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| **Order Decision** |
| Site visit made on 29 March 2022 |
| **by Graham Wyatt BA (Hons) MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 8 June 2022** |

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| **Order Ref: ROW/3274938** |
| * The Order is made by under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the New Holland FP47 Order 2018 (1) Diversion Order.
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| * The Order is dated 11 July 2018 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 not 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 the existing and proposed route.
2. The effect of the Order would be to divert Public Footpath 47 (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 south-westerly direction, passing between two areas that are contained within a commercial/industrial estate (the estate). The footpath then enters the estate which contains a dock and several very large warehouse-style buildings. The footpath passes between these buildings and a security checkpoint where it changes course to travel southwards, towards the pedestrian and vehicular entrance into the estate and a level crossing at Lincoln Castle Way.
2. The applicant argues that as an approved customs wharf and temporary storage area, the diversion of the footpath would allow for greater security of the estate as well as controlling unauthorised access into the UK. Moreover, as part of the current route of the footpath crosses through the estate, there is potential danger that public users of the footpath could come into conflict with very large heavy goods vehicles as well as small ancillary vehicles such as forklifts and vans that service the estate. Furthermore, as a large amount of timber is stored within the estate, there is a risk of fire. Consequently, taking all these factors into account, the applicant argues that it is within the interest of the owner of the land, and indeed the public, that the footpath is diverted out of the estate.
3. The objector states that there is an impression that there is a continuous conflict with vehicles, and that users of the footpath must exercise caution continually whilst navigating through the estate. However, the reality is that the footpath is clearly defined with a segregated area that is marked out, and drivers are aware of their surroundings, with vehicles moving slowly within the estate and yielding where required for pedestrians.
4. During my visit I walked through the estate in both directions and witnessed its operations and vehicle movements. A ship was being unloaded, with vehicles moving between the dock and a fenced off-loading area. The barrier at security control obstructed the current footpath and required me to walk around it. Whilst on site I did witness a large vehicle emerge from an access road to the south and turn west into to the site, towards the exit. The turning circle for the vehicle required it to breach the area marked out for the footpath. However, although the road at the eastern end of this part of the footpath is narrow, it is not particularly long, has a straight alignment and one is able to see whether it is clear and safe to navigate.
5. Although metal palisade fencing has been erected to ensure that pedestrians do not enter areas around the margins of buildings, there is a large open area towards the security barrier, where goods are stored. However, I did not feel as though I was walking within a restricted area or in danger from vehicle movements as, apart from the barrier, it is quite clear where the footpath is through the estate, with signage on the ground directing pedestrians through it.
6. Nonetheless, the applicant states that walkers have crossed through the estate for many years and has produced evidence to demonstrate various incidences that were recorded during 2017. These highlighted occasions were walkers stopped to take photographs of the site, entered areas that are beyond the footpath or came into close contact with vehicles, with drivers having to take evasive action.
7. However, these incidences recorded are few and, overall, do not indicate that walkers are constantly in danger when passing through the estate. No recorded casualties or accidents have been reported. Nevertheless, given the movement of goods by very large vehicles, and the nature of the business as a customs area, I can appreciate that some people may find walking through the estate a daunting prospect. The evidence provided by the applicant also demonstrates that it would be within the interest of the owner of the land and the public for the footpath to divert out of the estate.

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

1. Footpath 47 currently runs from point A, through the estate to point C, where it meets Footpath 41, which itself continues in a westerly direction alongside an existing railway line. It is proposed to divert the footpath from Point A directly southwards to Point B on Oxmarsh Lane where it would terminate. Pedestrians would then be required to walk west along Oxmarsh Lane, over a level crossing continuing west to Barrow Road where one would then head in a northerly direction along public roads to the junction of Barrow Road and Lincoln Castle Way. At this point, pedestrians would walk further northwards, over another level crossing to meet Point C.
2. Although one would have to contend with vehicle movements within the estate, the route to Point C from Point A via Point B is not a simple matter of walking along public highways. Between Point B and the level crossing on Oxmarsh Lane, the road is quite narrow and does not contain a pavement, although there is a grass verge area that could be used for refuge. To the north of Barrow Road and close to the estate are other areas of employment with parking areas and access gates into commercial premises. Whilst pavements assist walkers through this part of Barrow Road, there is no dedicated pavement between the level crossing at Lincoln Castle Way and Point C, requiring walkers to use the access road into the estate and potentially coming into conflict with large vehicles entering or exiting the estate.
3. I fully acknowledge the applicant’s concerns that the estate generates regular vehicle movements associated with its use. However, I am not persuaded that these movements are significantly more than one could expect to meet when walking the diverted route as proposed. From my own experience, walking through it I came across one large vehicle leaving the estate and did not otherwise encounter any other moving vehicle that inhibited my progress.
4. Moreover, from my own assessment, the new termination Point B would place walkers at risk of conflict with traffic using Oxmarsh Lane and Lincoln Castle Way, where parts of these highways do not have a dedicated pedestrian pavement. Whilst the dangers posed may not be the same as one may experience when crossing through the estate, they are nonetheless highway safety concerns that do not appear to have been subject of an appropriate assessment. Thus, based upon the information I have before me, I am not satisfied that the location of the new termination at Point B is acceptable in highway safety terms. Therefore, it would be substantially less convenient to the public.

