



Order Decision

Site visit made on 17 June 2018

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 02 August 2018

Order Ref: ROW/3190343

- This Order is made under Section 119 of the Highways Act 1980 (the Act) and is known as the Hampshire (Test Valley Borough No. 7) (Parish of East Tytherley - Part of Footpath No. 12) Public Path Diversion and Definitive Map and Statement Modification Order 2017.
- The Order is dated 21 April 2017 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 3 objections outstanding when Hampshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is Confirmed

Procedural Matters

1. This case concerns the proposed diversion of Public Footpath 12 (FP12) which runs on a north-south alignment through Oaklands Farm which occupies an isolated rural location to the east of East Tytherley. No-one requested an accompanied site visit, so my inspection was carried out unaccompanied.

The Main Issues

2. The Order is made in the interests of the owner of the land crossed by the Footpath. Section 119 of the 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) it is expedient to confirm the Order having regard to its effect;
 - i) on the public enjoyment of the path as a whole; and
 - 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.
3. Sub-section 2 sets out that a "...diversion order shall not alter a point of termination of the path or way...(where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public."
4. In addition, in determining whether or not to confirm the Order, I am required to have regard to the provisions of any rights of way improvement plan ("ROWIP").

Reasons

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

5. The majority of FP12 runs along the metalled farm access road. In so doing it passes close to a number of existing properties and farm buildings. I understand that one of these has the benefit of a recent planning permission to convert it to a residential use. Although I did not witness any vehicular or farm activity on my site visit, I can imagine that the road is well used by residential and farm traffic at other times. At a number of points forward visibility along FP12 is restricted by the alignment of the road. Consequently, there is a clear safety benefit to the landowner and public alike in diverting FP12.
6. FP12 separates one of the farm dwellings from its garden located on the western side of the driveway. Consequently and not unreasonably, the landowner states that the diversion will improve the privacy of these residents. In light of the above, I am satisfied that it is expedient, in the interests of the owner of the land, that the footpath in question should be diverted

Whether the new route will be substantially less convenient to the public

7. The proposed diversion of FP12 would be fairly modest with no significant increase in distance being added to the route. The proposed alignment would traverse open farmland to the west of the farm and would be enclosed by stock proof fence to a width of 2.5m. Whilst less than the existing route, the width would be more than adequate for pedestrian use.
8. There would be a net reduction in the number of limitations with only a single gate at the intersection with Footpath 1. This would benefit the elderly or the less mobile. Whilst there would be a change in surfacing from tarmac to grassland, the latter is not unusual in rural areas where as is the case here, the majority of connecting footpaths are of a similar surface. Accordingly, the fact that the ground might on occasion be wet and muddy is not a compelling reason not to confirm the Order.
9. Based on the foregoing, there would not be any significant disadvantage or loss to the general public as a result of the diversion. I therefore conclude that the new route would not be substantially less convenient to the public.

The effect of the diversion on public enjoyment of the route as a whole

10. Whilst I found the existing route to be pleasant enough, I am mindful that my site visit was undertaken on a quiet Sunday afternoon. I can appreciate that at other times the proximity of farm activity and traffic could detract from one's enjoyment of the route.
11. In spatial terms, the proposed and existing routes would be closely related such that the new route would still enjoy views over the farm including the old buildings/walls/hedges and trees. Whilst I cannot discount the possibility some might prefer to walk along the existing route, it cannot reasonably be said that the proposed route which would be a traffic-free with an open bucolic aspect would, diminish the public's enjoyment of the route as a whole.
12. It is argued that the new route would not provide the same level of shelter as the existing route. However, given that the proposed route is likely to be part

of a longer recreational walk using this and other paths in the area, I have no reason to think users of the path would not be dressed appropriately for the weather. I am therefore satisfied that the diversion would not significantly affect the public's enjoyment of the route as a whole

The effect the coming into operation of the Order would have with respect to the land served by the existing route and the land over which the new route is created together with any land held with it, account being taken of the provisions as to compensation

13. The land crossed by the existing and proposed routes would remain within the same ownership. There is no evidence that there would be any 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.

Termination points

14. The northern termination point C would be approximately 15-20 metres to the west of point B. However, both new termination points are either on the same highway, or a highway connected with it. I am thus satisfied that the new termination point would be substantially as convenient to the public.

ROWIP

15. 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.

Other Matters

16. Objectors to the Order have commented that the existing route is adequate and therefore the diversion is unnecessary. However, S119 of the Act provides for the diversion of a footpath provided it is in the interests of a landowner. Having considered the Order against the relevant statutory tests I have found that to be the case in this instance. The fact that FP12 may have been previously diverted does not preclude further applications under S119 of the Act. As the route would be physically enclosed, I am satisfied that the diversion would not harm livestock or local wildlife. Finally, it has been suggested that a new section of footpath could be provided to connect FP10 and FP12. However such matters are outside the scope of my decision and are a matter to be taken up directly with the landowner.

