
Order Decision

Site visit made on 3 October 2018

by K R Seward Solicitor

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

Decision date: 27 November 2018

Order Ref: ROW/3196239

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and section 53A(2) of the Wildlife and Countryside Act 1981 and is known as the Kent County Council (Public Footpath ER80 and ER81 (part) Shepherdswell With Coldred) Public Path Diversion and Definitive Map and Statement Modification Order 2017.
- The Order is dated 16 February 2017 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule.
- There were 11 objections and representations outstanding when Kent 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.

Preliminary Matters

1. Aside from nine outstanding objections, two letters of support for the Order were submitted from local residents during the statutory consultation period. The objections included representations from the Open Spaces Society ('OSS') and branches of the Ramblers' Association. A further objection was received from Michael Hayley on behalf of the Ramblers' Association following referral of the Order for determination by the Secretary of State.
2. None of the parties requested an inquiry or hearing into the Order and so I made an unaccompanied site inspection. In arriving at my decision I have taken into account all of the written representations and documentation.
3. A single Order has been made to divert two footpaths crossing land within the same ownership. The paths currently commence at the same point and the proposed diversions would see the paths linked. Nevertheless, they are separate footpaths capable of diversion without the other. They are not inter-dependant. The case for diversion of each footpath must be considered on its individual merits.
4. If the Order is confirmed, the definitive map and statement will also be modified.

Main Issues

5. The Order has been made in the interests of the landowner whose land is crossed by Footpaths ER80 and ER81. By virtue of section 119 of the Highways Act 1980, for me to confirm the Order I must be satisfied that:-
 - (a) the diversion to be effected by the Order is expedient in those interests;

- (b) the new path will not be substantially less convenient to the public in consequence of the diversion;
 - (c) 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 paths and the land over which the new path would be created together with any land held with it.
6. I shall also have regard to any material provision contained in a rights of way improvement plan for the area when considering the Order.

Reasons

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

- 7. The application was made on behalf of the Church Commissioners for England, as landowners. The Order seeks to divert two footpaths which currently cross agricultural land farmed by their tenant. The land is in arable production being cultivated in autumn months and harvested in the summer. A diversion is sought for the purposes of agricultural efficiency. Keeping the paths clear is said to impact upon the ability of the farmer to earn a living as well cause difficulty in management.
- 8. In reality, objectors say that the farmer has ploughed and cropped the field regardless of the paths. That may be so, but it is not a question of whether the farmer would be gaining from past failures. The farmer's past record does not demonstrate one way or the other how it might be in the owner's interests to divert the paths.
- 9. Even if the strict rules regarding the ploughing and reinstatement of public footpaths are observed then it is not difficult to see how keeping the two cross field routes clear would still inconvenience a farmer. That is especially so as the definitive lines are not straight but curved.
- 10. By diverting both ER80 and ER81 around the field edge, the paths will be less of a burden to the farmer and hence benefit the landowner.
- 11. Objectors argue that if farm management suffices as a reason then every farmer will apply to divert paths crossing their land resulting in a footpath network around field edges.
- 12. Fears of a precedent being set are unfounded because each and every application must be assessed on its merits against the statutory framework. Now that the Order has been made, this first test under section 119 is concerned with whether a case has been made out that the diversion of these particular paths is in the interests of the landowner, as expressed in the Order. Satisfaction of this test does not mean that the Order must be confirmed. It still falls to be assessed against the remaining criteria where other issues come under consideration.
- 13. Bearing in mind the position and lengths of the paths and the use to which the land is put, I am satisfied that it is in the interests of the landowner for the paths to be diverted.

