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| **Order Decision** |
| Site visit made on 27 January 2025 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 24 February 2025** |

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| **Order Ref: ROW/3329926** |
| * 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. It is known as the Worcestershire County Council Diversion of Footpaths FH-552 (part) & FH-553 (part) (formerly Footpath 91) FH-579 (part), FH-580, & FH-581 (part) (formerly Footpath 99), and FH-586 (part) (formerly Footpath 100) in the Parish of Feckenham Public Path Diversion and Definitive Map Modification Order 2023. |
| * The Order is dated 4 May 2023 and proposes to divert a number of public footpaths in the parish of Feckenham. Full details are shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the Definitive Map and Statement for the area, once the provisions relating to the diversion come into force. |
| * There was one objection outstanding when Worcestershire County 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 inspection on 27 January 2025.
2. In this decision I will refer to the points on the Order routes as shown on the Order plan. I have appended a copy of the Order plan to the end of my decision. Worcestershire County Council as the Order Making Authority (OMA) are supporting the Order. Submissions in support of the Order are also made by the applicant.
3. From my site visit it was noted that some parts of the existing definitive footpaths are obstructed by a hedge, wall, and garden planters. Although adjacent routes, on a slightly different alignment, are available for use. In this decision I have treated the existing routes as if they are available for public use.

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 paths to be diverted. This is subject to any altered point of termination of the paths 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 paths as a whole, (b) the coming into operation of the Order would have as respects other land served by the existing public rights of way, and (c) any new public rights 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 routes of the rights 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 owner of the land that the paths in question should be diverted***

1. The diversion Order has been made pursuant to an application by the owner of the land over which the existing and part of the proposed routes pass. The remaining parts of the proposed routes would be on the neighbouring land, which has been agreed with the owner.
2. The basis of the application is for privacy reasons. One of the existing routes runs along, or alongside, the driveway to the property and then to the front and side of the residential dwelling. The footpath is adjacent to outbuildings, and the private garden and outdoor seating area. In addition, two footpaths cross another garden area used to grow plants or vegetables. Users of the existing footpaths can see directly into several windows of the property. The route C-A crosses the driveway and a grass field, it is also within view of the property and garden. The landowner states the diversions would improve their privacy.
3. The existing route runs in a generally westly direction from point G and D to point F, where it continues for a short distance along the driveway before joining Berrowhill Lane. At point C the existing route runs in a generally southerly direction to point A. The Order seeks to divert the footpaths to a route around the perimeter of the residential curtilage, route G-J would run along the edge of the adjacent field. In addition, route F-B would be diverted to a track to the north, between points F-C . At points G, D, A, C and F the proposed routes would join the existing public rights of way network as they do currently.
4. I accept that it is expedient in the interests of the landowner for the paths to be diverted. By diverting the footpaths further away from the dwelling and the garden it would significantly improve the landowner’s privacy. In addition, the diversion would allow the landowner to fully utilise the garden to the north of the property, currently there are two footpaths which cut through this area, between points E-G and E-D. The objector does not dispute that the Order is in the landowner’s interest, indeed, they have commented that they agree the footpaths should be diverted.

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

1. The numbering of these footpaths on the Definitive Map and Statement and in the Order is confusing. The Order does propose some new termination points if each numbered path is considered separately; however, this is only in relation to how the footpaths are numbered. A walker would not use each numbered footpath in isolation. When considering the journey, a user of the footpaths would take as a whole, the proposed route would re-join the existing right of way at points G, D, A and F. Therefore, the only change in termination point would be point C, where users travelling north to south or vice versa would have an additional 32 metres to walk between points C and M before continuing their journey. I do not consider this to be excessive in the context of the footpath. Therefore, I consider the new termination point would be substantially as convenient to the public.

