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| **Order Decision** |
| Site visit made on 11 June 2024 |
| **by Claire Tregembo**  |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
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| **Decision date: 25 June 2024** |

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| **Order Ref: ROW/3292629** |
| * This Order is made under section 119 of the Highways Act 1980 and is known as the Norfolk County Council (Ovington Footpath No. 1 (Part)) Diversion Order 2021.
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| * The Order is dated 19 May 2021 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
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| * There were three objections outstanding when I made my site visit.
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| **Summary of Decision: The Order is confirmed.**  |
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**Preliminary Matters**

1. It is not possible to access the very southern end of Ovington Footpath No. 1 (OFP.1) due to obstructions and challenges on that section which is owned by a different party. I have been advised that parts of the existing footpath and the connecting Ovington Footpath No. 2 (OFP.2) were obstructed when the Order was made, but these obstructions have been resolved. Norfolk County Council (the Council) has advised that they are actively pursuing the obstructions at the southern end of OFP.1. I am satisfied that I have seen enough of the Order route and surrounding footpaths to make a decision with regard to the Order.
2. Notices advertising the making of the proposed diversion were erected at points A, B, and C when the Order was made. This meets the requirements for giving notice of the Order as set out in Schedule 6, paragraph 1(3)(c)(i) of the Highways Act 1980 (the 1980 Act). However, the obstructions on the footpaths could have prevented the public from seeing the notices. To ensure walkers were aware of the proposed diversion, the Council was asked to give further notice of the Order by erecting notices on Ovington Footpath Nos. 1 and 2 where they meet the road. Two further objections were received, and these will be considered along with the objection received when the Order was originally made.
3. Concerns were raised about the removal of these notices, the location of one of them, and who erected them. The Council was aware that one of the notices disappeared and arrangements were made for them to be checked and re-erected. One of the notices was not erected at the end of OFP.2 but I consider it was sufficiently close to the end of the footpath to make the public aware of the proposed diversion. Schedule 6 states notice of the Order should be given by ‘causing a copy of the notice to be displayed’, but it does not specify how they should cause them to be displayed. Photographs are provided showing the notices displayed on site and most were still present at the time of my site visit. I am satisfied the requirements to give notice of the Order have been met.

**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. 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 full length of 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 runs through the grounds of three residential properties: The Willows, Waterend Farm, and Owl Cottage. The proposed diversion would divert the footpath out of the gardens and parking areas of The Willows and Waterend Farm. It would also significantly reduce the length of footpath passing over land owned by Owl Cottage. The existing footpath runs close to two sides of Waterend Farm. Windows and doors of Waterhouse Farm and The Willows are clearly visible from the existing footpath. It has been claimed that Waterend Farm is only an outbuilding. However, it appeared to be a residential dwelling at the time of my site visit and plans of the property show the windows are for two bedrooms.
2. The proposed footpath runs along the driveway to Waterend Farm and Owl Cottage. It is fenced off from the surrounding land. Views of Waterend Farm and The Willows from the proposed footpath are limited by hedges and trees in the gardens and the increased distance from the footpath. Therefore, the proposed diversion would improve the privacy and security of the owners and occupiers of these properties. It would still be possible to see the front of Owl Cottage from point A, but views are limited.
3. OFP.2 runs through the gardens of The Willows with clear views of the house which is likely to affect its privacy and security. The diversion may have less of an impact on the security and privacy of The Willows due to the existence of OFP.2. However, it would remove OFP.1 from the parking area and improve privacy at the front of the property.
4. Overall, I am satisfied it is expedient to divert the footpath in the interests of the owners and occupiers of the three properties.

