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| **Order Decision** |
| Hearing held on 6 February 2024 |
| **by Claire Tregembo** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
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| **Decision date: 05 March 2024** |

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| **Order Ref: ROW/3294870** |
| * This Order is made under Section 119 of the Highways Act 1980 and is known as the Oxfordshire County Council, Goring Heath Footpath No 27 (part), Public Path Diversion and Definitive Map and Statement Modification Order 2021. |
| * The Order is dated 22 February 2021 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There were ten objections and eighteen representations outstanding at the commencement of the hearing. |
| **Summary of Decision: The Order is confirmed.** |
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**Preliminary Matters**

1. I carried out an unaccompanied site visit on 5 February 2024 where I viewed the Order route and surrounding path network. I also carried out an accompanied site visit with representatives of Oxfordshire County Council (OCC), the landowner, and objectors to the Order following the close of the hearing on 6 February 2024.
2. The Order route runs through Beech Woods behind Keeper’s Cottage. I will refer to various points shown on the Order map in my decision. For ease of reference, I have appended a copy of the Order map to the end of my decision.

**Procedural Matters**

1. Concerns are raised over the consultation process and advertising of the Order. OCC carried out pre-order consultations when considering the application for the diversion. The Order was advertised in the local press and OCC has confirmed they posted notices on site and maintained them for the required notice period. OCC has confirmed that the relevant consultations were carried out when the Order was made. The procedural requirements for public path orders are set out in Schedule 6 of the Highways Act 1980 (the 1980 Act) and I am satisfied these have been met.

**Main Issues**

1. Section 119(6) of the 1980 Act 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.
3. The line of the footpath used on the ground is not on the same alignment shown on the definitive map. The route used runs between the same points but meanders more than the definitive line. There is no recorded width in the definitive statement, but the current width is accepted to be narrower than the width available in the past. When comparing the existing footpath to the proposed diversion, I will disregard any circumstances preventing or diminishing the use of the existing footpath and apply the above tests as if the legally recorded line were open and available for use.

**Reasons**

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

1. The Order was made in the interests of the landowner who wishes to regenerate the wood and enjoy it as a private space. It is possible to see into his garden from the existing footpath which causes security and privacy concerns. Holly, which currently provides screening, is to be removed as part of the proposed woodland regeneration.
2. During my site visit, I could clearly view some parts of the garden from the footpath, including areas with play equipment, garages, and parked cars. The house is further away from the footpath but some views of it were currently possible. Without the holly, there would be clear views of the house and garden impacting further on privacy and security. There is also a gate from the garden into the woodland directly onto the footpath.
3. The proposed diversion is on an alternative line through the woods further away from the house and gardens. It is not possible to see into the garden and the landowner would be able to privately enjoy the woodland closest to their property.
4. Some parties consider the diversion is not necessary to regenerate the woodland and alternative measures could be taken to improve privacy. These include not removing the holly, carrying out additional planting, or erecting fences. However, these measures will not allow the landowner to enjoy the woodland as a private space. Removing the holly is considered necessary to regenerate the woodland.
5. I consider the proposed diversion will improve the existing privacy and security of the garden because the public will no longer be able to see into the garden and will not have direct access to the gate into the property. The diversion will also allow the landowner to use some of the woodland for their own private enjoyment. Therefore, I am satisfied it is expedient to divert the footpath in the interests of the landowner.
6. The diversion will allow the landowner to regenerate the woodland without further compromising the privacy and security of their property. However, my conclusions on the expediency of the diversion in the interests of the landowner are based on the existing situation without the removal of the holly.

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

1. The northern end of the footpath will terminate at the same point. The southern end of the footpath will terminate 88 metres northwest on a connecting footpath, Goring Heath Footpath 26 (FP26).
2. For those heading northwest to Coombe End, this will result in a slightly shorter route. However, for those travelling from north to south, or heading east to Whitchurch Hill this will make their journey slightly longer. They will also travel along an additional section of FP26 which is described by some as ‘murky’, a dark tunnel or less pleasant. The footpath network is most likely used for recreational purposes, although some path users state they use it to reach Whitchurch Hill for utility purposes.
3. The existing section of Footpath 27 (FP27) and FP26 are both through similar density woodland with overhanging vegetation. Therefore, I do not consider the existing section of FP27 to be more convenient than FP26 in terms of the nature of the footpath.
4. Although the new termination point will increase the distance walked for most path users, this distance is short compared to the overall length of the footpath network. It will only add about a minute to the travel time for most walkers which represents only a negligible increase in overall journey time.
5. Therefore, I consider the new termination point to be substantially as convenient to the public.

