
Order Decision

Site visit made on 20 March 2018

by K R Seward Solicitor

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

Decision date: 13 April 2018

Order Ref: ROW/3178768

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as The Exmoor National Park Authority (Public bridleway WL 14/3 (part) in the Parish of Minehead Without) Public Path Diversion Order, 2016.
- The Order is dated 10 March 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Exmoor National Park Authority 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

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. I have found it convenient to refer to points along the existing and proposed routes as shown on the Order Map. Therefore, I attach a copy for reference purposes.

Main Issues

3. The Order has been made in the interests of the owner whose land is crossed by bridleway WL 14/3 in the parish of Minehead (Without). Pursuant to section 119 of the Highways Act 1980, for me to confirm the Order I must be satisfied that:
 - (a) the diversion to be effected by the Order is expedient in those interests;
 - (b) the new bridleway will not be substantially less convenient to the public in consequence of the diversion;
 - (c) any new termination point for the bridleway is substantially as convenient to the public; and
 - (d) it is expedient to confirm the Order having regard to:
 - (i) the effect of the diversion on public enjoyment of the bridleway as a whole, and
 - (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing bridleway and the land over which the new bridleway would be created together with any land held with it.

4. As the bridleway lies within the Exmoor National Park my consideration must include the provisions of section 5 of The National Parks and Access to the Countryside Act 1949. I must also have regard to the material provisions of any public rights of way improvement plan prepared by any local highway authority whose area includes land over which the Order would extinguish a public right of way.

Reasons

Whether it is expedient in the interests of the owner of the land that the bridleway in question should be diverted

5. The application was made on behalf of the National Trust ('NT'), the landowner of Wydon Farm which forms part of the Holnicote Estate. Wydon Farm has been occupied for several generations by the Knight family. The tenant supports the application and representations made for the NT are stated to be made on behalf of the tenant also.
6. The current route passes through the busy working farmyard with buildings on either side. Not only does this involve passing through an area where livestock are kept, but also where agricultural vehicles and machinery are in use. Once through the farmyard, the route proceeds in a northerly direction along the alignment of an old sunken lane. It continues over grassland intersected by a narrow road before connecting with public bridleway WL 14/9.
7. As part of the route affects an active farmyard, disturbance could be caused to animals. There is also potential for danger to users coming into conflict with animals and farm related activities. It is clearly in the interests of the landowner for the bridleway to be diverted out of the farmyard.
8. Objectors suggest that removal of the route along the old sunken lane will not add to the agricultural productivity of the farm. That may be so, but it forms part of the route which links in with the stretch of bridleway through the farmyard. It is argued that there is no need to divert the northern end of the route where it crosses grassland. The proposal is to divert the whole length of the bridleway onto an existing vehicular width track which is in use as a permissive route. As things stand, there are two routes that could be used by the public. Whilst objectors may wish for that choice to remain, it is beneficial to the landowner to have just a single route available for public use.
9. I am satisfied that it is expedient in the interests of the landowner for the bridleway to be diverted.

Whether the new bridleway will not be substantially less convenient to the public

10. No objection is raised to diversion of the part of the existing bridleway between points A-B which passes through the farmyard at Wydon Farm. It is the diversion of the remainder of the route between points B-G which is disputed.
11. The diverted route runs along an existing track which has been in use as a permissive route for some years. Judging from tyre marks, it is clearly used by farm traffic. There is no obvious sign that the current bridleway is used by farm vehicles other than in the farmyard. One statutory objector describes it as

“perverse” to remove the public from a traffic free route to place them with traffic instead. Walkers and riders might be inconvenienced by encountering farm vehicles and machinery and there may be a risk of horses taking flight. However, that could occur now where the existing route goes through the farmyard, part of which is enclosed on both sides.

