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| **Order Decision** |
| Site visit made on 11 May 2021 |
| **by J J Evans BA (Hons) MA MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 30 July 2021** |

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| **Order Ref: ROW/3254464** |
| * 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 (the 1981 Act) and is known as the Hampshire (Basingstoke and Deane Borough No. 8)(Parish of East Woodhay – part of Footpath No. 26 and part of Bridleway No. 27) (Test Valley Borough No. 25)(Parish of Faccombe – part of Footpath No. 2) Public Path Diversion and Definitive Map and Statement Modification Order 2019.
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| * The Order is dated 20 November 2019 and proposes to divert part of two footpaths and a bridleway as shown on the Order Map and described in the Order Schedule and would modify the Definitive Map and Statement for the area accordingly.
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| * There were two objections to the Order 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 in the Formal Decision.**  |
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**Procedural Matters**

1. The Order seeks to divert part of Bridleway No 27, and also parts of Footpaths Nos 26 and 2. In considering whether or not to confirm the Order, I have considered the proposals for the footpaths and the bridleway separately.
2. I undertook an unaccompanied site visit whereby I walked the paths that were to be diverted as well as the new routes, albeit part of the proposed route of Footpath No 26 and part of the legal route of Bridleway No 27 were inaccessible due to dense tree and shrub cover. Nevertheless, I was able to observe the general alignment of the routes and gained a good understanding of the effect of the proposed diversions on both public convenience and enjoyment.
3. Upon confirmation of Bridleway No 27, the definitive map and statement will be modified.

Main Issues

1. The Order was made under Section 119 of the 1980 Act and Section 53A(2) of the 1981 Act. Before confirming the Order I need to be satisfied that:-
* it is expedient, in the interests of the landowner, lessee or occupier of the land that the bridleway should be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public;
* the proposed diversion would not be substantially less convenient to the public;
* it is expedient to confirm the Order having regard to the effect which: (i) the diversion would have on public enjoyment of the path as a whole; and (ii) the effect the coming into operation of the Order would have upon other land served by the existing public right of way, and the effect which any new public right of way created by the Order would have upon the land over which the right is so created and any land held with it, having regard to the provision for compensation.
1. Other factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation.
2. When considering the Order I must also have regard to any provision contained in a Rights of Way Improvement Plan for the area. In this case the Council have drawn my attention to issues identified in the Hampshire Countryside Access Plan (2015-2025).

Reasons

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

1. With regard to Footpath No 26, the Order has been made in the interests of public safety and in the interests of the owner of the land crossed by the path. Part of the footpath is aligned very close to the edge of an actively eroding quarry face within a disused chalk pit (Points A-B). There is clearly a risk to public safety for users of the path, particularly as there is no fence to the quarry. Diverting the footpath away from the quarry edge (Points A-H) would benefit the landowner and would be in the interest of public safety.
2. During negotiations for diverting the route away from the quarry, the landowner requested the diversion of the legal route of Footpath No 26. Instead of crossing through fields between Points A-B-C, the proposed route would be along field boundaries (Points A-H-G-F-E), and would necessitate a diversion to Footpath No 2 to maintain network connectivity (Points D-E).
3. The legal alignment of Footpath No 26 traverses a steeply sloping field (Points A-B), across an arable field (Points B-C), and joins Footpath No 2 along the edge of another field laid to pasture (Points C-D). Diverting Footpaths Nos 26 and 2 to the edges of the fields rather than across them would be advantageous to the landowner in terms of agricultural management and productivity.
4. The proposed route of Bridleway No 27 follows an existing unsurfaced track on the more gently sloping land above the steep scarp slope (Points G-J). Although this route is not the legal route, it has clearly been utilised by the public for some time. The continuation of the use of the track would be to the benefit of the landowner as it runs between two field boundaries rather than through a field, thereby having land management and agricultural productivity benefits.
5. Given the above circumstances, I am satisfied it would be expedient in the interests of the landowner for the footpaths and bridleway to be diverted.

