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| **Order Decision** |
| Site visit made on 15 August 2023 |
| **by Charlotte Ditchburn BSc (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 September 2023** |

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| **Order Ref: ROW/3304444** |
| * This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981, and is known as the Hampshire County Council Test Valley Borough No.26 Parish of East Dean – Restricted Byway 501 Public Path and Definitive Map Modification Order 2021.
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| * The Order is dated 13 January 2021 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
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| * There were four objections outstanding when Hampshire 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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Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case based on the written representations forwarded to me. I made an unaccompanied site inspection on Tuesday 15 August 2023. On my visit, I found it impossible to walk the whole of the Order route. It was obstructed at several points by a locked gate, fences and overgrowth.
2. The Order has been made by the Council to resolve what it considers to be a cul-de-sac route that is no longer needed for the public.
3. As I have found it convenient to refer to points along the route as shown on the Order Map, I attach a copy for reference purposes.
4. The parties were given an opportunity to comment following the recent publication of Government guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises, August 2023. The OMA wrote that the recently published guidance adds support to the case for confirming the order.

The Main Issues

1. The order is made on the grounds that the path is not needed for public use. By virtue of Section 118(2) of the 1980 Act, before confirming the Order, I must be satisfied that it is expedient to extinguish the path having regard to:
2. the extent (if any) to which it appears that the path would, apart from the Order, be likely to be used by the public, and
3. the effect that the extinguishment of the path would have as respects land served by the path, having regard to the provisions for compensation.
4. In accordance with section 118(6) any temporary circumstances preventing or diminishing the use of the path or way by the public shall be disregarded.
5. I also need to have regard to any material provision contained in a rights of way improvement plan (ROWIP) for the area. There are no material provisions for me to consider in this case.

Reasons

1. The Order relates to the proposed extinguishment of East Dean Restricted Byway 501 that has been obstructed and inaccessible to the public since 1939. The Order route is obstructed by a number of fences, a locked gate and overgrown vegetation. In consequence use of the Order route has not been possible since the late 1930s.
2. Commencing at East Dean Road and proceeding south for 12 metres to a five bar timber gate, it continues along a grass field edge for 35 metres along the side of a hedgerow, the path then meets a 12 foot ex-military security fence. It continues for 60 metres along the bottom of a depression through the centre of a well-established hedgerow and shrub with more established trees varying in width from 5 to 15 metres. The path then meets a post and wire agriculture fence, crosses a grass field access 5 metres in length then another post and wire fence. It continues 10 metres through hedgerow and scrub to another post and wire fence, crosses a site service tarmac road 4 metres wide to another post and wire fence. The path continues 15 metres through the centre of low-density hedgerow and scrub 10 to 15 metres wide, then proceeds 80 metres through well established (80 year old) trees and scrubland. The path crosses another 4 metre tarmac site service road, the final 80 metres of path follows the bottom of a depression through the centre of well establish trees and scrubland.

*The extent that the path would, apart from the order, be likely to be used by the public*