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

1. There is no change to the southern termination point. The northern termination point moves approximately 40m south-west.
2. The objectors claim walkers are more likely to use the Order route and the north-eastern end OFP.2. Anyone making this journey will have to walk 25m further due to the new termination point. The objectors consider this will make the footpath less convenient. Other parties consider path users may enjoy a short circular walk so may be just as likely to use the Order route and the south-western end of OFP.2. The new termination point will make this route 55m shorter. The Order route and OFP.2 are predominantly recreational routes. I consider the small changes in distance will have limited impact on the convenience to the public, particularly considering OFP.2 continues to the north-east for approximately 2km.
3. There is a short, steep bank on OFP.2 close to point B. It is claimed the bank will need to be crossed to reach the new termination point at C when coming from the north-east, making it less convenient. However, the bank is just north-east of point B and needs to be crossed to reach the existing termination point. Furthermore, the bank curves around the edge of the parking area in front of The Willows. Even if walkers deviate from the legal line of the existing footpaths, the bank still needs to be crossed to reach point A.
4. 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. The proposed footpath is along a wide driveway, with a firm, level surface making it easy to use and follow. The existing footpath runs through gardens and parking areas with a mix of grass and stone surfaces. It has no recorded width, is mostly undefined, and the enclosed section north of A is narrower than the proposed footpath. Some path users may find the proposed footpath easier to use and follow than the existing footpath, even if it is clearly waymarked. Therefore, I do not consider the proposed footpath to be substantially less convenient to the public.

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

1. The proposed diversion would make a circular walk from Ovington using OFP.1 and the south-western end of OFP.2 55m shorter. Some people may consider a shorter recreational route less enjoyable. However, given the overall length of the walk, I consider the reduction in length will have a limited impact on the enjoyment of the route as a whole.
2. The Order route and pond alongside it have been in existence since at least Victorian times. Some people may enjoy walking a path knowing it has been walked for many generations and remains unchanged over time. However, the proposed diversion only affects a short section of OFP.1. The buildings do not appear to be historic, and the location and footprint of the current properties are different to those shown on the 1883 Ordnance Survey map.
3. At the time of my site visit, the only view of the pond from the existing footpath was from its northern corner. Trees and shrubs meant it was not possible to see the pond from the rest of the existing footpath. A similar view of the pond was available from the proposed footpath just west of A. Therefore, I consider views of the pond are not reduced by the proposed diversion.
4. The proposed footpath runs along a driveway which is claimed to be banal and dominated by wooden fencing and brambles. The objectors consider the existing footpath to have a higher amenity value with attractive views of trees, shrubs, plants, and flowers. However, wooden fencing is visible along most of the existing footpath and sections of it run along driveways, through parking areas, and gardens giving it a domestic feel. There are grass verges, trees, shrubs, and flowers alongside the proposed footpath. The enjoyment of any path is subjective and open to varying opinions. In my opinion, the proposed and existing footpaths are similar in appearance and nature, therefore the amenity value of both paths is similar.
5. The proposed diversion takes the footpath out of gardens and parking areas and away from residential dwellings. I consider there are likely to be walkers who would not feel comfortable passing through private gardens close to houses and parked cars. These walkers are likely to prefer the proposed footpath.
6. For these reasons, I do not consider the proposed diversion will affect the public enjoyment of the footpath as a whole.

***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 would improve the privacy and security of the land served by the existing footpath. No issues have been raised that suggest the diversion would have an adverse effect on land served by the existing or proposed path.

***Duty to have regard to the desirability of conserving flora, fauna, habitats, biodiversity, and natural beauty***

1. Reference is made to the importance of ponds as habitats for aquatic plants, invertebrates, amphibians, dragonflies, damselflies and mammals, and the loss of 50% of Norfolk’s ponds over the last 70 years. The landowners maintain the pond as a feature of their garden and there is no indication that the proposed diversion will result in the loss of the pond. The pond is fenced off from the existing and proposed footpath and there is nothing to indicate the diversion will disturb the pond habitat, biodiversity, flora, fauna, or natural beauty.

***Rights of Way Improvement Plan***

1. I have only been provided with a very limited extract of the ROWIP. However, none of the parties have raised any matters relating to it.

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

1. I have found above that the proposed diversion is in the interests of the landowners affected by the proposed diversion. I consider the new termination point to be substantially as convenient to the public. The proposed footpath is not substantially less convenient than the existing footpath and there is no overall loss of enjoyment of the footpath. Nothing has been raised to suggest the proposed diversion would have a negative effect on land served by the existing or proposed footpath. There is no evidence the proposed diversion will affect the flora, fauna, habitat, biodiversity, or the natural beauty of the pond. Therefore, I consider it is expedient to confirm the Order.

**Other Matters**

1. Concerns have been raised about the Council’s ability to assert and protect public rights, maintain paths, and remove obstructions from them. The legislation makes various provisions available to anyone who has concerns about the maintenance, protection, and removal of obstructions from public highways.

**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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