
Order Decisions

Site visit made on 8 November 2016

by Alan Beckett BA MSc MIPROW

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 December 2016

Order Ref: FPS/E1855/3/7 (known as Order A)

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Worcestershire County Council Footpath SP-536, Formerly Footpath 28, in the Parish of Stoke Prior Public Path Extinguishment and Definitive Map Modification Order 2014.
- The Order is dated 13 November 2014 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Worcestershire County Council ('the Council') submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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

Order Ref: FPS/E1855/4/26 (known as Order B)

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Worcestershire County Council Footpath SP-534, Formerly Footpath 27, in the Parish of Stoke Prior Public Path Diversion and Definitive Map Modification Order 2014.
- The Order is dated 13 November 2014 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Worcestershire County 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 in the Formal Decision.

Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I carried out an unaccompanied site visit on Tuesday 8 November 2016.
2. In response to submissions made by Mr Jewson, the Council acknowledged that there was a typographical error in part 1 of the schedule to order B which incorrectly referred to footpath SP-508 when in fact the footpath was located in the parish of Finstall and should have been recorded as footpath FS-508. The Council requested a minor modification to the Order if it were to be confirmed.
3. Mr Jewson also queried the reference in part of the Schedule to footpath SP-585; according to his copy of the definitive map there was no such footpath.

The Council's response was that the proposed diversion would intersect with footpath SP-532 necessitating a new footpath number for part of that path.

4. The numbering of public footpaths is an administrative matter for the Council; I do not consider that any modification of part 2 of the schedule is necessary. As regards the requested modification of part 1 of the schedule I would not ordinarily consider that the incorrect notation of SP-508 would warrant modification as it would not lead to incorrect or misleading information being recorded in the definitive map and statement. However, as the modification has been requested by the Council in response to Mr Jewson's accurate reading of the Schedule, if I confirm the order I will modify it in the manner requested.
5. Order A seeks the extinguishment of a public right of way which crosses the Bromsgrove – Solihull railway on the level and has been made under the provisions of section 118 of the 1980 Act as opposed to section 118A. The Council's reason for making the Order under s118 is that the physical crossing of the railway was located 45 metres to the south of the crossing point shown on the definitive map and it is the public right of way which is shown on the definitive map which is to be extinguished.
6. In an email to Network Rail dated 17 April 2012 the Council advised Network Rail that it did not consider it necessary to extinguish the route in use but only the definitive line. The physical crossing which was in use was not included in the proposed extinguishment as the Council considered that it was not possible for the public to have acquired a right of way as the dedication of such a right of way would be incompatible with the statutory function for which Network Rail held the land.
7. Whilst the Council's approach is broadly in line with the guidance on statutory incompatibility provided by the case of *British Transport Commission v Westmoreland County Council* [1958] and by the Supreme Court in the case of *R (oao Newhaven Port and Properties) v East Sussex County Council and Anor* [2015] UKSC 7, there is nothing in the submissions made which shows that the physical crossing did not exist prior to the commencement of the British Transport Commission Act 1949 which specifically precludes the acquisition of public rights over an operational railway as such access would be a criminal trespass. If the crossing being used was in existence prior to 1949 it may be arguable that a public right of way could have been acquired through long use prior to that date.
8. Given the Council's assertion that there is no public right of way over the used crossing, it is surprising therefore that since August 2011 the used crossing has been subject to a formal temporary closure under the Road Traffic Regulation 1984 (as amended) ('the 1984 Act'). The current site notice refers to the footpath subject to the temporary closure as footpath SP-536 although that footpath is some 45 metres to the north.
9. There is therefore a degree of confusion as to what Order A seeks to accomplish. If confirmed, Order A would extinguish SP-536 as shown on the definitive map, but would have no effect upon any rights which may be in existence over the physical crossing and which the Council have treated as a public right of way by their notices under the 1984 Act.
10. Similarly, Network Rail's submissions regarding the safety of the crossing relate to the physical crossing which was (until August 2011) in use by the public, but

says nothing about the safety or otherwise of the definitive line of SP-536. It is clear from Network Rail's submissions that they regard the used crossing as a public right of way.

11. Whereas there are specific provisions within the 1980 Act for the extinguishment or diversion of public footpaths and bridleways which cross operational railways and Parliament has recognised that the safety of the public on railway crossings is a particular issue with particular criteria to be addressed when a question arises of whether a public right of way should be extinguished or diverted, the Council has chosen not to invoke those provisions. The orders have been made under the provisions of section 118 and 119 of the 1980 Act with Order B being made to provide a reasonably convenient alternative route for the route proposed to be stopped up.
12. However, whilst I am required under section 118 (6) of the 1980 Act to disregard any temporary circumstances which prevent or diminish the ability of the public to use the path subject to the Order I am aware that if the definitive line were open and available for use it would cross a four track railway in the vicinity of a crossing point which Network Rail submits is unsafe. I am therefore of the view that in assessing the definitive line of SP-536 against the criteria found in section 118 (2) of the 1980 Act, I should have regard to the safety of the definitive line of the definitive path if it were open and available for the public to use.
13. Furthermore, given the uncertainty about the status of the used crossing and that the purpose and intent of Order A is to remove the at grade public right of way I consider that if Order A is to be confirmed, then a modification to extinguish any public right of way which may be in existence over the used crossing would be appropriate.

