



Order Decisions

Site visit made on 15 June 2020

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 17 July 2020

Order Ref: ROW/3228650

referred to as 'Order A'

- The Order is made under Section 119 of the Highways Act 1980 and section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Surrey County Council Footpath No. 69 (Ripley) Public Path Diversion Order 2018.
- The Order is dated 14 September 2018 and proposes to divert part of a footpath running generally alongside the A3 onto land to the south-east, on the other side of the boundary. The Order would modify the Definitive Map and Statement accordingly. Full details are shown in the Order map and described in the Order Schedule.
- There was one objection outstanding when Surrey County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation, which has subsequently been withdrawn.

Summary of Decision: The Order is confirmed.

Order Ref: ROW/3228651

referred to as 'Order B'

- The Order is made under Section 26 of the Highways Act 1980 and section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Surrey County Council Public Footpath No. 610 (Ripley) Public Path Creation Order 2018¹.
- The Order is dated 10 October 2018 and proposes to create a public footpath to the south-east of the existing line of the public footpath and the A3. The Order would modify the Definitive Map and Statement accordingly. The proposals are shown in the Order map and described in the Order Schedule.
- There was one objection outstanding when Surrey County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation, which has subsequently been withdrawn.

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

Order Ref: ROW/3228652

referred to as 'Order C'

- The Order is made under Section 26 of the Highways Act 1980 and section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Surrey County Council Public Footpaths Nos. 609 & 610 (Ripley) Public Path Creation Order 2018.
- The Order is dated 14 September 2018 and proposes to create public footpaths to the south-east of the existing line of the public footpath and the A3. The Order would modify the Definitive Map and Statement accordingly. The proposals are shown in the Order map and described in the Order Schedule.
- There was one objection outstanding when Surrey County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation, which has subsequently been withdrawn.

Summary of Decision: The Order is not confirmed.

¹ Subject to the modifications made to the Order

Procedural Matters

Objections

1. The Orders were submitted to the Planning Inspectorate with one objection outstanding. Following further correspondence on the matter this objection was withdrawn on 9 March 2020.
2. However, following the submission of the Orders to the Planning Inspectorate Elmbridge Model Club ("EMC") raised concerns and asked for an accompanied site visit regarding the proposals. The matters raised were not part of any statutory objection² but, given that they arise from an affected landowner/ occupier, I consider it appropriate that I should take account of those concerns.

Advertisement of Orders

3. EMC indicated that whilst they understood that "*...the correct procedure in accordance to regulations was followed...*" this differed from the emails that had been used to during negotiation, such that they felt that the application was "*behind our back*". Surrey County Council, the order-making authority ("the OMA") highlighted correspondence with agreements and understanding of the proposals over time, although I accept that as a voluntary club some members may have been more involved than others at times.
4. The procedural requirements in relation to public path orders are set out in Schedule 6 to the Highways Act 1980 ("the 1980 Act") and I am satisfied, as EMC indicate, that the procedural requirements have been fulfilled. As noted above I am taking account of the relevant matters that have been raised by EMC in their late objection and so I am satisfied that no prejudice has arisen.

Request for non-confirmation

5. The OMA submitted three Orders, explaining that Order C was fatally flawed due to the omission of one of the maps and asked that it be not confirmed. Order C was replaced by Order B, with a further advertisement period.

Site visit arrangements

6. An accompanied site visit was arranged to take place on 31 March 2020. Unfortunately, the introduction of the Covid-19 lockdown restrictions on 23 March 2020 meant that the accompanied site visit could not be carried out. In order to progress the matter as soon as it was possible to do so the parties were asked for agreement to an unaccompanied site visit, at a date in line with the lifting of restrictions. Further opportunity was given for additional submissions, for example maps or photographs, to assist with the site visit.
7. I would like to thank the parties for their assistance in making alternative arrangements during this difficult time. I made an unaccompanied site visit on 15 June, taking account of all the written representations.