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

14. The proposal is to divert both ER80 and ER81 around the field edge. The termination points would be unchanged for ER81. Whilst ER80 would still terminate at point D, it would start further north along Coxhill Road at point C. Point A could still be reached by utilising ER81, whether diverted or not.
15. Numerous comments are made about the tenant farmer ploughing and cropping both footpaths and failing to reinstate them. Indeed, the Council as Order Making Authority ('OMA') refers to taking direct action to secure reinstatement of the routes. When considering the convenience of the existing routes included in the Order it is appropriate to assess them as if they were maintained and available for public use. I shall therefore disregard the problems experienced in the past over unavailability of the existing paths. When I undertook my site visit, the existing paths were available and evident on the ground.
16. Both of the existing routes start at point A. They splay out in different directions in a gently curved line across the field to exit 120m or so apart along Coxhill Road.
17. The Ramblers are less concerned about the diversion of ER80 although the OSS explicitly maintains an objection to its diversion.
18. The OMA suggests that the paths are recreational rather than utilitarian. It is certainly true that there is a direct line from Moorland Road in the east across the field using ER81 which then crosses Coxhill Road to carry on through the fields towards the next village. Submissions indicate ER81 is a route enjoyed by ramblers, but it does also link parts of the village. The OMA refers to how walkers began to use the field edge when the tenant failed over the years to reinstate the paths. It is this route between A-B-C which is now proposed as the diversion for ER81. It is described as having been used by local people to access the village and its services. Between A-B the new route passes by allotments and behind the village hall which I understand contains a post office, nursery school and café.
19. Objectors dispute that there is now a well-trodden line along the new route between A-B and describe how overgrown it is (as shown in copy photographs). If the Order is confirmed it must be anticipated that the new alignment will be cleared for use. Indeed, it was walkable by the time of my visit.
20. The explanation provided by the applicant for reduced use of A-B is that the Parish Council has erected a gate in the boundary hedge a short distance west of point A. This provides a shortcut to the village hall along a permissive path. The applicant points out that the gate is unauthorised and users of the gate trespass on its land. For that reason, I am asked to disregard the presence of the gate and the access that it offers. It is unclear if that would still be the case if ER81 were diverted to the line which goes past the gate. In any event, a permissive path could be terminated at any time and so it does not influence my considerations.
21. If ER81 was diverted, it seems likely that there would be use of the new path particularly if ER80 was diverted also as there would be no other public footpath in the immediate proximity linking these parts of the village.

22. Walkers can proceed almost straight ahead upon arrival at point A. The diversion requires walkers to turn north for a short way to reach the corner of the field before turning north-west along the field edge to the juncture with Coxhill Road. At this point (B), users must turn 90 degrees to head south-west walking parallel with the road to reach the existing exit point (C). Steps and metal support rails at point C lead through the hedge and down the bank to the road.
23. An additional 50m is involved. In itself this is not much in the context of the length of the route. The changes in direction will be less convenient than walking along a gently curved line. For those wishing to continue along ER81 towards Woolage Green the additional distance and changes in direction will be less convenient, but not substantially so. Similarly, walkers heading south-west are unlikely to find it substantially less convenient and if ER80 is diverted also as proposed, they will have the convenience of a long straight path.
24. The OMA confirms that there will be no exit point at the corner of the field onto Coxhill Road at point B. This is close to the access for the village hall where vehicular traffic will be entering and leaving. There is no hedge at this point, but there is a steep grassed bank which would not be safe to tackle especially when the ground is wet and slippery.
25. Without an exit point at B, users wishing to head for the village hall and other facilities must use the steps to enter Coxhill Road at Point C and then double back for about 62m along the road to reach point B. The road is narrow and quite busy with vehicular traffic. There is no footway on this side of the road. Only a narrow footway extends for part of the stretch on the opposite side of the road where there is housing. Ultimately though, walking along part of Coxhill Road in this way is no different from the existing route if the village is the users' intended destination. Needing to double back is less convenient, but as the route is only 50m longer it involves little additional travel time.
26. The main objection to the diversion of ER80 is that it is less direct and longer. The recorded distance of A-D is 280m. The path would be diverted beside the field edge running parallel with Coxhill Road for a distance of 120m to connect with ER81. Whilst the diverted length of ER80 is shorter, it is much further to get from A-D. The total distance around the field edge is approximately 400m using diverted ER81. If ER81 was not diverted, it would be around 350m. In each case, there would be a 90 degree change in direction.
27. ER80 does not offer the same continuity as existing ER81 in terms of an onward definitive line to the west. The changes in direction have limited impact in consequence. It is considerably longer to get from A-D, but the additional time taken to walk between those points would not be so unreasonable. Offset against that is the added convenience of a stretch of off-road path beside Coxhill Road which connects with ER81 to the west and not far from ER83 to the south.
28. The combined effect of the diversions would be to offer an off-road path running parallel with Coxhill Road between B-D. The convenience is diminished by the lack of an exit point at B requiring walkers to still use the road for part of the stretch between B-C. Overall, I consider that in each case the new paths will not be *substantially* less convenient to the public.

