
Order Decision

Inquiry held on 19 July 2016

Site visit made on 19 July 2016

by Martin Elliott BSc FIPROW

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

Decision date: 12 April 2017

Order Ref: FPS/W1850/7/14M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Herefordshire Council (Addition of Footpaths BW24 and BW25 Bridstow) Modification Order 2013.
- The Order is dated 20 December 2013 and proposes to modify the Definitive Map and Statement for the area by adding two public footpaths as shown in the Order plan and described in the Order Schedule.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act notice of the proposal to confirm the Order subject to modifications has been given. Following the notice of the proposed modifications two objections were received.

Summary of Decision: The Order is confirmed subject to modifications previously proposed, further modified, as set out below in the Formal Decision.

Procedural Matters

1. In my interim decision dated 22 August 2016 I proposed to confirm the Order subject to modifications the effect of which would be to delete from the Order footpath BW25 Bridstow (B to E¹) and the section of footpath BW24 Bridstow between points A and C. The section of BW24 Bridstow (C to D) to be confirmed by the Order is proposed to be modified so as to record the width of 2 metres. Following the notice of the proposed modifications two objections were received. Numbers in square brackets in this decision relate to paragraphs in my interim decision.

The Main Issue

2. The objection on behalf of Mr and Mrs Vanston relates to the width of the Order route C to D. Mrs Preece, objecting in her own right and on behalf of the Ross-on-Wye and District Civic Society Committee, objects to the exclusion of footpath BW25 Bridstow (B to E) from the Order.
3. The main issue is whether the proposed modifications in respect of the width of the Order route C to D should be pursued or whether the Order should be further modified in this respect. Furthermore whether footpath BW25 should be removed from the Order. The test to be applied to the evidence is on the balance of probabilities.

¹ Letters A to E identified in this decision relate to points identified on the Order map.

Reasons

Width of C to D

4. The objector contends that any determination of width should be based on what is a reasonable estimate of the likely public use throughout the qualifying period. It is asserted that there is no evidence, nor suggestion in the user evidence, that a 2 metre width has in fact been used. It is contended that a 1 metre width would be reasonable. The Council argue that a width of 3.4 metres is more reasonable.
5. It is suggested by the objector that it is more appropriate to consider the footpath widths set out in paragraph 1(3)(a)(i) of Schedule 12A of the Highways Act 1980 which, it is contended, recognises in statute that footpaths which are not field edge, such as C to D, should have a minimum width of 1 metre. However, the widths specified in Schedule 12A relate to the reinstatement following disturbance, such as ploughing out, and identify the absolute minimum width to which any reinstatement should be carried out where no width is proved. The widths set out in Schedule 12A are not relevant in respect of determining the width of a highway in other circumstances.
6. The objector puts the proposed 2 metre width in context by reference to the Department for Transport guidance 'Inclusive Mobility' which recommends a width of 2 metres to allow two wheelchair users to pass. Whilst I note the point that this represents a much wider path than the average rural footpath the determination of any width in respect of the Order route should be based on the relevant circumstances.
7. I note the assertion of the Council that there is no reason to suggest that the public were restricted in their use between the physical boundaries. However, there is no evidence before me to indicate that the public used the full width between the boundaries. The Council accept that the boundary to boundary presumption does not apply in this case. I am aware that the Ordnance Survey mapping supports the existence of the full width of 3.5 metres between the boundaries. However, as noted in my interim decision [21] Ordnance Survey maps do not provide evidence as to public rights.
8. The objector refers to Defra² Circular 1/09. In respect of definitive map modification orders the Circular advises that orders should contain information as to width; this is to allow any order route to be unambiguously identified.
9. Reference is also made to the Planning Inspectorate's Advice Note 16 which, as noted by the Council, has no legal force. However, the Advice Note does clarify the Planning Inspectorate's position on the need for widths to be shown in definitive map and other orders. In respect of definitive map orders paragraph 9 advises that *'Determination of the width will, if not defined by any inclosure award, physical boundary or statute, be based on evidence provided during the confirmation process, or, where there is no such clear evidence, the type of user and what is reasonable. Circumstances, such as the nature of the surface and other physical features, may dictate what may be considered reasonable. In the absence of evidence to the contrary, Inspectors should ensure that the width recorded is sufficient to enable two users to pass comfortably, occasional*

² Department for Environment, Food and Rural Affairs

pinch points excepted. This width may well be greater than the width of the "trodden path".'

