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| **Order Decision** |
| Site visit made on 5 December 2023 |
| **by John Dowsett MA DipURP DipUD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food, and Rural Affairs** |
| **Decision date: 17 June 2024** |

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| **Order Ref: ROW/3307808** |
| * This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981 and is known as the Cumbria County Council (Footpath NO 253009 Parish of Silloth) Public Path Diversion and Definitive Map and Statement Modification Order 2022. |
| * The Order is dated 16 August 2022 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There were 3 objections outstanding when Cumbria County 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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Procedural Matters

1. The Order has been made under Section 119 of the Highways Act 1980 (the 1980 Act) to divert part of the route of Footpath 253009. Section 53A(2) of the Wildlife and Countryside Act 1981 makes provision that an Order to divert a public right of way may include within it such provision as may be required under Section 53(2)(b) of that Act to also modify the definitive map and statement. This is the case with this Order. Consequently, if confirmed, the Order would also modify the definitive map and statement for the area once the provisions relating to the diversion come into force.
2. On 1 April 2023 a new unitary authority, Cumberland Council, took over the administrative functions of Cumbria County Council, Carlisle City Council, Allerdale District Council and Copeland District Council. Whilst the Order Making Authority (OMA) has changed since the Order was submitted for confirmation, this has no implications for the Order.
3. Whilst three objections to the Order were received within the statutory time period, a fourth objection was received outside of the time period. I have had sight of this additional objection and it raises similar points to the other objections and does not raise any new issues.

The Main Issues

1. Section 119 of the 1980 Act requires me, in this case, to determine:

* Whether it is expedient in the interests of the owner, lessee, or occupier of land crossed by the path or way, or of the public, for the path to be diverted;
* Whether the proposed diversion would not be substantially less convenient to the public; and
* Whether it is expedient to confirm the Order having regard to the effect which: (a) the diversion would have on public enjoyment of the footpath 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, 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).

Reasons

1. Public Footpath 253009 runs around Grune Point, a spit of land between the Solway Firth and Moricambe Bay, located just to the north east of the village of Skinburness. The footpath commences adjacent to the coastline to the south west edge of Skinburness from where it runs in a generally north east direction following the coastline to the rear of the houses on Skinburness Road and Ryehills Road before running parallel to Dick Trod Lane, passing through a gate, and continuing parallel with the coastline to the junction with Footpath 253016 at Point A on the Order Map. A short distance to the north east of this junction coastal erosion has resulted in the formation of a small bay and the defined line of the footpath consequently runs across a stony beach before making landfall again approximately 90 metres west north west of Grune House.
2. Once past Grune House, the defined route veers east by north to run through a small field in the shape of an irregular pentagon, which is partially enclosed by a concrete wall, before once more turning generally north east to run parallel to the boundary of four fields, passing inside the boundary of the central two. The route then turns south south east at point N on the Order Map, just before Grune Point, and then runs generally south west by west from Point O on the order map to meet a track which runs between the field boundaries and an area of salt marsh back towards the village of Skinburness. Once within the village the route crosses Skinburness Road where it meets Footpath 253008 just to the south of Midtown Farm.
3. The route of the King Charles III England Coastal Path (the ECP) follows much of the same route as Footpath 253009 around the spit and the Order seeks to divert that section of Footpath 253009 which is not co-incident with the ECP (between Points A and B and Points C and D on the Order Map) onto the same line. The route of the ECP has been established on the ground, is signposted, and is in use.
4. I observed when I visited the site that the defined route was impassable where it crosses the pentagonal field, roughly between Points J and L on the Order Map, and was not visible on the ground between this field and Point N on the Order Map.

*Whether it is expedient in the interests of the landowner or others for the path to be diverted*

1. The evidence indicates that the proposed new route crosses land within four ownerships. None of the landowners object to the proposed diversion. The proposed diversion would re-route the public footpath around the perimeter of the pentagonal field instead of crossing it. The diversion would also move the definitive route outside of the boundary of two fields. In terms of land management and use, this would be advantageous to the respective landowners.
2. Although it is also a matter of convenience, which is addressed elsewhere this decision, the diversion of that section of the current route which is presently inundated at high tide away from that area is in the interests of the public as the route would be available to the public at all times. The co-location of the current right of way with the ECP would also reduce overall maintenance costs from the public purse.

