
SUPPLEMENTARY SUPPORTING STATEMENT & STATEMENT OF REASONS

FOOTPATH STOPPING UP (IN PART) AND DIVERSION

Footpath: Public Footpath HOL/60/20 (Part)
Location: Adj. Wolfstone Heights Farm, Upperthong, Holmfirth, West Yorkshire HD9 3UU
Applicant: Mr. Richard H. Butterfield ('applicant')
Date: 3rd August 2021

1.0 UPDATE

- 1.1 This Supplementary Supporting Statement & Statement of Reasons ('**Supplementary Statement**') supplements the original Statement dated 23rd June 2020 (which was modified with a Notice by the DfT National Casework Team to accord with the DfT Draft Order Plan Points) and updates the position for the Inspector prior to the Public Inquiry sitting on 24th August 2021.
- 1.2 Since the application under Section 247 Town and Country Planning Act 1990 was made, the DfT has duly made the Draft Order and consulted in accordance with the law. In summary, the consultation responses have identified that the **level of support** for the proposed stopping up and diversion of this part of Footpath 60 **has more than doubled the level of objection**.
- 1.3 A Public Inquiry is scheduled to take place on 24th August 2021. A final Pre-Inquiry meeting took place earlier today (3rd August 2021) for programme management purposes.
- 1.4 Further traffic and pedestrian survey works were carried out in late Summer 2020 and are submitted to the Inquiry Programme Officer. Following this, Via Solutions Ltd., through Mr. Eric Appleton, has undertaken further work and analysis. It is now beyond any doubt that there is no reason in highways safety terms not to make this order. It is in fact the case that the proposed new access/exit adjacent to Wolfstones Road represents a far safer egress point than the existing route, which we submit weighs heavily in favour of making the final order in itself.
- 1.4 Furthermore, it is now reinforced beyond any doubt that the assertion that a majority of users use the existing Footpath 60 to access and egress Wolfstone Heights Trig Point is baseless and without foundation.
- 1.5 Further works have taken place in accordance with planning permissions on the site so far as they are physically and legally able without the stopping up of Footpath 60. It should perhaps be noted that the original driveway is used much less frequently due to the other driveway being constructed and used, as well as the fact that the existing driveway is blocked, save for access down the current

legal footpath, for which the northernmost gate leaf is left permanently open (Point 'B' on the order plan).

- 1.6 It transpires that people are using the diversion and that it is for some (possibly many) increasingly the favoured route for walkers and runners in the area, compared with the current legal route. In addition, people do appear to now understand to a greater extent that where the final order is not made, then the diversion route will be gone. It is an 'instead of' the existing Footpath 60 route, not 'in addition' to it.

2.0 INQUIRY WITNESSES

- 2.1 The Applicant shall be providing six (6) witnesses at the impending Public Inquiry in support of the application. These are:

- Mr. Russell Earnshaw – ADP Architecture and Design Ltd. – providing Architect Evidence
- Mr. Eric Appleton – Via Solutions Ltd. – providing Highways and Safety Evidence
- Mr. Greg Cropper – local resident and ex-Parish Council and Land Charity Member – providing user and miscellaneous local evidence
- Ms. Joanna Cronie – providing user evidence (as a runner and mother of young children)
- Mr. Richard Paxman – providing user evidence as a walker and father
- Ms. Sue Wimpenny - providing user evidence and wildlife and nature promotion

All of the above shall be providing a Proof of Evidence each and shall be attending the Inquiry for examination.

- 2.2 In addition to the above attendees at the Inquiry, the following have provided their own Proofs of Evidence through Written Statements in support of the application, but for reasons provided therein unfortunately will not be in attendance in order to be examined at the Inquiry. These are:

- Mr. Jim Cunliffe – a retired Highways Engineer and ex-co-opted member of the Holme Valley Land Charity – providing evidence in relation to highway safety concerns around the entrance to the trig point
- Mr. Richard Butterfield – the applicant and landowner

- 2.3 Obviously opposing evidence has not yet been seen and examined, but it will become clear from the evidence that much of what those opposing assert is baseless and without foundation, but moreover there is seemingly now no good reason for the Secretary of State not to make a final order.

