



Order Decision

Inquiry opened on 15 December 2015

by Mark Yates BA(Hons) MIPROW

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

Decision date: 30 December 2016

Order Ref: FPS/P0430/6/1

- This Order is made under Section 26 of the Highways Act 1980 ("the 1980 Act") and Section 53A(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as The Buckinghamshire County Council (Public Bridleway No. 47, Parish of Wooburn) Public Path Creation Order 2014.
- The Order was made by Buckinghamshire County Council ("the Council") on 17 November 2014 and proposes to create a bridleway, as detailed in the Order Maps¹ and Schedule. If confirmed, the Order would also modify the definitive map and statement in accordance with Section 53(3)(a)(iii) of the 1981 Act.
- There were six objections² outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I opened a public inquiry into the Order on 15 December 2015 at Bourne End Library. The inquiry was adjourned as the barrister representing the Council (Mr Stedman-Jones) was unavailable for personal reasons and it resumed on 10-12 May 2016 and 13-14 September 2016. I made an unaccompanied visit to parts of the site on 14 December 2015 and walked the whole of the route following the close of the inquiry when I was accompanied by the interested parties.
2. All of the points referred to below correspond to those delineated on the Order Maps.
3. The proposed bridleway proceeds along the track bed of a former railway line (points A-E) and over a farm access track ("the farm track") between points E-F. This route is located between sections of the A4094 Road, known as Cores End Road and Town Lane, at points A and F respectively. The land in question is owned by members of the Pitcher family ("the principal objectors") and the A-B section corresponds to an existing public footpath. Public use of the B-D section is stated to be allowed on a permissive basis. Although Mr C. Pitcher states that he is not opposed to a route in principle, he clearly objects to the route included in the Order.
4. Mr Wilmshurst, on behalf of the principal objectors, has raised the issue of objections stated to have been made by additional members of the Pitcher family and Mr Baker. Whilst they may have submitted objections to the Order, checks undertaken by the Council have revealed that these were not received. The statement of case for the principal objectors encompassed other members of the Pitcher family and Mr Baker gave evidence at the inquiry. No other

¹ The route is depicted on two maps within the Order at a scale of 1:2,500.

² The six objections provided to me were submitted by Mr Boon, Mr Linehan, Mr Wall, Mrs M. Pitcher, Mr R. Pitcher and Mr C. Pitcher.

remedy was sought by Mr Wilmshurst on this issue. It is purely a matter of speculation whether any additional parties submitted an objection which was not received by the Council.

5. In response to the closing submissions on behalf of the principal objectors, Mr Stedman-Jones wished to tender two additional documents. I heard submissions on this matter and the parties had the opportunity to look at the documents prior to the resumption of the inquiry on its final day. In the circumstances, I concluded that the appropriate course of action would be to deal with the remaining matters and close the inquiry. However, the parties would have an opportunity to make additional written representations in relation to the new documents. All of the additional submissions have been circulated for information.
6. The Council agreed to pay the costs of the principal objectors in relation to the specified time taken by Mr Wilmshurst to consider the two additional documents and formulate a response and there is no costs application for me to determine.

Main Issues

7. Section 26(1) of the 1980 Act outlines that the factors to be considered in relation to the creation of a bridleway are whether there is a need for a bridleway and that it is expedient to confirm the Order having regard to:
 - (a) the extent to which the bridleway would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
 - (b) the effect which the creation of the bridleway would have on the rights of persons interested in the land, having regard to the provisions for compensation.
8. Section 29 of the 1980 Act requires me to also have regard to the needs of agriculture
9. In addition, I need to have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area.

Reasons

The Order

10. It is the principal objectors' primary position that the Order should not be confirmed. However, if this is not the case, they request that consideration be given to principally three alternative routes. The alternatives comprise of the upgrading of Footpath 19, a bridleway which terminates in the locality of point D and a route through the field to the west of the farm track³. I accept that in determining whether it is expedient to confirm an Order it may be appropriate to give consideration to any viable alternative options. Following the close of the inquiry, I asked for the views of the parties regarding practical matters arising out of the bridleway terminating in the locality of point D. The responses of the parties on this issue have also been circulated for information.

³ The discussions which took place between the principal objectors and the Council during the May-September adjournment in order to consider this proposal were unsuccessful.

