
Order Decision

Site visit made on 13 March 2017

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 25 April 2017

Order Ref: FPS/P1615/5/7

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Forest of Dean District Council (Footpath DLH37) Public Footpath Diversion Order 2016.
- The Order is dated 5 July 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 3 objections outstanding when Forest of Dean District Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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

Preliminary Matters

1. An order was made by the Council in February 2016 to divert a length of footpath DLH37 under section 257 of the Town and Country Planning Act 1990 in order to enable development to proceed ("the First Order"). That order was subject to two outstanding objections. However, it was subsequently found to be invalid and a further order made dated 5 July 2016 ("the Order"). It is this second Order that is the subject of this Decision.
2. The Council has provided me with copies of the objections to the First Order and has commented upon them in its statement of case. The first objection relates to the need for a temporary diversion during the development stage. This objection has not been maintained, but is a matter which has been raised by other parties. The second objection has been maintained and forms one of the outstanding objections to the Order. I have therefore taken these matters into account in reaching my decision.
3. My attention has been drawn to the wording in Part 2 of the Order Schedule which includes a reference to the alternative route having a 'minimum' width of 2 metres. I agree that the use of the word 'minimum' adds little to the description of the route and introduces a degree of uncertainty which, should the Order be confirmed, can be addressed by modifying the Order. I am satisfied that such an amendment would not require re-advertising by virtue of paragraph 3(6) of Schedule 14 to the 1990 Act.

The Main Issues

4. The Order was made because it appeared to the Council that it was necessary to divert the footpath to enable development to be carried out in accordance with planning permission granted under Part III of the 1990 Act.
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5. Section 257 of the 1990 Act requires that, before confirming the Order, I must be satisfied that it is necessary to divert the footpath in question to allow development to be carried out in accordance with planning permission already given but not substantially complete.
6. Even if I were to find it necessary to divert the path to allow implementation of the permission, my confirmation of the Order is discretionary. In exercising this discretion, I must consider the merits and any disadvantages of the proposed diversion in relation to the particular facts of the case, and in particular the effect the confirmed Order would have on those entitled to the rights that would be affected by it.

Reasons

Whether it is necessary to divert the footpath to enable development to be carried out

7. Planning permission reference P1888/14/FUL dated 10 July 2015 was granted for a development comprising 16 affordable houses together with access and landscaping at Land West of The Wend, Longhope, Gloucestershire, GL17 0QR ("the Approved Scheme").
8. I have seen copies of the relevant consent and the associated approved plans. It is clear that the permission relates to the land crossed by the existing footpath and that the development would not be possible unless part of it was diverted. I am therefore satisfied that it is necessary to divert the footpath in order to enable the development to proceed.

Whether the development is substantially complete

9. At the time of my site visit there was no indication of any works having commenced in association with the planning permission. The existing footpath is easily accessible and currently in use and I am satisfied that the development is not substantially complete.

The effect of the Order on those whose rights would be affected by it

10. The current path is located in an open field at the north western end of Nupend Lane, opposite the property known as Landour. It proceeds diagonally downhill along a poorly defined grass covered route towards Napping Lane. It is a pleasant walk through what is currently an open field of agricultural origin which provides extensive views of the surrounding countryside as well as towards the Conservation Area (CA). The proposal would move the path to a more westerly alignment but without altering its overall length.
11. It is clear from the evidence submitted that, following the implementation of the Approved Scheme, views from the diverted route would be considerably different to those which existed at the time of my site visit. However, while it may be possible to amend the layout to incorporate the existing path alignment, this would have little impact on the visual enjoyment of users. In both instances the footpath would pass through part of a housing estate and the visual enjoyment of users would be similarly affected.
12. While I note that the Council's landscape consultee considered the effects on the visual enjoyment of path users would be substantial, these were matters

which were taken into account by the Council when considering whether or not to grant permission for the Approved Scheme. In considering whether or not to confirm the Order, I am unable to reconsider either the planning merits of the proposal or the principle of development in this location. While I accept that there will be a loss of visual enjoyment in general, it would not, in my view, be materially improved by retaining the footpath along its current route. As such, I do not consider it sufficient to justify a refusal to confirm the Order.

13. The site layout has been planned to preserve a key view from the adjacent CA and it is this layout, and the preservation of that view, that has resulted in the need to divert the route. Nevertheless, the diverted path would pass along a section of the estate road for some of its length. Circular 1/09 advises that in considering potential diversions to an existing right of way that are necessary to accommodate the planned development, the alternative alignment should avoid the use of estate roads wherever possible. It advises that preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic, with the clear intention being to avoid conflict between path users and those of the estate roads.
14. The proposed diversion would result in around 4 metres of path passing over the estate road located to the front of plots 12-14 of the Approved Scheme. The remainder would pass over a tarmac surface through landscaped estate paths before exiting the estate boundary and re-joining the existing path alignment. However, I note that in locating the crossing points towards the end of the estate road, the Approved Scheme would limit any potential conflict which might arise. Furthermore, as the estate road bisects the development there is every indication that an amended scheme, which sought to incorporate the existing route, would also involve users having to cross over part of the estate road. This, when coupled with the fact that there would be no material reduction in the convenience of users seeking access to the highways to either end, leads me to conclude that diverting the route along a short section of the estate road would not be materially disadvantageous to path users.
15. Consequently, while I acknowledge that the overall visual enjoyment of users would be diminished as a result of the Approved Scheme, I do not consider the disadvantages flowing from the proposed diversion would be of any significance or would outweigh the clear benefits that would result from enabling the development to proceed.

