



Order Decision

Site visit carried out on 19 November 2015

by Peter Millman BA

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 15 December 2015

Order Ref: FPS/Z1585/4/23

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Essex County Council Highways Act 1980 – Section 119 – Public Path Diversion Order Footpath 13 Wickham Bishops.
- The Order is dated 13 March 2015 and proposes to divert a footpath as shown on the Order Map and described in the Order Schedule.
- There were ten objections outstanding when Essex County Council submitted the Order to the Secretary of State for confirmation.

Summary of Decision: I have not confirmed the Order.

Main issues

1. The Order was made by the County Council in the interests of the owner of the land crossed by the footpath. Section 119(6) of the 1980 Act requires that, before confirming the Order, I am satisfied that it is expedient in the interests of the owner, or of the public, or both, that the path should be diverted. The further tests for confirmation are set out in the remainder of s119(6) and in s119(6A) of the 1980 Act. The principal issues are, first, whether the diverted footpath would be substantially less convenient to the public than the present one, and second, what effect the proposed diversion would have on public enjoyment of the path as a whole.

Reasons

Background

2. Footpath 13 runs diagonally across what was once a single field, although it is now bisected by the double fence which encloses the path. The field – although it is perhaps better characterised now as an informal garden area – is owned together with a property called Ballards. The owner of Ballards wishes to sell the property, but a potential buyer would like to purchase it without the footpath running across the field. The application envisaged a diversion starting at A and ending at C to link with footpath 15 (see copy of the Order map appended below), but the published Order proposes to divert the footpath around the inner edge of the field to end at B.

The tests for confirmation

The landowner's interest

3. The County Council's statement of the grounds on which it considers the Order should be confirmed state simply: *The owner wishes to sell the property and*

his buyer wishes to remove the footpath from across the middle of the field to around the boundary. The landowner's agent states that an offer has been made for the property and accepted subject to the diversion of the footpath, and adds: It is considered expedient that the line of the footpath should be diverted to prevent walkers passing directly through the garden land, to the clear benefit of both safety and privacy for the prospective purchaser.

4. It would clearly be expedient in the current landowner's interests to have the footpath diverted if it makes it easier to sell the property. I can give very little weight, if any, to the advantages said to accrue to the prospective purchaser. Section 119 of the 1980 Act refers to the interests of the owner, lessee or occupier of the land, not to those of a prospective buyer. In any event, no evidence has been provided to indicate in what way the privacy or safety of such a purchaser would be compromised by the footpath in its present position, which is well away (about 60 metres at its closest point) from the house and separated from it by a fence and hedge.

Whether the diverted path would be substantially less convenient to the public

5. The current path is 213 metres long. The diverted path would be 340 metres long, an increase of about 60%. This would be a significant increase for those, like one of the objectors, who use the path as a short cut to get from Grange Road to the church or nearby graveyard (see inset map in the copy of the Order map appended below), but perhaps not for people taking dogs for a walk. None of the objectors referred to dog-walking although the applicant's agent stated that much of the use of the path was by dog walkers.
6. The current path slopes very gently uphill from A to B. The proposed diversion slopes gently downhill from A to C and then runs uphill from C to B. This would make the diverted route slightly less easy to use, particularly for those who are less mobile or older.
7. The current route runs between sheep-wire fences set about 2 metres apart. The surface is of grass, with a central strip where much of the grass has worn away and the surface is of compacted soil, slightly muddy at the time of my site visit, carried out on a very wet day in November.
8. There is no path on the line of the proposed diversion. The Order map shows that the centre of the path, which the Order defines as 2 metres wide, would be from 4 to 9 metres from the centre of the roadside hedge. There would therefore be a gap between the path and the hedge. Between A and C the proposed diversion crosses, or passes close by, some manhole covers, which may be to do with what the landowner's agent refers to an 'aqueduct' crossing the field. The path would then pass through a small spinney (marked on the Order map by a line in the shape of the upper half of a letter D). Between the spinney and point C, on the line of the proposed diversion, there is currently what appears to be a long heap of rubble covered by grass. There appear to be no boggy or inherently wet areas on the proposed diversion, but I accept the comment of an objector that the surface of the proposed diversion would not dry out as quickly as the cross-field route because of shading by hedges, which would be on the southern and western sides of the path.
9. The Order states that the landowner 'will defray all costs which are incurred in bringing the new site of the path into a fit condition for use by the public.' One letter written in support of the Order states that the current path is muddy and the new one is 'to have a proper base with an all-weather surface'. The

landowner's agent states that the new path would be 'properly surfaced, with suitable drainage and planting'. There is, however, no schedule of works referred to in the Order which would guarantee anything other than a path in a condition fit for use by the public which, in my view, need only be a path of a similar standard to the current one.

