
Order Decisions

Hearing held on 21 March 2017

by Helen Slade MA FIPROW

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

Decision date: 29 March 2017

Order Ref: FPS/P3800/4/56

'Order A'

- This Order is made under Section 119 of the Highways Act 1980 ('the 1980 Act') and is known as the West Sussex County Council (Shermanbury) Public Path (No. 2382) Diversion Order 2015.
- The Order is dated 13 November 2015 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were three objections outstanding at the commencement of the hearing.

Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.

Order Ref: FPS/P3800/3/8

'Order B'

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the West Sussex County Council (Shermanbury) Public Path (No. 2384) Extinguishment Order 2015.
- The Order is dated 13 November 2015 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding at the commencement of the hearing.

Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.

Procedural Matters

1. I carried out an unaccompanied site visit to the area the day before the Hearing. The weather at the time was breezy and it was drizzling. I was able to walk or view the proposed route, and to walk along the existing route. As a consequence of the weather I was not able to see the long views referred to by the applicant, but as I am familiar with the area I did not consider that to be a significant issue. At the Hearing, following discussion, it was agreed that it was not necessary for me to return to the site, and I did not do so.
2. The Orders were made on the application of Mr and Mrs Teague. Three objections were received in relation to the Orders: one from Mr and Mrs A Arnold; one from Mrs L Hardisty; and one from Shermanbury Parish Council ('The Parish Council'). A representation in support was received from Mrs F C Rice.
3. Mr and Mrs Arnold were also concerned that proper consultations had not been undertaken by West Sussex County Council ('the County Council') regarding the proposals, and in particular Mrs Arnold claimed that the local Ramblers had not been consulted. Mr Arnold did not accept that no objections had been

made to the proposals at the informal stage of the process, and thus disagreed with the County Council's statement to that effect.

4. I explored thoroughly the process of consultation adopted by the County Council and I am satisfied that the informal consultations (which are not statutory) were conducted as set out in the County Council's statement. The Ramblers were consulted but appear not to have responded. The formal, statutory notice was served on all the prescribed bodies but, again, no response was received from the Ramblers. Whether or not the Ramblers choose to respond is a matter for them. I am satisfied that they were consulted as required by the legislation.
5. With respect to the question of informal objections prior to the making of the Order, this is a matter for Mr and Mrs Arnold to pursue with the County Council if they consider an error was made. Mr and Mrs Arnold are a statutory party to the present matter, having made a formal objection, and as such I am satisfied that no prejudice has been caused.

The Orders

6. An earlier version of the Orders was submitted to the Planning Inspectorate in 2015 but they were found to be invalid as the confirmation of each one was dependent on the confirmation of the other. This error has been corrected in the current Orders.
7. Nevertheless, at the Hearing I raised with the representative of the County Council (the Order Making Authority or 'OMA') who was present, Mrs J Grimwood, that I considered that there was a slight problem with the new Orders, but one which I felt that I could correct by way of a modification.
8. Put simply, both Orders have exactly the same map attached, with the same legend. Each Order Plan therefore appears to extinguish the same paths, and each Order Plan purports to provide the same alternative route. In reality of course, the text of Order A makes it clear that it seeks to extinguish part of Footpath 2382 and to provide an alternative route, whilst the text of Order B is designed to extinguish part of Footpath 2384 which would otherwise be left as an unconnected spur.
9. If I confirm the Orders I intend to modify each Order Plan to conform to the purpose expressed in the text of its respective Order, for the purposes of clarification. This type of administrative alteration would not affect land not affected by the Order as made, and thus would not require to be advertised.

The Main Issues

Order A

10. Section 119(1) of the 1980 Act states that an order can be made where it is considered by the authority that it is expedient in the interests of the owner, lessee or the occupier of land crossed by the path or way, or of the public, that the line of the path in question should be diverted. This Order has been made in the interests of the landowner. Section 119(6) of the same Act states that, if I am to confirm the Order, I too must be satisfied in this respect. Furthermore, before the Order can be confirmed I must be satisfied that the path will not be substantially less convenient to the public as a consequence of the diversion.

11. If I am satisfied on the above points, I must then consider whether it is expedient to confirm the Order, having regard to the following issues:
- a) the effect that the diversion would have on public enjoyment of the path as a whole;
 - b) the effect of the coming into operation of the Order on land served by the existing right of way; and
 - c) the effect of the new public right of way on the land over which it is created (or land held with it);
- having regard also, with respect to b) and c), to the provisions for compensation as set out in Section 28 of the 1980 Act.

