

---

## Order Decisions

Inquiry held on 21 November 2017

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 14 December 2017**

---

### **Order Ref: ROW/3169596 referred to as Order A**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Essex County Council Public Path Diversion Order Footpath 2 Great Waltham.
- The Order is dated 23 November 2016 and proposes to divert part of a public footpath at Absol Park in the parishes of Great Waltham and Barnston as shown on the Order Map and described in the Order Schedule.
- There were 4 objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed subject to a modification that does not require advertising.**

### **Order Ref: ROW/3169607 referred to as Order B**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Essex County Council Public Path Diversion Order Footpath 16 Barnston and Footpath 2 Great Waltham.
- The Order is dated 23 November 2016 and proposes to divert parts of public footpaths at Absol Park in the parishes of Great Waltham and Barnston as shown on the Order Map and described in the Order Schedule.
- There were 4 objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed.**

### **Order Ref: ROW/3169622 referred to as Order C**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Essex County Council Public Path Diversion Order Footpath 26 Barnston.
- The Order is dated 23 November 2016 and proposes to divert a public footpath at Absol Park in the parish Barnston as shown on the Order Map and described in the Order Schedule.
- There were 4 objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed subject to a modification that does not require advertising.**

### **Order Ref: ROW/3169626 referred to as Order D**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Essex County Council Public Path Diversion Order Footpath 97 Great Waltham.
- The Order is dated 23 November 2016 and proposes to divert part of a public footpath at Absol Park in the parish of Great Waltham as shown on the Order Map and described in the Order Schedule.
- There were 4 objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed.**

---

## **Procedural Matters**

1. I held a public inquiry into these Orders on Tuesday 21 November 2017 at St John the Evangelist Church, Ford End, Essex. I made an unaccompanied site inspection on Monday 20 November when I was able to walk the majority of the Order routes and to view the rest. I made a further visit to parts of the routes after the inquiry on Tuesday 21 November accompanied by Mr G Crawford and Mrs P Crawford, landowners, Mr M Lees, Open Spaces Society and Mrs K Evans, Ramblers Association.
2. In writing this decision I have found it convenient to refer to points marked on the Order Maps. I therefore attach copies of these maps.

## **The Main Issues**

3. These Orders are made in the interests of the owners of the land crossed by the footpaths. Section 119 of the 1980 Act therefore requires that, before confirming the Orders, I must be satisfied that:
  - It is expedient in the interests of the owners of the land that the footpaths should be diverted;
  - The new footpaths will not be substantially less convenient to the public;
  - The diversions are expedient with regard to:
    - the effect on public enjoyment of the rights of way as a whole;
    - the effect on other land served by the existing rights of way;
    - the effect of the proposed new rights of way on the land over which they are created and any land held with it.
4. In addition, where a diversion will alter a point of termination of a path or way, as in the case of Orders C and D, the proposed new point of termination must be on the same highway as the existing point, or one connected to it, and it must be substantially as convenient to the public.
5. Regard should also be given to any material provisions of the Rights of Way Improvement Plan (ROWIP) for the area.

## **Reasons**

6. I have considered each of the four Orders separately as, although they are linked and when looked at together form a coherent package, they are not completely inter-dependent and it would be possible for one or more to be confirmed but others not with only minor modifications.

## **Order A**

*Whether it is expedient in the interests of the landowners that the footpath be diverted*

7. The present route of this path, Points A-B-H, follows a track around the east and south sides of a man-made lake which is also used by farm vehicles. This gives rise to potential conflict as there is little space for walkers and large vehicles to pass safely. The proposed new route, A-J-H, would not be used by vehicles.

8. The landowners have suffered a considerable amount of criminal damage mainly resulting from trespass from the path into the lake itself. Over 800 waterside plants are said to have been uprooted and often thrown into the lake for dogs to fetch. On occasion bags containing dog faeces have also been thrown into the lake.
9. Planning permission has been granted for the installation of a 80kW ground mounted photovoltaic array on land immediately to the east of the existing path (Points A-B) but the police have asked the landowner to delay carrying out this development pending the diversion of the footpath as there is a perceived risk of damage to panels by footpath users.
10. Trisha Sterck, Essex Police Crime Prevention & Partnership Co-ordinator, confirmed that the owners of Absol Park have been the victims of many varied crimes in recent years. These have included thefts, vandalism and threatened assault. She supports the proposed diversions which she believes will help reduce crime and the landowners' fear of crime.
11. In these circumstances, it is clear that the proposed diversion is expedient in the interests of the landowners.

