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| **Order Decision** |
| Site visit made on 12 April 2023 |
| **by Graham Wyatt BA (Hons) MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 May 2023** |

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| **Order Ref: ROW/3301707** |
| * The Order is made by under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the North Yorkshire County Council Bridleway No. 25.121/027 and Footpath No. 25.121/028 Head House Farm, Hartoft Diversion Order 2021.
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| * The Order is dated 24 August 2021 and proposes to divert the bridleway and footpath shown on the Order Plan and described in the Order Schedule.
* There were two objections outstanding when North Yorkshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. As the objectors 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 both the existing and proposed routes.
2. The effect of the Order would be to divert Bridleway No. 25.121/027 from its current route to a new route to the south and divert Footpath No. 25.121/028 from its current route to a new route to the west.

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.
1. In reaching my decision I am also required to have regard to any material provision contained in a rights of way improvement plan for the area.
2. The Order has been made in the interests of the owner of the land (‘the Applicants’) crossed by those parts of the Footpath and Bridleway at issue.

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 footpath No. 25.12/028 travels in an easterly direction from Point A where it crosses two fields in a diagonal manner until it meets and crosses over a further field close to Head House Cottage. The footpath then continues along the driveway to Head House Cottage, where it meets bridleway No. 25.12/027 at Point B. The bridleway itself runs in a north-easterly direction to Point H, passing through a farmyard area where buildings, vehicles, plant, and materials are kept. Once through the farmyard, the route of the bridleway proceeds in a north-easterly direction, into the field beyond.
2. At the time of my visit, a farrier was present with a vehicle, while actively shoeing a horse and blocking Footpath No. 25.121/028. A horse was also present in the field closest to the dwelling. Thus, the current route of the footpath affects a property, where there is a possibility that users could disturb and distress livestock that may be kept in the fields, including horses. There is also a potential danger that public users of the Footpath and indeed the Bridleway, could come into conflict with very large vehicles. The applicant also states that biohazard protection is also required for a closed herd of rare breed cattle, and that thefts have occurred in the area. These are matters that I find in favour of Order.
3. Moreover, I do not share an objectors view that privacy is a matter for a large number of properties across the land and one that must be borne in mind when considering purchasing a property. When I visited the site there was evidence of agricultural activities, with materials being stored close to the Bridleway. The dwellings are within a remote and rural location and there is evidence that thefts have occurred in the area. In such circumstances I find it reasonable for occupiers of such remote properties to be concerned about security.
4. Furthermore, as the Footpath and Bridleway are close to dwellings and outbuildings, it is not inconceivable that users may stray from the rights of way into areas that are private. This adds to the security concerns raised by the applicant and indeed, raises privacy concerns as well.
5. Thus, I consider that the proposed diversions would be in the interests of the Applicants. As a result of the diversions, the Footpath and Bridleway would no longer be located close to the properties and would enhance the amenity of the space between the houses. Furthermore, the diversion would also be in the Applicants interests as a means of enhancing the security of the property and farmyard.

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

1. Footpath No. 25.12/028 currently runs from Point A and crosses three fields where it meets Point B on the drive to Head House Cottage, and where it connects with Bridleway No. 25.12/027 at Point B. It is proposed to divert the Footpath so that it heads in a south-easterly direction across two of the same fields from Point A to Point E, where it would then head eastwards for a very short section to meet Bridleway No. 25.12/027 at Point F, where one can then walk up the hill to Point G.
2. Bridleway 25.12/027 currently runs northeast/southwest from Point G to H. It is proposed to divert the Bridleway into the adjoining field to the south where it would travel in the same direction until Point K. It would then divert northwards to Point L followed by two short turns until it meets Point H on the original route of the Bridleway.
3. The proposed diversion will result in users of the Footpath and Bridleway no longer being able to access Point B on the Proposals Map. However, as Point B is only a very short distance from Point G and the terminal points of the proposed routes are on the same highway as the Footpath and Bridleway to be diverted, I am satisfied that they are as substantially as convenient to the public.

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

1. An objector argues that as the proposed routes would be longer and counter intuitive, as a result of the dogleg turns and the perception of being made to “go out of your way”. Moreover, there is a sense of history when walking along well-trodden routes. Although I acknowledge the heritage that is conveyed through the use of public rights of way, the test is whether the proposed route would be substantially less convenient to the public.
2. Thus, the routes offer users the opportunity to walk to the same points across open fields, with vistas across the landscape. This would be achieved without the need to enter an area where large vehicles and animals are kept. Moreover, the turns within the diverted Footpath and Bridleway are not so challenging to the point that they become less convenient than walking the original route.
3. The proposed diversions would not prevent those who wish to use the Footpath and Bridleway as part of a journey across this part of North Yorkshire and the terminal points of the proposed routes are on the same highway as the Footpath and Bridleway to be diverted. Consequently, I am satisfied that it would not be substantially less convenient to the public.

***The effect of the diversion on public enjoyment of the path as a whole***

1. The diversion of the Footpath would take users further west where one would then travel southwards to Point F across open fields where views across the field are extensive and one can appreciate the open and rural qualities of the area. There is no requirement that users of the Footpath and Bridleway should be able to experience the same amenities as the existing footpath provides. The proposed diversion is a small part of a longer rights of way network and would nonetheless provide similar amenities and vistas across an undulating landscape of hedgerows, farmland, fields bounded by dry walls, and buildings.
2. Moreover, the diverted Bridleway would also be provided at a satisfactory width of some 4m and the Footpath to a width of between 2m and 3m. I note that the diverted Bridleway will be fenced either side to allow the movement of livestock. Although there will be gates within the fence, to allow the movement of livestock, there will be no gates across the course of the diverted routes.
3. With regard to the provision of a culvert at Point G to I, the Order makes it clear that the applicant is required to make sure that the new site of the way and path are brought into a fit condition for use by the public and to the satisfaction of the Authority. Therefore, should the new route require a culvert so that it is satisfactory and in a fit condition for use by the public, then this would be a matter for the OMA to consider.
4. Thus, in my view, the diversions proposed would have no significant adverse effect on the public enjoyment of the rights 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. None of the parties suggest that the Order is contrary to any material provision contained in a rights of way improvement plan for the area.

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

1. I have found that the diversions are expedient in the interest of the landowner and the public and that the new termination points to be substantially as convenient to the public. I am also satisfied that it is expedient that the Order is confirmed having regard to its effect on public enjoyment. Nothing in the submissions presented or from my site visit leads me to conclude that it would not be 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 be confirmed.

**Formal Decision**

1. I confirm the Order.

Graham Wyatt

**INSPECTOR**

**Order Map - Copy Not to Scale**

