

Order Decision

Site visit made on 30 June 2016

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 14 December 2016

Order Ref: FPS/W1850/7/15M

- The Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The County of Herefordshire District Council (Addition of Public Footpath LQ85 Longtown and Llanveynoe) Modification Order 2010¹.
- The Order is dated 14 April 2010 and originally proposed to record a route in the Parishes of Longtown and Llanveynoe as restricted byway. Full details of the route are set out 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 I have given notice of my proposal to confirm the Order subject to modifications.
- Representations received in response to the notice were withdrawn or modified.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Preliminary matters

1. In my Interim Order Decision ("IOD"), issued on 19 July 2016, I proposed modifications to the Order as made, involving alterations to the extent and status of the Order route. Advertisement of the proposed modifications led to representations from an affected landowner and Longtown Group Parish Council ("the Parish Council"), who made the application to record public bridleway rights over this route.
2. The landowner indicated that he did not object to the route being recorded as a public footpath. The Parish Council withdrew their objection to the proposed modifications, supporting the position of the adjacent landowner.

Main issues

3. The original Order proposed to add a restricted byway to the Definitive Map and Statement in the Parishes of Longtown and Llanveynoe. I was satisfied, on the balance of probabilities, that the evidence as a whole showed that the Order should be confirmed, subject to a modification requested by Herefordshire Council, the order-making authority ("the OMA") regarding the extent to be recorded at the western end. I also considered that the route should be recorded with the status of footpath.
4. No further evidence was presented in response to the advertisement of the proposed modifications, although a number of concerns were raised, two of which I deal with briefly here.

¹ Subject to the modifications set out in the formal decision

Reasons

5. In relation to Ordnance Survey maps, I noted that there appeared to be some agreement that there was a used footpath running alongside the Order route. This is part of the historic evidence and there is no implication made, or intended, that this would be part of an official alternative to the Order route. The Order legally records only the route as shown thereon.
6. I note concerns that I gave inappropriate weight to the reference to user evidence in the report of the OMA. I did not give specific weight to this in my decision. However, it assisted in relation to the direct evidence of the type of use attempted over the route, which was given by the current adjacent landowner and, therefore, the status that should be recorded.
7. In preparing this final decision, I have reconsidered all of the evidence presented in this case and I am satisfied that my decision should stand.

Other matters

8. The law does not allow me to consider such matters as the practicality of the route in question; health and safety; failure to maintain the Order route in the past; costs of bringing the route into use; the cost to the taxpayer in considering the Order; farm management issues; or, signage necessary to ensure use of the Order route, rather than potential alternatives. I do understand that these matters are the most important to those living in the area, and working the land, but I have not been able to take them into account.

Conclusion

9. I am satisfied, on the balance of probabilities, by consideration of all the evidence available, that it is appropriate for me to confirm the Order subject to the modifications set out in paragraph 47 of my IOD, as set out below.

