

Order Decision

Inquiries held on 13 August 2014 and 26 January 2016

Site visit made on 12 August 2014

by Susan Doran BA Hons MIPROW

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

Decision date: 06 December 2016

Order Ref: FPS/M1900/7/67RM2

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Hertfordshire County Council (Aldenham 83 and 9) Modification Order 2009.
- Hertfordshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 9 October 2009.
- The Order proposes to modify the Definitive Map and Statement for the area by adding a byway open to all traffic and a restricted byway, and deleting a length of footpath and adding a length of 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 notice has been given of my proposal to confirm the Order with modifications.

Summary of Decision: The Order is confirmed subject to the modifications that I previously proposed

Procedural Matters

1. The effect of the Order if confirmed with the modifications that I proposed in my second interim decision dated 5 May 2016 (further to those proposed in my first interim decision of 14 January 2015) would be to amend the line of Restricted Byway 83, as shown on the original Order plan, further west to the alignment shown on the Finance Act Plan of 1910; amend the variable width of the Restricted Byway to up to 12 metres; and amend the alignment of Aldenham 9 so as to run to the west of and beside the amended alignment of Restricted Byway 83. Also, I proposed to delete a short spur of BOAT 83 at point E on the Order plan as made; to record Footpath 26 as connecting with the amended line of Restricted Byway 83; amend the grid references for points D, E and H; and further amend the description of Aldenham 83 where it follows the eastern bank of The Brook between points B and C, to aid clarity. And, finally, to attach to the Order a revised A3 Order plan¹ as Supplementary Plan A and to modify the Schedules to the Order as necessary; and to attach to the Order an A4 supplementary plan (not to scale)² as Supplementary Plan B to show the routes in more detail at the bend in The Brook.
2. Two representations in support of the modifications proposed in my second interim decision were made following notice of my proposed modifications:

¹ As provided by Hertfordshire County Council

² Also provided by Hertfordshire County Council

from Dr Wadey as the Applicant and on behalf of the Hertsmere District British Horse Society; and from Mr Beney on behalf of the Open Spaces Society and Bushey and District Footpaths Association.

3. In addition, an objection was made by Mr Kind on behalf of the Trail Riders Fellowship ('TRF'), and I address this below.

The Main Issues

4. The main issues are whether there is any new evidence or argument which might cause me to reconsider my findings in respect of the unmodified part of the Order; and whether there is any evidence or argument which has a bearing on the modifications I proposed, and which might indicate that those modifications should be amended or not pursued.

Reasons

5. Mr Kind refers to a specific issue set out in the TRF's statement of case to both inquiries. In summary, this is that in the absence of a reasonable explanation, it should be inferred that Hertfordshire County Council ('the Council') intended to record the historical route of Aldenham 83 (Oakridge Lane) on its List of Streets ('LoS'). The TRF's objection to the second interim decision is that it does not sufficiently address this point and no adequate reasoning is provided.
6. I considered this issue at paragraphs 17 to 22 of my second interim decision, referring back to paragraphs 13 to 20 of my first interim decision where I initially addressed the point raised.
7. As previously stated³, Section 67(2)(b) of the Natural Environment and Rural Communities Act 2006 provides that public rights for mechanically propelled vehicles will not have been extinguished over Oakridge Lane if, immediately before 2 May 2006 (the commencement date), it was not shown in a Definitive Map and Statement as a public right of way, which in this case it was not, but was shown in a list required to be kept under Section 36(6) of the Highways Act 1980: the list of highways maintainable at public expense, or LoS.
8. However, the relevant documentation, (discussed at paragraph 14 of my first interim decision) shows the alignment of Oakridge Lane coinciding with the Order plan (as made) with the exception of the length C-E where it follows the Stearns' access road to the east. I further considered this at paragraphs 17 and 18 of my first interim decision. At paragraph 18 I concluded that "whilst it might have been the Council's intention to record the historic alignment of Oakridge Lane, it does not alter the fact that immediately before 2 May 2006, the alignment recorded between points C and E was different to the historic route".
9. In my second interim decision, I considered arguments put forward by Mr Kind at the second Inquiry, but found nothing in them to alter the conclusions I had previously reached. Furthermore, I reverted to my comments at paragraphs 17 and 18 of my first interim decision, which I quote above in part.
10. No new evidence or argument has been adduced by Mr Kind on behalf of the TRF; and no new case law has intervened that would cause me to alter the

³ Paragraph 13 of my first interim decision

conclusions reached in my second interim decision, or indeed in my first interim decision.

