



Order Decisions

Site visit made on 3 June 2019

by K R Seward Solicitor

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

Decision date: 26 June 2019

Order A: ROW/3211383

Order B: ROW/3211385

Order C: ROW/3211387

- Order A is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as West Sussex County Council (Elsted & Treyford and Harting) Public Path (No.871) Diversion Order 2017.
- Order B is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as West Sussex County Council (Elsted & Treyford and Harting) Public Path (No.872) Diversion Order 2017.
- Order C is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as West Sussex County Council (Elsted & Treyford and Harting) Public Path (No.873) Diversion Order 2017.
- The Orders are all dated 10 March 2017 and propose to divert the public right of way shown on each Order plan and described in the Order Schedule.
- There were two objections outstanding when West Sussex County Council submitted the Orders to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decisions: The Orders are confirmed.

Preliminary Matters

1. Following submission of the Orders to the Secretary of State for confirmation, one objection was withdrawn. There remains one other outstanding objection.
2. There are three linked Orders made on the same day for the diversion of part of three public footpaths. They affect land within the same ownership. The public paths and their proposed diversions are physically linked. Taken together the Orders form a coherent package. Orders A and C could potentially be confirmed in isolation, but Order B depends upon confirmation of Order A if cul-de-sac paths are to be avoided terminating in a field. Nevertheless, they are separate Orders and I must deal with each individually and on its own merits.
3. All the existing and proposed routes are shown on a single plan which is affixed to each Order. I refer to points marked on the plan and so a copy is attached for reference purposes.
4. The application states that the landowner proposes to enter public path creation agreements¹ to dedicate two additional lengths of public footpath, including a long stretch on disused railway line. The new paths would link with the diverted paths to provide a long circular route. However, I have not been supplied with completed dedication agreements and so I am unable to take the proposal into account.

¹ Under section 25 of the Highways Act 1980

5. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations.

Main Issues

6. The Orders have been made in the interests of the owners whose land is crossed by the footpaths. By virtue of section 119 of the Highways Act 1980, for me to confirm the Orders I must be satisfied that:
 - (a) the diversion to be effected by each Order is expedient in those interests;
 - (b) the new path will not be substantially less convenient to the public in consequence of the diversion;
 - (c) any new termination point for the paths is substantially as convenient to the public; and
 - (d) it is expedient to confirm each Order having regard to:
 - (i) the effect of the diversion on public enjoyment of the path as a whole, and
 - (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing path and the land over which the new path would be created together with any land held with it.
7. I gather that the land affected is within the South Downs National Park and I shall consider the provisions in section 5 of The National Parks and Access to the Countryside Act 1949 Act. I shall also have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area when considering the Orders.

Reasons

Background

8. Order A concerns the diversion of part of public footpath 871 ('FP871') in the parishes of Elsted & Treyford and Harting. Orders B and C relate to the diversion of part of public footpaths 872 and 873 ('FP872' and 'FP873'), respectively, located in the parish of Elsted & Treyford.
9. All the current and proposed routes cross farmland under the same ownership.

Whether it is expedient in the interests of the owner of the land that the paths in question should be diverted

10. FP871 (Order A) currently passes through the yard between the farmhouse and outbuildings at Woodhouse Farm. It continues along the track between fields used for rearing game birds and grazing sheep before turning to bisect a cultivated field. The route proceeds straight across another field annotated on the Order map as a 'marshy area' which is managed by grazing.
11. Whilst FP871 passes close-by the farmhouse it is not possible to see into the house or garden and so any effect on privacy will be perceived rather than real. Similarly, there is no evidence that the proximity of the path to both the farmhouse and farm where livestock are sometimes housed, and materials/equipment are stored has given cause to prompt security concerns. However, I

