
Order Decisions

Hearing held on 3 August 2016

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 18 August 2016

Order Ref: FPS/Y3940/4/14 – Order A

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 and is known as the Wiltshire Council Parish of Norton Bavant Path No.4 (part) Diversion Order and Definitive Map and Statement Modification Order 2015.
- The Order is dated 6 August 2015 and proposes to divert a public bridleway at Scratchbury Hill, Norton Bavant, Wiltshire, as shown on the Order Map and described in the Order Schedule.
- There were 2 objections outstanding at the commencement of the hearing.

Summary of Decision: The Order is confirmed subject to modifications that do not require advertising.

Order Ref: FPS/Y3940/6/2 – Order B

- 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 and is known as the Wiltshire Council Parish of Norton Bavant 10 (part) Creation and Definitive Map and Statement Modification Order 2015.
- The Order is dated 6 August 2015 and proposes to create a public footpath at Scratchbury Hill, Norton Bavant, Wiltshire, as shown on the Order Map and described in the Order Schedule.
- There was 1 objection outstanding at the commencement of the hearing.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public hearing into these Orders on Wednesday 3 August 2016 at the Rights of Way & Countryside Unit 9, Ascot Court, White Horse Business Park, Trowbridge. I made an unaccompanied site inspection on Tuesday 2 August when I was able to walk the majority of the Order routes and to view the rest. I made a further visit to parts of the routes on Wednesday 3 August accompanied by all the parties that appeared at the hearing.
2. In writing this decision I have found it convenient to refer to points marked on the Order Maps. However, as the Orders use similar annotation to describe different points, I attach only a copy of the Order A map to which I have added additional annotation so as to also identify points referred to in Order B without causing confusion.

The Main Issues

3. Order A is made in the interests of the owner of the land crossed by the bridleway and the public. Section 119 of the 1980 Act therefore requires that, before confirming the Order, I must be satisfied that:
 - It is expedient in the interests of the owner of the land and the public that the bridleway should be diverted;
 - The new bridleway will not be substantially less convenient to the public;
 - The diversion is expedient with regard to:
 - the effect on public enjoyment of the right of way as a whole;
 - the effect on other land served by the existing right of way;
 - the effect of the proposed new right of way on the land over which it is created and any land held with it.
4. In addition, where a diversion will alter a point of termination of a path or way, as in this case, the proposed new point of termination must be on the same highway as the existing point, or one connected to it, and it must be substantially as convenient to the public.
5. With regard to Order B the requirements of Section 26 of the 1980 Act are that, before confirming this Order, I must be satisfied that there is a need for a footpath along the line indicated on the Order Map and that it is expedient to create it having regard to:
 - (a) the extent to which the way would add to the convenience or enjoyment of a substantial section of the public or to the convenience of local residents, and
 - (b) the effect the creation of the way would have on the rights of persons with an interest in the land, taking into account the provisions for compensation.
6. In respect of both Orders regard should also be given to any material provisions of the Rights of Way Improvement Plan for the area.

Reasons

Order A

7. The existing route of the bridleway is currently obstructed by fences south of Point B and is undefined crossing an arable field. It is also evident on the ground that the route currently used by the public both north and south of Point B does not follow the definitive line. However, I have assessed the proposed diversion as though the definitive route of the bridleway was unobstructed and available to users.

Whether it is expedient in the interests of the landowner and the public that the bridleway be diverted

8. All of the land affected by the proposed diversion is owned by the Ministry of Defence (MOD). The diversion was applied for by the Defence Infrastructure Organisation (DIO). On behalf of the DIO it is stated that the proposed diversion will benefit the tenant of the land by reducing potential conflict

between agricultural management and recreational activities and removing the need to clear cross field paths through crops and maintain three gates. The diversion will also contribute to a wider aspiration of the DIO to improve the Imber Perimeter Path and create a complete circular bridleway, much of which is already in place. Although Bridleway 4 already forms part of the Imber Perimeter Path, it is difficult to use and therefore regarded as unsatisfactory.

9. Historic England, the national body responsible for the protection of ancient monuments such as Scratchbury Hillfort has commented that the diversion of the bridleway running along the side of the scheduled monument will help to reduce erosion pressure on the earthworks. This can be seen as a potential benefit to the public. Also, the creation of the proposed link from Point C to Point D, combined with the associated creation of the new footpath from C1 to B1 will make possible circular walks around Scratchbury Hill not currently available.
10. One objector expressed concern that a large section of the proposed new route runs within a designated Site of Special Scientific Interest (SSSI) and that its use by the public might lead to damage to the flora and fauna. However, a section of the existing route of the bridleway also runs within a (different) SSSI and Natural England, the national body responsible for the protection of such sites, has raised no objection to the diversion subject to measures being put in place to prevent unauthorised vehicular use of the route. I also note that part of the proposed route within the SSSI utilises an occupation road that was present at the time of the enclosure of the area (c.1809) and is still used by agricultural vehicles today.
11. In these circumstances, it is my view that the proposed diversion is expedient in the interests of both the landowner and the public.

