

Order Decision

Hearing held on 24 January 2017

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 23 March 2017

Order Ref: FPS/Y3940/5/5

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Wiltshire Council Parish of Heywood Paths 6 (part), 7 and 8 (part) Stopping up and Diversion Order and Definitive Map and Statement Modification Order 2016.
- The Order is dated 9 February 2016 and proposes to stop up and/or divert parts of footpaths 6 and 8 and to stop up footpath 7, in the parish of Heywood in the proximity of Hawkeridge Farm. The proposals are shown in the Order map and described in the Order Schedule.
- There were two objections outstanding when Wiltshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Preliminary Matters

Documents

1. There was concern prior to the hearing that not all the relevant documents were available. Wiltshire Council, the order-making authority ("the OMA"), confirmed that all submitted documents had been on deposit as required. To assist the objector concerned the OMA supplied him with a copy of the submitted documents ahead of the hearing.
2. Unfortunately, documents relating to aspects of the Flood Risk Assessment¹ were not submitted until the day of the hearing. During the decision writing process I found I needed further information on these matters and so asked for this to be submitted by the applicant for the Order. The statutory objectors, who spoke at the hearing, were sent copies of the additional information² and given an opportunity to comment further.
3. I am satisfied that there has been appropriate opportunity for all parties to access the relevant documents.

Drafting of the Order

4. Concern was raised that the Order did not show the continuation of all the routes and, therefore, the effect on the network in the area. Discussion at the hearing resolved that the Order map showed all the routes as recorded on the Definitive Map and Statement ("the DMS"), although those which were not directly affected were shown by a small magenta pecked line, which was not

¹ Hearing document 4

² Hearing document 7

easily visible to all. However, I am satisfied that the notice and Order were effective in setting out the proposed changes, to which objections were made.

5. I have considered whether to modify the Order to show the routes more clearly. However, I am satisfied that the Order as drafted showed everything that was required. The Order is also made under section 53A(2) of the Wildlife and Countryside Act 1981, which means that on confirmation the Order would also modify the DMS. The Order itself would not need to be viewed as part of the DMS and, therefore, I do not consider it necessary to make any modification in this respect. Nonetheless, in relation to future Orders, the OMA may wish to bear in mind the difficulties that may arise in using this symbol.

Procedural Matters

6. I made an unaccompanied site visit on 23 January 2017 and held a public hearing into the Orders on 24 January. Following the close of the hearing I made a further accompanied site inspection, with the objectors and representatives from Hawke Ridge Business Park Ltd ("HPH") and the OMA.

Main Issues

7. The Order was made because it appeared to the OMA that it was necessary to stop up and divert the relevant parts of the footpaths to enable development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990 ("the 1990 Act").
8. Section 257 of the 1990 Act requires that, before confirming the Order, I must be satisfied that it is necessary to stop up and divert the footpaths in question to allow development to be carried out in accordance with the planning permission already given but not substantially complete.
9. Even if I were to find it necessary to stop up or divert the paths to allow implementation of the permission my confirmation of the Order is discretionary. In exercising this discretion I must consider the merits or disadvantages of the proposed diversion and stopping up in relation to the particular facts of the case, and in particular the effect the confirmed Order would have on those entitled to the rights that would be altered by it.

Reasons

Background

10. At the time of the making of the Order there was an outline planning permission with two variations: 14/03118/OUT³ for "*Formation of new business park (Class B1, B2 and B8) access and associated works*"; 14/10780/VAR⁴, which was the "*Variation of condition 3 of planning permission 14/03118/OUT to enable the development to be implemented on a phased basis*"; and 15/04092/VAR⁵, the "*Variation of condition 10 of planning permission 14/10780/VAR relating to archaeological works*".
11. The development relates to two areas of land lying to the north and south of Mill Lane, the western end of which is an adopted public highway and the

³ 26 September 2014

⁴ 22 December 2014

⁵ 30 July 2015

eastern end a public footpath, leading to Hawkeridge Mill, beyond which public footpaths continue. Towards the western end of Mill Lane lie Hawkeridge Farm and several other residential and commercial properties.

