



Order Decision

Site visit carried out on 29 September 2016

by Peter Millman BA

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

Decision date: 11 October 2016

Order Ref: FPS/Y3940/4/15

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Wiltshire County Council Baydon 2 (Part) and 11 (Part) Diversion Order and Definitive Map and Statement Modification Order 2015.
- The Order is dated 13 August 2015 and proposes to divert public rights of way as shown on the Order Map and described in the Order Schedule. If confirmed the Order would also update Wiltshire County Council's Definitive Map and Statement.
- There were three objections outstanding when Wiltshire County Council submitted the Order to the Secretary of State for confirmation.

Summary of Decision: I have confirmed the Order with a modification.

Main issues

1. The Order was made by Wiltshire County Council in the interests of the owner of the land crossed by the right of way. Section 119(6) of the 1980 Act requires that, before confirming the Order, I am satisfied that it is expedient in the interests of the owner, or of the public, or both, that the way should be diverted. The further tests for confirmation are set out in the remainder of s119(6) and in s119(6A) of the 1980 Act. The only contested issue in this case is the effect the proposed diversion would have on public enjoyment of the way as a whole. If I conclude that there would be a negative effect on public enjoyment, I am required to balance it against the weight to be given to the interests of the landowner in diverting the bridleway.

Reasons

Background

2. In June 2013 the County Council received two applications for diversion orders affecting the area around Baydon House Farm (shown on the map attached at the end of this decision). The first application was for an order under section 257 of the Town and Country Planning Act 1990. Planning permission had been granted for the erection of barns and if the permission were to be implemented it would have been necessary to divert a path. A diversion order was made and, following a public inquiry, has been confirmed. Before confirmation of that order, it was possible to walk or ride directly from point B (see map below) to link with the paths to the north. The result of that diversion is that the length of bridleway A-B-C-D is not connected to the rest of the rights of way network except at A and D.
 3. The second application was for an order under section 119 of the 1980 Act. Although this application was abandoned, a second application in the same
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terms was made once the order under section 257 of the 1990 Act had been confirmed. This Order has now been made, and since there are unwithdrawn objections I have been appointed to determine it.

4. The effect of the Order before me would be to shorten the loop of bridleway A-B-C-D so that it would run from E-F-G-H. The line of the current bridleway south of B by Elm Cottage has been unavailable for some years and is currently blocked, though I shall not take that into account in deciding whether to confirm the Order. A path on the proposed line E-F-G-H has already been created on the ground.

The tests for confirmation

The landowner's interest

5. There is no dispute that the proposed diversion would be in the interests of the landowner's privacy and security.

The effect on public enjoyment

6. The Ramblers (formerly known as the Ramblers' Association), who are objecting to the Order, contend that the existing route passes through or very close to several points of interest; a garden, a cottage, and horses being exercised and trained in an outdoor school, whereas the proposed route passes very little of interest. Secondly they argue that because the current route between B and C runs along the crest of a hill there are views to the east, while the proposed diversion, below the crest, offers only very limited views. Finally, they argue that at the moment the combination of paths 2, 11 and 8 [i.e. A-B-C-D-A] offers a good short circular walk near the village, while A-E-F-G-H-A would be much less attractive, with nothing of interest to see.
7. When I visited the site I observed the following. The current bridleway, which is not signed, leaves Aldbourne Road and bridleway 8 at A and runs along a tarmac drive to B. There is a gate across the drive between A and B. The drive is the main entrance to Baydon House Farm and its various farm buildings. At B the right of way (which from this point on is not visible as a track on the ground) turns south and runs across a grassed garden area, passing very close to the side of Elm Cottage, before reaching a high, impenetrable hedge at the rear of the garden. Beyond the hedge the route continues between a tall brick wall on the east and a manège on the west. The wall ends roughly 100 metres south of B while the route continues along a grass surface past a tennis court on the east. To the west the area is mostly level grass with a new driveway running north/south along the central line. Past the tennis court there are the remains of a hedge to the east. This comprises a few specimen trees with bushes between, now supplemented with recently planted hawthorn whips which will make a continuous hedge in time. There are views to the east and south-east from between the trees and gaps in the bushes across rolling countryside for a mile or so. At C the bridleway turns west and runs in a straight line across a grassy area to re-join bridleway 8, which appears to be a lane of some antiquity.
8. The proposed bridleway (which has been created as a physical track) leaves bridleway 8 at E and runs eastwards, up a short slope through a narrow belt of trees to F, where it turns south-south-east to run between a post and rail fence on its eastern side and a belt of mature trees, mostly beech, to the west. On the eastern side of the fence the grass has been planted with a widely spaced

