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| **Order Decision** |
| Site visit made on 15 October 2024 |
| **by A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 06 November 2024** |

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| **Order Ref: ROW/3326731** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and under Section 53A(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Surrey County Council Footpath No.94 (Byfleet) Public Path Diversion Order 2021. |
| * The Order is dated 16 December 2021 and proposes to divert the public footpath as shown on the Order Map and described in the Order Schedule. If confirmed the Order will also modify the Definitive Map and Statement for the area, in accordance with Section 53(3)(a)(i) of the 1981 Act, once the provisions relating to the diversion come into force. |
| * There were 3 objections outstanding when Surrey County Council (the 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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**Preliminary Matters**

1. In 2020, the agent for Byfleet Manor estate (the applicant), submitted an application to divert part of Footpath No.94 (FP94) which crosses estate land. Further to a number of public consultations, revisions were made to the proposals and the matter referred to the Surrey County Council Local Committee (Woking), (the Committee), in November 2021 for determination.
2. The Council’s Officer recommendation, whilst stating the matter was ‘finely balanced,’ was to refuse the application. The Officer considered that the application was not shown to be in the public interest and therefore did not comply with Council policy for processing diversion applications under Section 119 of the 1980 Act. The Committee, however, took the view that the proposed diversion was in the public interest and an Order was made in December 2021.
3. All objectors considered that the rejection of the Officer’s professional recommendation by the Committee, suggested that the committee members had not considered the legal criteria in an objective manner when coming to their decision. One objector further felt that the layout of the Officer’s report and its treatment of the representations made, would have introduced a bias in favour of the application.
4. The Ramblers were also concerned as to how the relative convenience of the existing footpath and the proposed diversion were able to have been compared, when the existing route has been closed and allowed to become overgrown since 2018, as a result of a series of Temporary Traffic Regulation Orders relating to works aligned to the Manor House and its grounds.
5. My role in this matter is to assess and determine the Order before me using the relevant legislation. Any concerns regarding the decision process adopted by the Council to determine this application and the associated making of the Order, are not within my remit to consider.
6. The existing route, albeit not accessible to the public, was not overgrown when I undertook an unaccompanied site visit on 15 October 2024 and I was therefore able to walk both the current and proposed routes. The current route was free of the debris referred to in one objection and there was one isolated broken stile remaining on the route that could be walked around, as there was no fencing adjoining it. For the purpose of considering this case, I will disregard any obstruction on the existing route of FP94 and assess the matter as though the path was open and available for public use.
7. In writing this decision I have found it convenient to refer to the points marked on the Order Map and I therefore attach a copy of this map.

**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 path must be taken into account, where applicable.
2. 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.

Reasoning

***Whether it is expedient in the interests of the landowner, the occupier, or the public that the path should be diverted***

1. The Order states that it is made in the interests of the public as well as the landowner. However, all 3 objectors consider that there is no public benefit in the proposals and therefore the test is not met. Albeit the Council’s policy states that a diversion should be in the interest of the public as well as the landowner to make an Order, section 119 of the 1980 Act is clear that it must be *‘expedient, in the interests of the landowner, the occupier or the public, that the footpath should be diverted’*. Therefore, for the purposes of confirming the Order I need only be satisfied that it is expedient for either the landowner or the public that the footpath be diverted, not both. Should I find the proposed diversion is only expedient for the landowner, I will modify the Order to reflect this.

*The interests of the landowners*

1. The application was made in order to allow greater privacy for the owners of the land and this does not appear to be a matter disputed by any of the objectors. The current line of FP94 passes next to the boundary hedge of Manor House Cottage and then next to the wall of the garden of the Manor House itself. On my site visit, at points along the current path alignment, I was able to observe open views of both houses and their gardens, as well as being able to see into the houses through certain windows. I therefore consider it expedient in the interests of the landowners that the public right of way should be diverted.

