
Order Decisions

by K R Seward Solicitor

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

Decision date: 08 November 2018

Order A: ROW/3207770

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and section 53A(2) of the Wildlife and Countryside Act 1981. It is known as the Oxfordshire County Council Idbury Footpath No 4 Public Path Extinguishment and Definitive Map and Statement Modification Order 2012.
- The Order is dated 6 September 2012 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were no objections outstanding when Oxfordshire 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.

Order B: ROW/3207769

- This Order is made under Section 26 of the Highways Act 1980 (the 1980 Act) and section 53A(2) of the Wildlife and Countryside Act 1981. It is known as the Oxfordshire County Council Idbury Footpath No 15 Public Path Creation and Definitive Map and Statement Modification Order 2012.
- The Order is dated 6 September 2012 and proposes to create a public right of way as shown on the Order plan and described in the Order Schedule.
- There were no objections outstanding Oxfordshire 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. Whilst representations were received from one individual, it was made clear that an objection was not being made to the Orders. Therefore, the Orders have been treated as though unopposed. The Orders have been determined on the papers without the necessity of a site visit.
2. Having made the Orders, the County Council as Order Making Authority supports the confirmation of both Orders. Should Order A not be confirmed, it requests that Order B also not be confirmed to avoid there being two routes.
3. If the Orders are confirmed, the definitive map and statement will also be modified in respect of each Order once the provisions come into force.

The Main Issues

Order A

4. By virtue of section 118(2) of the 1980 Act, for me to confirm the Order I must be satisfied that it is expedient to stop up the footpath in question having

regard to:

- (a) the extent (if any) to which it appears likely that the path would, apart from the Order, be likely to be used by the public; and
 - (b) the effect that the extinguishment of the right of way would have as respects land served by the path, account being taken of the provisions as to compensation.
5. Under section 118(5), where proceedings preliminary to the confirmation of a public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order then in considering the extent the path would be likely to be used by the public, regard may be had to the extent to which the public path creation order would provide an alternative path.

Order B

6. The matters requiring consideration under section 26(1) of the 1980 for the creation of a footpath are whether there is a need for a footpath and that it is expedient to create the footpath having regard to:
- (a) the extent to which the footpath would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
 - (b) the effect which the creation of the footpath would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 of the 1980 Act.

Orders A and B

7. In determining whether to confirm Orders A and B I must also have regard to the material provisions of any public rights of way improvement plan ('ROWIP') prepared by any local highway authority whose area includes land over which the Order would extinguish or create a public right of way.

Reasons

Order A

The extent to which the footpath would be likely to be used

8. The definitive line for Idbury Footpath No 4 (FP4) commences along the Fifield-Idbury road and proceeds in a north-easterly direction for 175m ending within the front garden of Idbury House. It does not connect with any other recorded public highway.
9. The representation received is that the extinguishment Order is based on a fiction that there is no public access from FP4 through to Idbury village. The author refers (in a letter sent in 2013) to using the path without impediment during the last 35 years when walking with family and friends to and from Idbury. Reference is also made to how historically the route through the garden was used by children from Fifield to go to Idbury school and back, as described in a website for Idbury. In addition, the route going through Idbury House garden into Idbury village is said to be shown on "the 1951 parish claim statement and survey map".

10. Nevertheless, the fact remains that there is no onward public footpath through Idbury House to the village recorded in the definitive map and statement. From the information before me, I understand that the OMA provided the necessary forms for a claim to be submitted for a Definitive Map Modification Order, but no such application has been made.
11. Based on the definitive map and statement FP4 is a cul-de-sac. As such, there is no legally established public path beyond the garden and users must return along the route from which they came upon arrival at the termination point.
12. The route through pasture may attract some users. It is possible that some people may wish to see the house and garden, but there is nothing to indicate that they are of any particular interest. As a cul-de-sac path terminating in a domestic garden, it is of limited value and appears unlikely to be used very much. That is all the more so if Order B is confirmed. The new path would commence at the same point as the path to be extinguished and continue in an east-north-easterly direction for 293m to connect with the existing footpath network and provide a continuous route into the village.
13. I concur with the OMA that the footpath created by Order B would form a more convenient and useful alternative for the public in their use of the rights of way network. I note that the local branch of The Ramblers' Association accepts the diversion and Oxford Fieldpaths Society consider the proposed route is an improvement over what exists now.