- note the comments of Sussex Police that the diversion would greatly increase the security of the farmhouse enabling security measures such as the installation of lockable gates. These comments confirm that there would be a security benefit to the landowner from diversion of the path.
12. As this part of FP871 affects an active farmyard, a safety risk is posed from walkers coming into conflict with large moving agricultural vehicles. There is also potential for interruption to farming operations and disturbance to farm stock especially if walkers are accompanied by a dog.
 13. FP872 (Order B) crosses the same arable land as FP871 (Order A) which was in crop at the time of my visit. The two paths cross mid-field. Time will be expended in clearing and reinstating the cross-field paths throughout the cultivation process. Inconvenience to the farmer would be avoided by diversion of the paths to the field boundary.
 14. FP873 (Order C) crosses a relatively small part of the marshland where it connects with FP871 (Order A).
 15. Woodhouse Farm is said to form part of a conservation Entry Level Stewardship Scheme ('ELS') administered by Natural England which promotes the conservation of flora and fauna. The area of marshland crossed by all the paths is expressed to be particularly suited to ground nesting birds as verified by the Game & Wildlife Conservation Trust. The Trust considers it beneficial to re-route the paths around the field edge to minimise disturbance to those habitats. Indeed, the Trust advises that the field is important at local and county level as a breeding site for certain rare/declining species of birds.
 16. In conclusion, I am unpersuaded on the information before me that there is a privacy issue arising from the present alignment of FP871 in Order A. However, I am satisfied that it is expedient in the interests of the landowner for the path in Order A to be diverted out of the farmyard in the interests of safety and security to the farmhouse. I am also satisfied that it is in the landowner's interests to divert the paths in Orders A and B from their cross-field locations for the purposes of agricultural efficiency and for each of the three paths to be diverted in furtherance of the applicant's conservation aims.

Whether the new paths will not be substantially less convenient to the public

17. The objector describes the new routes as longer and haphazard with no clear direction of travel and no landscape reference points to navigate walkers. That does not correspond with the comments made by Harting Parish Council who indicate that the public already use some parts of the diverted routes out of convenience. During my site visit I found the new paths easily identifiable from the cleared routes which mostly follow the natural lines created by planted boundaries.
18. All the routes currently cross marshland which by its very nature can be wet and boggy making walking conditions difficult at times. Conditions were dry at the time of my visit, but the surface was very uneven, and the alignment was not altogether clear through the long grasses. In the places where there was a trodden line it appeared to follow the easiest route available under foot as opposed to the actual definitive line. There is not currently a consistent clear alignment to follow through the marshland whereas the diverted routes follow

grassed headlands which avoid the wetter areas. None of the diverted routes have stiles whereas there are four along the current route for Order A and two along each path in Order B and C. These factors will facilitate accessibility and use by a wider group of people.

19. I turn now to address points specific to each Order.

Order A

20. The diverted route would start about 28m north-west of the length of path to be stopped up. The wide berth around the farm buildings to reach point B is undoubtedly longer than the direct route through the farmyard. The diversion ends at point H rather than point D. To reach point D from H would necessitate using FP873 for a 196m stretch along the current route or 200m if it is diverted. There would be an overall increase in the journey between the same points. This would be less convenient, but the increased distance is not so considerable in the context of the route as a whole.
21. The diversion involves various changes in direction to navigate widely around the farm buildings and its nearest field to then follow the field boundaries. In contrast, the existing alignment for FP871 has only one change in direction. It follows a straight line turning only once through the farmyard and the field beyond to continue straight across the open fields.
22. Neighbouring Harting Parish Council considered the Orders and commented that, in reality, walkers have tended to use more convenient and/or more direct routes across the fields crossed by these paths and by necessity tried to avoid the wetter areas. They say that B-E (Order A) has always been used because it is 'convenient and direct'. It is not difficult to see why that would be so. Upon emerging from the woodland at point E, the natural inclination if wishing to head west is to follow the field boundary rather than head north straight into the arable field before turning sharply south-west.
23. On balance the Parish Council considers the diversion within the arable field in Order A to be an improvement provided the routes are not damaged by vehicular traffic.

