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| **Order Decision** |
| Site visit made on 22 February 2022 |
| **by Graham Wyatt BA (Hons) MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 April 2022** |

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| **Order Ref: ROW/3279493** |
| * The Order is made by under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Nottinghamshire County Council (Clayworth Footpath No. 1) Diversion Order 2020.
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| * The Order is dated 18 December 2020 and proposes to divert the public footpath shown on the Order plan and described in the Order Schedule.
* There was one objection outstanding when Nottinghamshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. As the sole objector to the Order did not request to be heard, I made an unaccompanied site visit, taking into account the written representations. I was able to conduct my visit along both the existing and proposed routes.
2. The effect of the Order would be to divert Public Footpath Clayworth No. 1 (the footpath) from its current route to a new route to the south.

Main Issues

1. 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.

Reasons

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

1. The current route of the footpath travels in a westerly direction, along the margins of a field where it passes through a farmyard that contains a number of agricultural buildings, as well as a private dwelling house. The route at this point requires walkers to navigate through the farmyard and an area where very large agricultural machinery and other plant are in use. Once through the farmyard, the route of the footpath proceeds in a southerly direction, again passing several agricultural buildings.
2. As part of the current route of the footpath affects a farmyard, there is a possibility that users could disturb and distress livestock, including horses. There is also a potential danger that public users of the footpath could come into conflict with very large vehicles. The owner of the footpath that passes through the farmyard also states that thefts have occurred and that users of the footpath allow dogs to foul private areas.
3. Therefore, notwithstanding that the objector argues that Leyfield Farm has planning permission for its conversion into several properties, it is clearly within the interest of the owner of the land and the public for the footpath to divert out of the farmyard.

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

1. The footpath currently runs from position SK 7235 8851 in a generally westerly direction, through the existing farmyard and then heads southwards to meet position SK 7193 8832. It is proposed to divert the footpath from position
SK 7235 8851 so that it continues southwards, following the line of the adjacent canal, then heading west at position SK 7229 8827 where it would meet position SK 7193 8832.
2. Therefore, the terminal points of the proposed highway are on the same highway as the footpath to be diverted and thus, are substantially as convenient to the public.

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

1. The objector argues that as the proposed route would be shorter in length than the existing route, there would be a loss of access to the countryside. Although I acknowledge the heritage that is conveyed through the use of public rights of way, the test is whether the proposed route would be substantially less convenient to the public.
2. Therefore, whilst the objector states that some of the original footpath could be retained and although the proposed route is shorter, it offers users the opportunity to walk to the same points across open fields. This would be achieved without the need to enter an area where large vehicles and animals are kept.
3. Thus, although the proposed route would be some 430m opposed to the existing 640m, I am satisfied that it would not be substantially less convenient to the public.

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

1. The diversion would take users further south along the canal where one would then travel westwards at Point SK 7229 8827 across an open field. Views across the field are extensive and one can appreciate the rural qualities of the area. When users reach Point SK 7193 8832, they will still be able to view the farmyard and its buildings to the north.
2. There is no requirement that users of the footpath should be able to experience the same amenities as the existing footpath provides. The proposed diversion is a very small part of a longer footpath and would nonetheless provide similar amenities and vistas, including that of hedgerows, farmland and buildings. Moreover, the diverted route would also be provided at a width of some 1.8m, with the ground being regraded to provide a level surface for its users.
3. In my view, it would have no significant adverse effect on the public enjoyment of the right of way as a whole.

***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. No relevant issues have been raised regarding this matter and I note that the landowner supports the diversion of the right of way.

***The consideration of the order in light of any material provision contained within a Rights of Way Improvement Plan***

1. None of the parties suggest that the Order is contrary to any material provision contained in a rights of way improvement plan for the area.

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

1. I have found that the diversion is expedient in the interest of the landowner and the public and that the new termination points to be substantially as convenient to the public. I am also satisfied that it is expedient that the Order is confirmed having regard to its effect on public enjoyment. Nothing in the submissions presented or from my site visit leads me to conclude that it would not be 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.

Graham Wyatt

**INSPECTOR**