Order B

12. If I am to confirm this Order, Section 118 of the 1980 Act requires that I must be satisfied that it is expedient to stop up the path having regard to:
- the extent that it appears likely that the footpath in question would, apart from the Order, be likely to be used by the public, and;
 - the effect that the extinguishment of the footpath would have as respects land served by it, account being taken of the provisions as to compensation.
13. In respect of the tests to be considered, I must have regard to the judgements in *R v Secretary of State for the Environment ex parte Stewart* [1980] JPL 537 and *R v Secretary of State for Environment (ex parte Cheshire County Council)* [1991] JPL 537 in which the tests to be applied at confirmation were clarified. Whilst the OMA must consider the need for the public right of way at the time of making the Order, at confirmation I must look at the question of likely future use of the path concerned. The question of the expediency of stopping up the path enables a variety of matters to be considered.
14. Where an extinguishment is being considered concurrently with a diversion order, Section 118(5) provides that I may have regard to the extent to which a path provided by the diversion order will provide an alternative path or way when considering the likely future use of the path proposed for extinguishment.

Both Orders

15. I must have regard to the material provisions, if any, of the Rights of Way Improvement Plan ('ROWIP') produced by the County Council. I must also take into account government advice, relevant legal precedents and other legislation which is applicable.

Reasons

16. Unless the diversion order is confirmed (Order A) there would be no reason to consider an extinguishment of Footpath 2384 (Order B). I will therefore consider Order A before moving on to consider Order B.

Order A

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

17. The existing route of Footpath 2382 runs north from Fylands Lane along the access to Springlands (the property owned and occupied by Mr and Mrs Arnold) and Springlands Barn (the property owned and occupied by Mr and Mrs Teague). Just to the south of Springlands Barn, the footpath turns west for about 52 metres (at Point B on the Order plan), before turning north again (at Point C), passing to the west of the former barn, now converted to a dwelling. The path runs in a generally northerly direction for about 160 metres, before turning easterly into some woodland (at Point D) – a total distance of about 212 metres.
18. The proposal would take the footpath further away from Springlands Barn between Points B and D, following a route slightly further south and running westerly alongside a field boundary for about 146 metres (between Points B and E). It would then turn generally north along the western boundary of the field adjoining Springlands Barn for about 101 metres and then east for about 54 metres along the southern side of the field boundary (Points E-F-G-H). The route would then return to one that was trending generally northerly for a distance of about 50 metres to rejoin the existing onward route of Footpath 2382 at point D – a total distance of about 351 metres.
19. The proposed diversion would result in the most commonly used north to south through route running further from the residential property at Springlands Barn (which benefits from planning permission and listed building consent). It would also take the east-west route slightly further from the residential curtilage. Mr and Mrs Teague requested the diversion to provide more privacy and security for themselves and their family and, more particularly, for their young son who is vulnerable because of a medical condition. They would also like to keep more livestock on the premises in the form of horses, sheep and chickens, and the diversion would allow them to make better use of the land available to them.
20. At the Hearing, Mr and Mrs Arnold acknowledged that the privacy and, to some extent, the security issues were understandable reasons for wishing to take steps to protect the property, and for moving the path. No-one has offered any reasons to suggest anything different and I am satisfied that it is expedient in the interests of the applicant landowners that the path be diverted.

Whether the path would be substantially less convenient to the public as a consequence of the diversion

21. The proposal would result in an increased walking distance (north to south or vice versa) of approximately 140 metres, according to the measurements supplied in the Order. The increase in distance for the east-west route would be a matter of some 30 metres. Walkers from the north wishing to turn to the west would benefit from a very slightly shorter route. A number of letters and emails in support of the proposals were submitted to the Planning Inspectorate during the course of the exchange of statements of case. None of the parties referred to the additional length of the walk, all considering that the proposal was of no disadvantage to them.

