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| **Order Decision** |
| Site visit made on 19 April 2023 |
| **by A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 24 May 2023** |

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| **Order Ref: ROW/3280814** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Essex County Council Bridleway 32 Alphamstone Public Path Diversion Order.
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| * The Order is dated 21 February 2020 and proposes to divert a public bridleway as shown on the Order Map and described in the Order Schedule.
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| * There were 2 objections outstanding and 5 representations of support, when Essex 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 subject to the modifications set out below in the Formal Decision.** |
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**Preliminary Matters**

1. In writing this decision I have found it convenient to refer to the points marked on the Order Map and I therefore attach a copy of this map.
2. I made an accompanied site visit on Wednesday 19 April 2023 when I was able to walk the current and proposed Order route.
3. Two objections were outstanding when the Order was submitted to the Planning Inspectorate, however although one objection was subsequently withdrawn, two more were submitted. In writing this decision I have taken all objections into account.
4. The Ramblers expressed concern about limitations that appeared to be on the diversion route but were not specified in the Order. At point E, a wooden post is situated in the centre of the gap leading onto the public highway and at point A the Ramblers submitted a photo of a gate that they believed was on the proposed diversion, which would also need to be removed.
5. I concur that as the Order states no limitations, should it be confirmed, the post at point E would need removing. On my site visit the Council advised that the diversion would not affect the gate by point A as the proposed route would run just east of the gate before turning to head in a west north westerly direction towards point E, parallel to the existing hedging.
6. The Ramblers also felt that the Order did not make it clear that a legal right remained to return to the public highway at point C, as well as the option to continue along a new stretch of bridleway and return to the highway at Point E. Should the Order be confirmed. It could be modified slightly to make the two options clearer.

**Main Issues**

1. For the Order to be confirmed, I must be satisfied, by virtue of Section 119 of the 1980 Act, that:
* it is expedient, in the interests of the landowner, the occupier or the public, that the bridleway should be diverted.
* the new right of way will not be substantially less convenient to the public.
* any new termination points will be substantially as convenient to the public.
* it is expedient to confirm the Order having regard to the effect which:

(a) the diversion would have on public enjoyment of the way as a whole.

(b) the coming into operation of the Order would have, in respect of other land served by the existing path; and the land over which the new right of way would be created, together with any land held with it.

1. Regard should also be given to any material provision contained in a rights of way improvement plan (ROWIP) for the area.

Reasoning

***Whether it is expedient in the interests of the landowner, or the public that the right of way should be diverted***

1. There is some debate amongst the parties regarding the merits of the reasons submitted by the landowner in the application to divert Bridleway 32 (the bridleway), especially as the original application was submitted by the previous landowner. The Council have changed their support for the Order as they are not able to substantiate whether the Order meets the interests of the new landowner and as a result are unable to determine whether Section 119(1) is satisfied.
2. The original landowner considered it to be expedient that the way should be diverted for several reasons:
* *The bridleway is shared by vehicles accessing adjacent dwellings.*
* *They face security concerns with public vehicle use, where vehicles use the bridleway as a short cut to connect to the adjoining highways that are separated by the bridleway.*
* *Should they wish to move livestock around the farm using the bridleway, it would create conflicts with legitimate users and those who use the route as a shortcut.*
* *They would enjoy better privacy when engaging in agricultural or social activities outside.*
1. Some objectors feel that these reasons are weak and not substantiated by fact and they are of the view that the bridleway is a very quiet route. They have not themselves experienced any conflicts with vehicle use, whether legitimate or otherwise, and any movement of livestock along the bridleway has never been observed, and they feel would be a rarity, as they believe the estate is predominantly agricultural by nature. Conversely, one representation received did make comment of seeing cattle and tractors on the bridleway.
2. The Council were initially in support of the Order but feel the reasons given to divert above might not be substantive to the interests of the new landowner. However, the concerns listed are specifically relevant to the situation of this land and correspondingly could apply to any occupant of this property and so are not necessarily bespoke to the previous owner. The new landowner confirmed by email on 28 September 2022, that they supported the Order and wished the process to continue. I will therefore consider the merits of the Order as made.
3. There is no evidence before me to qualify any current conflicts with users of the bridleway from the movement of livestock, or from vehicular use, legitimate or otherwise; and I have no reason to doubt the evidence of the objectors who purport that conflict has never been a problem. However, I do consider the security concerns raised through unauthorised vehicular use and the request for privacy are valid reasons for requesting a diversion.
4. The property is situated between two public highways linked by the bridleway, which also holds private vehicular rights. As one objector rightly points out, it must be difficult to distinguish between vehicles who use the route illicitly and those having legitimate business there. The diversion of a section of bridleway would allow the locking of a gate adjacent to point C, effectively removing the through route unauthorised vehicles are currently able to use, thereby improving security to the property and its outbuildings. I recognise that measures could be taken to erect signs and install security devices but this would not necessarily prevent any unlawful use of the bridleway as a through route.
5. The bridleway currently traverses the southern and eastern sides of Clees Hall and there is also a public footpath running directly to the north side of the property. Albeit the house sits some 30 metres from the bridleway, the garden and driveway have an open aspect. I acknowledge the view of two objectors that this distance is greater than many other houses are from a public highway, however, the property is viewable from public rights of way in three directions, and the desire of the landowner for some degree of privacy when using their outside space is a valid reason for requesting a diversion. Although one objector suggests fencing or hedging could be erected to offer privacy, this would reduce the open nature of the landscape in which the property sits. Such measures might also enclose the driveway completely, which could raise further security issues as well as changing the current open aspect of that part of the bridleway to that of a confined space.
6. With respect to security and privacy I consider the test is met and that it would be expedient to divert the way in the interests of the landowner.