Conclusions

17. There is nothing in the submissions or from my site visit that would lead me to conclude that it would not be expedient to confirm the Order. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

18. The Order is confirmed.

D. M. Young

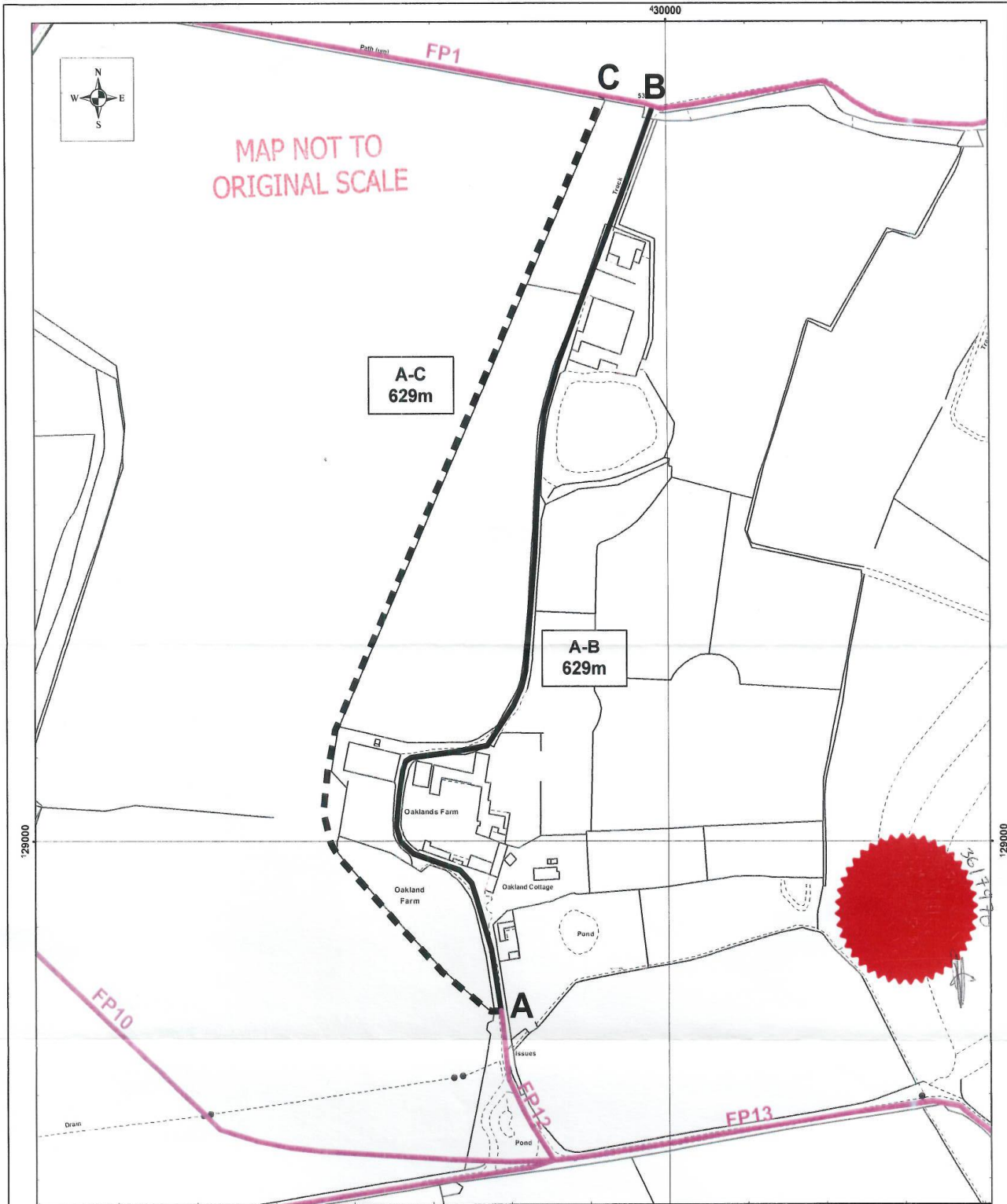
Inspector

HAMPSHIRE COUNTY COUNCIL

MAP REFERRED TO IN

THE HAMPSHIRE (TEST VALLEY BOROUGH NO. 7)
(PARISH OF EAST TYTHERLEY - PART OF FOOTPATH NO. 12)

PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2017



SCALE 1:2,250

LEGEND

FOOTPATH TO BE DELETED:-



NEW ROUTE OF FOOTPATH:-



EXISTING FOOTPATH TO BE RETAINED:-



MAP No. 1614 PRODUCED FROM DIGITAL DATA SUPPLIED BY ORDNANCE SURVEY

THE COMMON SEAL OF HAMPSHIRE COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-

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 DATE: 21st April 2017

AUTHORISED SIGNATORY

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KAREN MURRAY,
 DIRECTOR OF CULTURE, COMMUNITIES AND BUSINESS SERVICES, WINCHESTER