



Order Decisions

Inquiry held on 18 September 2019

Site visit made on 17 September 2019

by K R Seward Solicitor

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

Decision date: 22 October 2019

Order A: ROW/3216621

- Order A is made under Section 119 of the Highways Act 1980 ('the 1980 Act') and is known as Public Path Diversion Order 2018 Footpath 7 Little Totham.
- The Order is dated 4 July 2018 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Essex County Council submitted Order A to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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

Order B: ROW/3216622

- Order B is made under Section 119 of the 1980 Act and is known as Public Path Diversion Order 2018 Footpath 2 Tolleshunt Darcy.
- The Order is dated 4 July 2018 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 3 objections outstanding when Essex County Council submitted Order B to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modification.

Order C: ROW/3216623

- This Order is made under Section 119 of the 1980 Act and is known as Public Path Diversion Order 2018 Footpaths 4 and 5 Tolleshunt Darcy.
- The Order is dated 4 July 2018 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 3 objections outstanding when Essex County Council submitted Order C to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modification.

Procedural Matters

1. All three Orders were made on the same day for the diversion of parts of four public footpaths. Apart from affecting land in the same ownership, the path in Order A has no other link or connection with those in Orders B and C. Indeed, it is in another parish some distance away.
2. The existing public paths in Orders B and C are physically linked. Taken together those Orders form a coherent package to divert the paths to avoid the buildings at Frame Farm and Limesbrook Farm. Orders A and C could be confirmed in isolation, but if Order C is confirmed without Order B then FP2 will become a cul-de-sac path terminating at a field edge. Nevertheless, they are

separate Orders and I must deal with each individually and on its own merits. However, I shall deal with issues consecutively under the same headings and take arguments common to both together, but I shall reach a conclusion on Order C before Order B. In addressing submissions made by the objectors, I shall also consider the implications of both Orders together.

3. Two of the three statutory objectors are Tolleshunt D'Arcy Parish Council and Mrs Diane Cook. The original letter of objection from the Parish Council commented on the Orders within its parish only i.e. Orders B and C. Similarly, Mrs Cook did not raise any objection to Order A. When the Orders were made Mrs Cook was a parish councillor although her objection was made in a personal capacity as a user of the routes in Tolleshunt D'Arcy¹. Mrs Cook attended the Inquiry to give evidence in her own right. She also produced an email from the Parish Clerk authorising her to represent the Parish Council.
4. The third statutory objector is The Ramblers Association ('the Ramblers') which objects to all three Orders. The Ramblers were represented at the Inquiry by Jackie Harrop who was the local representative when its objection was made. Ms Harrop emphasised that she had not personally compiled the Ramblers submission and so may be unable to answer all questions particularly those of a legal nature.
5. The Ramblers express alarm and dissatisfaction that planning permission was granted by the district council for new development affecting the existing definitive line for FP5. That is a matter falling outside of my considerations.
6. The walked route currently deviates from the definitive line at both Frame Farm and Limesbrook Farm (Order C). A barn is built over the path at Frame Farm preventing the entire legal line from being walked. Despite the deviations I was able to gauge the approximate position of the path sufficiently to allow me to assess the proposal. When considering the convenience of the routes included in the Orders the present obstructions of the paths are to be disregarded.
7. Suggestions are made as to possible alternative routes for the diversions. Invariably there will always be other alignments that could be used. That does not mean that they are available or would be acceptable to the landowners. It is evident that various proposals were discussed. The history behind the Orders coming to fruition and whether or not preferences have been incorporated cannot affect my considerations. I must consider the routes as provided by the Orders in accordance with the statutory tests.
8. As I have referred to points along the existing and proposed routes as shown on the Order Maps, I attach copies of the maps for reference purposes.

Matters relating to the Orders

9. The Ramblers point out that under the Orders as made, the existing paths will be stopped up simultaneously with the new ways coming into operation, being 28 days after confirmation of Orders A and C and 30 days for Order B. It suggests that works will be required under each Order before the new paths would be fit to use. A request is made that none of the existing routes are extinguished until the works are satisfactorily completed.
10. The works sought involve a crossing for the stream in Order A along with a new

¹ Also referred to as 'Tolleshunt Darcy'

exit onto Church Lane with finger post. A ditch crossing and provision of a gap in the hedge midway along the new route is required under Order B. For Order C, a new exit point through the hedge onto Kelvedon Road is needed (which addresses any difference in height) along with a finger post. On my site visit I found the proposed routes to be inaccessible in the places identified. None could be walked in one continuous line. In order to walk the length of each new path I retraced my steps to enter the proposed path from the opposite end. At the Inquiry the County Council, as Order Making Authority ('OMA') agreed that all the works described are needed if the Orders are confirmed before the paths are fit for public use. Arrangements are already in place with the landowners for those works to be undertaken. The OMA is confident that all the works are achievable within the periods of 28 and 30 days specified in the Orders.

11. Pursuant to section 119(3)(b) of the 1980 Act, where it appears to the OMA that work is required to bring a footpath into a fit condition for use by the public an order extinguishing a public right of way is not to come into force until the local highway authority for the new path certifies that the work has been carried out. Provision to that effect should be incorporated within each Order because of the works required.
12. Where gaps would be created in the hedgerow they should be recorded in each Order as a limitation compliant to the British Standard for gaps, gates and stiles with the position identified on the Order map. Furthermore, the existence of a bridge at the crossing points (Orders A and B) should be identified in the description of the way so that it can be recorded in the Definitive Statement.
13. For all the Orders, the Ramblers requests clarity over where the 2m width of the diverted path would run in relationship to hedges/trees. Concern is expressed over the narrowing of the available path once the hedgerow grows sideways. For year-round convenience of the public, it is requested that provision is made in the Orders for a 0.5m clear margin along each side where there is a boundary feature.
14. The Orders require a 2m wide path to be available and it is incumbent upon the landowners to leave a path of that width. There is a risk that the hedgerow and trees along parts of the new routes could become overgrown and impede their usability. A solution discussed at the Inquiry is for wording to be added to the description in Part 2 of each Schedule to the effect that the 2m is measured from the face of the hedge or any other boundary feature. This would mean that a 2m wide path would always remain walkable on the ground and not suffer from encroachment by the hedgerow/trees. There was consensus at the Inquiry between the main parties that this approach should be adopted.
15. The Ramblers request that the diversion of FP5 (Order C) onto Kelvedon Road at point Z is made subject to a road safety audit with the diversion not taking effect until any measures required by the audit have been undertaken. An Order cannot be conditioned. Therefore, it cannot be made subject to another process or involve unidentified works and land. The suitability of the new termination point is a factor falling for consideration in deciding whether it is expedient for the Order to be confirmed.
16. In Order A the entire length of the diverted path is labelled as FP7, but part goes over the parish boundary into Great Totham which already has a FP7. The Ramblers submit that the new route would require a different and unique path number. Given that the diverted path would be known as FP7 Little Totham and

it is not near to FP7 Great Totham I do not see that this would create confusion or present any problem with identification.

