

THE HAMPSHIRE (EAST HAMPSHIRE DISTRICT NO 116)
(PARISH OF HEADLEY - PARTS OF BRIDLEWAYS NOS 4 & 46)
PUBLIC PATH DIVERSION ORDER 1990

PUBLIC LOCAL INQUIRY - 10TH DECEMBER 1991

STATEMENT OF COLIN EDWARD PIPER

- 1 I am the Rights of Way Manager for Hampshire County Council.
- 2 The procedure for diverting public paths is contained in Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981.
- 3 The routes under consideration are shown on the current (Second Review) Definitive Map and statement dated 1 January 1964 as; Headley Bridleways Nos 4 and 46. I attach a copy of the statement which describes the routes.
- 4 In November 1982 Hampshire County Council received an application, from Mr A G P Whitfield of Headley Down Farm, for the diversion of the above Rights of Way. It was made under Section 119 of the Highways Act and the reasons given were; in the case of Bridleway 4; for securing the efficient use of land and to provide a more commodious path, and in the case of Bridleway 46; for securing the efficient use of land and for securing a shorter path.

Bridleway 46; for securing the efficient use of land and for securing a shorter path.

5 This application became a joint submission with Hampshire County Council who, as ^{lessors} owners of the southern part of Broxhead Common wished to divert parts of Bridleway 4 away from Broxhead Farm and a sports field.

6 After consultations the County Council agreed to make an Order for these diversions but, because of objections, this Order was not confirmed. It was submitted to the Secretary of State for confirmation but the appointed inspector refused to do so because of errors in the published plans.

7 Hampshire County Council made a revised Order for these diversions in December 1987. The original objectors were notified that their objections would relate to this new Order unless they informed the Council otherwise.

8 The objections were sustained and in consequence the amended Order was submitted to the Secretary of State. This time the issue was dealt with by a Public Inquiry which was held on 21 March 1989. During the course of the Inquiry, it became clear that there was a minor error in the wording of the Order. Application was made at the outset for that minor drafting error to be amended and the regulations provided for this to be done. Unfortunately, the Inspector, whilst noting his gratitude to the

local authority for drawing his attention to the error, felt unable to amend it and accordingly decided not to confirm the Order. A decision was not made in any way on the merits of the proposed diversions.

- 9 This information was reported back to the Rights of Way Sub-Committee at its meeting on 11th January 1990. As a result members resolved to make another Order for the diversion of Headley Bridleways 4 and 46. This then is the third Order emanating from the original diversion application and the subject of today's Inquiry.
- 10 Hampshire County Council made the Public Path Diversion Order on 26th September 1990. It was published on 3rd October with notices erected on site on 10th October and maintained there until 7th November 1990.
- 11 The publication of this Order attracted 3 letters of objection. They were from:
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|------------------------|-------|--------------|
| Headley Parish Council | dated | 24th October |
| Mrs M Comber | dated | 3rd November |
| British Horse Society | dated | 7th November |
- 12 Headley Parish Council argue that "this Diversion Order merely serves to regularise what was originally an unlawful act and should not have been sanctioned. In addition, the proposed

diverted paths lack the views of the existing ones, they are narrow and in the winter are very rutted".

- 13 Hampshire County Council acknowledge that the legal routes of these 2 bridleways are currently obstructed by fences. There have been barriers across the Rights of Way since this part of the Common was enclosed back in the 1960's. The Council have powers under Section 143 of the Highways Act 1980 to remove the obstructions but these powers have been delegated to East Hampshire District Council under an agency agreement. Even ^{with} ~~if~~ ^{concurrent} these powers were still available to the County Council it is unlikely that they would be used in this case for the following reasons.

Firstly, for all of the period that the legal route has been blocked there has been available a suitable, alternative path in close proximity to the originals. Secondly, the landowner has acknowledged his error, in 1982, by applying for a diversion. It is not the landowners fault that the matter has remained unresolved to the present day. East Hampshire District Council have adopted a similar policy towards these particular obstructions.

- 14 Given those circumstances the Authorities have used their discretion in not exercising their powers. It must be emphasised that this leniency is rarely used and that both Councils have a firm policy towards illegal obstructions of Rights of Way. If, having considered the relative qualities of
- Test.

the alternative paths, the Inspector declines to confirm the current Order, then Hampshire County Council will urge the District Council to take the necessary action to ensure that the definitive routes of Bridleways 4 and 46 can be used by the public.

