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| **Order Decision** |
| Site visit made on 20 January 2025 |
| **by Claire Tregembo** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 06 February 2025** |

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| **Order Ref: ROW/3332035** |
| * This Order is made under section 119 of the Highways Act 1980 and is known as the North Yorkshire Council Public Footpaths 10.146/013, 10.146/015 & 10.46/200, and Public Bridleway 10.146/016, Thimbleby Grange, Thimbleby Diversion Order 2023. |
| * The Order is dated 18 April 2023 and proposes to divert three public footpaths and one public bridleway as shown on the Order map and described in the Order Schedule. |
| * There were fifteen objections and one representation outstanding when North Yorkshire 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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**Procedural Matters**

1. I will refer to various points and sections shown on the Order map. For ease of reference, I have appended a copy of the Order map to the end of my decision.

**Preliminary Matters**

1. I am advised that the landowner intends to dedicate the diverted footpaths as public bridleways. Equestrian user groups support this proposal but a user group representing walkers does not. They consider the proposed dedication should be taken into consideration as equestrian use would change the experience of walkers and impair their enjoyment of the network. I can only take into consideration the Order before me and the reasons for making it. Furthermore, there is no legal agreement in place to ensure the proposed dedication will occur.

**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.

**Reasons**

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

1. The application for the Diversion Order was made by the landowner because some of the public rights of way alongside the farmyard area separate it from the land to the south and east. This makes it difficult to expand and improve the farmyard and affects the operational viability of the farm. The proposed diversions would divert two footpaths away from the farmyard and allow the expansion of the farm buildings.
2. Two footpaths cross access points into the farmyard where visibility is limited. Manoeuvring large agricultural and forestry vehicles cause health and safety risks to the public and farm workers.
3. The footpaths alongside the farmhouse and farmyard also affect security. One footpath providing direct access to the A19 is also screened from the farm by a hedge. The landowner considers the footpaths make the house and farmyard vulnerable to theft and damage, and means the area cannot easily be secured reducing the options for storing equipment and stock.
4. The landowner states the current Order routes differ from routes used by farm workers resulting in additional gates and stiles which they need to maintain. Realigning the Order routes would reduce the number of structures on the Order routes by three. However, several gates on the existing routes (points B, C, G, L, M, and T) are field gates used for stock control or private access purposes and new gates are proposed on some of the Order routes. I do not consider the diversions would reduce the costs or time spent maintaining structures.
5. The triangle area of land near point G has been set aside for rewilding as it is too wet for agricultural purposes. However, the presence of people here disturbs wildlife reducing the ecological benefits.
6. The landowner states trespass occurs in the area between points E, M, U, and T due to the public taking easier or more direct routes, or using the old line of the bridleway along the top of the ridge to the east of Order route M-N. Furthermore, clay target shooting takes place on land east of Order route M-N which is a danger to path users straying from the definitive line onto the old bridleway, particularly horse riders. The landowner considers the diversions would reduce this trespass by providing routes along the desire lines and away from the old bridleway line.
7. I consider the proposed diversions would improve the viability of the farm and improve the security and safety of the farmyard and house. The diversions could reduce trespass and would move the public away from an area of rewilding. Therefore, I am satisfied it is expedient to divert the Order routes in the interest of the landowner.

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

1. Point A joins the A19, a busy dual carriageway and parties believe there is limited use of section A-B. The proposed diversions would relocate this terminus to point AA on a quiet minor road.
2. There is no gap in the dual carriageway central reservation at point A and there are no public rights of way on the opposite side of the A19 here. Anyone wishing to cross the A19 would need to walk alongside it to the north or south to reach a gap in the central reservation. From point AA there is a short walk along the quiet road to reach the A19 where there is a gap in the central reservation with a public footpath on the opposite side. The footpath opposite this road can be used to reach the road south of point A.
3. I consider the new termination point would reduce roadside walking along the busy A19 and be substantially as convenient to the public.