11. Accordingly, it seems to me that whether or not it may be inferred that the Council intended, or that the TRF believes, that the historic route of Aldenham 83 *should* have been shown on the LoS - in other words that a mistake had been made - the 2006 Act concerns what *was* shown on the LoS immediately prior to commencement. In this case, I am satisfied that what *was* shown on the LoS between points C and E on the Order plan was not the historic route of Oakridge Lane but a route following the Stearns' access road. Even if this amounted to a mistake, and the historic route should have been shown in its entirety on the LoS, I consider that the 2006 Act is clear and offers me no discretion to interpret it otherwise.

Conclusions

12. Having regard to these and all other relevant matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications I previously proposed in paragraph 43 of my first interim decision, dated 14 January 2015, and in paragraph 54 of my second interim decision, dated 5 May 2016.

Formal Decision

13. The Order is confirmed subject to the modifications previously proposed and advertised, as follows:

From the First Interim Decision

Aldenham 83

- In Parts I and II of the Schedule to the Order, after reference to The Brook at TL1566 0135 (point B on the Order plan) insert "and its eastern bank"
- In Parts I and II of the Schedule to the Order, with regard to the width, delete the words "as shown shaded grey on the Order Plan" and "as shown shaded grey on the plan forming part of the Hertfordshire County Council (Aldenham 83 and 9) Modification Order 2009", and insert "as shown uncoloured [or blue] on the Inland Revenue Valuation Plan prepared under the Finance (1909-1910) Act 1910."

Aldenham 9

- In Part I of the Schedule to the Order, after "The Brook" insert, "on dry land"
- In Part II of the Schedule to the Order, at the end of the description insert "Between TL1557 0101 and TL 1556 0096, the path follows the riverbank on dry land"

From the Second Interim Decision

In Part I of the Schedule to the Order, under 'Description of Path to be Deleted'

- In the first line, amend the grid reference from "TL 1557 0101" to "TL 1556 0101"; in the second line replace "TL 1556 0096" with "TL 1554

0092", and replace the letter "H" with "E"; and in line 3, replace "50" with "90"

In Part I of the Schedule to the Order, under 'Description of Path to be Added'

- For the BOAT to be added between points A and C, in the third line amend the grid reference from "TL 1566 0135" to "TL 1565 0134"; in the fourth line insert "and its eastern bank" after "The Brook", and amend the grid reference from "TL 1558 0103" to "TL 1557 0103"; and in the last line delete "where it leaves The Brook". In the description of its width, in the second line amend the grid reference from "TL 1558 0103" to "TL 1557 0103"
- For the RB to be added between points C and E, in the first line amend the grid reference from "TL 1558 0103" to "TL 1557 0103"; in the second line replace "65" with "60"; in the third line amend the grid reference from "TL 1557 0097" to "TL 1555 0097"; in the fourth line replace "45" with "50" and amend the grid reference from "TL 1555 0093" to "TL 1554 0092". In the description of its width, in the first line replace "10" with "12", and amend the grid reference from "TL 1558 0103" to "TL 1557 0103"; and in the second line amend the grid reference from "TL 1555 0093" to "TL 1554 0092"
- For the BOAT to be added between points E and F, in the first line amend the grid reference from "TL 1555 0093" to "TL 1554 0092"; and in the second line replace "355" with "350". In the description of its width, in the first line amend the grid reference from "TL 1555 0093" to "TL 1554 0092"; and in the second line amend the grid reference from "TL 1529 0072" to "TL 1529 0071"
- For the Footpath to be added, in the first line amend the grid reference from "TL 1557 0101" to "TL 1556 0101"; in the third line amend the grid reference from "TL 1556 0096" to "TL 1555 0096", and add at the end of the line, "and continuing generally south west along the western side of RB83 for approximately 40 metres to TL 1554 0092 (point E on the Order Plan)". In the description of its width, in the first line amend the grid reference "TL 1557 0101" to "TL 1556 0101", and replace "TL1556 0096" with "TL 1554 0092"; and in the second line, replace the letter 'H' with "E"

