



Order Decision

Site visit made on 19 June 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: 26 June 2018

Order Ref: ROW/3189557

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the North Somerset District Council (Part of Footpath AX 29/14, over land west of A371 Banwell Road, Winscombe and Sandford), Public Path Diversion Order No.1 2017.
- The Order is dated 27 January 2017 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 North Somerset District Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Preliminary Matters

1. The case concerns the proposed diversion of that part of Public Footpath AX 29/4 (the Footpath), which traverses farmland in an east-west direction from the A371 Banwell Road. The land has been heavily planted with commercial apple trees, which are wired and staked whilst the landowner has also strengthened the field hedgerow boundaries. The legal line of the Footpath is no longer passable. Nonetheless, the Order seeks to regularise the situation by legally diverting the Footpath along existing field boundaries to the south of the current route. In advance of the making of the Order, the landowner has provided an alternative stoned hardsurfaced path that skirts present field boundaries (the 'walked route').
2. Reference is made in the Council's submissions and those of others relating to a traditional stone stile at point C on the line of the existing Footpath on the Order plan. However, at my site visit I observed that this stile has been removed and the previous opening in the hedgerow at this point planted up such that the stile no longer exists.

The Main Issues

3. The Order is made in the interests of the owner of the land crossed by the Footpath. Section 119 of the 1980 Act requires that, before confirming the Order, I should be satisfied that:
 - (a) It is expedient, in the interests of the owner, that the footpath in question should be diverted;
 - (b) The new footpath will not be substantially less convenient to the public;
 - (c) The new path termination point (being on the same highway) is substantially as convenient to the public;

- (d) It is expedient to confirm the Order having regard its effect:
 - (i) on the public enjoyment of the path as a whole;
 - (ii) the effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, having regard to the provisions as to compensation.
- 4. In addition, I am required to take into consideration any material provisions of any Rights of Way Improvement Plan ('ROWIP') prepared by the Council.

Reasons

Whether it is expedient in the interests of the owner of the land that the footpath in question should be diverted

- 5. From point D the existing route commencing on the western side of the A371 Banwell Road enters the field and takes a broadly straight westerly line across slightly undulating farmland for some 186 metres to point C and the former stone stile that was formerly in situ but now removed. At this point, the route continues in a westerly direction for some 11 metres to point B then turning NNW for some 5 metres to point A.
- 6. The Order is made to address the concerns that the landowner has in terms of the location of the existing line of the Footpath relative to the commercial apple tree plantation. The plantation is arranged in rows that occupy a generally north-south orientation. The individual trees are staked and wired. This has resulted in the line of the Footpath being severed at each row as it crosses from east to west. The landowner maintains that retaining the existing route would make it difficult to manage the plantation effectively as farm machinery are required to regularly move between the rows for crop spraying and other maintenance. This would be compounded during harvesting. Diverting the path along an alternative route away from the plantation would allow more efficient farming activities to take place. Although objectors suggest that temporary farming practices should not override legal requirements, I am satisfied that the orchard is a long-term farming activity that cannot be described as temporary.
- 7. Having regard to the above, I am satisfied for the reasons given that it is expedient in the interests of the landowner that the Footpath should be diverted.

Whether the new footpath will not be substantially less convenient to the public

- 8. At present, the walked route deviates from the legal alignment shown on the Order plan. However, my determination must be made as though the legal line was currently available since it is established practice in these matters to disregard temporary circumstances.
- 9. Of course, the existing alignment of the Footpath provides a more straightforward route than the walked route that follows the line of existing field boundaries and their hedgerows. The walked route also contains a series of minor changes of direction by comparison. The difference in distance between points D, C and A of the existing route and E, F, G, H, I and A of the

proposed route as a result of the deviation would be 33 metres. I do not consider this to be significant in terms of the very much longer route of the recreational walk using this and other parts of the Footpath that links Banwell Road and Max Mill Lane much further to the west.

