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| **Order Decision** |
| Site visit made on 24 April 2023 |
| **by I Radcliffe BSc(Hons) MRTPI MCIEH DMS** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 26 September 2023** |

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| **Order Ref: ROW/3293520** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Public Bridleway No 20.46/24, Brook House Farm, Middleton Tyas Diversion Order 2021. |
| * The Order is dated 21 May 2021 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There were 2 objections outstanding when North Yorkshire 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. My site visit was unaccompanied and I was able to walk and view the existing bridleway route between points A and B. I was unable to walk the proposed new route from point C to point E due to the presence of unbroken field hedges. However, I viewed this section from the neighbouring maintainable highway and track. I was able to view and walk the remainder of the Order route from point E to point H.
2. Along the road that links Five Hills Lane to the start of the bridleway a sign has been erected on the approach to Brook House Farm which states that the road is private. On the basis of the information provided by the Highway Authority the sign is incorrect: the road is a county road and maintainable highway and the public have the right to use it. This matter is addressed in my reasoning below.
3. In August 2023, the Department for Environment, Food and Rural Affairs published guidance on the diversion of public rights of way. The guidance relates to rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises. Comments were invited on the guidance and the responses received have been taken into account in this decision.

**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, occupier or the public for the path to 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 determining 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 path 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. In reaching my decision I am also required to have regard to any material provision contained in a rights of way improvement plan for the area. I must also consider whether the Public Sector Equality Duty would be discharged by this proposal.

**Reasons**

*Whether it is expedient, in the interests of the owner of the land crossed by the bridleway, that the bridleway in question should be diverted*

1. The Order has been made in the interests of the owner of the land (‘the Applicant’) crossed by that part of the bridleway at issue.
2. Bridleway No 20.46/24 links Brook House Farm to Cow Lane to the south. The bridleway commences in front of the farmhouse at the end of the metalled unclassified county road off Five Hills Lane that terminates at this point (point A on the Order plan). The bridleway then proceeds southwards along a hardstanding track past the front of the open farmyard for approximately 584 metres before joining Cow Lane.
3. It is the section of the bridleway from its start (point A) to a tight bend to the south of the farmyard (point B) which gives the applicant concerns regarding safety, privacy and security.
4. The farmyard at Brook House Farm and the buildings that it contains are the only farm buildings within the applicant’s ownership and are used daily in relation to the estate and associated activities. Although farm operations are generally seasonal, work is often intense due to the need to complete tasks before the weather changes. The use of the bridleway has increased in recent years and farm machinery has become larger. Turning and reversing large vehicles and machinery is a hazardous activity in the presence of bridleway users as vehicles can encroach onto the bridleway when manoeuvring and require a safe environment in which to operate. Therefore, whilst the bridleway does not pass through the farmyard, and so the recently published DEFRA guidance does not strictly apply to it, in this case many of the same safety issues arise, and so I attach significant weight to the thrust of the guidance in this respect in the determination of the Order.
5. A local fatality involving a footpath user, farm machinery and a member of the applicant’s family has brought into sharp focus the risk of bridleway users coming into conflict with vehicles and machinery using the yard. At point B the tight bend on the bridleway reduces intervisibility between vehicles, machinery and vulnerable bridleway users travelling in opposite directions to the detriment of their safety.
6. The Health and Safety Risk Assessment for the farm requires that operators are aware that members of the public may at any time pass along the bridleway in front of the farmyard and that operators should therefore be vigilant. Other controls include signs warning bridleway users of the presence of heavy vehicles turning and reversing.
7. These administrative controls reduce the risk of bridleway users and farm vehicles or machinery coming into conflict, but do not ensure the prevention of such incidents. In accordance with the hierarchy of controls advocated by safety practitioners, the most effective control is to eliminate the hazard. In practice, this means separating bridleway users from turning or reversing farm machinery and vehicles.
8. The position of the objectors to the Order route is that the risk of bridleway users coming into conflict with farm machinery and vehicles is negligible. This is because in their experience the farmyard is little used as they have not encountered farm vehicles when using the bridleway.
9. In my assessment, whilst the yard is not in use continually throughout the day it is in daily use and with the limited visibility that exists in relation to oncoming bridleway users travelling from the north around the bend by the farm house there is a significant risk of conflict and injury.
10. The bridleway passes along the outside of a low front boundary wall with the farm house and open front garden on the other side. Tall, sash windows allow glimpsed views inside the house and an outdoor table and chairs is clearly visible to the side of the house. The extent of public views from the bridleway reduces the privacy of the occupiers of the house, but by no more than would occur in the majority of residential situations where dwellings face a highway.
11. Concerns about security also exist in relation to those who may use the existence of the bridleway to survey the house and its surroundings with criminal intent. The diversion of the bridleway may not deter those who are intent on stealing and who would still legally be able to view the house from the unclassified county road that terminates when it meets the bridleway at point A. However, the occupiers of the property would be able to make a stronger challenge to the presence of unauthorised third parties found beyond the end of the unclassified road by the house and farm yard immediately next door if the bridleway is diverted away from the house in the manner proposed.
12. Taking all these matters in to account, I consider that the proposed diversion, which would alter the northern terminal point of the bridleway, would be in the interests of the applicant. As a result of the diversion, bridleway No 20.46/24 would no longer pass along the front of the farmyard or in front of the farmhouse. Consequently, it would improve safety and security for the farm, and slightly enhance amenity for the occupants of the farmhouse.
13. For these reasons, I am satisfied that in the interests of the landowner it is expedient that part of bridleway No 20.46/24 should be diverted. In accordance with section 119(2) of the 1980 Act, I also find that the termination of the proposed new route at point C would be substantially as convenient to the public as the current point of termination on the same highway at point A.

