



Order Decisions

Site visit carried out on 17 November 2015

by Peter Millman BA

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

Decision date: 24 NOV 2015

Order Ref: FPS/R4408/5/2 ("Order A")

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as The Metropolitan Borough of Barnsley (Public Footpath 9 Great Houghton) Public Path Stopping Up Order 2014.
- The Order is dated 11 August 2014 and proposes to stop up a footpath as shown on the Order Map and described in the Order Schedule.
- There were four objections outstanding when Barnsley Metropolitan Borough Council submitted the Order to the Secretary of State for confirmation.

Summary of Decision: I have confirmed the Order with a modification.

Order Ref: FPS/R4408/3/1 ("Order B")

- This Order is made under Section 118 of the Highways Act 1980 ("the 1980 Act") and is known as The Metropolitan Borough of Barnsley (Public Footpath 9 Great Houghton) Public Path Extinguishment Order 2014.
- The Order is dated 11 August 2014 and proposes to extinguish a footpath as shown on the Order Map and described in the Order Schedule.
- There were four objections outstanding when Barnsley Metropolitan Borough Council submitted the Order to the Secretary of State for confirmation.

Summary of Decision: I have confirmed the Order with a modification.

Preliminary matter

1. I have noted above that there were four objections to each Order. In fact, these objections were made to the extinguishment of the footpath as a whole, rather than specifically to one or other of the Orders.
2. An accompanied site visit was requested by the applicant for Order A. He was not present at the site visit, which I carried out accompanied by a representative of Barnsley Metropolitan Borough Council ("the Borough Council"), two objectors and two interested parties.

Main issues – Order A

3. The Order was made because the Borough Council considered that it would be necessary to stop up part of footpath 9 if it granted planning permission for development at Great Houghton under part III of the 1990 Act.
4. Before confirming the Order, I am required by Section 257 of the 1990 Act to be satisfied that an application for planning permission has been made, and

that if the application were granted it would be necessary to authorise the stopping up of the path in order to enable the development to be carried out.

5. Even if I am satisfied on that issue, my confirmation of the Order is discretionary. In exercising this discretion I must consider the merits and demerits of the proposed stopping up in relation to the particular facts of the case, and in particular the effect the confirmed Order would have on those entitled to the rights that would be extinguished by the Order. I must also approach the exercise of my discretion on the footing that the planning issue will have been resolved in favour of the development being allowed to proceed, if planning permission is granted, and consider whether the disadvantages and losses flowing from the proposed stopping up would be of such significance that I should refuse to confirm the Order.

Main Issues – Order B

6. The Order was made because the Borough Council considered that part of footpath 9 was not needed for public use.
7. Section 118 of the 1980 Act requires that, before confirming the Order, I am satisfied that it is expedient to stop up the footpath having regard to the extent (if any) to which it appears to me that it would, apart from the Order, be likely to be used by the public. I must also have regard to the effect the extinguishment of the footpath would have as respects the land served by it.
8. When considering likely use I must disregard temporary obstructions to the current path.

Reasons

Background

9. The Borough Council's Definitive Map of Rights of Way shows footpath 9 running from Chapel Lane, near where it becomes Church Street, towards, but not quite reaching, High Street in Great Houghton. The accompanying Definitive Statement, however, describes the path as reaching the High Street. Although public footpath rights exist, the path does not exist on the ground. When planning permission for the Rodes Avenue estate (see the maps attached below) was given, probably in the early 1970s, the local planning authority was either unaware of or ignored the presence of the footpath. No provision seems to have been made either to accommodate the path within the development, or to divert it. The right of way runs across the front gardens of both 1 and 2 Rodes Avenue. It seems also that the highway authority was unaware that one of the paths for which it was responsible had become obstructed.
10. The current situation, therefore, is that there exists a public right of way on foot along a route which has probably not been used for 40 years or more and which has for all that time been obstructed and impossible to use.
11. There is a path between Church Street and High Street which is currently used by the public. It runs next to the church and quite close to the line of the obstructed path, but is not recorded on the Definitive Map for the area. It is not clear whether this path has become, as a result of long use, a public right of way.
12. A planning application has been recently made to erect a house on land forming part the grounds of what was, until recently, a public house, the Old

Hall, through which part of footpath 9 ran. It would be necessary to stop up or divert only part of footpath 9 if the house was built. However, the opportunity to try to resolve the problem of what to do about the remainder of footpath 9, which also runs through the gardens of two residential properties on Rodes Avenue, has been seized by the Borough Council. The Borough Council believes that if an order is made which stops up the part of footpath 9 affected by the development, the remainder of footpath 9 will no longer be needed for public use and so may be extinguished. This is the purpose of Order B.

