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| **Order Decision** |
| Site visit made on 24 April 2024 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 May 2024** |

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| **Order Ref: ROW/3319960** |
| * This Order is made under section 257 of the Town and Country Planning Act 1990 and section 53A(2) of the Wildlife and Countryside Act 1981. It is known as the Oldham Borough Council (Part of Footpath 119 Saddleworth) Public Path Diversion and Definitive Map and Statement Modification Order 2022. |
| * The Order is dated 23 November 2022 and proposes to divert part of the public right of way as shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the Definitive Map and Statement for the area, once the provisions relating to the diversion come into force. |
| * There were nine objections outstanding when Oldham Borough 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. Oldham Borough Council, the order-making authority (the OMA) refer to a previous decision made in 2021 by an Inspector supporting a diversion of this footpath. In that case the Order was unable to be confirmed as the planning permission had expired, therefore the Order was not valid. Although there may be similarities with the previous Order in terms of the route and the issues raised, this is a new Order, and I will consider it as such.
2. I undertook an unaccompanied site inspection on 24 April 2024.
3. 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.

Main Issues

1. Section 257(1) of the Town and Country Planning Act 1990 (the 1990 Act) provides for an Order to be made authorising the diversion (or stopping up) of a footpath if the local planning authority is satisfied it is necessary to do so in order to enable development to be carried out in accordance with planning permission already granted under Part III of the same Act.
2. In this case the Order seeks to divert approximately 63 metres of footpath 119, which currently runs adjacent to the rear boundary of 3 properties on Treetops Close. The Order proposes to replace the footpath with an alternative diversion route approximately 77 metres in length.
3. In considering whether or not to confirm an Order, the disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.
4. In short there are two main issues that must be considered here. These legal tests, as outlined above, have been described by the Courts as “the necessity test” and “the merits test”. Confirmation of an Order requires that both are satisfied.
5. In addition, in reaching my conclusions I have considered the requirements of the Equality Act 2010 where appropriate.
6. The OMA has referred to 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” which was issued by the Department for Environment, Food and Rural Affairs in August 2023. It is also known as the ‘presumptions guidance’. Although this was issued after the making of the Order the OMA has mentioned the guidance. However, the guidance states it applies only where local authorities are considering diverting or extinguishing a right of way under the Highways Act 1980. Therefore, as this Order is made under the 1990 Act it does not apply in this case. Nevertheless, the issues referred to by the OMA will fall for consideration as part of “the merits test” referred to above.

Reasons

*Whether the diversion of the path* *is necessary to allow development to be carried out in accordance with planning permission*

1. Planning permission (FUL/348134/21) was granted on 12 April 2022 for the change of use of land adjacent to 1, 2 and 3 Treetops Close to garden use associated with the dwellings. I am satisfied that the relevant planning permission is extant and directly relates to the land crossed by the Order route.
2. The planning permission permits an area of land at the rear of the dwellings to be used as their garden. The footpath on its current alignment would cut across the gardens. Some of the objectors have stated that, as no building or structure is to be erected on or over the footpath, then the footpath could remain on the current alignment and users could pass through the private garden without conflict. Although this may be an option in some developments, I consider that the circumstances of this case mean this would be unsuitable in this instance.
3. It is a condition of the planning permission that the development is fully implemented in accordance with the approved details, subject to the requirements of conditions 3 and 5. The conditions refer to a boundary fence adjacent to the footpath on the western boundary. This boundary fence would obstruct the footpath on its current alignment. Approved ‘Plan A’ envisages that the existing footpath would be relocated. The grant of planning permission does not of itself authorise obstruction of the footpath. However, the development cannot be delivered fully, in accordance with the approved plans, with the footpath in its existing location. That being so, I am satisfied that the diversion order is necessary to allow the development to be carried out in accordance with the planning permission.

*Disadvantages of the proposed Order*

1. The diverted route would be longer than the existing path but not significantly so. I consider that the disadvantage to the public from a longer route would be limited.
2. There is currently a trodden path on an alignment very similar to the proposed diverted route from point B to C on the Order plan. Safety concerns have been raised regarding pedestrians traversing this section of the proposed route as there is a very steep gradient. Objectors also state that the proposed diversion is less accessible to footpath users due to the gradient and current earth surface of this section of the path.
3. The OMA has stated that as part of the proposal the landowners are required to provide steps with a suitable surfacing on the diverted route between points B and C, I agree with the OMA that this will improve the route and enable users to walk the slope safely. I therefore consider that no disadvantage would arise because the objectors’ concerns would be addressed with the planned improvement works. No further improvement works would be required to the remainder of the proposed route between points C and D as it is already an existing tarmac path.
4. In terms of accessibility in comparison to the existing route it would be similar as there are currently steps on the existing footpath. The effect is therefore neutral.

*Advantages of the proposed Order*

1. The proposed steps would be an improvement and would assist pedestrians who are currently using the section B-C. I consider the surface and width would also be an improvement. The current route is narrow and muddy in places whereas the proposed route would be surfaced and wide enough for two people to pass each other.
2. As the existing path would cut through the private gardens, the diversion would have significant advantages for the occupiers of the affected properties. Diverting the footpath would greatly improve their privacy and security. The occupiers have stated if the footpath were to remain on the current alignment, they would have concerns over the safety of their children playing in the garden. In addition, I acknowledge that some users of the footpath may feel uncomfortable walking through the private gardens. Taken together, the benefits identified above form significant advantages of the Order.

*Whether development is substantially complete*

1. On the day of my site visit of the area of land which is subject to planning permission the land was open and no fencing work had been undertaken. Thus, I am satisfied that development is not substantially complete.

*Other Matters*

1. In reaching my conclusions I have considered the requirements of the Equality Act 2010 and considered the effect of the Order on all sections of the community. I acknowledge that the local topography means there are many steep gradients on the rights of way in this area. The existing alignment of the public footpath is very steep at the southern end, and there are currently a number of steps for pedestrians to negotiate. Due to the gradient, there are proposed steps on the diverted route, between points B and C. As there are steps on both the existing and proposed routes, it is unlikely to be used by those with limited mobility or, difficulty climbing steps. There is however an alternative step free access available by using Woods Lane and Treetops Close.
2. Some of the objectors’ have commented that some trees would be likely to be cut down by the occupiers. The occupiers have stated that a number of trees, many diseased, have already been removed from the site. Whether the occupiers choose to fell any further trees is not a relevant consideration in relation to the Order.

*Conclusion*

1. I have found above that the Order would result in limited disadvantages to the public. I have identified advantages which together form significant benefits of the Order. These advantages consequently outweigh the identified disadvantages.
2. Thus, in view of the above considerations, I conclude that the Order should be confirmed.

**Formal Decision**

1. The Order is confirmed.

*J Ingram*

INSPECTOR