*Whether the new footpath will be substantially less convenient to the public*

12. The proposed new route is 43m shorter than the existing route between Points A and H. Walkers wishing to use the existing path between Points A and B in conjunction with Footpath 97 to the east of B could have an additional distance of around 90m to travel. However, if Order D is confirmed this would provide a shorter link between Point A and Footpath 97 to the east.
13. Immediately to the west of Point A the proposed new path crosses a 1m wide footbridge over a ditch. On the existing path there are currently vehicle barriers at either end of section B-H each with a narrow gap and a bar to step over permitting pedestrian access.
14. Mr Crawford stated that parts of the track between Points A and B are liable to flooding in wet weather and that the track between B and H is situated on a clay bank which can become muddy and slippery. The proposed new path is on slightly higher ground which does not flood.
15. Overall, there appears to be no reason why the proposed new footpath will be substantially less convenient to the public.

*The effect on public enjoyment of the right of way as a whole*

16. The existing path runs close to the edge of the lake throughout its length whereas only part of the proposed new path is close to it and then separated from it by trees and shrubs. Objectors argue that this would be less enjoyable to use and I accept that some people value the opportunity to walk in close proximity to water features. However, the section of path proposed to be diverted is a relatively small part of the right of way as a whole, the proposed new path will run close to the lake for part of the way and will command open views to the west.
17. The character of the path between Points A and B is likely to change in any event as a result of the development of the photovoltaic array to the east and

the growth of the hedge separating this from the track which was planted in accordance with a condition of the planning permission.

18. Although some users might find the proposed new section of path less attractive, this may have only a limited effect on public enjoyment of the right of way as a whole and any perceived disadvantage must be weighed against the potential advantages of the diversion. On balance, it is my view that the possible adverse effect on public enjoyment is not significant enough to outweigh other advantages of the proposed diversion.

*The effect on other land served by the right of way*

19. I have seen no evidence to suggest that the proposed diversion would have any adverse effect on other land served by the existing right of way.

*The effect of the new right of way on the land over which it is created and other land held with it*

20. All of the land over which the new right of way would be created is in the same ownership as the existing path. The landowners have applied for the diversion and believe that overall its effect will be beneficial.

*The ROWIP*

21. I have not seen the ROWIP but it was stated on behalf of the OMA that it contains no policies with a specific bearing on this proposed diversion.

*Conclusions, Order A*

22. This proposed diversion satisfies the criteria set out in the 1980 Act and the Order should therefore be confirmed. However, for completeness the description of the new path in Part 2 of the Schedule to the Order should be modified to record the fact that the new path crosses a 1m wide bridge west of Point A.

**Order B**

*Whether it is expedient in the interests of the landowners that the footpath be diverted*

23. The effect of this Order would be to remove the public right of way from an existing farm access track and replace it with a parallel route running approximately 4 metres to the south along the edge of an arable field. This would enable the landowners to install lockable gates or barriers across the track and thereby prevent unauthorised vehicular access. The diversion would also reduce any potential danger to walkers from sharing a route with vehicular traffic.
24. As mentioned in connection with Order A, the Essex Police Crime Prevention & Partnership Co-ordinator has expressed the view that the proposed diversions will help reduce crime and the landowners' fear of crime.
25. In these circumstances the proposed diversion is clearly expedient in the interests of the landowners.

*Whether the new footpath will be substantially less convenient to the public*

26. The proposed new route of the footpath would be almost identical in length to the existing route and be equally flat.
27. It would follow a grassed field edge rather than a track with a hardened surface. This might mean it becomes muddy in wet weather. However, some walkers prefer to walk on a grass surface rather than a hardened one and the new path would have the advantage of walkers being separated from vehicular traffic.
28. On balance, it is my view that the proposed new footpath would not be substantially less convenient to the public.

*The effect on public enjoyment of the right of way as a whole*

29. Views from the proposed new path will be very similar to those from the existing path.
30. As previously mentioned, the existing path follows a hardened track also used by vehicles whereas the new path would have a grass surface and be separated from the vehicular route by a hedge. Some people might prefer the new route in these circumstances.
31. I note that no specific objections were made in respect of this diversion.
32. Overall, I do not think the proposed new route would have any significant adverse effect on public enjoyment of the right of way as a whole.

*The effect on other land served by the right of way*

33. I have seen no evidence to suggest that the proposed diversion would have any adverse effect on other land served by the existing right of way.

*The effect of the new right of way on the land over which it is created and other land held with it*

34. All of the land over which the new right of way would be created is in the same ownership as the existing path. The landowners have applied for the diversion and believe that overall its effect will be beneficial.

