



Order Decisions

Hearing held on 14 November 2019

Unaccompanied and accompanied site visits undertaken on 13 and 14 November 2019

by Mark Yates BA(Hons) MIPROW

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

Decision date: 21 January 2020

Order Ref: ROW/3216113

Referred to as 'Order A'

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as The Kent County Council (Public Footpaths DR47 Darenth and SD47 Horton Kirby and South Darenth) Public Path Diversion and Definitive Map and Statement Modification Order 2017.
- The Order was made by Kent County Council ("the Council") on 10 July 2017 and proposes to divert Footpaths DR47 and SD47, **which form one continuous route**, as detailed in the relevant Order Map and Schedule.
- There were three objections outstanding at the commencement of the hearing.

Summary of Decision: The Order is not confirmed.

Order Ref: ROW/3216111

Referred to as 'Order B'

- This Order is made under Section 26 of the 1980 Act and is known as The Kent County Council (Public Footpath DR46 Darenth) Public Path Creation and Definitive Map and Statement Modification Order 2017.
- The Order was made by the Council on 10 July 2017 and proposes to create a section of footpath, as detailed in the relevant Order Map and Schedule.
- There were no objections outstanding at the commencement of the hearing.

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

Order Ref: ROW/3216112

Referred to as 'Order C'

- This Order is made under Section 118 of the 1980 Act and is known as The Kent County Council (Public Footpath DR46 Darenth) Public Path Extinguishment and Definitive Map and Statement Modification Order 2017.
- The Order was made by the Council on 10 July 2017 and proposes to extinguish a section of footpath, as detailed in the relevant Order Map and Schedule.
- There were no objections outstanding at the commencement of the hearing.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. The hearing was held to consider the objections made to the diversion proposed by Order A. No objections were submitted in response to Orders B and C. However, the path to be created by Order B links with the proposed diverted route in Order A. In the circumstances, it is appropriate to first consider Order A before addressing the other Orders. If confirmed, each Order would also modify the definitive map and statement.
 2. Current guidance on rights of way matters is found in Department for Environment, Food and Rural Affairs Circular 1/09.
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3. All of the points referred to below correspond to those shown on the respective Order Maps.

Statutory Tests

4. Before confirming Order A, I must be satisfied that:
 - (a) it is expedient, in the interests of the owner of the land crossed by the footpath, that the path should be diverted;
 - (b) any new termination point is substantially as convenient to the public;
 - (c) the new path will not be substantially less convenient to the public;
 - (d) it is expedient to confirm the 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 the 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.
5. Before confirming Order B, I must be satisfied that:
 - (a) there is a need for the footpath included in the Order; and
 - (b) it is expedient to confirm the Order having regard to:
 - (i) the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and
 - (ii) the effect which the creation of the path would have on the rights of persons interested in the land, having regard to the provisions for compensation.
6. Before confirming Order C, I must be satisfied that it is expedient to extinguish the footpath having regard to:
 - (a) the extent (if any) to which it appears that the path would, apart from the Order, be likely to be used by the public, and
 - (b) the effect that the extinguishment of the footpath would have as respects land served by the path, having regard to the provisions for compensation.
7. Section 118(5) of the 1980 Act specifies that in considering the test outlined in paragraph 6(a) above, regard can be given to the extent to which an Order under Section 26 of the Act would provide an alternative path.
8. I also need to have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area when considering the Orders.

Main Issues

9. The objectors' question whether it is expedient to confirm Order A having regard to the interests of the landowners, public enjoyment and the ROWIP. Additionally, matters are raised regarding the convenience of the proposed path and the new termination point.

Reasons

Order A

10. Although references have been to the obstruction of the footpath, where it passes through the Hawkspare site (points E-F), being an issue over a number of years, this is a matter for the Council to address. Nonetheless, when considering the convenience of the routes included in the Order, it is equitable to disregard any obstructions on the existing path.
11. It is my role to consider the merits of the diversion in the Order and not any alternative proposal favoured by the objectors. Clearly, if the Order is not confirmed, the other parties may wish to consider whether an alternative course of action should be pursued.