Order B

24. Except for the northern end, FP872 currently proceeds in a straight line across the fields in a southerly direction for around 590m. It bisects the existing route in Order A at point C where the direction of travel is aided by a finger post. The diversion would start at the same point (G) but follow the tree line for a short distance in a south-westerly direction before turning 90 degrees or thereabouts to head south-east for about 410m beside the field boundary.
25. If I do not confirm Order A then Order B would result in a cul-de-sac path for FP872 with the diverted path ending at point I and the unaffected part of FP872 ending at point E. In that scenario the diversion would be substantially less convenient to the public who can presently connect with FP872 at point E. On the other hand, if Order A is confirmed (and I will arrive at a decision on that Order first) then a link between points E-I is achieved.
26. Even so, for those wishing to reach point G from E the diversion is far longer and involves changes in direction. From that viewpoint the diversion is less convenient. However, it does follow a clearly defined path on a relatively level

grassed surface beside the treeline. Although there is currently a clear line from point E through the cropped field, the alignment of the existing path becomes unclear with no focal point upon entering the next field and the long grass of the 'marshy area'. The ground here is rough and very uneven, and this affects the convenience of its use.

Order C

27. Order C concerns a straight and relatively short section of path of about 196m in length. The diverted path would be marginally longer at 200m and curves to follow the tree line. The differences in length are not so great to have much impact upon convenience. I found the new route easier to follow than the untrodden definitive line across the uneven marshland and an improvement on convenience.

Summary on convenience

28. Each diversion is less direct. It will take longer to walk between the same points although the extra distance for Order C is minor. Anyone utilising these paths will most likely be doing so for recreation given the remoteness of the location. When going for a walk in the countryside, the additional time and distance is less likely to be an issue than a route used for access or as a link between destinations.
29. Order A has the disadvantage of a longer route around the farm buildings and various changes in direction, but it benefits from a clearly defined route along all stretches and avoids wetter areas of marshland. Overall, I do not consider it to be less convenient.
30. The new route for Order B is less convenient, but not substantially so provided Order A is firstly confirmed. If not confirmed, then the cul-de-sac paths created by Order B would be substantially less convenient to the public.
31. I find no adverse effect on convenience for Order C as the increased distance is so small. Indeed, the improved conditions under foot would deliver an improvement.

Altered termination points

32. The diversion in Order A starts a short distance to the north-west of point A and is accessed by an existing footpath. The effect on convenience is marginal. The other end of the diversion stops at point H and utilises FP873 to reach the same end point.
33. For Order B the northern termination point is the same, but the southern end is approximately 310m to the north east of existing termination point E. Point E can only be reached from the diverted route if Order A is confirmed. Clearly, if Order A is not confirmed then the new termination point resulting from Order B will not be convenient to the public as it will be inaccessible. If Order A is confirmed, then new termination point I will be more convenient for some and less so for others or it may make no difference depending on the intended direction of travel. On balance, it is not *substantially* less convenient to the public, which is the test that must be applied.
34. There is no change in the termination points in Order C.

