
Order Decision

by Helen Slade MA FIPROW

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

Decision date: 26 October 2016

Order Ref: FPS/E2001/4/7

- This Order is made under Section 119 of the Highways Act 1980 ('the 1980 Act') and Section 53A(2) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as The East Riding of Yorkshire Council (Hotham Footpath No.5) Public Path Diversion and Definitive Map Modification Order 2016.
- The Order is dated 22 June 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule, and to modify the Definitive Map and Statement accordingly.
- There was one objection outstanding when East Riding of Yorkshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision, and the Definitive Map and Statement is modified accordingly.

Procedural Matters

1. The objection to this Order has been made by Mr A Kind on a technical issue regarding the drafting of the Order. The parties have agreed to the matter being dealt with by way of written representations. I have not made a site visit and I am confident that I can make a decision without the need to do so.

The Main Issues

2. Whilst I still need to be satisfied that the legal criteria have been met in relation to the proposed diversion, the main issue which needs to be addressed as far as this Order is concerned is the description of the limitation with respect to the gate at Point D on the Order plan. Mr Kind has pointed out that the description in the Order does not conform to the guidance provided by the Department for Environment Food and Rural Affairs.

Reasons

Legal criteria

3. The Order was made by the East Riding of Yorkshire Council (the Order Making Authority or 'OMA') following the receipt of an application from G S Underwood and Sons of South Carr Farm. The Order proposes to extinguish a section of Hotham Footpath No. 5 which passes in close proximity to the curtilage of a bungalow and a farmhouse. The alternative route will provide a direct east-west connection between the remaining part of Footpath 5 and Bridleway No 4, whilst maintaining the opportunity to travel south along the bridleway towards

the parish of North Cave. The existing route has two metal gates but the proposed route will have only one gate, at Point D on the Order plan.

4. There are no objections to the proposal and the information provided by the OMA indicates that the Order meets the relevant criteria:
 - It is expedient in the interests of the landowner that the path be diverted;
 - The path will not be substantially less convenient to the public as a consequence of the diversion;
 - The diversion will have no negative on the enjoyment of the route as a whole by the public;
 - There are no issues with regard to the land served or crossed by the existing or proposed route;
 - The proposal is consistent with material provisions of the Rights of Way Improvement Plan for the area;
5. I am therefore satisfied that it is expedient to confirm the Order.

Description of the limitation in the Order

6. With regard to the way in which the gate should be described, the OMA has agreed with the objector that the relevant British Standard should be included in the description of the new route.
7. Furthermore, the landowner has asked that an ordinary gate be substituted for a kissing gate, and the OMA has concurred with this, requesting that the appropriate modifications be made to the Order.
8. I am satisfied that I am empowered to make these changes, and that the Order would be improved by doing so.

