



Order Decision

Site visit made on 24 July 2018

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 19 September 2018

Order Ref: ROW/3190330

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as The Cornwall Council ((Parts of Footpath Nos 1 & 18, Ladock) (Trewince, Grampond Road)) Public Path Diversion Order 2017.
- The Order is dated 20 February 2017 and proposes to divert the public rights of way shown on the Order Plan and described in the Order Schedule.
- There was 1 objection outstanding when Cornwall Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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

Procedural Matters

1. The Order seeks to divert part of Footpath No.1, Ladock (FP1) (shown A-B on the Order Plan) and part of Footpath No. 18, Ladock (FP18) (shown C-D on the Order Plan). One objection was made to the Order and relates to FP18 only. In considering whether or not to confirm the Order, I have considered each proposal separately.
2. I undertook a site visit on 24 July 2018 accompanied by one of the landowners, representatives of both the Council and Ladock Parish Council and a representative of the Cornwall Ramblers Association. Together we walked the majority of FP18 between points C and D with the exception of a small section to the west of Llys Trewyns where it has become obstructed. In addition, we also walked the approximate line of the proposed new route, although between points H and D the actual line walked was a few metres to the east of the line depicted on the Order Plan due to overgrown vegetation along the field boundary. In addition, we walked the approximate line of the new route proposed for FP1 (C-B). However, we were unable to walk the majority the existing route of FP1 due to various obstructions including the dilapidated building located to the west of point A and the orchard area situated to the north of Trewince Barn. Nevertheless, I was able to see the majority of both routes from numerous vantage points and gain a good understanding of the effect that the proposed diversions would have on both public convenience and enjoyment.
3. My consideration of the Order is made on the basis that the existing routes are open and in a fully usable condition.

The Main Issues

4. Section 119 of the 1980 Act requires that before confirming the Order, I must first be satisfied that it is expedient in the interests of the owner of land crossed by the paths that the footpaths in question should be diverted. In

addition, section 119(2) requires that where the Order alters a point of termination, I must be satisfied that it is substantially as convenient to the public.

5. The other tests for confirmation set out in section 119 which are relevant to this Order are, firstly, whether the diverted footpaths would be substantially less convenient to the public than the present ones, and secondly, what effect the proposed diversions would have on public enjoyment of the path as a whole.
6. In addition, I am required to take into consideration any material provisions of any Rights of Way Improvement Plan (ROWIP) prepared by the Council. However, in this case there are no material provisions of the ROWIP which are relevant.

Reasons

FP1

7. No objection has been made in relation to the proposed diversion of FP1 and there is nothing to indicate that the Order does not satisfy the relevant statutory tests. Furthermore, I noted during my site visit that its re-alignment along the proposed route would move the path away from the dilapidated building and outside the boundary of the orchard situated north of Trewince Barn. This would improve the privacy and security of the occupiers of that property and would improve security around the depilated buildings. As such, I consider it would be expedient in the interests of the affected landowners for the path to be diverted.
8. Furthermore, although it would involve the alteration of a point of termination from point A to C, having viewed both the existing and proposed routes, I am satisfied that it would be substantially as convenient to the public. Similarly, in view of its shorter length following the well-defined access track and field boundary, I do not consider the proposed new route would be substantially less convenient to the public. Likewise, I have seen nothing which would lead me to conclude that the proposed diversion would negatively impact on public enjoyment of the route.
9. Accordingly, in the absence of anything to indicate otherwise, I am satisfied that the relevant tests for confirmation have been met in respect of FP1. As such, I consider it expedient to confirm this part of the Order.

FP18

10. Unlike FP1, the objection to the diversion of FP18 raises a number of issues in respect of the statutory tests and these are considered further below:

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

11. The section of FP18 to be diverted commences at point C on the Order plan and proceeds in a west south westerly direction along the rear of Llys Trewyns, between that property and Trewince Barn. The route then proceeds south along the western edge of Llys Trewyns, although this part of the route is currently obstructed by mature vegetation and is not passable. After passing through a metal field gate, it then continues in a south westerly direction through an

agricultural field to Point D where it joins with FP10 Probus at the parish boundary.

12. The proposed diversion is made on the basis that it would improve the security and privacy of the owners of Llys Trewyns, Trewince Barn and Trewince Farm. I noted on site that the route is situated on the shared accessway of these properties, and passes in close proximity to the rear elevation of Llys Trewyns as well as alongside windows and doors serving Trewince Barn. Although there is no evidence that there have been any particular security issues resulting from the use of the path, it was clear on site that the diversion of this part of the path, to a location further away from the buildings, would positively improve privacy for the occupiers of all of these properties.
13. Accordingly, I am satisfied that it is expedient in the interest of the owners of Llys Trewyns, Trewince Barn and Trewince Farm that part of FP18 is diverted.

Whether or not the diverted path would be substantially less convenient to the public.

