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| **Order Decision**  Site visit made on 7 February 2023 |
| **by C Beeby BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 26 May 2023** |

**Order Ref: ROW/3284297**

* This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Footpath No. 30.31/096 (part), Botton Grove, Danby Head Diversion Order 2020.
* The Order is dated 14 August 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 North Yorkshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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Decision

1. The Order is not confirmed.

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. On 1 April 2023 North Yorkshire County Council merged with several other authorities to become a unitary authority, North Yorkshire Council. Thus, whilst this change has not materially affected the Order, any references to actions of the Order Making Authority (the OMA) following that date in this decision relate to the new unitary authority.
3. At the time of the site visit the existing section of path was not accessible by the public, with signs indicating a diversion comprising the new route proposed by the Order. Nevertheless, I am satisfied that I was able to make an adequate assessment of the existing section of path for the purposes of this decision, given the topography and openness of the land surrounding the proposed new section of path.

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 any 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:

1. which the diversion would have on public enjoyment of the path as a whole;
2. which the coming into operation of the Order would have in respect of other land served by the existing paths; and
3. on the land over which the new path would be created together with any land held with it.
4. 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 section of existing path currently passes close to a farmhouse, Botton Grove, which is occupied by the applicant for the Order. It is submitted that diversion of the section of path further away from the house would be in the interests of the owners because it would improve security and privacy at the property.
3. Botton Grove has a relatively remote location with limited natural surveillance from surrounding properties. Two security incidents at the property are referred to in support of the Order, although their dates are not confirmed and any related police records are not before me. The suggested police response times are not supported by evidence and therefore I attach minimal weight to these as a consideration in assessing the issue of security at the farmhouse. The path passes alongside the farmhouse rather than through its yard and it is likely that access by walkers to the property with the suggested unsolicited welfare requests could be reduced by the use of signage and/or boundary treatments.
4. Nevertheless, in extending the distance between the footpath and the house the Order would evidently reduce the potential for security incidents because the public would be further away from the house. Thus, the Order would improve security at the property.
5. The existing path passes relatively close to the rear windows and door at the farmhouse, meaning that there is some intervisibility between users of the path and occupiers of the house. Although I acknowledge that many dwellings lie on the pavement in urban areas, that is a pre-existing situation on which I have no substantive evidence in terms of its effect on privacy, and I am required to assess the particular circumstances of this proposal in accordance with the relevant statutory provisions. Whilst I am not satisfied that path users may see into the upper floor windows and hence bedrooms and bathroom of the property, the privacy of occupiers of its ground floor is most likely to be adversely affected by the proximity of the path, so that the Order would reduce this adverse effect.
6. The Order would not alter the points of termination of the path and therefore it is not necessary to assess whether any such alterations would be substantially as convenient to the public.
7. Thus, the Order is expedient in the interests of the landowners in order to improve security and privacy at Botton Grove.

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

1. An equitable comparison between the existing and new routes can only be made by disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public, when considering this matter. Therefore, in assessing this, I shall disregard the fact that a Temporary Closure Order which closed the existing section of path to pedestrians until 9 June 2023 (or completion of works on the path) was made due to danger to the public from a collapsing culvert and deep holes. I shall instead assess the convenience of the existing route as if the way were open and maintained to a standard suitable for those users who have the right to use it.
2. The diversion has been laid out on the ground and, whilst I acknowledge the lack of public complaint to this, it is a neutral matter which does not attract weight in my determination.
3. The existing section of path is 412 metres long and the new section of path would be 470 metres long. The Order would consequently increase the distance between the section of path’s termini.
4. Furthermore, the existing section of path follows rolling terrain along the side of the hill and includes a relatively steep gradient for only a limited distance. However, in ascending and then descending the adjacent hillside, the new section of path would introduce a steep gradient within both the first and last fields crossed. The new section of path would consequently considerably increase the distance of steep gradient to be navigated by users of the path. It would therefore reduce the ease of use of the path to users.
5. Whilst I acknowledge the steep topography of much of the surrounding countryside, I am required to make findings in respect of the Order route. Any part it forms of longer routes over steeper terrain used by leisure walkers has not been adequately demonstrated for me to consider as part of this decision.
6. For these reasons, the new path would be substantially less convenient to the public.

*Provisions within the ROWIP*

1. At the time of submitting the Order to the Secretary of State neither North Yorkshire County Council or the North York Moors National Park (within which the Order route lies) had a ROWIP and my attention has not subsequently been drawn to the existence of such a document.

*The effect on public enjoyment of the path as a whole and other matters*

1. The existing path follows a relatively linear route towards the foot of a hill, whereas the new path would introduce changes of direction and a dog-leg around the farmhouse. This would result in a sense of going out of one’s way which would be exacerbated by the need to ascend and then to descend the hill instead of following its contours. This would reduce public enjoyment of the path as a whole.
2. The OMA submits that the existing section of path cannot be brought into a suitable condition for public use without significant remedial works due to landslip caused by the collapse of drainage systems. It considers that the cost to the public purse of making the existing path available would consequently be excessive.
3. Nevertheless, minimal evidence to confirm the public cost of the remedial works referred to is before me. Thus, any such costs have not been sufficiently demonstrated to form a potential consideration in determining the Order.
4. Similarly, any historic interest associated with the existing section of path has not been adequately demonstrated to form a consideration here.
5. 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 will be created.
6. Nevertheless, for the above reasons, the Order would reduce public enjoyment of the path as a whole.

**Conclusion**

1. I have concluded above that the Order is expedient in the interests of the landowners. However, as the new path would be substantially less convenient to the public, the Order cannot be confirmed. Furthermore, the proposal would reduce public enjoyment of the path as a whole.
2. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

**Formal Decision**

1. I do not confirm the Order.

*C Beeby*

INSPECTOR

ORDER MAP - COPY NOT TO SCALE