Main Issues

17. The Orders have been made in the interests of the owners whose land is crossed by the footpaths. By virtue of section 119 of the 1980 Act, for me to confirm the Orders I must be satisfied that:
- (a) the diversion to be effected by each Order is expedient in those interests;
 - (b) the new paths will not be substantially less convenient to the public in consequence of the diversions;
 - (c) any new termination point for the paths is substantially as convenient to the public; and
 - (d) it is expedient to confirm each Order having regard to:
 - (i) the effect of the diversion on public enjoyment of the path as a whole, and
 - (ii) the effect the coming into operation of each Order would have with respect to other land served by the existing path and the land over which the new path would be created together with any land held with it.
18. I shall also have regard to any material provision contained in a rights of way improvement plan ('ROWIP') for the area when considering each Order.

Reasons

Order A

Whether it is expedient in the interests of the owner of the land that the path in question should be diverted

19. The application was made by RH Ashcroft & Sons Ltd being the owners of Little Totham Hall. The Order has been made in the interests of the landowners' privacy and security. As the privacy issues relate to the dwellinghouse which is occupied by Mr and Mrs Ashcroft, technically the Order should have been expressed as being made in the interests of both the landowners and occupiers. The OMA confirmed this to be the case. A minor modification is required to this effect. The objectors accepted this without any comment.
20. The existing path follows a farm track accessed off Church Lane. It passes close by several farm buildings associated with Little Totham Hall and past the end of the private driveway to the house.
21. I heard how invasions of privacy have arisen when walkers get lost and continue along the private driveway to reach the back of the house instead of following the legal line. However, this is a symptom of inadequate signage for the public path rather than its alignment.
22. From the definitive line most of the front garden with manicured lawns is exposed to public view. Due to the presence of large trees much of the house itself is concealed from view although some ground floor windows are visible. The distance is too great to see through the windows. The private seating area

to the side of the house is visible. Whilst the views are not close it is enough for privacy to be adversely affected.

23. At the Inquiry, one occupier described how it felt an "intrusion" when members of the public walk past the front garden whilst it is in use. This had been a particular concern when the family had younger children causing fears for their welfare whilst playing in the garden and the need to repeat warnings not to talk to strangers.
24. In terms of security, evidence was given that barns in the farmyard have been burgled three times in the past 10 years with livestock also killed. It cannot be known whether those crimes would have been avoided but for the public path. However, the need to keep the path open at all times to the public will not help in safeguarding the premises. The presence of the path gives a legitimate reason for persons with unlawful intentions to be in the farmyard. Based on the evidence I consider that the security concerns are not the result of a generalised fear of crime but arise from past experiences.
25. I am satisfied that the proposed diversion is expedient in the interests of the owners and also the occupiers.

Whether the new path will not be substantially less convenient to the public

26. The existing path extends for approximately 213m to connect with FP8 at point E. The diverted route is considerably longer at around 500m and exits onto Church Lane at a different point. To reach the existing termination point F involves a further distance of around 130m involving road walking. Therefore, it is 630m in total to travel between the same points compared with 213m.
27. The additional distance may not be as much of an issue for users heading south or wishing to connect with FP10 to the east, but for those wishing to travel north towards the Church then it will take far longer. The Church is described by the Ramblers as a point of interest which is often visited.
28. The existing route does not lead directly to the Church, but it does offer a fairly short and easy route from point E. It partly follows a hard-surfaced track which provides a suitable surface for all year-round walking. Walking conditions over the grassed field edge diversion could be more difficult during wet spells. Thus, the diversion would be less convenient for those seeking to reach the Church.
29. For others seeking to head west along Church Lane past point G the diverted route is not much longer, but it involves doubling back along the road parallel with G-H. The OMA suggested that a gap would be created in the hedgerow after point G to allow access onto Church Lane for the convenience of walkers. Whilst not objecting, Mrs Ashcroft was previously unaware of this and the OMA acknowledged that it was an "afterthought" that had not been raised before. There is no such provision within the Order and map as currently drawn. The OMA suggested that they would take the owners word for it that a gap would be created and maintained, but this is not satisfactory either in terms of my considerations or going forward if the diversion takes effect.
30. The benefit of another exit point is that it would shorten the diversion if heading to or from the west via point G. From G-H measures about 140m and so nearly double that distance could be saved. By removing the need to walk between those points it would give users the option of reducing the time and

distance walked and avoid a 140m stretch of road walking. It would also offer a stretch of off-road walking for people using Church Lane without wishing to use the remainder of the diverted path. It seems to me that a modification to the Order to provide for the suggested exit point would make the diverted route much more convenient than presently proposed. It would then make it quicker and shorter than the existing route to reach point E via point G.

31. The Ramblers note that the new route follows the line of a 'stream'² and it is in Flood Zone 3, being at the highest risk of flooding. The OMA stated that it was unaware of any actual flooding. In evidence Mrs Ashcroft said that there had been no flooding throughout her 26 years of occupancy. From the evidence before me there is theoretically a high flood risk but not one that has materialised in modern times. There is certainly nothing before me to indicate that flooding is likely to occur on any degree of regularity to cause a significant impediment to the convenience of use of the diverted path.
32. Unlike the existing route, the diverted route would not be shared with vehicular traffic. The track is utilised by farm machinery and vehicles giving rise to potential safety implications. There is a sharp bend in the track limiting visibility for operators and pedestrians alike. From this viewpoint, the diversion is more convenient as users and farm traffic are not using the same space. Users would still encounter road traffic along Church Lane to reach point F, but that is no different from the position now as the same stretch of road is used by walkers exiting at point F to head south.
33. All things considered including possible flood risk, I conclude that the diverted route is less convenient than the existing route, but not substantially so subject to the modification described.

