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| **Order Decision** |
| Site visit made on 10 January 2023 |
| **by Nigel Farthing LLB** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 May 2023** |

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| **Order: ROW/3291382** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Borough Council of Kings Lynn and West Norfolk (diversion of Footpath Wiggenhall St Mary the Virgin FP1) Order 2021. |
| * The Order is dated 21 October 2021 and proposes to divert the public footpath shown on the Order plan and described in the Order Schedule (‘the footpath’). |
| * There was one objection outstanding when The Borough Council of Kings Lynn and West Norfolk (‘the Council’) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed subject to modifications as set out below in the Formal Decision which does not require advertising.** |
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Procedural Matters

1. I undertook an unaccompanied site inspection during the morning of Tuesday 9 January 2023. It was raining heavily and very wet underfoot.
2. No-one requested an inquiry or hearing into the Order. In arriving at my decision I have taken into account all of the written representations.
3. As I have found it convenient to refer to points along the existing and proposed routes as shown on the Order Map, I attach a copy for reference purposes.

Main Issues

1. Section 257(1) of the Town and Country Planning Act 1990 (the 1990 Act) provides for an Order to be made authorising the stopping up or 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 to divert the existing alignment of the footpath to accommodate works to replace the existing pumping station with a new relocated structure. The procedure is only available if the consented works have not been substantially completed.
2. The Council concluded that the works are permitted development under Schedule 2, Part 13, Class C of the Town and Country Planning (General Permitted Development) Order 2015 (‘GPDO’) and on 20 December 2018 issued a Certificate of Lawful Use or Development in the following terms:-

‘18/01869/LDP: LAWFUL DEVELOPMENT FOR PROPOSED USE: Existing pumping station to be replaced and relocated with a new pumping station, new inlet and outfall structure, control building, weed rake and screen, compound area, security fencing, eel passage, access path and steps, haul road, decommissioning of existing pumping station and cottage’.

1. The objector queries whether all of the works to be undertaken fall within the General Permitted Development Order but accepts that a Certificate of Lawful Development having been issued, the lawfulness of the development is conclusively presumed and, provided the development is not complete, section 257 is therefore available. The objector however criticises the use of this procedure primarily because of the lack of public consultation. The objector also objects to the grant by Norfolk County Council of a Temporary Traffic Regulation Order (‘TTRO’) which has enabled works to begin before any final decision has been taken with regard to the diversion of the footpath.
2. In considering whether or not to confirm the Order, the disadvantages or loss likely to arise as a result of the diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed Order.
3. In short there are two issues that must be considered here. These legal tests, as outlined above, have been described by the Courts as “the necessity test” and “the merits test”. Confirmation of an Order requires that both are satisfied.
4. Whilst I must also have regard to any material provisions in any rights of way improvement plan for the area when determining this Order, no issues have been raised in this respect. In addition, in reaching my conclusions I have considered the requirements of the Equality Act 2010 where appropriate.

Reasons

*Background*

1. Kings Lynn Drainage Board operates a pumping station adjacent to Eau Brink Road, Wiggenhall St Germans. The pumping station was constructed in 1959 and extended in 1988. The equipment has reached the end of its useful life and requires urgent replacement to prevent an increased risk of fluvial and tidal flooding within the Board’s catchment area.
2. The Board has commenced work to replace and relocate the existing pumping station and associated structures and to improve the watercourse. These works fall within Class C of the GPDO which confers planning permission for ‘Development by a drainage body in, on or under any watercourse or land drainage works required in connection with the improvement, maintenance or repair of that watercourse or those works’.
3. The Certificate of Lawful Development is sufficient to engage section 257(1)(a) of the 1990 Act

*Whether the diversion of the path* *is necessary to allow development to be carried out in accordance with planning permission (the necessity test)*

1. For the reasons given I am satisfied that relevant planning permission is extant and directly relates to the land crossed by the footpath.
2. The consented works involve the remodelling of the watercourse such that the pumping station and associated infrastructure extend over the line of the footpath as currently recorded. I am therefore satisfied that the diversion of the footpath is necessary in order to enable the development to be carried out.