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

1. The existing footpath is a straight route through the woods whilst the proposed footpath will take a less direct route and require walking along an additional length of FP26 for most journeys. However, it will only add 88 metres to the overall distance travelled or 1 minute to the overall journey time. It is still possible to travel between points A and B. I do not consider this will make the new footpath substantially less convenient to the public.
2. There is no recorded width for the existing footpath. It is currently fenced to a width of around 1 metre, although it is accepted that the fencing has narrowed the previously available width. OCC do not believe the previous width was more than 2 metres and this is not disputed by any of the parties. The proposed footpath has a width of 3 metres for most of its length, except for the last 8 metres where it narrows to 2 metres between trees. This will allow the public to pass each other more easily making the new footpath more convenient, even if a 2 meter width was available on the existing footpath.
3. The landowner only intends to fence the eastern boundary of the proposed footpath, which will make it feel less enclosed than the existing footpath. This could change in the future, but the proposed 3 metres will ensure a suitable minimum width remains available for use. Even if the previous width of the existing footpath were available, it would still feel more enclosed and confined than the proposed footpath due to the tree density and narrower width. This will make the proposed footpath slightly more convenient for the public.
4. The existing footpath has several exposed tree routes which could trip path users and can become muddy in winter. The proposed route is for the most part level with a firm stone and earth section which is believed to be part of an earlier track. There is a short muddy section. The landowner has agreed to lay stone on the muddy section of the proposed footpath to bring it into a suitable condition for use.
5. OCC is responsible for the surface of the public footpath and has powers to undertake improvements. Surface works could be undertaken to improve the condition of the existing footpath, but this will also apply to the proposed footpath if I confirm the Order. However, the ground conditions on the proposed footpath are better overall than those on the existing footpath. The wider width of the proposed footpath will allow path users to spread out reducing wear and tear and providing space to avoid damp sections.
6. The tree canopy over the existing footpath is denser than over the proposed footpath. A more open tree canopy increases light and air to the ground below helping the surface dry out and reducing the likelihood of poor surface conditions developing and in turn the need for maintenance. The surface of the proposed footpath will not affect the convenience to the public but could require less maintenance than the existing footpath.
7. There is a gate at point B on the existing footpath, but none are proposed on the new footpath which would make it slightly easier to use.
8. Although the extra distance and slightly less direct route will make the proposed footpath slightly less convenient it will benefit from the additional width and the removal of a gate. Overall, I consider the proposed footpath will not be substantially less convenient to the public.

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

1. It is generally agreed that the proposed footpath is a pleasant route. Many of those making representations consider the proposed footpath to be more enjoyable than the existing footpath because it is less confined, brighter, and wider, has better views, feels safer and is more family and dog friendly. The proposed footpath still passes through the same woodland so there will be no loss of woodland walking.
2. Some people consider the need to use the additional section of FP26 makes the walk less enjoyable as this section is dark, confined, and more daunting. However, this section is similar to the existing section of footpath. Furthermore, FP26 already appears to be well-used and is part of the Chiltern Way promoted recreational route.
3. It is suggested that the proposed footpath will be darker at night without stars and moonlight due to being further into the woodland than the existing footpath. However, the tree canopy over the proposed footpath is more open than on the existing footpath. Therefore, I do not consider this will affect the enjoyment of the footpath.
4. I do not consider the proposed diversion will affect the public enjoyment of the footpath as a whole and the representations indicate some people will find it more enjoyable.

