



Order Decision

Inquiry held on 11 October 2022

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 7 December 2022

Order Ref: ROW/3262032

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Nottinghamshire County Council (Greasley Footpath No.32 and No.40) Diversion Order 2019.
- The Order is dated 6 November 2019 and proposes to divert the public rights of way shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding at the commencement of the inquiry.

Summary of Decision: I propose to confirm the Order subject to modifications that require advertising.

Procedural Matters

1. I held a public inquiry into this Order on Tuesday 11 October 2022 at County Hall, Nottingham. I made an unaccompanied site inspection on Monday 10 October 2022 when I was not able to walk the whole of the Order routes but viewed them from accessible points. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary.
2. In writing this decision I have found it convenient to refer to the Order Map and to points marked on a map, titled Plan RC1, prepared on behalf of Nottinghamshire County Council, the Order Making Authority (OMA), which shows the Order routes without grid references but with additional points annotated. I therefore attach copies of these maps.

Background

3. Footpaths 32 and 40 were recorded on the definitive map on the basis of a parish survey carried out in 1953. Since that time considerable changes have occurred in the vicinity including, in particular, the construction of the properties now known as 199A and 201A Main Street. This appears to have led to the routes used by the public having altered to some extent to avoid obstructions.
 4. Evidence from aerial photographs and statements of path users suggests that over a long period the routes actually used by the public differed from the recorded definitive lines.
 5. More recently, in around 2013, the route of Footpath 32 then in use by the public was obstructed by the locking of gate at Point A on Plan RC1. Footpath 40 had also then been obstructed for some time. When the Highway Authority took steps to
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- have the obstructions removed and enforce the re-opening of the paths this was challenged on the grounds that the legal routes of the paths were not in fact as claimed.
6. The definitive map was drawn on a small scale Ordnance Survey map base published in 1938 and footpaths were indicated on this by relatively wide lines. In addition, the accompanying statement described Footpath 32 as being of varying width. This together with the fact that more recent developments had altered the appearance of the area significantly made the precise identification of the true alignment of the paths extremely difficult.
 7. As agreement could not be reached between the authority and landowners, the alignment of the paths became the subject of a County Court judgement in 2015 in which the route of the paths, in so far as they affected the property 199A Main Street, were defined on plans. These routes are those now proposed to be diverted by the current Order.
 8. I am aware that other surveys have been undertaken on behalf of landowners and have indicated lines somewhat different from those of the court judgement which is perhaps unsurprising given the nature of the definitive map and statement. However, it is reasonable in my view for the OMA to act on the basis of the decision of the court.

The Main Issues

9. The Order is made in the interests of the owners of the land and the public. Section 119 of the 1980 Act therefore requires that, before confirming the Order, I must be satisfied that:
 - It is expedient in the interests of the landowners and the public that the footpaths should be diverted;
 - The new footpaths will not be substantially less convenient to the public;
 - The diversion is expedient with regard to:
 - the effect on public enjoyment of the rights of way as a whole;
 - the effect on other land served by the existing rights of way;
 - the effect of the proposed new rights of way on the land over which they are created and any land held with it.
10. In addition, where a diversion will alter the point of termination of a path or way, as in the case of Footpath No.40, the proposed new point of termination must be on the same highway as the existing point, or one connected to it, and it must be substantially as convenient to the public.
11. Regard should also be given to any material provisions of the Rights of Way Improvement Plan for the area.
12. Temporary obstructions to routes should be disregarded and the routes assessed as though they were open and available for public use.

Reasons

Whether it is expedient in the interests of the landowners and the public that the footpaths be diverted