Main Issues

8. The relevant tests for a public path diversion order, Order A, is set out under section 119 of the 1980 Act. This Order has been made in the interests of the public. Sub-section (6) of the Act sets out that "*The Secretary of State shall*

² They were raised after the statutory objection periods of 21 September 2018 - 22 October 2018 and 19 October 2018 - 19 November 2018.

not confirm a public path diversion order...unless ...satisfied that the diversion to be effected by it is expedient...in the interests of the public...and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

- (a) *the diversion would have on public enjoyment of the path or way as a whole,*
 - (b) *the coming into operation of the order would have as respects other land served by the existing public right of way, and*
 - (c) *any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it..."*
9. Sub-section 2 sets out that a "*...diversion order shall not alter a point of termination of the path or way...(where it is on a highway) 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.*"
10. Sub-section (5) sets out that "*...the council may require [the owners] to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—*
- (a) *any compensation which may become payable under section 28 above as applied by section 121(2) below, or*
 - (b) *where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public..."*
11. Sub-section 118(6) of the 1980 Act states that "*...any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.*" Section 119 of the 1980 Act, under which Order A is made, does not contain such wording. However, in comparing the convenience of the existing and replacement routes, a fair determination can only be made on the assumption that the existing route is available to the public to its full legal extent. I have considered the existing route as if it was fully available for use.
12. Section 26 of the 1980 Act sets out the powers for the creation of footpaths. I must be satisfied that there is need for a footpath over the land and that it is expedient to create it, having regard to
- (a) the extent to which the path or way 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
 - (b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 of the 1980 Act.
13. I am required to have regard to the material provision of a rights of way improvement map ("ROWIP") prepared by any local highway authority whose area includes land over which an Order would create or extinguish a public right of way.
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Reasons

Order A

Whether it is expedient, in the interests of the public, that the right of way in question should be diverted

14. I understand that Footpath 69, Ripley ("FP69") was diverted from its original alignment when the A3 Ripley bypass was constructed under The London-Portsmouth Trunk Road (Ripley By-Pass) Order 1973 to an alignment along the south-eastern side of the A3 trunk road. Following construction of the A3 service area an Extinguishment Order was made in 1985 but ultimately unconfirmed. The subsequent Guildford Borough Council (Right of Way No. 69 Parish of Ripley) Public Path Diversion Order 1988 moved the footpath onto the current alignment, within the eastern boundaries of the service area.
15. Taking account of the location of section A – F³ of the footpath, alongside the slip road back onto the A3, I agree with the OMA that the proposed route, A – B, provides a safer setting for the public, away from traffic which would be gathering speed at that point in order to rejoin the main carriageway.
16. The remainder of the route is unpleasant to use with overgrowth making walking impossible for some sections and rubbish, including human excrement, giving rise to a potential health hazard. I understand that the landowner, BP Oil UK Limited ("BPO") carry out litter picks on a regular basis and the OMA's contractors have previously strimmed the Definitive route. Nevertheless, I consider that it would be in the interests of the public for the footpath to run on the proposed alignment within the field to the south-east rather than the current alignment.
17. Taking all the matters raised into account I am satisfied that it is expedient in the interests of the public that this part of the footpath should be diverted.

Whether the new route will be substantially less convenient to the public

18. As the proposed route mirrors the alignment of the existing, effectively on the opposite side of the field boundary, I am satisfied that there would be no inconvenience with regard to length or alignment of the route.
19. EMC raised concerns regarding the surface due to water run-off into the field. Although my site visit coincided with a particularly dry spell of weather, such that the land was very hard and dry, I noted that the area around point C appeared to have previously been poached by the horses, which were fenced into the southern part of the field at the time of my visit. The OMA indicated that they would take responsibility for surface maintenance if the Order was confirmed. It is noted that BPO have agreed to defray any expenses which are incurred in bringing the new site of the way into a fit condition for public use.
20. I also note the concern that the horses may be spooked, which could be dangerous for walkers. The OMA say that there are many rights of way crossing fields with horses and they have had no reported incidents. Of course there always a potential for incidents to arise where livestock are involved. Nevertheless, weighing the danger and unpleasantness of the existing route

³ Points A – H are indicated on the relevant Order maps

against the possibility of such incidents I am satisfied that this would not make the proposed route substantially less convenient to use than the existing.

21. Taking account of these points I am satisfied that the proposed route would not be substantially less convenient to the public.

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

22. Diverting the route from the current unpleasant and potentially dangerous location into the field would undoubtedly improve enjoyment of the public in using the route as a whole. The route is more pleasant being separated from the traffic and provides improved views. The section of FP69 to the north-east of point E is already situated within the field.