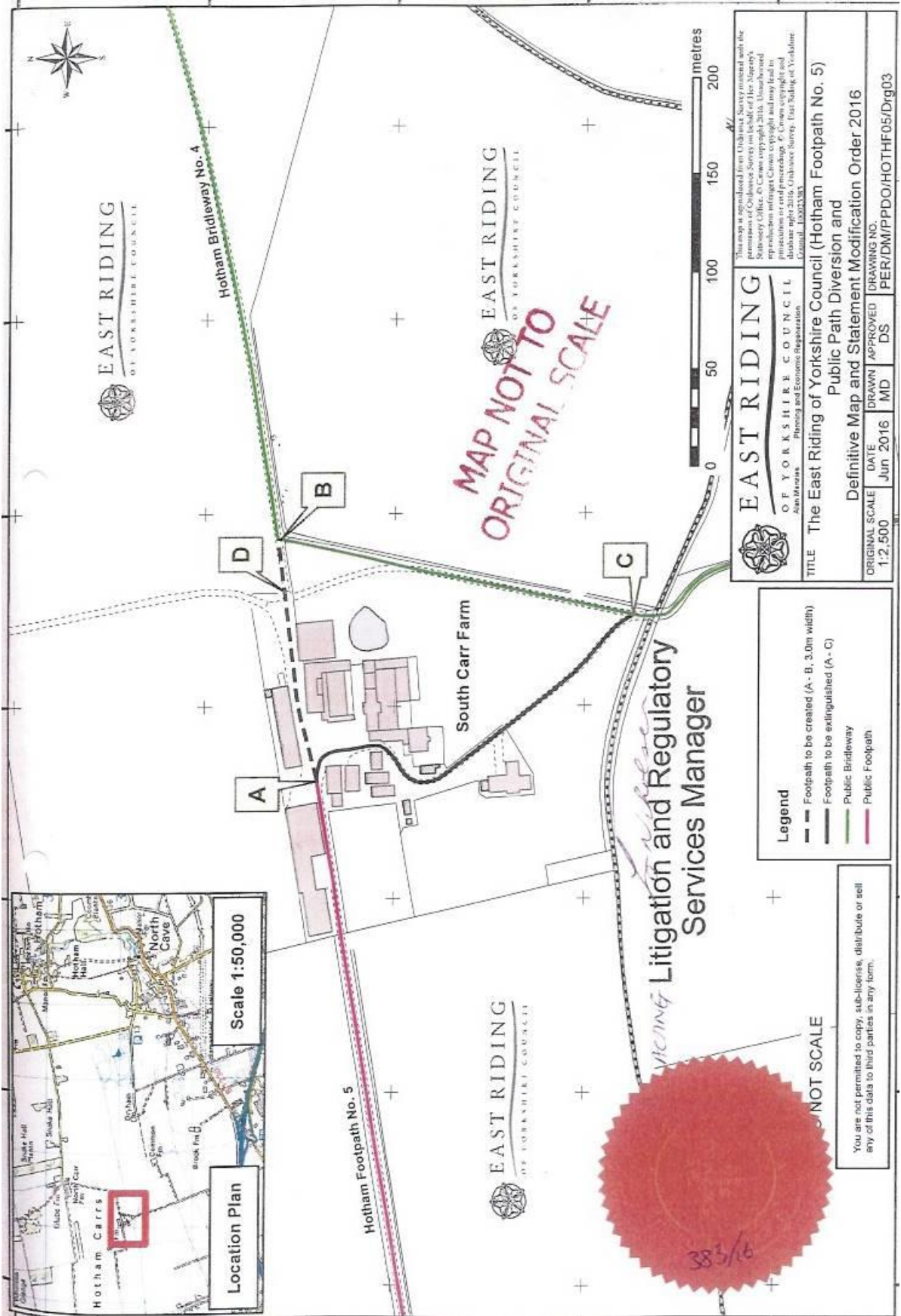
Conclusions

9. Having regard to all matters raised in the written representations I conclude that the Order should be confirmed with modifications, and that the Definitive Map and Statement should be modified accordingly.

Formal Decision

10. I confirm the Order subject to the following modifications:
 - In Part 3 of the Schedule to the Order under '*Limitations and Conditions*' before '*gate*' delete the word '*kissing*'. After the word '*gate*' add the words '*that conforms to BS5709:2006*'.
 - In the '*Remarks and Limitations...*' column in Part 4 of the Schedule to the Order before '*Gate*' delete the word '*Kissing*'. After the word '*Gate*' add the words '*that conforms to BS5709:2006*'.

Helen Slade
Inspector



EAST RIDING OF YORKSHIRE COUNCIL
Planning and Economic Regeneration

383/16

NOT SCALE

Legend

- Footpath to be created (A - B, 3.0m width)
- Footpath to be extinguished (A - C)
- Public Bridleway
- Public Footpath

TABLE

ORIGINAL SCALE	DATE	DRAWN	APPROVED	DRAWING NO.
1:2,500	Jun 2016	MD	DS	PER/DW/PPDO/HOTHF05/Drg03

TITLE The East Riding of Yorkshire Council (Hotham Footpath No. 5) Public Path Diversion and Statement Modification Order 2016

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Planning Litigation and Regulatory Services Manager