11. Mr Wilmshurst raises the issue of the extent of the proposed bridleway shown on the Order Maps. It is submitted that the scale and nature of the maps are insufficient to accurately determine the land over which the proposed bridleway will run. He says the route shown includes land outside of the former railway line and it proceeds through trees and a mound of soil. It is considered that the Order in its present form is unlawful. Attention is drawn in support to the case of *MJI (Farming) Ltd v Secretary of State for the Environment, Food and Rural affairs 2009* ("*MJI Farming*") and the requirement for an Order Map to be sufficiently clear.
12. It is the Council's position that the Order Maps comply with the relevant regulations⁴ and are fit for their purpose. The width is set down in the Order and does not have to be shown on the maps. However, the Council has supplied new maps⁵ showing the extent of the proposed 5 metres width shaded grey. It is requested that these are appended to the Order.
13. I agree with the Council that the Order Maps comply with the regulations in terms of their scale and the notation used. Further, the width is expressly stated in the Order and the dashed line falls within the former railway line. Nonetheless, if confirmed, there may be some uncertainty regarding the precise extent of the 5 metres width. The additional maps would provide clarity on this issue. In my view, it would not be appropriate to insert a revised map in order to remedy an error with the original. However, an additional map may be appended to an Order to provide greater clarity in terms of the extent of the right of way. The use of an additional map in these circumstances is supported by paragraph 33 of the judgment in the *MJI Farming* case. It is clear from the additional maps that the proposed bridleway is confined to the bed of the former railway line (points A-E) and away from the mound of soil. I address the presence of trees in paragraphs 30-32 below.
14. The principal objectors are concerned about the impact that the proposed bridleway will have on vehicular use of the farm track. Attention is drawn to section 2-060.2 within volume 1 of the Encyclopedia of Highway Law and Practice, where it states "*The right of way which is created can be unconditional or subject to such conditions or limitations as may be specified in the order. The order could, therefore, be made expressly subject to the rights of the land owner to use his land in ways which would otherwise amount to an obstruction of the highway or a public nuisance. Examples might include gating the path, ploughing the land... or driving motor vehicles over the path...*". Attention is also drawn to Section 34 of the Road Traffic Act 1988, where it is an offence to drive a mechanically propelled vehicle on a bridleway (subject to certain exemptions) without lawful authority.
15. They wish consideration to be given to the insertion of a limitation in the Order for the landowners and their licensees to have an express right to use the route with vehicles. Whilst the Council does not object to such a modification, it queries whether it is necessary given that the principal objectors currently own the land crossed by the proposed bridleway and as such they have a right to drive a vehicle over it. The Council says these landowners also have the power to grant a license to any other person to use the route.
16. I also have doubts regarding whether such a modification is necessary given that any vehicular use by the landowners, or granted by them, would appear to

⁴ The Public Path Order Regulations 1993

⁵ Four maps at a larger scale of 1:1,500

constitute use which is with lawful authority. Nonetheless, for the avoidance of any doubt, the Order could be modified by the insertion of a limitation specifying that the bridleway is subject to the permitted use by mechanically propelled vehicles. Such a modification could incorporate use for agricultural purposes and deliveries to the farm, including parked vehicles. However, I do not agree with the principal objectors request that any highway rights are made subservient to the agricultural use of the land. No authority is provided for such a modification and it is a potentially wide ranging restriction on public use. In these circumstances, I would expect the public and private rights to co-exist.

17. The principal objectors request that the farm track is maintained in whole, or part, to the standard of a vehicular highway. Attention is drawn to there being no power for them to repair a highway maintainable at public expense. However, I am not satisfied that I should interfere with the Council's potential maintenance responsibilities for the proposed bridleway. The issue of any additional maintenance for other traffic would be a matter for the parties to resolve. On this issue, the Council states that it is unlikely to object to a suitable surface being provided, particularly if the condition makes it difficult for the public.
18. The Council requests that the whole width of the farm track is recorded as a bridleway rather than the 5 metres width specified in the Order. The extent of this width is shown on the revised map numbered 6. In addition, the Council would agree to the Order being modified to facilitate the erection of a replacement gate structure suitable for vehicular access and bridleway users along the farm track. I shall give consideration to these matters when reaching my decision.
19. The creation of the bridleway is stated to occur at the end of 28 days from the date of the confirmation of the Order. Mr Carr, who was the Council's principal witness, accepts that this period may be problematic in terms of undertaking all of the required works. In my view, it would be more appropriate for the Order to come into force once the Council certifies that the required works for the bridleway have been completed to a satisfactory standard.

