



DEVELOPMENT CONTROL AND REGULATORY BOARD

10th OCTOBER 2019

**APPLICATION FOR A PUBLIC PATH DIVERSION ORDER -
PROPOSED DIVERSION OF PUBLIC BRIDLEWAYS D6 AND D43
(PARTS) AT QUENBY HALL, HUNGARTON (HARBOROUGH
DISTRICT)**

**JOINT REPORT OF THE CHIEF EXECUTIVE AND THE DIRECTOR
OF ENVIRONMENT AND TRANSPORT**

PART A

Purpose of the Report

1. The purpose of this report is to seek determination of an application by Mr. and Mrs. Allen to divert Public Bridleways D6 and D43 at Quenby Hall, in the Parish of Hungarton, in Harborough District. The proposed diversions are shown on Plan No. 2483/P attached as Appendix A to this report.
2. Under the proposal Bridleway D6 would be diverted from the route A-I-B-C-D-E on the plan, to the route A-F-B-G-E and Bridleway D43 would be diverted from points H and I on the plan to points H and J on the plan.

Recommendation

3. It is recommended that an Order be made to divert the Bridleways D6 and D43 at Quenby Hall as shown on the Plan no. 2483/P appended to this report.

Reasons for Recommendation

4. The application to divert the paths as it relates to Bridleway D6 and D43 satisfies the relevant statutory criteria set out under the provisions of the S119 of the Highways Act 1980. It is in the interests of the occupier and the alternative route is not substantially less convenient and would not have a significant negative effect on public enjoyment of the path as a whole.

Resource Implications

5. The applicant has constructed a trackway on the proposed alternative route. Future maintenance of the track will remain the responsibility of the occupier.

Circulation under the Local Issues Alert Procedure

6. A copy of this report has been sent to Mr. S. J. Galton CC (Launde division).

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PART B

Background

7. In February 2018 the Council received an application from Mr. and Mrs. Allen of Quenby Hall, Hungarton, for the diversion of Public Bridleways D6 and D43 (Parts) within the curtilage of the Quenby Hall Estate. A copy of the Application is attached as Appendix B.
8. The full reasons given for seeking the diversion of Bridleway D6 are outlined in the application. The primary reason given is the wish to see a 'lost' Italianate garden reinstated between the Hall gardens and the woodland to the south which would necessitate the diversion of Bridleway D6. The other reason given is to improve privacy.
9. The application also seeks to divert another Bridleway, D43, also shown on the plan. This was not part of the original proposal but was suggested by the Rights of Way Officer on the basis that if it was agreed to divert Bridleway D6, Bridleway D43 might be diverted at the same time to follow a better, more commodious route for the public to follow.
10. It was originally intended that this application would be considered at the meeting of the Development Control and Regulatory Board on 11 July 2019 and a report was produced as part of the papers for that meeting however the report was withdrawn to enable officers to give further consideration to new information that had been received.

Legal Considerations

11. The County Council must have regard to the legal considerations set out in the Highways Act 1980 as detailed below.

Highways Act 1990 (Section 119)

12. The primary criteria which must be met before a Highway Authority makes a public path diversion order are as follows:-
 - a) Before making an order the Authority must be satisfied that it is expedient to divert the path in the interests of the public or the owner, lessee or occupier of the land crossed by the path.
 - b) Before confirming an order the Authority or the Secretary of State must be satisfied that:-
 - i) The diversion is expedient in the interests of the person(s) stated in the order,
 - ii) The path will not be substantially less convenient to the public as a consequence of the diversion,

- iii) It is expedient to confirm the order having regard to the effect it will have on public enjoyment of the path as a whole, on other land served by the existing path and on land affected by any proposed new path, taking account the provisions for compensation.

13. An authority should not make an order if it does not consider that the statutory criteria to enable it to confirm the order can be met.

