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## Order Decision

Site visit made on 13 January 2017

**by Rory Cridland LLB (Hons), Solicitor**

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

**Decision date: 21 February 2017**

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### **Order Ref: FPS/Z1585/4/33**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as Essex County Council (Footpath 13 Wickham Bishops in the District of Maldon) Public Path Diversion Order 2016.
- The Order is dated 13 May 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were two 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.**

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### **Preliminary Matter**

1. Since the submission of the original application, the land over which the route passes, as well as the house known as Ballards, has been sold. The Order was made to address privacy concerns of the landowner. The Council continues to support the Order, as do the new owners who assert that it would enable them to make more effective use of the land and increase their privacy. I am satisfied that the reasons for making the Order are essentially unchanged. Accordingly, I do not consider the change in ownership to have any material impact on whether the Order should be confirmed

### **The Main Issues**

2. Section 119 of the Highways Act 1980 requires that before confirming the Order, I must first be satisfied it is expedient in the interests of the landowner or of the public, or both, that the footpath in question should be diverted. The further tests for confirmation set out in s119 are, firstly, whether the diverted footpath would be substantially less convenient to the public than the present one, and secondly, what effect the proposed diversion would have on public enjoyment of the path as a whole.
3. In addition, I am required to take into consideration any material provisions of a rights of way improvement plan prepared by the Council.

### **Reasons**

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

4. The current path is located in an open field to the south west of the property known as Ballards. It comprises a well-defined earth path of around 190 metres in length and runs diagonally between wire post fencing set about 2 metres apart. From Point A, the existing route runs diagonally in a south easterly direction towards the field boundary, where an opening in the hedge
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provides access to Grange Road. Ballards is located around 65m to the east of Point A at its nearest point and is partially screened from the footpath by a mature hedge.

5. The Order is made to address privacy concerns arising from the landowners' wish to extend their gardens and make greater use of the land adjacent to the footpath. I note that a number of reasons may have been advanced by previously owners as to why the route should be diverted. I also note that there is sufficient space available to undertake a number of recreational activities on the land without diverting the route. Nevertheless, in seeking to make more effective use of the land, I am satisfied that it is expedient in the interests of the landowner that the footpath should be diverted.

**Whether the diverted path would be substantially less convenient to the public**

6. The diverted path would be around 221 metres long, an increase of around 31 metres. This would amount to an increase of approximately 16%, which, while longer, would not be substantially so.
7. Similarly, while it would introduce a number of bends to the route, these would have only a limited impact on convenience and would not be of such a number that they would materially affect its convenience to the public.
8. Accordingly, I conclude that the proposed diversion would, due to its increased length and the turning points, be slightly less convenient than the current path but would not be substantially so.

***The effect on public enjoyment***

9. Some of the effects on convenience will also affect enjoyment. One letter of objection refers to the additional bends in the route and the increased length as factors that will impact on both general visibility and safety. However, there is no mention of additional fencing or hedging in the Order and there is nothing before me which would indicate that it is the intention of the present owners to restrict visibility by enclosing the route. Furthermore, visibility can vary considerably between footpaths both locally and throughout the county and have seen no evidence that rural paths in this part of Essex are more dangerous than in other areas. As such, I do not consider the introduction of 4 bends and an additional 31 metres in this open location would have any material impact on either visibility or safety.
10. Furthermore, the Order map shows that the centre of the path, which the Order defines as 2 metres wide, would be moved closer to the field boundary, particularly between points A-C and D-B. However, there is sufficient distance between the field boundary and the proposed route to ensure that users of the new route would not experience any sense of enclosure. Likewise, although I observed during my site visit that there were pleasant views from the existing route, the proposed route, being sited away from the boundary hedges, would have similar if not identical views. On balance, I consider that views would be generally unaffected.
11. While I note that the ROWIP seeks to improve accessibility for all users, it appears to me that the proposed diversion, being only slightly longer and of a similar surface and width to that of the existing route, would have very little impact on accessibility.

12. Consequently, I find that there is no significant detrimental impact on public enjoyment that would lead me to conclude the Order is not expedient in this regard. Accordingly, I conclude that the test is met.

### **Other matters**

13. While I note the concerns expressed regarding the impact of the proposed diversion on local wildlife, any works necessary to bring the new route into being are likely to be limited both in time and extent. I am therefore satisfied that any negative impacts on wildlife will be minimal.
14. Whilst a path may have existed at this location for many years, there is nothing to suggest that Footpath No.13 is of any particular historic significance. The fact that a path has existed on the same line for many years is not a sufficient reason for refusing to sanction its diversion.
15. The letters of objection refer to the conclusions reached by another Inspector following consideration of a previous proposal to divert the route<sup>1</sup>. However, while I note the conclusions reached by that Inspector, I understand that that proposal involved diverting the path much closer to the field boundary and would have resulted in a longer, less open route which the Inspector considered would have been less enjoyable to the public. In this case, I have found that the additional length would have only a limited impact and the separation distance between the new route and the boundary hedge would help preserve the open and pleasant views currently experienced by users. As such, I am satisfied that the previous proposal is sufficiently different to the current one so not to carry any material weight in the determination of this appeal. In any case, each proposal should be considered on its own merit and that is the approach I have taken.

### **Conclusions**

16. For the reasons set out above, and having had regard to all other matters raised, I conclude that the Order should be confirmed.

### **Formal Decision**

17. I confirm the Order.

*Rory Cridland*

INSPECTOR

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<sup>1</sup> FPS/Z1585/4/23



### Plan No. WBISH 13 Z

Diversion of Footpath 13 Wickham Bishops

Route to Close A-B

New Route A-C-D-B

Unaffected

Definitive Map Sheet TL 81 SW

Scale 1:1500

Pond

Orchard House

Park House

SD

Ballards

Wickham Bishops

C

Path (on)

13

13

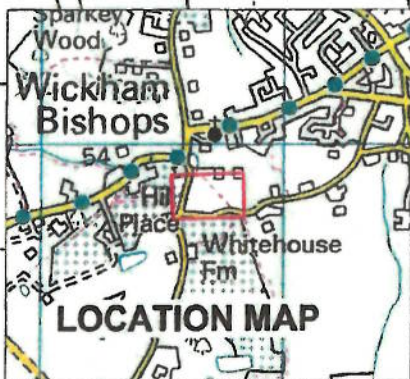
B

D

Grange Road

GRANGE ROAD

16



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Attesting Officer