
Order Decision

Site visit made on 10 April 2018

by Martin Elliott BSc FIPROW

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

Decision date: 02 May 2018

Order Ref: ROW/3185097

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as The Cheshire East Borough Council (Footpath No.24 (part) Parish of Bollington) Public Path Diversion Order 2016.
- The Order was sealed on 6 October 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were three objections when Cheshire East Borough 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 modification.

Preliminary Matters

1. I carried out an unaccompanied site inspection of the existing and proposed routes and the surrounding area on 10 April 2018. The existing route has been in parts been quarried out and is also obstructed by fencing. Whilst I was unable to walk the existing route I am satisfied that I am able to make my decision based on my site visit and the submissions before me.
2. The Council has requested that the Order, at paragraph 2, is modified so as to allow time for works to be completed that are required to bring the new route to a suitable standard. The Council has asked that a period of 60 days is inserted in the Order. There is nothing to suggest that anyone will be prejudiced by such a modification and the Order, if confirmed, will be modified accordingly.
3. Points A to H mentioned in this decision relate to points identified on the Order map.

The Main Issues

4. This Order has been made in the interests of the owner of the land crossed by the footpath. Section 119 of the Highways Act 1980 therefore requires that, before confirming the Order, I must be satisfied that:
 - (a) it is expedient in the interests of the owner of the land crossed by the section of footpath to be diverted that the line of the path or way, or part of that line should be diverted; and
 - (b) the path or way will not be substantially less convenient to the public; and
 - (c) that it is expedient to confirm the Order having regard to:
 - (i) the effect which the diversion would have on public enjoyment of the path or way as a whole; and

- (ii) the effect which the coming into operation of the Order would have as respects other land served by the existing rights of way; and
 - (iii) the effect which any new public rights of way created by the Order would have as respects the land over which the right is so created and any land held with it, account being taken of the provisions as to compensation.
5. In addition, Section 119(2) of the 1980 Act requires that a diversion order cannot alter a point of termination of the way if that point is not on a highway, or (where it is on a highway) otherwise than to another point which is on the same highway, or another one connected with it, and which is substantially as convenient to the public.
6. Section 119(6A) of the 1980 Act provides that I must have regard to any material provision contained in a Rights of Way Improvement Plan (ROWIP) for the area covered by the Order.
7. As noted above the existing route is currently unavailable. An equitable comparison between the existing and proposed routes can only be made by disregarding any temporary circumstances preventing or diminishing the use of the existing route. The convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.

Reasons

Whether it is expedient in the interests of the owner of the land crossed by the footpath and the public that the way should be diverted

8. The Council submits that the diversion is in the interests of the landowner as the current route partly passes through their working quarries or within close proximity. The diversion would allow the landowners to continue with their current planning permissions and to make the existing route available would hinder current practice due to the proximity of the path to the quarry face and heavy machinery.
9. No evidence has been put before me to suggest that the diversion of the footpath would not be in the interests of the landowner. For the reasons given by the Council I consider that the diversion will indeed be in their interests.

Whether the path or way will not be substantially less convenient to the public

10. The Council acknowledge that the proposed alternative path is steeper than the existing route but do not consider that this makes the alternative substantially less convenient.
11. In opposition it is stated that the proposed alternative has a much steeper gradient than the original footpath which gently sloped and would have been much easier to use. Concerns are raised that if the proposed alternative route is to be narrowly confined with barbed wire then it is likely to become as muddy, slippery and dangerous as another route¹.

¹ The green route marked on a map accompanying the objector's statement of case identified on the extract of the definitive map provided by the council as footpath 32.

12. On my site visit I noted that the initial section of the existing route rises steeply through a wooded area before passing through an area which has been quarried out. Where the route turns to the south towards point F the route, if available, would continue to ascend before gaining flatter ground between points F and D. In respect of the proposed alternative, the initial section through the wooded area is of a similar gradient to the existing route. The alternative route then ascends more gently before rising steeply through points G and H to point C.
13. The proposed alternative will be 2 metres in width other than where there will be steps where the width will be 1 or 1.2 metres. The alternative route will be subject to improvement, including the provision of the steps and resurfacing as required. The Council indicates that the majority of the work required will be to the section between points B and C. The existing route will only be stopped up when works have been carried out to bring the new route into a fit condition for the use by the public. The path would be enclosed for approximately 75 metres of its length between post and wire fences and I note the concerns as to the condition of footpath 32 where it is enclosed. However, the section to be fenced, with a post and wire fence, will be on the section where there is a more level gradient and will be to a width of 2 metres. This contrasts with the section of footpath 32 identified by the objectors which is at a steep gradient. Given the improvements, although the alternative route will in parts be steeper, I do not consider that the alternative route will be substantially less convenient.

