



Order Decision

Site visit made on 4 December 2017

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

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

Decision date: 12 February 2018

Order Ref: ROW/3174315

- This Order is made under Section 257 of the Town and Country Planning Act 1990 (the Act) and is known as the Cambridge City Council (Part of Public Footpath No. 117 Cambridge) Public Path Diversion Order 2016.
- The Order is dated 26 October 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981, once the provisions relating to the diversion come into force.
- There were 2 objections outstanding when Cambridgeshire County Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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

Procedural Matters and Background

1. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations. When I conducted my site inspection both existing and proposed routes had been fenced off between Points C/E and Point A. I was therefore only able to see limited sections of the paths both of which appeared to be impassable due to the unrestricted growth of vegetation.
2. The effect of the Order would be to divert Public Footpath No. 117 (the Footpath) from its current legal alignment to a new route slightly to the west.

The Main Issues

3. The Order was made because it appeared to the Council that it was necessary to stop up the footpath to enable development to be carried out in accordance with planning permission granted under Part III of the Act.
4. Section 257 of the Act requires that, before confirming the Order, I must be satisfied that it is necessary to stop up the footpath in question to allow development to be carried out in accordance with the planning permission already given but not substantially complete.
5. Even if I were to find it necessary to stop up the path to allow implementation of the permission my confirmation of the Order is discretionary. In exercising this discretion I must consider the merits or disadvantages of the proposed stopping up in relation to the particular facts of the case, and in particular the effect the confirmed Order would have on those entitled to the rights that would be extinguished by it.

Reasons

Whether it is necessary to stop up the footpath to enable development to be carried out

6. Outline planning permission for 2,300 mixed tenure dwellings and associated facilities (Planning ref: 07/0620/OUT) was approved in August 2010. Given the size of the site known as Clay Farm, the development was sub-divided in 20 parcels and built out in 6 phases. The Footpath runs behind houses in Foster Road and Paget Close and falls within parcels 8A and 9. The former is being developed by Countryside Properties Ltd (Planning Ref: 15/0844/REM) whilst the latter is being developed by Hill Residential (Planning Ref: 14/1201/REM later amended under 15/2296/S73) on behalf of Cambridge City Council.
7. Given that the diversion traverses two plots of land two separate applications were made by the respective land owners. The Council subsequently combined the two applications into a single Order.
8. Hill Residential has confirmed in their statement that parcel 9 is being developed in accordance with 15/2296/S73 and not 14/1201/REM stated in the Order. That being the case, I consider a modification will be necessary should I be minded to confirm the Order.
9. Having viewed the plans relating to each planning permission, I am satisfied the development would encroach onto the existing line of the footpath and consequently there is a need to divert it as shown on the Order map.

Whether the development is substantially complete

10. Whilst it appears that work has not yet commenced on parcel 8a, I saw on my site inspection that parcel 9, now known as 'QUAD', is at an advanced stage with some of the units already occupied.
11. Nonetheless, approximately 10 parking bays together with associated kerbing and surfacing works have yet to be completed. Therefore in terms of those works affecting the legal alignment of the Footpath, I am satisfied that the Hill development is not substantially complete.
12. It is also pertinent that, 'the development' in this case also includes parcel 8a. As no development has commenced pursuant to planning permission 15/0844/REM, the development as a whole is not substantially complete.

The effect of the Order on those whose rights would be extinguished by it

13. There is no suggestion that the diversion would adversely impact existing users of the path. The diversion would be fairly modest in its extent and there would be no perceptible increase in distance between points A-B-C and A-D-E. No gates or stiles would be removed or erected. Although there would be a reduction in the width of the northern section (points D-E) from 3 to 2 metres, this would be off-set by landscaped margins on the new path's eastern flank and new planting along the Foster Road boundary fences. The width of the southern section (points A-D) would be unchanged at 3 metres. The current route is unsurfaced and therefore the proposed full footway construction would provide a safer walking route particularly for the less mobile and those with pushchairs.

14. Accordingly, there would not be any significant disadvantage or loss to the general public as a result of the diversion.

Other Matters

15. I have noted the comments made by the two objectors. However, whilst noting the duty contained in Section 40 of the Natural Environment and Rural Communities Act 2006, the effect of the diversion on local ecology was considered by the local planning authority at the planning application stage. Consequently, they are not matters to which I can ascribe any degree of weight when considering a Public Path Diversion Order under Section 257 of the Act.

Conclusions

16. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed with the modification described at paragraph 8 above.

Formal Decision

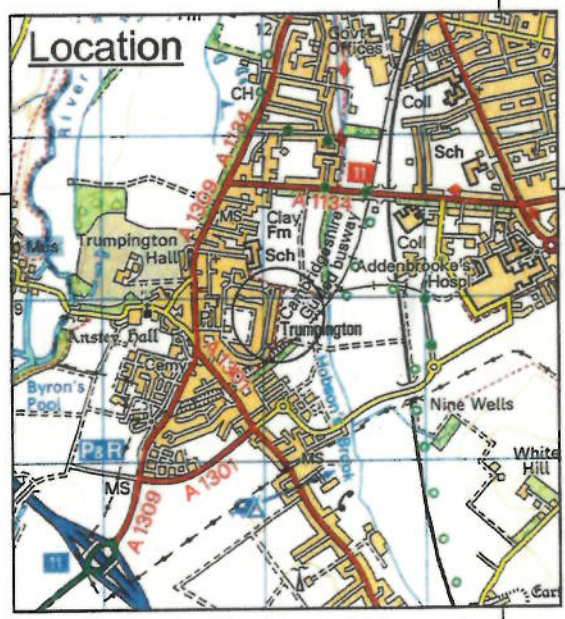
17. The Order is confirmed subject to the following modification.