Altered termination points

34. Section 119 requires that the point of termination shall not be altered otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
35. The northern termination point is unchanged. The southern termination point remains along Church Lane, but about 130m to the south where it is directly opposite FP10. The Ramblers regard this new termination point as generally less convenient than currently exists, but that depends on the user's direction of travel and destination. For those heading east towards the Church or beyond point H will be less convenient as it will involve further distance and walking along Church Lane where there is no footway. On the other hand, point H will be much more convenient for users seeking to connect with FP10 as it will simply involve crossing over Church Lane. It will avoid the road walking currently needed to connect FP7 and FP10.
36. Therefore, for some people the new termination point will be more convenient and for others it will be less convenient. Given the ease of connectivity that will be secured with existing FP10, I consider that the new termination point H is substantially as convenient to the public.

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

37. An extract of the 1895-97 Ordnance Survey map identifies that the current

² As described in the Order. I would describe it as a water filled ditch.

route for FP7 has existed in excess of 100 years. Even so, there is nothing before me to indicate that it has any particular historical significance. Therefore, I attach little weight to the longevity of the existing route.

38. The existing path passes quite close by a very large pond³ which clearly attracts wildfowl. At the time of my visit geese were laying on the lawn beside the pond. Totham Hall itself is a Grade II listed building. The grounds are located next to the Church and its spire with weathervane can be seen from the path. This combination of features makes for a visually attractive setting.
39. To experience the setting involves walking through a small farmyard with buildings on either side and where tractors and agricultural machinery are manoeuvred. From my own experience, tractor noise in the yard disrupts the quiet surroundings and requires users to be alert to their whereabouts. The driveway is also the main access to Little Totham Hall and for the adjacent fields within the same landholding. Therefore, it is used by farm traffic and other vehicles going to and from the house. Not only is this shared space potentially hazardous for footpath users but encountering heavy farm machinery, in particular, is likely to impede enjoyment.
40. The existing route ends a short way past the pond at the field edge where the diverted path would start. From the new route, the pond can be seen in a couple of places where there are gaps in the hedgerow. Those views of the pond are not as clear as those from the existing path, but it can be appreciated to some degree. The diverted route would run beside the hedge/tree line for 360m which restricts views to the east, but to the west there are wide expansive views over the open fields. With no buildings visible, the countryside can be enjoyed free from potential disturbance by vehicles. As the diverted route approaches Church Lane, a footbridge is to be provided over the ditch to then proceed on the inside of the hedge line parallel with the lane. The lane is not busy, but the occasional traffic will be seen and heard from the diverted route for the final stretch. The path will, however, be shielded by the hedge line. At the end, the path enables users to connect easily with FP10 which is only available now by walking 130m or so along the lane.
41. The grassed field margin of the diverted path could become boggy during wet weather which might diminish enjoyment. This is not an issue that affects the existing path which is designed to carry heavy agricultural machinery.
42. Some people will prefer a field edge path to walking through a farmyard and close to someone else's home. This can give rise to feelings of intruding. Others may be unperturbed and enjoy the unrestricted views of the pond and surrounding buildings regardless of farm and other traffic. The effect on enjoyment will depend upon a user's preferences. Any negative effect would not warrant a decision not to confirm the Order.

The effect of the diversion on other land served by the existing paths and the land over which the new path would be created

43. No specific issues have been raised with regard to other land served by the existing paths and the land over which the new path would be created.

³ Described by the Ramblers as a 'lake'

ROWIP

44. By achieving better connectivity with FP10, the diversion is compatible with Theme D of the Essex County Council ROWIP for a more continuous network.

Whether it is expedient to confirm Order A

45. I have concluded that the Order is expedient in the interests of the landowner and occupiers. Whilst the diverted route is less convenient than the existing route, it is not substantially so subject to the modification described. I have found that the new termination point is substantially as convenient to the public. The experiences for each path differ considerably. Some people will prefer the existing path, but others will prefer the diversion and the connectivity it brings with FP10.
46. With the modifications, I consider that it is expedient to confirm the Order.

Orders B & C

Whether it is expedient in the interests of the owner of the land that the paths in question should be diverted

47. The application to divert all the paths in Orders B and C were made by David Weston along with Paul and Sam Tallowin of Frame Farm.

Order B – FP2

48. The land affected by FP2 is owned by Mr Ashcroft and farmed by the company he owns with his wife. The existing route crosses two fields dissected by a hedge line and the stream known as Limes Brook. The fields are actively farmed and subject to cropping. Crops will be affected by a cross field path which will also be more onerous to maintain than a field edge path. From that viewpoint I am satisfied that it is in the interests of the owner for the path to be diverted.

Order C – FP4 & 5

49. The land crossed by FP5 belongs to Mr and Mrs Ashcroft who also own part of FP4 including Limesbrook Farm. The remainder of FP4 including Frame Farm is owned and farmed by the applicants in partnership.
50. FP4 and FP5 are joined and the OMA regards them as one path. It was pointed out that the only reason for the difference in numbering is because there is an intersection where the path heads in different directions. FP4 continues to the south. Where the path turns north it becomes FP5.
51. When the Order was made, there were two barns described as 'poultry houses' located across FP4 towards the southern end. Since then, one barn⁴ has been demolished and removed. There remains one other built over the path. Given this obstruction and the alignment of the path through the farmyard, the route which is used on the ground takes walkers away from the farmyard. It re-connects with the legal line further to the north. As mentioned previously, my considerations do not cover this aspect.
52. Planning permission has been granted for a new barn over FP4. The Ramblers point out that it will be an offence under section 137 of the 1980 Act if the barn

⁴ Also described by an applicant as a 'tin shed'

is built before the path is diverted. Separate provision for the stopping up or diversion of public paths where it is necessary to do so in order to enable development to be carried out is contained within section 257 of the Town and Country Planning Act 1990. None of these matters influence my decision which must be based upon the legal tests summarised above.

