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| **Order Decision** |
| Site visit made on 12 December 2023 |
| **by Graham Wyatt BA (Hons) MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 29 February 2024** |

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| **Order Ref: ROW/3292813** |
| * The Order is made by under Section 119 of the Highways Act 1980 and is known as the Oxfordshire County Council Ewelme Footpath No. 32 (part) and Brightwell Baldwin Footpath No. 2 (part), Public Path Diversion and Definitive Map and Statement Modification Order 2021.
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| * The Order is dated 28 June 2021 and proposes to divert the footpath shown on the Order Plan and described in the Order Schedule.
* There was one objection outstanding when Oxfordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. As the objector to the Order did not request to be heard, I made an unaccompanied site visit, taking into account the written representations. The effect of the Order would be to divert part of Footpath No. 2 (FP2) and Footpath No. 32 (FP32) from its current route to a new route to the east.

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 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 Applicants’) 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 route of FP2 currently runs southwards from Chalgrove where it connects to FP32 at Point D. The footpath then doglegs west to Point C and runs in a south easterly direction to Point A. The Order seeks to divert part of FP32 to the east of the property from Point A-E-F which are away from the property. The diverted footpath would then cross an arable field in a generally northwest direction from Point F-G-H-D where it would reconnect to FP2 which would then carry on its existing course. Therefore, part of FP2 would be deleted from Point D-C-B and part of FP32 would be deleted from Point B to A.
2. I do not share the objectors view that privacy is a matter for a large number of properties across the land and one that must be borne in mind when considering purchasing a property. The current route of FP32 passes through several garden areas of Whitehouse Farm and across the front of the main building, along with its parking areas, which is occupied as a private dwelling. Therefore, there is a matter of privacy for the owner of the property, and it is conceivable that users of FP32 could stray away from the footpath into private areas. Moreover, FP32 passes in very close proximity to the front of the dwelling which could result in additional privacy concerns as well as potential nuisance through noise and disturbance from users of the footpath.
3. In such circumstances, I find it reasonable for occupiers of such remote properties to be concerned about security. These are matters that I find in favour of the Order.

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

1. FP32 currently runs from Point A to point B and meets FP2 at Point B. It is proposed to divert FP32 to the east of the private areas and dwelling, so it crosses woodland from Point A-E-F where it then crosses a pasture field from Point F-G-H and then across an arable field from Point H-D where it reconnects to FP2.
2. Therefore, the Order route will still connect FP32 at Point A and FP2 at Point D. Thus, the terminal points of the proposed routes are on the same highway as the footpath. 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 the termination points are as substantially as convenient to the public.

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

1. The routes offer 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 and cross private areas and across the front of a private dwelling and parking areas. The Order route would offer views across the landscape that are superior to the current route of walking through private, domestic areas. The Order route would also alleviate the need to cross two stiles and pedestrian gates would be provided. This would offer a route that is likely to benefit those with reduced mobility.
2. Moreover, the Order route would add a further 87m along an existing route of some 1.54km. I do not consider this to be a significant increase. 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. There is no requirement that users of the footpaths should be able to experience the same amenities as the existing footpaths provide. Notwithstanding the straightness of the proposed route, the diversion of the footpaths would take users further east across open fields where views across the landscape are extensive and one can appreciate the open and rural qualities of the area. Moreover, the Order route will take users away from the residential areas where one could realistically stray off the footpath and into areas that are private.
2. The proposed diversion is a small part of a longer rights of way network and would nonetheless provide similar amenities and vistas across a landscape of open pasture fields and a wooded area, which I found to be a more pleasant experience than walking through private garden areas and passing by the front door of a dwelling and through its parking area. The Order route will also result in the removal of three stiles with two pedestrian gates which would make the route more accessible for those with low mobility.
3. Thus, in my view, the diversions 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. Aim 1 of the Oxfordshire Rights of Way Management Plan 2015-2025 (ORWMP) seeks to improve public rights of way when opportunities arise. Aim 3 of the ORWMP also seeks to ensure that its rights of way network is reasonably accessible to those with limited mobility. For the reasons as set out above, I am satisfied that the Order route will improve the rights of way and will enable those with low mobility access to the route without the need to climb over stiles.
2. Thus, in my view, the proposed Order route complies with the aims of the ORWMP.

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

1. I have found that the diversions are 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 in the written representations, I conclude that the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

Graham Wyatt

**INSPECTOR**

**ORDER MAP - COPY NOT TO SCALE**

