



Planning Inspectorate
Department of the Environment

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The County Secretary,
Hampshire County Council,
The Castle,
Winchester, Hampshire,
SO23 8UJ.

Your reference

R405/DP/HB

Our reference

FPS/5057/4/20

Date 04 SEP 1989

Sir,

HIGHWAYS ACT 1980, SECTION 119,
HAMPSHIRE COUNTY COUNCIL (EAST HAMPSHIRE DISTRICT NO.66) (PARISH OF
HEADLEY - PARTS OF BRIDLEWAYS NOS.4 AND 46)
PUBLIC PATH DIVERSION ORDER, 1987.

1. I refer to the above named Order, submitted by your Council to the Secretary of State for the Environment for confirmation, which I have been appointed to determine in accordance with the provisions of paragraph 2(A) of Schedule 6 to the Highways Act 1980. I held a public local inquiry into the Order at Headley on 21 March 1989, and inspected the lines of the above bridleways on 20 and 21 March 1989.

2. The effect of the Order, if confirmed without modification, would be to divert two sections of Bridleway No.4, and one section of Bridleway No.46, at points on or adjacent to Broxhead Common, from lines marked (-X-X-X) on the Order map to the lines marked (-I-I-I).

3. The written objections dated early 1984 to an earlier Order, cancelled because of a drafting error, were carried forward to this Order. The combined total with the written objections dated early 1988, would have meant eight statutory objectors, but the Ramblers' Association and Mr.R.C.Hope-Jones CMG subsequently wrote withdrawing before the inquiry. Representatives of Headley Parish Council, Kingsley Parish Council and the British Horse Society were the only statutory objectors who wished to speak at the taking of the Appearances. The author of the Headley and District Bridleways Group letter of 9 February 1984 was present, wished the letter to stand, but said that reorganisation had changed their name. Mr.J.Beniens asked leave to add his personal objection. In my determination of this case, I have taken into consideration all objections and representations.

DESCRIPTION OF RIGHTS OF WAY CONCERNED AND SURROUNDING AREA.

4. At Sleaford, some 9 kilometres east of Alton, the A325 road running south-south-west from Farnham, Surrey, to Petersfield, Hampshire, crosses the River Slea. The River Wey meanders northeast to be joined by the River Slea about 2 kilometres east of Sleaford. Broxhead Common

crowns the hill south of the River Slea, northwest of the River Wey, and east of the A325 road. The land northeast of Broxhead Common, at the apex between the two rivers comprises mainly the wooded Headley Park. Broxhead Common is crossed by the B3004 Sleaford to Lindford road running south-south-east. Bridleways 4 and 46 both run generally northeast from the B3004 road, across land in the ownership of Headley Park. The latter, the more northerly, initially runs unfenced across high ground of sandy loam heathland; the former initially through lower lying woodland, again unfenced. Both then cross, or pass between, grazed fields before reaching a track along the edge of the park woodland. Only in the case of the diverted line of Bridleway 46, is the route fenced on both sides in traversing between this farmed land.

THE CASE FOR THE ORDER MAKING AUTHORITY.

5. The solicitor for Hampshire County Council opened by asking for modification of the Order to change the wording relating to the interests applicable. It was in recognition that the committee responsible for recommending the making of the Order had subsequently pointed out an error in the made Order, in that all diversions are claimed to be in the interest of the landowner. In their view, this was only true of the sections of the diversions attributable to rationalisation of the crossing of farmed land. The said owner leased the other land crossed by the bridleways to Hampshire County Council for recreational purposes, and therefore it was said the diversions on these sections had to be in the interests of the public.

6. Identification on the Order Map of where the interests of the landowner apply, was for Bridleway 4, between marked points D and F; for the existing Bridleway 46, between point C and where the route leaves the field between points A and B. There was some doubt on the latter, whether the landowner also had interest in diversion of the section between point A and the field edge, in order that the diversion was still a throughway.

7. The Highways Act 1980, Schedule 6, Part 1, para 2(2) was quoted as the legal entitlement for confirmation of the Order subject to a modification saying the Order was in the interests of both the landowner and the public, to sweep up all the situations. It was argued that people were present to voice public interest, and would be able to indicate whether awareness of this legal necessity was likely to have been a factor in people's decision to come or not to the inquiry. Whether failure to have advertised the correct interests had prejudiced anyone's interest was said to be a matter on which the Inspector would have to satisfy himself. The point was not alluded to at any later stage.

8. Mr.M.R.Porter was called as the Farm Agent of the land owner, Mr.A.G.P.Whitfield. He attested that, in respect of the farmed land crossed by both bridleways, the diversions were merely rationalisation from the lines currently shown on the Definitive Map to the routes actually used by the vast majority of riders and walkers, certainly over the last twenty years, thereby avoiding crop and livestock disturbance. Pressed on crop disturbance, he said that the lines across

the fields as presently on the Definitive Map had not for many a year been definitive on the ground. In consequence, horsemen naturally could not keep to just one line to minimise damage. On livestock disturbance, he said it was only natural for riders, given open space in fields, to expect to gallop, and this could frighten grazing horses or cattle, but particularly sheep, which were most often involved. He could not cite instances, for the very reason it was only exceptionally a person was seen to ride or walk the original lines of these bridlevays. He maintained the diversions offered no distraction from public enjoyment, and that they most definitely contributed to farm efficiency.

