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| **Order Decision** |
| Site visit made on 24 May 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: 7 July 2022** |

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| **Order Ref: ROW/3255726** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Norfolk County Council (Aldeby Footpath No.8 (Part) Diversion Order 2019. |
| * The Order is dated 4 December 2019 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There was one objection outstanding and 4 expressions of support when Norfolk 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 Matter

1. The applicants requested an accompanied site visit. However, as no representative from the Open Spaces Society, the objector to the Order, was present at the time of my visit I undertook the site visit unaccompanied. I was able to walk both the existing legal alignment of Aldeby Footpath No.8 and the Order route.

The Main Issues

1. This Order has been made in the interests of the 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 owner of the land crossed by the section of the footpath to be diverted that the line of the path or way, or part of that line, should be diverted;
3. the path of 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 public right 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 Aldeby Footpath No.8 runs from Point A on the Order Map along a drive through the garden of the applicants’ dwelling, known as White House. As a consequence, the garden of the property is divided into two, both areas separately enclosed by fencing. The footpath also runs very close to the dwelling before passing through a parking and turning area for the property with garaging and sheds and thence off the property into a field.
2. The existing alignment of the footpath therefore prevents the enjoyment of the garden as one entity and raises concerns over privacy and security. The proposed diversion would take walkers around the edge of the garden area on the northern side of the drive, thus allowing enjoyment of the garden as one. At the time of my visit the diversion route was separated from the garden by temporary fencing and newly planted evergreen bushes, which will eventually form a hedge. The diversion would also allow the closing and locking of gates at either end of the drive and would thus afford increased privacy and security.
3. 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 existing legal alignment is gently curving for approximately 78 metres between Points A and E on the Order Map. The Order route turns generally north-north-westwards from the existing alignment at Point A for approximately 44 metres to point B. The route then continues in a generally east-north-east direction for approximately 27 metres to Point C, turns generally north-east for approximately 10 metres between Points C and D and then runs generally eastwards for approximately 31 metres to Point E
2. The proposed diversion would thus be approximately 34 metres longer than the legal route of the footpath. However, the full length of Footpath No.8 and Gillingham Footpath No.4, of which it is a continuation, from one public highway to another is approximately 740 metres. In this context, the increase in distance would not be significant. The Order route includes a number of changes in direction along its length but these would be easy to follow.
3. Furthermore, the route beyond Point E suggests that the footpath is most likely used for recreational purposes and no evidence has been provided to indicate otherwise. The surface of the Order route would be suitable for users. Consequently, neither the increase in length nor the changes in alignment would significantly inconvenience users of the path.
4. The Definitive Statement does not specify the legal width of the section of Footpath No.8 to be diverted. However, the local representative of the Open Spaces Society suggests that it is reasonable to infer from the historic map evidence adduced that the highway became dedicated across the whole width of the track, approximately 5.5 metres. The proposed diversion would have a legal width of 2 metres, a significant reduction in width. Moreover, the section of the diversion between Points A and B is adjacent to a tall hedge forming the boundary with the neighbouring property. The Norfolk Access Improvement Plan 2019-2029, incorporating the Rights of Way Improvement Plan, sets out that new and diverted enclosed routes should be 3 metres wide.
5. However, beyond Point B the Order route is more open, running partly alongside a stream and along a field edge. It would thus only be fully enclosed along part of its length and, although narrower than the existing alignment, would be of adequate width for users to pass for its full length. Furthermore, the applicant indicates that a width of 2 metres would comply with Schedule 12A of the 1980 Act and the advice of Natural England, Inclusive Design for Getting Outdoors, Inclusive Mobility and Manual for Streets. The reduction in width would therefore not significantly inconvenience users.
6. For these reasons, the proposed diversion 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. As noted above, the proposed diversion would only affect a small proportion of the route as a whole. It would not result in the loss of any significant views along the existing legal alignment. The majority of the Order route would provide a pleasant walking experience alongside a stream with biodiversity interest and views across a field to distant woodland as I saw during my site visit or along the edge of an open field.
2. The sense of intrusion and awkwardness from walking through a residential property and in proximity to White House, as indicated in the representation of support from the Waterloo Residents Association on behalf of local residents and users of the footpath, would be reduced. The avoidance the parking and turning area for the property by the Order route would also result in a more pleasant experience.
3. 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. The land over which the existing route and over which the majority of the proposed route passes is within the ownership of the applicants who naturally support the Order. Part of the Order route passes over land owned by another party, who has confirmed agreement to the diversion and to whom the applicant has agreed to pay compensation.

*Whether it is expedient to confirm the Order*

1. The Order is in the interests of the landowners, the alternative route is not substantially less convenient and there will be no overall loss of enjoyment from its use. The confirmation of the Order would not affect land served by the existing footpath and the effect on land over which the right of way would be created is not such that the Order should not be confirmed. I therefore conclude that it is expedient to confirm the Order.

**Other Matters**

1. In addition to the issues addressed above, the representation from the Open Spaces Society refers to the historic alignment of the existing footpath and the future maintenance of the Order route. However, no evidence has been put to me that the historic alignment specifically relates to any of the main issues in this case. Future maintenance of the Order route is a matter between the applicant and the OMA. Neither of these matters therefore affect my decision.

Conclusion

1. Having regard to the above and all matters raised in the written representations, including the expressions of support for the Order from Aldeby and Gillingham Parish Councils, a neighbouring property owner and the Waterloo Residents Association, I conclude that the Order should be confirmed without modification.

**Formal Decision**

1. The Order is confirmed.

Martin Small

INSPECTOR

