
Order Decision

Site visit made on 22 October 2019

by Paul Freer BA(Hons) LLM PhD MRTPI

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

Decision date: 27 November 2019

Order Ref: ROW/3223251

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and also section 53A(2) of the Wildlife and Countryside Act 1981, and is known as the County Council of Durham (Public Footpath No.39 Evenwood and Barony Parish) Public Path Diversion and Definitive Map and Statement Modification Order 2018.
- The Order was sealed on 4 October 2018 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule and to modify the Definitive Map and Statement in that respect.
- There was one objection, from the Open Spaces Society, outstanding when the County Council of Durham 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.

Preliminary matters

1. The objector points out an error in Part 4 of the Schedule to the Order insofar as it refers to "southerly, westerly and northerly" around the field edge whereas the correct sequence should be "southerly, easterly and northerly". The County Council accept that this is in error and invite me to modify the Order accordingly. In addition, in paragraph 1 of the Order itself, the words 'as provided for by paragraph 3 below' are extraneous and appear to be a typographical error. I shall delete them. I am satisfied that I can modify the Order in both these respects without causing injustice and that it is not necessary to re-advertise the Order.

The Main Issues

2. The Order has been made in the interests of the owners of the land crossed by the footpath. Section 119 of the Highways Act 1980 therefore requires that, before confirming the Order, I must be satisfied that:
 - (a) it is expedient in the interests of the owner of the land crossed by the section of footpath to be diverted that the line of the path or way, or part of that line should be diverted; and
 - (b) the path or way will not be substantially less convenient to the public;
 - (c) the point of termination of the alternative path would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public, and
 - (d) that it is expedient to confirm the Order having regard to:

- (i) the effect which the diversion would have on public enjoyment of the path or way as a whole; and
 - (ii) the effect which the coming into operation of the Order would have as respects other land served by the existing rights of way; and
 - (iii) the effect which any new public rights of way created by the Order would have as respects the land over which the right is so created and any land held with it.
3. Section 119(6A) of the 1980 Act provides that I must have regard to any material provision contained in a Rights of Way Improvement Plan for the area covered by the Order.

Reasons

Whether it is expedient in the interests of the owners that the line of the path or way, or part of that line should be diverted

4. Following a significant loss of stock during the bad weather in early 2018, the landowner intends to erect an additional building to provide shelter for his livestock in a position close to the other farm buildings. Pursuant to that, the landowner applied for and obtained planning permission for the erection of a new building which, if constructed, would obstruct footpath No. 39. Whilst the owner understands that he cannot implement this permission until and unless footpath No. 39 is diverted, the intentions of the landowner in this respect are nonetheless clear.
5. The objector questions whether the erection of this building justifies diverting the footpath, commenting that the building would only be used as a shelter for a few months each year and thereafter only used for storage purposes. However, given that planning permission has now been granted for such a shelter and the clear intentions of the owner to implement the permission, that argument has been overtaken by events.
6. The existing line of footpath No. 39 runs close to where the landowner stores farm equipment when not in use: indeed, several pieces of equipment were being stored on this part of the land at the time of my site visit. Although the objector considers that most walkers have no difficulty in negotiating footpaths close to pieces of agricultural machinery, there is in my view a general benefit to the efficiency of the farming operation to be derived from separating members of the public from where farming activity takes place.
7. For these reasons, I am satisfied that diverting the footpath to enable the planning permission for the animal shelter to be implemented and to avoid any possible conflict with activity associated with the storage of agricultural equipment is in the interests of the landowner.

Whether the path or way will not be substantially less convenient to the public

8. The proposed diversion affects approximately one third of the total length of footpath No. 39, equating to an additional length of some 186 metres. However, footpath No. 39 itself forms part of an extensive network of footpaths in the area used primarily for recreational purposes. Viewed in that context, I am satisfied that the alternative route is not substantially less convenient.

The effect which the diversion would have on public enjoyment of the path or way as a whole

9. The existing and the alternative routes pass over terrain of the same surface and gradient. Furthermore, the existing and the alternative routes are in close proximity, such that the experience of walking the route would be essentially the same.
10. The diverted route would follow the edge of the field rather than pass straight through it. The objector considers that the diverted route is therefore circuitous, and as such irritating and irksome to walk, especially given that the exit from the field can be seen beyond the circuitous loop. The objector considers that this would tempt walkers into taking a more direct route by cutting corners and taking diagonal desire lines across the field.
11. I take the objector's point that following a more circuitous route to a clearly visible end point may detract from the enjoyment of the walk to some extent. However, in the context of a recreational walk over a longer distance than just this section of the footpath, it is my view that any such loss of enjoyment would not be significant for most people. Furthermore, any such loss of enjoyment must be balanced against the interest of the landowner. In weighing that balance, and having regard to the considerations outlined at paragraphs 3 to 6 above, I consider that it remains expedient to confirm the order.

The effect which the coming into operation of the Order would have as respects other land served by the existing right of way

12. There is no evidence that the diversion will have any effect on land served by the existing way.

The effect which any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it

13. The proposed alternative route crosses land entirely in the ownership of the applicants for the Order and they clearly support the diversion.

Whether the point of termination of the alternative path would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public

14. The existing points of termination of footpath No. 39 would be unaffected by the proposed diversion of the footpath.

Rights of Way Improvement Plan

15. There is nothing in the Rights of Way Improvement Plan 3 for County Durham that is directly relevant to my consideration of this Order.

