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| **Order Decisions** |
| Site visit made on 15 August 2025 |
| **by R J Perrins MA** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 September 2025** |

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| **Order Ref: ROW/3342563 referred to as ‘Order A’** |
| * This Order is made under Section 119 of the Highways Act 1980 and is known as The Kent County Council (Public Footpath ZR281 (Part), Doddington And Milstead) Public Path Diversion and Definitive Map and Statement Modification Order 2023.
* The Order is also made under Section 53A(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) because it appears to the authority that the Definitive Map and Statement for the County of Kent (Map Sheet 107 (TQ95NW) requires modification in consequence of the occurrence of an event specified in Section 53(3)(a)(i) of the 1981 Act, namely the diversion (as authorised by this Order) of a highway shown or required to be shown in the map and statement.
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| * The Order is dated 20 December 2023 and proposes to divert the public footpath shown on the Order plan and is described in the Order Schedule.
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| * There were three objections and representations outstanding when Kent County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs.
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| **Summary of Decision: The Order is confirmed.**  |
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| **Order Ref: ROW/3342551 referred to as ‘Order B’** |
| * This Order is made under Section 118 of the Highways Act 1980 and is known as The Kent County Council (Public Footpath ZR283 (Part), Doddington) Public Path Extinguishment and Definitive Map and Statement Modification Order 2023.
* The Order is also made under Section 53A(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) because it appears to the authority that the Definitive Map and Statement (Map Sheet 107 (TQ95NW) for the County of Kent requires modification in consequence of the occurrence of an event specified in Section 53(3)(a)(i) of the 1981 Act, namely the stopping up (as authorised by this Order) of a highway hitherto shown or required to be shown in the map and statement.
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| * The Order is dated 13 July 2023 and proposes the extinguishment of the public footpath shown on the Order plan and is described in the Order Schedule.
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| * There were three objections and representations outstanding when Kent County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs.
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| **Summary of Decision: The Order is confirmed.**  |

Procedural Matters

1. As the objectors to the Orders did not request to be heard, I made an unaccompanied site visit, taking into account the written representations.
2. The three objections covered matters concerning both Orders. In response to those objections, which highlighted not all points were labelled on the diversion Order plan, an amended plan sealed under the same seal number was served. The new plan is that which I have considered.
3. In this decision I will refer to the various points shown on the Order Plans and have attached copies of them to the end of my decision.

Main Issues

***Order A***

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.

***Order B***

1. The Order is made under Section 118 of the Highways Act 1980 and I must be satisfied that it is expedient to extinguish that part of the footpath proposed in the Order having regard to the extent that it appears that it would, apart from the Order, be likely to be used by the public, and the effect which the extinguishment of the right of way would have as respects the land served by the footpath, taking into account provisions for compensation.
2. Where an extinguishment is being considered concurrently with a creation, Section 118(5) provides that I may have regard to the extent to which a path provided by the Creation Order will provide an alternative path or way when considering the likely future use of the path proposed for extinguishment.
3. In reaching my decision, I am required to disregard any temporary circumstances preventing the use of this part of the footpath when determining the likely use that may be made of it.
4. The government guidance (‘the 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’. 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.

**Both Orders**

1. I need to have regard to any material provision of any rights of way improvement plan (ROWIP) prepared by any local highway authority whose area includes land over which the Orders would create or extinguish public rights of way. None of the parties suggest that either Order is contrary to any material provision contained in a rights of way improvement plan for the area.

Order A

Reasons

1. The proposed Order seeks to divert part of Footpath ZR281 from its current legal route, the alignment of which crosses land under the ownership of two separate landowners; a farm estate and surrounding fields belonging to the applicant, and through the private garden and drive belonging to a neighbouring residential property. At the time of my visit, the footpath had already been diverted away from its route through Down Court Farmyard where the route was unpassable as it leaves the farmyard on the northern side of the northernmost large agricultural building, and onto the field as it proceeds in a south-easterly direction. However, I will determine this case on the basis of its legal alignment.

