

## Order Decision

Inquiry held on 21 October 2015

Site visit made on 20 October 2015

**by Mrs H D Slade MA FIPROW**

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

**Decision date: 18 July 2016**

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### **Order Ref: FPS/T0355/7/3M**

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Footpath 16 Windsor in the Royal Borough of Windsor and Maidenhead Order 2014.
- The Order is dated 18 November 2014 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- In accordance with Paragraph 8 (2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order so as to amend the line and the description of the width of the Order route.
- One objection and two representations were made with respect to my proposed modifications.

**Summary of Decision: The Order is confirmed subject to the modifications that I formerly proposed, as set out in the Formal Decision.**

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### **Procedural Matters**

1. In my interim decision, issued on 2 November 2015, I proposed modifications to the Order which required advertisement. I proposed that the recorded width of the route be altered such that it would be wider along its entire length than originally set out in the Order, as made by the Order Making Authority (the Royal Borough of Windsor and Maidenhead or 'RWBM'). I also proposed a slight modification to the line of the route.
2. One objection was made to my decision within the statutory notice period, and two representations largely in support were also received. The Order Making Authority has made no further comments.
3. It has been agreed that the matter can be dealt with by the written representations procedure and I have taken all the comments made into consideration. I have not made a further visit to the site as I do not consider it necessary for me to do so.
4. This final decision should be read in conjunction with my interim decision.

### **The Main Issues**

5. As before, the only issue in dispute is the width of the path to be recorded, principally over the length A-B as shown in the Order map and schedule, but the objector, Mr Zammitt, also considers that the recorded width of the part of the remainder of the route (B-C) should remain as quoted in the original Order.
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6. No objections have been made to my conclusions in other respects such that neither the existence of the right of way, nor the date of its dedication, is in dispute; and no objection was raised to the slight amendment to the line of the route in the vicinity of Point D on the Order plan.

## **Reasons**

### ***Whether a right of way has been dedicated***

7. I concluded in my interim decision that the right of way had come into being as a result of inferred dedication at common law by at least 1960. This is important because, in the absence of any subsequent legal change to the dimensions, this is the date which determines the width of the route to be recorded now.

### ***The width of the right of way***

#### *Section A-B*

8. I acknowledge the detailed analysis which Mr Zammitt has provided, both in his original statement of case, at the Inquiry, and in his subsequent submissions following the issue of my interim decision. I have read them carefully. I also acknowledge that he has moved some way towards offering a 'compromise' width of 1.75 metres which Messrs Conway and Neighbour have endorsed.
9. Nevertheless, as I indicated in my interim decision it is not my role to negotiate a 'deal'. I have been appointed to determine the facts of the case, on the balance of probabilities.
10. It is claimed that the path was directed to be set out by the developers to a width of 6 feet in the late 1950s and, even today, as confirmed at the Inquiry by Mr Hurst, the standard norm for adopted footpaths is 1.8 metres, which is the equivalent metric measurement for 6 feet rounded down to one decimal point. This is a figure used by Highway Authorities throughout the country, not just in Windsor and Maidenhead. This lends considerable support to the contention by Mr Neighbour, and not disputed by the Order Making Authority (which is also the Highway Authority), that the path was originally 6 feet wide when first set out.
11. Mr Neighbour also confirmed at the Inquiry that the path had originally had a dirt surface and was used in this condition for some time before the concrete surfacing was laid. A common law dedication requires two elements: dedication and acceptance. The evidence available to me at the Inquiry, and which has not been disputed, is that these two requirements were clearly met.
12. No evidence of what happened on the ground subsequently can alter the fact that, without the existence of any legal order to alter the width, the recordable width now must be that which existed at the time of dedication.
13. As set out in my interim decision it is open to the RBWM, in its capacity as the Highway Authority, to decide how to deal with a situation where that original width has been compromised by encroachment. The difference in width may be so small that it is considered *de minimis*, or they may use powers available to them under other legislation to rectify the matter. However, it is not my role to direct the Council in this way. I must do my job and allow RBWM the room to do their job.

14. Consequently, and taking into account all the comments made, I find no reason to depart from my interim conclusion that the width of the path between points A and B should be recorded as 1.8 metres being the metric equivalent of 6 feet.

*Width of B-C*

15. Whilst I acknowledge the concern of Mr Zammitt to avoid difficulties for neighbouring landowners, no evidence has been submitted which would cause me to revisit my conclusions about the width of the length of path B-C, nor any other part of the Order route. Indeed the landowners affected by the matter have chosen to play no part in the process, and certainly have not objected despite the opportunity to do so.
16. For the reasons set out in my interim decision, I conclude that the path between points B and C was, more likely than not, to have previously been 2.4 metres wide along this section, and this is the measurement which should be included in the Order.
17. As I have indicated above and in my interim decision, if re-instatement to that width is now difficult or impossible, it is a matter for RBWM to determine how best to proceed.

*Width of C-D*

18. No evidence has been presented to cause me to depart from my previous conclusion that this section of the route should be recorded as 4 metres, and no objection to the slightly revised line of the path has been raised.

*Width of D-E*

19. This is the section from Keepers Close Farm along what is now Mantle Close. I note that in my interim decision I erroneously referred to this section as also being C-D, when I should have referred to it as D-E<sup>1</sup>.
20. Notwithstanding this typographical error, no evidence has been forthcoming to suggest that I should alter my conclusion that the width of the public right of way for this section should also be recorded as being 4.0 metres.