- The reference to 14/1201/REM on the eleventh line of the Order's first paragraph shall be deleted and replaced with 15/2296/S73.

D. M. Young

Inspector

Diversion of Public Footpath No. 117 Cambridge (part)

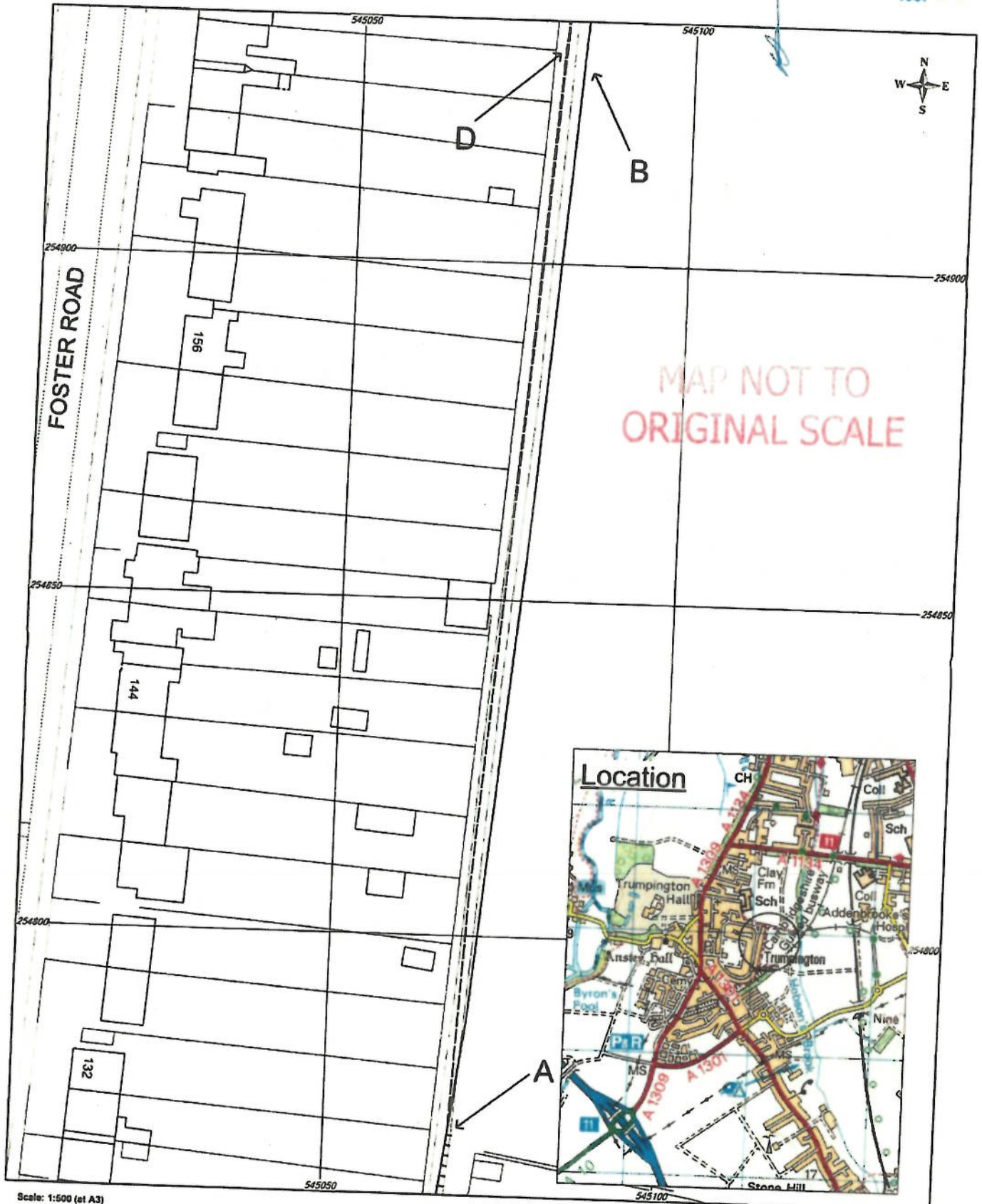


Scale: 1:500 (at A3)
Date: 29/04/2016

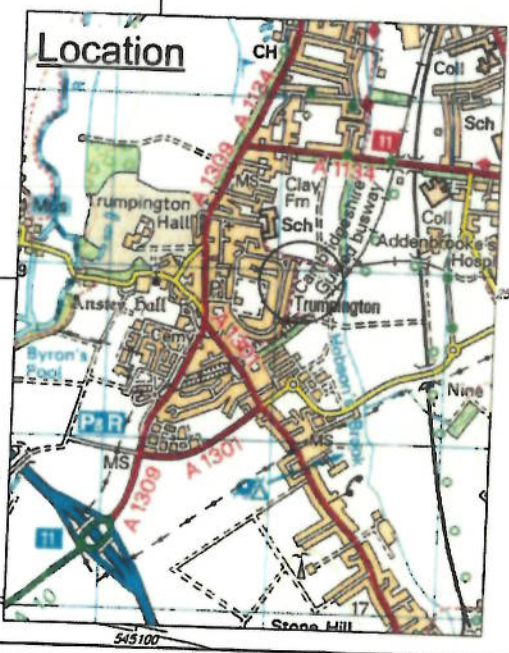
Key - Drawn from the Definitive Map

- Public Footpath to be stopped up
- New section of Public Footpath
- Unaffected Public Footpath

Diversion of Public Footpath No. 117 Cambridge (part)



MAP NOT TO ORIGINAL SCALE



Scale: 1:500 (at A3)
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