



## **Public Path Order 2024**

### **Part Diversion of Public Bridleway M463 in Parish of Wishaw**

On 4 June 2024, Warwickshire County Council (“the OMA”) made an Order under Sec 119 Highways Act 1980 to divert (in part) Public Bridleway M463 having satisfied itself that it is expedient in the interests of the owner of the land crossed by the way in question and that the necessary legal tests have been met. The Order has received objections which have not been resolved.

The OMA seeks confirmation of the Order as made.

#### **Location**

The parish of Wishaw lies in the Northwest of Warwickshire and borders on to the town of Sutton Coldfield, West Midlands as shown on the location plan attached (Doc. Ref. 12).

Public Bridleway M463 connects the D373 Grove Lane to the C10 Holly Lane as shown on the plans attached (Doc. Ref. 12).

#### **Background**

In 2021, an application was received by Warwickshire County Council for the partial diversion of Public Bridleway M463 (“the Path”) as shown on the Order plan attached (Doc. Ref 01 a&b) The application was made by Mr Paul Archer, the landowner.

From point A on Grove Lane, the definitive route of the Path passes through a metal gate into a commercial yard before turning North and then travelling adjacent to the M6 Toll Road in a generally North-Westerly direction until it reaches Holly Lane.

The current Path was diverted to its existing route by the Birmingham Northern Relief Road (Side Roads) Order 1998 (Doc Ref. 20) and set out with an awarded width of 2.4 metres by the Warwickshire County Council Definitive Map Modification Order 1/2001(Doc Ref. 21) and subsequently confirmed by Planning Inspectorate Decision ROW/327510.

The section of Path to be diverted (A-B) is approximately 570 metres in length.

The proposed route is approximately 550 metres in length, would leave Grove Lane at a break in the hedgerow at Point C (Appendix C), crossing arable fields and livestock pastures via two Bridle gates (Points D and E) before rejoining the existing Path at Point B. The proposed route would be awarded a width of 4 metres. The proposed diversion would cross land also owned by Mr Archer and no other landowners are affected.

The applicant states that it is in his interests to divert the Path as it currently enters a commercial agricultural yard which is accessed by heavy and light commercial vehicles creating health and safety concerns and would also allow the security of that yard to be maintained.

The Order as made would require the diverted route to still join the D373 Grove Lane which is a single carriageway regulated by a 60-mph speed limit. Grove Lane does not enjoy a footway although there is varying provision for grass verges at different points along its length. The distance between the current and proposed access points to D373 is 327metres. It was noted that neither the current nor proposed routes afforded access to any other Bridleways meaning riders would have to either join the carriageway or turn back in either instance and walkers would have to negotiate the carriageway should they wish to continue on a PROW (Footpaths M5 and M7). All users of both the current and proposed route would be subject to the same prevailing traffic, lighting and physical features requiring an equal exercise of caution in both cases.

### **Informal Consultations**

Informal consultations were undertaken with the local County Councillor (Councillor M. Watson), North Warwickshire Borough Council, Wishaw Parish Council, The Ramblers, The Open Spaces Society, Byways and Bridleways Trust, The British Horse Society, The British Driving Society, The Auto Cycle Union, GLASS and The Trail Riders Fellowship. In addition, Statutory Undertakers were informed.

The Ramblers had no objections describing it as a 'welcome proposal'.

The British Horse Society supported the proposal at that stage.

The Statutory Undertakers had no objections (or even responded).

A Wishaw Parish Councillor (Alison Burgoyne) stated that they were opposed although the Council itself did not respond. Minutes from the Parish Council meeting 31 June 2024, however, record that the Council are now in support of the application.

The Open Spaces Society opposed the Proposed Order.

Dave Massey, a local resident, opposed the Proposed Order.

Peter Norris, an interested party, opposed the Proposed Order.

No other replies were received. Those parties raising objections at this stage were spoken to in person.

### **Making The Diversion Order**

A Public Path Diversion Order was made on 4 June 2024 and the necessary site notices posted on 7 June 2024. Copies of the notice were posted to the statutory list of bodies and interested parties on 5 June 2024. Notice of the making of the Order should have been advertised in the Tamworth Herald on 6 June 2024 however due to a clerical error, this did not occur. The Order was subsequently advertised in the Tamworth Herald on 28 November 2024 with an amended objection/representation period which concluded on 3 January 2025.

A copy of the Order is attached (Doc. Ref 01 a&b).

Notice publicising the Order and copy of Newspaper cutting are attached (Doc. Ref. 06).

The Order received letters of objection from:

- (i) The British Horse Society
- (ii) Jack Jennings, local representative of the Open Spaces Society (OSS)
- (iii) Dave Massey, a local resident
- (iv) Peter Norris, an interested party.
- (v) Alison Burgoyne. Ms Burgoyne claimed to speak on behalf of Wishaw Parish Council. It was subsequently revealed that she was no longer a Parish Councillor and that her views did not necessarily represent the elected body. She did not respond to further requests or following publication of the Order.