12. By the time of the hearing a further approval had been granted, 16/06752/REM⁶, "...of reserved matters relating to appearance, landscaping, layout and scale (15/04092/VAR Erection of 4 No. Warehouse Units – use Class B8 – and associated works)". This relates to buildings to be sited on the northern section of the development area.
13. There was some discussion at the hearing as to whether or not this permission should be taken into account in relation to the Order now before me. As I have made a decision on the basis of the earlier permissions I have not found it necessary to consider this matter further.

Whether it is necessary to stop up and divert the footpaths to enable development to be carried out

14. It been suggested that one of the conditions meant that it was necessary for the Order to be confirmed. The relevant condition states that "*The development hereby permitted shall be carried out in accordance with the following approved plans submitted on application reference number 14/03118/OUT approved by the Local Planning Authority...Parameters Plan Rev C received on 23rd June 014.*"
15. At the hearing the OMA confirmed that they no longer supported that position. Although I accept that the plan shows that the intention has always been to alter the existing public path network, I do not consider that reliance could be placed on a condition of this type; the making and confirmation of an Order is a separate statutory procedure, outside the direct control of the developer.
16. It was argued in objection that the outline permission, and variations, were insufficient to show that changes to the rights of way network were necessary. Reliance was placed upon the guidance given by DEFRA in Circular 1/09⁷ and Planning Inspectorate Advice Note 9⁸. The question was put as to why the footpaths could not remain on their current alignments, with the building works simply avoiding them.
17. The guidance referred to indicates that "*Most outline planning applications do not contain sufficient information to enable the effect on any right of way to be assessed...*" and "*An outline permission might not give the degree of certainty necessary to evaluate the impact that the development will have upon the way.*" The question then is whether the particular permissions before me provide sufficient information to show that the changes are necessary.
18. The revised, and current, condition 3 sets out that "*No building phase (or component thereof) shall be commenced, with the exception of the site access roundabout and access road (and associated works), until details of the following matters in respect of that phase or component thereof (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by the Local Planning Authority:*

⁶ 10 November 2016

⁷ Version 2, October 2009

⁸ 8th Revision November 2014

- *The scale of the development;*
- *The layout of the development;*
- *The external appearance of the development;*
- *The landscaping of the development;*

The development shall be carried out in accordance with the approved details."

19. Those supporting the Order explained that the permission was to be implemented on a phased basis to allow development of bespoke units, within the permitted classes, which were built to order. The Conceptual Site Layout Plan⁹ has been updated as shown by the current Masterplan Option¹⁰, and this may again alter depending on demand for particular unit sizes in particular business classes, within the allowance of the outline permission. Without the certainty of being able to build the type of unit required at the time required, due to any need for additional procedures such as individual diversion orders relating to individual reserved matters applications, the outline planning permission granted could not be implemented.
20. Taking account of the above matters I am satisfied, in this case, that the outline permission provides sufficient information to allow me to evaluate the impact of the development on the public rights of way in question. I consider that the phasing of the development, granted through the variation to the outline permission, introduces flexibility to the planning permission which is at odds with the existence of the public footpaths on their current alignments through the site area.
21. Whilst I agree with the objectors that it would be possible for each individual reserved matter attached to a new building phase to deal with the rights of way on a piecemeal basis this would not, in my view, allow the implementation to proceed as set out by the varied outline permission.
22. Taking account of all the above matters, I am satisfied that it is necessary to divert and stop up the footpaths to enable the development to be carried out.

Whether the development is substantially complete

23. There was agreement between the parties that although some access and drainage works had been carried out the development was at a very early stage. It is not substantially complete.

