



Order Decisions

Inquiry Held on 23 and 24 January 2018

by Helen Slade MA FIPROW

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

Decision date: 13 February 2018

Order Ref: ROW/3174201

'Order A'

- This Order is made under Section 119 of the Highways Act 1980 ('the 1980 Act') and under Section 53A(2) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as The Wiltshire Council City of Salisbury (Stratford sub Castle) Salisbury footpath no. 6 Diversion Order and Definitive Map and Statement Modification Order 2016.
- The Order is dated 12 December 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule, and to modify the Definitive Map and Statement accordingly.
- There was one statutory objection outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed subject to the modification set out below in the Formal Decision.

Order Ref: ROW/3174202

'Order B'

- This Order is made under Section 118 of the Highways Act 1980 and is known as The Wiltshire Council Stratford sub Castle footpath linking Salisbury 24 with Salisbury 6.
- The Order is dated 12 December 2016 and proposes to extinguish the footpath shown on the Order plan and described in the Order Schedule.
- There was one statutory objection outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed subject to the modification set out below in the Formal Decision.

Application for costs

1. At the Inquiry an application for costs was made by Wiltshire Council ('the Council') against Ms Penny Fulton. This application is the subject of a separate Decision.

Procedural Issues

2. When I opened the inquiry at 10.00am, the sole statutory objector (Ms Fulton) was not present in the room. Having enquired of her whereabouts I was informed that she had had to take her dog home, and was likely to return quite shortly. I therefore adjourned the full opening of the inquiry, with everyone's agreement, until her return. I continued with my opening announcement at 10.15am.
3. Prior to the inquiry I was aware that Ms Fulton had raised a number of legal submissions in her objections and I offered her the opportunity to present these matters after I had made my opening announcement. I also raised an issue with the Council myself. Ms Fulton did not proceed to raise all the issues

she had referred to in her various statements and submissions at this point, but returned to some of them in her closing submissions. For simplicity and clarity I deal with her complaints and legal issues in paragraphs 6 to 32 below, before I determine the Orders.

4. To assist the inquiry, the Council submitted an aerial photograph and an associated A3-size plan of the area covered by the two orders, with all three affected paths shown in different colours. These routes were described by reference to their colours as follows:
 - The Purple Route – the definitive line of Footpath 6 which has been obstructed for 60+ years and which it is proposed to divert onto the Green Route by way of Order A;
 - The Red Route – the route which has been used for the last 60+ years as an alternative to Footpath 6, and which is proposed to be extinguished (or stopped up) by way of Order B;¹
 - The Green Route – being the line of a path currently used by permission of the landowners, but onto which the Purple Route is proposed to be diverted by way of Order A.
5. I have attached a reduced-scale copy of this map as Appendix A to this decision, and have referred to the routes by their colours in this decision where appropriate.

Conduct of the inquiry

6. During my opening announcement I sought details of who wished to speak at the Inquiry. Ms Fulton expressed surprise that I had not asked her if she wished to call any witnesses. She indicated to me that she would have liked to call the Council's Rights of Way Officer and also all the people who had expressed support for the Orders.
7. I explained that all those people who had expressed a wish to speak in support of the Order, including the Council's witness Miss Madgwick, would be available for cross-examination by her and that there was therefore no need to call them herself. I also said that if she wished to call other people it was open to her to ask them to appear, although I felt it was unlikely given her position as the sole statutory objector. As the inquiry went into a second day, I indicated to Ms Fulton that I would hear any witnesses she was able to contact overnight, but none materialised.
8. Ms Fulton indicated in her closing submissions that she had not been given the opportunity at the inquiry to properly present the matters she had raised. She considered that the inquiry had not been conducted in accordance with the relevant rules and regulations, and that she had not been allowed to speak at the appropriate times. No other party expressed dissatisfaction with regard to my handling of the event.
9. Despite claiming to have read all the relevant guidance, Ms Fulton was somewhat ill-prepared for a formal event such as an inquiry, and demonstrated a poor understanding of the procedure. She failed on a number of occasions to heed my instructions on the correct procedures, and I found it necessary at

¹ Having been accepted by the Council as being an unrecorded public right of way

times to prevent her continuing with an irrelevant line of argument or questions, or for speaking out of turn. I am satisfied that I conducted the inquiry fully in accordance with the provisions of the Regulations² and the accompanying Circular; and also in accordance with the guidance published by The Planning Inspectorate.³ Although I gave Ms Fulton as much help as I could, in fairness to all parties it is incumbent upon me to conduct these events in a manner which is not prejudicial to any party.

