
Order Decisions

Inquiry held on 17, 18, 19 January, 28 February and 1 and 2 March 2017

Site visit made on 13 March 2017

by Alison Lea MA (Cantab) Solicitor

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

Decision date: 20 April 2017

Order Ref: FPS/M5450/4/1

- This Order is made under Section 119 of the Highways Act 1980 and is known as the Harrow School Playing Fields (Footpath No 57) Diversion Order 2013.
- The Order is dated 3 July 2013 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 12 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed

Order Ref: FPS/M5450/4/3

- This Order is made under Section 119 of the Highways Act 1980 and is known as the Harrow School Playing Fields (Footpath No 58) Diversion Order 2016.
- The Order is dated 7 April 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 12 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed

Order Ref: FPS/M5450/6/1

- This Order is made under Section 26 of the Highways Act 1980 and is known as the Harrow School Playing Fields Public Path Creation Order (No 1) 2013.
- The Order is dated 3 July 2013 and proposes to create a public right of way as shown on the Order plan and described in the Order Schedule.
- There were objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed

Order Ref: FPS/M5450/6/2

- This Order is made under Section 26 of the Highways Act 1980 and is known as the Harrow School Playing Fields Public Path Creation Order (No 2) 2013.
- The Order is dated 3 July 2013 and proposes to create a public right of way as shown on the Order plan and described in the Order Schedule.
- There were objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed

Procedural and Preliminary Matters

1. Order Ref. FPS/M5450/4/3 dated 7 April 2016 replaces Order Ref. FPS/M5450/4/2 dated 3 July 2013. When the latter was submitted to the Secretary of State for confirmation it became apparent that there were errors

in the plan to the Order. It was therefore remade and accordingly it is Order Ref. FPS/M5450/4/3 dated 7 April 2016 which is before me. However there are no material differences between the Orders.

2. There were 12 objections to the diversion orders dated 3 July 2013 and it is not disputed that those made in relation to Order Ref. FPS/M5450/4/2 should be treated as made in respect of Order Ref. FPS/M5450/4/3. Oral evidence was given at the inquiry by 6 of those objectors¹. In addition I heard evidence against the Orders from 2 local residents who had not previously submitted formal objections and also from Gareth Thomas, Member of Parliament for Harrow, and from Councillor Sue Anderson.
3. It is unclear how many of the objections also relate to the creation orders. At the inquiry many of the objectors stated that they were "neutral" in relation to the creation orders.
4. I carried out a preliminary site visit on 18 January 2017 accompanied by a representative from each of the Council, Harrow School (the School) and the objectors. I carried out a further accompanied site visit on 13 March 2017 accompanied by a representative from the Council and from the School and by a number of objectors.
5. FP57 runs along a northwest/southeast alignment between the southern end of Football Lane and Pebworth Road. Tennis courts and astroturf pitches have been constructed pursuant to a planning permission granted in 2003 and the route passes through the tennis courts and between the 2 astroturf pitches. The Order if confirmed would divert the footpath along a short stretch of FP59 and then around the eastern edge of the tennis courts and astroturf pitches.
6. FP 58 runs along an east/west alignment between the southern end of Football Lane and Watford Road following the shortest route between the 2 points. The Order if confirmed would divert it along part of FP59 to Point H where it would make a right angle turn to follow an existing track running northwest/southeast. It would then make another right angle turn to run adjacent to the stream close to the boundary with Harrow School Farm up to a stile on Watford Road.
7. The creation orders would add a footpath between the sports pitches and the stream which would link with the diverted routes of FP57 and FP58 and would create a triangular network of footpaths near the stream.
8. It is common ground that the 4 Orders should be considered as a package and that the 2 creation orders are not capable of confirmation unless both the diversion orders are confirmed. This is because they would not connect with a public highway. Accordingly I shall consider the diversion orders first. As some of the issues are common to both Orders I shall consider them together where appropriate.

Background

9. There is a long history to this matter. Despite this history, I agree with the Council that the fundamental issue in the determination of whether or not to confirm the Orders is whether or not the statutory criteria have been met. Nevertheless, given the extent to which both the School and the objectors refer

¹ Ms Ashbrook gave evidence on behalf of both the Ramblers' and the Open Spaces Society

to, and indeed rely on, various aspects of the history to the making of these Orders, I set it out in some detail.

10. Planning permission was granted in 2003 for development which included "12 replacement tennis courts" and "2 all-weather pitches² and fencing". The application was made in January 2001. Neither the School nor the Council has been able to supply copies of the application or plans but it is accepted that the development was constructed in accordance with the permission.
11. The tennis courts and astroturf pitch compound were constructed over the definitive line of FP57, which has been obstructed by the tennis courts since that date. The astroturf pitches are located either side of the definitive line of FP 57, which runs along a paved area between the pitches. The line was blocked for many years due to the locking of gates at either end and the placing of heavy machinery against one of the gates. Following complaints the machinery was removed and the gates unlocked. Members of the public are now able to walk the definitive line between the pitches.
12. Both the planning permission and the report to committee are silent as to the existence of FP57 and the fact that the development would obstruct the definitive line. Following the grant of permission on 28 April 2003 no action to extinguish or divert FP57 was taken.
13. A Permissive Footpath Agreement was entered into by the School and the Council on 23 May 2003. The correspondence leading to it was explored in considerable detail at the inquiry.
14. The first piece of correspondence is a letter dated 27 September 2000 from the Council to the School which refers to the Council's support for an initiative by the London Walking Forum to create an orbital waymarked path around London, the "Capital Ring". It refers to a section of the Capital Ring utilising "the public right of way across Harrow School's playing fields, from the end of Football Lane to Watford Road" and states that "obviously conflict occurs when walkers wish to use the path and matches are being played. The route around the pitches is not clearly defined, and can lead to walkers wandering over the School's land to try to find their exit point".
15. The letter goes on to state that "the Capital Ring route is designed to be easy to follow without the aid of a map" and that "Mr Bob Dunn, of the London Walking Forum Executive/Ramblers' Association, has kindly prepared a schedule for the signage that will be necessary for this section of the Capital Ring. I believe he has already spoken to you, and canvassed his suggestion that an alternative route around the pitches could be waymarked, subject to the School's permission".
16. The letter then invites comments on "whether the School would be prepared to enter into a legal agreement creating a "permissive route" along the line suggested by Mr Dunn, whilst retaining the public right of way across the pitches, as at present" and states that the "advantages of such an arrangement, apart from directing walkers away from conflict with players and helping to contain unintentional trespass over the School's fields, is that it allows an element of flexibility in the arrangements, and the opportunity to review them if circumstances change. The alternative of extinguishing the

² Referred to throughout the inquiry as the astroturf pitches

present right of way, and replacing it with the other route, would be a lengthy and costly process, involving a public inquiry, and almost certain opposition. It would also be very difficult to reverse if circumstances change”.