The effect of the Order on those whose rights would be extinguished by it

Persons whose properties adjoin, or are near, the existing public right of way

24. The Order has most effect on the occupants of properties located on Mill Lane, one of whom made an objection to the Order. For those living towards the western end of the Lane the greatest effect would be the loss of Heywood Footpath 7 ("FP7"), which runs between points F – E – D¹¹ and continues via Heywood Footpath 6 ("FP6") to give access to Hawkeridge village, where I understand there is a public house.

⁹ 2272/P 01/A, August 2014, Hearing document 3C

¹⁰ 2272/F M 100/C, December 2016, Hearing Document 3D

¹¹ Letters as used to identify the routes on the Order map

25. Mention was made of one of the residents in this area being registered disabled. Although this party chose not to object to the Order, concerns were raised on his behalf, as well as more generally, to the doubling of the distance to reach the village on the proposed route. This would involve walking along Mill Lane to point C and then around the edge of the proposed development area to point A.
26. I agree that increased distance can be a barrier to access for some individuals. However, the OMA point out that the existing route through to the village is subject to four stiles, which can also form a barrier for some. The proposed route, so far as it is within the control of the HPH, is without any barriers, there being a gap only at point C, although the continuation would still involve two stiles, at A and at the northern end into the village. Furthermore, the intention is that the proposed footpath would be a 2-metre wide surfaced route, which the OMA believe would be an improvement on the current cross-field path.
27. Having walked these routes during both my accompanied and unaccompanied site visits I can see that the proposed route may be more inconvenient in some respects for those living in and around Hawkeridge Farm. A direct route, when you are travelling to and from a specific destination, will always feel more natural and preferable. However, I also consider that there are advantages in terms of surfacing – avoiding the need to walk through heavy clay – and reduction in limitations. It appeared that use was already being made of the proposed route alignments in preference to the legally existing routes.
28. The matter of enjoyment of use the routes was raised, with respect to alteration of the historic relationship of the footpaths to the Grade 2 Heritage Asset Hawkeridge Farm and the village. Although I recognise that many people enjoy the historic relationship of certain routes, I consider that the effects of the development itself would break that link. Even if the existing route of FP6 were to remain on the current alignment, at best it would run between buildings and service yards, at worst through them. I do not consider that it would be an enjoyable walk, even with landscaping, as suggested in objection.
29. Taking all those points into account I consider the overall effect to be neutral with regard to accessibility and not substantially less convenient¹² as suggested. I agree that the enjoyment of use of the routes would be negatively affected, even with the additional landscaping that has already been carried out to provide screening alongside the proposed routes. However, I consider that the real impact arises from the development itself, not from the alterations to the alignment of the footpaths.

The general public

30. In relation to the general public the considerations set out above also apply. An additional comment was made regarding the National Planning Policy Framework requirement for accessibility for all, with a suggestion that the development could only be reached from the village by use of the road, on which this is no footway, and so people would be more likely to drive. Although FP7 is stopped up by the Order, FP6 is diverted and would continue to provide access on foot to and from the village, albeit on a longer route.

¹² It was noted at the hearing that the relevant section of Planning Inspectorate Advice Note 9 is that set out at paragraphs 39 – 45 and not the sections mistakenly referred to in objection