The Main Issues

Order A

14. Section 118 (2) of the 1980 Act requires that before confirming the Order I should be satisfied that it is expedient to stop up the footpath in question having regard to the extent that it appears that it would, apart from the Order, be likely to be used by the public; and that I should consider the effect which the extinguishment of the rights of way would have as respects land served by the path, account being taken of the provisions as to compensation.
15. Section 118 (5) provides that where proceedings preliminary to the confirmation of a public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path diversion order (as is the case here) then in considering the likely extent of use of the path proposed to be extinguished, regard may be had to the extent to which the diversion order would provide an alternative path.

Order B

16. The Order is made in the interests of the owners of the land crossed by the current line of footpath SP-534. Section 119 of the 1980 Act requires that, before confirming the Order, I should be satisfied that:
 - (a) it is expedient, in the interests of the owners of the land that the footpath in question should be diverted;

- (b) the new footpath will not be substantially less convenient to the public;
- (c) it is expedient to confirm the Order having regard to its effect;
 - i) 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 the land served by the existing path and the land over which the new path is created together with any land held with it, having regard to the provisions as to compensation.

Orders A and B

17. In determining whether or not to confirm the Orders, sections 118 (6A) and 119 (6A) of the 1980 Act require that I should give consideration to any material provision of a rights of way improvement plan (ROWIP) prepared by any local highway authority whose area includes land over which the Order would create or extinguish a public right of way.
18. Furthermore, I need to give consideration to what impact (if any) the proposed diversion would have upon the needs of agriculture and forestry¹ or the biodiversity² and natural beauty of the area³.

Order A

The extent to which the footpath would, apart from the Order, be likely to be used by the public

19. Footpath SP-536 crosses the railway to the south of Bromsgrove station and provides a link between footpaths SP-530 and SP-529 which run parallel to the railway on its north-western side and footpaths SP-537 and SP-534 located on the south-eastern side of the railway. The definitive route of footpath SP-536 is currently unavailable as it is securely fenced on both sides of the railway and there is no infrastructure to facilitate the crossing of the rails. In giving consideration to the question as to the extent to which the footpath would be likely to be used, I have disregarded these obstructions and have considered the matter as if the footpath were open and available for use.
20. No empirical evidence has been submitted to demonstrate the use of the footpath, either for the definitive line or for the 'used' crossing to the south. Given that the definitive line is currently fenced off and that the 'used' line has been closed to public use for at least 5 years, it is unlikely that any such evidence of use would be available in any case.
21. I saw from my site visit that SP-532, SP-533 and SP-508 appeared to be in regular use as there were visible wear marks in the ground which suggested the repeated passage of many pedestrians. Similarly, SP-529 and SP-530 appeared to be well used. Although SP-529 and SP-530 have a tarmac surface, there was a well-defined route on the ground through the autumn leaves which had fallen from the adjacent trees. All the paths in the vicinity of SP-536 therefore appear to be well used.
22. The only exception to this general rule appears to be SP-534 which approaches the crossing from the north-east from the crossroad junction with SP-532, SP-533 and FS-508. The lack of wear in the ground on this path may be a function

¹ Section 121 (3) of the 1980 Act

² Section 40 of the Natural Environment and Rural Communities Act 2006

³ Section 11 of the Countryside Act 1968

of the fact that the railway crossing has been unavailable for some time but is also in part due to the fact that part of SP-534 and part of SP-537 nearest to the railway have been obstructed by the construction compound created in association with the works to re-construct Bromsgrove Station⁴.

23. Ignoring these obstructions and impediments to the current use of SP-534 and SP-536, I am of the view that as the remaining paths in the immediate vicinity of SP-536 are well used, it is likely that at least some of the users of the other paths would use SP-536 were it open and available for use.

