

Town and Country Planning Act 1990 - Section 257

Order Making Authority: Birmingham City Council

Title of Order: (Public Footpath (ID: 2086) (Part Adjoining Wishaw Lane)) Public Path Stopping Up Order 2020

Statement of Objection by Dr Paul Hoad

1. Introduction

- 1.1. This is the statement of objection to explain why Birmingham City Council (Public Footpath (ID: 2086) (Part Adjoining Wishaw Lane)) Public Path Stopping Up Order 2020 ('Order') should not be confirmed by the Secretary of State for the Environment, Food and Rural Affairs ('Secretary of State').
- 1.2. This statement sets out the flaws in the case put forward in the Statement of Reasons ('SOR') submitted by Birmingham City Council

2. Objections to Stopping Up Order

- 2.1. In section 6.2 the SOR, Birmingham City Council ('BCC') have set out a number of reasons why my objections should not be considered. However they have failed to set out a key objection that I have put forward with regards the Stopping Up Order under consideration. A critical matter which I have objected to is why the Order should be made at this point in time and not later, and that BCC are being over-hasty in carrying out this action.
- 2.2. The footpath in question is providing a facility for the public. Once implemented, this facility will be lost. While the developers have come to an agreement with BCC to provide a replacement Bridleway the implementation of this is however dependent on the subsequent redevelopment of the area. This is therefore case of a certain loss of a public facility in return for a proposed replacement at some undefined point in time. This will lead to a loss of public utility for what could well be an extended time and furthermore adds a risk that changes in circumstances may lead to the failure to implement the replacement Bridleway or to otherwise provide adequate compensation for the loss of a public asset.
- 2.3. Ostensibly my concerns would appear to be minor. The attitude that I have received, and no doubt is the prevailing assumption, is that the developers would be only too eager to build the development and so the period during which there would be a loss of public facility would be short-lived. However my engagement with the representatives of the developers in order to rectify this matter have not been satisfactory and have instead confirmed my concerns over this matter.
- 2.4. I propose that the developers should enter into a legal agreement with BCC to ensure that the time period between the loss of the existing footpath and the opening of the new bridleway would be minimised. This should be reasonably straight forward. For example the footpath need only be Stopped Up at the point when the necessary building works have to begin, so it would be possible to allow for financial penalties to be imposed on the developers if building work does not start at the agreed time and for these penalties to increase with each day of delay. Similarly the opening of the new bridleway could be within a defined time from the Stopping Up, and again financial penalties could be applied should any delay occur.
- 2.5. Placing such conditions on the development should not be considered too onerous. The development is a very large one, no doubt generating a very large profit to the developers. The cost to the developers of drawing up such an agreement should therefore not be considered a problem. Indeed, great play is made of the job opportunities being created by

this development and so increasing the number further by adding in legal guidance is a clear benefit. The mention of financial penalties might appear to be an increased burden on the development, but this should not be if the development is indeed to go ahead within such a short time frame as the Stopping Order would indicate. If all things are in place except the removal of the footpath then there should be no objection to this. If the developers do not wish to entertain this concept this would confirm that there is no immediate prospect of the site being developed and hence no immediate need for the Stopping Up order.

