



Order Decision

Site visit on 9 November 2016

by Sue Arnott FIPROW

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

Decision date: 25 November 2016

Order Ref: FPS/H0900/3/3

- This Order, dated 29 October 2015, is made under Section 118 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as the Cumbria County Council (Footpath No. 602022 Parish of Lindal & Marton) Public Path Extinguishment and Definitive Map and Statement Modification Order 2015.
- The Order proposes to permanently close part of Public Footpath No. 602022 at Lindal Business Park as detailed in the Order map and schedule, and would modify the definitive map and statement accordingly.
- There were two objections outstanding when Cumbria 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 Order was made by Cumbria County Council (CCC) under Section 118 of the Highways Act 1980 (the 1980 Act). The requirements of this section are that, before confirming the Order, I must be satisfied that it is expedient to extinguish the part of Footpath 602022 proposed in the Order (shown as A-B on the Order map) having regard to:
 - (a) the extent to which it appears that the footpath would, apart from the Order, be likely to be used by the public; and
 - (b) the effect which the extinguishment of the right of way would have as respects land served by the footpath, account being taken of the provisions as to compensation.
2. In addressing the issue of expediency, I am not required to examine too closely the question of whether or not this footpath is needed¹. That was an issue of foremost importance for the Council when it decided to make the Order but, at this (confirmation) stage I must focus on the path's likely use in future.
3. The path in question may not be needed if there is an adequate alternative route available, but even if so, the path may still be used simply because people prefer it. Yet the Courts have accepted that confirmation is not necessarily ruled out by the fact that the path is likely to be used to more than a minimal extent² in future.

¹ As demonstrated in the case of *R v Secretary of State for the Environment ex parte Cheshire CC* [1991] (QBD)[1991] JPL 537

² A principle articulated by Phillips J in *R v Secretary of State for the Environment ex parte Stewart* [1980] JPL 175.

4. 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, and I am also mindful of the requirements of the Equality Act 2010.

Reasons

5. This Order was requested by the company which owns the land over which the Order route passes. The reasons given for the application are the health and safety implications of having members of the public walking through a busy factory yard and parking area.
6. At present Footpath 602022 leaves London Road (at point A) beside the main entrance into the candle making factory and outlet and proceeds across the staff car park. It passes close to the works building and adjacent to (or possibly through) a line of car parking spaces before passing the entrance to the operational area of the factory. From here the right of way leaves the tarmac and proceeds along a grass track which rises gently up to a vehicular gate with a pedestrian kissing gate alongside. On entering the field beyond, it crosses Footpath 602023 (at B) then proceeds south south eastwards, through fields to the parish boundary and on to the Dalton to Little Urswick road.
7. To reach Footpath 602023 from point A, walkers must proceed along a minor road for approximately 70 metres to a traditional stone squeeze stile in a wall situated above road level, approached by rough stone steps that are just visible in the steep grass verge. Both footpaths 602022 and 602023 lead into the same field and meet at point B. From this point Footpath 602023 proceeds east and south eastwards, also through fields to the parish boundary and to another minor road, north west of Great Urswick, where it connects with other paths.
8. CCC took the view that, with improvements to Footpath 602023, the closure of the Order route would not prevent the enjoyment of the footpath network but would make it safer for everyone. CCC was satisfied that the applicant would improve accessibility and visibility at the start of Footpath 602023; this would include clearing vegetation, installing a new set of steps and constructing a hand rail in the verge at the junction with the road. The footpath is already signposted at this point.
9. Four objections were received by CCC during the statutory period following advertisement of the making of this Order, two of which were later withdrawn following correspondence with CCC. In reaching my conclusions, I have considered these objections together with the responses thereto from CCC.

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

10. No information has been provided by CCC to indicate either the present level or type of use of Footpath 602022 by the public, or its likely use in future if it is retained. Since the surface of the majority of the path (A-B) has been covered with tarmac to form the factory car park, it is impossible to gauge from this any sign of wear and tear by foot traffic. Over the grassed section there is some indication of use with a worn trod around the gate but, insofar as this offers any helpful indication, I take it as evidence there is currently some, but not heavy, use by the public.
11. This is supported by comments made by the two local people who maintained their opposition to the path's closure. One says he continues to use the

footpath although he has moved out of the village; another comments that this footpath "always has been and still is in regular use by the public", and was established long before the factory. Further, in a subsequently withdrawn objection, the correspondent stated that both paths are well used.

12. Having no other information on which to base my conclusion, I find there is regular use of the Order route by the public. In the absence of any indication that this is likely to change in future, I conclude that this use will probably continue unless the route is extinguished by this Order.

The effect the extinguishment would have on land served by the footpath

13. No adverse effects arising from the proposed closure on the land concerned have been drawn to my attention. Compensation issues have not been raised.

