
ROW/3316971

***"FOOTPATH 25 Castle Hedingham, Public Park Diversion
Order 2022"***

**Proof of evidence of Ian Mark Coward, MRTPI on behalf
of Mr D. Collins**

January 2024

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1.0 PROOF OF EVIDENCE OF IAN MARK COWARD

1. My name is Ian Mark Coward and I am a chartered town planner and have been so since April 1997.
2. I completed a BA (Hons) in Geography from the University of London (RHBNC) in 1991 and then graduated from the University of Sheffield with an MA in Town and Regional Planning in 2004.
3. I was first employed as a planning assistant with "The JTS Partnership" based in Brentwood, Essex where I was employed from 1995 until summer 1999 at which point I moved to (what was then known as) "Weatherall, Green and Smith" (subsequently known as ATIS Weatheralls, then ATIS and now BNP Paribas) where I was employed until 2005 leaving, at that point, as an Associate Director.
4. In 2005 I joined "CgMs Consulting" as a Senior Associate Director and left as a Director in 2007 at which point I set up "Collins & Coward Planning and Development Consultancy" with my fellow director, Tony Collins, MRICS MRTPI MCIT MILT MEWI (now retired).
5. In terms of the preparation of this written evidence, and all work associated in the lead up to the inquiry, as well as my conduct on the day, I confirm that I have acted, and will continue to act, fully in accordance with the Code of Conduct of the Royal Town Planning Institute.
6. Collins and Coward have been instructed by Mr Collins for a number of years now and advise in respect of a number of planning matters to include those in and around his property in Rushley Green.
7. It was my colleague, Mr Tony Collins, who submitted the application for a public path diversion order on behalf of Mr D. Collins on 8th May, 2021. An Order was made but fails to be confirmed by an Inspector duly authorised by the Secretary of State for reason that the Order was opposed.

8. The Inquiry is listed for 5th and 6th March 2024 and I have been asked by the applicant to submit a proof and attend the Inquiry in support of the Order and in the hope that the Order is confirmed.
9. Mr Tony Collins is now retired and I have effectively taken the case over. As a MRTPI planner I am able to provide my professional assessment as to the relevant matters and also relevant judgements as to amenity, landscape and character.
10. I have read the submissions prepared by all of those opposing the order as well as that of the order-making authority.
11. I went to site on 12 January 2024 as preparation for the presentation of the applicant's position at Inquiry. I walked along the current footpath (definitive route) and also the proposed diversion. The weather was "fresh" and dry but, having a prolonged period of rain, the ground soft underfoot. There were no grazing cattle.
12. At the start of the visit I saw a local dogwalker walking northeast and towards Rosemary Lane – the dog was off lead but walking to "heel". I also noted, in the vicinity of the footpath, several patches of dog faeces (I recall at least three), a tied plastic bag (which I presume contained dog faeces) in addition to a sodden "Carlsberg" cardboard box/package. I append to my proof of evidence various photographs to (further) evidence/confirm these points.
13. In terms of the two routes:
 - 1.13.1. The existing footpath was more sodden and slippery underfoot - particularly in the vicinity of the gates at the entrance, exist and middle – with matters exacerbated by this path seemingly well used (i.e. bare soil/the grass worn to mud) but also the topography meaning that the levels "fall away" to the south and east (when walking in a south-westerly direction). Ground conditions worsened in the vicinity of the field gates.
 - 1.13.2. The diversion was, in the main, more level and the walking conditions better. There was no bare soil/mud even though there were evidence of trampling along the relevant section. I infer from this that, given

the absence of grazing cattle, such could either be local wildlife (i.e. deer) or walkers and/or their dogs. I do accept that "traffic" along the diversion/alternative route is likely to be materially less until such time as the definitive route is/may be altered.

14. I found both routes pleasant but of the proposed diversion I had views into a copse/spinney (which I found pleasant), the location of a historic well was also pointed out to me and I could clearly see some terraces in the ground. The former may be of interest to "nature lovers" the latter two items notable to those with an interest in local history.
15. I will add that the position of the well was given by Mr Tom Doe but that it was covered by scrub and would not, in its current form, be visible from either route. It may be that, in time, the relevant owner (of Hedingham Castle) may wish to make a feature of the well. I appreciate that such matters are speculative and so will attract little, if any, weight in the determination of this matter.
16. I note that the current route passes through the aged terraces. It is my belief that if these terraces were historically used for the taking of crops or grazing of cattle then any historic right of way would be less likely to pass through them (i.e. I believe it far more likely that historic rights of passage would skirt around these terraces).
17. I noted that Mr Collins' dwelling was to the north of the footpath and at the top of a rising hill/knoll but, in part, the other side of a mature hedge and embankment. I was surprised to learn that walkers and their dogs would depart so materially away from the obvious line of the footpath as it currently is. I also noted that it would be possible to see, in part, Mr Collins dwelling and garden from the footpath in its current route – however, such views are much lesser from the proposed diversion primarily for reason of a lower topography.
18. In light of the application, all representations and my site visit I now express my professional opinion as to the matters that I understand are relevant to a formal decision of the made diversion order.

whether it was expedient to make such an Order in the interest of the landowner.

