



Order Decision

Site visit on 10 January 2019

by Mark Yates BA(Hons) MIPROW

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

Decision date: 01 December 2020

Order Ref: ROW/3199856M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as The Cheshire West and Chester Borough Council (Addition of particulars to the Definitive Statement for Footpath No. 19, Beeston) Modification Order 2017.
- The Order was made by the Cheshire West and Chester Council ("the Council") on 22 June 2017 and proposed to modify the definitive statement in relation to Footpath No. 19, in the parish of Beeston, as detailed in the Order Map and Schedule.
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications.

Summary of Decision: The Order is confirmed subject to the revised modifications set out below in the Formal Decision.

Procedural Matters

1. This decision should be read in conjunction with my interim decision ("ID") of 22 February 2019, with the numbers in square brackets representing particular paragraphs in the ID. All of the points referred to below correspond to those delineated on the Order Map.
2. My proposed modifications primarily involved describing the width of the A-C section of the footpath by reference to boundaries shown on the 1910 Ordnance Survey ("OS") map. The intention was to show it by way of hatching on this map. An objection was submitted by the Council to this supplementary map being appended to the Order. I have considered this objection from the written representations of the parties, including the submission made by Mr Hall of William Hall and Co on behalf of the late Mr Jenkins.

Main Issues

3. I outlined the relevant matters in relation to the Order, as made, in the ID [4]. The issue now is whether there is any new evidence or argument which has a bearing on how the width is recorded for the A-C section.

Reasons

4. Mr Hall and the Council do not dispute that it is likely the public footpath between points A-C was set out by reference to its historical boundaries. Therefore, the hedge to hedge presumption is applicable in terms of the width of this section [10]. This means that regard should be given to the extent of the lane shown on the historical maps, most notably the OS mapping.
 5. The Council highlights two issues regarding the hatching shown on the supplementary map. Firstly, the extent of the hatching towards point C and
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secondly at the point the historical maps show a gap in the south-western¹ boundary of the lane, where there was access to a property.

6. In order to address the above concerns, the Council has provided a modern map² on which is overlaid the extent of the lane shown on the 1910 OS map. The Council also suggests that the minimum and maximum widths of the path are specified along with the hatching shown on this additional map.
7. I accept that the additional map provided by the Council reflects the modifications I proposed to make to the Order. In terms of the map now put forward by Mr Hall, the Council points out that it is enlarged and marked 'not to scale'. Further, it does not use the recommended shading or prescribed line styles. I take the view on balance that Plan MO/560B should replace the original supplementary map proposed in the ID.
8. I noted in the ID the variance in the widths that were calculated by the parties from the OS maps [11]. It remains my view that it is not possible to determine the minimum and maximum widths from these OS maps to the degree of precision put forward by the parties. I therefore consider on balance that it is only reasonable to describe the width of the A-C section by reference to the boundaries shown on the OS maps, as reflected by plan MO/560B.

