
Order Decisions

Site visit made on 28 August 2018

by K R Seward Solicitor

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

Decision date: 04 October 2018

Order A: ROW/3184369

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act"). It is known as the West Sussex County Council (Warnham) Public Path (No. 1577) Diversion Order, 2013.
- The Order is dated 27 September 2013 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 6 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 subject to the modifications set out below in the Formal Decision.

Order B: ROW/3184370

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act"). It is known as the West Sussex County Council (Warnham) Public Path (No. 1578) Diversion Order, 2013.
- The Order is dated 27 September 2013 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 6 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 subject to the modifications set out below in the Formal Decision.

Preliminary Matters

1. Both Orders relate to the diversion of public footpaths in the Parish of Warnham, being FP1577 and FP1578. These public rights of way affect land within the same ownership and they are physically linked. The Order map is the same in each case identifying both routes and diversions. Whilst Order A does not depend upon Order B, if Order B was confirmed without Order A, it would leave a cul-de-sac route for FP1578 stopping at the field edge west of Little Daux Cottage. Taken together the Orders form a coherent package. Nevertheless, I must deal with each Order individually and on its own merits.
2. If the Orders are confirmed the landowner proposes to enter a Creation Agreement under section 25 of the Highways Act 1980 to upgrade both diverted footpaths to bridleways with an all-weather surface suitable for such use. An Agreement signed by the landowner has been produced. It will only be completed once the Orders are confirmed. I have no reason to believe that completion will not occur, but as the Agreement is not yet in force and depends upon the Orders being confirmed, I am unable to take it into account.

3. When notice of the Orders was first published there were six objections and one letter of support from the parish council. It transpired that the notice omitted a description of the existing routes. After re-advertising, one further objection was received from the occupier of 2 Great Daux who also made a subsequent late representation.
4. The County Council as Order Making Authority ('OMA') has suggested minor changes to Clauses 1 and 3 of each Order to clarify the length of path to be stopped up and the extent of the new paths by reference to points on the Order map. I agree this would add clarification. The Orders can be modified without the need to re-advertise.
5. No-one requested an inquiry or hearing into the Orders. In arriving at my decisions I have taken into account all of the written representations.
6. As I have found it convenient to refer to points along the existing and proposed routes as shown on each Order Map, I attach a copy for reference purposes.

Main Issues

7. These Orders are made in the interests of the owner whose land is crossed by the footpaths. By virtue of section 119 of the Highways Act 1980, for me to confirm the Orders I must be satisfied in each case that:
 - (a) the diversion to be effected by the Order is expedient in those interests;
 - (b) the new paths will not be substantially less convenient to the public in consequence of the diversion;
 - (c) any new termination point for the paths is substantially as convenient to the public; and
 - (d) it is expedient to confirm the Order having regard to:
 - (i) the effect of the diversion on public enjoyment of the paths as a whole, and
 - (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing path and the land over which the new path would be created together with any land held with it.
8. I shall also have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area when considering the Orders.

Reasons

Order A

Whether it is expedient in the interests of the owner of the land that the path be diverted

9. Currently, FP1577 commences at the juncture with Bridleway 3647 ('BR3647') and proceeds in a north-westerly direction beside and through arable land.
10. The application is made by the landowner whose estate includes adjoining Warnham Park. He seeks to divert part of FP1577 for the purposes of restoring

the land as parkland for the expansion of his existing deer herd. Apparently, considerable problems have been caused from disturbance to deer by dogs being walked along the path especially during the breeding season. By diverting the path so that it is close to the perimeters of the expanded park, the landowner anticipates being able to manage the herd better and erect fencing. It is contended that the expansion plans for the deer park could not take place unless the footpath is diverted.