10. Whilst the existing route crosses an open field and is readily discernible to footpath users from Banwell Road to the east, the proposed path will follow an alignment that hugs existing field boundaries; the surface has been stoned for much of its length. Objectors believe this to be an inconvenient surface for some users of the proposed Footpath. However, I agree with the OMA that the stoned surface will soon regenerate and soften to give a pleasant walking experience and be especially beneficial as it will create an all-year round path.
11. Although noting the views of the objectors that the walked route lies close to a small watercourse that runs into the Lox Yeo River may become saturated and possibly flood, the OMA has identified that the land is not within a flood risk zone. Further, local evidence has confirmed that this land has not flooded in living memory. In noting the small watercourse running alongside a section of the proposed route during my site visit, this appeared to be a minor field ditch and is not for all intents and purposes part of the river proper but rather a small tributary. I am satisfied from the evidence that the proposed route will not be affected in terms of flooding. Although my visit coincided with a dry summer's day and generally dry period, the size of the ditch and its depth would be unlikely in my view to overflow sufficiently to make the adjoining ground saturated and unusable. In the event that this ditch does get full, then the surfaced route will prevent the proposed route from becoming boggy.
12. The existing obstructed Footpath runs along a slightly undulating field. In fact, I found that by hugging the existing field boundaries, the route of the proposed Footpath is generally along flatter ground. The short rise between points F and G is not noticeably or unacceptably steep. The width of the path ranges from 2 metres to 2.5 metres. Whilst there is a degree of confusion in the appreciation of the route direction at point F in particular, the OMA will ensure that the Footpath is properly waymarked. Moreover, and importantly, the Footpath will obviate the potential conflict that might frequently arise between footpath users and farm machinery.
13. Accordingly, although the proposed route will be longer, it will not be significantly so. Its steeper sections are not in any way significant. The surfacing is acceptable and will in fact increase the enjoyment of walking across a solid and permeable footpath surface for most users. On balance, I conclude that the new footpath will not be substantially less convenient to the public, which is the test I must apply.

Whether new path termination point (being on the same highway) is substantially as convenient to the public

14. The termination point at the eastern end of the footpath would be a short 2m (approximate) distance to the south of that of the existing route. Nevertheless, the Order satisfies the test that the termination points would be on the same highway as the existing footpath and that the route would remain substantially as convenient to the public.

The effect the diversion would have on public enjoyment of the path as a whole, and the effect with respect to the land served by the existing right

of way and the land over which the right is to be created and any land held with it, having regard to the provisions for compensation

15. From point D heading westwards along the existing route towards point C, the views open out in a 360 degree arc and is generally of wooded hillsides in the middle to long distance. The proposed Footpath would follow the line of the hedgerow along the valley bottom for part of its route and in this regard, there is a very slight diminution of views of the countryside, particularly to the west. However, this is of such short duration that its effects would not be particularly noticeable or significantly diminish the enjoyment and pleasure of walking this similarly attractive section or importantly, the whole length of the path.
16. The land crossed by the existing and proposed routes would remain within the same ownership. There is no evidence that there would be any negative effect on land served by the existing or proposed routes. Although compensation issues have not been raised, the landowner has agreed to defray any compensation which becomes payable in consequence of the Order being confirmed.

ROWIP

17. No issues have been raised by the parties in this regard, and there is nothing that would suggest the Order is incompatible with the Council's ROWIP.

Whether it is expedient to confirm the Order

18. It is the impact of the proposal on the convenience and public enjoyment which are the main concerns of the objectors. It is the view of the landowner that confirmation of the Order would have a positive impact on the safety of the public when heavy farm machinery is in operation in particular.
19. As stated above the OMA requires the provision of adequate waymarking, which would assist walkers navigating part of the route in particular. The landowner has worked with the OMA to enhance accessibility through the removal of stiles and their replacement with gates. Despite the removal of traditional stone stile, I am satisfied that the provision of gates and proper waymarking will go some way towards addressing the concerns of the objector. Whilst I understand that the walked route has been in existence for some time, there is no supported evidence that it has had any adverse effects on the use of the path by walkers.
20. From what I saw at my site visit and having regard to the submissions made, there is nothing to suggest that it would not be expedient to confirm the Order. I therefore conclude that the Order should be confirmed.

