



Order Decision

Site visit made on 19 June 2018

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 02 August 2018

Order Ref: ROW/3187431

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the North Somerset District Council (Footpath LA19/50 and part of Footpath LA19/48, over land between Kingston Lane and Market Place, Winford) Public Path Diversion Order No. 2 2017.
- The Order is dated 27 January 2017 and proposes to divert the public rights of way shown on the Order Plan and described in the Order Schedule.
- There was 1 objection 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 not confirmed.

Procedural Matters

1. The Order seeks to divert the entire length of Footpath (FP) LA19/50 (shown A-B-C on the Order Plan) and part of FP LA19/48 (shown C-D on the Order Plan). In considering whether or not to confirm the order, I have considered each proposal separately.
2. One objection was made to the Order during the statutory period. This was in relation to the diversion of FP LA19/50 only. A further representation was made following the submission of the Order to the Secretary of State which relates to both FP LA19/50 and FP LA19/48. I have had regard to all representations made in considering whether or not to confirm the Order.
3. The Council has drawn my attention to that part of FP LA19/50 which passes over a redundant tennis court located to the south of Walton Crescent and which is not currently passable. However, the Council has confirmed in their written evidence that they have regarded this as a temporary obstruction and considered the proposal on the basis that the existing route is open and maintained to a suitable standard. I have taken the same approach in my consideration of this matter.
4. The Order Plan shows FP LA19/48 as continuing in a westerly direction from point D to the junction with FP LA19/8/40. However, the Definitive Map shows this as FP LA19/49. I have considered the Order on the basis that this is a typographical error and that the information set out in the Definitive Map is correct. In the event that I was to confirm the Order, I am satisfied that it can be modified to correct this typographical error.

The Main Issues

5. Section 119 of the 1980 Act requires that before confirming the Order, I must first be satisfied that it is expedient in the interests of the owner of land

crossed by the path or way or of the public that the footpaths in question should be diverted. In addition, section 119(2) requires that where the Order alters a point of termination, I must be satisfied that it is substantially as convenient to the public.

6. The other tests for confirmation set out in section 119 which are relevant to this Order are, firstly, whether the diverted footpaths would be substantially less convenient to the public than the present ones, and secondly, what effect the proposed diversion would have on public enjoyment of the path as a whole.
7. In addition, I am required to take into consideration any material provisions of a rights of way improvement plan prepared by the Council. However, in this case there are no material provisions of the Rights of Way Improvement Plan which are relevant.

Reasons

Whether it is expedient in the interests of the owner of the land or of the public that the footpaths in question should be diverted

8. FP LA19/50 commences on the southern side of Kingston Lane (point A on the Order Plan) and proceeds, via a metal gate, in a generally east south easterly direction for approximately 55 metres through the Parish Council's composting centre to point B before continuing in the same direction through an agricultural field for a further 194 metres to Point C. The route itself is not readily evident on the ground.
9. The part of FP LA19/48 to be diverted commences at point C and proceeds, via a stile, in a generally south south westerly direction for approximately 126 metres at which point it joins FP LA19/49 at point D. As with FP LA19/50, the route is not readily evident on the ground and passes centrally through an agricultural field.
10. The Order is made on the basis that it is expedient in the interests of both the landowners and the public. In respect of the landowners' interests, FP LA19/50 currently passes through the Parish Council's composting site after which it passes centrally through an agricultural field¹ which is currently used for the grazing of animals. I accept that by diverting the route it will allow for the safer management of the composting site and more effective use of the agricultural land for the grazing of stock. As such, I consider it would be expedient in the interests of the landowners for FP LA19/50 to be diverted. Similarly, the part of FP LA19/48 to be diverted would also enable more effective use of the land for agricultural purposes and I am satisfied that its diversion would be in the interests of the landowner.
11. However, the Council has indicated that the diversion of both routes would also be in the interests of the public. The Council asserts that this would be because the proposed new routes have been more frequently used over recent years than the existing routes and the diversion would offer them legal protection, safeguarding them for public use into the future. However, while I note these routes provide important links for local residents, there are other mechanisms available to the Council which would secure their protection in the future. As such, I am not persuaded that the diversion of these routes would result in any meaningful benefit to the public.

¹ in separate ownership.

12. Consequently, while I consider the proposed diversions would be in the interest of the landowners, I do not consider that it has been demonstrated that the diversions would be in the interests of the public. Accordingly, should it be confirmed, it will be necessary to modify the Order to remove the references to it being expedient in the interests of the public.

