
Order Decision

Site visit made on 9 July 2019

by Paul Freer BA(Hons) LLM PhD MRTPI

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

Decision date: 03 October 2019

Order Ref: ROW/3211890

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and also section 53A(2) of the Wildlife and Countryside Act 1981, and is known as the Gloucestershire County Council Public Footpath CKD 31 Parish of Kingswood Diversion Order 2018.
- The Order was sealed on 5 March 2018 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule and to modify the Definitive Map and Statement in that respect.
- There was one objection outstanding when Gloucestershire 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.

The Main Issues

1. The Order has been made in the interests of the owners 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:
 - (a) it is expedient in the interests of the owners 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;
 - (c) the point of termination of the alternative path would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public, and
 - (d) 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 rights 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.
2. 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.

Reasons

Whether it is expedient in the interests of the owners that the line of the path or way, or part of that line should be diverted

3. In May 2017, retrospective planning permission was granted for the erection of a feed silo and a biomass building in positions that obstruct the public footpath. The erection of the feed silo and the biomass building evidently form part of the farming business taking place on the land. Both structures now have the benefit of planning permission. Accordingly, I am satisfied that diverting the footpath to avoid the physical obstruction caused by the erection of the feed silo and the biomass building is in the interests of the Landowners.

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

4. The alternative route of footpath CKD 31 is approximately 2 metres longer than the existing section of the footpath. The alternative route is therefore not substantially less convenient.

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

5. The existing and the alternative routes pass over terrain of the same description and gradient. The existing and the alternative routes are in close proximity, such that the experience of walking the route would be essentially the same. Given that the character of the existing and alternative routes are similar, I do not consider that the diversion will have any adverse effect on the public 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

6. There is no evidence that the diversion will 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

7. The proposed alternative route crosses land entirely in the ownership of the applicant for the Order and they clearly support the diversion.

Whether the point of termination of the alternative path would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public

8. The existing points of termination of footpath CDK 31 would be unaffected by the proposed diversion of the footpath.

Rights of Way Improvement Plan

9. The County Council's rights of way improvement plan sets out the criteria that it will take into account in determining the priority to be afforded to applications to divert public footpaths. As such, nothing in the County Council's rights of way improvement plan is material to the application that is now before me.

Whether it is expedient to confirm the Order

10. Having regard to all of the above, I conclude that it is expedient to confirm the Order.

Other Matters

11. The objector raises concerns that, for the most part, relate to (in his view) perceived deficiencies in the County Council's protection of public footpaths in the area rather than the merits of the diversion of the public footpath in question. The objector's concerns are not matters for my consideration and I give them no weight in determining the Order.

Conclusion

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

Formal Decision

13. I confirm the Order.

Paul Freer

INSPECTOR

Kfamer S44248

TITLE:
Proposed diversion
of footpath CKD 31
at Highwood Farm
Kingswood



DRAWN BY: Martine Tyler
DATE: 12th October 2017
SCALE: 1:2,500

Legend

Footpath to be stopped up

A-B

C-D

Footpath to be created

A-B

C-D

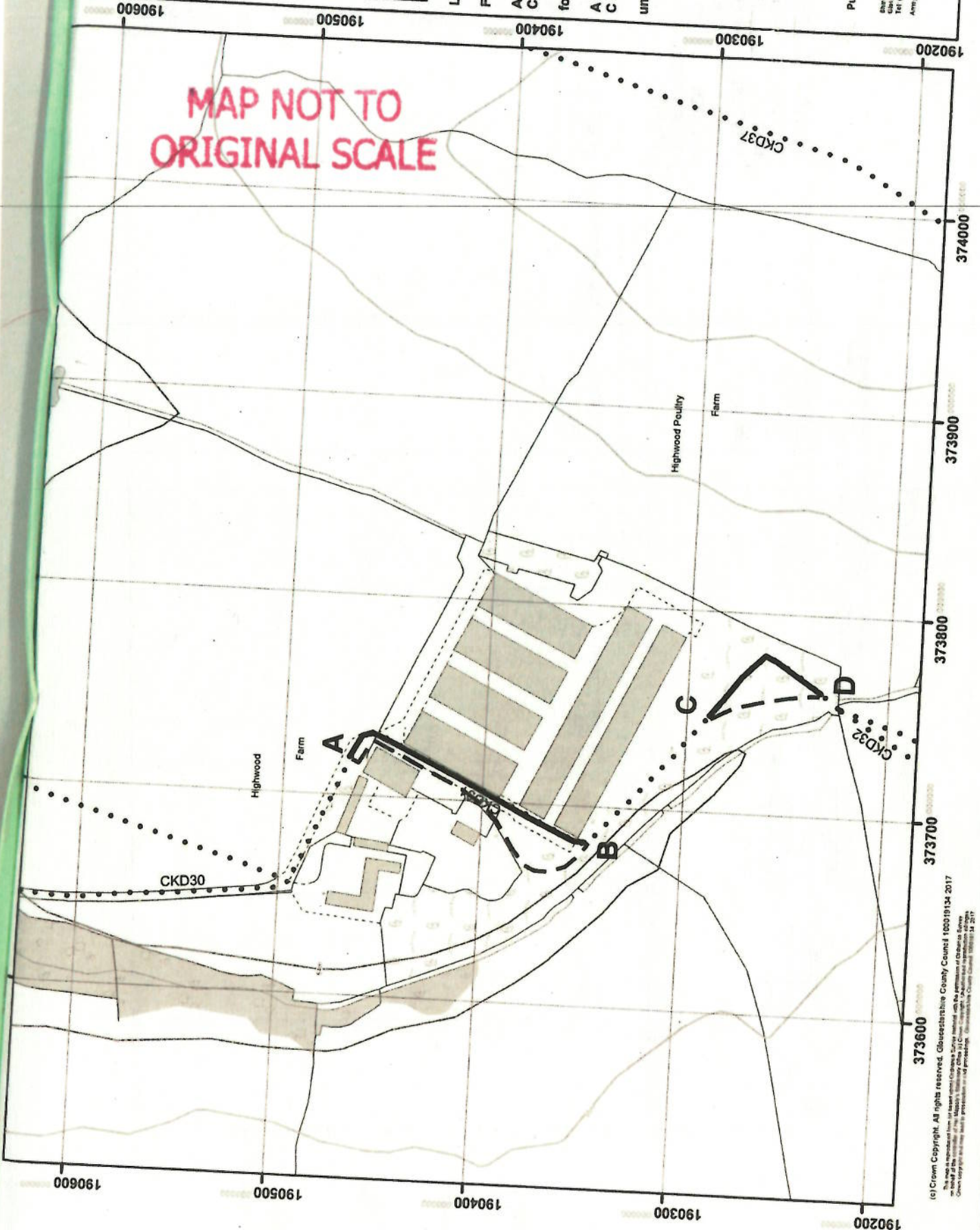
unaffected public footpath

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Public Rights of Way

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Army / Highways Gloucestershire

MAP NOT TO
ORIGINAL SCALE



373600
373700
373800
373900
374000
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