The extent to which the bridleway would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area

20. The Council outlines in its statement of case that the reasons why it considered there to be a need for a bridleway relate to this test. It asserts that the bridleway will add to the convenience and enjoyment of local residents by creating a high quality route for walkers, cyclists and horse riders. The Council says that this route will also encourage use by people with limited mobility. A comparison is drawn between the nature of the proposed bridleway and the corresponding route via Cores End Road and Town Lane.
21. As outlined in some of the plans mentioned later in this decision, the establishment of an off-road route between Bourne End and High Wycombe has been a longstanding objective of the local authorities in the area. In respect of the potential continuation between Wooburn Green and High Wycombe, it cannot be determined at this stage whether such a proposal will be taken forward. The Order before me needs to be considered in light of the creation of a bridleway as far as point F and is independent of any proposed extension to

High Wycombe. Reference is made by the Council to the potential links to various locations which could be served by the proposed bridleway.

22. The creation of a bridleway has also been a longstanding objective of Sustrans and this was supported further by the evidence of Mr Tucker at the inquiry. However, the negotiations that have taken place over a number of years have failed to obtain agreement for the voluntary dedication of a bridleway. There is further support for the Order from Wooburn and Bourne End Parish Council, Wooburn Residents Association and Bourne End Residents Association. In terms of the latter, its Chairman (Mr Penfold) gave evidence at the inquiry. Mr Williams and Ms S. Gibson also spoke in support of the Order, primarily in relation to their respective cycling and equestrian use.
23. An informal public consultation was undertaken in 2007 with the majority of the 160 plus responses being in favour of the proposed bridleway creation. Most of the respondents stated that they would use it. It is apparent that this was undertaken in advance of further talks seeking the voluntary dedication of a bridleway. Further support for the proposal is evident from the majority of the responses to a pre-Order consultation exercise undertaken by the Council in 2014.
24. Mr Williams submitted 116 letters of support to Wycombe District Council on 10 June 2013. These are stated to have been submitted mainly by parents and staff at St Paul's School. Most of these letters are of a standard nature. On 11 June 2013 an e-petition from 70 people was sent to the Council requesting that the scheme be implemented.
25. The responses outlined above demonstrate a fair level of local support for the proposed bridleway. It is apparent from the pre-Order consultation responses and the evidence at the inquiry that the route is currently used as far as point D by pedestrians and some cyclists and horse riders.

Links

26. I consider it likely from the information provided that the predominant type of use of the proposed bridleway would be by pedestrians. In terms of pedestrian users, public access is presently available from Cores End Road by way of Footpath 47 (points A-B) and then by means of Footpath 19, via Footpath 20, through to the junction with Footpath 37 at point D. I recognise that the proposed bridleway offers a potentially more pleasant route for pedestrians than Footpath 19, which proceeds along the southern extent of the former railway line. Nonetheless, public access is available for walkers between points A and D.
27. Footpaths 20 and 37 provide a means of access to locations on both sides of the former railway line. These include properties in the locality of Willow Road, the industrial estate at Thomas Road, the Wye Valley School⁶ on New Road and the Westfield School on Highfield Road. The catchment areas for these schools are stated to include Wooburn as well as Bourne End. Additional means of access are available from the former railway line but these are not public rights of way. On this issue, I note that the Council does not dispute Mr Wilmshurst's assertion that there is no opportunity for prescriptive rights to have arisen as statutory notices have been filed. Further, the access points generally link

⁶ Now known as the Bourne End Academy

directly with Footpath 19, as evident with the pathway that leads from Stratford Drive.

28. Mr Carr says that once the spinal route is in place there will be an opportunity for other routes to be established. However, in my view, consideration should be given to the benefits of the proposed bridleway in relation to those destinations that the public are lawfully entitled to access from it rather than those that may potentially be reached from the route in the future. If the Council wanted any additional routes to be considered these should have been included in the Order.
29. In light of the above, I consider that the proposed bridleway needs to be considered in relation to pedestrian use of the whole route and those destinations served by Footpaths 20 and 37. I recognise that there may also be the potential for circular walks which incorporate the proposed bridleway. This means that the support in terms of access to St Paul's School and the present Cores End Village Green should not be taken into account. Clearly, this issue impacts upon the supporting evidence provided on behalf of parents and children at this school. The potential cycling and equestrian use can in my view only be considered in connection with the whole route.

