
Order Decision

Site visit made on 13 March 2017

by K R Saward Solicitor

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

Decision date: 21 March 2017

Order Ref: FPS/Z1585/4/35

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Essex County Council (Footpath 31 Stanway) Public Path Diversion Order 2016.
- The Order is dated 18 April 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when Essex County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations.
2. The application for a Public Path Diversion Order was made by Edward Morton of the Morton Partnership Ltd as agent for Mr Newman who owns the land with his wife. In submissions made by the applicant, a drawing¹ is produced identifying a new route extending past the kitchen garden at 'Olivers' in a westerly direction which is annotated "proposed footpath 22". This route does not follow the alignment of the diverted footpath shown in the Order which is much further to the south and is not shown on the applicant's drawing. Clarification was therefore sought from the applicant who has confirmed the intended diversion is as shown on the Order plan. I have disregarded the route shown erroneously in the applicant's drawing.

Main Issues

3. The Order has been made in the interests of the owners of 'Olivers' whose land is crossed by FP31. By virtue of section 119 of the Highways Act 1980, I must be satisfied that the diversion to be effected by the Order is expedient in those interests. The Order must not be confirmed unless I am satisfied that the diverted path will not be substantially less convenient to the public than the current path. Further, it must be expedient to confirm the Order having regard to the effect which the diversion would have on public enjoyment of the path as a whole.

¹ Numbered 15235-50

Reasons

Whether it is expedient in the interests of the landowner that the footpath should be diverted

4. The diversion is stated to be in the interests of the landowners for reasons of privacy and security as the footpath passes through the grounds of the estate known as 'Olivers'. This is challenged by the two statutory objectors who point to the lack of evidence to demonstrate that the current alignment diminishes privacy and security. Four letters of support were submitted by interested parties, three being neighbours and one a garden designer retained by the owners.
5. The main house is a substantial dwelling, identified by the applicant as being Grade II* listed and with a Grade II listed coach house. The house is set in considerably sized grounds. Some distance from the main house is a dovecote said to be both Grade II listed and a scheduled ancient monument. It has a timber barn alongside described by the applicant as curtilage listed. The land beside these structures has been laid out as a kitchen garden.
6. Currently, FP31 passes very close to the dovecote and barn and past woodland on one side with the main house and paddocks on the other side. The existing route is a wide and well defined soil track signposted at points 'A' and 'B'. Although the route curves gently at the northern end, it is otherwise relatively straight and it is difficult to see how any confusion over the correct route could have arisen for footpath users.
7. The applicant refers to incidents of theft from the kitchen garden, an attempted break-in to the barn and trespass into the private gardens. I have no reason to doubt there have been such occurrences, but the details are unclear particularly in terms of how this section of FP31 has facilitated those security breaches. It is acknowledged that some of the intrusions have been through the main gates rather than the footpath. Furthermore, there are various points where access could be gained to the kitchen garden by anyone so inclined regardless of the presence of the footpath. From the information supplied, I cannot be satisfied that the current route poses or increases a security risk. Equally, I have no evidence to substantiate the fears that the close proximity of the path to listed buildings increases the risk of them being harmed.
8. The house is a significant distance from the path and separated by high, dense hedgerow, trees and other foliage. Only part of the rooftop is visible from the path. The gardens around the house are also well-screened. Other parts of the estate are far more open giving rise to some, albeit limited, impact on privacy from passers-by.
9. Most pertinently, the estate is dissected by the footpath with a large part of the grounds isolated from the enclosed areas closer to the house. The location of the footpath clearly impedes the ability of the landowners to encompass land within their private garden space or utilise it in a manner of their choosing. Apparently, planning permission has already been obtained to create a walled garden around the paddock to the north of the kitchen garden. By diverting the footpath away from its current position, the landowners' enjoyment of their grounds would almost certainly be enhanced. It would allow opportunity for the garden areas to be used as one rather than separated by screening as they

are at present in order to preserve privacy. Just because the owners would have been aware of the presence of FP31 when they purchased the property does not mean that it must stay in the same location.

