



Order Decision

Site visit on 10 January 2019

by Mark Yates BA(Hons) MIPROW

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

Decision date: 22 February 2019

Order Ref: ROW/3199856

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as The Cheshire West and Chester Borough Council (Addition of particulars to the Definitive Statement for Footpath No. 19, Beeston) Modification Order 2017.
- The Order was made by the Cheshire West and Chester Council ("the Council") on 22 June 2017 and proposes to modify the definitive statement in relation to Footpath No. 19, in the parish of Beeston, as detailed in the Order Map and Schedule.
- There were two objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.

Procedural Matters

1. In light of the withdrawal of Mr and Mrs Porter's request to be heard, it was decided that the Order would be determined from the written submissions of the parties and the scheduled hearing was cancelled. An opportunity was provided for the parties to provide any final comments in advance of my visit to the site.
2. The objection from Mr and Mrs Porter was considered by the Council to be valid and I see no reason to disagree. However, this is distinct from whether the objection addresses any matters relevant to my decision.
3. The Council draws attention to an error in the Order Schedule regarding a grid reference and, if confirmed, the Order should be modified accordingly.

Main Issues

4. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(iii) of the Act. Therefore, I need to be satisfied that evidence has been discovered which shows that particulars contained in the definitive statement require modification. The test to be applied is the balance of probabilities.

Reasons

Background matters

5. There is no width recorded in the definitive statement for Beeston Footpath No. 19. An application was made by the second objector (Mr Jenkins) to record a width for the section of the footpath between points A and C on the Order Map ("A-C"), which crosses land owned by Mr and Mrs Porter. The Council declined to make an Order in line with the application. However, an Order was made to
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specify a varying width for the footpath and to record limitations of stiles and gates at points along the path.

6. The point of contention is the width of A-C and no issue is taken with the widths specified beyond this section or the limitations included in the Order. Although Mr and Mrs Porter dispute that the footpath crosses their land, this is not a matter for me to determine and it was the subject of a separate decision by the Council. I shall therefore consider the evidence and submissions made in relation to the width of A-C.

Consideration of the evidence

7. Beeston Parish Council produced a schedule and map showing the public rights of way claimed for inclusion in the original definitive map and statement for the area¹. The schedule for Footpath 19 describes A-C passing between hedges and having a width of 20 feet (6 metres).
8. It is generally agreed that the historical Ordnance Survey ("OS") mapping does not show any part of A-C with a width of 6 metres. The widths specified for this section in the Order were calculated from the 1954 OS map, which was used as the base for the first definitive map. Mr Jenkins believes that the widths for A-C should be taken from the 1971 OS map.
9. The available OS maps that were produced both before and after the relevant date show A-C generally between boundaries. I can see no discernible difference between the relevant features shown on the OS maps provided. The advantage of the 1971 OS map is that it has a larger original scale of 1:2500. At my request, the Council supplied two further OS maps at a scale of 25 inches to a mile, which were produced in 1874 and 1910.
10. It is more likely that the public footpath between A-C was set out by reference to the historical boundaries evident on the OS maps. This is supported by the description in the parish schedule. Therefore, the hedge to hedge presumption is applicable. This applies even though the situation on site has now changed in that the western boundary hedge no longer exists. However, it is not asserted that the path extended beyond the boundary of the western hedge at the entrance to the property shown on the OS maps.
11. No explanation has been provided for the range of widths calculated by the parties for the points between A-C. An issue will nonetheless arise in placing reliance on precise measurement obtained from OS maps to the degree specified by the parties. In the circumstances, I am not satisfied that I can rely on the widths provided by either the Council or Mr Jenkins.
12. I consider that it is appropriate to modify the Order to state that the width of A-C is shown hatched on a copy of the larger scale 1910 OS map, which will be appended to the Order. This shows the hedged section prior to the relevant date of the definitive map. As it is possible that the width shown will extend beyond the widths specified in the Order I take the view that the proposed modifications should be advertised, as outlined in paragraph 15 below.

¹ It has a relevant date of 1 November 1956

Conclusion

13. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to modifications.

