



Order Decision

Site visit made on 18 August 2020

by Alan Beckett BA MSc MIPROW

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

Decision date: 05 October 2020

Order Ref: ROW/3234925

- This Order is made under Section 26 of the Highways Act 1980 (the 1980 Act) and is known as the County Council of Durham (Public bridleway No. 25 Muggleswick Parish and No. 68 and 69 Lanchester Parish) Public Footpath Creation and Definitive Map Modification Order 2019.
- The Order is dated 7 March 2019 and proposes to create a public right of way as shown on the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Durham County Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the route at issue on Tuesday 18 August 2020.

The Main Issues

2. The main issues in relation to this Order are:
 - (a) the tests for confirmation contained within section 26(1) of the 1980 Act, namely:
 - (i) whether there is a need for the bridleway along the route indicated in the plan attached to the Order;
 - (ii) whether it is expedient to create the bridleway having regard to the extent to which it would add to the convenience or enjoyment of a substantial section of the public or the convenience of local residents;
 - (iii) the effect the creation of the bridleway would have on the rights of persons with an interest in the land, taking into account the provision that exists for compensation to be awarded to the landowner.

3. Reasons

Background

4. The bridleway, which is to be created by the Order runs, for the most part, over the Waskerley Way, a former railway line which has been converted into a multi-user recreational route owned by the Council. The Council submits that this section of bridleway has been included within the Order to ensure that the

terminal points of the new bridleway are located on other acknowledged highways, in this case on UCR 18.3 at the eastern end and UCR 17.2 at the western end.

5. The section of the proposed bridleway which is in dispute is the section which commences at on UCR 18.3 and runs in a generally north-westerly then south-westerly direction over the access track leading to Red House Farm (shown as G – F – E on the Order plan). This access track had been recorded in the Council's List of Streets as a publicly maintainable highway for many years, although the Council acknowledges that the inclusion of the route in its List of Streets appeared to be a drafting error as the Council had been unable to identify any documentary evidence which indicated that the track was subject to public rights.
6. The Red House Farm track has subsequently been removed from the List of Streets. The Council's case is that the track has been used by the public on foot and by pedal cycle for many years to link with the minor highway network at Oxen Law. The Council is proposing the creation of a public bridleway over the track at Red House as a means of ensuring continued public access over the track.

Whether there is a need for the proposed bridleway

7. The Council seeks the creation of a bridleway over the track at Red House Farm as a means of ensuring the continuation of use by the public which has taken place for many years and which has recently been challenged¹ by a new occupier of the property. The Council submits that prior to the making of the Order, 73 individuals had been in contact with regard to their use of the route. Of these, 37 respondents complained of having been challenged when attempting to walk or ride a bicycle along the access track with 41 respondents providing evidence of their use of the track. Users have been drawn from a wide geographical area; the respondents came from within County Durham but were also drawn from the surrounding areas of Gateshead, Hexham and Whitley Bay.
8. The majority of those who complained about the track at Red House being obstructed were cyclists. Those who had used the track at Red House had been engaged in circular walks or rides in the area, with the track providing a convenient means of travel between the Waskerley Way and the minor highway network at Oxen Law. Whilst some of the complainants had been seeking to make their way to a nearby Bed and Breakfast establishment at Bee Cottage, these were very much in the minority. Although the objector submits that the enhancement of the viability of the business carried out at Bee Cottage could not justify the creation of the bridleway, the majority of those who contacted the Council regarding the obstructions at Red House were those wishing to use what was understood to be, and recorded as, a public road.
9. The proposed bridleway would provide those users with an alternative means of access to Oxen Law that does not involve use of footpaths no 22 and 56 and without having to negotiate the stock yard, stiles and gates or livestock which may be present in the farmyard or nearby fields crossed by the existing footpaths.

¹ The written evidence suggests that the conflict between users and the occupiers of the land arose around 2014

