



## Order Decision

On the papers on file

**by Susan Doran BA Hons MIPROW**

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

**Decision date: 09 February 2021**

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### **Order Ref: ROW/3238053**

- This Order is made under Section 118 of the Highways Act 1980 and is known as the Herefordshire Council Footpath MR45A Marden Public Path Extinguishment Order 2019.
- The Order is dated 2 May 2019 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Herefordshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

### **Summary of Decision: The Order is confirmed**

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#### **Procedural Matters**

1. This case was due to be determined following an unaccompanied site visit. However, in light of the Covid-19 pandemic, guidance in place at the time, and having regard to the circumstances of this case, the decision was taken not to visit the site. In view of this decision, the parties were afforded an opportunity to make any further submissions in addition to those already provided during the usual written representations procedure. A submission was received on behalf of the Open Spaces Society ('the OSS') and responses to it were made by Herefordshire Council ('the Council') and two interested parties. I take into account all the evidence and submissions before me. I am satisfied that I can reach my decision on the basis of the papers on file.
2. In addition to the objection made on behalf of the OSS, an objection was made on behalf of the Herefordshire Ramblers', and a representation received in support of the Order from Marden Parish Council.
3. I note from the submissions that the line of the Order route is obstructed in several places, and this has been the case for many years. Indeed, I understand obstructions, including a residential dwelling, have endured since the 1960s.

#### **The Main Issues**

4. The Order is made under Section 118 of the Highways Act 1980, the Council having concluded that this length of public footpath was not needed for public use. However, at the confirmation stage, I must be satisfied it is expedient to stop up the footpath proposed in the Order having regard to the extent that it appears that it would, apart from the Order, be likely to be used by the public; and the effect which the extinguishment of the right of way would have as

respects the land served by the path, taking into account provisions for compensation.

5. In reaching my decision, I am required to disregard any temporary circumstances preventing the use of the path when determining the likely use that might be made of it.
6. Whilst I must also have regard to any material provisions contained in the Council's rights of way improvement plan, in this instance it says there are no matters relevant to the determination of this Order, and none have been raised by any other party to the Order.

### **Reasons**

#### ***The extent to which it appears that the path would, apart from the Order, be likely to be used by the public***

7. Both Objectors maintain that were it not for the obstructions, which they say have gradually increased over time, with the help of appropriate signage and waymarking the path would be well used. Likely use is suggested by walkers wishing to use the Order route itself; walkers wishing to access the housing estate; people living in the houses wishing to use the Order route in either direction; walkers linking with other local public footpaths, or to access the River Lugg. To that end, I consider it is possible there would be use of the path were it available, the indications being that if available it would serve a recreational rather than utilitarian purpose.
8. On the other hand, the Council has received little in the way of complaints regarding the lack of an available route<sup>1</sup>, despite the path having been obstructed for several decades. And, there is a lack of evidence from residents or members of the public locally or more widely, to indicate they would in fact use the Order route, or to use it in the ways suggested.
9. I note support for the path's extinguishment on behalf of the Parish Council, which represents local people. Furthermore, correspondence from several local residents whose properties are directly affected by the Order route which passes through one residential property and several private gardens, indicates that none have encountered anyone attempting to use the path for periods of up to 50 years or more, nor enquiring about it. Neither were the local residents aware of any complaints about its lack of availability. Together these representations point to a lack of evidence of likely use of the path by the public.
10. Whilst I consider it is possible the path would, apart from the Order, be used, the evidence does not support a demand for it. Accordingly, I find that likely use by the public is not such that the Order should not be confirmed, and conclude it is expedient that the footpath be stopped up.

#### ***The effects which the extinguishment would have as respects land served by the path, account being taken of the provisions as to compensation***

11. No issues have been raised as regards the effect on land served by the existing route. I note that Footpath MR45A provides a link between Orchard Green and Footpath MR45 which runs near to the River Lugg. Access to Footpath MR45

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<sup>1</sup> Other than from the OSS

would remain via public roads, for the majority along a footway, running north and then west, enabling a connection back to point B on the Order plan. I am satisfied that there would be no adverse effect on land served by the path, and it is expedient to confirm the Order in this regard.

### **Other matters**

12. Both Objectors suggest the path could be diverted near point A (on the Order plan) to avoid passing through the dwelling. The Council comments that neighbouring landowners are resistant to such a scenario. However, the possibility of diverting the path as proposed is not a matter before me for consideration under this Order.
13. Whilst not determinative, I note the alternative route that can be (and presumably has been) used by the public wishing to access points A and B avoiding the Order route. It is longer than the existing path and as indicated above in part follows footways alongside roads. I understand that Marden is a rural area and these roads are quiet with little traffic. It is suggested the alternative is less enjoyable and less expedient, though no evidence has been provided to support the view that the existing route is more likely to be used as a result.
14. Reference is made to the central section of the Order route having been diverted following a 2016 diversion order under the Town and Country Planning Act 1990, suggesting this would not have been confirmed had the path not been considered necessary. However, the confirmation tests in that case were different to those I must apply with regard to this Order (paragraph 4 above).

