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## Order Decision

Site visit made on 14 January 2020

**by Helen Slade MA FIPROW**

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

**Decision date: 22 January 2020**

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### **Order Ref: ROW/3225726**

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ('the 1990 Act') and is known as the Cornwall Council (Footpath NO. 25, Redruth (Part))(Semmens Way) Diversion Order 2016.
- The Order is dated 13 April 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule in consequence of planning permissions granted.
- There were four objections outstanding when Cornwall Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is not confirmed**

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### **Procedural Matters**

1. The Order has been made because Cornwall Council ('the Council') is satisfied that it is necessary to divert the footpath to enable development to be carried out in accordance with planning permission which has already been granted in relation to works at the former Wheal Harmony site. The works in question consist of the following:

#### Planning Reference PA12/10102

- Remediation of Sub-surface mining features to stabilise the land for use as employment site (B1)<sup>1</sup>;
- Construction of roads to access employment land;
- Installation of site infrastructure, including surface water drainage and foul drainage systems and landscaped space.

#### Planning Reference PA12/10103

- Erection of up to 71 Open Market Dwellings and 5112 sq. metres of Employment Space with access roads and remediation of below ground mining features.
2. With respect to the part of Footpath 25 which is the subject of this Order, I am only concerned with the development of that part of the site which is concerned with employment (i.e. B1) as the path falls wholly within that area.
  3. I carried out an unaccompanied site visit of the area on the morning of 14 January 2020. The weather was very wet but I was able to either walk or view both the existing and the proposed routes.

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<sup>1</sup> Where B1 comprises the part of the site set aside for Employment purposes

4. I note that some of the development for which permissions were granted has taken place and parts of the line of the proposed route have now been adopted as part of the highway network. Most, if not all, of the housing appears to have been completed and is occupied. Cornwall Council ('the Council') has requested that modifications be made to the Order, if it is confirmed, to delete from it those parts of the proposed route which form part of the adopted highway network. Nevertheless, a substantial section of the existing route lies across land which is yet to be developed in accordance with the relevant planning consents.
5. Both permissions quoted in the Order were granted in outline, requiring approval of certain reserved matters. With respect to the part of the employment site to the north of Jennings Road an application was made on 10 October 2018 for the approval of the reserved matters, but this had not been determined at the time of the submission of the matter to the Secretary of State. No further information has been submitted in this respect. I have therefore proceeded on the basis that the application remains outstanding.

### **The Main Issues**

6. Section 257(1) of the Town and Country Planning Act 1990 provides for an Order to be made authorising the stopping up or diversion of a footpath if it is necessary to do so in order to enable development to be carried out in accordance with planning permission already granted under Part III of the same Act.
7. In coming to a decision on this matter I must take account of relevant case law and the advice in the Rights of Way Circular 1/09 (Guidance for Local Authorities) published by the DEFRA in October 2009 ('Circular 1/09').
8. I also need to take account of the provisions of the Growth and Infrastructure Act 2013 ('the 2013 Act') and the consequent amendments made to the regulations governing the stopping up and diversion of public paths in connection with development.
9. In considering whether or not to confirm such an order, I have discretion to consider:
  - The interests of the general public;
  - The potential effects of the Order on certain particular members of the public, such as occupiers of property adjoining the existing highway.

### **Reasons**

10. Footpath 25 currently runs from its junction with the A3047 road next to Manor House Kennels and runs generally south and then east across an area which was formerly part of Wheal Harmony mine. It then continues in a southerly direction alongside what is now a playing field. Mr Geoffrey Gay, the former Director of Wheal Harmony Limited, states in his written submissions that the footpath was closed during the works to stabilise and decontaminate the land. It appeared to me during my site visit that the path continues to be unusable on much of its definitive line, due to obstructions related to the development works.

