PINS LOGO

|  |
| --- |
| **Order Decision** |
| Site visits made on 1 November 2023 and 11 June 2024 |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 October 2024** |

|  |
| --- |
| **Order Ref: ROW/3301325(M)** |
| * This Order is made under section 119 of the Highways Act 1980 and is known as the Norfolk County Council (Wacton Footpath No. 25 (Part)) Diversion Order 2021. |
| * Norfolk County Council submitted the Order for determination to the Secretary of State for Environment, Food and Rural Affairs. * The Order is dated 18 August 2021 and proposes to divert the public footpath as shown on the Order map and described in the Order Schedule. * The Order was subject to an Interim Decision dated 28 November 2023, in which I proposed to confirm the Order subject to modifications which required advertisement. * In accordance with Paragraph 2(3) of Schedule 6 to the Highways Act 1980, notice has been given of my proposal to confirm the Order with modifications. * One objection and one representation were received in response to the notice. |
| **Summary of Decision: The Order is confirmed subject to the width modification I previously proposed. The proposed modification to the alignment is not confirmed and the Order will be confirmed on its original line.** |
|  |

Procedural Matters

1. The effect of the Order, if confirmed with the modifications I previously proposed would be to increase the width between points A and B from 1.5 metres to 3 metres and to realign the footpath around a utility pole stay.
2. In my Interim Decision dated 28 November 2023, I proposed to confirm the Order subject to the modifications described in paragraph 1 above. As the modifications proposed would affect land not affected by the Order as submitted, I was required by virtue of Paragraph 2(3) of Schedule 6 to the Highways Act 1980 to give notice of my proposal to modify the Order and provide an opportunity for objections and representations to be made to the proposed modifications.
3. Prior to making my Interim Decision, I undertook a site visit on 1 November 2023. After my decision, a contractor visited the site and advised the utility pole stay which crossed the line of the footpath, could be relocated so that it did not cross it. Work to relocate the stay was completed by 5 March 2024 and photographs were provided showing the changes. I made another site visit on 11 June 2024 to view the changes.
4. This decision should be read in conjunction with my Interim Decision into the Order, which outlines the main issues to be addressed and my findings on these matters.

**Main Issues**

1. The objection and representation to the Order both refer to the relocation of the utility stay. The OSS support the proposed width increase, but the landowner objects to it.

**Reasons**

***The Utility Stay***

1. The landowner and OSS both agree my proposed diversion around the utility pole stay is not necessary because it no longer crosses the footpath. Having revisited the site, I agree the proposed modification to the alignment is no longer required and the Order should be confirmed on the line originally proposed. Without the diversion around the stay, the footpath will be approximately 1 metre further from the house.