Crossing the railway

24. Network Rail submits that the crossing used by the public prior to the imposition of a temporary closure was unsafe for public use. The crossing had been assessed under the All Level Crossing Risk Model (ALCRM) used by Network Rail to quantitatively assess the risk present at each crossing on the network. This system covers two measures of risk – collective risk and individual risk of fatality. Collective risk is number ranked from 1 to 13 where 1 is the highest risk and 13 no risk; individual risk (to the regular crossing user) is ranked from A to M where A is the highest risk and M no risk. Using the ALCRM, the SP-536 crossing was rated as a C6 medium risk crossing. Network Rail submits that the ALCRM did not sufficiently address the deficient sighting of fast trains which made the crossing non-compliant with guidelines issued by the Office of Road and Rail.
25. The estimated time taken to cross the running rails (the crossing time) is calculated as the time required to walk between 'decision points'. Decision points are found on either side of the line and are defined in the relevant guidance⁵ as '*a point at which guidance on crossing safely is visible and at which a decision to wait or cross in safety can be made*'. The decision points are taken to be the point at which notices bearing the legend '*Stop Look Listen Beware of Trains*' are situated.
26. The critical figure in relation to the crossing time is the warning time. The warning time is calculated as the shortest possible time for trains to travel the distance to the crossing from the point at which they can first be seen or heard by a pedestrian standing at the relevant decision point (the sighting distance). Warning times are calculated using the maximum permitted travelling speed on the line.
27. The generally accepted principle regarding at-grade crossings is that for a crossing to be deemed safe, the warning time should be greater than the crossing time. It is Network Rail's case that the SP-536 crossing did not comply with modern safety requirements.
28. The maximum line speed of trains crossing SP-536 is currently 90 mph (144KmH) and is due to be raised to 100 mph (161KmH) during the period 2019-2024. Pedestrians currently have to cross four lines; a banker line, the up and down high speed lines and a goods loop line. The crossing is considered unsafe for pedestrians crossing from the west due to the curvature of the line to the south of the crossing.

⁴ A link from SP-534 to SP-537 has been provided between the works compound and its associated car park

⁵ Office of Rail Regulation Railway Safety Publication No. 7 'Level Crossings: a guide for Managers, Designers and Operators' (2011).

29. The crossing is 17.7 metres in width between decision points and network Rail estimate that an able-bodied person would require 15 seconds to cross all four lines. The furthest south a pedestrian can see when standing at the western decision point is 267 metres; for a northbound high speed train travelling at 90 mph (144KmH) the visual warning time for pedestrians wishing to cross the railway is 6.5 seconds.
30. Network Rail calculated that for a train travelling at 90mph a sighting distance of 599 metres is required to give sufficient time for a pedestrian to cross all four lines in safety. In the absence of a satisfactory visible warning of the approach of a train, Network Rail considers that an able bodied user standing at the decision point on the western side of the railway would not be able to determine whether it was safe to cross the railway.
31. At current permissible line speeds, there is insufficient time for an able-bodied pedestrian to cross the rails safely from the western side when a northbound train is approaching. I am satisfied that the warning time for pedestrians for a train running at the maximum permissible line speed would not satisfy the current safety criteria.
32. Network Rail note that if whistle boards were installed at the maximum recommended distance of 400 metres from the crossing, the audible warning of the approach of a train travelling at 90mph would only extend to 10 seconds⁶ which would be insufficient audible warning of the approach of a train at this location.
33. Although the figures relating to visual and audible warnings submitted by Network Rail relate to the crossing which was in use until April 2011, it is likely that these figures also relate to the question of whether the definitive line of footpath SP-536 would be subject to the same level of risk as the definitive crossing is only 45 metres to the north.
34. At the crossing point shown on the definitive map it would remain necessary for a pedestrian to cross four lines of railway so the crossing distance is unlikely to be materially altered from the 17.7 metres width of the used crossing or that an able-bodied person would take less than 15 seconds to cross the lines. In such circumstances the audible warning of the approach of a train travelling at 90 mph (144KmH) passing a whistle board at the maximum permitted distance of 400 metres would remain at 10 seconds and would be insufficient for a pedestrian to cross all four lines. The audible warning given to pedestrians considering crossing at the definitive crossing of SP-536 would be insufficient for a pedestrian to cross safely.
35. I consider it unlikely that there would be any significant increase in the distance at which an approaching train would be first viewed from the definitive crossing point although it is further along the relatively straight section of track and further away from the curve. From a study of the Order map, it is likely that sightlines to the south from the western side of the track on the definitive crossing would not extend beyond 300 metres which would remain significantly less than the sighting distance required for a pedestrian to be certain that train travelling sat the maximum permissible speed was not approaching the crossing from the south. I do not consider that a reduction in the lineside

⁶ This figure assumes that the whistle would not be masked by other ambient noise

vegetation is likely to materially increase the sighting times for trains approaching this crossing.

