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# Order Decision

Hearing held on 22 May 2012

**by Mark Yates BA(Hons) MIPROW**

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

Decision date: 21 June 2012

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## Order Ref: FPS/H0738/3/1

- This Order is made under Section 118B of the Highways Act 1980 ("the 1980 Act") and is known as The Council of the Borough of Stockton-on-Tees Mill Lane School, Wellington Street, Stockton-on-Tees Special Extinguishment Order 2009.
- The Order was sealed by Stockton-on-Tees Borough Council ("the Council") on 24 June 2009 and proposes to extinguish a footpath, as detailed in the Order Map and Schedule.
- There were two objections<sup>1</sup> outstanding at the commencement of the Hearing.

**Summary of Decision: The Order is not confirmed.**

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## Procedural Matters

1. I held a Hearing into the Order on 22 May 2012 at the Education Centre in Norton, Stockton-on-Tees. I made an unaccompanied visit to the site on 21 May 2012 and I undertook a further visit accompanied by the parties or their representatives immediately following the close of the Hearing.
2. At the Hearing, I raised two issues regarding the Order and the Council accepted that it could be modified. No objections were raised in response to the suggested modifications. Overall, I consider it appropriate, if confirmed, for the Order to be modified to make it clear that the whole width of the path would be stopped up and that the statutory undertakers shall continue to have the right to access any existing apparatus.
3. Following the close of the Hearing, I was handed a copy of the aerial photograph that had been circulated to the parties and a map of the area. These documents only provide assistance in identifying particular places mentioned by the supporters and the objectors.

## Main Issues

4. The Order has been made for the purposes of school security. Section 118B(1)(b) of the 1980 Act requires that, before confirming the Order, I must be satisfied that:
  - i) the Order route is a relevant highway and that it crosses land occupied for the purposes of a school; and
  - ii) it is expedient, for the purposes of protecting pupils or staff from violence or the threat of violence, harassment, alarm or distress arising from unlawful activity, or any other risk to their health and safety arising from such activity, that the Order route should be stopped up.

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<sup>1</sup> One objection was supported by a petition and the other involved the submission of an additional petition

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5. Section 118B(8) of the 1980 Act also requires that I must be satisfied that it is expedient to confirm the Order having regard to all the circumstances, and in particular to:
- i) any other measures that have been or could be taken for improving or maintaining the security of the school;
  - ii) whether it is likely that the coming into operation of the Order will result in a substantial improvement in that security;
  - iii) the availability of a reasonably convenient alternative route or, if no reasonably convenient route is available, whether it would be reasonably practicable to divert the highway under Section 119B of the 1980 Act rather than stopping it up, and
  - iv) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation.

## **Reasons**

### ***Whether the Order route is a relevant highway***

6. The Council confirms that the route is recorded in its list of streets but is not shown in the definitive map and statement. It is considered by the Council to be a footpath and nothing has been provided to suggest that this is not the case. Therefore, I accept that the route is a relevant highway in accordance with Section 118B of the 1980 Act.

### ***Whether the footpath crosses land occupied for the purposes of a school***

7. The footpath has a tarmac surface and is separated from the building and playground of the Mill Lane Primary School<sup>2</sup> ("the school") to the east by fencing. On its western side it is generally unenclosed from an adjacent playing field. The head teacher (Mrs O'Brien) confirms that the land crossed by the footpath and the playing field is in the ownership of the school.
8. It appears to me that consideration should be given to whether the footpath crosses land within the control of the school, which could include a playing field. Although not presently used by the pupils, Mrs O'Brien outlines that the school wishes to make use of the field. She says that the children cannot safely use it until the footpath is extinguished and this part of the site is secured.
9. In my view, the footpath crosses land occupied for the purposes of a school despite the fact that the land in which it is located is not currently used by the pupils.

### ***Whether it is expedient, for the purposes of protecting pupils or staff from violence or the threat of violence, harassment, alarm or distress arising from unlawful activity, or any other risk to their health and safety arising from such activity, that the footpath should be stopped up***

10. Details have been provided of incidents of crime and anti-social behaviour ("ASB") affecting the school site. However, it is apparent that some of the incidents mentioned occurred in relation to the school building and the immediate grounds rather than the footpath or the playing field. The evidence

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<sup>2</sup> The school caters for children between the ages of 3 and 11

indicates that the erection of fencing has for the most part eliminated the problems that were occurring in the locality of the school building.