Whether the new points of termination of the footpath will be substantially as convenient to the public

12. The proposed diversion would alter one of the termination points of the bridleway. The proposed new termination point (Point D) is on the same highway as the existing termination point (Point A), unclassified road 9052, approximately 650m to the south. This means that the distance between Points A and C by way of the proposed new route would be slightly less than it is by the existing route.
13. Users of the bridleway wishing to travel between Points A and D would not need to walk or ride on the unclassified road itself as the awarded width of the highway (40') means that it is possible to use the adjacent field edge. It was also suggested on behalf of Wiltshire Council, the Order Making Authority (OMA), and the British Horse Society (BHS) that most horse riders would wish to continue westwards from Point D to link with a network of permissive and definitive bridleways rather than continue by way of Point A.
14. Concern had been expressed that it would be dangerous for riders (and others) to emerge onto the road at Point D as there was a steep slope and restricted visibility. However, when I visited I noted that work had already been carried out to reduce the gradient of the slope and remove trees to improve visibility with the result that, in my view, this potential problem had been eliminated.

15. Overall, it is my view that the proposed new termination point (Point D) will be substantially as convenient to the public as the existing termination point (Point A).

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

16. On behalf of horse riders, the BHS argued that the proposed new route would be much more convenient as the existing route is difficult and dangerous to negotiate. North of Point B the existing route is very steep and would deter many riders from attempting to descend it and south of B the route crosses a slope with roughly a 45° camber which is difficult and dangerous to negotiate, particularly in bad weather conditions.
17. The proposed new route is less steep, slightly wider and includes only one gate rather than four on the existing route.
18. If the diversion were to take place in isolation, pedestrian access to the ramparts of Scratchbury Hill would be lost. However, the concurrent Creation Order (Order B) will facilitate access to a longer section of the ramparts if confirmed.
19. Whilst accepting that the proposed new bridleway might be more convenient for horse riders and cyclists, Mr Morland expressed concern that the loss of the bridleway between Points A and B would be inconvenient for walkers as it provides an alternative and less difficult means of access to the ramparts of Scratchbury Hill than the existing Footpath 10.
20. The route A-B is currently available but is less clearly defined and signed than Footpath 10 and appears to be much less used by walkers to access the ramparts. A-B is a significantly longer and less direct means of access to the ramparts from Point A where it is possible to park vehicles than is Footpath 10 but it is true that Footpath 10 from Point A1 to the ramparts is steep, particularly close to the top. However, the DIO is currently seeking to create and sign an alternative permissive route avoiding the steepest section.
21. On balance, it is my view that the new bridleway will not be substantially less convenient to the public if the new footpath proposed in Order B is created.

The effect on public enjoyment of the right of way as a whole

22. For horse riders and cyclists the proposed new route is more easily accessible and safer than the existing route and in those respects will be more enjoyable to use.
23. It was also pointed out that the proposed new route passes through woodland, Norton Plantation, and that the opportunity to ride or walk in woodlands is limited in the area. The addition of this section of bridleway might therefore enhance the enjoyment of the right of way for users.
24. Although walkers would be deprived of an access route to Scratchbury Hill from the south as a result of the diversion, the concurrent Creation Order (Order B) will provide a more direct access route if confirmed.
25. It was also argued that walkers approaching Scratchbury Hill by way of the existing bridleway between Points A and B would not only have an easier climb but also a different experience with different views which some people might prefer. However, this section of the existing route follows a tarmac road for

much of its length and being at a lower level than Footpath 10 on the ramparts offers similar but less extensive views. It would appear that the desire of most walkers is to ascend the hill as soon as possible and walk around the ramparts themselves.

26. Overall, it is my view that the proposed diversion, along with the creation of the new footpath links in Order B, will be expedient with regard to the effect on public enjoyment.

The effect on other land served by the right of way

27. I have seen no evidence to suggest that the proposed diversion would have any adverse effect on other land served by the existing right of way.

The effect of the new right of way on the land over which it is created and other land held with it

28. Both the owner and tenant of the land crossed by the proposed new bridleway support the diversion and feel that overall its effect will be beneficial.

The Rights of Way Improvement Plan (ROWIP)

29. The Wiltshire Council ROWIP recognises the council's duty to consider the needs of people with mobility impairments and to take opportunities to improve the network to make the rights of way network more accessible and to promote and create accessible trails. The OMA consider that the diversion of the bridleway will contribute to the achievement of these aims as a result of the reduction in the number of gates, gradient and the improvement of the surface.

Conclusions with regard to Order A

30. Overall, it is my view that on balance the proposed diversion satisfies all the criteria set out in the relevant legislation, if the new footpath links proposed in Order B are also created.

