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## Order Decision

Site visit made on 26 September 2018

**by Rory Cridland LLB (Hons), Solicitor**

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

**Decision date: 24 October 2018**

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### Order Ref: ROW/3196958

- This Order is made under Sections 257 and 333(7) of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as the Cornwall Council Footpath Sections of Right of Way No. 57 Chacewater (Parts): Former Hallenbeagle Mine Site (South West Part) Varying Order 2017 ("the Order").
- The Order is dated 24 October 2017 and proposes to vary the Cornwall Council Footpath Sections of Right of Way No. 57, Chacewater (Parts): Former Hallenbeagle Mine Site (South West Part) Diversion and Stopping up Order 2013 ("the 2013 Order") by replacing the route to be created in that order with an alternative public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections 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 modifications

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#### Preliminary Matters

1. The 2013 Order was made under Section 257 of the 1990 Act to divert part of public footpath No 57, Chacewater ("the Footpath") in order to enable development to be carried out in accordance with Planning Permission Reference C1/MC04/0836/07/b<sup>1</sup>. It was subsequently confirmed by the Council as an unopposed Order. However, paragraphs 2-4 of the 2013 Order make clear that the diversion and stopping up of the routes is contingent upon the Council certifying that the alternative route has been created to their reasonable satisfaction.
2. While I note there is some dispute over the extent of the works required to bring that route into a useable condition, whether they can be physically undertaken without the consent of the adjoining landowner, and the extent to which the Council should be satisfied that it is not possible or reasonable to carry them out, the fact remains that the works have not been undertaken and the Council's certification has not been issued. Accordingly, the Order has not been brought into effect. In such circumstances, it is open to the Council to make a new order to divert the existing route to a different alignment.
3. However, in the present case, rather than make a new Diversion Order, the Council has made a Varying Order dated 26 October 2017 which replaces the route to be created in the 2013 Order ("the 2013 Route") with a new route. There is nothing to suggest that the necessary procedures in respect of the Varying Order have not been complied with and I see no reason that this method would not be equally effective. Nevertheless, in view of the fact that the replacement of the alternative highway fundamentally alters the proposal, I

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<sup>1</sup> and reserved matters approval Reference SA04/0545/09/M.

have considered the proposed diversion on its own merits, applying the Section 257 tests as though it were a new order.

4. The Order as drafted includes a section of footpath between points B-D which was subsequently extinguished<sup>2</sup>. The Council has invited me to modify the Order to remove those parts which deal with that section of route. I agree that, in the event that I were to confirm the Order, such an amendment would be appropriate and would not require re-advertising by virtue of paragraph 3(6) of Schedule 14 to the 1990 Act.

### **The Main Issues**

5. The Order was made because it appeared to the Council that it was necessary to divert the Footpath to enable development to be carried out in accordance with planning permission granted under Part III of the 1990 Act.
6. Section 257 of the 1990 Act requires that, before confirming the Order, I must be satisfied that it is necessary to divert the Footpath in order to allow development to be carried out in accordance with planning permission already given but not substantially complete.
7. Even if I were to find it necessary to divert the path to allow implementation of the permission, my confirmation of the Order is discretionary. In exercising this discretion, I must consider the merits and any disadvantages of the proposed diversion in relation to the particular facts of the case, and in particular the effect the confirmed Order would have on those entitled to the rights that would be affected by it.

### **Reasons**

#### ***Whether it is necessary to divert the Footpaths to enable development to be carried out.***

8. Approval of Reserved Matters in respect of Planning Permission C1/MC04/0836/07/b dated 7 August 2007 ("the Permission") was granted for the construction of estate roads and services, structural landscaping, plot layout and building design to each plot on 11 August 2009<sup>3</sup>. Subsequently, a non-material amendment was permitted by the Council on 3 July 2014 which moved the proposed footpath link running alongside the railway line to a route along the estate roads.
9. There is no dispute that the development would not be possible unless those parts of the existing route affected by the Order were diverted. I have no reason to conclude otherwise. I am therefore satisfied that it is necessary to divert the Footpath in order to enable development to proceed.

#### ***Whether the development is substantially complete***

10. At the time of my site visit, it was clear that works had commenced in association with the Permission. However, the Footpath is unaffected and although it is not currently passable due to the presence of large gorse bushes, there is still considerable work remaining before the development and that part

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<sup>2</sup> By virtue of the Cornwall Council (Public Footpath & Bridleway No 57 Chacewater (Part)) Public Path Extinguishment Order 2017.