12. Moreover, there is no evidence that encounters between riders and farm traffic are frequent or have proved problematic during the time the proposed bridleway has been in use as a permissive route. There is good visibility in all directions and at 3m (as stated in the Order) the bridleway is wide enough for a horse to be manoeuvred. There is also space to move to one side. Along the short section of track which is raised on both sides, Exmoor National Park Authority states that a refuge will be provided. Whilst the track could possibly be fenced in future, there are restrictions on barbed wire and an obstruction cannot be caused. It is no different from any bridleway across agricultural land. The prospect of fencing and encountering farm vehicles does not in itself make the diversion *substantially* less convenient which is the test I must apply.
13. At 1095m in length, the proposed route is longer than the existing bridleway which measures 905m. The additional distance principally arises from the diversion looping around the fields to the west of the farm buildings taking users away from the farmyard. It is less convenient to travel greater distance and if heading away from point H there are rising ground levels. However, it is a gradual incline along an even, clearly defined and signed route.
14. In contrast, the terrain through parts of the farmyard is very steep and slippery. At present, the route proceeds along the alignment of an old sunken lane between B-D which is also very steep. There are very large stones forming its surface between B-C. Even if this section was well maintained, the stones would by their very nature be unlikely to provide a flat surface. It is a strenuous walk along the old sunken lane which would present a challenge on horseback or cycle. The topography and stones also mean that it is not accessible to all.
15. In places, post and wire fencing obstructs part of the existing route and hedgerow has overgrown some of the old sunken lane. Such temporary obstructions are to be disregarded in comparing the convenience of the routes.
16. There are various curves in the diverted route, but the existing route also changes direction. The routes run parallel along a stretch by the sunken lane. At point E the existing and proposed routes cross before heading in different directions across grassland. There is little difference in terms of the convenience of the alignment north of the sunken lane.
17. The diversion follows track lines. They are easier to follow than the existing bridleway. Where it currently passes through the farmyard the alignment is not readily apparent on the ground nor is it evident across the grassland without a trodden line. The track is quite stony which may not be ideal for horses. However, it is considerably easier and safer than trying to pass along the large uneven stones of the old sunken lane. Fears that the new route could become hard surfaced are speculative and unsupported by evidence. Approval of the local highway authority would in any event be required.
18. Although the surface condition of the diversion varies, it is largely level apart

from a short stretch. The existing route has a longer stretch of grass surface to better suit horses, but the surface of other parts is not particularly conducive to use by any user. At the time of my visit there was a lot of surface water run-off following snow. This affected both routes, but presented particular difficulty over the stones of the old sunken lane which provides a channel for water.

19. To sum up, whilst the diversion is longer it offers a 3m wide clearly defined route with better surface conditions overall than the existing bridleway. The track is used by farm vehicles, but so is the farmyard. In the circumstances, I do not find that the new bridleway will be substantially less convenient to the public.

Whether any new termination point is substantially as convenient to the public

20. Both routes start at the entrance to the farmyard. At the other end, the diversion terminates some distance to the east of the existing route. The exit points in each case are along public bridleway WL 14/9 which spans east to west. Whether there would be any inconvenience from the change in termination point will depend on a user's final destination. In practical terms there is unlikely to be any appreciable difference. The diversion simply takes the shortest direct route from the road to meet WL 14/9 whereas the existing route crosses the grassland at an angle.

21. I conclude that the new termination point is substantially as convenient to the public.

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

22. One statutory objector describes the sunken lane as an ancient track of great antiquity. Exmoor National Park Authority acknowledges that the existing route has historic value being one of many sunken lanes on Exmoor with public access rights. Its heritage value is confirmed by the Authority's Landscape Advisor.
23. As a public body, both the Authority and an Inspector acting on behalf of The Planning Inspectorate have duties under The National Parks and Access to the Countryside Act 1949. In particular, any public body in exercising or performing any functions relating to land in a National Park must have regard to the purposes specified in section 5 of the 1949 Act. Those purposes are conserving and enhancing the natural beauty, wildlife and cultural heritage of the area and promoting opportunities for the understanding and enjoyment of the special qualities of those areas.
24. That does not mean that the Order cannot be confirmed because of the heritage value of the existing bridleway. The sunken lane will still physically exist. As part of the diversion runs parallel with the sunken lane, it can be seen and appreciated even if not used. In my view, the purposes would be fulfilled even if the sunken lane is not available for public use.
25. It is evident from the objections, that some riders relish the challenge of the steep old sunken lane. This would not be experienced with the diverted route. On the other hand, it is entirely possible that other riders might prefer the easier more even diverted route over a lesser gradient with wider, scenic views. Equally, there may be some walkers who wish to experience the old sunken lane

particularly given its historic value whereas others could be deterred by, or physically unable to, contend with the difficulty of conditions.

