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| **Order Decision** |
| Site visit made on 9 November 2021 |
| **by Andrew McGlone BSc MCD MRTPI** |
| **appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 2 December 2021** |

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| **Order Ref: ROW/3256535** |
| * This Order is made under Section 119 of the Highways Act 1980 (“the 1980 Act”) and is known as the Part of Public Footpaths 55 and 237 Nelson Public Footpath Diversion Order 2020. |
| * The Order is dated 3 February 2020 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There was one objection outstanding when Pendle 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.** |
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**Main Issues**

1. Section 119(6) of the Act 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.

1. 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. Regard must also be had to any material provision contained in a rights of way improvement plan 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**

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

1. Up until 2001 footpath 55 terminated at point B as shown on the Order plan. However, a definitive map modification order in 2001 resulted in footpath 237 being added to the definitive map and statement based on the evidence that supported its subsistence or reasonably alleged to subsist over the land.
2. The proposed diversion would change the existing route of public footpaths 55 and 237 which run as a continuous footpath and are, for the purpose of the Order, treated as a single public right of way. Thus, I shall refer to them as ‘the footpath’. The definitive route leaves the track between properties at Catlow Court and Catlow Row before passing through the gardens of 1 and 2 Catlow Court and onto the open fields to the west. After four steps down from the track the path is, for the most part of the stretch between points B and C, fenced on either side to provide security to the owners of No 2 who are the applicants.
3. The proposed route from C to D would mean that the footpath would extend along the northern edge of No 2’s garden, thereby allowing the garden to be used as a single entity whilst improving their privacy and security. The proposed route would be in the interests of the landowners for these reasons even if other footpaths in the area do run through residents’ gardens and potential security issues cannot be completely ruled out.
4. For a short section near to point B after leaving the garden of No 2, the definitive line of the footpath extends through the grounds of No 1 before exiting into the field through a gate. However, I saw during my unaccompanied visit that the definitive footpath is currently obstructed, and an alternative route is in situ along the stone wall between Nos 1 and 2. The alternative path is not condoned but I consider, in relation to the definitive route, that the proposed diversion would be in the interests of the landowners as the path would be further away from their home and not pass through their curtilage. Notwithstanding the privacy issues experienced by the occupants of No 1 borne from people using the definitive route and not the alternative, the proposed diversion would improve the security and privacy of the occupants of No 1. Even if I did not come to this view, it would still be expedient in the interests of the applicants (No 2) for the footpath to be diverted.
5. The layout of No 2’s garden may not be historic, and the owners of Nos 1 and 2 seem to have purchased the properties in the knowledge that the footpath existed. There may also be changes to property values, but I have considered the Order on its own merits.

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

1. The diversion would not alter the path’s termination points at points A or C.

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

1. The path is likely to be used, for the most part, for recreational purposes. Whilst the proposed route would reduce the defined footpath’s length by around 10 metres it would cause an imperceptible difference in journey time.

The footpath’s new width at 2 metres would be wider in places than ‘the entire width’ of the existing route as it is referred to in the Order, though users would still need to use the four steps onto the track next to 1 Catlow Row. A handrail would be installed at the steps before public use of the proposed route. The surface between points C to D and D to A would be akin to the existing surface between points C to B and the mowed grass for most of the stretch of footpath between points A and B not within the curtilage of No 1. Part 3 of the Order contains specifics relating to point D, which is unusual to be included in an Order as it is a matter for the Order Making Authority and the applicant; the owner, lessee or occupier of the land. However, I do not consider it misleading and so will not modify the Order in this respect.

1. Users would not be far away from the existing route and the proposed route would be easy to follow, especially with waymark discs at points A, D and C. There would also not be any extra degree of difficulty created for users compared to the existing footpath to the west which has a series of narrow gaps and gates through the stone walls for users to overcome. Hence, the proposed route would not be substantially less convenient to the public if it were diverted.