- 2.6. As indicated above, it might be assumed that the developers would be only too eager to undertake the works in order to profit from the development. However to assume this and to accept the Stopping Up order on such an assumption would be incorrect. The development of land is subject to all manner of influences. For example the availability of capital to develop a piece of land is critical, and it is not just whether the developer has access to the necessary funds, but whether such funds are spent on this particular development as opposed to other competing opportunities (developing other areas, purchasing land etc.). Just because a site is likely to be very profitable does not mean it will be developed if another more profitable venture is available or indeed that more profit could be realised by a delay.
- 2.7. Also, profits are not made just by building on land. Building consent and the removal of obstructions to development can raise the price of land before the development is actually started. So the potential for this land to sit idle while it is sold on to others cannot, and should not, be discounted.
- 2.8. Having had exchanges with the developer's representative over this matter, at no point has an actual timescale been stated to provide evidence of an imminent need for the Order. This speaks volumes about the uncertainty in the plans and the likelihood that there will a significant delay before anything will materialise.
- 2.9. It is also important to note in this context an incorrect statement in the SOR provided by BCC. In the paragraph 5.1 (b) of the SOR BCC states:
"Without the Order, there would be a legal obstacle to the Peddimore development proceeding in that condition 9 of the Planning Permission requires the stopping-up of PROW 2086 before any development (other than the A38 roundabout works and temporary construction accesses) can take place."
- 2.10. However the actual wording of the planning requirement (as set out in BCC's Non Material Amendment – Decision Document, dated 20th January 2021, document "8807571 - STATEMENT OF CASE APPENDIX 3 NON-MATERIAL AMENDMENT APPLICATION APPROVAL REFERENCE 2021 00356 PA.pdf" as submitted by BCC) states:
"No development within Development Zone 2 (as identified on the "Parameters Plan for Outline Elements" drawing reference 17046 P0002 approved under Condition 3) shall take place unless and until an order has been made authorising the stopping up of PROW 2086 to the full extent shown on plan PED-BWB-GEEN-XX-TR-DR-007 rev P11. PROW 2086 must thereafter be stopped up prior to any works that effect PROW 2086 being carried out."
- 2.11. The important flaw in BCC's case in the SOR is that they are claiming that all of the development is being prevented from going ahead by the existence of the footpath whereas it is only one part of the development, namely Development Zone 2. As is clear from the site plan (reproduced in Figure 1) Zone 1A and Zone 1B do not affect the footpath.

- 2.12. The Stopping Up Order is therefore being put forward on the basis of an incorrect and misleading assumption.
- 2.13. To implement the Stopping Up of the existing footpath now, under the proposed Order, is therefore doubly incorrect. Firstly, there is no evidence provided of any immediate development being undertaken within the site and secondly much of the site could be developed anyway without affecting the footpath. The fact that the footpath is unlikely to be unaffected in the near future is clearly demonstrated by the fact that the field through which it runs has been ploughed over rather than being left as it was when the Stopping Up order was publicised.
- 2.14. Given that it is evident that the footpath only affects part of the overall site, this reinforces the fact that there is a risk that there will be delay between the removal of the path and the actual practical need for its removal as it may be the last part of the site to be developed. The process is clearly focussed on smoothing the way for the developers and are not protecting the public interest. The release of any land should be based on its actual need. Until such time as this land is required, the existence of the path as a public facility should be protected.
- 2.15. BCC is therefore unnecessarily removing a public facility at this point in time.

3. Summary and Recommendations

- 3.1. The SOR submitted by BCC to the planning inspectorate is incorrect and falsely presents the conditions requiring the Stopping Up of the footpath.
- 3.2. The Stopping Up is not required for significant parts of the development to go ahead (as set out in the actual conditions for the development).
- 3.3. The Stopping Up order is being put forward primarily for the benefit of the developers and not for the overall practical implementation of the site development or for maintaining public utility.
- 3.4. The proposed Stopping Up order should therefore not be implemented as it is unnecessary at this time and will lead to the unjustified loss of a public facility.
- 3.5. BCC should ensure that Development Zone 2 should be the last part of the overall development to be implemented to ensure the maximum availability of this facility.
- 3.6. The development of Development Zone 2 (and hence any possibly need to remove the existing footpath) should be subject to legally binding agreements, including the provision of financial penalties, to ensure the time period between the loss of the footpath and the opening of the new bridleway is minimised. Such agreements should set out a minimum time between the removal of the footpath and the start of any work, as well as the duration of the construction, and with penalties rising with increasing delay. Any funds raised by such penalties should be ringfenced for subsequent use for community benefit in the local area (ie this should not be part of general BCC funds nor should it be used to implement schemes elsewhere in the city).
- 3.7. Only when such agreements are in place should BCC consider a new Stopping Up Order.