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| **Order Decision** |
| Site visit made on 22 April 2024 |
| **by Claire Tregembo** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
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| **Decision date: 8 May 2024** |

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| **Order Ref: ROW/3311726** |
| * This Order is made under Section 119 of the Highways Act 1980 and is known as the Herefordshire Council Footpath YP6 (Part) Yarpole Public Path Diversion Order 2022. |
| * The Order is dated 30 May 2022 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There were two objections outstanding when Herefordshire 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. An Order to divert the footpath was made on 24 January 2022 under the Town and Country Planning Act 1990 (the 1990 Act) to allow permitted development to occur which received one objection. However, the development was almost complete. Orders made under the 1990 Act cannot be confirmed if the development affecting the path is substantially complete. Therefore, the 1990 Act Order was abandoned, and a new Order was made under the Highways Act 1980 (the 1980 Act). The 1980 Act Order also received objections which have not been withdrawn, and this is the Order that is now before me.
2. I have appended a copy of the Order plan to the end of my decision.

**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. 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. Part of the Order route has been built over and is now obstructed. When comparing the existing footpath to the proposed footpath, I will disregard any circumstances preventing or diminishing use of the existing footpath and apply the above tests as if the legally recorded footpath is open and available for use.

**Reasons**

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

1. The existing footpath now runs through two residential properties, three gardens, and across a private road. Two properties would need to be demolished if the existing footpath were to be made available. This would have a significant impact on the interests of the owners and occupiers of these properties.
2. The existence of a public right of way through houses and gardens can lead to problems in conveyancing, obtaining a mortgage, and selling properties. The new houses all appeared to be occupied at the time of my site visit, and I have not been advised of any issues that arose during their sale. However, there is the potential for these issues to arise during any future sales. The value of the properties is likely to be adversely affected by the footpath running through them.
3. The existing footpath will also affect the privacy and security of the properties and impact on the resident’s enjoyment of their private gardens. The proposed diversion takes the footpath out of the properties and gardens into an adjacent field.
4. I consider the diversion will prevent two houses from being demolished, resolve any issues with the future sale of the properties, increase their value, and improve the privacy and security of the houses and gardens. Therefore, I am satisfied it is in the interests of the owners and occupiers of the properties to divert the footpath.

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

1. The proposed diversion moves the termination point at the south-western end of the footpath approximately 45 metres south-east along the C1039. This is slightly further out of the village. However, it is also closer to footpath YP7 to the south and anyone using both paths would have less roadside walking.
2. The new termination point joins the C1039 on the outside of a bend. There is good visibility in both directions and the field access provides a safe space for walkers to stand whilst waiting to join the road. The visibility to the south-west at the existing termination point is limited by the bend. Therefore, visibility is slightly better at the new termination point.
3. For these reasons, 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. Prior to the residential development, the existing footpath ran across the middle of a field. The proposed footpath is along the grassed edge of two fields which is level and firm. There were sheep in the fields at the time of my site visit, but the grass looked recently seeded. If the fields over which the Order route runs are used for arable farming, a field edge footpath would be more convenient than a cross field footpath as it would not be ploughed or planted with crops. If the fields are only used for livestock, I consider the proposed footpath to be equivalent to the existing footpath, prior to development.
2. The existing footpath now passes through residential properties, gardens, and across a stone access road. Some parts of it are obstructed by buildings and fences and walkers have to share the road with vehicles. Although I am considering the Order route as if it were open and available for use, I cannot ignore the fact that the existing footpath now crosses gardens, a road and through properties that would need to be demolished to allow its use. It is likely that some walkers will find the proposed footpath more convenient than the existing footpath in its current state. The proposed field edge footpath would be easier to follow than the existing footpath through gardens and properties.
3. The proposed footpath is 16 metres longer which has a minimal effect on the convenience to the public. The gradient of the existing and proposed footpath is the same. There is no recorded width for the existing footpath. The proposed footpath is two metres wide which I consider to be sufficient width for two people to pass each other.
4. Prior to the development, I am advised there were no structures on the existing footpath. At the time of my site visit there were four sections of metal fence held together with metal rods at Point C. This was not stable enough to climb over, but I was able to remove a rod to gain access. This structure made it difficult to access the proposed footpath, but it was probably erected to stop the sheep getting into the road. The Order includes a pedestrian gate at Point C. I am advised there is no intention to install the gate at this time and a wide gap will be left. However, if I confirm the Order and the sheep remain in the field, the gate will need to be installed to prevent the sheep escaping. A gate is slightly less convenient than a gap, but I do not consider it makes the Order route substantially less convenient.
5. Overall, I consider the proposed footpath will not be substantially less convenient to the public than the existing footpath.

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

1. The proposed footpath follows the edge of a beck and has views over farmland. The existing footpath originally had similar views, but the houses now obscure them.
2. I consider there are likely to be path users who would not feel comfortable passing through a private garden and residential area. Some users are likely to prefer a traffic free route, even if vehicular use is limited. A beck side footpath may also be more enjoyable to some walkers.
3. I consider the proposed diversion will not affect the public enjoyment of the footpath as a whole and some people may find it more enjoyable than the existing footpath.

