

CET/23/16

Public Rights of Way Committee
9 March 2023

Proposed Diversion: Bridleway No. 6, East Anstey

Report of the Director of Climate Change, Environment and Transport

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

1) Recommendation

It is recommended that a Public Path Diversion and Definitive Map & Statement Modification Order be made to divert Bridleway No. 6, East Anstey from the line A – B – C – D to the line A – G – F – E as shown on drawing no. CCET/PROW/22/15 and that if there are no objections, or if such objections are made and subsequently withdrawn, it be confirmed as an unopposed order.

2) Summary

This report examines a landowner application to divert a public bridleway in the parish of East Anstey to facilitate improved privacy, and to enable them to better enjoy use of their garden and paddocks. Additionally, the diversion will be of benefit to users of the bridleway by improving ease of access. The current proposal is shown on plan no. CCET/PROW/22/15.

3) Background

East Anstey Bridleway No. 6 was partially diverted in 2000 when a Community Care organisation purchased Blackerton and wanted to move the bridleway alignment out of the middle of the site to the edge. A report was presented to the Public Rights of Way Committee at its meeting on the 26th July 2000 with an Order made on the 21st August 2000 and confirmed on the 31st October 2000.

This current proposal follows on from an application initially made by a landowner, Ms Moore, in July 2019. The applicant was proposing to divert the path onto a different alignment. Informal consultations were undertaken in June 2021 and indicated broad support, including from statutory consultees.

A Diversion Order was subsequently made and published in December 2021. This generated twenty-one representations in support, but also seventeen representations raising objection to the Order. These objections focussed on the loss of direct access to the public right of way from private access points available to Blackerton residents and visitors. The bridleway provides an off-road route towards East Anstey village and the Primary School, as well as easy and safe access to the local countryside. Some Blackerton residents felt that the direct proximity of the bridleway was an asset to their hamlet, and that the path was well used.

A site meeting was held with the applicant in March 2022 to discuss options on how

to proceed given the high level of response, particularly in objection, to the Order. It was the officers' opinion that given the level of opposition raised to the Order, including on the basis of negative impacts on public use, the Order would have to be sent to the Planning Inspectorate for determination, and it was unlikely to be confirmed. Consequently, it was agreed that an alternative proposal was needed.

A potential option was considered for a permissive path enabling residents and visitors at Blackerton to connect with the proposed bridleway alignment. The County Council consulted on this in May 2022 as part of liaison to identify whether withdrawal of objections was feasible. This received virtually no response, with only two objectors responding and maintaining their objection. As a result, the County Council notified all the relevant parties in November 2022 that the Diversion Order was being withdrawn.

With regards to identifying a suitable alternative alignment, a site visit was held with the relevant landowners, Ms Moore and Mrs Wilkins to discuss and view a new potential diversion proposal and any works required as part of the process. Agreement was reached on the proposal as set out within this report, with parties viewing it as the best, most feasible option for landowners, Blackerton residents, and the public.

Mrs Ward of Blackerton House, a principal objector to the earlier proposal was not able to attend the site meeting, so another meeting was subsequently held with Mrs Ward and Councillor Yabsley, the local member. There was a good discussion, and Mrs Ward and Councillor Yabsley also acknowledged positive benefits to this 2nd diversion proposal.

The works schedule agreed with the relevant landowners includes:-

- Point A – finger post with two sign arms;
- Point G – finger post with two sign arms on the corner of the Classrooms property;
- Point F – existing field gate is retained, with a horse handle to be added to the gate, and waymarking on gate post in both directions;
- Point E – waymarking on end fence post in both directions; and
- Between points F and E – new stockproof fencing for paddock running parallel to existing fence, the width between the fences being the width of the existing field gate.

Further consultations were undertaken in December 2022 on this 2nd diversion proposal. This generated in an objection from a Blackerton resident, which is attached. East Anstey Parish Council and the British Horse Society have both indicated support for this 2nd proposal.

Given the number of objections to the previous diversion proposal and that an objection has now been received in response to informal consultation on the 2nd proposal, the application should be considered by the Public Rights of Way Committee.