23. I agree with the OMA that this meets the ROWIP aims of improved quality and recreational enjoyment.

The effect the coming into operation of the Order would have with respect to the land served by the existing route and the land over which the new route is created together with any land held with it, account being taken of the provisions as to compensation

24. The land crossed by the existing route would remain part of BPO's property. There would be a benefit to BPO in terms of the removed requirement to maintain the route for the public to walk. However, BPO have confirmed that litter picking will continue, regardless of the location of the footpath.
25. The proposed route is on land owned by the Trustees of EMC. The concerns regarding safety of the horses from litter is noted. However, I agree with the OMA that the litter appears to arise from the use of the land crossed by the existing right of way, with such use appearing most likely to be connected predominantly, if not entirely, with service area users rather than general walkers. I do not consider that the use of the proposed new footpath alignment would be likely to cause additional littering within the field.
26. It is noted that there is fencing to the east of both points C and A, forming a smaller field in this area. This will require appropriate structures to allow public access and the OMA will deal with this by way of an application under section 147 of the 1980 Act.
27. In January 2019 EMC informed the OMA that they had received approval from Guildford Council to build an Electricity Termination Cabinet. They indicate this would be on the southern boundary of the BPO site but have not supplied any further details. The OMA indicate that the cabinet position could be undertaken without interference with the footpath and so I am satisfied that this should not affect this Order. Further diversion of the route can be considered if required.
28. I consider that the provisions as to compensation would be sufficient to address any remaining concerns.

Whether the point of termination of the new right of way will be on the same highway or highway connected with it, and will be substantially as convenient to the public

29. I am satisfied that the termination points remain on the same or connected highways and will be substantially as convenient to the public.

Conclusions regarding Order A

30. I am satisfied that proposed diversion would be in the public interest and not substantially less convenient to their use, with increased enjoyment in comparison to the existing route. I am satisfied that the matters raised by EMC as an affected landowner are capable of being addressed through the implementation of the Order. Having regard to these, and all other matters raised in the written representations, I conclude that Order A should be confirmed.

Order B

Whether there is a need for a footpath and whether it is expedient to create the footpaths having regard to the extent to which their creation would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area

31. The Order seeks to create two short sections, Footpath 609 ("FP609")⁴ and Footpath 610 ("FP610")⁵, to provide links to the A3 carriageway area such that users could still access the service station should they wish to do so. The OMA indicated that this access would be in line with the aims of the ROWIP; however, on submission of the Order they requested that FP609 was removed from the Order as they did not wish to promote access onto the slip road.
32. The service area, which currently includes food and drink provision, is likely to provide a 'local shop' for residents of the properties on Grove Heath Lane. I consider that improvements in connectivity, which are in effect retention of existing links, would add to the convenience of persons resident in the area. This is in line with the ROWIP aim of improved access to facilities. However, given the matters regarding safety on the slip road mentioned in relation to Order A, I agree with the OMA that it would not be appropriate to promote the continuation of that link. The short section of slip road that would be used to access the service area to and from FP610, point H, is where cars would be braking to enter the service area, rather than accelerating to rejoin the A3.
33. I am therefore satisfied that it would be expedient to create FP610. However, taking account of the wider issues in using the section of the route A – F I do not consider that the creation of FP609 would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area.
34. As the Order will introduce a kissing gate, I consider that this should be specified to the current British Standard and so will modify the Order.

The effect which the creation of the footpaths would have on the rights of persons interested in the land, taking account of the provisions as to compensation in Section 28 of the 1980 Act

35. There is no indication that the confirmation would affect the interests of the landowners as access is already legally present in connection with the continuation of the footpath within the field to the north-east.

⁴ Points A - G

⁵ Points E - H

Conclusions regarding Order B

36. Having regard to these, and all other matters raised in the written representations, I conclude that Order B should be confirmed subject to the modification to remove FP609 from the Order. There is no requirement to give notice of this modification under paragraph 2(3) to Schedule 6 of the 1980 Act.

Order C

37. This Order was replaced by Order B as it was noted after sealing that one of the maps was missing from the sealed Order. I agree with the OMA that as a result the Order is fatally flawed and, therefore I conclude that it should not be confirmed.

Formal Decisions

Order A

38. The Order is confirmed.

Order B

39. The Order is confirmed subject to the following modifications:

- Throughout the Order:
 - remove all references to FP 609;
 - remove all plural references;
- Within Part 2 of the Schedule to the Order in relation to the kissing gate:
 - add text "...to BS5709:2018."

