



Order Decision

Site visit made on 24 November 2020

by K R Saward Solicitor

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

Decision date: 01 December 2020

Order Ref: ROW/3235465

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Hertfordshire County Council (Aspenden Old Lane, Buntingford) Extinguishment Order 2018.
- The Order is dated 27 April 2018 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection outstanding Hertfordshire County 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. No-one requested to be heard with respect to the Orders and so I made an unaccompanied site inspection, taking account of the written representations.
2. As I have found it convenient to refer to points along the existing and proposed routes as shown on the Order Map, I attach a copy for reference purposes.
3. Having initiated and made the Order, Hertfordshire County Council as Order Making Authority ('OMA') supports the confirmation of the Order.
4. Despite extensive enquiries the OMA was unable to ascertain all ownership of the land in question. In these circumstances the Secretary of State granted dispensation to the OMA from serving notice on the owners/occupiers of the land over which the Order path runs which would otherwise be required.

Main Issues

5. By virtue of section 118(2) of the 1980 Act, for me to confirm the Order I must be satisfied that it is expedient to stop up the path having regard to:
 - (a) the extent (if any) to which it appears that the path would, apart from the Order, be likely to be used by the public; and
 - (b) the effect that the extinguishment of the right of way would have as respects land served by the path, account being taken of the provisions as to compensation.
6. In accordance with section 118(6) any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.
7. I must also have regard to the material provisions of any public rights of way improvement plan ('ROWIP') prepared by any local highway authority whose area includes land over which the Order would extinguish a public right of way.

No provision within the OMA's ROWIP which is material to the Order has been identified and I have not therefore considered the issue further.

8. I have had regard to the judgments in *R v SSE ex parte Stewart* [1980] JPL 537 and *R v SSE (ex parte Cheshire County Council* [1991] JPL 537 which clarified the relevant tests to be applied. Whilst the OMA must consider the need for the path for public use when making the Order, I must look at its likely future use.

Reasons

Background

9. In 2018 the OMA made and confirmed modification orders for two bridleways in Aspenden and Buntingford to the Definitive Map and Statement ('DMS'). Whilst investigating the applications for those claimed routes the OMA say they discovered an anomaly in the historical documents. A section of the old lane running between Aspenden and Buntingford had not in fact been stopped up as public highway as the records indicated was intended.
10. It emerged that a section of lane as shown on Aspenden Tithe Map 1845 was to be replaced by 'Public Bridleway and Footway No 11' as shown and set out in the Inclosure Map and Award 1869 along a more direct alignment than before. The section of lane in question is shown with a plot number listed in the Award as 'Allotments' and with a note recording that fences were to be made and maintained by the owner 'against the road'. The Inclosure Map depicts the eastern end as fenced at its road junction. If the section of lane was to remain as public highway then it would be anticipated that no plot number would have been allocated and the land not fenced off. The Award did not stop-up this section of the old lane and the OMA has been unable to trace any other legal order which does so.
11. The Extinguishment Order which is the subject of this decision seeks to correct that omission. The section of lane concerned does not appear on any maps after the 1869 Inclosure Map. It is not on the list of streets held by the local highway authority nor is it shown on the DMS.
12. The OMA explains that whilst the route set out in the Inclosure Award was a 'bridleway and footway', this Order is made to extinguish a restricted byway to ensure that if any higher rights are later discovered they too will be extinguished. A bridleway allows a right of way on foot as well as the right to ride or lead a horse and by bicycle (subject to limitations). A restricted byway includes those rights but allows the public a right of way in/on vehicles (e.g. cycles and horse-drawn vehicles), but not motorised vehicles.
13. Concurrently with the 2018 Orders referenced above, a section of upgraded bridleway ('BR11') running to the south of the route proposed for extinguishment was diverted further away to the south of the A10 road.

The extent to which the right of way would be likely to be used

14. The Order route is currently unavailable as it is now obstructed by factory units and parking areas forming part of the Watermill Industrial Estate. However, these factors which prevent or diminish the use of the path are to be disregarded and viewed as temporary when considering the Order.

