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## Order Decision

Site visit made on 7 August 2018

**by K R Seward Solicitor**

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

**Decision date: 30 August 2018**

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### **Order Ref: ROW/3191733**

- 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. It is known as the Hampshire (Basingstoke and Deane Borough No.4)(Parish of Overton – Part of Bridleway No.26) Public Path Diversion and Definitive Map and Statement Modification Order 2017.
- The Order is dated 13 June 2017 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Hampshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision**

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### **Preliminary Matters**

1. During my site visit I was accompanied by the applicants' agent, representatives of the Order Making Authority ('OMA') and Mr Ramm of The Open Spaces Society ('OSS'), the statutory objector.
2. None of the parties requested an inquiry or hearing into the Order. In arriving at my decision I have taken into account all of the written representations.
3. 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.
4. If confirmed, the Order will also modify the Definitive Map and Statement once the provisions relating to the diversion come into force.

### **Main Issues**

5. The Order has been made in the interests of the owners whose land is crossed by Bridleway 26 ('BR26') in the parish of Overton. By virtue of 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 path will not be substantially less convenient to the public in consequence of the diversion; and
  - (c) it is expedient to confirm the Order having regard to:
    - (i) the effect of the diversion on public enjoyment of the path 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 path and the land over which the new path would be created together with any land held with it.

6. I shall also have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area when considering the Order.

### **Reasons**

#### ***Whether it is expedient in the interests of the owner of the land that the path in question should be diverted***

7. The application is made by the owners of Lower Whitehill House. At present, BR26 proceeds through their property along a rough surfaced track which commences at Whitehill Road and extends past their house and garden.
8. Picket style fencing and gates separate the track from the garden. From the bridleway there are views on foot across the lawn where children's play equipment is positioned. A patio area close to the house laid out with table and chairs is also clearly visible. More of the garden will be seen by riders on horseback at elevated height. The bridleway is not far from the nearest ground floor windows, but there are no views into the house itself.
9. Privacy could be improved by planting to block views into the garden, but it would not eliminate all views. Even with dense planting behind the fencing, users of the existing bridleway would still be able to see into the garden at the entry points towards the lawn and patio where most privacy might reasonably be expected.
10. The current route separates the enclosed garden from woodland within the same ownership on the other side of the track. The applicant's young family apparently play in this vicinity and cross the track to reach the chicken coop in the wooded area. It is submitted that the diversion will result in significantly enhanced safety for the owners crossing between the areas. That may be so if private rights were no longer exercised by farm traffic, but the Order concerns the stopping up of public rights as a bridleway. It has not been explained adequately how the existing use of this section of BR26 by walkers, cyclists and horse riders impacts adversely upon the safety of the family.
11. It is also unclear if there is any basis for the landowners' concerns over security to their property.
12. Nevertheless, I am satisfied that it is expedient in the interests of the landowners, that this part of BR16 should be diverted to improve privacy to their garden.

#### ***Whether the new path will not be substantially less convenient to the public***

13. The diverted route is approximately 53m longer than the existing route. The applicants submit that this represents an extra 2% given the overall bridleway length and its connection to Overton itself.

14. Currently, the bridleway follows the track leading to Lower Whitehill House and continues in a broadly straight line along the unaffected part of BR26. The applicants submit that the diverted route will be equal to or better than the existing route in terms of surface finish, gradient and width. They say that an improved surface material and less overshadowed alignment will improve surface run-off and drainage.
15. Whilst the applicants say that the new route will average 3.7m in width as opposed to an average of 2.6m for the existing bridleway, the width recorded in the Order is 3m. That is the width that would need to be maintained rather than any greater width. Nevertheless, at 3m the diverted route would still be wider than the existing route.
16. Objection has been raised by the OSS that the diversion introduces two changes in direction.
17. Firstly, users travelling in a southerly direction along BR26 would need to change direction at point C. On the ground, the intersection is a wide splay which accommodates agricultural vehicles, but on the Order map the alignment is drawn right-angled. This involves a sharp turn which the OSS considers to be problematic to cyclists in particular. For walkers it is the same route used at present to link between BW26 and FP15.
18. In practice, any type of users may well take the most convenient route to connect between the public paths. The area laid out would allow riders and cyclists to sweep around avoiding point C. However, that is not how the route is shown in the Order. Nevertheless, at 3m the route is wide enough to allow both cyclists and riders to turn at point C without being greatly inconvenienced. It is not as convenient for walkers or riders wishing to head south towards point A, but I do not consider it to be *substantially* less convenient and that is the test I must apply.
19. Secondly, there is a change of direction at point B where the route curves around from a south-westerly to south-easterly direction towards point A. The OSS describes this as an "anomaly" because it requires walkers proceeding from the west along FP15 to double-back on themselves and at a sharp angle along the diverted route from point B.
20. In practice, walkers would probably take the shortest route by turning along the laid out track before reaching point B. The applicants say that they would maintain a 15m wide splay at this junction thereby allowing walkers to follow a more direct route towards the south. This is supported by the OMA.
21. I was able to see at my site visit how this would be achieved using a draft map prepared by the OMA in response to my request before my visit to allow me to understand the proposal. It seems to me that a modification to the Order to provide for the intended 15m splay would overcome the inconvenience of walkers needing to contend with a sharp change in direction and double-back. The change in direction would then be no different from the right angled turn that currently exists between FP15 and BR26.
22. The new route is in use for vehicular traffic to the Laverstoke Estate under an arrangement described by the applicants as a temporary verbal agreement between the current owners to test the diversion. If that agreement were to

