

|  |
| --- |
| **Order Decision** |
| Site visit made on Tuesday 13 February 2024 |
| **by A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 21 March 2024** |

|  |
| --- |
| **Order Ref: ROW/3304518** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Norfolk County Council (Field Dalling Footpath No.8 (part)) Diversion Order 2021. |
| * The Order is dated 15 September 2021 and proposes to divert the public footpath as shown on the Order Map and described in the Order Schedule. |
| * 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.** |
|  |

**Preliminary Matters**

1. I made an unaccompanied site visit on Tuesday 13 February 2024, when I was able to view the current and proposed routes and walk those parts of the existing route that were not obstructed. 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. I note from the Council, that the relevant part of the legal line of the footpath is currently obstructed by a garden wall, caravan, swimming pool, vegetation, and fencing. Mr Witham, on behalf of the Open Spaces Society (the objector), commented that the current obstruction of the existing footpath, was a result of what he considers are years of neglected maintenance by the Council. Nonetheless when considering this case, I will disregard any obstructions on the existing way and assess the matter as though it was open and available for public use.
3. Birketts, who represent Mr and Mrs Fox (the applicant), brought attention to the Presumptions Guidance issued by the Department for Environment, Food and Rural affairs (DEFRA) in August 2023. They submitted that the guidance was relevant to the proposed diversion as the footpath currently runs through the garden of the property and I concur with the applicant in this respect. Accordingly I will consider the impact of the footpath on its current alignment through the applicants garden, balanced with the overall impact to the public, affording appropriate weight.

***Width of the route***

1. There is currently no recorded width for Footpath 8 (FP8) on the Definitive Map and Statement (DMS) for the area. I note that the objector submitted an application under Section 53 (S53) of the Wildlife and Countryside Act 1981 in 2020, which was then subject to a Direction in December 2022. The application is to add a width to the particulars of the path, as well as provision that there are no limitations or conditions on the footpath.
2. Although the S53 application does not yet appear to have been determined, the Council have advised that they agree with the objector’s submission in his S53 application, in the regard that there should be no limitations or conditions entered on the DMS for FP8, and that the width should be based on the pecked lines shown in the 1905/6 OS County Series Map, due to its reputable accuracy.
3. The Council, as part of their normal procedures, investigated the width of the footpath prior to making the Order. This was carried out by measuring the width shown on the 1905/6 OS map, using GIS software mapping tools, with the results ranging between 1.8 - 2 metres.
4. The lack of a width being stated on the DMS at this time, does not preclude me from being able to determine the Diversion Order before me. My comparison of the current footpath and proposed diversion is as a ‘whole’ and I am satisfied that the width specified on the Order is appropriate.
5. I do, however, acknowledge and appreciate the objector’s frustration that the S53 application was submitted prior to the diversion application and his aligning consideration that it should as such, have been determined prior to the diversion application.

**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 footpath should be diverted.
* the new right of way will not be substantially less convenient to the public.
* any new termination point will be substantially as convenient to the public.
* it is expedient to confirm the Order having regard to the effect which:

(a) the diversion would have on public enjoyment of the way as a whole.

(b) the coming into operation of the Order would have, in respect of other land served by the existing path; and the land over which the new right 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 right of way should be diverted***

1. In July 2020, the applicants submitted an application to partly divert FP8 where it runs across their property. The application was made on the grounds that the diversion would improve security at their property, increase their privacy, allow their dogs to run freely in the garden, and relieve them of the need to be aware of walkers when using their driveway and turning area.
2. It was quite clear from my observations on the site visit, that the proposed diversions would undoubtedly be in the interest of the landowner with respect to improved security and privacy at their property. The existing footpath crosses the garden, directly across an outside recreational area, passing next to a swimming pool, greenhouse, and caravan, with an open view of the nearby house. Accordingly I consider this test is met and that it would be expedient to divert the footpath in the interests of the landowner.

