



## Order Decision

Site visit made on 16 July 2019

**by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA**

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

**Decision date: 29 August 2019**

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### Order Ref: ROW/3213813

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Cumbria County Council (Footpath No 431031 Parish of Whitehaven) Public Path Diversion and Definitive Map and Statement Order 2018.
- The Order is dated 9 August 2018 and proposes to divert a section of the said footpath and make a consequential modification of the definitive map and statement as shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Cumbria County Council (the 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 a modification set out below in the Formal Decision**

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### Background and procedural matters

1. The existing section of FP No 431031 proposed to be diverted is the subject of a temporary closure order. I was given access to it by the applicant, Storey Homes and made an unaccompanied site inspection with a good view in clear weather of the existing route and that of the proposed diversion.
  2. The definitive route crosses fields at Edgehill Park, the site of ongoing residential development, providing a link from Greenbank to near Wilson Pit Road. It is obstructed by an outbuilding within the plot of High House. Furthermore, outside the south-west boundary of High House a steep gully, densely vegetated with a stream at the bottom, prevents access on this FP.
  3. A fair comparison between existing and proposed diversionary routes can only be made by applying the principle set out for extinguishment orders, namely to disregard temporary circumstances preventing or diminishing its public use. The outbuilding is a temporary obstruction but, as I found during my visit the steepness of the banks forming the gully, combined with the stream at the bottom having no crossing and the impenetrable undergrowth, form a natural obstruction that is likely to endure and is clearly permanent in nature.
  4. The objector states that site notices were not in place on two dates. The Council displayed them on 15 August 2018 and on being told they were not correctly located they were reposted on 13 December 2018. From the images and other evidence supplied I am satisfied that the notices were displayed prominently at appropriate points on the FP. I do not consider that anyone
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- with an interest in the proposed diversion would have been prejudiced by the absence of notices from those locations during the limited periods specified.
5. The existing definitive statement refers to the terminal point (Point B) as "*corner on road near Wilson Pit*". The proposed modification of the definitive statement states that FP No 431031 will terminate at "*corner on road near former Wilson Pit at High Road*" (Point B). The Council accepts that when Wilson Pit Road/High Road was itself diverted, the southern terminal point of FP No 431031 no longer adjoined that highway. The change in circumstances can be appreciated from comparing the FP on the definitive map with its appearance on a later OS base map.
  6. The Council maintains, in opposition to the objector, that the proposed description of Point B in the definitive statement is correct. I note that an unrecorded path or narrow road appears to lead from Point B to Wilson Pit Road/High Road. I do not know the circumstances of the previous diversion, however what is clear is that the proposed Order before me does not change the terminal points of the existing FP. That said, it would be preferable in my view for the statement to be modified so that the description of the terminal point would be replaced by the grid reference for Point B to avoid ambiguity.
  7. The objector suggests that no modification could be made. On the contrary I do not consider the current proposed statement to be an error prejudicing the interests of any person, nor has it rendered the Order misleading in its purpose, nor has it resulted in incorrect (as opposed to ambiguous) information being recorded. Apart from my proposed eventual modification, the Council's proposed statement otherwise reflects what would be the altered route, including a recognition that the footpath commencing at its northern end is from the road which is now known as Gameriggs Road.
  8. Therefore if the Order is confirmed I will modify the definitive statement as described. Any further amendment of the Map and Statement or action in relation to the way from Point B down to the main thoroughfare at Wilson Pit Road/High Road would be for the Council to pursue independently of this Order.

### **Main Issues**

9. Section 119 of the 1980 Act requires that, before confirming the Order, I should be satisfied that:
  - a) the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public;
  - b) the new footpath will not be substantially less convenient to the public;
  - c) it is expedient to confirm the Order having regard to its effect:
    - (i) on public enjoyment of the path as a whole; and
    - (ii) the effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, having regard to the provisions as to compensation.
10. In determining whether or not to confirm the Order, section 119(6A) of the 1980 Act requires that I consider any material provision of a rights of way

improvement plan (ROWIP) of any local highway authority whose area includes land affected by the Order.

