



Order Decision

Site visit on 17 March 2020

by Sue Arnott FIPROW

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

Decision date: 07 August 2020

Order Ref: ROW/3226673

- This Order is made under Section 26 of the Highways Act 1980. It is known as the Cheshire West and Chester Borough Council (Footpath 52 Ellesmere Port) Public Path Creation Order 2018 and is dated 18 October 2018.
- The Order proposes to create a public footpath in Church Wood near the western boundary of Rivacre Country Park, as detailed in the Order map and schedule.
- There was one objection and one representation outstanding when Cheshire West and Chester Borough Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is not confirmed.

The Main Issues

1. The main issue is whether, having regard to Section 26 of the Highways Act 1980 (the 1980 Act), it is expedient to confirm the Order.
2. Before confirming the Order I must first be satisfied that:
 - (a) there is a need for a public footpath along the line indicated on the plan attached to the Order (shown as A-B); and
 - (b) it is expedient to create a footpath having regard to:
 - (i) the extent to which the right of 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
 - (ii) the effect which the creation of the right of way would have on the rights of persons with an interest in the land, account being taken of the provision for compensation.
3. Further, in determining this Order I am required to have regard to any material provisions in any rights of way improvement plan for the area.

Reasons

4. On 21 December 2016 the order-making authority, Cheshire West and Chester Borough Council (CWCBC) granted planning permission (Ref 16/02082/FUL) for residential housing on Hooton Lane, Ellesmere Port, and for improved sports and recreational facilities. This identified a need for the proposed footpath to provide sustainable travel options for residents of the new housing estate.
 5. The development site lies to the north of Vauxhall Sports Club. Sports playing fields lie between the sports centre buildings and the point marked B on the Order
-

map. At point B is a coded lock on a gate which separates the sports ground from the woodland (owned by the Council) through which the Order route passes.

6. The travel plan accompanying the planning application stated that the footpath "*provides a walk route through to the golf course and will enhance access to the site on foot and increase the number of people who could access the primary school and local facilities on foot.*" Further, it noted that the route (which was already in use) would be regularised by means of a creation order under the 1980 Act and would be physically improved by the developer of the housing site.
7. On the day of my visit to the site I observed that the proposed public right of way had a newly constructed surface and was in use by pedestrians, the gate at point B being unlocked at the time. However, it was not clear whether access for the public northwards beyond point B (as opposed to residents of the housing development and/or patrons of the sports club) would be restricted at some time in the future.
8. Highways can exist as *culs-de-sac* but normally lead from one highway to another or to some other public place. At the time the Order was made, it seems the sports ground was considered to be a place of public resort and thus the termination of the proposed footpath at point B presented no difficulties.
9. Since this Order was made, it has become apparent that there is no planning mechanism to enforce the anticipated provision of a right of way for new residents across the sports grounds and public access beyond point B cannot be guaranteed.
10. Having reviewed its case for seeking confirmation of the Order, and as a consequence of changes in the actions of the developer, CWCBC accepts that the statutory tests are no longer met in this case. It has therefore withdrawn its support for the Order.
11. Having regard to the requirements of Section 26 of the 1980 Act as set out above, I am unable to find a need for the Order route as proposed in the Order when passage for the public beyond point B is unresolved. In the circumstances, the proposed footpath is unlikely to add to the convenience or enjoyment of a substantial section of the public, or to the convenience of local residents, if it is not available as a through-route to a place accessible by the public.
12. Taking account of all other relevant factors too, I do not consider it would be expedient for this Order to be confirmed as it stands.

