



Order Decisions

Site visit made on 27 November 2017

by K R Seward Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 January 2018

Order Ref: ROW/3174213 (referred to as 'Order A')

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Breckland District Council (Bridleway 15) Public Path Diversion Order 2016.
- The Order is dated 19 July 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Breckland District Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out in the Formal Decision.

Order Ref: ROW/3174214 (referred to as 'Order B')

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Breckland District Council (Bridleway 16) Public Path Diversion Order 2016.
- The Order is dated 19 July 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Breckland 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 modifications set out in the Formal Decision.

Preliminary Matters

1. The Orders were made on the same day to divert two bridleways in relation to the same development.
2. No-one requested to be heard with respect to the Orders and so I made an unaccompanied site inspection, taking account of the written representations.
3. There are minor typographical errors in both Orders with reference made in places to "bridleways" in the plural rather than the singular. If they are confirmed, these errors should be corrected by modification of the Order.
4. When notice of the Orders was first given the title of the Orders was incorrect. Each notice referred to the route to be diverted as a footpath whereas the Orders concern a bridleway. The Orders were made in 2016 and not 2015 as advertised. The notices also referred within the body of the text to 'bridleways' instead of a single 'bridleway'. Due to these errors, the Orders were re-

advertised with the correct details and a further period was given for representations or objections.

5. The Open Spaces Society (OSS) objected to both Orders following the first public notices having also highlighted the errors mentioned above. No further objections were received in response to the corrected notices.

The Main Issues

6. To confirm the Orders, by Section 257 of the 1990 Act I must be satisfied that it is necessary to divert each bridleway in order to enable development to be carried out in accordance with the grant of planning permission. This is subject to the development not being substantially complete.
7. In addition to the statutory test set out above, paragraph 7.15 of the Rights of Way Circular 1/09¹ advises that the grant of planning permission does not mean that a public right of way will automatically be diverted or stopped up. However, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally, or to persons whose properties adjoin or are near the existing highways should be weighed against the advantages of the Orders.

Reasons

Background

8. Planning permission was granted on 24 June 2016² for the construction of 24 dwellings, associated open space, parking and access road. The site is undeveloped land located off Parklands Avenue.
9. At the time of my site visit the development had not commenced.

Order A

Whether it is necessary to divert part of the bridleway to enable development to be carried out

10. The Order map shows that the definitive line for Bridleway 15 ("BR15") would pass through dwellings and gardens if not diverted. As the grant of planning permission does not entitle developers to obstruct a public right of way, the development could not proceed unless the route is altered.
11. I consider that it is necessary to divert the section of BR15 to enable the development to be carried out.

The disadvantages or loss likely to arise as a result of the diversion

12. For the most part the diverted route would extend in a straight line behind a long row of dwellings to the south of the site where the surface is grassed. It would be separated from the rear gardens by fencing. On the other side, there is a row of established trees identified on the site plan as being outside the development site. Although this long stretch of bridleway would be enclosed whereas the present route crosses open land, the trees on one side provide a

