



Order Decision

Site visit on 27 June 2016

by Sue Arnott FIPROW

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

Decision date: 15 August 2016

Order Ref: FPS/Z1585/4/27

- This Order is made under Section 119 of the Highways Act 1980. It is known as the Essex County Council Footpath 23 and 24 Helions Bumpstead Public Path Diversion Order 2014 and is dated 26 September 2014.
- The Order proposes to divert parts of public footpaths 23 and 24 at the recreation ground in Helions Bumpstead, as detailed in the Order map and schedule.
- There were two objections outstanding when Essex County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed with modifications, as set out in the Formal Decision below.

Main Issues

1. The requirements of Section 119 of the Highways Act 1980 (the 1980 Act) are that, in the case of both Footpath 23 and Footpath 24, before confirming the Order I must be satisfied that:
 - (a) it is expedient in the interests of the owner of the land crossed by these footpaths that the rights of way in question should be diverted;
 - (b) the new routes to be provided will not be substantially less convenient to the public; and
 - (c) it is expedient to confirm the Order having regard also to (i) the effect of the diversion on public enjoyment of each path taken 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 paths would be created together with any land held with it, having had regard to the provision for compensation.
2. Further, in determining this Order I am required to have regard to any material provisions in any rights of way improvement plan for the area although no relevant issues have been raised in this case. I am also mindful of the requirements of the Equality Act 2010.

Reasons

3. Footpath 23 runs from one side of the recreation ground to the other, passing directly across the cricket square. On the south western side it links with Footpath 27, a path which leads from Church Hill south eastwards to Water Lane. At the north eastern side it connects with Footpath 24 and with Footpath 25 which approaches from the north and continues generally southwards.
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4. Footpath 24 leads from this junction westwards across the recreation ground to meet Church Hill and Mill Road adjacent to the village hall. The cricket pavilion stands across the definitive line of the public right of way. Passage is further obstructed by a low fence which separates the pavilion's car parking area from a small copse and by children's play equipment.

The interests of the owner of the land

5. On discovering that these paths were obstructed, Essex County Council's (ECC's) Enforcement Officer persuaded the Helions Bumpstead Parish Property Trust (PPT) that it was in their interests to divert both routes, the PPT being owner of the recreation ground and associated land.
6. Taking Footpath 24 first, the proposal to divert Footpath 24 seeks to regularise the current situation. Since the cricket pavilion was located in its present position, and the children's play area sited near the village hall, the public have needed to find a way around these obstructions. By formally re-aligning the public right of way, both the pavilion and the play area cease to be at risk of enforcement action to seek their removal. To that extent, there is a tangible benefit to the owner that would derive from the diversion of Footpath 24.
7. Although there is no marked path on the ground, it is clear that Footpath 23 passes through the cricket square in the centre of the cricket field. I found it perfectly possible to walk the definitive line on the day of my visit but ECC reports that the square is roped off for much of the year. Therefore, to enable the rope fencing to remain, it is proposed to simply divert the footpath around the sides of the fence around the square.
8. No details have been provided to explain how often the cricket square needs to be roped off and it is therefore difficult to gauge the extent of the benefit likely to derive from PPT's ability to exclude the public from the square at certain times. However, as with Footpath 24, if this diversion removes the risk of enforcement action at certain times of the year, then it would be in the PPT's interest.
9. Whilst I find the benefits of diverting Footpath 23 somewhat tenuous, I have little doubt that the diversions proposed by this Order would be expedient in the interests of the landowner.

Convenience to the public

10. In assessing the relative convenience of the present and proposed routes I have considered various factors including length, width, gradient, surface and limitations in the context of the roles played by Footpaths 23 and 24 in the local network.
11. In relation to Footpath 24 in particular, I recognise the obstructions mean that it is not now possible for the public to walk the definitive route. Consequently, when making a comparison between the present and proposed routes, I will disregard these obstructions when considering aspects of convenience.
12. I find no issues of concern in terms of gradient or surface, or the width of the paths to be provided or the increase in length of both routes when considered in context. However I am concerned about the practicality of the alignment proposed for Footpath 23, the exact position of Footpath 24 between points R and Q, and the existence of a locked gate across the proposed new route of Footpath 24 just to the south east of point P.