The effect which the extinguishment of the right of way would have as respects land served by the path

14. Extinguishment of FP4 would improve privacy to Idbury House which would no longer have a public right of way running into its front garden. No adverse effects arising from the proposed closure on the land concerned have been drawn to my attention. Compensation issues have not been raised.

Whether it is expedient to confirm the Order

15. The Order shall not be confirmed unless I am satisfied that it is expedient to do so. First and foremost the test I must address is the likely use of the Order route if it were to remain. Given that FP4 is a cul-de-sac path, it is unlikely to attract much use in the future. The new footpath proposed in Order B offers an alternative which is likely to be better used in light of the link it affords between the Fifield-Idbury road and Idbury village and the connection it brings with the local network of rights of way.
16. I am satisfied it is expedient to confirm the Order.

The ROWIP

17. No material provisions of Oxfordshire Rights of Way Management Plan 2015-2025 have been drawn to my attention with regard to the extinguishment.

Order B

Whether there is a need for a footpath

18. Currently, there is no public right of way to link the Fifield-Idbury road with Idbury village. The OMA considers there is a need for a footpath to provide such a link. This is undisputed and there is no reason for me to come to a

contrary view.

19. The creation of a new footpath (Idbury Footpath 15) would secure a public footpath link to Idbury Footpath 1 which connects with Idbury Footpath 2 leading into the village. It would also allow walkers to head south along FP1 to Fifield thereby avoiding the road.
20. Thus, the creation of FP15 would bring connectivity with the village and add to the convenience of persons resident in the area who would also be able to enjoy an improved public footpath network along with other users.
21. Most of the land affected by the new path belongs to the applicant for the Orders, being the owner of Idbury House whose land is crossed by the path to be extinguished in Order A. The owner of the remainder of the land consents to the Creation Order. No adverse effects have been identified for either owner.

Whether it is expedient that the footpath should be created

22. Having regard to the considerations above, I am satisfied that there is a need for the footpath and it is expedient that the footpath should be created.

The ROWIP

23. The OMA draws my attention to three aims of the Vision Statement in its adopted ROWIP.
24. Aim 1 is for public rights of way to be recorded, protected, maintained, promoted and improved when opportunities arise. The addition of a public footpath to the network providing a connection for pedestrians between the Fifield-Idbury road and the existing public path network through to Idbury would be an improvement in fulfilment of this aim.
25. The connection achieved between the Fifield-Idbury road and the village is also consistent with Aim 2 for a public rights of way and countryside access network that adapts to balance the current and future needs of communities and users, farmers and landowners and the natural and historic environment.
26. The OMA states that the new route provides a level surface across open pasture fields enabling access for less-able users to satisfy Aim 3. This seeks a public rights of way and countryside access network which is reasonably accessible to those with limited mobility, vision or understanding.

Conclusions

Order A and B

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

Formal Decisions

Orders A and B

28. I confirm the Orders.

KR Seward

INSPECTOR

**Highways Act 1980
Sec 118
Wildlife & Countryside Act
1981 Section 53A(2)**

**Order for the
Extinguishment of
Ibbury Footpath No. 4**

**Existing Footpath No. 4
to be deleted**

A - B _____
Length: 175m approx.