11. According to the Parish Council, which supports the Order, Warnham deer park was originally laid out in 1837. By the 1890's the herd was said to be regarded as the finest Red Deer herd in the country. Most of the parkland trees were felled in 1928 and it is said to be the applicant's vision to plant new trees for landscape improvement and shelter for deer. The existing park is stated to be recorded within the Register of Historic Parks and Gardens by English Heritage for its special historic interest.
12. The Parish Council submits that re-routing FP1577 around the edge of the proposed deer park extension protects the deer and enables the arable land to be landscaped with new parkland tree planting within permanent pasture.
13. It is unclear whereabouts problems have arisen in the past. Part of the existing footpath is enclosed by wire fencing where it extends beside the field edge up to point R. As such, the use of this stretch by dog walkers appears unlikely to affect deer in future. The remaining stretch up to point S bisects open fields where deer could be present on either side if the park is expanded.
14. An objector points out that there are many instances in England where deer and public rights of way happily co-exist. That may be so, but it is plausible that disturbance to deer could arise depending on the circumstances. Indeed, the applicant points out that in the example given by the objector, the herd is Fallow Deer which are significantly less aggressive in the rut and occupy greater acreage enabling them to move away from perceived conflict.
15. There is no guarantee that the deer park will be expanded following confirmation of the Order. If it were to do so, I can see that use of the section of route heading south eastwards from point S across the open fields could potentially disturb deer particularly if dogs are not kept under close control. It may be impractical to fence a route in such an open location which would then stop or deter the movement of deer between different areas of the park.
16. Whilst there are no details to demonstrate that the landowner's plans will come to fruition, taken at face value, I am satisfied that it is expedient in the interests of the landowner that the footpath should be diverted to facilitate expansion of the deer park.

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

17. As things stand, the affected part of FP1577 is in a straight alignment in a north-westerly direction from the intersection with BR3647. It continues past the affected part of the footpath in virtually a straight line beside the churchyard to exit in Church Street.
18. The diversion requires users to continue along BR3647 for a further

320m in a more northerly and curved line towards the A24 Dorking Road. At point T it changes direction to cut inside the field boundary before proceeding parallel with the road. At point W there is a short link along a track to an existing access point with the A24 where there is a field gate at point X. From point W the path would follow a ditch line travelling away from the road in a south-westerly and then north-westerly direction to connect with existing FP1578. This links to the unaffected part of FP1577 at point S after another change in direction.

19. I gather that it would be around 260m¹ longer to travel between points R-S along the diverted route than the existing path. The diversion involves various changes in direction as the new section of path follows headlands. The new route is not very clear in places where it is overgrown, but this would improve with use and signage. The field edge location should provide a hardened surface with less risk of being ploughed.
20. The existing route from point R follows an unmistakable line between fencing of the arable field and trees/hedging separating the path from Warnham Park. Where the fencing ends midway between R-S the definitive line continues through the middle of the field until the intersection with FP1578. Despite it being a trodden path only, the soil was well compacted and the alignment clearly visible through the field when I visited. During wet spells and other times of year, the exposed location of the path could well make it vulnerable to becoming muddy. The Parish Council produces a photograph to highlight the uneven surface of the field path.
21. The Parish Council adds that the path is regularly ploughed making conditions under foot challenging when reinstated. There are restrictions on ploughing up a public right of way. It must be reinstated to be available for use and any lawful non-availability will be short term.
22. Objectors say that the existing path is the most direct route between the village of Warnham and Horsham. The Parish Council observes that Horsham is over 4km away and says the additional distance is unlikely to be material. If Horsham is a walker's destination then I agree that comparatively the diverted route is not so much further to cause major inconvenience.
23. However, for those wishing to undertake a shorter walk, the combination of additional distance and changes in direction will be less convenient than the existing route. As things stand, walkers can follow virtually a straight line between point R and the village centre where there are some services.
24. A diversion can be less convenient without being *substantially* less convenient. In my view, the diversion is not substantially less convenient to the public.

Altered termination points

25. The northern termination point is unchanged. At the southern end of the route the termination point would be approximately 320m further to the north. To walk between the existing and new termination points involves the use of BR3647. From the new termination point, entry can be gained from and onto

¹ Distance calculated by the Parish Council which tallies with figures given in the Order when adding the distance between X-S along FP1578. The County Council refers to it being an additional 297 metres.

the A24, but as a busy main road without a footway, it is more likely that walkers will wish to proceed north-westwards towards the village or south past point R if travelling in the opposite direction.

