



Order Decision

Site visit on 18 October 2017

by Sue Arnott FIPROW

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

Decision date: 02 November 2017

Order Ref: ROW/3170991

'Order A'

- This Order is made under Section 119 of the Highways Act 1980. It is known as the Essex County Council Footpath 14 Great and Little Leighs in the City of Chelmsford Public Path Diversion Order 2016 and is dated 7 October 2016.
- The Order proposes to divert part of public footpath 14 to the north of Gubbion's Hall in Banters Lane, Great Leighs, as detailed in the Order map and schedule.
- There were twenty objections and three representations outstanding when Essex County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

Order Ref: ROW/3170984

'Order B'

- This Order is made under Section 118 of the Highways Act 1980. It is known as the Essex County Council Footpath 15 Great and Little Leighs in the City of Chelmsford Public Path Extinguishment Order 2016 and is dated 7 October 2016.
- The Order proposes to extinguish the public's rights over definitive footpath 15 to the north of Gubbion's Hall in Banters Lane, Great Leighs, as detailed in the Order map and schedule.
- There were twenty objections and three representations outstanding when Essex County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed with a modification as set out in the Formal Decision below.

Procedural Matters

1. I visited the site on Wednesday 18 October 2017 accompanied by Mr R Lee (on behalf of Essex County Council (ECC)), Mr M Stevens (the applicant), Mrs K Stevens, Mr J Thurlow (Footpath Representative for Great and Little Leighs Parish Council) and Mr M Lees (the local correspondent for the Open Spaces Society – Chelmsford District).
 2. The order-making authority, ECC, has drawn attention to an error in the Schedule to Order B and requested a modification to correct it. Here the grid reference given for Point B is wrongly stated to be "57535,21783" when it should have read "57353,21783". It seems to me that this is a simple drafting mistake, that no-one has been misled by this, and that in all other respects the intention of the Order is quite clear. Consequently, if minded to confirm this Order, I shall modify this grid reference so that the information ultimately recorded on the definitive statement is accurate.
-

The Main Issues

3. **Order A** has been made by ECC under Section 119 of the Highways Act 1980 (the 1980 Act). Therefore if I am to confirm this Order I must be satisfied that:
 - (a) it is expedient in the interests of the owner of the land crossed by Footpath 14 that the public right of way in question should be diverted;
 - (b) the new route to be provided will not be substantially less convenient to the public; and
 - (c) it is expedient to confirm the Order having regard also to (i) the effect of the diversion on public enjoyment of the path as a whole, and (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing path and the land over which the new path would be created together with any land held with it, having had regard to the provision for compensation.
4. **Order B** is made under Section 118 the 1980 Act. The requirements of this section are that, before confirming this Order, I must be satisfied that it is expedient to stop up the whole of Footpath 15 as shown on the Order B map, having regard to:
 - (a) the extent to which it appears that the footpath would, apart from Order B, be likely to be used by the public; and
 - (b) the effect which the extinguishment of the right of way would have as respects land served by the existing path, account being taken of the provisions as to compensation.
5. In the case of Order B, when addressing the issue of expediency, I am not required to examine too closely the question of whether or not this footpath is needed. That was a matter for the Council when it decided to make the Order, but at this (confirmation) stage I must focus on the path's likely use in future¹. The way in question may not be needed if there is an adequate alternative route available, but the Courts have accepted that confirmation is not necessarily ruled out if a path is likely to be used to more than a minimal extent in future². However, the answer depends on the circumstances.
6. Sub-section 118(6) of the 1980 Act requires that I disregard any temporary circumstances preventing or diminishing use of the path in question when determining the likely use that might be made of it.
7. Further, sub-section 118(5) enables any proceedings preliminary to the confirmation of an extinguishment order to be taken concurrently with any similar proceedings relating to a diversion order and thus to take into account the effect of any alternative path to be provided in a related order.
8. In determining both Orders I am required to have regard to any material provisions in any rights of way improvement plan for the area. However no specific issues have been raised in this case beyond the general desire to improve network connectivity. I am also mindful of the requirements of the Equality Act 2010.

