



Order Decision

Inquiry opened on 13 November 2012

Site visit made on 12 November 2012

by **Barney Grimshaw BA DPA MRTPI(Rtd)**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: **11 DEC 2012**

Order Ref: **FPS/Y3940/4/8**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Wiltshire Council Parish of Purton, path no. 104 Diversion Order 2011 and Definitive Map and Statement (SU08NE) Modification Order 2011.
- The Order is dated 20 September 2011 and proposes to divert part of a bridleway known as Mud Lane as shown in the Order Map and described in the Order Schedules.
- There were 39 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. I held a public inquiry into this Order on Tuesday 13 and Wednesday 14 November 2012 at Purton Village Hall. I made an unaccompanied site inspection on Monday 12 November. At the inquiry it was agreed by all parties that a further accompanied visit was unnecessary.
2. In writing this decision I have found it convenient to refer to the Order Map and points along the Order route marked on it. I therefore attach a copy of this map.

The Main Issues

3. The Order is made in the interests of the public and the owner of the land crossed by the bridleway. Section 119 of the 1980 Act therefore requires that, before confirming the Order, I must be satisfied that:
 - It is expedient in the interests of the public and the landowner that the bridleway should be diverted;
 - The new bridleway will not be substantially less convenient to the public;
 - The diversion is expedient with regard to:
 - the effect on public enjoyment of the right of way as a whole;
 - the effect on other land served by the existing right of way;
 - the effect of the proposed new right of way on the land over which it is created and any land held with it.

4. In addition, where a diversion will alter the point of termination of a path or way, as in this case, the proposed new point of termination must be on the same highway as the existing point, or one connected to it, and it must be substantially as convenient to the public.
5. Regard should also be given to any material provisions of the Rights of Way Improvement Plan for the area.

Reasons

6. The existing Order route is now a bridleway (the route was upgraded from footpath status in 2011) which follows a sunken way leading to Ringsbury Camp, an Iron Age fortress. It is obstructed by overgrowth towards its eastern end and would appear to have been similarly obstructed elsewhere prior to some recent clearance work undertaken by volunteers. It is also obstructed by a raised field crossing which is fenced on both sides. The route is said to be liable to flooding at certain times although it was not flooded when I visited. The route would appear not to have been available for public use for a long time. The proposed new route has been in existence for 7 years having been provided by the landowner as a permissive bridleway. This is said to be currently well used and passable at all times of year.
7. In accordance with current advice¹, I have disregarded the obstructions to the existing route in assessing the proposed diversion and have compared the two routes as though both were open and available for public bridleway use.

Whether it is expedient in the interests of the public that the bridleway be diverted

8. The proposed diversion attracted a considerable amount of public support with a total of 83 people making representations in favour. The majority of these provided no evidence or indication of why they supported the diversion. It was suggested on behalf of objectors that many people were comparing the existing route in its currently obstructed condition with the new route which is open and available. It is not known whether a similar number of people would have still supported the diversion if the existing route had also been open and available.
9. There was also a considerable amount of opposition expressed to the diversion with 39 people making objections. Overwhelmingly, objectors referred to the loss of a historic route and/or features as their reason for objecting.
10. The OMA stated that the proposed new route is drier, more level and less liable to flooding or overgrowth than the existing route and accordingly the diversion is clearly expedient in the interests of the public. Objectors argued that, if the existing route was maintained to an appropriate standard, it would be more enjoyable to use and have few disadvantages compared to the proposed new route, particularly as this duplicates an existing footpath for most of its length. These and other matters affecting the interests of the public are dealt with in more detail later in respect of the effects of the proposed diversion on public convenience and enjoyment.
11. The OMA also stated that opening up the existing route of the bridleway would require considerable public expenditure. In 2008, an estimate was obtained from a contractor, MJ Church, for works to clear and open up the existing route

¹ Rights of Way Advice Note No.9, PINS, Revised October 2009

amounting to a total of £148,434.17 excluding VAT. The current price of similar works would be higher than this allowing for inflation since 2008 (estimate increased to £152,160.72 in 2010). The OMA stated that the current annual budget for the maintenance of the whole rights of way network in Wiltshire is £176,000 (2012-13) and that for the northern area, of which Purton forms a part, the budget is £44,000. It was argued that the expenditure required to open up the existing route could not be justified when a reasonable alternative route could be made available at no cost to the public purse and that for this reason the proposed diversion would be expedient in the public interest.

