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## Order Decision

Site visit made on 29 June 2020

**by K R Saward Solicitor**

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

**Decision date: 13 July 2020**

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### **Order Ref: ROW/3234411**

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Essex County Council Public Path Diversion Order 2019 Footpaths 28 and 36 Wethersfield in the District of Braintree.
- The Order is dated 4 February 2019 and proposes to divert the public rights 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.**

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### **Preliminary Matters**

1. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations.
2. I have referred to points along the existing and proposed routes as shown on the Order Map and so I attach a copy of the map for reference purposes.

### **Main Issues**

3. The Order has been made in the interests of the landowners. Section 119(6) of the Highways Act 1980 involves three separate tests for an Order to be confirmed as follows:

TEST 1: whether it is expedient in the interests of the landowners 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.

4. In deciding expediency at 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.

5. Even though a single Order has been made for the diversion of two public paths, each proposal must be considered individually against the relevant tests. Whether or not other unconnected paths in the district have been diverted in similar circumstances does not influence my decision which must be made on the particular facts applicable in this instance.
6. I must also have regard to any material provision contained in a rights of way improvement plan for the area when considering the Order. As there is no suggestion that the Order is contrary to any such provision, I do not address this matter further.

## **Reasons**

### ***Whether it is expedient in the interests of the owner of the land that the path in question should be diverted***

7. The Order relates to two linked public footpaths known as Footpaths 28 and 36 Wethersfield ('FP28' and 'FP36', respectively). Both cross land at Valley Farm, the landowners of which have applied for the paths to be diverted.
8. FP36 follows the driveway leading to the farm complex. It skirts behind the agricultural buildings away from the yard. As the path proceeds northwards, it passes reasonably close to the side elevation of the substantial farmhouse. In the approach, there are views into parts of the enclosed side/rear garden. The front of the property becomes visible as the path passes by a pond and crosses the lawn. Clearly, having members of the public walking near to the house and through the front garden will have an adverse effect on the privacy of occupiers.
9. FP28 starts at point B where it meets FP36 near to the farmyard entrance. The path follows a farm track which passes very close-by the windows and doors of a residential barn conversion within the farm complex. People coming and going to the building are easily observed. The path proceeds past another yard area where I saw a tractor. The presence of walkers in the vicinity of this working environment and along the farm track used by agricultural traffic will inevitably be a source of concern for the owners and those operating in the area.
10. Given the close proximity of the paths to residential accommodation and the working farm environment, it would clearly be expedient in the interests of the landowners for both footpaths to be diverted.

### ***Whether any new termination point is substantially as convenient to the public***

11. Section 119(2) of the 1980 Act provides that a public path diversion order shall not alter a point of termination of the path— (a) if that point is not on a highway, or (b) (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.
12. It is incorrect that the Order contravenes s119(2) on the basis that neither end of FP28 is on a highway, as the objector submits. The eastern end (point F) of the proposed diversion would commence along Oakhill which the Council confirms is highway. The western end (point G) remains unchanged. From point G, FP28 continues unaffected in a south-westerly direction. Altered termination

point F for FP28 avoids the need to utilise the farm access. It also offers a more convenient link with FP43 which is very close-by to the south. Therefore, it is substantially as convenient as the existing termination point, if not more so.

13. Turning to FP36, the northern end (point A) is unchanged and the southern end meets with the proposed diverted route for FP28 at point D. Therefore, the diversion depends upon the diversion of FP28 in order to terminate along a highway and comply with section 119(2). If the Order for FP28 is not confirmed then FP36 would also fail because point D would not meet with another highway.
14. Should FP28 be confirmed then termination point D for FP36 would connect partway along that diverted path at the field edge. Point D would not be as convenient as existing point C for users wishing to head south along FP43 or Oakhill via point F, but it would be more convenient for those looking to proceed west along FP28. The effect of the altered termination point would thus depend on a user's destination. For some, it would be less convenient but the additional distance to reach point F is not far with limited impact on convenience. Overall and subject to confirmation of FP28, I consider that the change of termination point for FP36 would be substantially as convenient.