The effect which the diversion would have on public enjoyment of the path or way as a whole

14. The objectors provide a history to the quarrying activities at Endon Quarry. They refer to a public inquiry at which it was decided that the remains of footpath 24 should be reinstated as an alternative giving panoramic views across the Cheshire Plain. Whilst the outcome of the inquiry and the decision to reinstate part of footpath 24 is not a matter for my consideration the objection suggests that the existing route provided good views. Although the diversion of the footpath will remove the opportunity for views from the existing footpath there are equally good views which can be obtained from the alternative route. As such, in terms of views, I do not consider that this amounts to a loss of enjoyment of the path.
15. No other submissions have been made to suggest that there will be a loss of enjoyment. In my view the diversion does not have any adverse effect on the enjoyment of the path as a whole

The effect which the coming into operation of the Order would have as respects other land served by the existing right of way

16. There is no evidence before me that the diversion would have any effect on land served by the existing way.

The effect which any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it, account being taken of the provisions as to compensation

17. The land over which the existing route passes is in the ownership of the applicant other than a 10 metre section east of point A. The alternative route passes over land in the ownership of the applicant who clearly supports the Order. There is no evidence before me of any adverse effect on the land over which the new route passes such that compensation issues are relevant.

Rights of Way Improvement Plan (ROWIP)

18. The Council has identified a policy initiative (5.2.14 of the Cheshire East ROWIP) relating to public information on the public rights of way network. However, the Council submit no argument as to how the initiative is relevant to the Order and I therefore give it no weight.

Whether the proposed point of termination is on the same highway, or another one connected with it, and is substantially as convenient to the public.

19. The proposed point of termination is at point C, on footpath 46, approximately 190 metres north of the existing point of termination which is at the southern end of footpath 46. The point of termination is therefore on the same highway. For those wishing to travel northwards from point C the proposed point of termination is no less convenient. For those wishing to travel south to point D there will be an overall increase in the distance to be walked. However this amounts to approximately an additional 32 metres which is not a significant distance. To reach point D requires the use of the Gritstone Way the surface of which is in good condition although on my site visit following heavy rain there was a short section which was muddy. Whilst returning to point D from point C involves walking slightly further I take the view that the proposed point of termination is substantially as convenient as the existing point of termination.

Whether it is expedient to confirm the Order

20. Having regard to all of the above, the diversion is in the interests of the landowner and whilst there is some loss of convenience the proposed alternative is not substantially less convenient. There is no evidence before me to suggest that the diversion will have an adverse effect on the enjoyment of the path as a whole. The proposed point of termination is substantially as convenient as the existing point.
21. The objectors indicate that landslips have already taken place on the 'ridge' due to quarrying activities and suggest that it is prudent to leave sufficient distance between footpath and quarry face. The location of the 'ridge' is not identified but I noted on my site visit that the alternative route passes over land between two quarried areas which could be described as a ridge. Whilst I am conscious that the existing route, which was recorded on the definitive map, has been, in parts, quarried out the alternative route will be recorded as a public footpath and should be safeguarded from current quarrying activities. I have no evidence before me to suggest that the alternative route is at risk of being lost as a consequence of landslip such that it would not be expedient to confirm the Order.
22. The objectors make the point that permission to quarry should not have been given and that the quarry owners were well aware of the 'legal footpath situation' when they took the quarry on. It is also suggested that the historic

route could easily be reinstated when quarrying activities end but in the meantime retained as a viewing point and if not possible at least marked out on the ground. Reference is also made to an alternative route (marked red on the map accompanying the objector's statement). Whilst I note these matters they are not relevant to my consideration and I can give them no weight. I am required to consider the Order measured against the relevant criteria set out at paragraphs 4 to 7 above.

23. Objections are made on the basis that confirmation of the Order will enable the landowner to extend the quarry. Although I have no information as to existing planning permissions the Council make the point that the landowners can only work within their current permissions and that further requests for quarrying would require further planning applications. Whilst other planning permissions may be granted in the future this has no bearing on my determination of the Order and again I give these objections no weight.
24. Taking all factors into account I consider that it is expedient to confirm the Order.

