
Order Decision

Site visit made on 15 May 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 19 June 2017

Order Ref: ROW/3170030

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Warwickshire County Council (Part of Footpath SD29A Clifford Chambers and Milcote) Public Path Diversion Order 2016.
- The Order is dated 13 July 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the Definitive Map and Statement, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981, once the provisions relating to the diversion come into force.
- There were 11 objections outstanding when Warwickshire 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.

Preliminary Matters

1. This case relates to the proposed diversion of a section of Footpath SD29A which traverses a field to the south of the River Avon and immediately north of the Stratford Greenway (the greenway). Although physical works relating to the diversion have already taken place, including the removal of the footbridge over the River Stour, legally the diversion cannot take effect until the Order has been confirmed.
2. Those opposed to the Order are primarily concerned about its effect on plans to reinstate the Stratford to Honeybourne railway line. Others are concerned about the effect of the diversion on public enjoyment of the path.
3. 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. I was able to walk along the diverted route and also the existing footpath as far as possible¹.

Main Issues

4. The Order is made under section 119 of the Highways Act 1980 (the Act) in the interests of the public. Sub-section (6) of the Act sets out that

"The Secretary of State shall not confirm a public path diversion order, unless he is...satisfied that the diversion to be effected by it is expedient...in the interests of the owner, lessee or occupier of land crossed by the path or

¹ Following the removal of the footbridge I was only able to walk to the existing path from Point B to the bank of the River Stour.

way...and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

(a) the diversion would have on public enjoyment of the path or way as a whole,

(b) the coming into operation of the order would have as respects other land served by the existing public right of way, and

(c) 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..."

5. I must also consider whether the proposed diversion satisfies the test set out in sub-section 2 which states that a diversion order must not alter the point of termination of the path otherwise than to another point on the same highway, or a highway connected to it and which is substantially as convenient to the public. I am also required to take into consideration any material provisions of a rights of way improvement plan prepared by the Council. However, no submissions have been made in this respect.

Reasons

Whether it is expedient, in the interests of the owner, that the right of way in question should be diverted

6. The Order is made to address health and safety concerns arising from the poor condition of the former footbridge over the River Stour which prior to its demolition had been closed since 2014 on advice from the Council's structural engineers.
7. The cost of a replacement bridge in what is a remote and inaccessible location is estimated to be in the region £90-10,000. Given the Council's annual rights of way budget is substantially less than this amount, a replacement bridge would place a considerable financial burden on the public purse.
8. The Council's preferred option is therefore to divert the footpath onto the adjacent greenway for a length of 715 metres in order to utilise its existing bridge over the river. A variant to the proposed diversion was considered by the Council but not progressed due to flooding issues and objections from neighbouring land owners. Based on the foregoing I am satisfied that it is expedient in the interests of the landowner that the footpath should be diverted.

Whether the new route will be substantially less convenient to the public

9. The existing footpath would be diverted onto the adjacent greenway which runs roughly parallel to it. The point of termination of the new right of way would be on the same highway. The greenway is a wide and flat joint use recreational route which at this point is situated at the top of an embankment.
10. Given the level difference between the field and the greenway, a new ramp has been constructed at points B-D. The proposed route would offer a more direct route between points A to B being approximately 10 metres shorter. Although there would be an additional gate on the route this would be offset by a reduction in the number of steps.

11. The length and gradient of the new ramp is not excessive and the Council point out that it is within recommended tolerances for countryside access. The existing ramp (points A-C) is a permissive link which although a little steeper has been in situ for a number of years without concerns being raised. To retain as many trees as possible the width of the new ramp is relatively narrow although not dissimilar to the existing one. The gradients of both ramps are gentle and I was able to negotiate them without difficulty. I accept there might be instances where groups of walkers might need to yield to one another. However, even when this were to occur, delays would be short lived. I have considered concerns that the ramps could pose a danger to pedestrian safety but there is no substantial evidence before me to explain why this would be so. I appreciate that seasonal leaf litter may be an issue but that is the case for a great number of footpaths including the adjacent greenway.
12. The existing path crosses the edge of a field which at the time of my visit was laid to grass. Sections are uneven but otherwise it is a pleasant walk with views across the field to the River Avon and houses on the far bank. However, given its flood plain location a short distance from the confluence of the River Avon and Stour, it is not unreasonable to conclude that conditions under foot after prolonged periods of rain would be challenging. Indeed comments received by the landowner in respect of an alternative diversion confirmed that the land to the north of the greenway is susceptible to flooding. To that end, the elevated position of the greenway offers a safer more useable route particularly during flooding events.
13. Finally, as the existing ramp at point A-C is currently a permissive link, the Order would give walkers greater legal access to the rights of way network in the area. Overall, for the reasons given above, I am satisfied that the proposed route would not be substantially less convenient to the public.