*The ROWIP*

35. I have not seen the ROWIP but it was stated on behalf of the OMA that it contains no policies with a specific bearing on this proposed diversion.

*Conclusions, Order B*

36. This proposed diversion satisfies the criteria set out in the 1980 Act and the Order should therefore be confirmed.

**Order C**

*Whether it is expedient in the interests of the landowners that the footpath be diverted*

37. As with Order B, the effect of this Order would be to remove the public right of way from an existing farm access track and replace it with a parallel route. In this case the new route would run approximately 7 metres to the west of the

existing path along the edge of an arable field. This would enable the landowners to lock gates or barriers across the track and thereby prevent unauthorised vehicular access. The diversion would also reduce any potential danger to walkers from sharing a route with vehicular traffic.

38. As mentioned in connection with Order A, the Essex Police Crime Prevention & Partnership Co-ordinator has expressed the view that the proposed diversions will help reduce crime and the landowners' fear of crime.
39. In these circumstances the proposed diversion is clearly expedient in the interests of the landowners.

*Whether the new point of termination of the footpath will be substantially as convenient to the public*

40. At the southern end of the path the point of termination would be moved from Point E on Footpath 16 to a new point (Point F) also on Footpath 16 but approximately 7m further west and 4m further south (if the diversion of Footpath 16 proposed in Order B is confirmed). I see no reason why this would not be substantially as convenient to the public.

*Whether the new footpath will be substantially less convenient to the public*

41. The proposed new route of the footpath would be similar in length to the existing route and be equally flat.
42. It would follow a grassed field edge rather than a track with a hardened surface. This might mean it becomes muddy in wet weather. However, some walkers prefer to walk on a grass surface rather than a hardened one and the new path would have the advantage of walkers being separated from vehicular traffic.
43. The proposed new path will cross a ditch by way of a 1 metre wide footbridge north of Point F. I do not think this is likely to cause any substantial inconvenience to the public.
44. On balance, it is my view that the proposed new footpath would not be substantially less convenient to the public.

*The effect on public enjoyment of the right of way as a whole*

45. Views from the proposed new path will be very similar to those from the existing path.
46. As previously mentioned, the existing path follows a hardened track also used by vehicles whereas the new path would have a grass surface and be separated from the vehicular route by a ditch and hedge. Some people might prefer the new route in these circumstances.
47. As with Order B, I note that no specific objections were made in respect of this diversion.
48. Overall, I do not think the proposed new route would have any significant adverse effect on public enjoyment of the right of way as a whole.

*The effect on other land served by the right of way*

49. I have seen no evidence to suggest that the proposed diversion would have any adverse effect on other land served by the existing right of way.

*The effect of the new right of way on the land over which it is created and other land held with it*

50. All of the land over which the new right of way would be created is in the same ownership as the existing path. The landowners have applied for the diversion and believe that overall its effect will be beneficial.

*The ROWIP*

51. I have not seen the ROWIP but it was stated on behalf of the OMA that it contains no policies with a specific bearing on this proposed diversion.

*Conclusions, Order C*

52. This proposed diversion satisfies the criteria set out in the 1980 Act and the Order should therefore be confirmed. However, for completeness the description of the new path in Part 2 of the Schedule to the Order should be modified to record the fact that the new path crosses a 1m wide bridge north of Point F.

**Order D**

*Whether it is expedient in the interests of the landowners that the footpath be diverted*

53. At present the route of Footpath 97 passes close to the building 'Blackbarn'. This building is currently being converted in accordance with approved plans to form a 4 bedroom dwelling with a 2 bedroom annex. Other land adjacent to the existing path will form the private garden associated with the dwelling and the land crossed by the path in front of the building will also be used for vehicular access and parking. The proposed diversion would enhance the privacy and security of the property and avoid potential conflict between vehicular and pedestrian traffic.
54. The diversion would also allow an existing gate close to Point C to be closed and secured and an existing vehicle barrier with pedestrian gap close to Point B to be removed. This would improve the security and appearance of the whole complex.
55. As mentioned in connection with Order A, the Essex Police Crime Prevention & Partnership Co-ordinator has expressed the view that the proposed diversions will help reduce crime and the landowners' fear of crime.
56. In these circumstances, it is my view that the proposed diversion is expedient in the interests of the landowners.

*Whether the new point of termination of the footpath will be substantially as convenient to the public*

57. The current western point of termination of Footpath 97 is at Point B where it joins Footpath 2. The proposed new termination point would also be on Footpath 2 but around 160m to the north.

