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| **Order Decision** |
| Site visit made on Wednesday 14 February 2024 |
| **by A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 04 March 2024** |

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| **Order Ref: ROW/3305445** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Norfolk County Council (South Lopham Footpath No.5 and Footpath No.6) Diversion Order 2022.
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| * The Order is dated 12 April 2022 and proposes to divert 2 public footpaths as shown on the Order Map and described in the Order Schedule.
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| * There was 1 objection outstanding when Norfolk County Council (the 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 made an unaccompanied site visit on Wednesday 14 February 2024, when I was able to walk the current and proposed routes. In writing this decision I have found it convenient to refer to the points marked on the Order Map and I therefore attach a copy of this map.
2. The applicant brought attention to the Presumptions Guidance issued by DEFRA in August 2023. They submitted that the change of status of the land arising as a result of the planning permission, meant that the guidance was relevant to the houses that would be built, as the footpaths would be contained in the curtilage of the properties, should they not be diverted.
3. Albeit I understand the submission made, I consider that the possible impacts on future residents should the planning consent be implemented, is a matter outside of the scope of this decision. I concur with the objector on this matter, in that my determination must be based on the current circumstances and not on possible future scenarios.

**Main Issues**

1. For the Order to be confirmed, I must be satisfied, by virtue of Section 119 of the 1980 Act, that:
* it is expedient, in the interests of the landowner, the occupier or the public, that the footpaths should be diverted.
* the new rights of way will not be substantially less convenient to the public.
* any new termination points will be substantially as convenient to the public.
* it is expedient to confirm the Order having regard to the effect which:

(a) the diversions would have on public enjoyment of the ways as a whole.

(b) the coming into operation of the Order would have, in respect of other land served by the existing paths; and the land over which the new rights of way would be created, together with any land held with it.

1. Regard should also be given to any material provision contained in a rights of way improvement plan (ROWIP) for the area.

Reasoning

***Whether it is expedient in the interests of the landowner, the occupier, or the public that the rights of way should be diverted***

1. In 2020, JD Alston (Estates), (the applicant), submitted an application to partly divert a footpath across their land.The original application was made on the grounds that the small field over which part of Footpath No. 5 (FP5) is situated, would be easier to manage should the route be diverted to the adjacent headland. A second grounds given to divert this path was to remove the footpath from a plot for which planning permission had been granted for a dwelling. The original application also stated that planning permission was going to be sought for two further dwellings on this small field, which would also be affected by the current line of FP5.The diversion application was later amended to also include the realignment of a very small section of Footpath No. 6 (FP6) which runs along the field edge, to achieve a more regular boundary and a slightly larger building plot for the planned dwellings.
2. Ultimately the original plot was not affected by FP5, and the applicant has withdrawn this ground for diversion, however the planning permission that was to be sought for two further dwellings has subsequently been granted and these would affect the lines of both paths if built.
3. Mr Witham, on behalf of the Open Spaces Society (the objector), submitted that one of the grounds for diversion given in the original application, which was for easier management of the small field, should not apply. He submitted that the land in question did not appear to be in agricultural use, which did appear to be the case on my site visit.
4. The field is currently diagonally dissected by FP5 and as the area of this field is very small, the diversion would undoubtedly enable easier management of the land, whether for agricultural purposes, other purposes, or for the implementation of the planning permission granted. Accordingly I consider that it would be expedient, in the interests of the landowner, to divert the footpaths.

***Whether the new rights of way will not be substantially less convenient to the public***

1. Diverting FP6 would have a negligible effect on the length of the path and would not be substantially less convenient to the public.
2. With regard to FP5, I agree with the objector that the current historic line of this footpath is more direct if travelling from St. Andrew’s Church to Church Road or vice versa. However diverting FP5 to the headland edge would only increase the length of this right of way by approximately 35 metres, which adds less than one minute to the travel time. I consider that the use of FP5 is most likely to be predominantly for leisure and probably used in conjunction with Footpath No. 4, which connects with FP5 at its north west termination, forming a much longer route. In this context the additional length is diminutive when considering the overall distance travelled in a recreational capacity.
3. The objector was concerned that the proposed diversion of FP5 introduced three new turns for the user, as opposed to the straighter line of the current footpath. He advised that one of these turns was 116 degrees, which introduced an element of turning back on oneself, which in itself was less convenient and felt less convenient. I consider the shallow turn at point A to follow the headland to be no less convenient and the change in direction at point D is almost indiscernible. I do agree that the turn at point C being more acute, could give the feel of being less convenient, however sharp turns are found on many public rights of way and adopted highways and when looking at FP5 as a whole, this change of direction does not make the route substantially less convenient.
4. The diversion affects only a very small section of the footpath, especially if viewed in terms of onward travel. I therefore consider that although FP5 is a little less convenient than its current alignment, the proposed diversion is not substantially less convenient to the public in terms of a rural unmade footpath.

