

---

## Order Decision

On papers on file.

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 12 March 2019**

---

### **Order Ref: ROW/3208844**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as The Somerset County Council (Footpaths L11/37 (part) and T17/20 (part) in the Parish of Fivehead), Public Path Diversion Order, 2017.
- The Order is dated 24 November 2017 and proposes to divert parts of public footpaths in the vicinity of Lower Listock Farm, as shown on the Order Map and described in the Order Schedule.
- There was one objection outstanding when Somerset 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 subject to a modification that does not require advertising.**

---

### **Procedural Matters**

1. After the Order had been submitted to the Secretary of State, the only objection to it was withdrawn. The Order is now unopposed.
2. I have found it convenient to refer in this decision to points on the Order route as indicated on the Order Map. I therefore attach a copy of this map.

### **The Main Issues**

3. The Order is made in the interests of the owner of the land crossed by the footpaths. Section 119 of the 1980 Act therefore requires that, before confirming the Order, I must be satisfied that:
  - It is expedient in the interests of the landowner that the footpaths should be diverted;
  - The new footpath will not be substantially less convenient to the public;
  - The diversion is expedient with regard to:
    - the effect on public enjoyment of the right of way as a whole;
    - the effect on other land served by the existing right of way;
    - the effect of the proposed new right of way on the land over which it is created and any land held with it.

4. Regard should also be given to any material provisions of the Rights of Way Improvement Plan for the area.

## **Reasons**

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

5. The land crossed by the existing footpaths (Points D-E-G-H) is owned by Mr and Mrs Wheller, the owners of Lower Listock Farm. They also own the land crossed by the proposed new footpath between Points A-B-B1-B2-C. Although the land crossed by the route between points C-C1-D is unregistered, Mr and Mrs Wheller own the land on either side of the track and, in the absence of any other claim, can be assumed to own this land.
6. The landowners, who applied for the paths to be diverted, state that this will be in their interests for three reasons. Firstly, immediately to the east of Point G are several large storage facilities. If the footpath is diverted it will be possible to place a locked gate at Point H to improve security. Secondly, the existing path is obstructed by a barn between Points D and E. If the path is not diverted this barn will have to be removed and an alternative location found resulting in considerable expense and inconvenience. Thirdly, the diversion would move the path further away from the landowners' house improving their privacy and security.
7. For these reasons it seems clear that the proposed diversion would be in the interests of the landowners.

### ***Whether the new footpath will be substantially less convenient to the public***

8. The proposed new route of the footpath is approximately 43 metres longer than the definitive route. However, the nature and location of the footpaths means that it is most likely to be used almost exclusively for recreation as part of longer walks. In this context, it is my view that the relatively short additional distance would not make the proposed route substantially less convenient.
9. The gradient of both routes is similar.
10. The width of the existing route is not recorded whereas the proposed route would be 2 metres wide, except for a bridge between Points C and B2.
11. The surface of the existing route is mainly metalled whereas most of the proposed route would be grassed. Although this might be regarded as less convenient by some users, the proposed diversion affects only a short section of path and other paths in the area which are likely to be used in conjunction with the Order route are also grassed.
12. It is proposed that the new footpath will include one pedestrian gate and one field gate. There are no limitations recorded on the definitive route. However, it is believed that many legitimate structures have not been recorded in the definitive statement as they should have been, and a 1904 Ordnance Survey map of the area shows the existing route crossed at 4 points by solid lines which probably indicate the presence of gates.
13. Overall, I see no reason to think the new footpath will be substantially less convenient to the public.

***The effect on public enjoyment of the right of way as a whole***

14. The proposed diversion affects only a short section of footpath and whereas the existing path passes through a farmyard and close to farm buildings which restrict the view from the path, the proposed route crosses an open field. Accordingly, many path users might find the proposed route more enjoyable to use.

***The effect on other land served by the right of way***

15. There is no evidence to suggest that the proposed diversion would have any adverse effect on other land served by the right of way.

***The effect of the new right of way on the land over which it is created and other land held with it***

16. The owners of the land crossed by both the existing and proposed routes support the diversion as they believe it will have a beneficial effect on their land. I have seen no evidence to indicate that this would not be the case.

***The Rights of Way Improvement Plan (ROWIP)***

17. I have seen a copy of the Schedule of policies and actions appended to the ROWIP, dated April 2014. The proposed diversion would not conflict with any of the policies contained therein.

**Other Matters**

18. Somerset County Council has drawn attention to a minor drafting error in the Order and requested that it be modified to correct this. The error concerns the location of the field gate referred to in the Schedule to the Order, Part 3. Whereas it is currently stated that this would be at Point A, it should have specified Point B which is on a field boundary. Points A and B are quite close to one another and I do not believe that any party will have been significantly misled or had their interest prejudiced by the error and I therefore intend to make the modification requested.
19. Although not relevant to consideration of this Order, I note that another order has been made to extinguish the section of footpath between Points F and E which is shown on the Order Map and that this was unopposed.