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

*Ash Tree Lodge*

1. A section of public footpath ZR281 from Down Court Road passes south through the centre of the drive and garden of Ash Tree Lodge. That section is currently inaccessible, and an unofficial route has been made to the west of the property, through a small paddock in the same ownership as Ash Tree Lodge. Nevertheless, if the route was open and available, it would have a significant effect on the enjoyment, privacy and security of those living at Ash Tree Lodge
2. I see no reason to disagree with the view that if the legal alignment was fenced the drive would become unusable and the fence would bisect the property, reducing the enjoyment and reasonable use of the land. The proposed diversion would move ZR281 to the paddock along the unofficial route used by the public. The path would be unfenced, with the stiles installed along this route removed for reasons of accessibility.
3. The proposed diversion would allow the occupiers of Ash Tree Lodge the ability to secure the property without having to make allowances for public access through their garden, which in turn has a detrimental effect on their living conditions. As such, I am satisfied that having regard to the safety, security, and privacy of Ash Tree Lodge, it would be in the interest of its occupiers that Footpath ZR281 is diverted out of the private garden area.
4. In turn, the Order would enable the County Council to address the current high stiles that exist across the proposed alignment.

*Down Court Farm*

1. The route leaves Ash Tree Lodge and enters into farmland where it crosses over a main access route for farm vehicles and then enters the farmyard itself, where it runs past large agricultural buildings, farm offices, parking and open storage areas, before entering the field to the east. The path continues in a southeasterly direction until it reaches the corner of the field and continues onwards to Doddington.
2. At the time of my visit the farmyard was busy; it is clearly a large enterprise with large agricultural vehicles toing and froing and working within the confines of the yard itself. My experience was that it was not a relaxing place to be and whilst those driving vehicles and working in the yard were aware of my presence, and were working with due care and attention, the right of way, through this busy yard, is not to my mind ideal from a Health and Safety perspective for those operating Down Court Farm.
3. No evidence has been submitted to corroborate the view that thefts have occurred, or that the insurance company have concerns about the right of way. I also recognise the expansion of the operations and commercial activity is not on its own a reason to divert a right of way. Nor is the convenience of landowners. Nevertheless, there is no dispute that there is a correlation between the alignment of rights of way and the theft of farm equipment; that unfortunately is somewhat inevitable. Diverting the path away from the active farmyard would generally improve security for the landowner. Whilst retaining it would not resolve the risk to the public traversing the yard, particularly during busy farming periods.
4. To overcome those issues the footpath would be diverted to the south of the farmyard, along the boundary of an agricultural field to the same termination point in the southeast (Point A). This alignment matches a route through the field that the public have been walking for a number of years. That would clearly be away from the farmyard and associated machinery and as such it would expedient in the interests of the farm operations.
5. Thus, I am satisfied that it would be expedient in the interest of the landowners and the public to divert the footpath in question.

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

1. Footpath ZR281 currently runs from Point D to point A where it meets Footpath ZR283. The proposed route would not alter that connection. At Point D where the footpath terminates on Down Court Road the new termination point would be some 25 metres to the west at Point H. That 25 metres is along a very quiet country lane and would have a very negligible effect, if any, on the convenience of the public.
2. Consequently, I am satisfied that the termination point would be as substantially as convenient to the public.

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

1. The length of the legal alignment which would be diverted is approximately 695 metres. The proposed diversion has a total length of approximately 792 metres, an increase of some 97 metres. To the southeast is the village of Doddington and footpath ZR281 serves it from the north. However, there are very few properties within a close radius to the affected route and footpath ZR281 does not exist in isolation.
2. A stretch of footpath ZR283 would not be affected by the proposed extinguishment and would continue down towards the village, re-joining an unaffected length of footpath ZR281 to the south. There is a network of Public Rights of Way just to the north of the village which also support the network, all of which would be unaffected by the proposed diversion or extinguishment.
3. I see no reason to disagree with the view that the length of footpath ZR281, under proposal to divert, is more likely to be used as a leisure walking route, in part due to the lack of services or amenities to the north, as well as the far-reaching countryside in proximity to it. As such the proposed increase of 97 metres over even terrain would not have a substantial effect on the convenience of the right of way.
4. Consequently, it is not considered substantially less convenient to the public.

