
Order Decision

Inquiry held on 20 August 2019

Site visit made on 19 August 2019

by Martin Elliott BSc FIPROW

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

Decision date: 16 September 2019

Order Ref: ROW/3216716

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as The Cornwall Council (Footpath 12 (Part) in the Parish of Kea) Public Path Diversion Order 2018.
- The Order was sealed on 22 February 2018 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection and one representation outstanding at the commencement of the inquiry.

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

Preliminary Matters

1. Both the objection and representation raise concerns that the Order specifies a width of 1 metre for the alternative route between points C and D¹ and that this width is insufficient. The Council asked that I modify the Order to identify the width as 2 metres between C and D. The Ramblers, who made the representation, support the proposed modification and the objector, Kea Parish Council, insist that a 2 metre width is provided. The applicant is agreeable for the alternative route to be 2 metres throughout. I have considered the Order on the basis that the proposed alternative route is 2 metres throughout and the Order, if confirmed, will be modified accordingly.
2. The Ramblers suggest that the section of alternative route C to D has been subject to a presumed dedication. Whilst I note this suggestion I have been appointed to consider an Order made under section 119 of the Highways Act 1980. It is not my role to consider the status of this section based on limited evidence. Such investigations should be properly dealt with under the provisions of the Wildlife and Countryside Act 1981. However, in any event, the existence of public rights along this section does not preclude the diversion of the existing route. An alternative route may follow an existing route for part of its length.

The Main Issues

3. This Order has been made in the interests of the owner of the land crossed by the footpath. Section 119 of the Highways Act 1980 therefore requires that, before confirming the Order, I must be satisfied that:

¹ Letters A to E relate to points identified on the Order map.

- (a) it is expedient in the interests of the owner of the land crossed by the section of footpath to be diverted that the line of the path or way, or part of that line should be diverted; and
- (b) the path or way will not be substantially less convenient to the public; and
- (c) that it is expedient to confirm the Order having regard to:
 - (i) the effect which the diversion would have on public enjoyment of the path or way as a whole; and
 - (ii) the effect which the coming into operation of the Order would have as respects other land served by the existing rights of way; and
 - (iii) the effect which any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it, account being taken of the provisions as to compensation.
4. In addition to the above Section 119(2) of the 1980 Act requires that a diversion order cannot alter a point of termination of the way if that point is not on a highway, or (where it is on a highway) otherwise than to another point which is on the same highway, or another one connected with it, and which is substantially as convenient to the public.
5. Section 119(6A) of the 1980 Act provides that I must have regard to any material provision contained in a Rights of Way Improvement Plan for the area covered by the Order.
6. The existing route is obstructed. In considering the convenience of the alternative route the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.

Reasons

Whether it is expedient in the interests of the owner of the land crossed by the footpath that the way should be diverted

7. The Order has been made in the interests of the owner of the land (the applicant). The application cites issues relating to privacy and security. The Council also referred to the fact that planning permission has been granted for the conversion of a barn adjacent to the path. It is contended that on completion of this conversion the path will pass directly in front of a glazed window in the kitchen/dining area. The presence of the path will therefore raise additional issues in respect of privacy.
8. Mr Mihell, the applicant, outlined that some walkers were unclear as to the location of the route and on occasions have entered the garden, sometimes with dogs, and also knocked at the door to ask for clarification of the route. This had an adverse effect on the privacy of the property.
9. No objections have been raised to the effect that the Order is not in the interest of the owner of the land and in my view the existence of the path has an adverse impact on the privacy and security of the property. There will also be future benefits in respect of the barn conversion although the issue is

whether the diversion is (i.e. currently) in the interest of the owner. I conclude that the Order is in the interest of the owner.

Whether the path or way will not be substantially less convenient to the public

10. The proposed alternative is similar in length and gradient. There will be no additional limitations on the path and the surface will be similar in character. Noting the proposed modification in relation to the width of the section of alternative route C to D the proposed alternative route will not be substantially less convenient.

The effect which the diversion would have on public enjoyment of the path or way as a whole

11. In their initial objection the Parish Council raised concerns that the diversion would have a detrimental effect on the enjoyment of the path. This was because part of the enjoyment of the route is to experience the historic setting of Treloggas Farm.
12. Treloggas is an historic mediaeval settlement first recorded in 1278. The proposed alternative route still passes through the curtilage of the historic buildings and provides views of the buildings and the surrounding farmland. Treloggas House is a grade II listed building although the front of the house cannot be seen from the existing path. Views of Treloggas Barn, are available from the existing and alternative route; I consider that views of Treloggas Barn are more extensive from the alternative route although these are from a greater distance. Whilst the views from the alternative route are different it remains possible to enjoy the historic setting of Treloggas.
13. I appreciate that some may gain enjoyment from walking closer to Treloggas Barn. However, I do not consider that the diversion will have an adverse effect on the enjoyment of the path as a whole.

