The Planning Inspectorate

Order Decision

Hearing held on 24 October 2017 and 27 February 2018

by Helen Slade MA FIPROW

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

Decision date: 22 March 2018

Order Ref: ROW/3172660

- This Order is made by Derbyshire County Council under Section 119 of the Highways Act 1980 ('the 1980 Act') and is known as The Derbyshire County Council (Public Footpath No. 56 (parts) – Alfreton (now in the Parish of Somercotes) Public Path Diversion Order 2016.
- The Order is dated 9 June 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding at the commencement of the hearing.

Summary of Decision: The Order is not confirmed.

Application for costs

1. At the Hearing an application for costs was made by Mrs Y Anderson against Derbyshire County Council. This application is the subject of a separate Decision.

Procedural Issues

2. I opened the inquiry on 24 October 2017 at Somercotes Infant and Nursery School, having been informed a few days before that Derbyshire County Council ('the Order Making Authority' or 'OMA') had advised the Planning Inspectorate that it had come to their attention that the statutory notices with regard to the Hearing had not been advertised correctly. I therefore decided, with the agreement of the parties, to carry out the accompanied site visit to make the best use of the time, and adjourned the Hearing for the OMA to properly advertise the Hearing.

3. A new interested party attended the opening of the Hearing and tabled a statement which I accepted. Mr John Boucher was attending as a representative of The Friends of Cromford Canal. Mr John Bayliss, the Chair of the same organisation, also attended as an observer. The applicant, Mr Pilsworth, attended as did the objector, Mrs Anderson.

4. It became clear on that occasion that there were issues with the information regarding landownership derived from the Land Registry. The adjournment therefore provided the opportunity for the OMA to investigate whether or not there were more fundamental problems in relation to the Order. I also drew the attention of the parties to the judgement in R v The Lake District Special Planning Board ex parte Anne Bernstein[1] which I considered to be relevant due to the nature of the proposed diversion.

[1] QBD [1982]

5. Mrs Anderson attended the site visit but declined to walk along those parts of the current useable route which did not coincide with the line of the route shown on the Definitive Map.

6. Three weeks before the date when the Hearing was to be resumed, The Planning Inspectorate received notification from the OMA that they no longer wished to have the Order confirmed as there had been a change in local policy. The statutory objector, Mrs Anderson, wished to continue with the Hearing and I therefore resumed at Alfreton Leisure Centre on 27 February 2018. On that occasion, Mrs Anderson was assisted by her son, Mr G Anderson. No-one else, other than Mrs Gale, the representative from the OMA, attended the resumed Hearing.

7. The OMA had previously informed all the parties who had been at the opening of the Hearing of their revised stance, and no-one has submitted any comments on the matter, apart from Mrs Anderson.

The Main Issues

8. Section 119 of the 1980 Act provides a power for a council to make an Order to divert a public footpath if certain criteria are satisfied. If objections are made to the Order, the relevant council cannot confirm the Order itself. However, the power of the Council to make the Order in the first place is discretionary and, having made the Order, the relevant Council has discretion on whether to continue to support the Order.

Reasons

9. Subsequent to the opening of the Hearing, the local council, Amber Valley Borough Council ('the Borough Council') published its proposed update to its Local Plan. According to the County Council, this Plan sets out the Borough Council's support for proposals to restore the route of the Cromford Canal to navigable status and includes policies that seek to protect the route from any development likely to prejudice its future restoration and maintenance.[2] These issues were raised by Mr Boucher in the statement he submitted to the first day of the Hearing.

10. If the Order were to be confirmed, any successful restoration of the Cromford Canal would involve the OMA in considerable expense (the OMA estimate £500,000) to construct two bridges over the route of the canal, to carry the diverted public right of way. In the light of this information, the OMA has decided not to continue with its support of the Order and has requested that the Order be not confirmed. The OMA advises that the situation has been the subject of discussions with the applicant for the Order.

11. Mrs Anderson's principal objections relate to the validity of the Order itself, and the way in which the OMA had approached the management of the footpath and the Order-making procedure over the preceding years. However she has also raised objections claiming that it would not be convenient or expedient in the interests of the public to divert the path. No objections have been made to the change of stance now taken by the OMA, although Mrs Anderson did point out that the updated Local Plan has not yet been adopted.

[2] I was not supplied with copies of the actual document, only quotes from it

12. In the light of the information provided by the County Council regarding the future of the Cromford Canal, and in the absence of any objection to the non-confirmation of the Order, I consider it would not be expedient to confirm it.

Conclusions

13. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that the Order should not be confirmed.

