
Order Decision

Site visit made on 22 July 2016

by Alison Lea MA (Cantab) Solicitor

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

Decision date: 15 August 2016

Order Ref: FPS/W1850/4/16

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Herefordshire Council Footpath LZ3 (Part) Lyonshall Public Path Diversion Order 2013.
- The Order is dated 14 November 2013 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Herefordshire 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 modifications set out below in the Formal Decision

Preliminary and Procedural Matters

1. The applicant and owner of the land at the time the Order was made has died and the application has been continued through her executors.
2. The Objector, Mr Newman of the Open Spaces Society, states that the Order plan is out of date and inaccurate. I accept that it does not show that the area between F and G is enclosed, does not show a hedge line and shows a building which does not exist on the ground. However, the Council confirms that it used the most up to date OS base layer available at the time the Order was made and that the line of the proposed route was plotted accurately using a GPS system. I find this approach acceptable and agree with the Council that there should be no problem in translating the new route, which is also described in the Order, onto the definitive map.
3. Mr Newman also states that the Council failed to take his comments into account at pre-order consultation stage and that it has not followed its own guidance note which states that "If objections are not withdrawn Herefordshire Council will normally decide not to proceed with the Application". In this case the Council concluded that the statutory tests were met and it made the Order. Due to his objection the Order has been submitted to the Secretary of State for confirmation and I have taken all relevant objections into account. Any concerns about the Council's procedure or guidance notes are not matters for me to comment upon.
4. Article 4 of the Order lists "Waymarking as appropriate" as works to be carried out in relation to the new highway. However, Articles 2 and 3 make it clear that the diversion will not take effect until the Council certifies that the alternative footpath has been created to its reasonable satisfaction. This would include waymarking as appropriate as well as any other works considered necessary. Accordingly I consider that Article 4 is unnecessary and could lead

to confusion. The Order should therefore be modified by deleting Article 4 and the reference to it in Article 3.

The Main Issues

5. Section 119(6) of the 1980 Act requires that, before confirming the Order, I must first be satisfied that
- (a) it is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public that the path be diverted;
 - (b) the new termination of the path is 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 to the effect of the diversion on public enjoyment of the way as a whole, and any other relevant matters.

Reasons

Whether it is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public that the path be diverted.

6. The Order is made in the interests of the owner and occupier of the land crossed by the path. Part of the existing route passes close to a residential property known as Summer Court and to various outbuildings and open yard areas belonging to that property. The new route would pass through fields and an enclosed track, away from the house and outbuildings
7. The applicant refers to a number of items having been stolen from buildings and yard areas and states that the diversion would increase privacy and security. This is not disputed and I agree that the diversion of the route away from the house and outbuildings would be in the interests of the owner and occupier of the property.

Whether the new termination of the path is substantially as convenient to the public

8. The termination points of the existing route and the proposed route are the same so the question of the convenience of the new termination does not arise in this case.

Whether the new route would be substantially less convenient to the public

9. The new route would be slightly shorter than the existing route and would have a prescribed width of 2 metres whereas the existing route has no recorded width. Both routes have 2 field gates, but in addition the existing route has a stile and a pedestrian gate. The objector states that the gate at Point G on the new route cannot be fastened as the gap between the gate and the gatepost is too wide and that on one visit the gate had been removed. He suggests that necessary works to the gate should be specified in the Order
10. At the time of my visit the gate was in position and closed and I note that the applicant has stated that any problems with the gate will be rectified and that

gates are checked every spring. In any event the Order provides that the diversion will not take effect until the Council has certified that the alternative footpath has been created to its satisfaction.

11. Despite some waymarking the existing route is confusing and difficult to follow through the farm complex and includes 2 right angle bends. The proposed route follows a more natural line with gentler angles and the change of direction between G and F is obvious due to it following a double fenced track.
12. The objector's main concern is that the route between F and G can be muddy and severely churned up by cattle. At the time of my site visit, the ground was dry but it was clear from the surface that it had been muddy. I also note the photographs taken in April 2016 showing that the ground was wet and muddy.
13. Although it may be that the area dries out quickly and that parts of the existing route are also likely to become muddy at times, I accept that this area is likely to become more muddy and rutted than the existing route. However, the applicant is willing to place hardcore surfacing along the worst areas and the Order provides that the diversion will not take effect until the Council has certified that the alternative footpath has been created to its satisfaction. The Council states that it will not certify the route as open and useable to the public until it has been provided unobstructed and with a firm, level surface and I do not consider it necessary for details of the works to be included in the Order.
14. The objector also states that parts of the route between E and H can be difficult due to mud and water, albeit to a lesser extent than the area between F and G. At the time of my site visit the ground was dry but I note that the Council accepts that at certain times, parts of it can be muddy. However the path is not enclosed at this point making it possible to avoid any particularly muddy areas and I have no reason to believe that, as a rural recreational route, it would be difficult or unusual.
15. Taking all of these matters into account I conclude that the new route would not be substantially less convenient to the public.