53. According to the applicants, the poultry houses were built over 60 years ago. Aside from the ongoing conflict between the definitive line and one of the remaining poultry houses⁵, FP4 also passes through a busy working farmyard. There are health and safety risks to the public walking through such an environment. It is not difficult to see how the owners and those managing and working in the yard would find it easier not to be concerned with the prospect of walkers appearing at any time during operations.
54. The footbridge crossing point provided for FP5 is in the wrong place as is the roped off section of path around Limesbrook Farm. During my site visit I saw how the recorded line passes near to a residential barn conversion and the front garden of the farmhouse. Given the proximity to the path, occupiers may well perceive that their privacy is infringed. I also heard how there had been an attempted break-in to the farm compound last winter. Of course, this could have occurred regardless of the footpath. Nevertheless, the public would have no reason to use the main farm track over which the path passes if it were diverted and this may assist in improving farm security.
55. The Order is expressed to be made in the interests of the landowner only. In view of the case made out, it should also refer to the interests of the occupiers not all of whom are landowners. A minor modification is needed to this effect.
56. I am satisfied that it is in the interest of the owners and occupiers for FP4/5 to be diverted.

Whether the new paths will not be substantially less convenient to the public

Orders B & C

57. The Ramblers argue that the existing connection will be lost between Kelvedon Road to the east and Tudwick Road and FP3 and FP16 to the west.
58. It would still be possible to walk between points K-V if both Orders are confirmed by utilising FP3 which links to both diverted routes, but it would be considerably longer and involve various changes in direction.
59. The applicants maintain that the existing paths are seldom used because the east to west connection to point V does not link to another path or lead anywhere other than the roadside. That view is supported by the OMA who say that FP3 was diverted previously to provide a well-used east-west route into the village of Tolleshunt D'Arcy. Certainly, FP3 would seem the most logical route if seeking to travel from east-west as it is a more direct route into the village without needing to contend with navigating through Limesbrook Farm.
60. Whilst an east-west connection would be lost from confirmation of either Order B or C, I am not satisfied that this would be a major loss given the alternative route already available and lack of connectivity with other public paths upon

⁵ Now used for agricultural storage

reaching point V. All the existing paths cross open fields which may not be available or easy to follow or use when the fields are ploughed or in crop. That issue is unlikely to arise with the diverted field edge paths where a grassed margin is retained.

Order B only

61. In Part 2 of Order B, the southern part of the diverted route is described as running "in a generally southerly direction parallel with and along the west side of the stream known as Limes Brook for a total distance of approximately 791 metres to point M" where it connects with FP3 Tolleshunt D'Arcy. Depending on how close the new path runs to the stream dictates whether it would be within Flood Zone level 2 or 3 and be on land at medium or high flood risk. None of the witnesses called by the OMA knew of any flooding that had ever occurred over the past 10-20 plus years that would affect the proposed route.
62. There is no evidence presented that the land is prone to flooding on any degree of regularity to suggest that the diversion would be less convenient. It would be considerably shorter to walk between M-K along the proposed route than utilising the existing path and part of FP4.
63. The diversion would still provide a circular route connecting with FP3 at one end and FP21 at the other end.
64. Point L in Order B terminates at a field edge where it currently connects with FP4. As previously noted, it would become a cul-de-sac path with no onward connection if FP4 were to be diverted. Should that happen, then the existing route would be less convenient than it is now with users only being able to approach the path from point K and needing to turn back at point L. If FP4 is not confirmed the link remains with FP2 in which case the diversion is less convenient for those wishing to continue along FP4/5. In either scenario it will be more convenient for walkers seeking to connect with The Chase.

Order C only

65. This is not the type of route where people may want to get from one point to another as quickly as possible. It is most likely to be used for leisure or for those exercising dogs.
66. At the start of FP4 from point S there are two stiles at each end of a paddock. The stiles will limit the use of the path to those able or willing to climb over. They may also prevent or deter access for those walking with dogs which are unable or difficult to get through on a lead. If horses are in the paddock, then this could also deter users who are uncomfortable around them or with dogs for fear that the animals might act unpredictably.
67. The existing path through Frame Farm is not easy to follow as there is no clear path given the various buildings, paddocks and other features. Nor is it clear where to walk through Limesbrook Farm. Evidence was given that walkers often get lost and stray off the path to come out on the wrong side of the farmhouse. Better signage could assist in both locations, but in view of the layout of the farms it is unlikely to overcome all problems of walkers straying whilst trying to establish where to walk.
68. As the diversion follows the hedge line for the most part, it is straightforward and convenient to use.

69. It was acknowledged by Mrs Cook at the Inquiry that the gate shown in one photograph annexed to her Statement of Grounds and which is alleged to be obstructing FP5 is not in fact along FP5. It is at the entrance of a farm track much further away which is accessed off FP3.
70. Under the diversion, it is further to walk between S-V than along the existing path. In terms of the additional time spent, it will not be significant in the context of the time taken to walk the route as a whole. In my view, most users will find the diversion as convenient as the existing path.

Altered termination points

Order B – FP2

71. The Ramblers consider that termination point M is substantially less convenient to the public than the current termination point L at the field junction with FP4.
72. They say it is muddy and gives rise to potential conflict between walkers and farm/other vehicular traffic utilising the private access along The Chase near to point M. No such issues arise along the existing cross field path between K-L.
73. In response, both Mr Tallowin and the OMA gave evidence that the photographs produced by the Ramblers to illustrate their point show the concrete track for FP3 and not point M itself.
74. Point M is close to the existing termination point S for FP4 which is proposed for diversion in Order C. It seems to me that the safety risk is unlikely to be any worse than that for point S and there is no indication that its location has presented a problem. In any event, point M is away from the main corner of the road. I saw for myself that there is plenty of room for users to stand and walk off the surfaced track and there are reasonable sight lines. These factors lead me to conclude that point M does not pose a greater safety risk. If anything, it adds to the convenience of users approaching from The Chase who will see the path virtually straight ahead.

