



---

## Order Decision

Hearing held on 4 December 2018

Site visit made on 4 December 2018

**by Susan Doran BA Hons MIPROW**

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

**Decision date: 18 January 2019**

---

### Order Ref: ROW/3197792

- This Order is made under Section 119 of the Highways Act 1980 and is known as the Wiltshire Council Dilton Marsh 15A (part) Diversion and Definitive Map and Statement Modification Order 2017.
- The Order is dated 17 February 2017 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. The Order is also made under Section 53A(2) of the Wildlife and Countryside Act 1981. If confirmed, the Order would also modify the Definitive Map and Statement, in accordance with Section 53(3)(a)(i) of that Act.
- There was one objection outstanding at the commencement of the hearing.

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

---

### Procedural Matters

1. This case concerns the diversion of part of Footpath 15A at Fairwood Road, Penleigh from its present alignment (A-B on the plan attached to the Order) to a new (parallel) line further to the south (C-D). The existing path running alongside the dwelling 'Shepherd's Purse' (approaching point B) is obstructed by vegetation and fencing, a matter raised by the Objector. Currently, the public have access to Footpath 15A via a permissive path running from D then following the field boundary in a north-north-westerly direction to meet Footpath 15A and then to A and beyond.
2. Section 119 of the Highways Act 1980 ('the 1980 Act') provides no guidance when considering the proposed diversion of a route which is obstructed. I consider, however, that the obstructions here are temporary ones, and in reaching my decision I have ignored them, comparing the routes as if the existing path was unobstructed and available for use by the public on foot.

### Notice of the Order

3. Wiltshire Council ('the Council') relied on grid references to locate the Order route, but accepted points made by the Objector that a more detailed description could have made it easier for the path to be identified. Indeed, the Council indicated it will endeavour to include more local detail in the future.
4. Several public paths connect with Fairwood Road, and the use of grid references in this case provided a means of identifying the relevant one. As regards notices, in addition to those placed clearly on site (as here), guidance<sup>1</sup>

---

<sup>1</sup> Defra Rights of Way Circular 1/09 at paragraph 5.16

indicates those published in the press should identify key points of a route by reference to features on the ground, as well as specifying grid references. Nevertheless, there is nothing to indicate in this case that anyone has been prejudiced by the lack of detail such as road names or postcodes. No other objections were received. I am satisfied that the Council has complied with the requirements and given notice of the general effect of the Order.

### **Order map**

5. The Order map scale is stated as 1:2500. The Council has confirmed the scale should be 1:1250, and the Objector that he was not misled by the public notices of the Order. However, whilst it is clear that the Council intended the map scale to be 1:1250, the map attached to the sealed Order is a photocopy of the original and as such is not true to scale. I calculate its scale as 1:1323. Nevertheless, it remains at a scale which is compliant with the Regulations<sup>2</sup>.
6. Point A is identified in Part 1 of the Schedule to the Order at OS grid reference ST 8530 5065. Both the Council and Objector agree that a more accurate reference is ST 8531-5066. I further agree with the Objector that a more accurate reference for point B is ST 8546-5076 and for point D, ST 8549-5065. I consider all these discrepancies to be minor and am satisfied that no-one has been prejudiced as a result, although the Order should be amended if confirmed.

### **The Main Issues**

7. The Order has been made in the interests of the landowner. Section 119 of the 1980 Act requires that to confirm it, I must first be satisfied it is expedient in their interests that the footpath in question should be diverted; and that the new footpath will not be substantially less convenient to the public.
8. I must then consider whether it is expedient to confirm the Order having regard to the effect the diversion would have on public enjoyment of the path as a whole; the effect which the coming into operation of the Order would have on other land served by the existing path; and the effect which any new path created by the Order would have on the land over which it is created, and any land held with it, having regard to the provisions for compensation.
9. Section 119(2) of the 1980 Act provides that a diversion order shall not alter the termination point of a path otherwise than to another point which is on the same highway, or a highway connected to it, and which is substantially as convenient to the public.
10. In addition, I am required to take into consideration any material provisions of a rights of way improvement plan ("ROWIP") prepared by the Council.

### **Reasons**

#### ***Whether it is expedient in the interests of the owner that the footpath should be diverted***

11. It is not disputed that this test is met. The existing route passes through the garden and in close proximity to the dwelling, impacting on privacy. Moving the path away from the property will address this issue. I am therefore satisfied it is expedient in the interests of the owner that the footpath be diverted.

---

<sup>2</sup> Public Path Order Regulations 1993, Statutory Instrument 1993, No.11

***Whether the termination points of the diverted route will be substantially as convenient to the public***

12. Confirmation of the Order would see both termination points move further south (from A to C and from B to D), but connecting with the same highways. There would be a small difference in distance for users depending on the direction of onward travel (slightly more for some, slightly less for others), but I would not regard this as significant. I am satisfied that the termination points of the diverted route will be substantially as convenient to the public.

