



---

## Order Decision

Inquiry Held on 23 July 2019

Site visit made on 23 July 2019

**by Susan Doran BA Hons MIPROW**

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

**Decision date: 17 September 2020**

---

### **Order Ref: ROW/3212517M1**

- This Order is made under Section 119 of the Highways Act 1980 and is known as the Dorset County Council (Footpaths 37 (part), 38 and 103 (part), Thorncombe) Public Path Diversion Order 2015.
- Dorset Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 7 August 2015.
- The Order proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule. The Order is also made under Section 53A(2) of the Wildlife and Countryside Act 1981. If confirmed, the Order would also modify the Definitive Map and Statement, in accordance with Section 53(3)(a)(i) of that Act.
- In accordance with paragraph 2(3) of Schedule 6 to the Highways Act 1980 I have given notice of my proposal to confirm the Order so as to correct the positions of points E, J and L in the Order and on the Order plan, to reposition the line of part of Footpath 103 as proposed, and to replace a medium mobility kissing gate on Footpath 103 with a gap.

**Summary of Decision: I have confirmed the Order subject to the modifications that I previously proposed**

---

### **Procedural Matters**

1. The effect of the Order if confirmed with the modifications that I previously proposed would be to correct the Order plan further to an Ordnance Survey update to the base mapping. This would result in the addition of points E1, J1 and L1 in place of the existing points E, J and L and the corresponding repositioning of the proposed route of Footpath 103 (part). These modifications would be reflected in the Order as appropriate. In addition, a proposed medium mobility kissing gate recorded in the Order as a limitation at point J (point J1 as modified) would be replaced with a gap.
2. Two objections were made following advertisement of the notice and deposit of associated documents relating to the proposed modifications. One of these, a representation from Mr Holt, concerns a spur footpath from point F on the Order plan leading to the village (or Millennium) playground. As Mr Holt points out this was the subject of a definitive map modification application some years ago. I referred to this matter at paragraphs 14, 17 and 59 of my interim decision. As stated in that decision the spur path is not a matter that is before me for determination and it follows that I am unable to consider it as part of this decision-making process.
3. The remaining objection from Mr Dunford concerns the proposed modifications relating to Footpath 103 and in particular points E and E1, and the expediency

test in the interests of the landowner. I consider this below. There are no objections to my proposed modifications to show points J and L as J1 and L1 respectively, or to replace the proposed kissing gate with a gap.

4. This decision is reached on the basis of written representations and I take into account comments made by the Objector Mr Dunsford, on behalf of the Applicants Mr and Mrs Cunningham, and by Dorset Council (the Council).

### **The Main Issue**

5. The main issue is whether there is any evidence or argument that would cause me to abandon or amend the modifications which I proposed in my interim decision dated 21 October 2019.

### **Reasons**

#### ***Points E and E1***

6. Mr Dunford argues that the fence, alongside which the proposed diverted route runs (paragraphs 26 and 29 of my interim decision), meets the rear boundary of Pennyhayne via a field gate at point E where there is an outbuilding, as evident on the ground. Accordingly, point E1 is not relevant.
7. However, and as both the Applicants and the Council point out, the proposed modifications reflect a digital update to the Ordnance Survey (OS) base map rather than an amendment or modification of the proposed diverted path on the ground. In that regard I concur with them that the modifications proposed do not alter the route of the proposed diversion. The OS mapping shows the fence line meeting the rear boundary of the properties at a point to the south west of E and this is consistent with the continuation of the unaffected part of Footpath 103.
8. On balance I conclude that the proposed modification should remain.