Site Inspections

14. Initial site meetings with the prospective applicants were held on 28th September 2017 and 18th December 2017. A further site visit was made on 15th January 2019 in the company of the Council's Highways Solicitor to further review the viability of the proposed diversion. A site survey plan is attached as Appendix C. Photographs from these visits are attached as Appendix D, along with a plan showing the positions from which these photographs were taken (Appendix E).

The Existing Route of Bridleway D6

15. The existing route of bridleway D6 starts from the west and follows the tree-lined, tarmacadamed access drive leading to Quenby Hall through attractive parkland. It crosses a brick-built bridge (photograph 13) and continues towards the Hall. Around 100 metres from the Hall the bridleway reaches a junction of the access road at point 'B' on the plan (photograph 1) where a track leads off to the north-east towards the Hall stables.

16. As can be seen from the photograph, this offers a vantage point from which to view Quenby Hall and much of the detail of its architecture. At this point the bridleway departs from the drive, curves to the south-east across grassland and passes through a gateway (photograph 3).

17. The bridleway, which at this point is quite close to the ha-ha wall, curves away from it in a sweeping semi-circle. The definitive legal line of the bridleway does not therefore run alongside the ha-ha wall, but because the formal route describes an imaginary curve not defined on the ground through the grass, members of the public tend to walk alongside the wall.

18. From the legal line of the bridleway the Hall can be viewed throughout the seasons between the trees. (photograph 5).

19. There are good views from this location of the surrounding countryside although the woods and hills to the south are somewhat distant with much grassland in the foreground as the path sits on top of a plateau (photograph 6).

20. The bridleway then swings around to the north-east in an arc across grassland around the Hall and then joins a stony/gravel track at point 'D' (photographs 7, 8, 9 and 10).

21. The path then follows this track eastwards for around 200 metres to point 'E' on the plan where, the diverted path would re-join the unaffected section of bridleway (photographs 10, 11 and 12).
22. The section of the bridleway proposed to be diverted is approximately 920 metres long and mainly runs on gentle slopes over, grass which includes short surfaced parts. It offers easy walking and riding, and provides good views of Quenby Hall and the surrounding countryside .

Proposed Alternative Route

23. The proposed alternative route for bridleway D6 departs from the unaffected part of the route at point 'A' on the plan diverging at an angle along a grassy track for around 100 metres before passing through a gateway at point F. This new route would mean pedestrians would not cross over the bridge shown in photograph 13. The proposed route offers a side on view of the structure as a whole.
24. Prior to lodging the application for a diversion, Mr. and Mrs. Allen had consulted the British Horse Society, the Leicestershire and Rutland Bridleway Association, the Ramblers Association, the Leicestershire Footpath Association and the Hungarton Parish Council about their proposed alternative route. A concern was that the alternative was muddy. The applicants have addressed this by laying down a sand/gravel/grass seed mix to provide a firm and dry walking and riding surface. (The work was carried out on the Applicants' own volition, not at the Council's request). It provides a good walking and riding route that should be usable at all times of the year.
25. The alternative route then turns south-east and follows the newly constructed wide surfaced track downhill. The surface is designed to grass over to form a natural-looking, well drained and firm surface for walkers and horse riders. This has begun to happen.
26. Views available from this section of the route are illustrated in photographs 14, 15, 16, 17, 18 and 19. At the start of this section the Hall can still be seen and the slope of the land opens up to a wide vista over the surrounding countryside and woodland. Towards point 'G' on the plan the gradient becomes steeper and reaches a maximum of around 1 in 5 for a short distance of approximately 100 metres. Whilst walking downhill this poses no difficulty. Using the route the other way, it does pose a short steep section. At point 'G' the proposed new bridleway then proceeds through a new gate to the south of woodland within which is the site of earthworks related to the old hall and village of Quenby (photograph 20). The bridleway then heads north-east continuing along the new track for approximately 600 metres traversing open pastureland. This section of track has an average gradient of around 1 in 20. The proposed path is now flatter than areas of ridge and furrow in the surrounding field.
27. Fine views of the surrounding countryside can be observed from this section of the alternative route (photographs 21, 22, 23, 24 and 25).

