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| **Order Decision** |
| Site visit made on 25 July 2023 |
| **by Claire Tregembo**  |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 9 August 2023** |

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| **Order Ref: ROW/3305824** |
| * This Order is made under Section 119 of the Highways Act 1980 and is known as the Public Bridleway No. 25.126/009 and Public Footpath No. 25.126/306, High Kingthorpe, Lockton Diversion Order 2021.
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| * The Order is dated 24 September 2021 and proposes to divert two public rights of way shown on the Order plan and described in the Order Schedule.
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| * 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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| **Summary of Decision: The Order is confirmed.**  |
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**Preliminary Matters**

1. I will refer to various points and sections of the Order routes using the letters shown on the Order map. I have appended a copy to the end of my decision.

**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 paths to be diverted. This is subject to any altered point of termination of the paths being substantially as convenient to the public.

Test 2: whether the proposed diversions are substantially less convenient to the public.

Test 3: whether it is expedient to confirm the Order having regard to the effect which- (a) the diversions would have on public enjoyment of the paths as a whole, (b) the coming into operation of the Order would have as respects other land served by the existing public rights of way, and (c) any new public rights of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

1. In determining whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to enjoyment of the land affected by the new paths must be taken into account, where applicable. Regard must also be had to any material provision contained in a rights of way improvement plan (ROWIP) for the area under section 119(6A). Other relevant factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation.
2. On 1 August 2023 Defra released new government guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial premises. The relevant matters within it were raised in the submissions before me. Therefore, I have not considered it necessary to take this into account or circulate it.

**Reasons**

***Whether it is expedient in the interests of the owner of the land that the paths in question should be diverted***

1. The Order has been made in the interests of the landowner to enhance the security and safety of their property and to increase the safety of farm workers. It would also enhance the safety of path users by taking them away from the dangers of farm vehicles and livestock movements.
2. The bridleway follows a track just east of point A between the main farmhouse and several outbuildings, passing close to them. There is a conservatory at the front of the farmhouse which can be seen into from the bridleway. A short distance before point B, it enters a farmyard which provides access to several farm buildings and a sheep dip. The footpath also joins the bridleway at point B. Although there were no animals or farm machinery at the time of my visit, there were signs of both using this area. Caution would need to be exercised by both path users and those driving due to the size of the farmyard. On several occasions, dogs accompanying walkers have caused sheep to panic within the farmyard endangering farm workers and sheep.
3. It is suggested that low levels of crime in the area, the amount of use of the farmyard and the limited extent of the bridleway within it, do not justify the diversion of the bridleway and footpath. Whilst crime levels may be low, there have been several thefts of farm machinery in the area. The diversion of the bridleway would enable the landowner to improve security and feel safer.
4. I consider the diversion of the Order routes would improve the security and safety of the farm. It would also separate the public from manoeuvring vehicles and livestock in a confined area improving safety for path users and farm workers. I am satisfied it is expedient to divert the Order routes in the interest of the landowner.

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

1. The termination points of the bridleway remain unchanged by the diversion, but both ends of the footpath would change. No comments have been made regarding the change in the points of termination.
2. The north-western end of the footpath joins the section of bridleway proposed to be diverted. If the bridleway is diverted the footpath would also need to be to remain connected to the wider public rights of way network. The proposed footpath diversion would join the bridleway near the middle of its new line at the north-western end.
3. The proposed diversion would move the south-eastern end of the footpath approximately 80 metres south-west of its current point. It could be possible to leave this point unchanged. However, moving this end means anyone using it would not have to walk further as a result of the diversion.
4. Therefore, I consider the new termination points would be as convenient for the public using the footpath.

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

1. The bridleway currently runs along a metalled surface between A and B. The proposed route between A and E would cross an arable field and be subject to ploughing. It has been suggested horses would disturb the surface making it unsuitable for walkers and difficult to use in winter or wet weather. Therefore, this would make it substantially less convenient to the public.
2. When I visited the site, I was able to walk through this field on a line that had been cleared through the crop. It was not on the line of the proposed diversion, but it allowed me to view the condition of the field. Despite a recent period of wet weather, I found the surface firm and easy to walk. To the east of C, the existing bridleway crosses another arable field, and this section was also easy to use and firm underfoot.
3. At present, this bridleway has limited use by horses due to its location off a busy road. The farmer only ploughs the field once every five years and intends to keep the surface firm and clear by running a heavy roller over it and mowing vegetation. I am advised the light soil over limestone means deep ploughing is not appropriate. The land appeared to be well-drained, therefore even if equestrian use or ploughing frequency increased, there is nothing to suggest it would become difficult to use.
4. Many horse riders prefer natural surfaces and can find metalled surfaces too hard and slippery. Cyclists are likely to find a metalled surface easier to use. However, as the bridleway would continue over pasture and arable fields, cyclists are likely to be using bicycles with appropriate tyres.
5. For these reasons, I consider the proposed surface between A and E to be suitable for a bridleway and it would withstand use by horse riders and cyclists.
6. East of E, the proposed diversions pass through the same field as the existing routes. Therefore, the surface of these sections would remain the same. Section E to F would be straighter than the existing footpath between B and D, therefore would be easier to follow and slightly more convenient for path users.
7. The boundary at point E is an electric fence which could be a hazard to path users, particularly horse riders. However, the existing bridleway gate in this boundary (approximately 40 metres south of point E) has a short section of wooden fence on either side. If this were replicated at point E, it would reduce this hazard. There are three gates on the existing bridleway, just east of A and at points B and C. There would only be two on the proposed bridleway, at points E and C, making it slightly more convenient for path users.
8. The proposed new route would be 15 metres longer when travelling in a north-easterly direction from point A. When travelling in a south-easterly direction the proposed new route would be 34 metres shorter. I consider these short changes in length would not affect the convenience of the Order routes.
9. There are currently no path widths recorded for the existing paths. The proposed bridleway would be 4 metres wide and the proposed footpath 2 metres wide. These widths would allow two path users to easily pass each other.

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

1. I have considered above that the surface change on the bridleway would not affect its convenience. For the same reasons, I do not consider it would affect the enjoyment of the public.
2. The diversions would take the Order routes out of the farmyard and away from the private dwelling. It would take path users away from farm traffic manoeuvring in a limited space and livestock enclosed in the farmyard. The farm buildings also limit views of the wider area from the bridleway. I consider there are likely to be walkers, horse riders and cyclists who would not feel comfortable or safe passing through this area. There may be path users who have an interest in working farms, but safer, traffic-free routes further from a private dwelling with better views are likely to be more enjoyable for the wider public.

***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. The Order has been made at the request of the landowner to improve security and farm safety. There is no evidence the diversions would have a negative impact on the land served by the existing or diverted routes.

***Rights of Way Improvement Plan***

1. I have not been provided with a copy of the ROWIP, but none of the parties have raised any matters relating to it.

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

1. I consider the proposed diversions are in the interests of the landowner. The proposed diversions would not be substantially less convenient to the public. I consider the proposed routes would be as enjoyable to the public. Some people may find them more enjoyable as they would no longer have to pass close to a private dwelling or through a working farmyard. I conclude it is expedient to confirm the Order.

**Other Matters**

1. During the pre-order consultation, suggestions were made for alternative and additional routes. These were not taken forward for various reasons. Although some parties may have preferred these routes, I can only consider the Order before me.

**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.

*Claire Tregembo*

INSPECTOR

**Order Plan**