*Whether the proposed diversion would not be substantially less convenient to the public*

1. The proposed new route would not be significantly different in terms of length, and, in any event, the proposed route would be very close to the existing route. The current route is presently a recreational route forming part of a circular walking route around the spit and this would be unchanged by the proposed diversion.
2. At present the section of the definitive route which now crosses the beach would be flooded and impassable at high tide. The stretch of beach is composed of large pebbles which present an uneven and unstable walking surface. It is proposed to divert this section of the path onto a new loop of footpath that has been created a short distance inland through the fields bordering the coastline, between points E and B on the Order Map via Points F, G, H, and I. Although this new section would be slightly longer, it would be passable at all times and would provide a more even walking surface.
3. All of the other sections of the route are compacted earth or trampled paths through grassland. The proposed diversion would not otherwise alter the walking surface.
4. It is suggested by one of the objectors that the diversion around the perimeter of the pentagonal field is unnecessary as the field is rarely used for livestock and that the diversion would move the route of the footpath closer to the coast where it is likely to be affected by coastal erosion sooner than the current line of the path. With regard to the first point, the proposed diverted route is not materially longer than the present route and is served by level access and gates. The current defined route involves negotiating a low wall to pass along it. The proposed arrangements would provide better access and be only a few metres longer than the present route.
5. On the second point, although the line of the footpath would be moved closer to the coast, erosion of unprotected coastlines is a natural process which is also not readily predictable. Although, in time, this section of path is likely to be lost to the sea, and the OMA accept that this will eventually happen, the same is true of other sections of the path where it is adjacent to the coast. Of itself, I do not find that this is a reason not to confirm the Order.
6. The diversion would involve the introduction of three kissing gates on the new route. Whilst these would form obstacles on the route, the present route of the footpath involves the negotiation of a wall and fences in a similar number of places. In this respect, the proposed diversion would represent a small improvement over the current situation.
7. In the above context, I find that the proposed diversion would not be substantially less convenient to the public.

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

1. Footpath 253009 forms an essentially circular walking route around Grune Point, initially running immediately adjacent to the shoreline on the north west side, before turning slightly inland to run through an area of coarse grassland and scrub before rounding the end and running back down the opposite side of the spit, adjacent to the salt marshes and mudflats, to return to the village.
2. Although the diversion is long, it would affect less than half of the overall length of the footpath. For most of its length, the proposed new route is close to the current route of the footpath and, consequently, the walking experience of the whole path would be essentially similar.
3. The diversion between Point F and Point B on the Order Map potentially has the greatest effect as it would take the route away from the coastline and views to the seaward side would be occluded by vegetation. However, this section of the diversion would replace the section of the current route which is inundated by the sea at high tide with a route which would be passable at all times and, in any event, access to the beach at either end of the diversion would not be prevented. The effect of the diversion at this point would consequently be broadly neutral.
4. Similarly, the short diversion around the perimeter of the pentagonal field would not adversely affect the users experience of either this section of the footpath or the footpath as a whole. Otherwise, although it would follow a slightly different line, the overall experience of walking the route would be broadly similar, with sections close to the coastline before turning inland and passing through coarse coastal grassland adjacent to fields to reach the headland. I saw when I visited the site that the proposed new route was clearly being used whereas the current defined route, whilst still discernible in some places, most notably where it meets the beach near Points A and B on the Order Map, was not particularly evident on the ground where it crosses the coarse grassland and fields. This is in some respects indicative that walkers are not using the current route in preference to the proposed new route.
5. Within this context I find that the proposed diversion would not have any adverse effect on the public enjoyment of the footpath as a whole.

*The effect of the Order in respect of other land served by the existing public right of way and the effect of the new public right of way created in respect of the land over which it is to be created, and any land held with it.*

1. Footpath 253009 is a recreational route which runs around Grune Point. Whilst there are field accesses from the track on the south eastern side of the spit, the proposed diversion would not affect the use of these as the access track is not part of the diverted route, nor is vehicular access to the track gained over any of the diverted route.
2. The land over which the proposed diversion passes is in the same ownerships as the present route and, due to the proximity of the two routes, the majority of the land over which the diversion would run is also rough coastal grassland. There would be a minor beneficial effect in land management terms for the existing land where the present route runs through fields in the same ownership. There is no evidence which would indicate that the proposed diversion would be likely to significantly increase usage, a concern which was raised by some of the objectors, given the existence of the ECP over the same route.
3. I therefore find that the effect of the diversion on other land served by the existing path, and on the land over which the new path would be created, would be a neutral one.

*Rights of Way Improvement Plan*

1. The Cumbria Countryside Access Strategy 2019 to 2024 sets out a number of priorities including for rights of way. The OMA’s report to the Development Control and Regulation Committee states that the proposed diversion would meet two of the priority areas of work identified in the Countryside Access Strategy namely: Improving Rights of Way and Countryside Access and Managing Rights of Way and Countryside Access.
2. Whilst a copy of the Countryside Access Strategy has not been provided as part of the OMA’s evidence, there is nothing before me which would indicate that the proposed diversion would not assist in meeting the identified objectives as it would make the route accessible during all states of the tide and combining the route with the ECP would reduce overall maintenance costs.