- continue, farm traffic associated with the Laverstoke Estate would also use the new route. Concern is raised that there is potential for conflict between vehicles and farm machinery with bridleway users which could be particularly daunting for horse riders.
23. The OSS says that the existing bridleway is almost entirely free of vehicles and certainly no large agricultural vehicles. However, there are signs of filled potholes past the access points for Lower Whitehill House indicating vehicular use by traffic not accessing the house. According to the applicants, the Laverstoke Estate benefits from a private right of way over their land where the existing bridleway runs between points A-C and this appears in the registered title held by H.M. Land Registry. That being so, there appears no difference in the type of traffic able to use the existing bridleway under private rights than the diverted route. The applicants make clear that they do not intend to maintain both routes if the Order is not confirmed.
  24. The track over which BR26 currently runs would remain in use by the occupiers of Lower Whitehill House and their visitors. This would reduce the overall level of vehicular traffic also using the diverted bridleway. Thus, in terms of the type of vehicular traffic, there is no material difference between the existing and proposed routes and the level of use of the diverted routes by vehicles may be less.
  25. Risk to safety is said by the OSS to arise due to the alignment. Whereas the existing route is broadly straight the diversion curves in two places between A-B. The OSS regards the sight lines as poor in these places and with less opportunity to avoid approaching vehicles by using a verge. It is feared that horse riders in particular may be put at risk.
  26. The Parish Council may be unaware of any incidents involving vehicular traffic coming into contact with users of public rights of way in the area, but the Order involves the creation of a new route to which past safety records will not apply.
  27. Whilst there is a grass verge along one side of the existing route, there is still little space for users if large farm vehicles were to use the track given its relatively narrow width. With its greater width, the diverted bridleway offers more space for users. On the other hand, visibility ahead is reduced where the track bends albeit not severely. It remains possible that drivers of vehicles may have less warning of the presence of bridleway users than a straight alignment as offered by the current route.
  28. During my site visit, I witnessed a large tractor with trailer using the track proposed for BR26. It could be heard approaching for some while before emerging from the track along which FP15 runs. The vehicle filled much of the new track width. Dust and dirt was being thrown into the air. This would not be pleasant for bridleway users. The surface appears quite new with loose gravel which is likely to be disturbed less once it has become more compacted through use. The situation would then be no worse than the existing route which has a similar type of surface. At present the gravel is slightly uneven in places where there are tyre marks. I would not regard this as serious enough to be problematic especially as the path is wide enough to avoid such areas.
  29. Safety for users of the bridleway would be improved, particularly along and

approaching the bends, if there were grass verge. In their submissions the applicants say there will be 0.5m of verge on either side of the track. There is no mention of such verge within the Order as drawn and so it would be entirely voluntary whether any verge was provided or maintained. Following the site visit, the applicants submitted proposed wording to incorporate provision within the Order for a 0.5m maintained verge along the eastern boundary only of the diverted bridleway, if considered necessary.

30. As the track is wider than the proposed diverted bridleway, the verge could not be on either side of the bridleway without removing part of the surfaced track. From what I saw, there is space for grass verge along the woodland side of the bridleway where there is presently weed/low level growth. This corresponds with the intended location for the verge as shown to me during my site visit and now offered by the applicants.
31. The OSS acknowledges that a verge would be helpful to walkers, but considers that it would be of limited use to cyclists and totally insignificant to a horse rider trying to avoid large farm vehicles and equipment. It is suggested that it would be more beneficial for verge on the outside of the bends along the western edge.
32. Whilst I note the OSS concerns, the provision of a maintained verge would widen the available space further to the benefit of all users. I would not regard the bends as being particularly sharp and there would be opportunity for users to move clear of oncoming vehicular traffic particularly with the extra space afforded by a verge. It seems to me that safety concerns arising from curves in the alignment can be addressed by modifying the Order to increase the width to include a verge from point A up to the juncture with FP15 at point B.
33. The Order should also specify a date when the new route will come into effect that provides time for works to be carried out and 28 days appears reasonable.
34. I conclude that the longer distance and changes of direction of the diverted route are less convenient than the existing route, but not substantially so subject to the modifications described.

