

RIGHTS OF WAY COMMITTEE

11 JULY 2017

**PUBLIC BRIDLEWAY NO 41
PARISH OF MELKRIDGE
REQUEST BY A LANDOWNER FOR THE COUNCIL TO USE POWERS
TO DIVERT THE PUBLIC BRIDLEWAY ONTO LAND OWNED BY
ANOTHER LANDOWNER**

Report of the Executive Director of Local Services and Housing
Cabinet Member: Glen Sanderson, Environment and Local Services

Purpose of report

To ask the Committee to resolve if the County Council should use its powers under s119 of the Highways Act 1980 to divert Public Bridleway No 41 onto another landowner's land.

Recommendation

It is recommended that the Committee agree that the Council should not use its powers contained in section 119 of the Highways Act 1980 to make an order to divert Public Bridleway No. 41 in the Parish of Melkridge for the reasons set out in this report.

1.0 BACKGROUND

- 1.1 Members will be aware that Public Bridleway No 41 in the Parish of Melkridge was first considered by members of the Planning and Environment and Rights of Way Committee on 2 July 2013. Members then resolved that a Definitive Map Modification Order be made to record the route as a restricted byway (a Planning Inspector modified that Order to record the route as a public bridleway following a public inquiry and this modification was confirmed on 26 July 2016).
- 1.2 The recording of the public bridleway on the Definitive Map and Statement has been very contentious with the landowner obstructing the legal line of the route and making two applications to the High Court (one still outstanding) to quash the Council's Order. Members may recall that the public bridleway has been subject to several reports to Committees.
- 1.3 The landowner, the Secretary of State and the County Council have agreed to a second stay in proceedings of the second Judicial Review to enable

further discussions and negotiations between the landowners in relation to a proposal by the first landowner to divert the public bridleway on her land to land owned by the second landowner (Melkridge Parish Council).

- 1.4 Decisions on whether the Council should use its powers to make public path orders (including diversion orders) are delegated to officers. When the landowner first approached the Council with the proposed diversion officers accepted that there may be merit in a proposed diversion but because the diversion was onto land owned by Melkridge Parish Council it would need the agreement of that party. No agreement has been reached and Council officers therefore declined to agree to make a public path order.
- 1.5 The first landowner's solicitor has questioned the basis on which the delegated decision was made by the officer. In the period when this matter was being addressed the County and Parish elections have also taken place. The result of the elections has seen a change in the Council's political administration and a change in the Parish Council membership. For these two reasons and for transparency officers have decided that it would be prudent to escalate the decision on the landowner's diversion request to the Rights of Way Committee.
- 1.6 A draft of this Rights of Way Committee report was sent to the first landowner's solicitor, Melkridge Parish Council and Highways England. Written comments submitted on the draft report by the landowner's solicitor and Melkridge Parish Council have been incorporated in the body of this report.
- 1.7 The remainder of this report sets out the detail of the request for the diversion, possible advantages and disadvantages of agreeing to the request and the facts which the Committee needs to take into account in deciding the request.

2.0 DETAIL

- 2.1 In October 2016 the first landowner submitted two proposals to the Council to divert the public bridleway. The Council responded that one proposal would not meet the tests for a diversion but that the one subject to this report (map attached) was not without merit but because it was a diversion onto another party's land would need that landowner's agreement.
- 2.2 The first landowner did not pursue the diversion proposal with Melkridge Parish Council until 13 December 2016 when her Solicitor wrote to the Parish Council to request a meeting to discuss the diversion proposal. At a Parish Council meeting held on 30 January 2017 the Parish Council declined to meet with the first landowner. On the 21 February 2017 the first landowner's solicitors made a "formal application" to the County Council for the proposed diversion. Officers of the County Council took the decision of the Parish Council to mean that it did not want the public bridleway diverted onto its land and officers informed the first landowner's solicitor that the Council would not make a public path order.

- 2.3 For the reasons set out in paragraph 1.5 above officers believe it is prudent to escalate the decision on whether the Council should use its powers under s119 of the Highways Act 1980 to make a diversion to the bridleway to the Rights of Way Committee.