The Tree Preservation Order ("TPO")

30. The principal objectors draw attention to a TPO which exists in relation to the land crossed by the proposed bridleway from point A to just beyond point B. Irrespective of any minor works to cut back vegetation or trim trees, Mr Carr accepts it may be necessary to remove some trees over this section. Mr Stedman-Jones says that the TPO is applied by Wycombe District Council, a supporter of the Order. He submits that there is every reason to expect co-operation between the two authorities in both the management of the route and the TPO in the circumstances.
31. In terms of the further submissions made after the close of the inquiry, it cannot be determined that any substantive works would be exempt. The specified width of the proposed bridleway is 5 metres and I would expect that this would be reasonably free of trees and other vegetation.
32. Whilst there may be an expectation that any consent for the removal of particular trees will not be withheld by the district council, this cannot be presumed. There is nothing to indicate that consent will be forthcoming and this is a matter of some concern.

Surface

33. Mr Carr understands the A-E section will probably have a stone type surface as opposed to tarmac. In this respect, I note the responses by horse riders, including the local representative of the British Horse Society (Ms Heath), regarding their opposition to tarmac on safety grounds. It is stated that tarmac can become slippery, for instance during the winter months, and lead to horses falling. Wooburn and Bourne End Parish Council were also not happy with the original proposed tarmac surface. I agree with Mr Carr that the Council has clearly had regard to the concerns expressed on this issue. The provision of a stone surface would be an improvement on the present natural surface between points A-E.
34. There is no proposal to change the surface of the farm track, which Mr Carr says has an all-weather surface. On this issue, I note the point made by Mr C.

Pitcher regarding the 30 metres leading from Town Lane having a tarmac surface and there may be some safety concerns for horse riders in relation to this short section. Photographs supplied by Mr C. Pitcher show the condition of the farm track after what looks like a prolonged spell of wet weather. Whilst there is clearly some surface water visible, I agree with Mr Carr that it is not flooded. There will of course be extremes of whether which render a way to be less desirable. As outlined below, the farm track is presently used by a variety of vehicles and I see no reason why its surface could also not accommodate bridleway users. It would be for the Council to determine whether any further improvements should be made in terms of the drainage issues highlighted by Mr C. Pitcher.

Safety

35. The main aim of the Order is to provide a route for pedestrians, cyclists and horse riders away from Cores End Road and Town Lane. A traffic count undertaken on 8 November 2012 reveals that 23,633 vehicles used Town Lane on this day. Another count on 15 November 2012 shows that 28,239 vehicles used Cores End Road on that day. These counts will only provide a snapshot of the extent of the use on the specific day. Nonetheless, it was generally accepted at the inquiry that both roads are heavily used. It is submitted in support that the proposed bridleway would provide a safer and shorter route for the public.
36. As part of the accompanied site visit, I walked along the pavement between points F and A. I found the pavement to have a variable width and it was narrow in some places. The main issues that I detected as a pedestrian was that the proposed bridleway offers a more pleasant and direct route between points A and F. The degree of traffic and the resultant noise was clearly evident.
37. As outlined in paragraph 26 above, pedestrians can proceed between points A and D via public rights of way but there is no public means of access for cyclists and horse riders between these points. I accept that the concerns regarding the use of the main roads in the area by cyclists and horse riders are valid. In particular, Mr Williams drew my attention to the roundabout on Cores End Road, which even as an experienced cyclist he finds intimidating. He also considers that the proposed bridleway offers the potential to get children involved with cycling. Mr Tucker says that the route would not only benefit local people, but it could also form part of the National Cycle Network and hence provide wider benefits. I note that the consultation response from Ms A.J. Gibson refers to the section of road in the locality of St Paul's Church in terms of the safety of horse riders. However, as Mr Wilmshurst points out the issue of vehicles exceeding the speed limit in this urban setting is an enforcement issue.
38. The principal objectors raise a number of safety concerns regarding the mix between vehicles and the public, particularly in relation to the farm track. In contrast, the Council does not see shared use of the track to be a problem. Mr Carr provided some examples at the inquiry of bridleways which proceed over access roads. I do not see there to be any relevance in the fact that none of these were in Buckinghamshire. Further, I am well aware from personal experience of instances where public rights of way co-exist with access roads. However, I am mindful that the circumstances in each case will vary and this

Order seeks to place a section of bridleway onto a track where no public rights currently exist.