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

14. The surface, width and elevated location of the greenway not only offers a safer walking route particularly for the less mobile but it also benefits from long distance views to the north and south. It thus allows for a much greater appreciation of the surrounding landscape. It has been claimed by one objector that the existing route is more aesthetically pleasing. Whilst such considerations are largely a matter of judgement, in my view, for the reasons set out above, the proposed diversion would not impair the public's enjoyment of the route.
15. I accept that some close-up views of the railway bridge arches would be lost and that this will be a disappointment to some. Nonetheless, I am not aware that the bridge is particularly notable in historical or architectural terms. In any event, as I saw when I visited the site, there is a considerable amount of vegetation along the river bank and field edge which filters views of the arches particularly in the summer months. I am not persuaded therefore that the loss of these views provide a compelling reason not to confirm the Order.
16. I can also appreciate that for some walkers the use of the greenway even over a relatively short distance would not be ideal. At the time of my mid-morning site visit the route was quiet and I only encountered a small number of other people. I acknowledge that the greenway is a popular recreational route and at times is likely to be busier than I witnessed on my site visit. Nevertheless, I am not persuaded that it can reasonably be argued that the mere presence of

other people would detract significantly from the public's enjoyment of the route.

17. Irrespective of the concerns that have been raised, by any reasonable estimation 715 metres is a relatively short distance when one considers that footpath SD29A forms part of an 88 mile route known as the Shakespeare's Avon Way. In that context and given my own observations, I am satisfied that the diversion would not adversely affect the public's enjoyment of the route as a whole.

The effect of the diversion on land served by the existing path and the land over which the new path would be created together with any land held with it, having regard to the provision for compensation.

18. There is no suggestion from those opposing the Order that it would have an adverse effect on land crossed by the existing footpath and no objection has received from the landowner. The Council are owners of the greenway. No implications in terms of compensation have been raised. It therefore follows that there would be no negative effect on land served by the existing or proposed routes.

Other Matters

19. Most of those objections received by the Council relate to the reinstatement of the Stratford to Honeybourne railway line. Notwithstanding the support of several key stakeholders, this project is at a formative stage with a number of significant obstacles still to overcome. In these circumstances, it would be perverse to attach any significant weight to the potential effect of the diversion on the reopening of the line. Even if there was more certainty about the project, this would not necessarily lead to the Order not being confirmed since it is almost inconceivable that the diversion of this footpath as well as others that currently cross the greenway could not be dealt with as part of the large scale project that would be needed to reopen the railway line.
20. I have noted various references to the district council's development plan. However, the diversion of a footpath does not constitute development in planning terms. Accordingly planning permission is not required and the development plan is hence of limited relevance. It is also relevant that there has been no objection to the Order from the local planning authority itself.

