

Order Decision

Site visit made on 13 November 2017

by **K R Saward Solicitor**

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

Decision date: 18 January 2018

Order Ref: ROW/3172988

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as Public Path Diversion Order 2017 Footpaths 5 and 18 Clavering.
- The Order is dated 25 January 2017 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Essex 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. 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.
2. I have found it convenient to refer to points along the existing and proposed routes as shown on the Order Map. A copy is attached for reference purposes.

Main Issues

3. The Order has been made in the interests of the owners of 'The Moat House' whose land is crossed by FP5 and FP18. By virtue of section 119 of the Highways Act 1980, for me to confirm the Order I must be satisfied that:
 - (a) the diversion to be effected by the Order is expedient in those interests;
 - (b) the new path will not be substantially less convenient to the public in consequence of the diversion;
 - (c) any new termination point for the paths is substantially as convenient to the public; and
 - (d) it is expedient to confirm the Order having regard to:
 - (i) the effect of the diversion on public enjoyment of the paths as a whole, and
 - (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing paths and the land over which the new path would be created together with any land held with it.
4. In arriving at my findings I shall have regard to the judgments in *Roberton v. Secretary of State for the Environment*¹ and *R (on the application of Young) v.*

¹ [1976] 1 All ER 689

*Secretary of State for Environment, Food and Rural Affairs*² as cited in the submissions before me. I shall also have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area when considering the Order.

Reasons

Whether it is expedient in the interests of the owner of the land that the footpath in question should be diverted

5. The Moat House is a large dwelling set in spacious grounds. It is accessed via a very long private road passing by Clavering Lakes and continuing through paddocks and among former farm buildings at Clavering Farm before arriving at the gated entrance to the property at point K. FP18 follows this same alignment. It proceeds along the gravelled drive of The Moat House up to point B before veering off across the lawn in a north-easterly direction where it becomes FP5. The footpath connects with FP8 and FP10 at point M at the north-east corner of the plot.
6. At its closest point, the footpath passes approximately 33m away from the house. During my site visit undertaken on a fine, bright morning I was unable to see into the house from the path through the very large front windows. However, I do not discount the possibility of being able to detect movement within the house or to see the silhouettes of people inside depending on the light and time of day.
7. Occupiers being able to see walkers in the garden from within the house could well cause a perception of interference with privacy capable of affecting the reasonable enjoyment of the property. Whether or not, there is actual interference with internal privacy from use of the footpath, it unquestionably causes an adverse effect upon the privacy of those using the garden.
8. It is not a small part of the garden that is affected. The grounds are reasonably expansive and the footpath crosses an appreciable area. Not only is there a lengthy stretch of public footpath within the grounds of The Moat House, it also cuts across a central part of the lawn in front of the house offering users views of much of the private grounds. Having users walk across such a large and open part of the garden will invariably interrupt the privacy of occupiers seeking to enjoy their outdoor space. Where the route crosses the lawn, the alignment is unclear giving rise to every possibility that users will stray from the correct route. Further, the landowners report suffering a loss of poultry in the grounds due to walkers having unrestrained dogs. This has no doubt added to the sense of intrusion.
9. Although the landowners may fear for the security of their property, there is no evidence before me that the presence of the footpath poses a security threat.
10. Regardless of the number of other footpaths in Clavering that cross gardens, the test is whether it is expedient in the interests of these particular landowners for FP5 and 18 to be diverted away from their land.

² [2002] EWHC 844 (Admin)

11. In this instance, I am satisfied that it is expedient in the interests of the landowners, that this part of FP5 and FP18 should be diverted to facilitate the enjoyment of their land and improve privacy to the grounds.