In Part II of the Schedule to the Order

- For Aldenham 83, in the third line of the description, amend the grid reference from "TL 1566 0135" to "TL 1565 0134"; in the fourth line insert "and its eastern bank" after "The Brook", and amend the grid reference from "TL 1558 0103" to "TL1557 0103"; in the fifth line delete "leaving The Brook on the east bank and"; in the sixth line amend the grid reference from "TL 1557 0097" to "TL 1555 0097"; in the seventh line amend the grid reference from "TL 1555 0093" to "TL 1554 0092"; in the ninth line replace "355" with "350"; and in the last line amend the grid reference from "TL 1529 0072" to "TL 1529 0071". In the description of its width, in the second line, amend the grid reference from "TL 1529 0072" to "TL 1529 0071"

- For Aldenham 9 in the fourth line of the description, amend the grid reference from "TL 1555 0093" to "TL 1554 0092"; and in the text previously proposed to be added, amend grid reference "TL 1557 0101" to "TL 1556 0101" and amend grid reference "TL 1556 0096" to "TL 1555 0096"
- For Aldenham 26, in the first line amend the grid reference from "TL 1557 0097" to "TL 1555 0097"
- For Aldenham 27, in the second amend the grid reference from "TL 1529 0072" to "TL 1529 0071"

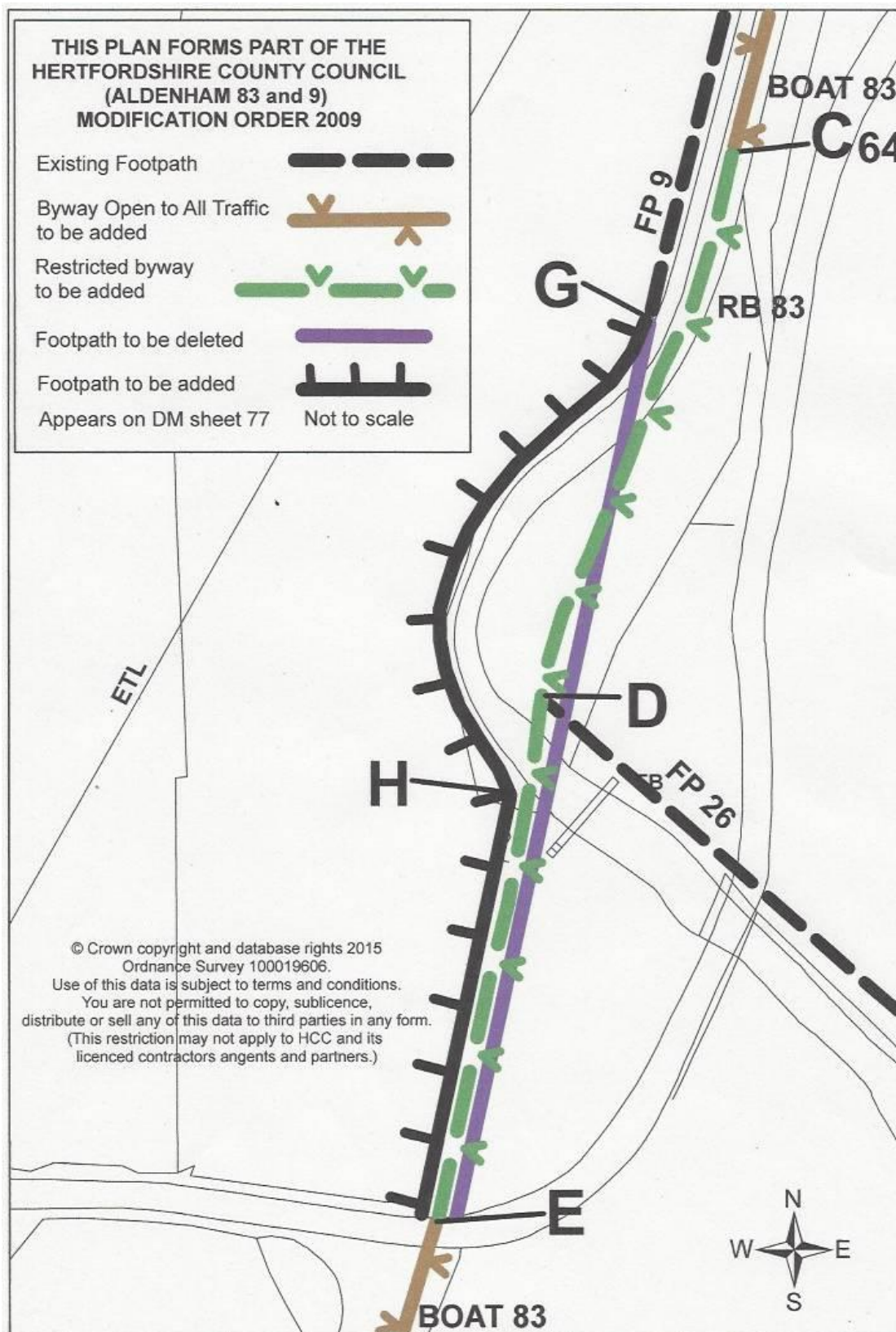
Order Plan

- On the Order Plan, beneath the Order title and explanation, add "For modifications refer to Supplementary Plans A and B attached to this Order"
- Attach as "Supplementary Plan A" a revised A3 Order plan showing the Order routes further to the modifications proposed above and as previously proposed