12. It was further argued that, even if the existing route was put into good order, the proposed new route would require less ongoing maintenance and this would benefit the public as more resources would be available for maintenance of the rest of the rights of way network.
13. Objectors were unhappy with this argument on two main grounds. Firstly, that the authority has a duty to maintain the highway under section 41 of the 1980 Act and it was clearly the intention of parliament that public money would be spent in the carrying out of this duty and not that highways should be diverted to follow routes less expensive to maintain. On this ground it was argued that the expenditure of public money to maintain the existing Order route could be regarded as expedient in the interests of the public. Secondly, it was suggested that the OMA had grossly overstated the likely cost of opening up the existing route. The Ramblers had obtained an alternative assessment of the work needed to bring the route into usable condition as a bridleway which amounted to a total of £29,731 excluding VAT, an amount which was said to have been capable of further reduction (by about £5,000) if some work was undertaken by volunteers. At the inquiry a further alternative estimate of likely costs was produced on behalf of Purton Parish Council in the amount of £24,196 excluding VAT. It was stated on behalf of the parish council and other bodies that volunteers would be readily available to assist with appropriate works.
14. The large difference in the estimates produced can partly be explained by disagreement between the parties as to the nature and extent of works required. Notably, the OMA's estimate allowed for the import of a large quantity of stone, sufficient to fill the route to a depth of 2 metres, whereas the objectors felt this was unnecessary and, in any event, would seriously damage the inherent character of the way.
15. It was stated on behalf of the OMA that the hedges alongside the existing route were probably protected under current hedgerow regulations. The landowner, Mr Moseley, also stated that he had no intention of removing the hedges or destroying the ancient route and had in the past expressed his willingness to enter into some sort of covenant to protect it. However, I have seen no substantive evidence that the existing route and hedges would be guaranteed any long term protection if the proposed diversion is confirmed.
16. A further factor which could possibly affect the interests of the public concerns the presence on the existing route of a water pipe with flush pipe and flush pan. Apparently the latter is used to drain the mains water periodically and results in large quantities of water being flushed on to the existing Order route. Clearly this is unacceptable on a public bridleway and, if the Order is not confirmed, some alternative arrangement will need to be made which may involve additional expenditure. However, the water company is a private

business and such expense would not fall directly on the public purse although ultimately it might be that the cost would subsequently be passed on to consumers.

17. In this case, it is very difficult to balance the factors that can be regarded as contributing to the interests of the public as they are so diverse. In theory the financial implications of the proposed diversion might be thought to be relatively easy to quantify and yet there is very considerable difference between the parties regarding the extent and costs of the work required to bring the existing route to an appropriate standard. It also seems reasonable to note that the authority has a statutory duty to maintain public highways which will inevitably result in the need for some public expenditure. Nevertheless, it is accepted that the cost would be appreciable relative to the current size of the relevant rights of way budget of the OMA. However, even if it were possible to be more precise, it would still be difficult to balance the financial cost against the value of conserving an ancient route. It was clear at the inquiry that the value that different people placed on protecting what some regarded as a vital element of their heritage also varied considerably.
18. Overall, it is clear that the existing route is an ancient and attractive feature with a distinct history and character which is highly valued by many people. It would require significant public expenditure to restore the route to an acceptable condition and, even then, some users might still prefer the proposed alternative route. However, the uncertainty regarding the nature and cost of the necessary works and the fact that the highway authority has a statutory duty to maintain the bridleway which it does not appear to have carried out in the past leads me to give reduced weight to the question of cost. Accordingly, on balance, it is my view that the available evidence has not demonstrated that the proposed diversion would be expedient in the interests of the public.
19. This conclusion does not necessarily mean that the Order automatically falls since, in accordance with current advice², even where an order is made in the interests of both the landowner and the public, it is still capable of confirmation if it is found to be in the interests of either the landowner or the public.

Whether it is expedient in the interests of the landowner that the bridleway be diverted

20. The existing route of the bridleway runs immediately alongside the farmhouse and garden of Restrop Farm and close to open barns and sheds, agricultural equipment, diesel fuel, yarded animals and hay barns. The landowner feels that the diversion will enhance his family's privacy and security by taking users further away from the farmhouse, farmyard and other buildings.
21. Although there has been no history of theft or other crime at the farm house area, the landowner points out that the existing right of way has been unusable for a long time and he fears that, if it is cleared and opened up the risk will greatly increase.
22. There are ongoing problems caused by trespass and illegal activities elsewhere on the farm and in nearby areas which have included the lighting of fires, vandalism of farm equipment, drug and alcohol abuse, litter including broken

² The Planning Inspectorate Rights of Way Advice Note No. 9, 7th Revision, October 2009.

glass and hunting and killing of wild animals. The landowner fears that opening up the existing route of the bridleway will expose him and his family to the risk of such problems also arising in close proximity to his home.

