
Order Decision

Site visit made on 24 February 2015

by Alison Lea MA (Cantab) Solicitor

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

Decision date: 8 April 2015

Order Ref: FPS/P0240/3/6

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Central Bedfordshire Council (Clophill: Part of Footpath No A4) Public Path Extinguishment Order 2013.
- The Order is dated 2 August 2013 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were 3 objections outstanding when Central Bedfordshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed

Procedural Matters

1. At the time of my site visit the path was obstructed by a number of features including fences and hedges and I was unable to walk the entirety of the route. However I was able to see the line of the path from various vantage points and I am satisfied that I am able to make my decision on the basis of that visit and the information supplied to me.
2. Although the Ramblers' did not make an objection within the statutory period, they have submitted a statement of case. I have taken the content of it into account in reaching my decision.

The Main Issues

3. The Order is made under S118 of the 1980 Act. The requirements of this section are that, before confirming the Order, I must be satisfied that it is expedient to stop up the right of way having regard to
 - (a) the extent, if any, to which it appears that it would, apart from the Order, be likely to be used by the public; and
 - (b) the effect which extinguishment would have as respects land served by the path.

When considering these requirements I must disregard any temporary circumstances preventing or diminishing the use of the right of way. The 1980 Act also requires me to have regard to any material provisions in the rights of way improvement plan for the area.

4. The Order was made because it appeared to the Council that the Order route was "not needed for public use". However, in considering whether to confirm

the Order it is the likely use of the path in the future that I am required to consider. The question of need can however fall within the broad character of expedience.

Reasons

The extent, if any, to which it appears that the route would, apart from the Order, be likely to be used by the public

5. Clophill Footpath No. A4 runs in a generally north-south alignment from its junction with The Slade in Clophill, to its junction with Old Kiln Lane (Point A). It then continues north up a bank, passing through fences, hedges, 2 paddocks and an arable field until it reaches a hedge and ditch at Point B where it terminates. At Point B it currently connects with a permissive footpath established under Natural England's Environment Stewardship Scheme (the Permissive Path), which itself connects with Bridleway No 9. The Order would extinguish the footpath between Points A and B.
6. The Council states that the Order route has always been recorded as a dead end route. It was first recorded as a public footpath on the 1808 Parliamentary Inclosure Award and later included in the 1952 Parish Survey and on the 1953 Draft Map of Public Rights of Way. However, aerial photographs taken in October 1968 show no visible path and the Council suggests that whilst the path may have been used in the 19th century it has not been used to any extent in the last 50 years or so. The only evidence of recent use is from Mr Brooks who states that he made one successful attempt to walk the path about 20-25 years ago, but recalls that he had some difficulty forcing his way through hedges. The landowners state that the route is completely inaccessible and I accept that although there is a public footpath sign close to Point A, it is unlikely that there has been any use of the path in recent times due to the presence of a bank, fences and hedge lines. The landowners point out that in any event walkers can continue along Old Kiln Lane and then north along Bridleway 9 and state that in their opinion this provides a satisfactory alternative.
7. In considering the likely future use of the route I must disregard the obstructions. The objectors suggest that the route is only unused because of the obstructions and that if made available it would be used as part of a circular walk with the Permissive Path and Bridleway no 9. The Ramblers' also state that the Order route is the obvious route for walkers leaving the village on their way to Haynes and that the detour along Old Kiln Lane and Bridleway No 9 is a less pleasant and unsatisfactory alternative.
8. In my opinion the Order route provides a natural continuation of Footpath No 4 from The Slade and, free from obstructions, would be likely to be used by walkers leaving Clophill and heading towards Haynes. It is more direct than heading east along Old Kiln Lane before turning north again, and although I have no reason to believe that the surface of Bridleway No 9 becomes particularly difficult or dangerous for walkers, some walkers may prefer to use a route that is not also used by horse riders. I also accept that it could be used in conjunction with Bridleway No 9 to form a circular walk and the fact that there may be other circular walks in Clophill is not evidence that this one would not be used.