26. The same termination points can be reached. BR3547 is 3m wide along a hard surfaced disused road. It is easy to follow, but the additional distance involved is less convenient than the existing termination point R.
27. On balance, it is not *substantially* less convenient to the public, which is the test that must be applied.

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

28. Part of the route runs parallel with and in quite close proximity to the A24, an extremely busy main road where a 50mph speed limit applies. Indeed, the whole of the diversion is closer to the A24 than the existing route. When I undertook my visit late morning and into the afternoon, the traffic flow was constant. Traffic noise was audible along the whole of the diverted route, but was particularly high for the 234m or so between T-W which is closest to the carriageway and where vehicles are accelerating after leaving the roundabout. Glimpses of some high sided vehicles could also be seen over the field boundary hedge.
29. In order to address noise along the section of diverted route closest to the A24 between T-W (or thereabouts), the applicant proposes to plant a 20-30m wide tree belt, described in the Order as a 'buffer zone'. Once matured, it should obscure views of the road. It may take a long while to become fully established and its effectiveness in reducing noise experienced from the path is uncertain. However, it is bound to have some positive effect even if it is only to create a greater sense of separation from the road. Nonetheless, traffic noise will almost certainly still be heard to a greater degree than the existing route which is much further away from the road.
30. Walkers must use the existing BR3647 to reach points R and T. Whilst the route between these points is wide and mainly leafy it too suffers from traffic noise with the A24 also running to the east. In comparison to the proposal, the existing route offers a reasonably peaceful walk with only a distant hum of traffic for the most part getting louder as it approaches BR3647.
31. The current path across the middle of an arable field offers views all about. Many people may enjoy the sense of openness, views and tranquillity. Even where the existing path is enclosed, it has hedgerow and trees extending down one side shielding the path and with views across the field on the other side.
32. The diverted route offers different far reaching farmland views on one side. Once the new deer park is established, the OMA suggests there will be more attractive views than the present arable cultivations. I acknowledge that there is prospect of more varied views with grassland, trees and opportunity to spot deer if the expansion takes place.
33. The Parish Council suggests that people often prefer to walk close to a field boundary where there is a greater feeling of security, free from unexpected animals which can intimidate. It is not altogether clear if these comments are borne out of any reported incidents. It is possible that some people may prefer

to use field boundaries especially when a field is in crop and they fear causing disturbance. Others may prefer the openness of walking across a field with expansive views which is supported by comments made by some objectors. The surface condition of the cross-field path could impact negatively upon a walker's enjoyment when wet and muddy. The diverted path is generally more sheltered by hedgerow and the field edge location is less likely to be disturbed and become uneven under foot.

34. The Parish Council says that the diversion offers a public benefit in completing a safe cycle route from Warnham to Horsham avoiding increasingly heavy traffic. However, the Order concerns diversion of a footpath and not a bridleway to allow cycle use.
35. There are advantages and disadvantages of the diversion. I consider that there would be a loss of enjoyment from more traffic noise. This may be mitigated to some degree over time by the proposed planting. The diversion offers prospect of more varied views if the deer park is expanded and a walker's enjoyment is less likely to be impeded by disturbance to the surface. More people are likely to be able to enjoy the path in consequence. Taking the factors as a whole I consider that the impact of traffic noise is offset to some extent so that the loss of enjoyment to the public is moderate only.

The effect of the diversion on other land served by the existing path and the land over which the new path would be created

36. There is no evidence to suggest that the proposed diversion would have any adverse effect on other land.

The ROWIP

37. A copy of the Rights of Way Improvement Plan for West Sussex has been produced. My attention has been drawn by the OMA to the vision for "*A county where there are maximum opportunities for people to enjoy the countryside on foot, by horse and by bicycle for health, recreation and to access services, while recognising the need to balance this with the interests of those who live and work in the countryside and the management of special landscapes*".
38. As the potential dedication of the routes as a bridleway is not a factor that can be considered I am unpersuaded the diversion increases opportunities for people to enjoy the countryside as suggested by the OMA.
39. To realise the vision, the ROWIP states that the County Council needs to "*Provide a path network that enables appropriate access without barriers for as many people and different types of users as possible*". The OMA refers to the 300m or so of FP1577 which bisects the arable field where ease of access will be diminished, especially to the less mobile, due to disturbance of the surface from ploughing.
40. As set out above, there are restrictions on disturbance of a public right of way which must be observed, but the field edge path is less likely to be disturbed to restrict its accessibility.