The effect of the diversion on public enjoyment of the paths as a whole

35. The objector describes the existing routes as “ancient paths” over open farmland with uninterrupted views of the South Downs countryside.
36. Even if these paths have existed for a considerable time there is no evidence that they hold any particular historical interest/value that should be preserved.
37. Due to the topography and tree lines, the far-reaching views of surrounding countryside are currently those from the northern end of Order B. Similar distant views can be enjoyed from L-M along the diverted path.
38. None of the diversions offer a cross field walk as provided by the current paths. For those who enjoy that experience the diversions will not be as appealing. That said, there are disadvantages liable to affect enjoyment of the cross-field paths. Those extending across cultivated land in Orders A and B are subject to ploughing and cropping with periods when part of the paths could be inaccessible or difficult under foot and the alignment less clear.
39. By statute a cross-field path must be reinstated to a minimum width of 1m after ploughing or lawful disturbance from agricultural use. The same risks from disturbance will not be posed with the new paths which will be maintained to a width of 3m except for the section between M-G in Order B which will be 2m wide due to trees limiting the available width.
40. The diversion in Order C is enclosed by trees on one side and post and wire fencing on the other side. Some sections of the other diverted routes are similarly enclosed, but the available width and available views to one side preserve the sense of openness to a reasonable degree. Some people will appreciate the shelter of the trees and the walk next to woodland delivered by Orders B and C with the wildlife it attracts.
41. The objector refers to the existing paths exhibiting a number of unique features including historic buildings and ‘open untamed countryside of the marshland which is an area of comparative wilderness’.
42. The buildings which can be seen from the existing path in Order A may be old, but there is nothing before me to indicate that they are of historic value or interest. Their value as a landmark for navigation purposes would not be lost. The diversion takes the public footpath away from the dwelling, but the outbuildings can still be appreciated from the diverted path. The path may be further away from those buildings than at present, but they can be seen from more than one vantage point. The gable end of the tallest building is visible from Q-P and the other buildings from P-X.
43. Whilst some walkers may enjoy close range views of the buildings and find the farming activities of interest there will be others who prefer to avoid walking through a working environment and be further away from built form. Indeed, I note that a supporter expresses dislike at walking through the farmyard where tractors are manoeuvring. Instead of passing through a working area, the diversion in Order A takes walkers past small ponds next to the farm buildings from Q-P with expansive views of the countryside to the other side then next to hedgerow from P-X-B with field views. Despite its longer length, many would find the diverted route in Order A to be a more pleasant experience.

44. Where the existing paths cross marshland, the conditions under foot are bound to be arduous during wet periods which is liable to detract from enjoyment. For Order A there is currently a long stretch across the marshy area. The area is remote and isolated, and so it is not difficult to see how it might be inhospitable at certain times of year. That being so, there is benefit from more even and easy to follow routes delivered by each of the three Orders.
45. The purposes of section 5 of The National Parks and Access to the Countryside Act 1949 Act are conserving and enhancing the natural beauty, wildlife and cultural heritage of the area and promoting opportunities for the understanding and enjoyment of the special qualities of those areas. The South Downs National Park Authority supports the proposed diversions and I am satisfied that the purposes of section 5 are fulfilled.
46. To sum up, the diverted route in Order A offers a different experience and whether it is more or less enjoyable than the existing path depends on individual preferences. Taken as a whole and bearing in mind all factors, it will be an improvement for many.
47. For those who enjoy a cross-field walk whatever the surface conditions will prefer the existing route in Order B. Others will get more enjoyment from an easier walk under foot along clear lines offered by the diversion. Overall, I consider the effect on enjoyment to be neutral.
48. Order C relates to such a short section of path overall that there is unlikely to be any significant effect on enjoyment. The diversion away from marshland along this stretch onto a better drained surface and clear alignment is likely to be an improvement for most users.

The effect of the diversion on other land served by the existing paths and the land over which the new paths would be created

49. Concerns are raised that the new routes will interfere with a greater number and range of habitats and various species such as bats found near hedgerow trees and barn owls hunting near field edges. In comparison, it is claimed that the existing paths do not create any additional pressure on local wildlife.
50. Whilst there are proposals for two additional links to be dedicated as public paths, the Orders do no more than divert existing footpaths. They do not increase the number of paths for there to be an 'over concentration' of use of the countryside.
51. The Game & Wildlife Conservation Trust expresses surprise and being impressed by the snipe habitat at the estate in a letter to the South Downs National Park Authority following a visit in November 2016. In providing advice for ongoing management of the site the letter advises that "the public footpaths across the middle of these fields are not helpful when trying to manage for ground-nesting birds. If it is possible to re-route the paths around the field edge, I would expect this to be beneficial."
52. The objector dismisses the views of the wildlife experts as irrelevant. Clearly, the wildlife and existing paths have co-existed, but the point made is that it would be better for certain species, such as snipe, if the paths across their habitats were diverted. The evidence responds to the objections raised. Rare breeding birds will not be unique to the applicant's land, but that does not diminish the importance of their protection. Walkers will still be able to

appreciate the wildlife even if it is from a greater distance less disruptive to their habitats.

