



Order Decision

Hearing held on 3 June 2008

by **Alan Beckett BA, MSc, MIPROW**

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

The Planning Inspectorate
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Decision date:
23 June 2008

Order Reference: FPS/J1155/4/32

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Devon County Council (Bridleway Nos. 23 & 24, Otterton and Bridleway No. 116 & Footpath Nos. 27 & 28, Sidmouth) Public Path Diversion Order 2006.
- Devon County Council ("the Council") submitted the Order for confirmation by the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 22 November 2006 and there were two objections outstanding at the commencement of the hearing.
- The Order proposes to divert parts of Bridleway Nos. 23 & 24 Otterton and parts of Footpath Nos. 27 & 28 Sidmouth as shown on the Order plan and described in the Order Schedules.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I made an unaccompanied inspection of the routes in question on Monday 2 June 2008, and I held a hearing into the Order at Larkbeare, Topsham Road, Exeter on Tuesday 3 June 2008. I was not required to make a further accompanied inspection of the Order routes following the closure of the hearing.
2. The sections of bridleway and footpath at issue form part of a network of routes located on Mutter's Moor and Harpford Common, an area of registered common located to the north-west of Sidmouth. That part of the common crossed by the Order routes is characterised by the predominance of lowland heath vegetation, although Mutter's Moor does not form part of the East Devon Pebblebed Heath SSSI.

The Main Issues

3. The Order is made in the interests of the public. Section 119 of the 1980 Act requires that before confirming the Order, I should be satisfied that:
 - (a) it is expedient, in the interests of the public, that the rights of way in question should be diverted;
 - (b) the new rights of way will not be substantially less convenient to the public;
 - (c) it is expedient to confirm the Order having regard to its effect;
 - i) on public enjoyment of the paths as a whole; and
 - ii) the effect the coming into operation of the order would have with respect to the land served by the existing paths and the land over which the new paths are created together with any land held
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with it, having regard to the provisions as to compensation and the needs of agriculture.

In addition, in determining whether or not to confirm the Order, Section 119 (6A) of the 1980 Act requires that I should give consideration to any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the Order would create or extinguish a public right of way.

Furthermore, I need to give consideration to what impact (if any) the proposed diversions would have upon the biodiversity¹ and natural beauty² of the area.

Reasons

Background

4. The definitive lines of the Order routes were difficult to walk at the time of my site visit as they cross the open heath where the vegetation cover obstructs the paths. There was no physical indication of the existence of the paths on the ground at the time of my site visit.
5. In contrast the proposed alternative routes followed broad and well defined rides through the heather which I noted had been signposted and waymarked by the Council. Judging by the foot and hoof prints found in the surface of the proposed routes, they appeared to be currently well used.
6. Copy extracts of 25" to 1-mile Ordnance Survey mapping for the area crossed by the Order routes was submitted by the Council. The 1906 map shows the existence of defined tracks crossing the common on the alignment of the rights of way as currently shown on the Definitive Map. The definitive map has a relevant date of 1 June 1957 and used as a base the 1906 6" edition which had been revised in 1938. The 1958 25" map and subsequent large scale mapping shows that the alignment of the defined tracks over the common had changed from that shown on the 1906 and 1938 editions to those which were present on the ground at the time of my site visit.
7. The definitive line of Bridleway 24 between B – C crosses the course of a stream which issues from the common at two points immediately to the north of it, and an identifiable track is shown on this course on the 1906 and 1938 maps. The proposed route of bridleway 24 at this point would follow the track which avoids the spring line; this route is shown on the 1958 and subsequent maps and appears to have been present since at least the late 1950s.
8. I heard from Mrs Pankhurst that Mutter's Moor had been used extensively by the army during the Second World War, and it was suggested that the movement of the defined tracks recorded by the 1938 and 1958 maps may have been as a result of the army needing serviceable routes over the common which avoided the springs and stream found on site. Whilst there was no evidence to suggest that the army had been instrumental in realigning the tracks over the common, it is a plausible explanation as it is known that

¹ Section 40 of the Natural Environment and Rural Communities Act 2006 - duty to have regard to the purpose of conserving biodiversity.

² Section 11 of the Countryside Act 1968 - duty to have regard to the desirability of conserving natural beauty and amenity of the countryside.