28. The Hall can be seen from this section of path at a distance. There are individual trees which limit the view at times. (photographs 23 and 25).
29. The proposed alternative bridleway is approximately 1,080 metres long compared to the original route which is approximately 920 metres; an extra 160 metres. A good walking speed on a ramble is around 3 miles an hour so the extra 160 metres equates to around 2 minutes extra walking time. The route is easier to use as it is on a track but the land levels change more than on the existing path.
30. The full length of bridleway D6 from its start on Barley Leas, Hungarton to its end on Hungarton Road, Cold Newton is approximately 2,350 metres (2.35 kilometres or nearly one and a half miles). At three miles an hour this would take around 30 minutes to walk.

Formal Preliminary Consultations

31. Preliminary consultations were carried out between Thursday 30th August 2018 and Thursday 4th October 2019. Utility companies, user groups, the Parish Council, the County Planning Archaeologist and other interested parties were consulted by letter or email.
32. The Council received no objections from the local horse riding and walking user groups during the above consultation period, nor any objections from utility companies or from the District or Parish Councils.
33. The County Planning Archaeologist did not object to the order.
34. Two objections to the proposal were lodged, by Mr. L. Faulkner (Appendix F) and Mr. G. Barnett (Appendix G) and a representation of concern about the proposal was received from Mrs V. Dennison (Appendix H).
35. The Applicants were invited to comment on the representations and their responses are attached as Appendix I.

Objections/Representations and Officer Comments

Mr. Faulkner (local resident)

36. Mr. Faulkner considers that the public enjoyment would be adversely affected by the diversion. His main reasons for this are that by diverting the bridleway the public would be deprived of what he describes as *“a magnificent view of the façade of Quenby Hall as you approach from the west along the driveway”*. Mr. Faulkner also takes the view that the diversion of the bridleway would diminish panoramic views of the landscape on both sides of the existing route.

37. By diverting the route, the public are further away from the building. However, the building is still in view on the alternative route albeit at a greater distance. The alternative route also offers improved views over the land to the south.
38. Mr. Faulkner goes on to express concern that the alternative route would be substantially less convenient in terms of it being a lengthy diversion over undulating terrain and having a dog-leg in the middle of it.
39. Measurements of the whole route of the bridleway from start to finish, of the existing route and of the proposed alternative as described in paragraphs 32 and 33 above, demonstrate that the extra length of path to be walked or ridden as per the proposed alternative is only 160 metres, adding only 2 minutes extra walking time to an overall journey time for a walker of around 30 minutes. Therefore, it is considered that in terms of path length the diversion would not make the path substantially less convenient.
40. There is not a dog-leg as such in the proposed route but rather a change of direction which gives the proposed alternative route a wide 'V' shaped appearance on the map. This, again, does not make the proposed diversion substantially less convenient. However, the diversion would require walkers and riders to drop downhill and then journey back uphill.
41. Mr. Faulkner raises the issue of those with disabilities being inconvenienced by the diversion of the bridleway off the access drive, being deprived of the closer view of the Hall. This would be correct, though an attractive view is still available where the proposed paths leave the drive.
42. Mr. Faulkner also suggests that the diverted route would be less convenient for disabled people and those perhaps with pushchairs. The Applicants have responded to the effect that they have provided the alternative route with a wide stone/sand/grass type surface that would be available to less able users and those with push chairs throughout the entirety of the proposed diversion, whereas the existing route crosses substantial areas of grassland where there is no hard surface. It is likely that some people would find the alternative route more convenient in terms of surface. Some will find the new route more challenging due to the changes in elevation, including the short steep section.
43. Finally, Mr. Faulkner raises the issue of the applicant's desire to re-construct an Italianate garden and to improve their privacy. The development of an Italianate garden would require discussions with the local planning authority and English Heritage as the parkland is Grade 2 listed. It may even require the path to be moved under different legislation. The authority is not aware of a time table for exploring the possibility of a new garden. The other reason given by the applicant is for privacy and this is the criteria being judged.
44. It is not necessary under the terms of the legislation for the applicants to demonstrate that lack of privacy is currently causing a problem. They only have to show that the diversion would be in their interests. Moving a path further from a property is considered to be sufficient reason to give for

applying for a diversion on the basis that it is in the interests of the landowner to so.

