



Order Decision

Site visit made on 30 November 2016

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 23 December 2016

Order Ref: FPS/W2275/4/46

- The Order is made under Section 119 of the Highways Act 1980 and section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Kent County Council (Public Footpath SD252 (Part) Ash cum Ridley) Public Path Diversion and Definitive Map and Statement Modification Order 2016.
- The Order is dated 29 February 2016 and proposes to divert part of a footpath running over land in the ownership of Pettings Park onto an alternative alignment and would modify the definitive map and statement accordingly. Full details are shown in the Order map and described in the Order Schedule.
- There were four objections outstanding when Kent County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation, one of which has subsequently been withdrawn.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. 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.

Main Issues

2. The Order is made under section 119 of the Highways Act 1980 in the interests of the owners of the land crossed by the footpath. Sub-section (6) of the Act sets out that "*The Secretary of State shall not confirm a public path diversion order...unless [she 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 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...*"
 3. Sub-section 2 sets out that a "*...diversion order shall not alter a point of termination of the path or way...(where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.*"
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4. Sub-section (5) sets out that *"...the council may require [the owners] to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—*
 - (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or*
 - (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public..."*.
5. Objections were made on the basis that there would be no, or minimal, benefit to the landowner, which is the underlying reason for the Order. It was argued that the proposed route would be substantially less convenient to the public due to the changes in direction that would be introduced, and that the new route would be less enjoyable.
6. I am required to have regard to the material provision of a rights of way improvement plan ("ROWIP") prepared by any local highway authority whose area includes land over which an Order would create or extinguish a public right of way. Kent County Council, the order-making authority ("the OMA") indicated that their ROWIP was not relevant to the Order and did not submit it.

Reasons

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

7. The application was made by the owner of Pettings Park, Ash-Cum-Ridley. The definitive route cuts across the corner of an area of land immediately in front of the property and the proposal is to move the alignment to the edge of the land, as far from the house as possible within this area. I agree with Ash-Cum-Ridley Parish Council ("the Parish Council") that the route will remain in quite close proximity to the house and formal garden area as the lateral movement is quite small, being no more than 30 metres at most.
8. Although there was a suggestion that livestock might graze the land I agree with the Parish Council that this appears unlikely at present. Although the applicant said that the yew trees, which are poisonous to livestock, had only been introduced in one area, I consider that the number and spread of the trees would significantly reduce the safe grazing area to the west and north-west of the property. The mown area of land on this side of the property extends some distance towards the right of way, with landscaped mounds to the north, again reducing available grazing land.
9. It was suggested by the Parish Council that the former fencing and/or hedging around the garden be reinstated to improve safety and privacy, as well as allow livestock grazing without access onto the garden area. Although Sevenoaks District Council were informed in December 2015 that the fence was to be replaced this has not occurred and the OMA report that the applicant had stated that it was removed to enhance aspects of the property by making it more open and providing better views from within the property. On the evidence available I do not consider that the diversion has been shown to be associated with re-introduction of livestock to this area.

10. The OMA said that the application did not refer to crime, and so queried the reference to there not being a crime report associated with the property. The application has not been submitted to me, but I note that the informal consultation carried out by the OMA in July 2015 referred to a wish to increase security and indicated that there had been stress and alarm caused by people peering in through bedroom windows. I agree with the Parish Council that in such circumstances it seems odd that the police were not contacted. The Parish Council indicate that this as a low crime area, nonetheless, I accept that the applicant may wish to increase his perception of privacy and security by segregating the public and private areas of his land.
11. Although there are some arguments as to whether litter is left on the route, and by whom, I note that some of this concern seems to be directed towards people not clearing up after dogs. It is to be hoped that only a minority of people would behave in this way, and that they would not be regular walkers, but such matters, including dogs being found in the garden, can be unpleasant. It is understandable that a landowner would prefer to segregate such use from the main property.
12. The Parish Council, and other objectors, have made a reasonable case with regard to the limited advantages that they see being gained for the applicant by such a diversion. I bear in mind that they are not the people who live at the property on a day-to-day basis and so their perception may vary from that of the applicant. He has pursued the diversion as he feels that it will be convenient, practical and preferable to the existing alignment. Although he could double-fence the existing route, this would leave an area of 'sterile' land to the north-west, which he could not easily make use of. Taking all the matters raised into account I am satisfied that it is expedient in the interests of the owner of the land that this part of the footpath should be diverted.