11. It is apparent that the written submissions in support of the Order make reference to incidents that did not occur on the footpath or the playing field. In addition, letters from the Cleveland Police and Cleveland Fire Brigade date back to February 2007 and mainly consist of general advice in relation to the securing of school sites. Overall, I find that there are problems with the written material provided by the supporters in terms of both its relevance to the unsecured part of the school site and in ascertaining the degree to which particular problems are occurring in this locality. One of the objectors, Ms Roberts has provided some statistics involving reported offences in the area. However, these statistics involve a limited period of time and I am mindful that incidents of crime and ASB may go unreported.
12. The Council refers to a survey that was undertaken by the school which reported that staff felt intimidated by the presence of the footpath across the playing field. In addition, reference is made to the school feeling that children and staff are vulnerable to potential attacks, threats of violence, harassment and distress arising out of unlawful activities. A copy of this survey has not been submitted; however, no evidence has been provided in relation to violence or the threat of violence being directed at staff or pupils in the locality of the footpath. Mrs O'Brien mentions an incident when a man was seen urinating in the locality of the western edge of the field and I accept that this could be unsettling to anyone who witnessed such behaviour. She also says that ASB does occur during the afternoons and that staff do not feel safe outside of the secure parts of the school site. However, Mrs O'Brien acknowledges that the school have not used the playing field during the eight years she has been based at the school.
13. At the Hearing, Mrs O'Brien and Mr Armitage<sup>3</sup> gave details of the most common problems that are encountered. The issues identified generally relate to the playing field as a whole rather than the footpath along the edge of the field. However, the supporters believe that the only viable option is to limit the means by which the public can gain access in this locality. Reference is made to bottles and cans being deposited on the playing field and syringes have also been found on the field. Although it appears to me that there is greater scope for certain activities to take place outside of school hours, particular items left on the playing field at times could impact upon the safety of pupils and staff subsequently using the field. Nevertheless, the securing of the playing field may not prevent certain items from being deposited onto the field from the surrounding land.
14. Mrs O'Brien states that there have been occasions when people on the footpath have tried to encourage pupils to come up to the fence and this has led to instructions being issued to the children. In response, Ms Roberts points out that this could happen in connection with children on the playing field if the path were stopped up. It is apparent that motor bikes and quad bikes have been ridden across the field and reference is also made to the problem of dog dirt. The three objectors who attended the Hearing are local residents and they accept that there is an issue regarding crime and ASB in the area due to its town centre location. However, they do not consider that the problems encountered are as significant as the supporters portray. Ms Roberts says that

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<sup>3</sup> He is a parent involved with the school

the use of the field by motor bikes is no greater than any other area of open space in the town.

15. As outlined above, some of the evidence does not relate to the footpath or the playing field. Nor have I been supplied with any record regarding when and how often the problems referred to by the supporters are occurring. The lack of supporting evidence means that it is difficult to assess the extent of the problems identified by the supporters and whether they are sufficient to warrant the stopping up of the footpath. In addition, the objectors dispute the extent of the problems highlighted by the supporters. It is also apparent that the relevant incidents mentioned occurred mainly on the field rather than in relation to the footpath. As detailed below, there may be some scope to take action which could alleviate the problems that are occurring in respect of the field without the need to extinguish the footpath. Having regard to the matters outlined above, I am not satisfied that, on balance, it is expedient that the footpath should be stopped up.

***Whether it is expedient to confirm the Order having regard to all the circumstances, and in particular to:***

*Measures that have been or could be taken for improving or maintaining the security of the school*

16. It is clear that the erection of fencing has significantly improved the security of the relevant part of the site. In my view, it would be possible to separate the footpath from the playing field by way of additional fencing with gated access to the field. However, this is not an option supported by Mrs O'Brien and reference is made to the legal requirements when children leave the school premises, such as the need for a certain ratio of staff to be present to accompany the children. She says that this would apply even though it may potentially involve the need for the staff and pupils to travel only a few metres. Although reference is made by Mrs O'Brien to the amount of space required to accommodate a sports pitch of the required standard, I am not convinced that this is a relevant reason to stop up the footpath. I consider that the erection of a fence to the west of the footpath could assist with the security of the playing field. However, this would need to be balanced against the staff resources required at the times when the children are walking to or from the field.
17. Ms Roberts suggests that anti-motor bike barriers could be employed at each end of the footpath. Whilst the Council says that the current police advice is to leave gaps rather than erect this type of barrier, this appears to be in order to assist with the apprehending of suspects. The erection of suitable barriers could deter use by people on motor bikes and quad bikes, but it would not impact upon the other issues mentioned by the supporters. No other measures were identified that could significantly improve the security of the playing field.

