



Order Decision

Site visit made on 10 August 2020

by Alan Beckett BA MSc MIPROW

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

Decision date: 15 September 2020

Order Ref: ROW/3238403

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Harrogate Borough Council Footpath 15.53/23/1 Cruet Farm Hollins Lane Hampsthwaite Diversion Order 2019.
- The Order is dated 12 June 2019 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 Harrogate Borough 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 route at issue on Monday 10 August 2020.

Background

2. Footpath 15.53/23/1 commences on Hollins Lane, Hampsthwaite at Ordnance Survey (OS) grid reference SJ 2615 5814 and runs in a generally south-easterly direction to join footpath 15.53/7/2 at OS grid reference SJ 2638 5792. From this junction path users can either continue south-east to re-join Hollins Lane or turn north-east along the local footpath network. On leaving Hollins Lane, footpath 15.53/23/1 passes through the land that formed part of Cruet Farm and then runs over open pasture towards Hollins Lane as described above. The land immediately surrounding the farmhouse of Cruet Farm has been re-developed for housing in recent years with that development being served by a new road known as Cruet Fold.
3. The land crossed by that section of the footpath at issue was the site of a barn at Cruet Farm. The barn has now been demolished as part of the proposed development of the site. At the time of my visit, the site was in the process of being prepared for the construction of a single, detached dwelling, with materials having been stockpiled and the site secured by Heras fencing. The proposed alternative route to link to the footway of Cruet Fold was open and available for use.
4. Planning permission for the development was granted by the Council on 9 January 2017 under permission 16/04554/FUL. It is proposed to divert that part of footpath 15.53/23/1 which crosses the development site to a new alignment which would result in those path users approaching Hollins Lane

from the south-east being diverted northwards for a short distance to join the footway running alongside Cruet Fold.

The Main Issues

The statutory requirements

5. Section 257 of the 1990 Act requires that I must consider whether it is necessary to divert that part of footpath 15.53/23/1 at issue to allow development to be carried out in accordance with the planning permission already given but not yet implemented.

Effect of the proposal on other parties

6. Paragraph 7.15 of Defra Circular 1/09 (version 2 of October 2009) advises that in considering whether or not to confirm the Order, the disadvantages or loss likely to arise as a result of the diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing public right of way should be weighed against the advantages of the proposed order.

7. Reasons

Whether planning permission in respect of the development has been granted

8. As noted above, permission for the demolition of the former barn and the erection of a single detached dwelling was granted on 9 January 2017 under reference 16/04554/FUL. A copy of the permission and the approved plans has been submitted by the Council.
9. I am satisfied that planning permission in respect of the development has been granted.

Whether the diversion of the footpath is necessary in order to allow development to take place

10. Drawing 1237/6 demonstrates that the proposed new dwelling will be built over the line of footpath 15.53/23/1 and would prevent users from passing along it to reach Hollins Lane. I saw from my site visit that the site had been cleared of the former barn and that ground works associated with the proposed development were in progress although it did not appear that construction of the house had commenced.
11. From the site plans and from my site visit, I am satisfied that the approved development has not yet been completed and could not be fully implemented if the footpath were to be retained on its existing line.
12. The objector suggests that an alternative route could be provided within the development site and that the proposed alternative is not therefore necessary. It is suggested that the footpath could be diverted to the northern boundary of the site to run in the 2.5 metre gap between the northern elevation of the proposed house and the site boundary. It is submitted that this alternative diversion would preserve a direct route to Hollins Lane with none of the additional distance and inconvenience introduced by directing users along the footway of Cruet Fold.
13. I am required to consider whether the diversion proposed by the Order satisfies the relevant tests under s257, not whether a diversion preferred by

another party would satisfy those tests. Furthermore, the approved development does not include the provision of a public right of way through the site. The approved development could not therefore be implemented by the retention of the footpath as suggested by the objector. I am satisfied that in order for the developer to be able to implement the planning permission granted, it is necessary for the footpath at issue to be diverted.

The extent of loss and inconvenience likely to arise either to members of the public generally, or to persons whose properties adjoin, or are near the existing public right of way as a result of the diversion of the footpath

Impact upon members of the public generally

14. The objector contends that the alternative route proposed would inconvenience path users through the increase in overall length of a journey to Hollins Lane and the requirement to walk over the footway at the side of Cruet Fold. It is submitted that the proposed diversion would have a serious negative impact upon the character and recreational amenity value of the footpath.
15. The extent of any increase in journey times or distances which a path user may face as a result of a diversion will depend upon the user's intended destination. In this case, if a path user approaching Hollins Lane from the south-east intended to walk towards the village centre to connect with the path network leading north and east from the village, or was undertaking a short circular walk incorporating footpath 15.53/6/1, there would be no discernible difference in the distance to be walked. Furthermore, a walk into the village centre would be along footways similar to those found at Cruet Fold.
16. Those users wishing to continue westward on footpath 15.53/8/1 would face an increase in journey distance of approximately 70 metres to reach the eastern end of the footpath on the western side of Hollins Lane. However, given that anyone wanting to walk to Rowden Lane via the current line of footpaths 15.53/23/1 and 15.53/8/1 would be undertaking a journey of approximately 1Km, an overall increase of around 70m to that journey is unlikely to inconvenience most users.
17. The proposed diversion would permit anyone currently undertaking a journey along footpath 15.53/23/1 to access Hollins Lane to continue to do so, albeit on a slightly different route. Although the objector contends that the proposed alternative route along Cruet Fold is not level, neither is it of such a gradient that it would present difficulties to most users. I consider that anyone who is able to negotiate the uneven ground and stone stiles present on the residual length of footpath 15.53/23/1 would not find the gentle gradients of Cruet Fold and Hollins Lane inconvenient. The short section of diverted path which would link to Cruet Fold will have a grass surface and be of a similar nature to that found on the residual length of the footpath. I do not consider that there would be any disadvantage to users in terms of the physical characteristics of the proposed route.
18. The proposed diversion would maintain a link between Hollins Lane and Rowden Lane as part of a longer recreational walk in the area. The public will still be able to undertake a journey along footpath 15.53/23/1 to connect with other footpaths within the local rights of way network should they so wish. There is no disadvantage or loss to the public in this respect.