17. In a response dated 5 January 2001 the School drew attention to the planning application it had recently submitted for sports facilities and referred to a second footpath which presented similar difficulties as it “crosses rugby pitches”. The Council responded on 10 January 2001 that it would “sound out Mr Dunn....on the acceptability of a permissive route alternative to the more southerly right of way you highlight in your letter”.
18. The next correspondence is dated 2 May 2001. In this letter the School’s Estates Bursar, Mr Gray, states that the School “has no objection in principle to the alternative route proposed, but I have been advised by our Solicitors that the School’s interests may be better protected if the existing right of way were to be diverted by way of an Administrative Order under Section 119 of the Highway Act 1980.....Under the circumstance, the School would expect the cost to be borne by the Council”. He goes on to state “whilst planning permission is yet to be received in respect of the New Sports Facilities in this area, I would like to adopt a similar approach for the alternative Route B, but clearly confirmation of the Order cannot proceed until the development is under way. In this case, the School would expect to meet the costs”.
19. The Council’s response is contained in a letter dated 10 May 2002. In relation to the more southerly path (FP57) it states that “it would need to be diverted as a consequence of the planning permission recently granted subject to a S106 agreement, for sports facilities”. With regard to the northerly footpath (FP58) it states “I am somewhat disappointed at your response. The original proposal was an attempt to alleviate the conflict between walkers, who currently have a right of way across the School’s pitches, and players. As the walk is publicised as part of the “Capital Ring” it is likely that the number of walkers using this path will increase, and consequently so will incidences of walker/player conflict. The School will therefore benefit considerably if a solution to this problem can be found.”
20. It goes on to state that “The original proposal was to create a permissive path around the pitches, whilst retaining the public right of way in its present route. The benefits of this are two-fold. Firstly it would entail very little cost to the School since a straightforward legal agreement would be set up between the School and the Council. Secondly this arrangement would allow the School to change the layout of the pitches very easily in the future. The permissive path could easily be altered to skirt the new position of the pitches whilst the public right of way remains in its original position. Conversely, if a permanent diversion of the existing right of way is sought under Section 119 of the Highways Act 1980...then neither of these benefits will accrue.....The process can be lengthy and expensive. In addition if a change in pitch layout were to be required in the future then the whole process would have to be repeated”.
21. There is then a file note prepared by the Estates Bursar of a meeting with the Council and the Ramblers’ Association. It records that it was agreed that “both rights of way across Sports East to be retained with signed alternative “permissive routes”. The note refers to 2 proposed permissive routes; one between Football Lane and Watford Road and the second around the tennis courts and astros, both of which were “accepted by all as sensible”. The note

also states "Ramblers' Association would probably not be happy to see ancient rights of way permanently diverted therefore "permissive route" approach may find favour and "a notice confirming that the rights of way remain available but alternative safer and more attractive routes have been marked for walkers' convenience was suggested".

22. The note also records that "as the route across the tennis and astros related to development proposals, Bob Dunn would confer with colleagues at Ramblers' Association and "I made it clear throughout that we were hoping to be able to get Ramblers' Association support for the alternative route proposed".
23. A further file note dated 2 July 2002 states that Bob Dunn had called Mr Gray to inform him that he, Mr Dunn, had discussed an alternative permissive route across the line of the new tennis courts and astro pitches with other senior members of the Ramblers' Association and that as the route is described as "undefined" the Ramblers Association had no problem with the suggested permissive route. The note then states that the Council would draw up a legal agreement for the Capital Ring and find out what steps need to be taken with regard to the second permissive route.
24. The next correspondence encloses an agreement for execution by the School. Mr Gray responded on 1 April 2003 stating that "unfortunately the plan of the site shows the route of the existing path No 1(A-B)³ as a straight line across the playing fields, whereas the Schedule to the Definitive Rights of Way Map, describes the route as "undefined". Clearly I do not want to suggest that the footpath is anything other than undefined and the line between A and B should therefore be removed".
25. The Permissive Footpath Agreement was entered into on 23 May 2003 and shows 2 new permissive paths. The first is similar to that now proposed as the diversion of FP58 and has marker posts for the Capital Ring Route shown along it. The second follows that route until the Capital Ring Route turns towards Watford Road, at approximate Point E on the current Order plan and is then similar to the creation order route from E-D-C on the Order Plan, and C-B on the diverted route of FP57. The definitive line of neither FP57 nor FP58 is shown but there is a note that those paths are undefined between A and B and A and C in the Schedule to the Definitive Map⁴. In the agreement the School grants the public "permission to walk along the permissive footpaths as alternative routes to the existing footpaths" and can close or alter the permissive footpaths by giving not less than 6 months' notice.
26. A letter dated 16 December 2003 from the Council to Mr Gray refers to "complaints that the Council has received from members of the public" as a result of FP57 being "blocked to enable the pitches to be fenced". The letter states that "the permissive footpaths were created as alternative routes to the existing footpaths and that gives members of the public the choice, to use the existing path or the permissive path. There is nothing on the Agreement file to suggest that the Council authorises the erection of the fence and no authorisation has been given....I must remind you of the public right of way over the existing footpath and request unfettered access to all members of the public".

³ A-G on the Order Plan

⁴ A-G and A-B on the Order plan

27. Mr Gray responded on 2 January 2004 stating that "At one time it was believed that there may be a defined right of way between the entrance and exit points of the public footpath across our playing fields....it was assumed that those wishing to use the original line of footpath could walk through the gates to the walkway between the two astroturf pitches. The gates would, of course, have to be unlocked for this purpose. However, prior to the Permissive Footpath Agreement being drawn up it was established that the right of way, whilst having a defined entry and exit point did not have a defined route across the playing fields.....it was agreed that as the route for both public footpaths is "undefined", neither the construction of our enclosed sports facilities nor the alternative Permissive Footpath routes would be problematical".
28. The next correspondence relating specifically to FP57 or FP58 is a letter dated 30 December 2009 from the Council to the School referring to correspondence received from the Ramblers' Association concerning the obstruction of FP57. This appears to be the correspondence which eventually led to the making of the various orders which are now before me.
29. The definitive statement refers to both FP57 and FP58 as following an "undefined route" whereas the definitive map shows both in straight lines as shown on the Order plans. Although the School accepts that following a legal judgement in 2005 it is not now disputed that the line on the map prevails, I note that the law on this matter was less clear at the time the Permissive Footpath Agreement was drawn up.

The Diversion Orders

The Main Issues

30. Section 119(6) of the 1980 Act requires that, before confirming the Orders, I must first be satisfied in relation to each that
- (a) it is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public that the path be diverted;
 - (b) the new termination of the path is 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 to the effect of the diversion on public enjoyment of the way as a whole, and any other relevant matters.
31. The points of termination of the footpaths would not be altered and therefore I shall not consider this test further. I also note that the diversion orders would not affect any other land served by the existing footpaths and would not affect any other land over which the diverted routes would pass as they would remain on the School's estate.
32. The 1980 Act also requires that I should have regard to any material provisions of the Rights of Way Improvement Plan (ROWIP) prepared by the local highway authority.

Reasons

Whether it is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public that the path be diverted

33. Both of the Orders are made in the interests of the owner of the land, namely Harrow School.

Footpath 57

34. Part of FP57 is obstructed by the fencing surrounding the tennis courts. In order to enable the public to use the definitive route, the minimum which would need to be done is for gaps to be made in the fencing to enable the public to walk across, or at the very least close to, the playing area of 6 of the courts⁵. The School submits that the reality of the situation is that those 6 courts, which are high quality and well used by both the School and by the Harrow Lawn Tennis Club, would be lost.
35. I accept the points made by some of the objectors that the courts are not in constant use and that it may be possible to reconfigure them in a way so as to minimise loss or indeed to provide courts elsewhere. Nevertheless any of these solutions is likely to involve expense and/or inconvenience to the School and I accept that it is in the interests of the School that FP57 be diverted to avoid the tennis courts.
36. The part of FP57 which passes between the astroturf pitches is paved and separated from the pitches by fencing. Following construction of the pitches, the gates at either end of the paved area were locked and members of the public were therefore prevented from walking the definitive line. I understand that following complaints the gates were unlocked in early 2012 and, following discussions between the School and the Council, were removed in 2015.
37. The paved area between the pitches is used by pupils and staff to access the pitches and as a spectating area for sports events, both by pupils and parents. The School states that there are issues of child safety and that diverting the route away from this area would reduce the risk to child pupils. I acknowledge the School's concerns about safeguarding and safety and appreciate that these are matters which must be taken seriously.
38. However, it has not been suggested that there have ever been any incidents relating to the safety of either a pupil or member of staff. Gareth Thomas MP pointed out that the School operates in an environment of its facilities being used by members of the public and that there are many points of public access to the playing fields. Nevertheless, he was not aware of any conflicts with members of the public having occurred. I also note that pupils live in boarding houses within Harrow-on-the-Hill, walk along the High Street on a daily basis and use Football Lane to access various School facilities, all of which will bring them into contact with members of the public. It is difficult to see why it would be more likely for incidents to occur on FP57, or indeed FP58, than elsewhere.
39. There is some debate about the number of spectators likely to be present in the paved area between the pitches, with the number seen varying from witness to witness. Mr Arundell, who I accept is most likely to have detailed knowledge, referred to 50 -100 spectators, rising to around 200, or perhaps

⁵ There is some disagreement as to the exact line of FP57 where it crosses the courts

even 300, during house competitions on Sunday afternoons during term times. Mr Eaglesham, whilst stating that "site observations...have confirmed that this area can become congested with pupils during sporting events or activities and would make passage through this area by the public more difficult at these times", had seen about 40-50 spectators within the paved area, often congregated in groups. Ms Lloyd referred to "perhaps 30 – not hundreds". Councillor Anderson said that when she walks through on a Saturday morning there may be 15-20 spectators but she accepted that there may be more spectators on other occasions.