**Conclusions**

21. Having regard to these and all other matters raised at the Inquiry and in the subsequent written representations I conclude that the Order should be confirmed with the modifications I formerly proposed, as set out overleaf.

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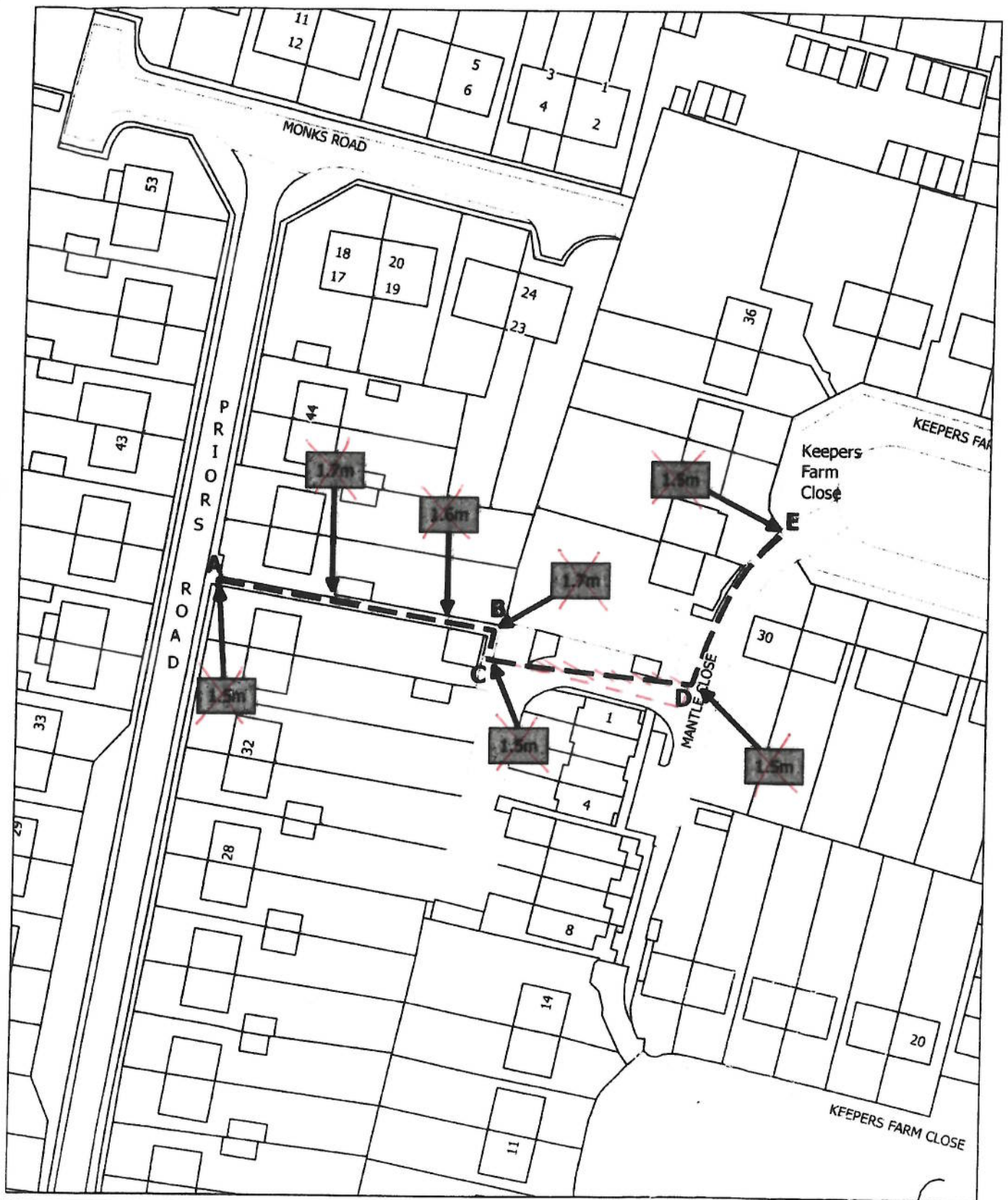
<sup>1</sup> See heading to paragraph 47 *et seq*

## **Formal Decision**

22. I confirm the Order subject to the following modifications:

- In Parts I and II of the Schedule to the Order, where the width of the path is described, delete the existing descriptions and substitute with the following in each case:
  - A-B 1.8 metres
  - B-C 2.4 metres
  - C-D-E 4 metres
- On the Order plan, delete all references to the width of the path shown in rectangular boxes and with arrows at seven locations, and re-align the path as indicated by a dashed red line

*Helen Slade*  
**INSPECTOR**



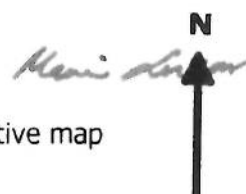
Public Rights of Way  
Drawn by: Andrew Fletcher

Scale: 1:750

**Wildlife and Countryside Act 1981  
Definitive Map Modification Order RBWM036**

**Windsor Footpath 16**

— — — — — Footpath to be added to the definitive map



The Royal Borough



Windsor & Maidenhead

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