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

1. Diverting that part of FP8 to the property boundary would involve a minor change to the direction of the path, albeit the general direction of travel is maintained. This alteration of the path alignment would increase the length of FP8 by approximately 15 metres. I agree with the objector that the current historic line of FP8 may be a little more direct for that part that is being diverted, however the path is in a rural location and the existing line of the entire of FP8 is not direct between its termination points, but meanders around the geographical features of the landscape. In the context of this rural location, the additional length is not substantially less convenient to the public, when considering the overall distance travelled in a recreational capacity.

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

1. The eastern termination point of FP8 is unaltered, and the proposed western termination point remains on the same highway, albeit very slightly north of its original terminal point. The objector felt that by shifting the termination point to one side of the driveway, visibility and sight lines could be impeded by the boundary hedging. The applicant did not agree with this comment, stating that the new termination point starts within an open area of highway boundary, with extensive visibility on both sides of the road. On my site visit I noted that FP8 terminates on the applicant’s driveway, with an open view along a relatively long and straight section of road. The movement of the termination point is only a matter of a few feet, to the north of the centre of the driveway. I did not observe any impediment to visibility at the new termination point, as suggested by the objector, and accordingly consider that the termination point is substantially as convenient to the public.

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

1. FP8 as a whole, enjoys a rural aspect, with a mixture of views across the open countryside as well as passing through woodland areas. At point A, the existing footpath runs along the applicant’s driveway and through their garden, before heading into woodland at point C.
2. The objector did not agree with the reference by the applicant, that users of the path would be embarrassed by crossing the owners garden. The objector felt that the legal line of the path did not pass particularly close to any dwelling house and considered that if the Council were to adequately maintain and signpost the footpath, users would have the potential not to stray from the route onto private quarters.
3. However on my site visit, I observed that the footpath on its current alignment passed in extremely close proximity to the swimming pool, greenhouse, and a caravan, with very clear views of the house across the garden area, which had an open aspect.
4. The enjoyment of any path is subjective by nature and of course, open to varying opinions. Whilst I recognise that there is enjoyment and interest for some in travelling through the grounds of a private property, it is my view that others may experience a sense of discomfort and intrusion from walking through a private garden at very close quarters to the outside recreation areas.
5. The proposed diversion affects only a very small section of FP8 and retains the views of the house, whilst reducing the need to walk through the middle of the garden. The rest of the footpath is unaffected and retains its rural aspect. When looking at FP8 as a whole, I consider that the effect of the diversion will have minimal impact on public enjoyment.

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

1. The land on which both the current footpath and the proposed diversion are situated, are within the land ownership of the applicant. No issues are raised which suggest that the diversion would have any adverse effect on land served by the existing route, or on the land over which the alternative route 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 diversion is compatible with their ROWIP, in providing an easily accessible route. No adverse impact on flora, fauna, geographical or physiographical features have been identified.

**Other Matters**

1. The objector questioned whether as part of the diversion, the applicant would be willing to dedicate higher rights to that part of FP8 that runs through their property. The applicant in their response commented that there was no request from the public or other sources to upgrade the path, and further added that there was no evidence to suggest that the path is subject to higher rights.
2. I respect the objector’s commitment to improving the public right of way network, albeit any possible future upgrading of the route is not a matter before me and should be a separate conversation between relevant parties.

**Conclusion**

1. I have found that the Order is expedient in the interests of the landowner in terms of privacy and security.
2. The proposed diversion of that part of FP8 involves a 15 metre increase in length, which is negligible when considering use is likely to be recreational or part of an onward journey. Accordingly, the proposed route is not substantially less convenient.
3. The change of the termination point of FP8 is just a few feet to the north, and in my view, does not form a visibility issue of any sort. I therefore consider the termination point remains substantially as convenient to users.
4. The proposed diversion, albeit it quite short, retains the rural character of FP8, whilst being less intrusive with regard to the private garden and outdoor recreational area of the property. Overall, when considering the proposed diversion within the countryside context in which it sits, I do not regard there to be a decrease in public enjoyment ‘as a whole.’
5. Turning to the Presumptions Guidance, I note that there are no other objections before me from the local community regarding the diversion of the part of the path applied for. The proposed diversion comprises a negligible change to the overall enjoyment of the path, and there is nothing before me to suggest that there is an inherent benefit to the community in the path running through the garden of the property, which would outweigh the impact it has on the residents of the property.
6. 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**

