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| **Order Decision** |
| Site visit made on 20 November 2023 |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 8 February 2024** |

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| **Order Ref: ROW/3312738** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as Public Path Diversion Order 2022 Footpath 11 Lambourne in the District of Epping Forest.
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| * The Order is dated 25 May 2022 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 8 objections outstanding when Essex County Council (the Council) 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.** |
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Procedural Matters

1. I undertook an unaccompanied site visit on Monday 20 November 2023.
2. 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.

The Main Issues

1. The 1980 Act involves three separate tests for an Order to be confirmed. These are:
2. 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.
3. TEST 2: whether the proposed diversion is substantially less convenient to the public.
4. 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.
5. 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.
6. 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

1. The Order route, Lambourne Footpath 11, currently runs from Point A at the junction with New Farm Drive in a south easterly direction across the field to Point B for its first section; its second section runs from Point C in a south easterly direction to Point D at a kissing gate where it continues unaffected. The proposed route runs from Point A in a north easterly direction to Point E, the field corner, continuing in a southerly direction along the field edge to Point B, the second section of the proposed route runs along the field edge from Point C in a southerly direction to Point F, the corner of the field, continuing in an easterly direction to Point D.

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

1. The Council state that the proposed diversion is for the landowner to make the best use of the grazing land for livestock by relocating the route from a crossfield path to a field edge path along an existing boundary. The landowner states that they wish to divert the footpath to enable them to fence the route with a minimum width of 2.5m between fence lines to prevent the public from straying from the definitive line. I understand the landowners wish to do so, having witnessed members of the public walking across the fields away from the definitive alignment of the path, with their dogs off lead, at the time of my site visit.
2. 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 the new path will not be substantially less convenient to the public***

1. In assessing the relative convenience of the present and proposed routes I have considered a variety of factors, especially the change in length, width and character in the context of the role Footpath 11 plays in the local network. In doing so, I note one of the points put forward by several of the objectors: that the proposed new route will be less direct and therefore less convenient.
2. There is no doubt that to follow the diversion via A-E-B and C-F-D along Footpath 11 would increase the distance along the definitive line. Currently the Footpath is 318 metres long between Points A-B and C-D. The proposed route would be 547 metres long, an increase of roughly 72%. However, I accept this should be put into context, since Footpath 11 connects with the rest of the rights of way network within Lambourne parish and the route serves a recreational rather that utilitarian purpose. Local people can use Footpath 11 to walk circuits on the network or walk in a linear nature along Footpath 11 returning the way they came. Adding further distance to the route would provide further time in nature for users and benefits to local dog walkers providing additional length to the network.
3. The statutory test requires a comparison between present and proposed routes, and I recognise that the question of convenience depends partly in which direction the user is walking and on the purpose of the journey. There is clearly no benefit to be gained by the public here from using the proposed route, only the disadvantage of the additional distance (229m) necessary to walk north or east along Footpath 11. However, the legislation does not require positive benefits for the public, only that the diversion should not be substantially less convenient. I therefore conclude based on the distance increase that the new route would not be substantially less convenient to the public.
4. The Council state that the diversion provides an opportunity, in terms of improving the convenience of the path, to remove some rails and gates either side of the mid-point bridge and to move a kissing gate at the main carriageway to a new location. The rails present on the definitive line between Point B-C are on part of the route not affected by the order, they are obstructions that I cannot consider under the legislation, these must be addressed by the Council whether or not the Order is confirmed. For the Order to come into effect, the gate at point A would have to be moved onto the proposed alignment for the Council to be able certify the route if the Order was confirmed.
5. The surface of the path is similar on the current path and proposed path. At the time of my site visit it was very wet under foot and the field was muddy. Objectors raise that the proposed route will be less convenient due to the surface in wetter months as the applicant is proposing to create a corridor route by erecting post and rail fencing with mesh. It is important to note that the proposed route has a recorded width of 2 metres wide and the applicant is proposing to install a post and rail to a maximum height of 1.2m, with mesh, at a minimum width of 2.5m, providing the public with a sufficiently wide route when walking round the field. The current route was wet, and the proposed route was not as wet. I acknowledge with increased footfall along the proposed route it may become muddier, but I do not consider this to be any worse than the current route. It is also worth pointing out that if I were not to confirm the Order the applicants could decide to fence section A-D having the same effect.
6. The gradient of the current and proposed routes are similar. Whilst objectors raise safety concerns due to the reduced viewing vantages of the proposed route, I do not consider these to be significant.
7. Objectors state that accessibility for elderly or less able users would be detrimentally affected by the proposed route. The gradient is similar so poses no greater challenge to users than that of the current alignment and the applicant has agreed to remove rails and gates either side of the mid-point bridge. The rails are currently obstructing the route and removal of the gates would improve the accessibility for all. The Council have confirmed that should fencing be installed, the Council shall require that any remaining and unnecessary gates are removed, which would also improve the accessibility of the route.

