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| **Order Decision** |
| Site visit made on 7 June 2022 |
| **by C Beeby BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 December 2022** |

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| **Order Ref: ROW/3277979** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Borough Council of King’s Lynn and West Norfolk (Diversion of Footpath 09) Order 2019. |
| * The Order is dated 11 November 2020 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 when the Borough Council of King’s Lynn and West Norfolk 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. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.

The Main Issues

1. Section 257(1) of the Town and Country Planning Act 1990 (the 1990 Act) provides for an Order to be made to authorise the diversion of a footpath if it is necessary to do so in order to enable development to be carried out in accordance with planning permission already granted under Part III of the same Act. In this case the Order seeks the diversion of Footpath 09 in the village of Methwold.
2. The statutory test outlined above involves consideration of the “need” for the Order. If “necessary”, the “merits” of the Order will fall to be considered, as set out in the case of R (on the application of Network Rail Infrastructure Ltd) v S/S for Environment, Food and Rural Affairs [2018] EWCA Civ 2069.

Reasons

*Background*

1. The footpath in question (A-B) connects Hall Farm Drive off Crown Street and a recreation ground.
2. Planning Permission (Local Planning Authority (LPA) reference 15/01683/FM) was granted on 5 August 2016 for the construction of 30 dwellings and associated infrastructure on vacant field at Land at Crown Street Methwold.
3. Planning permission (LPA reference 19/00144/F) was granted on 12 July 2019 (the 2019 permission) for the variation of condition 2 of planning permission 15/01683/FM to amend the approved plans. This became the new planning permission.

*Whether the diversion of Footpath 09 Methwold is necessary to allow development to be carried out in accordance with planning permission*

1. For the purposes of this decision there is no dispute that the 2019 permission is the relevant permission, which has been implemented. It directly relates to the land crossed by Footpath 09 Methwold.
2. The need for an order under section 257 of the 1990 Act may be satisfied by the existence of either a legal or physical obstacle to the development proceeding. The evidence before me does not suggest that there would be a legal obstacle to the development proceeding in the absence of the proposed diversion.
3. Garden boundary fences would obstruct the existing public footpath at three points. Thus, there is a physical obstacle to the development proceeding which demonstrates a need for the Order. Diversion of the footpath between points A and B is consequently necessary to enable the development to be constructed in accordance with the approved plans.

*The merits or disadvantages of the proposed alternative route*

1. The diverted section B-C would continue the open field views available from section A-C, and would be surfaced, providing accessibility benefits.
2. Any ability of the Order, in enabling the planned development layout, to contribute to the protection of the appearance of the Methwold Conservation Area and nearby listed buildings has not been adequately demonstrated.
3. Whilst the section of new route B-C would be approximately half the distance of the section to be diverted A-B, the distances involved are short and hence the overall loss of public path would not be substantial. The disadvantage of the proposed alternative route in this regard is consequently minor.
4. The evidence before me does not suggest that the Order would result in disadvantage to people whose properties adjoin or are near the existing highway.

*Summary*

1. I consider that the diversion has been shown to be necessary to enable development to be carried out. The advantages of the Order are not outweighed by the disadvantages.

Conclusion

1. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

*C Beeby –* INSPECTOR