22. Mr and Mrs Arnold consider that the increased distance of the proposed diversion will be inconvenient to walkers such that they will be more inclined to take the 'short cut' and walk immediately adjacent to their own property. Thus they consider that removing the problem of the proximity of the path to Springlands Barn will simply transfer the problem to their own property, with all that entails in terms of loss of privacy and security.
23. I accept that this is a possibility, particularly since the historical route of the footpath lay in a direct line between the house and the barn prior to its original diversion in 1973 to the present definitive line. There will no doubt be people who recall the former route, and may still desire to walk that way. Mr and Mrs Arnold claim to see people doing this on a regular basis, and have reportedly spoken to some of them.
24. However, I consider that if the proposed route is properly signposted and waymarked, and is clear and convenient to use, as planned, the likelihood of people walking adjacent to Mr and Mrs Arnold's house is no greater than it is now. Mrs Crouch, who attended the Hearing as an objector to the proposal, acknowledged that the main problem with using the path, even at present, is the confusion over its route. Clarity in this regard would give greater confidence.
25. Guided by the decision in *R (on the application of Young) v SSEFRA [2002] EWHC 844* the question of convenience relates to such matters as the length of the path and its ease of use and its purpose.
26. I am satisfied that the maximum increased length (140 metres or so) of the proposed route in this case is insignificant when taken in the context of the total length of a walk required to use this part of the path. It is a path used primarily for leisure purposes and the added length will not impinge on that significantly.
27. In terms of ease of use, I find that the proposals to fence it from the stock to a width of 3 metres (far in excess of the width of most footpaths) and the consequent absence of all impediments in the form of stiles or gates, as stated by the applicant to be his intention, is likely to result in a path which is more accessible than at present. The present route would be likely to be subject to movements of livestock needing to pass from one paddock or field area to another, and may well be muddy in wet conditions. Separating the stock from the path will significantly reduce this possibility, although it cannot eliminate the potential for mud. It is planned to remove the two existing gates along the route (at Points B and H) as they will no longer be necessary.
28. I am consequently satisfied that the path will not be substantially less convenient to the public as a result of the diversion.

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

29. Mrs Crouch was concerned that the double fencing of the new route would spoil the feel of walking along it, by producing a sense of being confined. Mr and Mrs Arnold felt that the fencing, together with the presence of electric fencing for stock control purposes, would be intimidating to users and possibly even dangerous as it would limit the ability of users to avoid threatening situations. It might act as further encouragement for walkers to stray from the official public right of way and walk past their own property.

30. Against that I have letters from eight parties who expressly consider that the proposed diversion would make the path more enjoyable to use as it would remove the sense of intrusion on the privacy of the owners of Springlands Barn. I suggest that walkers who express dislike of walking too close to Springlands Barn are unlikely to choose to walk past Mr and Mrs Arnold's house in preference, particularly when it is not the line of the public right of way.
31. The owner of the land crossed by the existing right of way is entitled to fence it off provided that no nuisance is caused to the users of the route. Mr Teague explained that if the path remains where it is now it will be necessary to fence it once the landscaping is complete and livestock are in the resulting paddock. At present he would be under no obligation to provide a width of 3 metres, since there is no width recorded in the Definitive Map and Statement. Mrs Grimwood (from the OMA) suggested that a width of 1.8 metres might be the result.
32. Taking all these matters into account, I conclude that whilst some people might consider the route less enjoyable to use as a consequence of the diversion, the majority of walkers would find the path more enjoyable as it would reduce the feeling of invading the privacy of the occupants at Springlands Barn, and provide a clearly identifiable route.
33. Furthermore, I agree with Mr and Mrs Teague that the longer views of the converted barn are probably more attractive, because the barn can be viewed in context more easily, without feeling as though one were prying.
34. With regard to the longer distance views of the landscape, I consider that both routes provide similar opportunities for pleasant views. This is not, in my opinion, a determining factor.

The effect on of the diversion on land served by the present route

35. The present route does not serve land which will be disadvantaged by the diversion.

The effect of the path on land over which it would be created, or land held with it

36. All the land affected by the proposal is owned by the applicants. No adverse effects have been identified on that land as a consequence of the proposal.
37. Mrs Hardisty, who owns land adjacent to the proposed diversion, has expressed concern about the effect of the public walking closer to her land and livestock.
38. There is a good field boundary between the land owned by the applicant and the land owned by Mrs Hardisty and, although at the time of my site visit her house (Oaklands) was visible across the fields, when the trees are in leaf I would expect this to form an effective screen. I do not anticipate that the diversion will have any measurable effect on her land. If, exceptionally, an actionable nuisance was identified that could be attributable to the diversion of the path, the compensation provisions contained in Section 28 of the 1980 Act may be applicable.