13. Although the problem of what to do about footpath 9 was understandably looked at as a whole by the Borough Council in consultation with local people, the tests for the confirmation of orders made under the 1990 Act are distinct from the tests for the confirmation of orders made under the 1980 Act, so it is necessary for me to consider them separately, and to consider Order A first.

Order A

14. The plans accompanying the planning application for the development of the Old Hall site show that if planning permission was granted for the construction of a house it could not be implemented while footpath 9 exists in its present position.
15. The disadvantages and losses (see paragraph 5 above) would primarily be to those people who live in Old Hall Walk and Rodes Avenue, who could use footpath 9, if it was available, to walk to the facilities on the High Street. To get from C to A (see maps attached below) via Rodes Avenue, Church Street and High Street entails an additional 80 metres or so of walking, compared to the route via footpath 9, if it was open.
16. The alternative route via Church Street runs on level footways. Objectors noted that the footway on Church Street was often obstructed by parked cars, as it was at the time of my site visit, so walkers would have to step into the carriageway. Church Street is a cul-de-sac and does not appear to carry significant vehicular traffic, so this is, I consider, a slight inconvenience to pedestrians, rather than a danger to them. It is difficult to make a meaningful comparison of this route with the convenience of the footpath. The Definitive Statement for footpath 9, which would have been compiled well before the 1970s, describes it as a metalled path 4 feet wide. It would probably have crossed open land before the houses on Rodes Avenue were built, but if the section between Rodes Avenue and High Street was reopened now, it might well be fenced against the properties on either side. The Borough Council would have a duty to maintain its surface, but not necessarily to provide a sealed surface. On the whole I consider that for most people, there would be little to choose between the two routes in terms of ease of use and convenience.
17. The plans submitted with the planning application show that it would be possible to divert the line of footpath 9 inside the western boundary of the development site instead of stopping it up. The result, however, would be a longer path between Rodes Avenue and High Street which would have an extra dog-leg. I do not consider that this would be preferable to the stopping up of the path.
18. Of the objections, two came from couples who live nearby, but their letters appeared initially to be concerned with the possible closure of the path across Church property (paragraph 11 above). The other objections were from a

Borough Councillor and Great Houghton Parish Council. These objections were concerned with the possibility of Church Street being blocked and residents in Rodes Avenue and Old Hall Walk being stranded. I was provided with no evidence as to why this might be likely, and no evidence of any complaint during the past 40 years that footpath 9 was obstructed.

19. Taking account of the fact that the issue will have been resolved in favour of the development being allowed to proceed (see paragraph 5 above) – if planning permission is granted – I do not consider that any disadvantages and losses would be of such significance that I should refuse to confirm the Order.
20. The Order states that it will come into effect on the date it is confirmed. However, when the Order was submitted to the Secretary of State planning permission had not yet been granted, so the wording of paragraph 2 of the Order should be amended to 'The stopping up of the footpath shall have effect on the date on which planning permission for the development referred to above is granted.' I was informed at the time of my site visit that planning permission had now been granted, but since I have not seen a copy of the permission I cannot take it into account.

Order B

21. There were no objections to the extinguishment of the part of footpath 9 between Chapel Lane and Rodes Avenue. If it was available it is not likely that it would be used.
22. I have concluded that if planning permission for the development referred to in Order A is granted, then the northern part of footpath 9 should be stopped up. If it is stopped up, then the part of footpath 9 between point B and Rodes Avenue would become a cul-de-sac leading nowhere. In those circumstances it is not likely that it would be used even if it was open and available for use.
23. However, to ensure that the footpath could only be extinguished if planning permission is granted and the part of footpath 9 running through the Old Hall site is extinguished, it will be necessary to modify Order B so that it could only come into effect on the coming into effect of Order A.
24. The stopping up of footpath 9 would have no adverse effect on the land served by it. I conclude that it is expedient to confirm Order B.

