



## Order Decision

Hearing held on 14 March 2017

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 21 April 2017**

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### **Order Ref: FPS/W1850/4/18**

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Herefordshire Council Footpath LR5 (Part) Ledbury Public Path Diversion Order 2016.
- The Order was made by the County of Herefordshire District Council ("the Council") on 10 March 2016 and proposes to divert a section of Footpath LR5, in the parish of Ledbury, as detailed in the Order Map and Schedule.
- There were two objections outstanding at the commencement of the hearing.

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

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### **Procedural Matters**

1. I held a hearing on 14 March 2017 at the Herefordshire Group Training Association, Holmer Road, Hereford. I made an unaccompanied visit to the site on 13 March 2017 and I undertook a further visit accompanied by the parties following the close of the hearing.
2. It is not my role to consider whether an alternative diversion should be pursued. Nor indeed is there any support from the Council for an alternative proposal.
3. All of the points referred to below correspond to those delineated on the Order Map.

### **Main Issues**

4. Section 119 of the 1980 Act requires that, for me to confirm the Order, I must be satisfied that:
  - (a) it is expedient, in the interests of the owner and occupier of the land crossed by the footpath, that the path should be diverted;
  - (b) the new path to be provided will not be substantially less convenient to the public;
  - (c) any new termination point for the path is substantially as convenient to the public; and
  - (d) it is expedient to confirm the Order having regard 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.

5. I shall also have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area when considering the Order.

## **Reasons**

### ***Whether it is expedient, in the interests of the owner and occupier of the land crossed by the footpath, that the path should be diverted***

6. The land crossed by the existing path, between points B-C, is owned by Mr Holden and Mr Barber-Starkey of Euroheat and leased to Hutchinsons. It is stated to have been discovered only relatively recently that the footpath crosses the compound used by Hutchinsons as a distribution depot.
7. It is not disputed that the diversion is in the interests of the owner and occupier of the land in question. The diversion would enable the existing security fencing to remain around the whole of the site. This would ensure that the compound remains safe and secure given that the site is used for the storage and distribution of agricultural chemicals.

### ***Whether the new path will be substantially less convenient to the public***

8. When considering the convenience of the routes included in the Order it is equitable to disregard the present obstruction of the footpath. This mainly arises from the security fencing which obstructs the path in two places. The footpath is also obstructed by vegetation and potentially some trees.
9. One of the objectors (Mr Phippard) raises three main concerns which he believes when taken together would lead to the footpath being substantially less convenient for the public. These are the increased distance, the gradient of the proposed path and its surface. The gradient and increased distance relate to the requirement to traverse a section of the connecting Footpath LR7 in order to continue through to point D.
10. There would be an increased distance of 117 metres arising out of the diversion for people travelling between points B and D. In response, the Council points to this issue not being applicable to people travelling to or from the north and the apparent recreational use of the path. The latter is also stated to apply in relation to the gradient between points C and D.
11. There will clearly be an increase in distance for some users arising out of the diversion but I concur with the Council that this needs to be considered in the context of the likely use of the path for recreational purposes. It is not suggested that the footpath serves as a direct route to a particular location. I also note from looking at the definitive map that the rights of way network is more prevalent northwards towards Ledbury.
12. In terms of the gradient, there is an incline to negotiate when travelling southwards between points C and D, which includes a short steep section near to point C. Whilst the existing path is not flat, it involves a gentler gradient. However, this issue needs to be considered in light of the undulating nature of the land in this locality.

13. A section of the proposed path in the locality of point B was wet in places when I walked the route. On this issue, Mr Phippard draws attention to the low lying nature of the B-C section. However, I did not find the surface to be a significant problem bearing in mind that there had not been a sustained spell of dry weather prior to my visits. It was also evident that there had been some vehicular use which has disturbed the surface of the proposed path in places. Mr Holden says there is no proposal to put up fencing to enclose the path so as to render the surface potentially wetter.
14. It is apparent that the vehicular use highlighted above related to works undertaken to clear the land. In contrast, the existing path crosses a compound which is subjected to regular vehicular movements, including delivery vehicles and fork lift trucks. This raises safety concerns in terms of members of the public walking through the compound and on this issue I consider that the existing path will be less convenient than the proposed path.
15. The Council confirms that there would be no need for any kind of barrier on the existing or proposed paths. This means that, if confirmed, the Order would need to be modified by the removal of the specified limitation at point B. There is no recorded width for the footpath but the 2 metres width for the proposed path would be a suitable width for a footpath in this location. For the avoidance of any doubt, I consider that it is appropriate for the Order to also be modified to state that the whole width of the existing path would be stopped up.
16. I accept that the issues raised by Mr Phippard will impact upon the convenience of the footpath if it is diverted as proposed. However, these issues need to be considered in light of the likely recreational use of the path and the nature of the land in this area. Further, the gradient and length of the route used will be dependent upon the direction of travel. The section of the existing path through the compound is also in my view less convenient for the public given its present use. In taking all of these factors together, I do not find that the diversion would lead to the footpath being substantially less convenient for the public.

