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| **Order Decision** |
| Site visit made on 20 August 2025 |
| **by H Baugh-Jones BA(Hons) DipLA MA CMLI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 September 2025** |

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| **Order Ref: ROW/3337080** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as The Kent County Council (Public Footpath KH288A (Part) Lenham) Public Path Diversion and Definitive Map and Statement Modification Order 2023.
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| * The Order is dated 23 August 2023 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
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| * There was one objection outstanding when Kent 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.** |
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The Main Issues and Legal Framework

1. The Order was made under Section 119 of the Highways Act 1980. This requires that, before confirming the Order I must be satisfied that:

(a) it is expedient in the interests of the owner of the land crossed by the footpath that the right of way in question should be diverted;

(b) the new termination point of Footpath KH288A (being on the same highway) is substantially as convenient to the public;

(c) the new route to be provided will not be substantially less convenient to the public; and

 (d) it is expedient to confirm the Order having regard also to (i) the effect of the diversion on public enjoyment of the path as a whole, and (ii) 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 together with any land held with it, having had regard to the provision for compensation.

1. Further, in determining this Order I am required to have regard to any material provisions in any rights of way improvement plan for the area although no particular issues have been raised in this case. I am also mindful of the requirements of the Equality Act 2010.

Reasons

*Interests of the landowner*

1. The footpath runs across the front of the applicant’s property, in very close proximity to the house. The evidence tells me that the land was purchased in 2007 and had been used for the growing of crops and through which the footpath was clearly marked by spraying. The applicant has subsequently constructed a new dwelling closer to the footpath and the land has become part of a domestic garden. Consequently, the applicant has cited security and privacy issues, given the public access very close to the house.
2. Problems caused for the applicant have led to an informal diversion being provided through the garden and adjoining pastureland. This has a width of 2 metres and is clearly well used. It is intended to now provide a route further away from the house and its garden. As it stands, both with the original line of the footpath and now the informally diverted one, the public has close access to the applicant’s property. Security would be improved by the proposed diversion of the footpath. In light of all of this, it would be expedient to divert the footpath in the interests of the landowner.

*Convenience to the public*

1. The public’s overall experience would not be unduly harmed given the modest length of the diverted footpath in the context of it forming a substantially longer route. The points of termination would not have a materially detrimental effect on the experience when using the proposed route and the unaffected lengths of the footpath in either direction.
2. Moreover, the Order sets out that, for the most part, the width of the new footpath would be 2.0 metres. This would allow walkers to walk two abreast and would enable an appropriate width to be legally defined in the definitive statement. There would be no material change to the gradient and the footpath would follow a broadly similar route to its current one.
3. The diverted route would not be substantially less convenient to the public and would terminate at a substantially as convenient point.

*Public enjoyment*

1. The current footpath route runs over high ground from where there are very extensive and pleasing views. The proposed route would be located only a short distance to the east and so would allow users the continued enjoyment of those vistas. Moreover, the length of the affected footpath would be modest in that overall context.
2. I am satisfied that the new route would not diminish the overall experience of using Footpath KH288A. There would be no adverse impact on the public’s enjoyment to any meaningful extent.

*Other considerations*

1. Compensation may be payable consequent on the coming into effect of a diversion order and is essentially a matter between the order-making authority and the relevant parties. In determining this Order, I need to take into account any effects on the land that *cannot* be remedied through financial compensation.
2. Given the minor change to the footpath’s route, I do not consider there to be any detrimental effects of the proposed diversion on any agricultural operations.
3. The footpath runs through part of the Kent Downs Area National Landscape. The affected part of the route would still cross the same agricultural field as it currently does. It would not be of different character, and the change would be very modest in the context of the National Landscape as a whole. Consequently, there would be no material effect on the natural and scenic beauty of the National Landscape.
4. I note the objection raised to the proposal. However, I have no empirical evidence that any proposals for housing would be likely to come forward following the footpath’s diversion. In any case, any such schemes would fall to be considered against local national planning policies for the location of new housing, including in National Landscapes.

*Whether it is expedient to confirm the Order*

1. The diverted footpath would be as enjoyable to the public as it is currently. Furthermore, it would be a perfectly useable route and retain its convenience. There would be a clear benefit to the landowner. This leads me to conclude that the tests in Section 119 of the Act are met it would be expedient to confirm the Order.

Formal Decision

1. I confirm the Order.

H Baugh-Jones

Inspector