***Whether the new right of way will not be substantially less convenient to the public***

1. The existing route of the bridleway has an approximate length of 800 metres. There is no recorded width although the objectors assert that on the ground there is a variable width between 2.4 - 3.6 metres. The proposed diversion only affects 170 metres of the existing way. The replacement route is approximately 258 metres in length, although this measurement includes travel along the new section of bridleway that would be created, rather than if the highway is returned to at its original point at C. The diversion would be 3 metres in width. The difference in length is negligible when considering the rural nature of the bridleway and the overall distance travelled on a recreational route. I consider this minimal increase in the length of the bridleway is not substantially less convenient.
2. Matters regarding surfacing were raised as a matter of convenience. The surfacing of a right of way does not render a route substantially less convenient, but I do consider it relevant as a matter of public enjoyment of the route, and accordingly I will examine the issue later in the decision.

***Whether any new termination points are substantially as convenient to the public***

1. The proposed diversion alters the termination point of the bridleway to a location slightly further west (point E), where it then re-joins the same highway as the current route. Users would also have the option of re-joining the highway at the bridleway’s current termination point at C. I find this substantially as convenient to the public.

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

1. Some objectors consider that the proposed diversion would have an adverse effect on public enjoyment on the basis that the existing section of bridleway (A-C) offers very pleasant views of the Clees Hall setting. They feel that this is an important feature of interest which would be lost if the bridleway were to be diverted.
2. I appreciate that enjoyment of any path is subjective by nature and open to varying opinions. It is the case that the existing bridleway has a very agreeable perspective of the house, moat, and gardens, which may be a feature of interest to users, however, the diversion would not remove these views entirely, as the unaffected section of bridleway north of point A still offers a vista of the house and gardens. I note that one objector felt that the proposed diversion was in effect corralling users behind a hedge. The diverted section of the bridleway would only sit behind a hedge on its northern side with the southern side offering an alternative view of open countryside for its short length, whilst the unaffected section of the bridleway and adjoining footpath to the north of the property would retain views of the house.
3. Whilst I also recognise that there is enjoyment and interest for some people in travelling through the attractive grounds of this property, it is my view that some other people may experience a sense of discomfort and intrusion from walking on a residential driveway with such open views to the house and garden.