Conclusion

25. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to modification.

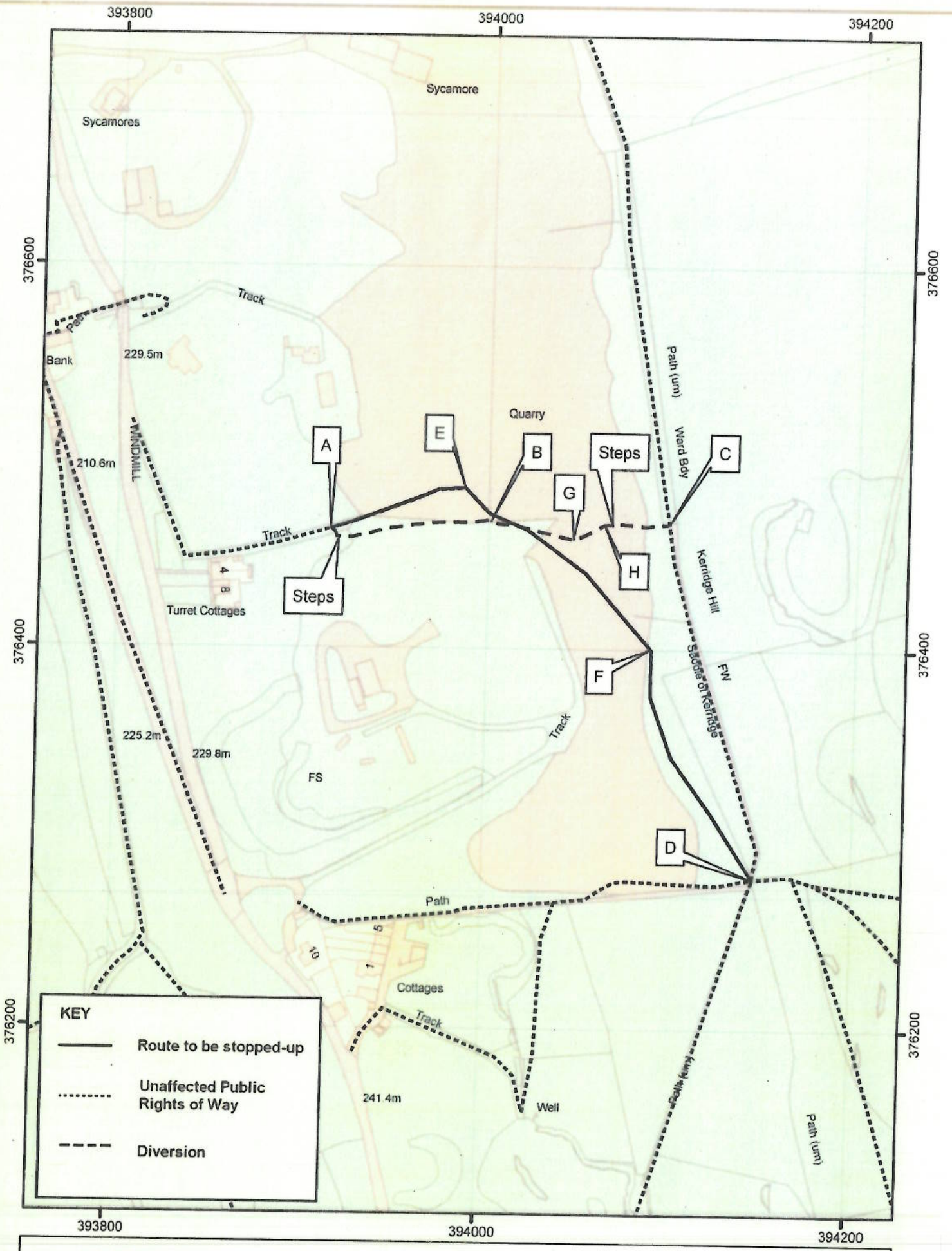
Formal Decision

26. I confirm the Order subject to the following modification:

- At paragraph 2 of the Order delete from line 1 'on the date of confirmation' and insert '60 days from the date of confirmation'.

Martin Elliott

Inspector



The Cheshire East Borough Council
 (Footpath No.24 (part) Parish of Bollington)
 Public Path Diversion Order 2016

Plan No.
 HA/104A

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