¹ As demonstrated in the case of *R v Secretary of State for the Environment ex parte Cheshire CC* [1991] (QBD)[1991] JPL 537

² A principle articulated by Phillips J in *R v Secretary of State for the Environment ex parte Stewart* [1980] JPL 175

Reasons

9. In January 2016 an application was made by the owner of Gubbion's Hall Farm to resolve several problems concerning public rights of way on his land. The two routes at issue here, Footpaths 14 and 15 (Great and Little Leighs), are both shown on the definitive map as passing through the farm yard although neither route is currently walked by the public. Whilst Footpath 14 *could* be walked, the public have preferred to take a parallel route outside the farm enclosure. The line of Footpath 15 appears to have been obstructed since an agricultural building was erected at the farm some time before 1962.

Footpath 14

The interests of the owner of the land

10. The applicant has sought to legally divert the section of definitive Footpath 14 (shown on the Order map as A-B) on the grounds of health and safety and farm biosecurity whilst also seeking to align the right of way with the route now in use by the public (shown as A-B-C). He submits that it is not appropriate, or safe, to have a public path passing through a working farm with livestock and agricultural machinery.
11. Some objectors challenge the long-term intentions of the applicant, suggesting that he may be more interested in selling land for housing than farming. No evidence has been put forward to support this assertion and the applicant has responded by pointing to his intended investment in Gubbion's Hall Farm and commitment to farming in the area for the foreseeable future.
12. It seems to me that re-instating the definitive line of Footpath 14 would cause severe difficulties in terms of managing livestock within the farm yard at certain times of year, and for complying with requirements for biosecurity and other regulations. It would also present challenges in terms of limiting risks to the public. I have no doubt that re-aligning Footpath 14 would alleviate these problems and be expedient in the interests of the owner of the land.

Convenience to the public

13. The factors usually considered when assessing the relative convenience of the present and proposed routes include the length, width, gradient, surface and limitations.
14. In this case there is very little significant difference between the two routes. The 'new' footpath would be defined as 2 metres wide whereas the definitive statement does not record a width for Footpath 14 at present, offering a slight advantage. However the proposed route is very slightly longer but otherwise there is nothing to suggest the public would be inconvenienced to any degree as a result of this diversion.

Other considerations

15. Turning next to the effect the proposed diversion would have on the public's enjoyment of Footpath 14, some of the objectors' comments suggest that many would be more likely to feel their enjoyment was diminished if required to walk the definitive line instead. The proposed route stays outside the farm yard until it reaches Banters Lane, providing better views northwards across the field. In my opinion the diversion would not result in any detrimental effects on the public's enjoyment of Footpath 14 as a whole.

16. Compensation issues are not relevant here since the applicant owns the land over which both the present and proposed routes pass. No adverse effects arising from the diversion on any of the land concerned have been drawn to my attention.

Whether it is expedient to confirm Order A

17. In reaching a final conclusion on the expediency of this diversion I must weigh the advantages that would accrue to the landowner in whose interest the Order is made against any disadvantages that may result for the public.
18. In this case, in addition to the benefits to the applicant, I find there to be only advantages to the public from diverting Footpath 14 as proposed, thereby aligning the definitive line with the route preferred by the public and in so doing, avoiding any conflicts within the farm enclosure.
19. I am satisfied that the statutory tests have been met in relation to the proposed diversion of Footpath 14 and conclude that Order A should be confirmed.

Footpath 15

20. As regards the extinguishment of Footpath 15, identified as A-B on the plan attached to Order B, I recognise that the definitive line is not presently used by the public and has not been so used since at least 1962 when an agricultural building was erected across the path at Gubbion's Hall Farm.
21. As noted at paragraph 7 above, the legislation requires me to disregard this as a 'temporary circumstance' preventing people using the path when I assess the likely use of Footpath 15 in future. However the Courts have held that it is legitimate to consider whether or not the obstruction is "*likely to endure*"³. Given the length of time this building has been standing on this site, it seems unlikely that action would now be taken by the highway authority to enforce its removal.
22. Yet even if it were to be re-opened along its definitive line, in my view the likely use of this footpath would probably be quite limited. I accept that there may be some people who would wish to use Footpath 15 on principle, despite it passing through a farm yard which, at certain times of the year, is holding cattle. However, given the close proximity of the well-used Footpath 14 which connects with Banters Lane some 100m or so to the north, my conclusion is that the majority of people would prefer to avoid the potential conflicts and hazards within the farm enclosure by using this alternative. This leads me to conclude that, if the path were to remain, its likely use would be minimal.
23. No adverse effects on landowning interests have been raised and compensation is not a relevant issue here. Taking into account all matters raised, I consider it expedient to extinguish the section of Footpath 15 as proposed by **Order B**.

