



Order Decision

Hearing held on 4 April 2017

by Mark Yates BA(Hons) MIPROW

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

Decision date: 24 April 2018

Order Ref: FPS/Z1585/7/86M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Essex County Council Definitive Map Modification No. 617 Footpath 59 Nazeing (Epping Forest District) Order 2016.
- The Order was made by Essex County Council ("the Council") on 15 February 2016 and proposed to modify the definitive map and statement in relation to the alignment of a section of Nazeing Footpath No. 59.
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications.

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

Procedural Matters

1. This decision should be read in conjunction with my interim decision ("ID"), dated 17 May 2017, which was issued following a hearing held on 4 April 2017. The numbers in square brackets represent particular paragraphs in the ID and the points referred to below correspond to those delineated on the Order Map.
2. Two representations and two objections were originally submitted in response to my proposed modifications. The matter has proceeded by way of an exchange of written representations involving the interested parties, including an additional objector (Mr Stephenson).

Main Issues

3. I outlined the relevant matters in relation to the Order, as made, in the ID [3-7]. The issue now is whether there is any new evidence or argument which has a bearing on the modifications proposed in the ID.

Reasons

4. The background to the Order is set out in the ID [8-9]. In summary, it proposed to delete a section of Nazeing Footpath No. 59 (points A-D) and add a new section of footpath (points G-B-H-D). The proposed deletion and addition elements in the Order would ordinarily be linked and the issue to be determined by reference to Section 53(3)(c)(i) and (iii) of the 1981 Act being whether an error had occurred regarding the recorded alignment of the footpath. However, in this case, I found the evidence to be supportive of the G-B-H-D section being a historical public footpath and that there had not been an error in the recording of the A-D section on the definitive map. The Order, if confirmed with my proposed modifications, would lead to an additional section of footpath being recorded in the definitive map and statement.
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5. Mr Stephenson questions the modifications made to the Order for the A-D section. However, these are required to give effect to the conclusions clearly set out in the ID. There is a need to remove all references to the proposed deletion of the A-D section.
6. I reached my conclusion in respect of the A-D section following consideration of the available evidence. I also considered the submissions regarding the alleged physical destruction of this section. No new evidence or submissions have been provided to indicate that I should take a different view in relation to the A-D section. It follows that this section should not be deleted from the definitive map and statement.
7. In terms of the addition of the G-B-H-D section, I gave my reasons in the ID for finding that a public footpath subsists. I considered that the G-B-H section broadly corresponded to an awarded public footpath [14]. Further, the other map evidence is supportive of the footpath continuing between points H-D. Mr Carr draws attention to the depiction of another path in the immediate vicinity of point H. I acknowledged the existence of a path heading in a north-north-easterly direction from point H in the ID [16]. It is not possible to discern whether there was any path shown over the H-D section on the small scale Ordnance Survey ("OS") map of 1866-1880, due to the trees present in this area. This section is nonetheless shown on the subsequent OS mapping. In contrast, no path is later shown heading north-north-east from point H. It remains my view on balance that the map evidence is indicative of the public footpath continuing onwards from point H to point D.
8. The objection from Mr Joslin and Mrs Beldom draws attention to my statement that a section of the proposed path in the Order "*crosses over the physical boundary on site and probably proceeds over land in the ownership of Mr Joslin and Mrs Beldom*" [9]. I took the view that the Order should be modified to make the position of the footpath in relation to the Selways plot clear and reflect the map evidence. It is my view that the footpath leaves the registered title of the Selways plot at point H. The H-D section most probably continues over land owned by Mr Joslin and Mrs Beldom.
9. I now turn to the Council's suggested additional modifications to the Order. The Council has proposed some additional text for inclusion into Part II of the Order Schedule in respect of the A-D section, which is now to remain. I accept that the definitive statement should include the existing and new sections of footpath. However, I am not satisfied that I should modify the current description of the A-D section to the extent suggested by the Council. I therefore propose to make only limited additional modifications to the Order. In respect of the Order Map, I do not consider it necessary, or indeed appropriate, to substitute a clearer version for the original map.

Other Matters

10. Whilst I appreciate the concerns raised about the impact of the sections of footpath on the landowners concerned, such matters are not relevant to my decision. Further, I do not have the power to extinguish any section of path, which would involve a separate process.

Conclusion

11. 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 the revised modifications outlined below.

