



Order Decision

Site visit made on 26 October 2020

by D M Young JP BSc (Hons) MA MRTPI MIHE

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

Decision date: 24 November 2020

Order Ref: ROW/3237320

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the North Kesteven District Council Part of Restricted Byway 3A Skellingthorpe Public Path Diversion Order.
- The Order is dated 11 March 2019 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 Lincolnshire 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.

Procedural Matters

1. None of the parties requested to be heard, I have therefore considered the case on the basis of the written representations received.
2. I carried out an unaccompanied site inspection of Restricted Byway 3A (the Order route) on the morning of 26 October 2020. Whilst it was not possible to walk along the legal alignment of the route between points A-C, I was able to see its general location from the proposed route (points A-B-C) which as I understand it, has been used by the general public for many years. Nonetheless, my determination has been made as if the legal line of the Order route were currently available.
3. For ease of reference, I shall refer to the various points labelled on the Order plan a copy of which is attached to this decision.
4. The Order is supported by Lincolnshire County Council (the "Order Making Authority" (OMA)). The objectors are Mr Paul Ambler, Mrs April Baker and Mr Roger Morley.

The Main Issues

5. The Order is made in the interests of the owner of the land crossed by the footpath. Section 119 of the Act requires that, before confirming the Order, I should be satisfied that:
 - (a) it is expedient, in the interests of the owner, that the footpath in question should be diverted;
 - (b) the new footpath will not be substantially less convenient to the public;
 - (c) it is expedient to confirm the Order having regard to its effect;
 - i) 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 the land served by the existing path and the land over which the new path is created together with any land held with it, having regard to the provisions as to compensation.
6. In addition, in determining whether or not to confirm the Order, I am required to have regard to the provisions of a rights of way improvement plan ("ROWIP") prepared by any local highway authority whose area includes land over which an Order would create or extinguish a public right of way.

Reasons

Background

7. The proposed Order seeks to divert a section of Restricted Byway 3A north of the old railway line¹, the legal alignment of which traverses the property of Mr Steven Mayo (the Applicant). It is proposed to divert the route onto an adjacent access road which serves five properties and runs in a southerly direction from Wood Bank for a distance of approximately 400 metres.
8. The application arose from a grant of planning permission for a single dwelling on land at Kelvindale Old Wood, Skellingthorpe in 2010². The permission was subsequently renewed in 2013 and 2016³. The drawings approved pursuant to these permissions illustrated how the proposed development would impinge upon the legal alignment of the Order route.
9. Prior to the current Order, the Applicant has made numerous applications to divert the Order route under section 257 of the Town and Country Planning Act 1990 in 2013, 2017 and 2018. These applications resulted in the OMA making several Orders all of which were abandoned for due to drafting errors.
10. The southern section of the proposed route is owned by the Applicant⁴. The private access road is currently unregistered but despite enquiries, the OMA has been unable to establish ownership. As a result, on 4 December 2019 the Secretary of State made a direction under paragraph 1 (3C) of Schedule 6 Part 1 of the 1980 Act that it was not necessary for the OMA to serve notice on the owners and occupiers of the land over which the Order route runs.

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

11. The approved planning drawings show that the dwelling would be sited very close to the legal alignment of the Order route. This would present future occupiers with a number of practical problems related to the erection of boundary fencing and perhaps more significantly, how to secure a reasonable level of privacy and security.
12. Having regard to the above and given that there is no evidence to the contrary, I am satisfied that it is expedient in the interests of the landowner that the footpath should be diverted.