#### **Details Of Objections (and responses where appropriate)**

##### **British Horse Society**

**Point 1.** “The proposed diversion at point C is 327 metres from the current entrance to the Bridleway which we consider to be unreasonable and not commodious or enjoyable.”

**Point C is on the same stretch of carriageway as the existing route and offers far easier access through a wide unregulated break in the hedgerow as opposed to a sharp concrete incline leading to a commercial yard. It is unclear from the objection how this is in any way less commodious or enjoyable.**

**Point 2.** “Options for an alternative access to the Bridleway close to the existing entrance should be fully explored.”

**The application route is expedient in the interests of the owner (as stated in the order) in as much as it addresses issues with the current route and affords an acceptable alternative. The viability of a ‘behind the hedge’ route was considered but as the route does not connect with any other Bridleways at either end, users would still have to negotiate a carriageway on leaving the path and such an option would offer no major benefit.**

**Point 3.** “The section of Grove Lane which would need to be used for access to the proposed diversion is unsafe with no verges for refuge, which would be exacerbated if a gate were reinstated at point C.”

**Although not total, there are section of verge along Grove Lane. The provision of verges for equine road users (or pedestrians) is not a prerequisite and in this instance is not considered necessary or desirable. Grove Lane is not the sole point of access to the**

existing bridleway and the 'other end' of the route at Holly Lane is similarly laid out. The diversion of the route should have no discernible impact on any assessment of risk by users choosing to access the carriageway on leaving the right of way. There is no provision in the Order for a gate at point C.

### Open Spaces Society

**Point 1.** “The proposed route is not substantially as convenient.”

**The proposed route is approximately 20 metres shorter than the existing one and removes the need to negotiate a commercial yard (potentially riding a horse).**

**Point 2.** “The exit onto Grove Lane is not conducive to the safety of (users).”

**The existing route exits onto exactly the same stretch of carriageway with the same prevailing circumstances.**

### Dave Massey

**Point 1.** “The new route was entirely chosen by the landowner, Mr Paul Archer who has no equine connections and chose the path entirely for his own convenience of his commercial venture and future expansion of his enterprise that blocked the original path.”

**The application route is expedient in the interests of the owner (as stated in the order) in as much as it addresses issues with the current route and affords an acceptable alternative.**

**Point 2.** “There has been placed a footpath, not bridlepath, post in the hedge to indicate the route.”

**At the moment the proposed route is 'advisory only' and should not be waymarked. Although a marker post was placed in error, there is no signage attached to suggest it is a right of way. The advisory nature of the route is clearly advertised at the entrance to the existing one.**

**Point 3.** “The amended route joins Grove Lane at a dangerous position , on a blind bend, both for riders, horses and vehicles. Grove Lane is a busy derestricted D class lane that will become much busier when the continuing Langley Sutton Coldfield housing development is completed. Grove Lane will become a major access route to Jnct. 9 of M42 and M6 toll. There was a very recent traffic flow survey carried out on Grove Lane.”

**It is difficult to counter the speculative assumptions regarding any increased traffic as a result of nearby developments. Appendix XX shows the view from the point where the proposed route meets Holly Lane and clearly shows that that it is not a 'blind bend' as claimed. Warwickshire Police were consulted and confirmed that there had been no injury road traffic collisions or collisions involving horses (with or without rider) in the last 5 years.**

### Peter Norris

“Not substantially as convenient”

Neither the proposed nor existing routes afford access to any other bridleways. Walkers are able to access footpaths M5 and M7 using the existing route but both require the user to traverse the D373 Grove Lane at present, and the proposed route would merely sustain that status quo. Mr Norris uses the phrase 'great connectivity' with regard to Ryefield Lane, but that road is also a carriageway with the same 60mph limit as Grove Lane, so it is unclear what point is being made. Any increased inconvenience to users as a result of diversion is not apparent and any increased risk similarly so. The argument ignores the fact that users of the proposed diversion would not have to negotiate a busy commercial yard.

### **Alison Burgoyne**

**Point 1.** “As a horse owner/rider the proposed 'new' access point where it will come out at point C on Grove Lane is completely unsuitable and dangerous. There is not a clear line of sight for either horse riders or motorists when exiting from the field onto the road, the field is lower and with the obstruction of the hedge and the way the road bends away it makes it impossible to have clear access/exit. As you are also aware this road is a national speed limit, which is utterly ridiculous, but only adds to the danger. “

**Point 2.** “The other consideration is with all the additional development going on around the local area, traffic volume is only going to increase. There are several horse riders in Wishaw and whilst I haven't spoken to everyone, the vast majority are of the same opinion that they would not use the bridleway as is planned currently.”

As the objections were not withdrawn, the Order was considered by the Warwickshire County Council Regulatory Committee on 3 September 2024, who subsequently agreed on 5 November 2024 that the matter should be referred to the Secretary of State for confirmation.