*Whether the new bridleway would not be substantially less convenient to the public*

1. The section of bridleway No 20.46/24 proposed for diversion is a track made of compacted stone and is approximately 172m in length. Combined with the unclassified county road it connects to, the total length of the current route that links point B to the start of the proposed diversion at point C is approximately 350m. The length of the proposed replacement route between these points would be 560m. The proposed replacement would maintain a means of travel between Five Hills Lane and Cow Lane.
2. The evidence before me suggests that the principal use of the bridleway is for recreational, as opposed to utilitarian purposes. Linking Five Hills Lane with Cow Lane the bridleway forms a circular loop with the settlement of Middleton Tyas and provides a useful right of way for recreational bridleway users travelling from further afield. The proposed diversion would increase the overall length of the route taken between the two lanes by approximately 210m. Such an increase is unlikely to inconvenience recreational bridleway users whether on foot, horseback or bicycle as claimed in one objection.
3. The section of bridleway that would be diverted is enclosed by boundary treatments that keeps it separate from adjacent fields and it has a single bridle gate that was open during my site visit. The proposed diversion shown on a hand annotated plan that accompanied the application would involve the insertion of two bridle gates at points C and D in order to contain any livestock kept in a field. As a supplied plan shows that this section of the bridleway would be separated from the field by a stock fence, it is likely that the two bridle gates would be open for the majority of the time. It is therefore unlikely that users would be materially more inconvenienced using the proposed diversion than the current route. Even if this was not the case and the gates were kept closed, subject to appropriate design so that they could be easily opened by all including those on horseback, this section of the proposed diversion would not be substantially less convenient to the public.No other infrastructure is described by the Order or is shown on the plans that accompany it.
4. At present only that section of the proposed route between points D and F is a purpose made track. As part of the proposal shown on the hand annotated plan the route between points C and D would be upgraded from pasture to a drained, compacted stone track. This improved surface would be similar to the existing track between points D and F it would join onto. Although this surface specification is not included in the order, this is a matter that the Order Making Authority (OMA) has control over as it would only close the existing section of bridleway and open the new section once it has decided that the new route was fit for public use. As a result, I find that it is within the control of the OMA to ensure the first half of the proposed diversion between points C and F would have a suitable walking and riding surface.
5. One of the grounds of objection to the diversion is that the surface of the remaining half of the proposed route between points F and H would remain as unimproved farmland, and so, at wet times of the year, would become so muddy that cyclists would be unable to ride this part of the route. Although during my site visit the weather was dry, I saw that puddles were present along vehicle tracks in the field to the south of the farmyard between points G and H that had created a surface that would be difficult to cycle on and which would ‘cut up’ with use. As a result, the surface is likely to become increasingly muddy during the colder, wetter months of the year and so is likely to result in mud starting to ‘clog up’ a bicycle to the extent that it could not be ridden. In my judgement, such conditions would ultimately affect much of the grassed section that forms the latter half of the diversion. Such conditions would also make the route difficult for pedestrians to use.
6. Given the compact well drained surface of the existing bridleway and its role in connecting Five Hills Lane and Cow Lane, such a deterioration in the standard of the bridleway surface would be to the detriment of its use by cyclists as well as by pedestrians, especially those with impaired mobility**.** In contrast, the British Horse Society, who are supportive of the diversion, expressed a preference for turf rather than scalpings to allow riders to canter or trot. Conflicting positions therefore exist between different types of user as to the suitability of the bridleway surface.
7. In my judgement, given that the applicant is willing to construct a hardstanding track so that the first section of the diversion would be usable, it is reasonable to expect that they would be prepared between sections F and H to create a dual surface bridleway that would accommodate the needs of cyclists, pedestrians and horse riders. Such a surface would involve providing scalpings or similar on half the 4m width of the bridleway. The OMA would be able to secure such an arrangement through its powers that keep the existing bridleway open until it decides that the diversion route has been brought into a fit condition for use by the public.
8. At 4m in width the proposed diversion would be sufficiently wide to cater for users. Other than for a gentle downwards gradient between points F and H, it would mimic the profile of the current bridleway route and so, in terms of physical exertion, it would be as easy to use as the existing route.
9. On balance, having given consideration to all the matters raised, I consider that with the control that the OMA has over the surfacing of the route, the proposed diversion route would not be substantially less convenient to the public.

