



Order Decision

Site visit made on 13 January 2025

by Claire Tregembo BA(Hons) MIPROW

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

Decision date: 9 April 2025

Order Ref: ROW/3340313

- This Order is made under section 257 of the Town and Country Planning Act 1990 and is known as the Cumberland Council (Footpath No 431022 Parish of Whitehaven) Public Path Diversion Order and Definitive Map and Statement Modification Order 2023.
- The Order is dated 14 November 2023 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding Cumberland Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.

Preliminary matters

1. The parties drew my attention to a typing error in the first paragraph of the Order. The Order includes the planning application references for the developments affecting the footpath. However, the same reference is given for both outline applications. The parties have asked for the second reference to be corrected. The typing error does not affect the validity of the Order. Therefore, if I confirm it, I will correct this error.

The Main Issues

2. Section 257(1) of the Town and Country Planning Act 1990 (the 1990 Act) provides for an Order to be made authorising the stopping up or diversion of a footpath, bridleway, or restricted byway if it is necessary to do so in order for development to be carried out in accordance with planning permission granted under Part III of the 1990 Act.
3. The merits of the planning permission granted for the developments are not matters before me in respect of this Order Decision. However, the granting of planning permission does not mean a public right of way will automatically be stopped up or diverted. In considering the confirmation of the Order, the disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public or persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed Order. There are effectively two issues that must be considered, the necessity test and the merits test. Confirmation of the 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 is necessary to allow the developments to be carried out in accordance with planning permissions

5. Outline planning permissions for two residential developments affecting the existing footpath were granted on 2 August 2017. Planning permissions for the reserved matters applications were granted on 30 September 2022. The planning permissions expire three years after the approval of the reserved matters applications. The plans for the developments show several dwellings, gardens, and boundary fences over the line of the existing footpath.
6. Therefore, I am satisfied the planning permissions are extant and relate to the land crossed by the Order route. I am also satisfied the diversion is necessary to allow the developments to be carried out in accordance with the approved planning permissions.

Disadvantages of the proposed order

7. The existing footpath has a length of 203 metres and the proposed path is 316 metres. An additional 52 metres of roadside walking would be necessary for anyone travelling along Harras Road from the west. Some path users could find the increased distance challenging. However, alternative routes would be available through the proposed developments and the shortest one would be approximately 35 metres longer than the existing footpath.
8. Furthermore, the existing footpath appears to be a recreational route rather than being used for commuting or utility purposes. Therefore, walkers using the footpath are likely to be using it as part of a longer journey. A short circular walk along the proposed footpath and the new estate roads would also be possible without having to walk along the existing roadside verges.
9. I consider any disadvantages caused by the increased distance will be mitigated by the alternative route along the estate roads and paths.

Advantages of the proposed order

10. The existing footpath crosses a grass field that, at the time of my site visit, was being used for grazing. It was uneven, undefined, waterlogged in places, with long grass, and the line was not visible. This made the footpath difficult to follow, particularly as rain meant I could not see the kissing gate on the far side of the field.
11. The proposed footpath will have a 2 metre wide tarmac surface. This will make it easier to use, particularly for those with mobility issues, wheelchair users, and families. The provision of a clearly defined path will mean it is easier to follow. Section C to E will run close to Harras Road so the streetlighting along it should improve visibility. The proposed footpath will also provide an alternative, off-road route for people walking along Harras Road and the U4008.
12. At its eastern end, the existing footpath joins the U4008 approximately 25 metres south of another footpath on the opposite side of the road. The proposed diversion will bring the footpath out directly opposite the other footpath removing the need to walk alongside a busy road on a grass verge with no street lighting. I consider this

will lead to a slight improvement in public safety for those using both footpaths. There did not appear to be any other destinations or facilities near this point.

13. There are two pedestrian gates on the existing footpath, but none are needed on the proposed footpath. The gate off Harras Road is a small kissing gate that is not easy to use. I consider the removal of the gates will make the proposed footpath more convenient for the public. The existing gates prevent access to some people therefore the proposed diversion would improve accessibility.

Requirements of the Equalities Act 2010

14. As discussed in paragraphs 11 and 13 above, the provision of a 2 metre wide, hard surface and the removal of the pedestrian gates, will make the footpath easier to use and more accessible meeting the requirements of the Equalities Act 2010.

Whether the developments are substantially complete

15. At the time of my site visit, the only sign of any development was a small area of hard standing enclosed by temporary fencing. It was not clear if this is part of the proposed developments. In any event, I am satisfied that the proposed developments are not substantially complete.

Conclusions on the relevant tests

16. I have concluded above that it is necessary to divert the existing footpath to allow the developments to be undertaken in accordance with the approved planning permissions.
17. Path users will benefit from an improved surface, the removal of structures, a clearly defined route, and reduced roadside walking to connect to another footpath. Although the proposed footpath is longer, an alternative route through the developments will provide a shorter option for those who need it. I consider the advantages of the proposed diversion to the public outweigh any disadvantages caused by the increased length of the new footpath.

Other Matters

18. The objector raised concerns about the planning process. I can only consider the proposal before me and cannot revisit the planning process. However, the planning applications and comments indicate that the public footpath was considered.

Conclusions

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

Formal Decision

20. I confirm the Order subject to the following modification:

In the second to last line of the first paragraph delete the second outline planning application approval reference '4/16/2415/001' and replace it with '4/16/2416/001'

Claire Tregembo

INSPECTOR