10. I accept that despite the relative isolation of the route, the extent of past use and the number of complaints about its unavailability demonstrates that the track at Red House is a popular point of access to and from the Waskerley Way. During my site visit, I observed four cyclists (a group of three and a lone cyclist) leave the Waskerley Way at Red House and make their way over the track in the direction of Oxen Law. The continued use of the route demonstrates the continuing desire of the public to be able to access Oxen Law from the Waskerley Way.
11. The objector contends that the proposed bridleway along the track at Red House is not needed as pedestrians can already make their way along footpaths 22 and 56 to reach Oxen Law. It is also contended that the proposed bridleway is not needed for cyclists or equestrians as access from the Waskerley Way to Oxen Law can be obtained by using UCR 17.5 which connects with the Waskerley Way at Palmers Bridge.
12. Whilst I accept that footpaths 22 and 56 provide a means by which pedestrians can reach Oxen Law without using the western part of the track at Red House, and that UCR 17.5 provides a means by which all classes of public user can reach Oxen Law from the Waskerley Way, the track at Red House provides a more direct link for cyclists wishing to undertake such a journey. A journey between points E and G via the Red House track is approximately 842 metres in length, whereas a journey between points E to G via Palmers Bridge is approximately 2600 metres. Furthermore, UCR 17.5 is deeply rutted in places, with many of those ruts holding water; whilst it may be possible for cyclists to pass along UCR 17.5 on an all-terrain or mountain bike, its physical characteristics does not make UCR 17.5 an attractive proposition for those riding touring cycles.
13. The existing footpath running between points E and G is not a practical proposition for cyclists to use due to the stiles and gates present on the route, and due to the livestock present in the farmyard from time to time. Whilst it is possible to negotiate this route on foot without significant difficulty, cyclists are required to wheel their bikes along the path and carry them over any structures present on the line of the path. In contrast, the proposed bridleway would run over a relatively firm unsealed surface which would be suitable for use by pedestrians, equestrians and cyclists with few structures to negotiate. There are gates present along the track at Red House, and it is evident from the written evidence submitted in support, that there have been gates on the track for a number of years, all of which were easily negotiated as they were not locked prior to around 2014.
14. The evidence submitted by the Council in support of the Order shows that complaints were made to it from around 2014 regarding obstructions encountered on the route which was at that time recorded in the List of Streets as a publicly maintainable highway and was also shown on Ordnance Survey maps as Other Route with Public Access (ORPA).
15. I accept that the evidence as to the claimed use of the track and the number of complaints about the unavailability of the track over many years demonstrates that there is a need for a public bridleway at this location. The proposed bridleway would be a more direct means of access to Oxen Law than other public routes in the area and would provide a route which is suitable for use by a wide range of users.

16. I conclude that there is a need for the bridleway proposed on the alignment shown on the plan attached to the Order.

Whether it is expedient to create the footpath having regard to

(a) the extent to which its creation would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area

17. The existing footpath between points E and G crosses the fences and gates that mark a working farmyard at Red House before running over permanent pasture. The proposed bridleway would run over an existing compacted stone surface which would be suitable for use by pedestrians, horse riders and cyclists. In addition to the proposed route being more direct than other available routes, the unsealed but compacted surface would be much easier to use year-round given the elevated and exposed location of the route at issue. I consider these matters to be as relevant to the question of convenience and enjoyment as they are to the question of the need for the route.
18. The Waskerley Way is a multi-purpose, multi-user route which has a fibredec surface. The surface of the path along the former railway and the surface of the Red House track is of a suitable standard for use by walkers, horse riders and cyclists. The Waskerley Way forms part of the C2C cycle route, and at its eastern end it connects with other cycle routes which run to Tyneside, to Durham and to Chester-le-Street and Sunderland. It is a key strategic route for walkers, horse riders and cyclists.
19. The proposed bridleway would link the Waskerley Way to the network of minor highways in the vicinity of Oxen Law; the evidence of use submitted by the Council demonstrates the nature of use to which the Red House track had been put prior to such use being challenged and prevented; use was as part of circular walks and rides in the area undertaken by both local residents and those from a wide area within the north-east.
20. The proposed path would circumvent the requirement of cyclists wishing to travel to Oxen Law to undertake a 2.6km detour north to Palmers Bridge and then south along UCR 17.5 and would replace that detour with a path approximately 850 metres in length. The created path is therefore likely to add to the enjoyment of those engaged in a recreational walk or ride walk in the area which incorporates the Waskerley Way and Oxen Law.
21. I am satisfied that the creation of the bridleway would add to the convenience or enjoyment of a substantial section of the public travelling within the area on foot, horseback or by bicycle.

(b) the effect which the creation of the footpath would have on the rights of persons interested in the land, taking account of the provisions as to compensation in Section 28 of the 1980 Act

22. The owner of the land crossed by the proposed bridleway submits that there will be substantial inconvenience and detriment to the farming business conducted at Red House. The farm is said to comprise around 500 acres of uphill grazing and is stocked with between 350 and 400 head of cattle together with sheep. Red House forms part of the owners' larger farming enterprise and forms an integral part of the farming business.