Material provisions in the rights of way improvement plan for the area

14. In April 2014 CCC published its Cumbria Countryside Strategy 2014-2019 providing a strategic framework for the management and improvement of countryside access and recreation in Cumbria. No specific references in this document have been drawn to my attention.
15. However, I note that as part of its "Priority Area 1: Improving Rights of Way and Countryside Access" the plan sets out details of its 'barrier reduction' initiatives throughout the county. Further, in its "Priority Area 4: Outreach – improving opportunities to enjoy the countryside" the plan recognises that people with limited mobility are amongst the groups who do not access the countryside as much as others. This translates into an intention to implement an annual programme of barrier reduction such as replacing stiles with gates, and the promotion of new 'Miles without Stiles' routes.
16. There appears to be no stated policy that such aims and objectives should be taken into account when considering requests to alter the public rights of way network. Thus there is no directly material provision in this document that needs to be considered in determining this Order.
17. However, given points raised by the two objectors about the inaccessibility of the alternative footpath, and the requirement for me to consider the implications of the Equality Act 2010, I cannot ignore the stated priorities of the strategy which seek to reduce barriers that prevent people with reduced mobility from enjoying the countryside.

Whether it is expedient to close the footpath

18. What is proposed here is not a diversion of A-B onto Footpath 602023; were it so, then the relative convenience of the old and new routes would need to be addressed.
19. This would show that the alternative via Footpath 602023 is longer by some 30-35 metres; that it has as a limitation a narrow stone squeeze stile rather than a pedestrian gate. It also involves a 70m walk along a public road with no footway where the speed limit is 60 mph (although I accept vehicles travelling at that speed may be rare). Most significantly it introduces a steep gradient up or down the roadside grass bank which I estimate to be at least 1:3.
20. In fact, the suitability of the alternative route is a significant factor when trying to ascertain the impact of the extinguishment on use in the future.

21. When consulted on the proposal³, the Cumbria Access Forum did not oppose the extinguishment of section A-B and considered Footpath 602023 a "largely suitable alternative". It requested that the stone stile be retained but commented that the exit onto the road is "not an acceptable alternative at present". It therefore offered support for the extinguishment on condition that the exit of Footpath 602023 onto the road is "assessed for safety and appropriate safety measures are undertaken before the closure of the level footpath through the car park".
22. This view of the present situation between the stile and the road is echoed by objectors who describe it as 'short but very steep'; 'slippery' with footholds which are 'ill-defined and covered with vegetation at certain times of year'; and providing a dangerous descent directly onto a road.
23. Of most concern are objections that "those unsteady on their feet or with minor eyesight issues would be debarred from gaining access to the footpath" and "To close it would mean I would no longer be able to use the footpath as the other entrance is too steep for me to use safely. I cannot walk up or down it."
24. CCC has stated that the Order will not be brought into operation⁴ until the necessary works are agreed and carried out to improve the junction of Footpath 602023 with the road. I do not doubt that the company intends to make improvements although there is nothing before me to show exactly what these will be. New steps and a hand rail would most definitely assist many users but there is a limited area in which these can be constructed; this must inevitably mean the steps will still be steep. By their very nature steps can be a barrier to some people with limited mobility and it is not clear whether a ramp could be constructed within the highway verge with a sufficiently shallow gradient to overcome the problem here.
25. The test I am required to address is first and foremost the likely use that the Order route would enjoy if it remains. From the information submitted it appears both paths are used and I have seen no evidence to suggest that would change. But if the option to reach point B (and the two paths which continue south from here) along the present gentle incline from point A is closed, some path users would not be able to use Footpath 602023 in the alternative since there is no assurance that the inherent difficulties at its roadside junction can be overcome satisfactorily.
26. Balanced against this is the applicant's request to close the footpath and to exclude the public from the company's land. Yet there is little information provided to demonstrate the problems at present. This does not appear to be an operational part of the site; it provides vehicular access for HGVs to the factory but is otherwise a staff car park. An objector's suggestion that the public path could be marked on the ground with additional signage to address any safety concerns was rejected by CCC as being insufficient to provide the level of safety that would be available along the alternative. Yet it is hard to accept that walking along a public road with a national speed limit could be safer for pedestrians than through a staff car park where cars (or lorries) are

³ I note that Lindal and Marton Parish Council accepted that "the adjustment to the footpath was a minor one" and, according to its minutes of a meeting on 5 Nov 2015, unanimously decided to express "no comment".

⁴ In fact the Order states that (if confirmed) the public right of way over the Order route will be extinguished 28 days from the date of confirmation.

travelling at very slow speeds and where employees should be aware of the possible presence of members of the public on the footpath.