Whether it is expedient, in the interests of the landowners, that the path should be diverted

12. The Hawkspare site and the agricultural land crossed by the existing path are owned by members of the Hawkins family and Ms L. Hawkins spoke on behalf of the landowners at the hearing. It is not necessarily disputed that the diversion would be in the interests of the landowners. The issue between the parties is the extent to which they would benefit from the diversion.
13. Large machinery is stated to move around the yard on occasions and there is concern that walkers may not always be visible to those who operate the machinery. Whilst there have been no reported incidents, there is a genuine concern by the landowners regarding the conflict between the public and heavy machinery. This view was endorsed by the Council's representative at the hearing (Mr Wade).
14. It is apparent that the movement of machinery within the yard occurs on an ad hoc basis. This coupled with the lack of a risk assessment makes it difficult to assess the extent of the potential risk to walkers. It may also be possible to put in place mitigation measures and provide a more clearly defined route through the site. However, I accept that there are valid concerns regarding the safety of walkers using the E-F section. It cannot be presumed that all people will be alert to the potential dangers of the site or dressed in visible clothing. There is also some merit in the point made by another landowner (Mr Ballard) that the lack of recorded incidents does not mean that there is no risk.
15. A further issue arises out of the reported incidents of theft from the site. These have included the removal of expensive batteries for machinery. CCTV is present and one person has been caught stealing from the site. However, the nature of the thefts may mean that the primary issue is not the footpath. The theft of heavy items is likely to involve vehicles accessing the site.
16. The remainder of the footpath passes through the middle of an arable field and I accept that the diversion of the path around the edge of the field would be advantageous to the landowner.

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

17. The information provided is supportive of the footpath being predominantly used as part of a recreational route rather than as a direct means of access to certain destinations. The destinations mentioned are places that form part of a longer route used. This means that the distances involved in walking the existing and proposed paths does not seem a significant matter. Nonetheless, the proposed change to one of the termination points means that the alternative route for a person wishing to travel between points H and E includes a section along the footway of the B260 Road.
18. I have to proceed on the basis that appropriate maintenance will subsequently be undertaken on any path that is created. The proposed path has specified widths of 2 metres (H-R) and 2.5 metres (R-Q), which would make adequate provision for a footpath in this location. It is only possible that fencing will be erected beside the R-Q section. There are steps and a stile on the existing path. In contrast, only a gate will be in place at point Q on the proposed path. These matters could represent some improvement on the existing position.
19. There is some cross-over between the convenience of the two routes and the proposed alteration to the termination point from point E to point Q, which I address more fully below. One issue that caused me concern during the site visits was the narrow width available for the footway to the south east of point E. The nature of the adjacent hedge at the bend in the road means that care needs to be taken when walking this section of the footway. This was evident during the unaccompanied site visit when a lorry passed close by as I walked around the bend. Whilst this is a matter that could potentially be addressed by the Council, the situation has been allowed to arise and there is no clear stated intention to remedy this matter. Nonetheless, this matter needs to be considered against the potential safety concerns regarding people coming into conflict with heavy machinery between points E-F.
20. Following the short ascent of the steps near point F, the existing path follows a relatively gentle gradient between points F-H. There is also a need to traverse a gradient if travelling along Gill's Road between point H and the B260 Road. It is therefore apparent that the existing route involves the need in places to traverse some form of slope. However, a sheer sided high bank currently exists on the proposed path at point R. The Council outlines that, if confirmed, arrangements will be put in place for a slope to be provided which would have a gradient of somewhere between 1:12 and 1:20.
21. I share the concerns of the objectors regarding the proposed path at point R. The issue does not relate to whether works will be undertaken to provide a slope but the nature of this slope. No design details have been presented on this matter. The Order only specifies that the diversion will be implemented once the works are completed to the satisfaction of the Council. Given the current height and steepness of the bank, the concern for me, as the decision maker, is the lack of detail means I cannot conclude with any degree of confidence that this section of the proposed path will not be substantially less convenient to the public. Further, there is the potential for any path that follows a zig zag route to lessen the gradient to not conform to the route shown on the Order Map. The concerns I have on this matter are sufficient in my view to mean that I cannot conclude that the proposed path satisfies the relevant test.