13. The line of Footpath 32 is currently obstructed by a locked gate at Point A, a section of the boundary fence between 199A and 201A Main Street and a further fence at Point B1. In my view these are temporary obstructions which should be disregarded in the assessment of the alternative routes. Footpath 40 is also obstructed by fences and passes through the corner of the building of 199A. Again, the fences are temporary obstructions which should be disregarded but 199A Main Street is a substantial building which has been in place since the 1960s and therefore cannot reasonably be regarded as a temporary obstruction.
14. The proposed diversion of Footpath 40 would take the path away from the building of 199A and the garden area of that property. It would also move it further away from the property, Holly Farm Bungalow. Although the proposed new route would still cross land in the same ownership as those properties, the diversion would clearly be beneficial to the properties and in the interests of their owners. The diversion would also be in the interest of the public as it would provide a route free of obstruction by a building and out of the immediate garden area of two properties.
15. The situation with regard to the proposed diversion of Footpath 32 is less clear cut. It would be in the interest of the owners of 201A Main Street as it would result in a reduced length of public footpath in the immediate vicinity of that property and the re-alignment of a longer section of the path closer to the boundary of other land in the same ownership. However, the diversion would result in an increased length of the footpath within the boundary of 199A Main Street and, although part of the path would be moved slightly closer to the boundary of the property and its width would be defined, the owner of this property considers that this would not be in his interests.
16. The owner of 199A has a serious health condition which is both triggered and exacerbated by having a public right of way crossing his property close to his house.
17. Although the proposed diversion has attracted a considerable amount of public support this seems to have been largely on the basis that it offers the prospect of re-opening routes that have been unavailable since 2013. This is understandable but it is likely that, if the definitive line of Footpath 32 were to be freed from existing temporary obstructions and available for use, this would be similar in terms of the interests of the public to the proposed new route.
18. Overall, the proposed diversion of Footpath 40 is clearly expedient in the interests of both landowners and the public. However, the situation regarding the proposed diversion of Footpath 32 is more complex. It would be in the interests of one affected landowner but not the other and, as far as the public interest is concerned, if all temporary obstruction were removed, the proposed new route would offer little advantage over the definitive route.

Whether the new points of termination of the footpaths will be substantially as convenient to the public

19. The termination points of Footpath 32 would be unaffected by the proposed diversion. At its eastern end, Footpath 40 would terminate at a point (Point J) roughly 10m to the north-east of the current termination (Point B) on the same highway (Footpath 32). There would appear to be no reason why this would not be substantially as convenient to the public.

Whether the new footpaths will be substantially less convenient to the public

20. The length of the proposed new paths would be broadly similar to that of the existing paths.
21. It is stated on behalf of the OMA that the proposed new route of footpath 32 would require fewer stiles than the definitive route and that this would make it more convenient. In particular, it is said that a single stile at Point A1 would be needed instead of stiles at B1 and B2. I am not sure that this is correct; the definitive statement records the existence of 3 stiles along the whole length of Footpath 32 and these may well not have been at these points. The existing fences at these points are in fact unauthorised obstructions to the definitive route in the same way as the gate at Point A. Their removal would not automatically justify the installation of new stiles.
22. With regard to Footpath 40 it is also claimed that fewer stiles would be required on the proposed route than on the existing route. Again, this may not necessarily be the case; the definitive statement records the presence of 6 stiles along the whole length of Footpath 40 but does not specify their locations which may not be at the locations identified on behalf of the OMA some of which are on fence lines which may not have been present when the path was recorded as a public footpath.
23. The definitive statement records the width of Footpath 40 as 2 feet (0.6m) whereas the proposed diverted route is to be 1.5m wide. This would make the path more convenient to use. Footpath 32 has a recorded unspecified variable width so it is not clear whether the proposed 1.5m width of the new path would be any more convenient to the public.
24. In other respects, there seems little difference between the existing and proposed routes with regard to the convenience of the public.
25. Overall, the proposed diversion would not render either of the paths substantially less convenient to the public.

The effect on public enjoyment of the rights of way as a whole

26. With regard to Footpath 40 it is likely that the proposed diversion to a route further away from residential properties and out of private gardens will make it more enjoyable for many users who might otherwise feel uncomfortable about apparently intruding into private space.
27. With regard to Footpath 32 there would appear to be little difference between the alternative routes with regard to the effect on public enjoyment of the right of way as a whole if temporary obstructions are disregarded.

The effect on other land served by the rights of way

28. I have seen no evidence of any negative effect of the proposed diversions on any other land served by the rights of way.

The effect of the new right of way on the land over which it is created and other land held with it

29. The proposed diversion of Footpath 40 would have a beneficial effect on land over which it would be created as a result of moving the right of way further away from residential properties.

30. The proposed diversion of Footpath 32 would have a beneficial effect on the property 201A Main Street as a result of reducing the length of path on the property and relocating part of it closer to the boundary. However, it would have a negative effect on the property 199A Main Street as a result of increasing the length of path on the property and making it more difficult to manoeuvre and store vehicles on the land affected. In theory this effect could be mitigated by an award of compensation but from the evidence submitted it seems unlikely that any financial compensation would be regarded as satisfactory by the owner.