**Conclusions**

20. In the light of the evidence available, I conclude that the Order should be confirmed subject to the modification referred to above.

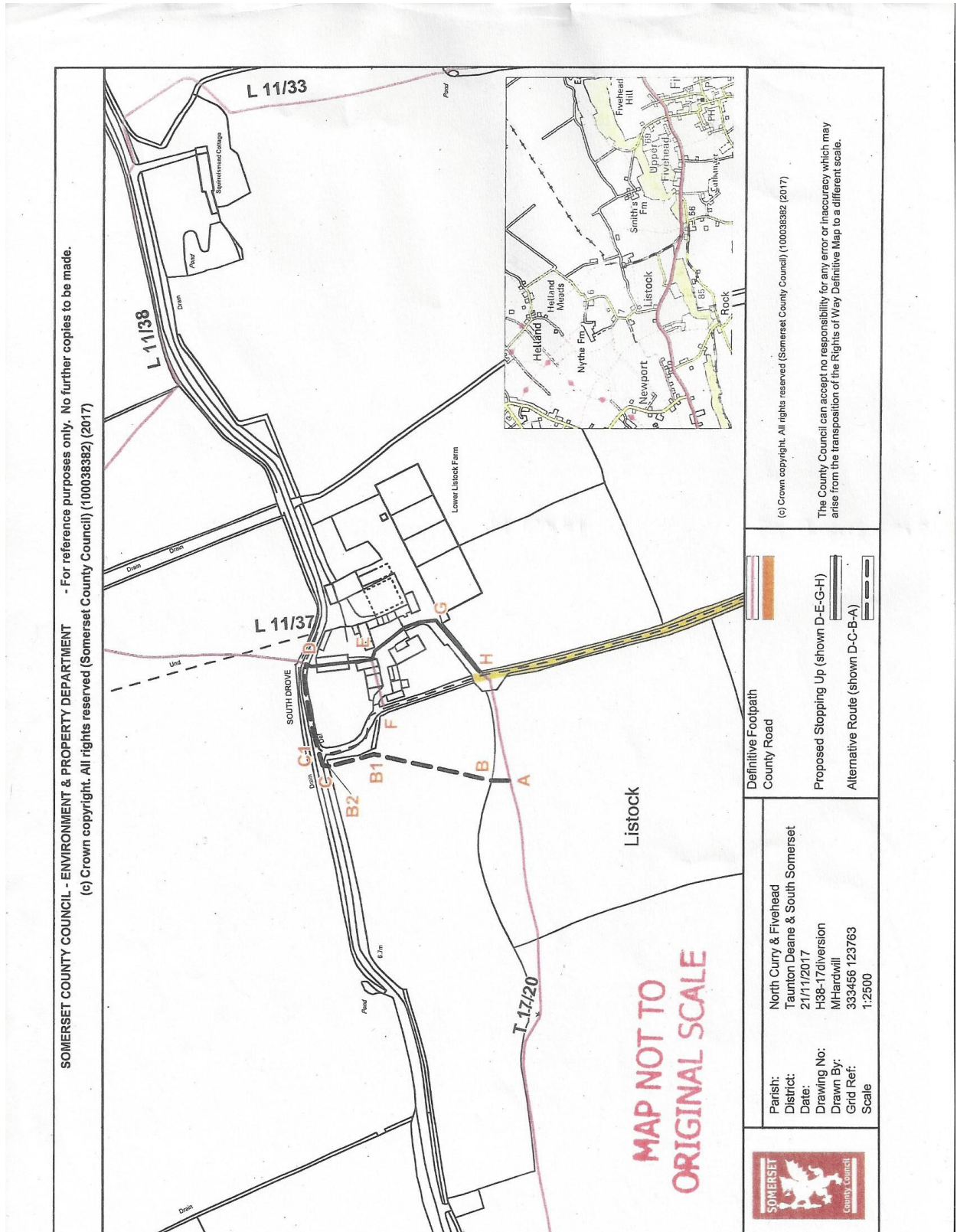
**Formal Decision**

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

In the Schedule to the Order, Part 3, amend the location of the field gate from Point A to Point B.

*Barney Grimshaw*

**Inspector**



SOMERSET COUNTY COUNCIL - ENVIRONMENT & PROPERTY DEPARTMENT - For reference purposes only. No further copies to be made.  
 (c) Crown copyright. All rights reserved (Somerset County Council) (100038382) (2017)

(c) Crown copyright. All rights reserved (Somerset County Council) (100038382) (2017)

The County Council can accept no responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way Definitive Map to a different scale.

Definitive Footpath  
 County Road  
 Proposed Stopping Up (shown D-E-G-H)  
 Alternative Route (shown D-C-B-A)

Parish:	North Curry & Fivehead
District:	Taunton Deane & South Somerset
Date:	21/1/2017
Drawing No:	H38-17diversion
Drawn By:	MHardwill
Grid Ref:	333456 123763
Scale:	1:2500



**MAP NOT TO ORIGINAL SCALE**