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| **Order Decision** |
| Site visit made on 5 March 2024 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 25 March 2024** |

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| **Order Ref: ROW/3304133** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act). It is known as the Norfolk County Council (Pulham St Mary Footpath No.10) Diversion Order 2021.
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| * The Order is dated 14 April 2021 and proposes to divert part of footpath no.10. Full details are shown on the Order plan and described in the Order Schedule.
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| * There was one objection outstanding when Norfolk County 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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Preliminary Matters

1. I undertook an unaccompanied site inspection on Tuesday 5 March 2024.
2. In this decision I will refer to the points on the Order route. I have appended a copy of the Order plan to the end of my decision. Norfolk County Council as the Order Making Authority (OMA) are passively supporting the Order. A submission in support of the Order is also made by the applicant’s representative.
3. The objector refers to a building obstructing the existing route. However, as there is no recorded width on the Definitive Statement, it is unclear whether the footpath is obstructed by the building. From my site visit it was noted that the existing footpath is obstructed by a hedge, at point B on the Order plan. I have treated the existing route as if it is available for public use. The proposed diversion is already laid out and is in use by the public.

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 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. 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.
2. The government guidance on “diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises” was issued by Defra in August 2023. It is also known as the ‘presumptions guidance’. Although this was issued after the making of the Order the applicant’s representative has mentioned the guidance and it falls for consideration. It states that I should weigh the interests of the owner against the overall impact of the proposal on the public as a whole. Reducing or eliminating the impact of the current route of the right of way on the owner, in terms of privacy, security and safety are important considerations to which due weight should be given.

Reasons

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

1. The diversion Order has been made pursuant to an application by the owner of the land over which both the existing and proposed routes pass. The basis of the application is for privacy reasons. The existing footpath runs near to a residential dwelling, outbuildings and through a private garden. Users of the footpath can see directly into several windows of the property and outbuildings. They also have a full view of the garden. From my site visit I noted an outdoor decking area, hot tub, and children’s play equipment, all of which were visible from the footpath. The landowner states the diversion would significantly improve their privacy and quiet enjoyment of the garden.
2. Although no previous specific security incidents have been mentioned, the landowner states the footpath diversion would enable a gate at the entrance to the property to be locked, thereby increasing the level of security.
3. The existing route of footpath no.10 runs in a generally south south westerly direction from Lonely Road, point A on the Order plan, along a gravel driveway and through a gate, then along a gravel path and lawn to the property boundary at point B. The Order seeks to divert part of footpath no.10 to a route around the perimeter of the property boundary, to the east of the existing alignment between points C and B on the Order plan. The diverted route would follow a fence line on its western side. From point C it would follow a south south-westerly route, to then re-join the existing alignment of footpath no.10 at point B.
4. I accept that it is expedient in the interests of the landowner for the path to be diverted. By diverting the footpath away from the dwelling and garden it would improve the landowner’s privacy.

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

1. The Order proposes a new termination point at the northern end, where the footpath joins Lonely Road. There is a distance of approximately 5 metres between the two points. There is a hedge immediately to the west of point A which does obscure the view of the road slightly. Users of the footpath do need to lean out to get a better view of the road. I consider that the visibility from point C would be an improvement, particularly when looking west along Lonely Road, as it gives a clear unobstructed view of the road. As the distance between the two points is minimal, the public would not be considerably inconvenienced by this change. Therefore, I consider the new termination point would be substantially as convenient to the public.