36. Network Rail submit that to achieve the required visual and audible warnings the crossing would have to be moved to the south to where only 3 tracks would have to be negotiated and where the width of the crossing would be reduced to 13.8 metres. However, it is submitted that a significant risk would remain as these three lines would remain subject to the frequent passage of trains running at variable speeds and a slower running train on one line may mask the appearance of another faster running train on another line.
37. In his objection, Mr Coleman questioned Network Rail's submission that the 'decision point' would be 2 metres from the nearest running rail; in his view a more likely point at which a pedestrian would determine whether it was safe to cross the rails would be from the space between track 1 and 2 as the first track encountered was the banker siding which ended just to the south of the crossing. If there was no banker engine present, then standing in the gap between track 1 and 2 would give rise to greater visibility along the curve and an opportunity to check that there was no train in sight or hearing approaching on track 2. If there was no train approaching then it would take 3 seconds to cross the fast up line.
38. I share Network Rail's concern that to follow the course of action suggested by Mr Coleman would expose a user to unnecessary additional risk. The curvature of the line to the south is the feature of the railway at this point which creates a risk to pedestrians in crossing the railway; to stand between the two 'up' lines to overcome the sighting deficiency caused by the curve would be to increase the risk that already exists.
39. Network Rail has given consideration to whether the existing crossing can be improved so that it can be made safe for use. The positioning of whistle boards at the maximum permissible distance from the crossing would not achieve a sufficient audible warning of the approach of a train at the maximum permissible speed. Cost benefit analysis of the safety gain of a miniature stop light (MSL) system or a footbridge has been undertaken⁷. The safety benefit of a MSL system is estimated at £7,000 whereas the cost would be around £800,000. The construction of a footbridge over four lines is estimated to cost £1.5 million (assuming the bridge could be built wholly within Network Rail's existing landholding) but would bring a safety benefit of only £12,000.
40. Miniature Stop Lights are not considered to be an option at a crossing where there are more than two tracks due to the potential for confusing users when the warning is activated by two trains approaching from the same direction; the high cost of such a MSL system is said to be due to the complexity of making allowances for stopping and non-stopping trains at Bromsgrove station. Whereas the installation of MSLs may have provided mitigation for the risk at the crossing, one weakness of MSLs is that they do not prevent use of the crossing and there have been a number of fatalities at pedestrian and other crossings where MSLs have been installed. Expensive works which may mitigate risk but allow it to remain do not appear to me to be ones which can be described as reasonably practicable. The provision of a stepped footbridge does not seem to be a reasonably practicable proposition given that it would be

⁷ Department for Transport Cost Benefit Analysis criteria

constructed within 240 metres of an existing ramped overbridge which already carries a public right of way.

41. As noted above consideration had been given to the relocation of the crossing to where only three lines would have to be crossed. Network Rail submit that although this would achieve the required sighting distances, the existence of three lines of rails combined with trains passing at variable speeds would not sufficiently mitigate the risk to users. Relocation of the footpath would require the diversion of other public rights of way which would require the consent of third party landowners. Given that Network Rail has been able to reach agreement with the relevant landowner for the diversion of SP-534, the uncertainty surrounding the diversion of other paths in the area does not make relocation of the crossing reasonably practicable.
42. I consider that the remedial works discounted by Network Rail as not being reasonably practicable with regard to the used crossing would be equally applicable to the definitive line of SP-536. In the circumstances, I do not consider that there are any reasonably practicable measures which could be taken that would reduce the risk to the public if the definitive right of way was open and available for use. I therefore conclude that it would be expedient in these circumstances to extinguish public footpath SP-536.
43. For pedestrians travelling from the south along SP-537 and wishing to travel north along SP-529 (or vice-versa) the path specified in Order B would provide a suitable alternative as it would provide a link to the bridge over the railway which carries footpath SP-532. For those pedestrians travelling from the north-east along FS-508 and wishing to travel along SP-530 the proposed alternative path would be of little value as it would not lead to a means of crossing the railway. However, as a route to the south-west is already available via the overbridge carrying SP-532 and via SP-529, I do not consider the loss of SP-536 would represent such a significant reduction in convenience to warrant the non-confirmation of Order A.

The effect which the extinguishment of the right of way would have as respects land served by the path, account being taken of the provisions as to compensation

44. There is no evidence before me from which I could conclude that extinguishment of footpath SP-536 would have any adverse effect in respect of this requirement of Section 118 of the 1980 Act.

Conclusion – Order A

45. I conclude that the requirements of section 118 (2) which are set out in paragraph 14 above are met in respect of this Order and that it is therefore expedient that it be confirmed.

Order B

Whether it is expedient, in the interests of the owners or occupiers of the land that the footpath in question should be diverted

46. Footpath SP-534 is a cross-field path running through what is currently grazing pasture. The diversion to the northern edge of the field will remove the maintenance responsibilities of a cross-field path. The landowner has agreed to the proposed diversion following negotiations with Network Rail in return for

the new footpath being securely fenced to prevent dogs being able to access the field and any livestock grazing there. I conclude that the interests of the landowner would be served by the proposed diversion.