Legal Issues

Date of the Notice for Order A

10. During my opening announcement I raised with the Council the matter of the advertisements for the Orders. Ms Fulton had claimed that only one of the Orders (Order A) was advertised, although she later accepted that advertisements relating to both Orders were in fact printed in the local paper.⁴
11. Nevertheless, I pointed out to the Council that the advertisement for Order A incorrectly stated that the Order had been made on 12 December 2015. This error was repeated on the copies of the Notice contained in the Council's Bundle.⁵ In explanation Miss Madgwick acknowledged that the error arose due to the practice of 'cutting and pasting' when large numbers of similar documents are produced. Mr Ward stated that the Notices were quite clear that they related to the Order made on 12 December 2016 and that no-one else had noticed the error until I raised it at the inquiry. He confirmed that no order had ever been made on 12 December 2015 relating to the paths in question.
12. It is regrettable that such an error was made since it could have caused confusion, but I am satisfied that no prejudice has been caused to anyone, including the statutory objector, because no-one else had raised the issue, and everyone present was quite clear which Orders we were considering. The correct dates appear on both Orders and I therefore consider that I am able to continue to determine them.

Whether or not the Orders are valid

13. Ms Fulton claimed that the Orders were not valid because they had been made under the incorrect legislation. She was convinced that the alterations to the paths were being made to permit development of the land (as indicated in the original application by Mr A Harrison) and that orders should therefore have been made under the relevant section of the Town and Country Planning Act 1990 ('the 1990 Act').⁶ She also insisted that she had not seen the original Orders.
14. Miss Madgwick explained that although the original application had been made on the basis of planning application which was granted consent, it became apparent to the Council during their investigations that there were other problems with the footpath network in that vicinity which required addressing. The scope of Section 257 of the 1990 Act was too restrictive as it would only

² The Rights of Way Hearings and Inquiries Procedure)(England) Rules 2007

³ Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England (15th Revision January 2018)

⁴ The Salisbury Journal dated Thursday 22 December 2016

⁵ Document 1C Tab SALS7

⁶ Section 257

have allowed the diversion or stopping up of that part of the footpath which was directly affected by the development. This would not have dealt with the wider issues and would have left an undesirable outcome. The Council therefore decided to pursue a more comprehensive solution using their powers under the 1980 Act.

15. I consider that it is a matter for the Order Making Authority, whoever that is, to determine which powers are used to make orders where there appears to be a choice of procedure. I acknowledge that the Council took the opportunity to resolve some other anomalies affecting the rights of way network in this location, and that they therefore used other powers under the 1980 Act to effect the desired outcome. Provided the order-making procedures have been followed correctly and the orders have been written in accordance with the regulations⁷ I must look only at whether or not the resulting orders meet the relevant criteria. I am satisfied that the Orders I am considering conform to the Regulations and I am therefore satisfied that they are validly made.
16. The original Orders were submitted by the Council to the Planning Inspectorate in accordance with the requirements of the Regulations, and I am satisfied that the copies which have been in circulation for information purposes are accurate copies of the originals. Ms Fulton has not been disadvantaged in any way by not having viewed the original sealed Orders.

Consultation process

17. Ms Fulton considered that the Council had not undertaken the proper consultation in connection with the Orders, and had both consulted irrelevant people, bodies or organisation, and not fully consulted with relevant ones.
18. Miss Madgwick was able to provide, as required, a full list of consultees in respect of the Orders. Ms Fulton may have been unaware that there is a prescribed list of consultees for Public Path Orders set out in the relevant Regulations and in Schedule 6 of the 1980 Act.
19. I am satisfied that extensive informal consultations were carried out with appropriate local representatives, where available, in advance of the making of the Orders, and that the statutory consultations were properly carried at the time the Orders were actually made.

