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| **Order Decision** |
| Site visit made on 24 January 2023 |
| **by C Beeby BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 July 2023** |

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| **Order Ref: ROW/3273510** |
| * This Order is made under Section 119 of the Highways Act 1980 (“the 1980 Act”) and is known as the Wiltshire Council Parish of Calne Without Bridleway 89 (part), 89A and 89B Diversion Order and Definitive Map and Statement Modification Order 2019. |
| * The Order is dated 16 December 2019 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There were five objections outstanding when Wiltshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.   **Summary of Decision: The Order is confirmed.** |
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**Preliminary Matters**

1. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.
2. An objection contends that the order is flawed because article 1 does not prevent the existing way from being stopped up before the replacement way is created. However, I consider that article 1 of the Order satisfactorily accords with section 119(3) of the 1980 Act, which requires the extinguishment date to be tied to the date on which the authority certifies that any works required to make good the new path have been carried out. Thus, I do not concur with the objection in this regard.
3. The proposed alternative path has already been laid out and elements of it have gained planning permission (local planning authority references 16/03821/FUL and 18/02808/FUL). Nevertheless, these matters are separate from the legal tests which I must consider under the 1980 Act and consequently they have not formed part of my decision.
4. The Council has received a definitive map modification order application seeking to record Bridleways CALW89 and CALW89A, and part of an unclassified road to the north of the Order route, as restricted byways. The application has not been determined. Whilst I note its contents, this decision must relate to the diversion Order before me, which concerns part of a public bridleway. Thus, if the diversion of any restricted byway rights over the Order route were subsequently sought, this would need to be by a separate Order.

**Main Issues**

1. Section 119(6) of the 1980 Act involves three separate tests for an Order to be confirmed. These are:

* Test 1: whether it is expedient, in the interests of the landowner, the occupier or the public, that the path should be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.
* Test 2: whether the proposed diversion is substantially less convenient to the public.
* Test 3: whether it is expedient to confirm the Order having regard to the effect which:

(a) the diversion would have on public enjoyment of the path as a whole;

(b) the coming into operation of the Order would have as respects other land served by the existing public right of way; and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

1. In deciding whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to enjoyment of the land affected by the new paths must be taken into account, where applicable. Regard must also be had to any material provision contained in a rights of way improvement plan (“ROWIP”) for the area under section 119(6A). Other relevant factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation.
2. As the route is within an Area of Outstanding Natural Beauty (the North Wessex Downs AONB) (“the AONB”), section 85 of the Countryside and Rights of Way Act 2000 imposes a duty on me to have regard to the purpose of conserving and enhancing the natural beauty of the area of AONB. This includes, by virtue of section 92, the conservation of its flora, fauna or geological or physiographical features.

Background

1. The existing sections of bridleway run south from a lane which is an unclassified road over a track which passes the owner’s property, The Mill House. The path then crosses the river Marden via a bridge before meeting the unaffected section of Bridleway 89. The Order seeks to divert the path further away from the Mill House via a separate bridge over the river.

Reasons

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

1. The Order states that it appears to the Council that it is expedient that the path should be diverted in the interests of the owners of the land crossed by the bridleways. Therefore I must consider whether the diversion is expedient in these interests.The Council considers that the Order would improve the privacy and security of the owners’ property.
2. Whilst an unclassified road ends towards the top of the property’s drive, the existing bridleway passes closer to the front of the owners’ property, which contains ground floor windows into which path users can see. The privacy of occupiers of the house is consequently adversely affected by the presence of the path, so that its removal would reduce this adverse effect.
3. The house has a relatively isolated position with minimal natural surveillance from other property, so that the presence of the path close to the house is likely to result in security concerns for the occupiers. Reference is made to the theft of items from the front of the house and a security incident in 2017 which resulted in police action. Whilst these incidents are unsubstantiated and the latter incident was some time ago and appears to have been a “one-off”, they are undisputed in opposition. In providing the only public access to the property the Order route may well have facilitated the security incidents. The removal of public access within close proximity of the house by the Order would enable the owners to improve security at the property.
4. In summary, I am satisfied that the Order is expedient in the interests of the landowners in order to improve privacy and security at The Mill House.

