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## Interim Order Decision

Site visit made on 10 May 2022

by **C Beeby BA (Hons) MIPROW**

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

**Decision date: 4 November 2022**

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### Order Ref: ROW/3256281

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Hertfordshire County Council (Ridge 39 and Shenley 39) Diversion Order 2017.
  - The Order is dated 8 September 2017 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
  - There was one objection and two representations outstanding when Hertfordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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### Decision

1. The Order is confirmed subject to the modifications set out below in the Formal Decision.

### Preliminary Matters

2. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.
3. The two submitted representations have been conditionally withdrawn, subject to a modification of the Order, in the event of confirmation, to connect the proposed new path to common land near Mimms Lane. The Council supports the modification of the Order by that matter, and furthermore by:
  - The identification of the existing path's junction with the unaffected Shenley Bridleway 17 in the Schedule; and
  - The identification of the unaffected Shenley Byway Open to All Traffic (BOAT) 33 on the Order plan.
4. Registered Common Land CL295 lies close to the northern end of the proposed route. CL295 falls within the Metropolitan Police Boundary and is consequently a "metropolitan common" which horse riders may use.
5. The Council submits that the draft Order, upon which pre-decision consultations were carried out by the agent for the applicant, depicted the proposed route to adjoin the common land. Following this the draft Order was modified in order to include mapping updates. This created, in error, a gap of approximately 4 metres between the proposed route and CL295. This gap is discernible on the Order plan

to the north east of Point G. The Order as made would consequently fail to provide the intended access between the proposed route and CL295.

6. A copy of the draft Order which was consulted on is submitted and I am satisfied that it proposed the connection of the new route to the common land. The objection to the Order does not comment on the matter and the two representations on behalf of the Open Spaces Society and the British Horse Society and local bridleways association support a modification to provide such a connection. The Council as landowner and the applicant as occupier are additionally in support. I have been requested to consider the Order on the basis of such a modification and I agree to do so, depending upon my findings, and subject to the need to advertise.
7. Whilst I note the suggested alterations to the Order plan in this regard, I concur with submissions concerning the desirability of consistency in the depiction of the new path. Furthermore, there is no provision in the Public Path Order Regulations 1993 for the suggested use of red cross-hatching to show the additional area of path. Thus, I propose to increase the width of the new route to connect with the common land by the use of grey shading at the relevant part of the Order plan, and to clarify in Part 2 of the Schedule text that the new route connects with the common land.
8. I concur that the suggested reference to the bridleway within the Order Schedule is supported by guidance within the Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09 (October 2009) at paragraph 5.14, which states that “the map should also contain sufficient detail to show the effect, not just on the path or way to be stopped up or diverted, but on those highways connected to it”. Thus, as my decision is to confirm the Order with the above proposed modifications, I additionally propose to modify the Order by the identification of the existing path’s junction with the unaffected Shenley Bridleway 17 in the Schedule.
9. However, the BOAT referred to is unconnected to the path which the Order seeks to divert. Therefore I do not consider it necessary to seek to modify the Order in respect of the depiction of Shenley BOAT 33.

## **Main Issues**

10. For me to confirm the Order I must be satisfied, by virtue of Section 119 of the 1980 Act, that:
  - it is expedient, in the interests of the landowner, the occupier or the public, that the path should be diverted. This is subject to the alterations in the points of termination of the path being substantially as convenient to the public;
  - the new path will not be substantially less convenient to the public; and
  - it is expedient to confirm the Order having regard to the effect which:
    - (a) the diversion would have on public enjoyment of the path as a whole;
    - (b) the coming into operation of the Order would have in respect of other land served by the existing paths; and
    - (c) the land over which the new paths would be created together with any land held with them.

11. I must also have regard to any material provision contained in a rights of way improvement plan (ROWIP) for the area.