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

1. According to the OMA the proposed route of footpath no.10 is 3 metres longer than the existing alignment. The objector states the existing route is more direct and easier to follow. It is claimed that the additional distance, and introduction of two curves, mean the proposed diversion would be less convenient to the public. I consider 3 metres to be a minimal increase in the context of this path. The proposed route would run parallel to the existing route and is therefore as direct. I consider the two small curves in the proposed route to be slight, they would not make the proposed route substantially less convenient to the public.
2. The existing route does not have a recorded width in the Definitive Statement. The objector has submitted historic Ordnance Survey maps, which show a track between a solid line and a dashed line. By measuring the track on the Ordnance Survey County Series 2nd edition map, with reference to the scale on that map, the objector claims the existing footpath has a width of at least 4 metres. Accordingly, the objector claims the reduction in width, to the 2 metres proposed by the Order, would make the new path substantially less convenient.
3. I consider that the Ordnance Survey maps show the track as a feature on the ground at the time. The public footpath may or may not have extended to the full width of the track shown, it would also have been used by the landowners in a private capacity. It is noted that the track does narrow once it passes the outbuilding to the south of the house. It is not possible to say what the legal width of the existing route would be without further investigation. The proposed diversion, with a recorded width of 2 metres throughout, would give greater clarity to the public. I consider this width is reasonable and would be sufficient for users of the footpath to pass each other. If it was found that the existing route has a greater width than 2 metres, this may mean the proposed route would be less convenient in this regard, but not substantially so.
4. The surface of the proposed route would be a natural surface with compressed wood bark chippings. I consider this firm and even surface to be an improvement to the loose stone surface on the existing route. The existing route has a wooden gate just to the south of point A, the proposed route would not have any path furniture, therefore in terms of accessibility this would be an improvement.
5. The landowner has raised concerns of public safety, due to the potential conflict between pedestrians and vehicles. Point A on the existing footpath is also the vehicular entrance to the property. The diversion proposal would eliminate any potential conflict, making the diverted route more convenient for the public.
6. Overall, having regard to all of these factors, I conclude that the Order route would not be substantially less convenient to the public, and in some respects would be more convenient.

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

1. The objector states that footpath no.10 passes through an attractive environment, it is also an historic path, dating back to at least Victorian times. It is claimed that diverting the footpath would affect the enjoyment of walking the path. There is also concern that, the proposed route would be confined between an outbuilding and a fence, and this would affect the public enjoyment.
2. The landowners have clarified that the proposed route would not run between an outbuilding and a fence. A new fence has been installed which immediately abuts the outbuilding. The proposed route would run with the fence on its western side, it would be unenclosed on the eastern side. Consequently, I find that any impact on the public enjoyment of the path as a whole would be limited.
3. I recognise that some users of the footpath may not be comfortable walking immediately adjacent to the property and through a private residential garden, they may feel like they are intruding in a private space. This could affect their enjoyment of the route. The OMA has received letters of support indicating that they prefer to walk the diverted route. Furthermore, on my site visit I noted the view from the existing route is obstructed by the buildings, fences, and hedge. However, there was a pleasant view from the proposed route of the surrounding farmland to the east and the south. For some people this open view may enhance their enjoyment of the path as a whole.
4. Taking account of all the factors, I conclude that, on balance, public enjoyment of the route as a whole would not be significantly negatively affected by the diversion and may in some respects be enhanced.

***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 the diversion would have any negative impact on the land affected by either the new route or the existing route. The applicant is the landowner for the new and existing route.

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

1. The OMA state that the Order is compatible with the objectives of the ROWIP. The objector claims the Order does not accord with the ROWIP. The objector refers to the fact that the OMA state they will seek a 2 metre width for unenclosed, and a 3 metre width for enclosed paths, for all new and diverted footpaths. However, as referred to in paragraph 19 above, the landowners have clarified that the proposed route would be open to the adjacent field on the eastern side. The new fence separates the garden from the footpath, the landowners have no intention of erecting further fencing. Furthermore, the adjacent field is unfenced all along its boundary with Lonely Road and it is therefore unlikely to be fenced in the future. Consequently, I am satisfied that the Order is consistent with the objectives of the ROWIP.

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

1. I have concluded that it is expedient in the interests of the landowner to divert the path. The Defra guidance referred to at paragraph 6 above guides that I should weigh the interests of the owner against the overall impact on the public. The privacy issues, referred to at paragraph 7 above, are important considerations. Diverting the route would reduce the impact significantly on the landowner.
2. The change to one termination point and the resulting diversion would not be substantially less convenient to the public. The diversion may have some adverse effect on the enjoyment of the route for some people, however, I consider that for the majority this would be minimal. The proposed route is likely to be more enjoyable to use for most people. Indeed, correspondence received by the OMA suggests that some local residents prefer the proposed route.
3. Having weighed up the competing interests, I am satisfied that it is 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.

*J Ingram*

INSPECTOR

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