

**NOTICE OF CONFIRMATION OF PUBLIC PATH ORDER**  
**HIGHWAYS ACT 1980**  
**LINCOLNSHIRE COUNTY COUNCIL**  
**PART OF PUBLIC FOOTPATH NUMBER 19 TETNEY**  
**PUBLIC PATH DIVERSION ORDER 2022**

On 20 September 2023 the Secretary of State for Environment, Food and Rural Affairs confirmed the above-named Order. The effect of the Order as confirmed is to divert the whole width of Footpath No.19 in the parish of Tetney running from an unaffected part of Footpath 19 at OSGR TA 3436 0187 (A) in a generally north westerly direction for approximately 147 metres to OSGR TA 3424 0197 (B) then continuing in a generally north north westerly direction for approximately 124 metres to terminate at Tetney Lock Road at OSGR TA 3418 0207 (C). The total length of footpath to be diverted to be approximately 271 metres as shown between points A-B-C on Order drawing numbered 2022/004/PPO361/A4 TO AN ALTERNATIVE ROUTE in the parish of Tetney to be 2 metres wide running from an unaffected part of Public Footpath 19 at OSGR TA 3436 0187 (A) and following the drain edge in a generally northerly to north north easterly to northerly direction for approximately 148 metres to OSGR TA 3437 0202 (D) then continuing across the drain in a generally northerly direction for approximately 170 metres to OSGR TA 3436 0219 (E) then running in a generally north north westerly direction for approximately 36 metres to OSGR TA 3434 0222 (F) then continuing in a generally north north easterly direction for approximately 12 metres to OSGR TA 3435 0223 (G) then running in a generally north westerly direction for approximately 27 metres to terminate at Public Footpath 18 at OSGR TA 3433 0224 (H). The total length of footpath added is approximately 393 metres as shown between points A-D-E-F-G-H on Order drawing numbered 2022/004/PPO361/A4. Limitations: Bristol 2 in 1 Gate incorporating pedestrian gate 0.7 metres wide at TA 3434 0223. Compliant to BS5709:2018.

A copy of the confirmed Order and the Order drawing have been placed and may be seen during office hours at Main Reception, Lincolnshire County Council, County Offices, Newland, Lincoln, LN1 1YL. Copies of the Order and drawing may be requested free of charge from Sally Ironmonger, tel: 01522 552117/e-mail: [sally.ironmonger@lincolnshire.gov.uk](mailto:sally.ironmonger@lincolnshire.gov.uk) ref: SXI.PLA021.64.TETNEY. A copy of the Order and drawing may also be viewed online (from 16 November 2023) at <https://www.lincolnshire.gov.uk/council-business/public-notices/1>. In addition Order drawing numbered 2022/004/PPO361/A4 showing the general effect of the Order is displayed with this Notice.

The Order comes into force as from 19 September 2024 but if a person aggrieved by the Order desires to question its validity, or of any provision contained in it, on the ground that it is not within the powers of the Highways Act 1980, as amended, or on the ground that any requirement of the Act, as amended, or of any regulation made under the Act has not been complied with in relation to the Order he or she may, under paragraph 2 of Schedule 2 to the Act as applied by paragraph 5 of Schedule 6 to the Act, within six weeks from 16 November 2023 make an application to the High Court.

Dated 9 November 2023



ANDY GUTHERSON, EXECUTIVE DIRECTOR OF PLACE



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## Order Decision

Site visit made on 29 August 2023.

by **Charlotte Ditchburn BSc (Hons) MIPROW**

appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 20 September 2023

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### Order Ref: ROW/3312283

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Lincolnshire County Council Part of Public Footpath Number 19 Tetney Public Path Diversion Order 2022.
- The Order is dated 11 February 2022 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Lincolnshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is proposed for confirmation subject to modification as set out below in the Formal Decision.**

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### Preliminary Matters

1. I undertook an unaccompanied site visit on Tuesday 29 August 2023. On my visit, I found it impossible to walk the whole of the Order route. It was obstructed at the northern end by the Barley Croft property.
2. The OMA has requested a minor modification to the wording of the Order, to allow sufficient time to install a large bridge at point D on the proposed route. There would be no need for this modification to be advertised further.
3. In this decision I have found it useful to refer to the various points annotated on the Order map. For ease of reference a copy of the map is attached hereto.

### Main Issues

4. 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.