### ***Other matters***

*Whether it is expedient in the interests of the landowners that Footpath 103 (part) be diverted*

9. Mr Dunford refers to the expediency of diverting Footpath 103 (part) in the interests of the landowners (paragraphs 28 and 31 of my interim decision). He considers it unnecessary to divert the path from Pennyhayne's boundary as well as from Worcester's boundary on the basis of the security and privacy of Worcester. Accordingly, he argues that moving the path from E to E1 has the effect of moving it from the rest of Pennyhayne's boundary.
10. The Applicants argue that if the proposed diversion were to revert to point E then it would be necessary for them to realign their established fence. However, as previously stated, the proposed modification reflects a mapping issue rather than an alteration in alignment of the path and I agree with the Applicants does not materially affect their case for the diversion overall. Having considered the arguments in my interim decision, I concluded that this expediency test was satisfied, albeit marginally. Further, no new evidence or argument is advanced that causes me to depart from my previous finding that it is expedient in the interests of the landowners that part of Footpath 103 should be diverted as proposed.

## **Conclusions**

11. Having regard to these and all other matters raised in the written representations I conclude the Order should be confirmed with the modifications previously proposed.

## **Formal Decision**

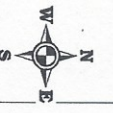
12. The Order is confirmed subject to the following modifications:

- In the Schedule to the Order (Parts 1-4) and on the Order plan delete references to 'E', 'J', and 'L' and delete the associated grid references where they occur
- In the Schedule to the Order (Parts 1-4) and on the Order plan insert new points and where appropriate new grid references as follows,  
E1 (ST 37510325)  
J1 (ST 3752503296)  
L1 (ST 37350319)
- In Part 3 of the Schedule to the Order, Limitations and Conditions, for Footpath 103, Thorncombe, Furniture, delete 'Medium mobility kissing gate' and insert 'Gap'
- On the Order plan, delete the broken line between E and J and insert a broken line between E1 and J1