40. There are no reports of any conflict between users of FP57 and spectators. The only evidence any one provided of an "incident" was Mr Eaglesham's reference to an occasion when he had witnessed a dog on a lead becoming excited. Councillor Anderson stated that she is a Harrow "Walks for Health" leader and that since it has been possible to walk the definitive line between the pitches, there have, in her experience, been no real conflicts resulting from the use of FP57. She stated that it was "quite nice" to walk between the astroturf pitches when matches were being played.
41. The paved area between the astroturf pitches is 7 metres wide and runs for the full length of the pitches, plus run off areas. It seems to me that even on the occasions when there are considerable numbers of spectators there would be sufficient room for members of the public to pass with ease. If it is the case that access becomes restricted because of spectators or pupils congregating in key areas, such as around the entrances to the pitches, or, as suggested by the School, kit left in the paved area causes an obstruction, I agree with the objectors that there are various ways in which this could be managed by the School.
42. It was also suggested that the sports being played on the astroturf pitches could result in a user of FP 57 being struck by a football or hockey ball. However, there is fencing the full length of the pitches and there are no reported incidents of anyone in the paved area being hit by a ball. I accept that, should a ball come over the fencing, a footpath user may be at greater risk of being hit than a spectator, as the latter would be more likely to be focussed on the game being played. However it cannot be assumed that spectators would always be closely following games on both pitches.
43. The School reports that since the gates to the paved area between the astroturf pitches were permanently unlocked there has been a problem with illegal use of the astroturf.⁶ However this appears to have been mainly due to the gates to the pitches themselves having been left open⁷, there being nothing other than anecdotal reports of people climbing over, which reports date from a time when the fencing was lower. Although Mr Arundell referred to the problem of staff having to constantly lock and unlock gates and the potential deficiencies of using combination locks, the locking of the gates to the pitches is a matter which is within the School's control.
44. Reference is also made to mud being brought on to the paved area, which it is submitted can cause a hazard to pupils and can be carried on footwear onto the astroturf pitches. I accept that it is likely that any mud would originate

⁶ Stated by Mr Arundell in his evidence in chief to be 2-5 times per month on the tennis courts or Astros

⁷ Mr Arundell stated that the gates are opened first thing in the morning and are then supposed to be locked by staff at 2200 hours

from the Pebworth Road end of the route and that it may be brought in on the footwear of users of FP57. However, I note that boys playing Harrow football would also return from this direction and, although I am informed that they are instructed not to walk through the paved area in boots, photographic evidence has been produced of boot studs in the mud. Furthermore, there is no evidence of mud in quantities likely to cause a hazard, no recorded incidents of any pupils slipping in mud, and no evidence of any special cleaning of the pitches which has been required due to mud.

45. It seems to me that none of the problems to which the School refers in relation to the part of the footpath which passes between the astroturf pitches are significant. Nevertheless they are clearly of some concern to the School and there is no doubt that the School considers it to be in its interests to divert FP57 away from the astroturf pitches.

Footpath 58

46. FP58 crosses a number of marked out sports pitches. Many of the objectors state that the footpath was in existence for a long time before the pitches were marked out and the evidence before me suggests that the pitches were marked out in their current configuration or similar around the time of the planning permission for the tennis courts. Nevertheless the School states that there have been pitches on this land for many years prior to that time. I note the long tradition of sporting excellence at the School, the importance of the pitches to the School and the fact that pitches are also used by outside organisations such as rugby squads. I also note Mr Arundell's evidence that it would not be possible to reconfigure the pitches to avoid the definitive line without a loss in the number of pitches. Although Mr Eley has suggested ways in which the pitches might be able to be reconfigured, it is clearly the School's preference that, at least for the time being, the pitches remain in their current locations.
47. It is clear that use of FP58 when sport is being played on one of the pitches crossed by it would interrupt the sporting use and the School refers to the conflict which occurs. I accept that the word "conflict" does not necessarily mean physical conflict, whether actual or potential and can also mean a conflict of legal rights. I note the reference in the Council's letter of 27 September 2000, when a permissive route for the Capital Ring route was first raised, to "conflict occurs when walkers wish to use the path and matches are being played".
48. In practice it seems that any conflict is limited, both due to the fact that it is often the case that the pitches are not in use⁸ and, on the occasions when they are, all the evidence before me is that users divert around the pitch. For example Gareth Thomas MP described how he had used FP58 since he joined a running club at the age of around 15 and that in all the years he had been running he could only recall one occasion when a pitch he wished to cross was in use. On that occasion he ran around the edge of the pitch and spectators. Ms Lloyd said that on the couple of occasions when she had used the path and sport was being played she walked round the top of the pitch. Others stated that avoiding a match on such occasions was similar to diverting from the line of a footpath across a field to avoid cows or a farmer ploughing.

⁸ Mr Catherall calculated a usage of about 6.5% of daylight hours based upon the charts put in evidence by the School.

49. The School also states that use of FP58 leads to a problem of dog faeces on the pitches. It is clear from the evidence and from my own observations that the School's playing fields are a popular location for dog walking and that not all dogs are walked on leads. I also accept that not all dog owners are responsible and that it is not unlikely that there will be occasions when dog faeces is not removed. This is, of course, particularly undesirable in areas where sports are played.
50. However, although it might be supposed that the number of incidents on the pitches might decrease if there was no public footpath directly crossing the pitches, the surveys provided by the School⁹ do not demonstrate a more severe problem in the location of FP58, or indeed of FP57, than elsewhere. On the evidence available to me I find it difficult to conclude that the diversions proposed would lead to a marked reduction in the problem experienced by the School. Indeed I note the lack of bins available and consider that there are measures which the School could take to reduce the problem.
51. Similarly I question whether the diversions proposed would make a material difference to the extent of trespass experienced by the School. I appreciate that many members of the public do not adhere to the rights of way and that trespass, both intentional and unintentional, is common. However the incident logs show that trespass occurs in numerous locations throughout the playing fields and is not confined to the locality of public rights of way. Although I accept that it may be easier to control trespass if the rights of way are on clear and defined paths on the ground, there seems no doubt that over the years there has been an absence of signage. Ms Lloyd stated that all signs were removed during the 2003 works and that signage has only recently improved. Mr Arundell accepted that it remains the case that waymarking could be improved. A number of objectors stated that they had had occasion to advise walkers who were unfamiliar with the area where they could go. The provision of appropriate signage may well go some way to reducing the extent of unintentional trespass.

Conclusions

52. I consider that many of the benefits of the diversions put forward by the School are over-stated. However, it is clearly in the interests of the School not to lose or to have the expense and inconvenience of reconfiguring or relocating tennis courts. Furthermore, although the definitive line of FP58 and the sports pitches can coexist, I accept that the School would prefer, even when no sport is being played, that walkers did not cross the pitches. In these circumstances I accept that it is in the interests of the School to divert the footpath away from the sports pitches rather than to reconfigure and maybe lose sports pitches.
53. Some of the objectors submit that the diversion orders are not in the interests of the School as the diverted routes would be longer than the definitive routes and the School would lose future flexibility. I note that at the time the Permissive Footpath Agreement was entered into, the ability to move the permissive route to accommodate changes in pitches was promoted by the Council¹⁰. The School accepts that its requirements may change in the future. However, the evidence before me is that the "sports pitches have been

⁹ Count on us, Transportation Data Collection and Tracsis, Traffic and Data Services. Tab 7, School's Statement of Case

¹⁰ Paras 16 and 20 above

arranged and marked out so as to maximise the use of all the available ground and space available"¹¹ and there is no evidence that future flexibility is a current priority.