The effect which the coming into operation of the Order would have as respects other land served by the existing right of way

14. There is no evidence before me that the diversion would have any effect on land served by the existing way.

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

15. The land over which the existing and alternative route passes is in the ownership of the applicant and one other owner. The applicant clearly supports the Order and the other owner has consented to the diversion. There is no evidence before me of any adverse effect on the land over which the new route passes such that compensation issues are relevant.

Rights of Way Improvement Plan (ROWIP)

16. No material provisions have been put before me from any ROWIP (in this case The Cornwall Countryside Access Strategy) which are relevant to the determination of the Order.

Whether the point of termination of the way is on a highway and is substantially as convenient to the public

17. The existing point of termination is at point A on the U6069 unclassified county road. The proposed point of termination is on this road at point E approximately 35 metres to the south of point A. The Parish Council initially raised concerns of public safety arising from the use of the highway. The point is also made that whilst there is a highway verge which could provide an alternative route for pedestrians there was no guarantee that the verge would remain available in the future.
18. The diversion will require the use of an additional length of vehicular highway if continuing northwards along footpath 12. There is no suggestion that the distance of 35 metres renders the proposed point of termination less convenient.
19. The vehicular highway on which the existing and proposed alternative footpath terminates is lightly trafficked providing access to the dwellings at Treloggas. The highway is also used by farm traffic. Beyond Treloggas House the road is signposted as being unsuitable for motor vehicles and is, with the exception of the first section which forms part of footpath 12, recorded as a byway open to all traffic. There is no evidence that the highway is used by any significant number of vehicles. There have been no recorded accidents along the road in the last 10 years. The road is subject to a 30 mile an hour speed limit although given the character of the road it seems more likely that vehicles will be travelling at a lesser speed. Consequently I do not consider that the proposed point of termination is less convenient arising from the need to use the vehicular highway. I consider the issue of safety at paragraph 22 below.
20. I note the concerns of the Parish Council in relation to the verge and the evidence before me is that the verge forms part of the highway. The verge could be used as an alternative to using the carriageway although it is likely that routine maintenance would be required to allow continued use. Nevertheless I do not consider that use of the highway makes the point of termination less convenient.

Whether it is expedient to confirm the Order

21. The use of the word expediency in section 119(6) means that other considerations may be taken into account in determining an order.
22. As noted above the Parish Council have raised issues in respect of highway safety. However, bearing in mind my observations at paragraph 19 above, there is nothing to indicate that the carriageway between points A and E is unsafe for pedestrians such that it is not expedient to confirm the Order.
23. An interested party, submitting correspondence in response to the Notice of Order, raised no objection to the diversion providing there is effective signposting along the new route. There is nothing to suggest that the alternative route will not be adequately signposted. The Council will be aware of its powers and duties under section 27 of the Countryside Act 1968 relating to signposting. Again there is nothing in this respect which suggests that it is not expedient to confirm the Order.

24. Having regard to all of the above, the Order is in the interests of the owner, the alternative route is not substantially less convenient and there will be no overall loss of enjoyment. I accept that some may enjoy walking closer to Treloggas Barn but when this is balanced against the interests of the Owner it remains expedient to confirm the Order. The proposed point of termination is on the same highway as the existing point of termination and is substantially as convenient. Consequently I conclude that it is expedient to confirm the Order subject to modification in relation to the width.

Other Matters

25. Mr Treseder by reference to *Stokes v Cambridge*² questioned whether the applicant should provide some kind of benefit to the public in terms of compensation being paid back to the community. There are no such provisions in section 119 of the 1980 Act, the relevant tests in considering an Order being those set out at paragraphs 3 to 6 above.

Conclusion

26. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed subject to modification.

Formal Decision

27. I propose to confirm the Order subject to the following modification.

- At paragraph 2 of Part 2 of the Schedule to the Order delete the words '*1 metre between points C and D and have a width of 2 metres between points B to C and D to E*' and insert '*2 metres*' so as to read '*The Public Footpath described above shall have a width of 2 metres.*'

28. Since the confirmed Order would affect land not affected by the Order as submitted, I am required by virtue of paragraph 2(3) of Schedule 6 to the 1980 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.

