



Order Decision

on papers on file

by Susan Doran BA Hons MIPROW

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

Decision date: 12 August 2020

Order Ref: ROW/3246198

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Shipton Oliffe Footpath No KSN 7 (Part) Public Path Diversion Order 2019.
- The Order is dated 25 October 2019 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Cotswold District 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 a modification set out below in the Formal Decision

Procedural Matters

1. This case concerns the proposed diversion of a public footpath at Little Paddocks, Shipton Oliffe to enable the conversion of a former poultry barn to holiday accommodation units. The diverted route is proposed to run parallel with Kilham Lane before heading west to re-join the original footpath.
2. The sole objection has been withdrawn and the Order is now unopposed. Accordingly, this case is determined on the basis of the papers on file.
3. Cotswold District Council (the Council) requested a modification to the Order in the event it is confirmed. I consider this below.

The Main Issues

4. Section 257 of the Town and Country Planning Act 1990 (the 1990 Act) requires that I consider whether it is necessary to divert the footpath in question to allow development to be carried out in accordance with the planning permission already given but not implemented. However, the power to confirm an order is discretionary. Paragraph 7.15 of Defra Circular 1/09 advises that in deciding whether or not to confirm an order, I must also weigh in the balance the disadvantages or loss likely to arise as a result of the diversion of the footpath to members of the public generally or to persons whose properties adjoin or are near the existing highways, against the advantages of the proposed order. This two-stage test in deciding whether or not to confirm a section 257 order - a 'necessity test' and a 'merits test' - has recently been endorsed in the Court of Appeal in the '*Network Rail*' case¹.

¹ R (on application of Network Rail Infrastructure Ltd.) v Secretary of State for Environment, Food and Rural Affairs [2018] Civ 2069

5. The issue is, therefore, whether the proposed diversion is necessary to enable the development to proceed, whether the public or adjoining property owners would be disadvantaged by its diversion, and if so, where the balance of advantage lies. The merits of the development are not at issue.

Reasons

6. The definitive footpath runs to the north of two agricultural buildings (between points A and B). Planning permission has been granted for the conversion of one of these and the approved development includes the obstruction of the definitive footpath by hard landscaping. I concur with the Council that it is necessary to stop up the footpath to allow the development, for which planning permission has been granted, to be carried out.
7. I understand that both the definitive and proposed routes include a natural gradient or incline. Accordingly, I consider there would be little if any adverse effect on users and amenity resulting from the proposed diversion in this regard. The proposed route is a little longer than the existing definitive alignment, although not significantly so in my view. It would offer a different walking experience following a track before entering an open field, compared to the definitive route passing buildings before entering fields. Onward links with the existing footpath network would be retained.
8. Having considered the evidence before me, I am satisfied that the test set out in section 257 of the 1990 Act has been met. I am further satisfied that in weighing the disadvantages or loss likely to arise as a result of the diversion against the advantages of the proposed Order, there is nothing that would lead me to conclude the Order should not be confirmed.

Other matters

9. Further to paragraph 2 above, the grid reference for point C given in Part 2 of the Schedule to the Order is inconsistent with that given in Part 1. It is evident from the Order plan that the correct grid reference is as stated in Part 1 of the Schedule. There is nothing to suggest that anyone has been prejudiced by this error. Since I have decided to confirm the Order, I shall modify it accordingly.
10. It appears an alternative to the definitive route had been available prior to the current proposal. However, that alternative route is not before me for consideration.

Conclusions

11. Having regard to these and all other matters raised in the written representations, I conclude the Order should be confirmed with a modification that does not require advertising.

