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## Order Decision

Site visit made on 2 November 2023

by **Charlotte Ditchburn BSc (Hons) MIPROW**

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

Decision date: 15 December 2023

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### Order Ref: ROW/3291825

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Solihull Metropolitan Borough Council Public Footpath SL20A (Part), Arden Academy, Knowle, Solihull.
- The Order is dated 28 July 2021 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were three objections outstanding when Solihull Metropolitan Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed subject to modifications as set out below in the Formal Decision.**

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### Preliminary Matters

1. I undertook an unaccompanied site visit on Thursday 2 November 2023.
2. Solihull Metropolitan Borough Council (the Council) has requested a minor modification to the wording of the Order, to reflect the correct length of the proposed route. There would be no need for this modification to be advertised further.
3. In this decision I have found it useful to refer to the various points annotated on the Order map. For ease of reference a copy of the map is attached hereto.

### Main Issues

4. Section 119(6) of the Highways Act 1980 involves three separate tests for an Order to be confirmed. These are:

TEST 1: whether it is expedient in the interests of the landowner, occupier or the public for the path to be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.

TEST 2: whether the proposed diversion is substantially less convenient to the public.

TEST 3: whether it is expedient to confirm the Order having regard to the effect which— (a) the diversion would have on public enjoyment of the path as a whole, (b) the coming into operation of the Order would have as respects other land served by the existing public right of way, and (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

5. In determining whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to enjoyment of the land affected by the new paths must be taken into account, where applicable.
6. Regard must also be had to any material provision contained in a rights of way improvement plan (ROWIP) for the area under section 119(6A). Other relevant factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation.

### **Reasons**

7. The current alignment of SL20A heads in a north westerly direction from Point A, skirting around various school buildings via Points B and C, along a tarmac path to Point D. The proposed route leads from Point A in a north westerly direction close to the northern edge of the school boundary, passing near some small service buildings via Points E and F and a 1.8m gap in the fence at Point G, turning in a south westerly direction re-joining the existing route at Point D.

### ***Whether it is expedient in the interests of the lessee of the land that the path in question should be diverted***

8. The Order is made in the interests of the lessee of the land crossed by the footpath to improve privacy and safety.
9. The Order would benefit the lessee, Arden Academy, by moving the public right of way from within the centre of the school grounds to the edge where it could be suitably fenced for security and safety purposes to safeguard the students of the academy. In 2016, the Council confirmed a public path order processed under the 1980 Act, section 119, to divert the route to improve security and safety of the site. The alternative footpath however could not subsequently be made available and certified as required by the order, leaving the public right of way on its original alignment. Clearly, having members of the public walking through the centre of the school grounds will have an adverse effect on privacy of the lessee. Accordingly, it is not unreasonable for the lessee to want to divert the footpath to increase privacy, security, and safety of their property to safeguard the students of Arden Academy.
10. Having regard to the above and given that there is no evidence to the contrary, I am satisfied that it is expedient in the interests of the lessee that the footpath should be diverted.

### ***Whether any new termination point is substantially as convenient to the public***

11. The termination point of the path will remain the same. Thus, with no alterations to the point of termination of the path it is substantially as convenient to the public.

### ***Whether the new path will not be substantially less convenient to the public***

12. According to the Council, the existing alignment of the footpath is 128m in length whereas the Order route is 162m. In my view, a 34m increase would not be substantially less convenient to the public.

13. The works to create a segregated path with a tarmac surface had already been undertaken at the time of my site visit, the current definitive alignment is obstructed by railing with locked gates within it. This is a matter for the Council to address, should the Order not be confirmed. When considering the convenience of the route included in the Order, it is equitable to disregard any obstructions on the existing path.
14. Accordingly, I am satisfied that the Order route would not be substantially less convenient to the public.

***The effect of the diversion on public enjoyment of the path as a whole***

15. The existing route is part of a network of public rights of way extending in the urban area of Knowle. Whilst the proposed route would be a fenced corridor, one side of fencing would screen neighbouring residents gardens and the fencing between the proposed route and the school side would be see through. Therefore, the proposed route would still have similar views, and a similar general direction of travel. It would have a similar gradient to the definitive route and there would be no negative effect on the ease of walking, with the proposed route having a tarmac surface.
16. The alignment of Footpath SL20A away from the school grounds and buildings would provide a more coherent route than the current legal alignment and would remove any uneasiness users might have about intruding into the private space of the school grounds, regardless of their legal rights.
17. Overall, I am therefore satisfied that the proposed route would not diminish the public's enjoyment of the route as a whole.

***The effect of the diversion on other land served by the existing path and the land over which the new path would be created***

18. There is nothing to suggest that the proposed diversion will have any adverse effect on land served by the existing route or on the land over which the diverted route would be created as they are both within the same ownership.

***Rights of Way Improvement Plan (ROWIP)***

19. No contradictory view has been expressed to that of the Council that the ROWIP has been taken into consideration when preparing the proposed diversion. There is also no evidence to suggest that the proposed diversion would conflict with the ROWIP.

***Conclusions on whether it is expedient to confirm the Order***

20. I have concluded above that the Order is expedient in the interests of the lessee and the public and the termination point to be substantially as convenient for the public. The proposed route would not be substantially less convenient, and I am satisfied that it is expedient to confirm the Order having regard to its effect both on public enjoyment and land served by the existing route and proposed route. There is nothing in the submissions referred to above or from my site visit that would lead me to conclude that it would not be expedient to confirm the Order.

### **Other Matters**

21. Objections include fears about increased crime from the proposed route.
22. Objectors raise concerns about costs of the diversion and associated works and potential wasted public money if the Draft Local Plan were to be approved and the site included in future redevelopment plans.
23. Whilst I recognise all of the above as genuine concerns, I must consider the current situation. The legal basis on which I must determine this case does not encompass consideration of such matters. If the Order were to be confirmed, the above issues should be referred to the Council to advise further upon. These are factors that I cannot take into account in reaching my decision.
24. One objector raises concerns about the current alignment being stopped up before the proposed route is complete as well as concerns about an indefinite period for the works to be completed, the objector requesting a set timescale should be added to Part 3 of the Order. The Order cannot be confirmed until the works on the ground are completed to a satisfactory condition, verified by the Council and the current definitive alignment cannot be stopped up until the Order is confirmed. The Order states that the new route will not come into being until confirmation.
25. Another objector states their preference for the route to be permanently extinguished. My decision relates solely to the tests set out in Section 119(6) of the Highways Act 1980; extinguishment can be undertaken under the Act but there is no such order before me.

### **Overall Conclusion**

26. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed with a modification to the wording of the Order, as referred to in paragraph 2 above.

### **Formal Decision**

27. I confirm the Order subject to the following modification:
  - Replace the final line of Part 2 of the Schedule with: "The part of this public footpath number: (SL20A) is 162 metres in length with a width of 1.8m."

*Charlotte Ditchburn*

INSPECTOR

**ORDER MAP - COPY NOT TO SCALE**

