



Order Decision

Inquiry opened on 8 November 2011

Site visit made on 9 November 2011

by Susan Doran BA Hons MIPROW

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

Decision date: 13 December 2011

Order Ref: FPS/Q3060/5/3

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Nottingham City Council (Nottingham Midland Station Footpath No.28) Stopping Up Order 2010.
- The Order is dated 19 March 2010 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedules.
- There were 12 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed

Procedural Matters

1. Following the close of the Inquiry I carried out a site inspection accompanied by representatives of Nottingham City Council ("the Council"), the Objectors and interested persons. During that visit, access was made available, by prior arrangement, to that part of the Order route adjacent to the multi-storey car park construction site.
2. An additional two statutory objections were received by the Council in respect of the Order, which were subsequently withdrawn, and three non-statutory objections were received.

The Main Issues

3. Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") requires that I must consider whether it is necessary to stop up the footpath in question to allow development to be carried out in accordance with the planning permission already given but not implemented.
4. However, the power to confirm an order is discretionary. Paragraph 7.15 of Department for Environment Food and Rural Affairs Rights of Way Circular 1/09 advises that in deciding whether or not to confirm the Order, I must also weigh in the balance the disadvantages or loss likely to arise as a result of the stopping up of the footpath to members of the public generally or to persons whose properties adjoin or are near the existing highway, against the advantages of the proposed order.
5. The issue is, therefore, whether the proposed stopping up is necessary to enable the permitted development to proceed, whether the public or adjoining property owners would be disadvantaged by the stopping up, and if so, where the balance of advantage lies.
6. The merits of the development are not at issue.

Reasons

The development

7. Planning permission for the 'Hub', the re-development of the Nottingham Midland Railway Station was granted by the Council on 9 April 2009 (planning permission reference 06/00694/PFUL3) for external alterations to the station and platform buildings, the erection of a new concourse and of a multi-storey car park facing Queen's Road. The Hub is intended to form a key part of a public transport interchange linking with the tram network (part of which is yet to be developed).
8. A subsequent amendment to the design and position of the multi-storey car park places it 470mm east of its original position. Work on the multi-storey car park has commenced. Further to this, a Temporary Prohibition of Pedestrians Order made under the Road Traffic Regulation Act 1984 has been in place on the footpath since January 2011. The Order was extended by the Secretary of State for Transport until 27 January 2012, or until the works are complete, whichever is the earlier. The TRO is argued to have been made for reasons of health and safety as access for construction materials and equipment was required in the area, rather than the development of the multi-storey car park encroaching on the Order route. It was apparent from the site inspection that the multi-storey car park does not encroach over the Order route.
9. Mr White argued, however, that the development was not the approved planning permission, and further that the multi-storey car park was substantially complete such as to fetter my discretion to modify the Order. I understand that the Council as the planning authority was consulted prior to the change. The alteration was argued to be within normal design tolerance. I do not consider that my ability to determine the Order is prevented by this matter, and neither do I believe that the development is substantially complete. Consequently I shall proceed to consider the Order.

Whether it is necessary to stop up the footpath in question to allow development to be carried out

10. Although the multi-storey car park, currently under construction, no longer obstructs the Footpath, the existing route, from Queen's Road, remains affected by several elements of the development. These were described as the two supporting walls and pillars for the upper concourse, the loading bay and operational service area which facilitates refuse collection and deliveries to the station development, the waste recycling area, the office/storeroom, and the "kiss and ride", facility (a drop-off and collection point for station users).
11. Mr Thompson and Mr White accepted that the development could not lawfully be completed unless the Order was confirmed. Mr Sladen on the other hand considered that changes could be made, as had already been the case with the multi-storey car park. Mr Ablitt considered the test was not met.
12. Mr Cheshire indicated that Footpath 28 could be reinstated if the Order was not confirmed, but this would mean the development of the southern concourse could not proceed as approved. He further gave assurances that the next phase of the works was fully funded and intended to go ahead, whilst nothing could be guaranteed.

