



Order Decision

Site visit made on 10 September 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 14 November 2017

Order Ref: ROW/3170417

- This Order is made under Section 119 of the Highways Act 1980 (the Act) and is known as the Hampshire County Council (Parish of Braishfield – Footpath No. 712) Public Path Diversion Order 2016.
- The Order is dated 29 November 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the Definitive Map and Statement, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981, once the provisions relating to the diversion come into force.
- There were 4 objections outstanding when Hampshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. This case concerns the proposed diversion of Footpath No. 712 (the Footpath) between Braishfield Road and Jermyns Lane. Those opposing the Order are concerned about the extra distance to local bus stops and the loss of a traffic and pollution free route. No-one requested an accompanied site visit, so my inspection of the route was carried out unaccompanied.
2. The current line of the footpath runs from Braishfield Road (point A) through the yard of Crookhill Farm and Sir Harold Hillier Gardens (the Gardens). It then turns southwards at the garden centre access road terminating at Jermyns Lane (point B). There are two principle reasons for the diversion; 1) improved security for the landowner, and 2) greater pedestrian safety.

The Main Issues

3. The Order is made in the interests of the owner of the land crossed by the footpath. Section 119 of the Act requires that, before confirming the Order, I should be satisfied that:
 - (a) it is expedient, in the interests of the owner, that the footpath in question should be diverted;
 - (b) the new footpath will not be substantially less convenient to the public;
 - (c) it is expedient to confirm the Order having regard to its effect;
 - i) on public enjoyment of the path as a whole; and
 - ii) the effect the coming into operation of the order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, having regard to the provisions as to compensation.

4. In addition, in determining whether or not to confirm the Order, I am required to have regard to the provisions of a rights of way improvement plan ("ROWIP") prepared by any local highway authority whose area includes land over which an Order would create or extinguish a public right of way. Hampshire County Council, the order-making authority ("the OMA") has submitted extracts from its "*Countryside Access Plan – 2015-2025*" and its predecessor the "*Countryside Access Plan – 2008-2013*" which contains more specific area based priorities. Amongst other things these seek to maintain and improve the condition of the rights of way network in Hampshire whilst improving connectivity for a range of users including equestrians and cyclists.

Reasons

Whether it is expedient, in the interests of the owner of the land, that the footpath in question should be diverted

5. The OMA argues that the diversion of the Footpath would enable the land owner to restrict public access to the Gardens and the adjacent farm yard to improve security. According to the submissions, approximately 25 plants and 2 pieces of artwork have been stolen from the Gardens since 2014. Additionally there have been several instances of theft from the yard of Crookhill Farm.
6. While it seems to me that there are other, more straightforward, ways in which security could be improved at Crookhill Farm and the Gardens, it has not been suggested by any party that the proposed diversion would not enable the owners to make the Gardens, farm yard and associated buildings more secure. I therefore conclude, on balance, that it is expedient in the interests of the owner that the Footpath should be diverted.

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

7. As the surface of the new route would be sealed, there would be no significant difference in the surface conditions of the two routes. However, it is the additional distance that is the main issue in this case.
8. Objectors point out that the current alignment provides a direct route from the houses on Braishfield Road to the bus stops located adjacent to the garden centre entrance on Jermyns Lane. Currently the Footpath is 560 metres long between points A-B. The proposed route would be 855 metres long, an increase of roughly 53%. Assuming an average walking speed of 1.4 metres a second¹, the diversion would increase the journey time between points A-B from 6.7 minutes to around 10.2 minutes. This equates to an additional 7 minutes for a round trip. Based purely on this simple mathematical analysis there would be a *substantial* increase in the length of the route.
9. I have carefully considered the OMA's argument that there would be a decrease in the walking distance between the bus stops and those properties to the south of point A. However, as there is a ditch and fence alongside the eastern flank of Braishfield Road which one would need to negotiate to access the new route, it is not clear how the Council came to this view. Whilst I cannot discount the possibility that the existing fence is to be removed and some sort of structure provided over the ditch, there is no mention of this in the submitted documentation.

¹ Paragraph 3.30 "*Guidelines for Providing Journeys on Foot*" 2000. The Institution of Highways & Transportation.