4) Highway Considerations

Section 119 of the Highways Act 1980 sets out the criteria for making and confirming a public path diversion order. They are:

Section 119(1):

Whether it is in the interests of the owner, lessee or the occupier of land crossed by the path or way, or of the public that the path or way should be diverted.

The application to divert the way has been made by the landowner as the definitive line of the bridleway runs through a paddock containing livestock before zigzagging across the garden and running adjacent to the back patio door. The landowner would like to make better use of their garden and believes that horse riders do not like using the definitive alignment. Investigation of the 2000 Diversion Committee Report and subsequent Order has revealed that the used alignment from 2000 was not the same as the definitive alignment set out in that Order, and that the definitive alignment was probably not an accurate reflection of what was intended at that time. The applicant is not seeking to regularise the anomaly from 2000, as the route splits the garden into two parts.

Officer assessment is that this test is met. Whilst there is no requirement that a path diversion must also be in the interest of the public, it is considered that the public will also benefit from this current diversion proposal.

Section 119(2):

That an altered termination is on the same highway or a highway connected to it, and that it is substantially as convenient to the public.

The proposed diversion will not alter a point of termination.

Section 119(6):

Whether it is expedient to confirm the order having regard to:

Whether the path or way will not be substantially less convenient to the public.

This generally addresses issues of length, gradient, difficulty of using the proposed route, surface and safety. The new route will be 20 metres shorter than the existing route which improves the overall length of the way which is currently 1,477 metres. The gradients on both routes are similar. There is a grassy surface on both routes, with a relatively short length of the tarmac shared access also on the proposed route. The shared access roadway is only be used by the applicant, her neighbour, and her neighbour's self-catering cottage visitors. People should be driving along the roadway with due care and attention to other users. A finger post at point E on the corner of the Classrooms will be highly visible to all users of the roadway. There will only be one field gate at point F with a horse handle on the proposed route replacing two smaller hunting gates without handles on the current route, and so the proposal is of benefit to convenience. It is considered that these general requirements will be met.

And having regard to:

(a). the effect that the diversion would have on public enjoyment of the path as a whole;

This deals with issues such as views, noise (e.g., adjacent to a road), proximity of other routes. Both routes provide limited views of the surrounding countryside, though the proposal route gives a better view of the hamlet of Blackerton. The diversion will affect less than 1.5% of the length of the existing bridleway and is not considered to adversely affect the public enjoyment of the route 'as a whole'. The proposal does, however, take the new way further away from the Classrooms property and improve enjoyment of the way, by being less intrusive, as the current route zigzags through the Classrooms garden and passes right by the rear patio door. Additional benefits are that the proposal avoids a narrower width point and proximity to a drop in levels. The proposal retains access to the bridleway for residents of Blackerton.

(b). the effect of the coming into operation of the Order on land served by the existing right of way;

There is no change.

(c). the effect of the new public right of way on the land over which it is created (or land held with it);

The new way crosses a paddock in the ownership of the applicant, Ms Moore, and the shared access roadway in the ownership of Mrs Wilkins, and will not affect other land.

Any material provision in Rights of Way Improvement Plan.

The County Council's relevant policies state:

LP1A The making of diversion orders which are in the interests of the users and/or landowners will be supported. Examples of diversions in the interest of the public are those which achieve:

- i. a direct improvement in road safety for users; or
- ii. a direct improvement in provision of a circular route, or provide access to a national route, regional route, attraction or viewpoint.

LP1B Applications will be supported which seek to divert paths away from:

- i. residential buildings to improve privacy; and
- ii. working farmyards and farm buildings for safety reasons.

5) Options/Alternatives

The processing of diversion order applications is a discretionary power of the County Council. If the decision is taken not to proceed with an order the landowners have no right of appeal. The application is considered to meet the relevant legal tests and County Council policies.

6) Consultations

As set out above, the application is supported by the Parish Council, the British Horse Society and the ward member. The one objection is from an adjacent resident. This makes reference to concerns about safety, applicant knowledge of the footpath prior to purchasing and/or making modifications to their house, and proximity of the proposed route to their own property. Whilst these points are of concern to the individual objecting, they do not demonstrate that the application fails the required tests set out in the legislation for the making and confirmation of a diversion order. The applicant has reasonably demonstrated that the proposal will improve their privacy and enable them to make better use of their garden and paddock which are split in two by the existing bridleway; and will also improve the use and enjoyment of the way by the public.