53. Opportunity will arise to observe other species from the diverted paths which are closer to woodland and hedgerow. There is associated risk of disturbance to that wildlife. However, the advice from the Game & Wildlife Conservation Trust is that unless there are flora of particular importance it is unlikely that any detriment to species at the field edge would outweigh the benefits to breeding waders and snipe in winter. Had there been the presence of important flora I would have expected it to be raised during the consultation process. I have no reason to disagree with the Trust's conclusions.
54. There is no real basis to believe that the risk of dogs worrying livestock will be increased when the diverted routes will be around field edges rather than cross-field. It seems more likely to me that the risk would be reduced where field boundaries are enclosed at least on one side. I note that specific concern is raised over the proximity of the new route along the old railway to grazing livestock in adjoining pastures outside the applicant's ownership. This route would be the subject of a separate creation agreement which is not before me.

Rights of Way Improvement Plan ('ROWIP')

55. The County Council advises that following the 10-year review of its ROWIP 2007-2017 its Rights of Way Management Plan 2018-2028 was published. It considers the proposals to accord with the relevant aims and objectives of both Plans. In particular, the County Council's vision for the network is to give maximum opportunities for people to enjoy the countryside while recognising the need to balance this with the interests of those who live and work in the countryside. It further seeks a path network that enables appropriate access without barriers for as many people and types of user as possible.
56. The diversion of each path will improve the landowner's ability to manage effectively his land to improve agricultural efficiency. Whilst there are some disadvantages from less direct and longer routes, each Order provides a countryside walk with a variety of views over the surrounding landscape. There are stiles across each of the existing routes whereas the diversions offer open access over easier terrain to assist in opening-up the network to more people.
57. The Orders appear to meet key aims within the ROWIP.

Whether it is expedient to confirm the Orders

58. I have concluded in my considerations above that each Order is expedient in the interests of the landowner.
59. Order A is no less convenient, and I am satisfied that it is expedient for the Order be confirmed having regard to its effect on public enjoyment. Nothing in the submissions or from my site visit leads me to conclude that it would not be expedient to confirm the Order.
60. Having reached that conclusion, confirmation of Order B would not result in cul-de-sac paths for FP872. Given the longer distance between points and changes in direction, the diversion in Order B would be less convenient to the public, but not *substantially* so. I need to balance that finding against the amount to which the interests of the landowner would be met. On balance, I consider that the

greater weight should be given to the landowner in this instance in order to facilitate land management for conservation purposes.

61. Order C is not less convenient, and I have found no adverse effect to public enjoyment. I consider it expedient to confirm the Order.

Conclusions

62. Having regard to the above, and all other matters raised in the written representations, I conclude that each Order should be confirmed.