5. 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, this affects land in the ownership of the Environment Agency, Oxford University and Grainsby Farms Limited.
6. 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 and the public that the path in question should be diverted***

7. The Order is made in the interests of the owners of the land crossed by the footpath and in the interests of the public that the path in question should be diverted.
8. The order would benefit the owner/occupier of Barley Croft by removing the public right of way from within the curtilage of the property. This diversion Order has been made following the granting of planning consent by East Lindsey District Council for the construction of Barley Croft which now obstructs the Order route. In December 1975, East Lindsey District Council confirmed a public path order processed under the Town and Country Planning Act 1971 (TCPA), section 210, to divert the route to enable the development to be carried out. The alternative footpath however could not subsequently be made available and certified as required by the order, leaving the public right of way on its original alignment. Clearly, having members of the public walking through the property and garden will have an adverse effect on the privacy of occupiers. Accordingly, it is not unreasonable for the landowners to want to divert the footpath to increase privacy, security and general enjoyment of their property.
9. The Order is also made in the interests of the general public by opening up a section of Footpath 19 (FP19) that has been obstructed for a great many years. Although the owners of Barley Croft may have believed that a diversion had been processed in the 1970s and therefore the obstruction was not wilful, it is still the case that the public right of way cannot be used and the public is entitled to expect the obstruction to be removed. It cannot be expedient to divert a path *in the public interest* simply because it has been blocked by development.
10. However, I recognise that there is an element of public benefit in resolving this long-standing situation by establishing an alternative path and on that basis, I accept that it is expedient to divert the footpath to achieve a positive solution for the public.
11. Having regard to the above and given that there is no evidence to the contrary, I am satisfied that it is expedient in the interests of the landowners and, to a limited extent, the public that the footpath should be diverted.

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

12. Section 119(2) of the 1980 Act provides that a public path diversion order shall not alter a point of termination of the path— (a) if that point is not on a highway, or (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
13. The Order seeks to divert 271 metres of the northernmost section of FP19 to an alternative 393 metre long route running crossfield, and adjacent to drain and field edges.
14. The proposed diversion would start at point A, but its termination at point C on Tetney Lock Road would change to point H. Consequently, users of the footpath would need to use Tetney Lock Road and FP18 to join FP19 to the northeast of the original termination point. The proposed diversion would be 112 metres longer than the existing route. It would add approximately 260 metres if users were approaching from the southwest on Tetney Lock Road, but conversely, it would mean the route is around 140 metres shorter if users' approach from the northeast on FP18. The gradients of both routes are similar, and users would, despite the increase or decrease in the length of the diverted route, be able to enjoy the convenience of FP19 which is currently obstructed. As regards overall convenience (and disregarding the obstructions), the termination point of the proposed route would be substantially as convenient as the existing termination.

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

15. When considering proposed extinguishments under Section 118 of the 1980 Act, sub-section (6) requires that any temporary circumstances preventing or diminishing use of the path in question should be disregarded when determining the likely use that might be made of it. Although the same instruction does not appear in Section 119, it is usual to adopt a similar approach when considering proposed diversions. That is relevant here in so far as the present definitive line of Tetney Public Footpath 19 cannot be used in its entirety as I have explained above.
16. Although the legislation refers to temporary circumstances, the courts have interpreted this as including man-made structures which are capable of being removed. In considering the potential effect of the proposed diversion upon use of the Order route by the public, I will be assessing the existing route as if it were open and maintained to a standard suitable for those users who have the right to use it. Thus, the route would be a footpath through agricultural land and through a garden of a residential property, from point A to point C on Tetney Lock Road.
17. According to the Lincolnshire County Council, the Order Making Authority (OMA), the existing alignment of the footpath is 271m in length whereas the proposed route is 393m. In my view, in this context a 122m increase would not be substantially less convenient to the public. The topography of the existing route and the proposed route is similar, with both routes having similar gradients.
18. The alignment of FP19 away from the owner/occupier of Barley Croft house and garden would provide a more coherent route than the current legal alignment and

would remove any uneasiness users might have about intruding into what is clearly a private space, regardless of their legal rights.

19. The new route includes a “Bristol 2 in 1 Gate” at point J, to replace an existing wooden field gate enabling walkers to easily access the crossfield diversion, and the landowner to prevent unauthorised vehicular access. The definitive route has a gate into the Barley Croft property at present, thus there would not be any extra difficulty created for users.
20. Accordingly, I am satisfied the proposed route would not be substantially less convenient to the public, and in various respects will be more convenient.