9. The Principal Rights of Way Officer for Hampshire County Council, Mr.W.A.Bide, spoke to deposited evidence notes, and said that the applications from the landowner for the diversions on farmed land were made around 1978, at much the same time as Hampshire County Council, as holders of the lease for much of Broxhead Common, were in the process of implementing part of an Order from the Court of Appeal. This enabled them to sub-let a small area to local sports bodies. In order to accommodate one of these, a football pitch, it was necessary to divert a section of the southernmost part of Bridleway 4, as between marked points G and I in the proposed Order. The other diversions on their leased land were to regularise what it was found that riders and walkers had adopted in preference to the current Definitive Map routes. To revert now on Bridleway 4, between marked points E and F, would mean removal of what in the interim had become mature trees. He then outlined the history of why it took such a long time to reach the stage of inviting confirmation of a made Order.

10. During his evidence he confirmed what the Headley Parish Council questioner of Mr. Porter had sought to elicit, namely Bridleway 46 was not recognised at the initial production of the Definitive Map in 1952, nor at reviews in 1959 and 1964. Bridleway 4 was shown as a footpath. They were added as Bridlevays, after objection to their exclusion by Headley Parish Council had led to an inquiry on 1 March 1965. Cross examination of Mr.Bide by the same objector, established that the landowner was not thought to have objected at that inquiry to the inclusion on the Definitive Map of Bridlevays 4 and 46. However, the objector felt that at much the same time, the landowner was intent on obstructing these very routes, to force people to use the alternatives which were now the subject of this Order. Kingsley Parish Council's representative raised questions about a subsequent inquiry on 9 November 1965, to which Mr.Bide had referred. Objection by the Forestry Commission had restored part of Bridleway 4 north of point D to footpath. Because present Forestry Commission staff had told her they could conceive of no reason for their predecessors objecting, she had sought a record of that inquiry, as noted in her letter of 23 March 1988. Mr.Bide agreed he had been unable to find one. The objector repeatedly claimed the relevance of that inquiry, because it made sections of both Bridlevays 4 and 46 now under consideration less useful throughways, and reflected the landowner's attitude.

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THE CASES FOR THE OBJECTORS.

11. The common ground amongst objectors was resentment at the unfairness of the position in which the Secretary of State had been placed, by being invited to confirm this Order. It was their belief that the landowner had manoeuvred a situation, through unlawful acts, to reach the point where to give confirmation to the Order represents condoning those acts.

12. Bridleways 4 and 46 were first obstructed in the mid 1960's, so that the public have had their accepted lawful and traditional public rights of way, probably going back much further, blockaded for nearly 25 years. Currently these obstructions remain as only a hunt-jump, at the fence line between points A and B on Bridleway 46, and a barbed wire fence, no gate from woodland OS8133 into field OS8500, and again from the adjoining field OS1537 onto the track at point D. There is a gate onto this track where it meets the looped original line of Bridleway 46 at point C. Objectors also noted gates had been provided where necessary to suit the diverted routes the landowner wished used.

13. Mr. Bide accepted that the British Horse Society had, certainly on one occasion and possibly on more, complained and received no support about the obstructions. He regretted that authority to take action on such complaints had been devolved to East Hampshire District Council some time previously. This District Council had, until recently, interpreted their powers under Section 143 of the Highways Act 1980, wrongly in his view, as being better served by furthering diversion proposals than serving notices to a landowner to remove obstructions.

14. Objectors wished to involve the inquiry in hearing about matters concerning other routes outside its scope. It was pleaded as demonstrating that the landowner continued these abuses. A matter concerning the locking of gates in February 1989, raised by the British Horse Society representative, was challenged by the solicitor for Hampshire County Council, who gained agreement that actually withdrawal of consent to permissive riding of a route was involved. Speaking basically from a deposited brief, this representative from Fordingbridge spoke of how forcefully she had been struck by the great sense of injustice which at once became apparent when she started investigating matters local to Broxhead Common. She felt the exceptional numbers present at this inquiry, including the press, was witness to this feeling. Local people had fought very expensive legal battles over several years in the 1970's against the landowner over his right to have suddenly fenced and started to graze '80 acres of the common'. They were drawn into losing arguments over how the land was divided in 1637, and how subsequent conveyancing of properties had reduced the list of commoners to just two. Finally a settlement in 1978 gave the landowner his way, but still not authority to have fenced off rights of way to force diversions.