Other matters

16. I have noted the comments from interested parties in relation to the route providing an important link to the Gloucestershire Way. However, I see no reason that the diverted route would not continue to provide as convenient a link for its users.
17. Furthermore, although I have noted the concerns of local residents regarding flooding, the Approved Scheme would include additional drainage which would ensure that ground conditions were significantly improved. Likewise, while I acknowledge the environmental impacts that can arise from Japanese knotweed, I have seen nothing which would indicate that the diverted route would be impacted by this invasive species.

18. Concerns have also been raised that the path would be unavailable during the construction period. However, there are other procedures which exist to enable a temporary diversion to be put in place during the period of construction and I note that the Council has indicated that it is their intention to provide an alternative route. Furthermore, I am satisfied that any impact on users in this respect would be temporary and not so significant that it would justify a refusal to confirm the Order.
19. I have also noted the concerns raised by interested parties which relate to the manner in which the planning application was processed and the impartiality of the Council in making its decision. These are not, however, matters to which I can have regard in considering whether or not to confirm the Order.

Conclusions

20. Having regard to these and all other matters raised within the written representations, I conclude that the Order should be confirmed subject to the modification described in Paragraph 4 above.

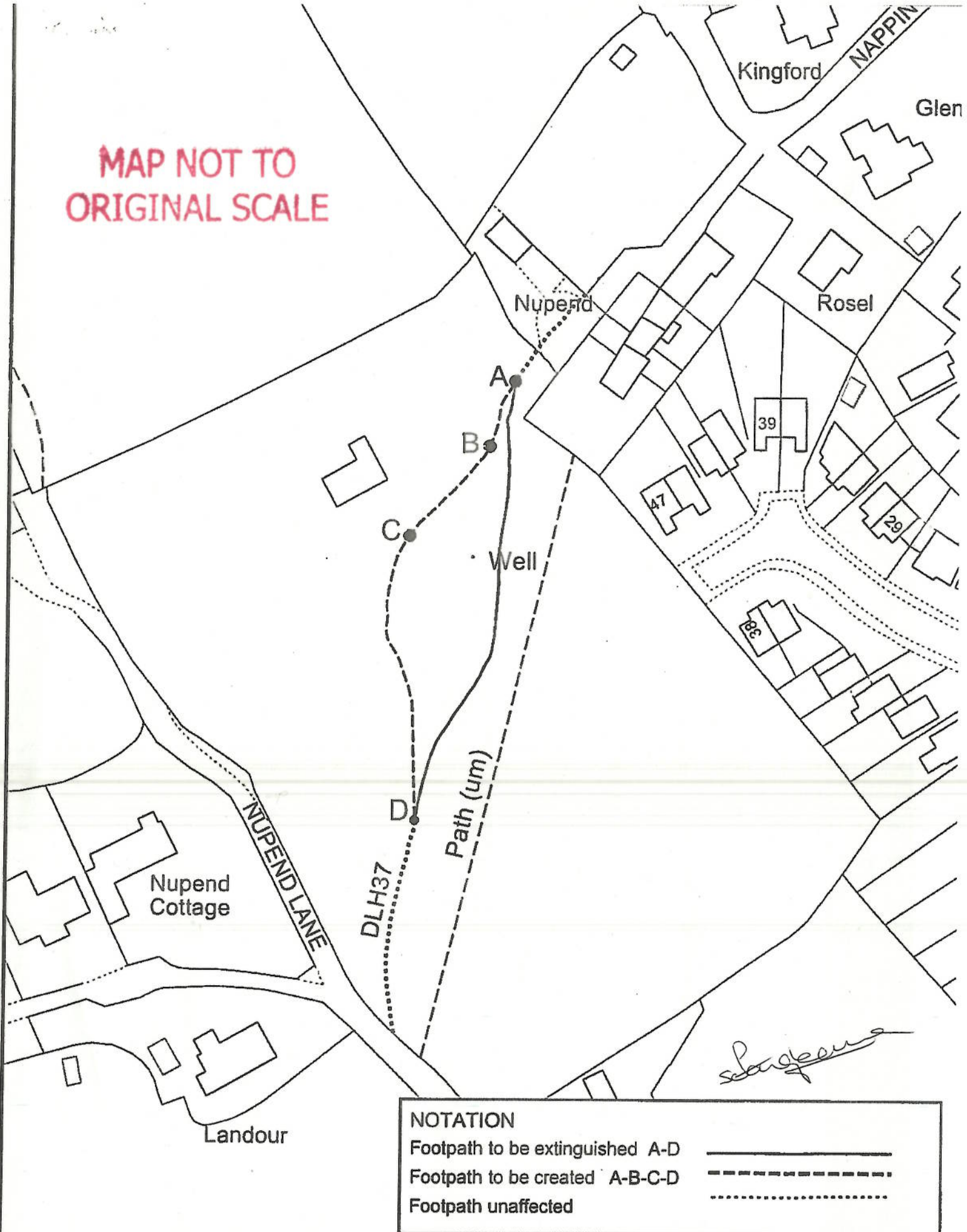
Formal Decision

21. The Order is confirmed subject to the following modification:
- In Part 2 of the Schedule the word 'minimum' shall be removed.

Rory Cridland

INSPECTOR

MAP NOT TO
ORIGINAL SCALE



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Public Footpath Diversion
Proposed Diversion of Public Footpath DLH37

Scale: 1:1000

27 January 2016