- mixture of what appear to be fruit trees and native hardwoods such as oak. There is a slight rise to the east, so the views available from the current bridleway are not to be seen. At G the way turns west and runs for about 45 metres via a gate to re-join bridleway 8 at H, immediately south of D.
9. The current right of way is subject to one authorised gate, while the proposed diversion would have no limitations; the gate near H would have to be removed if the Order was confirmed.
 10. The current route A-B-C-D, since the previous diversion (paragraph 2 above), is somewhat anomalous, in that it is not linked to the wider rights of way network, but provides only a circuitous way of getting from A to D. The proposed diversion would also have the same limited function. Neither the current nor proposed route seems likely to be used by a long-distance rider, cyclist or walker following bridleway 8 to the south, and much more likely, as the Ramblers agree, to be used by local people (perhaps with dogs) wanting a short circular walk. It is the interests of walkers which should probably be given greater weight.
 11. I accept that for some people the current path might provide 'several points of interest', though I am not convinced that crossing a cottage garden entirely laid to grass, passing between a manège and a brick wall and then along the edge of a large garden/orchard area, would provide continuing interest for many. I accept that there are views to the east and south-east from the current right of way which are not available from the proposed diversion. These views, however, which the Ramblers characterise as 'good', are neither particularly distant nor panoramic.
 12. The Ramblers contrast the existing path with the proposed bridleway, stating that it passes very little of interest. Again, I accept that for some people this might be so, but I consider that nevertheless others might get as much or more enjoyment walking on a path where they are less likely to feel that they are intruding into someone's garden or interfering with the schooling of horses. I accept that the views to the east from parts of B-C are different from the views from F to G, but given the local availability of quite spectacular views this is unlikely to be a significant issue for many. Walking between an orchard and a beech wood may well provide points of interest to some walkers.
 13. The Ramblers' third argument (paragraph 6 above), in the context of comparing a short circular walk along A-B-C-D-A with one along A-E-F-G-H-A, is based on the claim that the hedge which borders F-G is just the other side of the hedge bordering E-D. It is not. The 'hedge' is a belt of mostly mature beech trees around 15 metres wide, and the paths each side of it have differing characters. Bridleway 8 runs along an old lane while the proposed diversion is on higher ground on a wide grassy path.
 14. I conclude that while some people might derive greater enjoyment from using the current right of way than the proposed diversion, for others the opposite might be true and that overall the public's enjoyment would not be significantly diminished or enhanced if the bridleway were to be diverted as proposed.

Other matters

15. The County Council states that there is a section of text missing from part 3 of the Schedule to the Order. After 'at its junction with Baydon 30' the following

words should be added: 'where Bridleway leading south for approximately 60 metres to its junction with Baydon path no. 2.'

16. An alternative route for the proposed diversion has been put forward by objectors. I would only consider such a route if the Order before me did not meet the tests for confirmation.

Conclusion

17. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with the modification described in paragraph 15 above.

Formal Decision

18. I confirm the Order with the following modification: In part 3 of the Schedule, after 'at its junction with Baydon 30' add the following: 'where Bridleway leading south for approximately 60 metres to its junction with Baydon path no. 2.'

Peter Millman

Inspector