## Reasons

*Whether it is expedient in the interests of the landowner, the occupier or the public that the path should be diverted*

12. There is some divergence of opinion amongst the parties on the matter of which (if any) interests the Order would serve. Nevertheless, the Order sets out that it appears to the Council that it is considered to be expedient that the path should be diverted in the interests of the owner and the occupier of Crossoaks Farm, and of the public. Therefore I must consider whether the diversion is expedient in these interests. The test is met if it would be expedient to divert the path in the interests of any of those parties; it need not be in the interests of all.
13. The tests in respect of the existing path are considered by the parties in three parts: Sections A-E, E-B and B-C. This being the case, I will consider the discrete sections in turn, before making an overall conclusion on the legal tests.
14. It is suggested that the diversion of section A-E of the existing path would allow for the more efficient use of a farmyard and farmland by the landowner and occupier because the route runs over or through an area which is subject to frequent traffic movements which may result in conflict with users of the path. It is stated that the area holds, amongst other uses, a car park, chemical tanks, building material storage compounds and a straw burner complex. It is submitted that diversion of the path away from this area would additionally be in the interests of the public because it would reduce the potential for conflict between users of the path and the occupier's farming operations.
15. It is submitted in opposition that no part of section A-E of the existing path crosses a farmyard or farmland.
16. Whilst the land surrounding the existing route A-E is subject to a number of industrial/business uses, as the existing path travels north from Point A it crosses an area containing fencing, buildings, car parking and a manège. The full route of the path in the vicinity of Crossoaks Farm consequently cannot be used. The manège is evidently in use for equestrian activities, although the evidence before me does not demonstrate that this need necessarily be incompatible with the exercise of public bridleway rights across one corner of the enclosure.
17. Nevertheless, the existing route then follows a track which is in use by vehicles, including heavy goods vehicles, to access a yard where building materials, machinery and vehicles are stored. As this is an industrial area there is potential for conflict between users of the existing path and the drivers of vehicles, which would harm the efficient use of the land by a landowner or occupier. Thus, irrespective of whether the existing path to the north of Point A crosses part of the suggested farmyard and farmland, the Order would remove the potential for such conflict, as the diverted route would not be subject to any concurrent vehicular use. It is consequently expedient in the interests of the landowner and the occupier that the section of existing path A-E should be diverted.

18. Furthermore, in removing the potential for such conflict and improving the safety of path users, the diversion of the section A-E is expedient in the interests of the public.
19. Whilst I acknowledge that buildings appear to be constructed across the path in the Crossoaks Farm area, as I have already found that the diversion of the section A-E is expedient in the interests of both the landowner or occupier and the public, I have not considered the matter of the existence or otherwise of planning permission or permitted development rights for these buildings further, particularly as there is minimal evidence before me in this regard.
20. The diverted section D-E is already laid out on the ground and there is a strip of land containing undergrowth and trees between the new section of path and the industrial area associated with the farm. Even if the laying out of section D-E entailed the loss of the strip as an area of productive farmland, the matter before me here is the effect of the definitive line and any arguments in support of its diversion.
21. Turning to section E-B of the existing route, the Council submits that the diversion of this section is expedient in the interests of the landowner and occupier to allow for the more efficient use of and encourage biodiversity in Bigpursley Wood. This is additionally considered to be in the interests of the public because the section would be diverted to higher, drier ground, enabling the public to avoid drainage run-off which affects the section E-B.
22. Section E-B follows a “gully” of lower ground. As it is surrounded by considerable mature woodland it is conceivable that the gully may be slow to dry out if water collects within it. Nevertheless, how the diversion of the section would be beneficial to the stated interests has not been adequately explained. As a result, only a neutral effect on the interests has been shown. Thus, the suggested expediency of the diversion of section E-B in the interests of the landowner, the occupier or the public has not been demonstrated.
23. The diversion of section B-C from a cultivated arable field is considered by the Council to be in the interests of the landowner or occupier in allowing for the more efficient use of the farmland by increasing the amount of land available for cultivation.
24. It has not been adequately explained how the presence of the section B-C affects the productivity of the land and I cannot make assumptions. As a result, it has not been demonstrated that the diversion of section B-C would be in the interests of the landowner or occupier.
25. It is submitted that the section B-C is unsuitable for horse riders in winter without surfacing because it crosses an arable field, and that the junction with Mimms Lane at Point C has poor visibility. Whilst I acknowledge that part of the section was ploughed at the time of my visit, I cannot assume that the surface is necessarily challenging for equestrians at some times of the year. Furthermore, I do not consider the available visibility from point C along Mimms Lane to be poor. The limited information on both submissions consequently does not persuade me that the diversion of section B-C would be in the interests of the public.
26. Although the part of section A-E in question is an established industrial or commercial yard, many of the items on the land are moveable, which may facilitate

a rearrangement of the land uses which could bring about similar safety benefits to the Order. The potential for conflict which I have identified above consequently has a temporary aspect.