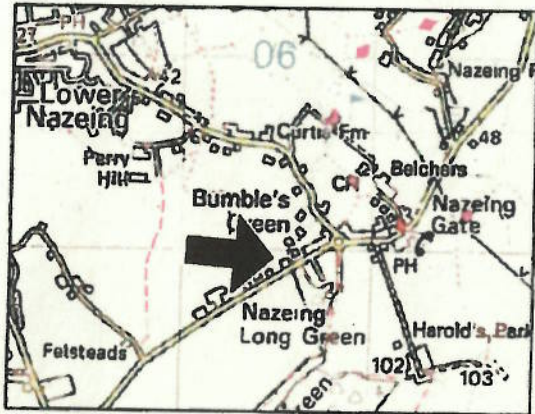
Formal Decision

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

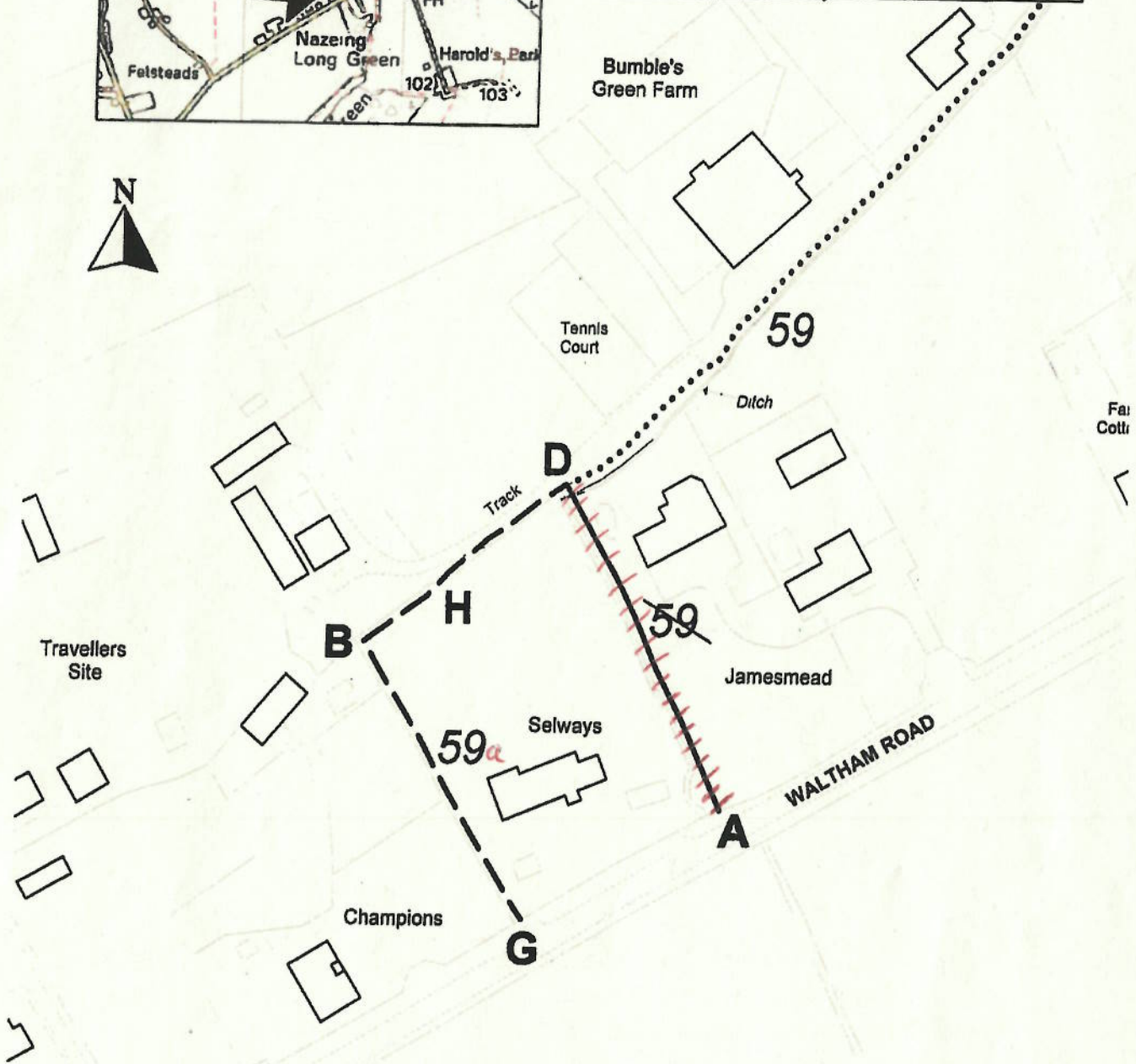
- Delete all of the text relating to the provisions of Section 53(3)(c)(iii) of the 1981 Act.
- Insert after "*route*" in the fourth line of the first description in Part I of the Order Schedule, "*The footpath proceeds along the western and northern boundaries of the land held within Land Registry Title Number EX292306 (points G-B-H on the attached map). It then continues along the southern boundary of the land immediately to the north of registered Title Number EX292306 (points H-D on the attached map)*".
- Delete the second description in Part I of the Order Schedule.
- Insert after the second paragraph in the fourth column in Part II of the Order Schedule, "*The path then splits with one section, with an unspecified width, leading south-eastwards to meet Waltham Road*".
- Delete "*Then continuing,*" at the beginning of the final paragraph in the fourth column in Part II of the Order Schedule and insert "*The second section numbered 59a continues*".
- Insert "*59a*" near to the end of the second column in Part II of the Order Schedule.
- Delete the solid line shown on the Order Map between points A-D and amend the map key accordingly.
- Delete "*59*" from the Order Map between points B-G and insert "*59a*".

Mark Yates

Inspector



Key
Footpath 59 Nazeing
 Delete Route A - D
 Add Route G - B - H - D
 Unaffected Route



**The Essex County Council Definitive Map
 Modification No. 617 (Footpath 59 Nazeing,
 Epping Forest District) Order 2016**
 Definitive Map Sheet TL40SW Scale 1:1250
 Grid Ref TL406,049 or 5406,2049

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