



Order Decision

Inquiry held on 6 July 2010

by **Helen Slade MA FIPROW**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
04 August 2010

Order Ref: FPS/W0340/4/9

- This Order is made under Section 119B (4) of the Highways Act 1980 (the 1980 Act) and is known as the West Berkshire District Council (Public Footpath Compton 16a (part), The Downs School) Special Diversion Order 2008.
- The Order is dated 14 October 2008 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were three objections and one representation outstanding at the commencement of the Inquiry.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.

Procedural Matters

1. I held a public local inquiry on Tuesday 6 July 2010 at Compton Village Hall, Burrell Road, Compton. The Order Making Authority, West Berkshire District Council ('the Council') took a neutral stance and the case in support of the Order was presented by Mr Simon Dimmick on behalf of The Downs School ('the School'). Four people appeared at the Inquiry to object to the proposal, two of whom were statutory objectors. Compton Parish Council has subsequently indicated that it does not object to the Order.
2. I undertook two unaccompanied site visits the previous day: the first during school hours (2.00 pm), having first notified the school owing to the nature of the site. I was able to walk the existing route and the proposed route, as far as was practicable. I also visited the surrounding area to familiarise myself with the locality. I returned to the site unannounced at the end of the school day (4.30 pm) to view the site under different circumstances. I carried out a formal accompanied site inspection following the close of the Inquiry on the Tuesday afternoon just before 5.00 pm, when I was accompanied by several representatives of the parties concerned, and other interested persons.
3. Following the close of the inquiry, a late written submission was received from Dr Keith Morris. Although it had been submitted to the Council before the inquiry (on 2 July), with a request that his concerns be considered, it was unfortunately overlooked. I therefore asked for his letter to be circulated to the parties to the inquiry for comment, notwithstanding that his principle concerns were raised at the inquiry by other parties in any case. One response was received (on behalf of the School) and I have taken both Dr Morris's views and the School's response into account in reaching my decision.

Technical Matters

4. I drew the attention of the School and the Council to two matters connected with the drafting of the Order itself. Firstly, the route as shown on the Order appears to run hard up against the boundary fence on the eastern side of the playing field; and secondly, the route between Points W and Z appears to clip the boundary along the southern edge, passing out of the School's property in the process.
5. The path on the ground was being staked out at the time of my site visit, and I was assured at the Inquiry that the stakes were in the intended position. I therefore pointed out that the line of the path on the ground did not accord with the line shown on the Order plan. The stakes indicate that the path will be further away from the boundary between the land owned by the School and the rear gardens of the properties in Shepherds Mount and that it will lie entirely within the grounds of the School. The School confirmed that the Order plan was not an entirely accurate representation of their application, and that the path would indeed be further from the rear gardens than shown on the Order plan.
6. Both these points were addressed by the Council and the applicants during the day of the Inquiry and a revised map was presented to me, together with a request to modify the Order accordingly.
7. I consider that it is essential to have as accurate a plan as possible, and that the situation on the ground should be as indicated in the Order. I am satisfied that the revised plan is a more accurate representation of the situation as it is intended to be on the ground and if I confirm the Order I intend to modify it accordingly. If the Order is confirmed, it will nevertheless not come into effect until the Council has certified that the new path is in a fit condition for use by the public.

The Main Issues

8. If I am to confirm the Order I must be satisfied that the criteria set out in the 1980 Act have been met. Firstly I must be satisfied that it is expedient that part of the line of the path which crosses land occupied by The Downs School should be diverted for the purpose of protecting the pupils or staff from violence, the threat of violence, harassment, alarm or distress arising from unlawful activity or any other risk to their health or safety arising from such activity.
9. If I am satisfied on the above point, I must then consider whether it is expedient to confirm the Order having regard to all the circumstances and in particular to:
 - Any other measures that have been or could be taken for improving or maintaining the security of the school;
 - Whether it is likely that the coming into operation of the Order will result in a substantial improvement in that security;
 - The effect which the coming into operation of the Order would have as respects land served by the existing public right of way; and

- The effect which the new public right of way would have as respects the land over which it is created, or any land held with it.