Whether the new footpath will not be substantially less convenient to the public

12. Instead of FP18 and FP5 crossing the grounds of The Moat House which involves navigating two stiles in the corner of the plot, the route would be diverted onto neighbouring agricultural land. It would run parallel with the northern perimeter of The Moat House along the field boundary to connect with existing FP7 which follows the south-western and western boundary alignment of the property.
13. There is no issue with the condition of the diverted route itself. However, the diversion would take walkers travelling north-south (and vice versa) along a section of existing FP7 which is extremely muddy along the field boundary south of point D. At the time of my visit on a dry day, the whole width of the path was churned up with deep mud for several metres and water logged in places. The surface was very uneven with deep grooves left by tyre tracks.
14. Photographs have been supplied by a statutory objector to illustrate how wet and muddy parts of FP7 can be even during summer months. The conditions shown in those photographs would still enable a walker to pass without major inconvenience. The conditions I encountered were potentially hazardous in the worst affected areas unless deviating off the route into the field laid with crop. Attempts to remedy the drainage do not appear to have been effective. The absence of recorded complaints or injury does not mean that the route is in an acceptable condition or that it will suffice for increased footfall after the diversion. It is possible that conditions have deteriorated further with the onset of winter.
15. Nevertheless, this is a matter beyond the control of the landowner and one that is capable of rectification through improvements to the existing path. If it is highway maintainable at public expense then that will be the responsibility of the local highway authority.
16. It is evident from the tyre tracks that the same section of FP7 is used by agricultural vehicles which could impact upon the convenience for walkers of the route between points K-M. There is no reason to suppose that this would be a frequent occurrence or present a significant impediment to use of the way.
17. If a walker wishes to connect with FP10 from FP7 then the diverted route is far more convenient because it offers a straight route along reasonably firm terrain for a much shorter distance than is presently available.
18. One statutory objector refers to businesses occupying the former agricultural barns in the vicinity of point K and the use of forklifts by a carpet business in particular occasionally blocking the track. The applicant advises that the tenancy for this business "will shortly cease" and there will be no activity undertaken near to the diverted route once the planning permission granted earlier in 2017 for use of the barn is implemented. I saw a number of vehicles manoeuvring around the barns which did not appear to be specific to any one

business. They would affect walkers whichever route was taken. I see no basis for concern in this regard.

19. The convenience of the diverted route will depend upon a walker's destination. There is nothing before me or from what I saw to indicate that some routes are used more than others. The current route is described as providing a safe circular walk from Clavering Lodge (at Clavering Lakes) and Stickling Green. As the applicant points out, the car park at Clavering Lodge is for customers only. Nevertheless, the existing route is still accessible via the public footpath network without parking at this location.
20. The footpath network would be improved by connecting FP7 and FP10 along a clearly defined route between points D and M without obstacles. This would be in the interests of those users looking to travel east or west without going south of points D or M.
21. However, the legislation does not require there to be public benefits, only that the diversion should not be substantially less convenient to the public. For anyone travelling in a northerly or southerly direction the new route would be less convenient due to the difficulty of walking arising from the condition of FP7, being an unavoidable part of the diversion to get from K-M or M-K. However, this is an issue which can be remedied by improvements to the existing route. That being so and taken as a whole, I do not find the diverted route to be *substantially* less convenient.

Whether any new termination point is substantially as convenient to the public

22. Both existing and proposed routes terminate at point M and existing point K is at a juncture where FP18 meets FP7 Clavering. The termination points would thus remain accessible. Although point K would be moved, it would be to another point along the same footpath (i.e. FP7).
23. The new route would be only about 10m longer than the existing route, but to reach either point K from the north or point M from the south would involve a change in direction and a much longer walk of approximately 370m compared with 160m for the existing route. This would affect walkers wishing to connect with FP8 to the north, FP10 to the east and FP23 and FP18 to the south. In journey time, the additional distance takes a matter of minutes at a steady pace. Taking account of the route as a whole, I am satisfied that the change is substantially as convenient to the public.

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

24. The walk through the grounds of The Moat House is through landscaped gardens with views towards a large pond along a mostly undefined route. The diversion is along a clearly defined path next to the hedge separating the property from the neighbouring agricultural land. It offers expansive views across the fields. The experiences are different, but the diverted route is no less enjoyable. Indeed, some people may prefer not to cross a private garden.
25. When considering the path as a whole, the diversion will take walkers via a stretch of poorly maintained path along existing route FP7 as described above. In its current condition, the diversion will be less pleasurable for walkers for

what might be a large part of the year. As set out above, it is achievable for that situation to be addressed through improvements to the existing path so as not to affect public enjoyment.

26. Whilst a path may have existed along the current alignment for many years, there is no evidence submitted to indicate that it has any particular historic or other significance. Therefore, I attach little weight to the longevity of the existing route.
27. Whilst the new route would be better for some walkers, for others the prospect of contending with a wet and muddy section of path will not be a pleasurable experience. Looking at the route as a whole as used by the public, there would be an adverse effect on public enjoyment, but one capable of being remedied.

The effect of the diversion on other land served by the existing path and the land over which the new path would be created

28. The Moat House would no longer be affected by a public right of way through its grounds which would clearly benefit the land. The new route would be along agricultural land owned by Mr Greenall of Clavering Farm who has consented to the Order.

The ROWIP

29. There is no suggestion that the Order is contrary to any material provision contained in a ROWIP.

Whether it is expedient to confirm the Order

30. The judgment in the *Young* case confirms that section 119(6) has three separate tests. On the first test I have concluded that it is expedient in terms of section 119(1) to divert the footpath in the interests of the landowners.
31. In relation to the second test, I have found that the diverted route would be less convenient for users wishing to walk from point K-M and vice versa, but not substantially so.
32. Walkers travelling between points K-M may find it a less pleasurable experience overall given the current condition of part of the existing path. Consequently, on the third test there is an adverse effect on the public enjoyment of the path as a whole as it currently stands. However, this is a matter which relates to an existing right of way for which there is a remedy rather than the route onto which the path is being diverted. The route between D-M may be more enjoyable because of the open views of the countryside and it will no longer be necessary to pass through private property.

