



Appeal Decision

Hearing held on 28 May 2008

Site visit made on 28 May 2008

by **Richard Merelie** MSc DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
18 June 2008

Appeal Ref: APP/E3905/A/07/2058908

Baydon House, Baydon, Swindon, Wiltshire, SN8 2HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Stephen Crown against the decision of Kennet District Council.
- The application Ref. K/56971/F, dated 14 June 2007, was refused by notice dated 27 September 2007.
- The development proposed is "alterations to existing wall and gateway requiring associated diversion of bridleway 11".

Decision

1. I dismiss the appeal.

Main issues

2. I consider the main issues in this appeal to be whether the proposed route would be less safe, convenient and attractive than the existing route and, if so, whether there are material considerations that would outweigh such objections.

Reasons

Background

3. Subject to the imposition of conditions relating to materials, the Council raises no objection to the design of the proposed works. On that basis there would be no conflict with saved policy PD1 of the Kennet District Local Plan, adopted 2004, which sets out design criteria.
 4. Nor does the Council object to the proposed development in terms of its impact on either the North Wessex Downs Area of Outstanding Natural Beauty, within which the appeal site is located, or the setting of Baydon House, a Grade II listed building nearby.
 5. Policy AT22 of the Local Plan has not been saved because it is covered by separate legislation. Both principal parties agreed therefore that its provisions were still relevant. Indeed, they are very material and of great weight, albeit that they are no longer part of the Development Plan. They seek to ensure that diverted public rights of way are no less attractive, safe and convenient for public use than existing routes.
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6. In this instance, the proposed alternative route already exists physically and is in use. It is part tarmac and part grass.

Proposed bridleway route v existing bridleway route

7. Baydon House is accessed from Albourne Road, to the north, by an unclassified public road that terminates at the existing gateway just south of the property, and thereafter changes to bridleway 11, which runs south and links shortly with bridleway 1. Bridleway 1 as shown on the Definitive Map is obstructed at this point, but there is an on the ground track that functions as part of that route.
8. The Council raises no objection to the width and surfacing of the proposed bridleway route in terms of it being unsafe. In turn, the appellant contends that the proposed route would be safer to use in that it has low level lighting at night. Whether potential users would take advantage of that in an otherwise unlit network of public rights of way is doubtful to my mind. I would add that this has to be balanced against light pollution in a rural area.
9. The appellant also claims that the tarmac surface of the proposed route would be easier to use than the gravelled section of bridleway 11, particularly for people with mobility difficulties. However, this section is reasonably level and firm, and the gravel is fairly small grained and compacted. In my assessment, it would not prohibit wheelchair access, or use of pushchairs for that matter. And for some walkers, the alternative tarmac surface might be felt to be somewhat unforgiving.
10. In his written submission, Mr Houghton, a Chartered Safety Practitioner, comments that the proposed route would have the advantage of separating pedestrians from vehicles, whereas the unclassified road is shared by both. However, there is nothing to confirm that the existing situation has been the source of serious conflict in the past, or to suggest that it is reasonably likely to become so in the foreseeable future.
11. Against that Mr Norman, a former National Hunt jockey, commented at the hearing about the potential problems associated with a closed environment for horses and pedestrians. In this regard, the proposed bridleway route is contained along its whole length by wire and timber fencing on both sides, making it difficult for pedestrians to take refuge from any out of control horses.
12. Overall, I acknowledge that the proposed bridleway route would be unlikely to be materially less safe than the existing route, which is also contained in places. At the same time, however, I do not believe that the proposed route would be significantly safer and easier to use than the existing route.
13. As for convenience, it was agreed that the proposed route would be just over 40m longer than the existing route, which is about 17% longer. For horse riders that is likely to be negligible, but for walkers it would be less insignificant. Moreover, bridleway 11 forms an important link in the network of public rights of way in the locality. Consequently, its diversion would have ramifications for other routes. For example, those using bridleway 11 to link to footpath 3, just north of Wentworth Cottage, would have over 140m extra to cover.

14. Overall, I conclude that the proposed bridleway route would be unreasonably less convenient than the existing route.
15. Regarding the relative amenities and enjoyment of the 2 routes, the existing route passes Wentworth Cottage and the 2 cottages known as Browns 1 and 2, as well as Baydon House itself, which is a particularly attractive farmhouse building dating from 1744. Wentworth Cottage and these 2 other vernacular cottages are themselves of considerable historic and architectural interest.
16. Any users of the proposed route wishing to view these buildings from the unclassified public road would have to make a fairly lengthy detour to do so, thus adding to the inconvenience that would be caused by the proposed diversion of bridleway 11.
17. I recognise that the proposed route would afford views of open countryside to the west though, as the Council pointed out, there are better rural views from other public rights of way in the area, such as No. 23 not far to the north. On the other hand, the proposed route would also afford views of the utilitarian agricultural and equestrian timber buildings located to the east. Moreover, it would afford close up views of the rather oppressive tall conifer hedging that runs along much of the eastern side of the proposed route.
18. In addition, the tarmac surface is bland and the fencing on both sides of the proposed route is of utilitarian appearance. More generally, the proposed route has an engineered and formal character, accentuated by the night lighting attached to the fencing and by the neatly cut hedging.
19. Overall, I conclude that the proposed bridleway route would be substantially less attractive than the existing route.

Material considerations

20. The appellant's main reasons for the proposal are to provide enhanced safety and security for the occupiers of Baydon House, especially children who are resident, and to overcome the nuisance caused by the right of way passing between the property and its front garden to the west.
21. However, no hard evidence was submitted of any safety or security incidents, let alone of any regular or frequent crime related occurrences. Nor were any details given of any children involved, or of how their well being was put at risk. Even if the proposed bridleway route were to be allowed, the unclassified road would continue to provide public vehicular access to the front of Baydon House, albeit that the numbers of walkers and horse riders would no doubt be fewer.
22. The sizeable area of land shown on the submitted plans as the "front garden" of Baydon House is in fact in agricultural use, currently for grazing alpacas. Furthermore, this land is separated from the house by an expansive gravelled vehicular turning area. And, as the Council points out, planning permission would be needed to change the use of the land to residential use. It cannot reasonably be claimed therefore that use of the existing route currently interferes with this land as a garden area associated with the main house. The small vegetable garden nearby is walled and gated, and therefore secure.

23. It may be that horse riders are able to look into some of the ground floor windows of Baydon House as they pass by, resulting in some perceived loss of privacy. But, as the Council argued, that is neither unusual nor unreasonable in rural areas. Also, as the Council pointed out, this existing situation would have been evident at the time the property was purchased by the current owner.
24. Whilst the appellant claimed that people had on occasion deviated from the existing route and encroached onto the adjacent paddock, that is essentially a matter of trespass. In any event, no substantive information was submitted to suggest that this was a regular occurrence or to indicate what harm was caused.
25. It was also claimed by the appellant that the proposed diversion would reduce the nuisance caused by the existing right of way to the occupiers of Wentworth Cottage and Browns 1 & 2. However, this has not been substantiated by the current occupants of these properties.

On balance

26. I note that the Council's officers recommended that the proposal be approved, and that there is some support for the proposal. However, there are also objections from the North East Wiltshire Group of the Ramblers Association, from Baydon Parish Council and from a number of local residents, some of whom have lived here for a long time and regard the existing historic route as part of their village heritage.
27. Having regard to the above, to what I saw during my site visits both before and after the hearing, and to all the other matters raised, including the appellant's comments on how the Planning Committee took its decision, I conclude that there are insufficient material considerations to outweigh the convenience and amenity objections to the proposed new bridleway route.

Richard Merelie

Inspector