Conclusion

9. For these reasons I conclude that the Order should be confirmed subject to the revised modifications detailed below.

Formal Decision

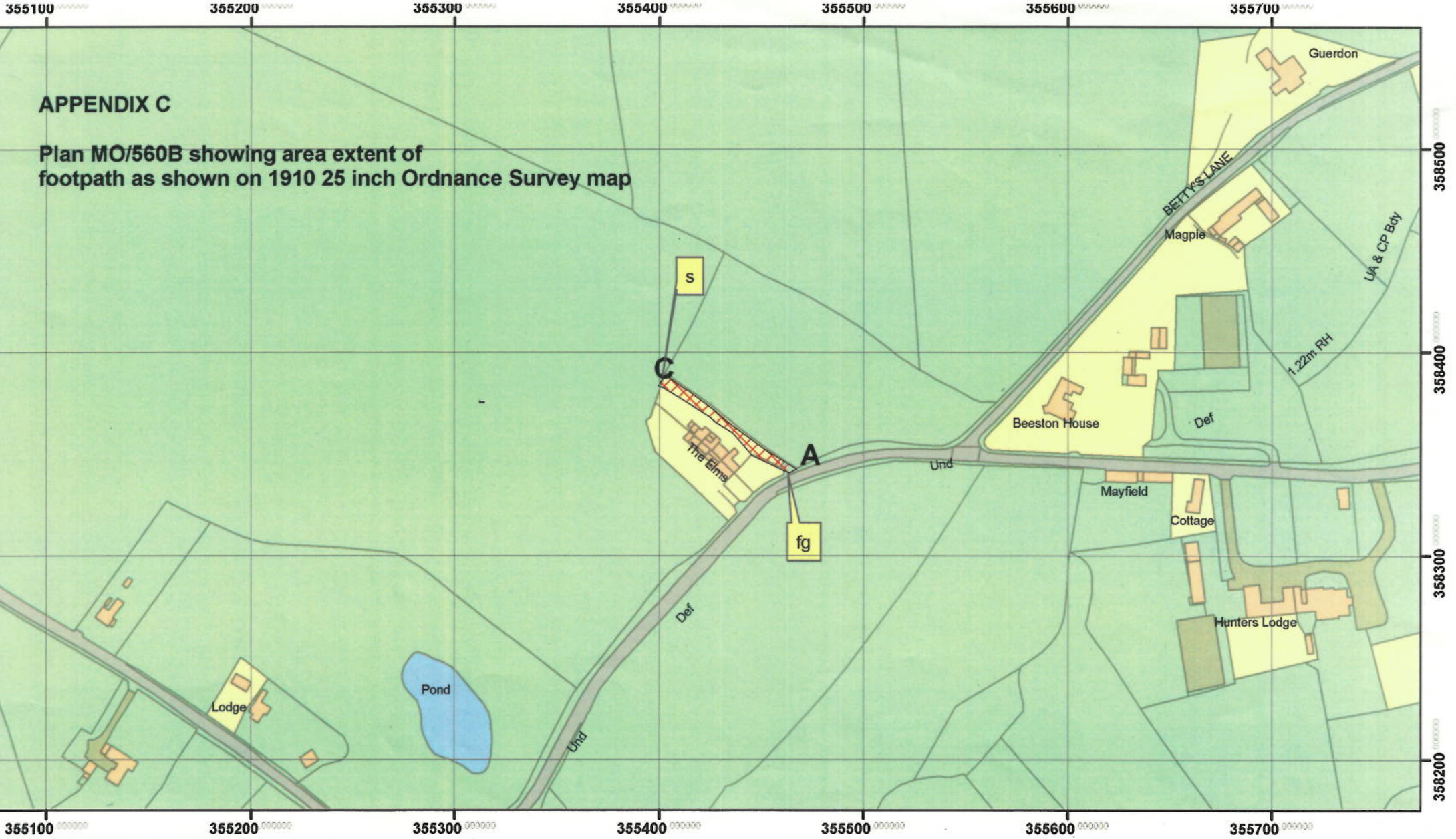
10. I confirm the Order subject to the following modifications:
 - Delete the grid reference "SJ 55469 58342" for the first limitation listed in Part II of the Order Schedule and insert "SJ 55461 58343".
 - Delete the first paragraph within the section headed "Widths" in Part II of the Order Schedule and insert "*The width between the junction with Moss Lane at OS grid reference SJ 55467 58342 and the field boundary at OS grid reference SJ 55401 58387 is shown by red hatching on plan MO/560B which is appended to this Order*".
 - Attach plan MO/560B to the Order.

Mark Yates

Inspector

¹ I referred to this as the western boundary in the ID and the Council refers to it as the southern boundary. It seems to me that it is located between these two compass points.

² Plan MO/560B



Wildlife and Countryside Act 1981
The Cheshire West and Chester Borough Council
(Addition of Particulars to the Definitive Statement for
Footpath No 19 Beeston) Modification Order 2017


Cheshire West and Chester

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