***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. The existing and proposed footpaths run over land in the same ownership. The landowner applied for the diversion as they consider it will improve their privacy and security.
2. A landowner to the north uses the existing footpath to reach their fields near Keeper’s cottage. The diversion will add 88 metres to their journey. This will impact on access to their land, but given the short distance involved, I consider this impact to be minor.
3. They also consider the diversion will bring the footpath closer to their barn at the edge of the woodland north of Section A to C impacting their privacy and security. The woodland limits views of the barn from the proposed footpath. The unaffected part of FP27 is much closer to the barn than the proposed footpath and the barn can be clearly seen from it. It is suggested that the woodland could provide cover for anyone wishing to approach the barn without being seen. However, this is no different to the existing unaffected section of FP27 through the woodland north of point A. I do not consider the proposed diversion will affect the security or privacy of the barn.
4. An adjoining landowner considers the diversion will increase the use of the section of FP26 over their land damaging the ground. There may be some increase in use, but this section is already well-used and ground conditions are good. Furthermore, OCC is responsible for maintaining the surface of the footpath if it deteriorates. I do not consider the proposed diversion will have a negative impact on this land, particularly considering this section is already a public footpath.
5. Adjoining landowners consider the proposed diversion will increase use of FP26 and FP27 over their farmland and bring walkers closer to FP26 west of Point E, increasing the likelihood of livestock attacks and abusive behaviour from walkers. The proposed diversion is unlikely to increase use of this footpath network or the routes that the public walk outside of the woodland. I do not consider the diversion will affect the behaviour of walkers. There is a stockproof kissing gate on FP26 just west of E which restricts dog access into the field from the woodland.
6. The diversion will benefit the owner of the land crossed by the existing and proposed footpath. I do not consider the diversion will have an impact on most of the land served by the footpath and the slight increase in travel time to reach some land is negligible.

***Biodiversity***

1. Concerns are raised over the impact the diversion will have on the woodland habitat and dormice and tawny owls living there. I am advised there is a Tree Preservation Order (TPO) on the beech trees within the woodland.
2. OCC’s Protected Species Officer does not believe the proposed diversion or the proposed woodland regeneration plans will affect dormice, who only live in broad-leave trees, or tawny owls. The landowner is aware of the TPO and intends to remove holly and regenerate the woodland to protect the beech trees and woodland habitat.

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

1. OCC considers the proposed diversion will meet the aims of the ROWIP and improve the rights of way network by providing a safe, open, and enjoyable route that serves the needs of recreational users. It will replace a narrow and difficult path with a wider, drier route through more open woodland improving access for those with reduced mobility or vision.
2. The proposed diversion does not appear to conflict with any of the policies set out in the ROWIP.

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

1. I have found the proposed diversion to be in the interests of the landowner. I do not consider the proposed diversion to be substantially less convenient to the public and the new termination point will be substantially as convenient to the public. I do not consider the proposed diversion will affect the enjoyment of the footpath and some people will find it more enjoyable. The proposed diversion will not impact on most of the land served by the existing or proposed footpath, other than a slight increase in distance to reach some land. The proposed diversion will not have an impact on biodiversity. Therefore, I consider it is expedient to confirm the Order.

**Other Matters**

1. During the pre-order consultation process alternative routes were suggested which would have resulted in a shorter diversion. I am only able to take into consideration the diversion shown in the Order before me.
2. It is suggested the diversion could set a precedent for footpath closures and it is a dangerous precedent to allow diversions to suit landowner’s landscaping aspirations. The legislation allows for the diversion of public rights of way in the interests of the landowners and each application is judged on its own merits. Orders can only be confirmed if they pass the relevant tests for confirmation.
3. Concerns are raised that the diversion could result in the loss of woodland habitat as the landowner could turn it into a lawned garden. The landowner made it clear that they intend to regenerate the woodland and there is no evidence that they plan to turn it into lawn. Furthermore, the woodland appears to be protected by a TPO. Even so, the future proposals for the land are outside of the scope of the decision before me.