Conclusion

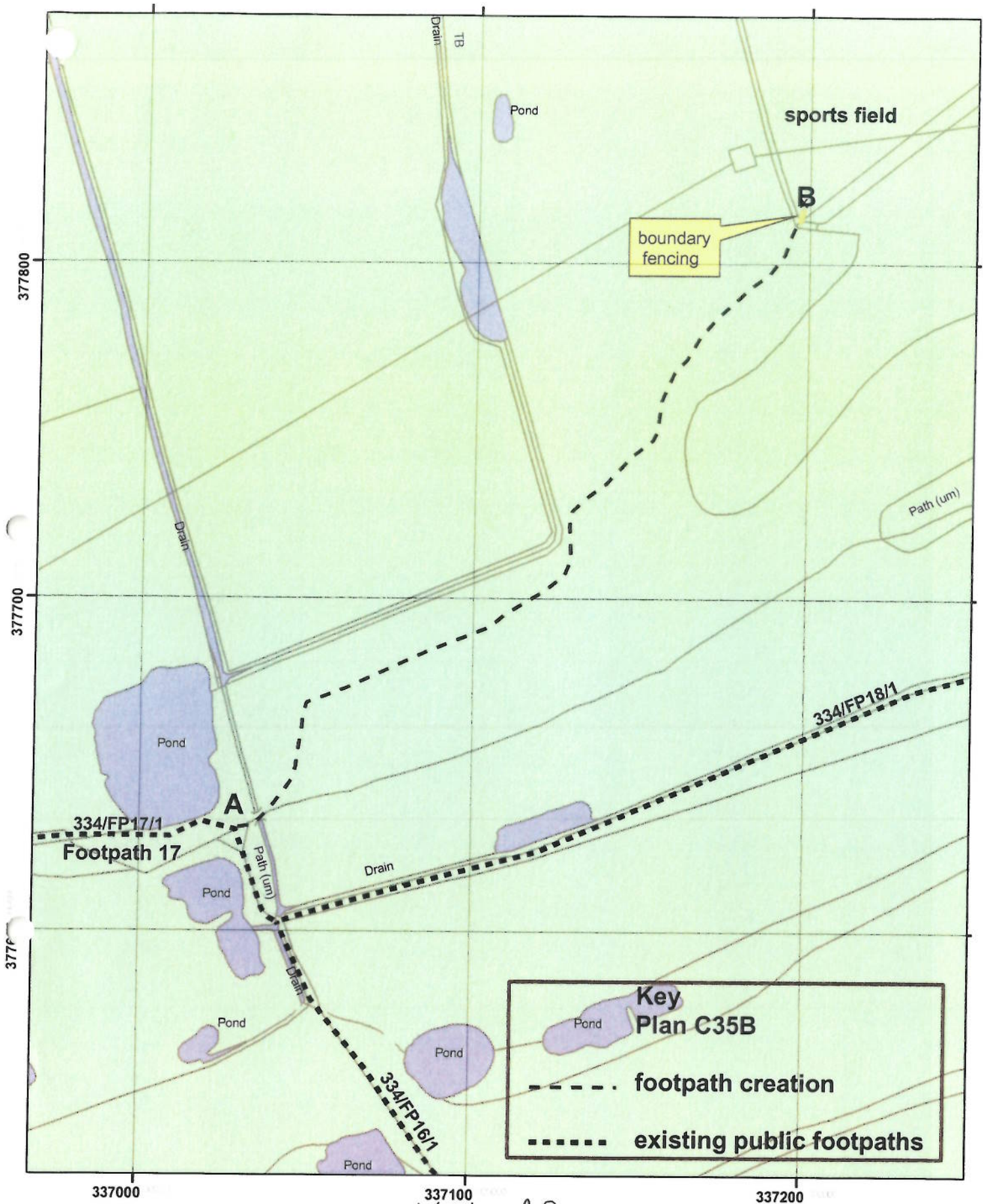
13. Having regard to the above and all other matters raised in the written representations, I conclude the Order should not be confirmed.

Formal Decision

14. I do not confirm the Order.

Sue Arnott

Inspector



Kathryn Bna

MAP NOT TO ORIGINAL SCALE

Highways Act 1980 section 26
The Cheshire West and Chester Borough Council
(Footpath 52, Ellesmere Port) Creation Order 2018