10. Whilst unpersuaded by the arguments over security and privacy to the main house, I consider that it is expedient in the interests of the landowners, that this part of the footpath should be diverted to facilitate their enjoyment of the land and improve privacy to the grounds. The diversion does not need to be in the interests of the public also.

Whether the new path will be substantially less convenient to the public

11. The current route connects with FP22 which follows the alignment of the private road leading to and from 'Olivers' and a small cluster of other properties. The paths are separated by a stile along FP31 near to point 'B'.
12. The diverted route will still link to FP22, but at a point further south than at present. Instead of continuing straight ahead at point 'A' in a northerly direction, the diverted route will go in a westerly direction to link up with FP22 where it passes by one boundary of the 'Olivers' estate. In the approach from the opposite direction, users will need to continue on FP22 for around 172m longer before turning at point 'C'.
13. Parts of FP22 are narrower than the existing route and the ground conditions were notably muddier in places when I undertook my site visit on a dry day. Nevertheless, it was wide enough to be passable with minimal inconvenience. The diverted route is also estimated to be about 100m longer than the existing route. In these respects, the new route will be less convenient, but not substantially so which is the test I must apply. Unlike the existing route, there will be no stile to contend with thereby increasing accessibility and making the diverted route more convenient for some users.
14. Use of a public footpath is on foot only. The reason for any use of FP22 by horse-riders and cyclists is unknown to me. If any such use were to cause conflict with pedestrians then that would be an issue of management of the footpath. It is not a matter that gives me cause to conclude that the diverted route onto existing FP22 is less convenient to walkers.
15. Objections have been raised on the basis that it is possible at present to walk from Layer de la Haye to Gosbecks Archaeological Parks without using FP22. Those destinations will remain accessible via the diverted route which is not appreciably longer. Similarly, connection can still be made with other footpaths in the vicinity at relatively minor inconvenience.
16. I conclude that the proposed diversion is less convenient to a limited degree, but not substantially so.

The effect of the diversion on public enjoyment of the path as a whole

17. The existing route is a very pleasant walk through the 'Olivers' estate taking in close range views of the attractive listed dovecote and barn. These features can still be appreciated from greater distance along FP22 in the context of their wider setting. Due to the distance, the experience from FP22 is not the same as walking close-by the buildings through the estate. However, the diversion offers a different, but equally pleasant experience walking along a wide track

bordered by woodland. Even though there would be a reduction overall in the length of available footpath in the network, this would not be an appreciable loss particularly given the quality of the diverted route and the extent to which the area could still be enjoyed.

18. Whilst a path may have existed in this position for many years, there is no evidence submitted to indicate that it has any particular historic or other significance. Therefore, I attach little weight to the longevity of the existing route.
19. Consequently, I find that there is no significant detrimental effect on public enjoyment of the path as a whole.

Rights of Way Improvement Plan ('ROWIP')

20. The Council has indicated that there are no material provisions relevant to this Order within its ROWIP and no-one has raised any issues in relation to this. Therefore, I have no reason to believe that the Order is incompatible with the ROWIP.

Whether it is expedient to confirm the Order

21. I have concluded in my considerations above that the Order is expedient in the interests of the landowners. The proposed route will not be substantially less convenient and I am satisfied that it is expedient the Order be confirmed having regard to its effect on public enjoyment. Nothing in the submissions or from my site visit leads me to conclude that it would not be expedient to confirm the Order.