Other Matters

41. The Parish Council refers to policies within the District Council's Development

Framework. Planning policies of the local planning authority do not apply in the consideration of the diversion of a footpath under section 119 of the 1980 Act.

Whether it is expedient to confirm the Order

42. I have concluded in my considerations above that the Order is expedient in the interests of the landowner. I have found that whilst the diverted path would be less convenient as would the new termination point, they would not be *substantially* less convenient to the public. I need to balance those findings against the amount to which the interests of the owner of the land would be met. On balance, I consider that the greater weight should be given to the landowner in this instance in order to facilitate expansion of the deer park.

Conclusion

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

Order B

Whether it is expedient in the interests of the owner of the land that the path be diverted

44. The Order is expressed to be made in the interests of the owner whose land is crossed by the path. The reasons given are that it is in the interests of privacy and security of two properties known as 'Little Daux' and 'Redes Barn²'.
45. From the land title information supplied from H.M. Land Registry, 'Little Daux' appears to fall within the same ownership as the surrounding fields, but 'Redes Barn' is in separate ownership.
46. FP1578 passes beside 'Redes Barn', but there is no indication of how privacy is considered to be compromised or from the occupiers themselves.
47. The path passes immediately behind the house and along the side of the garden of 'Little Daux'. The property is reasonably well screened from public view by boundary planting. There are occasional glimpses into the garden and views may well become clearer at other times of year when there is less foliage. This is enough to cause me to believe that privacy to 'Little Daux' would be improved if the path is diverted.
48. The applicant says that 'Little Daux' has been burgled, but it is unclear if the presence of the public footpath contributed in any way to access being gained. In the consultation response from Sussex Police it states that "*To remove part of footpath 1578 which fronts Little Daux cottage situated adjacent to the A24 road, may have a dual impact. Initially this may reduce the intrusion of privacy to the residents of Little Daux by removing the footfall across its frontage, but at the same time it removes the natural surveillance this footfall provides whilst using this stretch of footpath. The action may result in unobserved unauthorised entries to the property*".
49. Therefore, if anything the Police suggest that closure of this part of FP1578 will

² The OMA refers to 'Reedes' and this is the name on the Order map. Order B refers to 'Reeds'. I have taken the name as displayed outside the property

not improve security. In the absence of further information to substantiate the case in this regard, the argument regarding security is unpersuasive.

50. Nevertheless, from my own observations, I am satisfied that it is expedient in the interests of the owner of 'Little Daux', that this part of FP1578 should be diverted to improve privacy.

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

51. The western end of FP1578 would be unaffected. The proposal involves stopping up the eastern section of FP1578 where it passes by the two dwellings and exits onto the A24 road. The OMA indicates that this section of path is little used by walkers. With fast moving traffic and grass verge only for pedestrians to use, it does seem unlikely that the path will be much used to connect with the A24. There are very few houses along this stretch of road.
52. Instead, a footpath would be created between S-Z to provide a link with Bell Road where there are numerous dwellings and a footway along one side of the road. Given its closer proximity to the village centre and where there is more housing, a footpath link in this location is likely to be more convenient for many users than the existing link to the A24. It would also offer easier access to the eastern end of FP1577 for residents in Bell Road. The Parish Council suggests as many as 100 residents would be closer to a public right of way from the additional Bell Road link. There is also benefit from the circular route that would be created around the church by joining FP1577, taking users away from the road.
53. At 3m in width, the footpath would be wider than the narrow path extending beside the churchyard thereby providing another option for users wishing to connect with FP1577 to the east. Access to and from the A24 could still be achieved further south by confirmation of Order A which creates a link at V-W.
54. I find that the diversion would not be substantially less convenient to the public.