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

1. Section A-AC would be diverted to the new line AA-AC removing the need to walk alongside the A19. Roadside walking to reach a gap in the central reservation of the A19 would be along a quiet road.
2. Sections V-C-D-E-I would be diverted onto section V-H and the existing bridleway between H and I which is a longer route. However, the new route is less steep than the existing footpath and easier to follow as it is enclosed between boundaries rather than following several meandering field edges. The section north of C is also churned up by agricultural vehicles accessing the farmyard.
3. Those using section B-C-D-E-L would have two options with the route chosen likely to depend on the overall direction of travel. Those heading north to point H would be able to use section B-AC-AA-H and those heading south to point N would be able to use section B-Q-N. These alternative routes have similar overall distances and would still be along similar field edge paths. Point L could still be reached by using the existing bridleway between H and I and section I-J-K-L from the north or section S-L from the south.
4. One party considers the Diversion Order a *de facto* extinguishment of the footpath network due to section B-C-D-E-L being replaced with a route running alongside the road in the field on the other side of the hedge. They consider this section would be of little benefit to walkers as the public road is quiet and adequate for their use. Although the road is quiet, it is narrow with no footways and some of the vehicles I saw were travelling at speed. There are grass verges along most of the road and some are wide, particularly west of point AA to the A19. However, the verges along other sections are narrow or non-existent, especially on the bends, and some include a drainage ditch. I consider a footpath in the field to be safer and more convenient for walkers. Path users would not have to move onto the verge to avoid vehicles, which may not always be possible or may mean crossing the road. The proposed footpath would also provide an off-road route for anyone walking between Thimbleby and the A19.
5. The alternative route to section F-G-S would be F-Q-S which is 80 metres longer than the existing footpath. I do not consider this additional distance to be substantially less convenient considering the Order routes are most likely used for recreational purposes. The existing route passes through two gates, but there is a third set of gateposts suggesting a gate is authorised here. An extract of the Definitive Statement has not been provided so I am unable to determine where gates have been authorised on this route. There would be two gates on the proposed footpath.
6. Section S-T-U would be diverted to the other side of the hedge between S-N-U. The trees along the boundary overhang and obstruct the existing footpath, presumably due to the direction of the prevailing wind. The surface on the existing route is uneven but the proposed route has an even surface. Therefore, the proposed footpath would be easier to use than the existing footpath.
7. User groups expressed support for the diversion of section I-E-L-K to the line I-J-K. The existing bridleway is through an area of vegetation and involves passing through three gates. At the time of my site visit, it was possible to walk along section I-E-L-K but riding a horse or bicycle there would have been difficult due to the vegetation. The new route would be along a cart track with no vegetation affecting it. There would be two bridle gates at points J and K.
8. The alternative route for section K-M-N would be along K-S-N which is approximately 140 metres longer than the existing bridleway and would involve passing through one less gate. Section M-N has a recorded width of 2 to 3 metres, but only a narrow line appeared to be used due to the slope. The surface is uneven, affected by rabbit holes and molehills, and is steep at its southern end. One of the user groups considers it difficult to follow closely, even with OS mapson a phone. There is also a rotational landslip on the slope above the existing bridleway. Although the landslip is not affecting the line of the bridleway at this time, it could in the future.
9. The alternative route is on even ground, is less steep, and has a width of 4 metres. Concerns are raised about section K-S being boggy and less well-drained than the existing route. At the time of my site visit, section K-S was largely dry, despite recent wet weather. There was a small pool of water in a dip close to the hedge and a short, slightly rutted section close to the field gate at K. The landowner intends to fill in some hollows along this section and clear the drains to improve drainage. Overall, I found the proposed route easier to use and follow, with better surface conditions than the existing route.
10. One person also considers the noise from the A19 to be louder due to the proposed bridleway being closer to it. The noise from the A19 is no different on the proposed route to the existing bridleway. Clay shooting was not taking place at the time of my site visit, so I am unable to determine the impact of this on either route. The increased distance from the shooting site means it is unlikely to be louder.
11. Taking the above into account, I do not consider the proposed new routes would be substantially less convenient to the public.

***The effect of the diversions on public enjoyment of the paths as a whole***

1. Those using the existing rights of way state they provide a variety of routes with excellent views over the surrounding countryside. They consider the proposed routes would be less attractive and varied with reduced views.
2. Most of the existing paths are along the edges of fields and this would largely remain unchanged. The proposed footpath between W and Y would run through a small wood. Some path users could find this an interesting addition to the path network. I found the views of the surrounding countryside on the existing paths to be similar to those on the proposed paths.
3. Particular concern is expressed about the loss of views along section M-N. Those using this section refer to the bridleway running along the top of the ridge and having existed on this line for hundreds of years. However, this section was diverted off the top of the ridge by an Order dated 8 November 1995 and now runs along the west side of the ridge. This suggests that bridleway users are using the old route instead of the current definitive line. I am only able to consider the enjoyment of the current legal line and cannot take into consideration a route that has previously been extinguished.
4. Section M-N provides attractive views of the land to the west but views to the east are limited by the higher ground above the bridleway. Similar views would still be available from point N with additional views to the west available along section U-S-Q-F. Views to the west along section K-S are limited by the hedge but there are attractive views of the land to the east which are not available along section M-N.
5. The option to take a short circular route would be reduced. However, given the location of the path network, I consider these ways are most likely used as part of a longer recreational walk or ride.
6. For these reasons, I do not consider the proposed diversions would affect the public enjoyment of the paths as a whole.

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

1. The Order was made in the interests of the landowner so they can make better use of their land. No issues have been raised to suggest the diversions would have an adverse effect on the land served by the existing or proposed paths.

***Wildlife and biodiversity***

1. One of the existing footpaths passes through an area set aside for rewilding. Its diversion away from this area is likely to reduce disturbance to wildlife and increase biodiversity in this area.

***Agriculture and farming practice***

1. The landowner considers the diversions would allow them to expand the farm improving its viability and the security of the farmyard.

***Rights of Way Improvement Plan***

1. A copy of the ROWIP for the area has not been provided, but none of the parties have raised any matters relating to it.

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

1. I have found above that the proposed diversions are in the interests of the landowner. I consider the new termination point would be substantially as convenient, and the proposed diversions would not be substantially less convenient to the public. I do not consider there would be a loss of enjoyment of the paths as a whole as a result of the proposed diversions.
2. There is nothing to suggest the proposed diversions would have a negative effect on land served by the existing or proposed paths. There are likely to be benefits to wildlife, biodiversity, agriculture, and farming practices as a result of the proposed diversions.

**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.

*Claire Tregembo*

INSPECTOR

**Order Map**