*The merits test*

*Disadvantages of the proposed Order*

1. The Open Spaces Society objects to the Order and expresses concern that the proposed route will be disadvantageous to the public by reason of being less convenient and less safe. I shall deal with these issues in turn.
2. The effect of the diversion would be to move the point at which the footpath meets Eau Brink Road by approximately 60 metres to the south. The objector states that this change would result in those wishing to travel north having to walk that extra distance on the road, and they would be closer to the bend in the road. I accept that for those using the path from the west and heading north at the road, there will necessarily be a short additional stretch of road walking. The same would apply to those arriving from the north.
3. In relation to convenience the objector highlights that the existing recorded route is ‘straight and direct’, following the bank of Mill Basin. The proposed route would veer from the straight line to follow the perimeter of the new pumping station compound. The angle of deviation would appear to be approximately 30 degrees which would create a noticeable, but modest change of direction for a relatively short distance.
4. The point at which the proposed route joins the road is closer to a bend, but the perimeter fencing has been set back from the edge of the carriageway so as to afford a pedestrian passage along the verge. Although the road is narrow, it is very quiet such that no vehicle passed in the time that I was making my inspection.
5. I was unable to assess the nature and condition of the path to be diverted since at the time of my visit this had been subsumed within the works undertaken. I was however able to see the unaffected path to the west of the point where the diversion starts, and it is a reasonable assumption that the section to be diverted was similar in character. The proposed path runs at a lower level, alongside the metal paling perimeter fence to the pumping station compound. The available path was level and more than two metres in width. At the time of my visit it was raining very heavily and had been for some time. As a result the surface of the path had some standing water and was muddy.

*Advantages of the proposed Order*

1. The principal benefit of the Order is to facilitate the replacement of the old pumping station which has reached the end of its useful life. The new facility will protect a catchment area of 6,700 hectares from the risk of flooding by allowing the Drainage Board to control water levels. I am told that the catchment area served by the pumping station includes several residential settlements as well as commercial and agricultural land, and several public rights of way.
2. Whilst the diversion of the footpath would create additional road walking for those coming from, or heading to the north, it will, in the same way reduce the amount of road walking for those coming from or heading to the south. I note that the nearest village is Wiggenhall St Germans which lies to the south and that there is no settlement along the road to the north before it meets the A47.
3. The Order provides for the diverted path to have a width of 2 metres which is adequate, and contrasts with the existing path which has no recorded width.

*Conclusion on the merits test*

1. The new pumping station represents a significant public benefit which is to be weighed against the detriment caused by diverting the footpath. The disadvantages of the Order are no more than modest and in terms of convenience can perhaps be categorised as neutral. I have little difficulty in concluding that the public benefits of the Order significantly outweigh any disadvantages and that the merits test is met accordingly.

*Whether development is substantially complete*

1. On the day of my site visit it was apparent that the structure of the new pumping station and compound were substantially complete. However, the Certificate of Lawful Development also provides for the decommissioning of the existing pumping station and cottage, and I am advised that this work has yet to be undertaken and that the new station is yet to be commissioned. On this basis I am satisfied that development is not substantially complete.

*Other Matters*

1. The objector has taken issue with the use of a TTRO to close the footpath and to allow works to commence in advance of the conclusion of the formal diversion procedure. I accept that the use of the process in this way is not in accordance with guidance, but it is not a relevant matter in my decision whether or not to confirm the Order.
2. The objector expresses concern at the use of the General Permitted Development procedure because public consultation, which would be required under usual planning procedures, is avoided. The Council has accepted that the works fall within the relevant provisions and thus that the procedure is available. A Certificate of Lawful Development having been issued, this is not a matter which falls within my determination.
3. The Order map is incorrectly annotated such that the correct notation for the ‘redundant footpath route’ and the ‘revised footpath route’ have been transposed. I do not think this error has adversely affected or misled any party and I therefore propose to modify the Order and Order map accordingly.

*Conclusion*

1. In view of the above considerations, I conclude that the Order should be confirmed subject to modification.

**Formal Decision**

1. I confirm the Order subject to the following modification

*Modifications to Order and Order Map:*

* The deletion from the Order map of the dashed line between points A and B and replacing it with a solid line, and the deletion of the solid line between points A and C and replacing it with a dashed line, together with consequential amendments to the descriptions of the routes within the Order.

Nigel Farthing

INSPECTOR