14. The length of FP18 to be diverted is approximately 273 metres compared to the proposed diversion which would be around 301 metres. This represents an increase in length of around 23 metres which, while longer, is not substantially so. However, the Council has confirmed that when approaching from the east and wishing to travel between points A and D, the proposed diversion would result in an increase in length of around 115 metres. This is considerably longer and would negatively impact on convenience for users travelling between these two points.
15. Furthermore, although there are two gates located on the existing route, there are no recorded limitations and the Council accepts they are 'unauthorised'. The proposed alternative, however, would result in two additional limitations being recorded at points G and H which, while easily navigable by most walkers, would nevertheless be less convenient to users than the present route.
16. Moreover, whereas the present route has a slight gradient and provides a gentle and easy walk between points C and D, the same cannot be said of the proposed alternative. While I accept that between points D and H there is only a marginal difference, between points F and G the gradient is considerably steeper. Here the land rises sharply and would pose a number of additional challenges to walkers. While I accept that the distance involved would not be considerable, with an increase in height of around 17 metres over a distance of 140 metres it would nevertheless further reduce the overall convenience of the route for users.
17. In addition, although my site visit corresponded with an unusually lengthy period of dry weather, parts of the proposed new route were clearly waterlogged. Walking conditions were difficult, and are likely to be considerably worse in periods of wet weather. This would make large sections of the route impassable and further reduce the overall convenience of the route for users. While I note the Order makes the stopping up of the existing highway contingent upon the Council's certification of works, there is no information as to what these works are or whether they would be sufficient to overcome the drainage issues identified above.

18. Consequently I find that, when taken together, the increased length, steeper incline, unsuitable ground conditions and additional limitations would result in a route substantially less convenient to the public than the existing route.

The effect on public enjoyment

19. Some of the factors that affect convenience will also affect public enjoyment. The increased gradient between points F and G and the unsuitable ground conditions between points H and D would, together, pose significant challenges to walkers and would materially alter the walking experience compared to the existing path. This would negatively impact on the overall enjoyment of the route.
20. While I note the proposed new route would provide extensive views over the surrounding countryside, this would only be for a small section and would not provide sufficient mitigation for the loss of public enjoyment that would result from the increased gradient and unsuitable ground conditions.
21. Accordingly, although I have found above that the proposed diversion of FP18 would be in the interests of the landowner, I have also found that it would be substantially less convenient to the public and would negatively impact on public enjoyment of the route. This would outweigh the benefit to the landowner and, as such, I do not consider it would be expedient to confirm this part of the Order.

Other Matters

22. The Council has drawn my attention to FP11 which they point out proceeds in a similar direction and performs a similar function to the part of FP18 to be diverted. However, the existence of other comparable paths is not something to which I can have regard under section 119 of the 1980 Act.
23. I have noted the comments in support of the proposed diversions submitted by Ladock Parish Council. However, these do not alter my reasoning on the main issues set out above.

Conclusions

24. I have found above that the proposed diversion of FP1 meets the statutory tests. However, I have also found that the proposed diversion of FP18 does not. Consequently, I conclude that the Order should be confirmed subject to the modifications set out in the formal decision below. I am satisfied that such amendments would not require re-advertising by virtue of Paragraph 2(3) of Schedule 6 to the 1980 Act.

Formal Decision

25. The Order is confirmed subject to the following modifications:

- In the heading:
 - the words “((Parts of Footpath Nos. 1 & 18, Ladock))” shall be removed and replaced with the words “((Part of Footpath No 1, Ladock))”.
- In the first paragraph:

- the word "footpaths" in line 3 shall be removed and replaced with the word "footpath".
- the word "paths" in line 4 shall be removed and replaced with the word "path".

- In paragraph number 1:
 - the word "rights" in line 1 shall be removed and replaced with the word "right".

- In paragraph number 5:
 - the words "((Parts of Footpath Nos. 1 & 18, Ladock)" shall be removed and replaced with the words "((Part of Footpath No 1, Ladock)".

- In Part 1 of the Schedule:
 - paragraph (ii) shall be removed in its entirety.

- In Part 2 of the Schedule:
 - in paragraph (i), the words "where it has a junction with that part of Footpath number 18 to be retained" shall be removed.
 - paragraph (ii) shall be removed in its entirety.
 - the word "Footpaths" in the final sentence shall be removed and replaced with the word "Footpath".

- In Part 3 of the Schedule:
 - Parts 3(ii) and 3(iii) shall be removed in their entirety.

- The Order Plan shall be amended as follows:
 - the words "((Parts of Footpath Nos. 1 & 18, Ladock)" in the title shall be removed and replaced with the words "((Part of Footpath No 1, Ladock)".
 - the broken black line between points F-G-H-D shall be removed and the solid black line between points C-D shall be altered so that it is shown as a footpath to be retained.