¹ Published by the Department for Environment, Food and Rural Affairs

² Pursuant to Council ref: 3PL/2015/0562/F

- soft edge. If both sides were to be fenced in future, the route would not be so narrow to give rise to concern.
13. There would be a turn in direction where the diverted route meets a track in the south-east corner of the site. The existing route also changed direction albeit to a lesser degree. The change in direction is unlikely to cause any real disadvantage to users. The track itself appears to be shown along a different alignment from the existing farm track which I assume would be re-aligned to accord with the base plan.
 14. However, the Order map depicts the new alignment by bold dashes in a straight line along the curved track. As the OSS points out, the bold dashed line between points B and C should denote the centre of the bridleway. If it were otherwise, there would be no way to measure the width of a route.
 15. The Order Making Authority says that the dashed line represents the shortest route along the section of track and it was shown in this way because the existing bridleway is in a straight line. It is not typical for a route intended to follow a curved track to be shown by a straight line. If confirmed, the route would follow the exact alignment as it is shown on the Order map.
 16. Where the line is drawn close to the edge of the track there appears to be insufficient space to achieve the full 4m width identified in the Order. The proposed site layout plan for the development indicates that the bridleway would pass very close to a dwelling in the south-east corner of the development. There would need to be 2m in width on either side of the centre line even if it means encompassing land earmarked for private garden or landscaping. As drawn, it seems that a fence would obstruct the newly diverted route.
 17. That cannot be what was intended. If the Order is confirmed as it is then it will create an unworkable position for both occupiers of the land affected and users of the bridleway. The track is wide enough to accommodate the proposed width of bridleway without affecting land on either side. Even though the existing route follows straight lines, the curvature of such a small section of the diverted route is of little or no practical consequence. That is especially so as the route is capable of being used in a straight line if desired. Thus, it seems to me that the position can be addressed easily by a minor modification to the route to follow the centre line of the track.
 18. The track is shown to end where it meets a new access road off Parklands Avenue. The proposed diversion would continue into the middle of the access road at which point it would connect with an unchanged part of BR15. At this point, it is also intended that the diversion would link in with the proposed diversion of BR16 which is the subject of Order B.
 19. If the alignment is modified as discussed above, then the exit point onto the access road would be slightly further to the west. A further modification would be required for the route to connect from that point at an angle to point D.
 20. I invited views from the statutory parties on possible modification of the route, as described. No comments were received.
 21. The OSS objects to the route being diverted onto the access road. That would still be the case even if the alignment is modified as above. Norfolk's Rights of

Way Improvement Plan 2007-2017 Strategic Review ("ROWIP") states that "It will not generally be acceptable to divert a footpath or a bridleway along a road or immediately beside a road (whether new or existing)."

22. As things stand, the bridleway merely crosses the farm track. The diversion would cause users to pass along a much longer stretch of track where there could be some vehicular movement which may involve large vehicles. In addition, users wishing to join BR16 will need to cross the access road on a bend potentially bringing users into conflict with moving vehicular traffic. Whilst by no means ideal, the level of traffic is unlikely to be very high for a development of 24 homes. There should be good visibility in each direction and it is anticipated that speed restrictions will apply.
23. Horse riders wishing to connect with the unaffected part of the bridleway would need to enter the access road and turn from a northerly to easterly direction whilst in the road. This would not necessitate a sharp turn in direction as the width of the new route would allow riders to sweep round gradually. In reality walkers wishing to take the same route would be likely to utilise the proposed footway without entering the access road.
24. At present, walkers and riders do not enter any road along the existing alignment. Having to contend with passing traffic along a residential access road is a disadvantage of the diversion. That said, only a small part of the access would be affected by the diverted route. The space should be capable of being shared with road users without raising unacceptable safety risks.
25. Although the hard surface proposed for the access road may not be best suited for horse riders, the section of route is so short as to cause negligible impact.
26. The OSS objects to the proposed width of 4m when the ROWIP provides that the County Council will seek to apply a minimum width to all new and diverted routes of 4m for unenclosed bridleways and 5m for enclosed bridleways.
27. Norfolk County Council has not objected to the proposed diversion. Moreover, there is no width specified in the Definitive Statement for BR15, as existing. According to the landowner, there would not be the space to make the bridleway any wider without reducing the size of rear gardens which would then make them too small. The ROWIP is not prescriptive and from my own observations on site, 4m would be wide enough for the intended use in all the circumstances of this case.
28. The existing route passes by a very large tree which the OSS considers to be a major feature of the current amenity value. Views of the tree would be restricted by the intervening housing. In effect the arguments in this regard are an objection to the layout of the proposed development. Moreover, there was no obvious use of the existing route with much of the land so overgrown that the bridleway was not discernible. Although the tree is a fine specimen, the surrounding area of land has the appearance of a neglected parcel of land.