*Whether any new termination point is substantially as convenient to the public*

1. The termination point of the existing route at point C would be unaltered. The termination point of the existing route would be altered at its north end to a point (point A) further north.
2. The alteration in the point of termination would not increase the length of the path, and any risk of cyclists overshooting and missing the new junction at point A could be adequately reduced by the use of appropriate signage.
3. Point A would form a junction into/out of the unclassified road where path users would need to turn approximately 90 degrees, instead of continuing in their line of travel from the current point B. Nevertheless, the purpose of this part of Test 1 is to ensure that a path user between two points is not left unable to reach their destination. In this case the proposed northern point of termination would lie a short distance further north, meeting the unclassified road near the existing point. The connectivity between points on the Order route and surrounding highways would consequently be unaffected.
4. Thus, the alteration in the point of termination of the path would be substantially as convenient to the public.

*Whether the new path will not be substantially less convenient to the public*

1. When comparing the convenience of the routes included in the Order it is appropriate to assess the existing routes as if they were available for use by the public to their full legal extent without obstruction. Therefore I shall disregard the existence of parked cars, gates and a narrow bridge forming obstructions to the definitive line of the existing path in assessing this test.
2. Several of the submissions in support of the Order refer to finding the proposed route more convenient due to the muddy or waterlogged condition of part of the existing route’s surface on occasion. Whilst an objector found the existing surface passable on a single occasion following a period of wet weather, the weight of evidence overall suggests that users find the surface of the proposed route more convenient than that of the existing route.
3. A five-bar gate was present at point B at the time of my site visit. Although this stood open, the owner submits that it is sometimes closed. In such cases the passage of users of the existing route would be delayed by the need to stop and open the gate, reducing the path’s accessibility.
4. Correspondence from the Council to the owners in 2006 states that, if a proposed stopping up of vehicular rights at the Mill House were successful, a bridleway gate could be in place, which should be at the correct location and to the standard required by the authority. Nevertheless, the Council currently considers that the gate is an unauthorised obstruction to the public right. Furthermore, orders of 2008 and 2009 to record the bridleways did not refer to the gate as a limitation. Moreover, the evidence before me does not confirm whether the specifications set out by the authority in 2006 were complied with. Thus, it has not been demonstrated that the gate at point B forms a limitation to the public right. I consequently consider that it is possible to pass freely over that part of the existing path without the need to stop.
5. The existing paths have a relatively straight alignment, providing a route without significant changes of direction. However, factors including the gradient of the paths, the need to pass a property frontage and the presence of a bridge are likely to prevent users such as runners, cyclists and equestrians from using the existing route at speed, in the interests of safety.
6. The proposed path includes several corners, some of which form an abrupt change of direction. These would limit the ability of users to safely use the entirety of the proposed path at speed, so that any change in pace required to navigate the corners would not be considerable.
7. Users of both the existing and proposed routes are consequently unlikely to be doing so at any speed. As a result, when compared to the existing paths, the proposed paths would not unacceptably increase the need to change pace.
8. The length of the proposed path would be greater than twice that of the existing paths, increasing travel time for users. The Order would consequently increase the distance between the existing path’s termini by a substantial degree. The additional distance may affect the convenience of the path for users with mobility issues, as referred to by an objector.
9. Nevertheless, as a route connecting lanes serving countryside hamlets, the path as a whole is less likely to be used for errands or for commuting to other locations, and more likely to be used for leisure purposes as part of a longer journey. Therefore, in increasing the travel time between the route’s termini, the Order is unlikely to adversely affect the convenience of the majority of users.
10. The gradients of the existing route are relatively steep, whereas those on the proposed route are more level. A significant proportion of the correspondence in support indicates that users prefer the gentler gradients of the proposed route. The correspondence in question appears to have been independently written in each case, and represents the views of a range of users including pedestrians, equestrians, cyclists and those with mobility issues.
11. As a result of these considerations, the letters in support attract significant weight in assessing Test 2, and demonstrate that the proposal would increase the ease of use of the route in this regard for a considerable proportion of users. The proposed route is consequently likely to be more accessible, in terms of gradient, to users such as those with mobility issues or those with pushchairs, although the additional distance would affect this increased accessibility. Overall, the new path would consequently be as convenient to these two groups.
12. The applicant provides the results of a survey made of users of the existing and proposed routes using closed circuit tv technology over 5 years. These show that a high proportion of users chose to use the proposed route, with relatively few people using the existing route.
13. Objectors submit a photograph of December 2018 showing cars parked on or adjacent to the existing route, which may have deterred some use. Furthermore, in January 2020 an objector provided two photographs showing plastic permissive bridleway signs of a plausible appearance which apparently cover waymarks for the existing route and attempt to direct path users along the proposed route. It is undisputed that all three photographs were taken during the period over which the use survey was undertaken. Therefore the parked cars and altered signs are likely to have deterred a proportion of users from making use of the existing route, and to have encouraged use of the proposed route.
14. Furthermore, whilst I note the submission that the recommendations of the Information Commissioner’s Office were complied with by the erection of separate notices stating that cameras were in use, such notices are likely to have deterred a proportion of potential use of the existing route.
15. The above circumstances are consequently likely to have affected users’ choice of route. As a result, the survey figures do not accurately represent the usual use of the two paths. Thus, the survey results attract very little weight in my determination.
16. Whilst a gate is present between Bridge Y and point C on the existing route, it is not recorded in the definitive statement as a limitation, and the evidence does not suggest that its presence has been authorised by the highway authority. It is considered by the Council to form an obstruction. Thus, although the proposed route is free of gates, this would not increase the convenience to the public because the existing route is, similarly, to be considered free of gates.
17. The legal widths of the existing and proposed routes are similar, so that an increase in the paths’ width would not form a benefit of the Order.
18. Overall, I conclude that the proposed route would be less convenient in some respects, but more convenient in others. For these reasons, the new path would not, on balance, be substantially less convenient to the public.

