



Order Decision

Inquiry held on 20 February 2024

Site visit made on 20 February 2024

by **Paul Freer BA(Hons) LLM PhD MRTPI**

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

Decision date: 04 April 2024

Order Ref: ROW/3314239

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 (the 1981 Act), is known as the Cumbria County Council (Footpath Nos 11404 and 114015 Parish of Dalston) Public Path Diversion and Definitive Map and Statement Modification Order 2022.
- The Order was sealed on 18 October 2022 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when Cumbria County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

1. The Order has been made in the interests of the owners of the land crossed by the public rights of way. Section 119 of the Highways Act 1980 therefore requires that, before confirming the Order, I must be satisfied that:
 - (a) it is expedient in the interests of the owners of the land crossed by the section of footpath to be diverted that the line of the path or way, or part of that line should be diverted; and
 - (b) the path or way will not be substantially less convenient to the public;
 - (c) the point of termination of the alternative path and/or way would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public, and
 - (d) that it is expedient to confirm the Order having regard to:
 - (i) the effect which the diversion would have on public enjoyment of the path or way as a whole; and
 - (ii) the effect which the coming into operation of the Order would have as respects other land served by the existing rights of way; and
 - (iii) the effect which any new public rights of way created by the Order would have as respects the land over which the right is so created and any land held with it.
2. Section 119(6A) of the 1980 Act provides that I must have regard to any material provision contained in a Rights of Way Improvement Plan for the area covered by the Order.

Background and Procedural matters

3. On 1 April 2023, Cumbria County Council became part of a new Unitary Authority called Cumberland Council. Orders made under the 1980 and 1981 Acts continue to refer to the name of the Order Making Authority that made the order, in this case Cumbria County Council.
4. This case involves the proposed diversion of sections of footpaths 114014 and 114015 at Greenhead. In summary, the proposed diversion would re-align Footpath 114015 to a more direct route across the land owned by the applicant for the Order, Mr Rickerby.
5. One of the two objections to the Order received was from Dalston Parish Council (DPC). The Inquiry was advertised in accordance with standard procedure. A representative from DPC did attend the Inquiry but elected not to give evidence in person. I am therefore satisfied that every person who may have wanted to appear at the Inquiry was afforded a fair and reasonable opportunity to do so.

Reasons

Whether it is expedient in the interests of the owners that the line of the path or way, or part of that line should be diverted

6. At the Inquiry, Mr Rickerby explained that land is primarily used for the grazing of sheep and for silage. The land is also used for equestrian events and dog shows. The former are one-day events and typically take place 2 or 3 times a year. These events are subject to Health & Safety procedures and requirements. The dog shows typically take place over a long weekend. In all of these respects, a benefit would accrue to Mr Rickerby from the re-alignment of footpath No. 114015 to a more direct route across his land and this would be in his interest.
7. The same is true of footpath No. 114014, albeit to a lesser extent. Footpath No. 114014 does not cross that part of the land used for the equestrian events and the dog shows, but a re-alignment of that footpath to a more direct route would benefit the landowner in relation to the other uses of the land.

Whether the path or way will not be substantially less convenient to the public

8. On the limited evidence before me, it appears that the footpaths proposed to be diverted are used primarily for recreational purposes (for example, dog walking) rather than to reach a specific point.
9. According to the distances set out in the Order itself, the section of the existing footpath No 114015 to be diverted amounts to 679 metres in total. The total length of the new path described in the Order amounts to 646 metres, a decrease of some 33 metres. This shorter distance reflects the more direct route of the footpath as proposed to be diverted.
10. In relation to Footpath No 114014, the section of the existing footpath to be diverted amounts to 184 metres in total. The total length of the new path described in the Order amounts to 202 metres, an increase of some 18 metres. This increased distance reflects the re-alignment of the route to where the new section joins with footpath No 114015, a more logical joining point.

11. The bar set in section 119(6) of the 1980 Act is a high one: the new path or way will not be *substantially* less convenient to the public (emphasis added). Having regard to all of the points rehearsed above, I consider that the new path(s) is more convenient than the path(s) to be diverted. The corollary is that the proposed diversion would not be substantially less convenient than the existing path.

The effect which the diversion would have on public enjoyment of the path or way as a whole

12. As noted on my site visit, the experience of walking the footpaths as proposed to be diverted is materially no different to walking the exiting footpath. The views obtained are near identical. The time taken to walk the route(s) is more or less the same, and the experience under foot is no different. I therefore conclude that the new path and the path to be diverted are as enjoyable as each other. If anything, the path as proposed to be diverted has the advantage of following the natural desire line.

The effect which the coming into operation of the Order would have as respects other land served by the existing right of way

13. There are no effects on other land served by the existing right of way.

The effect which any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it

14. The landowner is also the applicant and clearly supports the diversion.

Whether the point of termination of the alternative path would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public

15. The point of termination of the alternative path would be on the same highway as existing and would be substantially as convenient to the public.

Rights of Way Improvement Plan

16. The proposed diversion would accord with two of the five priorities identified in the Rights of Way Improvement Plan (the Cumbria Council Access Strategy), specifically in terms of Improving Rights of Way and Countryside Access, and Managing Rights of Way and Countryside Access.

Other Matters

17. Both of the two objections that are outstanding question the need for the path to be moved. However, the objective of re-aligning the footpaths such that they follow a shorter, more natural desire line and do not cross land where sheep may be grazing is entirely logical. The objective of separating those using Footpath No.114015 from those attending or participating in the equestrian events or dog shows held on the land is also compelling, not least on Health & Safety grounds.
18. The objections also refer to a loss of privacy to the occupier of a residential property resulting from the footpath close to their boundary. A residential property adjoining an existing footpath is not land served by an existing right of way. Any loss of privacy resulting the proposed re-alignment of Footpath No 114015 is

therefore not a consideration which falls to be considered under Section 119 of the 1980 Act, including at (d) in relation to the effect which the coming into operation of the Order would have as respects other land served by the existing rights of way.

19. In any event, in his evidence Mr Fewkes explains that the route as now proposed was waymarked by the Redspearland's walking group in or around 2005 as part of an organised walk and since that time been used by walkers in preference to the defined route. This evidence is supported by a photograph dated 2009 showing the waymark in place. The implication is therefore that in practice walkers have been using the alignment now proposed for some considerable time without complaint.

Whether it is expedient to confirm the Order

20. I consider that the criteria set out in section 119(6)(a),(b),(c) and (d) of the 1980 Act are all met. I therefore conclude that it is expedient to confirm the Order.

Conclusion

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

Formal Decision

22. I confirm the Order.

Paul Freer

INSPECTOR

APPEARANCES

For the Order Making Authority:

Ms Emma Priest

Senior Lawyer

She called:

Mr Geoff Fewkes

Countryside Access Officer

For the applicant:

Mr Rickerby

Applicant

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1/ Opening Submissions on behalf of Cumberland Council
- 2/ Copy of the application