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

1. The view from the current route is of open countryside and farmland. There are no obvious features of interest to be seen, other than those forming part of the general landscape. Views to the southeast are obstructed by woodland beyond the field boundary. I accept that the diversion would lead to a restriction of the attractive views across the open field. Whilst the view would be restricted, it would not be lost altogether, as it can still be appreciated from Points A and D, and from the various points where it can be seen from the field edge. Overall, I accept that, in the absence of other factors, the retention of the view would carry significant weight. However, in this case there are other factors of significance relating to public enjoyment which I must weigh against the limitation of the view.
2. From the proposed route between A and B the view to the east is largely obstructed by woodland but affords users a view of Alder Wood and the stream within, giving good views into the woodland and providing a walk of a different character to that of the existing route. As the termination points are not changing, these are the two highest points on the route at which any observant user is likely to stop and take in the view. Between A and D, the views over the landscape are available and substantially unchanged as a result of the proposed diversion.
3. I have referred previously to the respective difficulties and merits of the surface of the existing and proposed routes. In my judgement these issues are just as relevant to the enjoyment as they are to the convenience of the user.
4. I must assess what effect the diversion would have on public enjoyment of the route as a whole. This requires me to make a qualitative judgement as to the value to the public of the view available from the existing route set against the proposed diversion onto the field edge.
5. My conclusion on the question of public enjoyment of the route is finely balanced. Taking account of all factors including the view and surface of the current and proposed route, I conclude that whilst the enjoyment for some may be reduced, on balance, public enjoyment of the route will not be negatively affected 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.
2. I therefore conclude that the Order route would not have any negative effect on land served by the existing or proposed routes.

***The effect of the Order on Alderwood***

1. An order can be made in the interests of the owner(s) of the land crossed by the existing path or way, its confirmation subject to that order meeting the necessary criteria, and that Section 119 (1) of the 1980 Act allows for this and for a diversion to be on land of the same or of another landowner (or lessee or occupier). Furthermore, Section 28 of the 1980 Act, as applied by Section 121(2), provides for compensation in respect of land affected by the coming into operation of such a diversion, where it is shown that the value of an interest of a person in land is depreciated, or that that person has suffered damage by being disturbed in their enjoyment of that land.
2. It is open to me to consider other relevant factors in addition to those set out in the Section 119 tests considered above with regard to expediency, and in this case the residents of Farm House and Alderwood in particular drew my attention to the effect of the proposal on their properties. In summary, their concerns were that their security and privacy would be negatively impacted by the order, the fencing between the order route and their garden would not be sufficient to prevent their dogs causing nuisance to themselves and the public as well as a drop in the value of Farm House.
3. Footpath 11 currently runs across the centre of the field. The Order proposes the path should instead pass along the boundary of Farm House and Alderwood. The residents of Farm House are concerned that users will be able to look into the windows of their property. Residents of Farm House and Alderwood are concerned about the post and rail fence that currently makes up the boundary between the proposed route and their properties due to the residents dogs causing nuisance to the public. However, at the time of my site visit the distance from the boundary fence and Farm House gave no direct view into the property and no residents dogs were present in the adjoining gardens. I acknowledge this could create some disturbance to users, but the residents gardens do currently have a view of the path and so I do not consider the disturbance to be substantial.
4. There is nothing to indicate that the safety and security of Farm House and Alderwood would be adversely affected by the path running alongside the fence as there is no visible means by which the public could access the properties from the proposed diverted path at this location compared to that of the current alignment. Some additional noise may result as users would pass relatively close to the gardens than is the case presently, but there is nothing to suggest this would be significant.
5. There is no requirement under the 1980 Act for adjoining landowners to be notified of a proposal to move a right of way adjacent to their land; although it is good practice (as here) to do so. As such, considerations of devaluation and disturbance are not relevant. No details were submitted in writing as regards to the claimed devaluation of Farm House as a result of the Order, if confirmed.
6. However, I am entitled to consider the impact on the residents of Alderwood and Farm House, in terms of the effect on their properties. I have concluded above that there is no indication of any significant interference to either Alderwood or Farm House, although some additional noise may occur. Any interference could be mitigated by the residents installing fencing or planting hedging. I find the disturbance not to be significant it is my overall view that it is expedient to confirm the order.
7. The 1980 Act envisages and provides for situations where a way is diverted onto land of the same or another landowner and contains provisions for compensation as described above.
8. On the evidence available to me I consider that any likely harm or interference to the residents of Alderwood and Farm House is proportionate when balanced against the benefits to the applicant and their livestock and to the public interest. Furthermore, I consider it is proportionate when taking into account the statutory compensation afforded by the 1980 Act. Thus, in my view, any potential interference is in accordance with the provisions of the 1980 Act.

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

1. No contradictory view has been expressed to that of the OMA that the ROWIP has been taken into consideration when preparing the proposed diversion. There is also no evidence to suggest that the proposed diversion would conflict with the ROWIP.

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

1. In reaching a final conclusion on the expediency of this diversion I must weigh the advantages that would accrue to the individual landowner in whose interest the Order is made against any disadvantages that may result for the members of the public who use this path.
2. Having regard to all of the relevant factors, I conclude that it is expedient for the Order to be confirmed. In reaching this conclusion I have had regard to the findings I have outlined above, both in relation to the landowner, in whose interest the order is made, and in relation to public enjoyment of the route. I have given due weight to the issues raised by objectors. In my judgement the factors supporting confirmation outweigh the matters raised by way of objection.

**Other Matters**

1. Objectors referred to the historical background of the route and preferences to alternative routes. These are not matters before me and not ones that have a bearing on my decision as to whether or not this Order made under the 1980 Act should be confirmed. It follows that I have not taken these into account in reaching my decision.
2. Objections include concerns about animal welfare regarding the loss of shade for the applicant’s livestock. It is down to the applicant to manage their livestock, this is not a relevant matter, I am bound to only consider the Order in relation to the specific tests set out in Section 119 of the Act and this is what I have done.

Conclusions

1. Having regard to these 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