39. The farm track is the only vehicular means of access to Manor Farm which is stated to be the site of the main grain store serving over 1000 acres of farmland. There is vehicular use of the track in order to access the farm and the outlying land within the same ownership. This use includes deliveries to the farm and use in relation to the shoot and game businesses based at Manor Farm. The farm track is also used as a means of access to three mobile homes and the garages of two properties on Town Lane.
40. Members of the Pitcher family gave evidence in relation to the use of the farm track by agricultural vehicles. I also heard evidence from two self-employed contractors who undertake work at Manor Farm (Mr Baker and Mr Wall). Photographs have been provided which show a range of vehicles using the track. The majority of the farm traffic entering the track is stated to travel from the direction of the village green, which involves a right turn and the need to cross traffic travelling in the opposite direction.
41. The principal objectors dispute the 21 vehicle movements recorded over the farm track in a traffic survey undertaken on behalf of the Council on 9 October 2014. Mr E. Pitcher and Mr Wall provided estimates for the number of vehicles that use the track on a daily basis. Whilst these are only estimates, the Council does not dispute this evidence. Rather Mr Stedman-Jones refers to the relatively low average frequency of this use. He also made the point that such use may be bunched together. The daily estimates provided by Mr Wall ranged between 40 and 200 and Mr E. Pitcher estimates 85 vehicular movements in a busy day. Clearly, there will be heavier use at harvest time between the end of July and the beginning of September. However, irrespective of the frequency of the vehicular use of the farm track, consideration needs to be given to the safety concerns of the principal objectors in light of the nature of the track and the surrounding area.
42. The evidence for the principal objectors highlights the difficulties that drivers of agricultural vehicles face when making a right turn into the farm track, particularly given the size of the vehicles concerned. It is apparent that this manoeuvre has to be done promptly due to the nature of the road and conduct of other drivers. Mr E. Pitcher states that just to stop on Town Lane when committed could block both lanes due to the length of the vehicle and place it in a hazardous position in the road. Mr Wall says there is a risk when breaking suddenly of toppling over.
43. The width at the entrance to the track at point F is fairly narrow for its current use and the evidence is supportive of agricultural vehicles having to over-sail the verge. An issue also arises in relation to the visibility when turning right into the farm track due to the position of the house and the car that is sometimes parked in front of this property. For vehicles making a left turn, visibility is compromised by a tree and bank. I agree with the principal objectors that vehicles turning into the farm track would pose a risk to the public on the track. This risk is increased in terms of the width and length of particular agricultural vehicles which use the track. The principal objectors draw attention to the reduced breaking distances of agricultural vehicles, which can also be affected by factors such as the weight of the load and the nature of the surface.

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44. It is apparent from my observations of the site and the photographs provided that the risk lessens as the track continues further away from point F. The farm track proceeds along a straight alignment until the turn at point E. I do not say that no risk arises. However, there is good visibility and people should in most cases have sufficient time to take an appropriate course of action, whether that is stopping a vehicle or stepping to one side. I note that Ms S Gibson's response to a question posed in cross-examination was "*If you encounter a vehicle you would wait or wait at the other end*". On this issue, the Council's requested modification to the width of the E-F section should assist. Nonetheless, I agree to some extent with the principal objectors that certain users may be more vulnerable given the vehicular use of the track. In this respect, reference is made to the potential use by children, the elderly and people with a disability. A further concern highlighted by Mr Baker is that people may not expect to encounter vehicles on the proposed bridleway.
45. I would not expect there to be any significant use of the route after dark given the lack of lighting. It appears to me that the public would use the roads and pavements outside of daylight hours and in this respect the proposed bridleway provides no assistance. This is particularly applicable during the winter months. However, I accept that there would be a greater risk on the route in fading light. There was also an acceptance by witnesses at the inquiry that the area can be prone to foggy weather conditions.
46. There does not appear from my observations of the site, or the evidence provided, to be a significant safety issue for people turning into the farm track at point E. Whilst there is no apparent support for any structure at this point at the present time, some form of structure or bollards could serve to control the speed of equestrians and cyclists joining the track. Any such structure would be independent of the existing field gate.
47. I note from the responses of the supporters that the farm track is considered to be safer than the corresponding roads. However, the Council failed to provide any expert evidence to counter the concerns of the principal objectors. Nor has there been any expert evidence in relation to the risks posed to the different types of users on the particular sections of road. There is also no information in relation to accidents that have occurred on the roads in this locality. These issues highlight a fundamental weakness in the Council's case when set against the evidence of people with longstanding experience of driving agricultural vehicles over the farm track. However, some weight should be given to the evidence of Mr Williams and Ms S Gibson in light of their personal knowledge.
48. One of the late submissions relates to an examination of the different highway options for the points where the proposed bridleway would join the roads at points A and F⁷. However, no evidence was provided to the inquiry regarding what highway measures will be implemented. I consider there to be a significant risk that, if confirmed, the Order would come into force prior to any associated highway works being undertaken where the route meets Cores End Road and Town Lane. This may well lead to potential risks to cyclists and horse riders joining or leaving the route at these points until such time as any highway works are implemented.
49. The other late submission is a Road Safety Audit Report of 29 July 2015. This looked at the safety issues arising out of the termination point at point F and an additional entry point continuing to the road via point D. Mr Wilmshurst