Order C – FP4 & 5

75. Both routes terminate along the public highway in Kelvedon Road in the north and FP3 to the south, but at different points. Kelvedon Road is relatively busy with fast moving traffic.
76. At the Inquiry it was suggested by one objector that buses stop at point V, but there is no bus stop there. It transpired that buses have sometimes stopped when passengers have asked the driver to alight at that point. There is no existing connection with any official public transport drop off and pick up point. If desired, it is only a short walk along the grass verge to get between points V and Z. Point Z is a little bit closer to the village which will be slightly more convenient if that is the user's starting or destination point.
77. Safety concerns were raised by the Ramblers about exit point Z. A gap will need to be created in the hedge. Whilst the OMA did not commission a road safety audit due to time and expenditure, assurances were given at the Inquiry that safety had very much been considered. The conclusion drawn by the OMA was that it would not differ much from the existing exit.
78. As point V is at the start of the track, there is space for users to stand well back from the main carriageway of Kelvedon Road. This option will not be

available at point Z although there is grass verge where pedestrians could stand and there is good visibility of oncoming traffic. On the other hand, point V is shared with vehicular traffic which could give rise to safety implications as large vehicles and machinery turn into the track. That is not an issue that arises with the proposed route. Furthermore, point V is nearer to a curve in the road than point Z. Motorists approaching from around the bend would have more time to see pedestrians stood at point Z than V.

79. From my own observations, both paths exit onto a road where care for personal safety needs to be observed. I have no reason to conclude that safety and convenience of the new termination point would be worse.
80. At the southern end, new point X is calculated by the Ramblers to be approximately 750m away from existing exit point S. Access between those points is achieved along FP3. For walkers looking to head east towards the village along FP3, the termination point will be more convenient but less convenient if heading west. The convenience of point X depends on the user's destination. It will be better for some and worse for others.

The effect of the diversions on public enjoyment of the paths as a whole

81. It is argued that the combined effect of Orders B and C will have a negative effect on the footpath network by removing the east-west connectivity that currently exists resulting in reduced enjoyment for the public.
82. As discussed under the issue of convenience, there is another existing path (FP3) which delivers an east-west link along what appears to be a more favourable route. On the evidence, the change in alignment of FP2, FP4 and 5 will be less enjoyable for some who like to experience a mix of countryside and the workings of the farmyards. However, there is more support for the diversions taking people away from dwellings and those working areas.

Order B

83. It is the evidence of Mrs Ashcroft that the existing path becomes very muddy in winter prompting complaints from users. This was not refuted by objectors. As a long cross-field path, FP2 delivers a sense of openness with views all around. Those views are broken at the midway point by the hedge line which bisects Limes Brook. The fields are cultivated, and Mrs Ashcroft explained that when rape is grown, the crop is so high that it obliterates the views. Of course, this will be temporary until the crop is cut.
84. The proposed path follows a grassed field edge which is less likely to get as muddy under foot. Whilst there is hedgerow on one side, views over the surrounding countryside can still be enjoyed. Both paths deliver countryside views of vast open fields. The views from K-L are not strikingly better than those proposed from K-M, they just differ.
85. The effect on enjoyment will depend upon personal preference. Some users prefer the openness of a cross-field path and 360 degrees views. Others who do not like to disturb the crop or walk over ploughed soil will prefer the clear line of a field edge path with less likelihood of the surface being disturbed. There is nothing to warrant not confirming the Order on this ground.

Order C

86. Tolleshunt D'Arcy Parish Council commented in its letter of objection that the alternative route is not as beneficial as the existing route without elaborating further. It stated only that the footpaths are still being walked and should not be extinguished, but the Order seeks to divert FP4 and 5 rather than extinguish them altogether.
87. Even if FP4 was unobstructed, it would still cross paddocks and a busy farmyard. The farmhouse is apparently Grade II listed, but the views of it are not close enough to allow its appreciation to any material degree.
88. I heard how forklifts are operated daily in the yard at Frame Farm along with loading activities involving heavy machinery. The yard is most active from March-November, but over the winter months lorries continue to be loaded. On my site visit I witnessed a tractor towing a trailer through the yard where its load was tipped into a lorry. It is clear to me that the section of FP4 passing through the farmyard is not a safe place for members of the public to walk.
89. Noise from the activities was audible from other parts of the path and this will impact negatively upon peaceful enjoyment of the walk. It is also not easy to navigate around the buildings to find the path because of the layout and activities underway.
90. Once out into the open fields, the views leading to point T allow the countryside to be appreciated which many users would find enjoyable. Objectors emphasise how enjoyable they find these views. Upon reaching point T, the definitive line for FP5 around Limesbrook Farm becomes difficult to navigate with few focal points. This could be addressed by better signage and if the path were kept clear of growth and obstruction. Even so, some users would feel uncomfortable walking quite close past the barn conversion and front garden of the house.
91. Having passed the farm buildings, the path proceeds along a dusty track with views of the surrounding fields before leading past a bungalow near to the exit onto Kelvedon Road. The track is used as the main access for agricultural vehicles and heavy farm machinery to Limesbrook Farm. By arrangement, it is also used by agricultural traffic associated with Frame Farm to avoid travelling through the village. If confronted with such vehicles it may impede enjoyment of the walk but how often this might occur in practice is not altogether clear.
92. No vehicles utilise the proposed route between X-Y-Z. It follows a headland from Z-Y along a wide environmental grassed strip. Views to the south and west are expansive and far reaching due to the elevated level. Walkers are likely to enjoy these as much, if not more, than those along the existing route. Part of the route travelling in a southerly direction past point Y is across open land which would be welcomed by those who enjoy the cross-field experience albeit relatively short. From those in support it is evident that there are members of the public who much prefer the proposed paths.
93. Overall, I do not consider that there would be an adverse effect on the enjoyment of the routes as a whole.

The effect of the diversions on other land served by the existing paths and the land over which the new paths would be created

94. No adverse issues have been raised in this regard. Indeed, the RSPB considers

there will be benefit from the diversion of FP2, FP4 and 5 as the existing land provides habitat for breeding turtle doves which will then be undisturbed by walkers and dogs.

