



Order Decision

Site visit made on 17 November 2015

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 24 NOV 2015

Order Ref: FPS/L3245/4/6

- The Order is made under Section 119 of the Highways Act 1980 and section 53A(2) of the Wildlife and Countryside Act 1981 and is known as The Shropshire Council (Restricted Byway 1 (part), Parish of Shawbury) Public Path Diversion Order 2015.
- The Order is dated 12 March 2015 and proposes to divert part of a restricted byway running over land in the ownership of Merlwood Farm onto an alternative alignment, as shown in the Order map and described in the Order Schedule.
- There was one objection outstanding when Shropshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Preliminary Matters

Temporary circumstances

1. A main issue raised in objection was that the existing definitive line of Shawbury Restricted Byway 1 ("RB1"), A – B¹, was obstructed by a garden. The applicants purchased the property, Merlwood Farm, in 2007 and indicate that the wooden shed, greenhouse and raised vegetable beds I noted during my site visit were already in place at that time. Although all legitimate users of a restricted byway would not be able to use the route as it is now, I was able to walk through. I was also able to walk the proposed route B – C, as well as the western continuation of RB1.
2. The objector, a representative of the Open Spaces Society, raised concerns that a diversion could not be used to overcome the obstructions mentioned above. Sub-section 6 of section 118 of the Highways Act 1980 ("the 1980 Act") states that "*...any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.*" Although section 119 of the 1980 Act, under which this Order is made, does not contain such wording, longstanding guidelines have required Inspectors to treat temporary circumstances in the same manner as under s118.
3. I am satisfied that whilst considering the potential effect of the proposed diversion upon use of the Order route by the public I must consider the existing route as if it was fully open and available to all legitimate users. However, in relation to the matter of expediency I consider that it may be inappropriate to disregard the facts on the ground.

¹ Points A, B and C are shown on the Order plan

Procedural Matters

4. 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

5. The Order has been made in the interests of the owner of the land crossed by RB1. I must be satisfied it is expedient to confirm the Order in that interest.
6. The objector raised concerns regarding the 'correctness' of using the 1980 Act to overcome issues with obstruction of public highways, as discussed in the preliminary matters above.
7. He also argued that the proposed route would not be convenient to all types of user. Shropshire Council, the order-making authority ("the OMA") and the applicant believed that it met the relevant test under the 1980 Act, that it would not be substantially less convenient to the public.
8. Additionally, the objector felt that the use of a section of county road between points A and C on the proposed route would be less enjoyable than the definitive line. The applicant argued that people may feel embarrassed passing a domestic property and so their enjoyment would be improved by use of the alternative. The parties also disagreed about the potential effects of shared use of the proposed route.

Reasons

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

9. The application was made by the owner of Merlwood Farm, Shawbury. The current route runs close to the house, adjacent to the lawn and a patio, with some views into windows on that side. I accept the argument of the applicant that it would be to his advantage to divert the eastern end of RB1 in order to reduce potential intrusion on privacy and fear of theft from outbuildings.
10. As noted, I shall consider the route so far as the public are concerned as if it were open to all. However, from the point of view of the applicant I consider it is in his interests that he be not required to demolish the existing shed, greenhouse and raised vegetable beds in order to fully open the route in its current location.
11. I consider that it is expedient, in the interests of the owner of the land that this part of the footpath should be diverted for the reasons set out above.

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

12. I agree with the objector that the existing alignment of RB1 provides a more natural straight line connection onto the road than the proposed route, which will introduce a 90° corner at point B. However, for any users wishing to turn south-west onto the road the proposed access at point C would be easier to use than point A.
13. In terms of use with horse and carriage I note that representatives from the British Driving Society ("the BDS") have been involved in a site meeting, as a result of which they have been content to withdraw their statutory objection.

Given that the BDS represent these users I prefer their view on the matter of whether the corners will be difficult for equestrians and carriage drivers. I am satisfied with their assessment that the proposed route would be far more convenient for these users and I do not consider that walkers or cyclists would be inconvenienced by the proposed alterations.

14. Although perhaps inconvenient for users travelling generally east – west, I do not consider the proposed route to be *substantially* less convenient, which is the test I must apply.
15. The objector raises concerns about the need to use the county road between points C and A. I note the location and links offered by the A53 to the south-east of this road and accept the evidence of the applicant that this is a quiet unclassified road with limited traffic, as I noted during my site visit. I agree with the assessment of the OMA and the applicant with regard to the availability of a verge along this road and, despite the shallow bend, I am satisfied that it would not be less substantially convenient for users.
16. In relation to concerns over potential shared use on the proposed route with farm vehicles the applicant comments that this is no longer a working farm and so the driveway has only limited movements of light vehicles in connection with the house. There are limited movements of farm vehicles for paddock maintenance at particular times of year but any other farm traffic remains on the existing route to the north, not on the proposed route.
17. I note that there will be no gate at point C, whereas there is currently a gate at 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.
18. Taking account of all the concerns raised I accept that some people may find the proposed route a little less convenient than the existing, but I am satisfied that overall it would not be substantially less convenient to the public.

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

19. The objector referred to some of the matters I have dealt with above regarding convenience in relation to public enjoyment. I am satisfied that the changes are not such that they would negatively affect public enjoyment.
20. I accept the argument of the applicant and the OMA that it is likely that some users may feel embarrassed passing in such close proximity to the residential property and through domestic gardens. For those individuals enjoyment would be enhanced. Overall I am satisfied that there will be no negative effect upon public enjoyment.

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

21. The land crossed by the existing route would remain part of the property to which it belongs, Merlwood Farm, with the land crossed by the proposed route being part of the same property. It does not seem that the change would have a negative effect on any 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

22. Point B remains unaltered whilst the eastern termination, point A, moves a short distance south-west along a minor county road to point C. I agree with the OMA that the termination points will be substantially as convenient to the public in terms of continuation of journeys to and from other highways.