The advantages to be conferred by the proposed Order

29. Saffron Housing Trust, as landowner and registered provider for the affordable housing units, has explained that the dwellings will be affordable homes to provide local needs housing. That housing will not be provided unless the route is diverted. The diversion would also deliver a clearly defined route.

Conclusion regarding Order A

30. I consider that the diversion has been shown to be necessary for development to be carried out. There are disadvantages of the proposed diversion. In particular, the diversion along a lengthier section of farm track leading into the middle of an access road where there is potential for conflict with vehicular traffic in each case. There would also be loss of open views. Much of the diversion would be enclosed by fencing for domestic gardens along the southern boundary whereas the existing route is open.
31. Taking all factors into account, the disadvantages and losses are in my view outweighed by the advantages in the provision of the new affordable homes. Therefore, I conclude that the Order should be proposed for confirmation subject to the modification to the proposed route to show it along the centre line of the track before connecting with point D and correction of the typographical errors mentioned in my preliminary matters.

Order B

Whether it is necessary to divert part of the bridleway to enable development to be carried out

32. Part of BR16 also crosses the same development site. The Order map shows it cutting across the corner of the garden of an end of terrace property very close to the dwelling. An area of proposed planting is also shown to cover part of the existing alignment.
33. Consequently, I am satisfied that it is necessary to divert the bridleway to allow development of this part of the site to take place.

The disadvantages or loss likely to arise as a result of the diversion

34. The bridleway would be diverted a short distance to the north-east to move it away from the corner of one proposed dwelling. It would cross land identified as a landscaped area from where the route would proceed to the middle of the access road mentioned above to connect with the proposed diversion of FP15. The same issues are raised by the OSS with regard to the bridleway entering the access road and at a point where there will be a bend in the road giving rise to safety concerns.
35. The entry point onto the access road would be well away from the junction with Parklands Avenue. Visibility to the west will be restricted to some degree by the bend in the road. It would be restricted further if this part of the development went ahead without BR16 being diverted as the existing route is closer to the bend in the road. Further, there is no reason to suppose that the diverted route would be unacceptable when used by road users concerned with their own and others safety.
36. Concerns about horse riders in particular needing to change direction in the middle of the road to connect with the unaffected bridleway are no different from those addressed in relation to Order A. The width of the bridleway affords sufficient scope for riders to change direction with relative ease. If they wished, walkers could use a small part of the proposed footway to connect more directly with the unchanged route to the east.

37. As before, only a very short part of the route entails horse riders using a hard surfaced road. The proposed diversion would be unenclosed and so would achieve the minimum 4m width sought in the ROWIP for bridleways. No loss or disadvantage arises in this respect.
38. The view would be altered by reason of the development rather than the diversion. The proposed route would at least cross a landscaped area located away from the dwellings.

The advantages to be conferred by the proposed Order

39. The diversion would facilitate the delivery of affordable homes.

Conclusion regarding Order B

40. In my view the diversion has been shown to be necessary for development to be carried out. It is a disadvantage that the proposed route goes up to the middle of an access road near to a bend in the road. However, when considered as a whole, the disadvantages are outweighed by the advantages in delivery of affordable homes.
41. This leads me to conclude that the Order should be confirmed with correction of the minor typographical errors identified in my preliminary note.

Other Matters

42. The OSS would prefer the words "*Limitations and Conditions: None*" to be added to Part 2 of the Orders for clarity. This would be an unnecessary addition which is not warranted.

Overall Conclusions

43. Having regard to these and all other matters raised in the written representations I conclude that the Order A should be proposed for confirmation with minor modifications to the alignment and typographical corrections. Order B does not depend on Order A. It can connect with existing BR15 even if Order A is not subsequently confirmed. Therefore, Order B should be confirmed subject to minor typographical corrections.