26. The small trees beside the old sunken lane provide some shelter from the elements whereas the diversion is more open and exposed. From the representations made, it is apparent that the objectors would like a choice of routes depending on weather conditions. One objector suggests that I should confirm only the diversion between A-M. That would leave a gap between M-B for which no Order has been consulted upon or made. Moreover, it is not the Order before me.
27. The diversion offers additional length of bridleway for users to enjoy. From the diverted route, there are more expansive views due to its higher ground level between points N-M. As the track winds down through the fields there are elevated views of the surrounding landscape. This includes views of the cluster of farm buildings from various angles and distant views towards the nearest settlement. Such expansive views cannot be experienced from the existing route.
28. From where the routes cross at point E and northwards, there are panoramic views which are similar from each route. The diversion has the advantage of being along a visible route. The alignment of the existing bridleway is unmarked which could adversely impact on enjoyment for some users unsure of the way.
29. The diversion has better accessibility than the existing route allowing more users to enjoy it and there are wider views. Weighed against that, there is a loss of public access to an historic sunken lane which is less exposed to the elements. Taken as a whole, I consider the diversion would not have an adverse effect on public enjoyment of the bridleway.

The effect of the diversion on other land served by the existing bridleway and the land over which the new bridleway would be created

30. There would be no effect on other land served by the existing bridleway. The NT also owns the land over which the new route would be created. It has been in use by members of the public as a permissive route. No adverse effect arises.

Rights of Way Improvement Plan ('ROWIP')

31. My attention has been drawn by the Authority to The Somerset County Council Rights of Way Improvement Plan 2015. The ROWIP explains that horse riding is one of the traditional recreational activities on Exmoor. Approximately 55% of the network within Exmoor National Park is said to currently be available to equestrian users, reflecting the historic and present importance of horse riding. Action D3 of the ROWIP provides that when considering suggestions for the creation of new routes, priority will generally be given to multi-user routes where these are appropriate – i.e. creation of restricted byways or bridleways and routes suitable for those with restricted mobility.
32. Action PW4 goes on to say that the Authority will work with county councils, parish councils and people with disabilities to progress the creation of all ability routes with the aim to improve and promote at least one per parish.
33. The diversion would meet the general aim of these criteria by being more

accessible to persons with restricted mobility than the existing bridleway for the reasons already articulated.

Whether it is expedient to confirm the Order

34. I have concluded in my considerations above that the Order is expedient in the interests of the landowner.
35. A benefit of the existing route is that it links in with public footpath WL 14/4 to the east. Should this Order be confirmed, Exmoor National Park Authority states that two footpaths will be created to provide connections with WL 14/4 to form a circular route for walkers. Creation orders made under section 26 of the Highways Act 1980 have been made, but not confirmed. If I were to confirm this diversion Order and the creation order for a footpath between M-B is not subsequently confirmed then footpath WL 14/4 would become a cul-de-sac. It would terminate at point B without an onward route and walkers would be unable to connect with it from the diverted bridleway. In view of this, I sought confirmation from the Authority as to its intentions. A written "guarantee" was then provided that it will confirm the creation order if I confirm the diversion order. Based on this, I am satisfied that a link with WL 14/4 would not be lost.
36. It is contended that the NT had agreed to a circular route whereby both the existing and proposed route would be public bridleway. Whether or not such discussion took place, the fact remains that the NT has applied to divert the existing route. Any complaints in this regard fall outside the remit of this decision. The public may wish to have the option of two routes, but that is not what is before me. Similarly, whilst it may be possible to divert the route through the farmyard without affecting the remainder of the bridleway between B-G, that is not the proposal.
37. It is also argued that the NT has been remiss in its duties by not having obstacles removed from the existing route so that the public can see what will be lost. I have disregarded the presence of obstacles along the route in my application of the statutory tests.
38. Concerns are also expressed about receipt of public monies for the bridleway which falls outside the remit of this decision.
39. The proposed route will not be substantially less convenient to the public and I am satisfied that it is expedient for the Order be confirmed having regard to its effect on public enjoyment. Nothing in the submissions or from my site visit leads me to conclude that it would not be expedient to confirm the Order.

Conclusion

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

Formal Decision

41. I confirm the Order.

KR Seward

INSPECTOR