19. For the above reasons I conclude that the proposed diversion would not result in disadvantage or loss to members of the public who would seek to use footpath 15.53/23/1.

Impact upon persons whose properties adjoin or are near the footpath

20. There is no evidence before me from which I could conclude that persons whose properties adjoin the existing right of way would suffer loss or inconvenience as a result of the proposed diversion.

Whether the Order should be confirmed

21. The Order has been made to enable the developer to execute the planning permission applied for and subsequently granted. It is clear that the permitted development would obstruct part of footpath 15.53/23/1 and I have concluded that the proposed diversion would not result in inconvenience or loss to the public in general or to those whose properties are adjacent to the footpath.
22. The advantage of the order is that the planning permission already granted can be carried out whilst retaining use of footpath 15.53/23/1. I conclude that there would be no disadvantage or loss to other parties which would outweigh the advantages conferred by the Order.

Conclusion

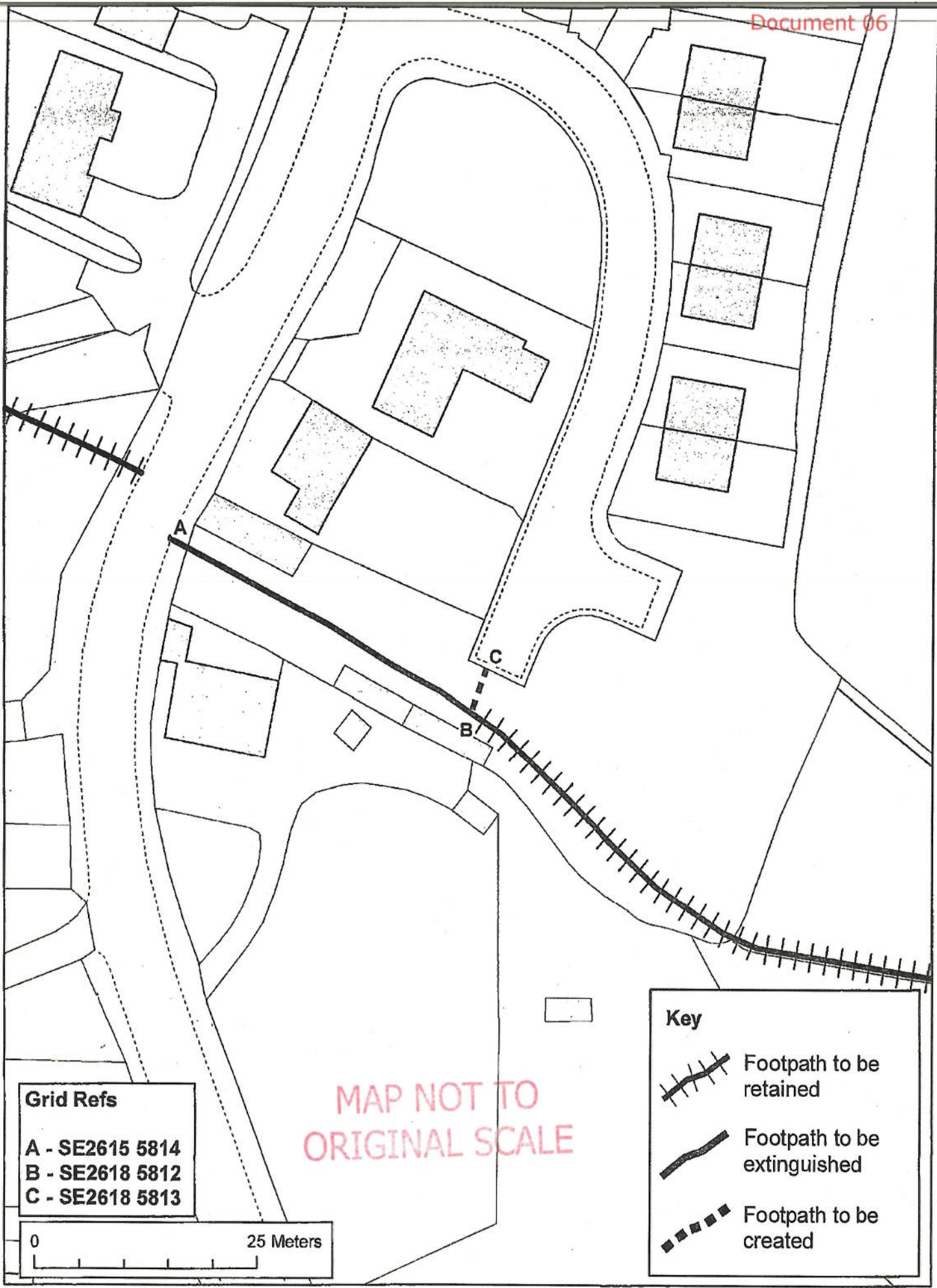
23. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

24. I confirm the Order.

Alan Beckett

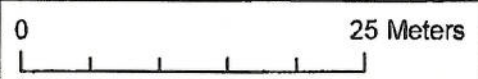
Inspector






MAP NOT TO ORIGINAL SCALE

Grid Refs

- A - SE2615 5814
- B - SE2618 5812
- C - SE2618 5813



Key

-  Footpath to be retained
-  Footpath to be extinguished
-  Footpath to be created