11. That part of the B1 site lying to the south of Jennings Road has been partially developed such that the short length of Footpath 25 crossing it has been obstructed by the development of units number 3 and 4. These two units are occupied and operational. This affects the length of Footpath 25 running west-north-west from Point B on the Order plan to the point where it meets the footway on the south side of Jennings Road.
12. To the immediate north of Jennings Road, the existing route of Footpath 25 is obstructed by a wall defining the edge of that part of the development site; and north of Point C on the Order plan the route is obstructed by safety fencing.
13. Whilst the definitive route of Footpath 25 clearly traverses the area shown in the planning applications scheduled to be developed for employment use, the precise layout of the majority of the site (lying to the north of Jennings Road) has not yet been determined. The outline permissions cited in the Order do not provide detailed layout information.
14. Paragraph 7.3 of Circular 1/09 states as follows:

*"Most outline planning applications do not contain sufficient information to enable the effect on any right of way to be assessed (and are not required to do so) and consequently such matters are usually dealt with during consideration of the matters reserved under the planning permission for subsequent approval"*
15. The 2013 Act provided powers to local authorities to make Orders for the diversion of paths for which planning applications had been made but not yet granted.<sup>2</sup> This allowed for the simultaneous consideration of planning applications and public path orders, but also ensured that the confirmation of the orders could not take place until the necessary and appropriate permission had been granted. The associated Regulations provided the necessary altered wording for use in such an order.<sup>3</sup>
16. The Order I am considering however has been made on the basis that the relevant permissions have already been granted. However, the outline planning permissions cited in the Order do not provide sufficient detail to show that it would be necessary to divert the footpath in question to allow the development to be carried out. The details of the layout of the area of B1 to the north of Jennings Road are contained in the application for reserved matters submitted in October 2018. Whilst these plans do show that the existing line of the footpath may be compromised by the locations of the planned units, the application is yet to be determined.
17. Circular 1/09 sets out in paragraph 7.11 that the grant of planning permission does not entitle developers to obstruct a public right of way. It cannot be assumed that because planning permission has been granted that an order under Section 257 will invariably be made or confirmed. Development, in so far as it affects a right of way, should not be started, and the right of way should be kept open for public use, unless or until the necessary order has come into effect.

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<sup>2</sup> Section 12

<sup>3</sup> Statutory Instrument 2013 No. 2201 The Town and Country Planning (Public Path Orders) (Amendment)(England) Regulations 2013

18. Where development, in so far as it affects a right of way, is completed before the necessary order to divert it has been made or confirmed, the powers under Section 257 and 259 of the 1990 Act are no longer available to be used. If such development has already been completed, there is no basis for an order to be made (and, by implication, other powers may have to be used).<sup>4</sup>
19. I therefore face two problems in determining this Order. Firstly, part of the existing line of the path is now obstructed by development which has taken place, and which was presumably subject to detailed planning permission which I have not seen.<sup>5</sup> It clearly cannot be claimed that it was necessary to divert that part of the path in order for the permitted development to be implemented, since the path has not yet been closed or diverted and the buildings are there, and in use.
20. Secondly, the larger part of the existing route of Footpath 25 lies across land for which no detailed planning permission exists, and for which there is consequently no evidence to show that it is necessary to divert it for the development to take place. In the absence of any permission regarding the siting detail, it may yet be possible to accommodate the line of the path within the final design of the area, without diverting it.
21. Furthermore, the modifications requested by the Council would have quite a substantial impact on the overall Order by excluding a large part of the proposed diversion because it has been overtaken by events. The overall impression would be more akin to deleting a large section of public right of way, which is quite different from the proposal on which the public were consulted, and yet I would not be required by the provisions of Schedule 14 to the 1990 Act to re-advertise it.
22. I therefore conclude that, guided by the advice in Circular 1/09, it is not appropriate for me to confirm this Order as the criteria for making it are not satisfied, and the passage of time has resulted in the need for a rather different Order. The public would then be afforded the opportunity to consider the effects of an Order which more accurately reflected the proposed outcome, which would be a more judicious way to proceed.

### **Other matters**

23. Given my comments above, I have not examined the matter in relation to the objections as I would not wish to prejudice any future consideration of this proposal under the same, or other, powers.

