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| **Order Decision** |
| Site visit made on 5 November 2024 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 6 December 2024** |

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| **Order Ref: ROW/3326451** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act). It is known as the Hertfordshire County Council (Great Munden 58) Diversion Order 2022.
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| * The Order is dated 8 September 2022 and proposes to divert part of Great Munden footpath no. 58. Full details are shown on the Order plan and described in the Order Schedule.
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| * There was one objection outstanding when Hertfordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is confirmed subject to the modification set out below in the Formal Decision.** |
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Preliminary Matters

1. I undertook an unaccompanied site inspection on 5 November 2024.
2. In this decision I will refer to the points on the Order route as shown on the Order plan. I have appended a copy of the Order plan to the end of my decision. Hertfordshire County Council as the Order Making Authority (OMA) are supporting the Order. Submissions in support of the Order are also made by the two applicants.
3. The objector states that the start of the proposed diversion at point A is on their land. The OMA have suggested moving point A slightly to the east, so that the proposed diversion is on the applicant’s land rather than the objector’s land at that point; both applicants agree to this amendment. This minor modification to the Order would not require advertising if the Order were confirmed. It is my view that the Order plan would not require modification as the proposed change would be de minimis to be shown on the plan, the description in the Order would correctly describe the route. This is referred to at paragraph 28 below.
4. From my site visit it was noted that the existing footpath is obstructed by a hedge, fences, and garden planters. In this decision I have treated the existing route as if it is available for public use.

Main Issues

1. Section 119(6) of the Highways Act 1980 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 paths must be taken into account, where applicable. 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.
2. The government guidance on “diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises” was issued by Defra in August 2023. It is also known as the ‘presumptions guidance’. Although this was issued after the making of the Order it now falls for consideration. It states that I should weigh the interests of the owner against the overall impact of the proposal on the public as a whole. Reducing or eliminating the impact of the current route of the right of way on the owner, in terms of privacy, security and safety are important considerations to which due weight should be given.

Reasons

***Whether it is expedient in the interests of the owners of the land that the path in question should be diverted***

1. The diversion Order has been made, pursuant to a jointly made application, by the owners of two separate plots. Together their land forms the majority of the land over which both the existing and proposed routes pass. In addition, the objector owns a very small strip of land which runs between the plots owned by each applicant. Therefore, the objectors land, albeit for a very small section, is also affected by the proposed diversion. Finally, a fourth landowner is only affected by the removal of a small section of the existing route from their land.
2. The basis of the application is for privacy reasons. The existing footpath runs near to the residential dwellings, outbuildings, and cuts through the centre of the private gardens of the properties. Users of the existing footpath can see directly into several windows of the properties. As the footpath cuts through the centre of the gardens, it is disruptive to the owners’ use and enjoyment of their gardens. They have commented that walkers find the existing route difficult to follow and there have been occasions of lost walkers meandering around the garden.
3. The existing route of footpath no.58 runs in a generally easterly direction from point A, it then leaves the shared driveway and follows a southerly then easterly direction across the gardens. At point C the existing route then turns in a generally southerly direction to the corner of the garden at point D. The Order seeks to divert part of footpath no.58 to a route around the southern edge of the garden boundary, between points A and D on the Order plan. At both points A and D the proposed route would re-join the existing alignment of footpath no.58.
4. I accept that it is expedient in the interests of the landowners for the path to be diverted. By diverting the footpath further away from the dwellings and to the edge of the garden it would improve the landowner’s privacy. The objector has not specifically stated that the Order is not in their interests, however the OMA suggests this is implied. I consider that the Order is in the interest of all the landowners, by diverting the footpath to the edge of the garden it would benefit all by enabling better use and enjoyment of the land.

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

1. The Order does not propose any new termination points, the footpath will re-join footpath no.58 at both points A and D.

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

1. The proposed route of footpath no.58 is 38 metres shorter in length than the existing alignment. The proposed route would therefore be more convenient to the public, I also consider that it would be more direct and an easier to follow route.
2. The existing route does not have a recorded width in the Definitive Statement. The proposed diversion, with a recorded width of 3 metres throughout, would give greater clarity to the public. I consider this width is reasonable and would be sufficient for users of the footpath to pass each other.
3. The surface of the proposed route would be a natural grass surface, which is the same as the existing route and therefore as convenient to the public. I consider this to be a suitable firm and even surface.
4. The existing route has a wooden gate between the two gardens, although there are no recorded limitations on the Definitive Statement. The proposed route does currently also have a gate on the boundary between the gardens, however, the Order does not refer to any path furniture. The OMA have stated that the gate will only be authorised if it qualifies under section 66 or section 147 of the 1980 Act, subject to the confirmation of the Order. Therefore, in terms of accessibility in comparison to the existing route the proposed route would be the same. The effect is therefore neutral.
5. Overall, having regard to all of these factors, I conclude that the Order route would not be substantially less convenient to the public, and in some respects would be more convenient.

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

1. I recognise that some users of the footpath may not be comfortable walking adjacent to the properties and through the centre of the private residential gardens, they may feel like they are intruding in a private space. This could affect their enjoyment of the route. Although the proposed route is still within the gardens, it is further away from the properties and feels less intrusive walking along the southern edge of the gardens.
2. Furthermore, on my site visit I noted the view from the proposed route. Although the southern boundary of the gardens consists of trees and hedges, and this mostly obscures the view, there are some gaps in the boundary where there are views of the surrounding farmland to the south. For some people this view may enhance their enjoyment of the path as a whole.
3. Taking account of all the factors, I conclude that, on balance, public enjoyment of the route as a whole would not be negatively affected by the diversion and may in some respects be enhanced.

***The effect of the diversion on other land served by the existing path and the land over which the new path would be created***

1. There is no evidence that the diversion would have any negative impact on the land affected by either the new route or the existing route. The applicants are the landowners for the vast majority of the new and existing route. The objector raises concerns to the proposed route running along the hedgerow; however, no reasons are given. I consider that the diversion would have no negative impact on their land, rather by diverting the footpath to the southern boundary this would enable better use of the land.

***Rights of Way Improvement Plan (ROWIP)***

1. The OMA state that there are no material provisions contained within the ROWIP. However, there are aspects of the proposed route which may contribute towards a number of the core aims of the ROWIP, for example easy access to the countryside. The objector has not raised any concerns regarding the ROWIP.

***Conclusions on whether it is expedient to confirm the Order***

1. I have concluded that it is expedient in the interests of the landowners to divert the path. The Defra guidance referred to at paragraph 7 above guides that I should weigh the interests of the owners against the overall impact on the public. The privacy issues, referred to at paragraph 9 above, are important considerations. Diverting the route would reduce the impact significantly on the landowners.
2. I consider that the diversion would not be substantially less convenient to the public. The diversion would not adversely affect the enjoyment of the route for the public. The proposed route is likely to be more enjoyable to use for most people.
3. Having weighed up the competing interests, I am satisfied that it is expedient to confirm the Order.

**Other Matters**

1. The objector comments that the wording of the Order omits to refer to their land, which lies between the two properties mentioned in the Order. I consider that the Order satisfactorily describes the route. The objector was consulted regarding the proposal, the aim of the Order is clear and therefore there is no prejudice to the objector by the way in which the Order route is described.

**Overall Conclusion**

1. 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 subject to the following modifications:
* On the second line of Part 1 of the Schedule to the Order replace ‘10m’ with ‘8m’.

*J Ingram*

INSPECTOR

