

IN THE MATTER OF THE HIGHWAYS ACT 1980 (“THE ACT”)

AND IN THE MATTER OF APPLICATIONS BY THE KEEPERS AND GOVERNORS OF THE POSSESSIONS REVENUES AND GOODS OF THE FREE GRAMMAR SCHOOL OF JOHN LYON (“THE SCHOOL”) TO THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARROW (“THE COUNCIL”) FOR TWO PUBLIC PATH DIVERSION ORDERS AND A PUBLIC PATH CREATION ORDER

PUBLIC PATH APPLICATIONS

Introduction

1. The School hereby applies to the Council for public path diversion orders under section 119 of the Act with respect to part of the lines of the London Borough of Harrow Footpath Number 57 (“Footpath 57”) and the London Borough of Harrow Footpath Number 58 (“Footpath 58”), together with requisite extinguishment of part of the current line of those Footpaths, and it further applies for a public path creation order under section 26 of the Act to create a footpath. The existing, diverted and created footpaths are shown on the attached plan (“Harrow School Sports East: Proposed diversion of nos. 57 & 58 Public Footpaths and creation of new public footpath, 29 February 2012”).

Background

2. The School has owned and occupied the subject land at Harrow-on-the Hill since before 1900.
3. The School's facilities include a range of grass sports pitches, tennis courts and Astroturf pitches and which are all used throughout the year. Some of these facilities were constructed pursuant to a planning permission granted on 23 April 2003 after consultation with the Council's rights of way officers and the Ramblers' Association. They are very well used for formal and informal sports and recreation by pupils and staff at the School, by pupils from other schools including those in the local community, by local clubs (including the Harrow Lawn Tennis Club), by Summer School participants (from the UK and overseas) and by large numbers of spectators watching matches taking place on these facilities.
4. The line of Footpath 57 as shown on the definitive map crosses several of the tennis courts and the viewing area directly between two Astroturf pitches, although the route is described in the definitive statement as an undefined route. Use of this part of the footpath by the public is obviously incompatible with use of the tennis courts and the Astroturf viewing area, with significant health and safety and inconvenience implications for public footpath users, pupils, staff and spectators.
5. The line of Footpath 58 as shown on the definitive map crosses several of the grass sports pitches, although the route is described in the definitive statement as an undefined route. Use of this part of the footpath by the public is obviously incompatible with use of the sports pitches, with significant health and safety and inconvenience implications for public footpath users, pupils, staff and spectators.

6. The context for these applications includes a permissive footpath agreement entered into by the School and the Council on 23 May 2003. This agreement, entered into after full consultation with both the Council and the Ramblers' Association, includes an acknowledgement that use of the existing footpaths by the public may often conflict with the sporting uses of the land crossed by those existing footpaths. Indeed, the proposal for a permissive route came initially from the Ramblers' Association and which was then adopted by the Council. The present applications are entirely consistent with the purpose of the permissive footpath agreement.
7. The proposed public path creation order is part of the package of proposals needed for the resolution of the acknowledged conflict between the users of the School's facilities and the users of the footpaths.

The public path diversion orders

8. The applications for the two public path diversion orders have been considered against the tests for confirmation. If, as the School submits, those tests are met, it must follow that the orders should be made.

Expediency

9. In the interests of the School as owner and occupier and the users of its facilities (including local community users) *or* of the public, it is expedient that the line of part of Footpath 57 and the line of part of Footpath 58 should be diverted. No limitations are to be placed on these interests.¹ The expediency test is a low threshold.² All concerned have an obvious interest in avoiding the conflict inherent when public footpaths cross well-used sports and recreation facilities, a conflict that has long since

¹ Robertson v Secretary of State for the Environment [1976] 1 WLR 371.

² Hargrave v Stroud DC [2001] EWHC 1128 (Admin) at [34(i)] (proposition unaffected by the appeal judgment).

been acknowledged by all concerned. This inherent conflict is exacerbated when users of the existing footpaths are accompanied by dogs both on and off the lead. School staff have witnessed several instances of dog-fouling on the sports pitches currently crossed by Footpath 58 in particular, both in the vicinity of the footpath itself and on the sports grounds more widely. Indeed, members of the public are found routinely to wander off the line of the footpath as well as dogs off lead.

Convenience

10. The diverted footpaths will not be substantially less convenient to the public.
11. A number of factors are typically considered when this test is being applied, including length, difficulty of walking and purpose of the path.³
12. The route from the Footpath 57 stile into the Harrow School football grounds (“the field stile”) to the junction with Football Lane, using the permissive footpath, is 680m. The distance between these two termini using the proposed diverted route of Footpath 57 is much shorter, at only 440m. When the permissive footpath is closed, and if the proposed new footpath is not created, it will not be possible to walk direct from the field stile to the commencement point of Footpath 58 at the stile on the western side of the A404 Watford Road (“the road stile”). The public will instead have to take the route of the existing or diverted Footpath 57 followed by the existing or diverted Footpath 58. This is a distance of at least 815m. The proposed direct route from the field stile to the road stile, incorporating the newly-created footpath of 110m, is considerably shorter at only 470m (a reduction of 345m). The proposed routes also allow for the possibility of taking and enjoying a circular route around the

³ R (Young) v Secretary of State for the Environment, Food and Rural Affairs [2002] EWHC 844 (Admin) at [27].

