



Order Decision

Site visit on 21 April 2016

by Sue Arnott FIPROW

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

Decision date: 26 April 2016

Order Ref: FPS/X1355/4/7

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as the County Council of Durham (Public Footpath No. 34 Consett Parish) Public Footpath Diversion and Definitive Map and Statement Modification Order 2014 and is dated 2 October 2014.
- The Order proposes to divert part of Public Footpath No. 34 at a point southwest of 12A Valley View in Leadgate, as detailed in the Order map and schedule, and would modify the definitive map and statement accordingly.
- There were six objections outstanding when Durham County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

Summary of Decision: The Order is not confirmed.

Main Issues

1. The requirements of Section 119 of the Highways Act 1980 (the 1980 Act) are that, in this case, before confirming the Order I must be satisfied that:
 - (a) it is expedient in the interests of the owner of the land crossed by Footpath 34 that the right of way in question should be diverted;
 - (b) the new termination point of the footpath (being on the same highway) will be substantially as convenient to the public;
 - (c) the new route to be provided will not be substantially less convenient to the public; and
 - (d) it is expedient to confirm the Order having regard also 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, 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. I am also mindful of the requirements of the Equality Act 2010.

Reasons

3. This Order was made by Durham County Council (DCC) at the request of the owner of 12A Valley Road, Leadgate. Prior to making the Order, initial consultations suggested no opposition to the proposed diversion. Consequently, the decision to make the Order was delegated to the Head of Transport and Contract Services at DCC who concluded that the Order should be made.
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4. Six objections (from a total of 9 people) were received by DCC during the statutory period following the advertisement of the making of this Order, including one from Councillor Sheild and Councillor Stelling and others from people living locally. In reaching my conclusions, I have considered these objections together with the responses thereto from DCC.

The interests of the owner of the land

5. DCC made the Order on the grounds that the diversion will provide greater privacy and security for the owner of 12A Valley Road. This would be achieved by moving the path further from the house so as to enable an enclosed garden area to be established by annexing land which, at present, lies to the south of Footpath 34. The section of path to be diverted (shown as A-B on the Order map) would be diverted along the line A-C-D which would run around the outer boundary of the intended garden.
6. No further details are provided to indicate exactly how the new area is to be annexed to No 12A, whether planning permission is necessary and has been granted, or the nature of the enclosure, other than that the applicant has agreed the southern boundary fence will be no higher than 5 feet (1.5 metres).
7. There is at present a substantial brick wall incorporating wooden fence panels forming the boundaries to this residential property which face the tracks carrying Footpath 34 to the south and Footpath 35 to the east.
8. Whilst the applicant has reported a history of anti-social behaviour in this area, no other information has been submitted to identify the particular security risk and how this would be reduced simply by moving one of the two adjacent footpaths further from the house. Neither is it obvious how the diversion will resolve any anti-social behaviour issues¹ when Footpath 35 will continue to pass alongside the eastern boundary wall.
9. However it does seem clear that the present garden area is very limited for a dwelling of this size and I can appreciate the desire to increase the outdoor space attached to the house. I there accept that it would be expedient in the interests of the landowner to divert Footpath 34 as proposed by this Order.

Convenience to the public

10. In assessing the relative convenience of the present and proposed routes I have considered a variety of factors, especially the change in length, width and character in the context of the role Footpath 34 plays in the local network. In doing so, I note one of the points put forward by several of the objectors: that the proposed new route will be less direct and therefore less convenient.
11. There is no doubt that to follow the diversion via A-C-D and along Footpath 35 to point B more than doubles the distance along the definitive line A-B. Whilst A-C-D alone adds 30 metres to the 38 metre distance walked along the straight line A-B, there is also the extra 25 metres required to return to point B. Even if walking from A to B intending to turn southwards along Footpath 35, the distance would be longer by 5 metres and if turning northwards or continuing eastwards along Footpath 34, then the new route would be 55 metres longer. However, I accept this should be put into context since Footpath 34 extends to some 1.5 km in total although local people may walk much shorter circuits including only parts of this lengthy path.

¹ I note that some objectors challenge the assertion that there are any such problems in this location.