Order C

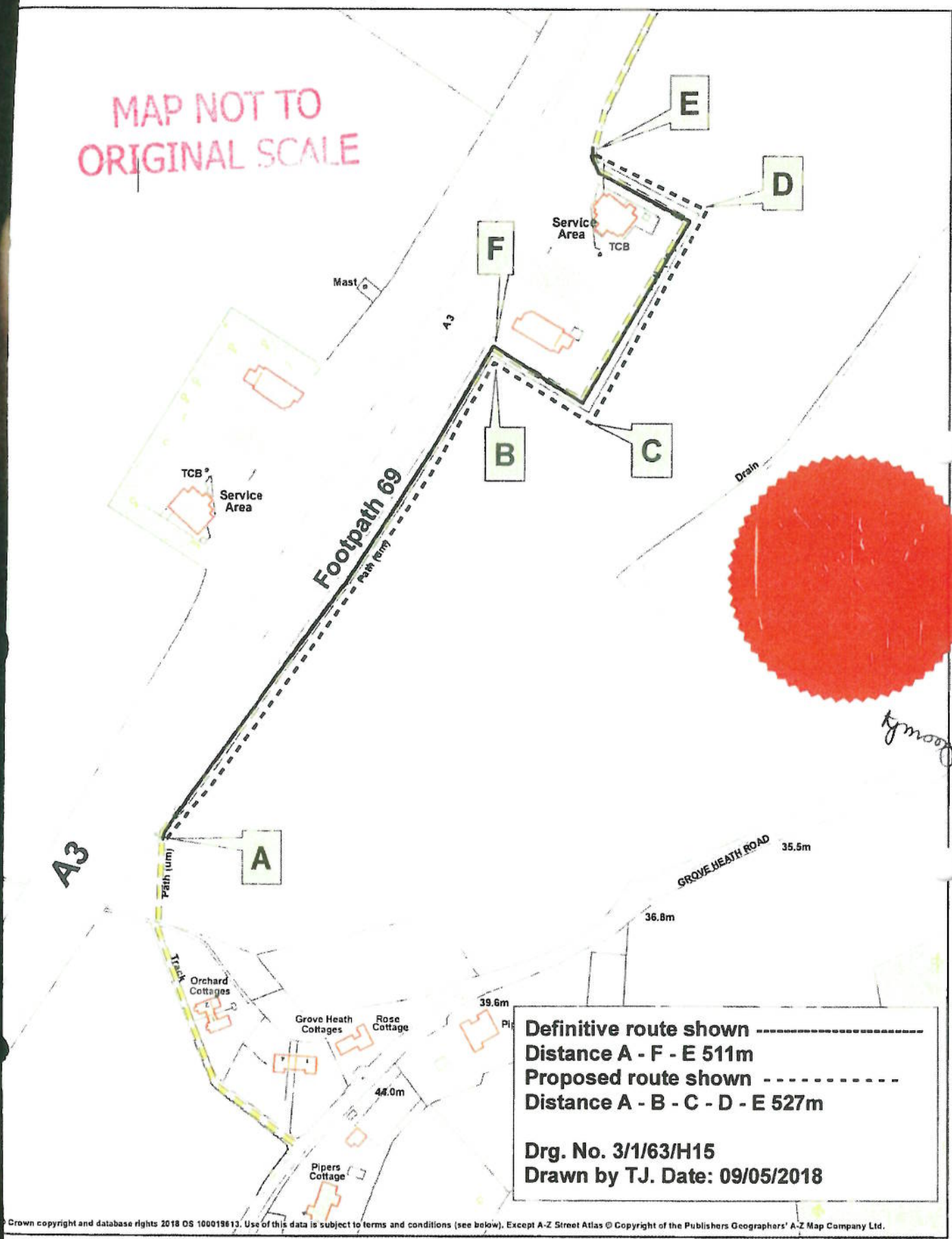
40. The Order is not confirmed.