***Whether any new termination point is substantially as convenient to the public***

17. The relocation of the eastern termination point a short distance eastwards to point A would not in my view render it less convenient as the public will walk between these points at the present time. It is not necessary to consider whether the footpath needs to commence at point A. I have addressed the differences between the footpath terminating at point C rather than point D above. In my view the revised termination points are substantially as convenient for the public.

***The effect that the diversion would have on public enjoyment***

18. Mr Phippard does not assert that the diversion would have an adverse impact on the public's enjoyment of the path. The second objector (Mr Clark) raises concerns about the loss of amenity and pleasure due to the works undertaken on the land crossed by the proposed path in comparison to the woodland section. Mr Clark has failed to expand upon his statement that there is no

wildlife to enjoy from the proposed path. It is nonetheless apparent that the land crossed by the proposed path has been cleared of vegetation.

19. The proposed path passes the small protected woodland<sup>1</sup> rather than proceeding through it and this may impact upon the enjoyment experienced by some people. However, the diversion removes the footpath from the compound which would be more pleasant for all users. I agree with the Council that there are variable views of the surrounding landscape available from the existing and proposed paths.
20. In light of the above, I do not find that the diversion would have any significant adverse impact on the public's enjoyment of the path as a whole.

***The effect of the diversion on other land served by the existing path and the land over which the new path would be created***

21. There is no suggestion that the diversion would impact upon any land served by the existing path. The land crossed by the B-C section of the proposed path is owned by the applicant who clearly supports the diversion and the A-B section is already highway land.

***The ROWIP***

22. None of the parties suggest that the Order is contrary to any material provision contained in the relevant ROWIP.

***Other matter to be considered in relation to the expediency test***

23. Mr Clark owns the property to the north of point B and he states that the diversion would take walkers along the edge of the field with direct views and access into his garden. He says that this impacts upon his privacy and security and there will be financial loss associated with moving the footpath so close to his property.
24. Again Mr Clark has provided no further details in relation to his concerns. The Council says the proposed path is 17 metres away from his boundary and I accept from looking at the Order Map that this is the case. In particular, the property and its garden are screened to a large extent from the proposed path by trees and vegetation, which for the most part are evergreen species. Further, the pond shown on the Order Map, whilst empty during my visit comprises of a fairly substantial ditch between the proposed path and the boundary of the property.
25. In light of my observations of the site, I am not satisfied that the diversion will have a significant adverse effect on the owner of the property to the north. I find this to be the case irrespective of whether Mr Holden's offer to provide additional screening is implemented.

***Whether it is expedient to confirm the Order***

26. I have concluded that it is expedient to divert the footpath in the interests of the owner and occupier of the land crossed by the path and that the diversion would not lead to the path being substantially less convenient for the public. In addition, I find the proposed termination points to be substantially as

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<sup>1</sup> It is subject to a Tree Preservation Order

convenient as those that presently exist. In light of my conclusions regarding these and the other relevant matters, I conclude that it is expedient to confirm the Order.

### **Other Matters**

27. There is no need to modify the description of the B-C section in the Order given its depiction on the Order Map in relation to the boundary to the north.

### **Overall Conclusion**

28. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that the Order should be confirmed with modifications.

### **Formal Decision**

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

- Insert after "*footpath LR5*" in the first line of the description in Part 1 of the Order Schedule "*being its whole width*".
- Delete all of the text in Part 3 of the Order Schedule.