Mutters Moor was used for gun emplacements and by barrage balloons during the war.

Whether it is expedient, in the interests of the public that the rights of way in question should be diverted

9. It was the Council's case that the diversions were in the interests of the public as they would regularise the use that had been made of the available tracks. In the Council's view, the definitive lines had fallen from favour with the public and the available routes had been adopted in their place. In addition the diversions would allow for a more economic use of resources as the reinstatement of the definitive lines would require the installation of bridges at an estimated cost between £2000 and £3000. In addition, the clearance of lowland heath cover to allow passage over the definitive lines would be criticised by those who were working to conserve a scarce habitat, particularly when suitable alternative paths were readily available.
10. The Council's case was supported by Mr Dyson, the representative of Sidmouth Town Council who submitted that the proposed bridging of gullies and associated drainage works that would be required would have a detrimental effect upon the amenity value of this part of the East Devon Area of Outstanding Natural Beauty; such works were considered to be inappropriate.
11. In objecting to the Order on behalf of the Open Spaces Society, Mr Mawer submitted that the Council was seeking the diversion to avoid having to carry out its statutory duties under the 1980 Act; this was not the purpose of section 119 of that Act. The vegetation overgrowth on the definitive lines should be cleared to allow the public access to the definitive lines, and the Council's avoidance of its duties was not in the public interest; there was no provision in the 1980 Act for the cost to the authority of undertaking its statutory duties to be taken into account in determining whether or not the definitive routes should be reinstated.
12. Whilst I agree with Mr Mawer that consideration of the cost of operations to assert and protect the rights of the public does not feature in Section 130 of the 1980 Act, I also concur with the Council that the relative costs of the proposed diversion as opposed to the re-instatement of the definitive lines is a material factor that should be taken into consideration.
13. At a time of increasingly scarce resources within local government I do not consider that the expenditure required to bridge the stream crossed by Bridleway 24 would be the best use of those resources which are available to the Council, given that the proposed diversion would result in bridleway 24 following a course above the spring line which and on which no such structures would be required. I take the same view with regard to the clearance of vegetation that would be required to make the definitive routes accessible; whilst the Council conceded that such clearance would not be particularly expensive, it nonetheless represents an additional expense that the proposed diversion would avoid. If the proposed diversion has the effect of freeing up resources to be spent elsewhere on the local rights of way network, or removing the liability on the public purse to erect and maintain a stream crossing, I am of the view that the proposed diversions can be said to be in the public interest.

14. Mr Mawer also submitted that the proposed diversion would represent a reduction in the number of routes over the common as the public already had the right to walk along the proposed diversion through the open access provisions of the Countryside and Rights of Way Act 2000. I am unconvinced by this argument; even if the paths were diverted, the public could still walk over their former courses if they so wished as the land crossed by the all the paths at issue is access land. I fail to see how the diversion would lead to a reduction in the number of routes on the common.
15. However, it appears that there is no demand or desire from members of the public to undertake a walk on the Order routes; the Council had no record of any complaints having been made to them that the Order routes were obstructed and any communication they had received with regard to Mutters Moor had been requests for repairs to be made to the proposed routes. I do not consider that the proposed diversions would have any noticeable impact upon public access or use of this part of Mutters Moor or that the public interest would be harmed in the manner suggested by Mr Mawer.
16. In considering the proposed diversion, I am required to take into account the impact the diversion would have upon biodiversity and natural beauty. The proposed diversions are unlikely to have any noticeable impact upon the biodiversity of Mutters Moor to any great extent, as the proposed routes follow already existing tracks. If the diversion did not go ahead the re-instatement of the definitive lines would have a much greater impact; to make Bridleway Nos. 23 and 24 available for use, for example, would require the clearance of vegetation along both routes to a width of at least 3 metres.
17. Mutters Moor does not fall within the East Devon Pebblebed Heath SSSI, which is located to the west of the common. However the lowland heath found on Mutters Moor is nonetheless part of a nationally scarce vegetation type. Although Mr Mawer submits that the Council should re-instate the definitive lines, he is the only person calling for such action. Whilst Mr Mawer is correct that the Council have a duty under Section 130 to make these paths available to the public, I have to balance that part of the public's interests against an equal public interest in the conservation of a scarce habitat.
18. As there is no demonstrable public demand for these paths to be made available once again, I concur with Mr Dyson in that it would be inappropriate and against the public interest to diminish the extent of the heather cover on Mutters Moor when there are suitable alternative routes available, use of which will not impact significantly upon the biodiversity or conservation interest of the site.
19. I am satisfied, for the reasons given above, that it is expedient to divert parts of Bridleway Nos. 23 and 24 and parts of Footpath Nos. 27 and 28 in the interests of the public.

