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## Order Decision

Site visit made on 18 January 2016

by **Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA**

**Decision date: 08 February 2017**

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### Order Ref: FPS/W0530/5/1

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the South Cambridgeshire District Council (Part of Public Footpath No.1 Hauxton) Public Path Diversion Order 2015.
- The Order is dated 16 December 2015 and proposes to divert the public right of way as shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when South Cambridgeshire District Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

### Summary of Decision: The Order is not confirmed

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#### Procedural Matters

1. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations.
2. The section of path proposed to be diverted is understood to have been closed by a temporary traffic regulation order for health and safety reasons whilst the adjacent former Bayer Crop Sciences site is being re-developed. Although the existing route is not available for use it was clearly visible on my site visit such that a comparison could be made between the existing and proposed routes.

#### The Main Issues

3. For the Order to be confirmed, by Section 257 of the 1990 Act I must be satisfied that it is necessary to divert the footpath to enable development to be carried out in accordance with the grant of planning permission.
4. The merits of the planning permission granted for the development are not relevant but if I were to find it necessary to stop up the path to allow the development to proceed, confirmation of the Order is still discretionary. In exercising this discretion I must consider the impact of a diversion on particular parties. I would have to consider the disadvantages or loss likely to arise from the stopping up or diversion of the way to members of the public or to persons whose properties adjoin or are near the existing highway, and weigh these against the advantages of the proposed Order.<sup>1</sup>

#### Reasons

5. Outline planning permission Ref S/2308/06/O was granted on 1 December 2006 for up to 380 dwellings at land east of the A10 known as the Former Bayer Crop Science Limited Site, Hauxton. On 20 June 2012 reserved matters

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<sup>1</sup> Paragraph 7.15 of Department for Environment, Food and Rural Affairs Circular 1/09

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- for that permission were approved under Ref S/1152/12/RM for layout, scale and appearance of Phase 1 comprising 201 dwellings and associated works.
6. According to the statement of case of South Cambridgeshire District Council, the order making authority (OMA), it is clear from the approved planning permission (the OMA refers only to the outline permission and the reserved matters approval) that the path would require to be diverted to enable the development to take place. However the planning position is not fully explained in that statement.
  7. The applicant is Redrow Homes and its statement of case, on the other hand, details that the plan submitted with the original application for diversion showed the existing footpath cutting through plot 107 and that this was the reason the Order was originally needed. This is consistent with a comparison of the location of points D and E on the Order map with the plan supplied by the applicant showing Plot 107 approved under the reserved matters approval.
  8. However approval was then granted on 2 September 2016 for a “non-material amendment” to S/1188/16/VC which was itself a variation of the approved drawings condition on the reserved matters approval S/1911/14/RM. The amendment purposely adjusted the location of plot 107 so that it now lies outside the line of the existing path, albeit it still runs quite close to it. Given the approval of the relocation of plot 107, landscape plans are out of date and the applicant states that revised plans will be made through an application in due course. However it is also clear from the applicant’s statement that any revised landscaping plans would not be submitted until the present Order is confirmed or not as the case may be.
  9. I saw that the house at plot 107 appears to be built substantially in line with the approved non-material amendment thus resulting in the line of the existing footpath being outside the plot.
  10. As described above, firstly I have to be satisfied, whatever other considerations might subsequently be relevant to approval of an order, that confirmation is necessary in order to enable development to be carried out in accordance with planning permission already granted under Part III of the Act.
  11. It is well established that it is insufficient that the making of such an order would merely facilitate the carrying out of the development. In this case the applicant advances reasons to support confirmation such as a more attractive alternative route, and to overcome delays already experienced with the application. However such reasons do not go to the issue of necessity in relation to the planning permission that has been amended and implemented.
  12. Although described in planning circles as a “non-material” amendment the relocation of plot 107 has materially altered the position as far as concerns my powers to confirm the Order. It is not possible to consider the Order without reference to the latest iteration of the permission granted to the developer and to what has been implemented on site.
  13. The development permitted under Ref S/2308/06/O is in progress but has not been completed. However diversion of the path is not necessary to allow the physical construction of houses on the site to be carried out, as the section of the path in issue is outside the boundary of the development of the relevant plot. Nor have I been made aware of any planning permission that has yet

been granted for landscaping that would militate against the retention of the existing line of the path and I see no other reason why the full development of the site cannot be carried out unless the Order is confirmed. It is therefore unnecessary to divert the footpath in order for development to be carried out.

14. In anticipation of this finding the applicant has stated that in the event of the Order not being confirmed, revised landscape plans will seek to provide an appropriate buffer between the revised location of plot 107 and the existing footpath route, and informal open space would be provided along with the retention of the existing route. Although such factors would be relevant had I reached the point of being able to exercise discretion whether or not to confirm the Order, for the avoidance of doubt they are not a matter for me, having regard to my conclusions on the primary test to be applied.

### **Conclusion**

15. I conclude that as the diversion of the footpath is not necessary to allow development to take place, the Order should not be confirmed.