Formal Decisions

Order A

44. I propose to confirm the Order subject to the following modifications:

- In paragraph number 3. delete "*bridleways*" and replace with "*bridleway*"
- In paragraph number 6. delete "*bridleways are*" and replace with "*bridleway is*"
- Within Part 2 of the Schedule delete the text and replace with:
"A new bridleway 4 metres wide, running from point BR15A on Shipdham Bridleway 15 (grid reference E:595273, N:307001) in an Easterly direction for approximately 132.5 metres to point BR15E (grid reference E:595405, N:307014) and then in a Northerly direction for approximately 26.5 metres to point BR15F (grid reference E:595409, N:307039) and then in a

Northerly direction for approximately 7.9 metres to point BR15D (grid reference E:595411, N307046)."

- On the Order map:
 - delete points BR15B and BR15C;
 - insert points BR15E and BR15F;
 - modify the route between points BR15E and BR15F to show the alignment along the centre of the track and then in a straight line between points BR15F and BR15D.
45. Since the confirmed Order would affect land not affected by the Order Paragraph 3(6) of Schedule 14 to the Town and Country Planning Act 1990 requires that notice shall be given of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Order B

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

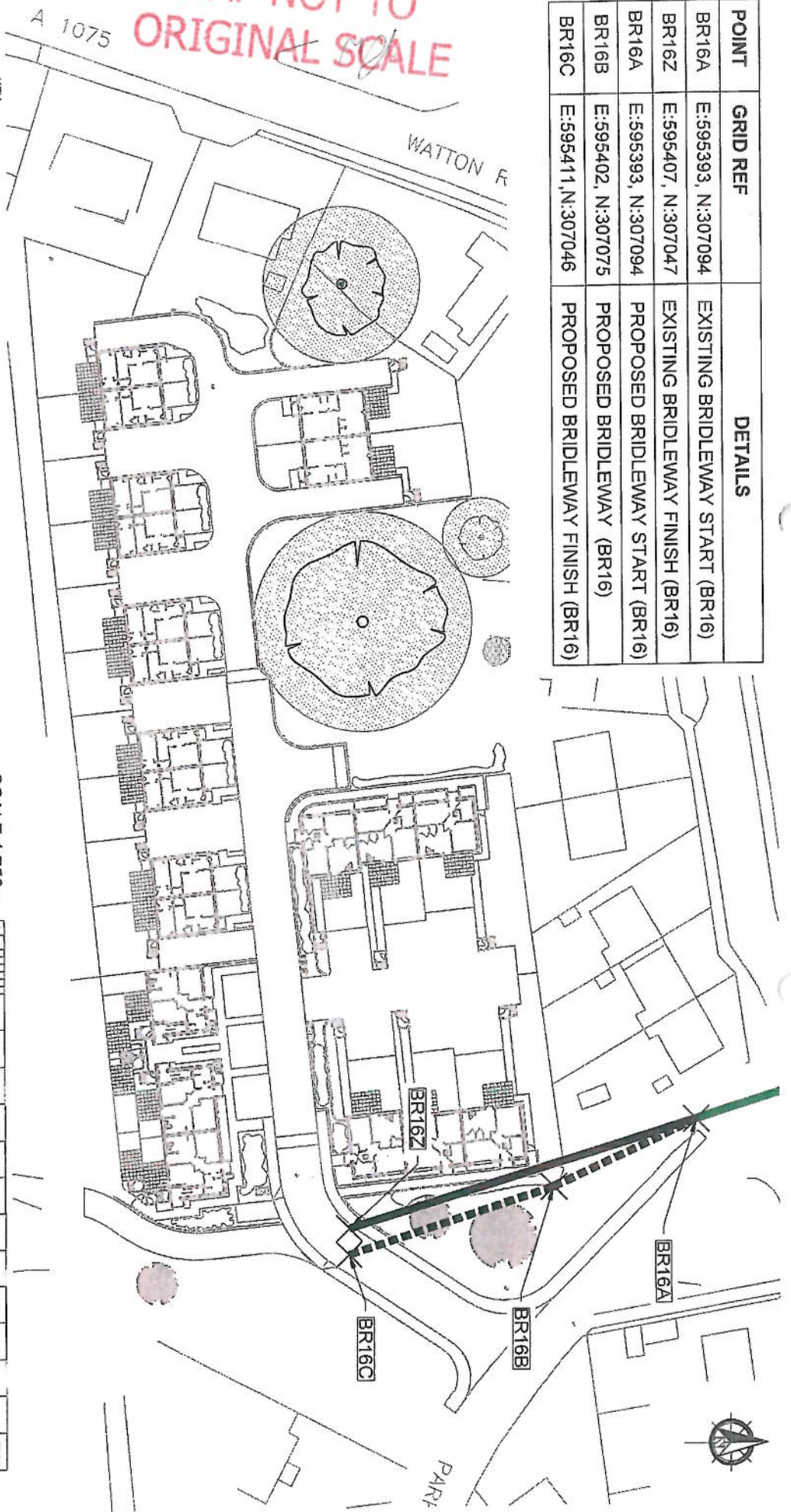
- In the opening paragraph and in paragraph numbers 2. and 3. delete "*bridleways*" and replace with "*bridleway*"
- In paragraph number 2. insert "*an*" after "*Norfolk County Council*".
- In paragraph number 6. delete "*bridleways are*" and replace with "*bridleway is*".