47. The Ramblers' Association submits that if SP-536 is extinguished it would be illogical for SP-534 and SP-537 to terminate at the railway. It is the RA's view and that of Mr Coleman that a better alternative route for SP-534 would be across the pasture field in a more southerly direction to SP-537 which would provide a more direct north-south route from FS-508 as opposed to the user having to turn north-west, then south-east then south-west following the field boundaries.
48. This proposed alternative route was suggested to the landowner as part of Network Rail's negotiations with him, but this proposal was rejected as it would retain the footpath within his grazing field and not mitigate the risk to his livestock posed by walkers' dogs. Given that the alternative diversion proposed by the objectors fails the first of the statutory tests set out in section 119 of the 1980 Act, I will not give further consideration to this suggestion even if the diversion proposed by the Order does not satisfy the remainder of the statutory tests.

Whether the proposed northerly terminal point of SP-534 will be substantially as convenient as the existing terminal point of the footpath

49. The proposed northerly terminal point of the footpath will connect with SP-532 approximately 130 metres to the west of its current terminal point on that footpath and will be substantially as convenient for those pedestrians wishing to link with other footpaths in the area as part of a recreational walk.

Whether the proposed footpath would be substantially less convenient to the public

50. The Ramblers' Association submits that the diversion of the footpath would exacerbate the impact of the extinguishment of SP-536 not mitigate it. It is submitted that the combined effect of the extinguishment and diversion on six specific walking routes was such that the proposed diversion made use of the routes less attractive for walkers. It was acknowledged that the diversion would provide a more direct link to SP-531 and SP-529; however it was much less direct for those users wishing to access FS-508 and SP-533. This is not regarded as a more convenient link to other footpaths. It was also acknowledged that if SP-536 was extinguished, the usefulness of SP-534 and SP-537 would be reduced.
51. The Council submits that the proposed diversion, when taken in conjunction with the extinguishment of SP-536 would provide a more intuitive route from point B to the railway overbridge which in turn provides a link to the housing estate developed on the former Stoke Works site; in the Council's view, the proposed route would not be substantially less convenient for users.
52. Network Rail took issue with the six suggested walking routes which the Ramblers' Association say would be adversely affected by the extinguishment of SP-536 and the diversion of SP-534. It is Network Rail's case that use of the overbridge which carries SP-531 would be more convenient to users as it removes the risk associated with crossing the rails on the level.

53. Of the routes that the Ramblers' Association claims would be made less convenient, Network Rail says that the suggested route FS-508 – SP-534 – SP537 does not use the level crossing therefore the extinguishment of SP-536 would have no impact upon this route; the proposed diversion of SP-534 would add approximately 140 metres to what is already a substantial recreational walk between Lower Gambolds Lane and Sugarbrook Lane.
54. With regard to SP-530 – SP-536 – SP-534 – FS-508, Network Rail say that the closure of the level crossing would require a user to continue along SP-529 to the overbridge and then use SP-532 to regain access to FS-508. This alternative route between Sugarbrook Lane and Lower Gambolds Lane would again require the user to walk an additional 140 metres as part of an extensive recreational walk.
55. Network Rail say that the route SP-530 – SP-536 – SP534 – SP-533 is essentially the same as the one considered above with the exception that SP-533 runs south to the Birmingham and Worcester canal. From Sugarbrook Lane to the canal is a longer walk than between Sugarbrook Lane and Lower Gambolds Lane and the additional distance of 140 metres would be insignificant on such a walk.
56. As to SP-530 – SP-536 – SP-537 Network Rail does not consider this to be a logical route which would be used by recreational walkers as it would start and terminate on Sugarbrook Lane at points where there are no houses so it is unlikely to be used as a circular walk by local residents. As to SP-531 – SP-529 – SP-536 – SP-537 this route would be replicated by SP-531 – SP-532 – SP-534 – SP-537; both routes follow the railway boundary and are of similar distances the only difference being that the railway is crossed by means of the overbridge which is a safer option than crossing at SP-536.
57. The final route suggested by the RA SP-533 – SP534 – SP-537 does not cross the railway and would be unaffected by the proposals other than requiring the user to walk an additional 140 metres along SP-532 to reach the northern end of the diverted path. In the context of a walk between the canal and Sugarbrook Lane it is submitted that this will not substantially inconvenience walkers.
58. I note that of the routes which the RA suggest would be made less convenient for users, those that link between Sugarbrook Lane and Little Gambolds Lane or Sugarbrook Lane and the canal require the user to walk between 2 and 2.5Km. In the context of a recreational walk in the area which incorporates a crossing of the railway the increase in distance which would result from walkers having to cross the railway by means of the overbridge does not seem to me to represent a substantial inconvenience.
59. I note that the RA considers that the usefulness of SP-534 and SP-537 would be reduced if SP-536 were extinguished; this may or may not prove be the case. Nonetheless the diversion of SP-534 will maintain a link between SP-537 and the path network to the north-east of the railway and the additional 140 metres which the diversion would require the user to walk to reach any of those other paths in the local network is unlikely to be a substantial inconvenience on a longer recreational walk.
60. Those pedestrians wishing to travel south-west to north-east are unlikely to be substantially inconvenienced by the proposed diversion nor are those

pedestrians wishing to travel from the housing estate on the former Stoke Works site who wishes to travel in a generally south-easterly direction. The proposed diversion is unlikely to have any detrimental impact upon those users of the footpaths SP-532, SP-533, FS-508, SP529 or SP-530 which appear from the worn lines in the ground to be the popular recreation routes on this edge of Bromsgrove.

