



Order Decision

Inquiry held on 19 January 2016

by Peter Millman BA

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

Decision date: 26 January 2016

January Order Ref: FPS/Z1585/4/21

- 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 8 and Footpath 15 Bradwell-on-Sea.
- The Order is dated 1 December 2014 and proposes to divert footpaths as shown on the Order Map and described in the Order Schedule.
- There were seven objections outstanding when Essex County Council submitted the Order to the Secretary of State for confirmation.

Summary of Decision: I propose to confirm the Order subject to modifications which require advertisement.

Main issues

1. The Order was made by the County Council in the interests of the owner of the land crossed by the footpaths. Section 119(6) of the 1980 Act requires that, before confirming the Order, I am satisfied that it is expedient in the interests of that owner, or of the public, or both, that the paths 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 in this case are, first, whether the diverted footpaths would be substantially less convenient to the public than the present ones, and second, whether it is expedient to confirm the Order taking account of the effect the proposed diversions would have on public enjoyment of the paths as a whole.

Reasons

Background

2. At the inquiry, the officer representing the County Council gave a brief outline of the history of the relevant parts of footpaths 8 and 15 since they appeared on the first Definitive Map of rights of way, compiled under the 1949 National Parks and Access to the Countryside Act, in 1953. It is sufficient to note that the current legal lines of both paths are not the same as they were then, when neither the marina nor the sewage works (both shown on the copy of the Order plan attached below) existed. The coastal path was cut when the entrance to the marina from the estuary was created, and the path diverted onto its landward side. Footpath 8 was diverted to its present line to accommodate the construction of the sewage works.
 3. Although it seems likely that when footpaths 8 and 15 were diverted onto their present lines they ran over routes which were usable, the current landowner,
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who said that he had known the land for about 40 years and worked on it for about 30, stated that he had never known those routes to be usable.

4. The situation at the moment is that footpath 8 between A and F is completely impassable because it is below the high water mark, and when the tide is out it runs through thick mud. Footpath 8 where it runs between the sewage lagoon and the drain is completely impassable because much of the land is effectively a marsh. North of the sewage works, in the vicinity of point B, footpath 8 is obstructed by rubble and machinery. The land under part of footpath 15 between F and E has subsided so that it runs through water at high tide, and its line is blocked by ramps leading to the pontoons as well as the machinery which is used to hoist boats out of the water. In the case of each path, even if man-made obstructions were removed, very large-scale ground works would be required to reinstate the paths on their legal lines.
5. Officers of the County Council met with the landowner in 1997 with a view to remedying the problems which are still, today, at issue, but for some reason, now unknown, failed to take matters forward, and nothing more was done until further meetings in 2011, after which the landowner applied for a diversion order.

The tests for confirmation

The landowner's interest

6. There is no doubt that it is in the landowner's interest that the parts of footpath 8 and 15 which run alongside the marina should be diverted. As for the part of footpath 8 which runs along the drain near the sewage works, it is hard to see how it would be physically possible to reinstate it on its legal line, and it would therefore be in the interest of the public for it to be diverted onto a usable route.

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

7. On the assumption that the current paths were actually available for use, then in terms of length, width and gradient, there would be little to choose between them and the proposed diversions in terms of convenience.
8. One concern of objectors was the interaction between pedestrians and motor traffic on the proposed diverted route of footpath 15, which would follow a track used by vehicles for most of its length. It seems to me that this concern is to do with both convenience and enjoyment. This track is shown on the Order plan attached to the end of this decision by a pair of parallel pecked lines from a little south of E, running in a straight line in the direction of D. The Order plan shows the proposed diversion running down the centre of this track. The track is about 4 metres wide, the proposed diversion 2 metres wide. At the inquiry, however, the County Council asked me to modify the Order so that public footpath rights would extend across the whole 4 metre width.
9. Two of the objectors expressed their concerns about safety in the following way. They asserted that the track was: 'in constant use not only by the marina's heavy lifting equipment but also by HGVs transporting boats, skips, recycling bins etc. in and out of the marina. Add to this the daily use by refuse, sewage, fuel lorries etc. and the vehicles/trailers of the marina berth holders and Marina Bar suppliers/patrons, you will see that the proposed so-called 'path' is in fact a well-used service road and cannot possibly be

considered a safe public footpath.’ They had additional concerns that a proposed static caravan site would add significantly to this traffic.

10. At the inquiry evidence was given that the entrance to this track is controlled by a barrier (at the point just south of E where the footpath would join it) and that it is subject to a 5 mph speed limit. The landowner gave evidence that during the time – about 40 years – he had known of or worked at the marina there had been no accidents involving pedestrians and vehicles on the track. During all this time the public had used it rather than the Definitive route, which had always been obstructed. In a busy week there would be no more than about 15 to 20 boat movements across the track. The crane driver who operates the boat-moving machinery stated in addition that the hoist had a maximum speed of 2 mph, and that when he was operating it a banksman directed those operations from the ground, looking out for pedestrians. He had worked at the marina for more than 30 years and there had never been an accident involving pedestrians. None of this evidence was challenged. It seemed to me that it was both credible and dealt with the specifics of the situation rather than assertions about perceived dangers. I conclude from it that the dangers argued to be associated with dual use of the track by pedestrians and vehicles are not as great as pictured by objectors and are, in fact, quite small.
11. The County Council’s proposal to increase the width of the footpath over the whole of the track (paragraph 8 above) appears to be sensible; there could then be no uncertainty about where, on the track, footpath rights existed.
12. Planning permission for a caravan park had not been given at the time of the inquiry, but the landowner stated that if it was constructed, its entrance would be near the main road, i.e. well to the east of the marina, and traffic to and from it would not use the track proposed to be followed by the diverted footpath.
13. It was not argued that the diverted route of footpath 8 would be less convenient than the current route, and I conclude that the proposed diversions would not be substantially less convenient compared with the current paths.