**New route of Footpath
under concurrent Section 26
Creation Order
(Drawing No. HA1980 / 404C)**

A - C - D _____
**Approximate route of unaffected
rights of way** - - - - -



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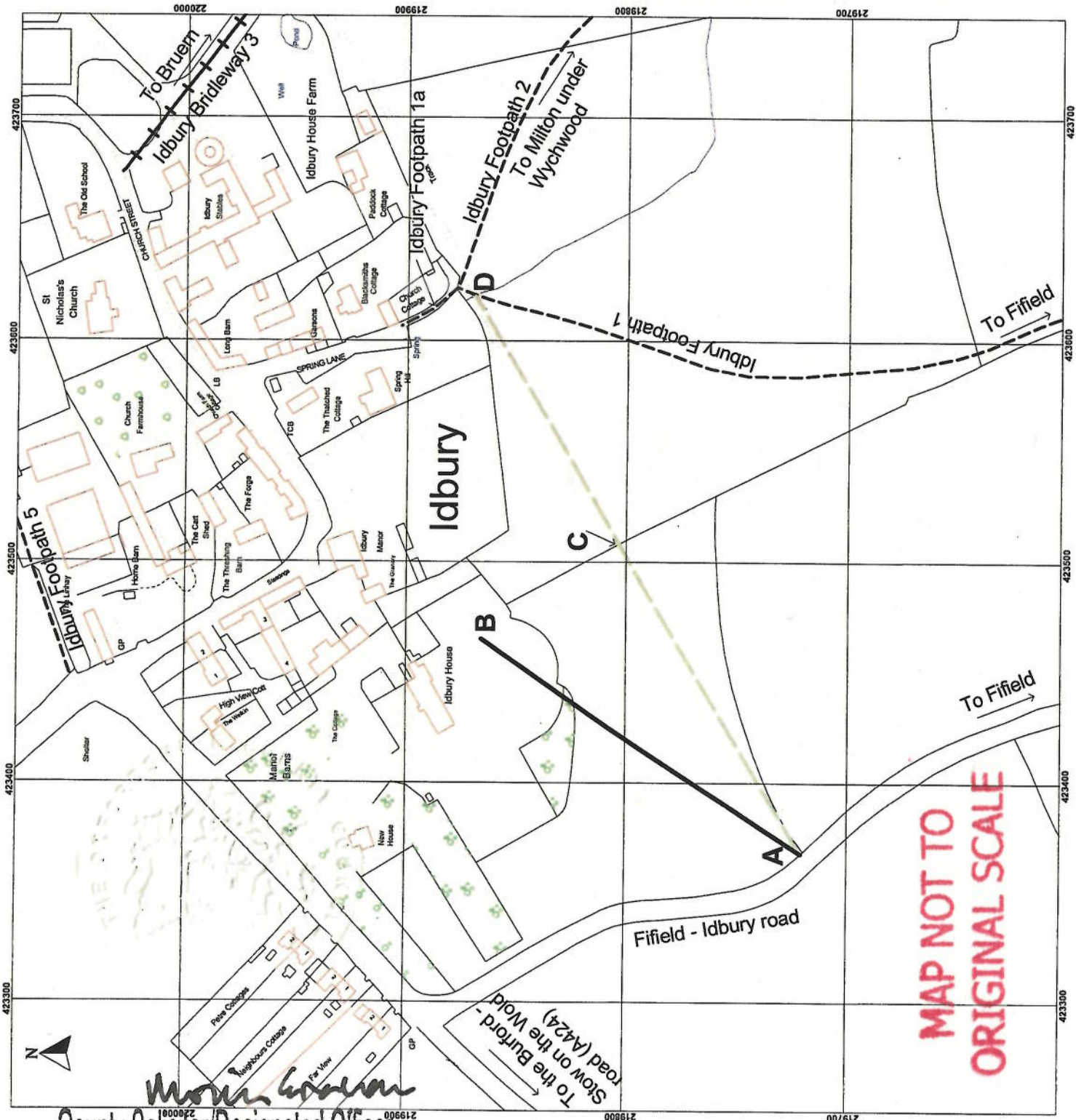
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Drawn By: DJR

Date: 30 May 2012

Drawing No: HA1980 /404E



**MAP NOT TO
ORIGINAL SCALE**

Mona Graham
County Solicitor/Designated Officer

**Highways Act 1980
Sec 26
Wildlife & Countryside Act
1981 Section 53A(2)**

**Order for the Creation
of Idbury Footpath No. 15**

**New route of Footpath 15
to be added**

A - C - D ————

Length: 293m approx.