61. The proposed diversion would remove the need for the boundary crossing currently found at point C as the path is to be fenced out of the field. As the path will connect directly to SP-532 at point D, the absence of any boundary crossings may be more convenient for some users. I concur with the Council that the proposed diversion provides an intuitive link between SP-537 and the network of footpaths which meet at the overbridge; I consider that the proposed diversion would provide a suitably convenient route for those wishing to travel north-south who would have otherwise used SP-536 as part of their journey.
62. The land crossed by the proposed path is not dissimilar to that crossed by the current route in terms of gradient, surface condition and width. In these respects, the proposed path is substantially as convenient as the existing path.
63. For the above reasons, I do not consider that the proposed diversion would be substantially less convenient for members of the public wishing to undertake a journey along the footpath network in the immediate vicinity of the railway.

Whether it is expedient to confirm the Order having regard to:

The effect the diversion would have on public enjoyment of the path as a whole

64. The proposed diversion of SP-534 would have little or no impact upon the views of the surrounding countryside or other features of interest visible from the footpath. Although the objectors submit that the proposed diversion is at a lower level and therefore the views would not be as extensive, I found from my site visit that the current and the proposed paths are at approximately the same elevation. The extensive views to the east and south available from the current line of the path would therefore be unaffected by the proposed diversion.
65. The views to the west from the current path are limited by the trees which stand adjacent to SP-529; although the proposed path would be nearer to the trees as a result of the diversion, there would be no adverse effect upon the views available to the public from the current path.
66. The proposed path would run adjacent to the railway line and the background noise of passing trains is more evident at this location than on the current line of the path, however the ambient noise is no greater than that experienced on the other footpaths which run parallel to the railway and such noise as is generated by a passing train is fleeting.
67. I conclude that the enjoyment of those who seek pleasure from informal recreation on paths such as footpath SP-534 would not be diminished as a result of the proposed diversion.

The effect the coming into operation of the Order would have with respect to the land served by the existing path

68. There is no evidence before me that the Order would have, in this respect, any effect separately identifiable from those considered above in relation to the other requirements of Section 119 of the 1980 Act.

The effect any new right of way created by the Order would have as respects land over which the new right is created together with any land held with it, account being taken of the provisions as to compensation

69. There is no evidence before me that the proposed diversion would have any detrimental impact upon the land over which footpath SP-534 will run. The land over which the proposed path would run is in the same ownership as the land over which the current path runs. Subject to the path being fenced out of the field by a stock-proof fence, the landowner has given his consent to the proposed diversion. Compensation under section 28 of the 1980 Act is unlikely to be an issue in this case.

Summary

70. I conclude that it is expedient to confirm the Order having taking into account the effect the diversion would have on public enjoyment of the path as a whole, on the land served by the existing and proposed paths and on any land held with it.

Consideration given to the provisions of a ROWIP

71. The Council has prepared a ROWIP; I understand that there are no provisions within that plan of particular relevance to this case.

Consideration given to the conservation of biodiversity⁸ and natural beauty⁹

Biodiversity

72. The land crossed by the proposed diversion is not classified as a Site of Special Scientific Interest and is not covered by any other local designations aimed at conserving habitat types or species diversity. There is no evidence before me that the proposed diversion would have any impact upon biological diversity.

Natural beauty

73. Footpath SP-534 is not located within any area which is designated as being of special importance in a national context (such as an Area of Outstanding Natural Beauty) although the path is set in attractive countryside on the fringe of Bromsgrove. The diversion of the footpath is unlikely to have any adverse impact upon the conservation of the natural beauty of the area.

⁸ Section 40 of the Natural Environment and Rural Communities Act 2006 - duty to have regard to the purpose of conserving biodiversity.

⁹ Section 11 of the Countryside Act 1968 - duty to have regard to the desirability of conserving natural beauty and amenity of the countryside.

Conclusions – Order B

74. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed with modifications that do not require advertisement.

Formal Decision – Order A

75. I propose to confirm the Order subject to the following modification:

in the Schedule Part 1 under 'description of public right of way to be extinguished' insert: "The length and entire width of that footpath in the parish of Stoke Prior to be extinguished commences at point X on the Order plan at the junction with footpath SP-530 and proceeds in a generally south easterly direction for approximately 24 metres crossing the railway line to point Y on the Order plan where it terminates at the junction with footpath SP-537. The total distance of footpath to be extinguished is approximately 24 metres.

