

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

400/42
Our reference
FPS/21700/4/20
Date

28
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Sir,

HIGHWAYS ACT 1980, SECTION 119,
HAMPSHIRE COUNTY COUNCIL (EAST HAMPSHIRE DISTRICT NO.116)
(PARISH OF HEADLEY - PARTS OF BRIDLEWAYS NOS. 4 AND 46)
PUBLIC PATH DIVERSION ORDER, 1990.

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 10th December 1991, and inspected the lines of the above bridleways on 9th and 11th December 1991.
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 original application for a diversion order for the two bridleways was made in 1982 and an Order promoting the diversion was made, but was opposed and later cancelled because of a drafting error. A revised Order was made in 1987 and a Public Inquiry was held in March 1989 but the Order could not be confirmed due to an error in the Order's description of interests. The current Order was made in September 1990 and written objections were received from Headley Parish Council, The British Horse Society and Mrs. M. Comber. Evidence was heard from six objectors including a representative of the Parish Council and the British Horse Society. The County Council Rights of Way Manager and the Farm Manager of the land were heard in support of the County Councils Case. A list of appearances and the Attendance list are attached. In my determination of this case I have taken into consideration all objections and representations.

4. Broxhead Common is on the high ground south of the River Slea, north west of the River Wey and east of the A325 Farnham - Petersfield road. The Common is crossed in a south-south-east direction by the B3004, Sleaford - Lindford road. The two bridleways in question run generally in a north east direction from the B3004 north of Lindford village.
5. Bridleway BW46 runs from a starting point near the highest point on the B3004, along the high ground, through unfenced heathland of mainly bracken and gorse and some trees. There are numerous foot or animal tracks, some with horse hoof marks, criss crossing the heath but there is a broad sandy track on the line of BW46 for the first 170 metres east of the B3004. At this point, 'A', BW46 forks in a north-north-easterly direction, for 140 metres, and appears as a narrow footpath mainly through gorse which becomes thicker just before the path reaches a stock fence, with barbed wire, marking the south western boundary of a newly sown grass field. It curves across the field just to the north, near point B, of the highest part of the field which slopes away to the north and to the east. The line of the path appears untrodden but on the map it continues eastward, with a northward curve, crossing the lower eastward part of the field to a fieldgate at point C. Here BW46 joins BW47 which runs due east between wire fences alongside woodland to the north and a pasture field to the south.
6. At point C there is to the westward a narrow grooved way, apparently much used by horses, between gorse and other bushes and some trees which are in turn between stock wire fences about 5 metres apart. On the north side of this way there is the newly sown grass field (OS.6871) and to the south of it is another grass field (OS.9758). This way leads straight up to a high point between the two fields about 270 metres from point C. This high point is only about 1 or 2 metres lower than the highest point in field OS.6871 which is 70 metres to the north north west. The highest point on BW46 is about the same height as the highest point on the alternative way. At the top of the alternative way the western boundary of field OS 9758, with the gorse and heathland to the west, lies to the south of the way. On its northern side, the boundary of field OS 6871 continues for 50 metres to a field gate and then a change of direction to the west-north-west, away from the alternative path, to cross BW46 as already described. The way descends about 2 metres along this 50 metre stretch to the west of the high point on the alternative way. Beyond the ground is level and the way through the heathland to point A is similar to BW46 west of that point. The alternative way is nearly on a straight line extension of that part of BW46 west of point A. The Distance between A and C on the alternative way is 510 metres. It is 62 metres (12%) shorter than is BW46 between the same points.
7. The highest points on both routes are about the same height but the lowest point of BW46 is about 2 metres below the lowest point on the alternative way. The gradients of both routes are gentle by country path standards but the alternative way is slightly steeper over one of its sections than is the steepest section of BW46 but it is not a significant difference. The views to the south and south east from the alternative way, if on horse back looking over the gorse bushes, are better than those from BW46 in the same directions but for

equivalent part of BW46 to the north of it and for the first 110 metres west of point C on both routes. In both these sections the northerly views are very similar from both routes.

