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| **Order Decision** |
| Site visit made on 11 October 2023 |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 30 October 2023** |

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| **Order Ref: ROW/3297794** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as The Buckinghamshire Council (Public Footpath No.13 (Part) Parish of Cuddington) Public Path Diversion Order 2021. |
| * The Order is dated 4 August 2021 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 Buckinghamshire 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 unaccompanied site inspection during the morning of Wednesday 11 October 2023.
2. One objection was outstanding when the Council submitted the Order, there have been six further objections since the Order was received by the Secretary of State for Environment, Food and Rural Affairs.
3. In this decision I have found it useful to refer to the various points annotated on the Order map. For ease of reference a copy of the map is attached hereto.

**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 diversion Order has been made pursuant to an application by the owner of the land over which both the existing and proposed routes pass. The basis of the application is to improve privacy and security of the owner and to utilise the land to erect secure paddocks for their animals.
2. The existing route of FP13 runs east south east for approximately 355 metres between point A and point B. The existing route is a crossfield route with a kissing gate at point A and a stile alongside a field gate at Point B.
3. The Order seeks to divert part of FP13 to along the field boundary and then join with existing FP11. I accept that this is in the interests of the landowner as it removes a crossfield route and creates a field edge route providing privacy and security to the landowner and enable the landowner to erect secure paddocks for their stock.

***Whether any new termination point is substantially as convenient to the public***

1. Point A represents the north-western termination point of the proposed route and is located on FP13, which continues beyond this point. Accordingly, the connection to the highway is unaffected by the diversion.
2. The south-eastern terminus of FP13 (Point B) is affected only marginally in that the junction with Cuddington FP11 will move some 60 metres to the south-west. FP11 continues beyond this point and the connection to the highway is thus unaffected.
3. I conclude that the terminal points of the proposed route will remain connected to the same highways as the existing route and will be substantially as convenient to the public.

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

1. It is necessary to consider whether, in terms of convenience, matters such as the length of the proposed path, the difficulty of walking it and its purpose will render the path substantially less convenient to the public.
2. According to the Council, the existing alignment of the footpath is 360 metres in length whereas the proposed route is 412 metres. In my view, a 52 metre increase would not be substantially less convenient to the public.
3. The overall effect of the Order is substantially to relocate the affected section of FP13 a short distance to the south, taking it from a cross-field alignment onto a field edge alignment. The topography of the existing route and the proposed route is similar, with both routes having similar gradients. The surface of the current route is a natural grass surface, the surface of the proposed route is the same.
4. The current route has a stile at Point A, the applicant will replace this stile with a pedestrian gate which will improve accessibility of the proposed route and a bridge will be installed between Point C and D.
5. The terminal points of the existing and proposed routes are substantially the same, such that the utility of the route would be unaffected by the diversion.
6. Having regard to these factors, I conclude that the Order route will be no less convenient to the public, and in various respects will be more convenient.

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

1. The proposed route would divert from the existing route but it would still have similar views of the rural landscape, and a similar general direction of travel.
2. One of the issues raised by objectors is that the section A-D would be enclosed on one side by fences. Whilst that is true, it is important to note that the proposed route has a recorded width of 2 metres wide and it will be set from the boundary by an additional 2 metres to provide a walkable width of 4 metres providing the public with a wider route and a feeling of openness when walking through the field. The recorded width and the additional width from the boundary have been included in the legal Order to safeguard this agreement for the future. The proposed route would retain pleasant open views to the north. It is also worth pointing out that if I were not to confirm the Order the applicants could decide to fence section A-B.
3. Urbanisation of the route has been raised by two objectors. The applicant is proposing a natural, grass surface with the installation of a bridge and paddock fencing erected to control stock, these are common features in the countryside, and I do not consider this would urbanise the route nor affect the enjoyment of the path as a whole.
4. Taking account of all factors, I conclude that, on balance, public enjoyment of the route will be enhanced by reason of the practical advantages conferred by the proposed diversion.

***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. There is no evidence that this diversion will have any negative impact on the land affected by either the new route or the existing route as they are both within the same ownership. The bridge across the ditch between points C and D will be installed in a natural gap in the hedge between two ash trees.
2. The adjoining landowner has withdrawn their permission to divert the footpath which affects a very short section on their land at points B and D. The proposed connection would not result in the route across the adjoining landowner’s land increasing in distance, it is like for like.
3. I therefore conclude that the Order route would not have any negative effect on land served by the existing or proposed routes.

***Rights of Way Improvement Plan (ROWIP)***

1. Between points C-D on the Order route, the applicant will finance a 1.2 metre-wide bridge installed by Buckinghamshire Council, which will be accessible to all users. The landowner has also agreed to replace a stile at point A with a British Standard pedestrian gate. The installation of such structures supports the view that the Authority is complying with the ROWIP in seeking improvement to the network by requiring the removal of stiles and the installation of structures compliant with BS:5709 on all diversion routes where possible in compliance with the Councils duties under the Equalities Act 2010.

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

1. I have concluded that it is expedient in the interests of the landowner to divert the path, and that the resulting diversion will not be substantially less convenient to the public. The proposed route is likely to be as enjoyable to use for most people, and there would be no adverse impact upon the land currently served by the footpath or the land which the diverted path would cross. I am satisfied that it is expedient to confirm the Order.

**Other Matters**

1. There was one duly made objection made to the Order and six further objections once the Order had been forwarded to the Secretary of State for Environment, Food and Rural Affairs, these raise a number of issues.
2. Objectors raise concerns about the cost, installation, and future maintenance of furniture on the route including a bridge and a gate. The diversion cost and any required works and furniture is covered by the applicant. The proposed bridge will be 1.2 metres wide and be accessible for all users creating a safe crossing of the ditch. Objectors raised concerns about an accessible gate being removed, as above there will be an accessible gate installed at point B. The furniture will be installed by the Council’s contractors to required standards and maintained in the future as similar furniture on the public rights of way network.
3. Five of the objectors mention destruction of a mature hedgerow to install the proposed bridge as a concern. The installation of the new bridge will not require destruction of a mature hedgerow as there is a natural break in the hedge, where the bridge will be installed. The Council states that the applicant is also planning to plant additional hedging to close the gap, where the current footpath enters the field.
4. Some of the objectors question the reasons for the Order to be made and the public interests in the route. Under section 119 of the 1980 Act, a landowner can apply to divert a public right of way if it is in their interests to do so, this Order is in the interests of the landowner to increase privacy and security of their property and to utilise the land to erect secure paddocks for their animals.
5. Objectors mention that the route has already been diverted and refer to their previous ‘unrestricted by-way across this field’. The reference to a previous diversion refers to a permissive path the landowner created on their land away from their property, which is not a recorded public right of way. The reference to an unrestricted by-way across the field suggests that they may have been straying away from the current public right of way and is not something I can consider under the legislation.
6. Objectors also mention horse dung along the hedgerow and re-routing of an ancient footpath. However, these are not matters before me for consideration under the legislation.

**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.

*Charlotte Ditchburn*

INSPECTOR

COPY OF ORDER MAP - NOT TO SCALE

