



Order Decision

Site visit made on 13 July 2020

by Alan Beckett BA MSc MIPROW

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

Decision date: 29 July 2020

Order Ref: ROW/3234405

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Shropshire Council (Footpath 52 (part) and Footpath 177 (part) Parish of Much Wenlock) Public Path Diversion Order 2011.
- The Order is dated 7 January 2011 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 Shropshire Council ('the Council') submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The order is confirmed.

Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the paths at issue on Monday 13 July 2020.
2. The sole remaining objector, the Much Wenlock Civic Society ('the Civic Society') contends that a long-standing public right of way exists between the end of the public highway (at the fork in the road to the south of Atterley House Farm) and the current junction of footpaths 52 and 177. A letter of support for the Civic Society's contention was received from Mr John Rigby. The view of both these parties is that this route should be recorded on the definitive map and that the proposed diversion would inconvenience path users approaching from the south-west as it would make the paths inaccessible to users approaching from that direction. It is also submitted that the diversion would remove the enjoyment that can be derived from a number of local circular walks which incorporated the road and the footpaths at issue.
3. The Civic Society refers to negotiations with the Estate regarding the claimed route and an alternative means of linking the road to the footpath network, but such negotiations have not been fruitful. The Civic Society is of the view that determination of the Order should be deferred until an application (as yet unmade) under s53 of the Wildlife and Countryside Act 1981 has been considered by Shropshire Council.
4. Whilst I can understand the Civic Society's and Mr Rigby's concerns, the route they claim to be a public right of way is not shown in the definitive map and statement and it does not appear that any evidence of public use over the period required under s31 of the 1980 Act has been put before the Council.

5. I understand that in 2011 the Council advised the Civic Society to submit an application under the relevant provisions of the Wildlife and Countryside Act 1981, but that no such application has been forthcoming. Furthermore, the Council submits that as part of its review of public rights of way in Acton Round, Much Wenlock and Barrow, it has undertaken an investigation of a claim that the route north from the public road at Atterley to Shirlett Road was a Byway Open to All Traffic, but there was no evidence that the connecting route at issue was a public right of way.
6. Whilst footpath 52 and 177 meet to the south-west of Atterley Farm, they provide a continuous through route from the west to the north via the farm and access from the south-west is not essential for the public to be able to use the footpaths in their current configuration. The question as to whether or not the route described by the Civic Society and Mr Rigby subsists or can be reasonably alleged to subsist as a public right of way is one for the Council to consider should an application be made under the 1981 Act. That question is not a matter within my remit under section 119 of the 1980 Act, and I have not taken the claimed footpath into account in reaching my decision.

The Main Issues

7. Section 119(6) of the Highways Act 1980 involves three separate tests for an Order to be confirmed. These are:

TEST 1: whether it is expedient in the interests of the landowner, occupier or the public for the path to be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.

TEST 2: whether the proposed diversion is substantially less convenient to the public.

TEST 3: whether it is expedient to confirm the Order having regard to the effect which— (a) the diversion would have on public enjoyment of the path 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.
8. In deciding expediency at the Test 3 stage, (a)-(c) are mandatory factors. Other factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to enjoyment of the land affected by the new paths must be taken into account where applicable.
9. I shall also have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area when considering the Order. Furthermore, I need to consider what impact (if any) the proposed diversion would have upon the needs of agriculture and forestry¹ or the biodiversity² and

¹ Section 121 (3) of the 1980 Act

² Section 40 of the Natural Environment and Rural Communities Act 2006 - duty to have regard to the purpose of conserving biodiversity.

natural beauty of the area³. I must also consider whether the Public Sector Equality Duty (PSED) would be discharged by this proposal.

10. The Order has been made in the interests of the owner and occupiers of the land crossed by the line of those parts of footpath 52 and 177 at issue.

