

Order Decision

Site visit made on 5 April 2016

by Mrs Helen Slade MA IPROW

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

Decision date: 28 April 2016

Order Ref: FPS/D0840/4/13

- This Order is made under Section 119 of the Highways Act 1980 ('the 1980 Act') and is known as The Cornwall Council (Bridleway No. 11, Laneast (Part)) (Coombegate, Pipers Pool) Public Path Diversion Order 2015.
- The Order is dated 29 April 2015 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when Cornwall Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I carried out an unaccompanied site visit on Tuesday 5 April 2016 during the early afternoon. As a consequence of my visit I asked the Order Making Authority ('OMA') for clarification of the status of the land crossed by both the existing and proposed right of way in respect of Registered Common Land and Access Land under the Countryside and Rights of Way Act 2000 ('the CROW Act').
2. Cornwall Council ('the Council') advised me that all of the affected land is registered as common land (Registered Unit No. CL328) and that it is consequently Open Access Land. The response I received from the OMA was circulated to the parties to the Order for comment. Mr Tate, the applicant for the Order, replied and I have taken this correspondence into account when reaching my decision, in addition to the original objections and other correspondence.

The Main Issues

3. Section 119(1) of the 1980 Act states that an Order can be made where it is considered by the authority that it is expedient in the interests of the owner, lessee or the occupier of land crossed by the path or way, or of the public, that the line of the path in question should be diverted. Section 119(6) of the same Act states that, if I am to confirm the Order, I too must be satisfied in this respect. This Order has been made in the interests of the landowner. Before the Order can be confirmed I must therefore be satisfied on that point, and also satisfied that the path will not be substantially less convenient to the public as a consequence of the diversion.
4. Where an Order proposes to alter a termination point of the path in question, I must be satisfied that the altered termination is on the same highway or a

highway connected to it, and that it is substantially as convenient to the public.¹

5. If I am satisfied on the above points, I must then consider whether it is expedient to confirm the Order, having particular regard to the following issues:

- a) the effect that the diversion would have on public enjoyment of the path as a whole;
- b) the effect of the coming into operation of the Order on land served by the existing right of way; and
- c) the effect of the new public right of way on the land over which it is created (or land held with it);

having regard also, with respect to b) and c), to the provisions for compensation as set out in Section 28 of the 1980 Act, where appropriate.

6. No relevant material provisions of the Rights of Way Improvement Plan produced by the Council have been brought to my attention.

Reasons

Whether it is expedient in the interests of the landowner that the path be diverted

7. The Order was made following an application by the landowner, Mr Ray Tate of Coombegate. The Council states that the reasons given by him were that the proposed diversion was required to enhance the security and privacy of the farmhouse and the holiday cottage, and to enhance the security of the farm buildings and equipment.
8. The Council accepted that these were legitimate reasons for making an Order and was satisfied that diverting the path would have the desired effect.
9. Following my site visit and subsequent enquiries regarding the status of the land, I am not persuaded that the diversion would have the effect intended. The OMA, which is also the Commons Registration Authority, has confirmed that the land crossed by the existing path is Registered Common Land, and that it is shown as such on the maps of Access Land produced under the provisions of the CROW Act. Therefore, by virtue of the definition of Access Land given in Section 1 of that Act, the land in question is Access Land and the public enjoys access over the whole area on foot, other than to any land which is considered to be Excepted Land as set out in Part 1 of Schedule 1 to the CROW Act.
10. The categories of land which are described as Excepted Land include, amongst other things (and in no particular order):
- a. Land covered by buildings or the curtilage of such land;
 - b. Land within 20 metres of a dwelling;
 - c. Land used as a park or garden;

¹ Section 119(2)(b)