Section 119 Highways Act 1980

- 2.4 This section of the Highways Act 1980 gives the Council powers to divert a public bridleway in the interests of the owner of land crossed by the bridleway to another location whether it is onto the landowner's own land or land owned by another landowner. A bridleway can also be diverted in the interests of the public. It would be unusual for the Council to agree to make an Order to divert a public right of way onto land not in the ownership of the applicant and officers consider there would need to be exceptional circumstances for it to make an order. It should be noted that where the Council makes a public path order a claim for compensation for loss caused by the public path order can be made against the Council (although the Council can enter into an agreement with the first landowner to defray the costs of any compensation that may become payable).
- 2.5 There is no doubt that a diversion of the public bridleway would be in the interests of the first landowner as they would be removing a public right of way and their obligations and responsibilities for a public right of way from their land. Other tests for the confirmation of a diversion order also have to be met. These include the diverted route not being substantially less convenient to the public, no adverse effects on the public enjoyment of the bridleway and no adverse effects on the land to which the bridleway is diverted. If an Order was made and attracted objections an Inspector appointed by the Secretary of State would have to consider these tests and ensure they were met before confirming the Public Path Order.

Public Bridleway No. 41

- 2.6 The public bridleway has been obstructed by locked gates at the north and south ends of the route. The obstruction pre-dated the recording of the public bridleway and the action of the landowner to obstruct the lonnen was the precursor to the recording of the existing public right of way on the Definitive Map and Statement.
- 2.7 In December 2015 a severe storm event resulted in flood water from the A69 road and surrounding higher ground cascading down the route of the bridleway causing significant damage to the surface of the bridleway. The resulting poor condition of the bridleway is one of the reasons the first landowner has given in support of her diversion proposal.
- 2.8 Responsibility for the maintenance of most public bridleways normally rests with the Highway Authority. However, because this public bridleway came into existence after the Highways Act 1959 from long usage there is no duty on the Highway Authority to maintain the route. Members should note that there is also no requirement for the landowner to maintain the route and that in law the landowner owes no duty of care to the users of the route in the event of accident or injury caused by the condition of the route.

Highways England

- 2.9 Highways England needs to ensure that the flood event which led to the closure of the A69 is mitigated. An officer has confirmed that Highways England's preferred mitigation scheme is to use the line of the public bridleway for a new culvert followed by the reinstatement of the public bridleway for public use. Highways England recognises that the public bridleway is a highway and that it has a duty to reinstate the highway for public use following any work. It has also indicated that it would use its powers of entry to access the land if an agreement could not be reached with the landowner.

3 **ASSESSMENT**

- 3.1 This section provides an assessment of whether a diversion of the public bridleway is required. It will consider the factors in support and against the Council agreeing to the request for a public path diversion order.

Factors in support of a diversion

- 3.2 The route is in a poor condition as a result of the flood event. It would be very difficult for walkers to negotiate the public bridleway and is unsafe for horse riders. There is no responsibility for the Highway Authority to repair the route. On this basis alone the Council would normally look favourably on an application from a landowner to divert a public right of way on their land if the tests for a diversion order were likely to be met.
- 3.3 The tests for a diversion order were set out in paragraph 2.5 above. As stated there is no doubt that a diversion would be in the interests of the first landowner. The proposed alternative route would be adjacent to the existing bridleway, of similar length and its connection to the A69 to the north and the U7070 to the south would only be a few metres to the west of the existing bridleway. While there is a difference in the surface of the proposed alternative route, compared to the surface of the bridleway prior to the flood event, officers consider that the proposed alternative route would not be substantially less convenient for the public. The land over which the diverted route would cross is used for public amenity and on this basis there is unlikely to be adverse effects on this land.

Factors against a diversion

- 3.4 Highways England has indicated that it wishes to culvert and re-instate the public bridleway as part of its proposed works to alleviate any future flood event on the A69. As this work would result in the re-instatement of the public bridleway to a specification suitable for bridleway users there is no need for the public bridleway to be diverted.
- 3.5 The public bridleway has been obstructed by the landowner with locked gates at each end of the route. It would be unusual for the Council, as a Highway Authority, to agree to divert a highway where a landowner was obstructing public passage.