- 15 When comparing the qualities of the routes in question, Hampshire County Council are of the opinion that the proposed routes are of a similar or better quality than the originals. In the case of Bridleway 46 the definitive alignment arcs across a large, open field. This area, if used for growing crops, could be subject to ploughing, the route of the bridleway would have to be reinstated but this surface would never be as satisfactory as an undisturbed path. In comparison the proposed route is more direct, well defined and will have a legal width of 5 metres. Although at present it is partly overgrown with gorse and the public's use is confined to a strip down the middle, it must be remembered that if this becomes the definitive route then the local authority will have full powers to maintain the surface. Until now East Hampshire District Council have carried out only minimal maintenance, on a without prejudice basis, to keep the route clear of obstructing vegetation. It is within their powers to remove all vegetation growing on the surface of a Right of Way. In the case of Bridleway 46, I would envisage some gorse and scrub being cut back to widen the available width and improve the views both to the north and the south. In addition it might be necessary to

make good the surface if it suffers from erosion or mud. Both routes of Bridleway 46 are on similar gradients therefore the potential views to be gained from them are identical. It should be noted that if the legal route across the field is re-opened then the landowner would have a legitimate case for erecting bridleway gates at the field boundaries. There are no gates across the proposed route. From the landowners point of view the proposed path allows him to use the whole of the field for farming purposes without taking account of public access.

16 In the case of the north part of Bridleway 4, where it crosses farm land, the 2 alternatives are virtually identical in length, character and gradient. The difference between them is that, with the route on the north-west side of the fence, the landowner can make efficient use of the fields for agriculture without inconveniencing the public who are exercising their rights of access.

17 For the middle section of Bridleway 4, near Broxhead Farm, the landowner; Hampshire County Council, wishes to divert the path onto a route that has evolved through public usage. This is slightly away from the woodland boundary, on higher ground free of obstructing vegetation.

18 For the southern section of Bridleway 4 the County Council wish to divert the path to the east, away from the sports field. The legal route should be adjacent to the football pitch. It is

considered desirable to separate the 2 facilities by utilising a path that has evolved through the remaining strip of woodland. The Council believe this diversion to be mainly in the landowners interest but it might be considered that there is an element of public interest in moving this route. Whichever interest is paramount the 2 routes are very similar in length and character.

- 19 The British Horse Society and Mrs Comber, in their letters of objection, make similar points to Headley Parish Council regarding the obstructions of the legal bridleway routes and the local authorities failure to implement the Highway Act. In addition Mrs Comber makes reference to an outstanding issue on a route to the north of Bridleway 46 and the downgrading of part of Bridleway 4 to footpath status back in 1965.
- 20 Hampshire County Council contend that these last 2 items are not relevant to the Diversion Order which is the subject of today's Inquiry and have therefore not commented on them in the written evidence. *part of the history*
- 21 It proved impossible to reconcile these conflicts of opinion, therefore on 12th March 1990, the County Secretary submitted the Public Path Diversion Order, to the Secretary of State for the Environment, for confirmation.
- 22 The Secretary of State decided that a Public Inquiry should be

held on 10th December 1990 and notices to that effect were posted on site on 17th October.

23 In agreeing to make the Public Path Diversion Order, the County Council are satisfied that the diversions are either in the interests of the landowner or the public. The application to divert Bridleway 4 is primarily made in the interests of the landowners. It would be detrimental to Mr Whitfield's farming interest and the County Council's recreational interest to have the legal route reinstated. For different sections of the path the landowners wish to legitimise minor deviations from the definitive route caused by alterations to the landscape over a period of 25 years. There has never been any attempt to stop the public using a bridleway from the B3004 northeastwards towards Mountfield Wood. At no point does the proposed route diverge from the legal route by more than 25 metres, the 2 run parallel to each other and are of the same quality.

24 Bridleway 46 is a little different in that the alteration is more significant; the maximum deviation from the legal route being approximately 110 metres. For the section across the field it is decidedly in the landowners interest to divert the path away from agricultural land so that it can be managed more efficiently. The public interest is not prejudiced by this alteration because the proposed route is of a standard at least as good as the original and in some aspects better. For the section of Bridleway 46 immediately to the south-west of the

field, the proposed route is a direct continuation of the diversion from across the field, forming a continuous, identifiable path.

25 Sir, for these reasons the County Council ask you to confirm the Order.

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