***The effect of the diversion on public enjoyment of the path as a whole***

35. As things stand, the bridleway passes close by the long side elevation of a flint walled building within the grounds of Lower Whitehill House. The OSS considers it to be an attractive feature appreciated by many walkers especially after several miles of field paths. It is thought to be a former dairy building<sup>1</sup>. A couple of other former farm buildings of unremarkable appearance are located further inside the plot. A small cluster of buildings is shown on the Ordnance Map dating from 1840 indicating their existence prior to that date.
36. Nevertheless, the flint building is not listed as being of special architectural or historic interest. As it is not protected, the flint building could be removed at any time although there is no suggestion that will happen. Views of the building are still available from the start of the diversion at point A. Although it is the much shorter end wall which is mostly visible from further away, enough can be seen to appreciate the flint structure and adjoining flint wall.

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<sup>1</sup> It is now in residential use

37. Trees have been removed to open up views towards the house from the new route, but there are only glimpses of the roof and upper storey and trees could be re-planted at any time. Even so, the house does not offer views of any particular note to give cause for it to remain exposed to public view.
38. The OSS refers to the woodland section of the existing route offering variety with shade providing relief from a hot sun and, if necessary, shelter from rain. My site visit was undertaken on a particularly hot day. At late morning the new route was certainly more exposed to the sun as it is open on one side. With woodland on the other side, the route is not totally unprotected from the elements, however. Being open on one side allows expansive and far reaching views over the fields. Many users may welcome these unobstructed views of unspoilt scenery with no obvious signs of development. Indeed, some may enjoy the exposure to the sun particularly during cooler times of year.
39. Thus, the two routes offer different experiences. The existing route is along a narrower track passing through a wooded area, beside a domestic garden, house and close by a flint building. The diverted route passes along a wider track with views of the open countryside. Whilst there are some views over the fields from the existing route at point C, they are nowhere near as expansive as those experienced from the diverted path. When comparing the experiences, much depends on individual preferences and interests.
40. Overall, I do not consider that there would be an adverse effect on the enjoyment of the route as a whole.

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

41. There is no evidence that the diversion will have any adverse effect on land served by the existing route or on the land over which the alternative route will be created.

***Rights of Way Improvement Plan ('ROWIP')***

42. The OMA has drawn my attention to the Hampshire Countryside Access Plan 2015-2025. The extract provided is generic in nature with no reference to specific areas. It identifies 8 county-wide issues. The most relevant to this case appears to be 'Meeting the needs of all users' and 'Condition of the rights of way network'.
43. I am satisfied that the diverted route would meet the needs of all users. The OSS has provided a copy photograph of tyre tracks along the new route to demonstrate its use by estate and farm vehicles. The surface of the diverted route has been laid to a standard making it suitable for all users.
44. The OMA has also submitted extracts of its Countryside Access Plan for the Hampshire Downs. Whilst specific to the area in which BR26 is located, it is not a current publication being dated 2008-2013. Its status is limited to providing the OMA with useful reference material.

***Whether it is expedient to confirm the Order***

45. I have concluded in my considerations above that the Order is expedient in the interests of the landowner. There is no adverse effect on public enjoyment.

The proposed route will not be substantially less convenient if the Order is modified to provide a splay at the juncture with FP15 and grass verge beside part of the bridleway, as suggested by the applicants. With those modifications, I consider that it is expedient to confirm the Order.

### **Conclusions**

46. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications. The proposal to modify is set out in the formal decision.

### **Formal Decision**

47. I propose to confirm the Order subject to the following modifications:

- Within Article 3 delete the word "from" before the text "the date of confirmation..." and replace with "28 days after".
- Within Part 2 of the Schedule delete the text in the first paragraph and replace with:

*"A Bridleway in the Parish of Overton, District of Basingstoke and Deane, that commences at Point A on the map and proceeds generally north-westwards before curving north-eastwards to a junction with Footpath 15 at Point B, then north-eastwards for approximately 28 metres to re-join Bridleway 26 at Point C, varying between 3 and 15 metres wide with a maximum width of 15 metres as shown cross hatched red on the order map together with a 0.5 metre maintained verge on the eastern side of the bridleway between Points A and B."*

- Within Part 4 of the Schedule delete the text for 'Overton Bridleway 26' starting "3 metres wide....." and insert "Varying between 3 and 15 metres wide rough metalled surface between SU 5158 4729 and SU 5150 4743 together with a 0.5 metre wide maintained verge between SU 5158 4729 and SU 5148 4742."
- On the Order map add the area cross hatched red.