- 3.6 The diversion proposal is to divert the route onto land in the ownership of another landowner. While in law the Council is able to do this it would be unusual for the Council to agree to this where the landowner over whose land the route would be diverted is not in support of the proposal.
- 3.7 The first landowner has made an application to the High Court for the Council's Modification Order to record the route to be quashed. It would be unusual for the Council to agree to make an Order to divert a public right of way onto another landowner's land in a situation where there is an outstanding legal challenge to the public right of way.
- 3.8 The route of the proposed diversion is over land which is registered Village Green and already has access rights by the public. The public is therefore losing an existing public right of way as a result of the diversion proposal.

4. **COMMENTS FROM LANDOWNERS ON THE DRAFT REPORT**

- 4.1 Comments from the landowner's solicitors, Bond Dickinson, by letter dated 23 June 2017:
- 4.2 We write with reference to your email of 26 May attaching a draft Rights of Way Committee Report. You have asked that we let you have our comments "for inclusion in the body of the report to help members make their decision" by 23 June to "enable them to be incorporated in the report".

We respond below to the points of the draft report as indicated. Please note for the avoidance of doubt that we consider that the assessment in the draft as presently drafted is predicated on the wrong test in law. The correct approach is as set out in our letter of application 21 February 2017, a copy of which is appended hereto. We should be obliged if the text of that letter also be incorporated within the final report.

We have sought below to address the main points that require comment. Please note however that the lack of comment on any point should not necessarily be taken to represent agreement with it.

a) Draft paragraph 2.4 states as follows: "This section of the Highways Act 1980 gives the Council powers to divert a public bridleway in the interests of the owner of land crossed by the bridleway to another location whether it is onto the landowner's own land or land owned by another land owner. A bridleway can also be diverted in the interests of the public. It would be unusual for the Council to agree to make an Order to divert a public right of way onto land not in the ownership of the applicant and officers consider there would need to be exceptional circumstances for it to make an order. It should be noted that where the Council makes a public path order a claim for compensation for loss caused by the public path order can be made against the Council (although the Council can enter into an agreement with the first landowner to defray the costs of any compensation that may become payable)."

Whether or not it is "unusual" in the circumstances for the Council to agree to make an Order is irrelevant. The proposed Order must be judged against the statutory test, as set out in S119 Highways Act 1980 and more fully addressed

in our letter of 21 February.

The purported need for "exceptional circumstances" to exist to justify an Order where diversion is onto land not in the applicant's Ownership is similarly not a true representation of the correct legal test. The notion that some form of exceptional threshold must be passed is without foundation as a matter of law.

We also note that the reference to compensation in the final sentence of draft paragraph 2.4 omits to mention that the first landowner has already made a clear commitment to meeting such compensation.

b) Paragraph 2.7 states "In December 2015 a severe storm event resulted in flood water from the A69 road and surrounding higher ground cascading down the route of the bridleway causing significant damage to the Surface of the bridleway (see photographs attached). The resulting poor condition of the bridleway is one of the reasons the first landowner has given in support of her diversion proposal."

It is agreed that the severe weather of December 2015 was the initial cause of the damage. However it should also be noted that subsequent bad and inclement weather has exacerbated the damage and that in such circumstances the route of the Lonnen is the natural desire line for the heavy run-off of water from the A69.

c) Paragraph 3.1 states "This section provides an assessment of whether a diversion of the public bridleway is required. It will consider the factors in support and against the Council agreeing to the request for a public path diversion order."

The decision that stands to be taken is not whether the diversion is "required" as such. Section 119 Highways Act 1980 contains no test of necessity. By virtue of S119(1) the test is whether it is expedient to do so either in the interests of the landowner or in the interests of the public. We would respectfully refer you further to our letter of 21 February as regards the appropriate tests and criteria.

d) Paragraph 3.3 states "The tests for a diversion order were set out in paragraph 2.5 above. As stated there is no doubt that a diversion would be in the interests of the first landowner. The proposed alternative route would be adjacent to the existing bridleway, of similar length and its connection to the A69 to the north and the U7070 to the south would only be a few metres to the west of the existing bridleway. While there is a difference in the surface of the proposed alternative route, compared to the surface of the bridleway prior to the flood event, officers consider that the proposed alternative route would not be substantially less convenient for the public. The land over which the diverted route would cross is used for public amenity and on this basis there is unlikely to be adverse effects on this land".

We note that Paragraph 3.3 represents an acknowledgement that the proposed diversion meets all the statutory tests.