<sup>3</sup> Ref: SA04/0545/09/M.

of it affecting the existing route, will be complete. Overall, I am satisfied that the development is not substantially complete.

***The effect of the Order on those whose rights would be affected by it***

11. The route to be diverted commences at Point G on the Order plan and proceeds in a generally northerly direction for around 20 metres to Point B before continuing for around 217 metres along part of the existing estate road and over an area of scrubland to a point where it terminates as a cul-de-sac path on an area of land that forms part of the A30 trunk road (Point C on the Order Plan).
12. The proposed new route, by comparison, would pass along the estate roads for the majority of its length. Concerns have been raised that this would result in walkers passing along a road which would be used frequently by commercial vehicles, would be of limited environmental interest and would be less convenient to walkers than the existing route. However, I note that part of the existing route already passes over the estate road for around half its length which seriously diminishes the overall walking experience. While the remainder of the route currently passes along an open area of scrubland, with the development complete this will change considerably - with users having to pass alongside large, commercial units, which would further detract from experience of path users.
13. I note that Circular 1/09 advises that in considering potential diversions to an existing right of way that are necessary to accommodate the planned development, the alternative alignment should avoid the use of estate roads wherever possible and that preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic. However, having viewed both the existing route and the proposed alternative, I do not consider there would be any material disadvantage to path users in diverting the path along the estate roads.
14. I also note that the alternative route proposed would pass in close proximity to the rear of the property known as Tregraine and result in direct views into its garden. However, there is nothing to suggest that this would result in any material disadvantage, either to path users or the occupiers of that property.
15. While I acknowledge that the proposed new route would result in some reduction in the convenience of users seeking access to the A30, I am mindful that Circular 1/09 also makes clear that having granted planning permission for a development affecting a right of way, there must be good reasons to justify a decision not to confirm an order.
16. Overall, I do not consider the disadvantages arising from the proposed diversion would be material or would provide sufficient reasons to justify a refusal to confirm the Order in the present circumstances.

**Other Matters**

17. I note that the extent of the works required to give effect to the 2013 Order are not significant. I also note that the 2013 Route would be more attractive and would pass along a landscaped area away from vehicular traffic. However, no public rights currently exist over the 2013 Route and both the developer and the Council have indicated that this route is no longer a viable alternative.

Accordingly, I do not consider these matters have any material bearing on my consideration of whether or not to confirm the Order.

18. A number of concerns have been raised in relation to the Permission and the consultation exercise undertaken as part of the Council's consideration of the non-material amendment. However, whether or not the correct procedures were followed in relation to these matters is not something to which I can have regard in considering whether or not to confirm an order under Section 257 of the 1990 Act. Similarly, I am unable to reconsider either the planning merits of the proposal or the principle of development in this location.
19. I have been referred to paragraphs 6.27(b) & (c) of the Planning Inspectorate's Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders. However, these paragraphs relate to orders made under Section 119 of the Highways Act 1980 and do not apply to Orders made under Section 257 of the 1990 Act.

### **Conclusions**

20. Consequently, for the reasons set out above and having had regard to all other matters raise, I conclude that the Order should be confirmed subject to the modifications described in paragraph 4 above and set out in the formal decision below.

### **Formal Decision**

21. The Order is confirmed subject to the modifications set out below:

- In the Order Schedule:
  - In paragraph 1, line 2 of the 2013 Order<sup>4</sup> remove the word "A" and replace with "G".
  - In Part 1 of the Schedule to the 2013 Order, remove paragraph (ii) in its entirety.
- On the Order Plan:
  - Remove that part of the route depicted by a solid black line between points B-D.

*Rory Cridland*

INSPECTOR

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<sup>4</sup>A copy of which is annexed to the Order setting out the variations proposed.