13. One of the objectors comments that Footpath 23 "is unusable most of the summer" and that he "receives regular abuse from the cricketers as I try and walk it". I suspect that the proposed diversion will do very little to resolve this problem since the majority of the path will remain in the same position. Diverting a 28 metre long section in the centre of the field so that it instead follows a 37m long loop around a rope fence (which may or may not be present) will seem a very unnatural line to take. Yet it is difficult to conceive of any new arrangement that might accommodate the objector whilst allowing cricket matches to carry on uninterrupted without a wholesale re-assessment of all the footpaths crossing the recreation ground and the adjacent land to the north and south. However that is not being proposed here. Whilst the short deviation proposed to the line of this footpath will not address the more fundamental issue of conflict between walkers and cricketers, in my view it will present a very slight inconvenience to the public but not a substantial one.
14. The proposal to realign Footpath 24 is described in the Order Schedule as continuing from point Q "in a north easterly direction to the field boundary then in an east south easterly direction along the field boundary for a further distance of approximately 80 metres to the aforementioned point **R**." That does not make clear exactly where the 2 metre wide footpath is to be established on the ground in relation to the line of maturing trees which stand just inside the boundary. Within a two metre strip measured from the boundary fence/hedge these trees extend on average 1 metre into the field.
15. Although aligning the footpath so that it lies just south of the trees may result in the public right of way encroaching onto the edge of the cricket field, its impact will be far less than in its present position. Consequently, I propose to clarify the description of the new route in the Order Schedule so as to make clear than the trees lie outside the width of the footpath.
16. On my visit to the site I noted that just south east of point P there is a locked field gate across the track which is intended to carry the new Footpath 24. The PPT explains that the lock is necessary to prevent vandals bringing vehicles into the recreation ground (which has facilitated theft from the cricket pavilion in the past). However immediately adjacent to this gate is a gap in the fence left for pedestrians to gain access.
17. Whilst the PPT makes clear that people from the village have free access to the whole of the recreation ground at all times¹ and therefore the gap will be there to facilitate this, the Order Schedule describes the new route "along the drive" as does the Order map. So as to make quite clear that the public (as distinct from villagers) enjoy a right of passage through the gap at the side of the gate, I propose to add this as a limitation on the use of Footpath 24 in the Order Schedule.
18. No particular concerns have been raised in relation to accessibility for all users although being mindful of the requirements of the Equality Act 2010, in reaching my conclusions on the relative convenience of the new route I have considered the reasonable needs of people with a range of disabilities.
19. In all the circumstances here, and disregarding the present obstructions on the present path, I consider the proposed new route of Footpath 24 will not be substantially less convenient than the existing original definitive line.

¹ A right of villagers to enjoy free and open access to the recreation ground does not necessarily mean that the general public may also benefit from such provision.

Other considerations

20. Having considered the comments submitted and from walking the routes myself, I consider the present and proposed routes to be broadly similar in character and find little effect likely on public enjoyment of either path if diverted as proposed.
21. Compensation issues are not relevant here since the PPT owns the land over which both the present and proposed routes pass. No adverse effects arising from the diversion on any of the land concerned have been drawn to my attention.

Whether it is expedient to confirm the Order

22. In reaching a final conclusion on the expediency of this diversion I must weigh the advantages that would accrue to the landowner in whose interest the Order is made against any disadvantages that may result for the public.
23. Overall, taking into account all relevant factors and having addressed the statutory tests in Section 119 of the 1980 Act, I conclude it would be expedient to confirm the diversions proposed by this Order whilst clarifying aspects of the description of the new route of Footpath 24.

Other Matters

24. Although the Order map states that it is drawn to a scale of 1:1000, this is clearly an error (I judge it to be approximately 1:1500). However since the overall intention of the Order is made clear by the relative positions of the present and proposed routes, I do not consider anyone would have been misled by this mistake.

Conclusion

25. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed with the modifications mentioned at paragraphs 15 and 17 above.