- 2.4 The Applicant has provided a Schedule of Witnesses for the Programme Officer to the Inquiry and described the additional documents and information that will be relied upon.

3.0 THE 'TESTS'

3.1 By way of reminder and as identified in the original Statement, the relevant tests and thereby what the Secretary of State must consider is as follows:

(1) **the necessity test:** whether it is necessary to enable development to be carried out in accordance with planning permission; and

(2) **the merits test:** in exercising the discretion whether to confirm an order, the obligation to take into account any significant disadvantages or losses flowing directly from the order which have been raised. The decision-maker must then decide whether any such disadvantage or losses are of such significance or seriousness that he should refuse to make the order.

3.2 DEFRA Rights of Way Circular 1/09, albeit primarily intended as a guide for local authorities for applications under Section 257 TCPA, provides at paragraph 7.1 and 7.2 that:

7.1 Proposals for the development of land affecting public rights of way give rise to two matters of particular concern: the need for adequate consideration of the rights of way before the decision on the planning application is taken and the need, once planning permission has been granted, for the right of way to be kept open and unobstructed until the statutory procedures authorising closure or diversion have been completed.

*7.2 The effect of development on a public right of way is a **material consideration** in the determination of applications for planning permission and local planning authorities should ensure that the potential consequences are taken into account whenever such applications are considered.*

Therefore, an examination of the consequences of the proposed diversion of part of Footpath 60 as a material consideration has already been considered, insofar as the Permissions have been granted.

More specifically for the Council, in considering whether to make an order, Paragraph 7.15 of the Circular advises that:

*"... Having granted planning permission for a development affecting a right of way however, an authority **must have good reasons to justify a decision either not to make or not to confirm an order.***

(NB. our emphasis)

This application, like others of its type, needs to be assessed through the prism that planning applications affecting a PROW, including subsequent NMAs, have been assessed and the Permissions have been granted. As identified above, the LPA has assessed and taken account the potential consequences of this development on the PROW.

- 3.3 Unless objectors can identify otherwise, to the Applicant's knowledge, there has never been a question in relation to the '**necessity test**'. Quite simply, in order to fully implement the permitted development, which has lawfully begun but obviously is not yet complete, then the relevant part of Footpath 60 must be stopped up. Where this does not occur, then the permitted development cannot be completed lawfully. The necessity test principles are described in detail in the Statement already and clearly no further elaboration is required here.
- 3.4 Turning to the '**merits test**', the Applicant's evidence will show that this is now beyond any fine balance. Hitherto there has been a mindset from objecting parties that there is only an advantage to the landowner. The evidence will now show that this is profoundly not the case; not at all. As the Applicant's evidence will show, there are very clear advantages in the diversion route over the existing route, not least pedestrian safety and a path more reflective of the setting, which is easier to use and far more pleasant overall.
- 3.5 More specifically, with relevance to the merits test, the inquiry evidence will show that there are no significant disadvantages or losses flowing directly from the making of the final order. Where in the unlikely event the Secretary of State would disagree and would find significant disadvantage or loss, then it is submitted and shall now be reinforced by Inquiry evidence that in respect of the proposal that such disadvantages or losses are not of such significance or serious that the Secretary of State should refuse to make the final order.
- 3.6 Following this and with reference to the cited DEFRA guidance, it is submitted and shall now be shown through Inquiry evidence that there is no good reason not to make a final order and allow this stopping up and diversion to progress so that works may be completed, and pedestrians begin officially enjoying the diversion route.

4.0 COSTS AND OTHER

The applicant reserves his position on costs.

We shall obviously be happy to provide any requested points of clarification by the Secretary of State. Otherwise, we look forward to providing evidence at the impending Public Inquiry, evidence for which has now been submitted.