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## Order Decision

Site visit made on 4 July 2017

**by K R Seward Solicitor**

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

**Decision date: 18 August 2017**

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### **Order Ref: FPS/X2410/5/6**

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as the Borough of Charnwood H61 (Part) at Rempstone Road, Wymeswold, Public Path Diversion Order 2016.
- The Order is dated 23 February 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Charnwood Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed subject to modifications set out below in the Formal Decision.**

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### **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.
2. Notice of the public path diversion order was originally advertised as the Borough of Charnwood H61 (Part) at Rempstone Road, Wymeswold, Public Path Extinguishment Order 2015. That title was incorrect because the Order is for a diversion of the route rather than an extinguishment and it was made in 2016, not 2015. Due to these errors, the Order was re-advertised under the correct title and a further period was given for representations or objections.
3. One objection was received in response to the first public notice. No responses were received following the amended notice. The objector suggests that insufficient time was allowed for objections. However, I am satisfied that requisite notice has been given<sup>1</sup>. The objector also states that the information could not be found for examination upon a visit to the Council offices. The Council has acknowledged that its Customer Services team did not correctly direct the objector to the information, but remedied the situation by sending copies of the application documents to the objector's home address. From the submissions made, it appears that the objector received the information in sufficient time to make a substantive objection to the Order.
4. In the opening paragraph of the Order the existing route is referred to as a footpath whereas it is in fact a bridleway. All subsequent references in the main body of the Order are to a 'bridleway'. Confusion is unlikely to have been caused by this error given that both public notices of the Order described the route as an existing bridleway without reference to a footpath.

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<sup>1</sup> In accordance with Schedule 14, Part 1, of the Town and Country Planning Act 1990

5. There is a typographical error at paragraph number 3.(a) of the Order which says "the proposed new route **between** [*my emphasis*] shall be to a width of at least 3 metres." The application made plain that the whole of the proposed route would be at least 3 metres rather than varying in width between particular points. Accordingly, the word "between" simply requires deletion. Also, the Order should not have specified the width as a minimum because this can lead to uncertainty regarding the position, area, maintenance and obstruction of a right of way. Therefore, the words "at least" require deletion.
6. I further note that the width of the route has not been included in the Schedule to the Order. Nonetheless, the Order itself makes it clear that the width will be 3m. For completeness, the width should be added to the Schedule.
7. If it is confirmed, all of these errors should be corrected by modification of the Order.

### The Main Issues

8. For the Order to be confirmed, by Section 257 of the 1990 Act I must be satisfied that it is necessary to divert the bridleway in order to enable development to be carried out in accordance with the grant of planning permission. This is subject to the development not being substantially complete.
9. In addition to the statutory test set out above, paragraph 7.15 of the Rights of Way Circular 1/09<sup>2</sup> advises that the grant of planning permission does not mean that a public right of way will automatically be diverted or stopped up. However, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally, or to persons whose properties adjoin or are near the existing highways should be weighed against the advantages of the order.

### Reasons

10. Outline planning permission was granted on appeal<sup>3</sup> for a residential development of up to 32 dwellings on land north of Rempstone Road, Wymeswold, Leicestershire on 27 August 2013. At that time, all matters except for the access were reserved for future approval. The Council subsequently approved the reserved matters, including the site layout, for the erection of 31 dwellings on 28 August 2015.
11. From the approved site layout plan it is evident that four dwellings would be built directly over part of bridleway H61. It would clip the corner of a fifth dwelling, or be very close to it, and run along the edge of the garden of a sixth plot. The grant of planning permission does not authorise the closure or diversion of a public right of way affected by the approved development.
12. The application to divert part of the bridleway is made by Barwood Homes. At the time of my site visit the dwellings along the line of the existing bridleway were under construction leaving this part of the route inaccessible. The dwellings were some way off completion, a number being the bare shell with

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<sup>2</sup> Published by the Department for Environment, Food and Rural Affairs

<sup>3</sup> Appeal Ref: APP/X2410/A/13/2194622

- their roofs yet to be fitted. Accordingly, I am satisfied that the development is not substantially complete.
13. Based on the approved site layout, there can be no doubt that the development cannot be carried out unless part of the bridleway is diverted.
  14. The statutory objector expresses concern that houses would be built over the bridleway, but the planning merits are not relevant to my decision. Nevertheless, even though I have found it necessary to divert the bridleway to allow the development to proceed, confirmation of the Order is still discretionary.
  15. The diverted route would commence at a point close to Rempstone Road. Instead of continuing in a straight line, the bridleway would curve through an area shown as open space. It would then continue between the estate road and new houses before running parallel with the existing route and linking up with it at the edge of the development. The diverted route is identified as being 21m longer than the existing route.
  16. The objector describes the route as an historic bridleway which has been used by villagers for many years and forms part of their heritage. In comparison, the alternative route is not considered to be a satisfactory alternative.
  17. Despite its possible longevity, there is no indication that the existing route holds any particular historic significance or value. I do not doubt that a bridleway leading through a housing development will not afford the same experience for users compared with a route through previously undeveloped land of rural character. However, a relatively short section of the route is affected and measures would be in place to enhance the quality of the route.
  18. The bridleway would be 3m in width. The local highway authority has stipulated a form of hard surfacing to ensure that the diverted route would be suitable for use by horse riders without loose materials entering the road. A condition has been attached to the grant of reserved matters which enables the local planning authority to secure an approved landscaping scheme.
  19. By the time of my site visit, the alternative route had already been laid out although the surfacing was incomplete. Landscaping works had also been undertaken in the vicinity with grassed areas and various shrubs planted. It was apparent that the route is not significantly longer than before and takes very little additional time to navigate. The alignment through the landscaped area distances the route from many of the houses to the benefit of prospective occupiers and users alike. At the same time, it also provides a sense of space for users of the route and enhances the experience.
  20. I have not had the benefit of seeing the route as it existed before development commenced. Nevertheless, from the information before me the disadvantages or loss to the general public arising from losing a relatively short section of a rural route in favour of the diverted route do not suffice to outweigh the benefit of additional homes delivered by the development.
  21. I conclude that the diversion of the bridleway is necessary to enable development to be carried out.

## **Other Matters**

22. Criticism is made by the statutory objector regarding the timing of the application to divert the bridleway and it having been made after the grant of planning permission. An order may be made in anticipation of planning permission. However, an order made in advance of planning permission cannot be confirmed by either the authority or the Secretary of State until that permission has been granted.
23. The statutory objector has commented that the diversion facilitates the developer being able to join up two separate halves of land to make the development more attractive to potential purchasers and thereby increase the land value. Even if that is the case, it is not a matter that influences my consideration of the Order. That decision must be taken solely on whether it is necessary to divert the bridleway in order to enable development to be carried out in accordance with the grant of planning permission.

## **Conclusion**

24. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed, subject to the modifications explained in my preliminary note.

## **Formal Decision**

25. The Order is confirmed subject to the following modifications:
- In the first sentence of the opening paragraph delete the word "footpath" and substitute the word "bridleway".
  - In paragraph number 3.(a) delete the words "between" and "at least".
  - In Part 2 of the Order Schedule amend the description of the bridleway by inserting the words "at a width of 3 metres" at the end of the text for each section A-D, D-B and B-C.

*KR Seward*

INSPECTOR

## Bridleway H61 (part)

*[Signature]*

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Wymeswold

Age Group	Percentage
18-24	10%
25-34	10%
35-44	10%
45-54	10%
55-64	10%
65-74	10%
75+	10%

Scale 1:1250