



Order Decision

Site visit made on 17 October 2019

by Susan Doran BA Hons MIPROW

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

Decision date: 01 November 2019

Order Ref: ROW/3221219

- This Order is made under Section 119 of the Highways Act 1980 and is known as the Derbyshire County Council (Public Footpaths Nos. 20 & 21 (parts) – Parish of Bradley) Public Path Diversion Order 2018.
- The Order is dated 18 October 2018 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule.
- There was one objection and one representation outstanding when Derbyshire 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

Procedural Matters

1. This case concerns the diversion of parts of two footpaths at Bradley near Ashbourne: Footpath 20 from its present alignment, points A-B-C and E-F-C (on the plan attached to the Order), and Footpath 21 from points C-D, to new alignments G-H and H-J-K-L-M and E-N-O-P-D. If the Order is confirmed, the paths would be realigned from the southern and eastern sides of a lake and north-east of Knoll Lodge to the western, northern and eastern sides of the lake (passing between two lakes) and further away from Knoll Lodge.
2. I made an unaccompanied visit to the site, when I walked the existing footpaths (none of which was obstructed) and viewed the proposed routes.

The Main Issues

3. The Order has been made in the interests of the owner of the land crossed by the footpaths described in the Order. Section 119 of the 1980 Act requires that to confirm the Order, I must first be satisfied it is expedient in the interests of the landowner that the footpaths in question should be diverted; and that the new footpaths will not be substantially less convenient to the public.
4. I must then consider whether it is expedient to confirm the Order having regard to the effect the diversions would have on public enjoyment of the paths as a whole; the effect which the coming into operation of the Order would have on other land served by the existing paths; and the effect which any new paths created by the Order would have on the land over which they are created, and any land held with it, having regard to the provisions for compensation.
5. 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.

6. I am also required to take into consideration any material provisions of a rights of way improvement plan ('ROWIP') prepared by the Council. No issues have been raised, and I note the proposal is consistent with aim 3 of section 5 of the ROWIP, to provide a more connected, safe and accessible network for all users.

Reasons

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

7. I have considered whether or not the existing paths interfere with the privacy or security of the property, these being the reasons given for the application. A house is currently under construction, the former dwelling having been demolished. The proposed route is further away from the house and outbuildings than the existing path which will improve the landowner's privacy. I am not aware of any security issues associated with the property, although I note it is accessed via a driveway from the road and is not overlooked by other dwellings. Nevertheless, moving the paths as proposed is likely to have a beneficial effect for the owner in terms of security, whether actual or perceived.

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

8. The termination point of Footpath 20 on Milldam Lane would move from A north to G, opposite Yeldersley Footpath 5, providing a direct crossing for walkers continuing a journey using public footpaths, instead of following the road to reach Footpath 20. The termination point of Footpath 21 would move from C to D a slight reduction in distance to link with the proposed diversion running north-east of the property. Overall, the termination points of the diverted routes will in my view be substantially as convenient to the public.

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

9. I do not share the view that there would be no advantage to the public in moving the paths. Parts of the existing route of Footpath 20 are bounded by high close-boarded wooden fencing creating a sense of enclosure which exacerbates their narrow width. I did not find the existing route at these locations virtually impassable on foot as suggested. However, the narrow width, worn trod and surface conditions meant some sections were muddier and less easy to negotiate than others. The proposed routes offer a defined width of 2 metres affording a wider, more open, less confined walking experience. There is no suggestion that the proposed routes would be fenced in a similar manner to the existing routes.
10. I find the proposed diversion more circuitous than the existing route. Journeys for some users will be longer but for others shorter depending on where they are travelling to or from. However, use of the paths is likely to be mainly for recreational purposes. Existing stiles will be replaced with kissing gates or gaps which together with surface improvements will make the proposed paths easier to negotiate for a wider range of users. Consequently, I consider the new footpaths will not be substantially less convenient to the public.

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

(a) the effect the diversions would have on public enjoyment of the paths as a whole

11. Both footpaths are said to pre-date the ponds and are historic paths, linking with the path through the woods. They may have existed on their definitive alignment for many years, but I am not aware of anything of particular historical importance associated with them or their enjoyment by the public to cause me to place significant weight on this point. I understand Footpath 20 originally followed the top of the dam but that the original dam wall has been replaced meaning the (historic) definitive route now lies on its southern slope. I accept some people would be disappointed by the loss of a path considered part of the local heritage. However, the 1980 Act provides a mechanism for applications to be made to move paths, subject to the relevant tests being met. If the Order is confirmed, access to and from the same destinations and a link with the woodland path would be retained.
12. A pond south of Footpath 20 would no longer be visible, but the proposed route offers more open and extensive views of the lakes than are currently seen from the existing path. The proposed route between D and N through a wooded area and meadow offers a more open aspect than is experienced between C and F which is enclosed, narrow and muddy underfoot. I consider the diversions here would have a positive effect on public enjoyment.
13. Some walkers may prefer not having to walk along the road between Footpath 5 Yeldersley and A; and some may feel uncomfortable passing close to a private dwelling, so prefer the proposed diversion, although this is subjective.