**Overall Conclusion**

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

**Formal Decision**

1. I confirm the Order.

*Claire Tregembo*

INSPECTOR

**APPEARANCES**

**For the Council**

Andy Sylvester Rights of Way Officer

**In Support of the Order:**

Andy Bowsher Applicant

Eric Hartley Local Resident

Elizabeth Pearson Local Resident

**In Objection to the Order:**

Chris Hall Open Spaces Society

Kate Ashbrook Open Spaces Society

David Godfrey The Ramblers and Oxfordshire Fieldpaths Society

Nicholas Moon Council for the Protection of Rural England

Martin Wise Local Resident

Charles Hedgcock Local Resident

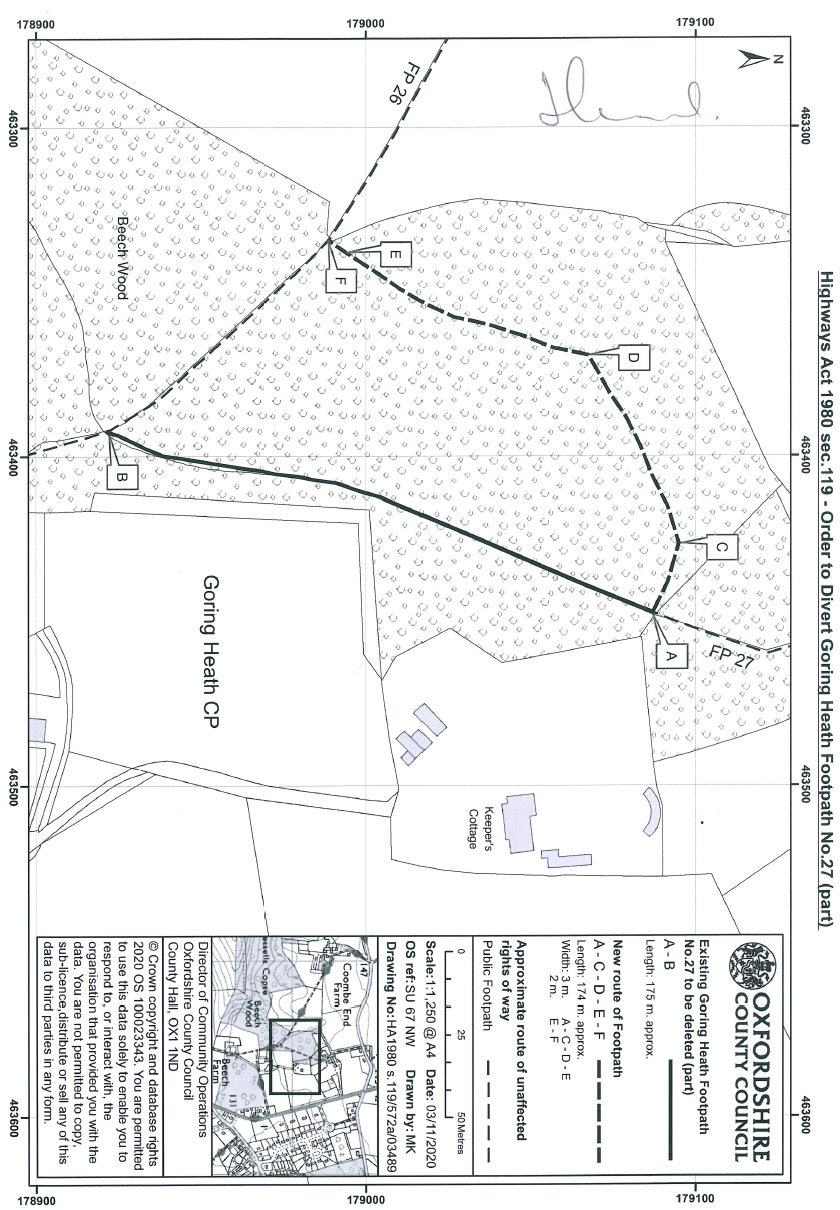
John Welting Local Resident

John Hatt Local Resident

**DOCUMENTS PRODUCED AT THE INQUIRY**

1. Open Spaces Society Comments on Agenda
2. Ordnance Survey 6 inch to the mile map 1912
3. Suggested Alternative Diversion
4. Tree Survey

**Order Plan**

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