19. Rushley Green Farm is located in close proximity to the current right of way. It is a family home as well as the focus of a working agricultural enterprise.
20. As set out in my Firm's original submission there are now many hundreds of walkers using the relevant section of footpath 25 and this causes damage to the path as shown on the photographs submitted with the application. The extent of the footpath is widened by use and so consequent trespass arises by material departures from/to the line of the footpath. Furthermore, it appears that walkers do, and have, departed materially from the definitive route – to the point of being, in my opinion "on the doorstep" to Mr Collins' dwelling and its garden.
21. As a consequence of the level of pedestrian traffic, the footpath and the area surrounding it becomes muddy, slippery and dangerous and also, to a point, aesthetically unattractive.
22. The route of the diversion is onto land which during my site visit in January 2024 was not waterlogged and the ground conditions good; notwithstanding a prior period of prolonged precipitation but also the fact that the surface has not been rolled, trampled and/or subject to a close cut.
23. I also note that Mr Collins did offer to surface the route of the diverted path albeit this did not find favour with the Parish Council. Either way the very fact that he did offer is indicative of the reasonable, practical and sensible approach he has taken to these matters.
24. The diversion will also, in my professional opinion, mitigate issues of trespass. Whilst it is accepted that many walkers keep to the footpath and are generally considerate, a number "wander" with some materially departing to the point of trespass onto the land in front of Rushley Green Farm.
25. Departures from the definitive route, to include material departures/brazen trespass, will in my view result in an adverse impact to the amenity to be reasonably enjoyed by the residents of Mr Collins' property/dwelling. There will, of course, be degrees of impact but where third parties are trespassing and take an adverse reaction to being politely asked to stick to the footpath this clearly is a material erosion of amenity as an intrusion to/interruption of normal day-to-day living.

26. The fact that the property is comparatively isolated in my view accentuates the impact. In addition sensible measures to address issues of trespass (such as a polite request to move) have on occasion been met by verbal abuse (as above). Mr Collins mentioned to me an option of "fencing in" the current footpath – i.e. to ~1.5m wide – in addition to on either scenario removing gates which he attested to being a benefit. However, my proof is given by reference only to what I saw and experienced on 12 January 2024.
27. I viewed first-hand the existence of dog faeces and understand why this is of concern to the applicant (but also his wife and neighbour landowners) – i.e. it is not pleasant and any crop of hay is often spoilt by the dog faeces and cannot consequently be used for animal feed. The existence of dog fouling should also be a general matter of public interest and concern (i.e. there should be no littering or health risk to users of the footpath).
28. I would add that as context to this point I recently obtained a prior approval from Braintree District Council for development described as follows:

Erection of New machinery store adjoining existing agricultural building: Submission of details following Prior Approval Required (23/02215/AGR)

29. This was approved pursuant to 23/02478/AGR.
30. Part of the justification for this additional building (and noting that under the agricultural prior approval regime the proposal needs to be seen to be "reasonably necessary" for agriculture) I explained to the local planning authority that the current agricultural building is used for hay storage and consequently a further building was required for the machinery.
31. This was accepted by the local planning authority.
32. I therefore conclude that there is a sufficient impact arising from these points for the proposed diversion, which is relatively limited in extent, to be expedient.

(ii) the termination points of the diversion are not substantially less convenient to the public

33. From walking both routes it is clear that there would be no change to the termination points.

(iii) the diversion should not be substantially less convenient to the public in terms of increased distance

34. The figures are set out in the statement prepared by the order-making authority, of which I do not disagree, and it is my view that 22 metres is marginal in this context.
35. In addition I note that the purpose of the walk is to enjoy the countryside as opposed to arriving at a destination (i.e going from A to B) in the vast majority of cases. Hence, the most direct route is not a necessity or essential to enjoyment of this footpath (i.e. it is not a "short cut" to shops or school or such like but, instead, a leisure route).
36. I also note at this point that the gradient of the path at the north-eastern end alongside Rosemary Lane is greater. I do understand that such is to be modified by Mr Collins and details are submitted pursuant to this. I have no reason to disbelieve Mr Collins and I consider that his commitment/promise is genuine. I acknowledge that changes to gradient at the northern end (which Mr Collins has promised to do) may find favour with the general public.
37. Notwithstanding the above, having walked the diversion in its current topography I found the gradient reasonable/manageable and the use not materially different or more challenging than to the current footpath.
38. In short, it is my view that the proposed diversion is not substantially less convenient in its current form. I also note that the authority made the order based upon the diversion in its current form/topography.

(iv) regard to the effect the diversion would have on the public enjoyment of the path as a whole

39. It is my view that the new route is slightly preferable: I accept that as a general principle as the difference between the proposed route and the existing is limited then any improvement is naturally also limited.

40. It is my opinion that the diversion/proposed new route will enable a better appreciation of the woodland alongside which it will pass and how this changes season by season. The views and appreciation of the countryside as currently enjoyed will be materially the same with the new route. I also consider that an appreciation of the historical context in terms of the terraces is also likely to increase. Subject to what happens, appreciation of the historic context well may increase from non-existent to marginally to wholly appreciable.
41. I therefore confirm my opinion that the modest diversion is expedient and that the enjoyment of the footpath is not to be reduced and in fact marginally improved for the reasons that I have set out.
42. I therefore conclude that the proposal does meet the relevant test(s) as set out at Section 119 of the Highway Act and we support the order-making authority's position that the diversion should go ahead.

The evidence which I have prepared and in support of this application to a footpath diversion order (in this proof of evidence but also written statement in support) is true and has been prepared and is given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true and professional opinion.

Signed.....

IAN COWARD.

Ian Mark Coward MRTPI

Dated: 26th January, 2024

PHOTOGRAPHS (taken 12 January 2024)