⁷ Feasibility Study Report of September 2014

says that the first two advantages listed in 3.1.3 of this document do not take into account the evidence of vehicular use provided to the inquiry. The other stated potential advantage is the retention of the gates. However, the gates would not necessarily remain and, as outlined above, I consider that the main concern arises at point F. The problems identified in 3.1.4 are to a large extent consistent with concerns highlighted by the principal objectors. A further issue arises out of cyclists turning right into the farm track at point F. There is the comment in 3.4 that safety could be improved by using the field to the west of the track.

50. The use of the farm track by cars in order to park at Manor Farm in relation to the shooting business may have some impact upon the safety of the public using the track. However, I consider there to be less risk in terms of the vehicular use of the D-E section. The vehicular use of the remainder of the route does not appear to pose a particular risk to the public bearing in mind that it is presently used by the public on a permissive basis.

Bees

51. The bee hives mentioned by the principal objectors are located in the yard at Manor Farm which is a fair distance from the proposed bridleway. Mr R. Pitcher adds that swarms of bees have formed on the former railway line. However, I am not convinced from the information provided that any significant weight should be placed on this issue.

The effect which the creation of the bridleway would have on the rights of persons interested in the land

Rights of access

52. In terms of access to Manor Farm and the rights of access granted to other parties, I have expressed doubts regarding whether the Order would impact upon these matters. Nonetheless, the proposed modification outlined in paragraph 16 above should address the concerns of the principal objectors and another objector (Mr Linehan⁸).
53. In terms of the parking of delivery trucks overnight on occasions, this could be included in the proposed modification to the Order. I agree with Mr Carr that there is an assumption that the trucks do not entirely block the farm track given that vehicular access is required by various parties. Further, Mr Carr highlights that the majority of time the vehicles are parked occurs during the hours of darkness. Clearly, I have concluded that there is likely to be little public use outside of daylight hours.

The shoot

54. The number of shoots operating out of Manor Farm is stated to vary with a maximum of 26 days between September and 1 February. There is an increase in vehicular use of the farm track during the periods that people are arriving or leaving in connection with the shoot. The actual shoot takes place in the fields to the north of the former railway line with people shooting away from the line.
55. It is apparent that the D-E section is used by vehicles on shoot days to transport the Guns⁹ and the Picker Ups¹⁰ and the vehicles are parked on or

⁸ He has a licence to use the farm track

⁹ People who come shooting

¹⁰ The people who use dogs behind the Guns to ensure that all of the birds are collected

next to this section. The D-E section is also regularly used as a drive (an area of cover where birds are flushed from). Maintenance works are stated to be undertaken throughout the year. Further activities include vermin control with significant numbers of pigeon and rabbit being shot and sold on as part of the game business. Mr R. Pitcher also says that eggs sold to game breeders would be compromised by public access and dogs being off their leads.

56. The information provided by Mr R. Pitcher does not suggest that the shoot will cease to operate if the order is confirmed. He accepted in cross-examination that the main effect would be a need for increased management of the shoot. Mr R. Pitcher agreed that prominent signs could be erected and the participants better briefed regarding other users of the route. Nonetheless, there will be an impact which is likely to have some time and costs implications. There may be occasions when the shoot is held up in order to accommodate the public but I am not satisfied it can be determined that this will have a significant bearing on the shooting activities. The same applies in relation to maintenance works and vermin control. However, I accept that there is a risk to game birds and eggs from dogs if protective action is not taken.