54. I conclude therefore that it is expedient in the interests of the owner of the land crossed by the paths that FP57 and FP58 be diverted. I note that the School also submits that it is expedient in the interests of the public that the paths be diverted. The Orders were not made on that basis and as I have concluded that it is in expedient in the interests of the School that they be diverted I do not need to consider that matter further.

Whether the new routes to be provided would be substantially less convenient to the public

Footpath 57

55. In considering convenience the School submits that, as members of the public cannot presently follow the line of FP57 and must divert around the side of the tennis courts, the correct comparison is between the new route and that currently taken with the obstruction in place. This is on the basis of its submission that the tennis court netting is not a temporary circumstance. The reason for this, it says, is that the netting was erected pursuant to a lawful planning permission which was granted less than a month before the Permissive Footpath Agreement was executed and in its submission does not form a wilful obstruction. The School states that, given the Council's support for the School's position, there is no prospect of any proceedings to remove the obstructions and therefore the existing route of FP57 should be assessed as if it is obstructed.
56. The Council submits that the tennis court netting is a temporary obstruction and, if the diversion order is not confirmed, it would require the obstruction to be removed. Circular 1/09 refers to temporary circumstances as "including any buildings or other structures preventing or diminishing the use of the way". The grant of planning permission does not authorise the obstruction of a right of way and in my view it would be incorrect to assess whether or not the new way is substantially less convenient on the basis that walkers are unable to follow the definitive line at present. Whether or not that obstruction is "wilful" has little relevance to this question.
57. The School states that if the obstruction has to be removed it would cut two holes of the appropriate width in the netting so that users of FP57 could cross the courts. On this basis I consider that the proper comparison is between the diverted route and the unobstructed definitive line passing through the tennis courts via gaps in the fencing.
58. The diversion order would result in an increase in the length of FP57 by about 107 metres, which the Council submits would result in an additional walking time of approximately 1 minute and 47 seconds. The evidence indicates a mix of recreational and non-recreational use, although I accept that the majority appears to be the former. I agree with the School and the Council that recreational walking is likely to be less time critical although I note the evidence of Mr Catherall with regard to the time pressures on his morning dog walk.

¹¹ Ralph Arundell proof para 26

59. FP57 commences at Pebworth Road and finishes at Point A and non-recreational walkers in particular are therefore unlikely to use FP57 in isolation. Ms Lloyd described a 20 minute walk from her house on Pebworth Road to Harrow-on-the-Hill. Although an additional, maybe 2 minutes, on this journey may be less convenient, it is difficult to conclude that it would be *substantially* less convenient.
60. Some of the objectors have also referred to the nature of the surface of the 2 routes. I note that the diverted route where it passes between the tennis courts and the astroturf compounds crosses slightly rough ground and a manhole cover. I also note that alongside the astroturf pitches, in order to avoid the lighting columns, the path would have to be located on the top part of a slope. Objectors also state that the ground between Points B and C is often wet and muddy.
61. The School has recently constructed a boardwalk over part of this area, which I accept is of insufficient width for a public footpath. However, the School has confirmed that whatever is required to be done to bring the diverted route "into fit condition for use by the public" will be carried out at the School's expense in agreement with the Council, and that any surfacing required will be sympathetic to the character of the area.
62. In any event the definitive line of FP57 also crosses a muddy area at Point B and has a slippery bank between the car park and the tennis courts. Although I accept that the bank was constructed as part of the tennis court development, it is not an obstruction which can be disregarded and there is no suggestion that the School would be prepared to remove it.

Footpath 58

63. The route of FP58 would be increased by 160 metres with, the Council submits, an additional walking time of approximately 2 minute and 40 seconds. Again I accept that the majority of use is likely to be recreational and generally not time critical. I also accept that, in particular for non-recreational use, it is unlikely to be walked in isolation. Mr Parker gave evidence that he uses it to walk to the pub in Harrow-on-the-Hill and Mr Eley referred to use of it as part of a considerably longer walk. Again, although some walkers may find the extra distance less convenient, in the context of their overall walk it cannot be said to be *substantially* less convenient.
64. As with FP 57 the School has undertaken to the Council that it proposes to make up the diverted routes where they are not on existing paths to a condition suitable for pedestrian use, taking into account the character of the area. Although some users may prefer to walk across the grass pitches, the fact that part of the diverted route is along existing track cannot be said to make it *substantially* less convenient.

Conclusions

65. Although both FP57 and FP58 would increase in length as a result of the diversions I do not consider that the additional length of either of them would result in the new routes being *substantially* less convenient to the public. There are no other factors which would lead me to that conclusion.

66. I also note that the creation order routes would add new definitive routes, making some, albeit perhaps not common, journeys, for example from Peabworth Road to the Northwick Park Hospital, slightly shorter.

Whether it is expedient to confirm the Orders having regard to the effect of the diversion on public enjoyment of the way as a whole, and any other relevant matters

Footpath 57 – effect on public enjoyment

67. As previously stated I agree with the Council that the obstruction presented by the tennis court fencing is a temporary circumstance. However, the minimum which would need to be done in order to allow the public to use the definitive route would be to make appropriate gaps in the fencing. That is what the School says that it would do and I shall therefore consider the effect on public enjoyment on that basis.
68. The School also states that it would erect 2 metre high fencing either side of the definitive route as it crosses the tennis courts. The unaffected courts would remain in tennis use and the narrow strip of land to the west of FP57 would, it is suggested, be used for other purposes, for example to carry out cricket, or other sports practice. The School submits that this “fallback position” should be taken into account in any consideration of the effect on public enjoyment. The Council agrees with this submission.
69. It seems to me that there is a wide range of action which the School could take in the event that the diversion order is not confirmed. The School made it very clear that the loss of any tennis courts would be unacceptable as 12 are required both for School use and for the Harrow Lawn Tennis Club. Some of the objectors stated that they did not wish to see the School lose the tennis courts and both Mr Eley and Mr Catherall proposed ways in which the courts may be able to be reconfigured. Although it may well be the case that such reconfiguration might not represent the optimum layout for courts, it is difficult to accept that, given the position of FP57, the School would lose 6 tennis courts, fence either side of the public footpath and introduce an alternative sporting use to the narrow strip of land to the west, rather than explore alternative solutions.
70. In addition Mr Eley proposed an alternative diversion along the paved area to the west of the tennis courts and only a short distance from the definitive line of FP57 (the Eley Route), thereby leaving the tennis courts unaffected. I agree with the School that there is no guarantee that there would be no objections to any such proposal. I also note that Mr Arundell states that the School had considered possible alternative routes, including the Eley Route¹² and possible re-configurations but that none of these was in its view practical or feasible. However no detail of the routes or re-configurations considered has been provided to me and similarly neither has any detail of the School’s proposals for the narrow strip of land to the west of FP57 in the event that the Order is not confirmed. I also note the comment of Mr Catherall that the fencing the School suggests would be constructed around FP57 would be seen as “somewhat unfriendly or even hostile” and would harm the School’s reputation and relationship with the public.

¹² Mr Arundell stated that this route was not acceptable to the School primarily because members of the public would be passing between the tennis courts and the athletics pitch and there may be issues of mud.