27. In summary, whilst I have not accepted all of the points advanced by the Council and the applicant, I am satisfied that it is expedient in the interests of the landowner and occupier and of the public to divert the path due to the potential for conflict between path users and the drivers of vehicles.
28. Thus, the diversion would be expedient in the interests of the landowner and occupier and of the public.

*Whether the alterations in the points of termination of the path are substantially as convenient to the public*

29. The points of termination of the existing route would be altered at both its north and south ends to another point which is on the same highway or another one connected with it. Two routes connect to Point A, at the southern terminus of the existing bridleway. Crossoaks Lane/Ridge Bridleway 37 connects from the east, and Shenley Public Bridleway 17 from the west.
30. Crossoaks Lane is an unclassified county road of a single vehicle width. There are some verges on which to take refuge and the visibility available to users of the lane is reasonable. The lane carried low levels of traffic at the time of my site visit. Although this was only a "snapshot", nothing before me suggests that this is unrepresentative of the usual number of vehicles using the lane. The lane is likely to be used by any residents of settlements to the east who access the Order route on foot.
31. Whilst there is better visibility and more verge available along Shenley Public Bridleway 17, the adjoining London Road is not as convenient to walkers due to a combination of issues such as the speed of traffic and a lack of footways, verges and visibility. Furthermore, the nearest settlements lie a greater distance from Point A using Bridleway 17 than using Crossoaks Lane, reducing the likelihood of use of Bridleway 17 to access Point A.
32. For these reasons, I do not concur that it has been demonstrated that the majority of pedestrians seeking to access Point A of the existing route from the east or west are likely to use Shenley Public Bridleway 17 in preference to Crossoaks Lane. As a result, any inconvenience resulting from the increase in distance to walk using A-D-E for users from the west is not clearly greater than the increase in convenience which would result from the distance saved for users from the east.
33. The new terminus at Point H would lie a short distance along Mimms Lane from the existing Point C, and would provide additional visibility and more direct access to public rights of way to the north and south of the lane. It would increase the time to access other paths to the east by only a minimal degree.
34. Thus, the alterations in the points of termination of the path would be substantially as convenient to the public.

*Whether the new path would be substantially less convenient to the public*

35. When comparing the convenience of the routes included in the Order it is appropriate to assess the existing route as if it were available for use by the public

without obstruction. Therefore I shall disregard the fact that structures currently obstruct the definitive line of the existing path.

36. The new path's length would be similar to that of the existing path, and therefore the Order would not result in any significant increase in the distance between the termini of the path. There would be a short section of a relatively steep gradient at Point H, however the path would pass over land of a similar gradient to the existing path elsewhere. The surface of the gully section of the existing route is likely to be less accessible than the natural and relatively level surface of the new route, particularly in wet weather.
37. The existing route has a width varying between 4 and 39 metres and the new route would have a width of between 4 and 15 metres, although the Council considers that it would generally be wider than 4 metres. There is nothing before me to suggest that the proposed width would harm the convenience of users. This is particularly the case at this rural location where use of the path is likely to be relatively light so that the need, for example, for two equestrians to pass would arise only infrequently.
38. Structures would lie at two points along the proposed new route, comprising a horse hop and motorcycle inhibitor. These would be authorised by the Council under the 1980 Act in the event of confirmation of the Order. There is no evidence before me to suggest that these would unacceptably harm the convenience of the new route when compared to the existing route.
39. For these reasons, the new path would not be substantially less convenient to the public.

#### *Provisions within the ROWIP*

40. Core Action 7 of the Council's ROWIP requires the Council to extend the network for cyclists, horse riders and horse and carriage drivers by, amongst other things, the provision of safe traffic-free routes for riders. I consider that the Order would contribute to this aim by reducing the risk of conflict with vehicles between Points A and E of the existing route and hence increasing the appeal of the route to horse riders.