***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. The proposed diversion will benefit the land served by the existing footpath as it will no longer pass through private properties and gardens. This will improve their security, privacy, and value.
2. The owner of the fields has given their consent for the diversion. As it is a field edge footpath, it will have minimal impact on farming practices and crop production.

***Rights of Way Improvement Plan***

1. None of the parties have raised any matters relating to the ROWIP. The ROWIP includes a Statement of Action to resolve long term path obstructions including by diversion where appropriate. Although the obstruction of this path is relatively recent, the properties have the potential to become a long term obstruction.

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

1. I have found the proposed diversion to be in the interests of the landowners and occupiers of the new development. I do not consider the proposed diversion to be substantially less convenient or less enjoyable to the public. The new termination point is substantially as convenient to the public. The proposed diversion will have a positive impact on land served by the existing footpath and there is no evidence it will have a negative effect on the land served by the proposed footpath. Therefore, I consider it is expedient to confirm the Order.

**Other Matters**

1. The development includes a footpath link to the Order Route which is an evacuation route for residents if the road into the estate floods. It is suggested that this should have included in the Order or otherwise dedicated for use by the public and would have made a better diversion route. I can only consider the Order before me, and I am unable to consider if an alternative or additional route should have been included in 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.

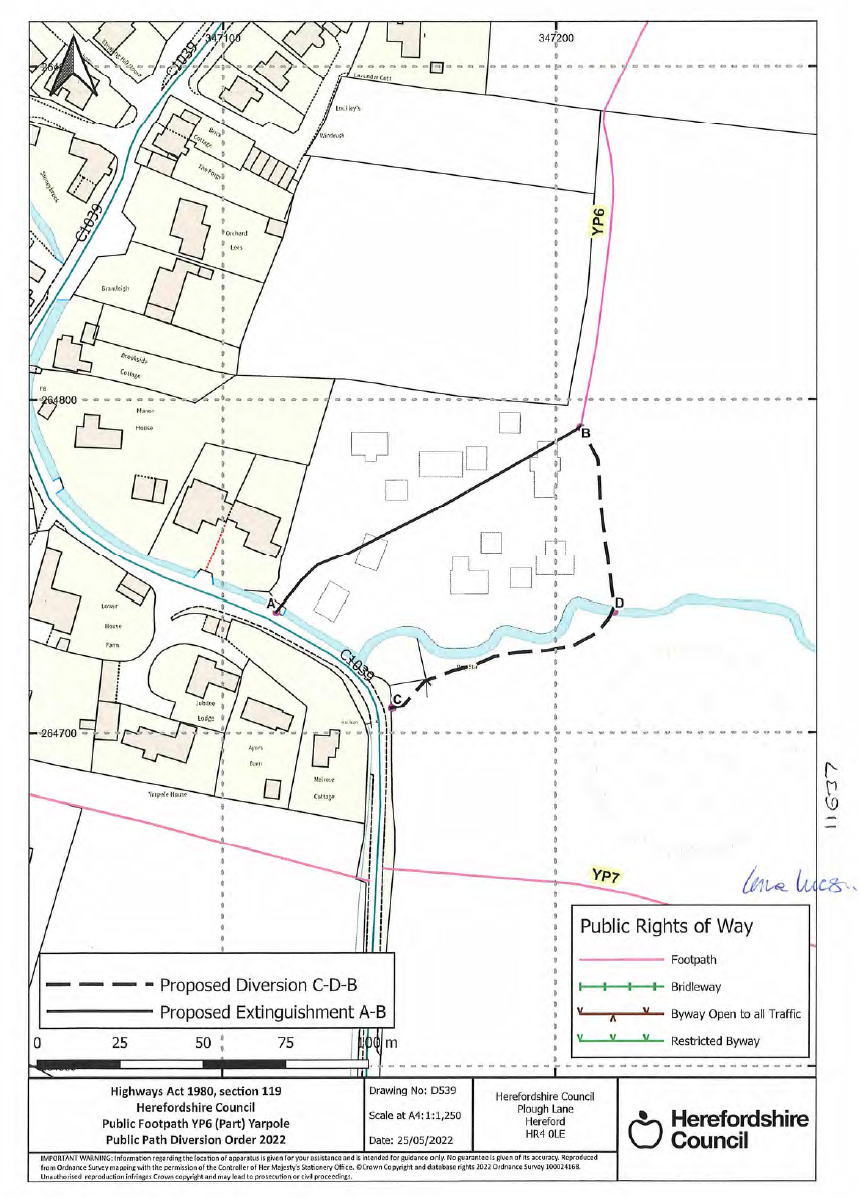
**Formal Decision**

1. I confirm the Order.

*Claire Tregembo*

INSPECTOR

**Order Plan**

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