



## Order Decision

Site visit on 9 August 2016

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 31 August 2016**

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### **Order Ref: FPS/Z1585/4/24**

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as 'Public Path Diversion Order Footpath 10 Wickham St Paul'.
- The Order was made by Essex County Council ("the Council") on 19 January 2015 and proposes to divert a section of Footpath No. 10, in the parish of Wickham St Paul, as detailed in the Order Map and Schedule.
- There was one objection outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs ("the Secretary of State").

**Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.**

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### **Procedural Matters**

1. I undertook an unaccompanied visit to the site on 9 August 2016. In light of the issue referred to in paragraph 5 below, I had to view the existing path in the Order from suitable vantage points.
2. Following the referral of the Order for determination by the Secretary of State, an additional party (Mr Dent) has joined Miss Sharp in objecting to the Order. The relationship between the two objectors has no material bearing on my decision.
3. All of the points referred to below correspond to those delineated on the Order Map.
4. The notice in relation to the making of the Order was re-advertised at the request of the Secretary of State as it was considered to be unsatisfactory. Due to concerns raised by the objectors, I understand that the Council has also now ensured that notices have been placed at points A, B and C.
5. The objectors refer to the longstanding obstruction of Footpath 10 in this locality. Whilst I appreciate their concerns, this is not a matter for me to address. I note that Miss Sharp's complaint regarding the issue is being pursued with the Council. Nonetheless, when considering the convenience of the routes included in the Order it is equitable to disregard the obstruction of the existing path.

### **Main Issues**

6. Section 119 of the 1980 Act requires that, for me to confirm the Order, I must be satisfied that:
  - (a) it is expedient, in the interests of the owner of the land crossed by the footpath, that the path should be diverted;

- (b) any new termination point for the path<sup>1</sup> is substantially as convenient to the public;
  - (c) the new path to be provided will not be substantially less 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 path 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 path and the land over which the new path would be created together with any land held with it.
7. 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**

### ***The Order***

8. The objectors refer to the existence of different editions of the definitive map and they question the route of Footpath 10. In considering matters relating to the definitive map I have had regard to the extract provided by the Council, as the surveying authority for the area. The Council believes that the existing alignment of Footpath 10 is correctly shown on the Order Map. However, from looking at the definitive map, I do not share this view. Whilst I recognise the limitations of the scale of the definitive map, it clearly shows a straight route continuing to point A rather than the curved alignment around Shellards Barn. The definitive map also appears to show the footpath proceeding partly through the barn.
9. The connecting Footpath 11 will be unaffected by the Order and its position is not a matter for me to determine. Nonetheless, its depiction on the Order Map along the track as far as point B does not appear to materially conflict with the alignment recorded on the definitive map. Its exact position on the ground would be a matter for the Council to determine.
10. In light of the above, consideration should be given to the route of Footpath 10 recorded on the definitive map. In the event that I conclude that it is expedient to confirm the Order, it would need to be modified accordingly.

### ***Whether it is expedient, in the interests of the owner of the land crossed by the footpath, that the path should be diverted***

11. In support, the Council states that Shellards Barn is being converted into a residential property and the owner (Mr Merton) wishes to divert the path as it passes very close to the proposed property. Bearing in mind my conclusion regarding the alignment of Footpath 10, the impact is likely to be substantial. Overall, I accept that it is expedient to divert the footpath in the interests of the landowner.

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<sup>1</sup> It should be on the same highway or a highway connected to it

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

12. The diversion would lead to the eastern termination point being relocated a short distance further along Footpath 11. Miss Sharp refers to the pond in the locality flooding in autumn and winter. The issue is stated to not impact upon the existing route of Footpath 10. This point is acknowledged by Mr Merton and he says that improvement works are to be undertaken to address the issue.
13. If the works are properly undertaken there is the potential for the flooding issue to be alleviated. Bearing in mind also that the Council has a maintenance responsibility for Footpath 11. In addition, my interpretation of the definitive map indicates that the existing path proceeds closer to the pond. For these reasons, I am not satisfied that the need to walk between points A-B will pose a significant problem when compared to the current termination point. Therefore, I find that the new termination point is substantially as convenient as the one that presently exists.

