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| **Order Decision** |
| Site visit made on 25 September 2024 |
| **by Andrew McGlone BSc MCD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 29 October 2024** |

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| **Order Ref: ROW/3331274** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Borough Council of King’s Lynn and West Norfolk (Diversion of Footpath 18 (Part) Snettisham) Order 2023.
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| * The Order is dated 17 May 2023 and proposes to divert the footpath shown on the Order plan and described in the Order Schedule.
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| * There were some 6 objections outstanding when the Borough Council of King’s Lynn and West Norfolk submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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| **Summary of Decision: Order is confirmed.**  |
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The Main Issues

1. Section 257(1) of the Town and Country Planning Act 1990 (as amended) (‘the Act’) provides for an Order to be made authorising the stopping up or diversion of any footpath if it is satisfied that an application for planning permission in respect of development has been made under Part III of the Act, and if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out. The Order is for the diversion of Footpath 18 (FP18) and the creation of an alternative length of footpath as shown on the Order Plan.
2. DEFRA Circular 1/09 version 2 makes clear that, in determining an order of this kind, the merits of the development are not at issue. However, it should not be assumed that because planning permission has been given necessitating closure of a footpath that confirmation of the ensuing order will automatically follow. Any disadvantages or loss likely to arise as a result of the path closure to members of the public may be weighed against the advantages arising from the development when determining the Order.
3. There are three issues to be considered. The first is whether the works that have already been carried out mean the Order cannot be confirmed. The second and third issues relate to legal tests described as ‘the necessity test’ and ‘the merits test’. Confirmation of the Order requires both to be satisfied. In deciding whether or not to confirm the Order, I am obliged to take into account: (a) any significant disadvantages or losses the diversion of the path would cause to the general public, or to other individuals whose actionable rights of access would be extinguished by the process; (b) any countervailing advantages to the public, or those individuals; and (c) the planning benefits of, and the degree of importance attaching to, the development.

Reasons

1. The Order route joins Lynn Road at its eastern end. The Order would relocate part of footpath 18 (FP18) to the south and east from its definitive route between points C-A to points C-B-A before returning to the existing route, which continues westwards before joining footpath 17.
2. The definitive route of FP18 crosses the rear garden of Ingol Falls House from its southeastern boundary before it extends in a south westerly direction and joins a footbridge across an overflow channel. This part of FP18 is grassed.
3. Notwithstanding the definitive route of FP18, the route on the ground follows the proposed diversion between points C-B-A, not the definitive route. From point C, the definitive route would necessitate users to pass through a tall mature hedge, through or around a detached outbuilding in the garden of Ingol Falls House, across the garden, and through a tall mature hedge before reaching point A. The alignment of the definitive route was revealed during the consideration of an application that was granted planning permission (‘the planning permission’) by the Council on 6 December 2021, for a detached home study at Ingol Falls House.
4. The public is entitled to expect that all rights of way will be kept open and available for use. Norfolk County Council (NCC) has been contacted by objectors who have raised concerns about the definitive route being obstructed between points C-A. Authorities have a responsibility to investigate, and if any obstructions are discovered or have been reported to them, ensure that they are removed as soon as is reasonably practicable. NCC are aware of the obstruction but also of the Order. NCC determined that it would not be in the public interest to enforce the definitive route while the diversion process is ongoing.
5. Nevertheless, during the consultation period relating to the Order, the definitive route of FP18 was available to be walked as a gate in the flank boundary of Ingol Falls House between points C and B was open. Although persons would not have been able to reach point A using the definitive route, comparisons could be made between the existing and proposed routes by consultees and members of the public. Notices were also erected on site. While I understand these may have been removed, people have evidently been aware of the Order to divert part of FP18.

***Whether works have already been carried out***

1. The building granted planning permission would be over the definitive line of FP18 between points A and C. Planning permission will expire on 6 December 2024. Works have not started on site, so there is no inability to confirm the Order as the planning permission has yet to be implemented.

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

1. The need for an Order under s257 of the Act may be satisfied by the existence of either a physical or legal obstacle to development proceeding. I am satisfied that the planning permission is extant and directly relates to the land crossed by the Order route. The development would permanently affect the ability of persons to use the definitive route of FP18. While objectors suggest that the detached home study could be moved a few metres to avoid needing to divert FP18, no alternative planning permission has been sought or granted. The landowner has also explained that the position and extent of trees subject to preservation orders are likely to affect any alternative location. In any event, the existence of a public right of way is a material consideration that will have been taken into account in reaching a decision to grant planning permission.
2. In considering the Order under s257 of the Act, the planning merits of the development are not at issue; those have already been considered before the planning permission was granted. I am therefore satisfied that the proposed diversion is necessary to allow the development to be carried out in accordance with the approved planning permission.

