



## Order Decision

Site visit on 18 October 2017

**by Sue Arnott FIPROW**

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

**Decision date: 02 November 2017**

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### Order Ref: ROW/3171003

- This Order is made under Section 119 of the Highways Act 1980. It is known as the Essex County Council Footpath 39 Great and Little Leighs in the City of Chelmsford Public Path Diversion Order 2016 and is dated 7 October 2016.
- The Order proposes to divert part of public footpath 39 to the south of the village of Great Leighs, as detailed in the Order map and schedule.
- There were twenty objections and three representations outstanding when Essex County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

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

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### Procedural Matters

1. I visited the site on Wednesday 18 October 2017 accompanied by Mr R Lee (on behalf of Essex County Council (ECC)), Mr J Thurlow (Footpath Representative for Great and Little Leighs Parish Council) and Mr M Lees (the local correspondent for the Open Spaces Society – Chelmsford District).

### The Main Issues

2. The requirements of Section 119 of the Highways Act 1980 (the 1980 Act) are that, in this case, before confirming the Order I must be satisfied that:
    - (a) it is expedient in the interests of the owner of the land crossed by Footpath 39 that the right of way in question should be diverted;
    - (b) the new termination point of Footpath 39 (being on the same highway) will be substantially as convenient to the public;
    - (c) the new route to be provided will not be substantially less convenient to the public; and
    - (d) it is expedient to confirm the Order having regard also to (i) the effect of the diversion on public enjoyment of the path taken as a whole, and (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing path and the land over which the new path would be created together with any land held with it, having had regard to the provision for compensation.
  3. Further, in determining this Order I am required to have regard to any material provisions in any rights of way improvement plan for the area. I am also mindful of the requirements of the Equality Act 2010.
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## Reasons

4. The applicant farms the land over which the present cross-field route of Footpath 39 runs. Whilst resolving other rights of way issues on his land elsewhere in the village, he has taken the opportunity to reconcile the definitive line of Footpath 39 with the field-edge route now in use by the public.

### *The interests of the owner of the land*

5. The historic line of this footpath (as recorded on the definitive map) effectively cuts a corner across an agricultural field that is regularly ploughed<sup>1</sup>, each time requiring re-instatement of the surface. Diverting the footpath to the undisturbed field edge will clearly result in more economic use of this land.
6. Whilst the applicant is not the owner of the land, there is little doubt that the advantages to him as tenant of re-aligning the public right of way will also be of significant benefit to the land owner who has indicated his full support for the diversion.
7. I therefore have no hesitation in accepting that the proposal to re-align Footpath 39 would be expedient in the interests of the owner of the land.

### *Convenience to the public*

8. In assessing the relative convenience of the present and proposed routes I have considered various factors including length, width, gradient, surface and limitations.
9. Firstly addressing the width of the path, it is proposed to record the new route as 2 metres wide whereas the definitive statement does not include a width for the present Footpath 39. After ploughing, reinstatement is only required to the standard width of one metre so there would be a theoretical benefit to the public in this respect. Having a surface that is not subject to regular ploughing would also be a significant advantage.
10. I found little difference in terms of gradient when comparing the present and proposed routes. Both slope gently down from north to south but neither is significantly steeper than the other and both offer open views to the south and east. No additional limitations are proposed on the new route.
11. Although at 115 metres in length, the new route (shown on the Order map as A-C) is considerably shorter than the present path (A-B) at 213 metres, the question of overall convenience needs to take into consideration the use of Footpath 39 within the local network. By moving the termination of Footpath 39 from B to C, both being points on Footpath 38, members of the public walking southwards along Footpath 39 wishing to turn west along Footpath 38 have a much shorter journey. For those turning southwards along Footpath 38 the route A-C-B will be in the region of 25 metres further than the direct path A-B but in this context I do not consider that to represent any noticeable inconvenience.
12. Overall, I agree that the new route proposed (A-C) would not be substantially less convenient to the public than the present Footpath 39 (A-B). Insofar as the diversion would leave Footpath 39 connecting with Footpath 38 at point C rather than at B, I conclude this would be substantially as convenient.

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<sup>1</sup> On the day of my inspection I found to have been ploughed and mostly reinstated.

*Other considerations*

13. As regards the effects on the public's enjoyment of Footpath 39, it would appear that people have already expressed a preference for the new route by choosing to walk it instead of the definitive line.
14. I have already noted that the field-edge route maintains the open views available from the existing line whilst maintaining, and in some instances improving on, connectivity with the wider network via Footpath 38 which carries 'The Essex Way'. ECC takes the view that the public's enjoyment of Footpath 39 would be enhanced and I tend to agree.
15. Compensation issues are not relevant here since all the land affected by the diversion lies within the same ownership. No adverse effects on the land arising from the diversion have been drawn to my attention and no issues related to the relevant rights of way improvement plan have been raised beyond the general desire to improve network connectivity.

***Whether it is expedient to confirm the Order***

16. In reaching a final conclusion on the expediency of this diversion I must weigh the advantages that would accrue to the landowner in whose interest the Order is made (including the benefits to his tenant) against any disadvantages that may result for the public.
17. I am satisfied that the statutory tests have been met in relation to the proposed diversion of Footpath 39. There are valid grounds for seeking the diversion and little opposition to the alternative route (if any). I therefore conclude it would be expedient to confirm the Order.

