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| **Order Decision** |
| Site visit made on Tuesday 15 August 2023 |
| **by A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 September 2023** |

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| **Order Ref: ROW/3299493** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Essex County Council Public Path Diversion Order 2022 Footpaths 14 and 15 South Hanningfield in the city of Chelmsford.
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| * The Order is dated 2 February 2022 and proposes to divert 2 public footpaths as shown on the Order Map and described in the Order Schedule.
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| * There was 1 objection outstanding when Essex County Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. Following submission a statement of support was also received.

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

1. I made an unaccompanied site visit on Tuesday 15 August 2023 when I was able to walk the current and proposed routes. In writing this decision I have found it convenient to refer to the points marked on the Order Map and I therefore attach a copy of this map.

**Main Issues**

1. For the Order to be confirmed, 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 footpaths should be diverted.
* the new rights of way will not be substantially less convenient to the public.
* any new termination points will be substantially as convenient to the public.
* it is expedient to confirm the Order having regard to the effect which:

(a) the diversions would have on public enjoyment of the ways as a whole.

(b) the coming into operation of the Order would have, in respect of other land served by the existing paths; and the land over which the new rights of way would be created, together with any land held with it.

1. Regard should also be given to any material provision contained in a rights of way improvement plan (ROWIP) for the area.

Reasoning

***Whether it is expedient in the interests of the landowner, or the public that the rights of way should be diverted***

1. In 2021 Mr and Mrs Brown (the landowners) submitted an application to divert 2 footpaths across their land which run diagonally across 2 adjoining fields. The fields in question are currently used for hay crops but have previously been used for grazing livestock. The landowners would like to re-route the cross-field paths to the field edge in order to make it safer when operating farm equipment for field maintenance, tending, and harvesting crops, but also to facilitate the return of livestock to the fields. The landowners Insurers and potential grazing tenants have specified that any livestock would need to be separated from the public, however the landowner feels that fencing the footpaths in their current location would effectively bisect both fields, making both farming and management of the fields more difficult and time consuming.
2. Mr Lee (the objector) submitted that long established rights of way should not be re-routed for the convenience of the landowner, at the inconvenience of users. However,it is considered that the test is met if it would be expedient to divert the ways in the interests of either the landowner or the public; it need not be in the interests of all. The proposed diversions are undoubtedly in the interest of the landowner with respect to maximising the safety of the public and livestock as well as for efficient farm management. Accordingly I consider the test is met and that it would be expedient to divert the ways in the interests of the landowner.

***Whether the new rights of way will not be substantially less convenient to the public***

1. Diverting the footpaths to the field edges would increase the length of both rights of way. The length of Footpath 14 would increase by around 31%, adding approximately an extra 92 metres to the route, and Footpath 15 would lengthen by approximately 38%, adding about 131 metres to the distance travelled.
2. These increases in length are notable and I agree with the objector that the current lines of the footpaths are far more direct. However the routes are in a rural location and use of these footpaths is most likely to be predominantly for leisure. In this context the additional length is not substantially less convenient when considering the overall distance travelled in a recreational capacity.Should either of the paths be used as part of a route to an onward destination, the length of each diversion is again diminutive when considering the total journey distance.
3. I therefore consider that although a little less convenient than their current alignment, the proposed diversions are not substantially less convenient to the public.

***Whether any new termination points are substantially as convenient to the public***

1. The proposed diversions do not alter the termination points of the footpaths and are therefore substantially as convenient.