*Surfacing*

1. For the most part, the objections and representations for the proposed diversion relate to any future surfacing. The existing route of the bridleway has a generous width and is formed of a hard base with a shingle surface. There is clear concern amongst objectors and from the representations received that the diverted route will be less convenient and a less enjoyable experience if the surface is not of the same quality as the one being lost.
2. There were various options considered for the surfacing of the proposed diversion that included replacing the hard surface with a soft one, as well as dividing the width into part hard and part soft surfacing. When the Council consulted on the matter, strong differences of opinion emerged, with all options being objected to by one party or another. The split surface was deemed preferable by the Council as it offered a softer surface for equestrians, a firm surface for cyclists and a choice to pedestrians.
3. Ultimately the current landowner, although not specifying a width, stated that the proposed diversion would have a hard surface that would be suitable for equestrians, cyclists, and walkers. *‘This surface would be made from a material such as rolled type 1 material with a shingle surface, as commonly used in other parts of the farm. It is self-draining and as already mentioned the route of the new footpath, where it runs through the side of a field is adjacent to a deep and well-maintained drainage ditch.’*
4. The newly created section of bridleway from points C-E would be unsurfaced, however there is the option to return to the highway at Point C for those users not wishing to use a natural surface.
5. I recognise that there are merits and drawbacks for all of the surfacing options and whilst it is not my role to determine the specification of the surface that would be provided, it is a key concern for most parties. Users were keen that the surface should benefit all types of users but were worried about the possibility of needing to negotiate muddy ground in inclement weather. There was also concern about the safety conflict that could become apparent with a split surface, should equestrians wish to share the firm surface if any soft surface were to be too muddy.
6. Aligning to the surface were concerns regarding flooding. Photos were submitted showing surface water in the vicinity of where the proposed diversion would sit, albeit the landowner felt that the photos were not on the actual line of the proposed diversion. I noted that the soil appeared to be clay based and that a deep drainage ditch ran alongside the hedge where the diversion would sit, however this did not seem to have a significant effect on the ground water that I noted on my site visit. One objector was concerned that the nature of this intermittent flooding would be discriminatory to less abled users and accordingly it is important, that any proposed surfacing addresses drainage issues adequately.
7. Correspondingly, should the Order be confirmed, as requested by the Council, I will modify the Order to specify that it would only come into effect once the Council are satisfied that the surface constructed is suitable for public use, with adequate drainage solutions and of a comparative quality to the surface of the existing bridleway. Should the Council not be satisfied, the Order would not come into effect and the legal route of the bridleway would remain on its original line.
8. It was noted by the Ramblers that both exit points C and E should retain a 3-metre width at their junction with the highway and as the stated width is 3 metres, I agree that the exit points should not be narrower than this.
9. The issue of surfacing has been examined above. I consider that the proposed diversion does not fully remove the property from view as it remains visible from other sections of the bridleway and adjoining footpath. The alternative vista offered by the proposed diversion, is a pleasant view of open countryside. Correspondingly, I consider that the diversion of this section of bridleway will not decrease public enjoyment of the bridleway as a whole.

***The effect the coming into operation of the Order would have with respect to other land served by the existing right of way and the land over which the new right of way would be created***

1. No issues are raised which suggest that the diversion would have any adverse effect on land served by the existing route or on the land over which the alternative route will be created.

***Consideration of the Order in light of any material provision contained in the ROWIP***

1. It is stated by the Council that the Diversion Order would increase the provision of bridleways and off-road cycling through the creation of the extra length of bridleway between C-E, whilst removing any limitations currently in place on the existing way.
2. Albeit there is no evidence before me that the limitations in place currently affect user experience of the route, I concur that the proposed diversion is not at odds with the ROWIP and does minimally increase the bridleway offering.

**Other Matters**

1. I note the objectors concerns regarding future maintenance of the surface of the proposed diversion and I appreciate this matter causes genuine apprehension. The highway authority has a duty to maintain the surface of a public right of way and the Council have asserted as much in their correspondence, however matters relating to the future realisation of this, is a matter outside of the scope of this decision.
2. One objector was concerned that should the route be diverted onto the adjoining field; they might encounter cattle should they be grazed in the future on that field. I did not notice stock proof fencing on the field where the proposed diversion would sit on my site visit but did observe such fencing on a field to the east of point A, which is unaffected by the proposed diversion.

**Conclusion**

1. I have found that the Order is expedient in the interests of the owner of Clees Hall for the purposes of security from illegal vehicular use and also for the purposes of privacy. The western termination of the diversion, although slightly further along the same highway, is of minimal increase in length and the Order route also retains the option of re-joining the highway at the current termination point. Accordingly, it remains substantially as convenient to the public, The Order route is a short diversion and would not be substantially less convenient to the public. The proposed diversion does not decrease public enjoyment of the route as a whole, as the unaffected section of bridleway retains some views of the house and garden while the diverted section offers views of open countryside. The Order would not come into effect until a suitable surface has been constructed and approved by the Council as being of comparable quality to the existing route and with adequate drainage to prevent any pooling of water. I therefore consider it is expedient to confirm the Order.
2. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications set out in the Formal Decision.

**Formal Decision**

1. I confirm the Order subject to the following modifications:
* In the main Order under BY THIS ORDER, section 1), remove *‘…after 42 days from the date of confirmation of this order’.* and insert *‘upon the satisfaction of the Highway Authority that the construction of the diverted bridleway is fit for public use.’*
* In the main Order under BY THIS ORDER, section 2), remove *‘There shall at the end of 42 days from the date of confirmation of this order be’* and insert *‘Upon the satisfaction of the Highway Authority that the construction of the diverted bridleway is fit for public use, there shall be’*.
* In Part 2 of the Schedule (Description of site of new path or way), remove *‘There will be a gap south of the aforementioned point* ***C*** *where the public will have access to the highway.’* and insert *‘There is an additional connection to the highway via a gap, south of the aforementioned point* ***C****.’*

*Mrs A Behn*

**INSPECTOR**

COPY - NOT TO SCALE