¹ Sustrans Route No.64 (Lincoln to Harby)

² LPA Ref 10/1018/FUL

³ LPA Refs: 13/0087/FUL & 16/0889/FUL

⁴ See Land Registry Title LL263005

Whether the new route will be substantially less convenient to the public

13. The diversion of the route onto a clearly defined stone access road would be more coherent and logical than the current legal alignment. The termination points of the route would remain unaffected by the proposed Order. The length of the route would increase marginally from 301 metres (points A-C) to 304 metres (points A-B-C).
14. I did not observe any gates or other obstructions across the proposed route at the time of my visit and the surface between points B to C would be clearly preferable for pedestrians and cyclists than the unmade surface along the legal alignment.
15. Mr Ambler argues that the diversion of the route onto the access road would give rise to safety issues between cars and pedestrians. The first point to make is that the amount of traffic generated by the properties located south of point A is likely to be very small. Moreover, in light of its limited width and uneven surface, it is almost inconceivable that drivers would drive at speed along the proposed route. Indeed, those objecting to the Order have not drawn my attention to any accidents along the proposed route despite the fact that it has been used for many years as part of the Sustrans route.
16. Accordingly, there would not be any significant disadvantage or loss to the general public as a result of the diversion. I therefore conclude that the new route would not be substantially less convenient to the public.

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

17. Whilst I was not physically able to walk the legal alignment of the Order route, I was able to ascertain its general alignment from various viewpoints along the proposed route.
18. From these observations, I can see no obvious reason why the public's enjoyment of the route would be diminished. Indeed, none of those opposing the Order have sought to suggest otherwise.
19. The proposed route was well used at the time of my visit by cyclists and dog walkers and clearly benefits from a superior surface for such users particularly in winter-time or after periods of heavy rain.
20. On the assumption that the planning permission is implemented, it is also pertinent that users of the legal alignment would inevitably feel a sense of uneasiness about intruding into what would clearly be a private space regardless of their legal rights. To that end, I am satisfied that the diversion would not adversely affect the public's enjoyment of the route as a whole

The effect the coming into operation of the Order would have with respect to the land served by the existing route and the land over which the new route is created together with any land held with it, account being taken of the provisions as to compensation

21. The southern section of the proposed route (B-C) would remain in the ownership of the Applicant. Between A-B, the route would be diverted onto the stoned access road. However, this land is unregistered, and it has not been possible to establish ownership. There is no evidence that there would be any negative effect on land served by the existing or proposed routes.

ROWIP

22. No issues have been raised by the parties in this regard, and there is nothing that would suggest the Order is incompatible with the Council's ROWIP⁵.

Other Matters

23. The objectors have raised various points, many of which have little or no relevance to the current Order or the legal tests that I am required to consider under section 119 of the 1980 Act.

24. Whilst the maintenance of the route is not a matter which is relevant to my decision, the OMA have confirmed that confirmation of the Order would not affect private access rights nor existing maintenance arrangements and the Highway Authority would only be obligated to maintain the surface of the route commensurate to its status.

25. The availability of alternative routes, even if they do exist, is not a matter that is relevant to my consideration of the Order.

Conclusions

26. There is nothing in the submissions or from my site visit that would lead me to conclude that it would not be expedient to confirm the Order. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

27. The Order is confirmed.

D. M. Young

Inspector

⁵ The Lincolnshire Rights of Way Improvement Plan 2007-2012

Section 119 of the Highways Act 1980 - Diversion of Restricted Byway No. 3A at Land at Old Wood South, Skellingthorpe in the Parish of Skellingthorpe