23. The existing bridleway route is lower than the surrounding land and is liable to flood in parts at certain times of the year. The landowner is concerned that this may result in potential users leaving the right of way and crossing adjacent fields. In any event, he considered that, if the existing route were brought back into public use, he would need to fence it on both sides to prevent trespass.
24. On behalf of objectors to the Order it was argued that, if the existing bridleway was cleared and in a usable condition it need not pose any particular problem for the landowner. It was pointed out that many rights of way run close to or through farmyards and appear to cause no problems.
25. The existing route is crossed at one point by a raised track linking fields on either side. This is fenced on both sides and completely obstructs the right of way. The landowner stated that if this had to be removed in order to re-open the route it would cause him severe difficulties in managing his land effectively, possibly including the need to construct an alternative access track and new field entrance. It might also mean more use of narrow public roads by agricultural vehicles which would also be undesirable. However, it appears that the existing raised field crossing, having been constructed after the route became a public right of way, is an unauthorised obstruction which ought not to be there.
26. The landowner also drew attention to a wall alongside the existing route close to his farm. This leans into the route in places and has lateral cracks. Although this is said to be currently stable, the owner fears that increased use of the route particularly by horse riders will necessitate expensive works to strengthen the wall.
27. Overall, it is my view that the proposed diversion would clearly be expedient in the interests of the landowner as it would enhance his security and privacy, facilitate the management of his land and avoid the need for further expenditure.

Whether the new point of termination of the bridleway will be substantially as convenient to the public

28. The proposed new point of termination of the bridleway is on the same highway, U/C 2057, Mud Lane and is situated approximately 30 metres to the east of the current termination point. There is no evidence to suggest that it will be any less convenient to the public.

Whether the new bridleway will be substantially less convenient to the public

29. The distance between points F and B by way of the existing bridleway and the short section of public road, F-A, is approximately 410 metres, by way of the proposed new route it is approximately 445 metres. The nature and location of the Order routes suggests that they are likely to be used mainly for recreational purposes as part of longer walks or rides. In this context, the additional distance of around 35 metres is likely to be of minimal significance.

30. The width of the existing route is recorded in the definitive statement as being between 12 and 25 ft. wide (3.7 – 7.6 metres) although at present the usable width is considerably less than this for most of the route. The width of the proposed new route is between 4.0 and 4.2 metres. If the existing route were cleared and made available, I do not think there would be any significant difference in the relative convenience of the two routes on the basis of their width.
31. It was stated by supporters of the diversion that the proposed new route would be more convenient as it would have fewer gates than the existing route. The proposed new route would have 2 gates (at Points C and F) whereas the existing route would require 4 or 5 gates. However, there are no limitations currently recorded on the existing route and the statement that 4 or 5 would be required is based on the assumption that a field crossing would remain part way along the route and would need gates on either side. However, as already mentioned, this is an unauthorised obstruction which ought to be removed. If this were done, I do not know whether an alternative crossing which required gates across the route would necessarily be required. I do however accept that, if the landowner sought authority to erect gates at each end of the route to prevent livestock straying, it is likely that this would be allowed. With this in mind, it is my view that there is potentially little difference in the relative convenience of the two routes with regard to gates.
32. Supporters of the Order pointed out that the proposed new route has been in use for 7 years and is more even than the existing route and available at all times of the year. On the other hand, the existing route is liable to flooding, particularly in an area to the west of the raised field crossing, and is often muddy. In addition low branches make it unsuitable for horse riders. Clearly in their present condition, the new route is easier to use than the existing one. However, with appropriate maintenance work such as the removal of obstructions, clearance of overgrowth (including low branches) and suitable drainage, it is possible that the existing route could be brought to a comparable standard to that of the proposed new route. Nevertheless, it is likely that the proposed new route might always be easier for some users than the existing one, particularly for horse riders and possibly less able walkers.
33. Objectors to the Order argued that the existing route offered a more direct and 'natural' link between the public road and Ringsbury Camp and would therefore be considered more convenient by many users. This may be the case but, the proposed new route is only marginally less direct and over time would no doubt take on a more 'natural' appearance. I therefore do not think the new route can be considered to be significantly less convenient in this respect.
34. Overall, it is my view on balance that the proposed new route would not be substantially less convenient to the public and might be more convenient, at least for some users.