7) Strategic Plan

The Council's Plan 2021 – 2025, <https://www.devon.gov.uk/strategic-plan/>, has, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

8) Financial Considerations

The County Council is not charging for the diversion order process, as it is resolving an historic anomaly. There are new or additional cost implications arising from maintenance requirements for the proposed alignment change.

9) Legal Considerations

The implications/consequences of the recommendation have been taken into account in preparing the report.

10) Equality, Environmental Impacts (including Climate Change) and Public Health Considerations

Equality, environmental impact (including climate change) or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

11) Risk Management Considerations

No risks have been identified.

12) Conclusion

The application would appear to meet the requisite legal tests for the making and confirmation of a public path diversion order and is in accordance with County Council policies. Works, including fencing and signage will be required for the new way, but the Order will state that the old way is not deleted until these have been carried out to the County Council's standards. It is recommended that an Order be made and published.

Meg Booth
Director of Climate Change, Environment and Transport

Electoral Division: South Molton

Local Government Act 1972: List of background papers

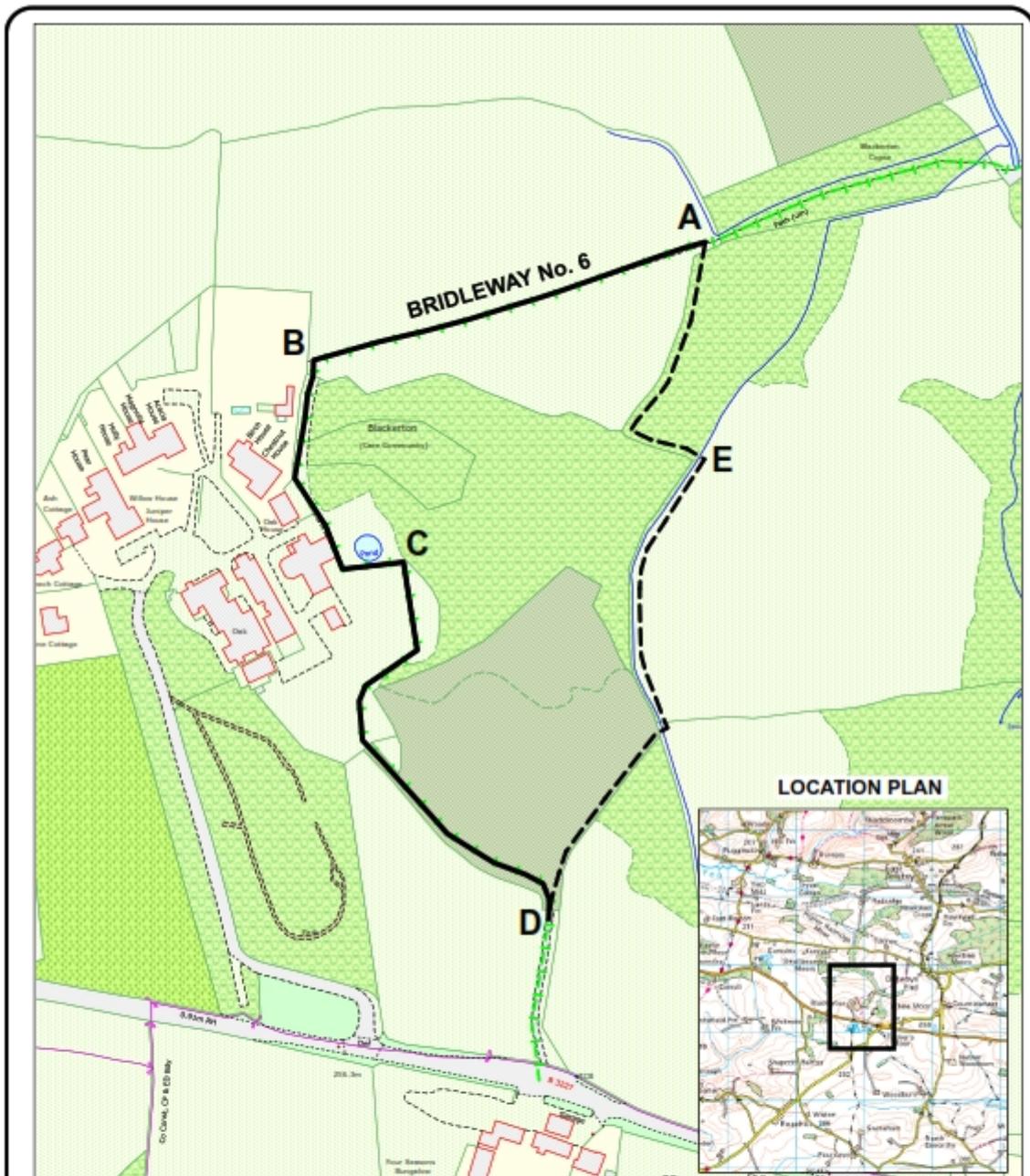
Background Paper Correspondence file
Date 2019 – date
File Reference PROW/EA/BR6