71. It seems to me that the fallback position presented to me is far from inevitable and that it is not the correct basis on which to carry out a comparison of the enjoyment of the existing and diverted routes. However, as the School has presented it to me as the consequence of not confirming the Order I shall consider whether implementation of the fallback position would alter my overall conclusion on public enjoyment of the route as a whole.
72. Objectors refer to a number of views which can be enjoyed from both FP57 and FP58. These include the eastern slope of the hill from the Boyer Webb Pavilion up the historic ridge to the skyline which includes a number of listed buildings such as the Grade 2* Vaughan Library and Chapel and the Grade 1 St Mary's Church. Reference is also made to Harrow Park which is the only Grade II listed park in the Borough and was set out by Capability Brown around 1768. The view from FP57 is described by objectors as "panoramic" and "exceptional", with references to "the fine view of Harrow-on-the-Hill and the magnificent spire of St Mary's Church" and "cherished views of the Grade II Listed park and of the historic ridge".
73. At my site visit I walked the definitive route and proposed diverted route in both directions and carefully considered the views throughout. Leading away from Harrow-on-the-Hill, from Point A, the definitive route crosses a car parking area and then down a quite steep and slippery grass bank towards the tennis courts. It then passes through the tennis courts. The views ahead, particularly once the bottom of the bank is reached, are unexceptional consisting mainly of the fencing and the hard playing surface of the tennis courts. To the right views of the wider area, including of Harrow Park, are impeded by the route being in a dip as a result of works which took place when the tennis courts were constructed.
74. Between the tennis courts and the astroturf pitches is an area of open grassland from where good views towards Harrow Park are available. Ahead is the fencing of the astroturf pitches and the route then enters this area and passes between the pitches along a wide paved area punctuated by lighting columns. Views are available to the right, across one of the pitches, to Harrow Park. The route then leaves the astroturf pitches to cross a muddy area to Point B with views ahead into fields. FP 57 then leads across the fields in an almost straight line towards Pebworth Road. On this part of the route, which is unaffected by the diversion order, there are views of the Wembley Arch and various tall buildings in the City.
75. Walking in the opposite direction, one arrives at Point B from Pebworth Road and continues in an almost straight line, through the muddy area towards the fencing of the astroturf pitches and the lighting columns between the pitches. On emerging from the muddy area there is suddenly a clear view of Harrow-on-the-Hill and its many listed buildings. Point A is visible in a straight line ahead. The route passes between the pitches but the height of the fencing is such that the views of Harrow-on-the-Hill are not restricted and in the area between the astroturf pitches and the tennis courts the view is unimpeded. Once the tennis courts are entered there is still a view of the buildings over or through the fencing but at this point the view is, in any event, less panoramic due to the proximity of the hill and its buildings.
76. The diverted route heads away from Point A along FP59 for a short distance and then turns alongside the tennis court fencing, to the east of the courts. At

the time of my site visit views were available through the court fencing, although in places the view is impeded by the awning over the seating area between the courts. I also understand that at times the fencing is covered by a fine mesh which impedes the view through. In the absence of the mesh it was possible to see Harrow Park beyond the courts, albeit through the court fencing.

77. At the end of the courts the route passes over the open grassed area, over slightly rough ground and a manhole cover. Prior to reaching the astroturf pitches there are unimpeded views to the right towards Harrow Park. The route then passes alongside the eastern boundary of the astroturf pitches and due to the presence of lighting columns would be located about 1.5m away from the fencing at the edge of a sloped area. Views of Harrow Park are restricted by high fencing and the view ahead is pleasant but unexceptional. At the end of the courts, at Point C, the route crosses at an angle to join Point B.
78. Walking from Point B to Point A, the diverted route turns away from the natural desire line to head towards Point C and then turns alongside the astroturf fencing. At this point the height of the fencing is about 3.5m and views of Harrow Park are restricted by this and other sporting paraphernalia. A view of the listed buildings of Harrow-on-the-Hill is available at an angle but again is restricted by the fencing. In the area between the astroturf pitches and the tennis courts the views are unimpeded. When the tennis courts are reached, any view is through the courts, which I accept will sometimes be further impeded by fine mesh.
79. In accept that, in particular when walking from Point B towards Point A, the panoramic view of the listed buildings on Harrow-on-the-Hill available from FP57 adds considerably to the enjoyment of the route. The views from FP57 where it passes through the astroturf pitches are to a large extent unspoiled by the presence of the pitch and fencing whereas the higher fencing adjacent to the diverted route significantly detracts from the enjoyment of the view. When the tennis courts are reached, the views from the definitive route are considerably more restricted and, in my opinion, little better than those available from the diverted route. This would not however be the case on occasions when the fine mesh is in place.
80. In the event that the School implemented its fallback position, walking between 2 metre high fencing would detract further from the enjoyment of views on this part of FP57. However the longer distance views available between Point B and the tennis courts would be unaffected. Although it is only from that part of the definitive route, and when walking in that direction, that clear views of Harrow-on-the-Hill are available ahead, I agree with the objectors that those views are exceptional. To divert away from that view, around the high fencing of the astroturf pitches, and to see the view through that fencing would have a significant impact on public enjoyment of the route as a whole.
81. The School states that no-one has claimed that the route is ancient and that the only information available is that it has been a public footpath since the date of the first definitive map. The details of how FP57 came to be on the first definitive map have not been made available to me but I note that the route is shown on the Ordnance Survey map c1868. Although this does not necessarily mean that it was considered to be public at that time it does mean that it existed on the ground as a route.

82. Ms Ashbrook states that FP57 "is clearly an ancient route: it can be traced back to the early nineteenth century at least, when it connected Sudbury to Harrow-on-the-Hill in an almost straight line..... the diversion will result in a loss of historic continuity. Walkers appreciate that they are following an ancient route and the knowledge of the history adds to their enjoyment of the path". Ms Lloyd stated that she had a strong feeling of historic continuum in walking paths used for generations and had a desire to preserve them for others. Councillor Anderson stated that FP57 was an important historic path linking Sudbury to the church and school which are historic sites and that these historic links are important to many residents. The Council describes the route as "in existence historically over hundreds of years"
83. I acknowledge the School's submission that it is almost always the case that public footpaths proposed to be diverted are historic and that in this case there is no evidence of historic association with a particular person or event. Nevertheless, in my opinion the fact that the route leads in a straight line towards an obvious historic destination, with a clear view of that destination, adds considerably to the enjoyment of the route.
84. A number of objectors referred to the straightness of the route. Ms Lloyd stressed the importance to her of walking in a direct line to her destination and Mr Catherall said that he "would not want to walk at 90 degrees to my destination". I agree that on reaching Point B the natural desire is to continue in a straight line towards Point A, not to turn away towards Point C. The straightness of the route gives walkers a sense of purpose which is lost on a route which turns at angles to avoid modern, man-made features.
85. For all of these reasons I conclude that the proposed diversion of FP57 would have a significant adverse effect on public enjoyment of the way as a whole.

Footpath 58 – effect on public enjoyment

86. FP58 runs from the A404 Watford Road at Point G in a direct east-west line to Point A, heading almost directly to the church spire. The panoramic view of the hill and its many historic buildings is in front of the walker throughout, described by Mr Thomas MP as "spectacular" and a vista that he didn't want to have to "enjoy from the side" and by Mr Parker as "wonderful". The views in the opposite direction are less exceptional although there are glimpses of various landmarks such as Wembley Stadium and tall buildings in the City.
87. The diversion would introduce a zig-zag with 2 right angle bends. The part of the route from A to H is already available to the public as FP59 and the route then turns to follow an existing service road and then turns again at Point E. When walking from Point G, through Point E and H towards A, at no time is the panoramic view of the buildings on Harrow-on-the-Hill directly ahead. I consider that this results in a significant loss of enjoyment.
88. Ms Ashbrook states that a walker's sense of direction and purpose is lost and Mrs Roake suggests that "it is natural to set one's eye on a destination and walk straight towards it". I agree that the route seems purposeless when compared with the direct line of the definitive route.
89. Mr Eley states that St Mary's Church was consecrated in 1094 and that although little of the original structure remains it has been in continuous use as a place of Christian worship since that time. He submits that FP58 was the way

to and from church and that the “proposed new route would destroy that visual connection with the area’s most prominent landmark, a connection that has subsisted for over 900 years”. In his view “this ancient right of way has heritage value that should not be casually overlooked. The straightness is characteristic of a “Coffin Road” – a rarity in England. Thus the straightness is part of the heritage”.