Altered termination points

55. Where a diversion will alter a point of termination of a path or way, as in this case, it must be on the same highway as the existing point, or one connected to it, and which is substantially as convenient to the public.
56. Instead of terminating along the A24 near to Redes Barn, the new route would terminate midway along Bell Road. Bell Road connects with the northern end of the A24 and so satisfies the first requirement. The termination points are not close. However, Bell Road is likely to be more accessible and convenient for a greater number of users than the existing termination point along the A24 where there is no connecting footpath network thereby limiting its likely use.
57. Thus, the new termination point is substantially as convenient to the public.

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

58. The existing route runs close to the two dwellings. For the most part the route

is quite leafy with tall boundary trees and hedgerow, but it is generally unremarkable. Once the proximity of the path to the dwellings becomes apparent, the sense of being in the countryside subsides. In the approach to the A24, the noise and visibility of constant fast moving traffic impedes enjoyment.

59. The diversion between S-Z is hedged on one side with pasture on the other side. Views of the church can be appreciated not too far away. Dwellings in Bell Road are visible which diminishes the views to some degree, but the road itself is obscured up to the entry point.

60. When comparing the experiences, the new route is favourable and so there would be no loss of enjoyment of the route as a whole.

The effect of the diversion on other land served by the existing path and the land over which the new path would be created

61. There is no evidence to suggest that the proposed diversion would have any adverse effect on other land.

The ROWIP

62. A copy of the Rights of Way Improvement Plan for West Sussex has been produced. My attention has been drawn by the OMA to the vision for "*A county where there are maximum opportunities for people to enjoy the countryside on foot, by horse and by bicycle for health, recreation and to access services, while recognising the need to balance this with the interests of those who live and work in the countryside and the management of special landscapes*".

63. In order to realise this vision one of the aims is to "*Improve path links so that the countryside is accessible directly from where people live, work and visit, to provide circular routes, and to link between communities.*"

64. The new link to Bell Road also offering a circular route would fulfil this aim.

Other Matters

65. Concerns are expressed by an objector over the use of land adjoining the west-bound carriageway of the A24 including acts of trespass ongoing over many years. Whilst I am sympathetic to the distress that has clearly been suffered to the local resident in question, the footpath diversion appears to have no bearing on that situation. I also understand that the applicant has private vehicular rights over this land, but whether or not he chooses to relinquish those rights is a private matter falling outside the remit of these Decisions.

Whether it is expedient to confirm the Order

66. I have concluded above that the diversion is in the landowner's interests to improve privacy to the garden of the residential property at 'Little Daux'. The diverted route would offer better convenience and public enjoyment. Consequently, it is expedient for the Order to be confirmed.

Conclusion

67. Having regard to the above, and all other matters raised in the written

representations, I conclude that the Order should be confirmed subject to the modifications described in my procedural note.

Formal Decisions

Order A

68. I confirm the Order subject to the following modifications:

- In clause 1, insert the words "*between the points R-S*" before "*on the map contained in this Order*".
- In Clause 3, insert the words "*between the points T-W, W-X and V-W*" before "*on the map contained in this Order*".

