



Penderfyniad ar y Gorchymyn

Ymchwiliad a gynhaliwyd ar 19/08/09

Ymweliad a safle a wnaed ar 19/08/09

Order Decision

Inquiry held on 19/08/09

Site visit made on 19/08/09

gan/by Susan Doran BA Hons MIPROW

**Arolygydd a benodir gan
Weinidogion Cymru**

**An Inspector appointed by
the Welsh Ministers**

Dyddiad/Date **20 November 2009**

Order Ref: H6955/W/2009/515187

The Welsh Ministers have transferred the authority to decide this Order to me as the appointed Inspector.

- This Order is made under Section 119 of the Highways Act 1980 and is known as The County Borough of Wrexham (Public Footpath No 2 in the Community of Abenbury) Public Path Diversion Order 2004.
- Wrexham County Borough Council submitted the Order for confirmation to the Welsh Ministers.
- The Order is dated 24 November 2004 and there was one objection outstanding at the commencement of the local inquiry.
- The Order proposes to divert the public right of way shown on the Order plan and described in the Order Schedules.

Summary of Decision: The Order is not confirmed

Procedural Matters

The accuracy of the Order map

1. The accuracy of the Order map was questioned in particular with regard to point B, such that, it was argued, part of the path runs to the south of the line marked, as shown on a map related to planning permission for the site. It was further argued that the Definitive Map was incorrect as the public had not walked the line marked. Wrexham County Borough Council ("the Council") stated the Order map was derived from the Definitive Map.
2. The Definitive Statement does not describe the route in sufficient detail to be able to determine the position of point B. The Definitive Map depicts the path by a heavy broken line which is shown passing through the corner of a field boundary to the north west of a pond. This boundary is no longer present on the ground. Nevertheless, from the evidence available to me I consider it more likely than not that point B is correctly depicted on the Order map, notwithstanding that the public may have walked a different line taking them nearer to the pond. I do not place reliance on the map related to the planning permission as this does not purport to represent the Definitive Map. Having considered the documentation

provided I am satisfied the Order map sufficiently reflects the alignment of Footpath 2 as depicted on the Definitive Map.

The termination point of the footpath proposed to be diverted at Cefn Road

3. Following the Inquiry, I noted an apparent discrepancy in the evidence provided with regard to the termination point of Footpath 2 at Cefn Road. An examination of the Order map, extract from the Definitive Map, and a plan showing definitive footpaths overlaid on 2006 Aerial Photography appeared to show the termination of Footpath 2, point A on the Order map, lay some metres to the north north-west of a pedestrian crossing point and access into the playing fields. It was the crossing point and access into the playing fields which had been discussed at the Inquiry and pointed out on the accompanied site visit after the Inquiry as point A. Therefore, the comments of the parties were sought.
4. I am satisfied that I can reach my decision on the basis of the evidence I heard at the Inquiry, my observations at the site visit, together with, and taking account of, the comments subsequently received further to this issue.

The Main Issues

5. Section 119(6) of the Highways Act 1980 ("the 1980 Act") requires that, before confirming the Order, I must first be satisfied on the balance of probabilities:
 - (a) it is expedient in the interests of the owner, lessee or occupier of the land that the footpath in question should be diverted;
 - (b) the new footpath will not be substantially less convenient to the public;
 - (c) it is expedient to confirm the Order having regard to the effect which the diversion would have on public enjoyment of the path as a whole; and the effect which the coming into operation of the Order would have as respects other land served by the existing path; and the effect which any new path created by the Order would have as respects the land over which it is so created and any land held with it, having regard to the provisions for compensation.
 6. Section 119(2) of the 1980 Act requires that a diversion order shall not alter the point of termination of a path otherwise than to another point which is on the same highway, or a highway connected to it, and which is substantially as convenient to the public. It is necessary to consider whether the diversion in question satisfies this test, as the termination points of the proposed path are different from the termination points of the current path.
 7. Paragraph 9 of Schedule 6 to the Countryside and Rights of Way Act 2000 inserts into the 1980 Act a requirement that I have regard to any material provision of a rights of way improvement plan ("ROWIP") prepared by any local authority whose area includes land over which the order would create, or extinguish, a public right of way (Section 119(6A)).
 8. The Order is made by the Council in the interests of the lessee or occupier of the land crossed by the footpath.
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Reasons

Whether it is expedient in the interests of the lessee or occupier that the footpath in question should be diverted

9. Footpath 2 Abenbury crosses land occupied by playing fields. Between points A and B on the Order map the path cuts across a football pitch which it was agreed is used. Between points B and C there is presently no pitch marked out on the ground, although plans provided to the Inquiry show the path crossing a pitch for which there is planning permission.
10. It was argued that the public has unrestricted access to the land as a whole, and given the infrequent use of the affected pitch, the diversion was unnecessary: the public naturally avoiding the pitch when in use by walking around it. Football players, it was said, had not experienced problems with people trying to cross the pitch neither had the Council received any complaints from users.
11. Whilst the public may be avoiding the pitch when in use, I consider that it is in the interests of the lessee or occupier that the footpath be diverted. This will allow the land along the length of the existing footpath to be used for the purposes for which it was intended, as argued by the Council, and furthermore will mean that the occupier, pitch users and the walking public will be clear as to the legal line of the path such that potential conflicts of use are avoided. It follows that, on balance, I find it is expedient in the interests of the lessee or occupier that the footpath be diverted.