13. On the basis of the evidence before me, I consider that the development for which planning permission has been granted cannot be completed if the Footpath remains in situ, at least insofar as that part of the Footpath between Platform 6 and Queen's Road. The remainder of the Footpath comprising the footbridge is unaffected by the development and I understand is to be retained for use by rail and tram passengers. However, as a result of the development, the remainder of the Footpath would become a cul-de-sac, making use as a through route on the definitive alignment impossible. I am therefore satisfied that it is necessary to stop up the Footpath to enable development to be carried out in accordance with the planning permission.

The effect the Order would have on members of the public or those whose properties adjoin or are near the existing path

14. The granting of planning permission does not mean that the Footpath will be stopped up automatically, and my attention was drawn by the Ramblers' Association ("the Ramblers") to the *K C Holdings* and *Vasiliou* judgements¹. The disadvantages and loss to the public and adjoining landholders must be weighed against the advantages of the proposed order. The 1990 Act enables orders to include provision for the improvement of an existing highway for use as a replacement for the one being stopped up. Here, the Order provides for an alternative route, from point A on the Order plan via Station Street, Carrington Street and Queen's Road to point B, and that this be improved to include resurfacing where required. A number of issues were raised and I consider these below.

Length and destination

15. Footpath 28 was described by many, including Mr Brooks and Mr Glover, as a convenient link from the Meadows and Trent Bridge areas (to the south and east) to the tram terminus at the junction of Station Street and Trent Street, to Canal Street and onwards to Weekday Cross and the city centre. As a sustainable link to the tram it was argued that stopping up the footpath was not in the public interest. Mr Ablitt indicated that many residents of the Meadows walk into the city and to work, and closure of the path would have a negative impact on them. Mr Sladen described it as a route well used by those choosing it over the already existing alternative route.
16. Users spoke of approaching the Footpath in different ways. Those coming from Summerleys Lane (to the south east) were in the habit of crossing the former car park through a gap in the wall and taking a diagonal route to reach the footbridge. This it was said was a provision made following an earlier diversion of Footpath 28 from the former bridge No.21 crossing the railway to the east, to its present alignment over bridge No.20B. However, the diagonal route across the car park is not part of the definitive alignment of Footpath 28 which forms the subject of the Order before me.
17. Mr Proctor described the Footpath as an essential part of a longer route avoiding the Broadmarsh Shopping Centre. Mr Goodall found the footbridge the shortest, most direct and convenient route as part of journeys made to and from the Trent Bridge area; and latterly had used the Footpath as a connection

¹ *K C Holdings (Rhyl) Ltd v the Secretary of State for Wales and Colwyn B C (1989)*, and *Vasiliou v Secretary of State for Transport and Ladbroke City and County Land Co. Ltd (1990)*

to and from the tram stop. Mrs Moore considered the Footpath both convenient and a less stressful experience than the alternative.

18. The alternative route proposed is longer. However, the additional time and distance required to reach A or B via Station Street, Carrington Street and Queen's Road is not great and will not inconvenience pedestrians massively (a few minutes depending on the ability or encumbrances of the user), and I concur with the Council not significant enough in itself to warrant not confirming the Order.
19. However, I agree with the Objectors that it is less direct and thus less convenient for some users, adding an unnatural 'dog-leg' for those taking a north south route.