***Other matters***

18. Although numerous letters of objection were submitted within the relevant period opposing changes to footpaths within the Parish, very few have identified specific concerns about this particular proposal. Nevertheless I have considered all the objections where relevant.

**Conclusion**

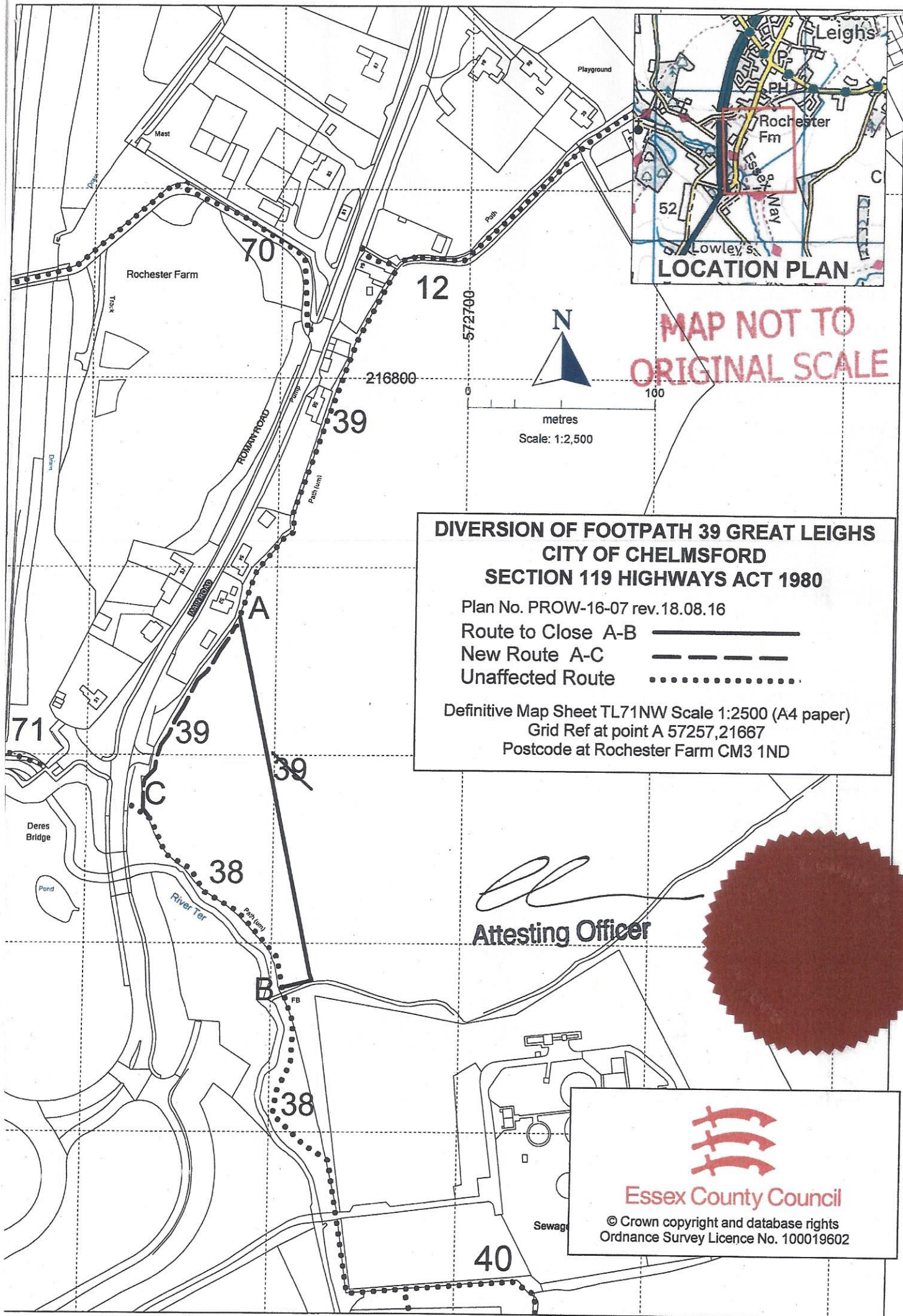
19. Having regard to the above and all other matters raised in the written representations, I conclude the Order should be confirmed.

**Formal Decision**

20. I confirm the Order.

*Sue Arnott*

**Inspector**



**MAP NOT TO  
ORIGINAL SCALE**

**DIVERSION OF FOOTPATH 39 GREAT LEIGHS  
CITY OF CHELMSFORD  
SECTION 119 HIGHWAYS ACT 1980**

Plan No. PROW-16-07 rev.18.08.16

Route to Close A-B

New Route A-C

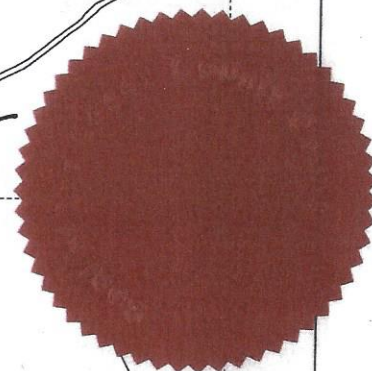
Unaffected Route

Definitive Map Sheet TL71NW Scale 1:2500 (A4 paper)

Grid Ref at point A 57257,21667

Postcode at Rochester Farm CM3 1ND

  
**Attesting Officer**



**Essex County Council**

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