



Order Decision

Site visit on 3 August 2020

by Mark Yates BA(Hons) MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 15 September 2020

Order Ref: ROW/3238952

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Norfolk County Council (Aylsham Footpath No. 9 (Part) and Aylsham Restricted Byway No. 8 (Part) Diversion Order 2019.
- The Order was made by Norfolk County Council ("the Council") on 14 February 2019 and proposes to divert two public rights of way in the parish of Aylsham, namely Footpath No. 9 and Restricted Byway No. 8, as detailed in the Order Map and Schedule.
- There was one objection outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is Confirmed.

Preliminary Matters

1. The Council passively supports the diversion of these rights of way with the case in support of the confirmation of the Order being made by the applicant's¹ agent (Birketts). The sole objection was submitted by Mr Witham of the Open Spaces Society.
2. All of the points referred to below correspond to those delineated on the Order Map. The diversion seeks to divert the footpath from the alignment A-B to a route between points A-E-D-K. It is proposed to divert the restricted byway from B-C to the route F-J-K-C.
3. Sections of the rights of way are presently obstructed, most notably by a barn that has been built over the footpath. This would be a matter for the Council to address, should the Order not be confirmed. Nonetheless, when considering the convenience of the routes included in the Order, it is equitable to disregard any obstructions on the existing ways.
4. It is my role to consider the merits of the proposed diversions included in the Order and not any potential alternative proposal. Clearly, if I reach a decision to not confirm the Order, the parties may wish to consider whether an alternative course of action should be pursued.
5. The diversions would only come into force once the specified works have been completed to the satisfaction of the Council. Given that the Council broadly supports the Order, it is reasonable to presume they are satisfied there would be no undue burden on the public purse arising from the diversions. Further, I must proceed on the basis that the rights of way will be maintained to the appropriate standard in the future.

¹ E J W Holman & Partners

Main Issues

6. By virtue of Section 119 of the 1980 Act, before confirming the Order, I must be satisfied that:
 - (a) it is expedient, in the interests of the occupier of the land crossed by the footpath and the restricted byway, that these rights of way should be diverted;
 - (b) the new rights of way will not be substantially less convenient to the public;
 - (c) the new termination points will be substantially as convenient to the public;
 - (d) it is expedient to confirm the Order having regard to:
 - (i) the effect of the diversions on public enjoyment of the rights of way as a whole, and
 - (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing rights of way and the land over which the new ways would be created together with any land held with them.
7. Regard should also be given to any material provision contained in a rights of way improvement plan ("ROWIP") for the area.

Reasons

Whether it is expedient, in the interests of the occupier, that the rights of way should be diverted

8. Both ways pass through a farmyard and attention is drawn to the applicant's concerns in terms of their agricultural operations. There are additionally security concerns given that the ways pass buildings and areas used for storage.
9. I am not satisfied that there is information to support the diversions on security grounds in this case. Further, I do not consider that I should give any weight to the benefits that would arise from the diversion of the footpath away from the barn, which has been built over this path.
10. Whilst there will be rights of way that proceed through farmyards, the issue to be established is whether it is in the interests of the occupier for these ways to be diverted. I find that this is the case given the presence of cattle in the yard at times and the movements involving agricultural vehicles and machinery. These issues mean that the applicant is concerned about the safety of the public within this area and undertaking farming activities in the circumstances. Additional concerns are raised in relation to the risk to biosecurity in light of the present routes of the rights of way. The applicant's view is that the loss of agricultural land to accommodate the diversions is better than the presence of the rights of way within the farmyard. Although it appears that cattle are sometimes found on a section of the proposed route of the restricted byway, this is not something that is stated to cause any concern.
11. For these reasons I find that it is expedient, in the interests of the occupier, to divert the rights of way.