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cg170223pra
sc/cr/Proposed Diversion Bridleway No.6 East Anstey
02 010323

Previous (1st) Proposed Diversion Plan 2021 (withdrawn)



map ref SS 286124

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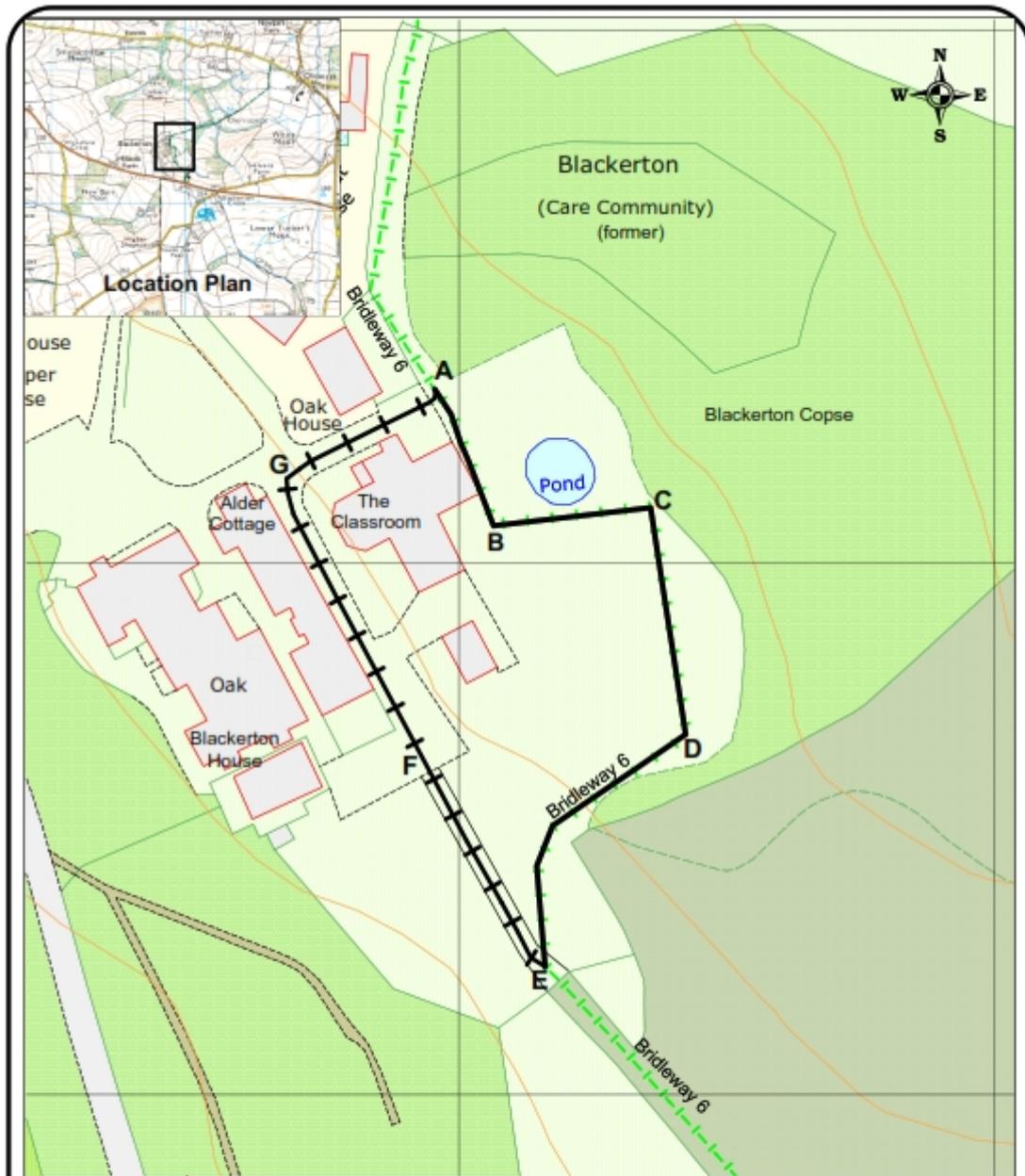
DEVON COUNTY COUNCIL
PROPOSED PUBLIC PATH DIVERSION ORDER
BRIDLEWAY No. 6, EAST ANSTEY