The reference to paragraph 2.5 in fact sets out a slightly higher test than the statutory test, since it suggests that there should be "no adverse effects on the public enjoyment of the bridleway and on the land to which the bridleway is diverted" whereas such matters should be weighed in the balance.

Nonetheless given that the conclusion of paragraph 3.3 is that the higher test is satisfied, it logically follows that the statutory test is also met.

e) Draft paragraph 3.4 states "Highways England has indicated that it wishes to culvert and reinstate the public bridleway as part of its proposed works to alleviate any future flood event on the A69. As this work would result in the re-instatement of the public bridleway to a specification suitable for bridleway users there is no need for the public bridleway to be diverted."

As stated above, the question of need is not the appropriate legal test nor is it otherwise relevant. In any event it should be noted that there is no agreement in place or likely to be reached between the first landowner and Highways England whereby culverting of the Lonnen will take place until and unless the present proposed Order under S119 Highways Act is approved, made and confirmed without challenge. The scenario envisaged at paragraph 3.4 will therefore not arise.

f) Draft paragraph 3.5 states "The public bridleway has been obstructed by the landowner with locked gates at each end of the route. It would be unusual for the Council, as Highway Authority, to agree to divert a highway where a landowner was obstructing public passage."

As noted above whether or not a proposed diversion is considered unusual is not the relevant test. In addition as a matter of law the existence of an obstruction is not per se directly relevant to the tests arising under S119 Highways Act 1980.

In any event we would comment that, as the draft report recognises, the damage caused to the Lonnen is such that use of it is plainly dangerous. We attach recent photographs that indicate that the route is for all practical purposes impassable.

As regards the question of obstruction we have expressly raised with the County Council whether it truly considers that a route in such condition should be made accessible. To date we have had no reply.

In any event we note that the very heavy concrete bollards that the Highway Authority has placed at the southern end of the Lonnen remain in place.

Indeed we addressed both the issues of the culvert (per draft paragraph 3.4 above) and of obstruction in our letter of 27 April 2017, copy attached. We should therefore be obliged if the contents of that letter also be incorporated within the terms of the report.

g) Draft paragraph 3.6 states "The diversion proposal is to divert the route onto land in the ownership of another landowner. While in law the Council is able to do this it would be unusual for the Council to agree to this where the landowner over whose land the route would be diverted is not in support of the proposal."

Again, whether or not the diversion should be characterised as unusual is a misdirection. Whether or not the proposed diversion is considered unusual is not the relevant test. Furthermore statute clearly envisages such situation since it makes provision for payment of compensation to the affected landowner on to whose land a path would be diverted. As noted above the first landowner has committed to meeting such compensation.

h) Draft Paragraph 3.7 states "The first landowner has made an application to the High Court for the Council's Modification Order to record the route to be quashed. It would be unusual for the Council to agree to make an Order to divert a public right of way onto another landowner's land in a situation where

there is an outstanding legal challenge to the public right of way."

Such proceedings will of course no longer be required if the route is diverted and an Order on that basis made and confirmed.

- 4.3 Comments made to an officer who attended a meeting of Melkridge Parish Council on Thursday 22 June 2017:

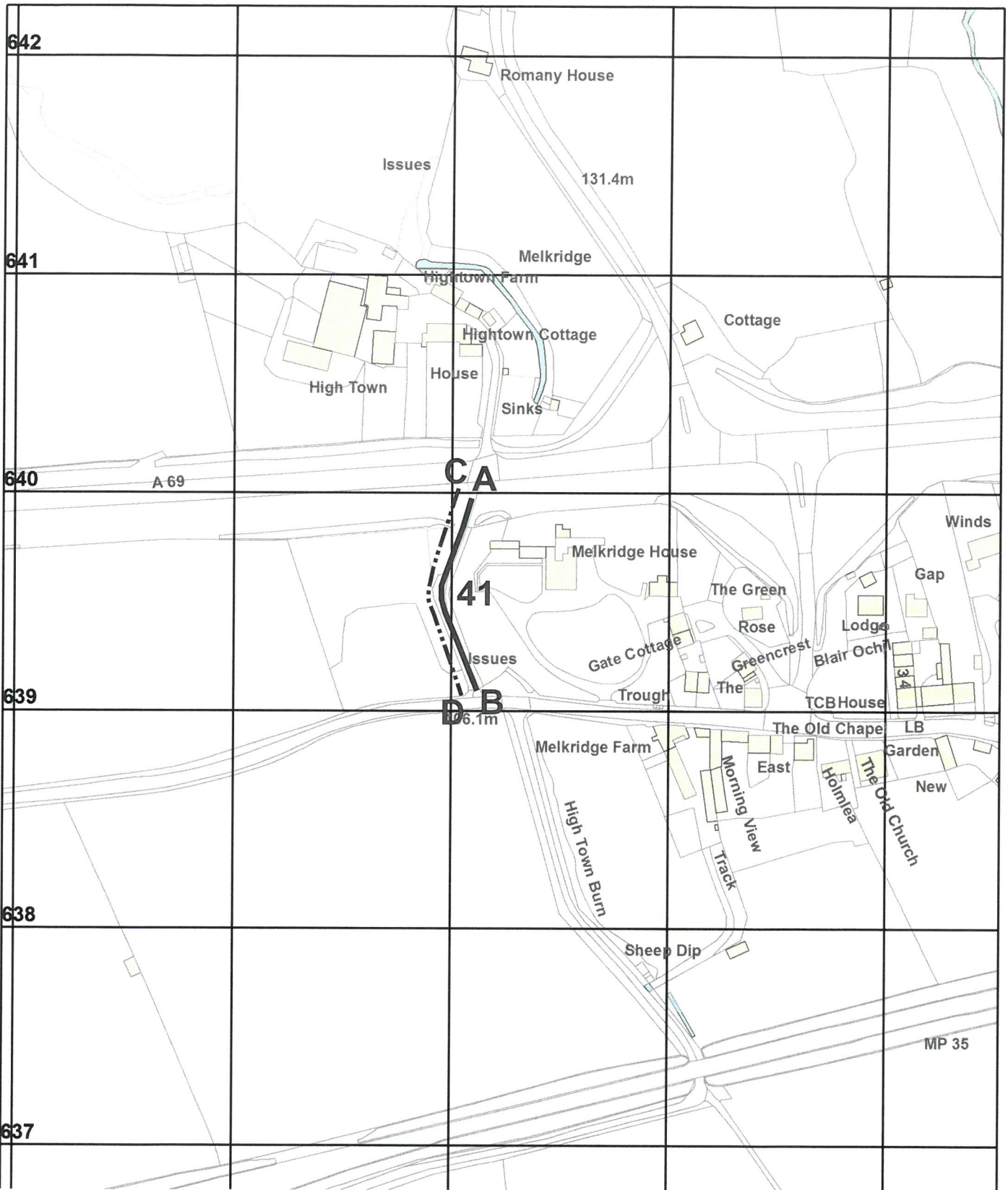
The Parish Council was in receipt of the draft Committee report to be considered by members of the Rights of Way Committee at their meeting in July. Members of the Parish were angry that the public bridleway remains obstructed by gates at either end and there has been no maintenance works to make the path safe, at least for pedestrians.

The Chairman stated that they were preparing a response for inclusion in the committee report and also stated a desire to attend the meeting to ensure that their thoughts were relayed to Committee Members.

- 4.4 At the time when this report had to be finalised no written response had been received from the Parish Council.

5. COMMENTS ON CONSULTATION RESPONSES

- 5.1 The response from Bond Dickinson implies that the Council is under a duty to make a diversion order in the interests of the owner where it is expedient to do so and the criteria for making an order set out in section 119(6) of the Highways Act 1980 are also met.
- 5.2 The Council is under no duty to make a diversion order at the request of the landowner. Section 119(1) of the Act states that the Council "**may**" make a diversion order. The word "may" means that the Council has a discretion, as the local authority with the power to make the decision, to agree or not agree to make a diversion order. There is nothing explicit in sections 119 (1) , (5) or (6) of the Act which requires the Council to make an Order if all of the conditions in these sections are met.
- 5.3 Bond Dickinson believe that the Council should make a diversion order because, in their view, the "legal tests" in s119 are met and it is wrong for the Council to take into account any other factors. Officers do not agree with this proposition. Officers agree that the diversion would be in the interests of the landowner but are not satisfied, taking into account s119 (6), that it would be (if an Order had been made and not objected to) expedient to confirm the Order.
- 5.4 The reasons why it would not be expedient are set out in the main body of the report above and include the outstanding Judicial review, the fact that the public bridleway is obstructed by the landowner and that Melkridge Parish Council does not wish a right of way to be diverted onto its land.