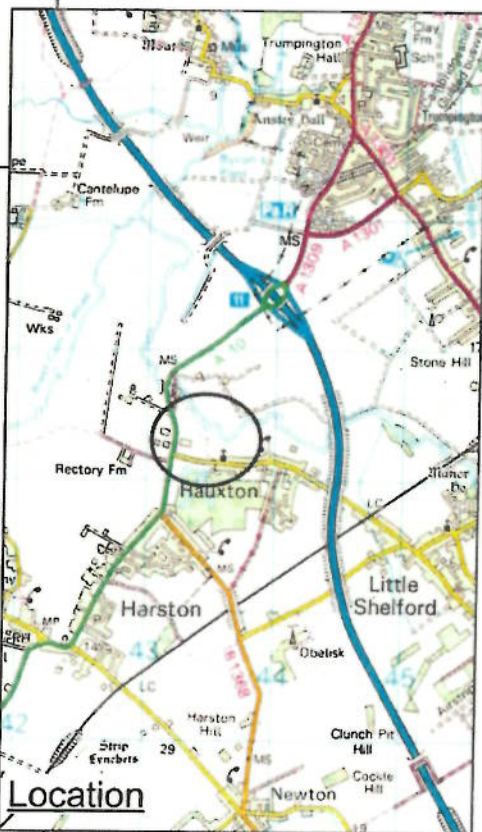
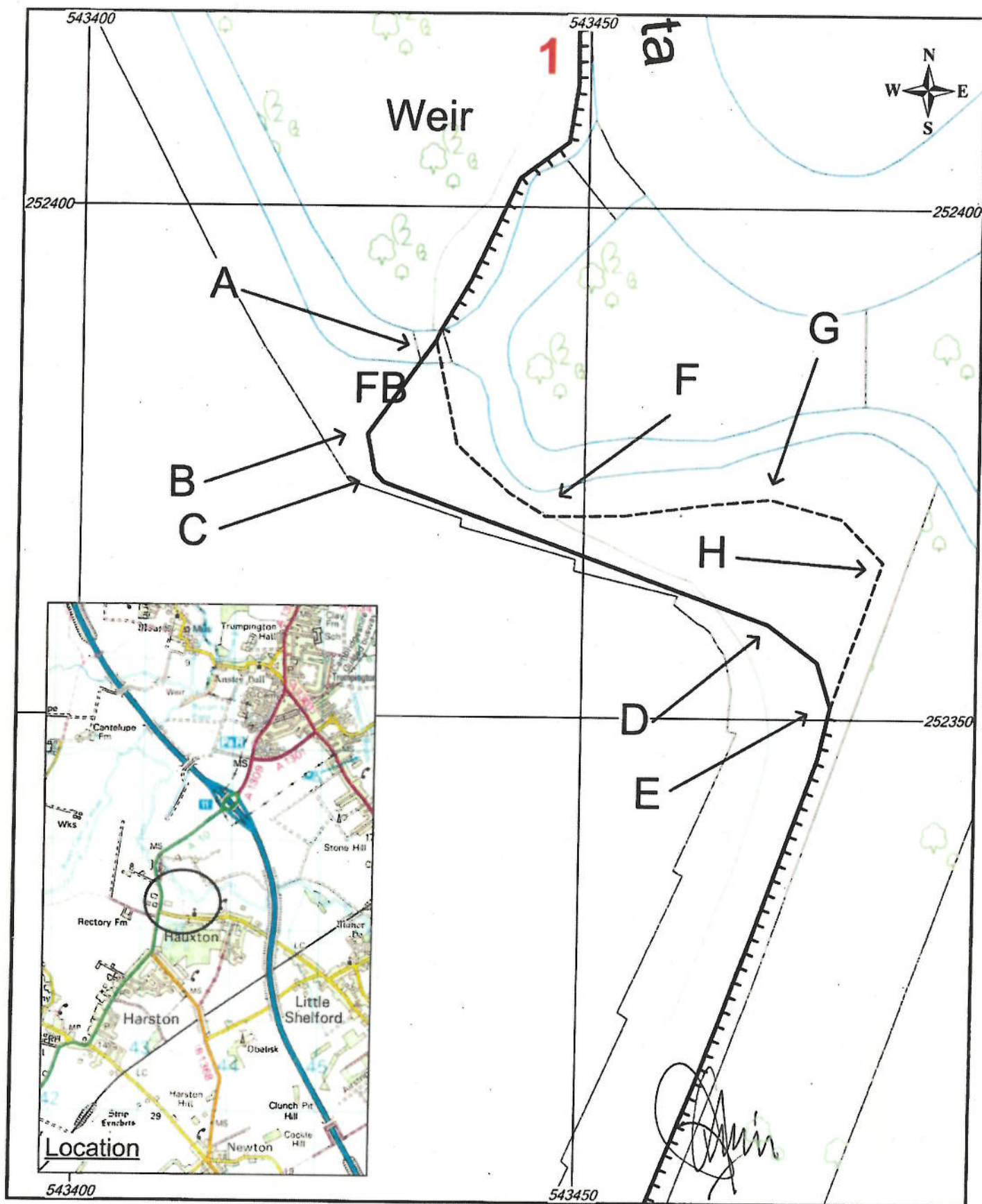
### **Formal decision**

16. I do not confirm the Order.

*Grahame Kean*

INSPECTOR

# Diversion of Public Footpath No. 1 (part) Hauxton



Scale: 1:500

Date: 03/12/2015

**Key - Drawn from the Definitive Map**

Public Footpath to be Stopped Up

New Route of Public Footpath

Unaffected Public Footpath