Whether it is expedient to confirm the Order having regard to the effect of the diversion on public enjoyment of the way as a whole and any other relevant matters

16. Both the existing and proposed path permit extensive views of the surrounding countryside. The existing path passes close to farm buildings and to a residential property. Although some walkers may like to see buildings in close proximity to the path, others are likely to find the existing route intrusive. The proposed route also reduces the likelihood of conflict with farm machinery and farm yard animals, although I note that both routes pass through fields where cows are grazed. It also appears from the ground that at times cows pass along the enclosed track between F and G on the proposed route.
17. I have concluded that the diversion would be in the interests of the owner and occupier of the property and that the new route would not be substantially less convenient to the public. Indeed for all the reasons given I consider that it is likely to be more convenient and increase public enjoyment of the route as a whole. There are no relevant provisions in the Council's

Rights of Way Improvement Plan and no other relevant matters have been raised. Accordingly I conclude that it is expedient to confirm the Order.

Conclusions

18. Having regard to these and all other matters raised I conclude that the Order should be confirmed subject to the modifications referred to in paragraph 4.

Formal Decision

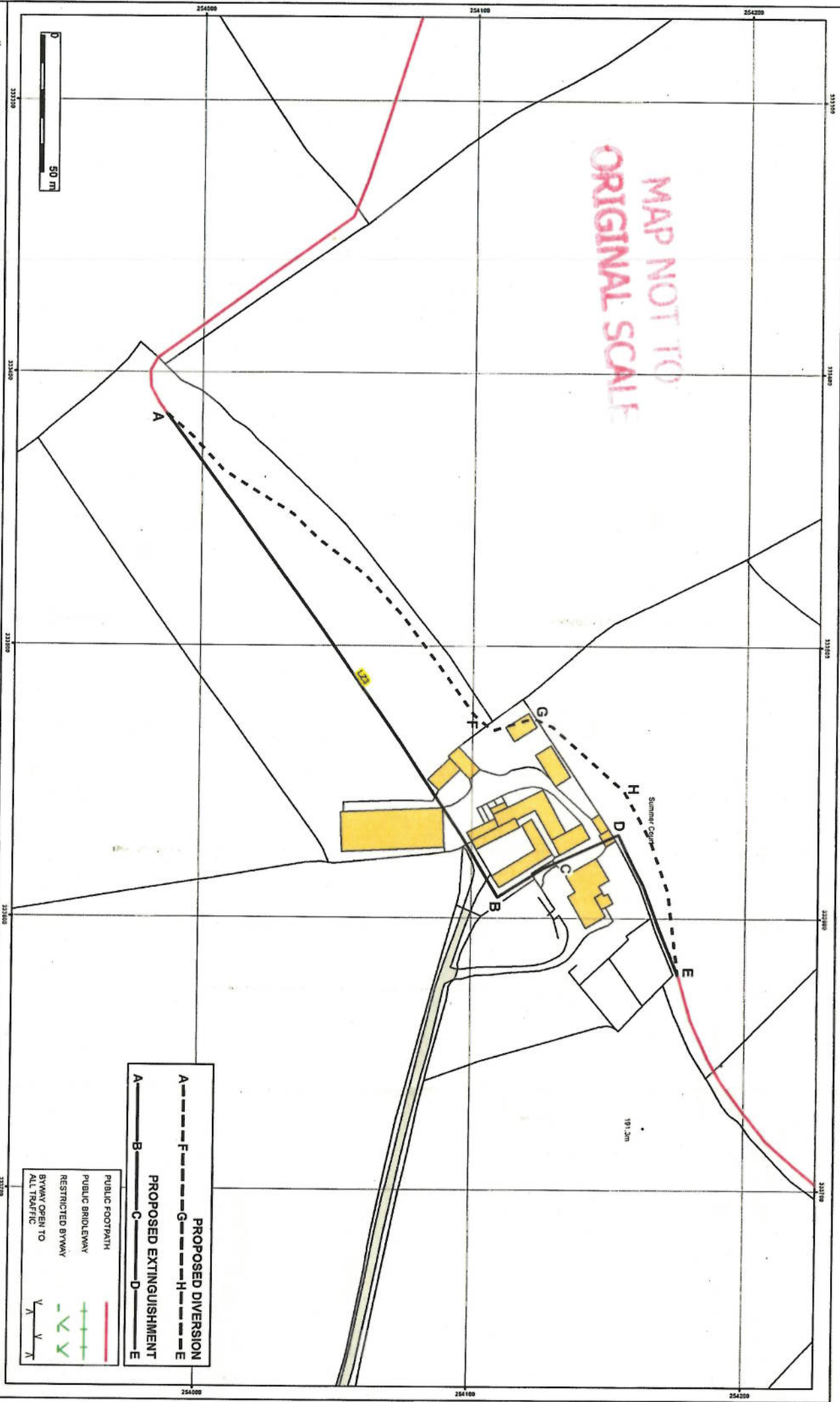
19. I confirm the Order subject to the following modifications:

- In Article 3 of the Order delete the words “and 4” in the second line
- Delete Article 4 of the Order and renumber Articles 5 and 6 accordingly.

Alison Lea

Inspector

MAP NOT TO
ORIGINAL SCALE



PROPOSED DIVERSION
A - - - - F - - - - G - - - - H - - - - E
PROPOSED EXTINGUISHMENT
A - - - - B - - - - C - - - - D - - - - E

PUBLIC FOOTPATH
PUBLIC BRIDLEWAY
RESTRICTED BYWAY
BYWAY OPEN TO ALL TRAFFIC

HIGHWAYS ACT 1980, SECTION 119
HEREFORDSHIRE COUNCIL - FOOTPATH LZ3 (PART)
PARISH OF LYONSHALL
PUBLIC PATH DIVERSION ORDER 2013

SCALE 1:1,250 @ A3 Drawing No.: D437/255-3



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