Rory Cridland

INSPECTOR

Highways Act 1980 S119 Order Plan Re Case HAD 220

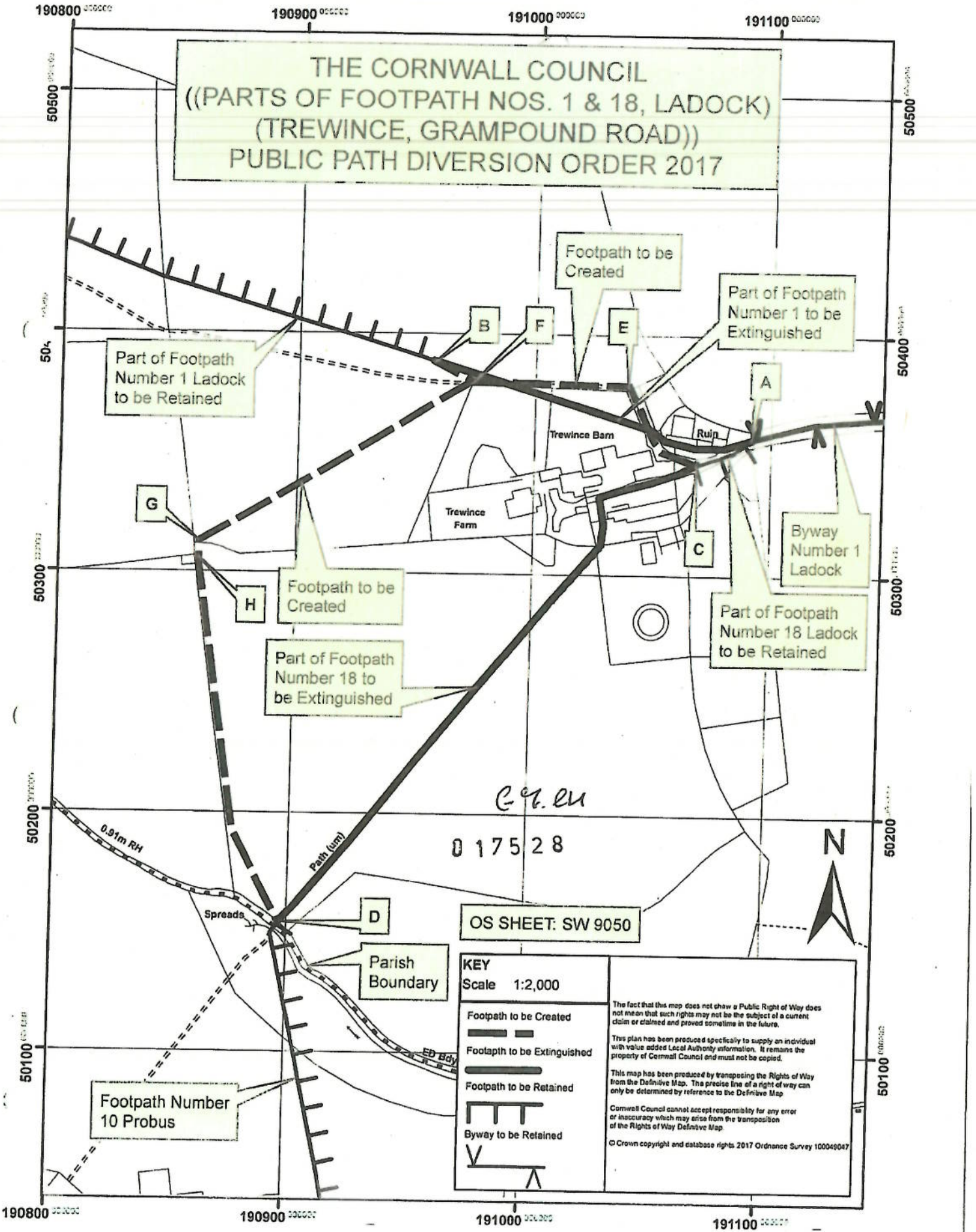
Parish: Ladock CP Path Number: FPs/310/1 & 18

Produced by Countryside Access Team: February 2017

MAP NOT TO ORIGINAL SCALE



THE CORNWALL COUNCIL
((PARTS OF FOOTPATH NOS. 1 & 18, LADOCK)
(TREWINCE, GRAMPOUND ROAD))
PUBLIC PATH DIVERSION ORDER 2017



Part of Footpath Number 1 Ladock to be Retained

Footpath to be Created

Part of Footpath Number 1 to be Extinguished

Byway Number 1 Ladock

Part of Footpath Number 18 Ladock to be Retained

Footpath to be Created

Part of Footpath Number 18 to be Extinguished

0 175 28

OS SHEET: SW 9050

KEY	
Scale	1:2,000
Footpath to be Created	
Footpath to be Extinguished	
Footpath to be Retained	
Byway to be Retained	

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Footpath Number 10 Probus

Parish Boundary

0.91m RH

Path (km)

Spreads

ED Bdy