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## Order Decision

Site visit made on 21 August 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: 18 September 2018**

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### Order Ref: ROW/3195200

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as The Cambridgeshire County Council (Public Footpath No 2, Alconbury Weston (part) Public Path Diversion Order 2015).
- The Order is dated 13 August 2015 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were five objections outstanding when Cambridgeshire 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 subject to modification.**

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### Preliminary Matters

1. The case concerns the proposed diversion of that part of Public Footpath No.2 Alconbury Weston which traverses farmland in a roughly north-north-east direction from a small glade off Hamerton Road on the edge of the village of Alconbury Weston. The existing route runs through a farm complex and farmland before heading north-west towards the neighbouring village of Upton. Part of the legal line of the footpath closest to an existing farm building appears to be no longer passable. However, walkers are able to walk freely by following either a route that skirts the existing field boundary hedgerow to the east or by taking a slight deviation to avoid the farm complex before proceeding along the legal route. Both routes join Public Footpath FP2a heading in a westerly direction from Vinegar Hill either at point G or F as shown on the Order map.
2. A new farm worker's dwelling has recently been built alongside the legal route immediately to north of the existing farm complex. The legal route is unaffected by this dwelling.
3. Objectors raised the matter that insufficient notices were placed in regards to notification of the proposal in line with the 1980 Act and Schedule 6 of the Regulations<sup>1</sup>. In particular, my attention was drawn to the fact that no notices had been displayed within the parish of Upton. The Council confirmed that notices were placed either end of the affected footpath but not in the village of Upton as the line of the footpath remained unaffected at that location. I have noted the Council's intention to change its procedures in future to include the posting of notices in neighbouring parishes. However, I am satisfied that the legal requirements in respect of notices relating to this Order have been satisfactorily discharged.

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<sup>1</sup> Public Path Order Regulations 1993

## **The Main Issues**

4. 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 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.
5. 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***

6. From point A the existing route commencing at a point towards the end of a small wooded glade off Hamerton Road skirts the end of an existing modern farm building before taking a diagonal route close past the owner's new house. It then cuts diagonally across a horse paddock to point G where it meets with a path (FP2) leading from the east at an existing metal kissing gate. From this point the path continues in a north-north-easterly direction before straightening to follow the line of the existing field boundary to point B, which comprises a fairly wide opening into the adjoining field to the north. The path then proceeds in a north-westerly direction towards Upton. There is a suggestion that the kissing gates are not located exactly on the legal line of the footpath; however, the walked route that follows the legal line
7. The Order is made to address the concerns of that the landowner has in terms of the location of the existing line of the Footpath relative to the recently built farm worker's dwelling. In addition, he claims that the line of the path has changed a number of times and that the route is not particularly discernible on the ground. The landowner suggests that the diversion would secure a definitive route, which would avoid confusion in the future. Whilst objectors suggest that the diversion would not be in the interests of the landowner, I am satisfied that it would take the proposed route would take the path away from the house and garden thus improving privacy levels for the occupiers of the property and potentially improve security levels. In addition, it would also avoid crossing a horse paddock which might dissuade some users from walking the legal route at this point.
8. 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 be diverted.