NORTHUMBERLAND

Northumberland County Council

Infrastructure
Local Services
County Hall Morpeth Northumberland
NE61 2EF

Public Rights of Way

Public Bridleway to be Closed



Public Bridleway to be Created



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O.S. Map NY 76 SW

Definitive Map No 204

Scale: 1/2500

Former District(s) Tynedale

Parish(es) Melkridge

Date: June 2017

Appendix

1. Letter from Bond Dickinson dated 23 June 2017
2. Letter from Bond Dickinson dated 21 February 2017
3. Letter from Bond Dickinson dated 27 April 2017
4. Email from Highways England dated 24 May 2017

23 June 2017

Mr D Brookes
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Our ref:
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Your ref:

By post and email

Email: david.brookes@northumberland.gov.uk

Dear Sir

Public Bridleway No 41 Parish of Melkridge

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Such proceedings will of course no longer be required if the route is diverted and an Order on that basis made and confirmed.

We should be obliged if you could acknowledge receipt.

Yours sincerely



Bond Dickinson LLP

Enclosures

1. Letter dated 21 February 2017
2. Letter dated 27 April 2017

21 February 2017

Mr P Bracken
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Our ref:
CB6X/FMO/LYD/0008.2
Your ref:

Dear Mr Bracken

Definitive Map Modification Order (No) 20 2013 Restricted Byway No 41 (Parish of Melkridge)

Further to previous correspondence in this matter and in particular our letter to you dated 3 October 2016 and your response dated 7 October 2016, we have subsequently contacted Melkridge Parish Council as requested by you. We attach a copy of our letter to the Parish Council dated 13 December 2016 offering a meeting to discuss the matter and requesting the Parish Council to reconsider its earlier decision not to agree to the proposed diversion of the bridleway running along The Lonnen onto the adjacent field owned by the Parish Council ("the Proposed Diversion Order"), which decision was made without taking into account any representations from The Lonnen's Landowner, namely Mrs Halbert for whom we act. In its attached e-mail of 2 February 2017, the Parish Council notified us of its formal decision to decline our invitation to meet and to inform us that its view was that any communication by us in relation to the proposed Diversion Order should be with the County Council.

Consequently, we now hereby make a formal application to the County Council to make the Proposed Diversion Order pursuant to section 119 of the Highways Act 1980 ("the 1980 Act") on the grounds set out below.

Background

On 26 July 2016, the Secretary of State confirmed with modifications the Definitive Map Modification Order (No) 20 2013 Restricted Byway No 41 (Parish of Melkridge), made by the County Council, which had the effect of adding a public bridleway to the Definitive Map along The Lonnen running between the A69 and the U7070. Our Client has lodged a statutory challenge to quash that Order, which proceedings are currently stayed by consent in order that alternative solutions can be pursued. This letter is written entirely without prejudice to those proceedings, and specifically with a view to seeking to resolve the ongoing matters by consent and without a need for further litigation.

In December 2015, The Lonnen was severely damaged and eroded by flooding. There remains a channel approximately 5 feet deep along its entire length with insufficient space either side for pedestrian or equestrian use. The Council has agreed that The Lonnen is unsafe for public use and should remain closed whilst in its current dangerous state.

Section 119(1) criteria

By virtue of section 119(1) of the 1980 Act, the County Council may make a public path diversion order where it appears to be expedient to do so either in the interests of the landowner or in the interests of the public. In the present circumstances, it is apparent that it would be in the interests of both the Landowner

of The Lonnen and of the public to make such a diversion order to divert the public bridleway from The Lonnen onto the adjacent field.

As to the public interest, The Lonnen is currently seriously eroded and unsafe for public use due to natural causes, namely the flooding which occurred on the A69 in December 2015. The Landowner has no duty to maintain The Lonnen and has no intention of doing so nor of contributing to the cost of such. The maintenance required to repair The Lonnen to a safe condition for use by pedestrians and equestrians is substantial and the cost of such would have to be borne solely by the public purse. Unless and until such works are undertaken, the route is required to remain closed and unavailable for any public use. Moreover, the cost of its ongoing maintenance would similarly have to be met from public funds.