Heidi Cruickshank

Inspector

Borough of Guildford Public Footpath No. 69 (Ripley) Proposed Diversion

MAP NOT TO
ORIGINAL SCALE



Definitive route shown - - - - -
Distance A - F - E 511m
Proposed route shown - - - - -
Distance A - B - C - D - E 527m

Drg. No. 3/1/63/H15
Drawn by TJ. Date: 09/05/2018

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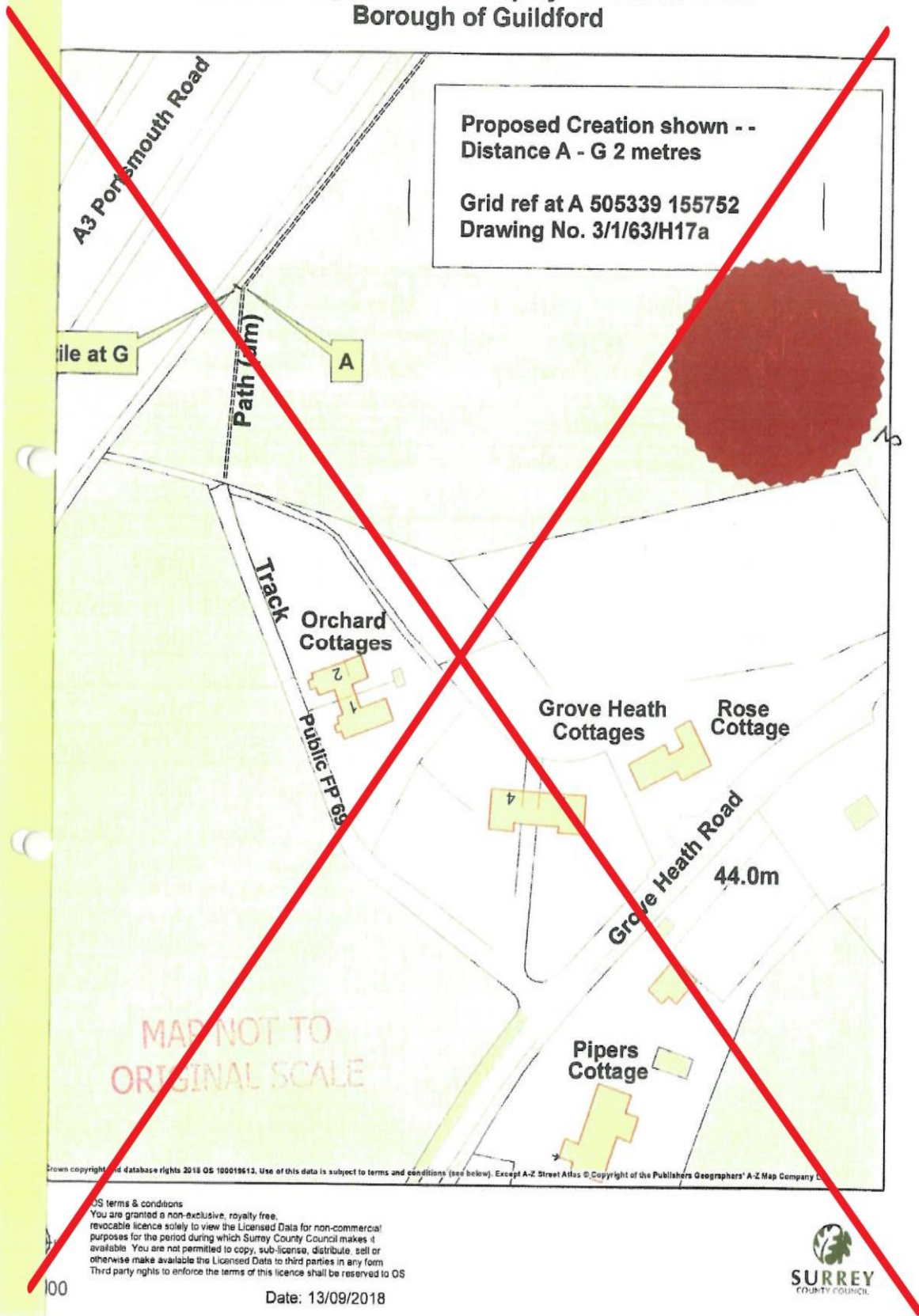
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Rights of Way

- - - - - Footpath
- - - - - Restricted Byway
- - - - - Bridleway
- - - - - BOAT



**Public Footpath No. 609 Ripley - Creation Order
Borough of Guildford**



Proposed Creation shown - -
Distance A - G 2 metres
Grid ref at A 505339 155752
Drawing No. 3/1/63/H17a

Tile at G

A

Path (am)

Track

Orchard Cottages

Public FP 609

Grove Heath Cottages

Rose Cottage

Grove Heath Road

44.0m

Pipers Cottage

MAP NOT TO ORIGINAL SCALE

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Public Footpath No. 610 Ripley - Creation Order
Borough of Guildford