Features and amenities

20. Footpath 28 is unique in Nottingham providing the only traffic free crossing of the railway². It is this feature which users extolled. The Ramblers argued its amenity value lay as a route in the heart of the city where people can walk away from busy roads and through an historic railway station on a path with historic origins. The Footpath formed part of an historic route known as the Trent Bridge Footway linking the north and south of the city, although it no longer followed its original alignment at this location having been diverted some 20 or so years ago.
21. The amenity value of the proposed alternative route lies in the historic and architectural interest of the station building, although as the Ramblers' pointed out, pedestrians can already enjoy this. Further, that the alternative route was unremarkable since it was possible to walk along pavements beside busy urban roads anywhere.
22. Witnesses spoke of Footpath 28 providing a largely covered route offering shelter in wet weather, giving users a totally different experience to the alternative which provides no shelter from the elements.
23. Crossing the footbridge, users are exposed to the noise of moving trains and platform announcements which arguably adds interest and character to the route, not least for railway enthusiasts, although the route cannot be described as a quiet haven. However, this is not an experience available to pedestrians elsewhere in the city. The alternative route is subject to the flow and noise of vehicular traffic.
24. There are no shops or businesses located along the existing Footpath thus confirmation of the Order would have no detrimental effect in this regard. There are local shops and facilities located on the opposite side of Station Street. The Council considered the alternative route would increase passing trade to these outlets. However, I agree with the objectors that the likelihood of increased passing trade is limited and, likely as not, users of the Footpath would have deviated to make impulse buys in any event: such opportunities being already available.
25. The benefits of the development were argued to include additional retail and other facilities at the Station and the provision of 30 new jobs. On a wider

² Examples of paths crossing railways elsewhere in the country were cited as existing and being retained, although their status was unclear

scale the socio-economic benefits of the development as a whole in regenerating this part of Nottingham were argued to be extensive, as well as acting as a catalyst for development and wider regeneration in areas on the south side of the city.

Safety

26. The line of Footpath 28 passed alongside a car park for a short distance although users were exposed to relatively few vehicle movements and separated from the car park by a row of bollards. In contrast, in its entirety the alternative route follows pavements adjacent to busy roads raising concerns amongst the Objectors of traffic volumes, pollution and safety in particular where the route narrows at the junction of Queen's Road and Carrington Street. The Ramblers drew my attention to paragraph 7.8 of Circular 1/09 which advises that alternative routes should avoid the use of estate roads and preference be given to paths through landscaped areas away from vehicular traffic. Although the advice describes the re-routing of paths in residential developments, I accept that the principle is applicable to the present circumstances.
27. The footway along Carrington Street is presently crossed by entrance/exit points to the 'port cochère' in front of the Station. These are defined by short, but in cases steep, slopes and tactile paving, and suggested as difficult for some users to negotiate. It is intended that these be removed and the footway be 'at grade', although it was not clear how this will be achieved. Some highway improvements have already taken place along the alternative route, notably the replacement of paving stones. However, the Council was not able to confirm what or how other improvements would be made.
28. It is proposed that Station Street be closed to traffic from Carrington Street and a turning circle installed. Alongside the footway forming part of the alternative route a taxi rank is proposed. Thus it is possible that here and elsewhere along the alternative route the available width will be reduced in places by bus and taxi shelters thus increasing congestion, and/or alternatively by people queuing for buses and taxis. Mr Cheshire considered that the development would increase the number of pedestrians using the area. However, no surveys had been carried out to establish existing or projected use of either the existing or alternative routes.
29. The proposed alternative will also cross the kiss and ride facility. Mr White queried safety aspects here where there would be inevitable conflict between vehicle users and pedestrians, compared for example to the Footpath crossing the service area (a suggested route for Footpath 28 which I refer to below). I agree that people using the kiss and ride facility may be more vigilant as they would be expecting pedestrians to be there, although some would be more concerned to find a place to stop and drop off or collect passengers. By its very nature the facility is likely to be in regular and frequent use, particularly coinciding with the arrival and departure of trains. Mr Cheshire indicated it would be possible to follow an alternative route forming part of the 'public realm' without the need to cross the kiss and ride facility. Nevertheless, there is nothing to indicate to me that this area will form part of the adopted highway, and the Order indicates the alternative route following the existing footway.

30. The Council argued that incidents of crime and anti-social behaviour on both routes were comparable, that the alternative route was adequately lit by street lighting, and that it complied with the Disability Discrimination Act 2005³ providing a more inclusive route.
31. Crime statistics provided by the Council have not been qualified in terms of the type or severity of incident either on the alternative route or within the Station area of the Footpath. Thus it is difficult to draw any conclusions as to whether the public is more or less likely to be at risk of crime on one or other route. However, the Council stated there had been no increase in incidents of public safety on the alternative route since the temporary closure of the Footpath.
32. A possible terrorist threat was linked by Mr Cheshire were Footpath 28 to be retained. However, such threat can exist with any area to which the public have access, and I note the Ramblers point that well used public areas as much as well used footpaths benefit, in line with 'secured by design' principles, from natural surveillance.