58. In general terms I see no reason why this new point of termination would not be substantially as convenient to the public. However, as Footpath 97 is likely to be used in conjunction with other paths affected by proposed diversions, this diversion will have an effect on the distance needed to be covered by path users depending on their direction of travel. I consider these effects below.

*Whether the new footpath will be substantially less convenient to the public*

59. The proposed new path is around 45m longer than the existing path. However, people wishing to travel in a generally east to west or west to east direction using Footpath 97 east of Point C in conjunction with Footpaths 2, 26 and 16 would have an additional distance of around 160m to travel. It is not known how many people use the paths in this manner but Mr Crawford stated that most walkers approached Absol Park from the north where there is a large residential development and no objection to the diversion had been received from people living to the east or west.
60. People wishing to use Footpath 97 to the east of Point C in conjunction with Footpath 2 to the north would have a shorter distance to travel as a result of the diversion.
61. In view of the nature and location of this path it is likely to be used primarily for recreational walking and accordingly the possibility that some people may have an additional distance to cover might not be regarded as a significant inconvenience.
62. Overall, I do not think the new footpath will be substantially less convenient to the public.

*The effect on public enjoyment of the right of way as a whole*

63. The proposed new path would follow a grassed field edge with open views to the east rather than a more enclosed track also used by vehicles and close to occupied buildings. Some people might find this more enjoyable.
64. To the south of Blackburn there is a scheduled ancient monument which can currently be seen from the existing path but will not be visible from the proposed new path. One objector argues that this would mean that the diverted route would be less enjoyable. However, the monument consists of an island surrounded by a moat (not part of the scheduled monument) which is overgrown and contains no visible historic features. There is no public right of access to the monument and the limited views of it that are currently available from Footpath 97 will be further reduced as a result of the redevelopment of Blackburn for residential purposes. It seems to me to be quite possible that many path users would be unaware of the existence of the monument.
65. The proposed diversion affects a relatively short section of Footpath 97 and it is my view that it would have only a limited effect on public enjoyment of the right of way as a whole.

*The effect on other land served by the right of way*

66. I have seen no evidence to suggest that the proposed diversion would have any adverse effect on other land served by the existing right of way.



*The effect of the new right of way on the land over which it is created and other land held with it*

67. All of the land over which the new right of way would be created is in the same ownership as the existing path. The landowners have applied for the diversion and believe that overall its effect will be beneficial.

*The ROWIP*

68. I have not seen the ROWIP but it was stated on behalf of the OMA that it contains no policies with a specific bearing on this proposed diversion.

*Conclusions, Order D*

69. This proposed diversion satisfies the criteria set out in the 1980 Act and the Order should therefore be confirmed.

### **Conclusions**

70. Having regard to these and all other matters raised, I conclude that all four of the Orders should be confirmed, subject to modifications to Orders A and C to record the presence of footbridges.

### **Formal Decision**

#### **Order A**

71. I confirm the Order subject to the following modification:

In the Schedule to the Order, Part 2, add after "*...commencing at the aforementioned point A*" the words "*crossing a ditch by way of a 1 metre wide footbridge*".

#### **Order B**

72. I confirm the Order.

#### **Order C**

73. I confirm the Order subject to the following modification:

In the Schedule to the Order, Part 2, add after "*...But 7 metres further west than the current path*" the words "*crossing a ditch by way of a 1 metre wide footbridge*".

#### **Order D**

74. I confirm the Order.

*Barney Grimshaw*

**Inspector**

## **APPEARANCES**

### **For the OMA**

|               |  |
|---------------|--|
| Laurence Page | Definitive Map Officer, Essex County Council |
|---------------|--|

### **Supporters**

|                                  |  |
|----------------------------------|--|
| Gordon Crawford who also called: | Landowner  |
| Trisha Sterck                    | Crime Prevention and Partnership Coordinator, Essex Police |
| Patricia Crawford                | Landowner  |

### **Objectors**

|             |                     |
|-------------|---------------------|
| Malcom Lees | Open Spaces Society |
|-------------|---------------------|

### **Interested Parties**

|                 |                      |
|-----------------|----------------------|
| Katherine Evans | Ramblers Association |
|-----------------|----------------------|

## **DOCUMENTS**

1. Statement of Case by the Landowners of Absol Park.
2. Proof of Evidence of Patricia Crawford.
3. Proof of Evidence of Derek Charman.
4. Proof of Evidence of Trisha Sterck.
5. Proof of Evidence of Gordon Crawford.
6. Statement of Andrew Blackwell.
7. Statement of Case of Malcolm Lees.