ROWIP

95. The Ramblers consider that the combined effect of Orders B and C will have a negative effect on the footpath network by removing the east-west connectivity that currently exists contrary to the Essex County Council ROWIP Theme D of "A more continuous network" and objective 4 "to reduce fragmentation in the public rights of way network".
96. Theme D lists one of the issues highlighted on an assessment was a lack of continuous paths. As things stand, FP2 links into FP5 to provide a continuous path from point K to point V along Kelvedon Road. That connectivity would not be lost altogether as it would still be possible to travel between point K and Kelvedon Road. However, it would involve a much longer circular route necessitating use of FP3 to provide the continuous link and a short walk along Kelvedon Road between Z-V.
97. Accessibility between points K-V will be worse in terms of the distance involved, but it will be improved in other ways as promoted by ROWIP objective 5. For instance, there is no specific width that must be maintained for the current definitive line whereas the paths in Orders B and C must be maintained to a width of 2m. More people would be able to use the diverted path in Order C free from stiles and without fears for safety through the active working areas. The diversions in both Orders should be available all year without the interruptions from cultivation that affect the existing routes.
98. Bearing in mind the benefits that would be secured, I do not consider that the objectives of the ROWIP would be undermined.

Expediency – issues pertinent to Orders B & C

99. The Ramblers consider that the change from a cross field path to a field edge path will be less convenient to the public as they will be less accessible. The reason for this conclusion is that a landowner is responsible for reinstating a cross-field path whereas the local highway authority will maintain a field edge path. With budgetary pressures, it is feared that the path will be unavailable over the summer months whilst the adjoining fields are in crop.
100. The judgment in *Ramblers' Association v SSEFRA, Oxfordshire CC & Weston*⁶ confirms that the issue of expediency under section 119(6) is not confined to the specific factors in sub-paragraphs (a)-(c) of that section, namely those concerning public enjoyment, the effect on the land and other land, plus the compensation provisions. It can encompass other factors.
101. The OMA stated at the Inquiry that whilst it would retain responsibility for the diverted paths it has arranged for the landowners to maintain them. If needed, the OMA is confident that it could easily arrange for the necessary works to be added to its maintenance programme and there is current budgetary provision for it to do so.
102. Ultimately, the highway authority will have a duty to maintain the diverted

⁶ [2012] EWHC 3333 (Admin)

paths whatever its budget. In these cases, there are other factors relevant to the question of accessibility. The existing cross-field paths are subject to ploughing and cropping. This is far more likely to affect the availability of a path than one along the field edge which is much easier to leave undisturbed. The diverted field edge paths are more likely to be accessible all year round to public benefit.

103. The RSPB supports the diversion of FP2, FP4 and 5 as the current routes pass through habitat which is consistently used by breeding turtle doves and which is managed for their use. It says that turtle dove numbers have plummeted by 94% since the 1990's placing them at risk of extinction in England. They are listed as 'vulnerable' on the IUCN Red List of Threatened Species. The RSPB considers that moving the paths will decrease the amount of disturbance from walkers and particularly dogs which will have a positive impact on other species of flora and fauna.

Whether it is expedient to confirm Order C

104. I shall address Order C first as my conclusion on this Order has implications for Order B as set out in my procedural note.
105. I have found that Order C is expedient in the interests of the landowners and the occupiers. Whilst some users will find the diversion less convenient, most are likely to find it more convenient. The convenience of termination point X depends on the user's destination. It will be better for some and worse for others. There is no adverse effect on the enjoyment of the routes as a whole and I am reinforced in that view from submissions in support. There are also benefits to wildlife conservation from diverting the path away from its current alignment. Having weighed up the relevant factors in accordance with the relevant tests, I consider that it is expedient for the Order to be confirmed with the modifications described.

Whether it is expedient to confirm Order B

106. I have concluded that the Order is expedient in the interests of the landowner. Now that I have decided that FP4 and 5 should be diverted FP2 would become a cul-de-sac path. That being so, the diversion will be more convenient as will its termination point which links to FP3. Views could still be enjoyed along FP2, but the creation of a cul-de-sac will impede that enjoyment. More users are likely to enjoy the diversion which links to other public paths. There are also benefits to wildlife conservation from diverting the path away from its current alignment. With the modifications identified above, I consider that it is expedient to confirm the Order.

Conclusions

107. Having regard to the above, and all other matters raised at the Inquiry and in the written representations, I propose to confirm Order A with modifications. The proposal to modify is set out in the formal decision. I conclude that Orders B and C should be confirmed subject to modifications. The modifications to Order A introduce a new termination point off the line drawn and should be advertised. There is no need to advertise the modifications to Orders B and C as they are points of clarification relating to the routes as already shown.

Formal Decisions

Order A

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

- In line 3 insert the words *"and the occupier"* after *"interest of the owner"*.
- At the end of Article 1) insert the words *"but not before the date on which the local highway authority for the new highway mentioned in Article 2) certifies that such work has been carried out as required to be done to bring the new site of the footpath into a fit condition for use by the public."*
- In line 1 of Part 2 of the Schedule insert the words *"measured from the face of the hedge or any other boundary feature"* after *"A footpath being 2 metres in width"*.
- In line 5 of Part 2 of the Schedule insert the words *"over a footbridge"* after *"crossing the stream"*.
- Under the new heading of *"(PART 3) - LIMITATIONS AND CONDITIONS"* insert *"A gap at points GA and H to BS5709:2018"*
- On the Order map add new point 'GA'.

109. Since the confirmed Order would affect land not affected by the Order as submitted because of the additional termination point, Paragraph 2(3) of Schedule 6 of the 1980 Act requires that notice shall be given 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.

Order B

110. I confirm the Order subject to the following modifications:-

- At the end of Article 1) insert the words *"but not before the date on which the local highway authority for the new highway mentioned in Article 2) certifies that such work has been carried out as required to be done to bring the new site of the footpath into a fit condition for use by the public."*
- In line 1 of Part 2 of the Schedule insert the words *"measured from the face of the hedge or any other boundary feature"* after *"A footpath being 2 metres in width"*.
- In line 3 of Part 2 of the Schedule insert the words *"and over a footbridge at point KA"* after *"southern boundary of the field"*.
- Under the new heading of *"(PART 3) - LIMITATIONS AND CONDITIONS"* insert *"A gap at point KA to BS5709:2018"*
- On the Order map add new point 'KA'.

