



Order Decision

Site visit made on 21 February 2018

by **Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI**

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

Decision date: 19 March 2018

Order Ref: ROW/3182219

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Harborough District Council Footpath D19 (Part) Pulford Drive Thurnby Public Path Diversion Order No2 2016.
- The Order is dated 20 December 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when Harborough District Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. No-one requested to be heard with respect to the Order and the case proceeded to be dealt with by way of an unaccompanied site inspection, taking account of the written representations.
2. The objection from Thurnby and Bushby Parish Council to the Order was withdrawn on 29 September 2017.

The Main Issues

3. The Order was made because it appeared to the Harborough District Council, the order making authority (the 'OMA') that it was necessary to divert the footpath to enable development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990 ('the 1990 Act').
4. Section 257 of the 1990 Act requires that, before confirming the Order, I must be satisfied that it is necessary to divert the footpath in question to allow development to be carried out in accordance with the planning permission already given but not substantially complete. The merits of the development are not at issue.

Reasons

Whether it is necessary to divert the footpath to enable development to be carried out.

5. The relevant permission, the outline planning permission was for the erection of up to 128 dwellings on land to the east of Pulford Drive, Thurnbury, Leicestershire. The permission was allowed on appeal on 16 August 2012, Planning Inspectorate Reference Number APP/F2415/A/11/2165170 (Council

Ref No 11/01080/OUT). Subsequently, and in pursuance of the outline planning permission, approval of Reserved Matters was issued by Harborough District Council for the erection of 128 dwellings and associated garages, hardstanding, access roads and open space on 7 November 2013, Council Ref 13/01201/REM.

6. I am satisfied that the planning permission relates to the land crossed by the Order route.

Whether the development is complete or substantially complete

7. During my site visit, I observed that the new footpath route has been provided in the form of a 2m wide tarmac surface for much of its length. This provided a robust marker on the ground to give a confident appreciation of where the existing path ought to be.
8. Section 257 of the 1990 Act is “...to enable development to be carried out in accordance with the planning permission granted...” Where the development, in so far as it affects a right of way, is completed before an order to divert the right of way has been made or confirmed, the powers under section 257 are no longer available since the development, which the order is intended to enable, has already been carried out. Paragraph 7.21 of Circular 1/09 states: “In this respect development should be regarded as completed if the work remaining to be carried out is minimal.” Accordingly, I also consider the powers invested under section 257 are lost where the development associated with the planning permission is substantially complete.
9. From my observations, it is clear that the part of the development situated between Points B and D as shown on the Order Map has reached the stage of completion, with the completed dwellings either having been sold or currently being offered for sale. Indeed at least one of the dwellings built directly on the line of the path is now occupied. Moreover, the roadways have been completed to final hardwearing surface and the landscaping works indicated on the approved drawings carried out. The remainder of the development has either been completed or is otherwise substantially complete.
10. I find that the development is complete insofar as it affects the public right of way and therefore the powers under S257 are no longer available. Given this, I have not found it necessary to consider any further matters relevant to potential confirmation of an Order.

Conclusion

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

Formal Decision

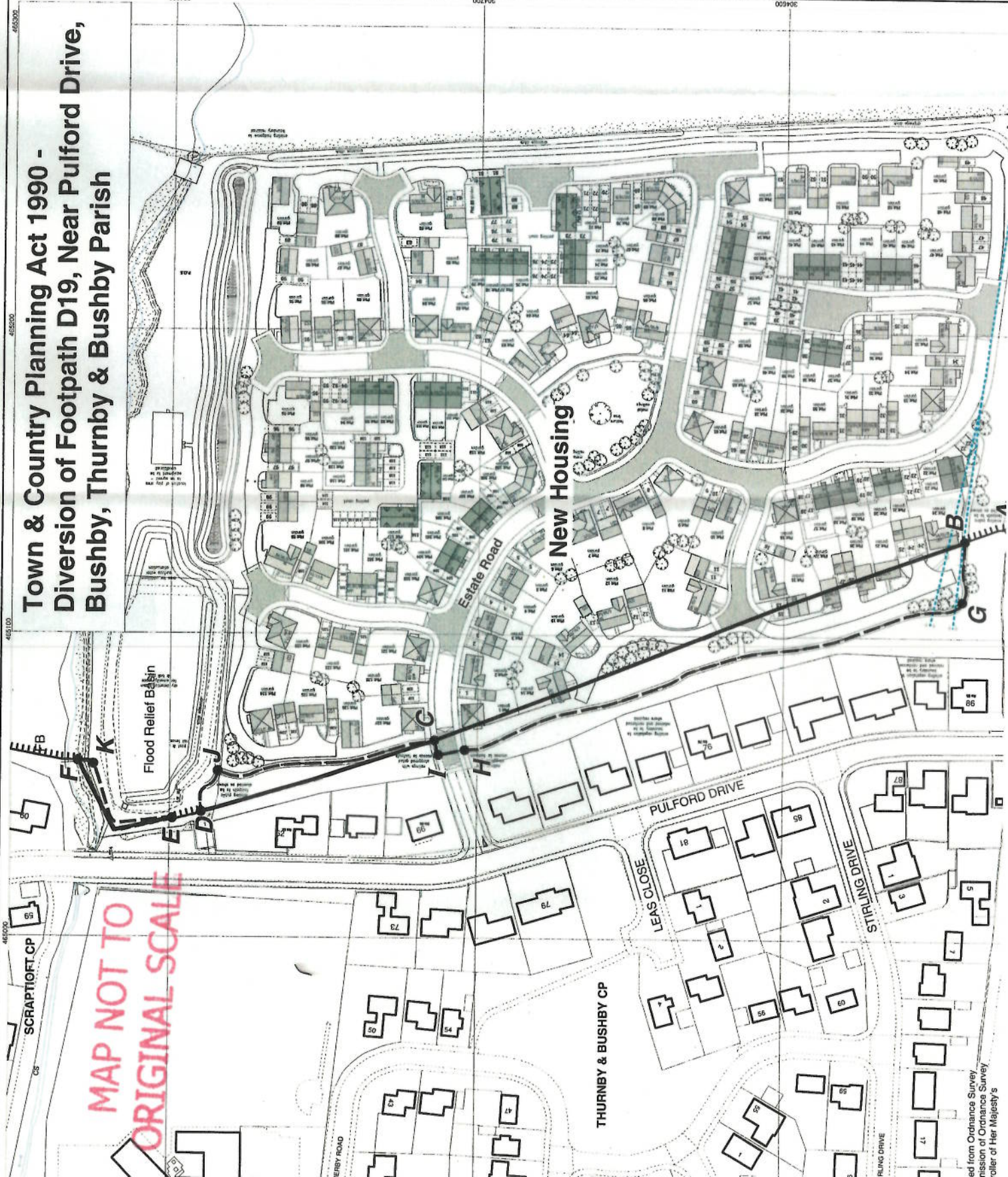
12. The Order is not confirmed.

Gareth W Thomas

INSPECTOR

Town & Country Planning Act 1990 - Diversion of Footpath D19, Near Pulford Drive, Bushby, Thurnby & Bushby Parish

**MAP NOT TO
 ORIGINAL SCALE**



Location Plan



Key

- Footpath to be diverted
B-C-D & E-F
- - - Alternative new footpath
B-G-H-I-C, C-J-D & E-K-F
- ||||| Footpaths unaffected

Harborough District Council

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 Phil Crossland, Director.



**Leicestershire
 County Council**