Guidance and policies

33. The Council drew my attention to a raft of policies which had been taken into account both with respect to the Footpath in relation to the development itself, and with regard to consideration of the suitability of suggested alternative routes (see below) within the context of the guidance, and which I note. These included extracts from the Nottingham Local Plan (November 2005)⁴, City of Nottingham Rights of Way Improvement Plan (November 2007)⁵, Park Mark Guidelines and Secured by Design Principles.
34. The Council indicated the development had been identified in the Council's local transport plans since 2001 as a key priority to help deliver an accessible, integrated and sustainable transport system, and argued the challenges to the Order were not of sufficient significance to merit refusal.
35. Mr Brooks and Mr Ablitt considered the closure of the Footpath was contrary to the Council's Local Transport Plan which encouraged walking in the city with its added health benefits.

Suggested alternative routes

36. Several of the Objectors argued that Footpath 28 could be retained if diverted, and suggested various routes were possible within the overall development, especially given that the footbridge over the railway will be retained. These included connections into the multi-storey car park stairwells from the footbridge or continuing alongside the multi-storey car park at ground level through the service area and across the kiss and ride facility to reach Queen Street, via the station concourse, or between Platform 6 and the service road adjacent to the multi-storey car park in an easterly direction to meet Queen Street.
37. The Council rejected these suggestions based on advice from the British Transport Police and expertise from other Council departments. Reasons

³ Now incorporated in the Equality Act 2010

⁴ Policy T12 "Planning permission will not be granted for development which would obstruct or adversely affect a public right of way unless satisfactory provision is made for an alternative alignment"

⁵ Policy 4 "The City Council will not approve the loss of a public path unless Policy T11 and Policy T12 of the Local Plan is satisfied"

included health and safety grounds within the multi-storey car park in line with 'Secured by Design' and 'Park Mark' standards, the latter requiring pedestrian access/egress points to be kept to a minimum. The multi-storey car park it was argued had been designed to achieve the 'Safer Parking Award' rather than to include a public right of way.

38. A route between Platform 6 and the service road it was suggested would need to be fenced on both sides, and whether or not such fencing was open, would present a security and safety risk to users. A route crossing the service area was considered unsuitable on safety grounds due to movements of vehicles and wheeled skips, where the public would not be expected to be. Vehicle movements here were anticipated to be 3-4 large heavy goods vehicles per day and 10-20 medium heavy goods vehicles, potentially doubling on completion of the Hub development.
39. Thus all the alternatives proposed were considered by the Council to be inappropriate or impractical on health and safety grounds and/or for security reasons, and with low amenity value, although Mr Cheshire accepted that it might be possible to control vehicle movements over the service area road to accommodate a crossing of the path. The Ramblers pointed out the Council's concerns were equally relevant to, and do not preclude the thousands of station users presently, and anticipated as a result of the development.
40. The merits of the planning permission are not before me, nor is it open to me to modify the Order so as to accommodate an alternative route by way of diversion as proposed. However, I take note of the suggestions as an expression of the perceived loss stopping up of the way would have on the users.

Where the balance lies

41. I approach the exercise of my discretion on the basis of the development being allowed to proceed, and consideration of whether the disadvantages and losses arising from the proposed stopping up are of such significance that I should refuse to confirm the Order.
42. The Order will allow the implementation of the planning permission which has been granted, and this is clearly to the advantage of the developers. The wider benefits to the area of the development as a whole have also been highlighted by the Council.
43. It is the Council's case that the alternative route is suitable: the extra time and distance is acceptable, it is as safe as the existing, lit to an acceptable standard, will be improved as required by the Order, is more inclusive, and provides an acceptable replacement route to access the tram. I accept that its additional length is not significant and that the public can still reach the destinations to which they wish to go, albeit in some cases circuitously. The alternative is lit and there would be resurfacing, although it is not clear how some necessary changes would be achieved such that I can be satisfied it will be suitably improved. Generally it is more inclusive, yet would already be a choice for those users unable to use the Footpath due to its steps. Whether or not it is as safe or safer in terms of crime statistics is not clear; neither is the effect of the development itself on pedestrian use, and congestion, of the alternative route clear.