15. Financial resources had been exhausted and, of local people, she claimed they were - 'probably left with the feeling that the law favoured those who could afford the cleverest Queens Counsel. Hampshire County Council was bound to support Mr. Whitfield in his fencing of the

common, and after all they were able to lease 189 acres. --- How is the ordinary person able to maintain his rights in law if he is not supported by it and it is not enforced? **If access from the north had been maintained officially, I doubt very much if this public inquiry would have taken place.'**

16. Most objectors were also concerned at the loss of length of 62 metres on Bridleway 46 through the diversion, noting it depended whether one completes one's passage via Bridleway 4, to enjoy the offset of gaining 22 metres there. The increased danger of using local public roads, heightened the need to retain every metre of recreational and safe right of way. Also of concern was loss of enjoyment of Bridleway 46, by reduction of the extent of the view northwards from the diversion. Mr. Bide countered that the loss in that direction was marginal, and compensated for by improved views to the south. One objector felt this loss of view was aggravated by the depth of the fenced path below the surrounding land level, which also led to some wet sections after rain. Mr. Bide reassured the inquiry that they would be removing some gorse bushes to improve passage and view, and filling wet areas with imported material. Width had been an issue at earlier stages, but did not feature with the finalised wording of the Order. Mr. Benians referred to OS maps of 1906-13, with revisions to 1938, and wanted fences moved back to suit the historic plan, even to fencing both sides of the loops across existing fields to counter the points raised by Mr. Porter. Before Hampshire County Council exercised their final right of reply, a Mr. C.W. Turner raised a matter which he subsequently agreed did not pertain to the Bridleways as in the Order.

CONCLUSIONS.

17. The starting point of my considerations has to be the made Order. Whilst I can understand and may even sympathise with some of the causes of the sensitivity felt by many in the local community, and I appreciate objectors' concern at perceived difficulty to confirming the Order, Section 119 of the Act makes very clear the only considerations allowed in the determination. I accept the objectors have reason to believe the landowner is not interested in the creation of throughways across his land.

18. I am grateful to Hampshire County Council for drawing my attention to the error in description of interests as at 5. above, and agree the distinction as to the applicable lengths, without adding to the solely landowner's interest, the section between point A and the field edge at the hunt-jump. However, I am advised that the simple modification proposed by the Council is not permissible. The Department of the Environment Circular 1/83, at Annex B para.9, has made it clear that the Secretary of State does not regard the power of modification vested in him as generally available to make good Orders which would otherwise be incapable of confirmation because they are defective in a matter of substance. Unless all lengths of the bridleways being diverted in the interests of the public can be readily deleted from the text of the Order, to leave intact an identifiable equivalent bridleway, then the Order must fail. This is clearly impossible for Bridleway 4. If one could define a point on the diverted line of Bridleway 46 where

landowner interest finished and public interest began, as with the hunt-jump on the existing bridleway, then it might be possible to create a right of way by modification. At the public local inquiry no such definition emerged.

19. In order to avoid the possibility of pre-empting any future re-examination of the subject of this Order, I must refrain from recording my conclusions on the permitted considerations under Section 119 of the Act, but would ask readers to assess for themselves the deliberations of this inquiry in the light of those considerations, in order to understand an Inspector's position.

20. I must record that I sensed a healthy mutual respect between the Hampshire County Council Principal Rights of Way Officer and the objectors, which I would wish nothing in the above to indicate as otherwise, and I hope his advice on action to achieve the removal of obstructions was helpful.

DECISION.

21. For the above reasons, and in exercise of the powers transferred to me, I have decided not to confirm the Order. Both copies of the Order are accordingly returned.

22. Copies of this letter have been sent to the objectors and to other interested parties.

I am, Sir,
Your obedient Servant,



Captain G.F. Laslett CBE C.Eng RN
Inspector

APPEARANCES - ANNEX A.

For Hampshire County Council:

Mr.M.R.Heath.

Solicitor,
Hampshire County Council.

He called:

Mr.M.Porter.

The Farm Manager,
Headley Wood Farm, Headley.

Mr.W.A.Bide.

Principal Rights of Way Officer,
Hampshire County Council.

For the Objectors:

Mrs.P.V.Brewster.

Clerk, Headley Parish Council,
Headley Village Hall,
Arford Road, Headley.

Mrs.M.Comber (signatory of previous letters as Mrs.M.Dale).
Chairman, Kingsley Parish
Council,
The Old Cottage,
Frith End, Bordon.

Mrs.E.A.Potter.

County Bridleways Officer,
The British Horse Society,
Padiss Corner, Ogdens,
Fordingbridge, Hants.

Mr.J.Benians.

Woodstock, Pond Road,
Headley.

Mr.C.W.Turner.

Headley Equestrian Centre,
Picketts Hill, Headley.

LIST OF DOCUMENTS - ANNEX B.

1. Attendance List.
2. Proof of Mr.W.A.Bide's evidence.
3. Basis proof of Mrs.E.A.Potter's evidence.