



Order Decision

Site visit made on 28 July 2016

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 23 August 2016

Order Ref: FPS/D0840/4/14

- The Order is made under Section 119 of the Highways Act 1980 and is known as The Cornwall Council (Bridleway No. 41, Stithians (Part)) (Tresevern House) Public Path Diversion Order 2015.
- The Order is dated 9 September 2015 and proposes to divert part of a bridleway running over land in the ownership of Tresevern House onto an alternative alignment, as shown in the Order map 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 confirmed.

Procedural Matters

1. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations.

Main Issues

2. The Order is made under section 119 of the Highways Act 1980 ("the 1980 Act") in the interests of the owners of the land crossed by the bridleway. Subsection (6) of the 1980 Act sets out that "*The Secretary of State shall not confirm a public path diversion order...unless [she is]...satisfied that the diversion to be effected by it is expedient...in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted...and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—*
 - (a) *the diversion would have on public enjoyment of the path or way 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,**so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a)..."*
 3. Subsection 2 sets out that a "...diversion order shall not alter a point of termination of the path or way...(where it is on a highway) otherwise than to
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another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public."

4. Sub-section (5) sets out that "...the council may require [the owners] to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—
 - (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or
 - (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public..."
5. One objector argued that the Order was not in the interests of the owners due to the effect on the land as a whole. There is no legislative requirement that the proposed route be of benefit to the public where the Order is not made in their interests; however, the new route must not be substantially less convenient to the public. It was claimed that there was a reduction in amenity, with the new route being less convenient, introducing a gap in the continuity of the route and creating an unnecessary extra length of bridleway.
6. I am required to have regard to the material provision of a rights of way improvement plan ("ROWIP") prepared by any local highway authority whose area includes land over which an Order would create or extinguish a public right of way. Cornwall Council, the order-making authority ("the OMA") submitted part of the Cornwall Countryside Access Strategy 2007, which incorporates their ROWIP.

Reasons

Whether it is expedient, in the interests of the owner, that the right of way in question should be diverted

7. The application was made by the owners of Tresevern House, Stithians. The current route runs over a driveway adjacent to the house. There are buildings on either side of the route, such as a shed, barn and greenhouse. I am satisfied that there would be increased security at the property, with the ability to challenge those in this area once there is no longer a public right of way through the residential and working areas. It is reasonable that the owners should wish to enjoy the use of their property without users passing so close, disturbing their privacy.
8. It was argued in objection that it would not be in the interests of the owners to take agricultural land out of production in order to provide the alternative route A - C¹. The applicants do not rely on 'efficient use of the land' as a reason for the diversion. As the applicants own all the affected land I consider it open to them to say how they would wish to use it, provided that all the relevant tests under the 1980 Act are met. I am satisfied that the proposed route, which will be generally enclosed from the adjacent land as a separate entity, would be preferable to the owners of the land than the existing alignment, A - B.
9. It is suggested that, as the public right of way predates the current owners moving to the property, they should run their affairs appropriately and not seek

¹ Points A, B and C are indicated on the Order map

to reorganise the right of way. The legislation allows such alterations to be made, provided that the public is appropriately provided for.

10. An objector raises concerns that the term 'expedient' is used, which he indicates has a dictionary definition of "*convenient and practical although possibly improper or immoral*". Expediency is part of the tests on diversion set out under the statute and I consider that the proposal is convenient and practical for the owners. For all the reasons set out above, I consider that it is expedient, in the interests of the owners of the land, that this part of the bridleway should be diverted.

Whether the new route will be substantially less convenient to the public

11. I agree with the objector that the existing alignment of the bridleway provides a more straightforward route than the right angled turns introduced by the proposed route. However, the width of 3 metres will make the proposed route wide enough for users to pass each other with ease, with wider areas naturally arising on the turns. I agree with the OMA that the route as whole, and the corners in particular, will not cause difficulties for those on horseback.
12. Whilst it has been argued in objection that there will be a need to share a tarmac road with vehicles over the section B – C this is a no-through road, signed as such at the north-eastern end at Goonlaze. It is unlikely that there will be much, if any, vehicular access by the general public. The likely use would be vehicles associated with the residential property and there would be mixing with those on at least the south-eastern section of B – A in any event. I am satisfied that it would not be substantially less convenient for users to use this short additional section of road.
13. I note the intention to remove the gate to the north of point A. I agree with the applicant that the removal of a structure from the route makes it more accessible, and therefore convenient, for all users.
14. I am satisfied that the proposed route would not be substantially less convenient to the public, which is the test I must apply.

The effect of the diversion on public enjoyment of the route as a whole

15. The applicant indicated that some people had said that they did not like using the route as it passed through private property. I accept that for some the changes will improve their enjoyment in using the route. I am satisfied that there will be no negative effect upon public enjoyment of the route as a whole.

The effect the coming into operation of the Order would have with respect to the land served by the existing route and the land over which the new route is created together with any land held with it, account being taken of the provisions as to compensation

16. The land crossed by the existing route would remain part of the property to which it belongs, Tresevern House, with the land crossed by the proposed route being part of the same property. There is no evidence that there would be any negative effect on land served by the existing or proposed routes.

Whether the point of termination of the new right of way will be on the same highway or highway connected with it, and will be substantially as convenient to the public

17. Point A remains unaltered whilst the south-eastern termination, point B, moves approximately 30 metres to the north-east along an unclassified county road, U6052, to point C. Whilst it was said in objection that there would be a break in continuity of the bridleway it should be noted that point B is the end point of Bridleway 41 at a 'crossroads' with Bridleway 50 running south-west, Bridleway 51 running south-east and the county road running north-east.
18. Although there may be a little inconvenience for users wishing to follow the generally north-south route in connection with Bridleway 51, I agree with the OMA that the alterations will be substantially as convenient to the public.

Other relevant matters

19. I agree with the OMA that there has been some misunderstanding of the compensation provisions under the 1980 Act; the Order has been correctly drafted with reference to defraying compensation, as set out by sub-section 119(5) of the 1980 Act. The OMA indicate that the ongoing maintenance of the additional approximately 8 metres length of right of way can be dealt with under the Local Maintenance Partnership grant for Stithians parish if necessary. I do not consider this to be of such weight on the public purse that it weighs against the expediency for confirmation in terms of the landowners interest.
20. There is nothing to suggest that the proposal is inconsistent with the ROWIP.

Conclusions

21. I conclude that it is expedient to confirm the Order in the interests of the owners of the land. In terms of the effect on the public I am satisfied that the changes are not such as to be substantially less convenient or have a negative effect upon the enjoyment in using the bridleway.
22. Having regard to these, and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Other matters

23. Concerns as to whether or not the application relates to potential sale of the property, and whether the changes may increase the market value, are not relevant to my decision. References to potential improper conduct are not matters for me.

Formal Decision

24. The Order is confirmed.

Heidi Cruickshank

Inspector

Highways Act 1980 Order Plan Re File HAD 221

Parish: Stithians CP Path Number: BR/231/41

Produced by Countryside Access: 17 August 2015



**THE CORNWALL COUNCIL
(BRIDLEWAY No. 41, STITHIANS (PART))
(TRESEVERN HOUSE)
PUBLIC PATH DIVERSION ORDER 2015)**