10. I conclude that the proposed diversion would be somewhat less convenient than the current path because of its additional length, more slopes and shading by hedges, but not substantially so.

The effect on public enjoyment

11. Some of the effects on convenience will also effect enjoyment. A longer path may not only be less convenient to some, but will probably also be less enjoyable to those objectors currently using footpath 13 as a short cut.
12. Supporters of the Order suggested that a path beside the hedge would be more enjoyable from a wildlife point of view. No further reason was given for this assertion. I looked at the hedge between the proposed diversion and the road when I carried out my site visit. In places it is very thin. I could see nothing about this hedge which might make it particularly attractive.
13. Several objectors to the Order argued that walking across the centre of what had been an open field gave them enjoyment because of the views of the surrounding countryside it afforded, and because of the feeling of being, as one walker put it, 'out in the open countryside.' When I carried out my site visit, the weather was particularly murky, and I could see nothing much beyond the boundaries of the field, but I accept that in good weather there will be some more distant views, particularly towards the south and south-east, and that some people find these views, as well as the sense of openness, an attractive and enjoyable feature of the current path. They would be largely lost if the path was moved close to the hedge.
14. The landowner's agent has stated that the landowner could, if he wished, plant hedges on either side of the current path to obscure views. On the other hand, objectors were concerned that if the path was moved close to the edge of the field, the current or future landowner could plant a hedge between the new path and the field. Both scenarios are possible, but hypothetical, and I cannot give their possibility any significant weight in assessing the expediency of confirming the Order.
15. Some objectors argued that to move the path to the field edge would be no better than forcing them to use the road. I do not agree. While the road is narrow and used by vehicles, the path would at least be traffic-free and safe, although closer to traffic than the current route.
16. One objector argued that the current path had heritage importance, having been used for centuries as a short cut to church. No evidence was produced to show that this was the case. The path has existed on its current route since for more than a hundred years; it is depicted on an Ordnance Survey map from the late 19th century, but there is no further evidence of any particular historical significance. The fact that a path has existed on the same line for many years, or that people who have walked it for forty years or so are attached to it, is not a sufficient reason for refusing to sanction its diversion.
17. Another objector argued that the current path, because it was straight, was safe; a walker could see anyone approaching him or her. This was contrasted

with the proposed route, where, it was suggested, the growth of scrub and the bends in the route would mean that anyone approaching might not be seen. I can understand that a nervous walker might be anxious, but I have seen no evidence that rural paths in this part of Essex are more dangerous than in other parts of the country.

18. One of the supporters of the Order wrote: 'Speaking from experience, sadly there are many people in Wickham Bishops who do not like change and resent some of the people that live in the larger properties... I believe that some people in the village are resentful and bitter and go out of their way to cause problems for people...' That may or may not be the case, but I cannot detect, in the material provided by objectors, anything other than a genuine desire to retain the footpath in its current position.
19. I conclude that the diversion of footpath 13 would have an adverse effect on its enjoyment by some members of the public because it would be longer, the sense of openness would be lost, views would be lost and the path would probably be damper. There would be no positive effects on public enjoyment.
20. In these circumstances, where the diversion would be in the interest of the landowner but less enjoyable for the public, I need to balance the interests of the landowner against those of the public to determine whether it would be expedient to confirm the Order.
21. Diversion of the footpath would enable the current landowner to sell his property to the person who has offered to buy. This would, in my view, be a one-off benefit to the landowner; once his property is sold he will benefit no longer. I cannot give significant weight to the unproven benefits to the privacy and safety of a future owner. The adverse effect on the enjoyment of some members of the public, even if not very great, would last for the foreseeable future; it would be felt each time they used the path. Cumulatively, I conclude, it would outweigh the benefit to the landowner, and I therefore further conclude that it would not be expedient to confirm the Order.

Conclusion

22. Having regard to these and all other matters raised in the written representations I conclude that it is not expedient to confirm the Order.

Formal Decision

23. I do not confirm the Order.

Peter Millman

Inspector