Whether the Council has misled people by only referring to 'Order' in the singular and not the plural

20. Ms Fulton considers that the Council has, throughout the process of considering the making of these Orders, referred in official documentation to 'Order' in the singular implying that there was only one Order.
21. I accept that there are instances of that phraseology being used within the Council's bundle, and that some people might, if they had not read the relevant reports thoroughly enough, have been unaware that there were two Orders. However the two proposals have travelled together throughout the process and the Orders were made and advertised on the same dates respectively. Any confusion which may have been caused initially by the wording used when drafting reports should have been resolved by the final appearance of the two

⁷ Public Path Orders Regulations 1993; The Public Rights of Way (Combined Orders)(England) Regulations 2008; The Public Rights of Way (Combined Orders)(England)(Amendment) Regulations 2010

Orders and by the advertising process. For the purposes of my inquiry, the critical issue is whether the Orders as made were in the correct legal format, made in accordance with the Regulations, and were advertised properly. I have already concluded that they were; and that no prejudice has been caused despite the typographical error contained within the advertisement.

22. However, the title of Order B makes no reference to the date of the Order or its type, contrary to the way in which the title of Order A is set out. I consider that this is rather unhelpful and may have added to Ms Fulton's confusion. I therefore intend to modify the title of the Order if I confirm it, to indicate that it is an extinguishment order and that it was made in 2016.

The legal effect of the existence of a permissive path

23. Ms Fulton drew my attention to another Order decision⁸ and a legal judgement⁹ which, in her view, demonstrated that Order B was impossible to confirm. She believed that because Order B involved the consideration, as an alternative route, of a footpath which is currently a permissive path, those precedent cases showed that the Order was not valid.
24. I accept that it is not possible to take into account, as an alternative route for a path which is being extinguished, a route which is the subject of an incomplete or conditional creation agreement (as at Tyttenhanger); nor is it possible to create a public right of way over a route which has already been found to carry public rights (as in the decision by Inspector Alison Lea). However, that is not what is proposed in the case I am considering. Where an extinguishment order is made concurrently with a diversion order, I may take into account the extent to which the diversion order would provide an alternative path or way, if appropriate. That requires me to consider Order A in the first instance; if I confirm that Order I may then take into account the new route of the public right of way created as a result as an alternative to the route which is the subject of the extinguishment Order (Order B).
25. If I confirm Order A, the present 'permissive' route (the Green Route) would become a legally recorded public right of way as a consequence. Order B is an extinguishment order and does not 'create' another path. The use of an existing public right of way as an alternative route in the case of an extinguishment order is specifically provided for by Section 118(5) of the 1980 Act. The situations in the cases cited by Ms Fulton have no bearing on my decision in this case.
26. Of course, if I do not confirm Order A, then I will have to consider Order B in that light. The Council has indicated that it would not seek the confirmation of Order B under those circumstances.

The accuracy of the Definitive Map

27. Ms Fulton considered that the route described in Order B was no longer a public right of way as it had not been in use for over 60 years. She believed that the Red Route, having become a public right of way through usage over such a long period (60+ years) automatically meant that the Purple Route was no longer a public right of way. She considered that the Definitive Map and

⁸ Decision by Inspector Alison Lea FPS/W9500/6/1 and 3/1 dated 5 March 2013

⁹ Hertfordshire County Council v Secretary of State for Environment, Food and Rural Affairs [2006] EWCA Civ 1718 (also known as 'Tyttenhaner') and

Statement was incorrect in showing the Purple Route as the right of way, and that other maps and plans, particularly the Ordnance Survey and the Land Registry maps, showed the Red Route as the 'definitive' line.

28. Miss Madgwick explained, on behalf of the Council, how the Definitive Map and Statement for the area had been produced, and that the line of the Purple Route was the legally recorded public right of way. No legal order had ever been made which either stopped it up or diverted it, and that it remained the legal line of Footpath 6, whatever may or may not be shown on other maps. However, she disagreed with Ms Fulton's interpretation of the line on the maps she had submitted and considered that, given the limitations of scale, they both showed the line represented by the Purple Route.
29. I am satisfied that regardless of what other maps may seem to show that the Purple Route remains the legal definitive line of Footpath 6 until or unless it is diverted or stopped up by a legal order. Ms Fulton is mistaken in her beliefs.

