
Order Decision

Site visit made on 31 July 2018

by Joanne Burston BSc MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 September 2018

Order Ref: ROW / 3190787

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as "Devon County Council (Footpath No.99 Ilfracombe) Public Path Extinguishment and Definitive Map and Statement Modification Order 2017.
- The Order is dated 16 May 2017 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Devon County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. The parties to the case have agreed that the matter be dealt with by way of the written representation procedure. Accordingly, I made an unaccompanied site visit to the area on Tuesday 31 July 2018.
2. An objector brought to my attention that the notice was misleading and served on the incorrect address for North Devon District Council. The Council accept that the first Order, made in February 2017, was incorrect. A subsequent Order was then made in May 2017 correcting these errors. I am therefore satisfied that the Order is adequate and meets the legal requirements.

Main Issues

3. 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.
4. I must also have regard to the material provisions of any public rights of way improvement plan ('ROWIP') which has been prepared for the area in which the path lies.
5. In accordance with the provisions of section 118(6) of the 1980 Act, I have disregarded any temporary circumstances preventing or diminishing use of the path in question when determining the likely use that might be made of it.

Reasons

Background

6. The OMA's Statement sets out the background to the Order in some detail. In summary, the path is recorded on the definitive map and is a spur of Footpath 99¹, known locally as '*Camp's Passage*'. Following a review of the Definitive Map in December 2009 it was noted that the path was affected by development and obstructions. A review of Ordnance Survey mapping and RAF aerial photographs, undertaken by the OMA, indicated that the structures were erected sometime between 1932 and 1946.
7. However, such obstructions did not prevent the path being recorded on the Definitive Map and Statement at that time and there has subsequently been some confusion over whether the Footpath should have been included in the first place. Further, no complaints have been made by the public regarding the obstructions, which included, enclosing the path and installing lockable gates and doors.
8. The proposed extinguishment of the Footpath was included in the Ilfracombe Parish Informal consultation in 2014. No objections were received during this consultation. Devon County Council formally made the Order to extinguish the path in 2017, from which 2 objections were received from members of the public.

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

9. No information has been provided by the OMA or the objectors to indicate either the present level or type of use of Footpath No.99 by the public, or its likely use in future if it is retained. Since the surface of the path (E5-E6) is hardstanding, it is impossible to gauge from this any sign of wear and tear by foot traffic.
10. As I have noted above, the route between points E5 and E6 is not fully accessible. At the time of my site visit the gates and doors across the path were closed, although not locked. This is a situation which has clearly continued over many years such that the public has already become accustomed to using an alternative route as a necessity. Even if I disregarded the gates and doors currently obstructing the definitive route, I consider it unlikely the public would choose to use it now that it passes through the rather dark and gloomy service lane of the adjacent Public House.
11. I acknowledge that since the objections were made to the Order the landowner has kept the gates and doors unlocked. Nevertheless, I consider that the present situation is indeed likely to deter potential users, particularly those of a less confident nature, because the access to the path from the street is obscured, not inviting and far from obvious.
12. An objector has provided interesting historical evidence; however there is no argument that the path is a Right of Way, given its inclusion on the Definitive Map. With regard to historical usage, I do not consider that the fact that the path may have been used more frequently in the past to be of any particular

¹ Commencing on the High Street at the west side of The Bunch of Grapes Public House, proceeding along an alleyway to meet the remainder of Footpath 99, opposite No.8 Fortescue Road.

relevance to the current situation. What is important in this case is the likely use in the future.

13. Indeed, neither of the Objectors state that they regularly use the path now or intend to in the future. Further, there has not been a general clamour from individual members of the public to retain the path because they wish to use it. I accept that if the path were clearer to see and easier to use it might be used more than it is, but that is speculation as there is no evidence to that effect. I also accept that there is a network of paths within easy reach of Point E5/E6, including Post Office Passage² and Regent Place. These run parallel to and either side of the Order route, some 26 metres to the southwest and 15 metres to the northeast respectively.
14. I accept that there are likely to be members of the public who would use the Order route if it were retained. But I believe these to be considerably in the minority, given that there has only been one objection to its extinguishment from a resident of Ilfracombe itself, and no objections from the Parish Council or the Ramblers Association. The alternative routes are pleasant to use and are likely to offer a more inviting route for most users.
15. Additionally, the alternative route along Post Office Passage exits onto the High Street very close to the current termination point, and would continue to provide a link to the onward routes from Footpath No.99.
16. I conclude that although there might be a few people who would feel that they had been disadvantaged by the extinguishment of the Order route, on balance I consider that the Order route would not be likely to experience significant levels of use if the Order were not confirmed.

