PINS logo (black) (A4 sizing)

|  |
| --- |
| **Interim Order Decision** |
| Site visit made on 1 November 2023 |
| **by Claire Tregembo** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
|  |
| **Decision date: 28 November 2023** |

|  |
| --- |
| **Order Ref: ROW/3301325** |
| * This Order is made under Section 119 of the Highways Act 1980 and is known as the Norfolk County Council (Wacton Footpath No. 25 (Part)) Diversion Order 2021. |
| * The Order is dated 18 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 Norfolk County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is proposed for confirmation subject to modifications.** |
|  |

**Preliminary Matters**

1. Wacton Footpath No. 25 is obstructed by buildings and walls within the grounds of Lyngrove which were erected in the late 1970s. The owner of the property only recently became aware of these obstructions and seeks to rectify them by diverting the footpath. For the purposes of my decision when assessing the relevant tests, I will consider the Order as if the footpath is open and available for use.
2. I will refer to various points shown on the Order plan in my decision. For ease of reference, I have appended a copy of the Order plan 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 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.
2. 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) and to the Public Sector Equality Duty (PSED). 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 owners of the land that the path in question should be diverted***

1. The section of footpath to be diverted runs diagonally across the garden of a residential property before entering the adjoining field. It passes close to the side of the house and conservatory, directly alongside a patio area and through a garage built by the previous owners. It is proposed to divert the footpath to the southern boundary of the property with a short section along the edge of the field to join the unaffected section of the path.
2. The diversion would improve the privacy and security of the house and garden. It would allow the residents to make better use of their garden and fence it off from the footpath to let their dogs out.
3. To make the Order route available on its definitive alignment, the owners would need to remove the garage, walls, plants, and hedges which have existed for many years. The diversion would make the footpath available for public use without the expense and inconvenience of removing these plants and structures.
4. Defra Government Guidance issued in August 2023 advises that reducing or eliminating the impact of the right of way in terms of the impact on privacy, security and safety are important considerations which should be given due weight when considering Orders.
5. I consider the diversion would enable better use of the garden, increase security, and improve the privacy of the house and garden. Therefore, I am satisfied it is expedient to divert the footpath in the interests of the landowner.

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

1. The proposed diversion is 8 metres longer than the existing footpath. I do not consider this affects the convenience of the footpath, particularly given its use would most likely be for recreational walking or to reach the village green and play area for recreational activities.
2. The proposed footpath would have a width of 1.5 metres from Point A to C with 1 metre-wide pinch points where the footpath passes under the stay of a telegraph pole at point Y and crosses a footbridge at point Z. I am advised a 1.5 metre width is proposed to reduce the impact of the footpath on the house and garden. However, a width of 1.5 metres makes it difficult for two path users to easily pass each other. It is not clear if the northern side of the footpath is to be fenced but references to defining the route, security and not being able to let their dogs use the garden suggest it will be. Even if is not intended to fence the footpath, there is nothing to prevent it from being fenced in the future. It is more difficult for walkers to pass each other on enclosed footpaths. The limited width and the pinch points would negatively affect those using mobility aids or families using pushchairs or prams and could prevent access for some. I consider the proposed widths would make the footpath substantially less convenient to the public.
3. Furthermore, at point Y it is not just the width that is restricted, path users would need to pass underneath the telegraph stay which cannot be moved. There is minimal height clearance and taller path users may need to duck underneath it. There is also the potential for path users to walk into it even if it was clearly indicated, particularly in low light or for path users with a visual impairment. Therefore, I consider the stay over the footpath would make it substantially less convenient to the public.
4. If the diversion ran to the north side of the stay, there would be no issues with height clearance under it. Additional width could also be provided. A width of 3 metres between A and B, would allow the public to pass each other easily, even if the footpath is enclosed, and persons using mobility aids or families with pushchairs would not be adversely affected.
5. Concerns are raised around the alignment of the proposed footpath and the introduction of two ninety-degree direction changes. The proposed footpath would run alongside the boundary of the garden so the new alignment would be easy to follow. If the proposed footpath between A and B is enclosed, the introduction of ninety-degree bends could make the footpath feel less safe and convenient. However, the field edge section is not intended to be enclosed and has a width of 4 metres. It would be easy to see anyone walking across the field or within the garden from point B. Therefore, I do not consider the alignment and bends on the new footpath to be substantially less convenient.
6. There is currently a gate at point A although this is not recorded on the definitive map or statement. The gate is to be removed and there are no limitations or conditions included in the Order. There will be a bridge across the ditch, but bridges are not deemed to be limitations or conditions. Section 2 of the Order records the width of the footpath as 1 metre where the bridge crosses the beck which I have dealt with above.
7. I consider the proposed width between A and B, the pinch points, and the limited height clearance at point Y would make the footpath substantially less convenient to path users. However, if I were to modify the Order to increase the width and divert the footpath around the stay at point Y it would not make the footpath substantially less convenient to the public.