*Any altered point of termination of the path being substantially as convenient to the public.*

1. The proposed diversions of Footpaths Nos 26 and 2 would incorporate part of a section of Bridleway No 27 (Points G-H). The diversion to Footpath No 2 would be required to provide connectivity with the new route of Footpath No 26. Consequently, the footpath diversions would have to be undertaken together to maintain network connectivity, including the links with Wayfarers Walk and the Brenda Parker Way.
2. The proposed route of Bridleway No 27 follows an existing track that links into the legal route of this path. The diversion would thereby maintain connectivity with the network, and would be as substantially convenient to the public.

*Public convenience and enjoyment*

1. The proposed route of Footpath No 26 would be of a similar distance to the legal alignment. There are currently two stiles on the existing route, and gates would have to be provided to allow access into the grassland field. The diversion of Footpath No 26 around the edge of the arable field would not be gated, thereby providing unobstructed connection onto Footpath No 2. Part of the diversion would use a section of an existing compacted gravelled track between Points E-F. Apart from this there would be no meaningful change to the surface for the remainder of the proposed route. As such there would be some public convenience improvements over the existing position.
2. Footpath No 26 provides a route connecting the lower land to the north of the road near the chalk quarry to the high land around Pilot and Dean Hills. When walking up this very steep scarp slope, the diagonal nature of the legal route across the field lessens the severity of the gradient, making it a longer but more enjoyable ascent. By contrast, the proposed route from Point A towards Point H necessitates walking directly up the steep scarp slope. The severity of the slope is such that the route would be arduous both when walking uphill and down, and would be substantially less convenient to the public.
3. Whilst there may be a desire by some to retain the footpath on its long-standing alignment, there is nothing to suggest that there is any historical significance attached to the legal route of Footpath No 26. Objection has also been raised concerning the loss of views with the proposed route. The new route between Points A-H would afford users with open and expansive panoramic views over the surrounding landscape not dissimilar to the legal alignment.
4. However, the proposed route between Points G-F-E would be adjacent to woodland and plantations, and also lower down the hill than the legal route (Points B-C). Walkers would have views that would be constrained by both the topography and nearby trees rather than the open and expansive panoramas currently experienced. Given the spectacular nature of the views available on the legal alignment of Footpath No 26, the proposed diversion between Points G-F-E, would significantly diminish the public’s enjoyment of the route.
5. With regard to Footpath No 2, the Order has been made at the request of the landowner to provide connection to the diversion of Footpath No 26. There are stiles on the existing route of Footpath No 2, and as the new section would not be gated, it would be more convenient to the public. The diversion of Footpath No 2 would be required to provide connectivity with the new route of Footpath No 26. It follows that diverting Footpath No 2 alone would result in a route with no connectivity with other parts of the network nor to any place of public interest.
6. Whilst acknowledging the need to address public safety near to the quarry when using Footpath No 26, this has to be balanced against the significant harmful effect the diversions as a whole would have on public convenience and enjoyment. I am not persuaded that the diversion of Footpath 26 is the only option for improving public safety near the quarry, nor have the Council adduced evidence to show why public safety could not be improved by the erection of a fence along the quarry edge. For the reasons given above, it would not be expedient to confirm the Order with respect to the diversion of Footpath No 26, and consequently the diversion to Footpath No 2 would not be needed. Having regard to my findings concerning public convenience and enjoyment, the proposed diversions of Footpaths Nos 26 and 2 would fail to accord with the requirements of the 1980 Act.
7. The proposed route of Bridleway No 27 follows an existing unsurfaced track. Although this route is not the legal line, it has clearly been utilised by the public for some time, and the track is identified on the Ordnance Survey map for the area as a public right of way. In addition, there is signage showing the route as along the track, including it being part of the Wayfarers Walk. The legal route is to the north of this track and runs through a field albeit there is little evidence of any use.
8. The Order has been made to divert the bridleway to reflect the route actually used by the public. The length of the route would be a similar distance to that of the legal alignment. Connectivity with other highways would be maintained, and there would be no meaningful alteration to its alignment. Moreover, the path would be on a more gently sloping section of the scarp slope than the legal route, thereby being more convenient. The track has a natural surface of grass and gravel, and no new gates would be proposed. Users would experience the attractive panoramic views available from traversing along the top of a steep scarp slope.
9. The British Horse Society have objected to the width of the path which varies between 2 and 2.5 metres. The proposed route is part of the Wayfarers Walk, and from the evidence before me, including what I saw at my site visit, the route is popular and well-used. Increasing the width of the path to 4 metres would minimise the potential for conflict between users.
10. Based on the foregoing and that the Council have raised no objection to the extension of the width of the path to 4 metres, I find that the route would not be substantially less convenient to the public nor detract from public enjoyment. Indeed, for many reasons the diverted route would be more convenient and enjoyable.

