
Order Decision

On papers on file

by Martin Elliott BSc FIPROW

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

Decision date: 14 March 2017

Order Ref: FPS/E1855/4/27

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 and is known as Footpath RP-518 (Part), formerly footpath 11, in the parish of Ripple public path diversion and definitive map and statement modification order 2015.
- The Order was sealed on 23 July 2015 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981 Act, once the provisions relating to the diversion come into force.
- There were two representations 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 proposed for confirmation subject to modifications set out below in the Formal Decision.

Preliminary Matters

1. The notice of the order, which was published in the Malvern Gazette and Ledbury Reporter, states that the Order was made on 9 July 2015 whereas the Order was in fact made on 23 July 2015. Whilst the date of making the Order is incorrect the notice clearly relates to the Order before me and the Council confirmed that no other orders were made on the date specified in the notice. Whilst the date given in the notice is in error there is nothing to suggest that anyone will have been misled or prejudiced.
2. Letters concerning the making of the Order were sent to the relevant parties on 24 July 2015 and indicated that a notice was to be published in the Malvern Gazette on 21 August 2015. The letters contained a copy of the notice, a copy of the Order and plan and a Statement of Ground. The notice, subsequently published in the Malvern Gazette on 21 August, invited objections and representations to be made no later than 35 days from the date of publication. In response to the letter dated 24 July two representations were made which were prior to the objection period specified in the notice published in the Malvern Gazette. As such these representations were not duly made as they were made outside the time period specified in the notice of the order.
3. The representations do not specifically raise objections to the Order although the representation from the Ramblers' Association indicates a considerable amount of reservation in accepting the principle of the making of the Order. However, this representation raises issues in respect of errors in the Order

relating to point B¹ and the identification of point F. The representation from the Malvern Hills District Footpath Society asks that the Order specifies a width for the section of the alternative route D to E.

4. The Council noted the representations and submitted the Order to the Planning Inspectorate for confirmation subject to modifications to address the concerns. Correspondence from those who made representations indicates that they are content with the proposed modifications although a request was made that part 4 of the Order be modified to reflect the addition of the width of the path between points D and E. In my view the modifications requested by the Council address the concerns and I propose to modify the Order accordingly; this includes a modification to part 4 of the Schedule to the Order subsequently requested by the Council.
5. In the circumstances I have made this decision on the basis of the papers on file. I have not visited the site but am satisfied that I can make my decision on the information before me.
6. The Order uses the term minimum in specifying the width of the proposed new route. The identification of a minimum width in an order can lead to uncertainty regarding the position, area, maintenance and obstruction of a right of way. I sought the views of the Council who asked that all references to minimum be struck out of the Order. The observations of the Council were circulated to the relevant parties and no representations were made in this respect.

The Main Issues

7. This Order has been made under section 119 of the Highways Act 1980. There is no evidence before me to suggest that the relevant criteria have not been satisfied such that the Order should not be confirmed.
8. Representations are made in relation to the reference to gaps in the Order and concerns that these will be replaced by gates or stiles. However, my determination must be based on the Order before me which states that there are no limitations, such as gates or stiles, on the proposed alternative route.

Conclusion

9. Having regard to these and all other matters raised in the written representations and in the papers on file I conclude that the Order should be confirmed subject to modifications.