10. With respect to the effect on land, I am able to take into account the provisions which exist for compensation, if appropriate.

Reasons

Whether it is expedient that part of the line of the path be diverted

11. The School occupies a large site on the edge of Compton village, and is bisected by a public footpath running east to west across the playing fields. The footpath links part of the village directly with the Newbury Road, and also provides access to the school for pupils and parents. There is a small Sports Centre on the site which is used by the community after school hours, and the footpath also enables access to this facility on foot.
12. The path has been diverted three times before due to the expansion of the school; the last time was only a few years ago when a new building, the Graham Taylor building, was erected. Discussions around that time (2004) had produced opposition to a proposal to divert the path around the edge of the field, and a smaller diversion was therefore undertaken, simply diverting the path around the new building. That Order was made under the Town and Country Planning Act 1990 and the diversion was confirmed in 2006.
13. However, in 2007 an incident at another school near Swindon gave the School cause to reflect seriously on their own safeguarding procedures, and to review their situation in the light of government and local authority guidance. Following a public meeting in February 2007, the School decided to make an application under the special provisions contained within the 1980 Act for the protection of schools.¹
14. A great deal of evidence was presented by the School, firstly in the written evidence and statements and subsequently at the Inquiry, detailing a list of incidents which have occurred over the years involving vandalism, intruders entering the school, and more recently of assaults on staff and others. Sgt. Harrison of Thames Valley Police states in her written evidence that 135 incidents have been reported to the police over the last ten years.
15. One incident at the school which took place in 2008 was referred to by several of the School's witnesses and had involved a former pupil entering the school, ultimately assaulting the Deputy Head teacher and a policeman. The offender was arrested and convicted. The incident had caused the School to operate its 'lock-down' procedure in order to placate and protect the pupils and the staff. This involved all pupils and staff being shut into darkened class-rooms until the incident was under control.
16. The School does not claim that all the incidents recorded were necessarily perpetrated due to, or facilitated by, the existence of the path itself nor by users of it. Rather, the School argues that the existence and the location of the path prevents them from being able to secure the premises, either during

¹ As amended by the Countryside and Rights of Way Act 2000

the day when pupils are on site or out of school hours when the buildings are empty.

17. Part of the School site has been securely fenced and the levels of vandalism have been reduced virtually to nothing as a result. It is the strongly held view of the Head Teacher and the governing body that being able to fence the whole site securely would have the same effect, but for the whole school.
18. Several local residents, including Mr Rowe, one of the statutory objectors, contest the level of crime which the School appears to portray, claiming that they are unaware of such levels of anti-social behaviour ('ASB') or other criminal activity. Mr Rowe has lived in the village for over 30 years.
19. Even Cllr. Alexander, in answer to questions at the Inquiry, conceded that the level of ASB has fallen in recent months due to a drive by the local police and community support officers to concentrate on such activity, and that as Compton was a village it was generally a quiet place with few problems. However, she considered that in order to maintain such an improvement it would be necessary to be constantly vigilant and to persist with the special initiative. It was the view of the Head Teacher and other witnesses that school premises in general attract undesirable behaviour and attention which may not otherwise occur or affect the local residents.
20. I acknowledge the legal duty that the staff and governors of the School have towards safeguarding pupils and employees on the site, and I also acknowledge the difficulty that is posed by having a public right of way running through the middle of the site. I am not convinced that the type of incident that occurred at the school in 2008, nor that which occurred in Swindon, is a high risk at Compton in terms of it being likely to actually happen again. The circumstances of each case appear to be particular to those incidents. However, if such an incident were to occur I accept that the risk of injury might very well be high. I also accept that the fear or anxiety caused by the prospect of a similar incident does exist amongst the school community and particularly amongst those people who carry the responsibility for health and safety.
21. I also agree that acts of vandalism can also cause distress and perhaps harm, not only to staff but also to pupils and this is a factor which I ought to take into account.
22. I acknowledge that some local residents consider that the levels of criminal activity do not warrant the diversion of the path, but I must place considerable weight on the evidence of Sgt Harrison that there have been so many incidents reported to the police over a long period of time. The School's own log shows that not all incidents have been reported to the police. I consider that it is possible that the School does act as a magnet for certain types of unlawful activity, and that other residents may not be aware of the problems, particularly if they have no connection with the School.
23. I am therefore satisfied that for the purposes of protecting the pupils or staff from the threat of violence or harassment, or from the alarm or distress caused by unlawful activity such as vandalism, or any other risk to their health or safety arising from such activity, it is expedient that the line of the path be diverted where it crosses the School.