The effect on public enjoyment of the right of way as a whole

35. Objectors to the Order argued that the great attraction of the existing route for users lay in its history. Ringsbury Camp is an Iron Age fortress and a scheduled ancient monument and it was claimed that the existing route might well have been the main access way to it and be of similar antiquity. This cannot be proved at present but documentary records that are available show that the route has existed for hundreds of years, perhaps since around 1200 at least.

Objectors argued that it was impossible to quantify the value of the experience of following in the footsteps of countless previous generations or to quantify the cost of its loss.

36. It was also pointed out that in addition to the existing route having great historic value, it also offered a rare opportunity for people to walk or ride along a sunken way bounded by ancient hedges full of interesting vegetation and wildlife. There is apparently only one other sunken way in Purton parish and that has a completely different character as it is occupied by a tarmac road and such ways are unusual throughout Wiltshire. Although the proposed new route offers a different experience and the opportunity to enjoy open views this is of little benefit to walkers as similar views can be obtained from Footpath 103 which runs alongside the route for most of its length.
37. As already stated, I have seen no substantive evidence that the existing route and hedges would be guaranteed any long term protection if the proposed diversion is confirmed.
38. The general issue of nature conservation was referred to by several parties. Supporters of the Order suggested that the works required to restore the existing route to a usable condition would inevitably damage vegetation and wildlife habitats including badger setts. Objectors argued that works could be carried out with minimal disturbance to wildlife.
39. Some objectors argued that conifers planted alongside the proposed new route were an unattractive and alien feature which made that route less enjoyable to use. Mr Moseley stated that the conifers were only a temporary feature providing shelter for other species and would all be removed in the next two years. The intention being to create hedges that replicated ancient hedgerows such as those alongside the existing route.
40. Supporters of the Order pointed out that the proposed new route offered expansive open views whereas the existing route was largely enclosed and that some people would prefer this. The existing route is also easily visible from the proposed new route and accordingly some appreciation of the historic way could still be gained. The new route was also said to be better for horse riders as it has a more even surface allowing the opportunity for horses to canter whereas the existing route is always likely to have a less even surface and be subject to tree roots and overhanging branches.
41. It was also argued that some users would prefer walking or riding further away from the house and garden of Restrop Farm because, even if signage made it clear that there was a right of way, they might still feel they were intruding on private space.
42. It was also suggested that the works that would be required to put the existing route into a useable condition would inevitably damage and diminish its historic value. Objectors argued that in their view only relatively limited works were required which would have a minimal effect on historic features.
43. Although some users, such as horse riders might prefer the proposed new route, considerable weight should be given to the value placed on the retention of the historic route by many people. On balance, it is my view that the overall effect of the proposed diversion on public enjoyment of the right of way as a whole would be negative.

The effect on other land served by the right of way

44. I have seen no evidence to suggest that the proposed diversion would have any adverse effect on other land served by the right of way.

The effect of the new right of way on the land over which it is created and other land held with it

45. The owner of the land believes that the proposed diversion would have a beneficial effect overall on his land. Apart from improving the privacy and security of his house and garden, it would avoid the potential need for considerable expenditure to remove the existing field crossing and construct a new field access, to fence the existing route and to strengthen the garden wall. He also states that the proposed new route will be much easier and cheaper to maintain.

46. It is my view that the proposed new right of way would have little adverse effect on the land over which it is created and that the diversion of the existing route would have a significant beneficial effect.

The Rights of Way Improvement Plan (ROWIP)

47. The ROWIP contains no policies specifically related to the proposed diversion. However, the OMA argued that the proposal was in accordance with some of the aims of the ROWIP as it would help in the provision of a more usable network and, in particular would improve accessibility for the less mobile and the blind or partially sighted.