10. In my interim decision I concluded that the documentary evidence is not sufficient to show that a right of way subsists [38] and there is no clear evidence which assists in determining the width. Accordingly the width should be based on the type of user during the qualifying period and what is reasonable in the circumstances.
11. The objector refers to the case of *Ford v Harrow (1903)* where the judge stated that 4 or 5 feet (1.2 metres to 1.5 metres) would be adequate for a footpath. However, this is not a proposition for a width of 1 metre. I have not been provided with a copy of the judgement but in my view any width should be determined by the circumstances. I accept that it is not open to me to be overly generous to the public and to confirm a width greater than can be presumed reasonable.
12. As regards the width of 2 metres I note the point made by the Council that this is an 'industry accepted' minimum when creating a new path. However, it was the Council that suggested that a width of 2 metres was reasonable [64] although this was in respect of A to C and B to E. The objector refers to the Council's statement of case³ where the Council identify the width of the section C to D established by user as being 1.5 metres; it should be noted that the Council subsequently changed its position [65]. I have been provided with no evidence that the width established by user is 1.5 metres or a greater width of 3.4 metres.
13. The statement of Heather Hurley cites examples of the types of historic user, namely '*a parent holding a child's hand, a double pushchair, wheelchairs etc.*' The objector maintains that this type of user could comfortably have walked a 1 metre wide path. However, in my view this is not sufficient to enable two walkers to walk together or for two users to pass comfortably.
14. I have re-examined the evidence of user which indicates that people walked with others or walked with dogs and note the historical use identified in the statement of Heather Hurley. I also note the point made by the Council that many of those using the route did so accompanied by at least one other and that people walking together do not walk in single file.
15. As I have noted above a width of 1 metre is not sufficient but having reconsidered the position I take the view that a width of 2 metres, or greater, is in excess of what may be required in respect of the type of user. In the circumstances I consider a width of 1.5 metres to be reasonable. In reaching this decision I am mindful of the fact that the Council, in the first instance, identified the width as 1.5 metres. I am also mindful of the widths identified in *Ford v Harrow*. I will modify the Order accordingly.

Footpath BW25 Bridstow

16. In support of her objection Mrs Preece has submitted an Ordnance Survey map circa 1969. I have already considered the Ordnance Survey mapping [20 and 21] and my comments are equally applicable to the 1969 Ordnance Survey map.

³ statement of grounds

17. Mrs Preece notes that the area opposite the Wilton Court Hotel (crossed by the route E to B) does not have a boundary line adjacent to Wilton Lane. It is contended that this is because the area was always open to access the river bank and the docks and that it was possible to make easy access with horse and carts. Mrs Preece referred to her prescriptive rights to access the docks which would have been '*the appropriate access for heavy goods, carts etc.*' Whilst I note that the area is open, the use of the land by horse and carts in connection with the use of the docks is not evidence of a public right of way on foot. Furthermore, although Mrs Preece has prescriptive rights to access the docks, this does not equate to a public right to use the land.
18. In my interim decision I acknowledge the use of the area in the vicinity of point C [32] as a wharf but, as noted, the use of the land as a wharf does not support the existence of a public footpath between points E and B. It may also be the case that South Herefordshire District Council, or Herefordshire Council, used the access for unloading quantities of gravel to stabilise the river bank. Again this does not support the existence of a public footpath but use of the land in connection with bank stabilisation activities.
19. Mrs Preece points out that the Order plan is inaccurate as it shows a boundary line adjacent to Wilton Lane. However, the Order plan is based on an Ordnance Survey map and will reflect the physical characteristics at the time of the survey. The presence or absence of a boundary on the Order map has no bearing on the existence of a public right of way.
20. Mrs Preece states that there has always been an access between points E and B however, for the Order to be confirmed in respect of this section it would be necessary to provide evidence to show the existence of public rights. Having regard to the additional evidence, and bearing in mind my conclusions in my interim decision [38], there is insufficient evidence from which I can conclude that public rights on foot subsist between points E and B. The Order in respect of this section should not be confirmed and the Order should be modified accordingly.

Other Matters

21. The objection on behalf of Mr and Mrs Vanston raises concerns that confirmation of the Order will put them in breach of planning conditions and that the loss of car parking space will affect rental income from their property; reference is made to compensation from Herefordshire Council. Whilst I note and can appreciate the concerns these are not matters which I can take into account in reaching my decision.
22. Mrs Preece makes the point that the route E to B is the only level access point to the village green for those with disabilities and the only suitable access for maintenance of the village green. Mrs Preece understands that all public areas are encouraged to have easy access for those with disabilities. Whilst I note these issues they are not matters which I can take into account in reaching my decision. The relevant criteria are those set out in my interim decision [5 to 8] the issue being whether or not public rights subsist. Mrs Preece also refers to the offer of part of VG8 to Bridstow Parish Council, this is not a matter for my consideration.