Order B

69. I confirm the Order subject to the following modifications:

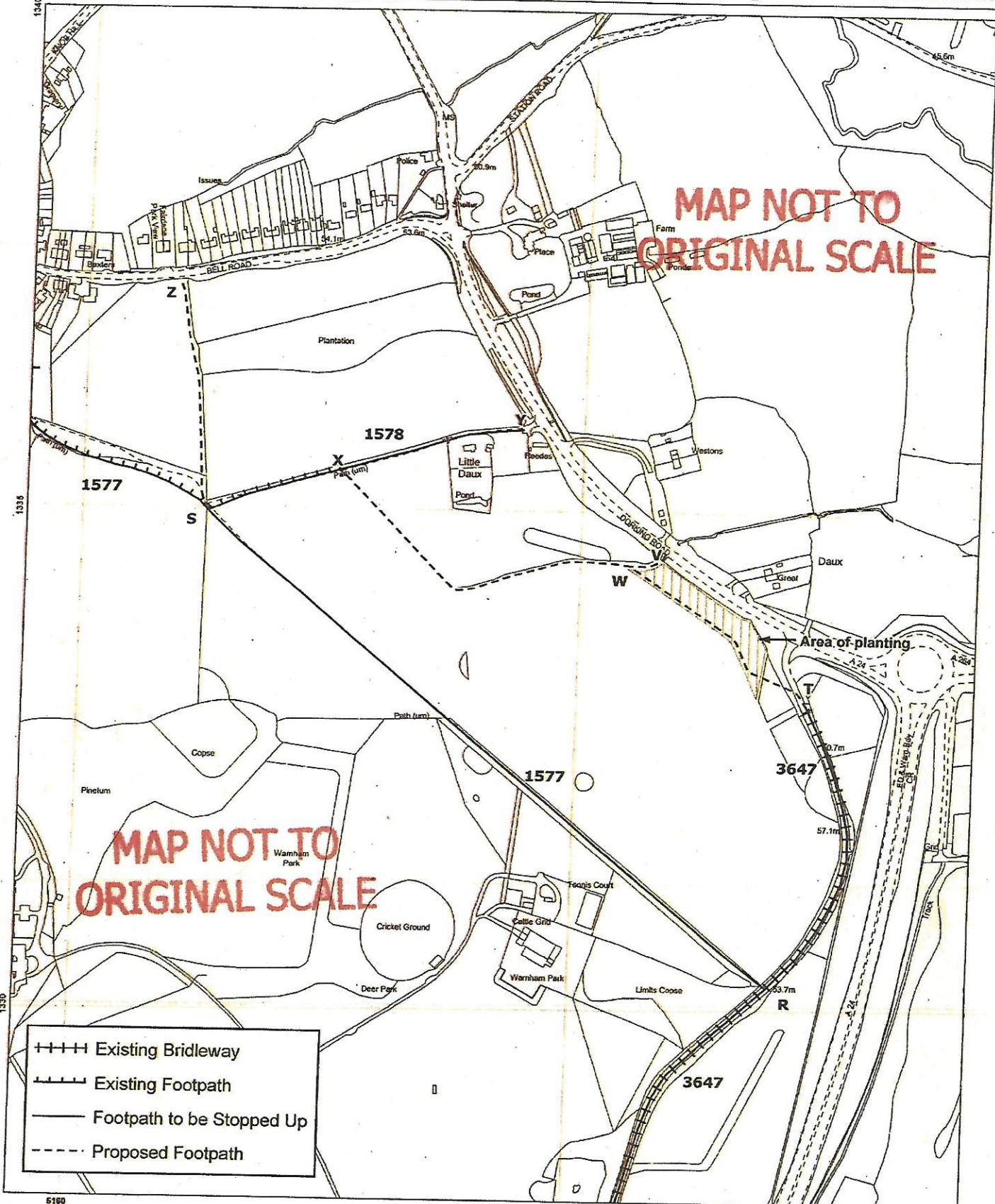
- In clause 1, insert the words "*between the points Y-X*" before "*on the map contained in this Order*".
- In Clause 3, insert the words "*between the points S-Z*" before "*on the map contained in this Order*".

KR Seward

INSPECTOR

MAP NOT TO ORIGINAL SCALE

MAP NOT TO ORIGINAL SCALE



- ++++ Existing Bridleway
- Existing Footpath
- Footpath to be Stopped Up
- Proposed Footpath

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Warnham: Footpaths 1577 and 1578 Proposed Diversion - Site Plan

Plan: 01610/1	1:2500 at A2	OS Sheet: TQ 13 SE	<p>west sussex county</p>	<p>Photocopy liable to</p>	<p>Sue Hawker Director of Communities</p>	
Date: 07.08.2013		Grid Ref: 6185 1334				