90. Ms Ashbrook also submits that FP58 is “clearly part of an ancient route”, shown on the Ordnance Survey map c1868, continuing on to Fryent Park and connecting 2 hill tops. She submits that the diversion will result in a loss of historic continuity. Mr Eaglesham said that it was used as a historic route to the church and has historical significance.
91. As with FP57 I conclude that the fact that the route leads in a straight line towards an obvious historic destination, with a clear view of that destination, adds considerably to the enjoyment of the route.
92. For all of these reasons I conclude that the proposed diversion of FP58 would have a significant adverse effect on public enjoyment of the way as a whole.
93. It is suggested by some objectors that the part of the route along the service road would be less enjoyable due to it being shared with traffic. Currently the track is used primarily by farm vehicles and ground staff and I accept that its use is far from intensive. Reference has been made to a current planning application made by the School for a new sports development which promotes the use of this route by construction traffic. Although I accept that intensive use of the route by vehicular traffic, and in particular construction traffic, would further reduce the enjoyment of the route, permission has not as yet been granted and this is not therefore a matter to which I can attach significant weight.

Conclusion on public enjoyment

94. I note the submission that the overall package of proposals should be taken into account. However, there are no views from the creation order routes which would compensate for the loss of views from the definitive line of either FP57 or FP58. Furthermore, as Mr Catherall points out, the diverted route of FP58 between H and E (and indeed continuing as part of one of the creation orders to Point D) would be parallel to much of the diverted route of FP57 and without a great distance between, thereby reducing variety.
95. The Council also submits that the diverted routes together with the creation order routes, close to trees and along the stream would be of greater biodiversity interest and that that this would add to public enjoyment. I note that some of the objectors consider that recent works undertaken by the School in various locations harm rather than enhance biodiversity. In any event I consider that any increase in enjoyment as a result, for example, of walking closer to the stream, is far outweighed by the negative impacts I have identified.
96. I conclude that even when considered as a package rather than as individual routes the adverse effect on public enjoyment of the routes as a whole is significant.

Any other relevant matters

97. A number of the objectors state that the School has illegally obstructed the route of FP57 and that this “wilful obstruction” should be taken into account. Reference is made to the judgement in *Ramblers’ Association v Secretary of State for the Environment, Food and Rural Affairs and another*¹³. I accept that the fact that certain factors are specified by statute does not narrow down the scope of expediency and that I should take into account all considerations that are material.
98. The School maintains that its actions are “the very opposite of wilful obstruction” and refers to the “School’s conduct in discussing, consulting on and agreeing matters, executing the permissive footpath agreement and implementing the lawful 2003 planning permission (the application as to which was consulted upon, in parallel, between 2001 and 2003)”. The Council states that the obstructions were not wilful so as to amount to a criminal offence.
99. There is no doubt that the 2003 planning permission did not, and could not, authorise the obstruction of a public right of way. Indeed, although I note the School’s submission that the consultation on the school’s planning application and subsequent grant of planning permission took place in parallel with the discussions involving the Ramblers’ Association and others as to alternative routes, the extent to which the definitive line of FP57 was taken into account in the grant of planning permission is unclear. The documentation which has been made available with regard to the planning permission is limited and that provided is silent with regard to the existence of a public right of way which would be obstructed by the development.
100. No-one from the Council, the School or the Ramblers’ Association who was involved at the time of the grant of the Planning Permission or the execution of the Permissive Footpath Agreement or the process leading up to either gave evidence at the inquiry. However it is clear from the documentation provided that although the Planning Permission and the Permissive Footpath Agreement have similar dates, it is the consideration of an alternative route to FP 58 for inclusion in the Capital Ring route which started the process which resulted in the Permissive Footpath Agreement.¹⁴ Initially it had nothing to do with the School’s planning application or FP57.
101. It is also clear that the Permissive Footpath Agreement did not, and could not, extinguish or divert the definitive rights of way. The Council made this clear both prior to entering into the Permissive Footpath Agreement¹⁵ and thereafter.¹⁶ It is difficult to accept that the School did not understand the position, particularly given the letter from the School to the Council which states that the School’s solicitors had advised that its interests may be better protected by diverting the right of way by an order made under s119 of the Highways act 1980¹⁷. The school bursar’s note also records that the “Ramblers’ Association would probably not be happy to see ancient rights of way permanently diverted”¹⁸.

¹³ [2012]EWHC 3333 (Admin)

¹⁴ Letter dated 27 September 2000 from the Council to the School, referred to at paras 14-16 above

¹⁵ Letter dated 10 May 2002 from the Council to the School, referred to at para 19 above

¹⁶ Letter dated 16 December 2003 from the Council to the School, referred to at para 26 above

¹⁷ Letter dated 2 May 2001 from the School to the Council, referred to at para 18

¹⁸ Details of note at para 21 above

102. It appears however that the fact that the definitive statement describes the routes of both FP57 and FP58 as “undefined” has led to some confusion. The School appears to have attached considerable importance to this and I note that it is referred to in a file note of a conversation with the Ramblers’ as the reason why the Ramblers’ found the permissive route around the tennis courts and astroturf pitches acceptable.¹⁹ I also note the School’s insistence that the definitive route of neither FP57 nor FP58 be shown in the Permissive Footpath Agreement.²⁰ It is also cited by the School in its response to the Council when the Council wrote to the School following complaints about FP57 being blocked.²¹
103. It seems to me that the position is not clear cut. However, insofar as the School appears to attach some weight to its view that the Ramblers’ had agreed to the diverted routes and have now gone back on this position, this is simply not apparent from the documentation provided to me. It is clear to me that both the Council and the Ramblers’ Association were discussing permissive routes in addition to the definitive routes. There was no suggestion that the definitive routes be formally diverted and no consideration of whether the statutory tests for diversion would be met. To the contrary, Mr Gray records in one of his notes that the “Ramblers’ Association would probably not be happy to see ancient rights of way permanently diverted”.
104. Both the School and the Council refer to the fact that the Council is the democratically elected body which made the Orders following due process and after having taken into account all the objections and representations made. They also point out that the Council fully supports confirmation of the Orders. Nevertheless there were objections to the Orders and accordingly they are now before me, on behalf of the Secretary of State, to determine whether they should be confirmed or not. This situation is in no way unusual.
105. The School also states that there are only a “handful of objectors”, that they don’t represent others and that they are not experts. I accept that none of the objectors states that they appear formally on behalf of others. However, I note that as well as a number of local people, 2 ward councillors and the Member of Parliament for Harrow gave evidence at the inquiry. Councillor Perrin stated that following an article in his local Residents’ Association magazine he had received written responses in support of his objections. I accept that, given the time and energy involved in preparing for and appearing at an inquiry, many people are content to allow others, who they consider may have more expertise than them, to pursue the matter. I do not find the level of objection in this case to be unusually small or to be a matter which should weigh against the objectors.
106. The School submits that the creation orders will, if confirmed, lead to the creation of additional statutory footpaths and circular routes which do not exist at present. I accept that the creation orders can only be confirmed if the diversion orders are confirmed and therefore that these additional routes will only become available as part of an overall package. Nevertheless I have concluded that the overall package results in a significant adverse effect on public enjoyment and this therefore limits the weight to be attached to the creation of these routes.