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

1. The proposed diversion would result in the current length of the footpath of 927 metres being increased to approximately 1024 metres. There is nothing before me to suggest that increase of some 97 metres would affect anyone using the path on a daily basis, and those that do use it primarily do so for recreational purposes.
2. The overall route in terms of views of farmland would remain largely unchanged. However, as I experienced, the alignment around the farmyard would be an improvement in that views would be of hedgerow planting and open agricultural fields, as opposed to a busy farmyard with all that entails. My own experience walking both routes reflects the view that enjoyment would increase from a visual perspective, reduced risk, and the odd feeling of trespass that comes about for some when walking across someone’s garden or through a farmyard.
3. With that in mind, the public enjoyment of the path as a whole would be maintained if not improved and the diversion would have no significant adverse effect on the public enjoyment of the right of way as a whole.

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

1. The existing and proposed Order routes cross over the aforementioned landowners’ property. I have already found that the diversion would allow safe use of the land for agricultural and residential purposes. One objection raises concerns about the potential effect on the rural aspect by the erection of security gates at the entrance to the farm. However, the current situation would not prevent vehicular security gates being erected in any event, provided they retained access to the right of way.
2. There is no evidence that the diversion would have a negative impact on the land served by the existing or proposed footpath.

***The consideration of the order in light of any material provision contained within a Rights of Way Improvement Plan***

1. I have not been directed to any other part of a Plan in which the proposal would be in conflict with.

***Conclusion Regarding Order A***

1. I have found that the diversion would be expedient in the interest of the landowners and the public and that the new termination point would be substantially as convenient to the public. I am also satisfied that it is expedient that the Order is confirmed having regard to its effect on public enjoyment. Nothing in the submissions presented or from my site visit leads me to conclude that it would not be expedient to confirm the Order.

**Order B**

**Reasons**

1. The Extinguishment Order, if confirmed, would extinguish part of footpath ZR283 from Point A where it joins Down Court Road to Point G where it would meet the diverted ZR281 south of Down Court Farm buildings. Parts of footpath ZR283 are currently obstructed. However, I will disregard these obstructions and consider their use as if they were available to the public.

***The extent to which it appears that the part of the footpath would, apart from the Order, be likely to be used by the public***

1. There is no dispute that in 1987 an Order was made to divert part of footpath ZR283 as a new building was being constructed. The order was confirmed but the definitive map was not amended. Given that, and as can be seen on the Order plan, the route is now showing as going through an existing building. Nevertheless, the tests still apply in regard to the extinguishment.
2. The section of footpath goes along the access road to the farm through the farmyard and around several farm buildings, crossing the current alignment of ZR281. It then continues south and runs through two agricultural buildings before crossing into the agricultural field where it would meet with the realigned ZR281 (if that were confirmed).
3. There is no continuation of the footpath network north of Down Court Road in this location. ZR281 currently terminates on the road to the west of the termination point of ZR283. Should the realignment of ZR281 be successful it would terminate some 200 metres west of the termination point of ZR283 on Down Court Road. That is to say the network would still provide access to that road and the remainder of footpath ZR282 would be directly connected to ZR281 and serve a useful purpose.
4. I see no reason to disagree with the view that most of the public, bar the most assertive of walkers, or those that know the area well, would make their way to the alternative route supplied by Public Footpath ZR281 given the potential conflicts using the Order route. The land to the north would still be served by a public right of way and a convenient access from the north to Doddington and vice versa would remain with, in effect, a small variation. Which as I have found above would be a more comfortable option.
5. That is reflected in the guidance which sets out that “members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises.” It goes on to state “in all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given”.
6. In this case I have found those matters to way in favour of the Order which in turn would lead to safer egress for the public as a whole. The relative section of the route proposed under Order A would effectively be similar, and serve the same purpose, I am satisfied that the section of ZR283 is not needed for public use.

***The effects which the extinguishment would have as respects the land served by the footpath, taking into account provisions for compensation.***

1. No relevant issues have been raised regard.

***The consideration of the order in light of any material provision contained within a Rights of Way Improvement Plan***

1. I have not been directed to any part of a Plan which the proposal would be in conflict with.

**Conclusion Regarding Order B**

1. The Order is confirmed.

**Formal Decisions**

1. **Order A** - The Order is confirmed.
2. **Order B** - The Order is confirmed.

RJ Perrins

**INSPECTOR**

**ORDER A**



**ORDER B**

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