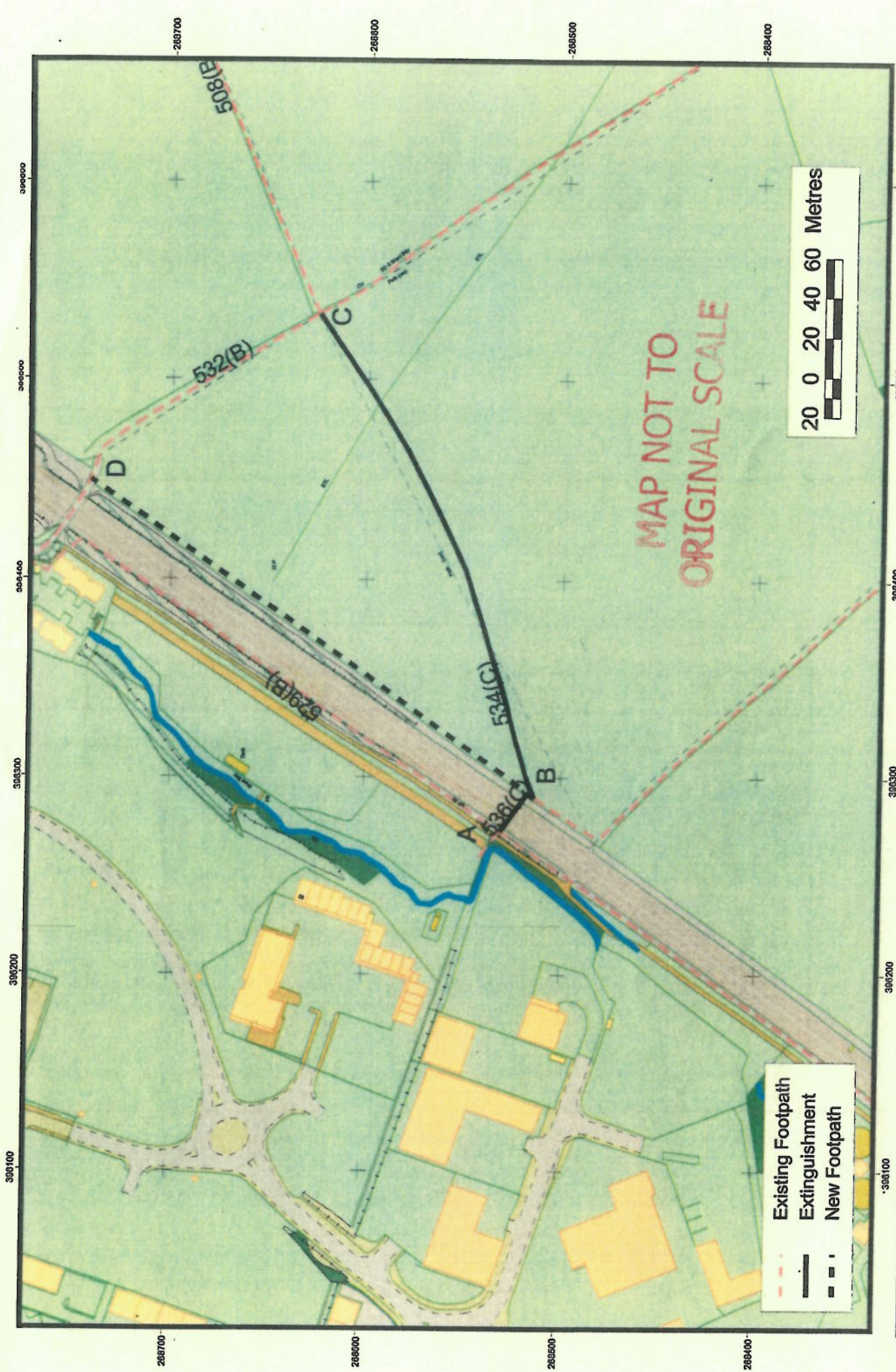
76. Since the Order as proposed to be confirmed would affect land not affected by the Order as submitted, I am required by virtue of paragraph 2(3) of Schedule 6 to the 1980 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modification. A letter will be sent in connection with the advertisement of the notice and the deposit of the associated documents to all persons to whom this Order Decision has been sent.

Formal Decision – Order B

77. I confirm the Order subject to the following modification: in the Schedule Part 1, line 6, amend "SP-508" to read "FS-508".