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

17. There is no evidence before me from which I could conclude that the extinguishment of the Order route would have any adverse effect in respect of this requirement of Section 118 of the 1980 Act.

Rights of way Improvement Plan ('ROWIP')

18. In July 2005 Devon County Council published its '*Devon on the move Rights of Way Improvement Plan 2005*' providing a strategic framework for the management and improvement of countryside access and recreation in Devon. This document was updated in 2012.
19. The Council argues that the extinguishment of part of footpath No.99 would not conflict with any of the aims of its ROWIP. Nevertheless one objector has brought specific references to the document to my attention relating to, amongst other matters, maintenance, planning considerations and walkers.
20. The ROWIP provides general guidance for the maintenance of the rights of way network. However, Policy LP3 in particular states that the "*Extinguishment of a public right of way will be considered where the requisite legal tests are met*". This is subject to two caveats including the monitoring of usage and that the path is physically available for use.

² This is also a spur of Footpath No.99

21. It is accepted that there is no substantive evidence of levels of public use from any party; however such monitoring is optional rather than a requirement. Nevertheless, given the alternative footpaths available in the local area and my conclusions on the legal tests, the proposed extinguishment appears to be compatible with the ROWIP.

Other material considerations

22. I understand the frustration expressed by the objectors over the failure to address the problems on the Order route sooner and more robustly, in their view. However these are not matters which directly influence my decision, other than taking into account the possible consequences on the potential level of usage. Where appropriate, I have disregarded the obstructions in making my assessment on this issue.
23. It is accepted that the route has not been used to its full width for many years, because of the encroachments referred to by the objectors. I agree with the view expressed by the objector that the maxim '*once a highway, always a highway*' prevails, whether or not action was ever taken by the highway surveyor / OMA to prevent such obstructions. Nonetheless, there are legislative procedures in place to enable Rights of Way to be extinguished, diverted or stopped-up. Therefore I place little weight on this statement.
24. I place no weight on an objector's statement that the extinguishment of the path would reduce the call on the maintenance budget.

Whether it is expedient to close the footpath

25. With an extinguishment order, the question is initially whether there is a need for this path but at this stage the point is whether or not the likely use of the path by the public in future is such as to outweigh the reason for closure, taking into account all other relevant considerations. I must also weigh the benefits to any landowning interests against any disadvantages to the public, although compensation is not a relevant consideration in this case.
26. As noted above, the definitive line of the footpath had become obstructed sometime between 1932 and 1946. The legislation requires me to disregard this as a 'temporary circumstance' preventing people using the path when I assess the likely use of Footpath No.99 in future. However the Courts have held that it is legitimate to consider whether or not the obstruction is "*likely to endure*"³. Given the length of time these structures have been standing on this site, it seems unlikely that action would now be taken by the highway authority to enforce their removal.
27. Yet even if it were to be re-opened along its definitive line, in my view the likely use of this footpath would probably be quite limited. I accept that there may be some people who would wish to use this spur of Footpath No.99 on principle, despite it passing through the service lane of the Public House. However, given the close proximity of the well-used Regents Place and Post Office Passage, which also connects to Footpath No.99, my conclusion is that the majority of people would prefer to avoid the potential conflicts and hazards within Camp's Lane by using these alternatives. This leads me to conclude that, if the path were to remain, its likely use would be minimal.

³ A principle articulated by Phillips J in *R v Secretary of State for the Environment ex parte Stewart* [1980] JPL 175, the prime question was, in the case of an obstruction, whether it was likely to endure."

28. No adverse effects on landowning interests have been raised and compensation is not a relevant issue here. Taking into account all matters raised, I consider it expedient to extinguish the section of Footpath No.99 as proposed in the Order.

Conclusions

29. Having regard to these and all other matters raised in the written representations, I conclude that it would be expedient to confirm the Order.