Formal Decision

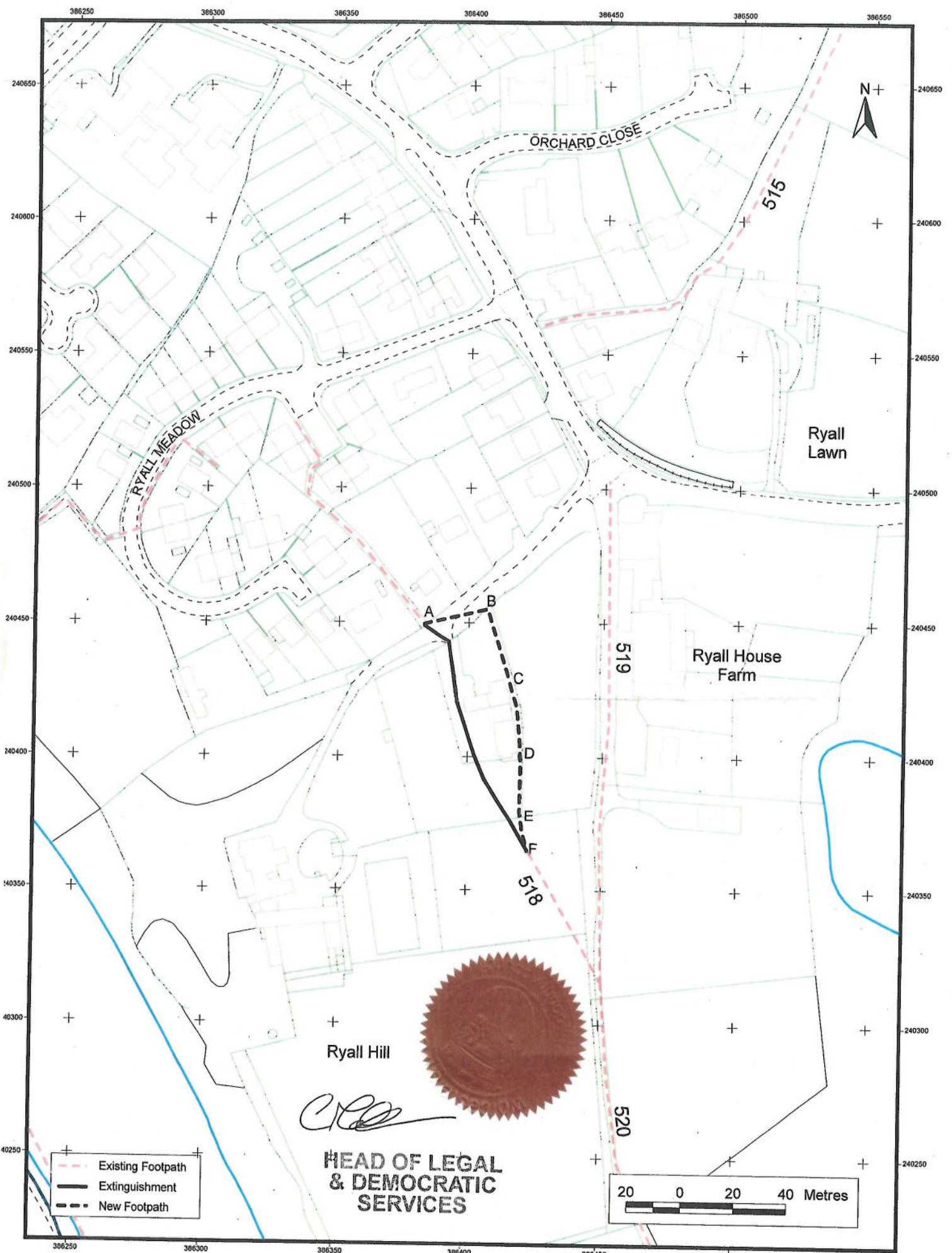
10. I propose to confirm the Order subject to the following modifications:
 - At part 1 of the Schedule to the Order from line 6 delete '(point B on the Order map)' and at line 8 after 'grid reference SO 8642 4036' insert '(point F on the Order map)'.
 - At part 2 of the Schedule to the Order at line 12 after 'approximately 24 metres' insert 'at a width of 3 metres' and delete all references to the word 'minimum'.

¹ Letters A to F used in this decision relate to points on the Order map

- At part 4 of the Schedule to the Order after 'approximately 24 metres' insert 'at a width of 3 metres' and delete all references to the word 'minimum'.
11. Since the confirmed Order 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 modifications. A letter will be sent to interested persons about the advertisement procedure.

Martin Elliott

Inspector



[Signature]

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