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| **Order Decisions** |
| Inquiry Held on 31 October 2023Site visit made on 31 October 2023 |
| **by Graham Wyatt BA (Hons) MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 22 January 2024** |

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| **Order Ref: ROW/3287255** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Wiltshire Council Bratton 42 (Part) Diversion and Definitive Map and Statement Modification Order 2021.
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| * The Order is dated 16 February 2021 and proposes to extinguish the public right of way as shown on the Order plan and described in the Order Schedule.
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| * There were 19 objections outstanding when Wiltshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs.
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| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. The effect of the Order would be to divert part of footpath BRAT42 from its current route to a new route to the south.

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 the 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 reaching my decision I am also required to have regard to any material provision contained in a rights of way improvement plan for the area.
2. The Order has been made in the interests of the owner of the land (‘the Applicant’) crossed by those parts of the footpath at issue.

**Reasons**

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

1. The Order relates to the northern section of footpath BRAT42 which is accessed over a stile and runs parallel to the mill pond with its bankside descending from the footpath to the pond. The Order seeks to divert the footpath to the southern side of the fence that currently separates the existing route from the proposed route. This would direct users of the footpath away from the trees and pond, across an open field with kissing gates at either end.
2. The applicant argues that the current route of the footpath crosses part of the garden area that belongs to Luccombe Mill. Users of the footpath frequently stray from the path and venture towards the mill pond, sometimes with dogs that enter the water. From my visit I noted that the main garden area that adjoins Luccombe Mill is clearly visible when viewed from the footpath and the bankside. Thus, whether or not the land that is crossed by the footpath is part of the garden to Luccombe Mill, it is not inconceivable that some users will be drawn to the pond where they will be able to view the garden and any activities that may be taking place. Moreover, this would be made worse during the seasons when the trees along the footpath are without leaves. This is clearly a matter of privacy and one that I find in favour of the Order.
3. In reaching this conclusion, I do not share the view that privacy is a matter for a large number of houses and one that must be borne in mind when considering purchasing a home. Thus, I consider that the proposed diversions would be in the interest of the Applicant.

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

1. The footpath currently runs from Point A to point B where it continues along the connecting footpath without alteration. The Order seeks to divert the route from Point C to Point B and vice versa. The termination point at Point B is therefore the same in either direction. Although users of the footpath would no longer be able to access Point A, Point C is very close by, and I am satisfied that they are as substantially as convenient to the public.

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

1. The proposed route offers users the opportunity to walk to the same points over open fields, with vistas across the landscape. This would be achieved without the need to enter an area where one could potentially cause harm through overlooking to private garden areas at Luccombe Mill. The proposed route is wide and level, allowing users to pass one another with ease. The provision of kissing gates at Points C and B also remove the need to climb over the stile at Point A. This would create a footpath that is more accessible for walkers and those with lower mobility. In addition, the creation of the steps at Point B which lead to the bridge are deep and level so that users can take one step at a time. This is in contrast to the narrow footpath that currently exists, with vegetation and tree routes under foot which may deter those with lower mobility. Additionally, the Order route is of a similar length to the existing route.
2. The proposed diversion would not prevent those who wish to use the footpath and the terminal points of the proposed routes are on the same highway as the footpath to be diverted. Although I acknowledge the heritage that is conveyed through the use of public rights of way, the test is whether the proposed route would be substantially less convenient to the public. Consequently, I am satisfied that it would not be substantially less convenient to the public.

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

1. The diversion of the footpath would take users to the south where one would then travel between Point C and B, and vice versa, across an open field where views across the landscape are extensive and one can appreciate the open and rural qualities of the area. I acknowledge that the existing footpath as a whole is not particularly long, and it would appear that the Order would be diverting a good proportion of it. The diversion is a moderate part of a longer footpath and even if I was to accept that it amounts to between 25-30% of its totality, the vast majority of the footpath remains unaltered and provides users with a pleasant walk to Paradise Pool, under the canopies of trees and through the woodland to Imber Road. Moreover, parts of the footpath have been upgraded to create a better walking experience for its users and the new route allows views across an undulating and bucolic landscape.
2. I walked both routes during my visit and noted that the proposed route is level and provides easy access to the steps down to the watercress beds and bridge. Whilst the existing route is also level to a degree, it does require constant vigilance as one navigates between mature trees and where the land descends towards the mill pond and the bridge. Furthermore, whilst I accept that users of the diverted route will no longer be able to view the mill pond when walking from Point B to Point C, there is no requirement that users of the footpath should be able to experience the same amenities as the existing footpath provides. The test is whether the public enjoyment of the footpath as a whole would be affected and for the reasons given above it will largely remain unaltered. Thus, in my view, the diversion proposed would have no significant adverse effect on the public enjoyment of the rights of way as a whole.

***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. No relevant issues have been raised regarding this matter.

***The consideration of the order in light of any material provision contained within a Rights of Way Improvement Plan***

1. None of the parties suggest that the Order is contrary to any material provision contained in a rights of way improvement plan for the area.

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

1. I have found that the diversion is expedient in the interest of the landowner and the public and that the new termination points to be substantially as convenient to the public. I am also satisfied that it is expedient that the Order is confirmed having regard to its effect on public enjoyment. Nothing in the submissions presented or from my site visit leads me to conclude that it would not be expedient to confirm the Order.

**Overall Conclusion**

1. Having regard to the above, and all other matters raised at the inquiry, I conclude that the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

Graham Wyatt

**INSPECTOR**

**APPEARANCES**

**For the applicant:**

Miss Poonam Pattni Counsel for the Order Making Authority and the Applicant

Miss Ali Roberts Rights of Way Operations Coordinator, Wiltshire Council

Mr Henry Pelly Applicant

**Objector to the Order:**

Mr Phil Workman Attend virtually via MS Teams

Mr Brook

**Supporters of the Order**

Mr Nick Jones

Mr Jeff Ligo

Miss Joanna Jolly

Mr Peter Thomas

Miss Suzanne Brown

Miss Emma Vincent

Miss Sian Morgan

Mr Parkinson

**DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Closing statement on behalf of the Order Making Authority and Applicant

**End.**

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