# ORDER A

## Plan No. BARN 2 J

Diversion of Footpath 2 Barnston

Route to Close A-B-H

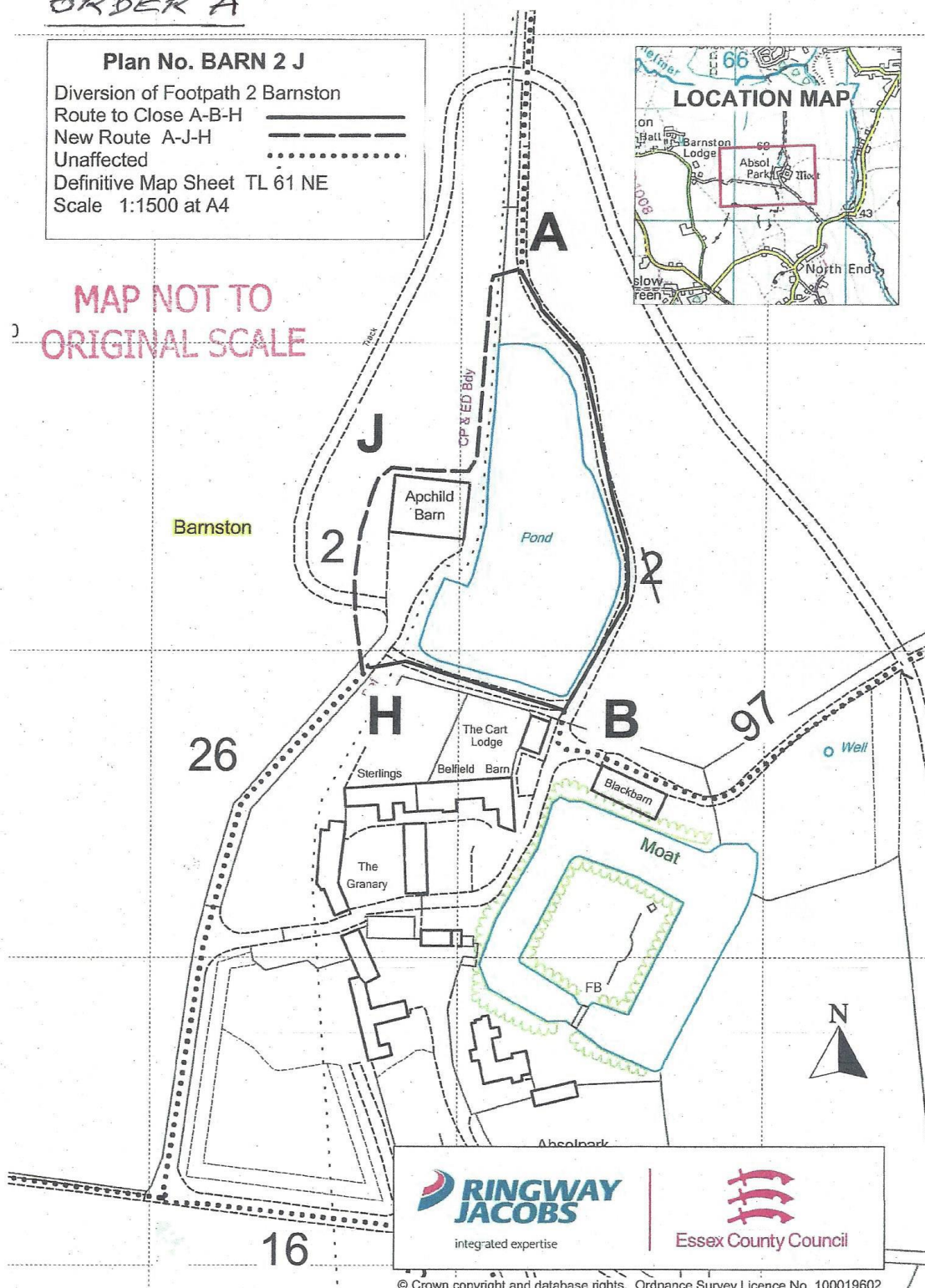
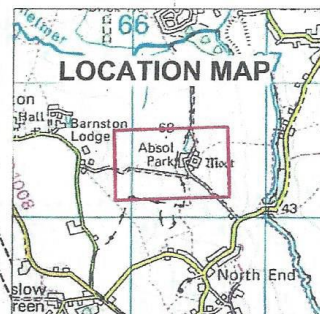
New Route A-J-H

Unaffected

Definitive Map Sheet TL 61 NE

Scale 1:1500 at A4

MAP NOT TO  
ORIGINAL SCALE



**RINGWAY JACOBS**  
integrated expertise

**Essex County Council**

© Crown copyright and database rights. Ordnance Survey Licence No. 100019602