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

15. No specific concerns have been raised on this ground.
16. The proposed diversion of FP28 provides a considerably shorter and more direct route to head west along the unaffected part of the path. At present, to travel between points F-G involves utilising FP36 and sharp changes in direction. For the most part the diverted route takes a straight alignment to follow the field boundary changing direction only towards the end for a short stretch to reach G.
17. To head north or south along diverted FP36 would be less convenient. The route between points A-F is longer and would involve various changes in direction. Travel between those points could only be achieved if FP28 is diverted. On the plus side, the diversion of FP36 is along an easy to follow alignment whereas the existing route requires users to navigate around buildings and an undefined path across a lawn in an area said to be prone to waterlogging. The diversion avoids any possible conflict with vehicular and farm traffic along the access drive which might inconvenience users. For those wishing to travel between points A-D coming from or going west then the diversion could be more convenient.
18. It seems to me that the diversion of FP28 would be more convenient to the public. FP36 would be less convenient for some users but I have no cause to believe that it would be substantially so.

***The effect of the diversion on public enjoyment of the path as a whole***

19. Both of the existing routes share space utilised by farm traffic. This might have some adverse effect on enjoyment for users confronted with such vehicles. For users who feel uncomfortable walking close to a dwelling or working area then the diversion for both routes will be preferable.
20. At present, FP28 follows the farm track and continues along the field edge. The proposed diversion is along a grassed strip beside the field boundary with views across the fields taking in the farmhouse and its collection of barns which can be

seen as a group. Users are likely to find the experience as enjoyable as the existing path if not more so.

21. The proposed diversion of FP36 offers far reaching views at elevated level over the surrounding countryside. Many users would find this considerably more enjoyable than the existing alignment along the farm access and past buildings from where views of the countryside are far more limited. For those who appreciate the experience of a cross field path with views all about will particularly enjoy the southerly stretch of the proposed diversion.
22. The statutory objector has been walking the paths for 20 years or so and sees no justification for their diversion. However, the legislation is in place to allow the diversion of public paths provided the relevant tests are met. The combined effect of the diversions would allow the paths to continue to be walked between almost the same points<sup>1</sup>, but along a different alignment.

***The effect of the diversion on other land served by the existing paths and the land over which the new paths would be created***

23. There is no evidence that the diversion of either path will have any adverse effect on land served by the existing routes or on the land over which the alternative routes will be created.

***Conclusions on whether it is expedient to confirm the Order***

24. I have found that the diversion of both paths would be in the interests of the landowners to fulfil Test 1 in each case. With regard to FP28, Test 2 is met and I have found there would be no loss of public enjoyment under Test 3. I am satisfied that it would be expedient to confirm the Order in respect of FP28.
25. Having arrived at that view on FP28, the proposed diversion of FP36 would connect with a highway as required by s119(2). This enables me to reach the view that the altered termination point would be substantially as convenient to the public. Furthermore, the diversion would not be substantially less convenient to the public to fulfil Test 2. I am satisfied that it is expedient to confirm the Order for FP36 having regard to the effect on public enjoyment under Test 3.
26. Nothing in the submissions or from my site visit leads me to conclude that it would not be expedient to confirm the Order with regard to both footpaths.

