



Interim Order Decision

Site visit made on 16 January 2024

by **Claire Tregembo**

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

Decision date: 8 February 2024

Order Ref: ROW/3304242

- This Order is made under Section 119 of the Highways Act 1980 and is known as the Babergh District Council (Polstead Footpath No 35 (Part)) Public Path Diversion Order 2021
- The Order is dated 4 February 2021 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were six objections and seven representations supporting the diversion outstanding when Babergh Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is proposed for confirmation subject to modifications.

Procedural Matters

1. Some objectors raise concerns over the consultation process and advertising of the Order. They also consider the public would not have seen notices displayed during Covid lockdowns. Pre-order consultations were made with user groups, parish, district and county councils and district councillors. The Order was advertised in the local press and publicised on the Polstead Parish Council, Babergh District Council (BDC) and Suffolk County Council (SCC) websites. Notices were placed on site and on the Stoke By Nayland parish notice board. A link to the Order was also posted on a Polstead Facebook page, although this was not arranged by BDC.
2. BDC has confirmed that the relevant statutory consultations were carried out when the Order was made. The procedural requirements for public path orders are set out in Schedule 6 of the Highways Act 1980 (the 1980 Act) and I am satisfied these have been met. Furthermore, when notices were posted on site, the Covid restrictions permitted unlimited outdoor exercise and in many areas use of the rights of way network increased.
3. Reference is made to a previous diversion approximately thirty years ago. A definitive map modification order (DMMO) to add Polstead 35 to the definitive map and statement (DMS) was made in 1988 and confirmed in 1989 following a public inquiry. Before making the DMMO, consideration was given to diverting the footpath, but a diversion order was not made.
4. If I confirm the Order, BDC has requested modifications to the Order to reflect the line that was provided as a temporary diversion during building works and has remained on a permissive basis since. The permissive route was believed to be along the line shown as the proposed footpath on the Order plan, but a topographical survey found this is not the case. The requested modification would

remove the need to undertake further work in the woodland. I will consider this request as part of my decision.

5. I also note that the line of the recorded footpath shown on the definitive map is closer to the pond and southern boundary of Red Barn Cottage than shown on the Order plan. Furthermore, the definitive statement states the footpath runs 'around the southern side of a barn' but the Order map shows it running to the north of Red Barn Cottage which is on the same footprint as the barn. Therefore, if I confirm the Order, I will need to modify the line of the footpath to be diverted to ensure the legally recorded line shown in the DMS is extinguished.

Main Issues

6. Section 119(6) of the 1980 Act involves three separate tests for an Order to be confirmed. These are;

Test 1: whether it is expedient in the interests of the landowner, occupier, or the public for the path to be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.

Test 2: whether the proposed diversion is substantially less convenient to the public.

Test 3: whether it is expedient to confirm the Order having regard to the effect which- (a) the diversion would have on public enjoyment of the path as a whole, (b) the coming into operation of the Order would have as respects other land served by the existing public right of way, and (c) any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it.

7. In determining whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to enjoyment of the land affected by the new paths must be taken into account, where applicable. Regard must also be had to any material provision contained in a rights of way improvement plan (ROWIP) for the area under section 119(6A). Other relevant factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation.
8. Part of the existing footpath is not available to use on its definitive line and has not been available for many years with walkers using alternative routes. When comparing the existing footpath to the proposed diversion, I will disregard any circumstances preventing or diminishing the use of the existing footpath and apply the above tests as if the legally recorded line were open and available for use.

Reasons

Whether it is expedient in the interests of the owners of the land that the path in question should be diverted

9. The recorded line of the footpath runs through the garden of Red Barn Cottage and then across a paddock. The cottage and paddock were in the same ownership

when the Order was made. However, the paddock was sold to another party in June 2021. The new owners support the footpath diversion.