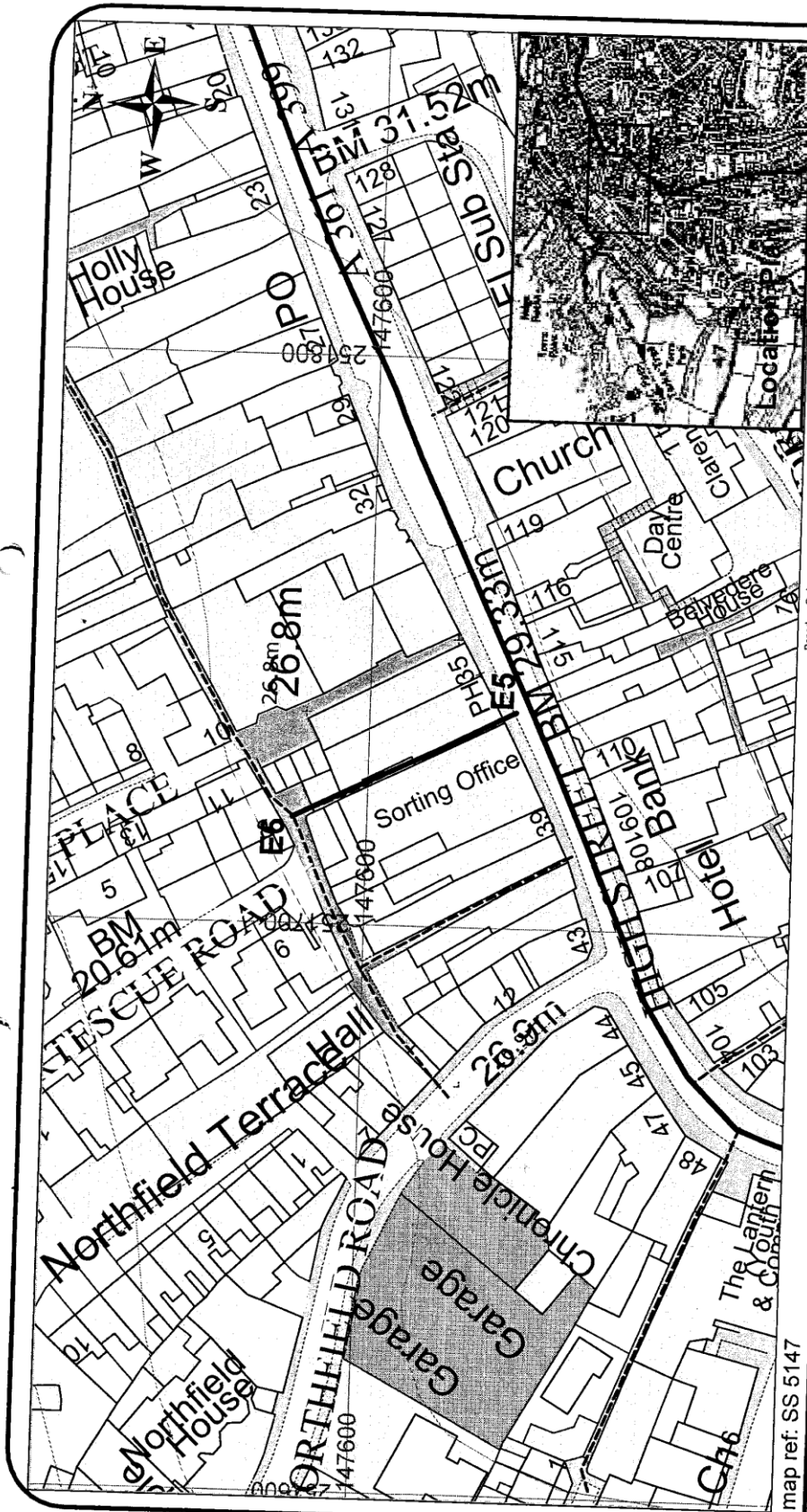
Formal Decision

30. I confirm the Order.

Joanne Burston

INSPECTOR

Appendix: Order Map



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drawing number	HCW/PROW/16178
date	May 2017
scale	1:1,000
drawn by	CLG

Devon County Council
 (Footpath No. 99, Ilfracombe) Public Path Extinguishment &
 Definitive Map & Statement Modification Order 2017

Notation
 Footpath No. 99 to be extinguished E5 - E6 (44 m) ———
 Existing footpath ———

Meg Booth
 Acting Chief Officer for
 Highways, Infrastructure
 Development & Waste

Devon
 County Council