Whether the new rights of way will not be substantially less convenient to the public

20. It was Mr Mawer's case that the definitive routes were as straight as possible and led the walker directly to their objective. The route linking Footpath 27 and Bridleway 24 between F - C - B - A for example was a virtual straight line, as was the line E - C - H. The proposed routes in contrast were circuitous and

were therefore less convenient for walkers irrespective of whether the length of the path was increased or reduced. The Council submitted that the proposed diversions would not result in any significant difference in the lengths of the paths; Bridleway 23 and Footpath 27 would increase in length by 25 and 5 metres respectively whereas Bridleway 24 and Footpath 28 would be reduced by 20 and 30 metres respectively.

21. I agree with Mr Mawer that E – C – H is a direct route and that the proposed alternative E – D – G – H would be somewhat circuitous. The zigzag course that would be introduced into this north-south route would mean that a walker wishing to travel along the proposed alternative would face an increase in journey distance of 35 metres (660 metres on the definitive lines as opposed to 695 metres on the alternatives). Those using Bridleways 23 and 24 would find that the overall journey distance would rise by 5 metres when compared with travel along the definitive routes. On the other hand, those pedestrians wishing to travel north – south using Footpath Nos. 27 & 28 would find that the proposed route F – G – H is more direct; users would find their journey reduced by 35 metres, with a consequent reduction in journey times.
22. The proposed diversions would result in some routes being longer, whereas others would be shorter; some would be more direct, other less so. What I have to consider however, is whether the proposed diversions would result in a substantial inconvenience to the public. For anyone contemplating a walk or ride (where appropriate) on the proposed routes they would have already walked or ridden a significant distance to reach this part of Mutters Moor. Approaching the proposed diversion from the west or from the south along Bridleways 24, 23 or Bridleway 21/Footpath 27 would involve a journey of approximately 980, 505 or 780 metres respectively. Journeys of a similar magnitude would be required if the Order routes were approached from the north or east on other parts of the rights of way network. Set in the context of journeys of such length, the increases in distances that would result from the proposed diversions would in my view be insignificant and would not inconvenience the public using them; a journey along Bridleway Nos. 23 & 24 (1770 metres) would be increased by 5 metres or 0.28% for example.
23. There is no evidence before me that the routes over Mutters Moor are used for any utilitarian purpose where an increase in journey distance and times may be critical; the representations I heard all described Mutters Moor as a popular location in the district for pedestrian and equestrian recreational use. I do not consider that the proposed diversions would have any detrimental impact upon the convenience of these routes. I conclude that the proposed alternative rights of way will not be substantially less convenient for use by the public.

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

24. No objections were raised to the Order on these grounds. The Council submitted that the diversion would regularise the use the public have made of the available tracks and there would be no detrimental impact upon the enjoyment that the public have derived from past use of the proposed routes. I saw that the definitive and proposed routes ran in close proximity to one another and the views of the surrounding common from the proposed routes would be little different from those to be had from the definitive routes. I

conclude that the enjoyment of those who seek pleasure from informal recreation on public footpaths and bridleways such as these would not be diminished as a result of the diversion.

The effect the coming into operation of the Order would have with respect to the land served by the existing paths

25. There is no evidence before me that the Order would have, in this respect, any effect separately identifiable from those considered above in relation to the other requirements of Section 119 of the 1980 Act.

The effect any new right of way created by the Order would have as respects land over which the new right is created together with any land held with it, account being taken of the provisions as to compensation.

26. I am led to believe that both the current and proposed routes lie on land in the ownership of the Clinton Devon Estate, and that there would be no impact upon the land crossed by the new paths. Compensation issues are therefore not relevant.