Formal Decision

12. I confirm the Order subject to the following modification:
 - In Part 2 of the Schedule to the Order, in the fourth line, replace SP 0363 1816 with "SP 0335 1808"

S Doran

Inspector

Town and Country Planning Act 1990
Section 257

**Public Footpath Order
Shipton Oliffe
(Footpath KSN7)**

Existing Footpath to be
Diverted.
(Length 336.5m)

Alternative Footpath to
be Created
(Length 509m)

Route of unaffected Footpath



AB

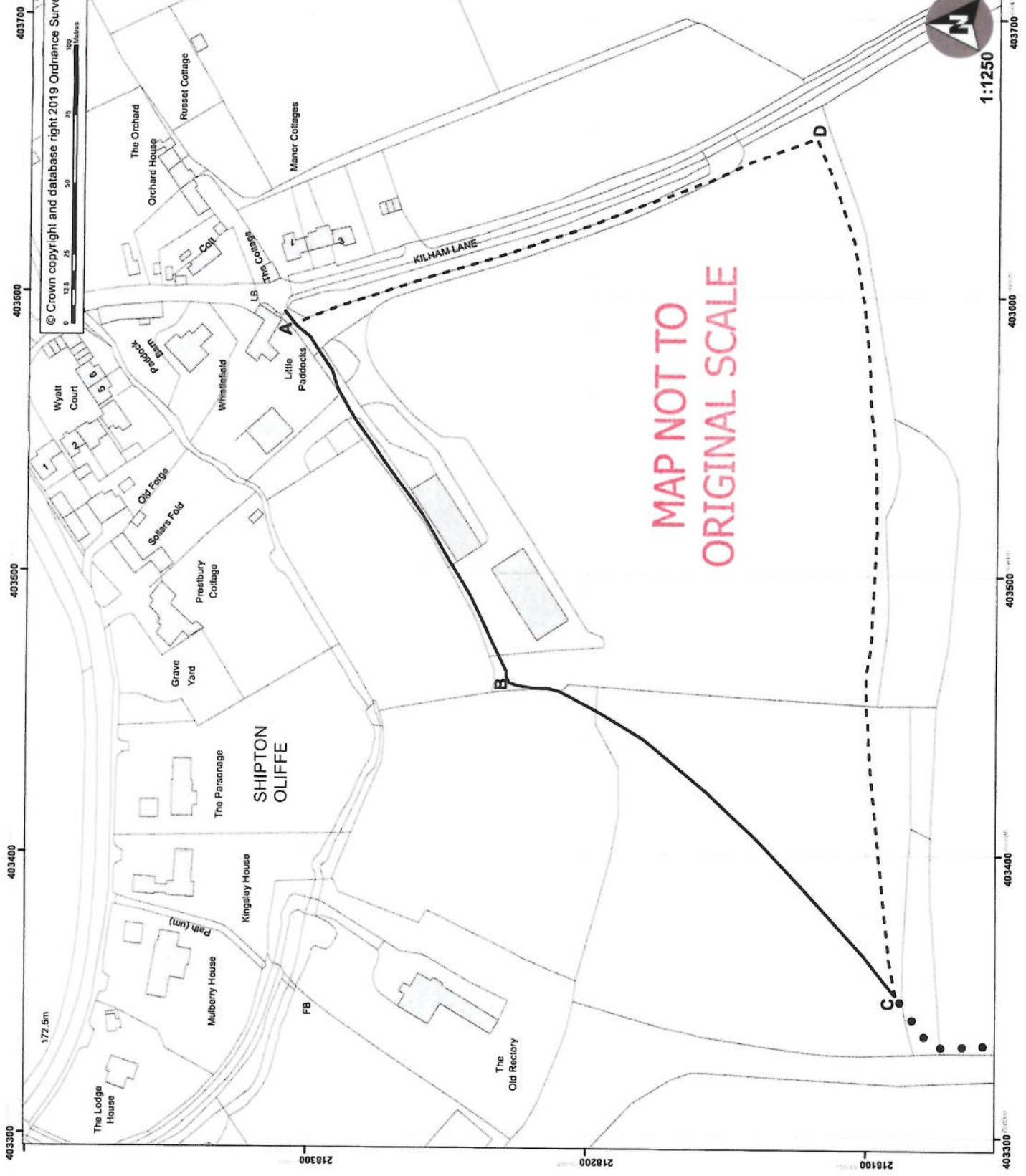
Date made: 25th October 2019



**COTSWOLD
DISTRICT COUNCIL**

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0 12.5 25 50 75 100 Meters



**MAP NOT TO
ORIGINAL SCALE**

1:1250

403300 403400 403500 403600 403700
218300 218200 218100 218000