***Whether it is expedient, in the interests of the owner or occupier of land or of the public that the footpath in question should be diverted***

11. The applicant owns the land on which the section of FP No 431031 proposed to be diverted is located save for High House. The applicant wishes to build a further phase of housing on land crossed by the existing FP. Reconfiguration of this section of the path would facilitate its development.
12. As to High House the owner was consulted on the proposed Order but did not comment. Nevertheless it may be fairly surmised that it would be in his interests for the footpath to be diverted around his property. The diversion need not be expedient in the interests of each and every landowner affected.
13. I conclude that it is expedient, in the interests of the owner of land crossed by FP No 431031 that the line of the path should be diverted as proposed.

***Whether the proposed diversion would be not substantially less convenient to the public***

14. In assessing the relative convenience of the present and proposed routes I have considered such matters as the length, difficulty of walking and purpose of the path. Difficulty in walking may be looked at in terms of matters such as length, width, gradient, surface and limitations.
15. The width of the existing route to be diverted, which is mostly grassed, is unrecorded. The diverted route would be on a generally even gradient, 2m wide between all three points A-B-C and would have a sealed surface. The applicant would install a kissing gate at Point C on the Order Map.
16. The existing section to be diverted is about 384m long and the proposed diversion would be about 420m. There is little evidence as to the motives of users of the path and I have no compelling reason to suppose that it is used by those seeking to achieve a destination more than by recreational walkers. The former may be disadvantaged by the extra length but not substantially so.
17. In any event the extra length of path that walkers would have to negotiate is in my view more than compensated for by the advantages in avoiding the steep-sided gully and stream on the definitive line of the FP.
18. Taking account of all the above factors, I find that the proposed diversion would not be substantially less convenient to the public.

***Whether it is expedient to confirm the Order having regard to:***

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

19. The Council asserts that it is irrelevant that, according to the objector, the diversion would destroy the historic route in existence since 1865. I consider that some users may indeed gain pleasure from walking an historic route and I note the proposed diversion would replace most of the current line of FP No 431031.
20. However I disagree with the objector that overall the "diverted route would be less enjoyable". The existing and proposed sections of the footpath traverse

open fields from Point B in a north-easterly direction along a straight line, with the proposed diversion following a similar trajectory slightly further north until Point C is reached. From Point C the new route would go around the perimeter of High House on a more even surface and away from the gully and stream, until it re-joins the definitive line at Point A. Walkers on the diverted route would continue to enjoy panoramic views of the fells east of Whitehaven and would not feel they were intruding when crossing the curtilage of High House.

21. I conclude that the public enjoyment of the path as a whole would not be significantly affected by the diversion.

*The effect the coming into operation of the Order would have with respect to the land served by the existing path, account being taken of the provisions as to compensation*

22. There is no evidence that the Order would have, in this respect, any material effects separately identifiable from those considered in relation to the other requirements of s119 of the 1980 Act.

*The effect any new right of way created by the Order would have as respects land over which the new right is created together with any land held with it, account being taken of the provisions as to compensation*

23. The proposed diversion would not have any detrimental impact on the land over which FP No 431031 would run and compensation is unlikely to be an issue in this case.

*Expediency and other matters*

24. There is no provision in the ROWIP that has been drawn to my attention that would affect the section of the path proposed to be diverted.
25. The objector states that the Order should define the standard to which the footpath should be built, supplying a specification for an aggregate surfaced path. Such a specification may have been drawn up, as suggested, to meet the requirements of the Equality Act 2010 but it is not necessarily the only method of complying with the legislation. The Council made use of its powers to provide in Section 1 of the Order that the old path would not be extinguished until it has certified that the new path is constructed to the required standard. Therefore I do not consider that the Order needs to be modified in this respect.

*Summary*

26. I conclude that it would be expedient to confirm the Order taking into account the effect the diversion would have on public enjoyment of the path as a whole, on land served by the existing and proposed paths and on any land held with it.

### **Conclusion**

27. Overall, taking into account all relevant factors noted above and all other matters raised in the written representations, I conclude that it would be expedient to confirm the diversion proposed by this Order with a modification (paragraph 6 above) that does not require advertising.