Town & Country Planning Act 1990 Section 257  
 Order Plan: Re File TAD 034

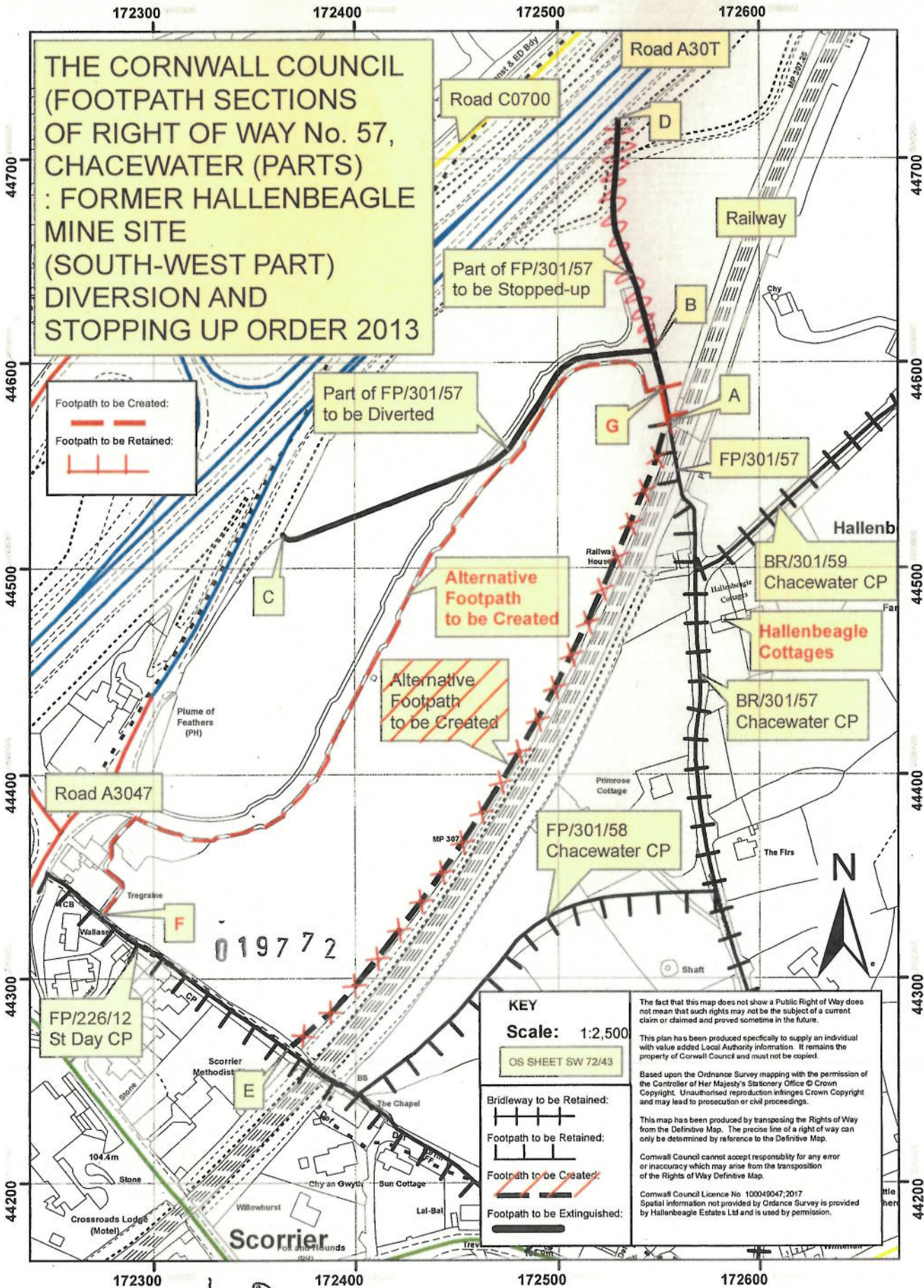
Parish: CHACEWATER CP Path Number: RoW/301/57

Produced by Countyside Access Team: 05 February 2013

Variations to Order Map  
 shown in red August 2017



**THE CORNWALL COUNCIL  
 (FOOTPATH SECTIONS  
 OF RIGHT OF WAY No. 57,  
 CHACEWATER (PARTS)  
 : FORMER HALLENBEAGLE  
 MINE SITE  
 (SOUTH-WEST PART)  
 DIVERSION AND  
 STOPPING UP ORDER 2013**



Footpath to be Created:  
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 Footpath to be Retained:  
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**KEY**  
 Scale: 1:2,500  
 OS SHEET SW 72/43

Bridleway to be Retained:  
 ———  
 Footpath to be Retained:  
 ———  
 Footpath to be Created:  
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 Footpath to be Extinguished:  
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*J. Reenan*