8. Bridleway BW4 starts at its western end near the junction of the B3002 and B3004. For the first 330 metres there is clear path way through trees and heathland along the BW4 definitive line shown on the Order Map, except between points G and I where it crosses the corner of a football pitch. Here the path on the ground takes a slightly more easterly route for nearly 100 metres. The diversion has the same appearance and surface as BW4 has in general along its length. BW4 north of its junction with BW5 follows the edge of the woodland and heathland but it appears to be unused and is overgrown in places. The used route is slightly further north and deeper into the tree fringe for about 260 metres. The used route is 1 to 2 metres higher than the definitive route and gives better views to the south. Beyond this to the north eastward the line of BW4 appears to be the same as that on the ground for nearly 200 metres. At point F there is a fieldgate and a 4 ft. wide metal gate which leads into a pasture field (OS.9758). The path as it appears on the ground follows the north west side of a stock fence which separates it from another grass field (OS.1537) to the south. The used route continues to a field gate at point D where it joins BW47. The definitive line of BW4 curves southward through field OS.1537 from a point about 8 metres south west of point F to point D, a distance of about 260 metres.

SUBMISSIONS OF THE PARTIES

The Case in Support of the Order

9. Most of the land in question was owned by Mr. Whitfield who farmed the two fields at the eastern ends of the Rights of Way and leased his heathland to the west to the County Council. Mr. Porter, the Farm Agent, said that the land was cleared, for agricultural purposes, at the eastern ends of BW4 and 46 in the early 1900's. He had cleared what is now the Southern Field (OS.9758) first and then the upper field (OS.6871), containing BW46, in 1964. Before the clearances the land was crossed by many tracks mainly the result of army tank training in the area. After clearing the area of the southern field he left a way for horses along its northern edge to the top of the hill, before clearing the upper field OS.6871. The 5 metre wide east-west way was fenced on both sides and had been and was being used by the public as a bridleway, as the owner had intended. Mr. Porter was not aware of any public right of way on the line of BW46 at the time or that BW46 had been added to the Definitive Map in 1965 after a Public Local Inquiry.
10. Following complaints that BW4 and BW46 had been illegally obstructed, Mr. Whitfield made an application in 1982 for a diversion of the Public Path under section 119 of the Highways Act 1980. The County Council supported the application and, as owners of the southern part of Broxhead Common, wished also to make a small diversion of BW4 where it crossed the corner of the sports field. An order was made to effect the diversions. Due to objections it was referred to the Secretary of State for confirmation, but failed due to an error in the published plans. A revised order for the Diversions was made in

... the two bridleways had been and were currently obstructed by fences. Neither they or the East Hampshire District Council have had the obstructions removed because:-

- a. For all of the period, since the enclosure of common in the 1960's, that the legal routes had been blocked there had been available suitable alternative paths in close proximity to the originals.
- b. The landowner had acknowledged his error, in 1982, by applying for a diversion of the bridleways and that it was not his fault that the matter had remained unresolved.

However, if the current Public Path Diversion Order for either or both bridleways, or parts of them, were not confirmed the County Council would urge the District Council to ensure that the definitive routes of both bridleways can be properly used by the public.

Bridleway BW4.

12. The County Council said that the application to divert Bridleway BW4 was 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. At no point does the proposed route diverge from the legal route by more than 25 metres, the two run parallel to each other and are of the same quality.
13. The representative of the Parish Council supported the proposed diversions of BW4 as, where the alterations were proposed, they were necessary in one place so as to avoid the sports field and in other places they were more satisfactory, as the views were better and the proposed headland path of field O.S. 1537 would be less confusing than the Definitive Map route and it would be protected from ploughing.
14. Mrs. Comber, representing the Three Counties Bridleway Group, and Mr. Gardener also agreed with the BW4 diversion route although they objected to the way it had come into being by what they considered to be illegal action by the landowner. Mrs. Ritchie, County Bridleways officer of the British Horse Society, withdrew her objection to the BW4 diversion on the understanding that the County Council would ensure that a gate at least 5 ft. wide would be provided for horse riders at point F, between field OS.9758 and the woodland/heathland, if the Order was confirmed for the BW4 diversion.

Bridleway BW46

15. In regard to Bridleway 46, the definitive alignment arcs across a large, open field (OS.6871). 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. However, Mr. Porter confirmed that the field had recently been ploughed

enance, on a without prejudice basis, to keep the route clear of obstructing vegetation. Should the Order be confirmed all the vegetation could if necessary be removed but it was felt that it would be more desirable, and in the public interest, to leave some trees and bushes as wild life habitat and provide some landscape features. Although it would be necessary to remove enough vegetation to widen the available bridleways minimum width to about 4 metres and to improve the views in all directions, particularly for walkers as they were presently unable to see over the top of the gorse and scrub in many places. The surface of the way would also be made good from the effects of erosion and grooving, apparently from heavy useage by horses, along the present narrow way between vegetation. The County Council would liaise with the District and Parish Councils and the British Horse Society and the Ramblers Association concerning the work to be done on the path in the best interests of its users.