drawing number **HIW/PROW/20/01**
 date **July 28 2020**
 scale **1 : 2500 (at A4)**
 drawn by **ST**

Notation **Bridleway to be extinguished (A-B-C-D) 556 metres** ———
Bridleway to be created (A-E-D) 385 metres - - - - -
Existing Bridleways - - - - -

Devon County Council
Meg Booth
 CHIEF OFFICER - HIGHWAYS INFRASTRUCTURE
 DEVELOPMENT AND WASTE

Current (2nd) Proposed Diversion Plan 2022



map ref: SS 8624

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Devon County Council
(Bridleway No. 6, East Anstey)
Proposed Public Path Diversion &
Definitive Map & Statement Modification Order 2023

drawing number CCET/PROW/22/15
 date March 2022
 scale 1:1,000
 drawn by CLG

Notation

Bridleway No. 6 to be extinguished A - B - C - D - E (158m) _____
 Bridleway No. 6 to be created A - G - F - E (138m) +---+
 Existing footpath - - - - -
 Existing bridleway - - - - -

Meg Booth
 Director of
 Climate Change,
 Environment & Transport



Caroline Gatrell

From:
Sent: 04 January 2023 18:54
To: Caroline Gatrell
Subject: Proposed diversion of bridleway no.6, East Anstey

Dear Ms Gatrell,

Re : proposed diversion of bridleway from the applicant's garden and paddock (A-B-C-D-E) to (A-G-F-E) would have major safety consequences for visitors and residents of Blackerton Village.

The proposed diversion between Classrooms and Alder Cottage is very busy with holiday makers arriving and leaving in their cars, also deliveries from many super markets, delivery couriers etc, these vehicles are very often in a hurry and travel through thoroughfare between Classrooms and Alder Cottage at high speed, for a private road..

Most drivers are unaware of the sharp blind corner at Alder Cottage and turn right round the corner of Alder Cottage without slowing down (this would be the proposed new bridleway!) We have had many near misses with traffic coming out of the thoroughfare between the Classrooms and Alder Cottage at the blind corner, this is a major safety issue.

There are over 20 dogs at Blackerton Village, we would have to walk our dogs down the thoroughfare to gain access to the fields, we feel that this is unfair to the other residents who brought their properties in good faith, knowing that there was a safe bridleway to use to access said fields.

The proposed bridleway will have a direct intrusion on our privacy as it would go directly past our front window, we have been told this would have a direct negative impact on the value of our property with many more people coming and going straight passed our window.

The applicant should have considered the bridleway when purchasing the Classrooms as the applicant knew that the bridleway ran directly past it. They have done alterations, gardens etc hoping that everyone would agree to their change of the bridleway route, without consulting any residents of Blackerton Village.

The re-routing the bridleway will only benefit the applicant and have negative effects for all other residents.

The applicant is taking a very selfish view for their own interests and totally ignoring other residents interests, when many residents moved here to make use of the original bridleway because it was very safe and not using any vehicle access points.

If the proposed change was to be agreed this will be an accident waiting to happen due to the many vehicles using the proposed diversion route.

Yours sincerely

Mr & Mrs Jewitt