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

13. Of course, the existing alignment of the footpath provides a more straightforward route than the 'zig-zag' introduced by the proposed route. I agree with the Ramblers that changes in direction when travelling from A to B can be annoying. However, as this is a recreational route, and the alteration occurs over a short distance of around one hundred metres, I did not find it to be substantially inconvenient.
14. I understand that low-level fencing is proposed to enclose the route. The width of 2.5 metres will make the proposed route wide enough for users to pass each other with ease, with wider areas naturally arising on the corners, which I am satisfied should allay any concerns about use of these areas.
15. The Parish Council raised concerns that hedging may also be introduced. Additionally they referred to the land being lower, such that water may drain there, whilst the Ramblers also referred to the surface becoming overgrown and muddy. The OMA say that the applicant has satisfied them that he will carry out any necessary maintenance on the route. The land generally appears fairly level and there was no evidence of waterlogging on any of the land. The Order records that the applicant will pay any expenses incurred in bringing the new route into a fit condition for public use. I agree with the OMA that the duty remains with them as the Highway Authority to ensure that the public highway is open and available and I am satisfied on this point.

16. Where an Order is made in the owner's interest there is no requirement that there be an improvement for the public, as suggested by the Ramblers, but the proposed route must not be substantially less convenient. Although I have taken account of all the concerns raised in objection, I am satisfied that the proposed route would not be substantially less convenient to the public, which is the test I must apply.

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

17. Reference was made to potential loss of views, as well as effect on openness in the Green Belt. I did not find the proposed lateral movement to be of such scale that it altered the views from the route. Although the direct line of sight across the corner of the land is altered, the proposed fencing will indicate the logical route to follow.
18. I do understand that some people would prefer not to walk within an enclosed area but agree with the OMA that the fact that other paths are not so fenced is not relevant. The alteration affects only a short section of route and, therefore, I consider the overall effect on enjoyment to be minimal.

The effect the coming into operation of the Order would have with respect to the land served by the existing route and the land over which the new route is created together with any land held with it, account being taken of the provisions as to compensation

19. The land crossed by the existing route would remain part of the property to which it belongs, Pettings Park, with the land crossed by the proposed route being part of the same property. There is no evidence that there would be any negative effect on land served by the existing or proposed routes.

Whether the point of termination of the new right of way will be on the same highway or highway connected with it, and will be substantially as convenient to the public

20. Points A and B, which give access to the field within which the proposed diversion is situated, remain unaltered. There will continue to be connections to the unaltered parts of the footpath from the current locations and, therefore, I am satisfied that this will be substantially as convenient to the public.

Other relevant matters

21. The Parish Council query why the applicant should have increased security and privacy if this leads to a decrease in the same for his neighbour. I note that there was a previous suggestion taking the route closer to Pettings Court, to which that owner objected. This led to the current proposal, to which the neighbour has raised no objection. I agree with the OMA that the matter seems to have been resolved to the affected party's satisfaction. There is no indication of an unreasonable impact on the neighbouring property.

Conclusions

22. Being satisfied that proposed diversion would not be substantially less convenient to the public I need to balance the minimal amount to which the interests of the owners of the land would be positively met against the minimal effect upon the public enjoyment in using the footpath. Due to the fact that

the owner lives on the land, whilst the public would walk along this section of footpath quite quickly, I consider that greater weight should be given to the interests of the landowner in this instance.