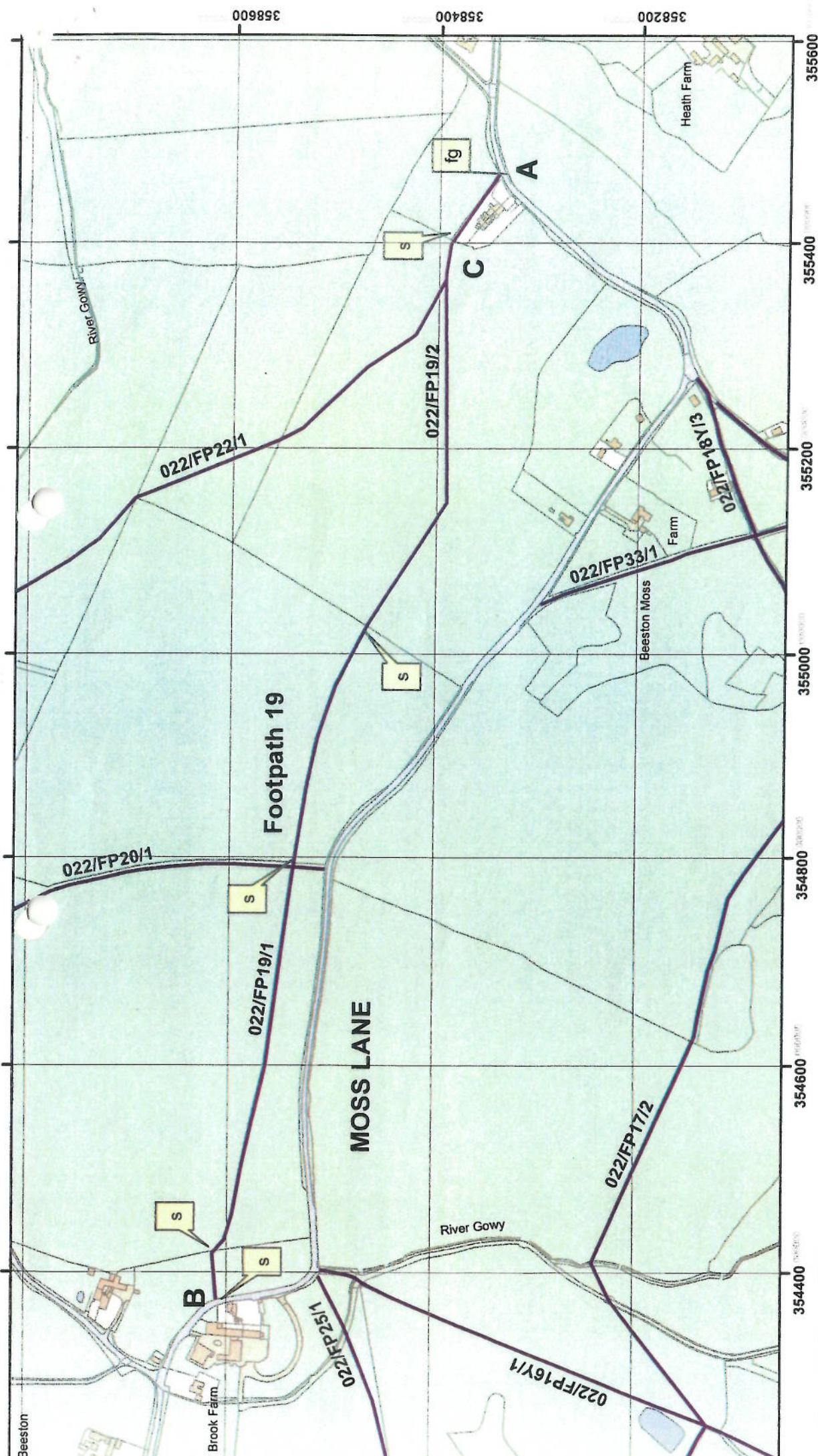
Formal Decision

14. I propose to confirm the Order subject to the following modifications:

- Delete the grid reference "SJ 55469 58342" for the first limitation listed in Part II of the Order Schedule and insert "SJ 55461 58343".
 - Delete the first paragraph within the section headed "Width" in Part II of the Order Schedule and insert "*The width between the junction with Moss Lane at OS grid reference SJ 55467 58342 and the field boundary at OS grid reference SJ 55401 58387 is shown by red hatching on the 1910 25 inch Ordnance Survey map which is appended to this Order*".
 - Attach the map outlined above to the Order.
15. Since the confirmed Order would affect land not affected by the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Mark Yates

Inspector



Wildlife and Countryside Act 1981
The Cheshire West and Chester Borough Council
(Addition of Particulars to the Definitive Statement for
Footpath No 19 Beeston) Modification Order 2017
Plan MO/560A



204
30.160

205
7.292

Cuen
Cott

172
15.116

179
.697

180
.942

186
.611

Yew Tree
House

182
1.171

184
.017

178
.809

Ivy
Cottages
177
.588

181
547



174
.857

175
.792

176
397

383
3.755

Und.

384
.255

385
.008

386
1.019

70
78

170a
.185

171
1.573



Valve House

173
2.186

173a
.033

134
.909

382
5.274

379
1.759

58

136
1.023

133
.768

Heath Farm
330
1.924

380
.878

30

137
.162

132
.573

328
6.366

329
3.760

331
3.641

30
98

128
.973

129
.534

126
1.125

323
2.521

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