¹⁹ Details of note at para 23 above

²⁰ Letter dated 1 April 2003 from the School to the Council, referred to at para 24

²¹ Letter dated 2 January 2004 from the School to the Council, referred to at para 27

107. Confirmation of the diverted route of FP58 would result in this section of the Capital Ring route being made definitive rather than permissive. The evidence is that it is a well-used recreational route and I accept that, as a permissive route, the long term future of this part of the route is not guaranteed. I also note that the Capital Ring route is a key walking route supported in the ROWIP. However, although the current agreement relating to the permissive route terminates on 31 March 2019 unless it is renewed, the School has confirmed that it has no present intention to withdraw the route. I note the School's evidence that it could do so if circumstances changed, for example if there was a need for drainage works. However, in such circumstances the definitive line of FP58 could be used. Although I accept that making the line of the current Capital Ring route definitive has some benefits, it is not a matter to which I attach significant weight.
108. It is suggested that confirmation of the diversion order in respect of FP57 will enable members of the public to use a route that many of them use already. Indeed at my site visit I saw people walking the diverted route. However, it is clear that the part of the definitive route of FP57 through the astroturf pitches was obstructed for many years and that the part through the tennis courts remains unavailable. There is also evidence that walkers have been challenged when trying to use the definitive line or diverting around the obstructions²² and that due to a lack of signage the definitive route has been unclear²³. I also accept that more recently the construction of boardwalks on the diverted routes will have encouraged walkers to use those routes. In these circumstances it is difficult to conclude that walkers seen on the diverted route are using it in preference to the definitive route.
109. The School states that a decision not to confirm the diversion of FP57 would mean that 6 of the tennis courts could no longer be used. The School is contractually obliged to provide the Harrow Lawn Tennis Club with the use of 12 courts and it therefore suggested that this loss would be likely to result in the end of the use of the tennis courts by that club, which has about 250 members of the public as members. It is submitted that this would be against the public interest and also the policy of Sport England to encourage the maximisation of participation in sport as well as sharing private facilities with others.
110. I agree that it would be unfortunate to lose 6 tennis courts and, as previously stated, some of the objectors have made it clear that that is not what they would wish to see happen. Also, as previously stated, objectors have suggested ways in which the courts could be reconfigured or FP57 diverted, for example, along the Eley Route. Councillor Anderson stated that in principle tennis courts should not be lost and she suggested a diversion "just to the side...following the natural line". Mr Catherall said that the Eley Route was a sensible idea, although the embankment to the car park was steep and the land levels should be reinstated.
111. Ms Ashbrook said that if the Eley Route had been discussed the Ramblers' and Open Spaces Society may have agreed not to object as a compromise. Indeed I note the correspondence between Graham Wright of the Ramblers' Association and David Eaglesham in December 2011 in which Mr Wright clearly proposes the Eley Route as a long term solution "given that the courts have

²² Mr Eley states that he was accosted by maintenance staff on 13 December 2011 and accused of trespassing

²³ Mrs Roake and Ms Lloyd refer to waymarks having been removed by the School.

already been built”²⁴. Mr Eaglesham’s response²⁵ states on behalf of the Council that “our preferred way of resolving this matter would be for the footpath between the football pitches to remain unobstructed (no gates) and for the minor diversion around the tennis court to be progressed through the necessary legal process so that it is formalised and recorded on the definitive map”. Although there is no plan attached to the e-mail it is clear that the route referred to is the Eley Route or something very similar. Ms Lloyd stated that the Eley Route was originally the Council’s preferred route but “the School simply would not agree to it”.

112. No alternative route is before me and it is not for me to assess whether the Eley Route, or any other route, passes the statutory tests. Nevertheless it is clear that the School could propose a different diversion of FP57 or could look at ways in which the courts could be reconfigured to avoid the loss of so many, or indeed any, courts. I do not accept that it is an inevitable, or even likely, consequence of not confirming this Order that 6 tennis courts will be lost without replacement. This therefore reduces the weight which I attach to the potential loss.
113. Similarly not confirming FP58 does not inevitably mean that any pitches will be lost. It would be for the School to decide whether or not to reconfigure the pitches to avoid the definitive line of FP58. Although the School states that the reconfigurations suggested by objectors at the inquiry are not feasible or practical, I am not satisfied that some reconfiguration could not be carried out if the School considered avoiding the line of FP58 to be paramount.
114. Although the broad objectives of the Council’s ROWIP are relevant in considering any changes to the rights of way network, and I note the support of the Capital Ring route in the ROWIP, there are no other aspects of the ROWIP which have been brought to my attention which I consider to be of particular relevance to this case.

Whether it is expedient to confirm the Orders

115. In relation to FP57 there is a clear benefit to the School in diverting the footpath away from the tennis courts which obstruct the definitive line. Although a number of objectors state that the obstruction is “wilful” and that this should be taken into account in considering expediency, from the documentation provided to me the situation does not appear clear-cut. Furthermore, although I do not accept that not confirming the Order will necessarily result in the loss of 6 tennis courts, I acknowledge that not confirming the Order will have significant consequences for the School. The benefits to the School in diverting the route of FP57 from between the astroturf pitches are less obvious. In my opinion the problems which the School state it experiences due to the definitive line of FP57 passing between the pitches are either over-stated or could easily be better managed by the School.
116. The impact of the diversion on public enjoyment of the route as a whole would be considerable. Although I have concluded that it is only in one direction and only on part of the route that the adverse impact on views would be significant, I give considerable weight to the enjoyment of those views,

²⁴ E-mail from Graham Wright to David Eaglesham dated 16/12/2011, Tab 13, page 100 to Ms Lloyd’s Statement of case

²⁵ E-mail from David Eaglesham to Graham Wright dated 20 Jan 2012, Tab 13, Page 99 to Ms Lloyd’s statement of case

which, I agree with objectors, are exceptional. I also accept that the fact that the definitive line is straight, leading to and with views ahead of, a historic destination adds to public enjoyment of the route, whereas, in contrast the diverted route leads away from the obvious desire line to skirt man-made features.

117. None of the other matters raised add significant weight either way and accordingly I conclude that, having regard to the effect of the diversion on public enjoyment of the way as a whole and any other relevant matters, it is not expedient to confirm the order in respect of FP57.
118. Although I have concluded that it would be in the interests of the School to divert FP58, it seems to me that the conflict referred to is limited. I also query the extent to which the problems referred to by the School, such as trespass and dog faeces on pitches, would be resolved or diminished by the proposed diversion and consider that the School could take other measures to reduce the problems.
119. The impact on the public's enjoyment would however be significant and I attach considerable weight to the "spectacular" views currently enjoyed. The straightness of the route and the sense of purpose and history the route provide add to the public enjoyment. The diverted route would provide none of these benefits and would lead to a considerable reduction in public enjoyment.
120. None of the other matters raised add significant weight either way and accordingly I conclude that, having regard to the effect of the diversion on public enjoyment of the way as a whole and any other relevant matters, it is not expedient to confirm the order in respect of FP58.

Conclusion

121. Having regard to these and all other matters raised at the inquiry and in written submissions I conclude that it is not expedient to confirm the diversion orders in respect of either FP57 or FP58. Accordingly the creation orders cannot be confirmed.

Formal Decision Order Ref: FPS/M5450/4/1

122. I do not confirm the Order.

Formal Decision Order Ref: FPS/M5450/4/3

123. I do not confirm the Order.

Formal Decision Order Ref: FPS/M5450/6/1

124. I do not confirm the Order.

Formal Decision Order Ref: FPS/M5450/6/2

125. I do not confirm the Order.

Alison Lea

Inspector

APPEARANCES

FOR THE ORDER MAKING AUTHORITY:

Ms R Stockley, Kings Chambers, Manchester

She called
Mr D Eaglesham London Borough of Harrow

FOR THE SCHOOL:

Mr J Steel QC, 39 Essex Chambers, London
Mr S Whale, Landmark Chambers, London

They called
Mr R Arundell Operations Bursar, Harrow School

OBJECTORS:

Ms G Lloyd, local resident
Mr C Eley, local resident
Mr P Catherall, local resident
Ms M Roake, local resident
Mr J Parker, local resident
Councillor K Perrin, Brent
Councillor S Anderson, Harrow
Mr G Thomas, Member of Parliament for Harrow
Ms K Ashbrook, Open Spaces Society and Ramblers' Association Buckinghamshire,
Milton Keynes and West Middlesex Area

