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| **Order Decision** |
| Site visit made on 7 June 2022 |
| **by John Dowsett MA DipURP DipUD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food, and Rural Affairs**  |
| **Decision date: 03 August 2022** |

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| **Order Ref: ROW/3278015** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and Section 53A(2) of the Wildlife and Countryside Act 1981 and is known as the County Council of Durham (Public Bridleway No.5 Sherburn Parish and No.38 Shadforth Parish) Public Bridleway Diversion and Definitive Map and Statement Modification Order 2020.
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| * The Order is dated 10 July 2020 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
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| * There were 6 objections outstanding when Durham County Council submitted the Order to the Secretary of State for Environment, Food, and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is confirmed.** |
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Preliminary Matters

1. Section 53A(2) of the Wildlife and Countryside Act 1981 makes provision that an Order to divert a public right of way may include within it such provision as may be required under Section 53(2)(b) of that Act to also modify the definitive map and statement. Consequently, if confirmed, the Order would also modify the definitive map and statement for the area once the provisions relating to the diversion come into force.
2. Bridleway No.5 and Bridleway No.38 form one continuous route running between Cookshold Lane to the north and Kell Crescent to the south. Part of the route is within Sherburn Parish and the remainder is within Shadforth Parish, with the route number changing where the bridleway crosses the parish boundary to the south of Cook’s Hold Farm.
3. A surfaced track has already been provided on the route of the proposed diversion. A section of current definitive route of the bridleway, that part known as Bridleway No. 38 and running from Kell Crescent to the parish boundary near Cook’s Hold Farm, was the subject of a temporary closure Order and the route was closed off by metal fencing and gates at each end at the time of my site visit. The route of the proposed diversion was available for use at the time of my visit, and I observed that a map showing this route was posted alongside the notice of the Temporary Closure Order at each end of the closed section.
4. The Order Making Authority support the Order.

The Main Issues

1. Section 257(1) of the Town and Country Planning Act 1990 (the Act) provides for an Order to be made authorising the stopping up, or diversion, of a bridleway if it is necessary to do so in order to enable development to be carried out in accordance with a planning permission already granted under Part III of the same Act.
2. In considering whether or not to confirm the Order, the disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally, or to persons whose properties adjoin or are near the existing public right of way, should be weighed against the advantages of the proposed Order.
3. It should be noted that, in considering whether or not to confirm this Order, the merits of the development are not at issue. However, it should not be assumed that because planning permission has been given necessitating closure or diversion of a footpath that confirmation of the ensuing Order will automatically follow.

Reasons

*Whether the diversion of the footpath is necessary to allow the development to be carried out*

1. The present definitive route of the Bridleway runs generally south south-east from Cookshold Lane, Point A on the Order Map following a metalled track that provides access to Cook’s Hold Farm. From there it runs alongside the boundary of land occupied by a sawmill and timber yard before turning almost due south and emerging onto a short, surfaced, track running between the houses on Kell Crescent at Point C on the Order Map.
2. From the evidence before me, planning permission was granted on 20 November 2019 for a development described as ‘Demolition of dwelling and extension to timber storage area, replacement log sorting line, alterations to access, new boundary fence, landscaping and drainage works, including SUDS pond and diversion of Bridleway’ (Planning Permission Reference: DM/19/02394/FPA). This planning permission was subsequently varied by way of an application under Section 73 of the Town and Country Planning Act 1990 (as amended) that substituted new drawings amending the proposed site access arrangements, the route of the proposed bridleway diversion, and the position of some of the boundary treatments. This application was granted on 1 September 2020 (Planning Permission Reference DM/20/00717/VOC).
3. I saw when I visited the site that this latter planning permission has been implemented in so far as the laying out and bringing into use of part of the outside timber storage area, the erection of boundary fencing, and the construction of a surfaced track on the route of the proposed bridleway diversion. However, other permitted works shown on the submitted drawings that would affect the current definitive line of the bridleway had not been carried out, such as the construction of retaining structures, laying out of other parts of the timber storage area, and the construction of ramps. From my observations, although the development permitted by the planning permission had commenced, it was still some way from being complete.
4. There is no evidence before me that would indicate that the relevant conditions attached to this planning permission have not been discharged.
5. It is clear from the drawings submitted as part of the planning application that the current definitive line of the bridleway runs through what will become part of the operational area of the sawmill and timber yard. This raises issues of safety for the users of the bridleway from potential conflict with heavy machinery and vehicles. A secondary issue would be that of security and safety at the sawmill and timber yard as the route of the bridleway would provide unrestricted access to the wider site once the permission is fully implemented. I saw during my visit that access to the site is strictly controlled and that procedures are in place to ensure that visitors are both authorised and limited to which parts of the site they can access unaccompanied.
6. For the above reasons, I conclude that the diversion of the bridleway is necessary to allow the development to be carried out.