Conclusion

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

Formal Decision

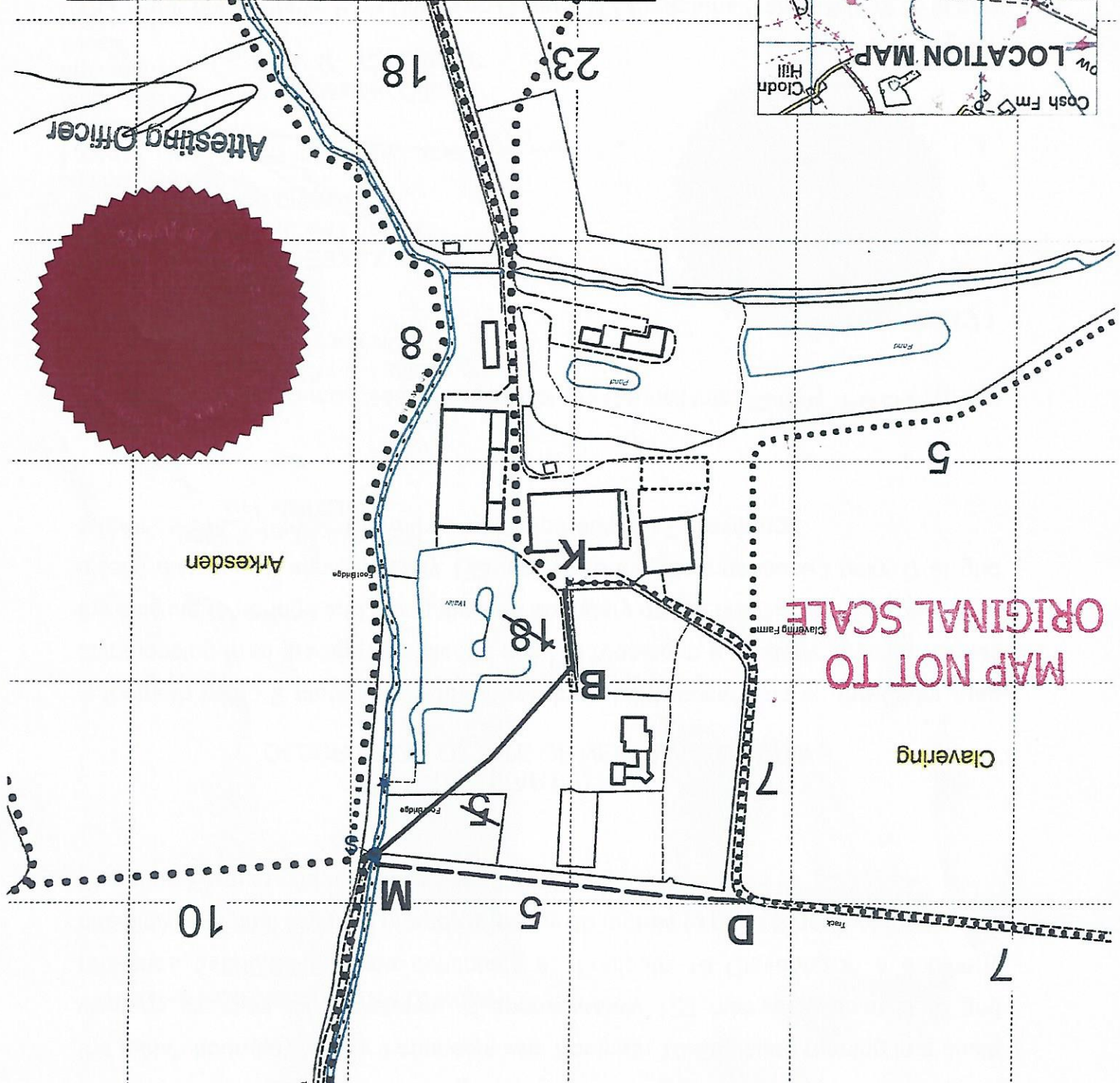
34. The Order is confirmed.

KR Seward INSPECTOR

Integrated expertise



Essex County Council

MAP NOT TO ORIGINAL SCALE

Plan No. CLAV 18 K

Division of Footpaths 5 & 18 Clavering

Route to Close M-B-K

New Route M-D

Unaffected

Definitive Map Sheet TE 43 SE

Scale 1:2500 at A4



Attesting Officer