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

1. The proposed routes are 55 metres longer in total than the existing alignments. For a walker travelling north to south there would be an additional 30 metres to walk; and if travelling east to west there would be an additional 120 metres to walk. The proposed routes would therefore be less convenient to the public in terms of distance, but not substantially so. I also consider that the proposed route is less direct when travelling east to west and vice versa; the objector refers to the zig-zag nature of the route and the number of changes in direction. However, this must be considered in the context of the route as a whole, when the main use is likely to be for recreational purposes and many users would be walking a much further distance. In addition, for a user travelling north from point A it would be considered more convenient to use the proposed route A-J-G, than the existing route A-B-E-G. Therefore, in terms of distance, I consider the proposed routes would not be substantially less convenient to the public.
2. The existing routes do not have a recorded width in the Definitive Statement. The proposed diversions, with a recorded width of 2 metres throughout, would give greater clarity to the public. I consider this width is reasonable and would be sufficient for users of the footpaths to pass each other.
3. The surface of the proposed route would be a stone track between points F and C, the remaining proposed routes would be a grass surface. There is some dispute whether the existing route between points F and B runs along the tarmac drive or the grass adjacent to it. As there is no recorded width for the footpath it could run over either or both. From point B to just to the west of point E the surface is a stone driveway. The existing routes between points E-G, E-D and A-C are a grass surface, except for where route A-C crosses the driveway. The objector claims that there would be a reduction in the quality of the surface of the footpaths. I consider the proposed routes to be a suitable firm and even surface. I do not consider the terrain or surface of the proposed diversions would be substantially less convenient to the public. Currently all the surfaces of the proposed routes are adequate, any future maintenance issues would be a matter for the OMA.
4. The existing routes currently have a total of 4 stiles; one just to the south of point C, one either side of the driveway just to the west of point B, and one in between points G and D. There is also a gate just to the south of point B and one to the west of point E. The proposed routes would have 4 gates at points M, L, K and J. The OMA have stated these are required for stock control and would only be in place for as long as they are needed. Therefore, in terms of accessibility in comparison to the existing routes, I consider the proposed routes would be an improvement.
5. The objector comments that where the proposed diversion leaves the driveway at point F and continues along the farm track this represents an increased risk to walkers from farm machinery. I do not consider this issue would make the proposed route substantially less convenient to the public. There is a wide track with a grass verge and good visibility for farm workers and walkers to avoid any conflict.
6. Overall, having regard to all of these factors, I conclude that the Order routes would not be substantially less convenient to the public, and in some respects would be more convenient.

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

1. I recognise that some users of the footpaths may not be comfortable walking adjacent to the property and through the residential garden, they may feel like they are intruding in a private space. This could affect their enjoyment of the route. Although the proposed route A-M is similar and parallel to route A-C, it is further away from the property and outside of the gated entrance, it therefore feels less intrusive.
2. Furthermore, on my site visit I noted the views from the proposed routes. From point G heading in a southerly direction there are very good views of the surrounding countryside to the east; part way between points D and J there are views of the village and the church. In addition, when walking the proposed route between points C-M-F, there are extensive views to the west. The views to the west from the existing routes, particularly when walking down the driveway from point B to point F, are partly obscured by trees. The views to the east from the existing routes are obscured by the property. For some people the improved views may enhance their enjoyment of the paths as a whole.
3. Taking account of all the factors, I conclude that, on balance, public enjoyment of the routes as a whole would not be negatively affected by the proposed diversions and may in some respects be enhanced.

***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. There is no evidence that the diversion would have any negative impact on the land affected by either the new routes or the existing routes. The applicant is the landowner for the existing routes and for parts of the proposed routes. The applicant and the neighbouring landowner are in agreement regarding the proposed routes.

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

1. The OMA has not made any comment but has submitted some material provisions contained within the ROWIP. I consider there are aspects of the proposed routes which may contribute towards some of the core aims of the ROWIP, for example to make provision for disabled people and others with mobility issues to use the rights of way network. 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 landowner to divert the paths. The Defra guidance referred to at paragraph 6 above guides that I should weigh the interests of the owner against the overall impact on the public. The privacy issues, referred to at paragraph 8 above, are important considerations. I consider that diverting the routes would reduce the impact significantly on the landowner.
2. I consider that the diversions would not be substantially less convenient to the public. The diversions would not adversely affect the enjoyment of the routes for the public. The proposed routes are 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 has made suggestions of alternative routes for the proposed diversions. I am satisfied that the OMA and the applicant have consulted with interested parties and landowners, they state several different routes have been considered. The options suggested by the objector are not considered suitable, as some of the land is not within the control of the applicant, and the neighbouring landowner would not support it. In addition, in another option suggested, one route remained directly adjacent to the garden.

**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.

*J Ingram*

INSPECTOR