48. Since the confirmed Order would affect land not affected by the Order as submitted Paragraph 2(3) of Schedule 6 of the 1980 Act requires that notice shall be given of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*KR Seward*

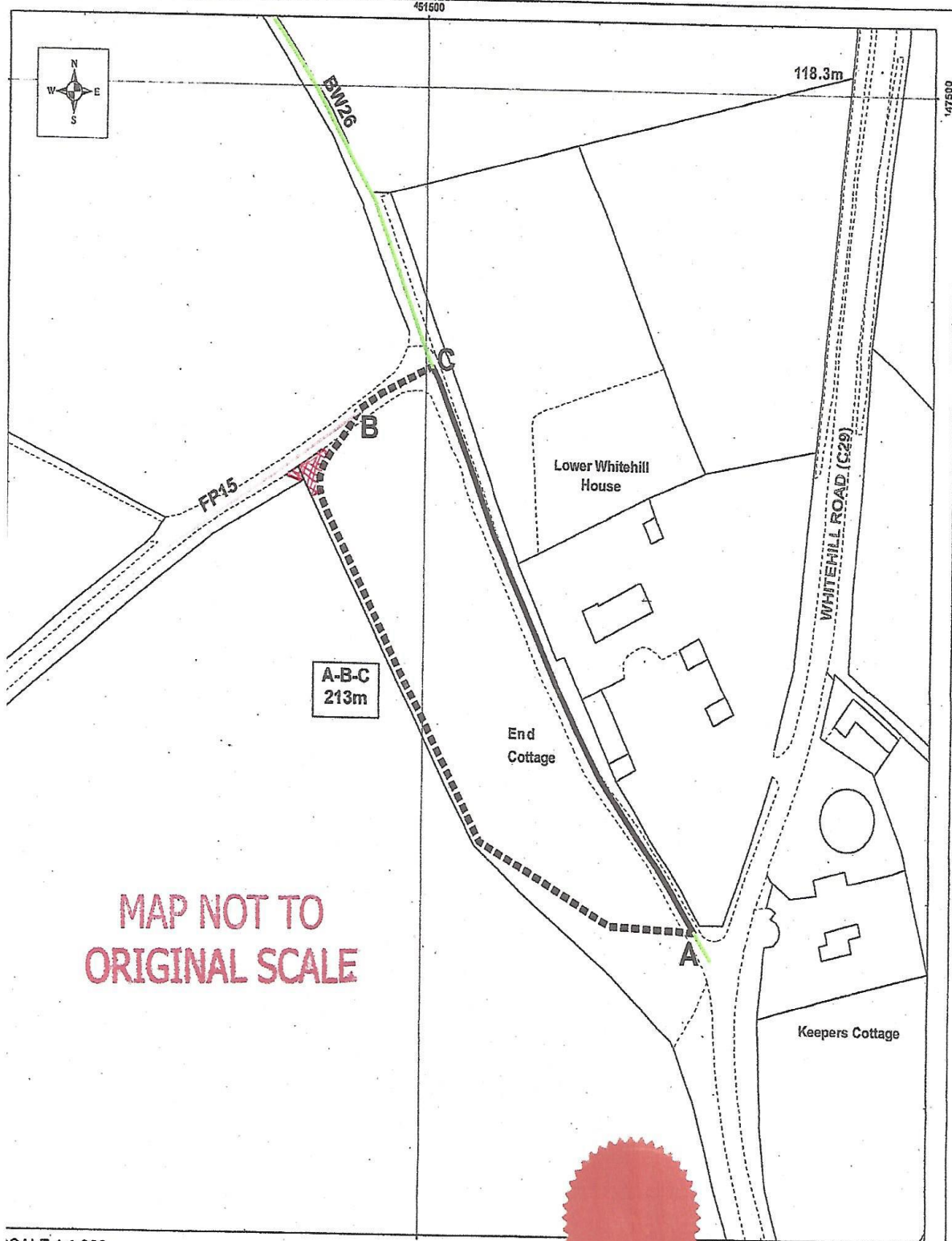
INSPECTOR

# HAMPSHIRE COUNTY COUNCIL

MAP REFERRED TO IN

THE HAMPSHIRE (BASINGSTOKE AND DEANE BOROUGH NO. 4)  
(PARISH OF OVERTON - PART OF BRIDLEWAY NO. 26)

PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2017



**MAP NOT TO ORIGINAL SCALE**

SCALE 1:1,000

LEGEND

BRIDLEWAY TO BE DELETED:-

BRIDLEWAY TO BE RETAINED TO THE MAP:-

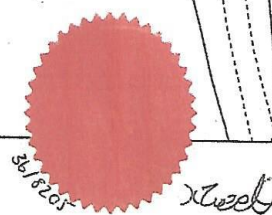
EXISTING FOOTPATH TO BE RETAINED:-



MAP No.1617 PRODUCED FROM DIGITAL DATA SUPPLIED BY ORDNANCE SURVEY

THE COMMON SEAL OF HAMPSHIRE COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-

AUTHORISED



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