44. Footpath 28 is unique and offers an experience which the alternative, replacement, route cannot - a traffic free route within the city which in addition provides a convenient link for a large number of users to and from residential areas, work places and other facilities. It provides a short but valued opportunity for pedestrians to get away from trafficked routes, with the added amenity value of an historic environment. On balancing the merits and demerits of the stopping up order, I find that the disadvantages and loss likely to arise as a result of the stopping up of the footpath to members of the public generally are such that permanent closure of Footpath 28 to the public is not justified. Thus I conclude that the Order should not be confirmed.

Other matters

45. Amongst other points raised was a belief that closure of the footpath was a means to resolve fare evasion problems encountered by Midland Trains, station staff, it was said, on many occasions stopping pedestrian users of the footbridge to check tickets. This was denied by Mr Cheshire. However, this is not a matter relevant to my determination of the Order.

46. Amongst matters sought by some of the Objectors was that the Order be modified to require the stopping of vehicular traffic at the port cochère within a set timescale should the Order be confirmed; that the area and pavements around the kiss and ride facility be adopted as part of the Queen's Road infrastructure and be maintained at public expense; interpretation materials be included in the public space designs documenting the history and bridges; that a Section 106 agreement be undertaken to ensure the continuation of a traffic free route crossing the Station, and the temporary prohibition order be extended to enable a diversion order for Footpath 28 under Section 257 of the 1990 Act to be investigated. I understand the sentiments behind these suggestions. However, they do not fall within my powers of modification in respect of the Order.

47. Future development proposals include the extension of the tram system to cross the railway with the possibility that permissive public access would be made available on the resulting bridge. This is something which may or may not happen in the future and has not affected my consideration of the Order.

Conclusions

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

Formal Decision

49. I do not confirm the Order.

S Doran

Inspector

APPEARANCES

For the Order Making Authority:

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| Mrs A Barrett | Solicitor, Nottingham City Council |
| who called | |
| Mr J Lee | Senior Rights of Way Officer, Nottingham City Council |
| Mr S Cheshire | Senior Commercial Scheme Sponsor, Network Rail |

Objectors:

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| Mrs S Rumfitt | <i>instructed by</i> The Ramblers' Association |
| who called | |
| Mr C Thompson | |

Mr D Ablitt
Mr P Brooks
Mr R Glover
Mr P Sladen
Mr J White

Interested Persons speaking against the Order:

Mr R M Goodall
Mrs D Moore
Mr R Proctor

DOCUMENTS

- 1 Opening remarks on behalf of the Ramblers' Association
- 2 Case law notes: K C Holdings (Rhyl) Ltd v the Secretary of State for Wales and Colwyn B C (1989) and Vasiliou v Secretary of State for Transport and Ladbroke City and Country Land Co Ltd (1990) submitted on behalf of the Ramblers' Association
- 3 Appendices 1-4 submitted by Mr Sladen: plans showing the route proposed to be stopped up and the proposed alternative route; footbridge nos. 21 and 20B showing the former and present course of Footpath No.28; boundary of the planning application site; and the affect of the development of the multi-storey car park on Footpath No.28 prior to the amendment
- 4 Email providing vehicle use figures for the service area, submitted by Nottingham City Council
- 5 Submission of Mr Ablitt
- 6 Statement of Mr Sladen
- 7 Closing remarks on behalf of the Ramblers' Association
- 8 Closing statement of Mr Sladen
- 9 Closing submissions on behalf of Nottingham City Council