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

1. The existing route is part of a network of public rights of way spanning the countryside. They provide opportunity for shorter and longer walks taking in the undulating moorland landscape, including views of Pendle Hill.
2. The proposed route would divert from the existing route by a modest amount at its widest point. A mature evergreen hedge would be removed between points C and D which would, in tandem with the orientation of the proposed diversion between these points, allow for views towards Pendle Hill or of the cottages at Catlow Row in conjunction with the stone wall that would remain to the north of the diverted route between these points. Users’ enjoyment of the route and its surroundings would be similar with short- and longer-range views of the moorland landscape, Pendle Hill and Nelson and the hamlet of properties which the footpath passes close to before reaching Southfield Lane.
3. The proposed diversion would mean that users would not need to overcome a turn or step by point B as the route would be made level other than the steps at point C and the proposed width next to here would mean that the turn would not be as sharp.
4. The proposed route would not be so substantially different that it would alter users experience of the rural setting, and thus historic significance of either the Southfield Conservation Area or the listed buildings at Catlow Hall Farm and Catlow Farmhouse or their curtilage buildings.
5. The proposed route would mean that users would be, for the section between points B and C, closer to 1, 2 and 3 Catlow Row, but the public’s enjoyment would be similar to the existing route which passes close to or within the curtilages of Nos 1 and 2.
6. However, overall, I consider that the enjoyment of those who seek pleasure from informal recreation on footpaths such as these would be marginally improved because of the Order.

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

1. There is nothing to indicate 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 which is within the same land ownerships.

1. The applicant has agreed to defray any compensation as a result of the Order coming into force or any expenses incurred in making the route of the proposed diversion fit for public use.

*Rights of Way Improvement Plan*

1. No contradictory view has been expressed to that of the Order Making Authority that the proposed diversion would contribute in a modest way to Theme 1, Aim 1.1 of The Lancashire Rights of Way Improvement Plan 2015 – 2025 which seeks to increase the proportion of the right of way network which is unobstructed.

*Effect on neighbouring property*

1. The proposed diversion and the loss of the hedgerow would mean that users approaching points D and C from point A would be able to view the front elevations of the properties in Catlow Row to a greater extent, along with the stone boundary walls. The proposed route would pass close to the outdoor amenity space next to the hedge and residents are likely to suffer, or at least perceive, a loss of privacy, even with the stone boundary walls remaining. The distance between users and the six properties and the amenity space, and thus the effect, would vary due to the orientation of the route and the properties. However, the removal of the hedge would also provide residents with an improved view across the landscape, a likely beneficial aspect of the proposal.
2. Users travelling from point C to point A would be closer to the occupants of the properties at Catlow Row, especially 1 Catlow Row and the outdoor amenity space. However, the direction of travel would be away from the properties, the amenity space and point C. Point C is the closest part of the route to 1 Catlow Row, but this would be unchanged compared to the existing definitive route. User’s experience is likely to focus on the extensive views of the landscape even for the short duration that would travel alongside the amenity space.
3. Even so, a modest harm to neighbours living conditions at 1 Catlow Row would be caused with the effect reducing with each property moving away from the proposed diversion. I have reached this view noting the existing close relationship between the hamlet of properties and the footpath.

*Septic tank*

1. The objector is concerned about the safety of a septic tank, but the proposed diversion would move the path further away from it and members of the public would not be able to access the land in which the septic tank is located. There is no substantive evidence to suggest that in maintaining the septic tank users of the footpath safety would be affected or compromised.

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

1. I have concluded that it is expedient in the interests of the landowners to divert the path, and that the resulting diversion will not be substantially less convenient to the public. The proposed route is likely to be marginally more enjoyable to use for the majority of people, and there would be no adverse impact upon the land currently served by the footpaths or the land which the diverted path would cross. There would be a modest loss of privacy to the occupants of properties on Catlow Row but this is countered by the improved view across the landscape that they could enjoy. Although the principal beneficiaries of the Order would be the occupants of Nos 1 and 2, I am satisfied that it is expedient to confirm the Order.

**Overall Conclusion**

1. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed.

**Other Matter**

1. I note the objector’s comments about their confidence in Pendle Borough Council to carry out its duties and decision making. Moreover, comments have been made about the process and people’s participation in it. However, the statutory requirements relating to the Order have been met and I have considered the Order on its own merits based on the evidence submitted.

**Formal Decision**

1. I confirm the Order.

Andrew McGlone

INSPECTOR