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

29. Part of the new route commencing at point A is already in use, but there is no evidence before me that there is a claim this is an existing public right of way.
30. Whilst paths may have existed along the current alignments for many years, there is no evidence submitted to indicate that they have any particular historic significance.
31. It is argued that the field edge is more flinty and uneven than the existing paths. The field is on an incline rising upwards away from Coxhill Road. The incline is not particularly steep. It undulates more between B-A than the existing paths and is a bit more uneven and stony, but not appreciably so. Where the new paths would run parallel with Coxhill Road, I found the route to be relatively flat and even.
32. Doubt is expressed that A-B-C would be used on any degree of frequency to retain a trodden line. From experience, objectors, including the Ramblers, say that field edge paths are rarely well maintained. Given the farmer's track record and severe financial pressures upon the County Council restricting its ability to maintain the public path network, it is feared that the paths would be overgrown and un-walkable.
33. Once the diversions are signed and made available, they would in all probability be used particularly given the connectivity with other paths and the access that they would offer. It appears that problems in the past have emerged from the cross-field location of the paths which would no longer present an issue.
34. The dilemma of being uncertain of which line to take at point A can be addressed by way markers. They may become damaged over time, but signage is capable of serving its function over many years.
35. When stood at Point A, there is a clear line ahead for ER81 through the field. It stretches into the distance as the line continues in a westerly direction across Coxhill Road. Some users, particularly those walking for recreation, might find this an inviting and appealing walk. Both cross field paths also offer a sense of spaciousness all about that many would enjoy.
36. Other users may prefer to follow field boundaries away from crops and where the hedgerow provides a natural line to follow. The expansive countryside views from point A are unchanged for ER81. There are also views stretching into the distance across the fields from the diverted path between A-B in each direction. Where the diversions would extend beside the mature hedgerow between B-C and C-D, far reaching views across the fields can be appreciated when travelling in a southerly direction. In the opposite direction, there is the open field to the east albeit views between C-B are disrupted by the village hall.
37. Views from the diverted routes are not as expansive as those experienced from the existing paths, but they still allow the countryside to be enjoyed.
38. The diversion of ER80 will improve the experience for walkers wishing to avoid the traffic along a section of Coxhill Road.
39. In each case, the effect on enjoyment will depend on a walker's purpose and destination. I consider that for the diversion of ER80 the less expansive views

are mitigated by the benefit of an off-road path away from traffic. With ER81 there would be some loss of enjoyment for those who enjoy cross-field walking, but not so for those who prefer walking along a field edge which may be firmer under foot with less risk of surface disturbance. Taking ER81 as a whole, any loss of enjoyment is not significant.

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

40. There is no evidence that the diversion will have any adverse effect on land served by the existing route or on the land over which the alternative route will be created.

Rights of Way Improvement Plan

41. The OMA has produced an extract of its Countryside and Coastal Access Improvement Plan titled 'Making the most of Kent's Countryside and Coast'. The copy appears to be in draft format as it is annotated 'Draft April 2013'.
42. One of the objectives (ST2) is to identify and investigate where the public rights of way network can provide safe alternative routes to avoid people having to walk, ride or cycle on busy roads. The actions to be taken against this objective is to identify and implement potential "behind hedge" routes.
43. Both of the existing routes exit along Coxhill Road, a busy narrow road without a footway at the exit points. The OMA confirms that there will be no exit point at B and so walkers would still need to contend with Coxhill Road if their destination is to the north of C. In this respect there is no improvement.

Whether it is expedient to confirm the Order

44. I have concluded above that the Order is expedient in the interests of the landowner. The proposed diversions will not be substantially less convenient to the public. Some users will suffer a loss of enjoyment from the diversion of each path. For some others the diversions will be preferable. On balance, any loss of enjoyment of the paths as a whole is not so significant as to outweigh the interests of the landowner. I am satisfied that it is expedient for the Order be confirmed having regard to its effect on public enjoyment.

