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| **Order Decision** |
| Hearing Held on 24 May 2022Site visit made on 23 May 2022 |
| **by C Beeby BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 21 December 2022** |

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| **Order Ref: ROW/3239564** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Derbyshire County Council (Public Footpath No.56 (part) – Alfreton, now in the parish of Somercotes) Public Path Diversion Order 2019.
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| * The Order is dated 1 August 2019 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
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| * There was one objection outstanding at the commencement of the hearing.
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Decision

1. The Order is confirmed subject to the modifications set out below in the Formal Decision.

Applications for costs

1. At the hearing applications for costs were made by the Council and the applicant against the objector. These applications are the subject of a separate Decision.

Preliminary 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.
2. The hearing to determine the Order was opened and adjourned pending an exchange of further written comments, in order to allow sufficient time for the objector to review the applicant’s statement of case. The agreement of all parties present to the adjournment and subsequent written exchange was sought and obtained. The written exchange process has now been concluded.
3. I made an unaccompanied visit to the site prior to the hearing, when I familiarised myself with the area. I was not requested to inspect the land before or during the hearing, and matters to be resolved by a site visit did not emerge during the proceedings. As a result, I did not arrange a further visit.

**The Main Issues**

1. For me to confirm the Order I must be satisfied, by virtue of Section 119 of the 1980 Act, that:
* it is expedient, in the interests of the landowner, the occupier or the public, that the path should be diverted. This is subject to the alterations in the points of termination of the path being substantially as convenient to the public;
* the new path will not be substantially less convenient to the public; and
* it is expedient to confirm the Order having regard to the effect:

(a) which the diversion would have on public enjoyment of the path as a whole;

(b) which the coming into operation of the Order would have in respect of other land served by the existing paths; and

(c) on the land over which the new paths would be created together with any land held with them.

1. I must also have regard 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 landowner, the occupier or the public that the path should be diverted*

1. The Order states that the Council considers it to be expedient that the path should be diverted in the interests of the owners of the land crossed by the footpath. Therefore I must consider whether the diversion is expedient in these interests.
2. The existing path passes through an area used by an engineering business for the storage of machinery and parts. As this is an industrial area there is potential for conflict between users of the existing path and the drivers of vehicles, which would harm the efficient use of the land by the owner. The business has been subject to two break-ins, through a fence along an alternative route which is provided nearby in the site.
3. The diversion of the path would remove the identified potential for conflict and would consequently allow for the more efficient use of the land. Furthermore, it would enable the owners to improve security at the business by the removal of public access to the area. It is consequently expedient in the interests of the landowners that the section of existing path A-B should be diverted.

*Whether the alterations in the points of termination of the path are substantially as convenient to the public*

1. The southern termination of the section of path would remain the same. The new northern termination at Point F would lie approximately 7 metres from the path’s original termination, and on the same highway. Any inconvenience arising from an increase in distance to walk would consequently be negligible. Thus, the alteration in the point of termination of the path is substantially as convenient to the public.

 *Whether the new path would be substantially less convenient to the public*

1. When comparing the convenience of the routes included in the Order it is appropriate to assess the existing route as if it were available for use by the public without obstruction. Therefore I shall disregard the fact that structures currently appear to partially obstruct the definitive line of the existing path.
2. The diverted section of path would be approximately 28 metres longer than the existing section. Whilst the longer walking time would consequently reduce the convenience to the public, this would be by a minimal degree due to the relatively short distance concerned. The gradients of the two paths would be similar. No width is recorded for the existing path, however the diverted section would generally have a width of 2 metres, and there is nothing before me to suggest that this proposed width would harm the convenience of users.
3. No limitations are recorded on the existing section of path. The diverted section would include three gaps in fences or walls across the route. Whilst the Order provides no width for the gaps, a representation refers to the need to clarify whether the path’s width would narrow at these points. Following a discussion at the hearing all parties supported a modification to record the width of the gaps as 1.5 metres in every case.
4. I am required by virtue of section 147 of the 1980 Act to have regard to the needs of persons with mobility problems. The proposed gaps of 1.5 metres would be greater than the minimum footpath gap width of 1.1 metres which is set out in the British Standards. There is nothing before me to suggest that a gap width of 1.5 metres would adversely affect the needs of persons with mobility problems. As a result, I consider this suggested width to be appropriate and therefore I shall modify the Order to reduce the path’s recorded width at these points accordingly. There is no mechanism by which such modifications require further advertisement.
5. For these reasons, the new path would not be substantially less convenient to the public.

