



## Order Decision

Site visit made on 5 August 2014

**by Heidi Cruickshank BSc (Hons), MSc, MIPROW**

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

Decision date: 11 September 2014

---

### Order Ref: FPS/D0121/4/19

- The Order is made under Section 119 of the Highways Act 1980 and is known as The North Somerset District Council (Parts of Footpath AX 6/12, Part of Footpath AX 6/15 and Footpath AX 6/14 South Hill Farm Bleadon) Public Path Diversion Order No. 5 2013.
- The Order is dated 12 December 2013 and proposes to divert parts of three footpaths running over land in the ownership of South Hill Farm, Bleadon, as shown in the Order map and described in the Order Schedule.
- There were two objections outstanding when North Somerset District Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

### Summary of Decision: The Order is confirmed.

---

#### Procedural Matters

1. I made an unaccompanied site inspection on 5 August 2014, by which time the statements of case from both objectors had been submitted, with the final comments received subsequently. I am satisfied that I saw all relevant matters during my site visit.

#### Main Issues

2. The Order has been made in the interests of the owner of the land crossed by the footpaths and I must be satisfied that it is expedient to confirm the Order in that interest. There is no legislative requirement that the proposed routes be of benefit to the public where the Order is not made in their interests, however, the new footpaths must not be substantially less convenient to the public.
3. Objections to the Order related to concerns about changes leading to the routes being less convenient and enjoyable for the public, due to increased distances, alterations to surfaces and the effect of limitations.
4. I am required to have regard to the material provision of a rights of way improvement plan ("ROWIP") prepared by any local highway authority whose area includes land over which an Order would create or extinguish a public right of way. Part of the ROWIP was submitted, referring to the processing of Public Path Order applications and principle of the least restrictive option in relation to barriers and furniture.
5. With regard to the comments as to the digitisation of the routes, I am satisfied that the Order plan reflects the definitive lines as recorded by the Definitive Map and Statement, relevant date 26 November 1956, and the Woodspring

District Council (Footpaths AS6/12, 6/14 & 6/15 – Bleadon) No. H. 11 Public Path Diversion Order 1990.

***Temporary circumstances***

6. Concerns were raised regarding obstructions to the definitive lines by new fencing. I agree with the objector that alignment A – B<sup>1</sup> of Footpath AX 6/15 (“AX 6/15”) is blocked by this fencing. The location of the kissing gate at C1 is on both the existing and proposed alignments of AX 6/12 and so this route is not obstructed by the fence. The obstructions to part of Footpath AX 6/12 (“AX 6/12”) on the section E – F and section K – J of Footpath AX 6/14 (“AX 6/14”) appear to be longstanding issues.
7. Sub-section 6 of section 118 of the 1980 Act states that “...*any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.*” Although section 119 of the 1980 Act, under which the Order is made, does not contain such wording, Circular 1/09<sup>2</sup> indicates that in forming an opinion on whether the replacement route is not substantially less convenient to the public, a fair determination can only be made on the assumption that the existing route is available to the public to its full legal extent. In considering the potential effect of the proposals upon use of the routes by the public I have considered the existing footpaths as if they were all open and available for use.

**Reasons**

***Whether it is expedient, in the interests of the owner, that the footpaths in question should be diverted***

8. The landowner is the applicant for the diversion and so it is evident that he believes the Order to be in his interests. The application refers to removing the route from the farmyard for bio-disease security and health and safety reasons. One objector recognises that the changes were for the owners ‘business end’ and North Somerset District Council, the order-making authority (“the OMA”) support the Order in the owner’s interests.
9. I am satisfied that the Order would be in the interests of the owner of the land crossed by the existing footpaths, particularly in relation to those parts of AX 6/12 within the farmyard area and AX 6/14, where proposals for an over-wintering area near the existing farm buildings would be affected by the definitive line. The alterations on South Hill will allow the management of the grazing land in that area without the need to make alterations to the fencing.
10. With regard to the interests of the owner of the land crossed by the footpaths it is, therefore, expedient to confirm the Order.

***Whether the new route will be substantially less convenient to the public***

***Distance***

11. I agree with the landowner that in travelling east or west, from points either north or south of the farmyard, there is little difference as the routes effectively form the opposite sides of a rectangle. Travelling from point H to either point E

---

<sup>1</sup> Points A – N are those indicated on the Order map

<sup>2</sup> Department for Environment, Food and Rural Affairs, version 2, October 2009

or K does not alter the distance significantly. I am satisfied that this would not be less convenient to the public.

12. However, I agree with the objector that the proposal introduces a greater distance if travelling generally north - south between points E and K as it would then be necessary to travel to and through point H in order to make that connection. The section of AX 6/14 to the south of the River Axe, giving access to Bleadon Bridge, provides a useful circuit from Bleadon itself and the OMA acknowledge that this alteration may not be as convenient to the public.
13. I walked both the existing and proposed routes, as far as was possible with section E – M not being available at the time of my site visit. I take account that these are recreational routes and not routes providing access to amenities, over which an additional distance may be significant. I am satisfied that whilst there is a longer walk, the additional distance is not so significant as to be substantially less convenient to the public, which is the test I must apply.