12. There is also a significant difference in the width of present and proposed routes. The Order Schedule acknowledges that the existing definitive path extends across the entire width of the track between A and B. Although the width does vary along the length of Footpath 34, here it is at least of sufficient width to accommodate a vehicle². In contrast the Order provides for the new route to be 1.8 metres although I note the applicant has agreed to extend this to 2.5 metres if required.
13. Although in some situations a width of 2.5m may be perfectly adequate, or even 1.8 metres, where the path is to run between fences at both sides it is the available width in relation to the physical boundaries which becomes important. Where, as between points A and C, the path has a 2m fence on one side and another that is to be restricted to 5 feet (1.5m) on the other, the limited scope for passing other pedestrians, particularly those with dogs, is a serious challenge for some because of the enclosed nature of the path and does affect the convenience of the way for many people.
14. There is also the further issue of the turns and curves the proposed route would introduce into a long and otherwise very straight footpath. Footpath 34 follows the original Iveston Railway, an old mineral line that is historically and culturally important in this part of North West Durham and to Leadgate in particular. By its intrinsic historical nature, this follows a straight line.
15. I fully understand the concerns expressed by the Police and Community Support Officer (PCSO) and others as regards the potential risks to the safety of people walking a route where forward visibility is restricted. Indeed the perceived increase in risk can be just as much a limitation for some vulnerable users.
16. I understand this to be a popular route for dog-walkers. One objector fears that the restricted visibility along the alternative path would constrain their ability to exercise their dogs safely. The dogs could not be let off the lead because their owners would be unable to see ahead to monitor their pets or to see others approaching. Councillors Shield and Stelling point out that this also has implications for the safety of other walkers and especially young children.
17. There is little difference in terms of the gradients of the two routes. No gates, stiles or other limitations are present on either path. Works are intended to the new route and there is no reason to suppose a suitable surface could not be provided.
18. The statutory test requires a comparison between present and proposed routes and I recognise that the question of convenience depends partly in which direction the user is walking and on the purpose of the journey. There is clearly no benefit to be gained by the public here from using the proposed route, only the disadvantage of the additional distance (55m) necessary to walk north or east along Footpaths 35 and 34 respectively or 5m more if turning south. However, the legislation does not require positive benefits for the public, only that the diversion should not be substantially less convenient.
19. Whilst DCC finds the junction at point D to be equally as convenient as point B I disagree. I consider the proposed new route will deflect walkers from the natural line of a path that is intrinsically a straight one and, combined with the change in width and character, will be substantially less convenient than A-B.

² It has not been suggested that the route carries a public right of way for vehicles.

Public enjoyment

20. The present and proposed routes would be different in character in two main respects. The views to be gained from the new section C-D over adjoining countryside are more open than from the definitive A-B. No information has been provided to indicate the future use of the intended garden area (previously allotments) if the diversion is not confirmed and there is no certainty that the present outlook from either path will be maintained. However, if the diversion were to proceed, there is no doubt that any views along Footpath 34 at this point would be lost.
21. The second change concerns the physical character of the path if diverted to follow a new line between fences, even if the available path width were to be modified to 2.5m. One objector expresses concern over the "blind corridor effect" that will result from the proposed arrangement, and the PCSO believes the footpath will be used less by the local community as members of the public lose their sense of safety due to the restricted visibility and the increased potential for individuals who seek to commit offences to lurk around dark corners. In contrast the present route is wide, open and affords good visibility.
22. DCC submits that the main use of Footpath 34 is for recreational walking and therefore the additional distance is not significant. Yet when walking for pleasure, the whole experience affects enjoyment of the way, not any one single factor. Here, I would agree with the objectors that the enjoyment of Footpath 34 as a whole derives from its long, continuous direct line that reflects its historical origins.
23. Having considered all the representations and after walking the full length of Footpath 34, it is my conclusion that to insert one contrived deviation from this line, with the path narrowing between fences, will detract considerably from the public's enjoyment of this pleasant and relatively informal route.

Other considerations

24. Compensation issues have not been raised. No adverse effects arising from the diversion on the land concerned have been drawn to my attention.
25. No issues have been raised in relation to DCC's Rights of Way Improvement Plan for Durham 2011-2014 or its draft revision. Neither have any particular concerns been raised in relation to accessibility for all users including people with a range of disabilities.

Whether it is expedient to confirm the Order

26. In reaching a final conclusion on the expediency of this diversion I must weigh the advantages that would accrue to the individual landowner in whose interest the Order is made against any disadvantages that may result for the many members of the public who use this path.
27. I cannot agree with DCC that simply because the diversion proposed affects only a small section of Footpath 34, that its impact will be similarly confined. Councillors Shield and Stelling refer to the precedent this diversion might set here; whilst that should not necessarily be a barrier to an otherwise acceptable re-alignment, it is nonetheless a consideration.
28. In conclusion, I recognise the substantial advantage that this diversion would offer to the applicant but I agree with the objectors that the alternative route

would be substantially less convenient for the majority of walkers and change the character of Footpath 34 to its detriment.