In addition, it would be in the Landowner's interest for the Proposed Diversion Order to be made. Given the location of The Lonnen and its coverage by trees, prior to its closure by the Landowner, it was used by poachers and others partaking in anti-social and other unlawful activities. That in turn gave rise to serious security and safety concerns on the part of the Landowner given the proximity of The Lonnen to Melkridge Hall. Indeed, it was those very concerns arising from such use that led to the initial closing of The Lonnen on behalf of the Landowner, which in turn led to the invalid application for the Definitive Map Modification Order being made.

Section 119(6) criteria

Moreover, the factors relevant to the confirmation of the Proposed Diversion Order as set out in section 119(6) of the 1980 Act would also be met. The diverted bridleway would not be substantially less convenient to the public. It is of note that the test in relation to that factor is that the diverted bridleway must not be "*substantially*" less convenient to the public. The proposed diverted route would follow a very similar route between the A69 and the U7070 on land immediately adjacent to The Lonnen. The adjacent land is level, safe for public use as a bridleway and would not result in any materially longer distance having to be travelled by those using it.

It would also be expedient to confirm such an Order taking into account the three specified factors in section 119(6). Firstly, the proposed diversion would have no adverse effects on the public enjoyment of the bridleway as a whole. On the contrary, the experience of the user would be positively improved given the more open views experienced along the proposed diverted route, and its increased safety from being gated at either end in contrast to The Lonnen, particularly where it meets the heavily trafficked and fast moving traffic on the A69. Secondly, the Proposed Diversion Order would have no effects on any land served by The Lonnen given that no premises are served by it. Thirdly, the Order would have no adverse effects on the land over which the bridleway would be diverted, namely the adjoining field. That land is owned by the Parish Council, and is currently open to the public who already have recreational rights over it.

Moreover, in considering that latter point, the County Council is required by section 119(6) to take into account the compensation provisions, which specifically include the compensation that may become payable under section 28 of the 1980 Act as applied by section 121(2). Their effect is that the Parish Council would be entitled to compensation for any resulting depreciation in value of their interest in the land over which the diverted bridleway would run or any resulting damage to its enjoyment of its land. Those provisions have two important effects. Firstly, any such loss, which is unlikely in any event given the particular circumstances, will be subject to full compensation in any event. That must be taken into account by the County Council in determining the effects of the Order on the Parish Council's land. Secondly, as any such loss is subject to compensation, there is no requirement for the owner of the land onto which a public right of way is diverted under section 119 to consent to the order. That is in notable contrast to a diversion order made by a magistrates' court under section 116 of the 1980 Act in relation to which such consent must be given by virtue of section 116(8)(a) as no compensation is payable for such orders.

Other criteria

In addition, the Proposed Diversion Order would not alter the points of termination of the bridleway other than to other points on the same highway, thereby complying with section 119(2).

Finally, we confirm on behalf of the Landowner that if the Order is made and duly confirmed, she will be prepared to meet the reasonable costs for the provision of new gates at either end of the diverted bridleway, any other reasonable costs required to bring the diverted route into a fit condition for use by the public, and any compensation that may become available under the statutory provisions.

Conclusion

Given that all the applicable statutory criteria are met, it is our view that the Proposed Diversion Order ought to be made by the Council. Indeed, we note your previous observation in your letter dated 7 October 2016 that an application for such would be considered favourably by the Council. Taking into account all the above matters, we accordingly request the County Council to proceed to formally consider this application made on behalf of Mrs Halbert to make the Proposed Diversion Order.

Yours sincerely

Frank Orr
Legal Director
Bond Dickinson LLP



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27 April 2017

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CB6X/FMO/LYD/0008.2
Your ref:
PB/010318

By post and email

Dear Mr Bracken

Definitive Map Modification Order (No 20) 2013 Restricted Byway No 41 (Parish of Melkridge)

I write further to your letter of 13 March to which I responded initially on 16 March. I then wrote further on 28 March and 24 April on each occasion requesting details of the County Council's decision. Notwithstanding that I have yet to receive any reply from you, I respond to your 13 March letter as follows.