22. In light of the above conclusion, the proposed diversion fails the relevant test set out in Section 119(6) of the 1980 Act and the Order cannot be confirmed. This means I do not need to reach a conclusion on whether it is expedient to confirm the Order. However, for completeness, I address the other relevant tests below.

Whether the new termination point is substantially as convenient to the public

23. An Order to divert Footpath DR29 has been confirmed but is not yet operative. Once the works have been carried out to the satisfaction of the Council, the diversion will come into force. Mr Ballard outlined at the hearing that he still intends to carry out the relevant works. The diverted route of DR29 would terminate opposite to point Q and provide a convenient link for the proposed path in this Order. Mr Wade says this point was fixed as the best crossing point. The diversion would also remove the requirement to walk along Gill's Road from point H. Although I accept from my observations of the site that this road is lightly trafficked. There are also bus stops located near to the proposed termination point.
24. The diversion would clearly mean that people wishing to travel directly between points E and H will have to walk along the footway of the B260 Road. Reference is made to people accessing particular locations such as the Ship Public House¹. The area near to the public house is cited as a place where walkers park and meet.
25. The objectors refer to the potential risk for walkers. In response, Mr Wade draws attention to there being only one minor reported incident involving someone being clipped by a vehicle when on the footway. However, I note that the incident occurred in the general locality of where I found the narrow width of the footway to be of concern. The remainder of the footway has some vegetation in places that reduces the available width of the tarmac surface, but I did not find that this issue posed any significant problems when I walked along it.
26. The road is heavily trafficked and there is nothing to deter people from driving in excess of the 40MPH speed limit. However, I do not view the majority of the footway to be unsafe. Reference is made to groups of walkers but there was no apparent issue during the accompanied site visit. In respect of the location near to the bend, this has to be considered in comparison to the section of the existing path between points E-F.
27. Having regard to the proposed rights of way network and the nature of the existing and proposed routes, I take the view that point Q is substantially as convenient as point E.

The effect that the diversion would have on public enjoyment

28. For those people wishing to travel between points E-H, the diversion would lead to them having to walk along the footway of the B620 Road. This provides a far less enjoyable experience than the part of the path that passes across the field. However, a proportion of the footpath proceeds through the Hawkspare site which has an industrial aspect. Mr Wade draws attention to the potential for members of the public to be reluctant to walk through this site in any

¹ At the time of the hearing it was not operating as a business

event. Although I note that some of the objectors have expressed an interest in looking at the old vehicles found within the Hawkspare site.

29. A main issue arising from the diversion is the loss of the wide-ranging views available from a proportion of the field section. These views gradually reduce towards point H. The lower-lying nature of the H-R section of the proposed path mean that these views are generally absent. There are nonetheless more far reaching views available going northwards towards point F via the new path included in Order B. Whilst there may be a desire by some to retain the footpath on its longstanding alignment, there is nothing to suggest that there is any historical significance attached to the route of the footpath.
30. There are clearly some matters arising from the diversion that will impact on the public's enjoyment of the path. Such matters would ordinarily need to be weighed against the other relevant matters to determine whether it is expedient to confirm the Order.

The consideration of the Order in light of any material provision contained in a ROWIP

31. The parties have referred to a number of objectives in the ROWIP in support of their respective positions. However, some of these relate to matters that do not appear to me to have any direct bearing on the diversion of the footpath. Mr Wade points to the need to improve the rights of way network due to the anticipated growth in population for this part of Kent. The changes to the network in the locality are considered by the Council to meet this objective.
32. In terms of the objectives involving the safety of members of the public using the rights of way network, clearly these need to be considered in light of the nature of the existing and proposed routes.
33. Overall, I am not satisfied it has been shown that any of the relevant provisions in the ROWIP have a significant bearing on whether it is expedient to confirm the Order.