Martin Elliott

Inspector

² *Stokes v Cambridge Corporation (1961) 13 P & CR 77*

APPEARANCES

For Cornwall Council:

Vanessa Davis
who called
Julie Bate

Legal Officer, Cornwall Council
Countryside Access Development Officer

In support of the Order:

Chris Tofts
who called
Brian Mihell

Solicitor for the applicant
Applicant

In opposition to the Order:

Ross Treseder

Kea Parish Council

Interested Party:

Robert Fraser

Ramblers' Association

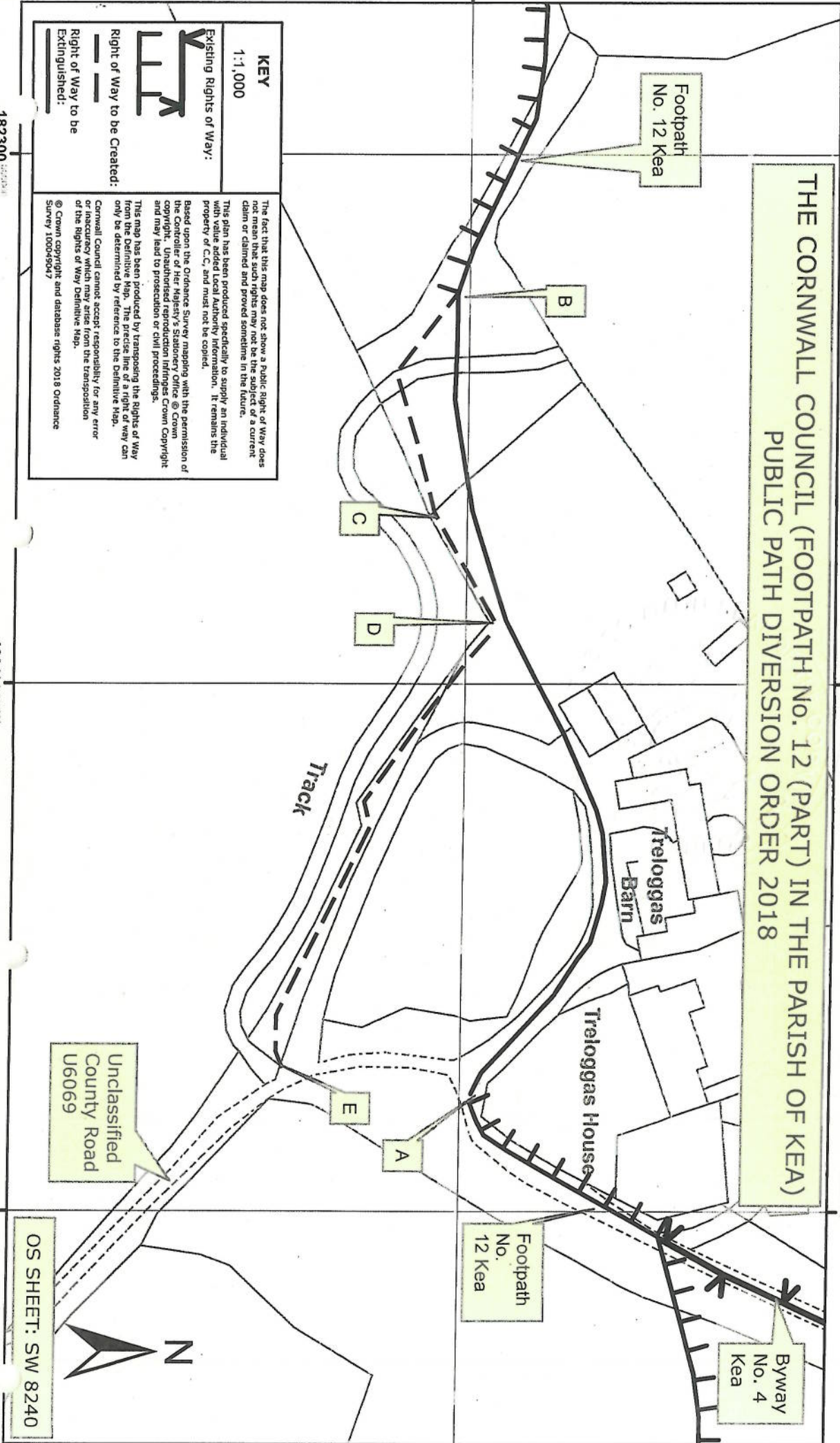
Highways Act 1980 Section 119 Order Plan: Re File HAD 243
 Parish: Kea Civil Parish Path Number: FP/308/12
 Produced by Countyside Access Team: February 2018

[Handwritten Signature]

MAP NOT TO ORIGINAL SCALE



**THE CORNWALL COUNCIL (FOOTPATH NO. 12 (PART) IN THE PARISH OF KEA)
 PUBLIC PATH DIVERSION ORDER 2018**



KEY
 1:1,000

Existing Rights of Way:

Right of Way to be Created:

Right of Way to be Extinguished:

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