23. The owner contends that the proposed bridleway would pass through the yard of the premises where intensive agricultural operations are undertaken which involves the use of large agricultural vehicles and other machinery. The creation of a bridleway would compromise the ability to undertake agricultural operations on site. The expected increase in numbers of the public passing through the farm would be brought into direct conflict with those operations and gives rise to substantial health and safety concerns; livestock feeding and handling areas should be kept separate from areas of public access.
24. Concerns are also expressed regarding the potential for biosecurity on the farm to be compromised by increased public traffic particularly from horses which may be unvaccinated or ill. Security and privacy at the property would also be reduced as measures to control unauthorised access would be affected. Furthermore, the dwelling at the property currently enjoys a high degree of privacy; this would be reduced as the proposed bridleway would run directly in front of the house. It is submitted that the reduction in privacy arising from the creation of the bridleway would have a significant detrimental effect upon the value of the dwelling. The owner contends that the effect of the creation of the bridleway would be to diminish the value of the landholding by around 10%, or a sum of around £160,000.
25. The Council disputes the impact which the creation of the bridleway would have upon Red House Farm and upon the owners' ability to undertake agricultural operations. The Council submits that users of the proposed bridleway would rarely come into direct contact with livestock as such use would be concentrated on the access track which links Red House to Oxen Law. The Council also considers that the biosecurity hazard posed by the new bridleway would be less than which already exists at the farm as footpath 22 runs directly through the enclosed farmyard and cattle pens immediately to the south of the access track.
26. The Council acknowledges that the proposed bridleway will have an impact upon the owner's interest in the land, however this is considered to be minimal. Part of the proposed route is already a public footpath where public use currently co-exists with the agricultural use of that part of the enclosed access track. That part of the yard between the bungalow and the enclosed yard and cattle pens is significantly wider than the section of the track over which footpath 22 currently runs. The width of the yard and track at this point, together with its open nature and good all-round visibility means that the risk of conflict between path users and agricultural activities would be small.
27. The Council submits that during inspections of the track and footpath 22 by its staff over a number of years there has been no stock or persons present on the access track or agricultural activity taking place on it. The Council also points out that for many years the access track had been designated as a UCR, had been shown as an ORPA on published OS mapping and had been regularly used by the public. It is not accepted that the dwelling at Red House had experienced a high degree of privacy which would be reduced by the creation of the bridleway. The Council's Valuation Officers have estimated the financial detriment to the property would be around £5,000 and the Council argues that the compensation provisions of section 28 of the 1980 Act would adequately address any adverse impact the creation of the bridleway would have upon the owner of the land.

28. The only activity which I witnessed on the access track at the time of my site visit was the use of it by two groups of cyclists who made their way in the direction of Oxen Law. I did not observe any agricultural operations taking place in the vicinity of the dwellinghouse on the track between it and the enclosed farmyard through which footpath 22 passes. I clearly have no way of knowing whether my observations are representative of the normal pattern of activity on the track, but those observations appear to be reflected in both the Council's submissions and in comments made by users of the track who also report having seldom encountered agricultural activity taking place on it.
29. The use of the access track as a public bridleway is unlikely to lead to any substantial increase of risk to on-farm biosecurity than that which is already posed by the presence of footpath 22 running over part of the access track and through the enclosed farmyard and livestock pen area. Whilst there may be a risk to biosecurity posed by equestrian use of the access track, that risk appears to be limited as the track does not appear to be used for animal husbandry to the same degree of intensity as the enclosed yard and livestock pen area.
30. Although the dwelling at Red House is isolated, the available evidence demonstrates that the access track had been used for many years by walkers and cyclists as part of the unclassified road network in the area. Although that designation was erroneous and has been corrected by the Council, it remains a fact that there has been a degree of disturbance experienced by the occupiers of the house. The use by the public of the proposed bridleway is likely therefore to be of a similar magnitude to that which had been experienced previously. I do not consider that the creation of the bridleway would have a substantial adverse impact upon the privacy of the dwelling at Red House.
31. I acknowledge that the creation of a public bridleway is likely to have an adverse impact upon the owner's interest in the land. The owner submits that the imposition of the bridleway would result in a 10% reduction in the value of the property, whereas the Council considers the impact would be much less. It is not for me to determine the quantity of compensation which would arise if the bridleway were to be created, but based on the characteristics of the access track, the submissions made by the parties, together with my observations on site, I consider that those impacts would not be as significant as the owner suggests and that any adverse impact upon the owners interests could be addressed through the section 28 compensation provisions.
32. There is a delicate balance to be struck between the desire of certain sections of the population to have access over land for recreational walking, cycling and horse-riding and the desire of land owners and land managers to utilise their land in the most efficient way possible. Section 28 of the 1980 Act makes provision for compensation to landowners for disturbance and loss arising from the imposition of a public right of way over their land. I consider that the benefits to the public which would arise from the creation of the bridleway are not outweighed by the impact the creation of the bridleway would have on the owner of the land. Any negative impacts the creation of the bridleway would have can be addressed by way of compensation.
33. Having given careful consideration to these matters I consider that there is a need for a bridleway between the Waskerley Way and Oxen Law and that it is expedient to create the bridleway described in the Order taking into account

the beneficial impacts the creation would have upon the public which are not outweighed by the adverse effect upon the land over which the bridleway would be created.

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

Formal Decision

35. I confirm the Order.

Alan Beckett

Inspector

MAP NOT TO ORIGINAL SCALE



The County Council of Durham
has approved the following Public
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Public Rights of Way - Highways not affected by the proposal
Footpath
Appointed Highway

Drawn 01 February 2013
Proposed On 02 Oct 018
Drs BWH