Mr. Barnett (local resident)

45. Mr. Barnett's objections are very similar to those of Mr. Faulkner. He first states that the alternative route will be more difficult to use in winter because it will not run across the same types of surfaces as the original. However, it is noted that the applicants have surfaced the alternative route, so it should not be substantially less easy to use in this respect. Most of the current diverted route runs across a grass field.
46. Mr. Barnett goes on to say that the new route will make the length of the bridleway substantially greater. As explained above, the new route only adds 2 minutes walking time.
47. Mr. Barnett next raises the issue of views of the Hall from the existing route as compared to the alternative route. He considers that views of this historical feature would be the poorer for example by the loss of the "*grand approach view of Quenby Hall*". The path will still use the approach albeit breaking off at an earlier point. The Hall will be further away because the point the path leaves the drive is further away. Conversely this is the reason for the application. The Hall is still visible from a number of points on the alternative route but details are more difficult to ascertain.
48. Mr. Barnett considers that there would be a loss of panoramic views if the path were diverted. The views of the surrounding countryside from the alternative route are good, in part due to the elevation changes.
49. Mr. Barnett comments concerning the Applicants' knowledge of the right of way prior to purchasing the Hall are not relevant. Any person may apply for a diversion.
50. Similarly, with regard to slight misuses of the path and surrounding grounds reported by the applicant it is reasonable for the Council to take the information relayed to it as believable, as it would be nothing out of the ordinary on minor highways.
51. Mr. Barnett considers that if the applicants were to proceed with developing an Italianate garden on the land concerned, it would not be necessary to divert the bridleway. As the applicants have not yet submitted planning permission for the gardens to the Local Planning Authority, and it is understood that there are as yet no plans drawn up it is difficult to speculate on this matter. It would seem reasonable to presume that if the bridleway were to remain where it was, this would have a significant effect on what the applicants could achieve, with regard to terracing, planting and so forth. It might well curtail what they wish to construct.

52. The applicant has not supplied any detailed proposals for a garden.
53. Finally, Mr. Barnett notes that the existing route is inadequately waymarked. The standard of waymarking in Leicestershire is generally good. However, officers would be happy to discuss improvements with the landowners.

Mrs. Vicky Dennison (local resident)

54. Mrs. Dennison does not object to the proposed diversion and considers that “the scenic view would be just as good, if not better than the existing route”. However, she expresses concern that the new route would remove the opportunity for horse riders to have a canter and that the new stony surface is “horrid” for horses. However, it is understood that the applicants have used the type of surface material they have for the very purpose of it eventually grassing over to provide a naturalised surface for users, while avoiding boggy areas. There is no obligation on the landowner or the Highway Authority to provide a surface suitable for horses to canter along.

Applicants’ Response to Representations

55. The Applicants’ response to the representations is attached as Appendix I and summarised below.
56. Mr. and Mrs Allen note that the existing route is often wet and goes over ridge and furrow. They state that the distance and gradient of the proposed alternative was not considered a significant impediment by the user groups they consulted in 2017 nor by those who were at the Parish Council meeting in May 2017. The proposed new route would rise from the Spinney on a gentle incline, on a wide, flatter, more solid surface which could be used by those with pushchairs or mobility scooters. They cite a local rider who uses the proposed diversion regularly and was happy to endorse the route and an older local resident who considered that the diversion was walkable, having seen and walked part of the route including to the bottom off the Spinney.
57. The Applicants suggest that the new view would be as good as the existing, showing the Hall in an elevated position from both the south-east and south-west, and framed amongst the historic trees. It is also pointed out that the new route would enable a new view of the Coplow and the old railway line. The new view of the Hall from the south-west looks across the landscaped old quarry which is grassed and to be sown with wild flowers. As explained to the Parish Council, the Applicants’ plans for the future include a view of the restored Medieval garden and the installation of a site board setting out its history and another bench to the south-west of the Hall (suggestions from local parishioners). It is stated that at the Parish Annual Meeting in May 2017 the plans were outlined, and the proposal received overwhelming support.
58. The Applicants also add that some people have climbed up the ha-ha wall and trespassed on the Hall garden.