Security

57. The principal objectors are concerned about an increased risk of crime and anti-social behaviour, if the Order is confirmed, given that public access is presently denied over the D-F section. Further concerns are expressed about the increased risk of trespass and use by unauthorised motor vehicles. In response, the Council has provided crime statistics for the Marlow neighbourhood for the period of October 2014 to September 2015. Whilst these figures appear to be relatively low, they are a year out of date. Further, Mr E. Pitcher is a member of the Thames Valley Rural Crime Farm Watch and he says that a lot of rural crime goes unreported.
58. Overall, I am not satisfied that there is significant merit in the security concerns of the principal objectors. There is nothing to prevent the farm track from being gated to the north west of point E in the same way as the track is presently gated. In addition, there is the potential for unauthorised vehicular access to be deterred by way of the replacement structure suggested by the Council. The presence of Footpath 37 may mean that there are other potential risks to the security of Manor Farm and the associated land.

Footpath 19

59. The continued presence of Footpath 19 means that two public rights of way would exist in close proximity to each other¹¹ with an unusable area of land between them. Whilst the Council suggests that the landowners could apply for the extinguishment of Footpath 19, if this Order is confirmed, there is no guarantee that it will be extinguished. Therefore, the existence of Footpath 19 is something that should be put into the balance. The Council could have made a concurrent Order to extinguish Footpath 19 along with the Creation Order.

Other matters raised by the principal objectors

60. I agree with Mr Carr that there is no reason why the current arrangement regarding the collection of rubbish bins cannot continue. It is often the case that bins are left on the highway on collection days. However, there may well be a need for these bins to be stored elsewhere outside of collection days in

¹¹ Between points B and D

order to prevent people from tampering with them or filling them with their own rubbish. There is nothing to suggest that mail deliveries will not be made further up the farm track. Nor do I consider it reasonable for the collection of rubbish and delivery of mail to be viewed as an interference with use of the highway. The provision of litter bins for the public on the proposed bridleway is a matter for the relevant local authority to determine.

The needs of agriculture

61. The proposed bridleway proceeds over land predominantly used for access purposes. It does not directly impact on the use of the agricultural land to the north but there would be a need to take into account members of the public using the way. The land is now used mainly for arable purposes with occasional grazed livestock. In terms of any potential return to greater livestock use, I consider that animal feeders could be accommodated between points D-E given the width available. There is the potential for any livestock in this area to be contained by authorised stock proof gates.
62. I have outlined above that there is some risk to the public in light of the vehicular use of the farm track, predominantly in relation to the entrance at point F. I cannot speculate how any accident would be viewed in terms of potential litigation. It is not in my view reasonable to conclude that the farm itself is at risk of closing should there be a high degree of use.

The consideration of the Order in light of any material provision contained in a ROWIP

63. The Council says the Order will assist with particular aims in the ROWIP. I accept that the Order could be consistent with the aims to "*Improve the use and enjoyment of the rights of way network*" (Aim 5) and "*Support safe, strong and cohesive communities*" (Aim 8). However, there will be some doubts in relation to the aim to "*Deliver a better integrated and more accessible rights of way network*" (Aim 4) given my comments regarding the potential links. This issue is more pronounced in terms of horse riders and cyclists. I nonetheless accept that the route would be accessible for people with limited mobility.
64. There is no actual evidence to show that the Order would "*Deliver economic benefits to local communities and businesses*" (Aim 11). On this issue, I note the concerns of the principal objectors regarding the impact the creation of a bridleway would have on those businesses based at Manor Farm. If increased use of the rights of way network arose from the creation of the bridleway it could "*Deliver health benefits for users and residents*" (Aim 13).
65. Support can be found elsewhere in the ROWIP for the creation of public bridleways and the use of Section 26 of the 1980 Act where routes cannot be provided by agreement. The Council also draws attention to particular aspirations contained in the ROWIP, including the provision of access for those with reduced mobility, tackling congestion and working in partnership with Sustrans, which may be applicable. In contrast, the principal objectors say the objectives in the ROWIP of promoting safe road crossings and the safety of equestrians are not met.
66. Overall, I accept that the Order is for the most part consistent with particular aims and objectives in the ROWIP.

Other plans

67. A number of other plans are mentioned by the Council. I accept that some weight should be placed on the relevant extant plans when determining whether it is expedient to confirm the Order. The plans that are most relevant reflect the desire by the local authorities to protect the disused railway line for use as a bridleway. There are additional plans which seek to encourage use on foot, cycle and horseback or for people to adopt a healthy lifestyle.