17. Both routes of Bridleway BW46 have very similar gradients. 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.
18. The difference in length of the two routes was negligible. The proposed route being about 11% (62 metres) shorter than the definitive route length of 572 metres. If a circular route was taken using BW's 46, 47 and 4 and one of the permissive paths across the heathland, connecting the eastern ends of BW's 46 and 4, the difference in the distances would only be about 3%. For those with limited time and desirous of a circular walk or ride, or a cross country route, the slightly shorter route could be preferable.
19. The alteration of BW46 is more significant than that of BW4, 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.

The Case for the Objectors

20. As reported by the Inspector at the 1989 Inquiry, the common ground amongst objectors, including the Parish Council, was the 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. 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 over 25 years. Mrs. Comber explained the history of Broxhead Common in outline up to 1961, when much of it was

were particularly concerned about paths to the north, which had connected with the Bridleways BW4, 46 and 47. They had also been very frustrated in their efforts to change back the status of these other paths from Footpath to Bridleway, as Headley Parish Council had claimed in 1964. They recited a history of prevarication including public inquiries, concerning the claim for one route, in particular, which was still unresolved. It was stated by Mrs. Ritchie, and supported by Mrs. Comber, that if this other route had been rightly re-instated, as a bridleway, the BW4 and BW46 Diversion Order would have been accepted by those currently most vociferous in opposing it.

Bridleway BW4.

21. Subject to the provision of a gate at least 5 ft. wide for horse riders at point F on the Order Map, which the County Council undertook to ensure its provision, the objectors withdrew their objection to that part of the Order concerning BW4. (as reported in paragraph 13 and 14).

Bridleway BW46.

22. The Parish Council were particularly concerned about the proposed diversion of BW46. In their opinion, the definitive route transverses the top of the escarpment where the whole beauty of the Slea Valley to the north unfolds, but it is hidden from the diversion route. It was emphasised that footpaths and bridleways were no longer primarily to provide communications from out-lying farms etc. to a village centre, but they were needed for recreational access to the countryside. The diversion meant a loss of 62 metres of a public amenity.
23. All the objectors supported the Parish Council in their opinion concerning the better views of the countryside and the openness of the definitive route of BW46 and its 62 metre longer length, which was so enjoyable to walkers and riders, compared to the proposed diversion. Mrs. Comber considered the gradient of the definitive route to be less as it wound up to the high ground instead of taking a direct line as does the proposed diversion. Mr. Gardener, who said he was a keen walker, did not enjoy walking the BW46 alternative route. The definitive route further north was in open ground and much better, but due to its obstruction he had not been able to enjoy it. He was also concerned that it took a long time for maps to be amended to show changes in rights of way routes. This was a factor in resisting changes, as walkers relied heavily upon the accuracy of maps to find their way in the countryside.
24. Mrs. Ritchie, the County Bridleways Officer of the British Horse Society considered BW46 unique in that it is one of the four remaining bridleways which runs across good well trained pasture (she appreciated that this was due to the owners achievements) which allowed riders and horses to enjoy a true freedom of the countryside. Good "going" was particularly important for the well-being of horses but it was becoming a rare occurrence. No evidence had been cited that the riders had abused the rights of way, over Mr. Whitfield's land, by upsetting any livestock; so it could not be said

and more confined and it left no doubt in her mind that it would be substantially less convenient to the public. She had no objection to the definitive route across field OS.6871 being fenced on both sides or to gates either side of the field providing they were well hung, but she agreed that it was difficult to find gates that remained well hung.