- d. Land within 20 metres of a building which is used to house livestock, not being a temporary or moveable structure;
 - e. Land covered by pens in use for the temporary reception or detention of livestock;
 - f. Land used for the purpose of getting minerals by surface working (including quarrying).
11. During my site visit I was satisfied that none of the land crossed by the existing public right of way falls into any of these categories. From west to east the path crosses a paddock with no livestock in it at the time of my visit and within which the path skirts a disused quarry; and an area of scrubby woodland. In practice it would then seem to run along the access drive to Coombegate (Mr Tate's property) to meet the road, although the definitive map and the Order plan both accord in showing the line of the path slightly to the west of the access drive, through an area of land which is currently overgrown.
12. The existing right of way is separated from the dwelling and associated buildings by a fence or hedge and I judged that it is further than 20 metres from the dwelling. It is therefore not within the curtilage of the dwelling and it lies beyond the statutory minimum distance in respect of Excepted Land. Even if the present definitive line were to be considered to lie within the requisite distance of the dwelling, it would still be possible for the public to access the parcel of land crossed by the existing path (on foot) in very close proximity to the present line of the route, notwithstanding the proposed diversion.
13. Mr Tate has commented that there are limits to the grazing rights on the Registered Common, as shown on the extract from the Commons Register map he has submitted, and that the area covered by the former quarry is ineligible land in respect of the Basic Payments Scheme² because it is excluded from the grazing rights. It is not clear from his comments whether he considers that this land is therefore not Access Land, but the definition of Access Land does not depend on either the ownership of the land or the exercise of grazing (or other) rights of common. As the quarry is not active, and not fenced off, I consider it unlikely that it falls into the category of Excepted Land.
14. No evidence has been submitted to demonstrate that the existence of the present path actually presents a security risk to the property, and the diversion would not, in any, case secure the removal of the public from the area by virtue of its status as Access Land. The proposed diversion would only remove the ability of equestrians to use the existing right of way.
15. In support of his application Mr Tate referred to the desirability of separating the public from the fenced off grazing area, and the risk of the gates being left open. However, the grazing area through which the path currently runs does not appear to fit the description of a pen in use for the temporary reception or detention of livestock, and thus is not Excepted Land. The public would retain the right of access through it on foot even if the proposed diversion was to go ahead. Equestrians would be excluded and I can see that might be of some benefit to Mr Tate.
16. I acknowledge that Mr Tate put forward his proposal after listening to the wishes of the riders from the nearby equestrian holding at Trekenner

² Agricultural payments scheme

Farmhouse, who wanted to be able to keep off the road as much as possible. I also acknowledge that Mrs Ann Sheldrake, of Trekenner Farmhouse, has written in support of the application. However, the Order was made by the OMA in the interests of the landowner, and not those of the users, whose interests I consider below. I need to be satisfied that the Order was made in the interests of the party cited in it.

17. The proposed diversion would not remove the ability of the pedestrian public to access the land crossed by the line of the current public right of way. Consequently the Order does not meet the first criteria on which I need to be satisfied – that is, whether it is expedient in the interests of the landowner to divert the path on the basis of the grounds argued. I do not consider that it would be expedient in the interests of the landowner, because the proposal cannot and would not achieve the privacy or security that he sought in making his application.
18. I would be entitled not to confirm the Order on this basis, but for completeness I consider the remaining criteria below.

Whether the altered termination point is substantially as convenient to the public

19. The two objections received by the OMA were made by residents of other properties at Trekenner and it is not clear to me whether or not either of them actually uses the path in question. They both refer to the dangers they perceive to be associated with the junction of the proposed path with the A395 road in terms of all users of the highway, and not just users of the public right of way.
20. I paid close attention to the visibility issues at both the existing and proposed junctions, and I also note that the OMA commissioned a Road Safety Review. I concluded on site that both locations had slight drawbacks in one direction in terms of visibility, but that neither one was particularly better or worse than the other. It should be remembered that I carried out my visit on foot. The Road Safety Review refers to the fact that a horse rider gets a slightly better view due to their elevated position. Mrs Sheldrake herself considers that crossing the road directly from their access onto the proposed diverted line would be much safer for equestrians, most of whom use this route already. She says that no-one turns right out of their lane onto the A395 for the purpose of accessing the current bridleway as it is too dangerous. The visibility over the brow of the hill is poor, and the horses travel too slowly for it to be safe.
21. I am satisfied that for equestrians the proposed diversion would be likely to be safer in that it would provide a more direct access to off-road riding from Trekenner Farm than the present arrangement.
22. However for walkers I am not satisfied that the proposed diversion offers the same benefits. I agree with the OMA that there is no obvious direct onward route in any direction at the eastern end of the current route. It is necessary for pedestrians to continue along the verge of the A395 which, even at the time of year that I visited it, was quite busy, and vehicles seemed to be travelling at the speed limit of 60mph in the majority of cases. Given the location of the road and the likely tourism traffic, I am quite prepared to accept that in the summer it would be very much busier.

23. The topography of the area, and the directional trend of the existing right of way, suggests to me that anyone using it on foot coming from the west would continue easterly on reaching the road, and follow a similar route in reverse. There is no obvious reason why someone would 'double back' by leaving or approaching the eastern terminus of the current route from the west. Although no evidence of patterns of use has been provided to me, there is a minor road leaving the A395 to the south and slightly east of the current junction of the bridleway with the A395 which might be a reasonable destination.
24. Consequently, diverting the bridleway to the proposed location would mean that a user would be likely to have to travel considerably further along the A395 in the face of fast-moving traffic to reach that point. I do not consider that walkers (or riders/cyclists not going to Trekenner) would find that a pleasant or desirable outcome. I conclude that, despite the benefit to some members of the equestrian community, the public in general and particularly those on foot would be substantially inconvenienced by the altered termination point. I would also be entitled not to confirm the Order on this basis.