***Whether the new path will be substantially less convenient to the public***

14. The Council points to the shorter distance involved with the proposed path but this is offset to some extent by the additional distance between points A-B. I consider that this issue will have only a limited impact on the convenience of the proposed path. The diversion would remove the need to traverse any structures. In this respect, the existing path should proceed over a footbridge near to point A.
15. Overall, I do not find that the diversion would lead to the footpath being substantially less convenient for the public.

***The effect that the diversion would have on public enjoyment***

16. Miss Sharp points to the loss of 66 metres of footpath but this has to be balanced against the provision of a slightly more convenient path. Whilst I recognise that some people may not wish the historical route to be diverted, nothing has been provided to suggest that the barn is a feature of particular note. Further, views of the barn would continue to be available from the proposed path.
17. From my observations of the site, I consider that the proposed path provides the scope for more wide reaching views of the surrounding landscape. Miss Sharp refers to the wildlife encountered from the existing path; however, the re-development of the site is likely to impact upon wildlife that has been present in the immediate locality of the barn.
18. In light of the above, I do not find that the diversion would have any significant adverse impact on public enjoyment of the path as a whole.

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

19. Bearing in mind that the section of footpath to be diverted proceeds to the west of the access track over which Footpath 11 proceeds, there is no apparent interference with land served by the existing path.

20. The proposed path also commences at the junction with Footpath 11, at the point the dashed and dotted lines on the Order Map meet (point B). The details provided in support indicate that the proposed path is located on land owned by Mr Merton and Mr Nott with the latter having consented to the diversion. The extent of the ownership of the land in the locality of point B is disputed by the objectors.
21. It is not my role to make a definitive ruling on the extent of the land ownership. However, the Land Registry documents provided show the proposed path being outside of the extent of the land within the title of the property known as Shellards, which is stated to be owned by Mr Dent. In contrast, the initial section of the proposed path is shown within the title of the land belonging to Mr Merton.
22. Having regard to the above, I do not find that the diversion will have an adverse impact on land served by the existing path or crossed by the proposed path.

### ***The ROWIP***

23. There is nothing to indicate that the Order is contrary to any material provision contained in the relevant ROWIP.

### ***Other matters considered in relation to the expediency test***

24. The objectors refer to the diversion leading to an increase in the number of people using the A-B section which passes Mr Dent's property. No evidence has been provided in relation to the number of pedestrians presently continuing from point B along Footpath 11, or the proposed path, bearing in mind that the latter is available for the public to use on a permissive basis. Given these circumstances and the rural setting of the footpaths, I am not satisfied it can be determined that there will be a significant increase in the number of people travelling over Footpath 11 by virtue of the diversion of Footpath 10.
25. It is not clear to me how the diversion will impact on Covenant 6.1 in the Deed of Grant extract provided by Mr Dent bearing in mind the current position of Footpath 11.

### ***Whether it is expedient to confirm the Order***

26. I have concluded that it is expedient to divert the footpath in the interests of the landowner and that the diversion would not lead to the path being substantially less convenient for the public. In addition, I find the proposed termination point to be substantially as convenient as the one that presently exists. In light of my conclusions regarding these and the other relevant matters, I conclude that it is expedient to confirm the Order.