9. Both The Greensand Trust and Mr Brooke refer to the Clophill Green Infrastructure Plan June 2010 (CGIP) which I am informed identifies the opening up of Path A4 north of Old Kiln Lane and the creation of a permanent link between Path A4 and Bridleway 9 in an Action plan. Although I have not been provided with a copy of the CGIP, I understand that it was based upon community consultation with 43 people attending 2 workshop type events held in the village. I agree with the objectors that this support is an indication that the route would be likely to be used if made available. Although the Council suggests that significant weight should be given to the fact that Clophill Parish Council withdrew its objection to the Extinguishment Order I note that the Council accepts that the CGIP "indicates that some villagers considered it desirous to see the footpath opened up". I also note the Council's comment that "if the footpath was open and available it is possible that it would be used to some degree; either as part of a circular walk or as part of a longer route to Haynes Church End".
10. I note that the Order route only connects to the wider network by virtue of the Permissive Path and that the Stewardship Scheme under which it was granted ends on 31 October 2019. I also note that the owner of the land has indicated that he may terminate the scheme earlier, although no details of the scheme and provisions for early termination have been provided. However, the Permissive Path currently provides a link and it is my view that, free from obstructions, the Order route would be likely to be used by the public whilst that link is in place. Although it may be the case that the Order route will become a dead end at some time in the future and that use may then cease, this does not mean that the public would not use it in the interim period. Indeed I note that the Council accepts that the path is likely to be used to some degree up until 2019.
11. There have been some discussions concerning the possible diversion of the Order route. However, this is not a matter for me to consider and the fact that the objectors may be willing to consider such a diversion does not mean that the route along its current alignment would not be used if available.
12. Given that the path has been obstructed for many years and that prior to the entering into of the Stewardship Scheme it has not connected to the wider network, it is difficult to assess the extent to which, apart from the Order, the path would be used. However there are clear reasons why a path in this location would be used and on the basis of the evidence before me I conclude that once made available there would be significant use of the path for as long as the connection to the wider network remains in place.

The effect of extinguishment on land served by the footpath

13. The Council states that the opening up of the footpath would have a detrimental impact on the owners of the land as it would affect their current land husbandry practices. Although no details have been provided I note that the land is part paddock and part arable field and I accept that extinguishment may help with the management of the land. I also accept that extinguishing the footpath would avoid the need to make gaps in the hedges and that this minor detrimental effect on flora would be avoided. There is no land directly served by the footpath which would be detrimentally affected by closure.

Whether it is expedient to extinguish the footpath

14. Although it is clear that the Order route has not been used by the public in recent years, there is no suggestion that it has been added to the definitive map in error and, although currently obstructed, the public is entitled to use the route. The landowners state that the Order route is not needed as Bridleway No 9 provides an alternative and I accept that walkers can reach the same point by using Old Kiln Lane and Bridleway No 9. The Council states that in considering whether it is expedient to extinguish the path it has taken into account the likely cost of necessary works including the provision of suitable structures. However, in its report to the development management committee dated 17 July 2013 some detail of the works is provided and they are estimated at a maximum of £1000 which it is stated could be met from the existing Rights of Way budget.
15. I accept that the Permissive Path which links the Order route to the wider network may not be available in the future and therefore that the works may only permit access for a limited time. However, given my conclusion with regard to the likely future use of the path until that time, I consider that the cost of the works, any effect on land management and the existence of an alternative route are of insufficient weight to lead me to conclude that it would be appropriate to confirm this Order.
16. Although I note that the Council's Outdoor Access Improvement Plan (the ROWIP) identifies connectivity as an issue, I consider that the proposal does not conflict with provisions of the ROWIP. Nevertheless for all the reasons given I conclude that it would not be expedient to confirm the Order.

Conclusions

17. Having regard to these and all other matters raised I conclude that the Order should not be confirmed.

Formal Decision

18. I do not confirm the Order.

Alison Lea

Inspector