### **Conclusions**

24. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

### **Formal Decision**

25. I do not confirm the Order.

*Helen Slade*

### **Inspector**

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<sup>4</sup> Paragraph 7.21 of Circular 1/09

<sup>5</sup> That part of the development of Area B1 to the south side of Jennings Road



Town & Country Planning Act 1990 Section 257  
Order Plan: Re File TAD 069

Parish: REDRUTH CP Path Number: FP/224/25

Produced by Programmes Team: 01 March 2016

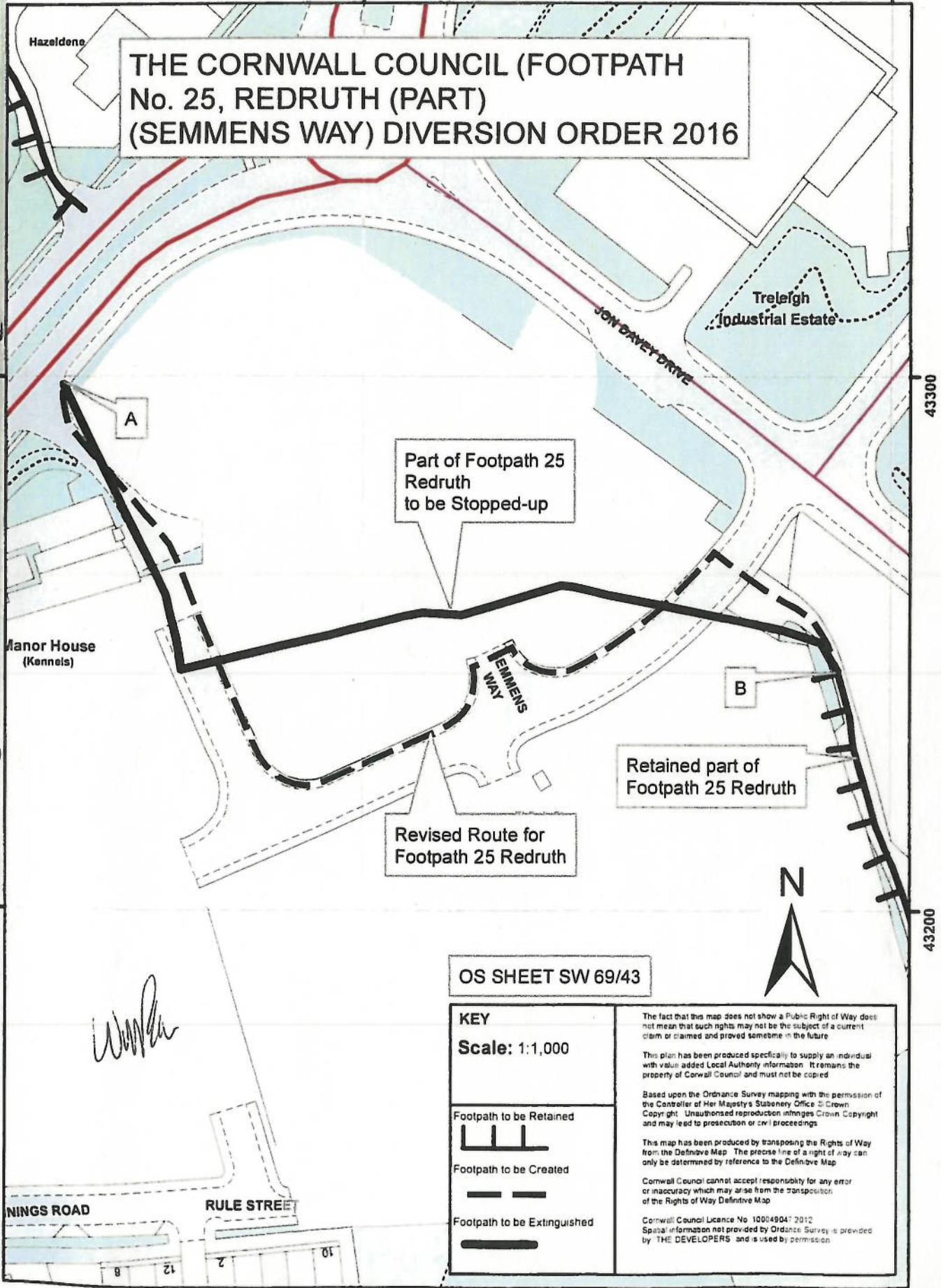
MAP NOT TO  
ORIGINAL SCALE



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**THE CORNWALL COUNCIL (FOOTPATH  
No. 25, REDRUTH (PART)  
(SEMMENS WAY) DIVERSION ORDER 2016**



*W. W. W.*

OS SHEET SW 69/43

**KEY**

Scale: 1:1,000

Footpath to be Retained



Footpath to be Created



Footpath to be Extinguished



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