Proposed Creation shown - -
Distance E - H 2 metres

Grid ref at E 505559 156089
Drawing No. 3/1/63/H17b

MAP NOT TO
ORIGINAL SCALE

kissing gate at H

E

Service
Area

TCB

A 3 Portsmouth Road

Path (um)

Public FP 69

Path (u)

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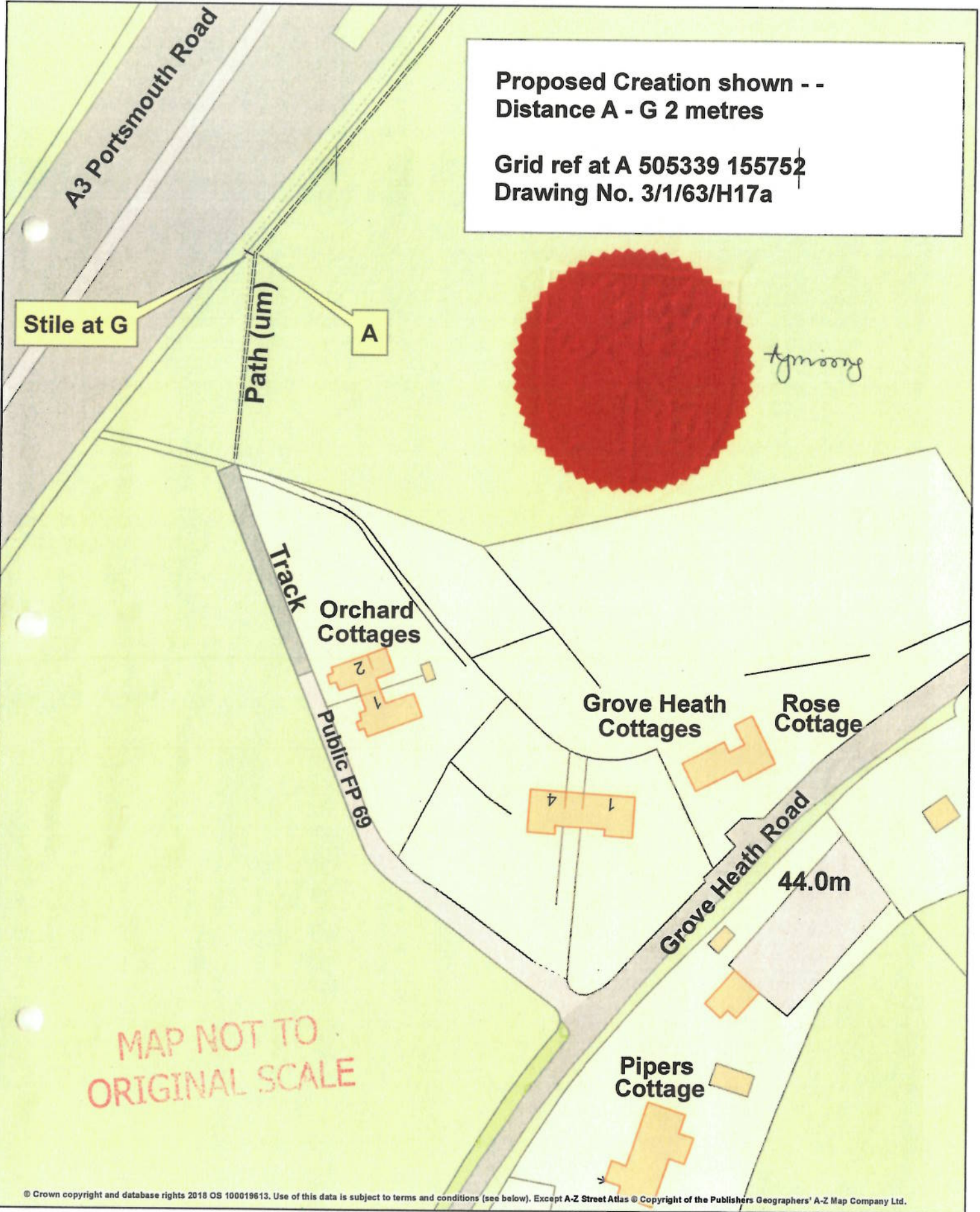
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Date: 12/09/2018



Public Footpath No. 609 Ripley - Creation Order Borough of Guildford



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Date: 13/09/2018