10. The recorded footpath passes very close to the side of the cottage. The garden is lawned with seating on paved areas adjacent to the cottage near the footpath. Anyone walking the footpath can directly see into the cottage through the windows and doors can easily be accessed. This impacts on the security and privacy of the cottage, the garden, and its residents.
11. The proposed diversion would take walkers out of the garden further away from the cottage reducing its intrusiveness. Although it would still be possible to see into the garden and potentially through some of the windows from the proposed footpath, walkers would not have direct access to the garden, doors or windows, and views into the property would be limited. The owners would be able to undertake additional planting to restrict views of the property from the proposed footpath further increasing their privacy. I consider the diversion would improve the privacy and security of the cottage and garden.
12. The recorded footpath crosses a paddock used to graze horses and sheep. The owners have concerns about biosecurity, public safety and dogs chasing sheep. They have also experienced problems with walkers feeding their horses. The diversion would take the footpath out of this paddock into the adjacent field owned by Red Barn Cottage. The proposed footpath would run along the edge of this field and at the time of my site visit it was being used to graze sheep. This section of the proposed footpath was available on the ground and was enclosed with a wooden fence on the northeastern side and a temporary fence on the southwestern side. The proposed diversion allows the owners to separate the public from their livestock improving security and public and livestock safety with minimal impact on the grazing area. If the legal line of the footpath were enclosed, it would result in two paddocks one of which would be so small it would be unsuitable for grazing.
13. Therefore, I consider the proposed diversion would improve the efficient use of the land for grazing and improve security and safety. The proposed diversion would remove the footpath completely from one of the owner's land leading to additional benefits for them.
14. I am satisfied that it is expedient to divert the footpath in the interests of both landowners.

Whether any new termination point is substantially as convenient to the public

15. The proposed new termination point would be 33 metres further southwest on Shelley Road (U4319). This would reduce the walking distance along the road to Stoke by Nayland Footpath No 16. This would be more convenient for walkers travelling between these footpaths. It would increase the distance to the nearest footpath to the north which terminates at Withermarsh Green. This already involves a much longer walk along roads. Furthermore, another footpath to the south of the Order route provides a shorter route to Withermarsh Green with less road walking.
16. Therefore, I consider the new termination point to be substantially as convenient to the public.

Whether the new path will not be substantially less convenient to the public

17. The recorded footpath crosses the paddock over a hill, and it is not possible to see the other side of the field from points C or D. This makes it more difficult to follow the line of the footpath. The proposed footpath between points J and G follows a fence line making it easier to navigate.
18. I was not able to follow the recorded line alongside the pond due to fencing and vegetation. However, the provision of the boardwalk along the northern edge of the pond suggests the ground here is soft underfoot. The available route through the garden is firm, flat, and easy to use.
19. The proposed diversion would divert the footpath through woodland, up and down a slope. There are concerns this section would become muddy in wet weather. I found this section to be even, firm underfoot and well-drained. The proposed footpath was firmer and drier than the section of Footpath 35 alongside the stream to the northwest of Red Barn Cottage. The Public Rights of Way Officer states they have made several site visits and always found the proposed footpath to be sound underfoot including in February 2021 when the area was extremely wet, and roads were flooded.
20. The gradient between E and H is less convenient than the route through the garden between A and H. However, the gradient is similar to the gradient between points C and D and points C to J. Therefore, I do not consider this makes the footpath substantially less convenient to the public.
21. There are three stiles on the route currently used by the public. A field gate and stile are recorded in the definitive statement on the section of footpath to be diverted. The proposed footpath will have two pedestrian gates and no stiles. I consider this would make the footpath slightly easier to use. There is currently a stile on the proposed footpath at point J. However, the Certificate of Works required to make the proposed footpath fit for use by the public includes the removal of this stile and the installation of a pedestrian gate. The Order states the recorded footpath will not be stopped up until SCC certify these works have been completed.
22. The proposed footpath is 5 metres longer than the existing footpath so does not affect the convenience to the public.
23. I consider the new footpath will not be substantially less convenient to the public.

The effect of the diversion on public enjoyment of the path as a whole

24. The footpath is known locally as 'Maria Marten's footpath' or the 'Red Barn footpath' because of the murder of Maria Marten in a nearby barn in 1827. Path users enjoy walking the footpath because of the historic connection. It is claimed the infamy of the murder attracts visitors to Polstead and the footpath. However, the barn where her body was discovered has been demolished and was located approximately 130 metres southwest of the Order route. The site of this barn is not visible from the line of the recorded footpath or the proposed diversion. Therefore, the proposed diversion does not result in the loss of views of the site of this barn and any historic connection will be with the area not the route of the footpath.
25. I consider there will be walkers who would not feel comfortable passing so close to a residential property and through a garden, particularly if the residents were in the

garden. The proposed footpath through the wooded area is likely to be more enjoyable to some walkers. Five people who support the diversion state the proposed footpath through the woodland is more enjoyable than the existing route through the garden. One person considers the woodland footpath to be less dark and dank than the section through the garden. Supporters also enjoy seeing the bluebells in the woodland, they are not present on the recorded footpath.