Order B

The need for the footpath

31. Currently, Bridleway 4 provides access to the ramparts of Scratchbury Hill by way of the link with Footpath 10 at Point B. Confirmation of Order A will result in the loss of this link and leave Footpath 10 without a link to another highway at either end. The proposed footpath C1 to B1 will however provide a more direct link to the ramparts from the south and add a right of way along an additional section of the ramparts. The link A to A1 will link Footpath 10 to other highways at the northern end.
32. In these circumstances there is clear need for the proposed footpath, if Order A is confirmed.

The benefits to the public and local residents

33. As stated above, if Order A is confirmed without the addition of the proposed footpath links in this Order, Footpath 10 would be left without a link to another highway at either end and the public would effectively be deprived of any right of access to Scratchbury Hill.

34. This would clearly be a disadvantage to the public. Scratchbury Hill is a feature of historic interest and recognised importance for nature conservation as well as affording commanding views of the surrounding countryside. As such it is a popular destination for walkers. The proposed paths will facilitate access to the hill from both the north and south and will therefore be of considerable benefit to the public.
35. The creation of this new footpath coupled with the proposed diversion of Bridleway 4 will open up the opportunity for circular walks around Scratchbury Hill to be taken. Both local residents and the wider public may well regard this as a benefit.
36. The objector expressed concern that increased access might result in damage both to the ancient monument itself and wildlife. However, the national bodies responsible for the protection of ancient monuments and nature conservation, Historic England and Natural England respectively, have both been consulted and raised no objection to the Order. Historic England has also supported the concurrent Order A which would remove a bridleway from part of the scheduled site.
37. On my visits I observed that there has been some erosion of the surface of the ramparts on the steepest sections of Footpath 10 but, as I have noted previously, the DIO is already taking steps to provide an alternative less steep route to avoid the worst section.
38. On balance, it is my view that the benefits to the public and local residents of the creation of the new footpath sections outweigh the potential disadvantages.

The effect on persons with an interest in the land

39. The owner of land crossed by the proposed footpath (the MOD) supports its creation as does the tenant of the land (in conjunction with Order A) as it will facilitate management of the land. It is understood that no party is likely to require compensation as a result of the creation of the footpath.

The ROWIP

40. No evidence has been presented to suggest any conflict with provisions of the ROWIP

Conclusions with regard to Order B

41. Overall, it is my view that the proposed new footpath links are needed if Bridleway 4 is diverted as proposed in Order A and that the benefits of the proposed new routes will outweigh any disadvantages and it is therefore expedient that they be created.

Other Matters

42. Order A includes a short section of Footpath 10 (Points B-B1) as part of the proposed diversion. Clearly, if the bridleway A-B-C is diverted and the new footpath B1-C1 is created, this section of Footpath 10 will become a cul de sac. However, I do not think it is reasonable to suggest that this section of footpath would be diverted onto the proposed new bridleway C-D. It would appear that it is in fact proposed that this section of path should be extinguished and, although this may be a logical step, it is not appropriate for the extinguishment of a section of footpath to be included in an order for the diversion of a

bridleway as is proposed. I therefore intend to modify the Order so as not to include this section of footpath.

43. The OMA has requested that two other modifications be made to Order A should it be confirmed so as to rectify minor errors. In paragraph 2 of the Order, the Order route is described as a footpath rather than a bridleway. Also, in Part 3 of the Schedule to the Order, the width and length stated relates only to the proposed new section of bridleway and not the full length of Bridleway 4 as it should. The length should therefore be modified from 1200m to 1600m and the width stated should be 4.0m for the new section but 3.5m for the unaffected section. I do not think that either of these errors has misled any party regarding the effect of the Order nor prejudiced the interests of any party; I therefore intend to make the modifications to the order requested.

Conclusions

44. On balance it is my view that when the two Orders are viewed together all the relevant criteria for their confirmation have been satisfied. I therefore propose to confirm both Orders subject to the modifications to Order A referred to above.

Formal Decision

45. Order A

I confirm the Order subject to the following modifications:

In paragraph 2, substitute the word 'bridleway' for 'footpath';

In the Schedule to the Order, Part 1, delete the sentence 'Additionally short spur at B.';

In the Schedule to the Order, Part 3, insert after 'Width 4 metres' the words '*from OS Grid ref ST90853 44042 to ST91694 43539, the remainder is 3.5 metres*' and amend the approximate length of the route from 1200 metres to 1600 metres;

Amend the Order Map accordingly.

Order B

I confirm the Order.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Sally Madgwick

Wiltshire Council

Supporters

James Nevitt

Defence Infrastructure Organisation
(DIO)

Graham Bennett

British Horse Society

Nigel Linge

Community Access Forum

Objectors

Francis Morland

Path user

Al Wright

Path user

DOCUMENTS

1. Statement of case and associated documents of Wiltshire Council.
2. Statement of case of Graham Bennett (BHS).
3. Statement of case and associated documents of Lieutenant Colonel Nigel Linge.
4. Statement of case and associated documents of Alastair Wright.
5. Statement of case of Francis Morland.
6. Statement of case of John Pritchard.
7. Supporting documentation, DIO.