***The effect of the diversions on public enjoyment as a whole***

1. The existing footpaths have a very agreeable outlook over the countryside and the diversions would not remove these views, albeit the aspect from where they are viewed would alter to some degree. The far-reaching views at point B on Footpath 14 would be retained, whilst Footpath 15 is across a lower lying field with no extensive views.
2. The objector considered that there were already too many enclosed footpaths in the area and feared that re-routing the footpaths around the perimeter of the fields would result in the enclosure of the paths by post and rail or post and barbed wire fencing, effectively channelling the walkers down the new routes, and allowing the fields to be used for grazing.
3. There is the potential for change in use of the fields which the footpaths cross, however, the landowners are entitled to farm their land as they see appropriate. I understand the objectors feelings concerning the possible enclosure of the footpaths as it is the case that the proposed field edge paths would be fenced to allow the safe operation of machinery as well as the safe passage of users when livestock is grazed in the fields. In respect of the fencing, the Council have advised that any fencing would not be allowed to incorporate barbed wire on the public facing side and they consider that the diversion process also affords them the opportunity to request least intrusive types of fencing on the proposed diversions, which they would not otherwise be able to do.
4. The landowners have advised that should the proposed diversions not be confirmed, the cross-field paths would need to be fenced on either side to maximise the safety of the public when crossing land where there are animals grazing, as well as to minimise risk to the grazing animals from any dogs that are not kept under full control. Aligning to this the objector questioned why the footpaths needed diverting at all if the current alignment was likely to be fenced anyway. In respect of the need to divert, I would refer back to the expediency test at paragraph 4, where it was submitted by the landowners that the diversions of the paths to field edge would enable more efficient farming practices.
5. I note the comment by the objector that as the current footpaths are not fenced to date, there is a possibility they may remain unenclosed, whereas the proposed diversions would definitely be fenced. However the possible realisation or otherwise of fencing the existing cross-field paths is not a matter within the scope of this decision.
6. With regard to the proposed diversions, the objector was particularly concerned that the re-routed paths would entail users walking under the overhanging branches of mature trees, some of which encroach up to 10 metres into the fields. He felt that this was a hazard that was not present on the current cross field lines of the footpaths and considered that these branches could pose a significant risk in high winds.
7. Whilst I respect this viewpoint, many public rights of way and adopted highways are flanked by trees and many walks in the countryside will involve encountering trees. On my site visit I noted that there were some overhanging trees on the proposed diversions, however for the most part, the field edges composed bramble and small trees. I also noted that in order to access Footpath 14 from either end, it was necessary to walk under trees or through a wooded area. In addition, the unaffected north eastern end of Footpath 15 follows the private road De Beauvoir Chase which is also flanked by trees on both sides.
8. Ultimately any overhanging branches that might be considered in the future to compose a hazard would be a maintenance issue for the Council and the presence of trees, are not on their own, a reason to not divert the paths. With regard to walking under trees in adverse weather conditions, I agree with the Council that people contemplating journeys in high winds should consult the local weather forecast and adhere to local advisories.
9. A statement of support for the proposed diversions was received in April 2023 from residents, who had lived locally for in excess of 20 years. They felt that the proposed routes offered a safer and more enjoyable experience for them, their family, and their dogs, as the current footpaths could feel intimidating to use when the fields were being bailed for hay, or when animals were grazing in the field.
10. The enjoyment of any path is subjective by nature and of course, open to varying opinions. I recognise that there is enjoyment and interest in travelling across fields containing livestock or where there is farm machinery in operation, but it is my view that some other people may experience a sense of discomfort or vulnerability from this, as evidenced by the statement of support.

***The effect the coming into operation of the Order would have with respect to other land served by the existing rights of way and the land over which the new rights of way would be created***

1. The land on which the both the current footpaths and the proposed diversions are situated, are within the land ownership of the applicant. No issues are raised which suggest that the diversions would have any adverse effect on land served by the existing routes or on the land over which the alternative routes would be created.

***Consideration of the Order in light of any material provision contained in the ROWIP***

1. It is the view of the Council that there are no relevant provisions in their ROWIP that would apply to or militate against these proposed diversions.

**Conclusion**

1. I have found that the Order is expedient in the interests of the landowners for the purposes of effective farm management and for the safety of walkers and animals should the fields return to being grazed.
2. The proposed diversions are of notable increase in length, however this is offset by the rural location in which the footpaths sit. Whether use be recreational or part of an onward journey, the increases in length become diminutive when considering overall distance travelled. Accordingly, the proposed routes are not substantially less convenient. The terminations of the footpaths are unaltered and so remain substantially as convenient to users.
3. The proposed diversions also retain the rural character and views of the current footpaths. Overall, when considering the proposed diversions in a rural context, I do not regard there to be a decrease in public enjoyment ‘as a whole’ and I therefore consider it is expedient to confirm the Order.
4. 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.

*Mrs A Behn*

**INSPECTOR**