1. In making this order it was necessary for the Council to conclude that the Order route is not needed for public use. Given that the Order route has not been useable for many years, it was perhaps relatively straightforward for the Council to conclude that the route is not needed by the public.
2. My task is not to examine the question of need, but to assess the extent to which the route might be used by the public if the obstructions were not present; and the route were available for use. Although the legislation refers to temporary obstructions, the courts have interpreted this as including man-made structures which are capable of being removed. Accordingly, I have to envisage a situation where the Order route is in a usable condition. Thus, the route would be a restricted byway through agricultural land, from C59 East Dean Road to a point north of the former chalk pit.
3. When assessing the extent which the path, if available, might be used by the public, it is appropriate for me to have regard to the utility the route would provide, and how this utility is currently met. I have no evidence about the utility of the path before the Order route was “closed” by the Admiralty in 1939 (under the provisions of the Defence Act 1842) when it acquired the Dean Hill site for use as a munitions store. It is a reasonable assumption that, whatever the purpose of the path then, circumstances have since changed significantly.
4. There were four outstanding objections when the Council submitted the order. The objectors refer to the disappearance of rights of way with the development of the Royal Naval Armaments Depot (RNAD) during the Second World War and the lack of circular traffic free routes in the village. They also express an interest in walking the Order route if it was available. The objectors highlight the lack of pavements in the village and the need for off road routes in the village for exercise. Another point raised by the objectors is the opportunity of the off-road route for members of the community, as a there and back route to the edge of a Site of Special Scientific Interest, otherwise inaccessible from East Dean and the history of the route as an ancient way. To that end, I consider it is possible there would be use of the Order route were it available, the indications being that if available it would serve a recreational rather that utilitarian purpose.
5. On the other hand, the Council has received little in the way of complaints regarding the lack of an available route, despite the path having been obstructed for several decades. And, there is lack of evidence from members of the public locally or more widely, to indicate they would in fact use the Order route, or use it in the ways suggested.
6. Point A is located at the junction of East Dean Restricted Byway 501 opposite Manor Farm. Point B is now a random location to the south east of Point A. Given the nature of the route and the lack of connectivity onward from the Order route I consider it unlikely, if available, there would be any significant use of the Order route.
7. Whilst I consider it is possible the route would, apart from the Order, be used, the evidence does not support a demand for it. Accordingly, I find that likely use by the public is not such that the Order should not be confirmed, and conclude it is expedient that the restricted byway be stopped up.

*The effect that the extinguishment of the path would have as respects land served by the path*

1. The majority of the land through which the Order route runs is owned by the applicant, who owns a private company which lets the numerous outbuildings and bunkers in its ownership for use as studios, workshops and storage. The company’s website makes reference to 24 underground storage bunkers, positioned within a ‘highly secure site’. Access to the site is regulated through a single controlled point of access, via a gatehouse. All but the first 50 metres of East Dean Restricted Byway 501 lies within this site, and if the route remains on the definitive map, it will represent a significant security issue for the landowner, who would have to fetter their previously robust security arrangements to provide public access into a site which has hitherto been closed to the general public.
2. Nothing on the ground would change in consequence of the proposed extinguishment. No issues have been raised as regards the effect on land served by the existing route. I am satisfied that there would be no adverse effect on land served by the route, and it is expedient to confirm the Order in this regard. No issues of compensation are raised.

*Expediency of confirming the Order*

1. Having reached a conclusion about the extent to which the public would be likely to use the Order route, if it were available, I must consider whether it is expedient for the Order to be confirmed. The ordinary definition of ‘expedient’ is ‘suitable and appropriate’. The requirement for expediency therefore permits me to bring into account other relevant factors to arrive at a balanced conclusion.
2. I cannot conclude that, if available, the Order route would not be used at all. It is however my finding that any such use would be very limited and that the route would not add any benefit to the network of public rights of way in the vicinity. Accordingly, the extinguishment of the route will not, in my judgement, be disadvantageous to the public.
3. As set out in my considerations above, the location of the route with no connecting right of way network and its cul-de-sac nature mean that it is most unlikely to be utilised by the public in future. There is benefit to the owners of the land crossed by the Order route in having it extinguished.
4. Having regard to all relevant factors, I conclude that it is expedient for the Order to be confirmed. In reaching this conclusion I have had regard to the findings I have outlined above, and I have given due weight to the issues raised in the written representations received.

**Other Matters**

1. The route is clearly not useable as a restricted byway at present but that does not mean that this was always the case. If it was ever used as a restricted byway in the past and has not subsequently been formally stopped up or downgraded it remains a highway of that status. It is also alleged by objectors that the present obstructions have not always been in place predating the Admiralty purchasing the land the Order route passes over in 1939.
2. The objectors all raise concerns relating to the lack of rights of way in the East Dean area, along with concerns of walking on East Dean Road, which they deem unsafe. However, the use of the road network to reach the Order route is not a matter before me for consideration under the legislation.

Conclusions

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

Formal Decision

1. I confirm the Order.

Charlotte Ditchburn

INSPECTOR