Reasons

Whether it is expedient, in the interests of the owner, lessee or occupier of the land crossed by the footpath, that the footpath in question should be diverted

11. The Order was originally made in 2011 following an application to divert the footpaths having been made on behalf of the Willey Estate ('the Estate'). The Estate wished to divert the footpaths to remove them from the immediate vicinity of three properties in Estate ownership and which were let to tenants of the Estate.
12. The public notice of the making of the Order attracted three objections, two of which were subsequently withdrawn. The Estate submits that it did not pursue confirmation of the Order at the time as there was no immediate requirement from its tenants for the path to be diverted. The tenancy of one of the properties has recently changed and the Estate has renewed its application for the footpath to be diverted as the circumstances which currently prevail are different from those present in 2011.
13. On its current alignment, footpath 177 runs through the amenity garden space of two residential properties. The Estate submits that both occupiers keep dogs and one of the properties is occupied by a family with young children who make extensive use of the garden through which footpath 177 passes. Footpath 52 runs along a track used for vehicular access to a third property and runs close to the building.
14. The Estate submits that the presence of the footpaths gives rise to three principal concerns; (a) the health and safety of both path users and tenants, (b) the security of the tenant's property, and (c) the encroachment into the occupier's privacy and quiet enjoyment of their property. In the Estate's view, the diversion of the footpaths onto a viable alternative route which does not encroach upon the private amenity space would bring benefits to both path users and residents.
15. I saw from my site visit that the current line of footpath 177 passes through the amenity garden area of The Stabling and to the rear of the building that forms part of Atterley Farm. Whilst there was a wicket gate at the boundary between The Stabling and the farm, it was clear from the contents of the garden that the occupiers had children and that access to the majority of the amenity space meant crossing the footpath which runs close to the house.
16. I consider that the amenity of these properties would be enhanced if the footpath were to be diverted. The diversion of the footpath would also enable the occupiers to increase the security of the property by removing the wicket gate in the boundary fence, leaving the gate onto the track that serves all three properties as the only legitimate means of access to the Stablings. I

³ Section 11 of the Countryside Act 1968 duty to have regard to the desirability of conserving natural beauty and amenity of the countryside.

consider that the security of the other two tenanted properties at issue would also be enhanced by the diversion of the footpaths to a new line on other Estate land and outwith the land which forms part of the tenanted properties.

17. One of the submissions made by Mr Rigby in response to the Estate's case was that the tenants knew of the existence of the footpath when they entered into their tenancies and current use of the land did not provide a reason to seek the diversion of the footpath. To my mind, this argument does not take account of the provisions of section 119 (1) of the 1980 Act; the tenant's awareness of the existence of the footpath at the commencement of their tenancy is irrelevant to the question of whether it would be in the interests of the owner or occupier of the land for the footpath to be diverted.
18. I consider that the proposed diversion would be in the interests of the Estate and its tenants. As a result of the diversion, footpath 177 would no longer run through the garden of The Stabling, nor would it run within a few metres of the house and would enhance the amenity of the garden. In addition, the diversion of footpath 177 and footpath 52 would also be in the Estate's interests and the interests of its tenants as a means of enhancing the security of Orchard Cottage and Atterley Farm.

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

19. The terminal points of the diverted footpaths (points A and B on the Order plan) will remain the same and the proposed alternative route will maintain onward connectivity between footpaths 52, 177 and 176. Users of these footpaths would not be inconvenienced by the proposed diversion.
20. From point A the path runs over a grass strip between rows of trees in an orchard, passing through a wicket gate into a track which is enclosed by hedges and fences between the gate and point B. The ground traversed by the proposed alternative is generally level and offers a walking surface comparable to that of the existing route and is unlikely to inconvenience current users of the path in this respect.
21. I saw that on the existing route, users have to negotiate a wicket gate at the boundary between The Stabling and Atterley Farm and a field gate at the vehicular access to The Stabling. With the exception of the gate at the orchard boundary, the proposed route is unobstructed. I consider that a reduction in the number of structures to be negotiated would mean that the proposed route is marginally more convenient for users of the path.

Whether it is expedient to confirm the Order having regard to

(a) the effect the diversion would have on public enjoyment of the path as a whole

22. The enjoyment derived from the use of a public right of way is, to a large extent, a personal and therefore subjective assessment. For example, enjoyment can be influenced as much by the weather during a walk as by individual personal preferences. However, I have attempted to assess this matter objectively, comparing such matters as the physical condition of both routes and the views afforded by both routes.
23. The existing route requires users to pass three residential properties at varying degrees of proximity. In the case of The Stabling, path users are required to

walk close to the house and through the private amenity space of the garden. It is acknowledged that some users may be uncomfortable in walking through domestic gardens close to residential properties. For such users, the diversion of the footpath onto land beyond the curtilages of Orchard Cottage, The Stablings and Atterley Farm is likely to make such a walk more enjoyable.