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

Other matters

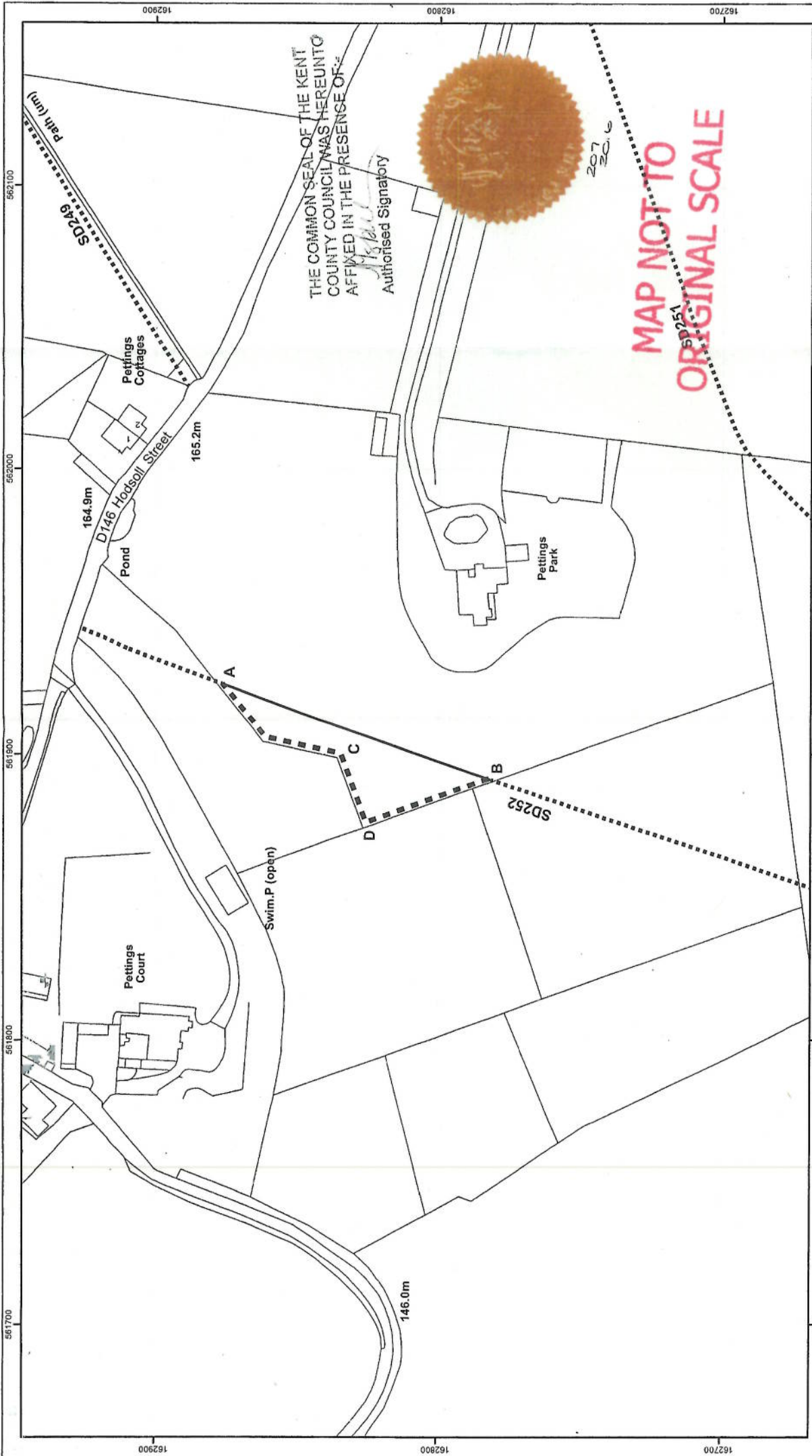
24. I note the concern of the Parish Council that the garden may have been extended, which could be a matter requiring planning permission within the Green Belt. Reference was made to problems arising due to the applicant landing his helicopter in the field. It is noted that the previous landowner did not feel the need to divert the route, as he did not encounter the issues referred to by the current owner and that there are other unaltered routes in similar situations. Concerns were also raised regarding comments made during the consultation and objection process. These issues are not relevant to my decision.

Formal Decision

25. The Order is confirmed.

Heidi Cruickshank

Inspector



Key

- Route to be diverted
- - - New length of route
- Unaffected routes

Kent County Council
Highways Act 1980
Wildlife & Countryside Act 1981
The Kent County Council (Public footpath SD252 (part) Ash-Cum-Ridley) Public Path diversion and Definitive Map & Statement Modification Order 2016

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