The Rights of Way Improvement Plan (ROWIP)

31. It is stated on behalf of the OMA that there are no material provisions within the ROWIP that would have a negative impact on the proposed diversions.

Other Matters

32. On behalf of the OMA, I was requested to modify the Order so as to add an additional part to the Schedule to describe limitations on the proposed new paths. Part 2 of the Schedule already describes the locations of stiles on the paths and it is appropriate that they be included as limitations in a new Part 3 to the Schedule. I therefore propose to modify the Order accordingly.

Conclusions

33. The criteria for confirmation of this Order are met with regard to the section of Footpath 40 proposed to be diverted and with regard to a substantial section of Footpath 32 but not the whole of the length proposed to be diverted.

34. I have found that the Order is not in the interests of the owner of 199A Main Street and the proposed diverted route would have a negative effect on that property. I therefore propose to confirm the Order with a modification so as not to divert the length of Footpath 32 within the property 199A Main Street.

35. Under the provisions of the Equality Act 2010, public authorities are required to have due regard to the need to eliminate discrimination, to advance equality between people who share a protected characteristic and others and to foster good relations between them. This is known as the Public Sector Equality Duty (PSED). The current owner of 199A Main Street is likely to have the protected characteristic of disability. Confirmation of the Order as made would be likely to cause him ill health and distress and that is partly why I have found that confirming the Order as made would not be in his interests. Accordingly, it is proportionate and necessary to modify the Order as proposed to ensure that there is no unlawful discrimination and

to advance equality of opportunity and foster good relations between people who share and do not share the protected characteristics.

36. A consequence of modifying the Order as I now propose would be to require the addition of a very short section of new path close to Point B1 so as to provide a continuous route.

Formal Decision

37. I propose to confirm the Order subject to the following modifications:

- In the Schedule to the Order, Part 2, delete the description of Footpath 32 and replace with:

“Commencing at point SK4838 4635 and running north-westwards for approximately 4 metres with a width of 1.5 metres, then continuing for a distance of approximately 144 metres in a generally north-north-easterly, along the grass field edge and having a width of 1.5 metres to a stile at point SK 4546 4646 at the junction with Greasley Footpath No.28 and the remainder of Greasley Footpath No.32.”

- Add to the Schedule to the Order, a new Part 3, as follows:

“PART 3

Limitations

Greasley Footpath No.40

<i>SK 4839 4637</i>	<i>Stile</i>
<i>SK 4836 4638</i>	<i>Stile</i>
<i>SK 4832 4637</i>	<i>Stile”</i>

- Amend the Order Map accordingly.

38. Since the proposed modification to alter the new route of the footpath would mean that the confirmed Order would affect land not specifically affected by the Order as submitted, I am required by virtue of Paragraph 2(3) of Schedule 6 to the Highways Act 1980, to give notice of the proposal to modify the Order and to give the opportunity for objections and representations to be made to the proposed modification. A letter will be sent to interested persons about the advertisement procedure.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Ruth Stockley

Counsel, representing Nottinghamshire
County Council (NCC)

Who called:

Robin Carr

Independent consultant representing
NCC

Supporters

Richard Hind

Landowner

Sally Hind

Landowner

David Hind

Steve Parkhouse

Ramblers

Objectors

Edward Cartwright

Andrew Waterhouse

Julie Nightingale

Richard Maher

Landowner

DOCUMENTS

1. Bundle of documents compiled by NCC
2. Proof of Evidence of Robin Carr on behalf of NCC
3. Statement of Case and Proof of Evidence of Richard Hind
4. Statement of Case and Proof of Evidence of Sally Hind
5. Statement of Case and Proof of Evidence of David Hind
6. Proof of Evidence of Steve Parkhouse
7. Statement of Pamela Tulley, John Coxon and 39 others
8. Statement of Craig Mucznik
9. Statement of Colin and Karen Sisman
10. Statement of Diane and Stephen Rowley
11. Statement of Tanya Jones
12. Statement of Darren Henry MP
13. Statement of John Whitley
14. Statement of Richard Maher
15. Statement of Andrew Waterhouse
16. Statement of Edward Cartwright
17. Statement of Julie Nightingale
18. Statement of Dean Waddilove
19. Letter from Peter Brown