24. The proposed route retains and extends the journey through the orchard on the western side of the settlement at Atterley before running between hedges and fences along an enclosed track. Although views over the surrounding countryside are obscured by the hedges, the extent of the enclosed section is approximately 120m and is unlikely to be detrimental to the enjoyment of a journey along footpath 52 and 177 which is approximately 3Km in total.
25. It has been suggested that the diversion would prevent users undertaking circular walks from Much Wenlock as the diversion would prevent access to the A458 at Beggarhill Brook and the onward paths to Callaughton. However, a circular walk to and from Much Wenlock via Callaughton would still be possible via the proposed diversion using footpath 176 to access the paths through Hawthorne Dingle and Muckley. The proposed diversion would not therefore prevent walkers from undertaking circular walks from the town.
26. On balance, I feel the enjoyment of those who seek pleasure from informal recreation on footpaths such as these would not be diminished as a result of this Order.

(b) the effect the coming into operation of the Order would have with respect to the land served by the existing path

27. The diversion of the footpath would have a positive impact upon the occupiers of Orchard Cottage, The Stabling and Atterley Farm as those properties would no longer be encumbered by a public right of way. I conclude that it is unlikely that the diversion would have any adverse impact upon the land served by the existing path.

(c) The effect any new right of way created by the Order would have as respects land over which the new right is created together with any land held with it, account being taken of the provisions as to compensation

28. The proposed footpath would run over land in the ownership of the Estate; compensation is therefore not relevant in this respect.

Consideration given to the provisions of a Rights of Way Improvement Plan (ROWIP)

29. The Countryside Access Strategy for Shropshire 2008-2018 produced by the Council draws broad strategic conclusions to identify improvements to the rights of way network with the county. The proposed diversion does not appear to conflict with the policies set out in the Council's ROWIP.

Consideration given to the needs of agriculture and forestry and the conservation of biodiversity and natural beauty

Agriculture and forestry

30. The land over which the proposed footpath would run is not used for either agriculture and forestry and appears to be part of a network of access routes between other cultivated land forming part of the Estate. There would be no

impact upon agricultural or forestry operations arising from the proposed diversion.

Biodiversity

31. The land crossed by the proposed footpath is not classified as a Site of Special Scientific Interest and is not covered by any other local designations aimed at conserving habitat types or species diversity. There is no evidence before me that the proposed diversion would have any adverse impact upon biological diversity.

Natural beauty

32. The land crossed by the proposed footpath is not located within any area which is designated as being of special importance in a national context although the path is set in attractive countryside just outside Much Wenlock and the boundary of the Shropshire Hills Area of Outstanding Natural Beauty. The proposed diversion would utilise hedged and fenced tracks which are an existing feature of the local landscape. The diversion of the footpath is unlikely to have any adverse impact upon the conservation of the natural beauty of the area.

Public Sector Equality Duty

33. The proposed alternative route would be predominantly over level ground with a single wicket gate for users to negotiate. The reduction in the number of structures to be negotiated would result in the proposed alternative being more accessible to those with mobility impairments than the existing route of footpaths 52 and 177. The reduction in overall length of the path by approximately 65 metres is unlikely to be an issue for current users of the path, and taking into account the characteristics of the current path there should be no disproportionality introduced to persons with protected characteristics (over and above the effects likely to be experienced by the rest of the population). I consider that the PSED is discharged by the proposal.

Conclusions on whether it is expedient to confirm the Order

34. For the reasons given above, I do not find that there would be any detrimental impact upon the enjoyment to be derived from a walk along the footpaths at issue, and that there would be no adverse impact upon the land currently served by the footpath or the land which the diverted path would cross. Consequently, there is no conflict between the outcomes of Test 3 and Tests 1 and 2. It follows that I consider that it would be expedient to confirm the Order.

