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## Order Decisions

Inquiry held on 2 April 2019

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 28 May 2019**

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### **Order Ref: ROW/3205587 – Order A**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the East Sussex County Council (Public Footpath Hurst Green 23) Definitive Map Modification Order 2017.
- The Order is dated 11 August 2017 and proposes to modify the Definitive Map and Statement for the area by altering the particulars of a section of Footpath 23, Hurst Green running from London Road (A21) through the property 'Jesse's', as shown on the Order Map and described in the Order Schedule.
- There were 2 objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed.**

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### **Order Ref: ROW/3205575 – Order B**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the East Sussex County Council (Public Footpath Hurst Green 23 (Part)) Public Path Diversion Order 2017.
- The Order is dated 11 August 2017 and proposes to modify the Definitive Map and Statement for the area by diverting part of Footpath 23, Hurst Green running from London Road (A21) through the property 'Jesse's', as shown on the Order Map and described in the Order Schedule.
- There were 5 objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed.**

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### **Procedural Matters**

1. I held a public inquiry into this Order on Tuesday 2 April at Hurst Green Village Hall. I made an unaccompanied site inspection on Monday 1 April when I was able to walk the whole of the Order routes. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary.
2. In writing this decision I have found it convenient to refer to points marked on the Order Maps. I therefore attach copies of these maps.

### **The Main Issues**

3. With regard to Order A, the requirement of Section 53(3)(c)(iii) of the 1981 Act is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that particulars contained in the definitive map and statement require modification.

4. With regard to Order B, this is made in the interests of the owners of the land crossed by the path. Section 119 of the 1980 Act therefore requires that, before confirming the Order, I must be satisfied that:
  - It is expedient in the interests of the landowners that the footpath should be diverted;
  - The new footpath will not be substantially less convenient to the public;
  - The diversion is expedient with regard to:
    - the effect on public enjoyment of the right of way as a whole;
    - the effect on other land served by the existing right of way;
    - the effect of the proposed new right of way on the land over which it is created and any land held with it.
5. In addition, where a diversion will alter a point of termination of a path or way, as in this case, the proposed new point of termination must be on the same highway as the existing point, or one connected to it, and must be substantially as convenient to the public.
6. Regard should also be given to any material provisions of the Rights of Way Improvement Plan for the area.

## **Reasons**

### ***Order A***

7. This Order was made as there appeared to be some confusion regarding the correct alignment of the path which was resulting in problems for the landowners and path users.

### *The Definitive Map*

8. The definitive map shows the footpath running from London Road at Point A on a similar line to that shown on the Order Map along what is now the drive to Jesse's as far as Point B. The alignment of this section of the route is not disputed. However, from Point B the definitive map appears to show the route continuing close to the boundary between Jesse's and the neighbouring property, Alma Cottage. The small scale of the map makes determination of the precise line somewhat difficult and the definitive statement only specifies the commencement and termination of the route and provides no description of the alignment of it between these points.
9. The route was first recorded as a public footpath on a map of reputed rights of way prepared for Battle Rural District in 1935 and it was again identified as a public footpath in the parish council survey of 1952 which led to the preparation of the first definitive map. However, the scale and nature of the mapping does not allow precise determination of the alignment of the route.
10. The draft definitive map prepared in 1954 included the footpath but again shown in a manner that does not permit precise determination of the intended alignment although it does appear that the route followed a track marked on the Ordnance Survey (OS) base map that was used. No objection was made to the inclusion of the route but the subsequent provisional map (1956) and definitive map (1957) did not show the route. In the absence of any other

explanation for this omission East Sussex County Council, the Order Making Authority (OMA), suggest that it may have been the result of a drafting error. Hurst Green Parish Council also objected to the omission.

11. A revised definitive map of 1963 again shows the route in a similar manner to the draft map of 1954. The then owner of Jesse's initially objected to its inclusion but subsequently withdrew the objection. A draft revised map of 1971 also shows the route as does the current definitive map published in 1997.
12. In 1980 an application was made to divert the path to a route around the south-eastern boundary of Jesse's. This diversion did not take place but a map prepared in connection with the proposal appears to show the existing route of the path on an alignment similar to that shown on the Order map.

#### *Other Evidence*

13. Aerial photographs taken from 1937 onwards appear to show a track running between Points A and D along the line shown on the Order Map. The current owner of land to the north-east of Point D stated that until 1987 this track had been the only means of access to his land and that he had a private right of way to use the route across Jesse's. Subsequently he had constructed an alternative access route and sold the private right of way to the then owner of Jesse's in the early 1990s.
14. Ten people completed user evidence forms describing their use of the route since the 1940s in one case. Nine of these attached maps showing the route used which corresponds to the route shown on the Order Map.
15. The aerial photographs show that the property Jesse's has changed over time particularly in recent years and the house itself has been extended. However, the photographs and other evidence indicate that at least until around 1990 there was a clear track running between gates at Points A and D roughly along the route shown on the Order Map. This is the route that people described having used over a lengthy period.