#### *Whether it is expedient to confirm the Order*

41. I note submissions regarding the timescale and effect of previous planning proposals and obstructions along the route. Nevertheless, the uses of the land crossed by the definitive and alternative routes have had a bearing on my decision. The effect of any structures which obstruct the definitive line has not. In the absence of any obstructions my conclusions would consequently have been the same.
42. My attention has been drawn to the judgment of R (on the application of) *Ashbrook v East Sussex County Council* [2002] EWCA Civ 1701, [2003] 1 P & CR 191. The judgment concerns obstructions and the duty of the highway authority. However, there is no rule of law that a right of way must be free from obstruction before a diversion order may be made. Thus, the matter has not had a bearing on the decision currently before me.



43. There is minimal evidence to suggest that signage along the proposed route has had a harmful effect on public understanding of the legal situation in respect of the two routes. As a result, I have not given the matter weight in my assessment.
44. The existing route A-E crosses a farm/industrial area, whereas the diverted route D-E passes between mature hedgerow and provides scenic views of wooded countryside. Whilst there may be enjoyment and interest for some people in crossing a working farm area, I consider that many people, who are likely to be seeking a countryside path in following the route, would prefer to walk or ride away from the farm area and through the countryside. Furthermore, I concur with the submission that the risk of encountering farm machinery or lorries along that section of the existing route may cause concern and reduce the enjoyment of more vulnerable users such as those accompanied by young children. As a result, I consider that the diversion of the section A-E to D-E is likely to increase public enjoyment of this section of path.
45. The diversion of section E-B to E-F where it passes through Bigpursley Wood would provide a route on slightly higher ground which may be better drained, however, as I have noted above, there is minimal evidence on the matter. The existing and proposed sections lie close to each other and consequently the available woodland views would be very similar on both paths. Thus, I find that there would be a neutral effect on public enjoyment of this section.
46. The existing section B-C crosses an arable field, whereas the new section F-G-H would be a headland path. As they lie close together they offer similar countryside views. I therefore consider that there would be a neutral effect on public enjoyment of this section.
47. Nevertheless, I attach moderate weight to the ability of the proposed diversion out of the farm and industrial area to increase public enjoyment of the path as a whole, as a result of the identified safety benefits in this regard.
48. No issues are raised which suggest that the diversion would have any adverse effect on land served by the existing route or on the land over which the alternative route will be created.
49. I have concluded above that the Order is expedient in the interests of the landowner and occupier and of the public. The alterations to the points of termination would be substantially as convenient to the public, and the new path would not be substantially less convenient to the public. The proposed diversion would increase public enjoyment of the path as a whole, and the Order gains support from the ROWIP. As such, it is expedient to confirm the Order.

### **Other Matters**

50. I acknowledge that since the making of the Order there have been some changes on the ground which are not reflected in the Order plan. Nevertheless, Circular 1/09 sets out that extracts from a current edition of an Ordnance Survey map should be used in the production of order plans, and the Council confirms that such an extract was used in drafting the Order. As the Order submitted to the Secretary of State in the event of unwithdrawn objections must be the Order which was made, there has not been an opportunity to update the plan. It follows that the mapping edition used does not affect the validity of the Order under consideration in this case.

## Conclusion

51. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications set out in the formal decision.

## Formal Decision

52. I confirm the Order subject to the following modifications:

- In Part 1 of the Schedule (Description of site of existing path or way), insert the text “and Shenley Bridleway 17” after the text “The full width of that part of Bridleways Ridge 39 and Shenley 39 from a junction with Ridge BR 37”.
- In Part 2 of the Schedule (Description of site of new path or way) insert “(where the path connects to the north east with the southern corner of Registered Common Land CL295)” after “Continuing north north west for approximately 280 metres to a junction with Shenley FP 22 at TL 2041 0081 (point G on the Order Plan)”.
- Extend the width of the new path by approximately 4 metres to the north east of Point G, to connect with Common Land CL295, as shown by grey shading on the attached amended Order Plan.

53. Since the confirmed Order would (if modified) affect land not affected by the made Order, I am required by virtue of Paragraph 2(3) of Schedule 6, Part 1 to the Highways Act 1980 to give notice of my proposal to modify the Order and to give an opportunity for objections or representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*C Beeby*

INSPECTOR