KR Seward

INSPECTOR

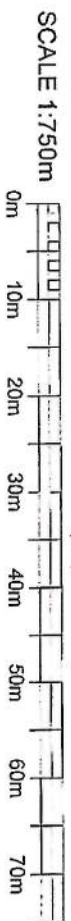
MAP NOT TO ORIGINAL SCALE

POINT	GRID REF	DETAILS
BR16A	E:595393, N:307094	EXISTING BRIDLEWAY START (BR16)
BR16Z	E:595407, N:307047	EXISTING BRIDLEWAY FINISH (BR16)
BR16A	E:595393, N:307094	PROPOSED BRIDLEWAY START (BR16)
BR16B	E:595402, N:307075	PROPOSED BRIDLEWAY (BR16)
BR16C	E:595411, N:307046	PROPOSED BRIDLEWAY FINISH (BR16)



- KEY
- EXISTING BR16 ROUTE TO BE DIVERTED
 - PROPOSED BR16 ROUTE
 - EXISTING ROUTE NOT AFFECTED

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client: **Wellington** Construction Ltd
 project: PARKLANDS AVENUE, SHIPDHAM

contract: **Eng** Additional Services
 title: BRIDLEWAY BR16 EXISTING AND PROPOSED REALIGNMENT PLAN

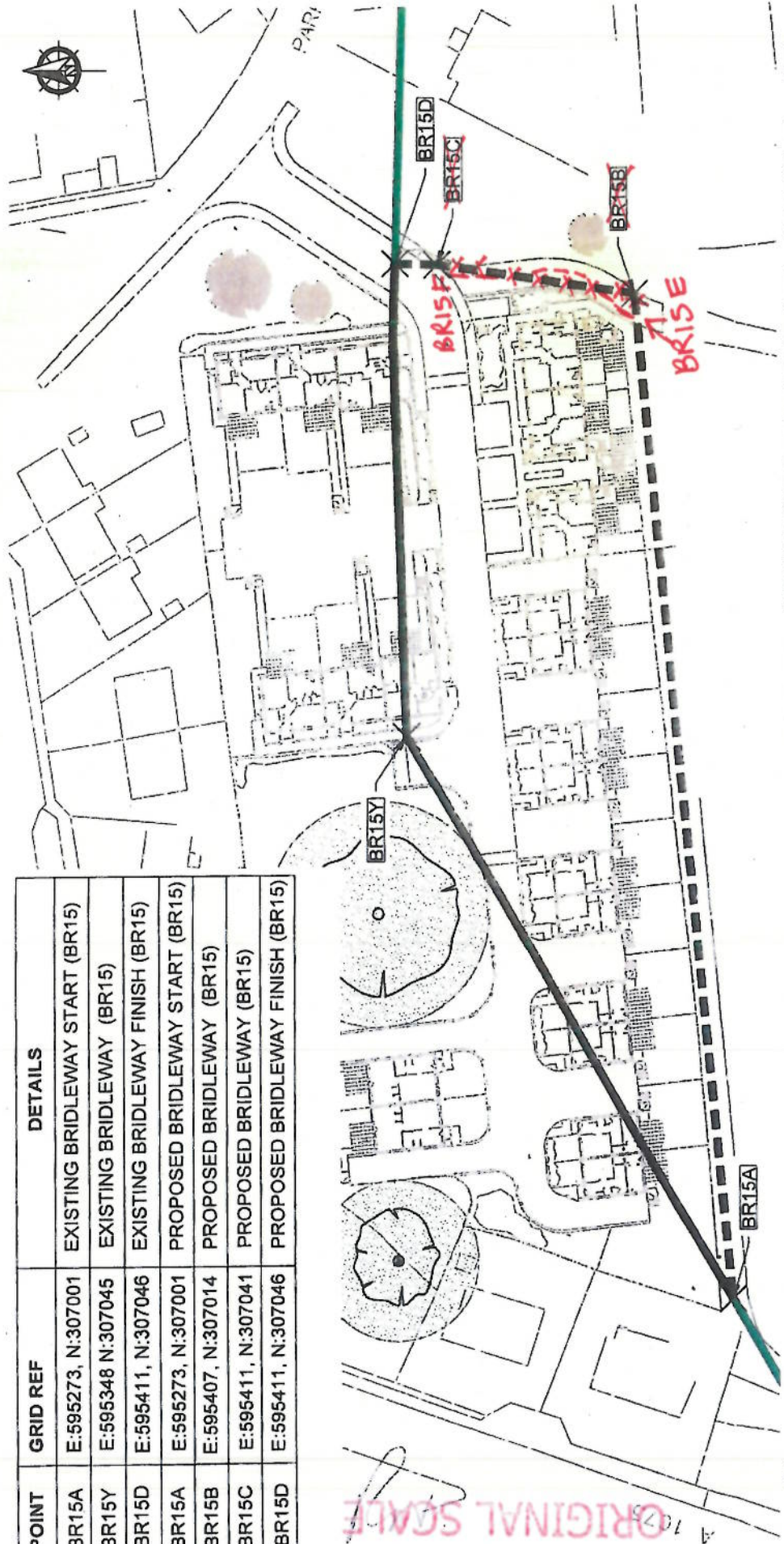
drawn: MEH
 checked: MEH
 dated: MAB
 scale: 1:750@A4
 date: 06.07.16
 client's number: 205041-553-P1