*Mark Yates*

**Inspector**

## **APPEARANCES**

### **For the Council:**

Mr M. Walker  
Ms S. White

Public Rights of Way Team Leader  
Rights of Way Officer

### **Additional Supporter:**

Mr S. Holden

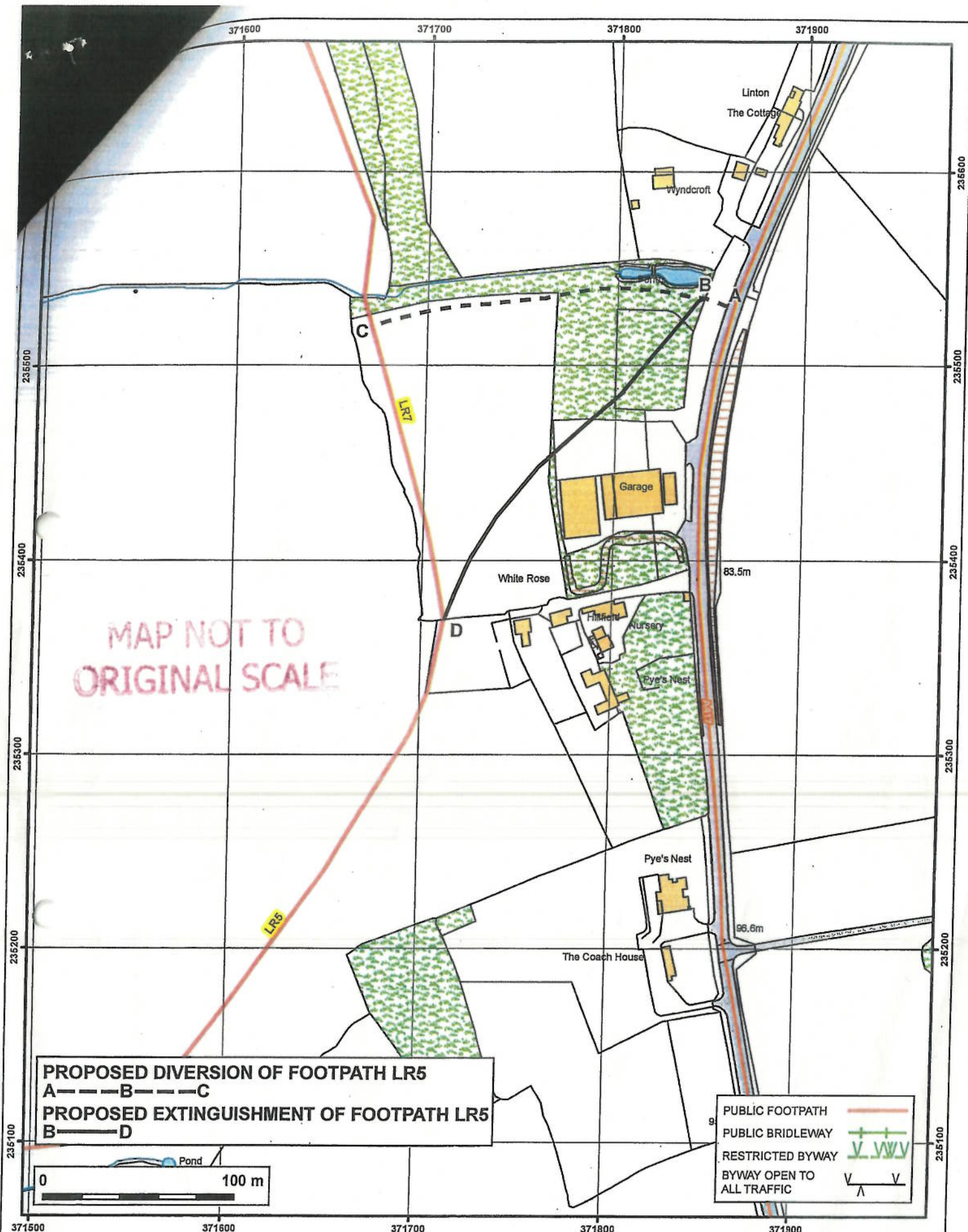
Applicant

### **Objector:**

Mr M. Phippard

## **DOCUMENTS**

- 1 Map of the area
- 2 Closing statement on behalf of the Council



**PROPOSED DIVERSION OF FOOTPATH LR5**  
**A---B---C**  
**PROPOSED EXTINGUISHMENT OF FOOTPATH LR7**  
**B---D**

PUBLIC FOOTPATH  
 PUBLIC BRIDLEWAY  
 RESTRICTED BYWAY  
 BYWAY OPEN TO ALL TRAFFIC



Highways Act 1980, Section 119  
 Herefordshire Council Public Footpath LR5 (part)  
 Parish of Ledbury Rural  
 Public Path Diversion Order 2016  
 DWG No.: D457/221-5  
 SCALE 1:2,500 @ A4

Balfour Beatty Living Places  
 Unit 3, Thorn Business Park  
 Rotherwas Industrial Estate  
 Hereford  
 HR2 6JT