Consideration given to the provisions of a Rights of Way Improvement Plan

27. The Council's Rights of Way Improvement Plan, "*Devon on the Move*" published in July 2005 draws broad strategic conclusions to identify improvements to the rights of way network with the county. I have had regard to the relevant provisions found in the Plan with regard to equestrian, cyclist and pedestrian use, and do not consider that the Order is incompatible with the policies published in the Plan.

Other matters

28. Mrs Pankhurst's representations to the Order concerned the damage done to bridleways and footpaths to the north of the order routes which had apparently been caused as a result of timber felling and extraction. Mrs Pankhurst had concerns with regard to the safety of pedestrians and equestrians using those paths following the timber extraction. Whilst these may be legitimate concerns, the operations described by Mrs Pankhurst had no effect upon the Order paths, and her concerns are not within my remit and I have not taken them into consideration.

Conclusion

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

Formal Decision

30. I confirm the Order.

Alan Beckett

INSPECTOR

APPEARANCES

For Devon County Council:

Mr M Jenkins Public Rights of Way Manager, Environment Directive,
County Hall, Exeter, EX2 4QW.

Mr M Martyn Definitive Map Review Officer, County Hall, Topsham
Road, Exeter, EX2 4QW.

Supporter:

Mr J Dyson Green Bank, Manor Road, Sidmouth, EX10 8RR.

Objectors:

Mr E Mawer 4 Bishop Court, Colyton, Devon, EX24 6QR.

Mrs J Pankhurst Hillside, Bickwell Valley, Sidmouth, Devon, EX10 8SG.

Interested Party:

Mrs R McKie 3 Stevens Lane, Sidmouth, Devon, EX10 9UL.



APPENDIX E

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M J Church
Contracting Division
25B Market Place
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Our ref: SPB/SW/1888/T1091
Your ref:

20th May 2008

Wiltshire Highways Area Partnership
Bath Road Industrial Estate
Chippenham
Wiltshire
SN15 08B

For the attention of Colin Lovelock

Dear Sirs

Re: Upgrading By-Way 104 Mud Lane, Purton

Please find enclosed our budget priced Bill of Quantities for our proposals for the work required to the above By-Way.

Our rates are based on the following:-

1. Rates include for labour, plant, materials and supervision.
2. Rates are nett and exclusive of Vat.
3. We have not allowed for dealing with any contaminated material.
4. We have not allowed for dealing with any services or statutory bodies.
5. We have not allowed for any design.
6. We have allowed for one site visit with continuous and uninterrupted working, we estimate the work will take five weeks to complete.
7. We have not included for any temporary fencing or hoarding etc.
8. Work to be valued on a re-measured basis.
9. Rates are open for acceptance for one month from the above date.

We trust our quotation is of interest and would welcome further discussion if you so desire.

We look forward to hearing from you in the near future.

Yours faithfully
For and on behalf of
M J Church Plant Ltd

PP. S. W. 2000

Steve Blower
Commercial Director

Email: sblower@mjchruch.com

Enc

Wiltshire County Council Rights of Way

By-Way 104 Mud Lane, Purton

Bill of Quantities

Item	Description	Qty	Unit	Rate	Total
1	Site clearance - dense shrub n.e. 1.5m high incl approx 50 N ^o trees, girth 300mm max, height 3m approx (roots to remain) and dispose to suitable landfill or recycling facility off site.		sum		
2	Supply and place 75-40mm recycled clean stone drainage blanket 2m deep x 3m wide to bridleway on terram (or similar) geotextile.	2060	m ³		
3	Supply and place 450mm dia perforated twinwall pipe in trench under drainage blanket including bed and surround with single size stone with terram geotextile wrap.	350	m		
4	Supply and place sand bag work headwalls at drainage outfalls	2	N ^o		
5	Supply, place and compact recycled graded 75mm down aggregate 300mm deep on terram geotextile over drainage blanket.	309	m ³		
6	Supply, place and compact recycled type 1 aggregate 200mm deep over 75mm aggregate.	206	m ³		
7	Contractors site offices, stores and welfare.	5	wks		
8	Mobilisation and demobilisation of contractors plant and equipment.		sum		

Total

£148,434.17