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

21. The existing route is part of a network of public rights of way extending across the countryside. They provide an opportunity for shorter and longer walks taking in the rural landscape. The proposed route would still have similar views of the rural landscape, and a similar general direction of travel. It would have similar surfaces to the definitive route and there would be no negative effect on the ease of walking.
22. Overall, I am therefore satisfied that the proposed route would not diminish the public’s enjoyment of the route as a whole.

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

23. The land crossed by the existing route would remain within the ownership of the applicants, the owner/occupiers of Barley Croft. Consent has been obtained from the owners of the land over which the proposed route runs including the Environment Agency, Oxford University and Grainsby Farms Limited.
24. FP18 already runs within the Environment Agency’s parcel of land, and I do not deem the establishment of additional access to negatively affect this land. The Order is made in the interests of Oxford University as owner of the land traversed by a cross-field section of the existing alignment of the footpath, by realigning it to a field edge, negating the need to reinstate the route through crops. Approximately 50 metres of cross-field path will be established on the Grainsby Farms Limited land, however this more evenly splits the field concerned, making it easier to manage and reinstate. I accept the proposed diversion would reduce these impediments and make cultivation more efficient. I am therefore satisfied that the diversion would be of benefit to the management of the affected land rather than presenting any disadvantage.
25. I have carefully considered the objection from the adjoining landowner of Applewick who feels that moving FP19 closer to the rear boundary of their property would negatively impact their privacy. In response, I note there would be ample separation between the path and the residential property which would back onto it. FP19 will also run along the boundary of the neighbouring property of Applewick, there is no evidence before me to suggest that either occupier will have their privacy undermined as a result. There is no evidence that future users of the proposed route would not continue to be respectful and considerate of neighbouring residents.

26. I therefore conclude that the proposed route would not have any negative effect on land served by the existing or proposed routes.

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

27. No contradictory view has been expressed to that of the OMA that the ROWIP has been taken into consideration when preparing the proposed diversion. There is also no evidence to suggest that the proposed diversion would conflict with the ROWIP.

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

28. I have concluded above that the Order is expedient in the interests of the landowner and the public and the new termination point to be substantially as convenient for the public. The proposed route would not be substantially less convenient, and I am satisfied that it is expedient to confirm the Order having regard to its effect both on public enjoyment and land served by the existing route and proposed route. There is nothing in the submissions referred to above or from my site visit that would lead me to conclude that it would not be expedient to confirm the Order.

**Other Matters**

29. The parties were given an opportunity to comment following the recent publication of 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, August 2023. The OMA wrote that in many ways the recently published guidance adds support to the case for confirming the order.
30. The main issues raised by the Objector are the impact on security for dogs entering their property and privacy due to the elevated height of the proposed route. With the exception of a narrow strip of land adjacent to the gate at Point J which could be secured, there is no direct access onto Applewick land from the new route. Walkers are expected to keep their dogs under close control whilst using the public right of way and appropriate signage could be erected to this effect. There is a deep ditch which separates the footpath from the Applewick property. An established hedgerow of trees and shrubs on the opposite side of the ditch serve to reduce the visual impact of the proposed route.
31. The Objector raises the matter of compensation to mitigate the diverted footpath in their objection. The OMA is under no obligation to provide fencing or compensation, however in consideration of minimising the costs to the public purse in negating the need to refer the opposed order to the Secretary of State, the OMA offered the objector a contribution towards the provision of fencing followed by an offer of compensation. This compensatory offer was rescinded as the objection was not withdrawn before the diversion order was referred to the Secretary of State.
32. One of the outstanding points made by the Objector is based on the grounds that there are other alternative routes they believe would be more suitable for the diversion. The OMA has investigated the suggested alternatives before the Order was referred to the Secretary of State. My decision relates solely to the tests set out in Section 119(6) of the Highways Act 1980; I cannot consider alternative routes under the legislation.

### **Overall Conclusion**

33. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed with a modification to the wording of the Order, as referred to in paragraph 2 above.

### **Formal Decision**

34. I confirm the Order subject to the following modification:

- “2. There shall at the end of 365 days from the date of confirmation of this Order be a public footpath over the land situated at Tetney described in Part 2 of the Schedule and shown by a bold broken line on the drawing contained in this Order.”

*Charlotte Ditchburn*

INSPECTOR