**Overall Conclusion**

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

**Formal Decision**

28. I confirm the Order.

*KR Saward* INSPECTOR

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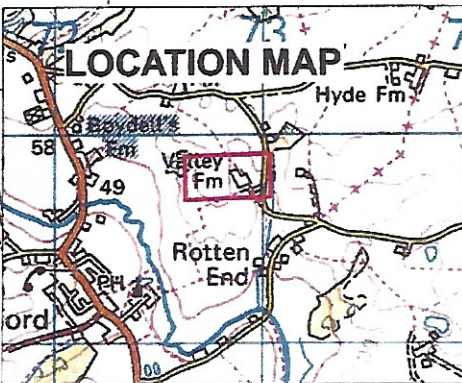
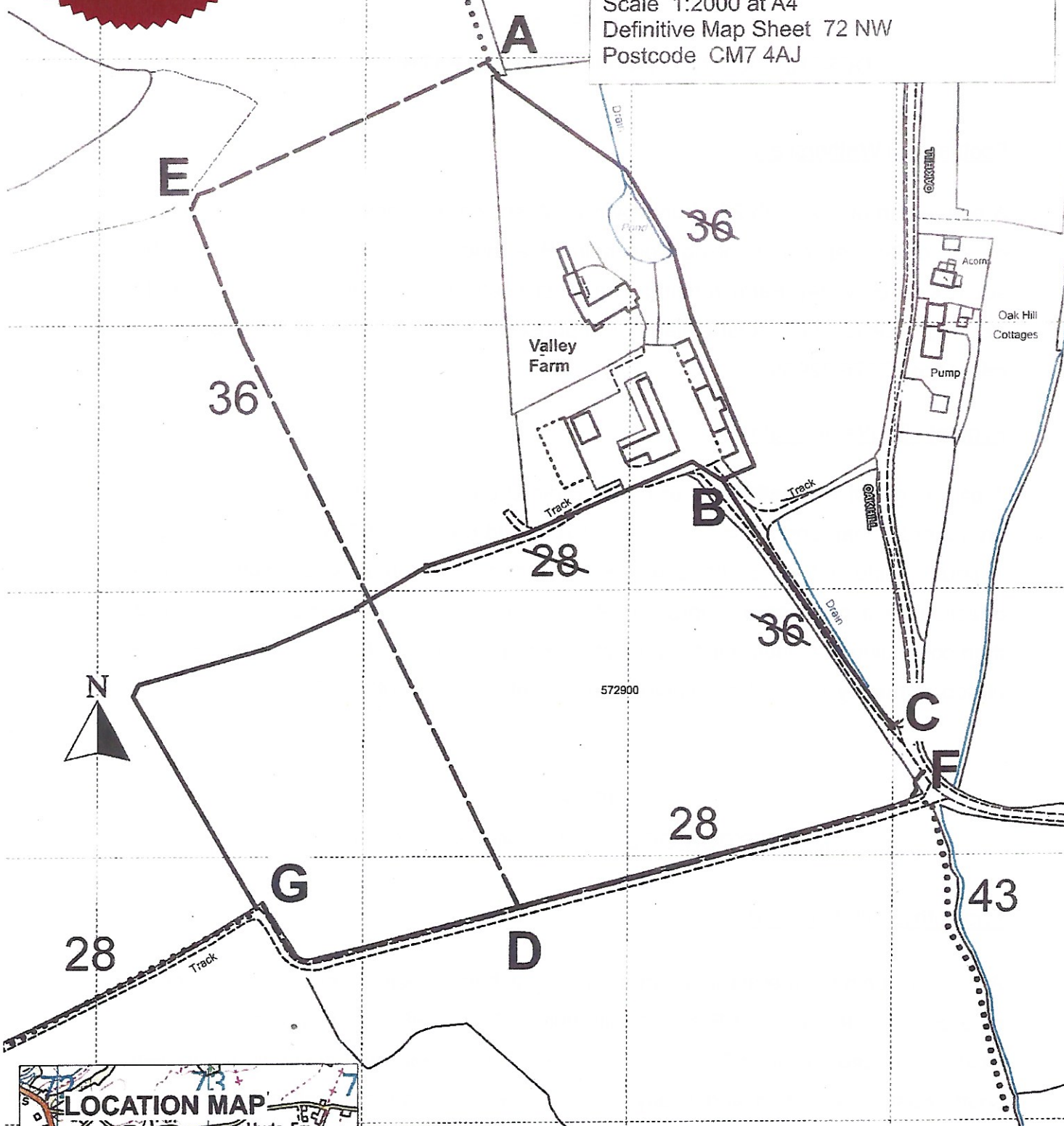
<sup>1</sup> There is a short gap between points C and F along Oakhill, but it is of no or negligible impact.

Attesting Officer

*[Signature]*

Plan No. WETH 36 F

Diversion of Footpaths 28 & 36 Wethersfield  
 Route to Close A-B-C, B-G —————  
 New Routes A-E-D, F-D-G - - - - -  
 Unaffected Routes .....  
 Scale 1:2000 at A4  
 Definitive Map Sheet 72 NW  
 Postcode CM7 4AJ





integrated expertise



Essex County Council

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Rotten End Farmhouse