Whether the orders are suitable for their purposes

30. Ms Fulton considered that it was perverse to divert a path which was not in use (the Purple Route in Order A), and to extinguish a path which was in public use and which, in her opinion, was needed (the Red Route in Order B). She suggested that the way in which the Council had made the Orders was confusing for the public, and cited the fact that all the supporters of the Orders used the comparison of the Red Route with the Green Route in their arguments for the diversion, instead of comparing the definitive Purple Route with the Green Route.
31. Miss Madgwick acknowledged that the Orders could have been made in different terms (i.e. The Red Route could have been diverted onto the Green Route and the Purple Route extinguished) and that the outcome would have been the same, if the relevant criteria could have been met for each order. She saw no particular reason why that would not have been so, but stated that the Council had chosen to do it a different way.
32. I agree with Ms Fulton that it might have been rather less confusing to the general public if the Council had made the orders in the way suggested by her but, as I have already indicated, it is a matter for the Council to determine how it wishes to exercise its powers, and I must consider Order A and Order B as put before me.

The Main Issues

Order A

33. Section 119(1) of the 1980 Act states that the first criterion on which I must be satisfied, if I am to confirm an order, is whether, in the interests of the owner, lessee or the occupier of land crossed by the path or way, or of the public, it is expedient that the line of the path in question should be diverted. In this case the Order has been made in the interests of the owner. Section 119(6) provides that I must also be satisfied, if I am to confirm the Order, that the path will not be substantially less convenient to the public as a consequence of the diversion.
34. Where an order proposes to alter a termination point of the path in question, I must be satisfied that the altered termination is on the same highway or a

highway connected to it, and that it is substantially as convenient to the public.¹⁰

35. If I am satisfied on the above points, I must then consider whether it is expedient to confirm the Order, having particular regard to the following issues:

- a) the effect that the diversion would have on public enjoyment of the path as a whole;
- b) the effect of the coming into operation of the Order on land served by the existing right of way; and
- c) the effect of the new public right of way on the land over which it is created (or land held with it);

having regard also, with respect to b) and c), to the provisions for compensation as set out in Section 28 of the 1980 Act.

36. To assist in the interpretation of these criteria, I have had regard to the judgement in the case of *R (Young) v Secretary of State for Environment, Food and Rural Affairs* (QBD) [2002] EWHC 119 (Admin) ('*Young*').

37. I must also have regard to any material provision of the Rights of Way Improvement Plan ('ROWIP') and the guidance contained in Rights of Way Circular 1/09, published by Defra.

Order B

38. In order to confirm the Order I must be satisfied that it is expedient to stop up the path having regard to:

- a) the extent that it appears likely that the footpath in question would, apart from the Order, be likely to be used by the public, and:
- b) the effect that the extinguishment of the footpath would have as respects land served by it, account being taken of the provisions as to compensation.

39. In respect of the tests to be considered, whilst the Council, when making the Order, has to consider the need or otherwise for the public right of way, I must look at the question of likely future use of the path concerned. Any temporary obstructions to use should be ignored for this purpose.

40. Where an extinguishment order is made concurrently with a diversion order, I may take into account the extent to which the diversion order would provide an alternative path or way, if appropriate.

Reasons

Order A

Whether it is expedient in the interests of the landowner that the path be diverted

41. The existing route (the Purple Route) is currently shown on the Definitive Map and Statement running through the gardens of Dairy Cottage, Mistral and Parsonage Farm, before passing through a partially open-sided barn and entering the adjoining field. It is currently unused and has been largely

¹⁰ Section 119(2)(b)

unavailable for use for over 60 years. Ms Fulton considers that there has been no application to divert this route and that the proposals were generated illegally by the Council.