#### *Width*

16. The current definitive statement does not indicate the width of the footpath. It is good practice for the width of all rights of way to be specified to give clarity to both landowners and path users and to facilitate maintenance and enforcement. The OMA therefore wish to take the opportunity to record the width of the path.
17. In the absence of any previously recorded width it is necessary to consider the most appropriate width in the present circumstances. Gates at Points A and D are 3.1m and 3.3m wide and the track running between appears to have been of a similar width in the past. Although walkers would typically not require the whole of this width at any one time, the route was (and still is in part) shared with vehicular traffic and parked vehicles and there have been no fences or other means of restricting pedestrians to any part of the route. It is therefore likely that the whole width has been used.
18. The OMA has therefore suggested that a width of 3.0m should be recorded and this seems reasonable to me.

### *Conclusions*

19. The scale and nature of the current definitive map and statement and other historic documents is such that they make determination of the precise line of the right of way between Points B and D difficult. However, what does seem to be clear is that there was a track running between gates at Points A and D over a long period along the line shown on the Order Map and that this was the route that was generally used.
20. In these circumstances, the current Order represents the most likely correct interpretation of the definitive map and it is appropriate for the map and statement to be modified as proposed to provide clarity for both landowners and path users.

### **Order B**

#### *The interests of the landowners*

21. The current owners of the property Jesse's have applied for the diversion of the footpath which they believe would be in their interests.
22. The diversion would allow the public footpath to be separated from the driveway and the rest of the garden of the property thereby increasing the security and privacy of the residents. The applicants were particularly concerned that the garden area used by their child and pets should be secure and safe. It would be open to the applicants to fence off the existing line of the path from the rest of the property but this would result in part of the garden being separated from the rest and of little use.
23. Overall, it is clear that the proposed diversion would be in the interests of the landowners.

#### *Termination point*

24. The proposed new termination point of the footpath, Point D, is immediately alongside the existing point, Point A, and on the same highway. There is no reason why this would not be substantially as convenient to the public.

#### *Convenience*

25. The proposed new route of the path is 8.5m longer than the existing route. This would be a very small increase in the context of a long rural path such as this.
26. The proposed width of the new path would be 2.5m whereas it has been accepted that the existing route is 3.0m wide. However, part of the existing route follows the drive to the house and is also used by vehicles. A width of 2.5m would be in accordance with current practice of the OMA and is in my opinion adequate for a footpath of this nature.
27. Much of the existing route has a hard or gravel surface, the proposed new route has a grass surface and may have the potential to become muddy in wet weather. However, the Order only affects a short section of a long footpath the remainder of which crosses open fields and does not have a hard surface.

28. Overall, the proposed diversion is likely to have a very limited effect on the convenience of the path and will not result in it being substantially less convenient to the public.

*The effect on public enjoyment*

29. The existing route of the path follows a direct line between points A and C whereas the proposed new route includes two right angle bends at Points E and G. Objectors argued that this would make the path less attractive to users.

30. On the other hand, the existing route runs along what is clearly a private drive and through a private garden and it was suggested on behalf of the OMA that some users might prefer to use a less intrusive route around the edge of the property which would not also be used by vehicles.

31. It was also suggested that as the proposed new route of the path would run alongside a substantial hedge it could become subject to encroachment by the hedge. However, the owner of the land crossed by the path will have the responsibility to maintain the recorded width of the path and I have no reason to believe that this will not be done.

32. I also note that the proposed diversion affects only a short section of a long path which mainly crosses open fields, roughly 95 metres out of 2 kilometres. The character of the section affected by the Order is already quite different from that of the rest of the path.

33. On balance, it is my view that the proposed diversion is likely to have very little effect on public enjoyment of the right of way as a whole

*The effect on other land served by the right of way*

34. I have seen no evidence to suggest that the proposed diversion would have any adverse effect on other land served by the right of way.

*The effect of the new route on land over which it is created*

35. The land over which the proposed new route would be created is owned by the applicants for the diversion who believe that it will be beneficial to their property.

*The Rights of Way Improvement Plan (ROWIP)*

36. I have not seen the ROWIP but was informed on behalf of the OMA that the proposed diversion does not conflict with any of the policies contained in it.

**Other Matters**

37. Some objectors argued that although the proposed diversion would benefit the owners of Jesse's it would be detrimental to the interests of owners and occupants of the neighbouring property, Alma Cottage. The diversion would move the route of the footpath so as to run immediately alongside the boundary of Alma Cottage. It was suggested that this would reduce the privacy of that property and cause disturbance to the occupants.

38. However, the boundary between the properties comprises substantial established hedging and some panel fencing which limits the potential for intrusion or disturbance. Also, the existing footpath already runs between 2m and 7m from the boundary. It therefore seems unlikely that the proposed

diversion will result in any significant detriment to the interests of owners and occupants of Alma Cottage.