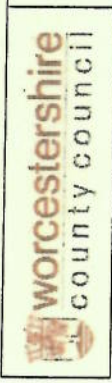
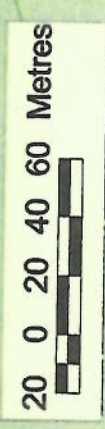
Alan Beckett

Inspector



- - - Existing Footpath
- Extinguishment
- - - New Footpath

MAP NOT TO
ORIGINAL SCALE

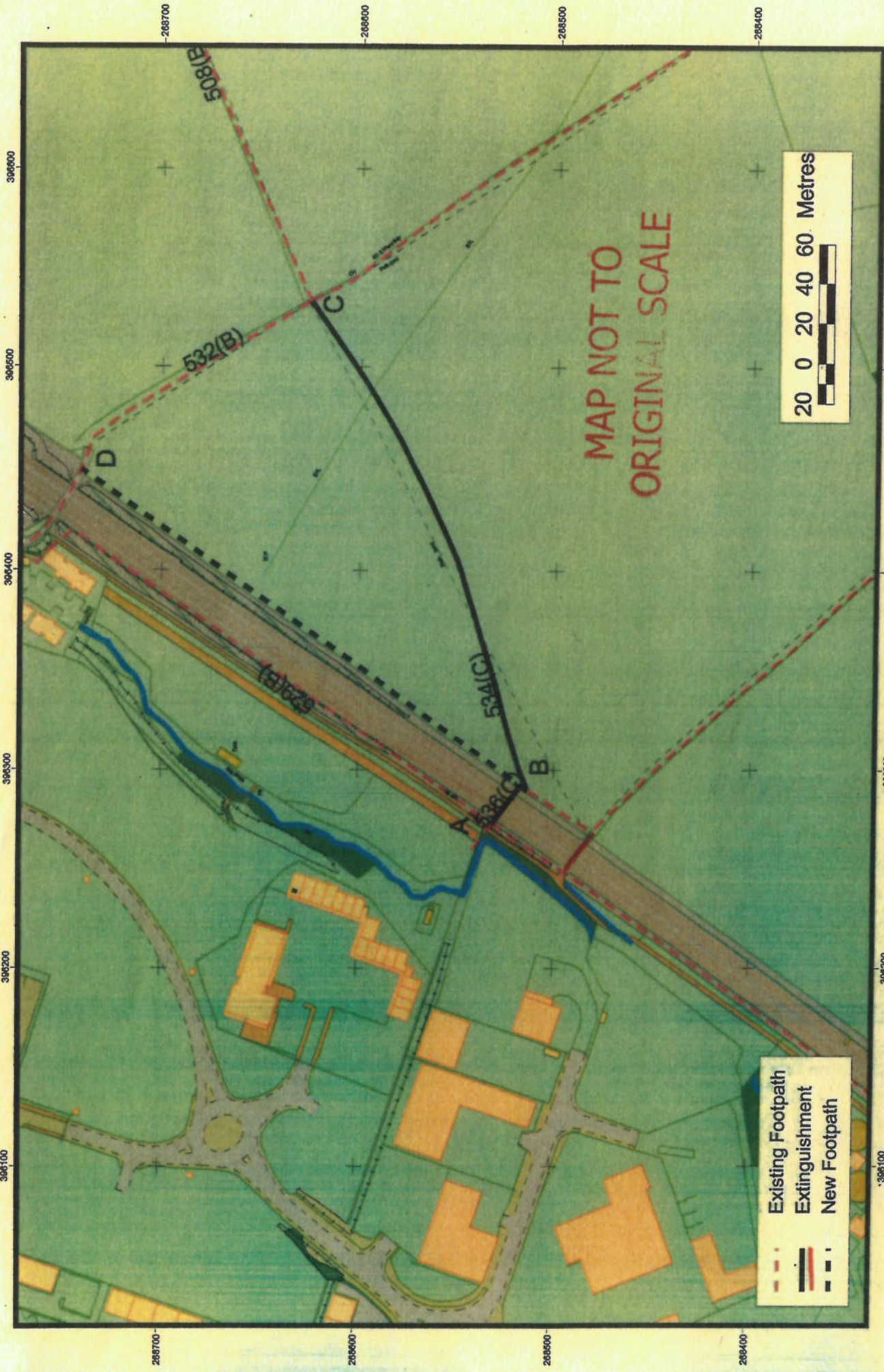


DISTRICT OF BROMSGROVE
PARISH OF STOKE PRIOR
PROPOSED DIVERSION & EXTINGUISHMENT
OF FOOTPATHS

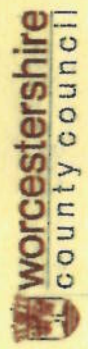
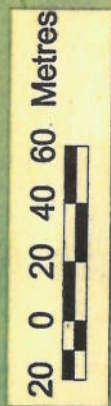


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- Existing Footpath
- Extinguishment
- New Footpath



DISTRICT OF BROMSGROVE
PARISH OF STOKE PRIOR
PROPOSED DIVERSION & EXTINGUISHMENT
OF FOOTPATHS



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