***Width***

1. The landowner requests the width between points A and B is not modified. At most, they would accept 2 metres and state they could accommodate this width more comfortably. They consider a 3 metre width is unreasonable given the constraints of the garden and the proximity to the house and outside seating area. They find it difficult to enjoy their garden and feel vulnerable with the path being so close. They believe a line of fruit trees would need to be removed if the proposed footpath had a width of 3 metres, as well as the chicken coop and gates. The landowner also considers people using the path would not feel like they are intruding so much on a private space with a narrower width. Therefore, walkers would feel more comfortable using the footpath.
2. During my site visits, I viewed the widths available on the ground. I also measured the widths on the Order plan. There is a width of approximately 6 metres between the existing hedge and the conservatory and seating area. This means there would be approximately 3 metres of garden between the footpath and conservatory and seating area with a 3 metre width. The width between the hedge and the line of fruit trees is at least 3 metres, therefore they would not need to be removed.
3. In paragraph 10 of my Interim Decision, I concluded the proposed diversion would improve the privacy and security of the property as it would take it further away from the conservatory, house, and seating area, and out of the rear garden benefiting the landowner. This would still be the case even with a 3 metre wide footpath.
4. The increased width would require the relocation or removal of a chicken coop and the removal of a wider section of the rear property boundary. However, the cost of this work is much less than the cost of removing the garage, walls, plants, and hedges in the garden if the diversion is not confirmed.
5. In paragraph 12 of my Interim Decision, I considered it likely that the footpath will be fenced off from the garden. Therefore, in my view, the public would not feel like they are intruding on a private garden regardless of the width of the footpath. I consider a narrower width would have a negative impact on the enjoyment and convenience of the footpath and some people may feel unsafe using a narrow enclosed path. A wider footpath would make it much easier for people to pass each other. As the footpath is close to a playground, there are more likely to be people using it with small children and pushchairs who would prefer a wider width.
6. The landowner considers a width of 1.5 metres would allow sufficient space for a pedestrian and wheelchair to pass side by side. They cite the Department of Transport, Inclusive Mobility A Guide to Best Practice to Pedestrian and Transport Infrastructure which states *‘footpaths should be made as wide as possible, but under normal circumstances, a width of 2000mm is the minimum that should be provided…If this is not feasible due to physical constraints, then a minimum width of 1500mm should be regarded as the minimum acceptable under most circumstances’.*
7. There are no physical constraints that would prevent a 2 metre wide footpath, and a 3 metre width could be achieved with the removal of the chicken coop alongside a short section of the proposed footpath. Inspectors may exercise discretion in determining a reasonable width considering all the circumstances of the case. I do not consider it would be reasonable to accept the very minimum acceptable width when the ‘*normal circumstances’* width is available, and a wider width could be made available.
8. I need to have regard to Norfolk County Council’s (NCC) Rights of Way Improvement Plan (ROWIP) and the Public Sector Equality Duty (PSED). The ROWIP seeks to apply 2 metres for unenclosed and 3 metres for enclosed footpaths on all new and diverted routes. Therefore, a width of 1.5 or 2 metres is contrary to the ROWIP. The ROWIP suggests NCC considers enclosed footpaths need to be wider than unenclosed footpaths. Furthermore, the width of section B to C of the proposed diversion is 4 metres, suggesting NCC considers a wider width should be provided where possible.
9. The ROWIP also seeks to create better access for disabled users and improve access for all. A 3 metre wide footpath would achieve this and meet the objectives set out in the PSED to advance equality of opportunities. I consider the PSED would not be discharged with a narrower width.
10. I accept the minimum widths stated in the ROWIP do not have to apply in every situation and discretion can be used. However, I do not consider it unreasonable to apply them in this situation given the benefits to path users.
11. To the west of point C, the footpath crosses an arable field. A cross-field footpath with an unrecorded width may only need to be reinstated to a minimum width of 1 metre. However, I do not consider I should disregard the PSED or ROWIP and accept a narrower width just because sections of the path unaffected by the Order only need to be reinstated to a narrower width. Furthermore, the cross-field footpath is not enclosed so path users are not confined by boundaries if they need to pass each other.
12. In my opinion, a footpath width of 1.5 or 2 metres would only lead to a marginal improvement in the privacy and security of the property compared to a 3 metre wide path. I consider a width less than 3 metres would have a significantly greater impact on the enjoyment and convenience of the public. I do not consider the additional work required to provide a width of 3 metres is unreasonable given the benefits of the proposed diversion to the landowner and the property.

###### Conclusions

1. Bearing in mind the above, I conclude the Order should be confirmed subject to the modifications to the Order set out in paragraph 32 of my Interim Decision dated 28 November 2023. However, the change to the alignment shown on the Order map is not to be confirmed.
2. As the footpath has reverted to its original alignment and the width increase is as proposed in my Interim Decision, no previously unaffected land is affected.

###### Formal Decision

1. I confirm the Order subject to the following modifications.

In Part 2 of the Order Schedule

* Delete ‘1.5’ and replace it with ‘3’.
* Delete ‘apart from a width of 1 metre at the point where there is a stay of a telegraph pole (point Y on annexed plan) at grid reference TM 1793 9145 and the crossing of the footbridge at grid reference TM1790 9144’.