29. Overall, taking into account all relevant factors and having addressed the statutory tests in Section 119 of the 1980 Act, I conclude it would not be expedient to confirm the diversion proposed by this Order.

Conclusion

30. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

31. I do not confirm the Order.

Sue Arnott

Inspector



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**The County Council of
Durham (Public Footpath
No. 34 Consett Parish)
Public Path Diversion
and Definitive Map and
Statement Modification
Order 2014**

Footpath to be extinguished



Footpath to be created



Scale 1: 1,000

Public Rights of Way /
Highways not affected by
the proposal

Footpath



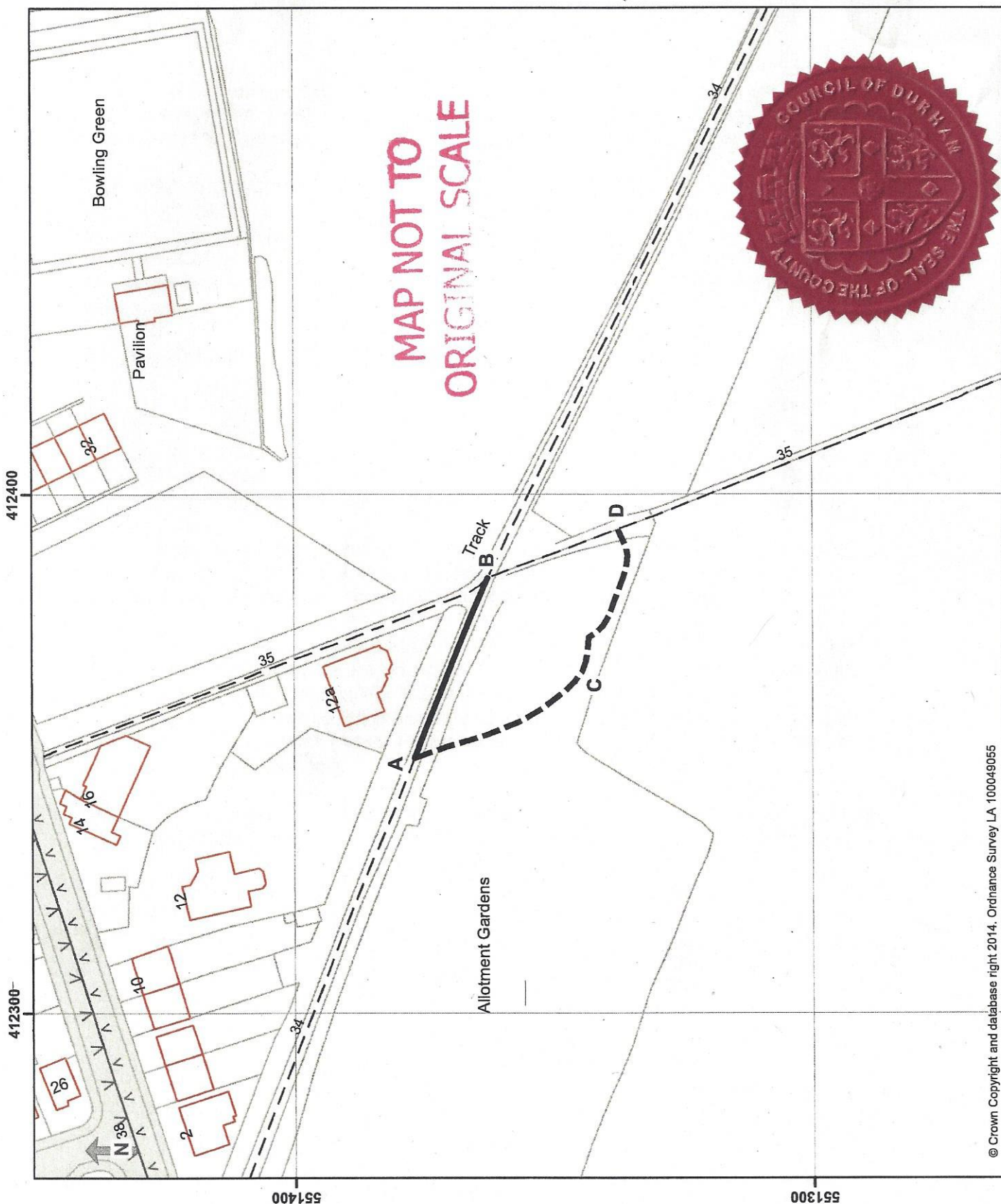
Byway



Adopted
Highway

Drawn: 13 August 2014

Postcode: DH8 7PR



Drawn by