***Disadvantages of the proposed order***

1. The proposed diversion of FP18 would result in a slightly longer route for users with an increase of around 6 metres. However, the additional length and less direct route would not be a significant increase in the context of a longer use of the public rights of way network, or even for local users. There would, however, be a limited disadvantage to members of the public in this regard.
2. Points are made about the accessibility of the proposed diversion. The Order relates to

part of FP18 that lies in the middle of the route. Kissing gates mark the entrance and exit to FP18 at either end of its route and its width varies depending on the watercourse and natural features such as grass, shrubs, and trees. At times, the route, which is unaffected by the Order, is narrow and could be tricky to navigate.

1. I have had due regard to the Human Rights Act 1998 and the Public Sector Equality Duty under the Equality Act 2010. The proposed diversion would not meet the width outlined in the Norfolk Access Improvement Plan 2019 – 2029 for new and diverted routes, and in that regard, there would be a limited disadvantage to members of the public. However, there would be no change to the kissing gates at either end of FP18, and the proposed diversion would not introduce any new restrictions. In fact, it would be as convenient to the definitive route in terms of its gradient, surface, and width. Added to this, the width of the diverted part of the route would be wider than other unaffected parts of FP18. As such, persons with visual impairments and reduced mobility would not be disadvantaged by the Order and the diverted route could be used by a range of people.
2. Much of FP18 is directly next to the chalk stream of the River Ingol, though shortly before point C FP18 turns away from the river to avoid crossing a weir and an overflow channel adjacent to the Mill Pond. To the west of point A is a bridge that crosses the overflow channel as it discharges into the old course of the river that existed before Snettisham Mill, a grade II\* listed building built in 1799. Despite the Mill potentially now being a holiday let, it is said to open its doors to the public for two days per year, though regular flour production has ceased. Objectors explain that the river was historically used to bring cereals to be ground in the Mill.
3. Objectors explain that the definitive route of FP18 is close to an overflow channel and a carrstone bridge that spans the overflow channel. They say that these are integral parts of the engineering features and historic setting of the Mill. They also contend that visiting the Mill, seeing the Mill Pond, and walking FP18 is part of the same experience.
4. The location of the Mill, the Mill Pond and the river are functionally linked, but users do not experience all of the components at the same time and not at all for a section to the west of the proposed diversion before the Mill comes into sight at the western end of FP18.
5. The Mill and Mill Pond are not features on approach to point C from the east, though the river is. Furthermore, between points C-A, the Mill Pond is not visible due to local topography or the Mill owing to intervening woodland. The diverted route would return users to the same point (A) by the overflow channel, and people would still experience crossing that channel over an existing bridge. However, they would not enjoy a view of a short section of the river from within the garden of Ingol Falls House as the proposed diversion would be behind the tall boundary treatment to the property. The Order would also mean that users would not be able to view the carrstone bridge spanning the overflow channel within the garden. That bridge is some distance from the Mill, and its setting, but I recognise its functional association with the Mill. However, the definitive route does not take users across that bridge to reach point A from point C. Users experience of the route closer to the Mill, which lies near to the junction of FP’s 17 and 18, would be unchanged.
6. There would be a limited disadvantage to members of the public arising from the change to a short section of FP18 and users appreciation of the river; however, that change does not affect users experience and understanding of the heritage of the Mill Pond or Mill.

***Advantages of the proposed order***

1. The diversion of FP18 would enable users of FP18 to not pass through the garden of Ingol Falls House. Instead, users would be able to appreciate the rural landscape to the south of Snettisham, which becomes evident when travelling in an east to west direction after the 90-degree bend near point C. This would better reflect users experience of the remainder of FP18 to the east, but also enable users to follow a pleasant route never far away from a watercourse without crossing a residential garden. Furthermore, the diverted route would provide opportunity for people to pass due to its width compared to other parts of the route, which are narrower. Users could also continue to access the wider public right of way network as part of longer journeys near a rural settlement without crossing the garden of Ingol Falls House. There would be limited social and environmental benefits that would flow from the diverted route.
2. The implementation of the planning permission would result in a detached home study that would deliver limited economic benefits linked to the construction phase.

***Conclusions on the relevant tests***

1. I have concluded that it is necessary to divert the Order route to allow development to be undertaken in accordance with the planning permission.
2. There are limited social, economic, and environmental benefits to the public flowing from the Order and the development itself. Those include a positive change to users experience of the route by not passing through a residential garden as part of the remainder of FP18, which takes in a rural landscape or watercourse. Balanced against these are the limited disadvantages to the public from the diversion of part of FP18, which would mean a slightly longer route and journey time, and a change to users experience of the river. There would be limited positive effects in terms of the accessibility of the route, and the diverted route would facilitate onward connections to the rest of the rights of way network. Overall, the disadvantages that arise from the Order and the development are not sufficient to outweigh the advantages of the development, and they are not individually or collectively significant enough to prevent the confirmation of the Order.

**Conclusion**

1. Having regard to these, and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

1. The Order is confirmed.

Andrew McGlone

INSPECTOR

 