DOCUMENTS

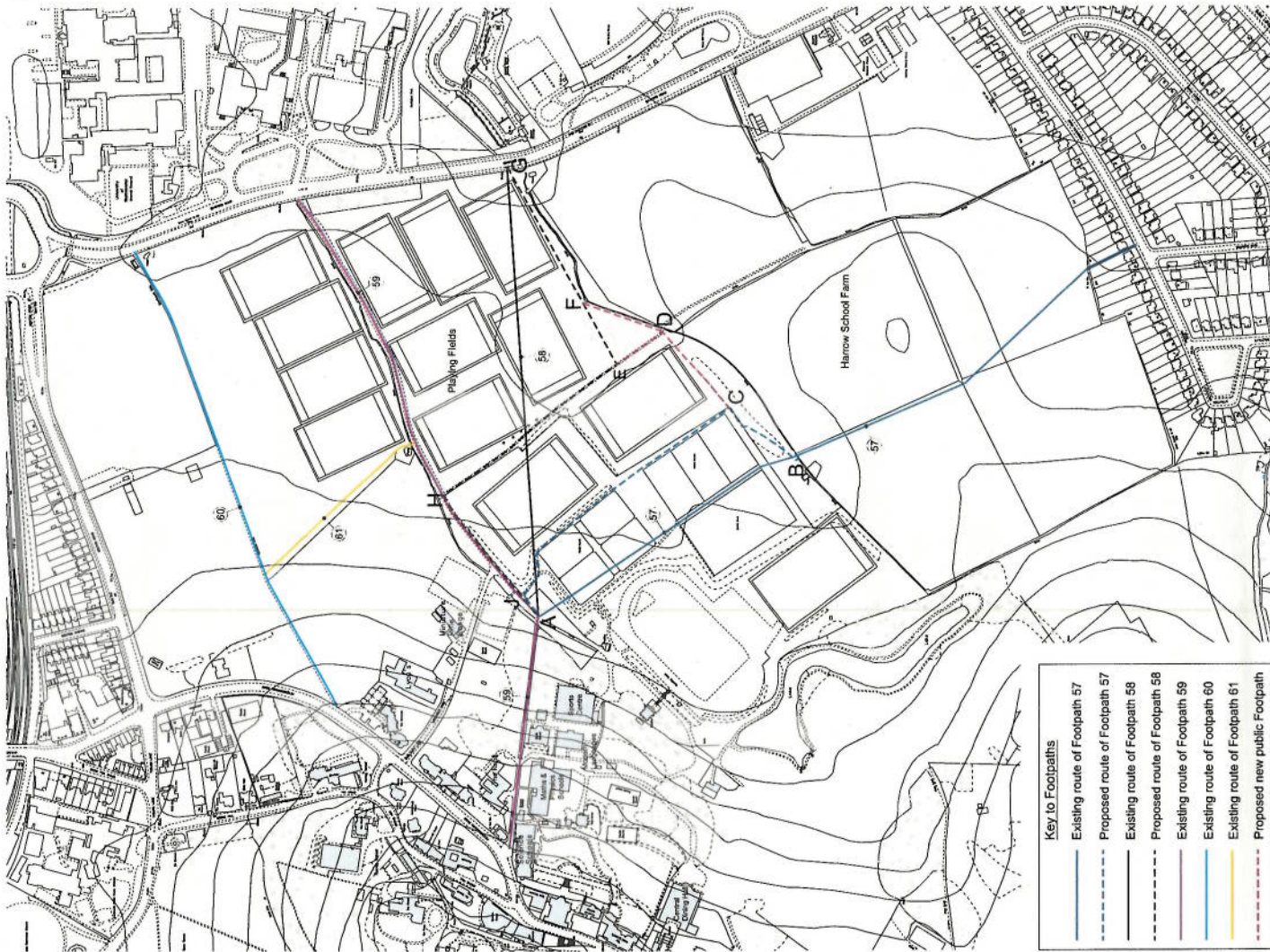
1. Report to Planning Committee, 12 February 2002
2. Table of distances to various destinations via existing and diverted routes
3. Revisions to table of distances
4. Estimate of construction site vehicle movements and indicative plans of possible temporary footpath diversions
5. Ducker Field Drainage Improvements – Flood Risk Assessment, July 2015
6. Planning for Sport, Aims and Objectives, Sport England
7. Dimensions of Tennis Courts, Government of Western Australia
8. FA Guide to Pitch Dimensions
9. Documentation relating to farming of area by Perrin family in 1916
10. Notice in London Gazette, 13 December 1955 recording registration of land at Sudbury Court Road to Perrin family
11. Documentation relating to clay pigeon shooting
12. Extract from Rights of Way by John Riddall and John Trevelyan
13. Extract from Public Rights of Way and Access to Land by Angela Sydenham
14. Extracts from General Permitted Development Order 2015
15. Judgement in Hertfordshire County Council v Secretary of State for the Department of Environment Food and Rural Affairs [2006] EWCA Civ 1718

PLANS

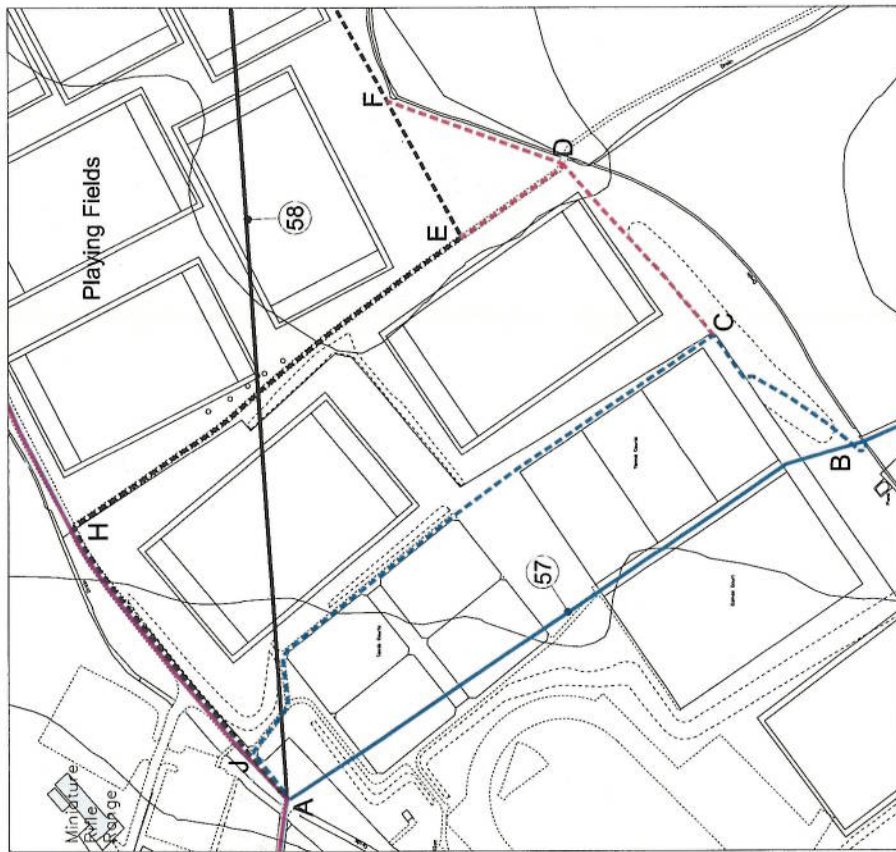
- A Plan showing layout of pitches on playing fields
- B Plan annotated by Mr Eley, 26 January 2017
- C OS map published 1868
- D Suggested alternative pitch and tennis court layouts

PHOTOGRAPHS

- 1 Bundle of photographs of walkers
- 2 Bundle of old photographs of the area
- 3 Bundle of photographs of area near to Point B



MAP NOT TO
ORIGINAL SCALE



1/1250 @ A1

Note: Base details and features to be checked for accuracy



Harrow School Sports East
Proposed division of no.s 57 & 58 Public
Footpaths and creation of new public footpath

14th August 2015