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

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

14. A second landowner affected by the Order has agreed in writing to the proposed diversion on their land. If the Order is confirmed, a short length of Footpath 33 west of N would become a cul-de-sac. However, the Council intends to address this under Section 118 of the 1980 Act.

Whether it is expedient to confirm the Order

15. I conclude that the necessary tests, considered above, are met and that it is expedient to confirm the Order as made.

Conclusions

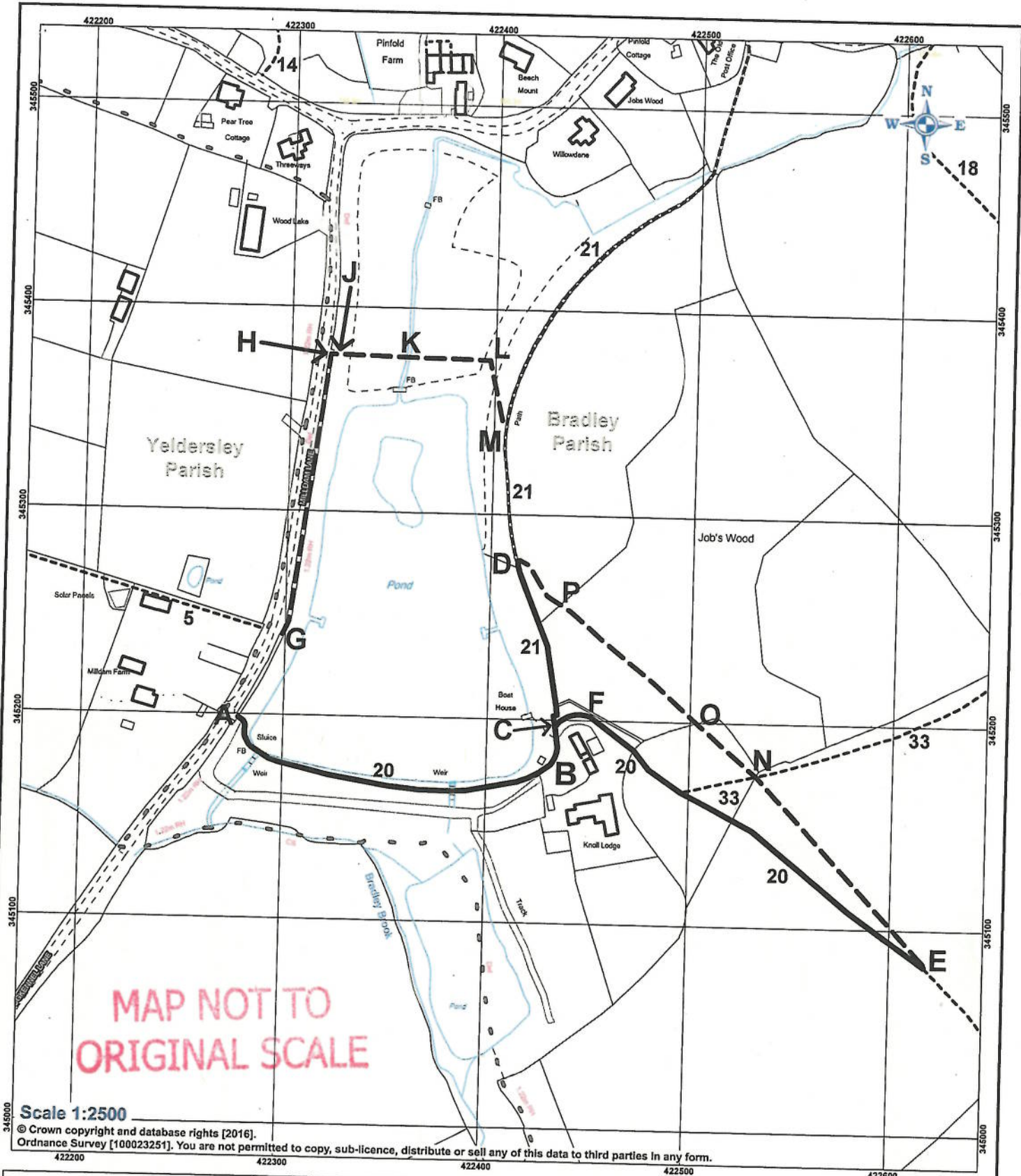
16. Having regard to these and all other matters raised in the written representations, I conclude the Order should be confirmed.

Formal Decision

17. I confirm the Order.

S Doran


Inspector



MAP NOT TO ORIGINAL SCALE

Scale 1:2500
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Highways Act 1980, Section 119
 The Derbyshire County Council
 (Public Footpaths Nos. 20 & 21 (Parts) -
 Parish of Bradley)
 Public Path Diversion Order 2018

Key:

- Footpaths to be diverted 
- Alternative footpaths 
- Other footpaths 
- Parish boundary 