CONCLUSIONS

26. The Hampshire County Council, having consulted the East Hampshire District Council, as required by Section 120 of the Highways Act 1980, made the Parts of Headley Parish Bridleways nos. 4 and 46, Public Path Diversion Order 1990 under Section 119 of the Act. The requirements being that it appears to the Council, as respects the bridleways in question, that in the interests of the owner, lessee or occupier of land crossed by the ways or of the public, it is expedient that the line of the way, or part of that line should be diverted. As the Order was opposed the Act requires that it be submitted to the Secretary of State, who shall not confirm it unless he is similarly satisfied that the diversions are expedient and further that the ways will not be substantially less convenient to the public in consequence of the diversions and that it is expedient to confirm the order, having regard to the effect which the diversions would have on the public enjoyment of the way as a whole.
26. As the other provisions and requirements of the Act are not in dispute, confirmation of the Order depends upon the Secretary of State being satisfied on the above issues. The Act requires that those obstructions which are apparent on the existing definitive ways in question should not be taken into account in making any decisions. Historical evidence is not a reason for or against the confirmation of the Order and disputes and proceedings about paths and ways not mentioned in the Order are not relevant.
27. Apart from the representation that a suitable gate, at least 5 ft. wide, be provided at point F on bridleway BW4, to which the County Council agreed, there were no objections or other representations, or they were withdrawn, to the two diversions of BW4 as detailed in the Order. Therefore, the Order should be confirmed in regard to BW4 as the diversions, being unopposed, meet the requirements of the Act.
28. There is no doubt that the diversion of the eastern part of BW46, through field OS 6871, is in the landowners interest and the diversion of the western part over the heathland is in the public interest, if the eastern part is diverted. The diversion of BW46 as detailed in the Order therefore depends upon the Secretary of State being satisfied with the requirement stated in the last sentence of paragraph 25 above.
29. Concerning convenience, the fact that the proposed diversion is 62 metres shorter certainly does not make it less convenient. As the existing route is likely to be gated, if the order is not confirmed, the diversion, which is ungated, cannot be said to be less convenient in that respect either. As regards relative gradients, I found that those of both the definitive and alternative (proposed diversion) route, to be relatively gentle for both

approximately the same but that the lowest point on the definitive route was about 2 metres below the lowest point on the proposed diversion. (Reference paragraphs 5 and 6). This, in my opinion, more than balances, in terms of physical energy, any slightly greater gradient over part of the latter than on any part of the former.

30. In comparing "going" the existing surface of the western part of the definitive route is poor and restricted by gorse over the heathland, which would no doubt be cleared if the Order is not confirmed, but it is good across field OS.6871 mainly because the route is not in use. On the proposed route the path is badly grooved, due to heavy usage, in the narrow way constricted by gorse and scrub, but the County Council said the way would be cleared to a width of at least 4 metres and the groove in the surface would be graded, if the Order is confirmed. Therefore, there is little difference between the routes as regards their "going" potential, although the definitive way is vulnerable to ploughing.

31. Although changes in routes take time to be recorded on the maps which are in general use by the public, and therefore perhaps inconvenient in that sense, I do not consider it as a matter of substantial inconvenience, particularly in the case of BW46 where the diversion is, on the ground, much clearer than the definitive route and is probably shown as a path on most maps made since the 1960's, as survey maps are records primarily of actual topography and not definitive rights of way. Also the 510 metre diversion, up to 110 metres southward but straightening the route, is unlikely to be confusing in relation to the scale of the maps used by cross country walkers and riders.

32. I therefore do not regard the diversion as substantially less convenient to the public. Nor do I regard the above issues as having any significant effect on the enjoyment of the way as a whole. A 62 metre shorter length is more often regarded as an advantage to public enjoyment, particularly in relation to circular routes for those limited by time or energy for recreational enjoyment, and sometimes also by cross country riders and ramblers wishing to use the most direct country paths and ways in long distance linear routes.

33. Although some aspects of relative public enjoyment of the ways have been covered in the preceding paragraphs the main issue in this respect appears to me to be the question of the relative extent of the scenic views between the two routes. I found, as I have described, in paragraph 7, that for horse riders looking over the top of the gorse scrub lining the proposed diversion route, between fields OS.6871 and 9758, the views are certainly as good if not marginally more extensive and better, although to some extent different to those on the definitive route. If there is a substantial clearance of the gorse and scrub along the proposed diversion, as the County Council has promised if the Order is confirmed, this assessment will also apply to walkers.

34. I therefore find it expedient to confirm the order also where it concerns BW46, having regard to the effect which that diversion would have on the public enjoyment of the way as a whole, as well as being satisfied that it is at least as convenient to the public and in both the interests of the owner and of the public where applicable, as required by the Act.

which, to the equestrian objectors to the Order, may be of greater importance; as stated by Mrs. Ritchie. I hope my conclusions and decision will help in the satisfactory resolution of other matters outside the scope of the Inquiry.

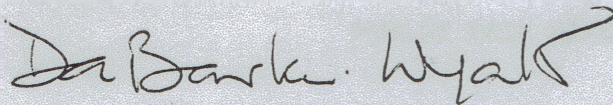
DECISION

§6. For the above reasons, and in exercise of the powers transferred to me, I have decided to confirm the Order. The confirmed Order is enclosed together with an explanatory memorandum. "

A copy of this letter has been sent to the objectors and other interested persons.

I am, Sir,

Your obedient servant

A handwritten signature in dark ink, reading "D.A. Barker-Wyatt". The signature is written in a cursive style with a large, sweeping flourish at the end.

Brigadier D.A. Barker-Wyatt CBE