Whether it is expedient to confirm the Order

39. Having found that it is expedient in the interests of the landowner that the path be diverted, and that the proposed diversion will not render the path substantially less convenient to the public, I am now required to balance the

interests of the applicant against those of the public to determine whether or not it is expedient to confirm the Order. Whilst acknowledging the views of the objectors in this case, I consider, on balance that the interests of the landowner and the interests of the public are largely in accord. No-one has raised any conflicts with material provisions contained in the Rights of Way Improvement Plan. Consequently, and bearing in mind that the Order was made in the interests of the landowner, I find it expedient to confirm the Order.

Other Matters

40. Mr and Mrs Arnold considered that an alternative proposal would have provided a path which would have removed the likelihood of walkers straying onto their property in preference to walking the definitive line of the public footpath. This, they say, they tried to discuss with Mr Teague without success. Their proposal would have removed the path from the access drive completely, and still achieved the benefits required by Mr and Mrs Teague.
41. I acknowledge that the suggestion by Mr and Mrs Arnold would have been an option, but at no time have they apparently approached the County Council to pursue this matter. Despite their inability to discuss the matter with Mr Teague, it would still have been open to them to discuss it with the County Council, who could have considered it along with Mr and Mrs Teague's application.
42. As Mr Teague has pointed out, Order A, if confirmed, will not preclude the possibility of pursuing Mr and Mrs Arnold's suggestion in the future. If the County Council is unwilling or unable to entertain it, for whatever reason, it is open to the District Council to consider making an order. I have therefore not allowed this matter to influence my conclusions in respect of this Order.

Order B

43. Having reached a view that it is expedient to confirm the Order A, I must now consider the situation regarding the path affected by Order B.
44. There is no question that the diversion of Footpath 2382 as set out in Order A would leave a spur of the adjoining Footpath 2384 unattached to any highway at its eastern end (Point C on the Order plan). Clearly it is unlikely that the length of Footpath 2384 between Points F and C would be likely to be used by the public in future, if it were allowed to remain in existence.
45. The diverted route of Footpath 2382 will provide a suitable alternative which, although a few metres longer, will be acceptable to the public, as indicated by the positive responses in support of the proposal as a whole.
46. There would be little or no adverse effect on the land served by the path since the alternative route would continue to provide access to the onward route of Footpath 2384, which runs across the land owned by Mrs Hardisty.
47. I am therefore satisfied that there is no impediment to the confirmation of this Order and that it is expedient to stop it up.

Conclusions

Orders A and B

48. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that both Orders should be confirmed with modifications.

Formal Decision

Order Ref: FPS/P3800/4/56

49. I confirm the Order subject to the following modifications:

- In Paragraph 1 of the Order, insert the words '*between Points B-C-D*' in the second line after the words 'bold black line';
- On the Order plan, insert into the Legend in brackets the letters '(B-C-D)' after the words 'Footpath to be extinguished';

Order Ref: FPS/P3800/3/8

50. I confirm the Order subject to the following modifications:

- In Paragraph 1 of the Order, insert the words '*between Points C-F*' in the second line after the words 'continuous bold line';
- On the Order plan, insert into the Legend in brackets the letters '(C-F)' after the words 'Footpath to be extinguished';
- After the words 'Proposed Footpath' in the legend, insert the words '*created by associated Diversion Order*'

Helen Slade

Inspector

APPEARANCES

FOR THE APPLICANT:

Mr and Mrs J Teague
Mr and Mrs A Rice

FOR THE ORDER MAKING AUTHORITY:

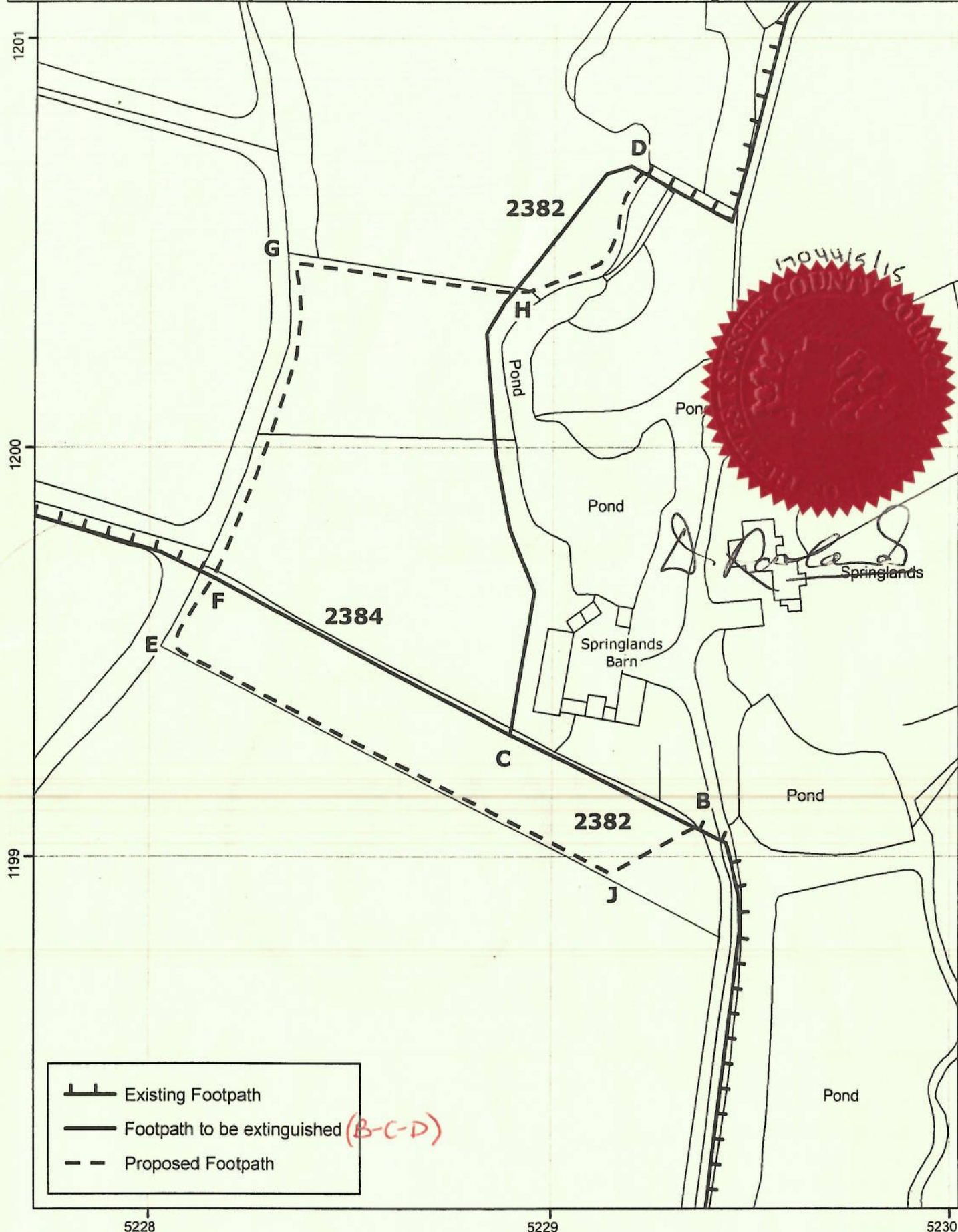
Mrs J Grimwood

OBJECTORS:

Mr and Mrs A Arnold
Miss M Crouch

DOCUMENTS

- 1 Inspecting Officer's report to Principle Rights of Way Officer approved on 6 August 2014, submitted by West Sussex County Council, with comments on the objections
- 2 Site notices for the Hearing and associated certificate of posting
- 3 Statement of Case submitted by Mr and Mrs J Teague, with appendices and photographs
- 4 Bundle of letters and emails in support of the proposals submitted by: Mrs Caroline Clarke; Margaret Graham; Jamie Coad; Will Harrington; Mr and Mrs P D Smith; Mr and Mrs D and J Perryman; Allison Wells; Coral Gatt
- 5 Letter from Madeleine Hartley at Horsham District Council dated 15 February 2017
- 6 Email dated 17 August 2016 from Mrs Arnold
- 7 Statutory objection dated 1 December 2015 from Shermanbury Parish Council
- 8 Statutory objection dated 4 December 2015 from Mr and Mrs Arnold
- 9 Statutory objection dated 6 December 2015 from Mrs L Hardisty
- 10 Representation in support dated 9 December 2015 from Mrs F C Rice



