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| **Order Decision** |
| Site visit made on 28 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/3327857** |
| * 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 Oxfordshire County Council Wardington Footpath No.4 (part) Public Path Diversion and Definitive Map and Statement Modification Order 2023. |
| * The Order is dated 6 February 2023 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 was 1 objection outstanding when Oxfordshire 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. I undertook an unaccompanied site visit on 28 October 2024 when I was able to walk both the current and proposed routes. The current route was obstructed for a very short part by a protruding section of the paint shop, but was, for the most part, walkable. For the purpose of assessing the diversion I will disregard any obstruction and assess the path as though it was fully available for public use.
2. Whilst acknowledging that footpaths can be diverted, Mr Chivers (the objector) believed that the existing route was an ancient trackway, predating highway law, and that as such, it was not legal to divert it.
3. There is no evidence before me illustrating that Footpath 4 (FP4) has a notably significant historical merit, although I do not doubt the objector’s assertion that the route is long-lived. Many public rights of way are historical by nature, however this does not necessarily preclude them from being able to be legally diverted, should the relevant tests be 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 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.
3. Consideration should further be given to the Public Sector Equality Duty, the needs of agriculture and forestry, and the desirability of conserving flora, fauna, geological and physiographical features.

Reasoning

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

1. The application was made in the interests of the landowner to improve security at the premises of Tuthill Porsche. The diversion of FP4 would allow for the installation of lockable gates at the commencement of their access road, along with fencing to provide a defined boundary. This would then enable an extension of the laser activated alarm system, which at the moment can be set off by members of the public straying into the working areas. I am satisfied therefore, that it is expedient in the interests of the landowner that the footpath be diverted.

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

1. The termination points are unaffected and as such remain substantially as convenient to the public.

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

1. The proposed diversion is approximately 25 metres longer than the current route. As the path is in a rural location, connecting to other rural rights of way, it is likely that the route is predominantly used for leisure purposes. Correspondingly, the additional length is negligible when considering the distance that would be travelled overall in a recreational capacity, and would not be substantially less convenient to the public.

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

1. The current route of FP4 crosses a stile and then travels along the access road that leads to the workshop area of Tuthill Porsche. From here the path crosses an outside working area and then runs behind the paint workshop, where a small protrusion of the workshop blocks the path for a very short distance. The path continues past the workshop and behind a new showroom, emerging onto a grassed area, before heading onto a field edge path.
2. Tuthill Porsche is a working site and whilst walking the current route I encountered associated traffic on the access road leading to the workshop, as well as heavy spray and fumes spreading across from the adjacent outside working area and loud banging emanating from inside the workshop.
3. The surface of FP4 is varied along its length, with both hard and soft surfacing and an unevenness in parts, due to the changes in surface type and some natural sloping of the ground. The path is narrow at certain points, with industrial buildings to one side and trees and shrubs to the other side, restricting views for the most part of the section proposed to be diverted.
4. In comparison, the proposed diversion crosses an open gravel surfaced private car park and then traverses a wide and open grassed area. This route is much flatter and on one side offers open views of the countryside and a registered battlefield of the Battle of Cropedy Bridge. Established trees to the other side reduce the impact of the buildings and works of the Tuthill Porsche site.
5. The objector felt that the current path was an important part of the countryside, as well as being adjacent to a historical site, and as such it should be retained. Whilst I understand this view, the proposed diversion is relatively closely aligned to the current path and still runs adjacent to the historical battlefield. The proposed diversion offers more far reaching views and its character is more in keeping with the rural landscape being traversed, rather than the industrial nature of the existing route.
6. The proposed route is also more level in nature, and comprises a gravel and grass surface, which for many, would be a more enjoyable surface to walk upon than the uneven and variable surface of the current path.
7. I consider ‘as a whole’ that the proposed diversion would have a beneficial effect on public enjoyment.

***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 the current footpath and the majority of the proposed diversion are situated, are within the land ownership of the applicant. A section of the proposed diversion runs across neighbouring property, the landowner of which, has consented to the diversion. No issues have been raised which suggest that the diversions 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. I am in agreement with the Council’s view that the proposed diversion satisfies Aim 3 of the Vision Statement in their Management Plan which aspires to *‘a public rights of way and countryside access network which is reasonably accessible to those with limited mobility, vision or understanding’.*

***The needs of agriculture and forestry, and the desirability of conserving flora, fauna, geological and physiographical features***

1. The objector was concerned that no reference had been made by the Council in relation to the proposed diversion, about any impacts to flora or fauna, whether an environmental impact survey had been undertaken or whether any habitat or hedgerow might be affected. There was further concern that an archaeological survey had not been undertaken.
2. I recognise these as genuine concerns, however, as the proposed diversion would cross existing gravel and grass surfaces, no surfacing or other creation works are required to bring the proposed path into being, which might impact upon the factors above. The Council’s Protected Species Officer was consulted about the proposed diversion and made no comment. No hedgerows will be affected or removed as part of the proposed diversion and an environmental impact survey is not required by the legislation governing a diversion of this type.
3. Turning to the archaeological aspect, it was recognised by the Council that both the existing route and the proposed diversion are in the vicinity of a historical site, however the Council’s Historic Environment Record Officer advised that archaeological monitoring was not necessary. Albeit the Officer requested that any ‘stray finds of civil war date’ encountered during the creation of the proposed route should be reported, it is the case that other than the installation of waymarking posts, works are not required to create the path.

***The Public Sector Equality Duty (PSED)***

1. The Oxfordshire Transport and Access Group were consulted on the proposed diversion and in their response they considered that any diversion should have a firm easy surface and any gates should be easy to open and close.
2. The current route has a stile and various changes in surface levels due to the nature of the site it crosses and the natural slope of the land. The proposed diversion has no structures or gates and traverses a much more level surface, making it more accessible to all users. I am therefore satisfied that the PSED is discharged.

**Other Matters**

1. The objector felt that the application was for the convenience of the landowner who had illegally infringed on the existing route and a convenience for the Council who he considered had neglected to maintain the path. He commented that the current obstruction of the existing footpath should have been picked up by the Council and planning control enforced and that a diversion application should not enable the Council to avoid the responsibility of maintaining the current footpath, or exercising building control.
2. The Council in response, accepted that the paint shop obstructed the path, but were unaware as to whether enforcement action had been considered, as this was a matter that would be dealt with by the District Council as the local Planning Authority.
3. Whilst I appreciate the frustration of the objector with regard to planning controls, planning enforcement and maintenance issues, such matters are outside of my remit to consider as part of this legislative process.

**Conclusion**

1. I have found that the Order is expedient in the interests of the landowner, in terms of better security of the site. The termination points of the path are unaffected and remain substantially as convenient to users. Although the proposed diversion of FP4 has a very slight increase in length, this is diminutive when considering use is likely part of a much longer onward journey and therefore not substantially less convenient to the public.
2. The proposed diversion offers better views of the surrounding countryside, and has a surface that is both more in keeping with a rural path, as well as being more accessible for all users. 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.’
3. 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**