Other matters

24. Although many letters of objection were submitted within the relevant period generally opposing changes to public rights of way within the Parish, several

³ The words of Phillips J in the *Stewart* case (see Footnote 2 above): "... the prime question was, in the case of an obstruction, whether it was likely to endure."

appear to be based on a misunderstanding of the proposal(s)⁴, many people believing Footpath 14 (and others) to be proposed for closure. Few identify any specific concerns about this particular path diversion but I have considered all the objections and representations where relevant.

Conclusion

25. Having regard to the above and all other matters raised in the written representations, I conclude that **Order A** should be confirmed as made and **Order B** should be confirmed subject to the modification referred to in paragraph 2 above.

Formal Decision(s)

26. I confirm **Order A**.

27. I confirm **Order B** subject to the following modification:

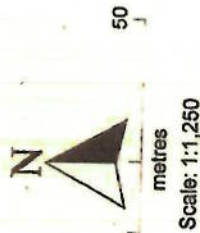
- In the Order Schedule: DESCRIPTION OF SITE OF EXISTING PATH OR WAY, in line 5 delete "57535,21783" and substitute "57353,21783".

Sue Arnott

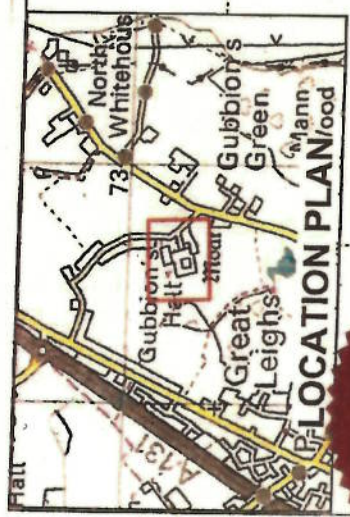
Inspector

⁴ Orders A and B are being determined alongside two others which propose changes to Footpaths 16 and 39 within Great and Little Leighs Parish.

MAP NOT TO
ORIGINAL SCALE



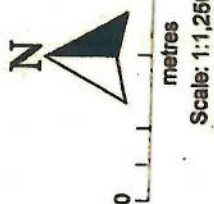
Essex County Council
© Crown copyright and database rights
Ordnance Survey Licence No. 100019602



[Signature]
Attesting Officer

DIVERSION OF FOOTPATH 14 GREAT LEIGHS
CITY OF CHELMSFORD
SECTION 119 HIGHWAYS ACT 1980
Plan No. PROW-16-08 rev.13.09.16
Route to Close A-B
New Route A-C-B
Unaffected Route
Definitive Map Sheet TL71NW Scale 1:1250 (A4 paper)
Grid Ref at A 57369, 21787
Post code at Gubbion's Hall CM3 1NT

MAP NOT TO
ORIGINAL SCALE



BANTERS LANE

TL71NW

Gubbion's Hall
Cottages

Great And Little Leighs



Essex County Council
© Crown copyright and database rights
Ordnance Survey Licence No. 100019602

Attesting Officer

14

15

B

14

Path (un)

573500

217800

Ruin

TL71NW

FB

Moat

FB

Gubbion's Hall

Little
Gubbions

Pond

Pond

Pond



LOCATION PLAN

EXTINGUISHMENT OF FOOTPATH 15 GREAT LEIGHS
CITY OF CHELMSFORD
SECTION 118 HIGHWAYS ACT 1980
Plan No. PROW-16-05

Route to Close A-B

Unaffected Route

Definitive Map Sheet TL71NW Scale 1:1250 (A4 paper)
Grid Ref at A 57370,21782
Post code at Gubbion's Hall CM3 1NT