*Conclusions*

39. The proposed diversion is in accordance with the criteria set out in the 1980 Act and should therefore be approved.

**Overall Conclusion**

40. Having regard to these and all other matters raised, I conclude that both Orders should be confirmed.

**Formal Decision**

41. I confirm the Orders.

*Barney Grimshaw*

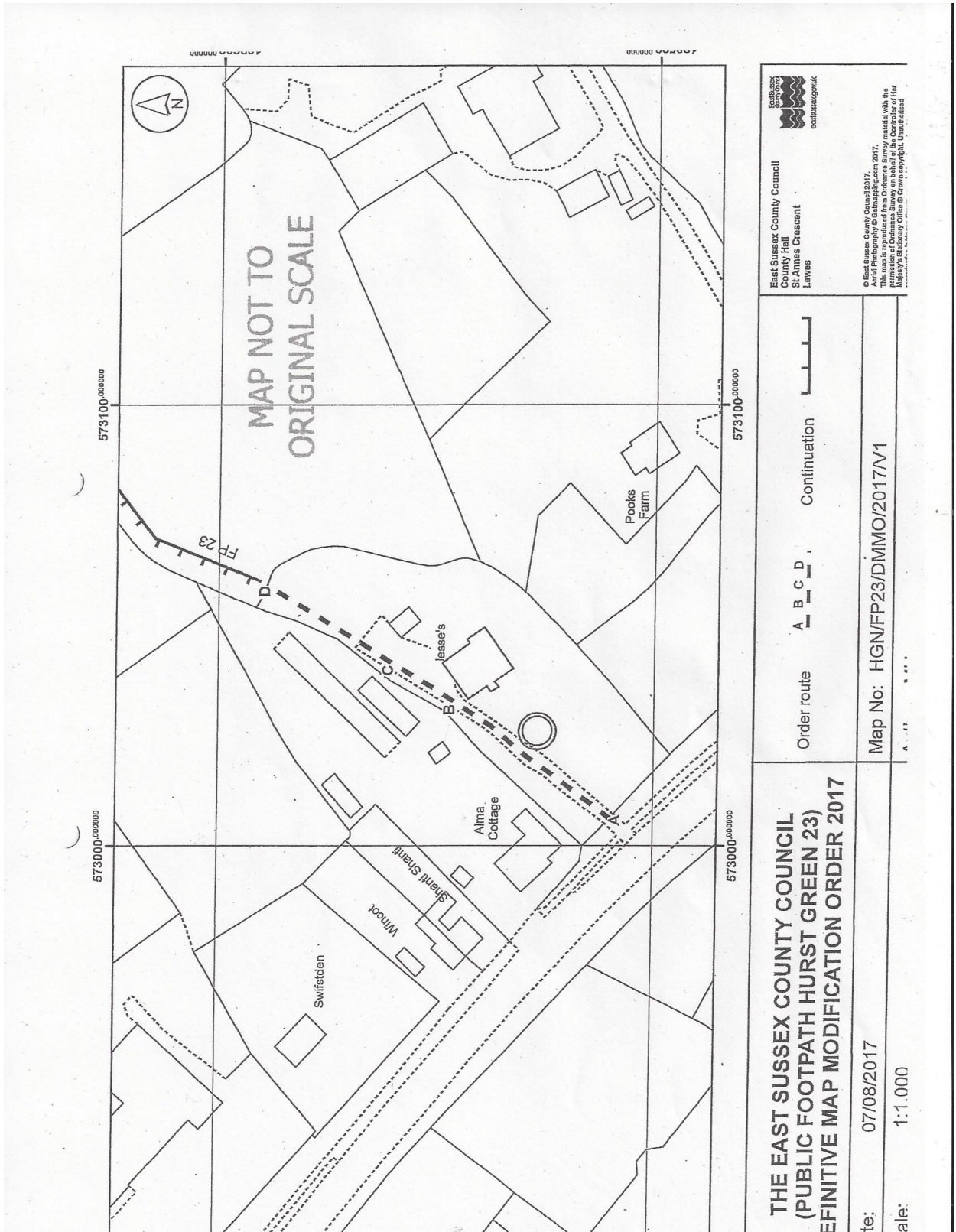
**Inspector**



## **DOCUMENTS**

42. Statement of case (Order A) with bundle of supporting documents, ESCC.
43. Proof of Evidence of Natalie Mclean.
44. Statement of case (Order B) with bundle of supporting documents, ESCC.
45. Proof of Evidence of Matthew Harper.
46. Statement of Brendan Clegg.
47. Letter, dated 21/01/19, from Diane Smith.
48. Letters and supporting documents from R and C Barrett.
49. Closing Submission (Order A), ESCC.
50. Closing Submission (Order B), ESCC





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Lewes

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Order route: A B C D Continuation

Map No: HGN/FP23/DMMO/2017/V1

**THE EAST SUSSEX COUNTY COUNCIL  
(PUBLIC FOOTPATH HURST GREEN 23)  
DEFINITIVE MAP MODIFICATION ORDER 2017**

te: 07/08/2017  
ale: 1:1,000