Order C

111. I confirm the Order subject to the following modifications:-

- In line 3 insert the words "*and the occupier*" after "*interest of the owners*".
- At the end of Article 1) insert the words "*but not before the date on which the local highway authority for the new highway mentioned in Article 2) certifies that such work has been carried out as required to be done to bring the new site of the footpath into a fit condition for use by the public.*"
- In line 1 of Part 2, of the Schedule insert the words "*measured from the face of the hedge or any other boundary feature*" after "*A footpath being 2 metres in width*".
- Under the new heading of "(PART 3) - LIMITATIONS AND CONDITIONS" insert "*A gap at point Z to BS5709:2018*"

KR Seward

INSPECTOR

APPEARANCES

For the Council:

Laurence Page

Definitive Map Officer

He called:

Jason Botelho

Area Public Rights of Way Officer

Paul Tallowin

Applicant

Fiona Ashcroft

Applicant/landowner

Also in Support:

Denise Cockett

Interested party

Maggie Henderson

Interested party

In Objection:

Diane Cook

Statutory objector

Jackie Harrop
for The Ramblers Association

Statutory objector

DOCUMENTS submitted at the Inquiry

1. Complete copy of the original application form for FP2 and FP4&5
2. Letter in support of all diversions from Janine Maycock
3. Printed email from the Clerk to Tolleshunt D’Arcy Parish Council of 16.9.19 confirming that its objection to Orders B and C remain.
4. Copy of the OMA’s opening statement
5. Marked up copy of an aerial photograph of the area produced by the OMA
6. Extract of the Definitive Map for the area
7. Authority for Diane Cook to represent Tolleshunt D’Arcy Parish Council at the Inquiry in the form of an email from the Parish Clerk dated 16.9.19.

Plan No. LTOT 7 E

Diversion of Footpath 7 Little Totham

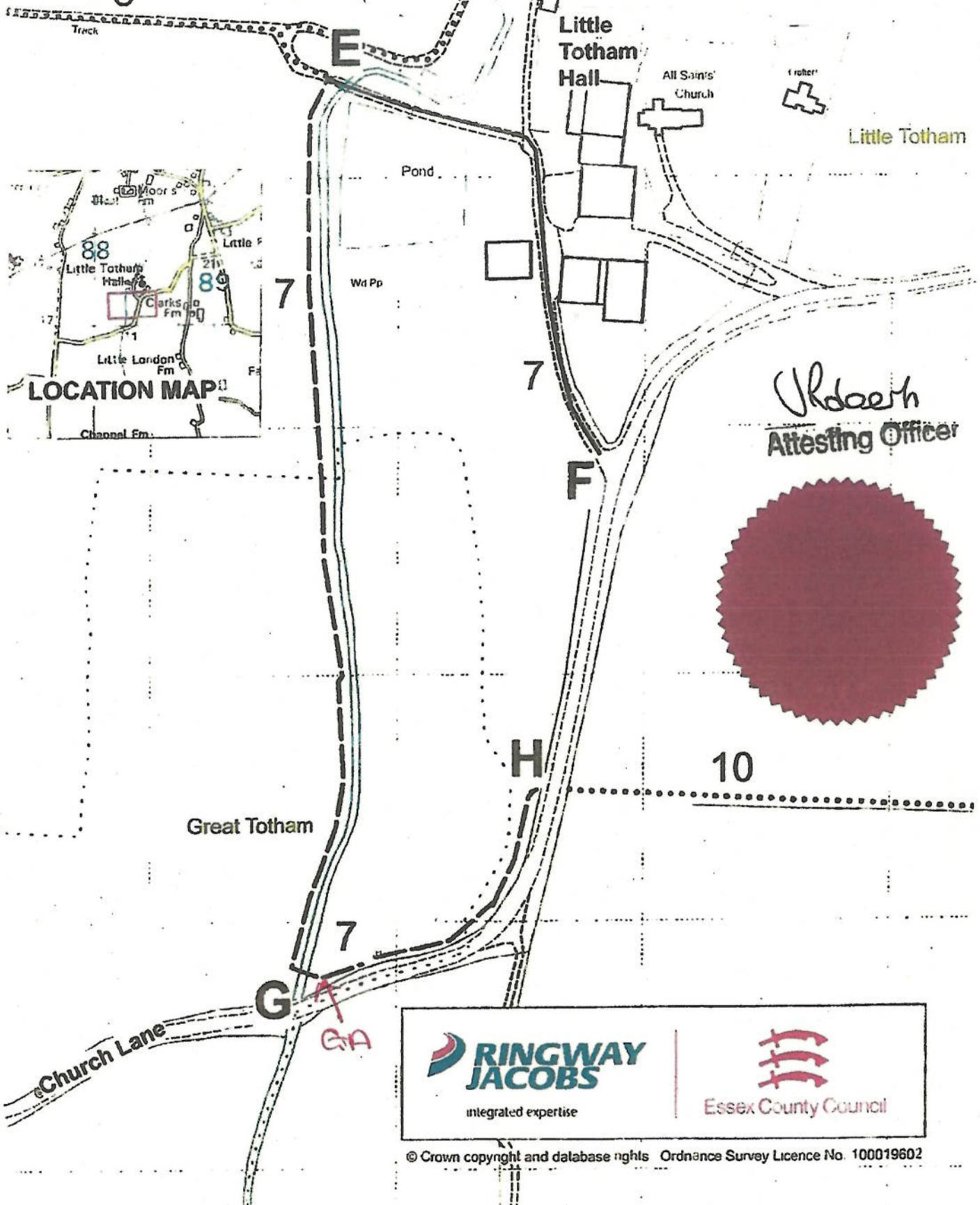
Route to Close E-F

New Route E-G-H

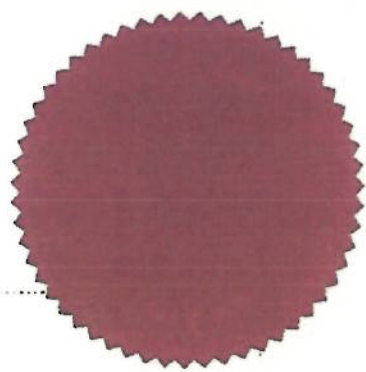
Unaffected Routes

Definitive Map Sheet TL 81 SE

Scale 1:2000 at A4

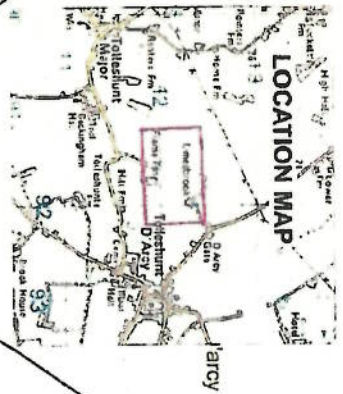


Robert
Attesting Officer



 integrated expertise	 Essex County Council
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Division of Land Use Planning
Route to Class 4
New Route K-M
Unaffected Routes
Definitive Map Sheet TL 91 SW
Scale 1:2500 at A3
Postcode CM9 8EJ