Whether it is expedient to confirm the Order

68. A proportion of the route is used by the public¹² and I do not doubt that the proposed bridleway would also be used. I consider it likely that the predominant type of use would be by pedestrians for whom public access is presently available to point D. However, the bridleway route offers a more pleasant route and extends through to point F. Whilst safety in relation to the roadside route may be less of an issue for pedestrians, there are parts where the pavement is narrow. Further, the provision of a level surfaced route could assist with access for people with limited mobility. Nonetheless, given the points where lawful access is presently available, I find that the potential benefits for the public have been overstated. This is particularly so for horse riders and cyclists who would only be able to legally proceed between points A-F. Further, the establishment of a 5 metre wide bridleway cannot be guaranteed over a section of the route in light of the TPO.

69. There are clearly potential safety benefits in providing a route away from the busy roads. However, the detailed evidence of the principal objectors highlighted safety concerns in relation to the farm track. No firm proposals were put before the inquiry regarding how cyclists and horse riders would safely enter or exit the route. It is also apparent that the bridleway will not provide a safe alternative route outside of daylight hours. I am not in a position to rule that one route is safer than the other. There is nevertheless a fundamental problem with the lack of expert evidence from the Council at the inquiry on the issue of safety. This issue in particular raises concerns about whether it is expedient to confirm the Order. These concerns are not addressed by the later written material provided by the Council.

70. In terms of the principal objectors, I accept that there is likely to be an interference with the activities of the shoot. The evidence indicates that the shoot could continue to operate but that there would be some disruption with additional precautions required. I am not convinced that the agricultural operations would be significantly affected. However, there is clearly concern about the potential conflict between the public and vehicles using the farm track. For those with an interest in the land, compensation would be available for any depreciation in the value of the interest in the land, or damage by being disturbed in their enjoyment of the land, arising out of the coming into operation of the Order. I am not satisfied it has been shown that the amount of compensation will be that substantial so as to prohibit the confirmation of the Order.

71. A further issue arises in relation to the continued existence of Footpath 19. Presently, if the Order is confirmed, there would be two public rights of way in close proximity to each other with an area of waste land between them. This will impact upon the landowners' ability to make use of the land in question.

¹² Mainly on a permissive basis

72. I accept that the general principal of creating a public bridleway in this locality has real benefits and it could be expedient to do so. This is generally supported by the ROWIP and other plans provided. However, in light of my conclusions on the various matters, I am not satisfied that it is expedient to confirm the Order before me.
73. The three alternative routes were only put forward by the principal objectors should I be minded to confirm the Order. Further, the Council requests that the Order is confirmed in relation to this particular route. On the basis of the submissions of the parties, it cannot be determined that it is expedient for me to propose to modify the Order so as to record a bridleway over an alternative route.

Other Matters

74. In light of my conclusion above, it is not necessary for me to consider the alleged interference with the human rights of the principal objectors.

Conclusion

75. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should not be confirmed.

Formal Decision

76. I do not confirm the Order.

Mark Yates

Inspector

APPEARANCES

For the Council:

Mr D. Stedman-Jones

Barrister instructed by the Council

He called:

Mr R. Carr

Consultant

Mr M. Tucker

Representative of Sustrans

Mr J. Penfold

Chairman of Bourne End Residents Association

Additional Supporters:

Mr R. Williams

Ms S. Gibson

For the Principal Objectors:

Mr P. Wilmshurst

Barrister instructed by the principal objectors

He called:

Mr R. Pitcher

Mr B. Baker

Mr T. Wall

Mr E. Pitcher

Mr C. Pitcher

Additional Objector:

Mr D. Linehan

DOCUMENTS

Submitted at the Inquiry

1. Addendum to the principal objectors statement of case
2. Documentation from Mr C. Pitcher
3. Statement and supporting documents on behalf of the Council
4. Authorities cited by the principal objectors
5. Two additional photographs
6. Closing submissions for the principal objectors
7. Feasibility Study Report
8. Road Safety Audit Report
9. Closing submissions on behalf of the Council

Submitted following the close of the Inquiry

10. Further submissions on behalf of the principal objectors
11. Letter of 29 September 2016 from County Councillor Appleyard
12. Email of 29 September 2016 from Wooburn and Bourne End Parish Council
13. Email of 29 September 2016 from Ms Amos (Secretary of Wooburn Residents Association)
14. Email of 29 September 2016 from Mr K. Williams

15. Letter of 19 September 2016 from Mr R. Williams
16. Letter from Mr Penfold
17. Letter from Mr Baker (President of Wooburn Residents Association)
18. Email of 4 October 2016 from Ms S. Gibson
19. Addendum submission on behalf of the Council
20. Further addendum submissions on behalf of the Council
21. Further submissions on behalf of the principal objectors
22. Final comments on behalf of the Council