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Shermanbury: Proposed Diversion of Footpath 2382 and extinguishment of part of Footpath 2384 - Site Plan

Plan: 01624 1:1,250

OS Sheet: TQ 21 NW / 22 SW



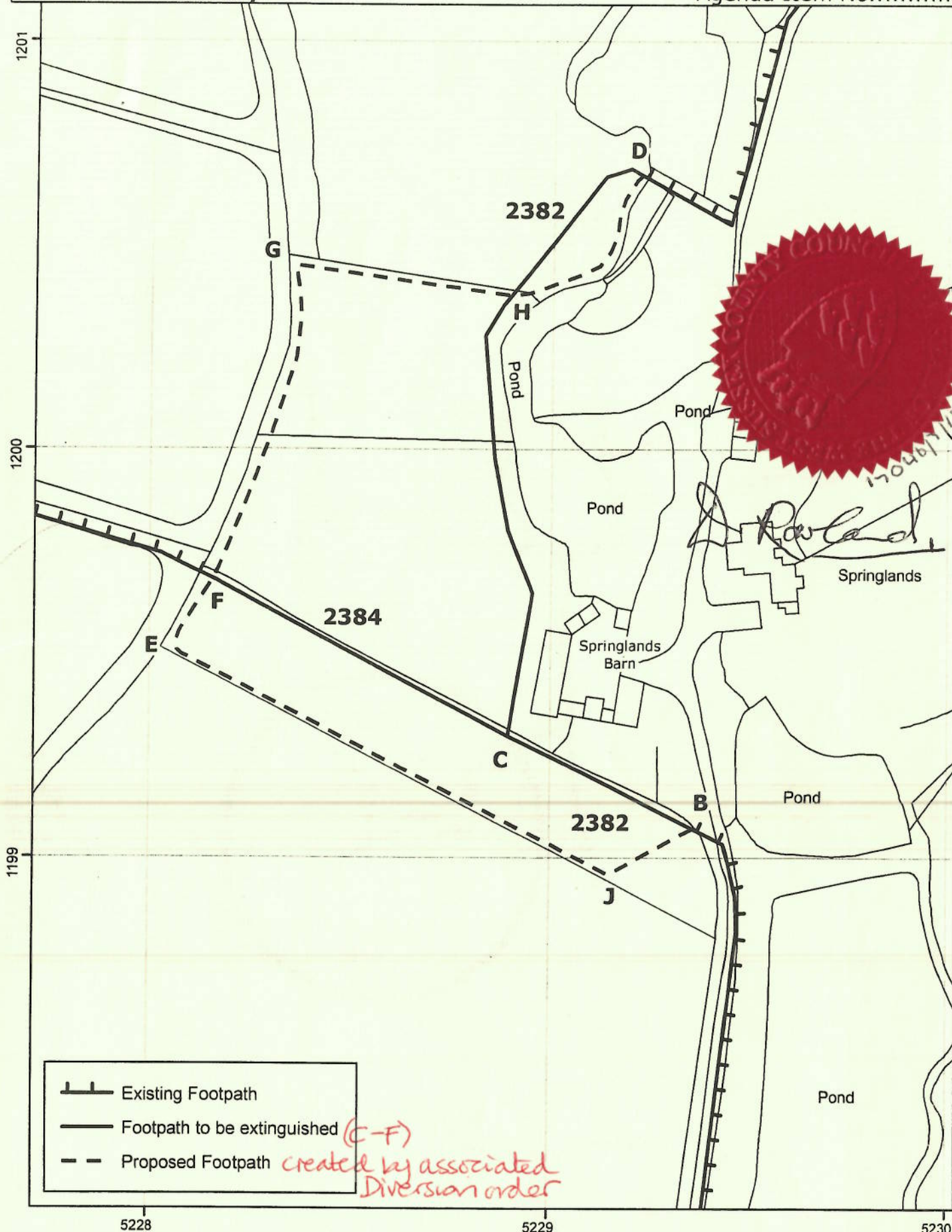
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Sue Hawker
Director of
Communities
Commissioning





Date: 18.09.2013

Grid Ref: 5228 1199



**Shermanbury: Proposed Diversion of Footpath 2382 and
extinguishment of part of Footpath 2384 -
Site Plan**

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Plan: 01624 1:1,250 Date: 18.09.2013	Grid Ref: 5228 1199				