### **Conclusions**

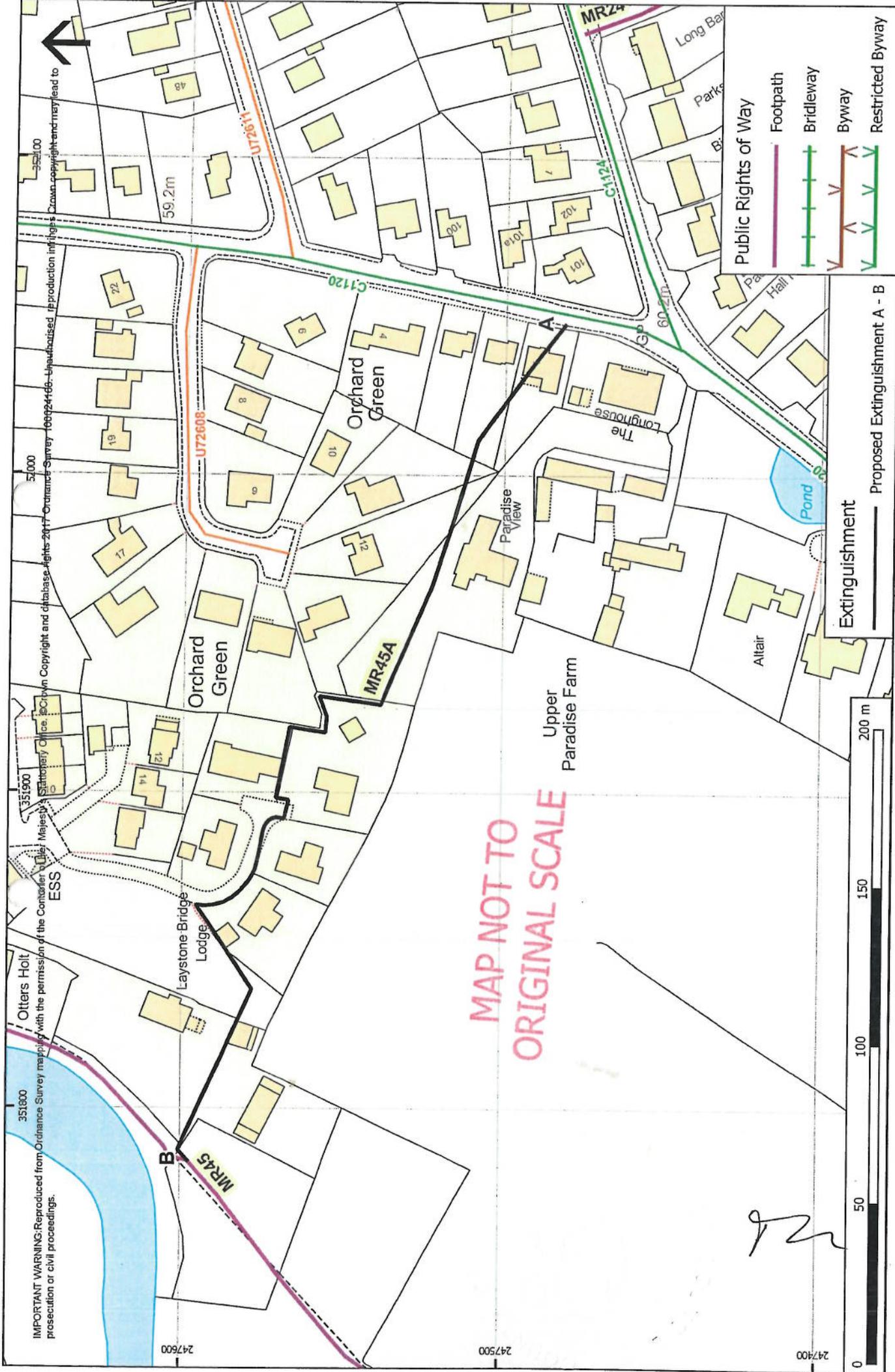
15. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

### **Formal Decision**

16. I confirm the Order.

*S Doran*

**Inspector**

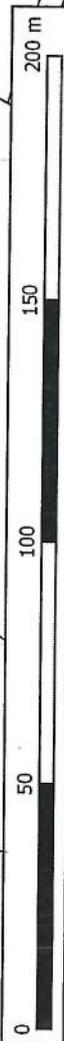


**MAP NOT TO ORIGINAL SCALE**

**Public Rights of Way**

- Footpath
- Bridleway
- Byway
- Restricted Byway

**Extinguishment** Proposed Extinguishment A - B



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**Highways Act 1980, Section 118**  
**Herefordshire Council Public Footpath MR45A Marden**  
**Public Path Extinguishment Order 2019**

SCALE: 1:1,500  
 DATE: 19/02/2019  
 PROJECT: Balfour Beatty Living Places Unit 3 Thorn Business Park Rotherwas Hereford HR2 6JT

**Balfour Beatty**  
 Herefordshire Council  
 Working for Herefordshire

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