*Whether it is likely that the coming into operation of the Order will result in a substantial improvement in the security of the school*

18. I accept that the securing of the playing field in the manner sought by the supporters could lead to substantial improvements in the security of the field. However, this issue needs to be considered in conjunction with the other relevant tests.

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*The availability of a reasonably convenient alternative route or, if no reasonably convenient route is available, whether it would be reasonably practicable to divert the highway rather than stopping it up*

19. Two potential alternative routes were highlighted by the Council and I walked both of these during the accompanied site visit. One is an existing footpath, which proceeds between the western ends of Melbourne Street and Wellington Street, as shown on the Order Map. The second consists of a route between Dixon Street and Vane Street via other highways. In terms of the distance needed to travel to certain locations, I agree with the Council that this will depend upon where a particular person is travelling from. However, the footpath option would appear to require the majority of local residents to walk further if the Order route were stopped up. Although there is some deterioration in the surface of the alternative footpath, I did not find this to have a significant impact upon its convenience.
20. The objectors are concerned about the safety of the alternative routes, particularly at night. Whilst it is not clear whether or not this issue relates to convenience, I am in any event required to take into account all circumstances in reaching my decision. Given that the concerns expressed about safety relate to the alternative routes, I consider it appropriate to deal with the issue at this point.
21. There is no evidence of criminal offences being committed against users of the alternative footpath; however, this may be due in part to the degree that it is currently used. It is apparent that some people had been unaware until relatively recently that the alternative footpath existed. I noted that the alternative footpath and the Order route both benefit from street lighting. However, I accept that there are potential blind spots which may cause concern to people walking along the alternative footpath. The objectors also refer to youths congregating in the locality of this path. In respect of the other potential alternative route, Ms Roberts has concerns about using it at night due to the alleys that need to be passed.
22. It is apparent that some members of the public will find the alternative routes to be less convenient than the Order route due to the extra distance involved. In respect of the safety of the public, the concerns expressed appear to be based upon a perception of the potential risk of being a victim of crime. However, the concerns of the objectors may impact upon their use of the alternative routes. Although Ms Roberts suggested at the Hearing that the footpath could be diverted within the playing field, this would not address the concerns expressed by the supporters.

*The effect which the extinguishment of the right of way would have as respects land served by the footpath*

23. No evidence has been put before me to indicate that the extinguishment will have any adverse effect on land served by the footpath.

### **Conclusions**

24. I accept that the securing of the playing field in the manner sought by the supporters could lead to substantial improvements in the security of the field. However, I have concluded above that the evidence provided by the supporters is not sufficient to enable me to conclude that it is expedient, for the purposes of protecting staff and pupils, to stop up the footpath. It is also apparent that

local residents have concerns about the suitability of the suggested alternative routes in comparison to the Order route. Taking into account all of the matters raised, I do not consider that it is expedient to extinguish the footpath.

### **Other Matters**

25. The objectors refer to the potential loss of the playing field for various activities. However, I need to consider whether it is appropriate to stop up the footpath. Therefore, as I outlined at the Hearing, the potential closure of the field to the public is not relevant to my decision.

### **Overall Conclusion**

26. Having regard to these and all other matters raised at the Hearing and in the written representations I conclude that the Order should not be confirmed.

### **Formal Decision**

27. I do not confirm the Order.

*Mark Yates*

**Inspector**

## **APPEARANCES**

### **For the Council:**

Mr J. Angus	Project Officer within the Technical Services Division of the Council
Mr R. Morrow	Officer within the Technical Services Division of the Council

### **Additional Supporters:**

Mrs C. O'Brien Mr A. Armitage	Head Teacher for the Mill Lane Primary School
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### **The Objectors:**

Ms T. Roberts  
Mrs M. Simpson  
Mrs M. Stott

## **DOCUMENTS**

- 1 Aerial photograph annotated with approximate distances between certain points
- 2 Map of the Stockton-on-Tees area