Whether it is expedient to confirm the Order

Other measures which have been, or could be taken, to maintain the security of the School

24. The witnesses from the School itself gave details of the steps that have already been taken to minimise the risks to pupils and staff under the present circumstances. As I have already mentioned, part of the site has been securely fenced and has resulted in reducing incidents of vandalism to nothing. Mrs Houldey described the improvement as having a 'huge impact'. The portable classrooms and the southern part of the site are still vulnerable, however, owing to the location of the footpath and the resulting inability to fence the site securely.
25. During the morning break and at lunchtimes, a supervisor is positioned at each end of the path and equipped with a walkie-talkie with which they communicate with the School office. Mrs Hill also clarified in her evidence that at lunchtimes, the sixth-form students are permitted to leave the School grounds (having first signed out at the office). The incident report dating from 17 June 2010 shows that at least one of the supervisors must leave the site on occasions to check on the area around the school, and in particular on that occasion to check the recreation field behind the village hall where some of the students were having a picnic lunch. Younger pupils are not permitted to leave the School grounds during school hours.
26. The School is also equipped with CCTV, although the precise detail of the locations of the cameras was not given to me.
27. Some of the objectors consider that it would be possible to fence the line of the existing path on both sides, thus isolating the path from the pupils and providing increased security for the School. However, the School argued that this would be impracticable for a variety of reasons. The fields are in constant use for lessons and there would need to be gates in the fencing to allow the flow of pupils from one side to the other. The gates would in themselves be a security risk as there would have to be long periods when they were unlocked. It would not be possible to supervise them at all times. Furthermore, the footpath passes in front of the Graham Taylor Building and the Sports Centre, an area which has to be open and unfenced to allow for access to those buildings, and to the rest of the School.
28. Other suggestions made by the objectors were that all the entrances to the school should be gated and locked, or that electronic gates should be erected. The Schools response to this was that the cost of electronic gates could not be justified under the present circumstances when access through the centre of the School was available freely and at all times owing to the presence of the public right of way. Some entrances are already locked, but some are used on such a regular basis that locking them is not practicable. Electronic gates would be fitted if the Order is confirmed.
29. Gates have recently been fitted across the current route of the public right of way. The School had apparently been unaware that this was not lawful, and the gates are being left open at present so as not to cause an unlawful obstruction to the footpath.

30. I acknowledge that the present location of the public footpath does limit the steps that the School is able to take to safeguard its staff and pupils to the levels which are currently recommended by government and local authorities. I do not consider that fencing the current route on both sides would be practicable; it would result in a footpath which, apart from anything else, would be unpleasant for the public to use, since it would be narrowly constrained between security fencing. It is my view that the measures which have been put in place are the most that can be done under the present circumstances without involving excessive cost.