You raise two specific queries as follows:

- (i) *When your client is proposing to permit Highways England to carry out the culvert diversion works, and;*
- (ii) *When your client is proposing to remove the obstructions to the bridleway at either end of The Lonnen, and if your client is not prepared to do so, can you advise why?*

I would respond as follows.

- (i) No agreement has presently been reached between our client and Highways England in respect of drainage works. Furthermore as Highways England is aware it is necessary that the diversion of the bridleway is effected before any drainage works be carried out. In addition, in any event please note that it does not necessarily follow that any drainage scheme to be agreed would in due course be compatible with use of the Lonnen as a bridleway.
- (ii) As the County Council is aware the Lonnen has suffered extensive damage to and erosion as a result of flooding and water run-off from the A69. You have previously received from us photographs which clearly show its condition. Since the photographs were taken I understand that, if anything, its condition has worsened. For the avoidance of doubt, can you please confirm that the County Council's position is that it requires the Lonnen to be opened in its current acknowledged state.

In respect of other points you make in your letter, I would comment as follows.

You state that *"the bridleway has suffered substantial erosion due to water flowing down the bridleway from the culvert running under her land occasioned by the culvert being obstructed, as we are advised by your client's son-in-law, by the roots of trees growing on your client's land"*. This is incorrect. We have

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spoken to Mr Gary Lydiate, our client's son-in-law, who confirms that notwithstanding that there are roots of trees present in our client's garden the cause of the overflow is run-off from Highways England's land down the Lonnen, most particularly in times of heavy rain. Indeed that is why, as you acknowledge in your letter, Highways England wishes "to undertake a drainage scheme for surface water from the A69...".

In respect of the progress of this matter we are both disappointed and surprised by the apparent about turn taken by the County Council.

You will of course recall that by letter of 7 October you confirmed the position as follows:

"The proposal to divert the public bridleway onto a new alignment is not without merit and would be considered favourably by the Council. As the proposed diversion is onto land owned by another landowner, the Council would need to be satisfied that the landowner had agreed to the route being diverted onto his/her land and that your client would agree to pay the expenses of the physical works needed to create the new bridleway and also any compensation which may be claimed".

Moreover that position and viewpoint was expressly confirmed as having been reached following discussions with your instructing officers.

Subsequently the County Council agreed to a stay of the challenge proceedings to enable discussions and negotiations to proceed in line with the above stated position. Whilst we acknowledge that we have not as yet obtained the consent of the Parish Council, its stated position is nonetheless that we should refer our request for diversion to the County Council. We have formally done so by way of letter dated 21 February. In that letter we expressly met the criteria you identified in your letter of 7 October as to costs and confirmed that our client is prepared to pay for the necessary diversion works and compensation payable.

We have subsequently had telephone conversations and email correspondence again seeking to progress matters on the above basis.

However, by your letter of 13 March the County Council appears to resile from its previously established position and has – out of the blue – decided that it refuses to consider our application for diversion.

Given that the County Council has acknowledged the merits of our suggested solution - which has very significant benefits, not least to the public purse - and has actively encouraged us to pursue that solution over the past months this sudden change is unexpected and is very much regretted.

Notwithstanding our letters of 16 March, 28 March and 24 April, we still await from the Council details of how and when it reached its decision and pursuant to what delegated authority.

Yours sincerely



Frank Orr
Legal Director
Bond Dickinson LLP

RE: Draft Committee Report

1 message

Dobson, Ben <Ben.Dobson@highwaysengland.co.uk>
To: David Brookes <david.brookes@northumberland.gov.uk>

24 May 2017 at 13:17

David,

I am happy to endorse the section that refers to our proposed works. It reflects our current position and mitigating actions should that position not be taken forward.

Ben Dobson

A19 & A69 Department's Representative

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GTN: 0300 470 2679

From: David Brookes [mailto:david.brookes@northumberland.gov.uk]

Sent: 24 May 2017 11:08

To: Dobson, Ben

Subject: Draft Committee Report

Ben

Further to our discussion last week I attach a draft report which will be going to our rights of way committee. There is a small section relating to the HE issue based on our conversation.

If you are content with this let me know, if you want to make a more official response that would also be welcome.

Regards

David

—
David Brookes

Infrastructure Records Manager

Technical Services

County Hall

Morpeth