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

1. To a large extent, the enjoyment to be had from using a public right of way is a subjective matter. Nevertheless, I have endeavoured to consider this issue objectively, by assessing matters such as the character of both routes and the views experienced whilst using them.
2. On the approach from the south, towards the northern end of the bridleway where it joins the unclassified county road at point A, open views to the west of an attractive large ridge and furrow field of pasture with dense mature trees beyond catch the eye. These views are complemented at the end of the bridleway at point A by close views of the farm’s attractive stone built farmhouse which faces the field.
3. From the north at point C along the unclassified county road that gives access to the bridleway at point A, views are initially limited due to the roadside hedges that enclose it. However, at the point where the fenced field opposite the farm house is encountered this changes quite dramatically: open views of the large ridge and furrow field of pasture and farmhouse begin and are complemented on the eastern side of the lane by a canopy of oaks and an under storey of flowers. These features serve to frame the farmhouse in an attractive way.
4. The proposed diversion would not alter the legal position that the views between points C and A would still be available to the public from the unclassified county road. In practice however, with both ends of the proposed diversion starting out of view of the attractive features that I have described, there would be no reason for people intending to use the bridleway to pass point C on the Order Map and continue to the end of the lane only to turn around and return the way they came. This would be especially so given that a sign has been erected on the lane at the point at which the fenced open field begins and the attractive features start to become apparent which incorrectly states that the road is private. The combination of these two factors leads me to the conclusion that in practice these views would effectively be lost if the proposed diversion was confirmed, not only to bridleway users but to other users of the road as people wrongly assume that beyond the sign the lane is private and proceed no further.
5. The views that would replace those of the ridge and furrowed field, mature trees and farmhouse would in parts be mundane in comparison. From the north, the diversion would start by passing along one side of a field of pasture before joining a hedged track of scalpings which passes through an area of poor quality woodland. The diversion would then follow the long side of the farm’s utilitarian yard before following the southern half of the section of bridleway to be diverted and eventually rejoining it. From the field of pasture to the south of the woodland the route would provide long distance views to the south east. It is said that these views are of the North Yorkshire Moors, Black Hambleton Hills and Roseberry Topping which are not visible from the current route. However, the views of these features are so distant that they would not lift the overall enjoyment of the path to the same level as the existing bridleway route that I have described above.
6. Taking all these matters into account, I find that the public enjoyment of the path as a whole would be moderately diminished as a result of the Order.