School's playing fields, which, if the orders sought are not made and confirmed, will not be available when the permissive footpath is closed. Any additional walking distances generated by the proposed routes and their various permutations are not significant in terms of additional walking time given that the overwhelming use of the existing footpaths is recreational.

13. Public use of Footpath 57 presently involves a number of obstacles if a straight line approach is adopted. These include a wooden car parking area rail, tennis court netting and the oft-congested Astroturf viewing area with its cumbersome gates at either end. Obstacles on Footpath 58, likewise adopting a straight line approach, include users of the sports pitches and the dense vegetation adjacent to the road stile. By contrast, the two proposed diverted routes would be entirely free of obstacles. The diverted route of Footpath 57 offers advantages in terms of gradient, in that the grass bank between the tennis courts and the car parking area is avoided. Both diverted routes also offer advantages in terms of surface condition, particularly given that the often muddy and slippery grass sports pitches are avoided with a route with a better surface under the canopy of the line of trees utilised instead. These various advantages apply to dog walkers and non-dog walkers alike.

Public enjoyment

14. The proposed diversions would clearly have a positive effect on the public enjoyment of the footpaths as a whole.
15. Adopting a straight line approach, Footpath 57 crosses man-made sports facilities associated with an urban environment. The route across the tennis courts and between the Astroturf pitches is almost entirely devoid of trees. The surface conditions include

lengthy stretches of Astroturf and concrete. Views incorporate utilitarian tennis court netting and Astroturf pitch netting. The current practical route, passing between the tennis courts and the athletics track, is little better. This incorporates another stretch of concrete track affording unappealing views of the tennis court/Astroturf netting on one side and the steep grass bank up to the athletics track on the other.

16. The proposed diverted Footpath 57 would clearly be more enjoyable to the public. It is less urban and more scenic, affording as it passes down the side of the tennis courts and one of the Astroturf pitches commanding, uninterrupted, views across grass sports pitches towards the City filtered by appealing close-up views of a number of mature trees. Between the Astroturf pitches and the rough farm field, it passes through an attractive belt of woodland alongside a stream.
17. Footpath 58 is presently a nondescript route across several grass sports pitches, lacking in cover and features. By contrast, the proposed diverted route would clearly be more enjoyable to the public. It would pass along a secluded path under the canopy of a line of mature and growing trees before turning to follow the line of a stream flanked by attractive vegetation and trees. It is better in terms of cover, features and biodiversity interest.
18. The permissive routes are used more frequently than the existing official routes. Diversion as proposed would not break up the network of public footpaths in the area, and, when considered with the proposed public path creation order, would serve to enhance significantly such network. These factors lend further support to the diversion applications in terms of the expediency, convenience and public enjoyment tests within section 119 of the Act.

Other matters

19. The termination points of the existing footpaths are unaltered by the proposed diversions (section 119(2) of the Act). The rights of way created by the public path diversion orders should be unconditional (section 119(4)). There are no effects in terms of other land served by the existing public rights of way or the land over which the new public right of way is to be created or any land held with it (section 119(6)(b)-(c)). There is no compensation issue (section 119(6)). There are no material provisions in any rights of way improvement plan particular to these applications (section 119(6A)). There are no issues in terms of agriculture, forestry, nature conservation or statutory undertakers (section 121 (3)-(4)).

Conclusion

20. The statutory tests for confirming the diversion orders are met. The Council should therefore make the orders sought.

The public path creation order

21. The proposed new public footpath crosses land presently crossed by part of the permissive footpath created by reason of the 23 May 2003 agreement. The School is entitled to close the permissive footpath on notice, pursuant to clause 1 of the agreement, which it is doing in parallel with these applications.
22. There is therefore a need for a public path creation order as proposed (section 26(1)). The new footpath would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area (section 26(1)(a)), in that they would gain a statutory right of way in place of a determinable permissive footpath shortly to be closed.

23. There is no issue in terms of the effect of creation on the rights of persons interested in the land, and no issue as to compensation (section 26(1)(b)). There are no material provisions in any rights of way improvement plan particular to this application (section 26(3A)). The new right of way should be unconditional (section 26(4)). There are no issues in terms of agriculture, forestry or nature conservation (section 29). The detail of the proposed footpath, in terms of its alignment, length (110m) and width, is fully consistent with the section 26 tests.⁴
24. In the light of all the above, the Council should be satisfied that it is expedient that the path should be created.

Conclusion

25. The statutory tests for making and confirming the creation order are met. For the avoidance of doubt, the School applies for the creation order only insofar as and if the Council is prepared to make the two diversion orders.

Widths

26. Where the proposed footpaths follow a line that is already paved, the School is content for the orders to indicate that the diverted line is the full width of that paving in accordance with the widths recorded on the second attached plan (“the Width Plan”). In all other respects, the width of the proposed footpaths should be indicated in the orders at a maximum width of 1.2m.

⁴ R (MJI (Farming) Ltd v Secretary of State for Environment, Food and Rural Affairs [2009] EWHC 677 (Admin) at [25].

Summary

27. The Council is respectfully urged, in the first instance, to make the three orders sought.

19 March 2012