212300

591300

K

2

Limes Brook

K-P

Drain 3
Track

M

Frame
Farm

Poultry Houses

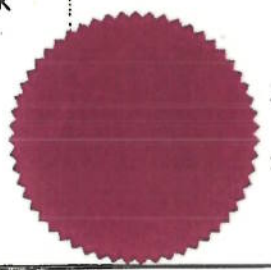
4

4

Track

Limesbrook
Farm

Shob
Attesting Officer



MAP NOT TO
ORIGINAL SCALE

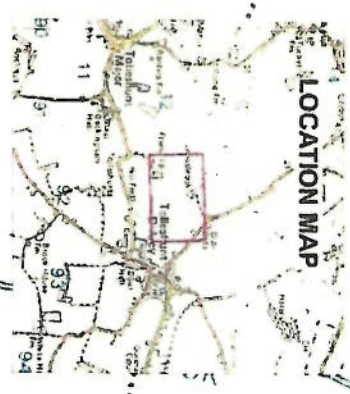
L.H Page
30/11/2017



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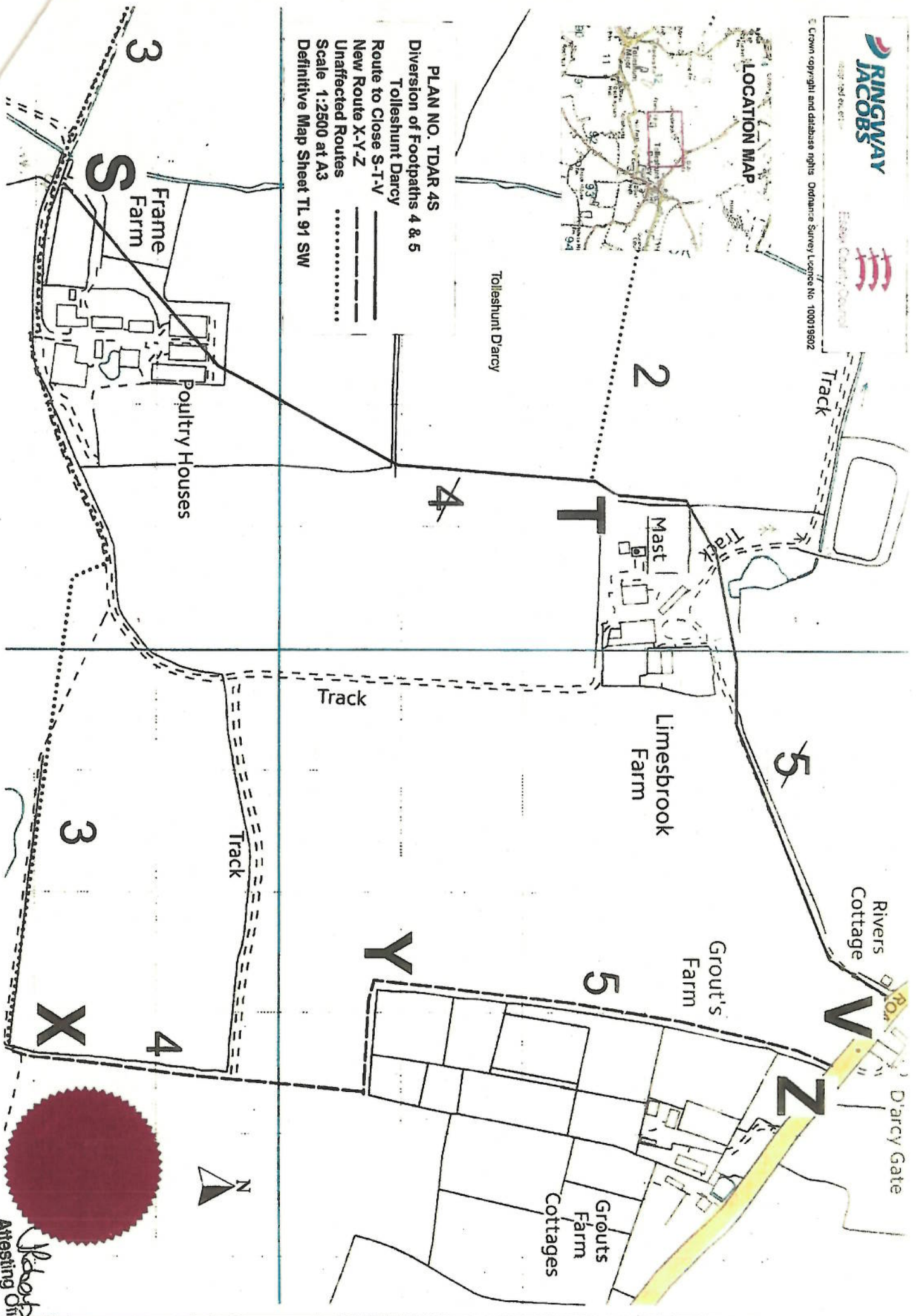


LOCATION MAP



Tolleshunt Darcy

PLAN NO. TDAR 4S
Diversion of Footpaths 4 & 5
Tolleshunt Darcy
Route to Close S-T-V
New Route X-Y-Z
Unaffected Routes
Scale 1:2500 at A3
Definitive Map Sheet TL 91 SW



Robert
Attesting Officer