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| **Order Decision** |
| Site visit made on 21 February 2022 |
| **by Andrew McGlone BSc MCD MRTPI** |
| **appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 March 2022** |

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| **Order Ref: ROW/3255923** |
| * This Order is made under Section 119 of the Highways Act 1980 (“the 1980 Act”) and is known as The Derbyshire County Council (Public Footpath No. 11 (Part) – Parish of Chisworth) Public Path Diversion Order 2019. |
| * The Order is dated 12 December 2019 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There were five objections outstanding when Derbyshire County 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. Footpath No. 11 (FP11) links bridleway No. 10 (BR10), which extends east to west, and footpath No. 4 (FP4) which broadly extends in a south-west to north-east direction near to FP11. FP11, subject of the Order, crosses a grassed field used for agriculture and through a barn granted planning permission in 2006. Hence, the footpath’s existing route is obstructed, and it seems to have been for several years. No Order was made to formally divert the path around the time of the planning application.
2. When considering the potential effect of the proposed diversion upon the use of the Order route by the public, the existing route should be assessed as if it was open and maintained to a standard suitable for those users who have the right to use it. However, I consider that it may be inappropriate to disregard the facts on the ground.
3. FP11 passes through a livestock handling and feeding area so it is not possible to walk the definitive route, but I was still able to access the route sufficiently to judge the difference between the legally existing and proposed routes.
4. I note objectors’ comments about the barn not being extensively used for agriculture, but there is no substantive evidence to support this view and I saw sheep in the building and on the land at the time of my site visit. By diverting the path, the land could be used more efficiently for agriculture. The proposed diversion would also remove the need for the landowner to reinstate the existing alignment, which would significantly affect their livelihood, as it would require the removal of the barn on the route. I note the guidance referred to by an objector, but for the reasons set out, I consider that it would be expedient in the interests of the landowners for the footpath to be diverted.

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

1. The proposed diversion would not change the path’s location at point A, but it’s termination at point B would change to point C. Both points B and C join FP4. As a result, the proposed diversion would join FP4 roughly 100 metres to the south of point B. The overall length of the diversion using points A-C-B would be around 306 metres which is roughly 46 metres longer than the existing route. The gradients of both routes are similar, and users would, despite the additional length, be able to enjoy the convenience of moving between BR10 and FP4 which is the connection that FP11 affords.

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

1. The path is typically used for recreational purposes. The proposed diversion would shorten the distance across the field between point A and FP4, which is a stone surface, by around 54 metres. The field across which the existing and proposed routes cross can get muddy. The diverted route would mean that users do not need to use a stile through the stone wall at point B. Thus, the route’s accessibility would be improved as there would also not be any extra difficulty created for users. There would be a relatively modest difference in journey time between the existing and proposed route.
2. Users would not be far away from the existing route and the proposed route

would be easy to follow with a clear line of sight. The footpath’s new width would be 2 metres and grassed; no change would be experienced in this regard. I therefore consider that 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 extending across the countryside. They provide opportunity for shorter and longer walks taking in the undulating landscape.
2. The proposed route would divert from the existing route by around 100 metres at its widest point next to FP4. However, the distance gradually decreases closer to point A. Views enjoyed of the rural landscape from either the existing or proposed route would be similar, albeit with a slight change to the orientation of travel in either direction. Hence, users’ enjoyment of the proposed route and its surroundings would be comparable with a variety of rural views available, and thus the historic and archaeological significance of either of the Scheduled Monuments at Robin Hood’s Picking Rods or a prehistoric cup-marked stone.
3. The diverted route would mean that users do not need to use a stile through the stone wall at point B.
4. I, therefore, consider that the enjoyment of those who seek pleasure from informal recreation on footpaths such as these would not be diminished 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 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.
2. 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 County Council’s 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.

**Other Matters**

1. An objector refers to a planning application in 2015, but I do not have any details of this before me. It would not alter my findings anyway given that this application was refused planning permission. Reference is also made to another planning application, said to have been granted in the valley at Rock Bottom Farm, which allegedly negates the need for the barn through which the existing route passes through. However, there is no evidence of this application to support the objectors’ assertions. In any event, planning permission was granted for the barn.
2. I note an objector’s comments about the lack of public consultation in connection with the barn prior to planning permission being granted in 2006.

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.

1. Comments are made about the farmer using the bridleway to access the land and the welfare of animals on the land. However, both are matters that lie outside the scope of my consideration of the Order which has been based on its own merits based on the evidence submitted.

***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 most 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. 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.

**Formal Decision**

1. I confirm the Order.

Andrew McGlone

INSPECTOR