Conclusion

34. I have concluded above that the Order should not be confirmed as I cannot be satisfied that the diversion meets a particular test in Section 119(6) of the 1980 Act. Whilst I have addressed the other relevant matters, there is no need for me to reach a conclusion on whether it is expedient to confirm the Order.

Order B

35. The proposed path would provide an alternative footpath for the path to be stopped up by Order C. This path would also continue onwards to link with the proposed path in Order A (points F-R). It is apparent that the public presently make use of the F-S section along the field edge and that the creation of this section is supported by the landowners. Nothing has been provided to show that the creation of a footpath between points F-S does not satisfy the relevant statutory tests and it would provide a convenient replacement for the path included in Order C.
36. However, in light of my conclusion regarding Order A, the F-R section would not link with another highway or place of public interest. It follows in my view that there is no need for it. Nor would it add to the convenience or enjoyment of a substantial section of the public, or to the convenience of local residents.

Therefore, this section should be removed from the Order. Additionally, the Council requests that the Order is modified to include the correct provision in the Wildlife and Countryside Act 1981.

Order C

37. The creation of the footpath by Order B means that the path included in Order C is unlikely to be used to any significant extent by the public. Further, nothing has been provided to show that the extinguishment would have a negative impact on any land served by the footpath.

38. When taken in conjunction with Order B, I find that it is expedient to confirm Order C.

Formal Decisions

Order A

39. I do not confirm the Order.

Order B

40. I confirm the Order subject to the following modifications:

- Delete from the fourth line of the second paragraph in page 1 of the Order "53(3)(a)(i)" and insert "53(3)(a)(iii)".
- Delete the text in lines four to seven in the description in Part I of the Order Schedule and insert "*approximately 490 metres to Grid reference TQ 5855 7035. As shown between points S and F on the Order Plan*".
- Delete from the Order Map the section of path shown between points F and R.

Order C

41. I confirm the Order.

Mark Yates

Inspector

APPEARANCES

For the Council:

Mr C. Wade
Mr W. Barfoot

Principal Case Officer for the Council

Supporters:

Ms L. Hawkins
Mr B. Ballard

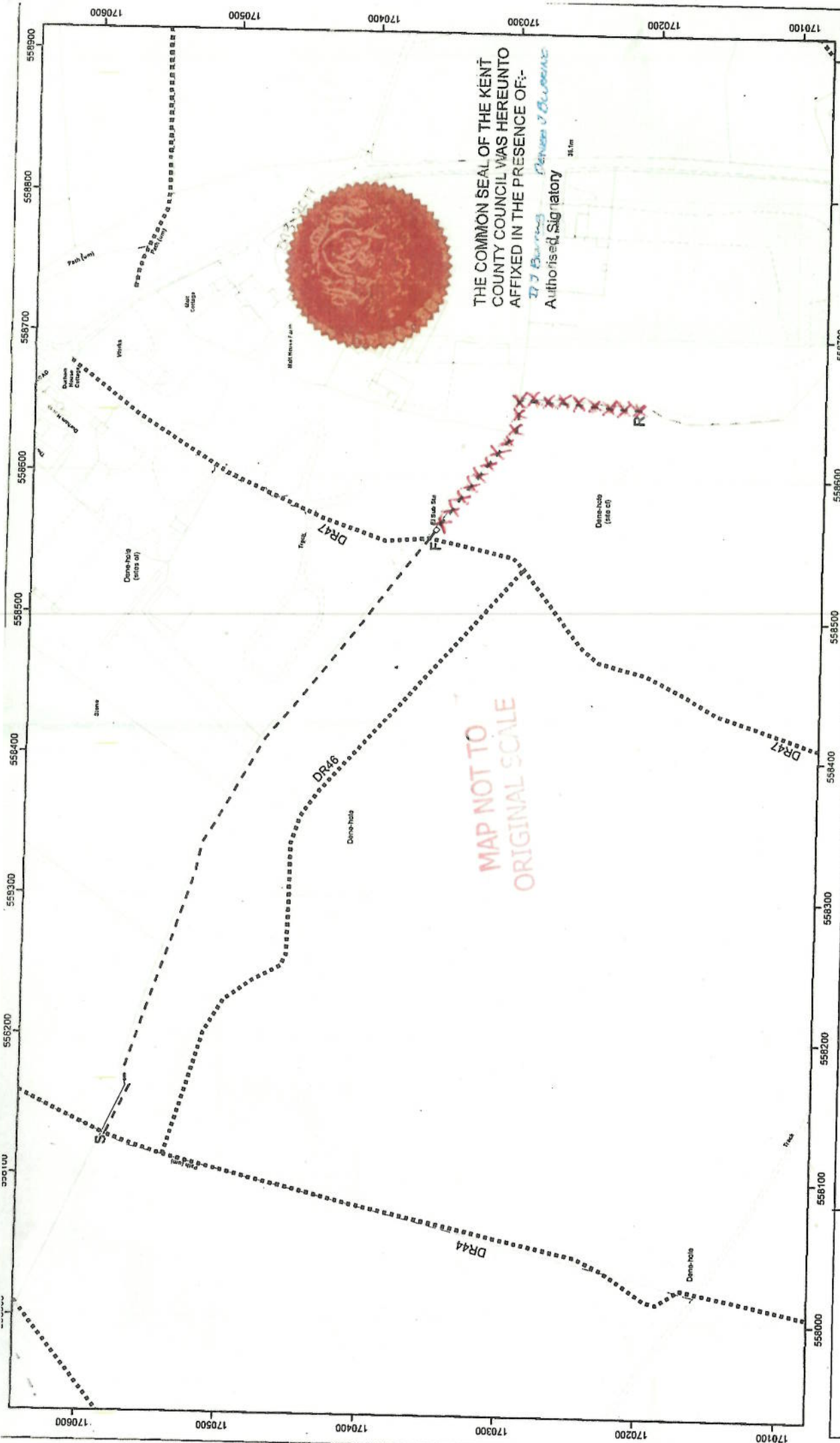
Objectors:

Mr W. Ripper
Mr K. Dare
Mr R. Barry
Mr R. Archer
Mr N. Machin

Dartford & Gravesham Ramblers
Meopham & District Footpaths Group
Sevenoaks District Ramblers
Sevenoaks District Ramblers
Kent Area Ramblers

DOCUMENTS

1. Map of the area
2. Site photographs
3. Closing statement delivered by Mr Ripper



THE COMMON SEAL OF THE KENT COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-
D J Burrows
 Authorised Signatory



1:2,500
 Kent County Council
 April 2017

0 0.175 0.35
 Kilometres
 0 0.1 0.2
 Metres

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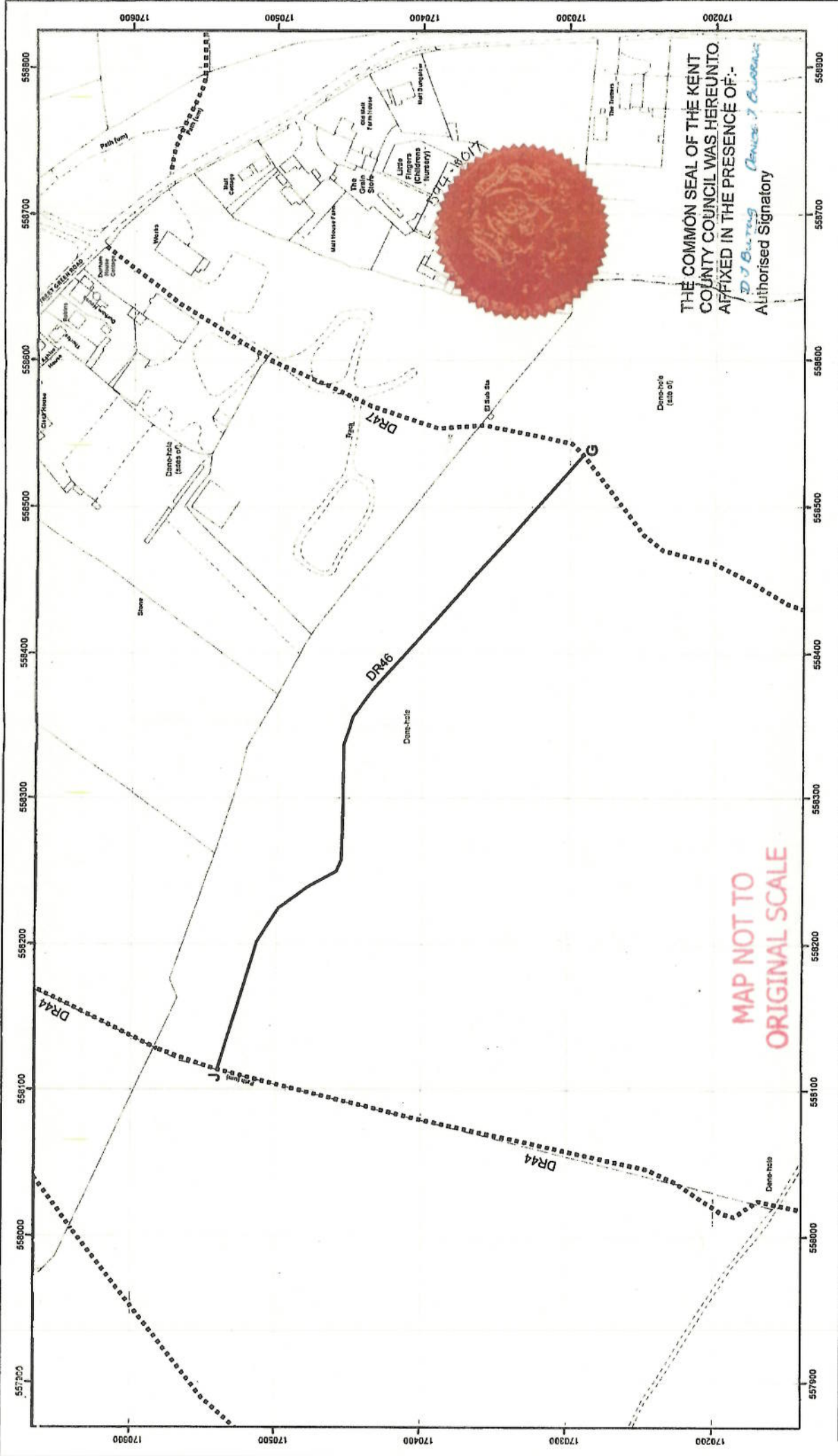
Created by: WJB | Checked by: CW | Reference: PROW/DR46/1452

THE KENT COUNTY COUNCIL
 (PUBLIC FOOTPATH DR46 DARENTH)
 PUBLIC PATH CREATION AND DEFINITIVE MAP AND
 STATEMENT MODIFICATION ORDER 2017

Public Rights of Way and Access Service

Key

- - - - - Route to be created
- Unaffected Routes

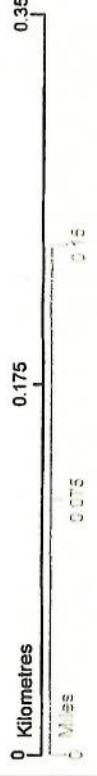


THE COMMON SEAL OF THE KENT COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-
D J Bunting
 Authorised Signatory

MAP NOT TO ORIGINAL SCALE

- Key**
- Route to be extinguished
 - Unaffected Routes

THE KENT COUNTY COUNCIL
 (PUBLIC FOOTPATH DR46 DARENTH)
 PUBLIC PATH EXTINGUISHMENT AND DEFINITIVE MAP
 AND STATEMENT MODIFICATION ORDER 2017