### **Overall Conclusion**

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

## **Formal Decision**

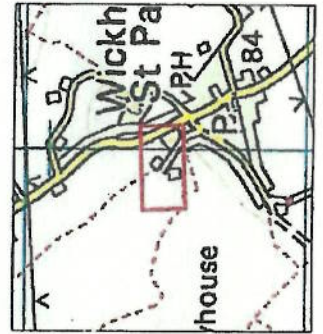
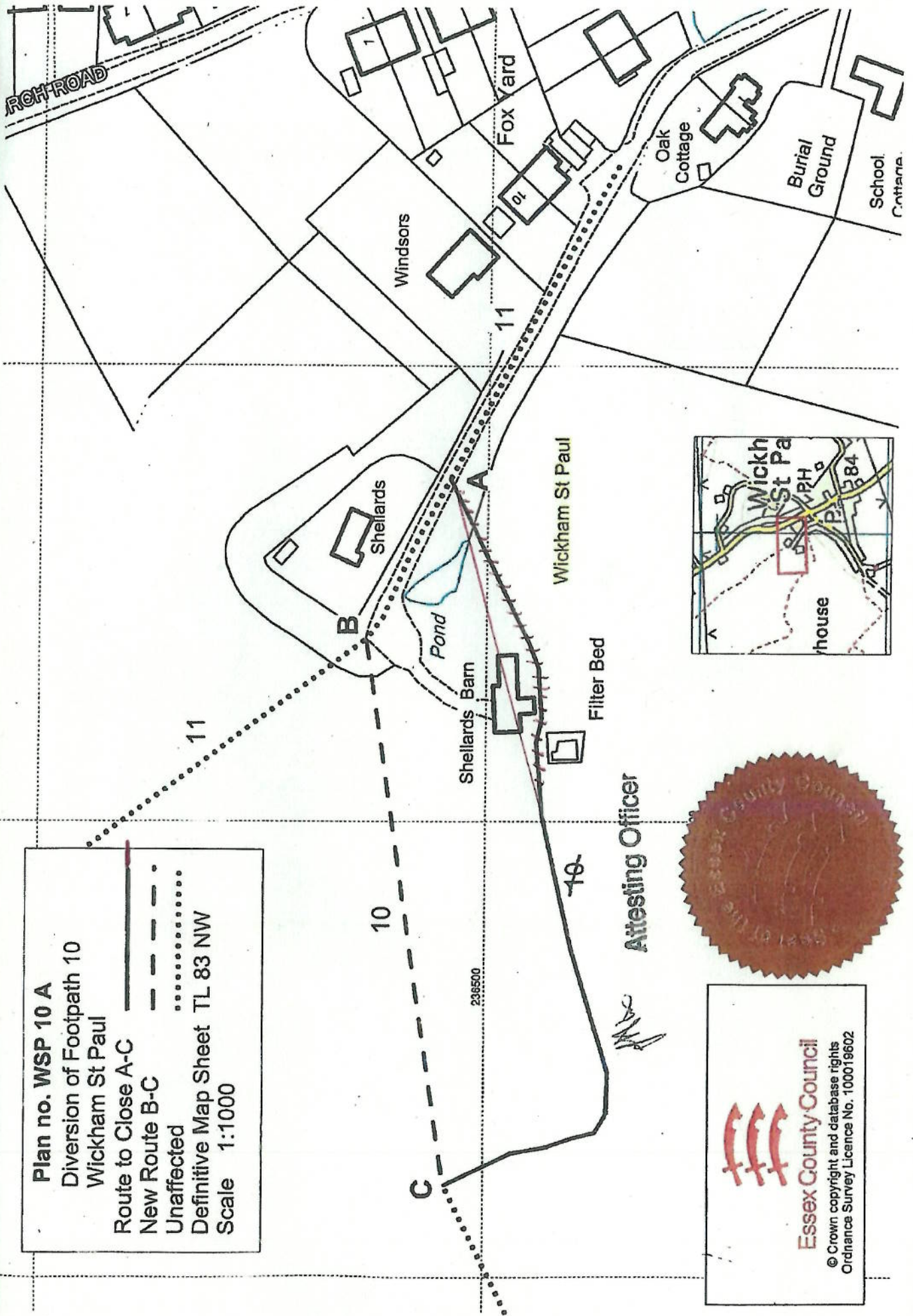
28. I propose to confirm the Order subject to the following modifications:


- Delete "*Shellards Barn*" from the fifth line of the description in Part 1 of the Order Schedule.
- Remove from the Order Map the section of the existing path shown by a red hatched line and replace it with the section shown by a solid red line.
- Amend the key to the Order Map to reflect the above modification.

29. Since the confirmed Order would affect land not affected by the Order as submitted I am required by virtue of Paragraph 2(3) of Schedule 6 to the 1980 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Mark Yates*

**Inspector**



  
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Attesting Officer

*[Signature]*