42. Two of the landowners, Mr Harrison and Mr Griffiths, spoke at the inquiry and confirmed that it would be helpful to them to have the path moved as it was clearly inconvenient for it to run through the curtilage of their properties. If the Order were to be not confirmed, the legal line of the path would remain on the Definitive Map, a factor which would also be inconvenient for the landowners, whether people used it or not.
43. Regardless of who initiated the proposal (and it is not necessary for there to be an application) I must be satisfied that the Order fulfils the necessary criteria. I am in no doubt that it is in the interests of the landowners to have a misleading situation resolved, and that it is expedient in their interests to remove the problem by diverting the path.

Whether the path would be substantially less convenient to the public as a consequence of the diversion

44. Although the Purple Route is currently obstructed, I will compare it with the proposed route (the Green Route) as if it were open and in use as far as is reasonably practicable.
45. In the *Young* case, the criteria which must be met when diverting paths under Section 119 of the 1980 Act were explored quite thoroughly. Guided by that decision, I take convenience to relate to such things as the length, the difficulty of walking and the purpose of the path.
46. The Order cites the existing path as being about 321 metres long and the proposed path (the Green Route) as 326 metres long, which is an insignificant difference.
47. With regard to the purpose of the path, I find that the purpose of the path would be unchanged since both routes commence at Point A on the Order Plan, and run in the same general direction to meet Bridleway Salisbury 24 a few metres apart.
48. With regard to the ease of walking the path, the width of the present route is given in the Order as being between 2 metres and 2.1 metres in width along its length.¹¹ The proposed route (the Green Route) will be 3 metres wide which is significantly wider. The Council's view is that the extra width will allow the wear on the path to be more evenly spread and thus avoid the problem of mud which can be a problem on paths in the area.
49. The surrounding fields are used agriculturally for keeping animals, including sheep and ponies. It was apparent on the site visit that mud cannot be avoided, since the ponies must be led across the proposed route at one point. However, bearing in mind that the site visit was carried out at a time of excessive rain and the ground was very wet, I anticipate that dryer weather would improve the situation quite significantly. It was not excessively muddy even in those conditions.

¹¹ In accordance with the Statement accompanying the Definitive Map.

50. The existing route, passing as it does through the curtilage of various properties for some of its route, might well be less muddy to use in part as a consequence, if it were available. It would be unlikely to suffer from use by the ponies. Beyond the barn, the Purple Route passes through the same agricultural field as the Green Route and thus there is not likely to be any difference in the walking surface.
51. There was some talk of hedges being planted alongside the fencing which currently exists along the proposed route, but Miss Madgwick made clear that the hedge would not be permitted to encroach upon the 3 metres width quoted in the Order.
52. The proposed route is fenced on both sides for about $\frac{2}{3}$ of its length and there are no limitations in the way of gates or stiles identified in the Order. At Point A there is a wooden wicket gate, but that would have to be negotiated on both the existing and the proposed routes. Because the existing route is obstructed at present it is not possible to evaluate what furniture might be a limitation to its use, so in this respect I must conclude that the proposed route, with no limitations, could not be any less convenient than the existing route.
53. Although it is possible that the proposed route may be slightly muddier than the existing route for part of its length, the additional width is likely to mitigate that risk, and I am satisfied that, overall, the path would not be substantially less convenient to the public as a consequence of the diversion.

Whether the altered termination point of the diverted route would be substantially as convenient

54. The southern termination point of the diversion would move the path about 12 metres further along Bridleway 24 from Point B to Point C. Miss Madgwick explained that this would, in fact, bring the line of the path into closer proximity to its onward continuation to the south than the current termination point, and thus be more convenient. However, the site visit demonstrated that the onward route is not in use on its definitive line and lies rather between the two points B and C.
55. I therefore conclude that the altered termination point would be substantially as convenient (as required by the legislation) rather than presenting any obvious benefit, although the benefit might be realised if the line of the onward route is restored along its legal line.

The effect of the diversion on the public enjoyment the path as a whole

56. The judgement in *Young* defined the enjoyment of the path as relating to such matters as its scenic value or its ambience. Much was made at the inquiry of the views towards Old Sarum and St Lawrence Church, both of which were claimed by the Council and the supporters to be enhanced from the proposed route.
57. Clearly the views of the Church would only be obtained if one was walking from south to north (or was turning round specifically to look at it), but I accept that the existing route would not provide quite the same panorama in this respect. On the existing route, the views of Old Sarum would be obscured for a short distance by the barn; a situation avoided on the proposed route. But otherwise I consider that the views are broadly similar and not a determinative factor.