*Provisions within the ROWIP*

1. Objective SO14 of the Council’s Countryside Access Improvement Plan 2015-2025 seeks to promote travel modes that are beneficial to health. As users may already walk, cycle and ride a horse on the existing route, this objective does not provide any particular support for the Order.
2. Objective SO15 of the ROWIP seeks to reduce barriers to transport and access for people with disabilities and mobility impairment. Whilst there is minimal specific evidence on the Order’s ability to meet this objective, I have found above that the proposed route would be as convenient for users with mobility issues. Therefore only a neutral effect in this regard has been shown, so that the ROWIP Objective does not provide any particular support for the Order.

*Whether it is expedient to confirm the Order*

1. Views of the two Grade II listed buildings at the Mill House are available from the proposed route. Nevertheless, these views are more distant than those of the buildings from the existing route. Furthermore, their availability would depend more on the maintenance of adjacent vegetation, which cannot be assured despite informal undertakings to do so, due partly to the potential for ownership of the property to change.
2. Views of the Mill House from “Bridge X” and surrounding land are already available to pedestrians as the bridge carries footpath CALW40. Thus, the Order would serve to remove closer-range views of the listed buildings for pedestrians, rather than providing alternative views of a different type to this type of user.
3. The proposal would, however, provide longer-range views of the Mill House from Bridge X which are not currently available to equestrians and cyclists, with a potential increase in appreciation of the historic interest contributed by the house’s setting for these groups. Some of these users comment that they consider the views from the proposed route to be better, with one equestrian explaining that in using the existing route their attention was too focussed on the potential for their horse to be spooked by various matters in passing in front of a dwelling for them to be able to take in views of the buildings.
4. As a result of the above considerations, the Order would have both beneficial and adverse effects in terms of the contribution of views of the listed buildings to public enjoyment.
5. The wider path as a whole is partially enclosed by mature hedgerow, giving the impression of a landscape feature of some age, which it is currently possible to follow by reference to existing longstanding features. The submission that the existing paths have some historic interest is supported by documentary evidence showing their existence over centuries as part of a longer route between highways, irrespective of a 2007 order which stopped up public vehicular rights but reserved bridleway rights over the Order route. The case in opposition indicates that this history, supporting the generally linear alignment of the existing route as a track of some age with a sense of purpose, contributes to the public’s enjoyment of the path as a whole. This enjoyment is enhanced by the existing route’s proximity to the listed buildings at the former mill.
6. An objector considers the diversion to form a “contrived detour”. In introducing a number of “dog-leg” corners and a more circuitous and less purposeful route between the current termini, the proposed route would disrupt the identified historic interest of following a linear route between defined features. The diversion would consequently have an adverse effect on public enjoyment of the path as a whole in this regard.
7. However, the matter is referred to by only a small number of objectors, and is not referred to as a concern by a considerable number of letters in support. The circumstances in this case consequently differ from those in my colleague’s decision (FPS/Y3940/4/8) concerning a route elsewhere in Wiltshire, where a considerable number of objections referred to the loss of a historic route and/or features as their reasons for objecting to a diversion order under section 119.
8. Furthermore, the diversion in this case relates to part of the wider route only, so that the historic interest of the track to the south would remain.