***Whether the new footpath will not be substantially less convenient to the public***

13. The new footpath introduces a 'dog leg', for users wishing to continue onwards from C via Footpaths 15 and 15A to reach Footpath 11 to the west. None currently exists on the definitive route. An alternative, continuing directly from C to Footpath 11, was suggested as a more convenient and commodious route; although the test does not require the new footpath to be more 'commodious'. The open field may appear featureless, and thereby difficult for users to follow the path, making the alternative an option. However, suitably placed way-markers and reinstatement of the definitive line on the ground following agricultural operations should overcome any issues on the new route. In any event, even if I were to consider the alternative more appropriate, such a modification would not be open to me as the proposed continuation extends beyond the Order map.
14. At the Hearing, a second alternative was suggested from D then turning to follow the permissive route (paragraph 1) to meet Footpath 15A then on to A, a route confirmed by all parties as already well used by the public. This route would help alleviate privacy issues caused by the alignment of the existing route (paragraph 11). But, it also introduces a 'dog leg' for east-west travel, a matter the Objector considered problematic as regards the new footpath.
15. The new route (C-D) is approximately 20 metres shorter than the existing one (A-B) and is open and unobstructed. In accordance with the Councils' ROWIP (recognising the needs of those with mobility impairments and making and maintaining a more accessible network), stiles have been removed and replaced with gaps. No path furniture is required as the field is cultivated as arable land. In addition, the Order provides a width of 2 metres for the new path which will give greater clarity for both users and landowners as none is presently recorded for Footpath 15A in the Definitive Map and Statement.
16. I have walked the proposed route and the alternatives with the Council and the Objector. Despite the introduction of a 'dog leg' on the new footpath, there have been no objections from the Parish Council, user groups, local users, or from other members of the public on this (or any other) point. Footpath 15A is a recreational path used mostly by dog walkers, with the parties agreeing the main direction of travel is north-south rather than east-west. Those heading east-west using the permissive path already follow a 'dog leg' apparently without complaint. The new footpath would be similar.
17. On balance I conclude the new footpath will not be substantially less convenient to the public.

**Whether it is expedient to confirm the Order having regard to:**

**(a) the effect the diversion would have on public enjoyment of the path as a whole**

18. I do not consider the diversion would result in a significantly longer journey for users of Footpath 15A as a whole. Whilst they would be required to walk further (between C and A via Footpath 15) on an east-west journey, the additional length is not in my view great. Neither is it significantly longer when considered as part of a recreational walk. Nevertheless, I agree that the modification to the Definitive Statement (Part 3 of the Schedule to the Order) contains limited detail, but when read together with the Order plan I consider the effect of the Order is apparent.
19. I accept that enjoyment would be increased for the public in not having to pass through a private garden and in close proximity to the dwelling.
20. I appreciate that the power line crossing the field (roughly east-west) together with the hedge line may provide a 'bearing' for users following D-C and the suggested alternative directly across to Footpath 11 (paragraph 13). Yet, it seems to me this would be true also for users following the existing Footpath 15A to and from A and then from A-C and onward to D. Arguably a defined width (2 metres) and way-marking to be provided by the Council on the ground would help clarify the route thereby adding to the public's enjoyment. Users currently happy to follow the permissive path north-north-west along the field boundary (the second alternative, paragraph 14) would simply follow a broadly parallel and marked route further to the west.
21. On balance I find overall that the diversion would not have an adverse effect on public enjoyment of the path as a whole.

**(b) the effect which the coming into operation of the Order would have with respect to the land served by the existing right of way, and**

**(c) the effect which any new public right of way created by the Order would have with respect to the land over which the right is so created and any land held with it, having regard to the provisions for compensation**

22. No adverse effects in either respect have been identified and I note that, in addition to the applicant, the owner of the arable field supports the Order.

**Whether it is expedient to confirm the Order**

23. The Objector would prefer a route continuing either directly west from C or one following the existing permissive path from D to A.
24. I have concluded that it is expedient in the interests of the landowner that the footpath be diverted. I have considered the suggested alternatives. However, I find that the termination points as proposed on the diverted route are substantially as convenient, and that on balance the new route would not be substantially less convenient to the public. Further, public enjoyment is not adversely effected by the proposal set out in the Order, and there are no adverse effects on the land. It follows in my view that it is expedient to confirm the Order as made, subject to the modifications described above (paragraphs 5 and 6).

### **Other matters**

25. The Objector had queried whether or not any conditions were applied to the existing Footpath 15A when planning permission was granted for the dwelling in 1994. However, this is not a matter for my decision.

### **Conclusions**

26. Having regard to these and all other matters raised at the Hearing and in the written representations, I conclude that the Order should be confirmed with modifications that do not require advertising.