Conclusions

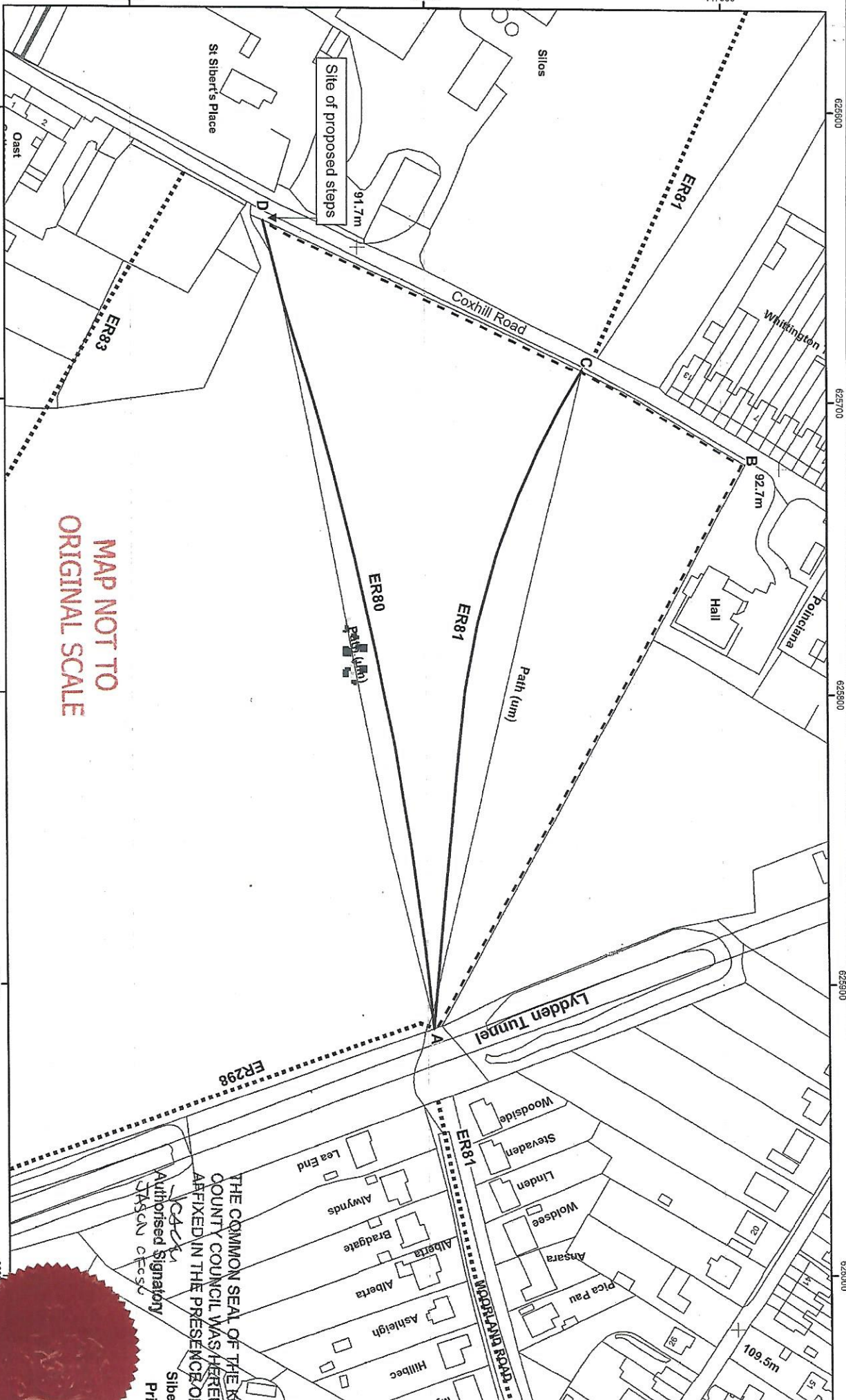
45. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed in respect of both paths.

Formal Decision

46. I confirm the Order.

KR Saward

INSPECTOR



MAP NOT TO ORIGINAL SCALE

- Key**
- Route to be diverted
 - - - New length of route
 - Unaffected routes

The Kent County Council
(Public footpaths ER80 and ER81 (part) Shepherdswell with Coldred) Public Path Diversion and Definitive Map and Statement Modification Order 2017

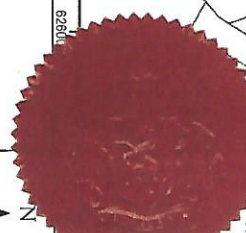
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THE COMMON SEAL OF THE KENT COUNTY COUNCIL WAS HEREON AFFIXED IN THE PRESENCE OF:
(Signature)
Authorised Signatory
DASON O'CONNOR
Siberts Prima



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