***Whether any new termination points are substantially as convenient to the public***

1. The termination point of FP5 is altered from Church Road to a point on FP6, which itself connects to Church Road, thereby maintaining connectivity to those users wishing to reach the original termination point.
2. The termination point of FP6 remains on the same highway, approximately 2.3 metres south of its original terminal point. The objector felt that sight lines could be impeded by the fencing or hedging of the neighbouring property to the south, as no law could place a restriction on the current, or future height of the fence or hedge. By contrast, the applicant felt that the sight lines and refuge space of the verge would be unaffected by the change, as the proposed width of the path is 3 metres, which they felt was a sufficient corridor for visibility. On my site visit I noted that the boundary for the neighbouring property was set back from the road, with FP6 terminating on a high grass verge, as pointed out by the applicant. The fencing and hedging on the neighbouring property had no effect on the good visibility offered from the existing and new termination points due to them being set back from the road, which itself was relatively straight, offering good sightlines. I therefore find the termination points, substantially as convenient.

***The effect of the diversions on public enjoyment as a whole***

1. The existing footpaths currently enjoy a semi-rural aspect, with views across the open countryside once the boundary hedging of the small field is crossed. I acknowledge the comment from the objector wherein he felt that the current route of FP5 to the church from point B was ‘enticing’. However on my site visit I observed that the hedging of the field across which FP5 currently runs, and the properties along Church Road to the north, effectively obscure any view of the church for the entire part of the current alignment that is to be diverted.
2. I also understand and respect the viewpoint of the objector that walking a path that has been shown on a map since 1884 is akin to ‘walking in the footsteps of our ancestors’, indeed many rights of way have this provenance. However the historical dimension is only removed for that small part of FP5 proposed to be diverted.
3. The enjoyment of any path is subjective by nature and of course, open to varying opinions. I recognise that there is enjoyment and interest in travelling along long established footpaths that terminate at a point of local interest, however only a very small part of the established route is affected by the diversion, with the termination point of St. Andrew’s Church remaining the same. Onward destinations and terminations in either direction of FP5 can still be reached and the views remain essentially the same. When considering the roles of FP5 and FP6 in a rural network of public rights of way, I consider that the effect of the diversions will have minimal impact on public enjoyment as a whole.

***The effect the coming into operation of the Order would have with respect to other land served by the existing rights of way and the land over which the new rights of way would be created***

1. The land on which both the current footpaths and the proposed diversions are situated, are within the land ownership of the applicant. No issues are raised which suggest that the diversions would have any adverse effect on land served by the existing routes or on the land over which the alternative routes would be created.

***Consideration of the Order in light of any material provision contained in the ROWIP***

1. It is the view of the Council that the diversions are compatible with their ROWIP, and no adverse impact on flora, fauna, geographical or physiographical features have been identified.

**Other Matters**

1. I note the objector’s comment that on the planning application form that was granted permission in February 2023 for two new dwellings, it stated that proposals would not require any diversions, extinguishments, or creations of rights of way, which is at odds with the diversion application being considered. However, consideration given to the paths during the planning process is not a matter for me and should be directed to the appropriate planning authority.

 **Conclusion**

1. I have found that the Order is expedient in the interests of the landowner for the purposes of better management of the field as well as the implementing of the development for which they have approved planning permission.
2. The proposed diversion of FP5 has an increase in length, however this is not substantial. The increase in length, along with the changes in direction become diminutive when considering use is likely to be recreational or part of an onward journey. FP5 is a little less convenient when heading towards Church Road but is more convenient if looking to seek an onward journey using FP6. Accordingly, I consider that the proposed routes are not substantially less convenient.
3. The change of termination point of FP5 still allows connectivity to Church Road via FP6. The change of termination of FP6 on Church Road is extremely slight and, in my view, does not form a visibility issue of any sort. I therefore consider the termination points remain substantially as convenient to users.
4. The proposed diversions retain the rural character, views, and destination points of local interest that the current footpaths offer, albeit the historical line for a minority of the southern part of FP5 will no longer exist. Overall, when considering the proposed diversions in a rural context, I do not regard there to be a decrease in public enjoyment ‘as a whole’ and I therefore consider it is expedient to confirm the Order.
5. 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.

*Mrs A Behn*

**INSPECTOR**