Formal Decisions

Order A

63. I confirm the Order.

Order B

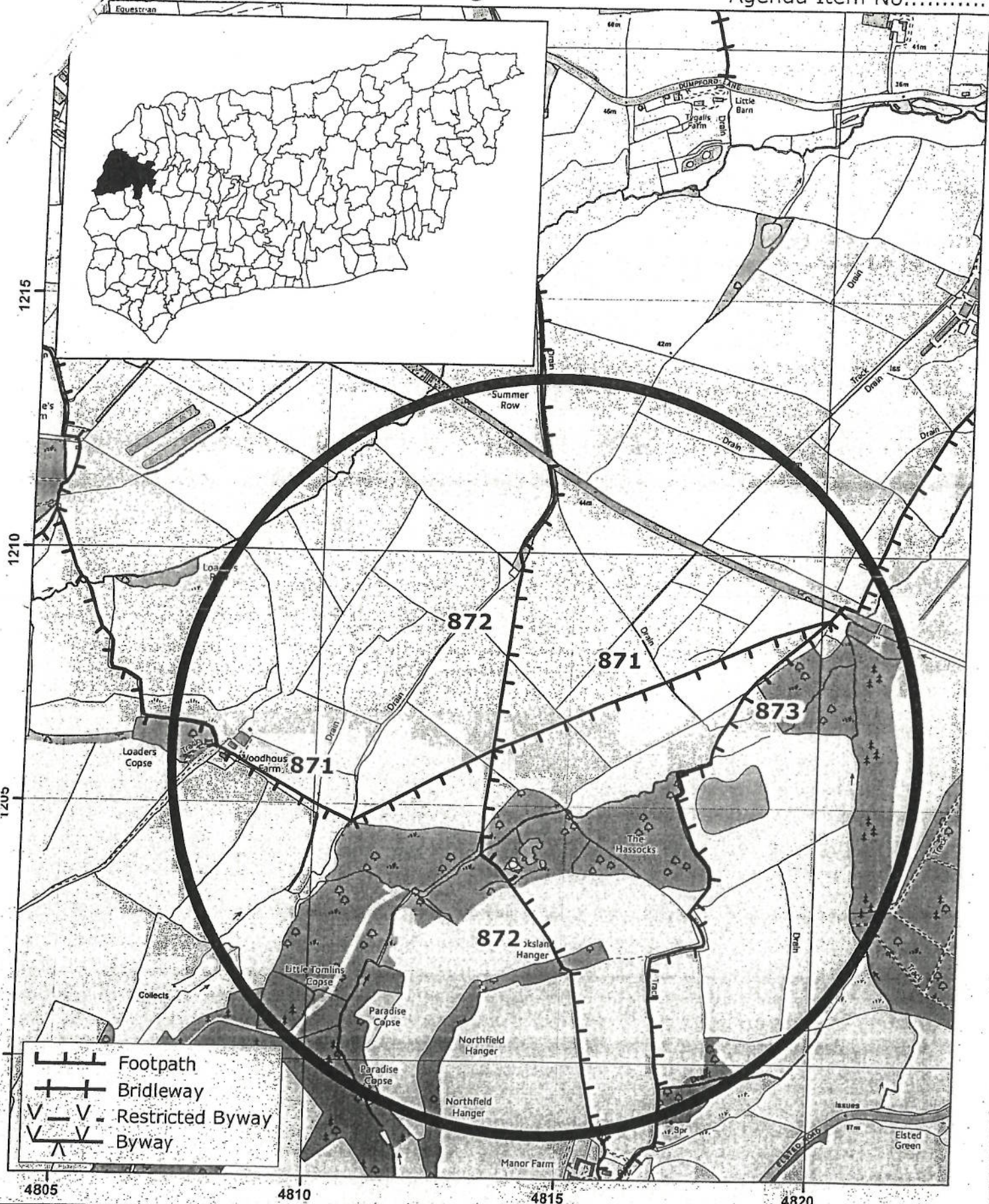
64. I confirm the Order.

Order C

65. I confirm the Order.

KR Seward

INSPECTOR



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Elsted & Treyford and Harting: Proposed Diversion of part of Footpaths 871, 872 and 873; Creation of new Footpath on disused Railway - Location Plan

