
Order Decision

Site visit made on 6 March 2024

by Charlotte Ditchburn BSc (Hons) MIPROW

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

Decision date: 26 March 2024

Order Ref: ROW/3322263

This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Ribble Valley (Footpath 3-45-FP51) Diversion Order 2023.

The Order is dated 3 January 2023 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.

There were 3 objections outstanding when Ribble Valley Borough Council ('the Council') submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

The Main Issues

1. It is proposed that Footpath 3-45-FP51 (FP51) be diverted onto an alternative alignment. Since the Order is made under section 257 of the Town and Country Planning Act 1990 (the 1990 Act), if I am to confirm the Order, I must be satisfied that it is necessary to permanently divert the length of footpath in question onto the alternative line shown on the Order plan to enable development to be carried out in accordance with the planning permission granted. The procedure is only available if the consented works have not been substantially completed.
2. The merits of the planning permission granted for the development are not matters that are before me in respect of this Order Decision. However, the grant of planning permission does not mean that a public right of way will automatically be diverted. When considering whether or not to confirm the Order, the disadvantages or loss likely to arise as a result of the diversion of the way to members of the public generally, or to persons whose properties adjoin or are near the existing highway, should be weighed against the advantages of the proposed Order.
3. In short there are two issues that must be considered here. These legal tests, as outlined above, have been described by the Courts as "the necessity test" and "the merits test". Confirmation of an Order requires that both are satisfied.
4. In addition, in reaching my conclusions I have considered the requirements of the Equality Act 2010 where appropriate.

Reasons

Whether the diversion of the path is necessary to allow development to be carried out in accordance with planning permission

5. On 11 February 2022, full planning permission (reference 3/2021/0076) for the demolition of 34 existing dwellings and the erection of 50 new dwellings with vehicular accesses, landscaping and other associated works, was granted by the Local Planning Authority. For the purposes of this decision, this is the relevant planning permission, and which directly relates to the land crossed by the footpath. The layout of the approved development shows that there would be garden spaces, estate roads and housing on the existing line of FP51.
6. It was apparent from my site visit that the construction work of houses and estate roads that would affect FP51, had commenced. 11 units have been completed, works on most other units on the site have commenced but are at the early stages, with a further 15 at an advanced stage of build but the final works on these units have been halted whilst this Order is determined. Accordingly, I am satisfied that the approved development has not yet been substantially completed and that the planning permission, under which the development would take place, could not be fully implemented if the footpath were to be retained on its existing line.
7. I am therefore satisfied that the approved development would encroach onto the existing line of the footpath. Consequently, I conclude that it is necessary to divert the footpath to enable the approved development to be carried out in full.

The extent to which the diversion of the footpath would disadvantage members of the public generally or persons whose properties adjoin or are near to the footpath affected by the Order

8. The existing alignment of the footpath is through a live residential development site, running across estate roads and through private gardens. It was noted on my site visit that the surface of the route was varied including grass, tarmac and rough terrain where development had begun. The current alignment had a number of gates incorporated into the fencing to allow access on the current alignment of the route through the gardens of the newly built houses. Whereas there is no recorded width for FP51, it is proposed that the diverted footpath would have a recorded definitive width of two metres along its entire length.
9. It is not my role to revisit the planning decision previously made by the Local Planning Authority. Apprehensions from objectors include the change in character, this would primarily be as a result of the approved development rather than as a result of the proposed diversion. In this regard, whilst I acknowledge the concerns raised regarding the loss of existing character of the path if the diversion were to be confirmed, the marked change in the character of the route, as a result of it passing through a new housing development, would have been known to the Local Planning Authority when it granted planning permission.
10. I acknowledge the desire of Objectors to retain the existing footpath on what is maintained to be a long-standing alignment. The proposed diverted footpath would include passing through landscaped space within the approved development with only a short section on the footway alongside Mitton Road. This would be in accordance with the guidance contained within the Department for Environment, Food and Rural Affairs, Rights of Way Circular 1/09, whereby alternative

alignments should avoid the use of estate roads, with preference being given to the use of made-up estate paths through landscaped or open space areas away from vehicular traffic.

11. The proposed diversion would have an overall greater length, by approximately 25 metres, when compared to the alignment of the existing footpath. Information indicates that the majority of use in respect of persons seeking to use the footpath in order to commute or reach another particular destination. It has been put to me that the additional length would cause substantial inconvenience to those using the existing footpath.
12. In consideration of the additional length when compared to the alignment of the existing footpath, I conclude that the limited increase in overall distance is unlikely to inconvenience users of the existing footpath in terms of utility use.
13. Furthermore, the proposed diverted footpath would have a level, all weather surface, thereby providing an improvement for all users, including those with restricted mobility, when compared to the current position with the existing alignment of the footpath crossing uneven surfaces within the current development.
14. The proposed alignment of FP51 away from the owner/occupier of the houses and gardens of the new development would remove any uneasiness users might have about intruding into what is clearly a private space, regardless of their legal rights. The proposed route would be an advantage to those persons whose properties adjoin or are near to the footpath affected by the Order as it would remove the public walking through their enclosed gardens and close to their properties through private space, improving security and privacy of their properties.
15. The proposed diverted footpath would be located closer to the Mitton Road carriageway than the existing path. As such, concerns have been raised that, as a result of the diversion, there would be significant disadvantages to the public in terms of safety and in terms of impact on the health of users.
16. Whilst I acknowledge objectors' submissions in this regard, on my site visit traffic noise from the nearby Mitton Road and Pendle Drive could be heard from both the proposed and existing path. As noted above, the proposed diverted footpath would pass through a landscaped space, with the evidence confirming that the landscaped area would include provision of trees and shrubs, with that buffer creating a naturalistic section through the grassed landscape areas of the site. I am satisfied road safety issues were considered before the granting of planning permission and during the detailed design stage.
17. By reason of the separation distance, I do not find that the position or potential increased levels of use of the path would result in the route being unsafe. Furthermore, there is no substantive evidence before me to suggest that, by diverting the footpath in isolation, there would be a significant adverse effect on the safety of users.
18. In addition, objections put to me raise concerns about the effect on the local environment and wildlife habitats. However, in those respects such matters would have fallen for consideration during the determination of the planning application by the Local Planning Authority. From the evidence it is clear that it is not the diversion of the existing footpath that has given rise to those concerns, but rather such matters arise from the development.

19. Consequently, I conclude that confirmation of the Order would not result in disadvantages or loss to members of the public generally, or people whose properties adjoin or are near the existing footpath.

Other matters

20. Objectors raise concerns about funding offered by the developer, towards the 'King's Picnic' and a defibrillator, dependant on objections being removed. It is not my role to examine or comment on matters beyond the diversion and I have only taken on board any comments where they are directly relevant to the main issues in this case.

Conclusions

21. I have concluded that the diversion of FP51 is necessary to enable development to be undertaken in accordance with planning permission granted for the site. Furthermore, the alignment of the diversion through a landscaped area would be in accordance with the guidance described above. The proposed diverted footpath would have a greater width than the existing way. Whilst I acknowledge that the diversion would have a greater overall length and would result in the footpath being located closer to traffic on Mitton Road, the diverted path would provide a level, drained all weather surface thereby improving accessibility for all users.
22. For the reasons given above, I conclude that any disadvantages to the public generally, or to persons whose properties adjoin or are near the existing highway, arising from the diversion of the footpath would not be of such substance to outweigh the benefits of confirming the Order.
23. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

Formal Decision

24. I confirm the Order.

Charlotte Ditchburn

INSPECTOR