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POINT	GRID REF	DETAILS
BR15A	E:595273, N:307001	EXISTING BRIDLEWAY START (BR15)
BR15Y	E:595348 N:307045	EXISTING BRIDLEWAY (BR15)
BR15D	E:595411, N:307046	EXISTING BRIDLEWAY FINISH (BR15)
BR15A	E:595273, N:307001	PROPOSED BRIDLEWAY START (BR15)
BR15B	E:595407, N:307014	PROPOSED BRIDLEWAY (BR15)
BR15C	E:595411, N:307041	PROPOSED BRIDLEWAY (BR15)
BR15D	E:595411, N:307046	PROPOSED BRIDLEWAY FINISH (BR15)



MAP NOT TO ORIGINAL SCALE

KEY
 - - - - - EXISTING BR15 ROUTE TO BE DIVERTED
 - - - - - PROPOSED BR15 ROUTE
 - - - - - EXISTING ROUTE NOT AFFECTED

SCALE 1:750m
 0m 10m 20m 30m 40m 50m 60m 70m

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BRIDLEWAY BR15
 EXISTING AND PROPOSED
 REALIGNMENT PLAN

DATE: 06/07/16
 DRAWN BY: MAB
 CHECKED BY: MEH
 SCALE: 1:750@A4
 PROJECT NO: 205041-552-P1

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