26. It was suggested that the barn conversion spoils the walk and has significantly changed the nature and feel of the site. Planning permission was granted for the conversion of the barn. The impact on the area and footpath would have been taken into consideration when determining the planning application. Red Barn Cottage is visible from the recorded footpath and the proposed diversion. Therefore, I consider the barn conversion to have the same impact on the recorded and proposed footpath.
27. I do not consider the proposed diversion would affect the public enjoyment of the footpath as a whole and some people would find it more enjoyable.

The effect of the diversion on other land served by the existing paths and the land over which the new paths would be created

28. The Order was made at the request of the owners of Red Barn Cottage to improve their privacy and security. Therefore, the diversion will have a positive impact on their land.
29. The proposed diversion removes the footpath from a paddock of one of the owners into a field owned by Red Barn Cottage. It would allow the owners of the paddock to make more efficient use of their grazing land and resolve their concerns around biosecurity, and public and livestock safety. I consider the diversion will have a positive impact on the paddock and a limited impact on the field.

Duty to have regard to the needs of agriculture (including the breeding or keeping of horses) and forestry and the desirability of conserving flora, fauna, habitats, biodiversity, and natural beauty.

30. I have already concluded above that the diversion will allow more efficient use of grazing land and resolve issues with biosecurity and livestock safety. Therefore, the diversion will benefit the needs of agriculture and the keeping of horses.
31. An assessment of the impact of the proposed footpath on bluebells within the woodland found it would result in little or no harm to bluebells. It also found that increased light along the woodland edge had resulted in the germination of foxglove seeds increasing flora and providing a source of pollen for bees. The proposed footpath may also provide an additional foraging route for bats. The woodland is not recorded as ancient woodland. The proposed footpath was concluded to be ecologically acceptable.
32. BDC has requested a modification to the proposed footpath to follow the line already provided on the ground as a permissive route. This would mean that additional work within the woodland is not required. I consider that, if I confirm the Order, the requested modifications should be made to prevent the removal of trees and to conserve flora and fauna, including bluebells and foxgloves.

33. Suffolk Wildlife Trust requests that hedgerow removal is not carried out during bird nesting season. There did not appear to be any hedgerows that needed removing to make the proposed footpath available for use.
34. There is no evidence before me that the diversion will have an adverse impact on flora, fauna, habitats, or biodiversity.
35. The footpath is within an Area of Outstanding Natural Beauty. I do not consider the diversion will affect the natural beauty of the area.

Rights of Way Improvement Plan

36. SCC's Green Access Strategy 2020-2030 is the relevant ROWIP for the area. The proposed diversion does not appear to conflict with any of the policies set out within it. The replacement of stiles with pedestrian gates meets objective 1.2.2 of the ROWIP.

Conclusions on whether it is expedient to confirm the Order

37. I have found the proposed diversion to be in the interests of both landowners. I do not consider the proposed diversion to be substantially less convenient to the public or less enjoyable. I consider the new termination point to be substantially as convenient to the public. There is no evidence that the proposed diversion would have a negative effect on land served by the existing or proposed footpath. The diversion would benefit agriculture and would not have an adverse impact on flora or fauna, biodiversity, or natural habitat. Therefore, I consider it is expedient to confirm the Order.

Other Matters

38. The length of the boardwalk was questioned with objectors stating its full length is 19 metres but the proposed footpath between points A and E is stated to be 15 metres. The proposed diversion commences partway along the boardwalk which accounts for the difference in length.
39. The reasons for making the Order were questioned. The objectors believe the landowners should have considered the impact on the property when converting the barn. Under section 119 of the 1980 Act, a landowner can apply to divert a public right of way if it is in their interests to do so. This Order is in the interests of the landowner to increase the privacy and security of their property.

Overall Conclusion

40. Having regard to the above, and all other matters raised in the written representations, I propose to confirm the Order subject to modifications to the line of the proposed footpath to reflect the alignment that has already been provided on the ground. I also proposed to modify the alignment of the footpath to be diverted to show the line recorded in the DMS.

Formal Decision

41. I propose to confirm the Order subject to the following modifications.

In Part 1 of the Order Schedule

- Delete '28' and replace with '11'
- Delete 'TM00083779' and replace with 'TM00073780'
- Delete '71' and replace with '88'

In Part 2 of the Order Schedule

- After 'point E then in an' add 'east south'
- Delete '28' and replace with '49'
- Delete 'TM00093780' and replace with 'TM00113779'
- Delete '36' and replace with '15'

42. 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.

Claire Tregembo

INSPECTOR

Modified Order Map