### *Surfacing*

14. There was concern regarding the surface of the route of AX 6/12, with comments that a new route would need to be maintained on waterlogged land in the winter. My site visit was carried out at a time when the land was relatively dry and whilst I did not find obvious signs of waterlogging on the proposed routes I note that the Ramblers also raised this point at the pre-consultation stage. The landowner indicates that he has subsequently carried out drainage works across the land generally and I do not consider that the land over which the proposed routes would run differs significantly from the land crossed by the existing routes.
15. Whilst I shall deal with the enjoyment of access to the quarry shortly, I agree with the OMA that crossing this area is uncomfortable for general walking purposes. I found the surface of the proposed route of AX 6/15 preferable.
16. I do not consider that the surface of the proposed routes will be substantially less convenient to the public.

### *Limitations*

17. New fencing on South Hill introduced the need for access points in relation to the two existing footpaths, AX 6/12 and AX 6/15, although only one kissing gate has been erected at point C1. As noted, I have considered the matter as if all the routes were open for use.
18. Concerns as to the condition of kissing gates were raised, however, those in place as a result of the Order will be compliant with British Standard 5709.2006. Article 1 of the Order sets out that the existing routes will only be stopped up once the OMA certify that work has been carried out to bring the site of the new highways into a fit condition for use by the public. Such works will include the limitations, as well as the physical provision of the route E - M.

### *Conclusion*

19. Whilst I agree with objectors that the distance through the farmyard will be increased, taking account of all the relevant points, I am satisfied that the proposed routes will not be substantially less convenient to the public.

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

20. Whilst I understand that some people may wish to walk through farmyards, to view livestock, buildings or machinery, there are those who would feel uncomfortable in such situations and may, unwittingly, place themselves, their own animals or others at risk. Taken on balance, I do not consider that moving AX 6/12 out of the farmyard area would have an overall negative effect on public enjoyment. I consider that the alteration at the north-western end, to align the route with the continuation to Bleadon, will improve enjoyment of the route, providing an easy continuous connection, without the current dog-leg.
21. It was argued that riverside views are available on other rights of way in the area and so of no advantage. I consider that the views provided by the proposed route of AX 6/14 are preferable to those available on the existing route, which runs alongside working farm buildings.
22. In relation to AX 6/15 it is clear that the alterations to the land generally, by fencing of the area, have caused unhappiness to the objectors, however, I need to consider the effect of the alterations on the particular routes in question. The landowner and the OMA rely on aerial photography to show the route which they say is used and onto which the footpath should be diverted. I agree with the objectors that the apparent lack of indication of a route on the definitive line may not mean that it is not used; any use may simply be insufficient to create a worn path on this particular ground. Nonetheless the claim that the proposed route is an additional route, part of the claimed circular route referred to below rather than an alternative, cannot be supported on the basis of the evidence before me. This evidence does no more than suggest that a route might be reasonably alleged to subsist.
23. The proposal would result in one less access point through the fencing than would be in place if the route was not diverted. However, it would be fair to say that as the existing rights of way meet at one point to the north-west of point C1, the fencing could have been located so that there was only one access point at this location anyway. Despite this I have considered the route of AX 6/15 as if it was fully available on the existing line.
24. AX 6/12 and AX 6/15 do not meet at the eastern end and, therefore, there is no circular route available by use of the recorded footpaths. The legally available circular routes to and from Bleadon make use of Shiplate Road, near Wonderstone, from AX 6/15 to join AX 6/16<sup>3</sup> or following AX 6/12 and AX 6/14 to Bleadon Bridge.
25. I note the comment that people may wish to view the old quarry and I agree this limestone rock area is likely to be of historical and archaeological interest to some people. However, the proposed alignment of AX 6/12 allows views of this area without requiring users to find access across the rough and uneven ground crossed by the definitive line of AX 6/15. Overall, I do not consider enjoyment of this feature would be removed by the proposals.
26. Taking account of all matters raised I am satisfied that there would be no overall reduction in public enjoyment of use of the routes as a whole.

---

<sup>3</sup> I note that the physically available alignment of this route also appears to differ from the definitive line.

***The effect the coming into operation of the Order would have with respect to the land served by the existing paths and the land over which the new paths are created together with any land held with it, account being taken of the provisions as to compensation***

27. The land crossed by the existing routes would remain part of the property to which they belong, South Hill Farm, with the land crossed by the proposed routes being part of the same property. There is no indication of any other legal interest in the land. It does not seem that the changes would have a negative effect on any land served by the existing or proposed routes.

***Whether the point of termination of the new footpaths will be on the same highways or highways connected with them, and will be substantially as convenient to the public***

28. I consider that the proposed routes satisfy the tests of being on the same or connecting highways and will be substantially as convenient to the public.

***Conclusions***

29. I conclude that it is expedient to confirm the Order in the interests of the landowner; the proposed routes will not be substantially less convenient to the public; there will be no adverse effect on public enjoyment, on the land served by the existing path, or the land over which the proposed path will pass.

30. Having regard to these, and all other matters raised in the written representations, I conclude that the Order should be confirmed.

**Other matters**

31. Both objections referred to fencing blocking other routes, a circuit and a route to Wonderstone, which lies to the north-east of South Hill Farm; it may be that these are comments relate to the same route. Comments were also made relating to historic use of South Hill as open space. The Diversion Order before me is a separate matter to any claim for additional routes or use of the land in a different capacity, which would be dealt with under alternative legislation should formal claims be made. I can only deal with the Order before me.

32. The provision of a permissive route on the northern side of South Hill is not relevant.

33. Concerns regarding the actions, or inactions, of the County Council or Parish Council in relation to obstructions are not relevant to my decision.

**Formal Decision**

34. I confirm the Order.

*Heidi Cruickshank*

**Inspector**