31. Concerns were raised regarding the potential for flooding on the proposed routes, particularly in the area to the north-west of point J and on the section running north-west from point C. These sections run close to Bitham Brook ("the Brook"). Photographs were submitted showing standing water in the area around point J. I note that this is thought to be runoff, rather than flood water, and that the permission provides for a comprehensive drainage strategy, with a sustainable urban drainage system, to deal with surface water.
32. HPH submitted the Site Specific Flood Risk Assessment¹³, required as part of the planning application. The Environment Agency had no objection to the development subject to a condition, incorporated in the planning permission¹⁴ that *"There shall be no development, groundraising or other alteration on land with an existing ground level of 47.51mAOD or below. This land shall remain undeveloped and shall form unobstructed open space with associated landscaping. REASON To minimise impact on the fluvial floodplain and flood risk to the surrounding area."* A Flood Level Contour plan¹⁵ shows a small area in the corner of the field north-west of J to fall within the contour and the north-eastern side of the northern section of the site, along the Brook.
33. The OMA indicated the intention to make surfaced tracks over which the new alignments of the footpaths would run. In relation to how such surfacing would fit with the planning condition the applicant referred to Planning Practice Guidance ("the PPG"). Table 2 of the PPG sets out that water-compatible development includes *"Amenity open space, nature conservation and biodiversity, outdoor sports and recreation and essential facilities such as changing rooms."* I am satisfied that the proposed route would fall within this definition. Table 3 of the PPG, which shows *"Flood risk vulnerability and flood zone 'compatibility'"* indicates that water-compatible development is appropriate in Flood Zones 3a and 3b.
34. The footpaths would be laid to the specification of the OMA by excavating and removing the current topsoil and subsoil and importing a suitable free draining aggregate base course with a hoggin surface layer, such as South Cerney river gravel. This would form a permeable route at existing ground level, not a hard impermeable footpath. I note that the stopping up and diversion of the existing routes would only take effect on the date that the OMA certify the replacement highways have been created to their satisfaction.
35. There would be a risk of flooding at some times, on some parts of the proposed routes. However, I am satisfied that the free-draining surface would provide an improvement on the existing routes crossing the fields. The permeability of the surface would be appropriate within the Flood Zone crossed by some parts of the proposed routes.
36. It was suggested that the length of the routes lost should be replaced by creating new rights of way in the vicinity. There is no requirement for such provision under the 1990 Act and I am satisfied that the proposed routes provide adequate replacement and alternative routes.

¹³ July 2013, Rev C 25-02-2014 Information Update

¹⁴ Condition 16 within 14/03118/OUT, 26 September 2014, Condition 15 in 14/10790/VAR, 22 December 2014 & 15/04092/VAR, 30 July 2015

¹⁵ IMA-16-100-D-001.dwg, Drawing No. D/001

37. I am satisfied that the disadvantage or loss to the general public as a result of the diversion and closure of the footpaths would be minimal.

The advantages conferred by the Order

38. In considering the overall effect of the Order I take account that confirmation would allow the development to go ahead, meeting aspirations set out in the Wiltshire Core Strategy. I am satisfied that in balancing all the matters raised confirmation of the Order is appropriate.

Other matters

39. Whether the development itself is necessary, or not, is not a matter for me, having already been determined through the planning process.

Conclusion

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

Formal Decision

41. The Order is confirmed.

Heidi Cruickshank

Inspector

APPEARANCES

For the Order Making Authority:

Ms S Madgwick	Public Rights of Way
Ms A Hays	Economic Development
Mr G Winslow	Spatial Planning Policy

In Support of the Order:

Mr C Wordsworth	Hawke Ridge Business Park Ltd
Mr J Gregory	Alder King
Mr J Pugh-Smith	Counsel