The effect of the proposed diversions on public enjoyment

14. Objectors mentioned a number of factors which might adversely affect public enjoyment of footpaths 8 and 15 if they were diverted. I note, however, that some concerns may be based either on presumptions about the enjoyment of the current routes, which have clearly been largely unavailable for many years, or in some cases possibly misconceptions about the position of the current legal rights of way. The situation on the ground is not made clearer by the fact that the proposed diversion of footpath 8 near the sewage works is waymarked as is it were the current legal route.
15. It was argued that footpath 8 ran by a brook and provided an enjoyable walk, which would be lost if the proposed diversion went ahead. The watercourse is, however, a drain rather than a brook, and in any event if the Order is confirmed the greater part of this path, south-west of point C, will remain next to it. The part of footpath 8 proposed to be diverted is adjacent to a sewage works and in my view there would probably be little loss of enjoyment if it was moved to the proposed position.

16. In the vicinity of B (see the Order plan attached below) footpath 8 is obstructed in places by what one objector described as 'large marine equipment and a mountain of rubble several metres high'. If the line of the current path through this area was cleared, however, the footpath would still be surrounded by the machinery and rubble, and it seems likely to me that most people would prefer to use the route of the proposed diversion, which utilises a grassy track.
17. Footpath 15, on the south-west of the marina, would be diverted by the Order away from the edge of the water. It would take a parallel course, about 25 metres from the water, but in a somewhat higher position, so that, in fact, views of the marina and its boats, and the estuary beyond, would remain. One objector argued that views could be lost as the landowner might erect a security fence next to the edge of the marina. He could, however, erect such a fence on the seaward side of the current footpath, if it was reinstated. I can, therefore, give this argument no significant weight.
18. One objector argued that the diversion would cause the loss of a 'delightful coastal path'. I consider this argument to be misconceived; the footpath along the edge of the estuary would not be affected by the Order.
19. I conclude that there would be no significant adverse effect on the public's enjoyment of footpaths 8 and 15 if their lines were moved to the proposed positions, and that it would therefore be expedient to confirm the Order.

Other matters

20. At the inquiry one objector wondered whether an 'Article 4 Directive', said to be applicable to the marina area, might have some bearing on my decision whether or not to confirm the Order. This is likely to be a reference to Article 4(1) of the *Town and Country Planning (General Permitted Development) Order 1995*. It does not seem to me that even if I had details of its applicability to the marina, it could have any significant bearing on my decision.
21. One of the objectors argued that if the Order was confirmed, the landowner would have profited from failing to maintain the footpaths. That may be an understandable reaction, but evidence was given at the inquiry suggesting that the footpaths were as impassable when the current landowner came to the marina as they are now.
22. Several objectors referred to a proposed application by the landowner for permission to create a static caravan park near the marina. Since it appears that no application has yet been made, or if it has it has certainly not been granted (see also paragraphs 9 and 12 above) I cannot give any weight to this matter in coming to a decision on the Order.

Proposed modifications

23. I noted above the County Council's request that the width of the diverted part of footpath 15 should be increased to 4 metres so that it extended to the full width of the track. In addition the County Council asked that the Order plan be amended to show the line of A-D approximately 10 metres to the south west of where it is currently shown. This was because A-D had been inadvertently shown on the Order plan too close to the edge of the marina, where the land appears still to be subsiding. Such a modification also seems to me to be sensible.

Conclusion

24. Having regard to these and all other matters raised both at the inquiry and in the written representations I conclude that it is expedient to confirm the Order with modifications.

Formal Decision

25. I propose to confirm the Order with the following modifications:

- On the Order plan, delete line A-D, move point D 10 metres to the south-west of where it is shown and show the diverted line of A-D running from A to the new location of point D. Immediately to the north-east of the new point D, straighten the kink in the line of footpath 15.
- In part 2 of the Schedule to the Order, in the description of the diverted part of footpath 8, delete the last two digits '50' of the grid reference for point D, and replace them with '48'. Delete '164' and insert '154' in its place.
- In part 2 of the Schedule to the Order, in the description of footpath 15, delete '2' and insert '4' in its place. Delete '325' and insert '335' in its place.

26. Since the confirmed Order would affect land not affected by the Order as submitted, I am required by virtue of Paragraph 2(3) of Schedule 6 to the 1980 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Peter Millman

Inspector

APPEARANCES

For Essex County Council

Mr S Taylor Public rights of way enforcement and liaison officer

In support of the Order

Mr A Thurtle Landowner
Mr I Cundy Crane operator

Objectors

Mrs D Tristram Local resident

Plan no. BOS 8 A
Diversion of Footpaths 8 and 15
Bradwell-on-Sea
Routes to Close A-B-C, E-F ———
New Routes A-D-C, E-D - - - - -
Unaffected
Definitive Map Sheet TM 00 NW
Scale 1:2500 Postcode: CM0 7RB

Plan by L. H. Page
08/01/2014