Conclusion

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

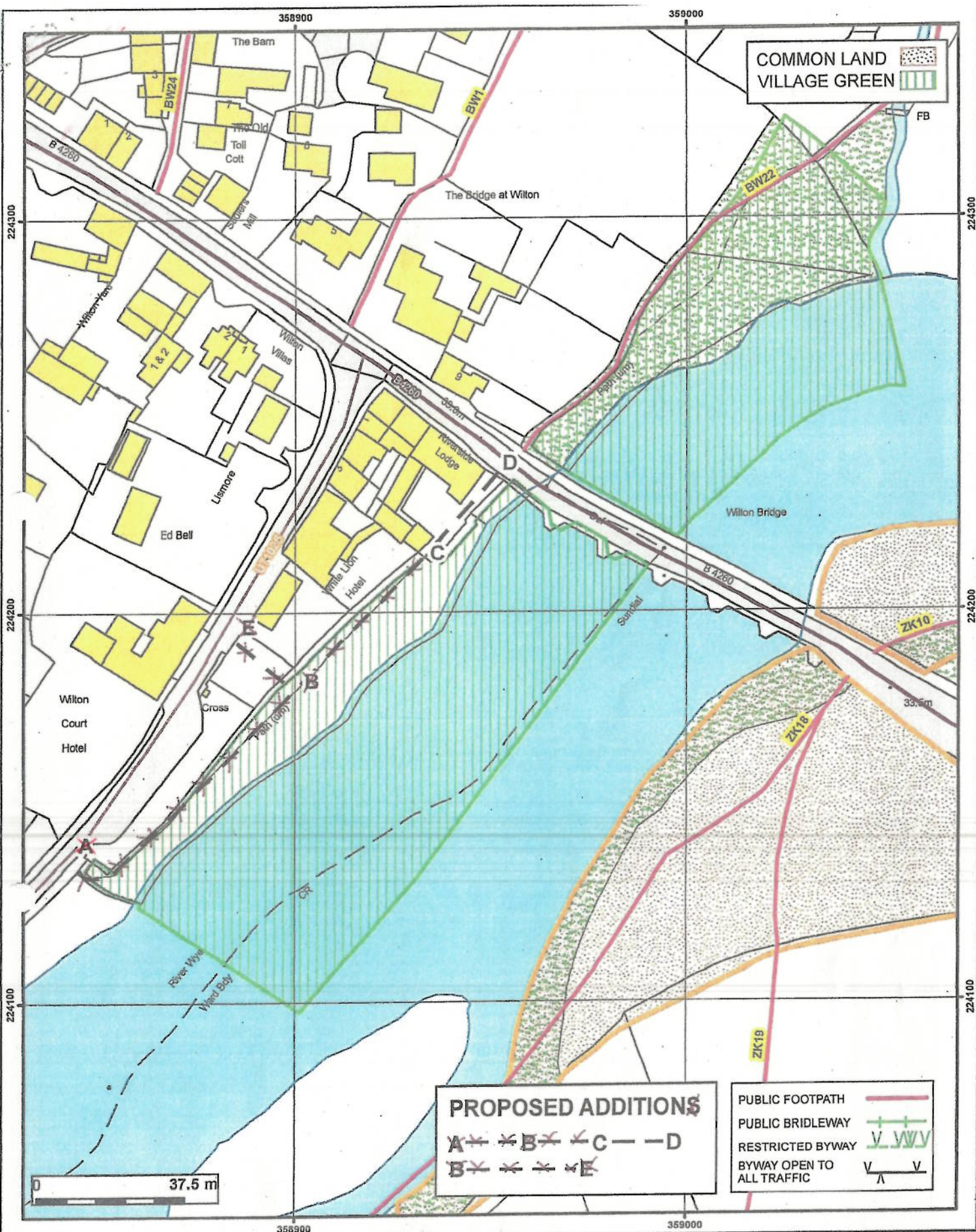
Formal Decision

24. The Order is confirmed subject to modifications previously proposed, further modified:

- From the title of the Order delete the 's' from 'footpaths' and delete 'and BW25 Bridstow'.
- From Part 1 of the Schedule to the Order delete the descriptions of the 'path or way to be added' and insert 'Footpath C - D Commences at its junction with the village green (VG8) at OS Grid Reference SO 5893 2421 (point C on the order plan) proceeding generally north eastwards for approximately 28 metres where it joins the County Road B4260 at OS Grid Reference SO 5895 2423 (point D on the order plan). The route has a width of 1.5 metres. (To be known as Footpath Bridstow BW24.)'.
- From Part II of the Schedule to the Order delete the particulars relating to Footpath Bridstow BW24 and insert 'Commences at its junction with the village green (VG8) at OS Grid Reference SO 5893 2421 proceeding generally north eastwards for approximately 28 metres where it joins the County Road B4260 at OS Grid Reference SO 5895 2423. The route has a width of 1.5 metres.' Delete the particulars relating to Footpath Bridstow BW25.
- From the Order plan delete the sections to be added A to C and B to E and associated references in the key and delete the points A, B and E and the 's' from 'additions' and 'footpaths'.

Martin Elliott

Inspector



**ORDER PLAN- COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL.
WILDLIFE & COUNTRYSIDE ACT 1981.
ADDITION OF FOOTPATHS IN THE PARISH OF BRIDSTOW.
MODIFICATION ORDER 2013.**

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