Conclusion

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

Formal Decision

22. The Order is confirmed.

Gareth W Thomas

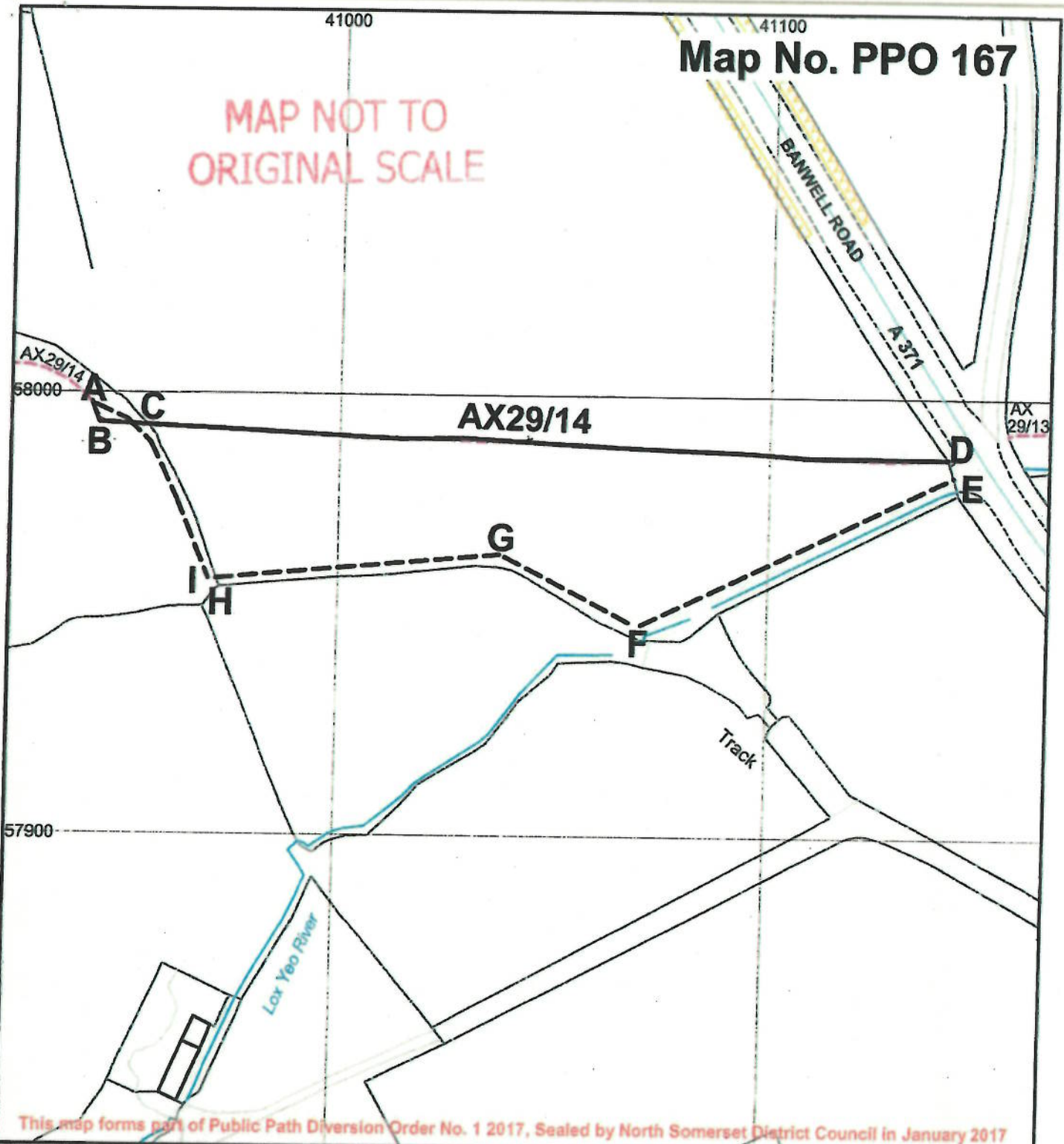
INSPECTOR

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Map No. PPO 167

MAP NOT TO ORIGINAL SCALE



This map forms part of Public Path Diversion Order No. 1 2017, Sealed by North Somerset District Council in January 2017

Highways Act 1980 - Section 119 North Somerset District Council

Public Path Diversion Order No. 1 2017

Part of Public Footpath AX 29/14,
over land west of A371 Banwell Road, Winscombe and Sandford Parish



Development & Environment

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Scale 1:1250



Date January 2017

Grid Squares
ST4057 & ST4157

Drawn by Penny Price

PATH TO BE DIVERTED

Existing —————
(D-C-B-A)

Proposed - - - - -
(E-F-G-H-I-A)

Connecting Paths - - - - -