



Order Decision

Inquiry Held on 18 September 2019

Site visit made on 17 September 2019

by K R Saward Solicitor

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

Decision date: 25 February 2020

Order ref: ROW/3216621M

- The Order 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 the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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

Preliminary Matters

1. In my Interim Order Decision which was issued on 22 October 2019, I proposed some modifications to the above Order and map.
2. No objections or representations were made in response to the advertisement of the proposed modifications.

Reasons

3. The effect of the Order, if confirmed with the modifications that I previously proposed, would be to create another termination point onto Church Lane in addition to the one already identified at point H as shown on the Order map. This would necessitate the creation and maintenance of a gap in the hedgerow after the proposed route crosses the stream at point G.
4. This was a proposal advocated by the Order Making Authority at the Inquiry albeit no provision had been made in the Order. It also appeared that not all interested parties were previously aware of this proposal even though they may not have had any objection.
5. The benefit of an additional exit point onto Church Lane, is that it would reduce the inconvenience of users needing to double back between points G-H to head south-west along Church Lane. It would also reduce the amount of road walking required if proceeding in that direction. Should such an additional termination point be provided I considered that the proposed diversion would not be substantially less convenient to the public.
6. Other works were required to bring the new footpath into a fit condition for use by the public. These involved a crossing over the stream and the creation of the new exit as originally proposed onto Church Lane along with a finger post. The exit point also involves the creation of a gap in the hedge. Gaps are

regarded as structures much in the same way as gates and stiles. The gaps should be recorded as limitations in the Order. Furthermore, the existence of a bridge over the stream should be identified in the description to be included within the Definitive Statement.

7. To satisfy section 119(3)(b) of the 1980 Act provision should have been made within the Order so that the existing footpath would not be extinguished until the local highway authority for the new path has certified that all the works have been carried out.
8. The new path would run beside a hedge and tree line. In order to address the concerns of objectors that the path could become overgrown, the 2m width of the new path should be measured from the face of the hedge or any other boundary feature to ensure that the available path is not reduced. Provision to this effect should be made within the Order.
9. Finally, as a minor point of clarification, the Order should have been expressed to be made in the interests of the occupiers as well as the owners.
10. With those modifications I was satisfied that it was expedient to confirm the Order in relation to the tests set out in section 119 of the 1980 Act. I remain satisfied that it is appropriate for me to confirm the Order, subject to the same modifications, as it meets the legislative tests.

Conclusion

11. I conclude that the Order should be confirmed subject to the modifications identified in paragraph 108 of my Interim Order Decision as set out below.

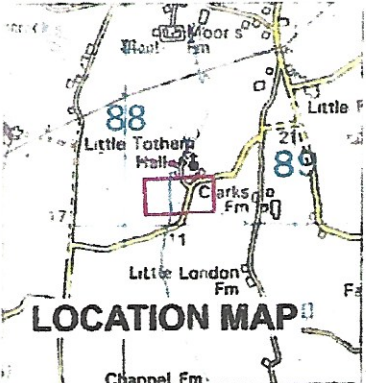
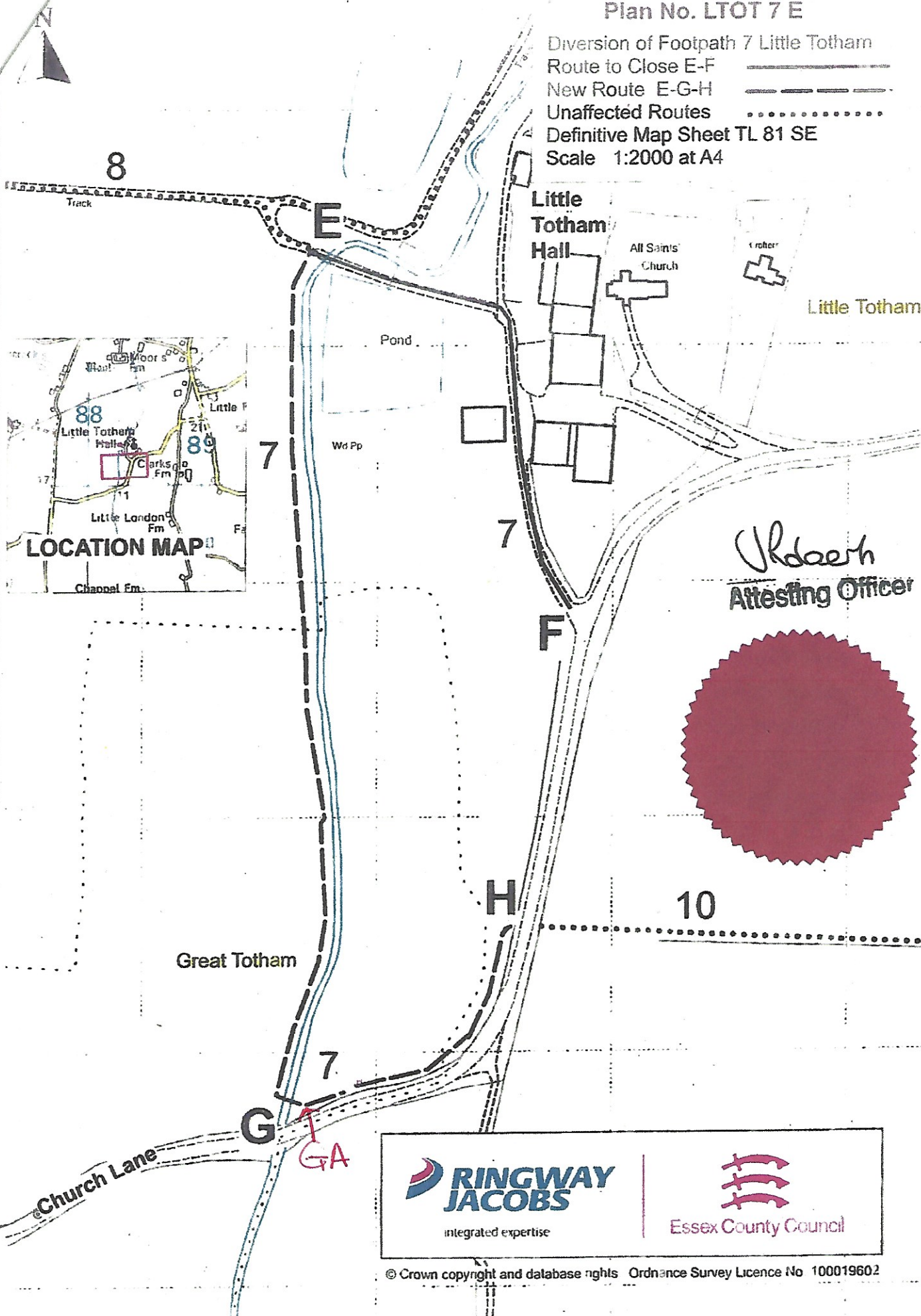
Formal Decision

12. In exercise of the powers transferred to me, the Order is confirmed subject to the modifications previously proposed:
 - 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'.

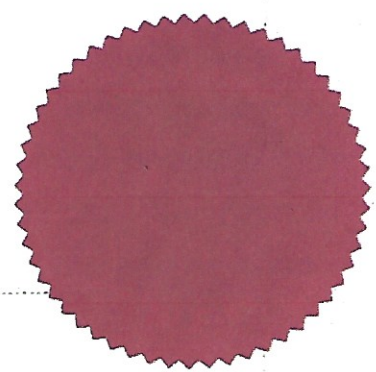
KR Seward
INSPECTOR

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



J. R. Daerh
Attesting Officer



 integrated expertise	 Essex County Council
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