Whether the new rights of way will not be substantially less convenient to the public

12. I have been provided with the different distances involved in using the existing and proposed routes. It is apparent that the diversions will lead to a shorter or longer journey depending upon where a person is travelling to or from. Nonetheless, given that these rights of way are likely to be used for recreational purposes, the distances involved are relatively minor.
13. The proposed footpath has a specified width of 2 metres, which would provide a suitable width for a public footpath in this location. Similarly, aside from a pinch point, the same applies to the 5 metres width for the proposed route of the restricted byway. There is a reduction in width to 3 metres at this pinch point due to the presence of a telegraph pole. Nothing has been provided to indicate that this pinch point will prevent access for lawful users of the restricted byway, and it involves only a few metres of the route.
14. The Order records limitations of a field gate and adjacent bridle gate at point J, which should serve to facilitate access for the different types of user. The applicant also proposes to seek approval to retain the kissing gate at point D for stock control purposes in accordance with Section 147 of the 1980 Act. It cannot be determined whether approval will be granted to retain the kissing gate. However, it is not asserted that this structure would have an adverse impact on the convenience of the footpath.
15. There are dog leg turns at points on both the existing and proposed routes. In respect of the turns at points D and K on the proposed routes, I did not find these to be significant when I walked the routes.
16. Having regard to the above, I consider that the new rights of way would not be substantially less convenient for the public than the existing ways.

Whether the new termination points are substantially as convenient to the public

17. The southern termination point for the restricted byway would be moved almost adjacent to the existing termination point on Heydon Road. There would be a more substantial change in terms of the southern termination point for the footpath. In essence, there will be a shorter or longer distance for pedestrians to travel depending upon where a person is walking to or from.
18. Whilst Mr Witham draws attention to the historical alignment of the footpath serving as a link between Heydon Road and Silvergate, the public have the choice to also use the restricted byway to continue eastwards towards Aylsham. No evidence has been provided to indicate that a particular route is used to a greater extent than the other. Further, any increase in the distance to be walked is relatively short.
19. Overall, I find that the proposed termination points are substantially as convenient to the public.

The effect of the diversions on public enjoyment

20. Mr Witham would like public access to continue to exist through the farmyard. He finds that this provides interest and considers the existing route of the restricted byway to be more sheltered and secluded.

21. There are views of the farm buildings and yard from points along the proposed ways. I am also mindful that there will be people who are likely to be deterred from walking within the working area of the farm. This will be particularly applicable when cattle are present in the farmyard. Although I note that there may be some occasions when cattle are found on the restricted byway. Given that the ways currently proceed within the farmyard where vehicles and machinery will be operating, the proposed routes are likely to offer more seclusion.
22. I accept that some people may prefer to walk rights of way that have been unchanged over time. However, I do not view this to be a significant issue by itself. There is no apparent feature of historical importance in the immediate locality of these rights of way.

The effect the coming into operation of the Order would have with respect to other land served by the existing rights of way and the land over which the new ways would be created

23. No relevant matters have been raised regarding these tests and I note that the landowner supports the diversion of the rights of way.

The consideration of the Order in light of any material provision contained in a ROWIP

24. There is nothing to suggest that the diversions are contrary to any material provision in the ROWIP.

Conclusions

25. I have concluded above that the proposed routes would not be substantially less convenient than the existing routes and the proposed termination points are substantially as convenient as those that presently exist.
26. I find that it is expedient in the interests of the occupier for the rights of way to be diverted. In some respects, the diversions provide potentially more enjoyable routes for the public in this locality. I do not consider that the points raised by Mr Witham are sufficient to indicate that the Order should not be confirmed.
27. When taking all of these matters into consideration I conclude that it is expedient to confirm the Order.






Formal Decision

28. I confirm the Order.

Mark Yates

Inspector

Aylsham FP9 (part) and Aylsham RB8 (part) Diversion Order 2019

- Footpath to be diverted (A - B) 
- Restricted Byway to be diverted (B - C) 
- Proposed Footpath (A - E - D - K) 
- Proposed Restricted Byway (C - K - F) 
- Unaffected Public Right of Way 

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