*The interests of the public*

1. The Committee when considering whether to make an Order, resolved that the proposed diversion was also in the public interest, due to the alternative route being less flooded and more accessible.
2. The objectors did not appear to refer to any flooding on the current route in their correspondence, however I noted several respondents to the pre-Order consultations mentioned flooding and boggy surfacing on FP94. The area is categorised as being at risk of fluvial flooding and on my site visit33333 I noted that the river level was very high. I have no reason to doubt that flooding occurs across the lower lying levels of the footpath and although the alternative route would still pass through the risk area, it is, in parts, on higher ground and avoids two particularly boggy areas highlighted by the landowner.
3. Turning to accessibility, the proposed diversion would be stone surfaced for the main part, with a width of 2 metres. FP94 currently has no recorded width and has a grass surface. Whilst I acknowledge that some users prefer a grass path as opposed to a firm surface, I am satisfied, for accessibility purposes, that a hard surface would be easier for users with mobility restrictions.
4. The applicant considered that the proposed diversion also offered increased safety for the public when interacting with vehicles using the private roads into the Manor House. Attention was drawn to the fact that the current path runs next to the high wall of the Manor House, giving minimal visibility when crossing the driveway at the entrance and consequently increasing the risk of accidents. The applicant further pointed out that the proposed diversion reduced the number of points where users would have to cross private estate roads, from three to one.
5. On my site visit, the traffic using the private estate roads to access the properties was very light and I consider that the reduction of times the proposed path crosses these roads has minimal benefit. However I do accept that the sightlines for observing vehicles leaving the Manor House by the central road are somewhat impeded by the wall and the proposed diversion would offer some public benefit in this regard.
6. When looked at cumulatively, I consider that there is some public benefit to be gained from the proposed diversion, through a reduction in flooding risk, increased accessibility and a slightly reduced risk of conflict with vehicles. Accordingly I am satisfied that it is expedient in the interests of the landowners and the public, that the footpath should be diverted.

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

1. The western termination (point A) remains unaltered. The eastern termination (point E) would be located 60 metres north west of the current termination (point B) on the same highway. This maintains connectivity for those users wishing to reach the original termination point and continue south, as well as for those users wishing to continue in a northerly direction. I therefore find the new termination point substantially as convenient.

***Whether the new path will not be substantially less convenient to the public***

1. All objectors felt that the proposed diversion was significantly less convenient, due to the increase in length. The dog-leg turn at point E for those wanting to travel south was also raised, with both the Ramblers and the Open Spaces Society feeling that *‘the walker’s sense of purpose would be lost.’*
2. The length of FP94 to be diverted, (points A-B), is approximately 220 metres. If travelling from point A to point B using the proposed diversion, there would be an increase in journey length of approximately 30 metres. If travelling in a northerly direction from point A towards Mill Lane using the proposed diversion, the distance travelled would be decreased by approximately 90 metres.
3. In order to reach the proposed diversion, the user must have travelled a considerable distance from another direction. In this context, the short additional length of the proposed route for some users is diminutive when considering the overall distance travelled. This is further mitigated by the diversion being more convenient for those users travelling north.
4. Two of the objectors were also concerned that the new eastern termination at point E, would mean those travelling south to point B, would have to travel 60 metres further along a bridleway shared with equestrians and cyclists. I accept this to be the case, however for those users travelling north, their journey would be 60 metres less on a shared route. The council do not consider that there is any inherent substantial inconvenience for pedestrians using a shared route and site inspections have not revealed damage to the surface in this regard.
5. It is also the case that most pedestrians using the existing route of FP94 would need to continue their journey using adjoining bridleways. An extra 60 metres of shared surface for those users travelling south is negligible when looking at the length of the bridleways needing to be travelled as part of an onward route.
6. Turning to the dog leg turn at point E of the proposed diversion, I note that the existing route of FP94 also has an existing dog-leg at point B, for those users wishing to travel north. I therefore do not consider that the proposed route would be substantially different to what is currently in existence in this regard. Whilst I accept that acute turns in rights of way may ‘feel’ less convenient, many highways have twists and turns along their lengths. When looking at the adjoining paths and the overall journey as a whole, I am not persuaded that this change in direction makes the route substantially less convenient.
7. I am therefore satisfied that the proposed diversion is not substantially less convenient to the public.

