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| **Order Decision** |
| Public Inquiry held on 5 November 2024 |
| **by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 3 January 2025** |

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| **Order Ref: ROW/3287228** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The North Lincolnshire Council (Public Footpath No 84, North Killingholme Public Path Diversion Order 2020(1) and Definitive Map Modification Order). |
| * The Order is dated 5 August 2020 and proposes to divert the public right of way shown on the Order plan together with the modification of the Definitive Map and Statement as described in the Order Schedule. |
| * There were two objections outstanding when North Lincolnshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is not confirmed.** |
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Preliminary Matters

1. The case concerns the proposed diversion of that part of Public Footpath No.84 North Killingholme which traverses grazing land from a field gate at point A on the Order map which adjoins the pedestrian gate to St Deny’s Church before firstly heading north-west and then turning roughly northwards towards a dilapidated pedestrian gate at point B and onto a private road. At this point the route follows the private road for a short distance westward before the path turns to continue in a northerly direction at point C. Walkers are able to walk freely through the grazing field by following either the definitive route or a distinctive grassed over concrete pathway that passes south of existing former kennels. The view of the church which dominates the village from the north is particularly noteworthy.
2. I held a public inquiry at the North Killingholme Village Hall on 5th November 2024 followed by an accompanied site visit during the afternoon of the same day.

The Main Issues

1. The Order is made in the interests of the owner of the land crossed by the Footpath. Section 119 of the 1980 Act requires that, before confirming the Order, I should be satisfied that:
2. It is expedient, in the interests of the owner, that the footpath in question should be diverted;
3. The new footpath will not be substantially less convenient to the public;
4. It is expedient to confirm the Order having regard its effect:
5. On the public enjoyment of the path as a whole;
6. The effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, having regard to the provisions as to compensation.
7. The Order is also made in accordance with Section 53A(2) of the 1981 Act relying on the occurrence of an event specified in Section 53A(3)(a). This section requires that, in the event that I am satisfied that the highway shown in the map and statement should be diverted, the modifications to the map and statement would be made in accordance with the Order.
8. In addition, I am required to take into consideration any material provisions of any Rights of Way improvement Plan (‘ROWIP’) prepared by the Council.
9. The Order Making Authority (the OMA) has taken a neutral stance in relation to the Order. This decision was taken contrary to the recommendation of its officers. The suggestion that members were lobbied is irrelevant to my consideration.

Reasons

***Whether it is expedient in the interests of the owner of the land that the footpath in question should be diverted***

1. The Order is made to address the concerns that the landowner has in terms of properly securing the land. Although I did not observe that the land was being stocked with animals at the time of my site visit, the landowner claims that sheep and other livestock have escaped onto neighbouring land. I observed that the field boundary along the western edges to the land was poorly maintained and consisted of various materials strewed together haphazardly. The landowner suggests that the diversion would secure a definitive route, which would avoid walkers wandering across his land at will. The landowner did not claim that the diversion would lead to improved privacy levels for the occupiers of his property or lead to significantly improved security levels.
2. Having regard to the above, I am not satisfied that sufficient evidence has been tabled to demonstrate that it would be expedient in the interests of the landowner that the Footpath be diverted.

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

1. At present, the walked route offers an understandable and direct route between the church and the wider footpath network. Of course, the existing alignment of the legal route provides a more straightforward route than the proposed route that follows the edge of the field boundary and watercourse. Due to the shape of the field, the proposed route would result in awkward changes in direction by comparison with the existing path’s distinctive and definable alignment heading to and from the church. The difference in distance between points A, B and C of the existing route and A to C of the proposed route would not be noticeably different despite its inferior alignment.
2. The objector suggests that due to the close proximity to a small watercourse, the land becomes boggy during inclement weather. At the time of my visit, weather conditions had been wet and the close proximity of the ditch meant that conditions underfoot were not particularly pleasant. The Council accepts that drainage works may be necessary to improve surface conditions in areas where the proposed route can get muddy as described by the objector. The landowner also confirms that further works will be necessary to improve parts of the proposed path although the details were sketchy and vague. I am not confident that the watercourse and field ditch would not overflow or that the adjoining ground would become saturated and unusable during inclement weather conditions. Although countryside footpaths will occasionally become muddy, I am not satisfied that the Council and the landowner have devised a scheme that would alleviate the objector’s concerns. As with the field boundaries, there is no evidence that this watercourse has been maintained to a good standard.
3. Accordingly, although the proposed route will be no longer in distance than the existing routing, it will take an awkward dog leg and follow a potentially muddy and poorly drained alignment. On balance, having regard to what I observed during my site visit, I would agree with the Parish Council’s views and would conclude that the new footpath would be substantially less convenient to the public, which is the test I must apply.

***Whether it is expedient to confirm the Order having regard firstly, to the effect the diversion would have on public enjoyment of the path as a whole and secondly, the effect which the coming into operation of the Order would have with respect to the land served by the existing right of way and the land over which the right is so created and any land held with it, having regard to the provision of compensation***

*Public Enjoyment*

1. From point A, the existing path slopes very gently up to point B and thereafter flat to point C. The route forms part of an attractive wider network of footpaths with intermittent open views of the surrounding mainly arable farmland. The objector describes it as part of a named longer footpath route connecting other parts of the County and having some historical association which should be recognised and preserved. However, the Council confirms it has no official or statutory status. It is the expansive views of the church within a pastoral setting, particularly from the north, that to my mind is an important element, which together with views of the wider landscape, provides for a pleasant walking experience.
2. I found that the proposed route as a whole fails to retain the open views of the church and wider landscape. The walking experience would be different and less attractive with regards to views and amenity. It would in all probability be wet underfoot and would potentially be liable to flooding. Consequently, I find that public enjoyment of the route would be unacceptably compromised, and this element of the test is not therefore met.

*Effect with respect to the land*

1. Both the land over which the existing and proposed route pass is in the same ownership. No other land is served by the existing route. No adverse effects have been raised as regards the land served by the existing right of way or the land over which the proposed route will pass. Compensation issues have not been raised. No detrimental impact has been identified as regards the land. I conclude that this part of the test is met.

***ROWIP***

1. No issues have been raised by the parties in this regard and there is nothing that would suggest that the Order is incompatible with the Council’s ROWIP.

***Whether it is expedient to confirm the Order***

1. I have concluded above that the Order is not expedient in the interests of the landowner. The proposed route will be substantially less convenient and would have a deleterious effect on the public enjoyment of the route in question. I find that the proposed route would have a significantly detrimental impact on amenity and enjoyment that would lead me to conclude that it would not be expedient to confirm the Order in relation to the proposed diversion. Furthermore, given my reasoning above, there is no requirement to modify the Definitive Map and Statement.

**Formal Decision**

1. The Order is not confirmed.

Gareth W Thomas

INSPECTOR

**List of Appearances**

For the applicant: Mr Lesley Robert Brown

For the Objectors: Hannah Hepworth – Clerk to Parish Council

Karen Boyington – Parish Councillor

Sidney Mill – Lincolnshire Ramblers

For the OMA Colin Wilkinson - ROW Officer

(taking a neutral stance)