*The extent of inconvenience or loss likely to arise as a result of the diversion of the right of way to members of the public generally, or to persons whose properties adjoin or are near the existing public right of way*

1. At 703 metres in length, the proposed diverted route would be longer and less direct than the current definitive route which is 453 metres long. The OMA opine that the proposed diversion is the shortest route around the western boundary of the development site. This is broadly correct if areas of tree planting are taken into account, and the new route generally follows existing field boundaries.
2. Objectors to the Order have raised that the proposed diversion is too long, particularly for elderly users. However, the OMA state that the route is primarily used for recreational purposes and that within this context an additional 250 metres length is not a significant increase. This would particularly be the case for cyclists and horse riders. This primarily recreational use was borne out by what I saw when I visited the site. During my time at the site, I observed the new route being used by two walkers, a runner, and two cyclists.
3. Although the southern end of the Bridleway terminates at the village of Sherburn Hill, where there is a small and limited range of services and facilities available, at the northern end there is predominantly open countryside between the termination point and the settlements of High Pittington to the north and Sherburn Village to the west. There is no evidence that would indicate that residents of these settlements would regularly seek to access Sherburn Hill via the Bridleway. Although there is a circular walking route via Cookshold Lane and East View, this is already relatively lengthy and an additional 250 metres would not make a significant difference to the useability of this route.
4. The gradient of both the definitive route and the proposed diversion are similar, with both rising from north to south as they ascend the north side of the hill. The proposed diversion is a surfaced track. Much of the current definitive route was obscured by vegetation with the exception of the metalled section at the northern end in the vicinity of Cook’s Hold Farm and the short roadstone surfaced section that runs between the houses at Kell Crescent. Nonetheless, there is no evidence that would indicate that the surface of the proposed diversion is not comparable to that of the existing route.
5. The onward connections from the southern termination point at Kell Crescent would be unchanged from the current situation. To the north of Cookshold Lane, Bridleway Number 6 provides an onwards connection. The proposed diversion would move the northern termination point of Bridleway Number 5 to the west of its present location. However, Bridleway Number 6 is roughly equidistant between the current and proposed northern termination points and, consequently, onwards connections in either direction would not be less convenient than at present.
6. Some concerns have been raised regarding visibility from the proposed new termination point on Cookshold Lane. At present the Bridleway joins Cookshold Lane at a properly formed and radiused junction. Visibility to the west is slightly constrained by a bend in the road. The proposed new termination point has much better visibility to the west, despite the presence of a roadside tree, but has a slightly more restricted sight line to the east due to the alignment of the road. The carriageway width is narrow, and I saw that vehicles tended to travel in the centre of the carriageway. In this respect the visibility of oncoming vehicles is broadly similar at each point. At the time of my visit, Cookshold Lane was very lightly trafficked and although it is subject to the national speed limit, I saw that, due to the narrow carriageway width and its sinuous alignment, observed vehicle speeds were low. Whilst I accept that this is just a snapshot and that usage will vary at different times of day, there is no evidence before me that would indicate that the road conditions which I observed are not relatively typical. From my observations during the site visit, I am satisfied that the proposed new termination point on Cookshold Lane is not inherently unsafe or less desirable from a highway safety perspective than the present termination point.
7. I also saw that the sequential views experienced when moving along both routes were comparable, although the proposed diversion is currently more open to the east than the present route where tree cover adjacent to the route occludes views in that direction.
8. At the northern end of the current definitive route of the Bridleway, Cook’s Hold Farmhouse sits adjacent to the route of the right of way, which continues past to join Cookshold Lane. This building was vacant at the time of my site visit, however, signage at the site indicated that it’s last use was in connection with boarding kennels. The diversion of the Bridleway would result in any future occupiers not being able to directly access Sherburn Hill by non-powered means from the route that currently passes the building. However, the termination point of the proposed diverted route is only a short distance to the west and an alternative route is available via Cookshold Lane and East View and Bridleway 37.
9. The diverted route of the bridleway would run to the rear of approximately six properties in Kell Crescent. This would follow the current definitive route of Public Footpath 42 which joins Footpath 33 shortly to the west of Kell Crescent. Whilst the diversion may result in some additional users on this section of the route, there is no substantiated evidence that would indicate that this would result in a significant increase in noise or disturbance over and above any that may be attributable to the use of the Public Footpath. Although a number of representations have raised the issue of fly tipping, when I visited the site and walked the proposed new route, the only section of the route where there was any evidence of deposition of rubbish was that part adjacent to the rear fences of Kell Crescent and where the route passes between the houses to join the carriageway of Kell Crescent. In this context, it is not possible to conclude that the proposed diversion, the route of which is currently in use, is solely responsible for the unauthorised tipping. In any event, even if the Bridleway diversion were not to proceed, public access would still be available to this area as it is also a Public Footpath.
10. I therefore find that the proposed diversion would not result in any significant inconvenience or loss likely to members of the public generally, or to persons whose properties adjoin or are near the existing public right of way. In contrast the proposed diversion would enable the expansion of an existing and established business which would sustain employment and contribute to the local economy. As a result, the advantages of making the Order would outweigh any minimal inconvenience or loss that may be experienced.

**Other matters**

1. A number of the representations have raised concerns about the current and future operations at the sawmill and timber yard. As mentioned under the preliminary matters, I have no power to interfere with the decision that has been made by the Local Planning Authority when it considered the planning application and the other matters raised relating to the operation of the site are not ones that I can take into account when determining whether to confirm the Order.

Conclusions

1. For the above reasons, I conclude that the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

John Dowsett

INSPECTOR