Whether the termination points of the diverted route will be substantially as convenient to the public

12. From point C, the junction of Footpath 2 with Footpaths 1 and 3 (which heads east from C) , the termination point moves along the same highway to point F, some 150 metres to the west. For those taking a longer walk utilising the rights of way network from west to east I find the new termination point makes little difference overall in terms of convenience or ease of use. I consider there would be a slight impact on those local people using the way for a short walk, for example the elderly, or those dog-walking, as argued by the Objector, since their circular walk utilising Footpaths 1 and 2 is truncated, but it is nevertheless retained.
13. From point A, the junction of Footpath 2 with Cefn Road, the termination point moves along the same highway to point D, some 23 metres to the north north-west of the definitive footpath. South south-east of point A is a road crossing point with studded pedestrian paving on both sides of the road from which the playing fields may be accessed by way of a wooden barrier that prevents people running out into the road: it was this crossing point that it was accepted was compared with point D at the Inquiry and pointed out at the subsequent site visit, as if it were point A (paragraph 3 above).
14. It follows that point A is presently obstructed by a hedge. Section 119 of the 1980 Act provides no guidance when considering the proposed diversion of a route which is obstructed. However, I consider it reasonable to reach my conclusions on the existing and proposed routes as if the definitive path were fully open and available for public use.

15. In considering the proposed termination point at D, I find that it has some similarities with point A; both are close to the junction of Cefn Road with Sutton Drive and both would require users crossing Cefn Road to access or egress the Footpath to be vigilant to traffic movements in and out of Sutton Drive, to and from the School site, and north and south along Cefn Road. The Objector raised concerns about safety and the potential danger to pedestrians accessing the Footpath, the road network at this location being subject to a large volume of traffic. Neither points D nor A have purpose built crossing points, although these exist south south-east of point A (paragraphs 3 and 13), opposite the spur of a 'roundabout' feature marked on the Order map, which provides access to the playing fields¹, and close to point E where there is a traffic calming feature and crossing point also providing access into the playing fields.
16. At point D the hedge is set slightly further back than at point A and the width of the verge allows a clear view of traffic coming from the north along Cefn Road. Also, drivers are likely to have a good view of walkers emerging from point D. However, people using the existing route have the advantage of access to the crossing point, south south-east of point A. From this purpose built crossing point walkers can follow the verge to point A, where Footpath 2 commences, although users can presently enter the playing fields from the crossing point and then follow Footpath 2 once inside. The Council stated at the Inquiry that a studded pavement crossing point and wooden barrier could be installed at point D. However, the pavement improvements would be a matter for the Council's Highways Department and no evidence was given that formal assurance of their installation has been sought, investigated or made in this regard, such that I cannot conclude they would take effect. On balance, given the need for users of the Footpath to be crossing where roads converge, I find I am unable to conclude the termination point at D to be as good as or as easy to use as that at A, access to which is facilitated by the existing nearby road crossing point.
17. In the event that I should conclude the termination point at D not to be substantially as convenient to the public, the Council invited me to consider modifying the Order so as to retain the termination point of Footpath 2 at point A. However, notwithstanding that the Council considered that point D was overall better than point A, or that point A was less good than the nearby crossing point, such modification would also require the public to negotiate a vehicular maintenance access into the playing fields between points A and D. This, the Objector argued, went against the purpose of the Order in proposing the termination of the path at point D so as to avoid the vehicular access, comprising a vehicular refuge from the highway with metal gates set back into the playing fields. Whilst I do not know how frequently the access is used, I do not consider such a modification would be as convenient to the public given there being no equivalent access to negotiate on the existing route.
18. On balance I conclude the termination point of the diverted route at Cefn Road will not be substantially as convenient to the public, and therefore this test has not been met.

¹ There is a separate access to the playing fields from the School site by way of a footbridge over Cefn Road

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

19. The proposed path heads first in a generally northerly direction, then easterly and then generally northerly direction to point F, being less direct than the existing route A-B-C. Overall the proposed path adds an additional 120 metres to a journey from points A to C from 303 metres to 423 metres, which is significant in terms of the overall length of Footpath 2. However, given that the path's use is recreational and much use is considered to be by those wishing to take a short circular walk utilising Footpath 1 for exercise or with the dog, I do not regard this as fatal to the Order. For those taking a longer walk using the rights of way network the additional length is insignificant given that a circular route beyond Footpath 2 on linking footpaths and bridleways is some 3.2 kilometres, and the nearest road some 1270 metres from point C. Thus overall, I do not find the additional length to be substantially less convenient to the public.
20. The Objector considered the public would not use the proposed route unless it was fenced off, by implication that public use of the land as a whole would continue, rather than of the Footpath. The Council has indicated no plans to fence the route.
21. The proposed footpath has a defined width which I agree with the Council is advantageous to users as it provides certainty given that the existing path has no defined width. The surface conditions of the existing and proposed routes are similar.
22. On balance I conclude the proposed footpath will not be substantially less convenient to the public.