Altered termination points

FP LA19/50 only

13. The existing FP terminates at Point A where it meets Kingston Lane and at Point C where it joins FP LA19/48. The proposed diversion would alter both of these termination points to Points F and H respectively. In respect of Point H, while I note the termination point is some distance to the north of Point C, it would proceed along gravel based, traffic free path and would not add any significant length to the route. Having walked the route, I am satisfied that it would be substantially as convenient to the public.
14. However, the same cannot be said of Point F. Whereas at present FP LA19/50 provides a traffic free route via mostly open fields to its termination point on Kingston Lane, the proposed diversion would terminate on Walton Crescent after which it would involve travelling through the housing estate and a section of road with no footway in order to reach the same point (point A). Furthermore, it would increase the overall distance between points A and C by around 137 metres, representing an increase in distance of around 55%. Overall, I do not consider would be substantially as convenient to the public.
15. Consequently, I find that the proposed diversion of FP LA19/50 fails to satisfy the test set out in section 119(2) of the 1980 Act. In such circumstances, it is not necessary to consider whether the other tests have been met.

Whether the diverted path would be substantially less convenient to the public

FP LA19/48 only

16. The length of FP LA19/48 to be diverted is approximately 126 metres compared to the proposed diversion which would be around 161 metres. This would amount to an increase of approximately 35 metres, representing an increase in length of around 27%. Even taking into account the additional length between points E and D, the Order Plan indicates that the proposed diversion, while longer, would not be substantially so.
17. Furthermore, although it would result in additional bends, it would pass over an improved surface and would no longer require navigating a stile at point C which would improve accessibility.
18. Accordingly, while the proposed diversion would be slightly less convenient in terms of its increased length, taking into account the reduced number of limitations along this section and the improved surface, it would not be substantially so.

The effect on public enjoyment

FP LA19/48 only

19. The part of FP LA19/48 to be diverted is currently open and accessible to the public and passes through an agricultural field over an undefined path. When proceeding from points C to D it provides clear and extensive views of the surrounding countryside including over the village of Winford and the wider Chew Valley resulting in a pleasant and enjoyable walking experience.
20. In contrast, the proposed route passes along a narrow gravel path bounded on both sides by large hedgerows. This would materially alter the walking experience, changing it from what is currently a pleasant countryside walk to a more urbanised one. Furthermore, it would result in a significant loss of views over the surrounding countryside. While I accept that many local residents may choose to make use of the gravel path due to its improved surface, the diversion of FP LA19/48 and the resultant loss of views would nevertheless detract from the overall walking experience and materially impact on the public enjoyment of the path as a whole. While I note that it would remove the need to navigate over the stile at point C, this would be of only minimal benefit and would not provide sufficient mitigation for the loss of views which would result.
21. Accordingly, although I have found above that the Order would be in the interests of the landowner and would not be substantially less convenient to the public, I nevertheless consider that it would materially impact on public enjoyment of the route. I consider this diminution in public enjoyment would outweigh the benefit to the landowner and, as such, do not consider it would be expedient to confirm the Order.

Other Matters

22. The Council has suggested that the proposed diversions will ensure there is safe, year round passable public access for residents wishing to gain access between Winford Village and the residential area at the former hospital site. Furthermore, they state that any seasonal conditions should not cause any detriment to these traffic free routes. However, access between these sites is already available on the ground and while I note that ground conditions between points A and C can become more difficult during wet weather, the evidence indicates that it continues to be accessible with suitable footwear.
23. I note that there have been no objections from the local representatives of the Ramblers Association and note the proposal is supported by Winford Parish Council. However, this provides only limited support in favour of the proposal and does not justify the reduction in public enjoyment identified above.
24. Likewise, while I note the Council's assertion that the proposed diversion of FP LA19/50 would result in a safer and more suitable alternative, there is nothing which would indicate that there were any significant safety risks along the FP or that its diversion would improve safety for walkers along Kingston Lane.
25. In reaching my decision, I have noted the various comments regarding Neosporosis. However, there is no evidence which would indicate that the diversion of FP LA19/50 would have any material impact on infection levels locally.