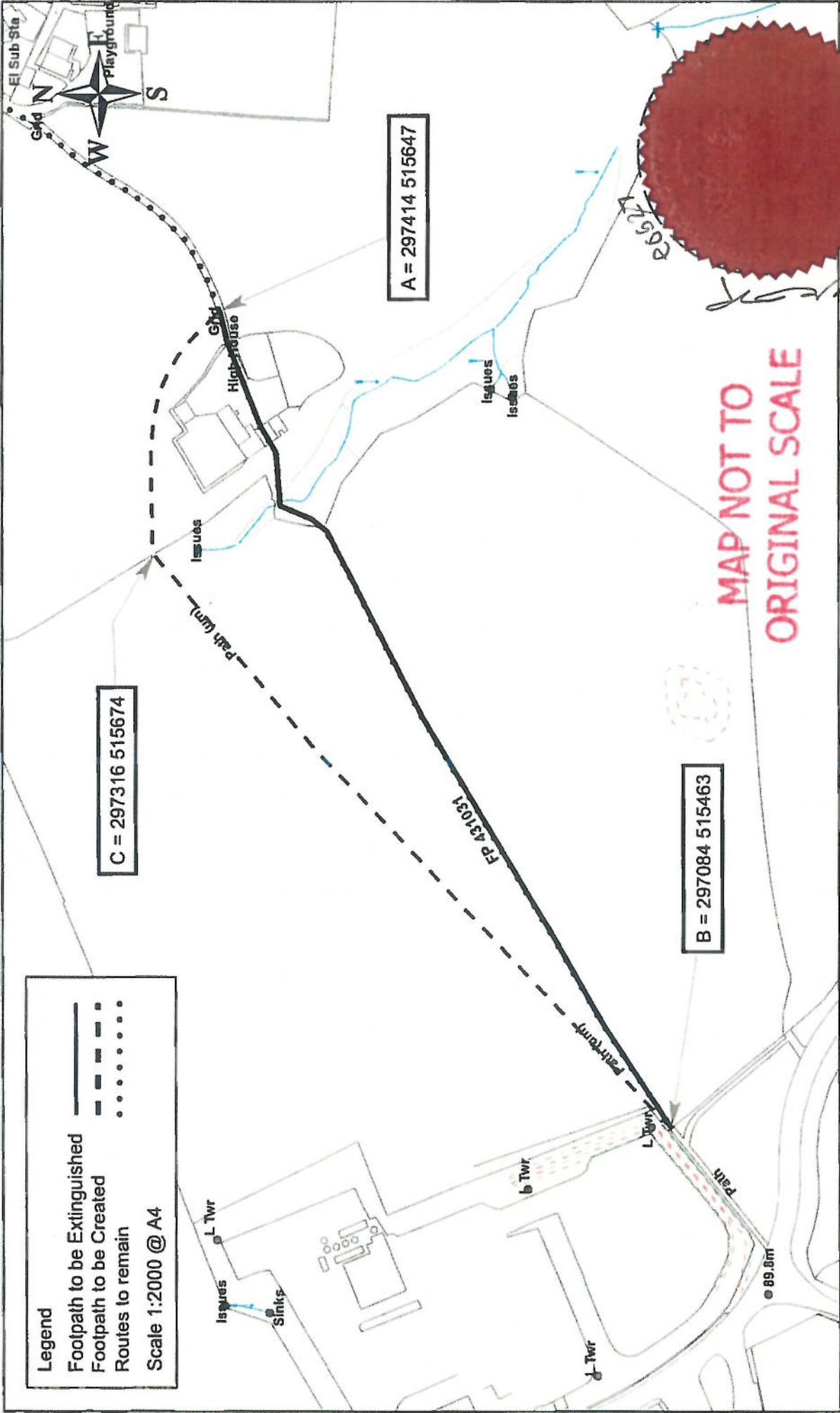
### **Formal Decision**

28. I confirm the Order subject to the following modification:

- In Part 4 of the Schedule to the Order, replace "corner on road near former Wilson Pit at High Road" with "297084 515463".

*Grahame Kean*

INSPECTOR



A = 297414 515647

C = 297316 515674

B = 297084 515463

MAP NOT TO ORIGINAL SCALE



Highways Act 1980 Section 119 and Wildlife and Countryside Act Section 53  
 Public Footpath 431031 Diversion Order and Public Path Modification Order  
 Edgehill Park, Whitehaven



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