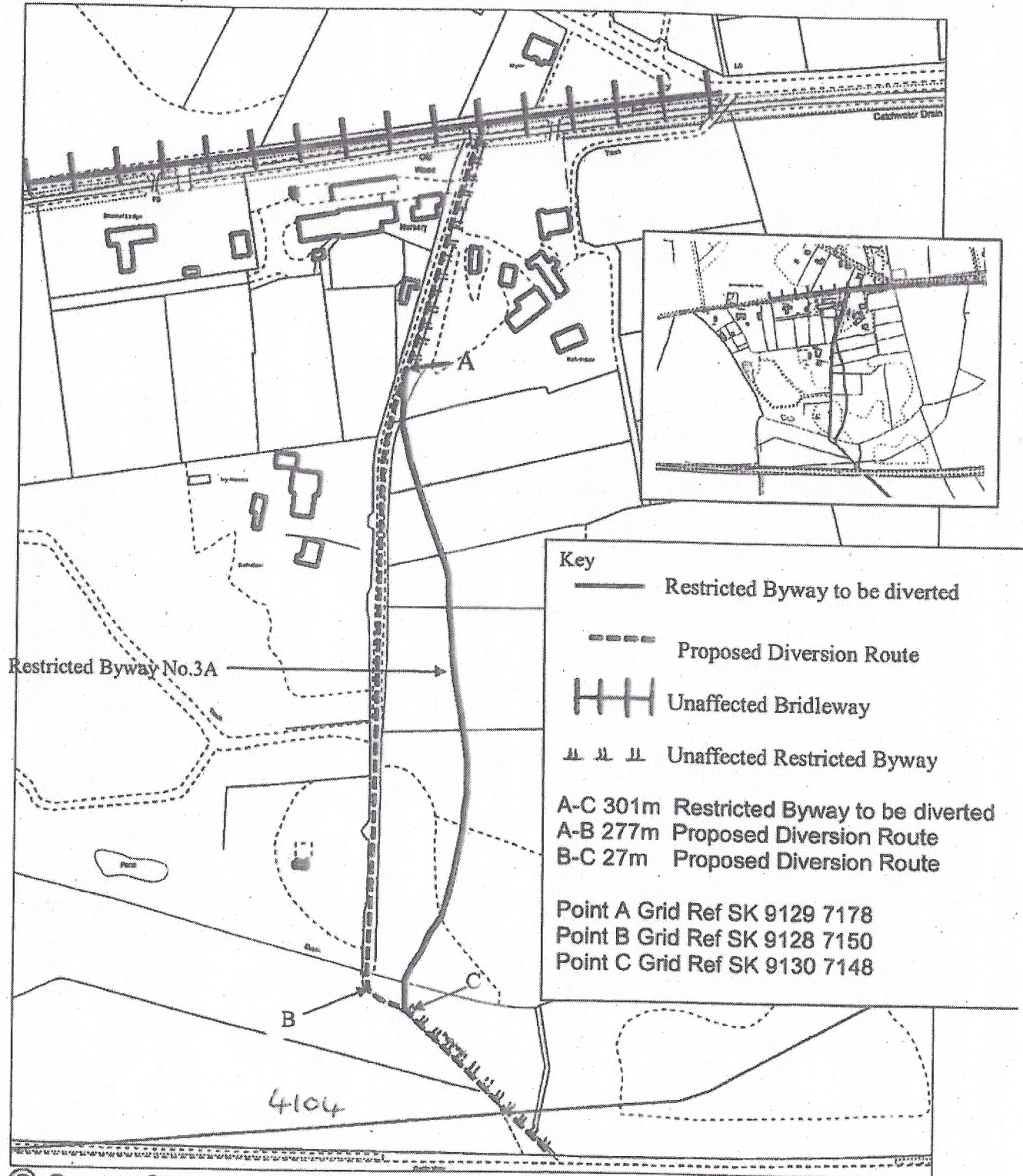
North Kesteven
DISTRICT COUNCIL

MAP NOT TO
ORIGINAL SCALE

AMS



Scale 1:2500



Key

— Restricted Byway to be diverted

- - - Proposed Diversion Route

|||| Unaffected Bridleway

||| Unaffected Restricted Byway

A-C 301m Restricted Byway to be diverted

A-B 277m Proposed Diversion Route

B-C 27m Proposed Diversion Route

Point A Grid Ref SK 9129 7178

Point B Grid Ref SK 9128 7150

Point C Grid Ref SK 9130 7148

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Ordnance Survey 100017926.

SKELL261118

MAP NOT TO