Conclusion

25. Having regard to these and all other matters raised in the written representations I conclude that both Orders should be confirmed with modifications.

Formal Decision – Order A

26. I confirm Order A with the following modification: in paragraph 2 of the Order, delete the words 'on the confirmation of this Order' and insert in their place 'on the date on which planning permission for the development referred to above is granted.'

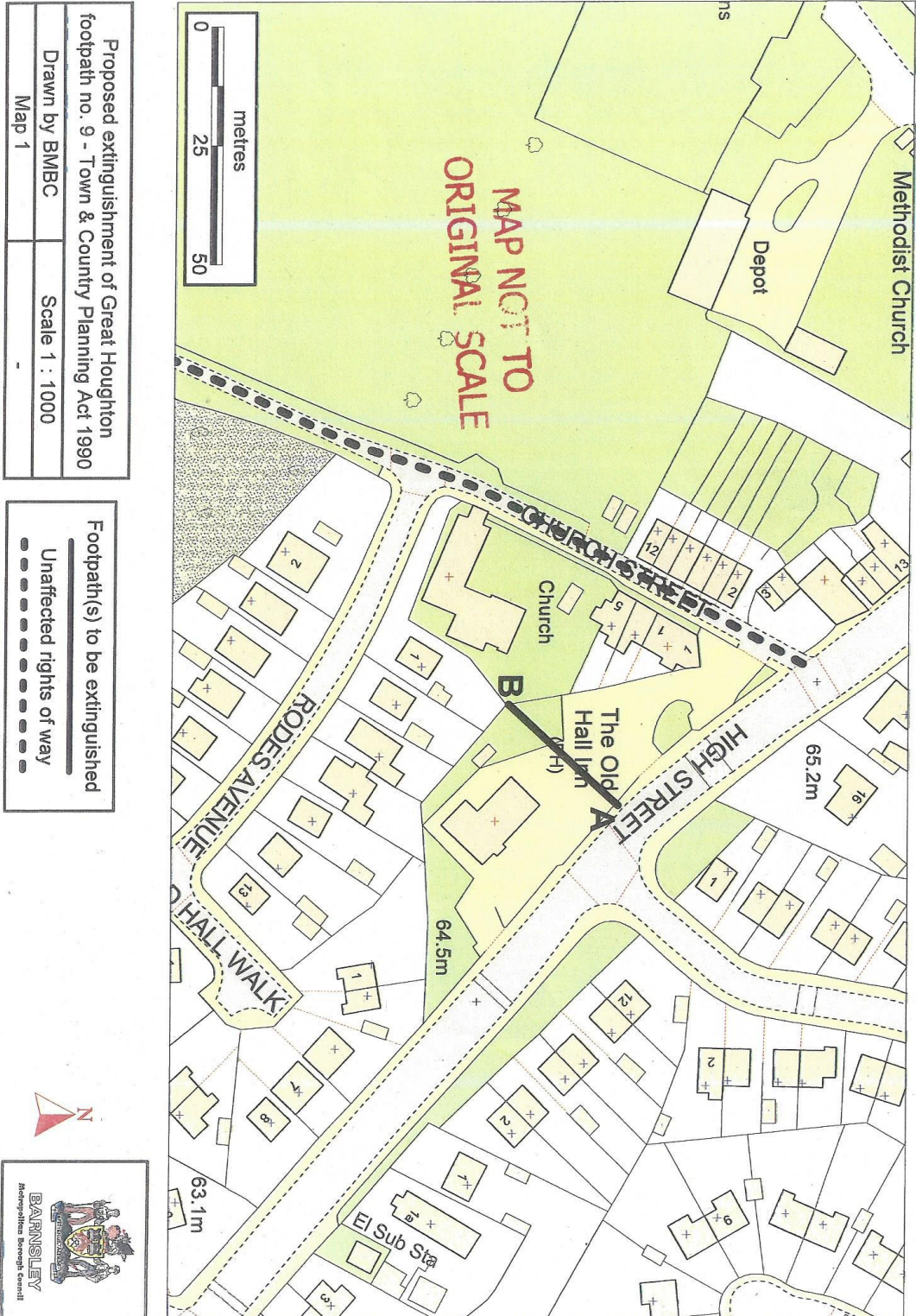
Formal Decision – Order B

27. I confirm Order B with the following modification: in paragraph 1 of the Order, delete the words 'after 7 days from the date of confirmation of this Order' and insert in their place 'on the date on which The Metropolitan Borough of