58. In terms of the ambience of the route, Mrs Winson in particular was enthusiastic about the proposed route as it presented a useful and easily used section of a circular walk that she could undertake with her grandchildren, including one in a pushchair. Ms Fulton was somewhat dismissive about the benefit of taking a pushchair (or indeed a wheelchair) along the diverted route but I am aware that there are a number of all-terrain pushchairs available these days designed for use over quite rough ground and the proposed route would present no challenge to one of them. Stiles, however, would be a considerable obstacle.
59. The same can be said of wheelchairs, but in reality the needs of less able people should not only be referenced to the use of wheelchairs. The ROWIP for the Council seeks to improve access for all people, including the elderly and the mobility impaired, and this will also include visual impairment. The lack of gates or stiles on this section of the route would be an improvement for all these people including families with children and dogs. I noted on my site visit that the provision of gates on the onward route to the north would now enable a circular walk free from any stiles, which will appeal to many people.
60. Ms Fulton extolled the value of stiles as an adventure for children, but I consider that this is a minority view, given the comments of others in support of the proposal.
61. I am satisfied that the diversion of the route would be likely to add to the enjoyment of using the path for the majority of people.

The effect on land served by the existing path or crossed by the proposed route

62. No issues were raised in this regard and the existing line of the path is not actually in use. All the affected landowners support the Order.

Modification to the Order

63. I noted at the inquiry that the description of the proposed route was not entirely accurate as it described the alignment of part of the path as running in a north easterly direction to Point A. The Council agreed that this would more correctly be described as a northerly direction and asked me to modify the Order accordingly.
64. I consider that this is an administrative alteration which clarifies the description, but does not alter anything on the ground. It would be in everyone's interests for me to modify the description accordingly.

Whether it is expedient to confirm the Order

65. I have concluded that it is expedient in the interests of the landowners to divert the path, and that the resulting diversion will not be substantially less convenient to the public as a consequence. The very slight alteration in the southern termination point is substantially as convenient to the public. Given that the proposed route is likely to be more enjoyable to use for the majority of people, I am satisfied that it is expedient to confirm the Order subject to the small modification to the description of the alignment of the new route.

Order B

The extent to which the route would be likely to be used

66. Having concluded above that Order A should be confirmed, I now turn to Order B which would extinguish the Red Route. The Red Route has been available and in use for many years (probably since the 1960s) and although not recorded on the Definitive Map and Statement as a public right of way, the Council has accepted that it has been dedicated as such.
67. Contrary to the assertion of Ms Fulton, there is no requirement (and indeed no provision in law) for an application to be made for an order under Section 118 of the 1980 Act. Contingent on the confirmation of the Diversion Order, the Council was at liberty, having evaluated the situation, to conclude that it was expedient to make the Extinguishment Order on the basis that the Red Route was no longer needed; the Green Route providing a parallel route in close proximity and serving the same purpose.
68. I must be satisfied that it is expedient to confirm the Order having regard to the extent to which the Red Route would be likely to be used if Order B were not brought into effect.
69. The Green Route has been available for use as an alternative route on a permissive basis for a couple of year or so, and clearly marked to that effect. It would seem that this was done to try to gauge the preferences of users prior to making the Order. Ms Fulton was critical of the way in which this was done, alleging that the Red Route had been made unattractive to use and was not signposted, so that anyone wishing to walk in that direction would have been guided towards the permissive route in preference.
70. Both Ms Fulton and Ms Stout (who made a late objection to the extinguishment of the Red Route) consider that the Red Route offers much more in the way of variety having, as it does, a hedgerow which provides habitat for birds, butterflies, other insects and wild plants and mammals. They both consider that the path is of historic interest and that its loss will be disadvantageous to the village and its environs. They consider that the Green Route offers none of these advantages and is a barren, straight path over rough ground with no hedges and only barbed wire fencing.
71. Mr Harrison was able to submit the details of an informal survey undertaken by Ms Brownlie, who owns the ponies that graze the land and occupy the adjoining stables and paddocks. These visitor numbers were gathered during the time she spends on the land (approximately three times a day to feed, muck out and to move the ponies around the grazing areas) during the period 23 November 2017 to 20 January 2018. She compared the number of people using the Green Route with the number using the Red Route. During the relevant period she was able to show that at least 382 people used the Green Route compared to 12 using the Red Route.
72. Mr Harrison also submitted copies of various letters and emails supporting the proposals in general, and in particular appreciative of the re-routing of the path.
73. I accept Ms Fulton's point that it is evident from the comments that most people thought that what was being done was re-routing the Red Route onto the Green Route, but that simply reinforces the fact that most people prefer