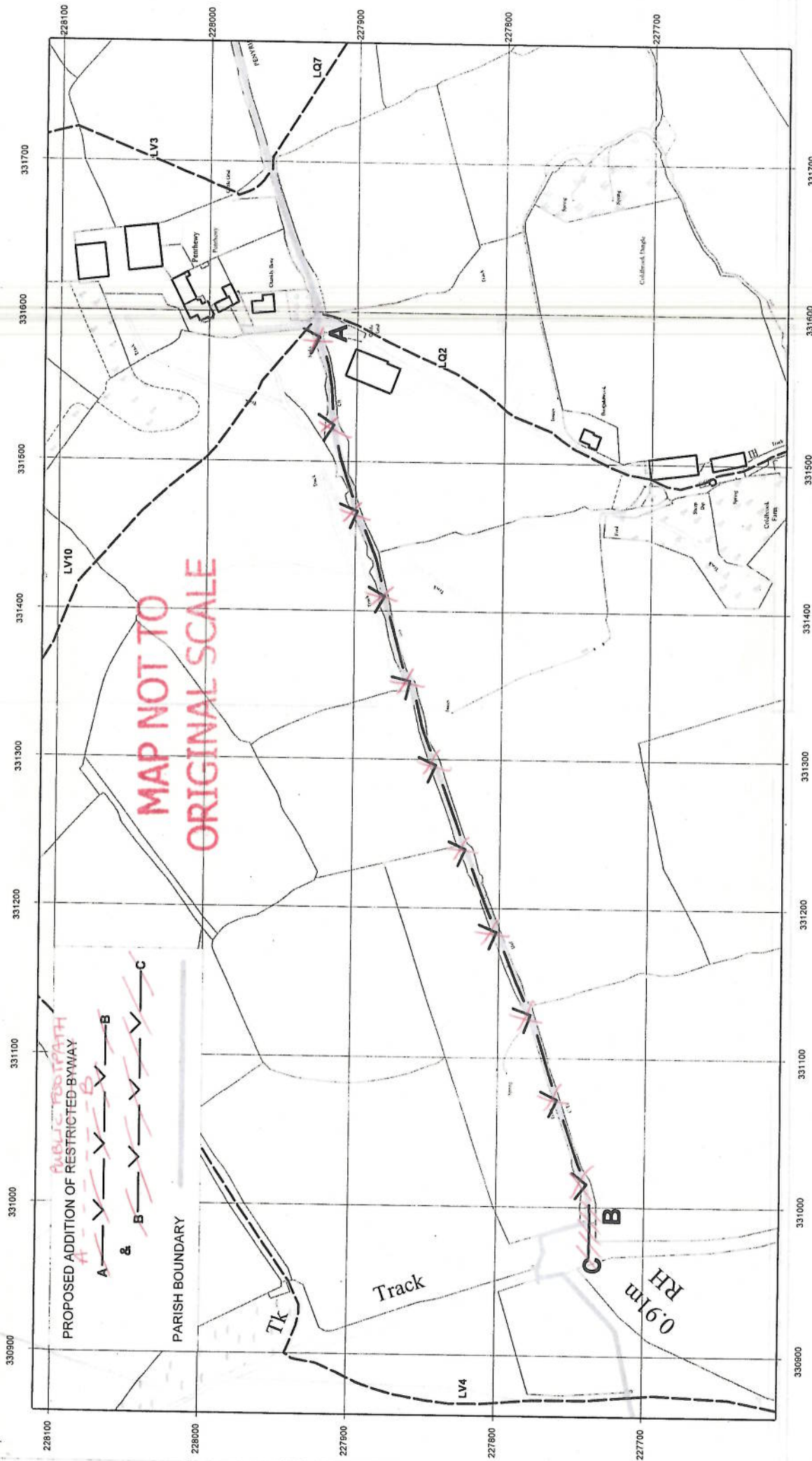
Formal Decision

10. In exercise of the powers transferred to me, the Order is confirmed subject to the modifications previously proposed:
 - Throughout the Order:
 - replace text “...restricted byway...” with text “...public footpath...”;
 - Within Part I of the Schedule:
 - remove reference “...- C...” throughout;
 - after text “...632 metres to...” add text “...the County Road U75000...”;
 - remove text “. The restricted byway continues in a westerly direction for approximately 23 metres to Ordnance Survey grid reference SO 3096 2773 (point C on the Order plan). The length of the way between points B to C is in the parish of Longtown.”;
 - after text “...length of approximately...” replace text “...655...” with text “...632...”;

- Within Part II of the Schedule:
 - remove text "*The restricted byway continues in a westerly direction for approximately 23 metres to Ordnance Survey grid reference SO 3096 2773...*";
 - after text "*...length approximately...*" replace text "...655..." with text "...632...";
- On the Order plan:
 - alter the title to refer to a public footpath;
 - delete section B - C;
 - modify the Order line to this point to a broken black line with short intervals;
 - alter the key to show the footpath between points A and B and to remove B – C.

Heidi Cruickshank

Inspector



LOCATION PLAN - PARISHES OF LONGTOWN & LLANVEYNOE
MODIFICATION ORDER, PROPOSED ADDITION OF RESTRICTED BYWAY
 DWG No. M32/247-GEN/244-GEN(iii)
 SCALE 1:2500



Herefordshire Council
 Public Rights of Way
 PO Box 41
 Leominster
 HR6 0ZA
 Tel: (01432) 260000
 Fax: (01432) 260526

--- PUBLIC FOOTPATH
 ---+--- PUBLIC BRIDLEWAY
 ---v--- RESTRICTED BYWAY
 ---x--- BYWAY OPEN TO ALL TRAFFIC

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