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| **Order Decision** |
| Site visit made on 25 October 2023. |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
|  **appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 18 December 2023** |

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| **Order Ref: ROW/3314095** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Public Path Diversion Order No 2, 2021 Public Footpath Sitlington 35, Hollinghurst Farm, Netherton.
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| * The Order is dated 8 March 2021 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
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| * There were two objections outstanding when Council of the City of Wakefield 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 subject to modifications as set out below in the Formal Decision.**  |
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**Preliminary Matters**

1. This case concerns the proposed diversion of Public Footpath Sitlington 35 (FP35) which traverses land to the west of Hollinghurst Farm, Netherton when using the public footpaths, resulting in the unfortunate death of a member of the public. The Council of the City of Wakefield (the Council) support the order.
2. Objections and representations state preferences for alternative routes. I must consider the order before me therefore these are not matters that I can consider under the legislation. Clearly, if I reach a decision to not confirm the order, the parties may wish to consider whether an alternative course of action should be pursued.
3. The Council of the City of Wakefield (the Council) has requested a minor modification to the wording of the Order, to reflect the proposed gates as limitations within the order. There would be no need for this modification to be advertised further.
4. I undertook an unaccompanied site inspection during the morning of Wednesday 25 October 2023.
5. 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 current legal alignment of FP35 runs from Point A at the junction with FP35 in a southerly direction to Point B at the junction with bridleway Sitlington 36.
2. There have been two separate incidents of cattle on the farm trampling members of the public when using the public footpaths resulting in the unfortunate death of a member of the public. The Health and Safety Executive (HSE) served a prohibition notice on the landowner requiring the landowner to separate their livestock from the public. To comply with the notice, the landowner must not keep cattle in the fields with a public right of way or must separate the public from the cattle with stock-proof fencing.
3. The reason given for the proposed diversion is for the landowner to make the best use of the grazing land available on the farm and enables the maximum use of the land available for silage by relocating the route from a crossfield path to a field edge path along an existing boundary.
4. Having regard to the above and given that there is no evidence to the contrary, I am satisfied that it is expedient in the interests of the landowner that the footpath should be diverted.

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

1. Point A represents the northern termination point of the proposed route and is located on FP35, which continues beyond this point. Accordingly, the connection to the highway is unaffected by the diversion.
2. The southern terminus of FP35 (Point B) is affected only marginally in that the junction with Sitlington 36 will move some 33 metres to the east to Point C. Sitlington 36 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.
4. Objections and representations raise the gateway that allows access between fields which crosses the proposed route as a concern. The landowner requires the gateway to effectively manage use of the land. The landowner has agreed to keep the field gates closed as well as to surface the crossing points and to keep the cattle on one side of the fence rather than leaving the crossing points open. In the event that the crossing points were to be open there will be a kissing gate at either side on the proposed route offering a refuge for the public before assessing and deciding to pass over the crossing points.

***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. The current route is obstructed at Point B by an established hedge and fencing. This is a matter for the Council to address, should the Order not be confirmed. When considering the convenience of the route included in the Order, it is equitable to disregard any obstructions on the existing path.
3. According to the Council, the proposed route will add 77 metres to the length. In my view, a 77 metre increase would not be substantially less convenient to the public as the route is used as part of a longer walk for recreational purposes.
4. The overall effect of the Order is substantially to relocate the affected section of FP35 a short distance to the east, 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 natural surface with some stone within the surface alongside the recently restored boundary of Hollinhurst Farm, the landowner has agreed to surface the areas of the proposed route that cross over gateways.
5. The proposed route passes over the same land but will be enclosed by stock proof fencing, this permanent protection from the cattle will improve the public enjoyment, in particular for those with knowledge of the recent history, by removing the fear/threat of trampling by the cattle. The order will have the effect of improving public enjoyment by offering improved safety and reassurance by the erection of stock proof fencing. This is supported by statements made at the Coroners Inquest.
6. Having regard to these factors, I conclude that the proposed 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. The proposed route will have a width of 2.5m.
2. Five people have written in support of the diversion order, four of these supporters mention the improvement to their enjoyment of the path if the order were to be confirmed.
3. 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. Fencing off the existing alignment of the public right of way would negatively impact on the farming operations, in particular cutting silage and the grazing of the cattle.
2. I therefore conclude that the proposed route would not have a substantial negative effect on land served by the existing or proposed routes when balanced against the reasons for the landowner seeking the diversion which would be in their interest.

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

1. The Order would improve accessibility by replacing stiles with kissing gates. The installation of such structures supports the view that the Authority is complying with the ROWIP in seeking improvement to the network by improving accessibility.

***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.

**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 with a modification to the wording of the Order, as referred to in paragraph 3 above.

**Formal Decision**

1. I confirm the Order subject to the following modifications:
* Adding the following paragraph at the end of Part 2 of the schedule:

“PART 3

LIMITATIONS AND CONDITIONS

Metal kissing gate (BS5709:2018); one at Point C at GR 2864 1647, two at Point D at GR 2864 1662.”

* Adding to the Order Plan and key, Point D at grid reference GR 2864 1662.

*Charlotte Ditchburn*

INSPECTOR

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