the Green Route over the Red Route, and thus would be happy to accept it as an alternative route.

74. It would be open to the landowners to plant hedges alongside the wire fencing and I was given the impression at the inquiry and at the site visit that this was likely to be the case. In time these would mature to provide habitat of a similar nature to that which exists alongside the Red Route. If the barbed wire is considered to be a nuisance, the Council has powers available to it under the 1980 Act to ensure that the nuisance is abated. The direct nature of the route was clearly considered by the witnesses in support of the Order to be an advantage rather than a drawback.
75. I do not have to be satisfied that no-one would use the Red Route if it remained in place. Rather, I must consider the level of likely use against the suitability of the alternative route. I conclude that even though there might be some limited use of the Red Route, on balance most people would be likely to use the Green Route as has been demonstrated over the last couple of years.

The effect on land served by the route

76. Ms Fulton was keen to point out that the owner of the ponies would still need to use part of the Red Route to move her stock about, and considered that would be a good reason not to confirm the Order. I might have given that view considerable weight had Ms Brownlie objected to the Order on that basis. However, it appears that she is supportive of the proposal, and is going to benefit from some sort of permission from the landowner to use the relevant length of path; therefore it does not affect my consideration of the matter.

Other factors

77. In considering the expediency of confirming the Order I can take into account other matters not specifically set out in the criteria of Section 118 of the 1980 Act. With regard to the historic nature of the route, alleged by Ms Fulton, it seems that the existence of the Red Route goes back only to around the 1960s. This may be of some interest but it is not historic in the sense that it has been part of the fabric of the landscape for centuries. I place little weight on arguments based on the long-standing existence of the path.
78. On the other hand I place considerable weight on the fact that the lack of any path furniture on the section of the Green Route which provides an alternative to the Red Route is an advantage to most users. I have already referred to Ms Fulton's view of stiles and concluded that it is a minority view.

Whether it is expedient to confirm the Order

79. Despite the views of Ms Fulton and Ms Stout, I find that the likely use of the Red Route would be minimal, and that the Green Route provides a suitable and popular alternative. There are no adverse effects on those others with a right to use the path (e.g. Ms Brownlie) and I therefore consider that it is expedient to confirm the Order, subject to a minor modification to the title.

Other Matters

80. Complaints made by Ms Fulton about the manner in which the Council handled the order-making process, including dealing with the initial application, the consultation process, any committee reports and the making of the orders

themselves, are not matters which fall within my remit. Procedures exist for complaints against the Council to be dealt with through their own internal procedure, or by way of complaint to the Local Government Ombudsman.

81. The recent application by Ms Fulton to modify the Definitive Map and Statement by the addition of the Red Route has no bearing on my decision. The Council has already accepted that it is a public right of way, and has chosen to extinguish it by a legal order (Order B). It is a matter for the Council to deal with the application in the appropriate manner.

Conclusions

82. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order both Orders should be confirmed with minor modifications.

Formal Decision

Order Ref: ROW/3174201

83. I confirm the Order subject to the following modification:

- In Part 2 of the Schedule to the Order, in the second line of the Description of the Site of the New Path or Way, delete the words 'north easterly' and substitute 'northerly'.

Order Ref: ROW/3174202

84. I confirm the Order subject to the following modification:

- In the title of the Order add the words 'Extinguishment Order 2016'

Helen Slade

INSPECTOR