Whether it is expedient to confirm the Order

16. Having regard to all of the above, I conclude that it is expedient to confirm the Order.

Other Matters

17. The objector considers that a less circuitous route around the building recently granted planning permission could be provided under the provisions of section 247 of the Town and Country Planning Act 1990, and notes that a suggested diversion route along those lines is shown on the application drawings for that building. However, that alternative route is not formally before me and I have therefore given it no further consideration.

Conclusion

18. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to modification.

Formal Decision

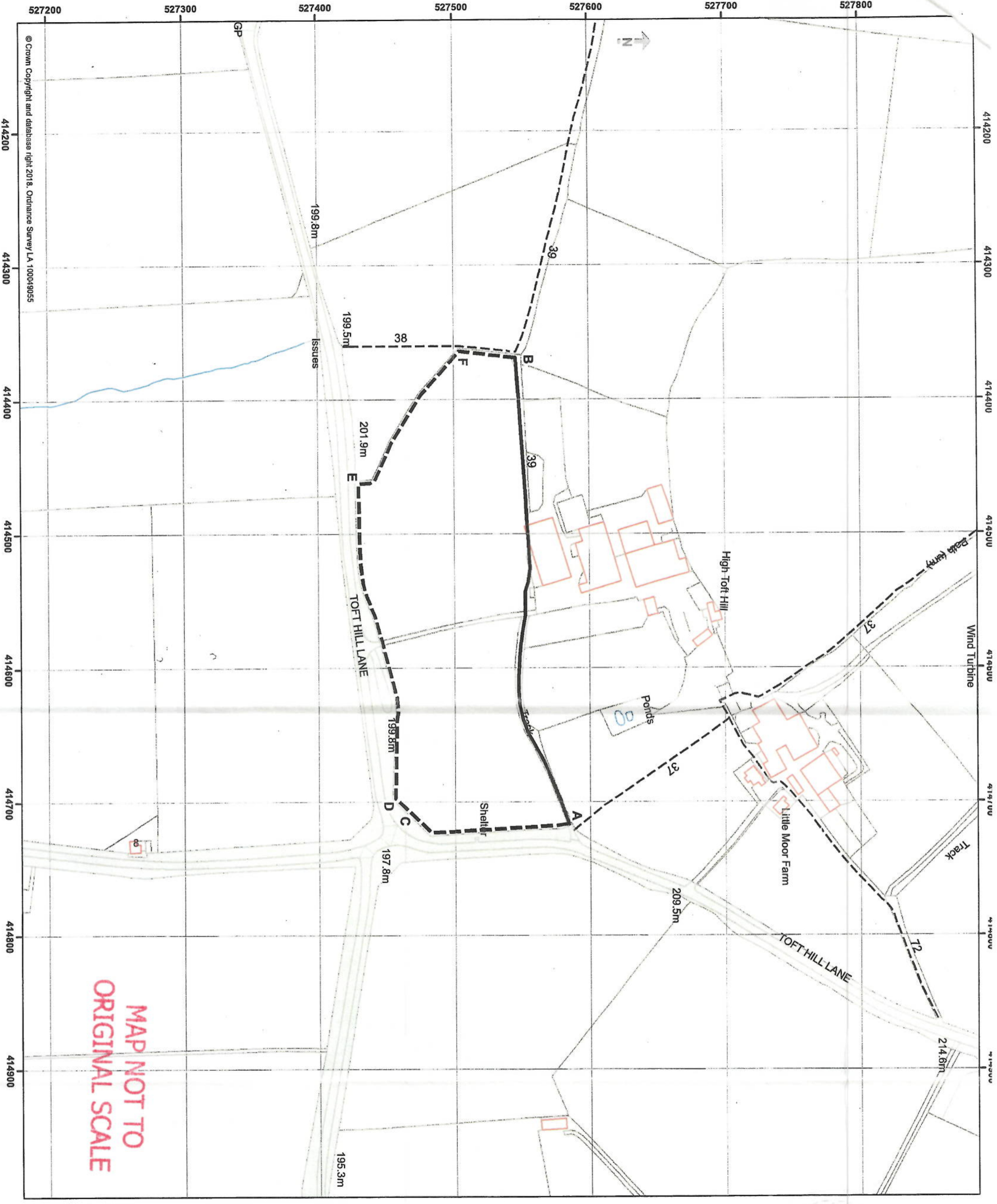
19. I confirm the Order subject to the following modifications:

20. In paragraph 1 of the Order, delete the words 'as provided for by paragraph 3 below'.

21. In Part 4 of the Schedule to the Order, delete the word "westerly" and insert "easterly".

Paul Freer

INSPECTOR



MAP NOT TO ORIGINAL SCALE



Ian Thompson
 Corporate Director
 Regeneration and Local Services
 Durham County Council
 County Hall
 Durham DH1 5UD

Barry Page

The County Council of Durham (Public Footpath No. 39 Evenwood and Barony Parish) Public Path Diversion and Definitive Map and Statement Modification Order 2018

Footpath to be extinguished
 —————
 Footpath to be created
 - - - - -

Scale 1: 2,500

Adopted Highway
 - - - - - Existing Public Footpaths

Drawn: 26 September 2018
 Postcode: DL14 0PE