Conclusions

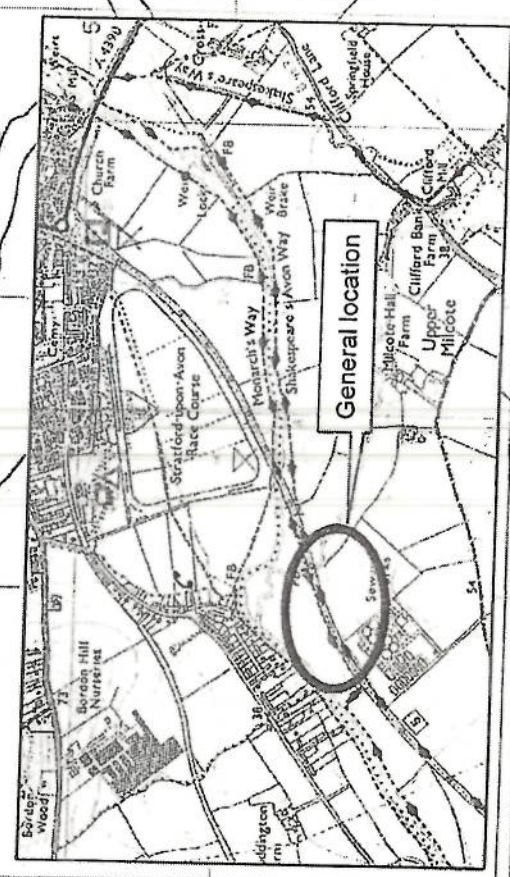
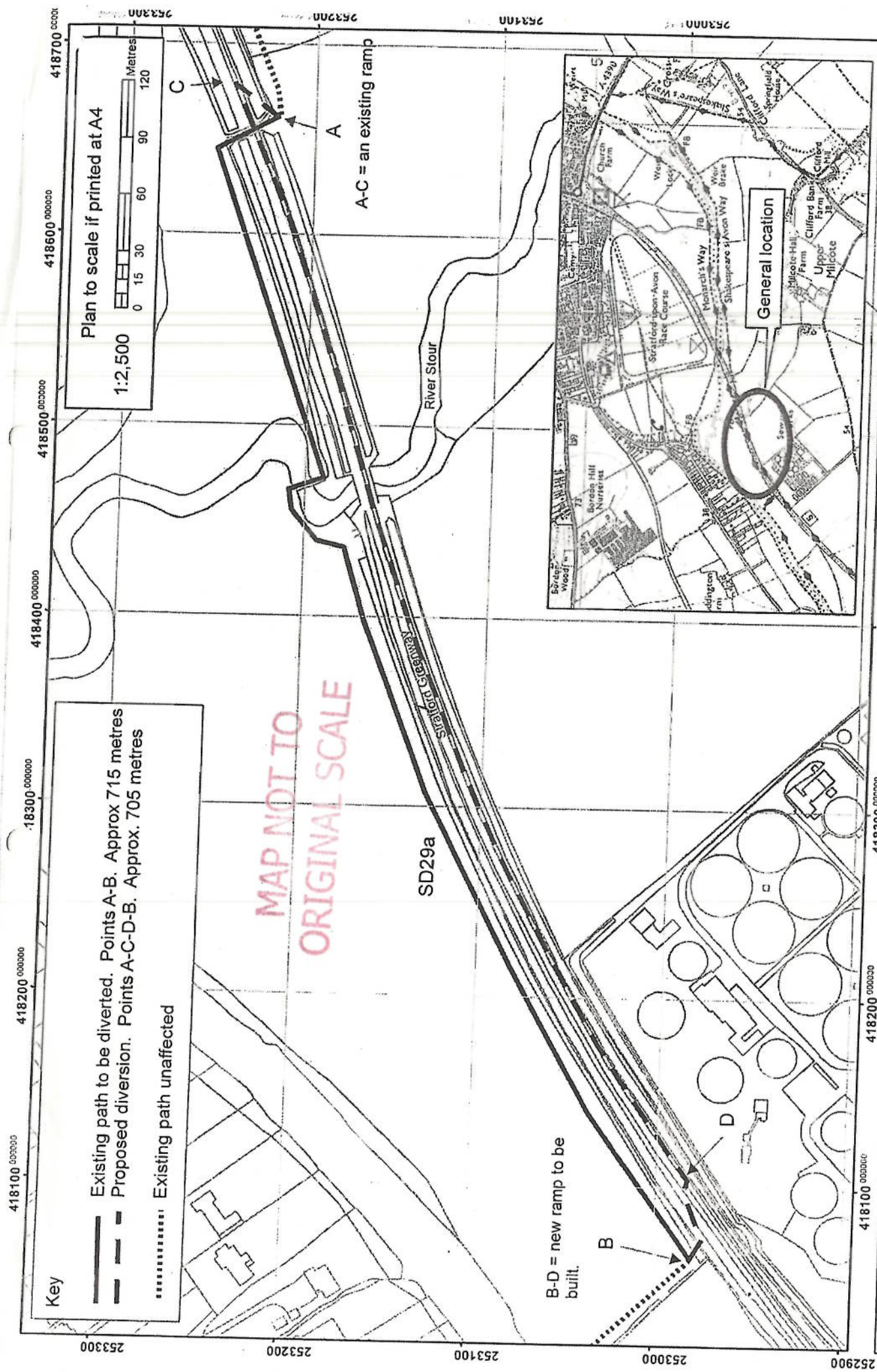
21. I have carefully considered the matters raised in the written representations. However for the reasons set out above, either individually or collectively, these do not justify a decision not to confirm the Order. I therefore conclude that the Order should be confirmed.

Formal Decision

22. The Order is confirmed.

D. M. Young

Inspector



Proposed diversion of Footpath SD29a (part) in the Parish of Clifford Chambers and Milcote
Highways Act 1980 Section 119

Order Plan
Plan Reference
P2016/001G