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

1. Point A and Point C remain unchanged. Although the new termination point for the footpath would be at Point B, it would nonetheless be connected to Points A and C via public carriageways. This distance is recorded by the objector as being some 602m from Point A to B, and an additional 715m from Point B to Point C, creating a total of 1.3km between Point A to Point C via Point B. The existing route between Point A and C through the estate is some 595m, or 722m shorter. The applicant records this as adding about 9 minutes to walk from Point B to C, which from my own experience, is close to the time it took me to walk that route.
2. I accept that it is not just distance and time at issue when considering such matters as whether the footpath is substantially as convenient to the public. However, in requiring walkers to travel south, this would divert them some distance away from their intended destination, be it from Point A to C or Point C to A. Additionally, when arriving at Point B walkers would be faced with having to walk a similar distance than if they had proceeded straight through the estate.
3. Moreover, one must recognise that the level crossings are operational and when closed, waiting at them could add to the time taken to reach one’s destination, be that from Point C – A via Point B, or vice versa. Whilst I accept that the new footpath between Point A and B would be levelled and would be dedicated for walkers, given the distance required to reach point A or C via Point B, the additional time should one meet a level crossing that is down, along with parts of the route between Points B and C not provided with a pavement would add to the inconvenience of being directed away from the walker’s intended destination. Additionally, I am not persuaded that meeting traffic whilst walking through the estate would add a similar amount of time to one’s journey.
4. Furthermore, although the overall additional distance could be deemed as minimal when considering the wider picture and length of the existing footpath, this does not represent an irresistible reason to find in favour of the diversion before me. I accept that walking through the estate may not be a pleasant experience for some walkers and that there are inherent dangers associated with the movement of goods and vehicles. However, the evidence from the applicant suggests that walkers coming into conflict with vehicles is few and there is nothing before me to demonstrate that the estate is being used as a route to enter the country illegally. Additionally, from my own experience, walking through the estate I did not encounter any significant time delays because of vehicle movements associated with its use.
5. Thus, I am not persuaded that the new footpath would be substantially as 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 onto Oxmarsh Lane. Although this sits to the south of the estate, there are open views across the landscape. In comparison, the current route through the estate has little to offer of views across an open landscape, although one can see the Humber through the dock, which to those that are interested in such matters, can be an appealing spectacle. However, overall, the route through the estate can be described as not particularly interesting.
2. That said, there is no requirement that users of the footpath should be able to experience the same amenities as the existing footpath provides. With that in mind, the public enjoyment of the path as a whole would be increased and, 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. The North Lincolnshire Rights of Way Improvement Plan (NLRWIP) identifies improvements to the rights of way network within the County. The proposed diversion does not appear to conflict with the Policies as set out within the NLRWIP.

**Other Matters**

1. The Order Making Authority provided a supplementary statement raising two matters relating to the wording of the proposed Order and that the status of the road, including and north of Barrow Road railway crossing, as a public highway remains unsettled. However, given my findings on the substantive matters above, I do not find it necessary to consider these matters in detail.

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

1. I have concluded above that the Order is in the interests of the landowners under section 119(1) of the 1980 Act. However, section 119(1) is subject to section 119(2) which requires an altered point of termination to be substantially as convenient to the public and that the route will not be substantially less convenient to the public. Given that I have not been satisfied that the altered termination point would be substantially as convenient and that the route is substantially less convenient, I do not consider it appropriate to confirm the Order. Although I do not consider that there would be no adverse effect on public enjoyment overall, the failure to demonstrate that the new termination point would be substantially as convenient to the public and the route would be substantially less convenient means that it is not 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 not be confirmed.

**Formal Decision**

1. The Order is not confirmed.

Graham Wyatt

**INSPECTOR**