Overall Conclusion

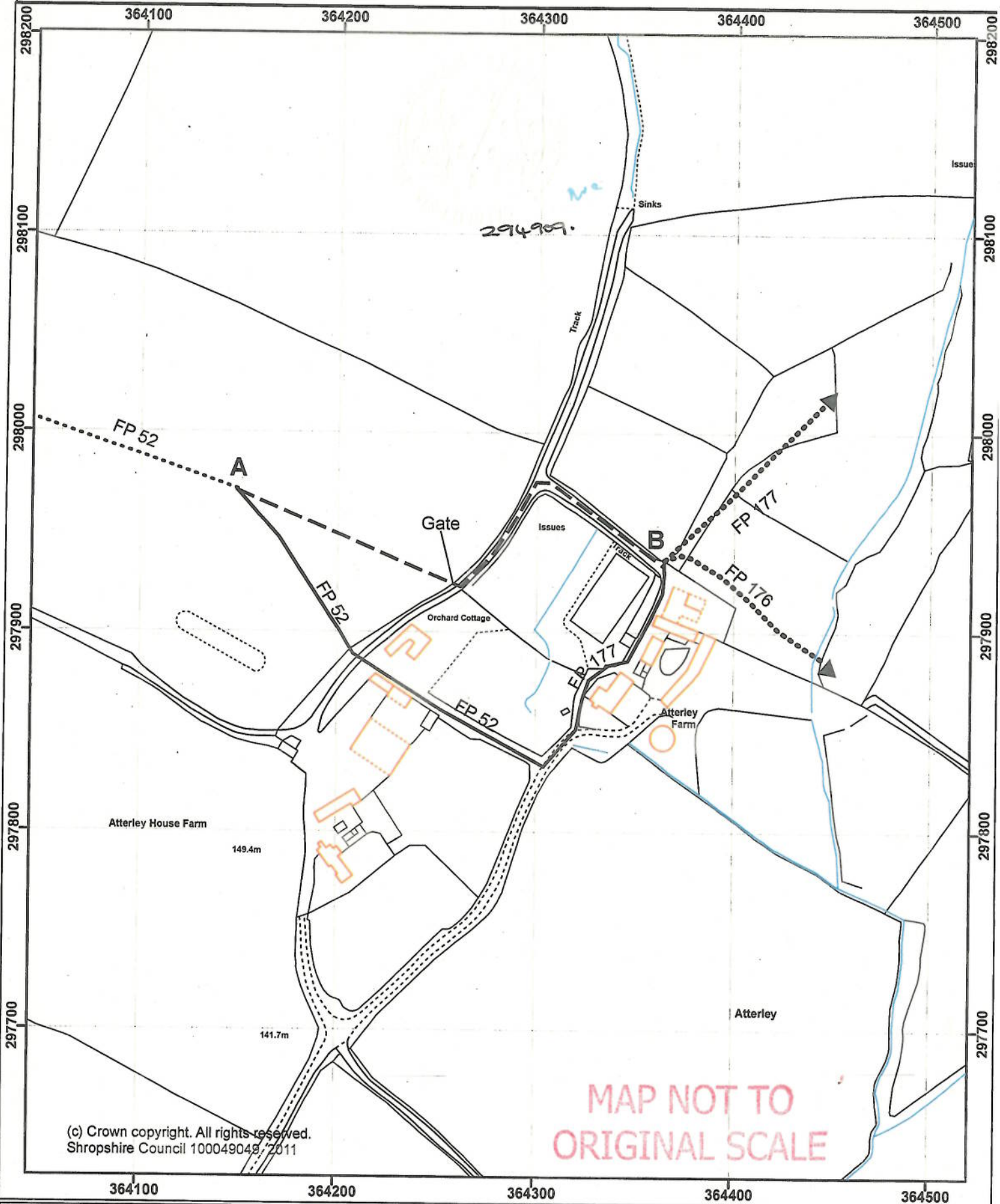
35. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

36. I confirm the Order.

Alan Beckett

Inspector






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MAP NOT TO ORIGINAL SCALE



The Shirehall, Abbey Foregate
Shrewsbury, Shropshire, SY2 6ND

Key

-  Route to be extinguished
-  Route to be created
-  Existing to remain



Scale 1:2500