



Order Decision

Site visit made on 23 July 2019

by **K R Saward Solicitor**

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

Decision date: 10 September 2019

Order Ref: ROW/3217652

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Norfolk County Council (Weeting-with-Broomhill RB2 (Part) and RB4 (Part) Diversion Order 2017.
- The Order is dated 24 May 2017 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 Norfolk County Council 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 referred to points along the existing and proposed routes as shown on the Order Map and so I attach a copy of the map for reference purposes.

Main Issues

3. The Order has been made in the interests of the owners whose land is crossed by restricted byways RB2 and RB4 Weeting-with-Broomhill. 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;
 - (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.
4. 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

5. The application is made by the owner of the land and buildings at Home Farm which is used for pig farming. The landowner is involved in the operation of that business. According to the landowner, there will be around 1,500 sows on the site at any one time.
6. Currently, restricted byways RB2 and RB4 proceed through the farmyard. It passes close-by agricultural buildings and open fronted pens in which pigs are held.
7. Along a restricted byway the public has a right of way on foot, to ride or lead a horse, by bicycle and to use non-mechanically propelled vehicles such as a horse and carriage.
8. In making the Order the Council has stated that it appears to be in the interests of the owners of the land crossed by the restricted byways that they should be diverted. Even though the Council may not have elaborated further the landowner has submitted various reasons which the Council has adopted.
9. Regular deliveries and collections take place at the farm involving articulated lorries which manoeuvre in the vicinity of the public right of way. For drivers there may be limited ability to see and hear pedestrians and cyclists in particular. Other large agricultural machinery and vehicles are also in use in and around the area which I witnessed during my site visit. Although there is no evidence of any accident or near misses, it is not difficult to see how there is potential danger from users coming into conflict with large vehicles or machinery given the location of the route through a busy working farm environment. Safety is likely to be improved if members of the public were not crossing the working area where such vehicles and machinery are active.
10. The landowner expresses a wish to improve biosecurity. Fears are raised over swine fever if the passing public were to feed the pigs. It is submitted that users have occasionally been tempted to stray to the pens to look at the pigs. Concerns are also expressed over the risk of quick spreading disease if waste from other nearby units is transferred into the area.
11. DEFRA guidance on 'Disease prevention for livestock and poultry keepers' available on the GOV.UK website has been drawn to my attention by the applicant. This explains that one of the main ways in which farm animal diseases are spread are movement of people, especially workers, but also farm visitors – people, pets, equipment and vehicles. The biosecurity measures advised include the limit and control of farm visitors where possible.¹
12. The guidance gives a clear steer that the risks of disease and it's spread would be reduced by moving the route away from where pigs are kept to lower the movement of people and their animals.

¹ A report of the Policy Commission on the Future of Farming and food titled 'Farming & Food, a sustainable future' is also produced, but no particular text is highlighted.

13. The location of the restricted byways and need for them to be kept open and available for public use has meant that the farmyard cannot be secured from entry. The landowner says that this has made the yard vulnerable to illegal access by private vehicles. Two burglaries reported to the Police took place in 2012 and 2013 where buildings near to the restricted byways were broken into. Whether these incidents would have occurred regardless of the restricted byways cannot be known, but the ease of public access cannot help in crime prevention. Although not recent, the incidents indicate that the landowner's concerns are borne out of experience and not a generalised fear of crime.
14. Concern is also raised over horses reacting abnormally in the presence of pigs. It appears to be more of a potential issue for the horse rider rather than the landowner. The amount and type of risk is unclear although I appreciate that an uncontrolled horse could pose a health and safety risk to rider and others. Without further details of how the proximity of pigs to passing horses affects the landowner, the case is not made out on this point.
15. The statutory objector, the Open Spaces Society ('OSS') suggests that diversion of the restricted byways appears contrary to the landowner's interests because of the amount of work involved to create the alternative route whereas the existing route is perfectly established. The landowner accepts that significant works are required to meet the standards of the local highway authority but considers that the burden of the works is more than offset by the benefits.
16. The landowner is desirous of moving the route and is willing to accept the responsibility of undertaking the works required. If he considered it too onerous it seems unlikely the landowner would have pursued the application.
17. Whilst not accepting all arguments raised, I am satisfied that it is expedient in the interests of the landowner for the restricted byways to be diverted.

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

18. The combined existing length of RB2 and RB4 to be diverted is about 233m. At 311m, the proposed diversion is 78m longer. The termination points remain the same. The per centage increase may be small in comparison to the entirety in length of each restricted byway, but it does increase the distance between points A-C by about one-third. In that context, the extra distance is significant. However, the additional journey time to travel a further 78m is not very much. It is not so far that it would add to the sense of fatigue for most users.
19. The OSS describes the new route as a contrived circular route. In order to avoid the farmyard, the new route takes users off at almost a right angle at point A before reaching any buildings. It proceeds in a straight line for about 128m through what is currently a field. After another right-angled turn at point D the route proceeds south in a straight line for about 130m before turning south-east for a short distance to reach the existing termination point at C.
20. The existing route is not straight but curves through the farmyard and includes two distinct turns in direction as it passes close-by an assortment of agricultural buildings. The current changes in direction are not as pronounced as those proposed in the new route and the existing route generally follows a northerly to southerly direction of travel. Under the proposal, users heading south will

need to go west for 128m before the route turns south and vice versa. This will be less convenient, but not substantially so.