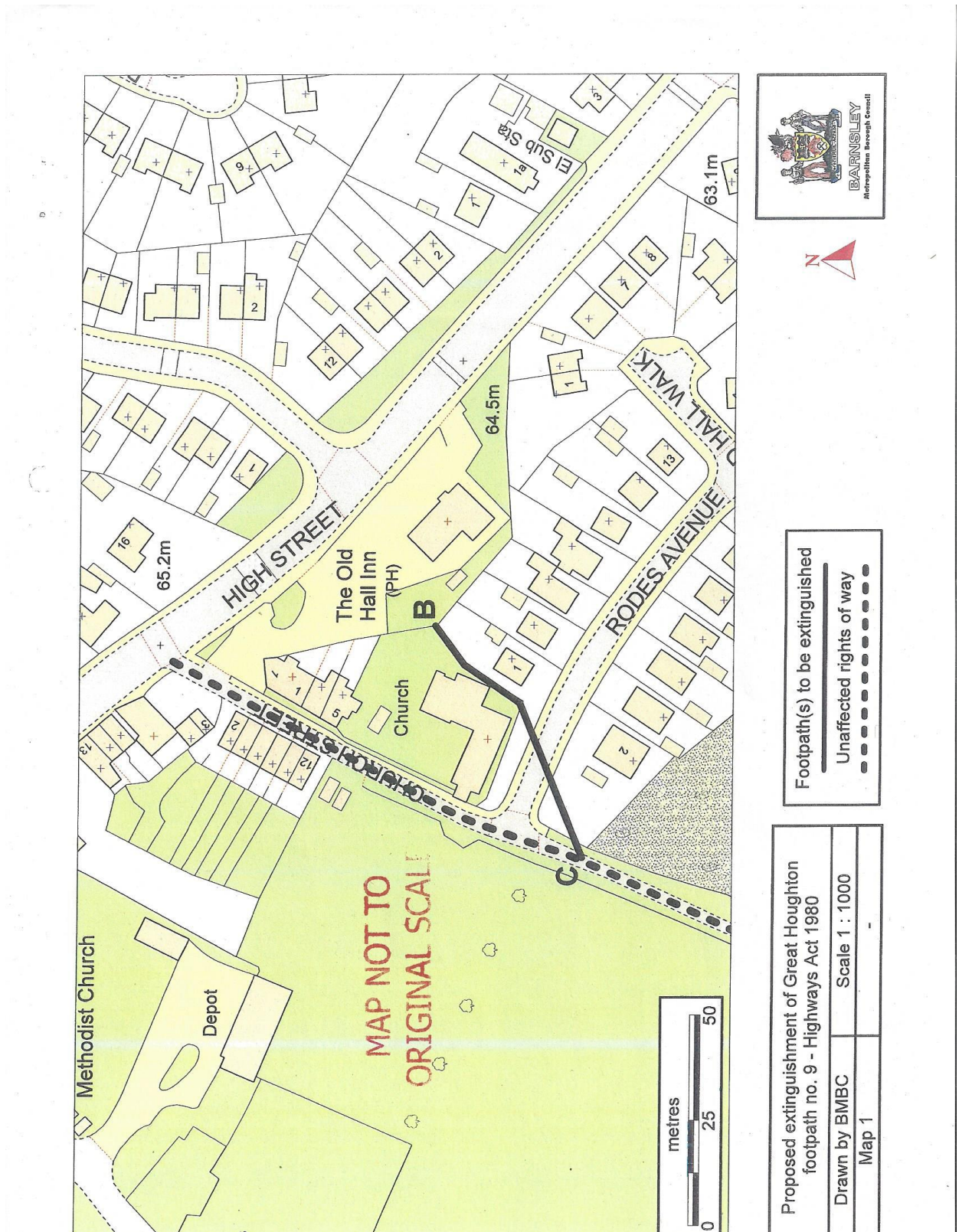
Barnsley (Public Footpath 9 Great Houghton) Public Path Stopping Up Order 2014 comes into effect.'

Peter Millman

Inspector



Map for Order A



Map for Order B