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

31. If the diversion of the footpath is achieved, it is the intention of the School to erect a security fence on their side of the diverted route, and to provide a gate into the School for pupils at Point A on the Order plan: the entrance to the Burrell Road 'alley'. The erection of the fencing, together with additional and existing fencing, would allow the School to be completely secure from unauthorised access. Access to the Sports Centre in the evenings would be maintained but during the day the entire School site would be isolated within the security fencing. Even in the evenings the majority of the site would be secure, and only authorised users of the Sports Centre would be able to gain access through the gates from the road.
32. In response to a question from Mrs Pegg, Mrs Hill acknowledged that the type of incident which occurred in June 2010 would not be eliminated² by the diversion, but she stressed that it is important to reduce the threat of harm. The School still wished to balance the needs of the village against the potential harm to the pupils. Retaining the footpath on a different line was a way of achieving that, rather than extinguishing the path altogether.
33. Sixth-form pupils will still be entitled to sign out of the premises at lunch time, but they would no longer be able to use the access at Point A; that gate would be locked during school hours. Their only means of access and egress would be via the gated entrance to the road. Thus their movements would be more closely monitored (since the School reception is adjacent to the main entrance) and the School site would remain secure.
34. I consider that it is self-evident that the ability to secure the site will significantly reduce the risk of any unauthorised intrusion into the School premises, both during school hours and at other times. It will not eliminate the risk, because a determined perpetrator will always find a way of gaining access, but I accept the view of Mrs Hill and others that most incidents are not 'planned' but are random attacks on a vulnerable site which has an attraction in its own right for various reasons. The casual miscreant will be deterred, and probably prevented, from causing criminal damage, alarm, or harassment by the presence of a secure perimeter fence. The pupils would be separated from any undesirable activity on the path, and consequently in no physical danger.
35. This secure fence cannot be erected with the footpath in its present position. I am satisfied that the coming into operation of the Order will provide the

² Undesirable attention from, or behaviour by, persons using the footpath

opportunity for these additional security measures to be employed and consequently provide a substantial improvement in the security of the School.

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

36. The existing path provides a link between Newbury Road and Burrell Road, and between the primary school and the Downs School. It also enables permitted access to the woodland immediately adjacent to the southern boundary of the School and to other rights of way nearby. The path also provides access to the Sports Centre which is available to some members of the public in the evenings.
37. The proposed route would maintain all these links, but the walk would be rather longer for some journeys. The existing route which would be extinguished is approximately 223 metres long. The proposed route, to return to the same point (Point A to D on the plan, via Points W and Z) would be approximately 370 metres. However, a walker wishing to access the woodland area from Point A would actually find their journey shorter: 256 metres as opposed to the current distance of about 337 metres.
38. Some people who responded to the initial consultations about the proposal were concerned that it would increase the distance between the primary school and the Downs School entrance and be unattractive for pupils to walk along. It would also involve people having to walk along Newbury Road where there is no pavement or footway.
39. I consider that these concerns have been overcome by the proposal to install a gate at Point A to allow access to the School for pupils at the beginning and end of the day. I acknowledge that for other people who may be walking from one school to the other, or who may be wishing to walk to the Sports Centre, the distance may be longer, but I do not consider this to be an excessive distance. Any disadvantage is outweighed by the benefits of the security to the School.
40. Furthermore, Councillor Alexander confirmed at the Inquiry that she has been successful in securing capital funding to provide a footway alongside Newbury Road to permit a safe, off-road route linking back to the main School entrance and the Sports Centre.
41. It was also confirmed by Mrs Hill that the public use of the Sports Centre is restricted to certain groups, the members of which will continue to be provided with a means of accessing the building through the security gates at the appropriate times.
42. I am therefore satisfied that there will be no overwhelmingly detrimental effect on land served by the existing route caused by the coming into operation of the Order.

The effect which the new public right of way would have as respects the land over which it is created, or any land held with it

43. All the land over which the new path would be created lies within the School's boundaries. There are consequently no issues which I need to take into account in this respect.