21. There is currently a pond where the diversion is due to pass. The OSS questions the feasibility of diverting over it. The applicant describes it as a 'pit' because vegetation has taken over it. He explains that a pond was created in a failed attempt to drain flood water from the farmyard. It is stated that the landowner is well aware of the works required to fill in this area of land. The new route is not currently laid out and the route between C-D will involve significant clearing, levelling and preparation before it is ready to use. In recognition of the large task a period of 365 days is afforded by the Order for all the necessary works to be undertaken.
22. As the pond was a man-made feature this is not a scenario of the land being naturally liable to accumulate water. There is no reason to believe that the land conditions will adversely affect the usability of the new route once the ground is prepared. The terms of the Order mean that the existing restricted byways will not be extinguished unless and until the local highway authority certifies that the work has been done to bring the new route into a fit condition for use by the public as a highway. Therefore, if the works to fill in the pond are not feasible or are not undertaken to the appropriate standard then the relevant sections of the existing restricted byways will remain and there is no risk of inconvenience to the public arising.
23. In response to the OSS's comments that there is no evidence of the existing route being prone to flooding, copy photographs are produced showing a large accumulation of surface water in the farmyard. They are said to date from February 2014 after exceptionally heavy rainfall the month before. This suggests that the amount of water shown is not typical. It is stated that there is standing water in the yard several months a year, but the severity and effect on use of the existing route is unclear. It does not give me cause to believe that there is a problem with the existing route affecting the convenience of its use.
24. The width of the new route to be created is 8m. The 5m central section is due to have a crushed asphalt surface which the applicant says will drain better than the existing route. A grassed verge will be on either side.
25. It seems to me that this proposal will add to the convenience of all users by providing a suitable surface to accommodate the mix of users able to use the route. A benefit of the grassed verge is that it will allow space for walkers to step aside away from other traffic to mutual convenience.
26. I conclude that the additional distance involved for the diversion and the change in direction does make the new route less convenient for the public but not substantially less convenient which is the test that must be applied.

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

27. The OSS considers that the farmyard is a distinctive and key feature to be experienced along the route. Many of the agricultural buildings are of utilitarian appearance although the route does offer close range views of a group of vernacular buildings which some users may find of interest. Aside from the farm buildings, there is a pig unit and prominent feed silos. The farmhouse itself is stated to be Grade II listed and it is therefore of historic interest.

28. For some other users the buildings and experience of the farmyard with loud animal noise emanating from the barns may not be appealing.
29. Whilst the landowner suggests that the farmhouse would still be visible, I was unable to see it from the new route given the tree cover and other buildings. Current views of the farmhouse are limited and not particularly close range so with that in mind I do not regard it as a major loss. Views of the traditional buildings are further away from the new route, but they can be still be enjoyed collectively and viewed in context.
30. It is intended that a low hedge line will be established on both sides along the east-west section of the new route which should still allow the traditional buildings to be seen by users. This section of new route will also facilitate a greater sense of the surrounding countryside as it passes through open fields. When travelling from points B-A along the existing route there are views of open countryside to one side of the route only with the other side dominated by the farm buildings. The farmland continues to the north of point A where I observed pigs in the fields and so the farm experience would not be totally lost.
31. During my visit there were regular farm traffic movements in and around the yard area with the need for me to step aside out of harms way. Due to the bends in the track I could hear the vehicles before seeing them, but not everyone may be able to do so. There were also workers frequently moving about on foot between the units on each side of the route. For users who find it uncomfortable entering a working environment or feel unsafe passing through a farmyard with tractors and other vehicles, the new route will be far preferable.
32. Instead of a farmyard and associated buildings, the new route goes through a green corridor lined with substantial trees along the north to south section.
33. The OSS describes the new route around the outside of the farmyard as giving the sense of being shoved out of the way. It may look that way on paper. In reality, once the new route is prepared it should deliver a route through fields and among trees which many users will find pleasurable and more enjoyable than the route through the farmyard. The landowner maintains that the rural character of the route will be enhanced and from what I saw on site I am inclined to agree. Of course, there will be some people who prefer the shorter, more direct route and diversity brought by the farmyard and its buildings.
34. The experiences will differ. Overall, I consider that most users will enjoy the new route and for many it will be more enjoyable than the existing route.

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

35. There is no evidence that there would be any adverse effect on land served by the existing route or on the land over which the new route will be created.

Rights of Way Improvement Plan

36. There is no suggestion that the Order is contrary to any material provision contained in a ROWIP.

Whether it is expedient to confirm the Order

37. I have concluded above that the Order is expedient in the interests of the landowner. The proposed route will not be substantially less convenient, 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.

Conclusions

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

Formal Decision

39. I confirm the Order.

KR Seward

INSPECTOR

**Norfolk County Council (Weeting-with-Broomhill
RB2 (part) and RB4 (part)) Diversion Order 2017**

Norfolk County Council
County Hall
Martineau Lane
Norwich
NR1 2SG



Restricted Byway to be diverted RB2 (A-B) and RB4 (B-C)

Proposed Restricted Byway RB2 (A-D) and RB4 (D-E-C)

Unaffected Restricted Byway