Formal Decision

14. I do not confirm the Order.

Helen Slade

Inspector

APPEARANCES

FOR THE ORDER MAKING AUTHORITY:

Mrs Julia Gale At the opening of the Hearing only	Derbyshire County Council
Ms Amanda Higton	Derbyshire County Council
Mr David McCabe	Derbyshire County Council

OBJECTOR

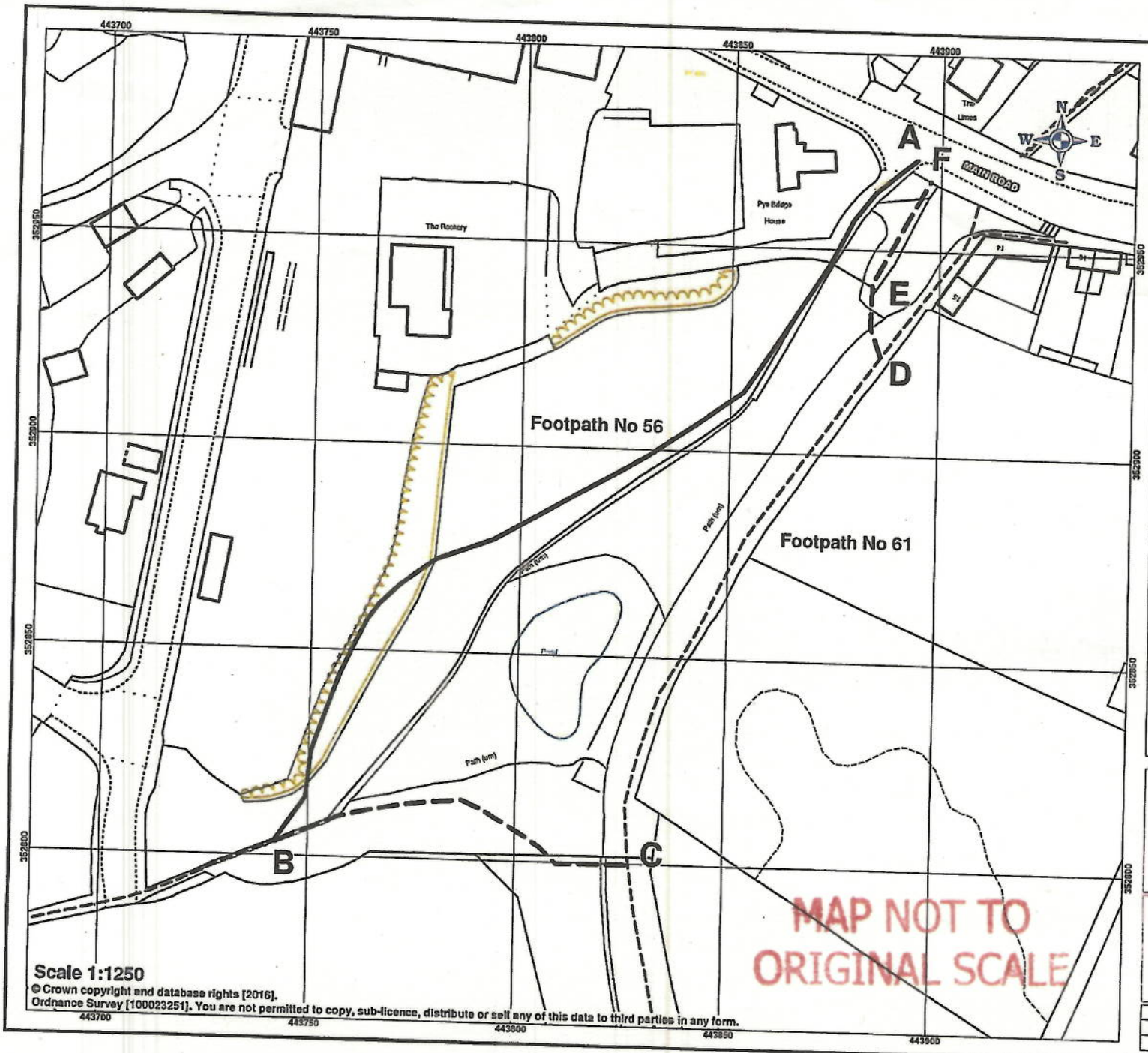
Mrs Yvonne Anderson	Adjoining landowner

OTHER PARTIES:

Mr Edwin Pilsworth	Landowner and applicant
Ms Annette Pattison	For the applicant
Mr John Boucher	The Friends of Cromford Canal
Mr John Bayliss	Chair of The Friends of Cromford Canal

DOCUMENTS

1 Statement of Case and submission documents from Derbyshire County Council
2 Letter in support of the order dated 23 July 2017 from EP Industries Ltd
3 Letter of representation with attachments and addendum from Mrs Y Anderson dated 11 April 2017
4 Statement of case and appendices from Mrs Y Anderson dated 24 September 2017
5 Letter from Mrs Y Anderson setting out intention to apply for costs dated 22 February 2018
6 Supplementary statement from Mrs Y Anderson, with attachment, dated 27 February 2018
7 Statement on behalf of The Friends of Cromford Canal dated 24 October 2017 submitted by Mr J Boucher



Highways Act 1980 Section 119

The Derbyshire County Council (Public Footpath No 56 (Parts) - Alfreton (now in the Parish of Somercotes)) Public Path Diversion Order 2016

KEY

Footpath to be diverted	———
Alternative footpath	– – – –
Existing footpaths	-------

DERBYSHIRE County Council

Improving life for local people

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Produced by Public Rights of Way on 3 February 2016

Ref: TE/GM/X3667/Order/2016

MAP NOT TO ORIGINAL SCALE

Scale 1:1250