Conclusion

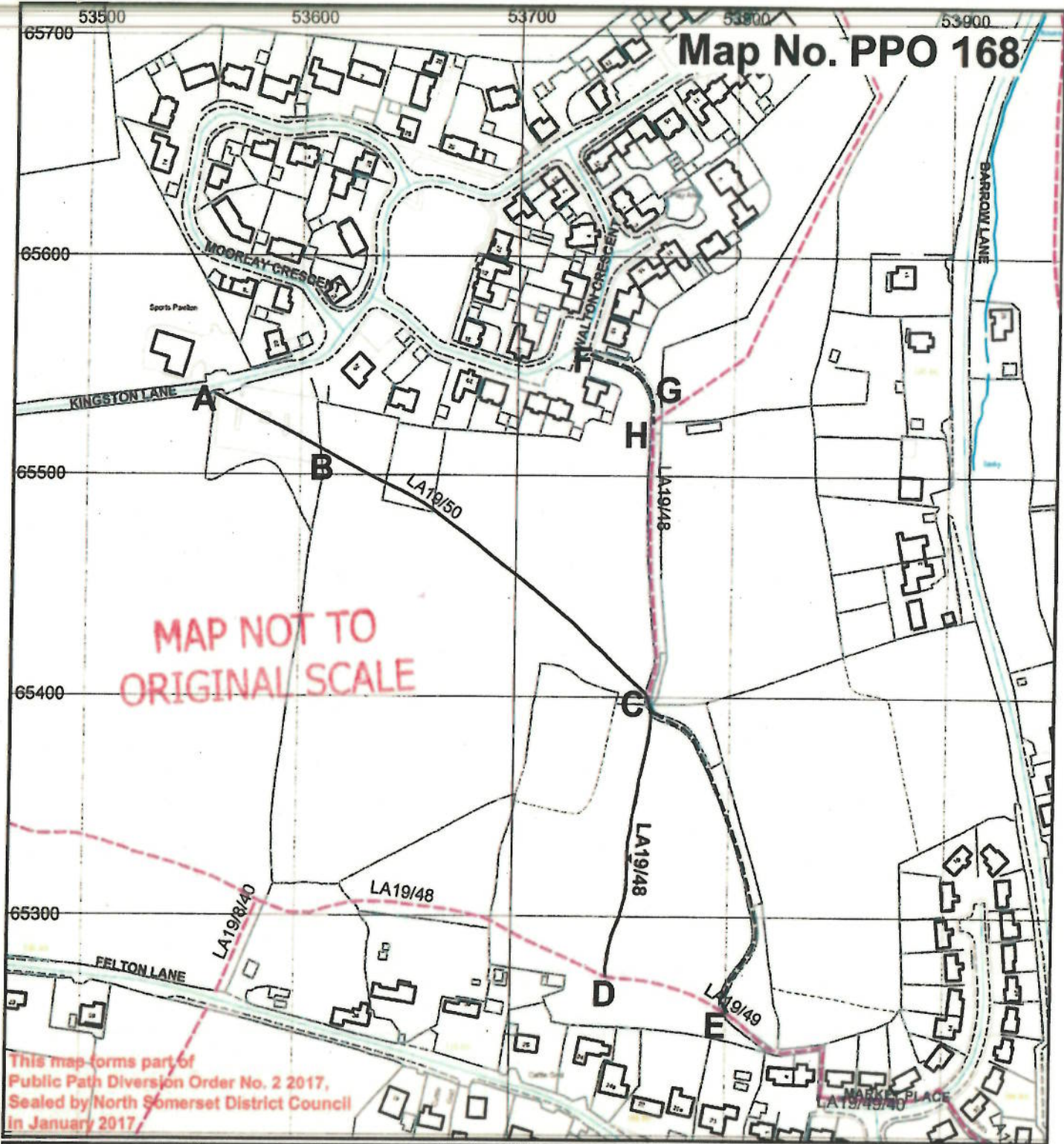
26. For the reasons set out above, and having had regard to all other matters raised, I conclude that the Order should not be confirmed.

Formal Decision

27. I do not confirm the Order.

Rory Cridland

INSPECTOR



Map No. PPO 168

MAP NOT TO ORIGINAL SCALE

This map forms part of Public Path Diversion Order No. 2 2017, Sealed by North Somerset District Council in January 2017.

Highways Act 1980 - Section 119 North Somerset District Council
Public Path Diversion Order No. 2 2017
 Public Footpath LA 19/50 and part of Public Footpath LA 19/48,
 over land between Kingston Lane and Market Place, Winford

N/S



Development & Environment
 Public Rights of Way
 Streets and Open Spaces
 North Somerset Council
 Town Hall
 Wallscote Grove Road
 Weston-super-Mare
 BS23 1UJ
 Tel: 01934 888 802



Scale 1:2500 NORTH
 Date January 2017
 Grid Square ST5365
 Drawn by Penny Price
PATH TO BE DIVERTED
 Existing ————— (A-B-C and C-D)
 Proposed - - - - - (F-G-H and C-E)
 Connecting - - - - - Paths