**Other Considerations**

1. The Council have a Countryside Access Plan 2015-2025 (the Plan), and specific issues within it have been brought to my attention concerning the condition of the rights of way network and the connectivity of routes. The diversion of the bridleway to the route currently used by the public would accord with both these issues. However, whilst acknowledging the public safety concerns for users of Footpath No 26, for the reasons given above the diversion of Footpaths Nos 26 and 2 would fail to comply with the specific matters identified in the Plan.
2. Compensation issues have not been raised as being relevant, and there is no evidence before me that the diversions would have any adverse effect on land served by the existing routes or on the land over which the alternative routes would be created.
3. Other routes and uses have been suggested by the parties, and it has been brought to my attention that the grassland field crossed by Footpath No 26 is open access land. However, open access land does not preclude the presence of public rights of way, and it is my role to consider the merits of the diversions in the Order and not any alternative proposals favoured by objectors. If an Order is not confirmed it would be for the parties to consider whether an alternative course of action should be pursued.
4. Finally, an objector has raised concerns regarding the Council’s handling of the case. Such concerns fall to be pursued by other means separate from the appeal process and are not for me to consider.

**Conclusions**

1. With regard to Bridleway No 27 the Order would be in the interests of the landowner and in terms of public enjoyment, and the proposed route would not be substantially less convenient. When taking all these matters into consideration, on the basis of the evidence before me, it would be expedient to confirm the Order with regard to Bridleway No 27, subject to modifications.
2. There is a public safety concern regarding the use of the legal route of Footpath No 26. However, I am required to weigh the advantages of diversion to the public and to the landowner against any disadvantages that may result. In this case the new route would be safer but would be substantially less convenient to the public and substantially diminish public enjoyment. Furthermore, the diverted section of Footpath No 2 could not be undertaken in isolation. It follows there would be no need for the diversion of Footpath No 2 if that of Footpath No 26 was not to occur. Thus, the diversions of Footpaths Nos 26 and 2 would fail to accord with the requirements of the 1980 Act.
3. Taking into account all relevant factors it would be expedient to confirm the diversion proposed by this Order but only in respect of Bridleway No 27.

**Formal Decision**

1. I propose to confirm the Order subject to the following modifications:
* Throughout the Order:
	+ Remove all references to Footpath No 26 and Footpath No 2;
	+ Insert bridleway instead of footpath.
* Within Part 2 in the section for East Woodhay No 27
	+ Delete “…2 metre…” and replace with “…4 metre…”;
	+ Insert the text as underlined …. “(Point G), proceeding south-south-westward to Point X, then proceeding north-westward to”…..
* On the Order Map:
	+ Remove all references to Footpath No 26 and Footpath No 2;
	+ Add Point X.
1. As the confirmed Order would affect land not affected by the Order as submitted I am required by virtue of paragraph 2(3) of Schedule 6 of the 1980 Act to give notice 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.

J J Evans

INSPECTOR