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

9. 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 convenient alignments or temporary arrangements.
10. Of course the existing alignment of the legal route provides a more straightforward route than the proposed route that follows the edge of the field boundary and watercourse. Despite the slight changes in direction, the proposed path, which is already an alternative walked route, follows a more distinctive and definable alignment alongside the field boundaries and their hedgerows. The difference in distance between points A, G, B and C of the existing route and A, D, E, F G, H and C of the proposed route as a result of the deviation would be 84 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 Alconbury Weston and Upton. It would also provide a more straightforward looped route if walking from Hamerton Road in the direction of Vinegar Hill.
11. The existing route crosses both a horse paddock and an adjoining open field; however, the alignment is not particularly discernible for walkers who may be unfamiliar with the route. Moreover, the presence of the kissing gate although potentially a route marker is not located on the legal route in any event. The proposed route will follow an alignment that hugs existing field boundaries. Objectors suggest that due to the close proximity to a small watercourse, the land becomes boggy during inclement weather. Photographs taken by objectors confirm that the land can get wet underfoot. At the time of my visit, weather conditions were fine following a particularly dry summer and the ditch was dry. The Council accepts that drainage works may be necessary to improve surface conditions in areas where the proposed route can get muddy as described by the objectors and shown in photographs. The landowner also confirms that further works will be necessary to improve parts of the proposed path. I am satisfied that the watercourse is a modest field ditch and would be unlikely to overflow sufficiently to make the adjoining ground saturated and unusable. As with many countryside footpaths, there will be occasions when paths become muddy. However, I am satisfied with the responses of the Council and landowner whilst points H to C follow the line of an existing stoned track, which will inevitably be drier at all periods of the year.
12. From what I saw during my site visit, there is a degree of confusion in appreciation of the precise alignment along points A, G and B of the existing path with the result that walkers are able to wander across fields at will. The proposed route will follow a better defined route. Moreover, it will obviate the potential conflict that might arise between footpath users and farm machinery and with some users not being comfortable with entering a horse paddock.
13. Accordingly, although the proposed route will be longer, it will not be significantly so. The surfacing is generally acceptable with drainage works alleviating areas of identified concern. 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 it is expedient to confirm the Order having regard firstly, to the effect the diversion would have on public enjoyment of the path as a whole and secondly, the effect which the coming into operation of the Order would have with respect to the land served by the existing right of way and the land over which the right is so created and any land held with it, having regard to the provision of compensation***

*Public Enjoyment*

14. From point A, the existing path slopes very gently up to point C. The landscape hereabouts is generally flat until reaching point C. There are fairly extensive open views of the surrounding mainly arable farmland. Objectors describe it as attractive open countryside with far reaching views, which provides for a pleasant walking experience. Objectors comment that this is an historic route and as such should be preserved.
15. Whilst the proposed route follows the existing hedgerow between points A to F, I found that the proposed route as a whole retains the open views to the north and east thus providing a similar walking experience as regards views and amenity as the existing path. Indeed taking the route away from farm buildings and the new dwelling may result in the enhancement of countryside views when walking between points A, D, E, F and G in particular. I found that the character of the remaining sections of the proposed route from point G, H, B to C to remain largely unaltered.
16. Whilst recognising that Footpath No. FP2 may have been in existence in this location for many years, there is nothing to suggest that it is of historic significance. The evidence suggests that the alignment has subtly changed over the years. Accordingly, I attach little weight to this as an argument in favour of the path's retention along its existing line.
17. The proposed route is to be the subject of improvement works as described in paragraph 11 above. Since this is an integral part of the alternative route, it is essential that the works are carried out prior to the stopping up of the existing route. Consequently, I am minded to modify the Order to specify the date when the old route will be stopped up to include on 28 days of confirmation of the Order or upon certification by the Council that the works required to bring the new path into a fit condition have been carried out, whichever is the later.

*Effect with respect to the land*

18. Both the land over which the existing and proposed route pass is in the same ownership. No other land is served by the existing route. No adverse effects have been raised as regards the land served by the existing right of way or the land over which the proposed route will pass. Compensation issues have not been raised.
19. I find that there is no significant detrimental impact on amenity or enjoyment that would lead me to conclude that the Order is not expedient in this regard. No detrimental impact has been identified as regards the land. I conclude that the test is met.

***ROWIP***

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

***Whether it is expedient to confirm the Order***

21. The proposed route is not yet a public rights of way and I have noted the views of objectors in respect of the muddy nature of part of the alternative route on occasions, which to my mind is the greater of the concerns raised. However, I am also mindful that work might be required to bring the path up to a suitable standard as indicated in the Order. The landowner has agreed to implement drainage works as confirmed by the Council.
22. I have concluded above that the Order is expedient in the interests of the landowner. The proposed route will not be substantially less convenient and consider that the Order should be confirmed having regard to the effects both on public enjoyment and on the land. There is nothing in the submissions nor what I found during my site visit that would lead me to conclude that it would not be expedient to confirm the Order.

**Conclusions**

23. Having regard to these and all other matters raised in the written representations, I conclude that it is expedient to confirm the Order with a modification that the current footpath is not stopped up until the new route is properly formed.