27. On balance I find no overriding case for the extinguishment of A-B such that the significant disadvantages to some members of the public arising from the steepness of the grass bank on the alternative route should be set aside.
28. Overall, taking into account all relevant factors and having addressed the statutory tests in Section 118 of the 1980 Act, I conclude it would not be expedient to confirm the extinguishment proposed by this Order.

Other matters

29. From my inspection of both footpaths it seemed to me that the route of Footpath 602023 as shown on the Order map does not reflect the route used on the ground. In addressing the issues in this case I have regarded the route from the stone stile at the top of the roadside bank, along the northern edge of the field, to point B as the public right of way.

Conclusion

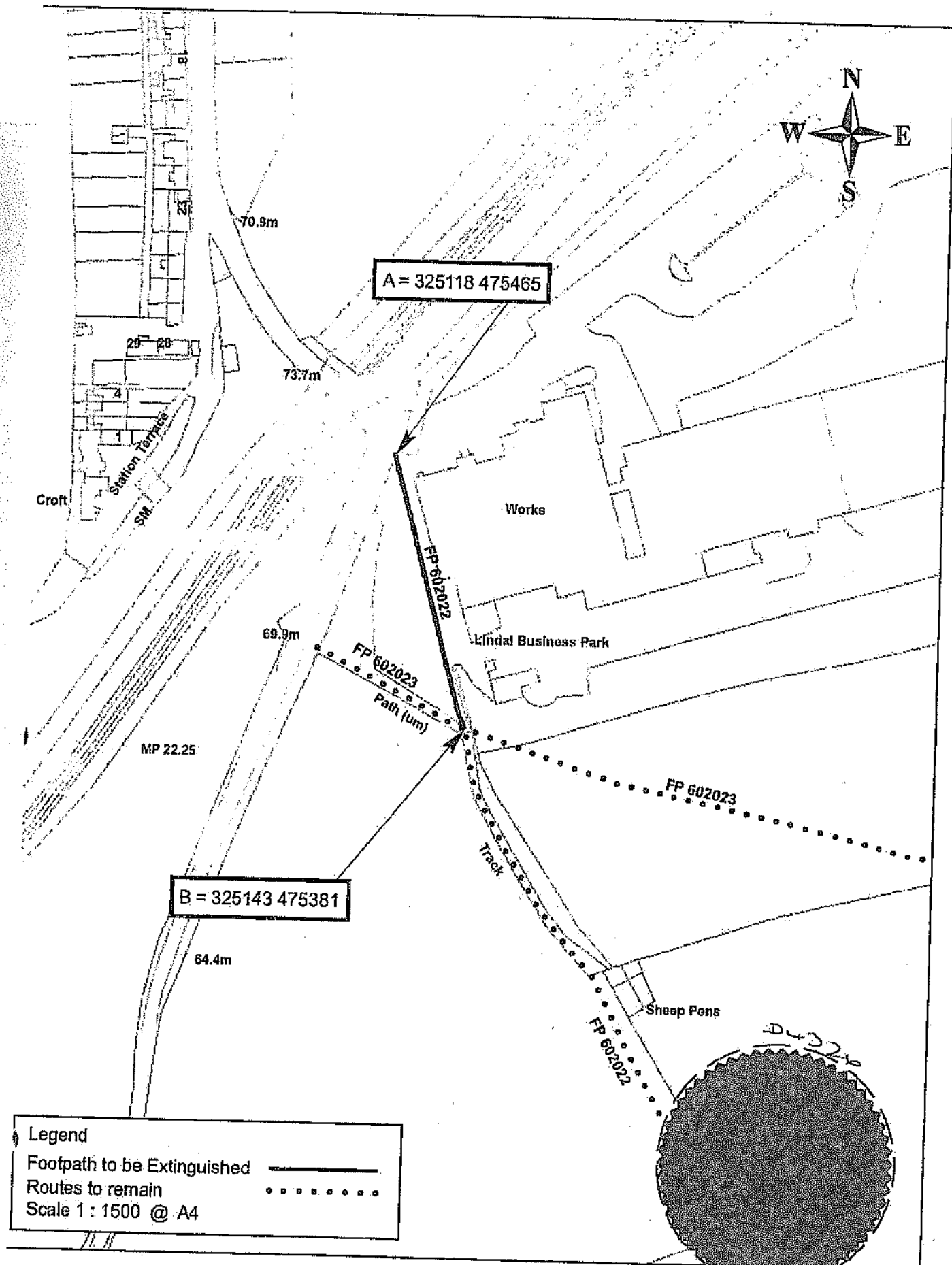
30. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

31. I do not confirm the Order.

Sue Arnott

Inspector



Legend

Footpath to be Extinguished ————

Routes to remain

Scale 1 : 1500 @ A4



Highways Act 1980 Section 118 and Wildlife and Countryside Act Section 53
Public Footpath 602022 Extinguishment Order and Public Path Modification Order
Lindal Business Park, Lindal

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