Whether the path would be substantially less convenient to the public as a consequence of the diversion

25. The OMA argues that the diversion would reduce the length of the bridleway by 154 metres and that, as members of the public have to use the road to continue their journey anyway, in whichever direction they may be travelling, the situation would not change in this regard. However, I have already concluded that the altered termination point would not be substantially as convenient to pedestrians if the proposed diversion took place due to the increased amount of road walking that would result. I also consider that the same arguments support a conclusion that the path overall would be substantially less convenient as a consequence of the diversion to the pedestrian members of the public, and to others on horseback or cycling who are not visiting Trekenner.
26. The additional length that a pedestrian (or cyclist/equestrian) would have to travel to regain the original termination point on the A395 is about 244 metres. Whilst this may not be very far in the overall context of a longer walk or ride, the fact that this 244 metres would be alongside or, more likely, on a busy road with no pavement, is a significant disadvantage. I accept that for some equestrians this may not be the case, since they will cross directly over the A395 towards Trekenner. I also accept that there is quite a wide grass verge alongside the A395, but it has a very uneven surface and is not comfortable to walk or ride along. The traffic travels very quickly, and its close proximity at speed is likely to be disconcerting to more vulnerable users. Consequently, for all pedestrians and perhaps some equestrians, and cyclists entitled to use bridleways, I conclude that the path would be substantially less convenient in this respect.
27. I acknowledge the comments made by the OMA that the existing route can be wet, and that it has two limitations on it in the form of gates. The proposed route would have no gates, and the land over which it runs is a little drier for the most part. However, the disadvantages of having to walk (or ride or cycle) further along a very busy road are not, in my view, outweighed by these minor advantages.

28. Furthermore, the public already has the right of access on foot to the line of the proposed diversion owing the status of the land as Access Land. Should the land across which the existing route runs be considered, in fact, to be Excepted Land in this context, the proposal would actually represent an extinguishment of pedestrian access rights, rather than a diversion.
29. Taking all these matters into account, on balance I consider that the path would be substantially less convenient to the public as a consequence of the diversion. This again renders it impossible to confirm the Order.

Whether it is expedient to confirm the Order

30. Having failed to be satisfied on the preceding criteria, there is, strictly, no purpose in me continuing to consider the remaining issues set out in paragraph 5 above since the Order must fail. Nevertheless I deal with them shortly for the sake of completeness.
31. The OMA identifies that the diversion would provide better views and would have no deleterious effect on the public enjoyment of the route. Whilst there may be marginally improved views, I consider that the disadvantage of having to use a greater length of the road would clearly have a deleterious effect on public enjoyment of the route for those not heading for Trekenner, the access to which is not recorded as a public right of way.
32. With regard to the land served by the existing and proposed routes, I have already concluded that the proposed diversion would have no effect on access by pedestrians as the land is subject to open access. For equestrians and cyclists the existing route does not provide access to a public location which would otherwise become inaccessible so there are no issues to consider in this regard.
33. As the affected land appears to be all in the same ownership, the question of compensation would not arise and I need not consider it.
34. Nevertheless, and notwithstanding the benefits to some equestrians from the proposed diversion that I have accepted, the conclusions I have reached on the remaining aspects force me to the inevitable determination that it is not expedient that the Order should be confirmed.

Other Matters

35. If it is considered to be beneficial or necessary to provide better equestrian access, other measures exist within the 1980 Act to create public rights of way.
36. Furthermore, as evidenced by Mrs Sheldrake herself in her letter, and from the track on the ground, the proposed diversion is already in use by equestrians. It runs over open common land and, although there may be no statutory right of access for equestrians over common land, the use appears to be being exercised without restraint. It may be that public rights have already been effectively dedicated.
37. The issue of fencing on the common is not a matter for me to address. If it is considered to require permission or that it is necessary to take any other action, provisions exist within other legislation to facilitate this.

Conclusions

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

Formal Decision

39. I do not confirm the Order.

Helen Slade

Inspector

Highways Act 1980 S119

Order Plan Re File HAD 219

Parish: Laneast CP

Path Number: BR/516/11

Produced by: Countryside Access Team: 29 April 2015