**Other matters**

1. The land over which both the current definitive route of the footpath and the proposed diversion run is within the Solway Coast National Landscape (formerly Area of Outstanding Natural Beauty), as well as within the Solway Firth Special Protection Area (SPA); Solway Firth Special Area of Conservation (SAC); and the Upper Solway Flats & Marshes Site of Special Scientific Interest (SSSI) with the latter also being a Ramsar site.
2. The proposed diversion would be close to, and broadly similar in appearance to, the existing route although the introduction of a small number of kissing gates would introduce a physical feature not previously present. However, I saw when I visited the site that these are few in number and not visually obtrusive. Within this context, I find that the proposed diversion would conserve the natural beauty of the area.
3. The Upper Solway Flats & Marshes SSSI is a site of national and international importance for wintering wildfowl and wading birds and is part of a chain of west coast estuaries used by migrating birds. The site is also noted for its populations of breeding birds, natterjack toads and invertebrates, whilst the geomorphology and vegetation of the estuarine saltmarshes, or merses, is also of great importance. It is also designated as a Ramsar site because of the international importance of the wetlands.
4. Whilst the presence of human beings does give rise to potential for disturbance of birds and amphibians and passage on foot can lead to trampling of vegetation, a used route currently exists close to the line of the proposed diversion. I would concur with the OMA’s conclusion that the proposed diversion would not significantly increase the usage of the route, notwithstanding the establishment of the ECP. Consequently, I would conclude that the proposed diversion would conserve the flora, fauna, geological, and physiographical features by reason of which the site is of Special Scientific Interest.
5. The Solway Firth SAC is designated primarily due to sandbanks, estuaries, mudflats and sandflats, and salt meadows habitats, although fixed coastal dunes with herbaceous vegetation are also a qualifying feature. Sea and River Lamprey are species of note in the designation. The Solway Firth SPA and Upper Solway Flats & Marshes Ramsar are classified primarily due to populations of European importance of wildfowl and waterfowl, both resident and migratory, and the international importance of the wetland habitat.
6. As the route of the proposed diversion is within the boundaries of the SPA, the SAC, and a Ramsar site, consideration must be given under the Habitats Regulations to the potential effects on these sites as a result of the proposed footpath diversion.
7. I have been provided with a copy of a Habitats Regulations Assessment (HRA) containing an Appropriate Assessment that was carried out by Natural England in respect of the ECP (*Habitats Regulations Assessment of England Coast Path proposals between Gretna and Allonby* *2021*). Natural England have been consulted and have confirmed that there have been no significant changes in circumstances since the HRA was produced and Natural England are satisfied that the HRA is still up to date and robust.
8. The Guidance on Habitats Regulations Assessments: Protecting a European Site, issued by the Department for Environment, Food, and Rural Affairs sets out that, in certain circumstances, decision makers can use an HRA carried out by another competent authority. Natural England are a competent authority for the purposes of this Order. These circumstances are: if the decision maker is satisfied that since that HRA was carried out there has been no new information in respect of the designated sites; that the assessment carried out by the other competent authority is relevant, thorough, and correct; that the conclusions are rigorous and robust; and that there is no new case law that changes the way an assessment should be carried out or interpreted. I am satisfied that this is the case in respect of this proposed diversion and, indeed, the OMA have relied on the HRA carried out by Natural England in making the Order.
9. Whilst, technically, the HRA was carried out in respect of a different project (the establishment of the ECP), the practical outcome of confirming this Order would be that the route of Footpath 253009 would become co-located with the route of the ECP. Consequently, it is reasonable to proceed on the basis that the potential effects of the proposed diversion of parts of Footpath 253009 would be the same as those of establishing the ECP. I have, therefore, used the evidence and conclusions from the Appropriate Assessment carried out by Natural England.
10. The Appropriate Assessment carried out by Natural England concluded that the proposal for the ECP, taking into account any incorporated avoidance and mitigation measures, would not have an adverse effect on the integrity of the Solway Firth SPA and SAC, or the Upper Solway Flats & Marshes Ramsar Site either alone or in-combination with other plans and projects. There is no evidence or information before me that would cause me to reach a different finding and I, likewise, conclude that the proposed diversion of Footpath 253009 would have no adverse effects.
11. Other points raised in objections relating to lack of car parking facilities in the nearby village and the potential for increased litter are not factors which can be taken into account.

Conclusions

1. For the above reasons, I conclude that the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

John Dowsett

INSPECTOR