Conclusions

22. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

23. The Order is confirmed.

KR Seward

INSPECTOR

Plan No. STAN 31 A

Diversion of Footpath 31 Stanway

Route to Close A-B

New Rout A-C

Unaffected paths

Definitive Map Sheet TL 92 SE

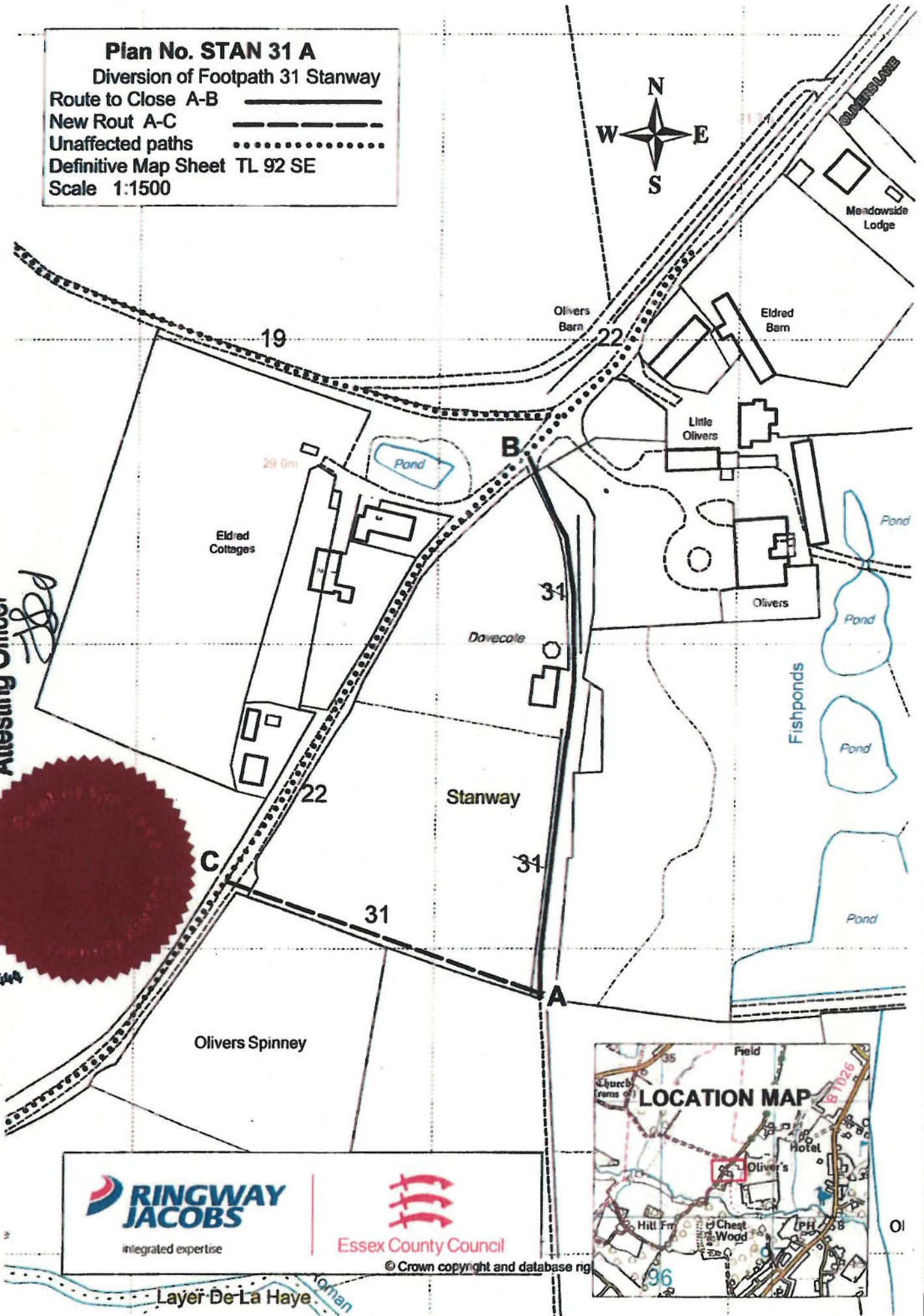
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Attesting Officer



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