10. The OMA argues that this increased distance would be offset by the public access improvements for the '*significant*' numbers of people who walk between Braishfield and Abbotswood. Whilst I have no doubt that the new route would be of benefit to some, as no pedestrian counts have been conducted in relation to the existing and proposed routes, it is simply not possible to quantify any wider public benefits that might flow from the diversion. Furthermore, the stated benefits must be moderated by the fact that the majority of the route between points A-C-B already exists, albeit on a permissive basis. Although the existing route has been in situ for a number of years, I recognise that it could be withdrawn by the landowner without notice. Nonetheless, there is no specific evidence before me to suggest this is likely in the event I were not to confirm the Order and it seems to me that such an outcome would only displace more pedestrians onto the Footpath.
11. The surfacing of the permissive route would also be a benefit for those unknown number of existing users of the permissive path. However, there is again no evidence before me to suggest the condition of the existing path prevents or discourages its use by the local community. Contrary to the aims of the Countryside Access Plans, interested parties have pointed out that cyclists would be unable to use the new route. This again limits the weight I can attach to the OMA's view that there would be significant community benefits.
12. I accept that the Abbotswood development of 800 houses to the south of the Gardens will inevitably increase pedestrian movements in the area. Although I do not know the circumstances which led to the approval of this development, it is reasonable to assume that it was accompanied by its own package of mitigation works. It is therefore unclear why one of the justifications for this public path diversion order is to mitigate the impact of a private housing development.
13. The OMA argues that the proposed diversion is also in the interests of the public as the route would provide a traffic free route between points A-B. Although the Footpath, like numerous other rural paths across the country, the traverses a working farm yard, that in itself does not make it unsafe. I have not been directed to a history of accidents at Crookhill Farm nor has any evidence been adduced to suggest that there is a wider pedestrian safety problem in relation to working farms. When I conducted my late afternoon site visit, the yard was not operational and the various buildings were locked. Although I can appreciate that the yard would be busy on occasion, no details of the farm's operational hours have been supplied nor do I know the number of pedestrians that are likely to pass through the yard at these times.
14. I found the yard to be fairly small and it took me less than 3 minutes to walk the distance between the two sets of gates. There are various warning signs which make it clear that one is about to enter a working farm. There is also good forward visibility and low levels of background noise. In these circumstances, pedestrians enter the yard with a good knowledge of any hazards that might be present.
15. I have also considered the argument that the existing route is shared with vehicular traffic which poses a risk to pedestrians. However, shared surface arrangements of this nature are commonplace particularly in rural areas. In this case, the busiest part of the route for vehicular traffic is to the north of

point B. However, the numbers of movements cited by the OMA are only likely to occur on a limited number of days throughout the year and certainly would not be the norm. In any event, there is a segregated footway to the north of point B which has evidently been in situ for some time and there is nothing before me to suggest its removal is imminent.

16. Although no dedicated pedestrian provision exists once the Footpath diverges from the garden centre access road, there are wide pedestrian friendly verges on either side. There is also good forward visibility and therefore drivers would have ample time to see pedestrians and vice versa. Finally, as this is a narrow private road used almost exclusively by employees, it is almost inconceivable that vehicles would travel at high speed along the route. Taking all of the above into account, I find the pedestrian safety arguments to be unconvincing and somewhat over-played.
17. Taking all these matters in the round, I find that the OMA has failed to adequately substantiate its view that the new route would provide significant community benefits. I therefore conclude based on the distance increase that the new route would be substantially less convenient to the public. This means the Order cannot be confirmed. However for completeness I have considered the other main issues below.

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

18. Whilst the character of the Footpath fluctuates along its length, overall it has a pleasant, rural character. In particular, the section through the Gardens benefits from an elevated aspect from where it is possible to admire the diverse collection of mature trees whilst enjoying the wondrous array of birdsongs. The land on both sides of the Footpath through the Gardens is essentially green, open and interspersed with mature landscaping. At the time of my visit, the Gardens were closed and the walk bestowed a sense of rural tranquillity affording both time and space for contemplation.
19. I accept that the walk would not always be so serene particularly at those times when the Gardens and garden centre are open. I also accept that the proximity of the garden centre access road and large areas of car parking along the southern section of the existing route detracts from the Footpath's otherwise bucolic and sylvan setting. Nonetheless, I cannot say that the occasional comings and goings of cars and other people would significantly undermine the Footpath's inherent qualities or one's appreciation of the surrounding countryside from it.
20. I was able to walk most of the proposed route on the existing permissive path. Whilst not an unpleasant walk the proximity of the road was immediately apparent. The alignment of Braishfield Road as well as the scarcity of frontage development does not encourage widespread compliance with the 30 mph speed limit to which this length of road is subject. Therefore although traffic volumes were fairly low at the time of my visit, the noise from passing vehicles was nonetheless a prominent feature of the walk. I can also appreciate that traffic volumes would be significantly higher at other times which would further erode one's enjoyment of the route. Although additional planting might alleviate matters, I am still giving some weight to the arguments raised by the objectors regarding increased traffic and pollution along the proposed route.

21. Overall, the proximity of the road network to the proposed route would detract significantly from the enjoyment of walking the proposed footpath. In these circumstances I find that the diversion would have a negative effect on the public's enjoyment of the route as a whole.

ROWIP

22. No issues have been raised by the parties in this regard, and there is nothing that would suggest the Order is incompatible with the Council's ROWIP.