- Attach as "Supplementary Plan B" an A4 plan (not to scale) showing the Order routes in more detail at the bend in The Brook further to the modifications proposed above and as previously proposed

S Doran

Inspector

SUPPLEMENTARY PLAN B



**THIS PLAN FORMS PART OF THE
HERTFORDSHIRE COUNTY COUNCIL
(ALDENHAM 83 and 9) MODIFICATION
ORDER 2009**

Existing Footpath
Existing Bridleway
Existing Restricted Byway
Byway Open to All Traffic
to be added
Restricted byway
to be added
Footpath to be deleted
Footpath to be added








0 50 100 200
Metres
Scale 1:2,500
Appears on DM sheet 77

**MAP NOT TO
ORIGINAL SCALE**

FP 9
RB 20
A
B
FP 9
BOAT 83
C
RB 83
D
E
FP 27
BR 72
F
FP 27
G
H
FP 9
FP 26

© Crown copyright and database rights 2016
Ordnance Survey 100019606.
Use of this data is subject to terms and conditions.
You are not permitted to copy, sub-licence,
distribute or sell any of this data to third parties in any form.
(This restriction may not apply to HCC and its
licensed contractors agents and partners.)

**THIS PLAN FORMS PART OF THE
HERTFORDSHIRE COUNTY COUNCIL
(ALDENHAM 83 and 9) MODIFICATION
ORDER 2009**

- Existing Footpath : 
- Existing Bridleway : 
- Existing Restricted Byway : 
- Byway Open to All traffic to be added : 
- Restricted Byway to be added : 
- Footpath to be deleted : 
- Footpath to be added : 

This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Hertfordshire County Council, 100015606, 2009



50 0 50 100 Metres

Appears on DM sheet 77 Scale 1: 2500

*For modifications refer to
Supplementary Plans A
and B attached to this
Order*