Conclusion

59. Under S119 of the Highways Act, the authority needs to be satisfied that the proposal is in the interests of the occupier of the land, before considering making an order. The land subject to the order is in the ownership of the applicant. It is considered that the diversion would be in the Applicants' interests. It would place a greater distance between the Hall and the public right of way thus providing greater privacy.
60. The authority could not confirm the order unless it was satisfied that the diversion is not substantially less convenient to the public. The proposal is not significantly longer, adding just 2 minutes to the journey. The gradient of the existing route is on a gentle rise. The alternative route does go down a slope. On one side this is a longer fall of about 1 in 20. On the other it includes a short 1 in 5 section. These sorts of height changes are not an unusual circumstance on the rural path network. The user groups or the local Parish Council did not raise this as an issue.
61. Before confirmation, the authority is also required to consider the effect the diversion would have on public enjoyment of the path as a whole. A walker using the route would currently take about 30 minutes currently. With the proposal this will increase to 32 minutes. As regards views, Mrs. Dennison agrees that landscape views from the proposed new route are in some respects better than those of the existing route, but Mr. Barnett and Mr. Faulkner take an opposite view. It is the opinion of officers, that on balance, there would be no significant diminution of the quality of landscape views.
62. With regard to the views of the Hall, moving the path further away will have an effect. The legislation allows for a path to be moved further away from a home and privacy would be enhanced. However, the proposed alternative route does provide attractive views of the Hall albeit from a greater distance.
63. The proposal has been subject to preliminary consultations. The user groups (both walking and riding) have no objections. Of the responses received, their concerns have been considered above. The proposal is in the interests of the occupier. Looking ahead, the proposed route is not substantially less convenient to the path as a whole or has a significant effect on public enjoyment of the route. For the reasons set out above, it is considered that the Diversion order proposal is reasonable, and an Order should be made.

Equality and Human Rights Implications

64. The E.U. Convention Rights and the Articles that set out the rights of individuals (such as respect for family life) can impact on certain decisions where the Council is making decisions or setting policy of public access and Rights of Way issues. However, this impact is confined to the exercise of those powers and functions. The Council has to exercise discretion about proposals that require a balance between the benefits of the scheme and the potential adverse implications for landowners and others.

65. Proposals to divert a Right of Way or to use statutory powers to compulsorily create a new Right of Way should refer to the Convention of Human Rights and take these issues into account when deciding if that scheme should proceed.
66. However, applications submitted to the Council under the Highways Act 1980 for a Diversion Order has limited discretion .
67. For that reason, arguments based on a potential breach of any of the Article rights have no relevance to such applications. The Secretary of State has indicated that objections based on such rights will not be regarded as relevant.
68. The work already undertaken on the proposed diversion route has produced a firm and dry walking/riding surface, which it is intended, will grass over to produce a natural-looking and well-drained path. This might improve access for less able users. However, the increased gradient over a section of the proposed diversion would be likely to make access more difficult for others.
69. It is noted that people with disabilities would be inconvenienced by the shortening of the route on the drive..

Background Papers

Application to divert bridleways D6 and D43 and representations received (appended).

Appendices

- Appendix A – Proposal Plan 2483-P
- Appendix B – Completed Application
- Appendix C – Site Survey Plan 2483-SS
- Appendix D – Site Photographs
- Appendix E – Site Photos Plan 2483-SP
- Appendix F – Objection from Mr. L. Faulkner
- Appendix G – Objection from Mr. G. Barnett
- Appendix H – Representation from Mrs V. Dennison
- Appendix I – Applicants' Comments on Representations

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