Plan: 01692 1:10,000
Date: 19.05.2016

OS Sheet: SU 82 SW
Grid Ref: 4813 1205

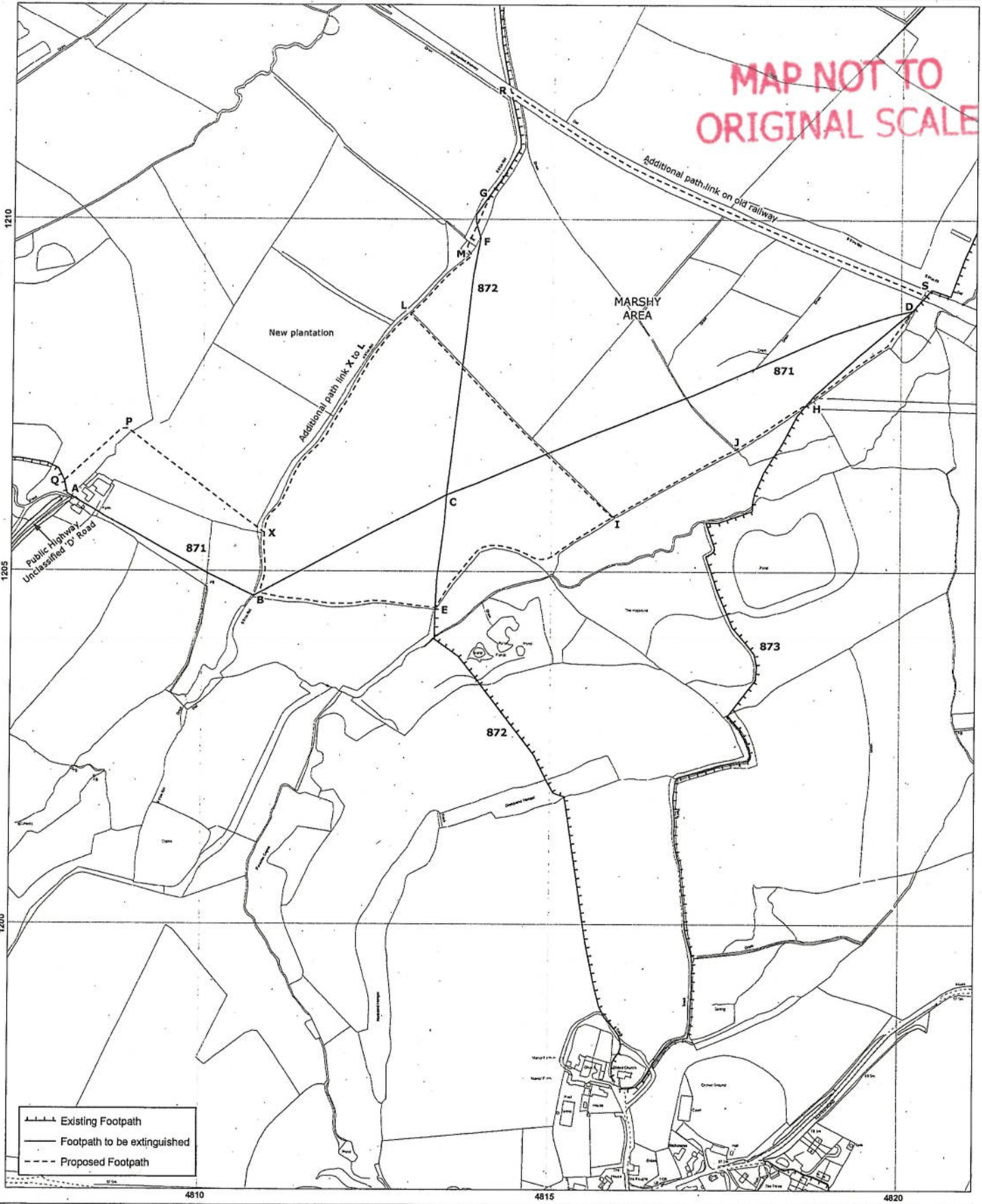


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Lucy Monie
Interim Director of Highways and Transport



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Elsted & Treyford and Harting: Proposed Diversion of part of Footpaths 871, 872 and 873; Creation of new Footpath on disused Railway - Site Plan

Plan: 01693/1 1:2,500 at A1
Date: 28.09.2016

OS Sheet: SU 82 SW
Grid Ref: 4813 1205



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Director of Highways and Transport