Other relevant matters

23. There is nothing to suggest that the proposal is inconsistent with the Countryside Access Strategy for Shropshire, 2008 – 2018², as set out by the OMA.

24. Similarly, their assessment with regard to the needs of agriculture, forestry and the desirability of conserving flora, fauna and geological and physiographical features and biodiversity appears fair and reasonable.

Conclusions

25. I conclude that it is expedient to confirm the Order in the interests of the landowner. 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 RB1.

26. Having regard to these, and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Other matters

27. The objector was concerned about future maintenance of the proposed route, specifically with regard to overhanging trees, which could be difficult for equestrians to negotiate. Whilst I note the assurances of the applicant of the intention to prune and maintain the branches, I consider that the duty of the highway authority to ensure that routes are available for public use, and the available legal remedies should they fail to do so, remove that matter from my consideration.

28. Whilst I fully understand the frustration of the objector at the installation of improper limitations and signage on the continuation of RB1 to the west and north this is on land outside the ownership of the applicant. Such matters should be dealt with through the highway authority complaints procedures or, failing that, there are legal remedies. I have not taken this matter into account in this decision.

Formal Decision

29. The Order is confirmed.

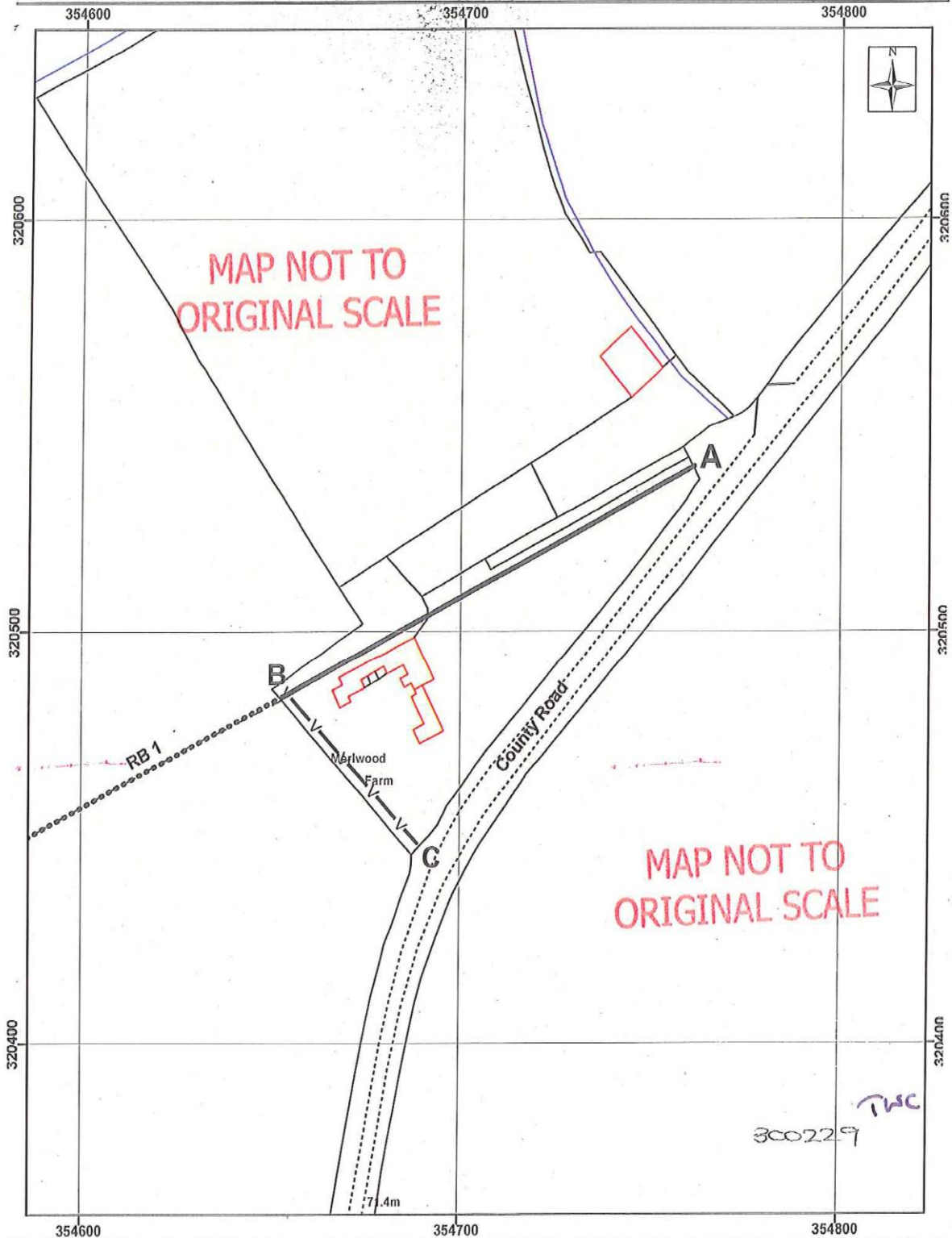
Heidi Cruickshank

Inspector

² The relevant rights of way improvement plan

SHROPSHIRE COUNCIL
SECTION 119 HIGHWAYS ACT 1980
Public Path Diversion Order 2015

Parish of Shawbury
Restricted Byway 1 (part)
OS Sheet No: SJ5420



The Shirehall, Abbey Foregate
Shrewsbury, Shropshire, SY2 6ND

Key

- Route to be created
- Route to be extinguished
- Existing to remain

Scale: 1:1,250

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