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| **Order Decision** |
| Site visit made on 9 March 2022 |
| **by Martin Small BA (Hons) BPl DipCM MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 April 2022** |

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| **Order Ref: ROW/3265435** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Kent County Council (Public Footpath ZR668) at Newnham) Public Path Diversion and Definitive Map and Statement Modification Order 2020. |
| * The Order was sealed on 13 March 2020 and proposes to divert the public right of way shown on the Order Map and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with 53(3)(a)(i) of the Wildlife and Countryside Act 1981, once the provisions relating to the diversion come into force. |
| * There was one objection outstanding when Kent 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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Procedural Matters

1. The effect of the Order would be to divert Footpath ZR668 from its current legal alignment to a new route to the south-west and south-east. The Order Making Authority (OMA) has clarified that the proposed diversion route would not be within the highway boundary of Sharsted Hill (email dated 5 April 2022). It would therefore represent a new right of way if the Order was confirmed. If confirmed, the Order would also modify the Definitive Map and Statement for the area.
2. The landowner originally applied to divert the footpath in 1992. An Order was made but for reasons unknown it was not confirmed, nor was the Definitive Map and Statement updated. The landowner believed that the change had taken place and more recently erected fencing across the legal alignment. This led to a complaint being made and the actual situation coming to light. Due to the passage of time, the OMA decided to start the consultation period afresh.
3. At the time of my site visit I was unable to walk the current legal alignment of Footpath ZR668 due to the fencing and it being planted with fruit trees as part of a commercial orchard. However, I was able to observe the alignment from both Points A and B as shown on the Order Map and I was able to walk the proposed diverted route. I have assessed the convenience of the existing legal alignment as if it were unobstructed.

The Main Issues

1. This Order has been made in the interests of the applicant with the agreement of his brother, the co-owners of the land crossed by the footpath. Section 119 of the 1980 Act therefore requires that, before confirming the Order, I must be satisfied that:
2. it is expedient in the interests of the owners of the land crossed by the section of footpath to be diverted that the line of the path or way, or part of that line, should be diverted; and
3. the path or way will not be substantially less convenient to the public; and
4. that it is expedient to confirm the Order having regard to:
5. the effect which the diversion would have on public enjoyment of the path or way as a whole;
6. the effect which the coming into operation of the Order would have as respects other land served by the existing rights of way; and
7. the effect which 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, account being taken of the provisions as to compensation.

Reasons

*Whether it is expedient in the interests of the owners of the land crossed by the footpath that the way should be diverted*

1. The legal alignment of Footpath ZR668 runs directly through a commercial orchard. The applicant contends that walkers stray from the path and walk around the rest of the farm. This causes potential health and safety issues between walkers and farm machinery (such as tractors spraying fertilizers and harvesting equipment) and means he is unable to manage the orchard effectively and safely.
2. Some of the users claim never to have seen any machinery in the orchard and the objector contends that he has only seen a tractor in the orchard ‘maybe once or twice’ in the 6 months since the fencing was erected. However, the applicant has advised that with jobs such as spraying, mowing, pulverising, irrigating and pruning, machinery is frequently in the orchard, and at harvest time there can be up to 10 tractors and 30 people on site.
3. The proposed diversion would take walkers outside the orchard, around its southern corner. It would allow the applicant to manage the orchard without potential conflicts with users and associated health and safety risks. I therefore find that the Order is expedient in the interests of the landowners.

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

1. The proposed diverted route would run on a wide grass verge between the fence to the orchard and a line of large mature trees alongside Sharsted Hill. Although likely to be muddy in wet weather the verge provides a suitable walking surface similar to that of the legal alignment. It would be of adequate width unobstructed by the trees alongside the road or other obstacles.
2. The legal route of the footpath is approximately 251 metres in length whilst the proposed diverted route shown on the Order Map would be approximately 300 metres. However, the rights of way network and surrounding area suggests that the footpath is most likely used as a walk for recreational purposes and no evidence has been put forward by the objector to the contrary. In this context the increase in overall length would be acceptable.
3. For these reasons the proposed alternative route would not be substantially less convenient to the public.

*The effect which the diversion would have on public enjoyment of the path or way as a whole*

1. The proposed diverted route would run closer to Sharsted Hill than the legal alignment but at a minimum distance of 4 metres from the highway boundary. Moreover, the OMA describes Sharsted Hill as a quiet country lane and the trees alongside the road provide physical and perceptual separation from any vehicles on the road. Given the width of the verge I see no reason why users of the diversion would wish to step into the road or that shading from the trees would be a problem. The greater proximity to the road would therefore not be significantly more dangerous nor be significantly less enjoyable.
2. The orchard consists of fruit trees trained on wire supports. I accept that the trees provide an attractive walking environment particularly when in bloom. However, the diverted route would run close to the orchard allowing the fruit trees to still be enjoyed. The mature trees alongside the proposed route are themselves attractive features to be enjoyed by users of the diverted route.
3. Furthermore, the density of the orchard planting is likely to result in views from the legal alignment being channelled between Points A and B on the Order Map with views to either side constrained. Although a user refers to good visibility in all directions it appears that this was from a route other than the legal alignment. In contrast, the diverted route is more open and offers glimpses of attractive views through the trees to the other side of the road for part of its length.
4. I therefore find that the proposed diversion would not adversely affect the enjoyment of the footpath as a whole.

*The effect which the coming into operation of the order would have as respects other land served by the existing right of way*

1. There is no evidence before me that the proposed diversion would have any effect on other land served by the existing right of way.

*The effect which 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, account being taken of the provisions as to compensation*

1. There is no evidence before me of any adverse effect on the land over which the new route passes. Compensation issues are therefore not relevant to my decision.

*Rights of Way Improvement Plan*

1. The OMA confirms that there are no relevant provisions within the County Council’s Rights of Way Improvement Plan to this Order.

*Whether it is expedient to confirm the Order*

1. The Order is in the interests of the landowner, the alternative route is not substantially less convenient and there will be no overall loss of enjoyment from its use. Consequently I conclude that it is expedient to confirm the Order.

**Other Matters**

1. The existing and proposed routes are within the Kent Downs Area of Outstanding Natural Beauty (AONB). Section 85 of the Countryside and Rights of Way Act 2000 imposes a duty on the relevant body to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. In this case I have no evidence that the proposed diversion would adversely affect the flora, fauna, geological, physiographical or other features of the AONB.
2. The objector has suggested an alternative route for a diversion between Point A and a point on Sharsted Hill to the north-east of Point B on the Order Map that would follow the north-western and north-eastern edges of the orchard. However, this is not the route proposed in the Order before me. Moreover, the OMA notes the applicant’s concern that this alternative route would encourage users to stray further from the footpath and so it would not be expedient in the interests of the landowners.

Conclusion

1. Having regard to the above and all matters raised in the written representation I conclude that the Order should be confirmed without modification.

**Formal Decision**

1. The Order is confirmed.

Martin Small

INSPECTOR