**Formal Decision**

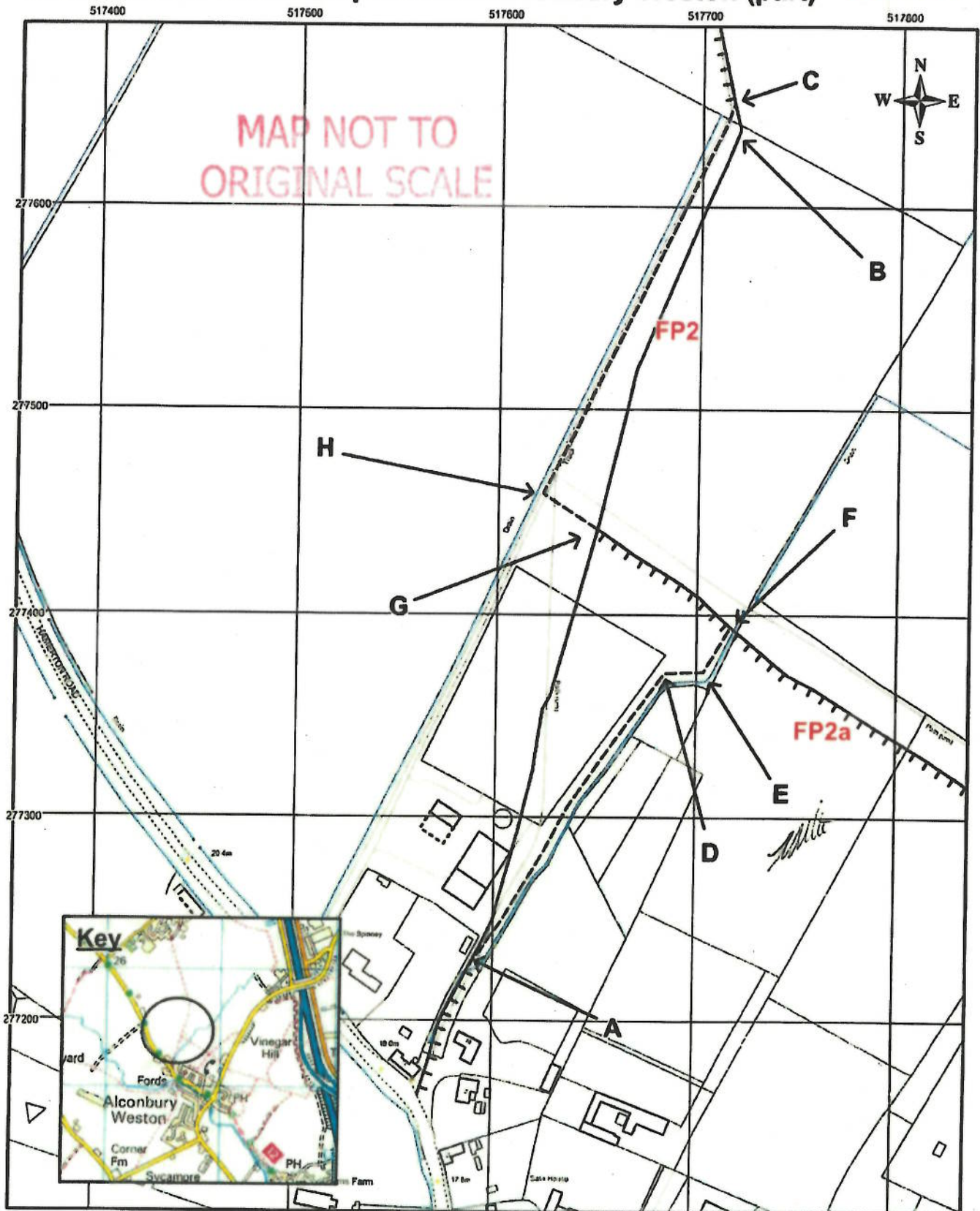
24. I confirm the Order with the following modification: Delete Paragraph 3 of the Order and amend Paragraph 1 by adding after 'the date of confirmation of this Order' the words 'or on such date as Cambridgeshire County Council certifies that the work required to bring the site of the new path into a fit condition for use by the public has been carried out, whichever is the later'.

*Gareth W Thomas*

INSPECTOR



# Diversion of Public Footpath No.2 Alconbury Weston (part)



Scale: 1:2500

**Key - Drawn from the Definitive Map**

Public Footpath to be Stopped Up Points A - B - C

New Route of Public Footpath Points A - D - E - F and G - H - C

Unaffected Public Footpath