Width: 1.5m

**Extinguishment of Footpath No.4
under concurrent Section 118
Extinguishment Order
(Drawing No. HA1980 / 404E)**

A - B ————

**Approximate route of unaffected
rights of way** - - - - -



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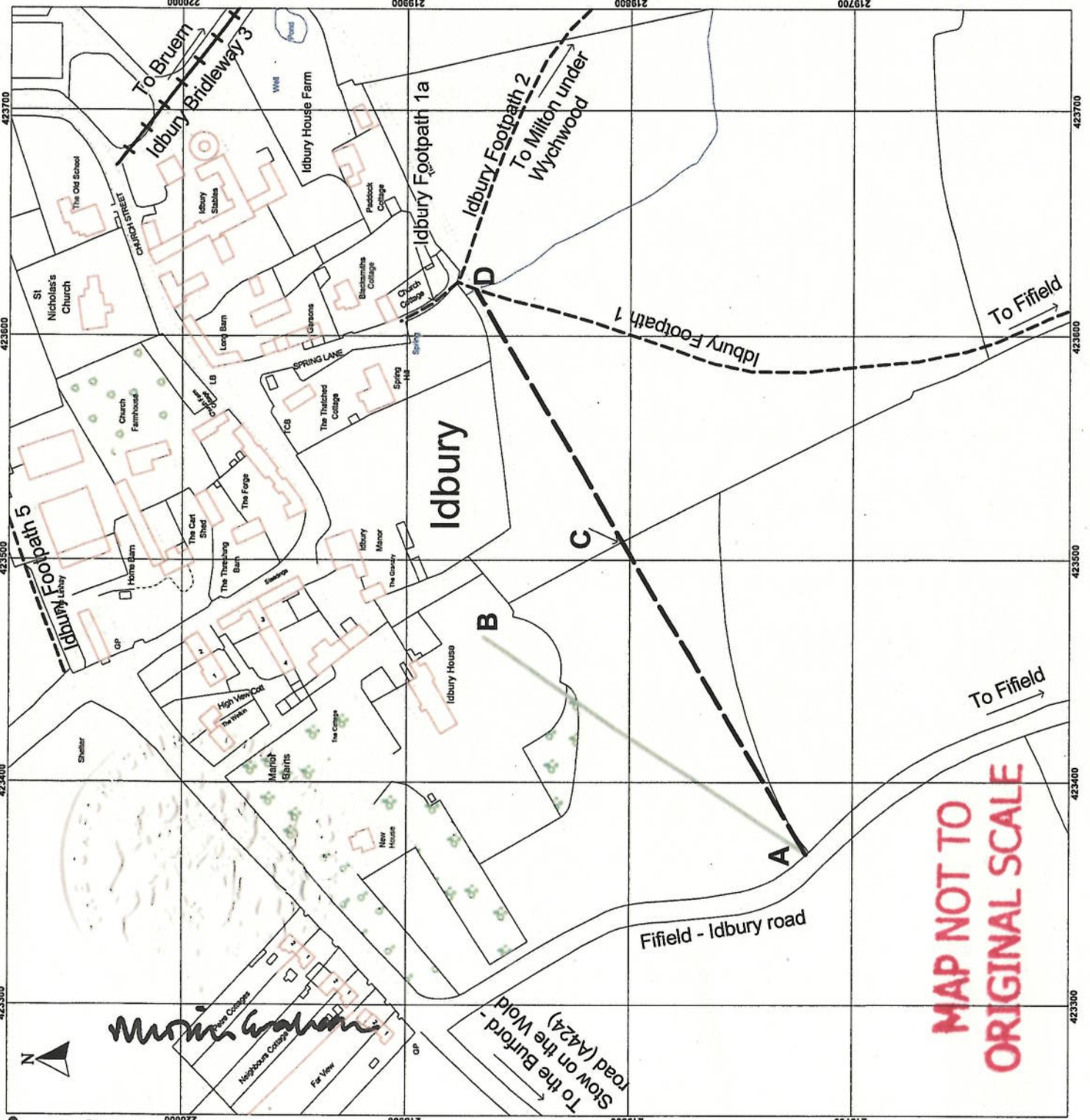
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