Other matters

44. I acknowledge that Mrs Pegg is concerned about the possibility of subsidence as a consequence of the engineering works which will be required to bring the proposed path into a fit state to be used. Mrs Hill gave assurances that she had sought expert guidance on this issue, and that she was satisfied there would be no harm done.
45. I also acknowledge that the neighbouring landowners have expressed concerns in relation to the security of their own boundaries, and the reduction in the privacy that they consider they will suffer. The School has stated that it will seek to address the concerns of the individuals involved, by providing fencing or other boundary treatments to suit their particular requirements. The path will not run hard up against any of their boundaries, but will be cut into the sloping ground a little way distant. This will mean that, for most of the neighbours, walkers will not be immediately adjacent to their back gardens.
46. Mr Rowe is in a slightly different position, since the path will be closer to his boundary. However he already has a substantial boundary for the most part and I consider that the School's offer to help make any improvements is a genuine and a reasonable one.
47. Nevertheless, the 1980 Act does not provide specifically for me to take into consideration the effect of the proposal on neighbours, and the compensation provisions may not apply in these circumstances since they do not have a legal interest in the land over which the new path would be created.³ However, I consider that I am able to take these issues into account when having regard to all the circumstances. I am satisfied that the mitigation offered by the School will go some considerable way towards ameliorating the perceived disadvantages. I am also satisfied that the village of Compton in general is not subject to high levels of crime or ASB which are likely to pose an additional risk to the occupants of the neighbouring land. Their rear boundaries are already accessible to any person wishing to gain unlawful access and the proposal is unlikely, in my view, to increase the risk. Any reduction in privacy is likely to be minimal.
48. At the inquiry, the School drew my attention to the fact that none of the concerns previously expressed by users or potential users of the footpath had been pursued at the Inquiry. I acknowledge that this is an indication that the proposals put forward by the School as a result of further consultations appear to have provided adequate mitigation in this respect and that the proposal has much general support locally. However, I acknowledge that Dr Morris has raised concerns relating to the presence of the adjacent woodland and considers the proposed route to be isolated.
49. There will undoubtedly be people who are inconvenienced to some degree by these proposals. I consider that the disadvantages raised by the objectors, including those referred to by Dr Morris, have been, or are likely to be, largely overcome by the mitigation measured proposed by the School. The benefit in terms of the safety of the staff and pupils outweighs any remaining

³ Section 28(4) of the 1980 Act

inconveniences likely to be experienced, either by users of the right of way or by the neighbouring landowners.

Conclusions

50. Having regard to these and all other matters raised at the Inquiry and in the written representations I conclude that it is expedient that the Order be confirmed with modifications.

Formal Decision

51. I propose to confirm the Order subject to the modifications set out below:

- On the Order plan, modify the line of the proposed route to accord with the revised plan.
52. Since the confirmed Order would affect land not 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 an opportunity for objections and representations to be made to the proposed modifications.
53. A letter will be sent to interested persons about the advertisement procedure.

Helen Slade

Inspector

APPEARANCES

For the applicant in support of the Order:

Mr S Dimmick *Solicitor, Blandy and Blandy,*

Who called:

Mrs V Houldey *Head Teacher, The Downs School*

Mrs L Hill *School Business Manager, The Downs School*

Mrs A Whitby *Chair of School Governors, The Downs School*

Cllr. B Alexander *Executive Member for Education, West Berks District Council, and Ward Councillor*

Mr I Pearson *Head of Education Service, West Berks District Council*

Objectors:

Mrs V Pegg *Local Resident*

Mrs A Carr *Local Resident*

Mr M Brewer *Local Resident*

Mr S Rowe *Local Resident*

DOCUMENTS

1. Statement of Case submitted by Blandy and Blandy on behalf of the Downs School
2. Bundle of Proofs of Evidence and Summary Proofs of Applicant's witnesses
3. Outline of opening remarks by Mr S Dimmick
4. Incident report (F/10/1455) dated 17 June 2010, and statement of Mrs L Moss
5. Map of school site showing movement flow
6. Minutes of Compton Parish Council meeting held on 17 May 2010
7. Letter/statement of Sgt Caroline Harrison, Thames Valley Police, submitted by the applicant
8. Statement of Mrs S Jennings, West Berks District Council, and reasons for neutral stance taken
9. Copy email sent by Mrs V Pegg to Stuart Higgins, West Berks District Council, dated 13 May 2010
10. Bundle of background papers, including consultation responses, submitted by West Berks District Council
11. Email statement/proof, dated 17 May 2010, submitted by Mr M and Dr Brewer
12. Statement/proof received 27 April 2010 submitted by Mrs V Pegg
13. Statement/proof dated 19 April 2010 submitted by Mr S Rowe
14. Extract from newspaper report (Newbury News) dated 1 June 2010 submitted by Mr S Rowe
15. Statement/proof dated 14 May 2010 submitted by Mr S Matthews
16. Map showing proposed modified route, submitted by West Berks District Council