*Provisions within the ROWIP*

1. At the hearing the objector submitted documents including extracts from the ROWIP. Whilst certain sections of these are highlighted, it is unclear how they are considered to relate to the proposal before me. My attention has not been drawn to any other material provision within the ROWIP which may be relevant.

*Whether it is expedient to confirm the Order*

1. The existing section of path follows a property drive before crossing an industrial area. There is consequently potential for conflict between users of the path and drivers at both locations. The risk of encountering vehicles on the existing route may cause concern and reduce the enjoyment of more vulnerable users such as those accompanied by young children.
2. The diverted route would be traffic-free. As a result, I consider that the diversion is likely to increase public enjoyment of the path by removing concerns about conflict with vehicles.
3. No issues are raised which suggest that the diversion would have any adverse effect on land served by the existing route or on the land over which the alternative route would be created.
4. I have concluded above that the Order is expedient in the interests of the landowners. The alteration in the point of termination of the path is substantially as convenient, and the new path would not be substantially less convenient to the public. The proposed diversion would increase public enjoyment of the path as a whole. As such, it is expedient to confirm the Order.

Other Matters

1. Whilst the objector considers that the Order would extinguish a private right of way which she suggests is associated with her property, the Order contains no such mechanism. Similarly, the removal of any obstruction to a private right of way is a matter for the holder of that right, and does not fall for consideration as part of the relevant statutory tests in this case. Thus, I have not considered these matters further.
2. The objector submits that an application form for the diversion order was not submitted. Nevertheless, the basis for the suggested requirement for such a form has not been adequately explained. Similarly, the relevance of cited case law has not been explained. Furthermore, the suggestion that any surfacing of the new path would require planning permission is not a matter which is relevant to my decision. There is additionally no statutory requirement for a diversion Order under section 119 of the 1980 Act to be accompanied by a separate extinguishment Order. Thus, I have not considered these matters further.
3. I note the objector’s concerns regarding the Council’s approach, however, these are not matters for this decision, which I have determined on the relevant statutory criteria.

Conclusions

1. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications set out in the formal decision.

**Formal Decision**

1. I confirm the Order subject to the following modifications:
* In Part 2 of the Schedule (Description of site of new path or way), in respect of section A-C-D, delete the words “2 metre wide”.
* In Part 2 of the Schedule, in respect of section D-E-F, delete the words “2 metre wide”.
* After “the total length of the alternative route is 265 metres or thereabouts.”, insert the words “The route is 2 metres wide apart from at the gaps at points C, D and E, where it is 1.5 metres wide”.

*C Beeby*

INSPECTOR

**APPEARANCES**

**In support of the Order**

**For the Applicant:**

Mr Robin Carr Robin Carr Associates

Mr Eddie Pilsworth of EP Industries Ltd Applicant

**For the Council:**

Mr Daniel Stedman Jones Of Counsel, instructed by Derbyshire County Council

Mr David McCabe Rights of Way Assistant, Derbyshire County Council

Ms Sarah Bond Solicitor, Derbyshire County Council

**Objecting to the Order**

Mrs Y Anderson Statutory Objector

Documents:

Site photographs

Extract from the Rights of Way Improvement Plan for Derbyshire 2007-2012 (November 2007)

Map marked “protected leisure route Pye Bridge to Riddings”

Map marked 1880

Undated map extract

Two letters dated 24 May 2022

ORDER MAP – COPY – NOT TO ORIGINAL SCALE