48. On behalf of objectors it was argued that Footpath 103 already provided an accessible route for the less mobile and they drew attention to current advice regarding the authorising of structures on rights of way³ which they suggested was of wider application. This advice states "*Improvements that would make it easier for people with disabilities to use rights of way would also make it easier for other users ..., for example: parents with young children in buggies...Authorities will need to take account of the wider context, such as the accessibility of the route as a whole and also the need to be aware that some rights of way are valued, by those who use them, because of their challenging nature or intrinsic character. Other local factors that may need to be taken into account, when considering potential improvements, include the historical or aesthetic character of the existing structures and landscape features and local custom and practice*".

49. Overall, it is my view that, whilst the proposed diversion would seem to accord with some of the aims of the ROWIP, this needs to be balanced against other factors.

Other Matters

50. Mr Riley raised the possibility that the existing bridleway might in fact be subject to higher public rights (such as byway or restricted byway). He also suggested that he had seen evidence to support this. I have not seen this evidence and am not in a position to assess whether the correct status of the existing route is that of bridleway. Accordingly, I have given no weight to this matter in reaching my decision. I would however point out that, should any

³ Authorising Structures (gaps, gates and stiles) on rights of way. Good practice guidance for local authorities on compliance with the Equality Act 2010. Defra, October 2010.

higher rights be shown to exist, over the existing route they would not be affected by the proposed diversion.

51. Some objectors suggested that there had been some procedural irregularities in the process leading to the making of the Order and that consequently it might not be valid. The OMA denied this. In any event, I was satisfied that the Order itself had been correctly made and advertised and advised that I had no remit to consider events that had taken place previously.

Conclusions

52. Overall, it is my view that the proposed diversion would have advantages for the landowner and possibly some users. It would also avoid the need for a significant amount of public money to be spent on restoring the existing bridleway, although the actual amount is uncertain and the highway authority has to accept that some resources are inevitably needed to carry out its statutory duty to maintain highways. On the other hand, the loss of such an historic route as the existing bridleway would have a serious negative effect on the enjoyment of many current and potential users of the right of way. As already stated, it is very difficult to balance such diverse factors but, taking all the arguments into account it is my view that the proposed diversion does not meet the criteria set out in the 1980 Act.
53. Having regard to these and all other matters raised, I conclude that the Order should not be confirmed

Formal Decision

54. I do not confirm the Order.

Barney Grimshaw

INSPECTOR

APPEARANCES

For the OMA

Trevor Ward	Counsel (representing Wiltshire Council)
Who called:	
Barbara Burke	Definitive Map and Highway Records Team Leader, Wiltshire Council

Supporters

Nicholas Hartley	Path user (walker)
Richard Moseley	Landowner
Michelle Philips	Path user (horse rider)
George Hawksworth	Local resident
Mike Bell	Local resident and Chair of Parish Council

Objectors

John Crawford	Purton Parish Council
Who also called:	
Ron Harris	Parish Councillor (Chairman of the Rights of Way and Open Spaces Committee)
Janet Davis	The Ramblers
Who called:	
Joan Crosbee	Walker
Marion Hobbs	Walker
Brian Freegard	Purton Historical Society
Bill Riley	Applicant for the upgrading of the Order route from footpath to bridleway (2011)
Richard Pagett	Purton's Qualities (P's and Q's)
Tony Price	Parish Councillor
Richard Gosnell	Walker

Interested Parties

Jacque Lay	Councillor, Wiltshire Council
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DOCUMENTS

1. Statement of Case and supporting documents, Wiltshire Council.
2. Proof of Evidence of Barbara Burke.
3. Statement of Case and supporting documents, The Ramblers.
4. Proofs of Evidence of Mrs J Crosbee, Mrs M Hobbs and Mr K Stimpson.
5. Statement of Case and supporting documents, Purton Parish Council.
6. Proofs of Evidence of Mr R Harris and Mr J Crawford.
7. Statement of Case and Proof of Evidence of Mr B Freegard (also on behalf of Purton Historical Society).
8. Statement of Case and Proof of Evidence of Mr B Riley.
9. Statement of Case of Dr R Pagett (Ps and Qs – Purton's Qualities)
10. Statement of Mr T Price.
11. Copies of enlarged details from OS maps surveyed 1815-16 and 1875-76.
12. List of bridleways and footpaths said to run close to farms.
13. Copy of Email from Richard Broadhead (Wiltshire County Council) to Shirley Bevington (Clerk to Purton Parish Council) dated 29 October 2008, with Bill of Quantities prepared by MJ Church.
14. Diagrammatic cross sections of Mud Lane, G Hawksworth.
15. Set of measurements made in Mud Lane, R Harris.