Other Matters

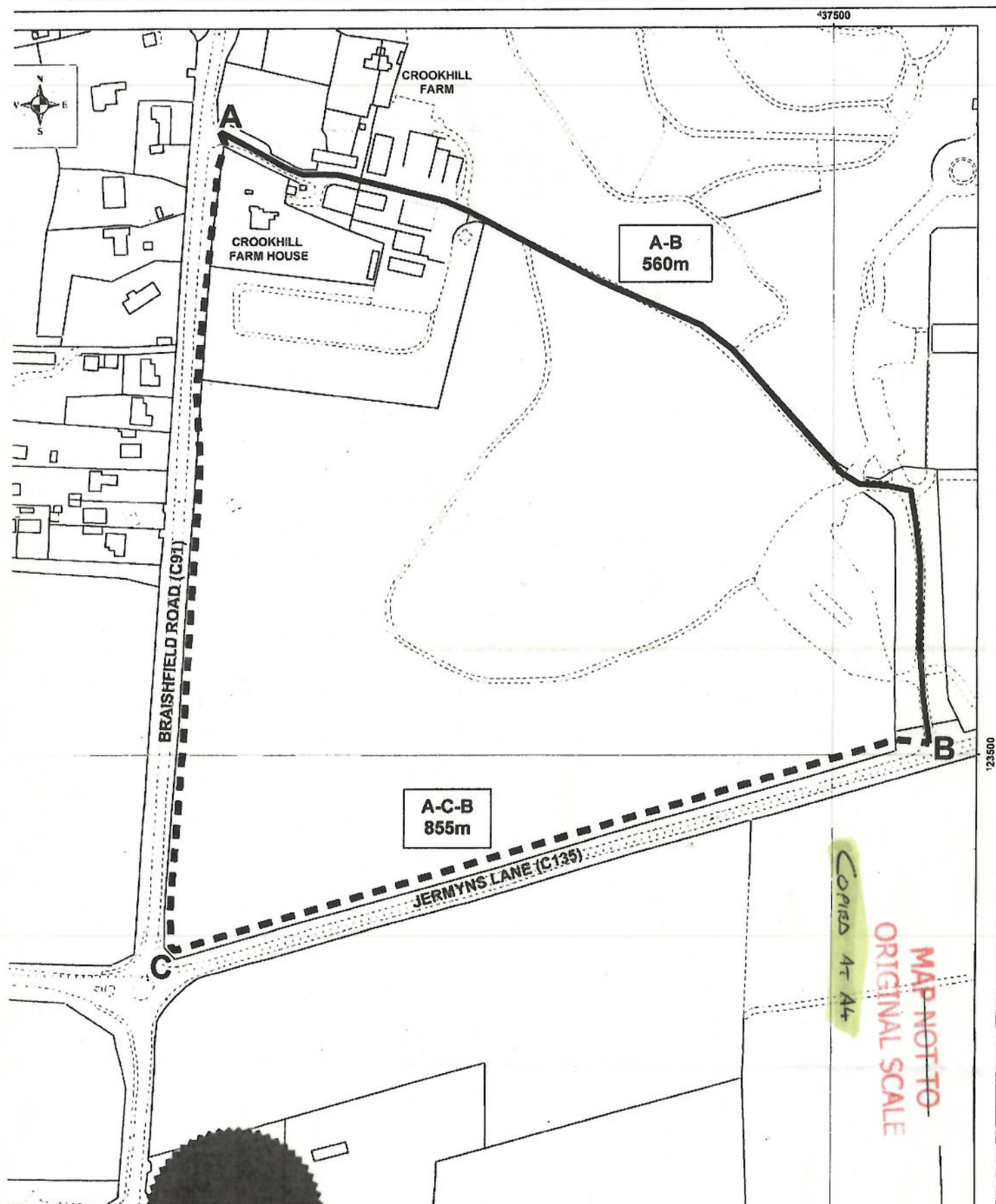
23. Finally, I appreciate that the proposed diversion has considerable local support from those who wish to see an improvement to pedestrian links between Braishfield and surrounding areas. However, whilst these objectives are laudable, I have seen no compelling evidence to explain why the improvement and extension of the existing permissive path should be dependent on the diversion of the Footpath. I am also bound to only consider the Order in relation to the specific tests set out in Section 119 of the Act and this is what I have done.

Formal Decision

24. The order is not confirmed.

D. M. Young

Inspector



Scale 1:2,000
END

ROUTE OF PATH TO BE DIVERTED:-

ROUTE OF PATH:-

MAP No.1608 PRODUCED FROM DIGITAL DATA
SUPPLIED BY ORDNANCE SURVEY

THE COMMON SEAL OF HAMPSHIRE COUNTY
COUNCIL WAS HEREUNTO AFFIXED IN THE
PRESENCE OF:-

.....
AUTHORISED
SIGNATORY

DATE 29th November 2016

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