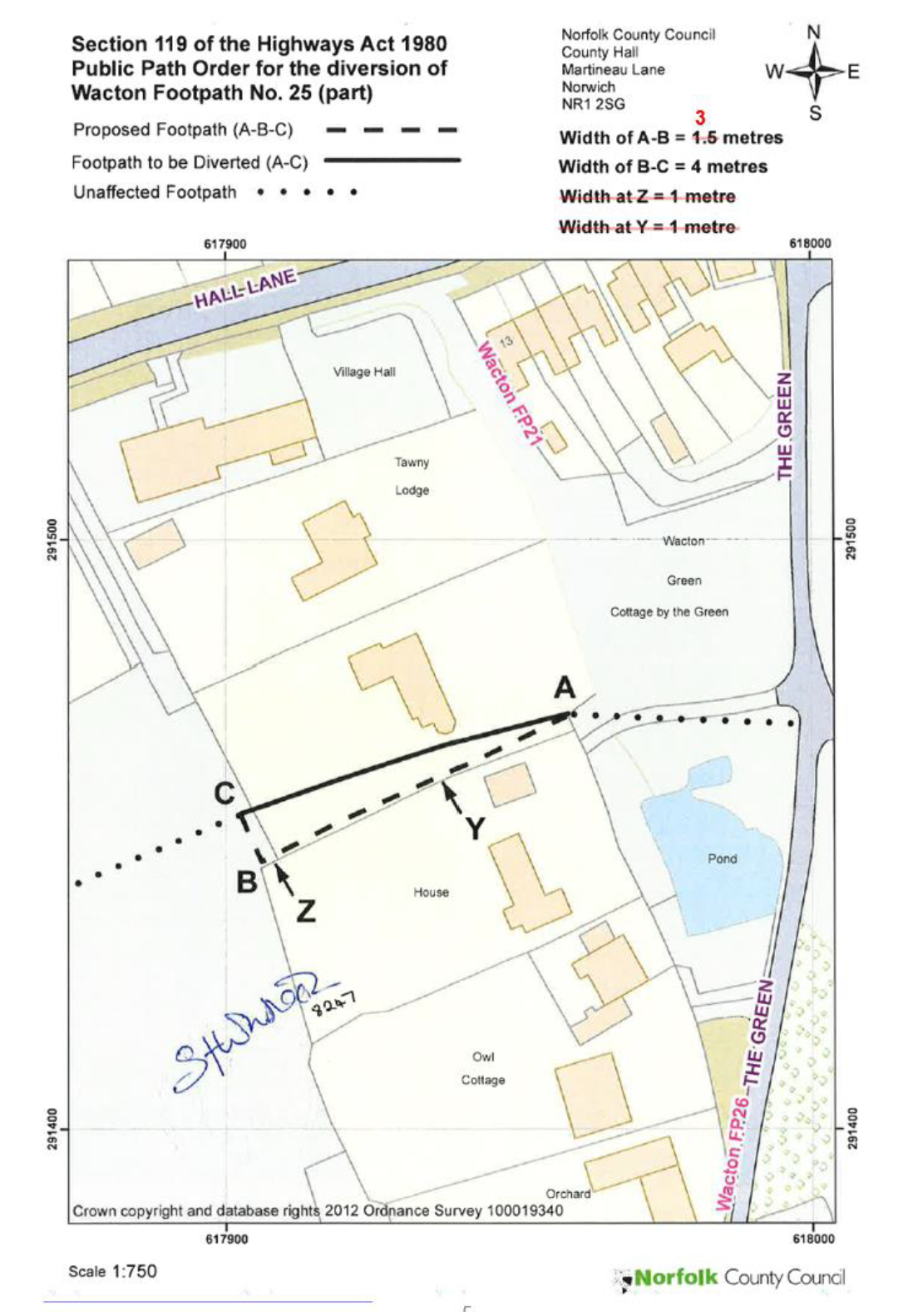
On the Map

* Delete ‘1.5’ and replace it with ‘3’.
* Delete ‘Width at Z = 1 metre’ and ‘Width at Y = 1 metre’

Claire Tregembo

Inspector

**Order Map**

****