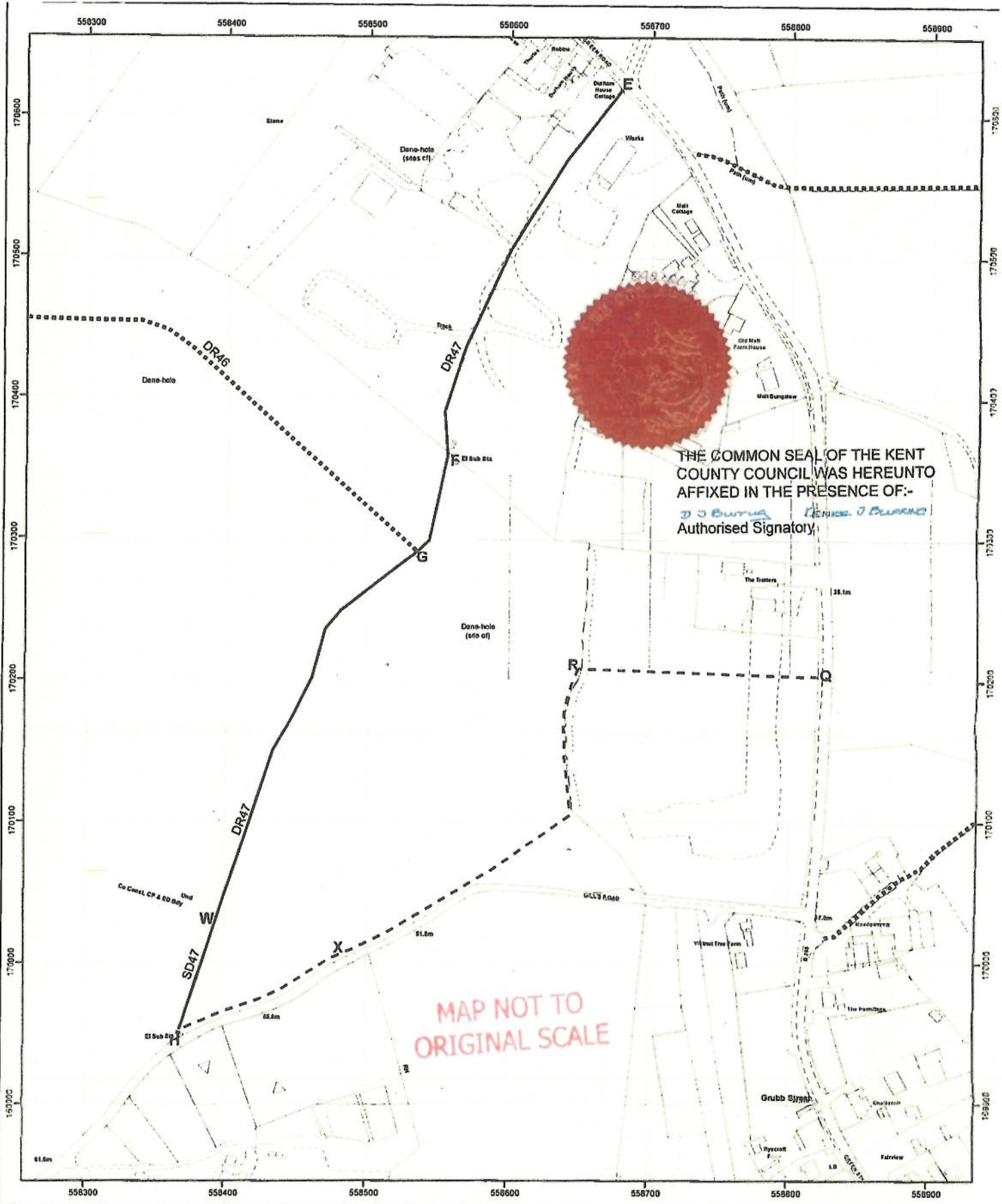
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1:2,500





Key	
	Route to be diverted
	New Length of route
	Unaffected Routes

**THE KENT COUNTY COUNCIL
(PUBLIC FOOTPATHS DR47 DARENTH AND SD47
HORTON KIRBY AND SOUTH DARENTH)
PUBLIC PATH DIVERSION AND DEFINITIVE MAP
AND STATEMENT MODIFICATION ORDER 2017**
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Created by:	WJB
Checked by:	CW
Reference:	PROW/DR47SD47 /1452

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