Formal Decision

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

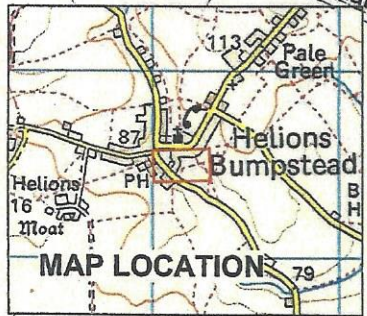
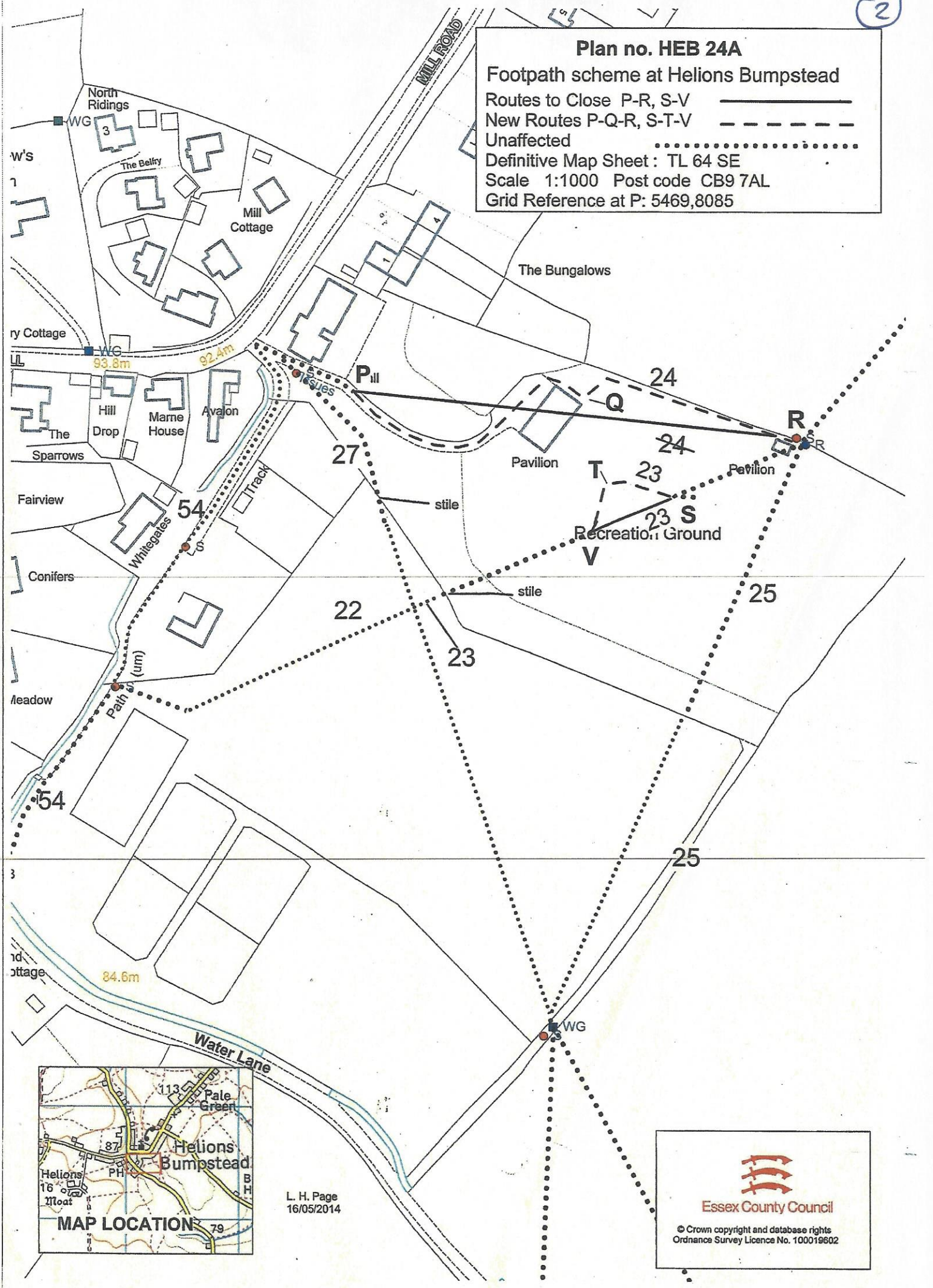
In Part 2 of the Order Schedule in the entry for Footpath 24

- Delete the words "along the field boundary" and substitute "parallel to the field boundary (where the centre line of the footpath is 2 metres from the boundary hedge/fence)";
- Add: "Limitations: a 1 metre wide gap at grid reference TL 65253 41611."

Sue Arnott

Inspector

Plan no. HEB 24A
Footpath scheme at Helions Bumpstead
Routes to Close P-R, S-V —————
New Routes P-Q-R, S-T-V - - - - -
Unaffected
Definitive Map Sheet : TL 64 SE
Scale 1:1000 Post code CB9 7AL
Grid Reference at P: 5469,8085



L. H. Page
16/05/2014



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