*The effect of the diversion on other land served by the existing paths and the land over which the new paths would be created*

1. On the evidence before me, the Order would not have any effect separately identifiable from those considered above in relation to the other requirements of Section 119 of the 1980 Act. On the same basis, the current and proposed route are on land in the ownership of the applicant and there would be no impact upon the land crossed by the new path. Compensation issues therefore do not apply in this case.

***Right of Way Improvement Plan (RoWIP)***

1. A RoWIP sets out broad strategic actions to identify improvements to the rights of way network within the area of the plan. The RoWIP for North Yorkshire was published in 2011. The proposed diversion does not appear to conflict with the policies set out in the ROWIP. Whilst there is nothing in the RoWIP that specifically relates to the network around Brook House Farm, paragraph 4.12.4 on page 53 makes reference to concerns regarding public rights of way passing through farmyards.

***Consideration given to the landscape and the conservation of biodiversity, geology and physical geography***

1. In making diversion orders, sections 29 and 121(3) of the Act requires that due regard is had to the desirability of conserving flora, fauna and geological and physiographical features. The land crossed by the proposed diversion is not covered by any national or local designations aimed at conserving habitat types or species diversity. Similarly, the proposal would not cross any geological or physiographical features of note. On the basis of the evidence before me, the proposed diversion would not have any adverse impact upon biodiversity, geology or physical geography.
2. The landscape crossed by the current and proposed path is not located within an Area of Outstanding Natural Beauty or a National Park. As a result, the statutory duties in relation to having regard to the purposes that such designations grant to an area do not apply.

***Public Sector Equality Duty (PSED)***

1. Decision makers are required by the PSED set out in section 149 of the Equality Act 2010 to have due regard to advancing equality of opportunity and to eliminate unlawful discrimination in relation to, amongst others, people with disabilities.
2. The proposed diversion would be on level ground between points C and G before gently sloping down to the south towards point H. There are two bridle gates which users would have to negotiate at points C and point D. Subject to both being provided with latching mechanisms at a suitable height which are straightforward to use, which is a matter within the control of the OMA, they would not be problematic for people with disabilities.
3. Although the proposed diversion would increase the overall length of the path by approximately 210 metres, a suitable walking and riding surface for most users of compacted stone would be provided between points C and D which would link up with an existing track of a similar type to point F. However, between points F and H the route would be across the edge of a field of pasture which is likely to cut up and become muddy. As a result, this section could be difficult to use for people with mobility disabilities, unless the OMA requires the provision of surface of scalpings or similar for half the 4m width of the bridleway before the existing section of bridleway is closed and the new section is opened.

**Other matters**

1. An objector has suggested that the bridleway could instead be diverted so that it runs parallel to the current line of the bridleway on its western side so that conflict with vehicles entering and exiting the farmyard would be avoided. However, as this suggested alternative has not been taken up by the applicant or the OMA, the diversion which I am required to consider is solely that contained within the Order.

***Conclusions on whether it is expedient to confirm the Order***

1. I have found that the proposed diversion is expedient in the interests of the owner in terms of safety, security and to a lesser degree privacy. In addition, I have found that with the control that the OMA can exert it would not be substantially less convenient to the public. These are important considerations to which I attach significant weight.
2. On the other side of the balance, I have found that the public enjoyment of the path as a whole would be moderately diminished as a result of the diversion. This is also an important finding of notable weight. Having taken into account the results of the relevant tests and all the matters raised, my assessment in this case is that, on balance, my findings in favour of confirming the Order outweigh my findings against doing so.

**Overall** **Conclusion**

1. Having regard to above, I therefore conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

Ian Radcliffe

Inspector

ORDER MAP - COPY NOT TO SCALE