### **Criteria Considered by Order Making Authority**

In reaching its determination, the authority had regard to the 2023 DEFRA Guidance note. With regard to the Rights of Way Improvement Plan (Doc Ref. 22), the Order is compliant with relevant policies RW1, RW2a, RW5, RW5a and RW5c.

The Order as made would require the diverted route to still join the D373 Grove Lane which is a single carriageway regulated by a 60-mph speed limit. The physical nature of the carriageway was altered significantly by the development of the adjacent M6 Toll Road. Grove Lane does not enjoy a footway although there is varying provision for grass verges at different points along its length. The distance between the current and proposed access points is 327metres. It was noted that neither the current nor proposed routes afforded access to any other Bridleways meaning riders would have to either join the carriageway or turn back in either instance and walkers would have to negotiate the carriageway should they wish to continue on a PROW as there are none directly opposite either route. All users of both the current and proposed route would be subject to the same prevailing traffic, lighting and physical features requiring an equal exercise of caution in both cases. Consequently, the OMA was satisfied that the proposed route was at least as substantially convenient for users.

**1. Is the diversion expedient in the interests of the owner, lessee or occupier of the land crossed by the path or of the public?**

The applicant is the sole owner of land crossed by both the current and diverted routes. The diversion is expedient in the interests of the owner who is concerned about the 24-hour security of his site which is undermined by rights of way access, and diversion would allow for security to be maintained. His intention is to further develop the use of the site which already utilises machinery and large vehicles and diversion would allow for Health and Safety considerations to be addressed as the proposed route removes any potential interaction with farm machinery and large vehicles and the attendant risk.

**2. Is the diversion substantially less convenient to the public?**

The current route requires the user to traverse a concrete ramp before entering a goods yard and travelling to the rear of agricultural buildings before entering open fields adjacent to the M6 Toll Road. It enjoys a width of 2.4 metres. The gradient of the land (barring the ramp) is generally flat.

The proposed route would run across open field and pasture and would be regulated by two BS 5709 Bridle gates to facilitate the maintenance of livestock (sheep). Its width would be defined as 4 metres. The gradient (barring a difference in levels at one of the bridle gates addressed by a slope) is also flat.

The existing route requires the user to negotiate two sharp turns at its Eastern end (Doc Ref. 01) and is approximately 570 metres in length.

The proposed route is an almost straight line and is approximately 20 metres shorter. The key difference between the existing and current routes is the agricultural yard at the Eastern end of the current route. Thereafter the character of both routes is virtually identical comprising a combination of furrow and pasture.

There are no features of interest on the current route.

The proposed route similarly lacks specific features; however, it does have the advantage of placing users at a greater remove from both the M6 Toll Road and any potential disturbance created by commercial activities.

All costs relating to the creation of the proposed route have been met by the applicant meaning that any ongoing maintenance and upkeep costs for the authority would be no greater than those for the current route.

Health and Safety Executive Guidance outlines the risk presented by public access to agricultural worksites and this is compounded by the fact that users of the current may include both children and horse riders. (Appendix xx)

The proposed route significantly reduces this risk through avoidance of the yard.

The main theme of objections to the proposed diversion is the fact that users would have to traverse the D373 Grove Lane should they choose to utilise other public rights of way. This argument is countered by the fact that the current route has exactly the same prevailing conditions. There are no other Bridleways accessible from Grove Lane so in either instance equestrian users would have to engage with vehicular traffic should they not wish to retrace their steps along either route.

Data provided by Warwickshire Police has confirmed that there have been no injury vehicle collisions or collisions involving horses (both recordable by law) along the stretch of D373 affected by both the current and proposed routes in the last five years, suggesting that any concerns are not evidentially supported.

**3. Environmental Implications**

No issues have been raised as a consequence of the proposed diversion. The land crossed by the current and proposed path is not listed or designated i.e it is not a Site of Special Scientific Interest, Local Nature Reserve, Scheduled Ancient Monument, Area of Outstanding Natural Beauty or any other known listing for nature, conservation, 4 or amenity. Nor does the change in location bring the path closer to any of these listings. The diversion (by itself) is not likely to affect biodiversity and the diversion is not likely to increase the number of people using the path.

**4. Accessibility**

With the caveat that the proposed route crosses agricultural farmland and is naturally surfaced, the Diversion will be suitable for use by the public regardless of age, gender reassignment, pregnancy, race, religion or belief, sex or sexual orientation. The diverted route will have a width of 4 metres and will be of natural surface making it no less accessible than the current route.

**5. Procedural Issue**

The contested Order was considered by the Warwickshire County Council Regulatory Committee on 5 November 2024 and it was agreed that the Order should be forwarded to the Secretary of State for confirmation.

6. The OMA respectfully requests that the Secretary of State confirms the Order as made.