### **Formal Decision**

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

- In Part 1 of the Schedule to the Order, in line 1 of the description of the existing path, replace ST 8530-5065 with ST 8531-5066; in line 3 replace ST 8546-5075 with ST 8546-5076
- In Part 2 of the Schedule to the Order, in line 3 of the description of the new path, replace ST 8548-5065 with ST 8549-5065
- On the map attached to the Order, in the Key, replace Scale 1:2500 with Scale 1:1323

*S Doran*

**Inspector**

## **APPEARANCES**

### **For the Council:**

Ali Roberts Rights of Way Officer

### **Objector:**

Francis Morland

### **Others who spoke:**

Paul Elloway Applicant and landowner

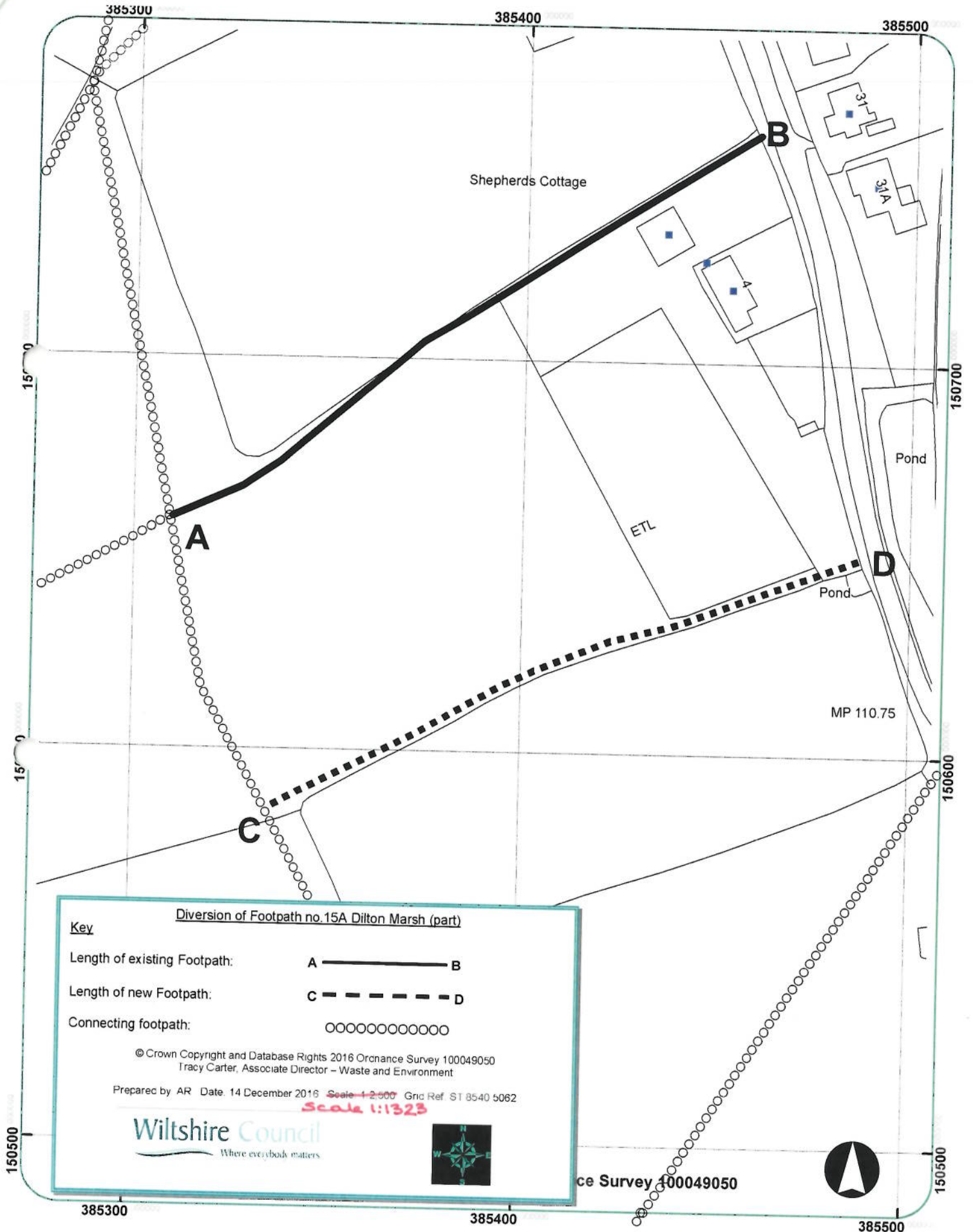
Bill Singer Landowner

## **DOCUMENTS**

1. A3 extract from Ordnance Survey map showing the area around Penleigh, Dilton Marsh, submitted by Wiltshire Council



# Diversion of footpath no. 15A Dilton Marsh (part)



**Key**

**Diversion of Footpath no.15A Dilton Marsh (part)**

Length of existing Footpath:      A ————— B

Length of new Footpath:            C - - - - - D

Connecting footpath:                OOOOOOOOOOOO

© Crown Copyright and Database Rights 2016 Ordnance Survey 100049050  
Tracy Carter, Associate Director – Waste and Environment

Prepared by AR Date: 14 December 2016 Scale: 1:2500 Gnc Ref ST 8540 5062  
*Scale 1:1323*

Wiltshire Council  
Where everybody matters

Ordnance Survey 100049050