*S Doran*

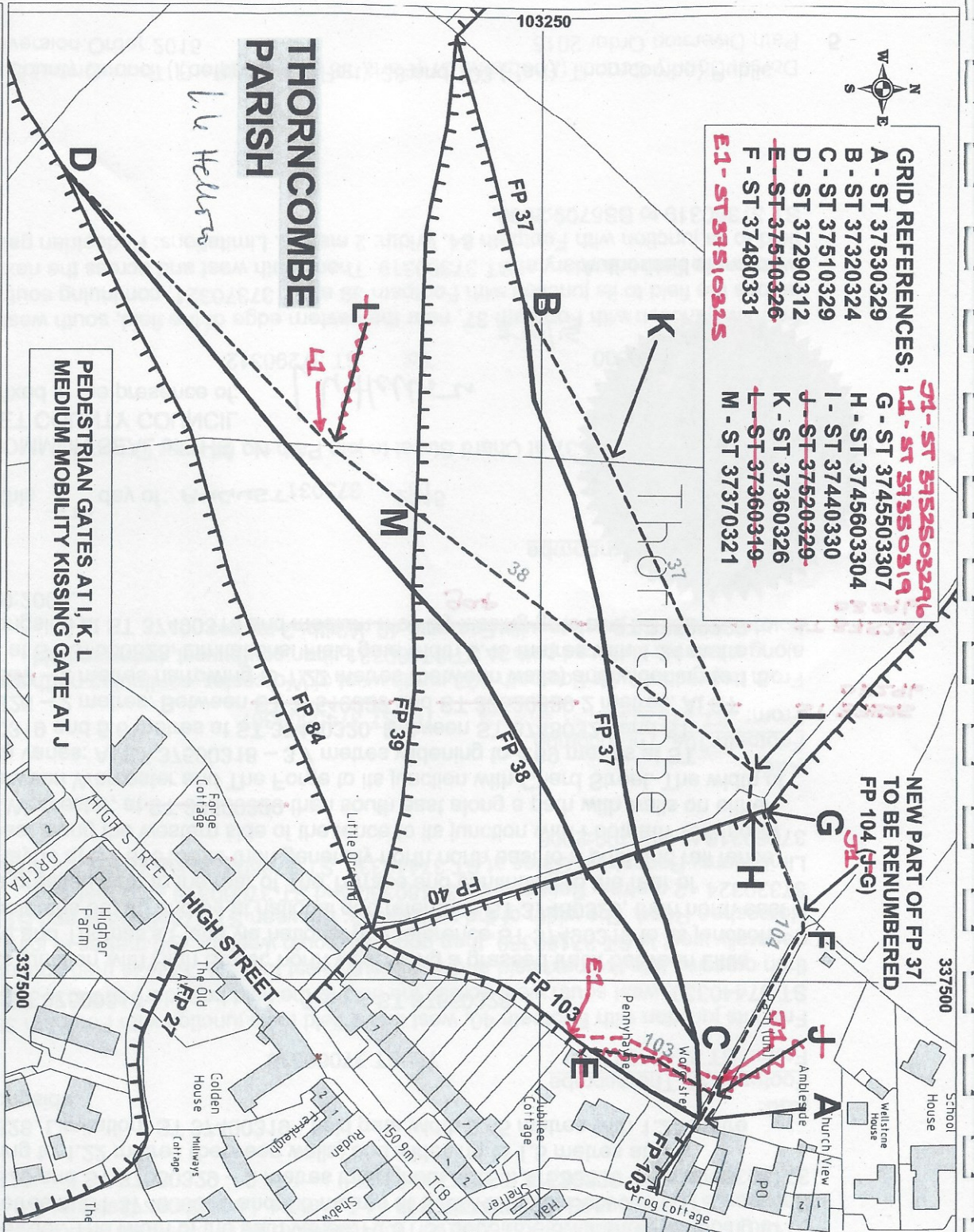
**Inspector**



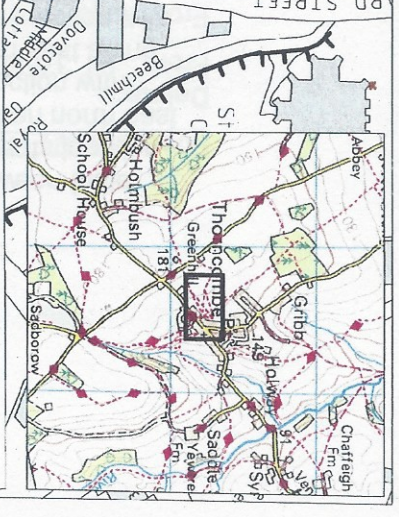


**GRID REFERENCES:**

A - ST 37530329	<del>G1 - ST 375250324</del>
B - ST 37320324	<del>L1 - ST 37350319</del>
C - ST 37510329	G - ST 3745503307
D - ST 37290312	H - ST 3745603304
<del>E - ST 37510326</del>	I - ST 37440330
F - ST 37480331	<del>J - ST 37520329</del>
	K - ST 37360326
	<del>L - ST 37360349</del>
	M - ST 37370321



PEDESTRIAN GATES AT I, K, L  
MEDIUM MOBILITY KISSING GATE AT J



**KEY:**

UNAFFECTED FOOTPATHS

FOOTPATH 37 TO BE DIVERTED

A C B

PROPOSED NEW ROUTE OF FP 37

~~J-L1~~ F G

H I K B and

FOOTPATH 38 TO BE DIVERTED

C D

PROPOSED NEW ROUTE OF FP 38

I M ~~L-L1~~ D

FOOTPATH 103 TO BE DIVERTED

~~E-L1~~ A

PROPOSED NEW ROUTE OF FP 103

~~E-L1~~ J A

DORSET COUNTY COUNCIL (FOOTPATHS 37 (PART), 38 AND 103 (PART), THORNCOMBE)  
PUBLIC PATH DIVERSION ORDER 2015

Ref: 13/20/1  
Date: 30/10/2014  
Scale 1:1500  
Drawn By: KJS  
Cent X: 337459  
Cent Y: 103235

GEOGRAPHICAL INFORMATION SYSTEMS

**Dorset County Council**

© Crown copyright and database rights 2015 Ordnance Survey 100019790  
You are permitted to use this data solely to enable you to respond to or  
interact with, the organisation that provided you with the data. You are not  
permitted to copy, sub-license, distribute or sell any of this data to  
parties in any form. Aerial Photography © UK-Perceptics 2002  
© Ordnance Survey 2005, 2008 & 2014