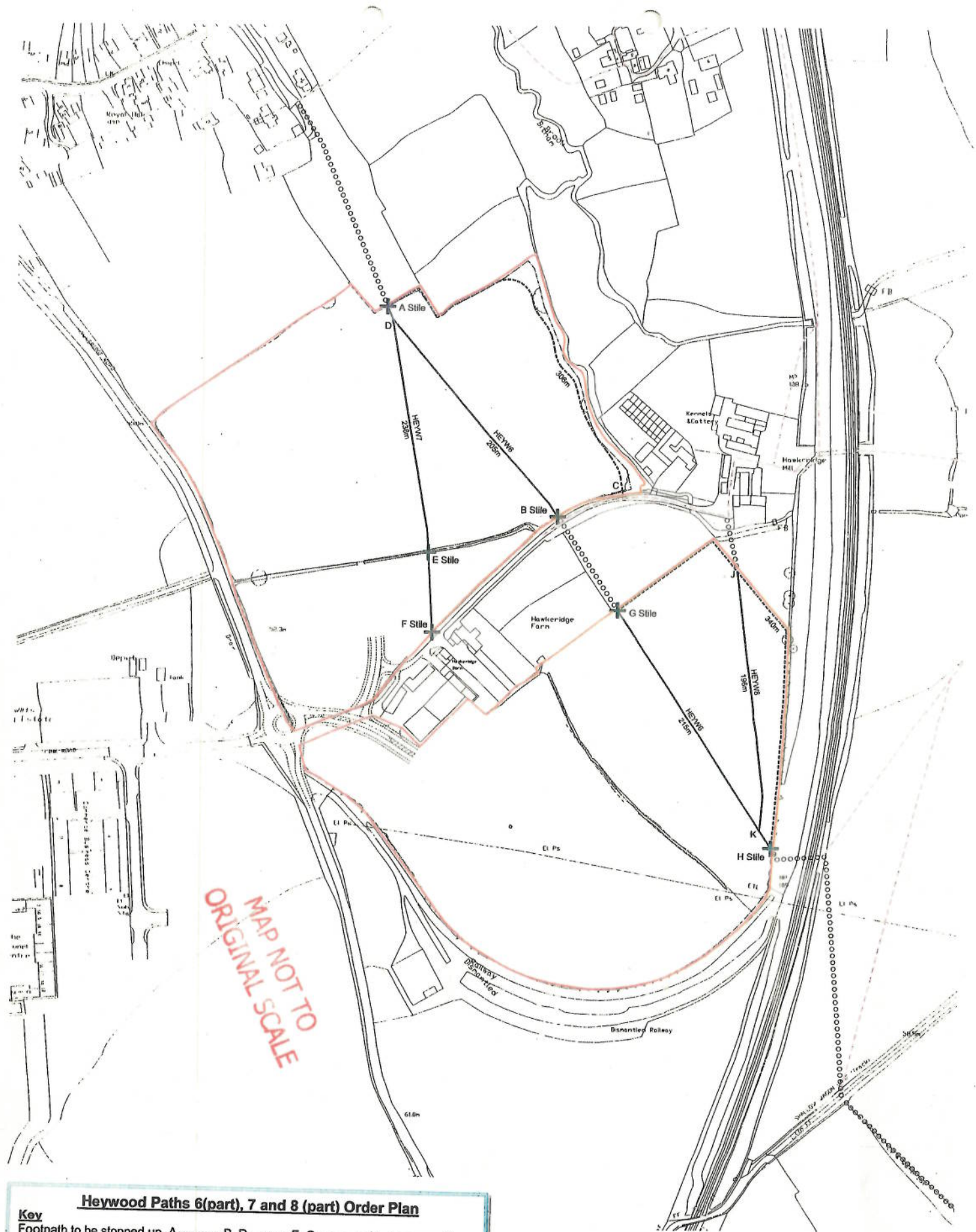
In Objection to the Order:

Mr D McGinn

Mr F Morland

HEARING DOCUMENTS

- 1 The Order
- 2 Extracts from the Wiltshire Core Strategy
- 3 Aerial photographs, Conceptual Site Layout Plan, August 2014 and Masterplan option, December 2016
- 4 Flood risk documents
- 5 Documents submitted by Mr Pugh-Smith
- 6 Statement of Mr D McGinn with Advice Note 9, Part of Circular 1/09 and site photographs
- 7 Flood risk documents submitted post-hearing



MAP NOT TO
ORIGINAL SCALE

Heywood Paths 6(part), 7 and 8 (part) Order Plan

Key

- Footpath to be stopped up A — B D — F G — H J — K
- Footpath to be created A — C G — J — H
- Unaffected paths

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© Crown Copyright and Database rights 2011 Ordnance Survey 100049050
Grid Ref A ST8642 5353
Scale 1:2500 at A3

Wiltshire
Where everybody matters



Hawke Ridge Business Park
Drawing Title
Footpath Proposals
Scale
1:2500 @ A3
Date
September 2015

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