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

1. The current route of FP94 runs close to the hedge of Manor House Cottage and then alongside the brick wall of the garden of the Manor House, affording close up views of both properties at the gates and gaps of the boundary structures. The objectors consider that the attractive close up views of the historical Manor House will be lost by diverting FP94 onto the proposed route.
2. I accept that views of the listed Manor House at very close proximity will be lost, however such views are only momentary while crossing the entrances to the property. Much of the existing route runs close to a high brick wall, which although attractive in its own right, obscures any view of the house for the most part.
3. When crossing the entrances to the Manor House and adjoining Manor House Cottage using the existing route, I was able to see clearly into the gardens of both properties as well as through some of the windows. Whilst I appreciate that some people are comfortable looking directly into a house and garden at close quarters, there are others who might feel uncomfortable with this.
4. The proposed diversion offers vistas of the house for a much longer part of its length than the existing route, albeit from a little further away. I noted several comments made during the consultations wherein many more users stated a preference for the alternative views afforded by the proposed diversion, than those who stated a preference for the existing views.
5. Surfacing was another matter raised as having an adverse effect on public enjoyment. The Council advised that the proposed surfacing for the diversion was crushed stone for part of the route, and grass for the section of the path between points D-E. The objectors felt that the proposed surface was inadequate compared to the pleasant grassy path that exists on the current route.
6. As noted by the Council, there appeared to be a clear split in public opinion regarding surfacing from the consultations and I appreciate that enjoyment of any path is subjective by nature and open to varying opinions. However I agree with the Council that the proposed surfacing would not be out of character with the rest of the route, when considering that in order to reach point A from Fullerton Road, a user will already have travelled along a surfaced track for some considerable distance.
7. I also concur with the Council that a firmer surface would help to make the path more accessible to all, and suitable for use in all weathers. When I walked the existing grassy route, it was heavy underfoot, likely due to inclement weather, and uneven in parts. I consider this may prove difficult to negotiate for users with mobility issues .
8. One objector was concerned that the proposed diversion, if hedged or fenced, could result in the Manor House being completely hidden from view. Whilst I understand this worry, there is nothing before me to indicate that this would be the case. The Council in their statement, advised that the landowner has *‘no intention of erecting fencing which would block views’* and I note in the application that the landowner stated there would be *‘fencing to match the existing estate style railings.’* This style of fencing was evident on my site visit and it was unobtrusive and did not detract from the views available.
9. The proposed diversion is a short section of a much longer journey travelled. It is the case that the existing footpath has momentary close perspectives of the Manor House, however, the alternative route offers what many respondents to the consultations considered better overall views of the house. The proposed surfacing does not change the overall character of the route and would be more accessible to all types of user, in all weathers. I therefore consider that the diversion will have minimal impact on public enjoyment as a whole.

***The effect the coming into operation of the Order would have with respect to other land served by the existing path and the land over which the new path would be created***

1. The land on which both the current footpath and the proposed diversion are situated, are within the land ownership of the applicant. No issues are raised which suggest that the diversion would have any adverse effect on land served by the existing route or on the land over which the alternative route would be created.

***Consideration of the Order in light of any material provision contained in the ROWIP***

1. No matters were raised by any party in this regard.

**Other Matters**

1. Some objectors highlighted that part of the diversion route is already used by the public and as a result the proposed route *is ‘nothing that the public does not already have access to.’* However the Council have confirmed that the relevant section of the proposed route is not a recorded public right of way, nor is it subject to an application to be recorded as such.

**Conclusion**

1. I have found that the Order is expedient in the interests of the owners of the Manor House and Manor House Cottage, in terms of privacy. I have found that the Order is also expedient in the interests of the public, in terms of a reduction in risk of flooding, better accessibility for all users, and to a lesser extent, a reduced risk of conflict with vehicles.
2. The change of the eastern termination point although slightly further along the same highway, retains connectivity and I consider remains substantially as convenient to users.
3. The proposed diversion of FP94 has a slight increase in length for some users, however, offers a similar reduction in length for others. Any small increase in length, along with any change in direction is negligible when considering use is likely part of a much longer onward journey. Accordingly I consider that the alternative route is not substantially less convenient to the public.
4. The proposed diversion retains views of the historical manor house, albeit the perspective changes, and it will have a surface that is both suitable and more accessible for all users. Overall, when considering the proposed diversion in a rural context and the overall character of the journey travelled utilising this footpath, I do not regard there to be a decrease in public enjoyment ‘as a whole.’
5. 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.

*Mrs A Behn*

**INSPECTOR**