9. For these reasons, the adverse effect on public enjoyment in this regard would consequently be limited.
10. It is submitted that the existing route’s surface between Bridge Y and point C is boggy for a few weeks in winter, even if the highway authority meets its maintenance duties. Although the extent to which this is the case is disputed by an objector, the parish council refers to waterlogging issues on the route and some photographs of boggy ground are provided. Furthermore, there was some standing water on the route at this point at the time of my site visit. These circumstances are likely to make use more challenging at certain times of the year, affecting public enjoyment of the path as a whole.
11. The proposed route has a hard surface and passes through more open land, and therefore it would not be subject to waterlogging in the same way as the natural surface of the existing route, which passes through a shaded area at this point and which may be more subject to surface disturbance due to landslip referred to by the landowners. Access to the proposed route is consequently more assured to all users throughout the year, so that the proposed route would increase enjoyment of the path as a whole in this regard.
12. There is minimal evidence before me to suggest that the risk of encountering vehicles outside the Mill House has caused concern to users of the existing route, and given the likely slow speeds of all parties and the limited domestic traffic associated with the property, the removal of exposure to vehicles is not a factor which would increase public enjoyment of the route.
13. Similarly, factors which may “spook” horses such as faster flowing water and children or animals from the dwelling have not been sufficiently evidenced for me to find that the proposed route would bring any particular benefits in this regard. Furthermore, the latter two elements are temporary circumstances associated with the current occupiers, who may change.
14. Whilst some users may appreciate the increased distance of off-road path which the proposal offers, others, for example users with mobility issues, are likely to consider that this reduces their enjoyment of the route.
15. The combined gentler gradient and separation from the dwelling of the proposed route are likely to provide more opportunities for equestrians to canter than are available on the existing route, although these would be relatively brief in view of the distances concerned.
16. A number of submissions in support state that the diversion would remove a sense of intrusion on the landowners’ privacy which correspondents experience when using the existing route. The proposal would increase the enjoyment of these users because the proposed route is further from the dwelling.
17. There is no evidence that the diversion will have any adverse effect on land served by the existing route or on the land over which the alternative route will be created.
18. Taking all the above considerations into account, the Order would have a neutral effect on public enjoyment of the path as a whole.
19. I have concluded above that the Order is expedient in the interests of the landowners. The alteration to a point of termination would be substantially as convenient to the public, and the new path would not be substantially less convenient to the public. The proposed diversion would have a neutral effect on public enjoyment of the path as a whole. As such, it is expedient to confirm the Order.

*AONB*

1. I have not identified any harm resulting from the Order to the purpose of conserving and enhancing the natural beauty of the AONB, including the conservation of its flora, fauna or geological or physiographical features.

**Other Matters**

1. Whilst the Order does not specify the form that its junction with existing public footpaths will take, this matter does not arise for consideration of Test 2 because, as the stiles concerned lie on adjoining paths and provide access only onto or from those, they do not affect the convenience of use of the proposed path.

**Overall Conclusion**

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

**Formal Decision**

1. I confirm the Order.

*C Beeby*

INSPECTOR