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

1. The existing footpath runs close to the house and through the middle of the garden alongside a seating area. I consider there are likely to be walkers who would feel uncomfortable passing so close to a residential property and through a garden, particularly if the occupants were using it. A route to the side of the garden further from the property could be more enjoyable to some walkers and make them more comfortable using the footpath.
2. If the proposed footpath between A and B is fenced, the narrow width and pinch points could make the footpath feel enclosed and constrained. Some path users would feel unsafe using a narrow enclosed route. I consider this would have a negative impact on the public enjoyment of the footpath and could deter or prevent use by some people.
3. The need to pass closer to the hedge, and for taller users to duck under the stay would reduce the public enjoyment of the footpath. If the footpath is diverted around the stay with a greater width, the impact on the public enjoyment would be minimised.
4. I consider the diversion as proposed, would have a negative effect on public enjoyment of the footpath as a whole. If I were to modify the Order to divert the footpath around the stay with an increased width, I consider the impact on public enjoyment would be reduced to an acceptable level.

***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 proposed diversion has been made in the interests of the applicant who owns the property through which section A to B runs. It will improve their privacy and allow better use of their garden. They would not have to remove their garage, walls, plants, and hedges to make the existing footpath available to the public.
2. Modifying the diversion to divert the footpath around the stay and increase the width would take up more space in the garden and bring it closer to the house. However, it would still have less impact on the resident’s privacy and security than the existing footpath. An increased width would require a chicken coop in the garden just south of point Z to be altered or relocated. However, the cost of this would be significantly less than removing the existing garage, walls, and planting on the line of the existing footpath.
3. Section B to C will run over a field not owned by the applicant. The owners have advised that they have agreed to the diversion. Section B to C is currently left uncultivated so the diversion is unlikely to have an impact on their use of the field.

***Rights of Way Improvement Plan and Public Sector Equality Duty***

1. Section 3: Future User Needs of the ROWIP includes a priority action to improve access for disabled users during route management work. Statement of Action 1.4 intends to create better access for disabled users and improve access for all. Appendices 8.3.2: Creating All Access Routes seeks to increase the number of routes available to people with reduced mobility and visual impairment including the removal of barriers on existing routes. The stay would introduce a new barrier for those with visual impairment and the narrow width and pinch points would introduce a barrier to some path users with reduced mobility. I consider the proposed diversion would not improve access for path users and would prevent access for some users. Therefore, I find the proposed diversion to be contrary to the ROWIP with regard to improving access.
2. Appendices 8.3.1 of the ROWIP states Norfolk County Council (NCC) will seek to apply up to 2 metres for unenclosed footpaths and 3 metres for enclosed footpaths for all new and diverted routes. It also states that ideally additional widths up to these will be provided on existing footpaths. The proposed width between A and B is narrower than specified in the ROWIP. The applicant believes these widths are not statutory as the ROWIP states *‘we will seek to apply up to’* rather than ensure or require. Therefore, they consider there is no obligation to provide these minimum widths. I consider the ROWIP suggests NCC considers 2 metres to be the minimum acceptable width for a footpath and a wider width should be provided when a path is to be enclosed.
3. When making my decision I must have due regard for the PSED of the Equality Act 2010 (the 2010 Act). As the proposed diversion would disadvantage those with visual impairments and reduced mobility, which are protected characteristics identified in the 2010 Act, I do not consider the PSED has been discharged by the proposed diversion.
4. I consider that if I were to modify the Order to divert the footpath around the stay with a wider width, the diversion would not be contrary to the ROWIP and the PSED would be discharged.

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

1. I have considered above that the Order is in the interests of the landowner and residents of Lyngrove. However, I have also found the proposed diversion would be substantially less convenient to the public and would disadvantage those with reduced mobility and visual impairment. It would also be less enjoyable to the public, contrary to provisions within the ROWIP and the PSED would not be discharged. As the proposed diversion does not pass Test 2, I consider it is not expedient to confirm the Order as made.
2. I have also considered the requirements of Test 2 would be met and the PSED discharged if I modified the Order to divert the footpath around the stay with a width of 3 metres between A and B. If I modify the Order accordingly, I consider it would be expedient to confirm the Order.

**Overall Conclusions**

1. Having regard to the above, and all other matters raised in the written representations, I conclude the Order should not be confirmed as made. However, I propose to confirm it with modifications to increase the width and divert the footpath around the stay as described above and set out below.

**Formal Decision**

1. I propose to confirm the Order subject to the following modifications.

In Part 2 of the Order Schedule

* Delete ‘1.5’ and replace it with ‘3’.
* Delete ‘apart from a width of 1 metre at the point where there is a stay of a telegraph pole (point Y on annexed plan) at grid reference TM 1793 9145 and the crossing of the footbridge at grid reference TM1790 9144’.

On the Map

* Delete ‘1.5’ and replace it with ‘3’.
* Delete ‘Width at Z = 1 metre’ and ‘Width at Y = 1 metre’

1. Since the confirmed Order would affect land not affected by the Order as submitted, I am required by virtue of Paragraph 2(3) of Schedule 6 to the 1980 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Claire Tregembo*

INSPECTOR

**Modified Order Map**