Whether it is expedient to confirm the Order having regard to:

(a) the effect the diversion would have on public enjoyment of the path as a whole

23. The main issue arising in respect of enjoyment concerned the views from the diverted route compared to those from the existing path. From the existing route heading eastwards the views are open and essentially of the playing fields and vegetation. However, as the land initially rises towards point C there are long distance views of countryside and hills beyond the hedgerow. Heading west, the views are open and of the vegetation with views towards the school and housing estate and hills in the distance. From the proposed route the views are essentially of the playing fields and of housing in the distance, with a glimpse of hills, and from point F along the existing Footpath 1 views are less open given the hedges and fencing. From point F the views are open with vegetation to one side, then of housing and the playing fields. It may be that for those using the route as a short circular walk to take the dog out the views may not be the most important element in their enjoyment. Those using the route as part of a longer walk may not find the reduction in views significant when taking into account the longer distance they will be travelling into or from the countryside. However, there would be a greater impact on those wishing to enjoy the views of the countryside, especially those unable to walk far, given the location of the path in relation to the built up area. On balance, I consider the views from the proposed route are reduced and less enjoyable than from the existing route.

24. In terms of the pond which lies to the south east of point B I consider the public's enjoyment would be unaffected since the nearest point to it on the existing and proposed paths is the same, point B: access to the pond is not afforded directly by the Order route, existing or proposed. To reach the pond the public must leave the footpath. Although, given the open nature of the land, the Objector argued the public will continue to access the pond to enjoy its natural history.
25. Overall, I conclude the diversion would have a negative effect on the public's enjoyment of the path as a whole.

(b) the effect which the coming into operation of the Order would have with respect to the land served by the existing right of way, and

(c) the effect which any new public right of way created by the Order would have with respect to the land over which the right is so created and any land held with it, having regard to the provisions for compensation

26. The land over which both the existing and proposed routes pass is in the same ownership, and the applicant is the lessee or occupier of the land. No adverse effects on the land or other issues were identified which require my further consideration.

Rights of Way Improvement Plan

27. With regard to the ROWIP, the Council considered there were no material provisions which required my consideration. The Objector queried government policy in encouraging the public to take walks to improve health and well being (a matter covered in the ROWIP) and whether any user surveys had been carried out. It was confirmed that the ROWIP contains no general user survey and no specific survey had been undertaken in respect of Footpath 2.

Other matters

28. The Objector invited me to consider an alternative diversion from the existing access at Cefn Road opposite the School to the playing fields, following the southern and eastern boundaries of the football pitch to the pond, to point B then passing between the (presently) unmarked pitches and northwards to reach point C. Overall, he considered this would be 22% longer than the existing path, in comparison to the Council's proposal which he said was 47% longer. In my view this is a significant departure from the Order such that it amounts to a different proposal. It follows I do not consider it would be appropriate to modify the Order to such an extent.
29. Reference had been made by the Objector to discrepancies between the positioning of pitches marked out on the ground and depicted on plans relating to the planning permission granted for the site in view of the presence of great crested newts, having regard to the European Union Habitat Directive, and concerns were raised about the effect on them of maintenance carried out prior to the Inquiry. Whilst the relationship between Footpath 2 and the pitches it crosses is before me in respect of the tests I must apply under the 1980 Act, matters relating to the planning permission are not. Having regard to great crested newts, the Council indicated that should any licence be required with regard to maintenance of the land then it would be sought. I do not consider the diversion proposal in itself would have a significantly detrimental effect on the presence of

such wildlife or its habitat associated with the site, provided the appropriate procedures are followed and any necessary licence obtained.

30. It was argued that the Council had failed to maintain the existing route of Footpath 2 and had not maintained Footpath 1. I consider that maintenance is an issue for the highway authority.

Whether or not it is expedient to confirm the Order

31. I have concluded that the termination point at D is not substantially as convenient to the public. Notwithstanding that I consider it is expedient to confirm the Order in the interests of the lessee or occupier of the land, but that the path would not be as enjoyable to the public due to the reduction in views, when weighing the two together I find the expediency test is not met. Having reached these conclusions, it follows that I decline to confirm the Order.

Conclusions

32. Having regard to these and all other matters raised at the Inquiry and in the written representations I conclude on balance that the Order should not be confirmed.

Formal Decision

33. I do not confirm the Order.

S M Doran

Inspector

APPEARANCES

For the Order Making Authority

Mr H Roberts of Counsel *for* Cyngor Bwrdeistref Sirol Wrecsam/Wrexham
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who called

Miss N Holmwood Assistant Public Rights of Way Officer, Wrexham
County Borough Council

Objector

Mr K Armstrong-Braun

DOCUMENTS

1. Extract from "Footpath Worker" dated August 1996, submitted as Annex 4B by Mr Armstrong-Braun
2. Bundle of photographs submitted by Wrexham County Borough Council
3. Revised copy of 'Map 1' and additional copy of 'Aerial Photo 1' submitted by Mr Armstrong-Braun