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| **Order Decision** |
| Site visit made on 19 September 2023 |
| **by Claire Tregembo** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
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| **Decision date: 3 October 2023** |

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| **Order Ref: ROW/3304041** |
| * This Order is made under Section 119 of the Highways Act 1980 and is known as the North Yorkshire County Council Public Footpath No. 25.121/048, Scugdale Cottage, Hartoft Diversion Order 2021. |
| * The Order is dated 22 December 2022 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. |
| **Summary of Decision: The Order is confirmed.** |
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**Preliminary Matters**

1. I undertook an accompanied site visit on 19 September 2023 with representatives of North Yorkshire County Council (The Council), the landowner, and the objector.
2. I will refer to various sections of the footpath shown on the Order plan. I have appended a copy to the end of my decision for ease of reference.

**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 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.

**Reasons**

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

1. The Order was made in the interest of the owner of Scugdale Cottage to improve privacy and security. After crossing a field, the existing footpath joins the access track to the cottage, then passes directly alongside it and over the rear garden.
2. Ground floor bedroom and bathroom windows are immediately adjacent to the existing footpath and anyone walking past can see into them.The owner has experienced people looking in through the windows and using the garden area for picnics. The proposed diversion would take people out of the curtilage of the property reducing its intrusiveness and walkers would not be able to look through the windows or directly access the garden.
3. I consider the diversion of the footpath would improve the privacy of the cottage and it would also allow its security to be improved. I am satisfied it is expedient to divert the footpath in the interests of the landowner and the residents of the cottage.

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

1. The existing footpath is on a hill rising from Scugdale Cottage to point B. I am advised the gradient from the southern end of the garage to the stile into the field, is 13.4% overall, with one section having a gradient of 16.5%. This gradient is over a distance of 88 metres. From the stile, the footpath continues to climb up to the road to the southeast. Northwest of A the footpath also climbs steeply to join a bridleway across the moors. The proposed diversion would be relatively flat between F and B but there would be a climb between C and E. According to the Order, the distance between C and E is 55 metres. Overall, I found the gradient of this section to be comparable to the existing footpath although a short section after D was slightly steeper.
2. The owner has agreed work with North Yorkshire Moors National Park and The Council to make the proposed footpath suitable for use. This work includes culverting the spring which lies in a dip and would result in the gradient being reduced. After these works, if necessary to aid walkers, a few low-rise, wide-tread steps would be added as used in other locations within the National Park.
3. As the gradient of the proposed route is comparable to that of the existing footpath but over a shorter distance, I consider it will not affect the convenience to the public.
4. It was suggested that the proposed footpath would be muddy for most of the year where it crosses the spring. The spring was confined to a small, rocky dip and ground conditions in the vicinity were good. I accept that this area is not currently being walked and use could affect ground conditions. However, the cross-field sections of the existing footpath, particularly the section running southeast of B which was waterlogged in places, were not muddy or difficult to use. Furthermore, works have been agreed upon to culvert the spring, contour the land and improve ground conditions. The Order also contains a clause to ensure the diversion will not come into effect until the Council certifies these works have been completed to their reasonable satisfaction. Therefore, I do not consider the ground conditions over the proposed section of footpath will make it substantially less convenient to the public.
5. There would be four pedestrian gates on the proposed footpath which are required for stock control. The existing footpath has a stile and a pedestrian gate. A pedestrian gate would be easier to use than the existing stile. Although an increase in the number of structures would make the footpath slightly less convenient to the public, they would not make it substantially less convenient.
6. The proposed footpath is only sixteen metres longer than the existing footpath therefore this does not affect the convenience to the public.

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

1. I have considered in paragraphs 8 to 13 above, that the gradient, surface, structures, and length of the proposed footpath would not affect the convenience of the Order route. For the same reasons, I do not consider they would affect the public enjoyment of the footpath.
2. The proposed diversion would move the footpath off a vehicular access track and away from a residential property to a new route crossing fields and through a wooded area. I consider there are likely to be walkers who would not feel comfortable passing so close to a residential property and through a garden. The wooded area may be more enjoyable to some walkers. Although use of the track by vehicles is likely to be low, the proposed diversion would not be used by vehicles which some walkers would find more enjoyable.
3. I do not consider the proposed diversion would affect the public enjoyment of the footpath as a whole and some people would find it more enjoyable.

***The effect of the diversion on other land served by the existing path and the land over which the new path would be created***

1. The Order was made following a request from the owner of Scugdale Cottage to improve privacy. This would have a positive impact on their land.
2. The proposed diversion would be on land owned by another party. They have agreed to the diversion and have not objected to the Order. There is no evidence before me that the diversion would have a negative impact on the land over which the footpath would be created.

***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 have found the proposed diversion to be in the interests of the owner of Scugdale Cottage. I do not consider the proposed diversion would be substantially less convenient to the public or less enjoyable. There is no evidence the proposed diversion would have a negative effect on land served by the existing or proposed footpath. Therefore, I consider it is expedient to confirm the Order.

**Conclusion**

1. Having regard to the above, and all other matters raised in the written representations, I conclude the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

*Claire Tregembo*

INSPECTOR

**ORDER PLAN**