15. If the route was reinstated, then it appears unlikely that it would attract much, if any, use by members of the public. It is inaccessible from the western end as it does not connect with any other highway after BR11 was diverted in 2018. It is now a cul-de-sac route not leading to any point of interest. Its location running through an industrial estate where businesses operate is unlikely to appeal to users. That is particularly so as users could come into conflict with the movement of vehicles including HGV's and other commercial vehicles. For all types of user this could be unpleasant and hazardous especially those with animals and/or young children.
16. Moreover, the route is unlikely to be used when as a result of the 2018 Orders there is an alternative bridleway available not far to the south of the industrial estate which links Aspenden Road with Aspenden.

The effect which the extinguishment of the right of way would have as respects land served by the path

17. No other land besides Watermill Industrial Estate is served by the route. The objector claims to represent a number of business owners on the Industrial Estate. For those businesses, it would appear to be a benefit for public rights of way to be extinguished. If the path were to remain then obstructions would need to be removed from its line, including buildings, unless a separate application came forward for its diversion. There is no guarantee that the path would be diverted.
18. Indeed, representations in support of the extinguishment by businesses on the Industrial Estate were submitted to the OMA.
19. I understand that the objector does not wish to see a loss of 'amenity land' in case it is needed or helpful in the resolution of issues over the access road to the Industrial Estate. However, nothing on the ground would change in consequence of the proposed extinguishment.
20. From the evidence, it appears that no-one knew the path existed and this is reflected in how development has evolved. It seems to me that the land served by the route would not suffer any adverse effects from the extinguishment. If anything, it would deliver a benefit to the owners/occupiers whose premises are currently encumbered. For any of the owners/occupiers it is difficult to see how stopping public access by walkers, cyclists and riders going back and forth at any time through the industrial estate would not be beneficial.
21. No specific adverse effects arising from the proposed closure on the land concerned have been drawn to my attention. Given that no-one realised until recently that a public path still existed, there is no reason to believe that any reliance has been placed upon it in modern times. No issues of compensation are raised.

Whether it is expedient to confirm the Order

22. The Order shall not be confirmed unless I am satisfied that it is expedient to do so. Use of the word 'expedient' in section 118 means that other relevant considerations besides those mentioned in the section can be taken into account in determining whether to confirm the Order.
23. An objection was made to the Order "on social, environmental, economic and domestic grounds as it is against the wellbeing of residential and business

residents alike". The objector has failed to elaborate and it is unclear how the well-being of any resident would be adversely affected if this route continues to be unavailable.

24. It is further argued by the objector that the closure of public paths which could be used for cycling is contrary to Government planning policy guidelines which encourage walking and cycling. However, this is not a 'planning' related decision, but one which must be taken pursuant to the statutory tests in section 118.
25. As set out in my considerations above, the location of the route through an industrial estate and its cul-de-sac nature mean that it is most unlikely to be utilised by the public in future. It is improbable that cyclists would wish to ride through a potentially hazardous working environment with large manoeuvring vehicles when there is nothing of interest to see, only to return the same way due to there being no onward link. I have no reason to believe that any harm to residents' wellbeing would be caused by extinguishment of the path or that any such benefit would be accrued by it being re-opened.
26. I consider that there would be very little, if any, negative impact from extinguishing the route. There would be far greater disruption to businesses affected if the route were to re-open with all that would entail in clearing the alignment of all development built without knowledge of the path.
27. In all the circumstances of the case I am satisfied that it is expedient to confirm the Order.

Other Matters

28. Any grievances that the objector may have with the local planning authority on issues related to the industrial estate or the condition of the access roads fall outside of my considerations which are confined to the statutory tests applicable to the extinguishment of this specific route. Similarly, the extent of Footpath 27 is not a matter for me.

Conclusions

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

Formal Decision

30. I confirm the Order.

KR Seward

INSPECTOR

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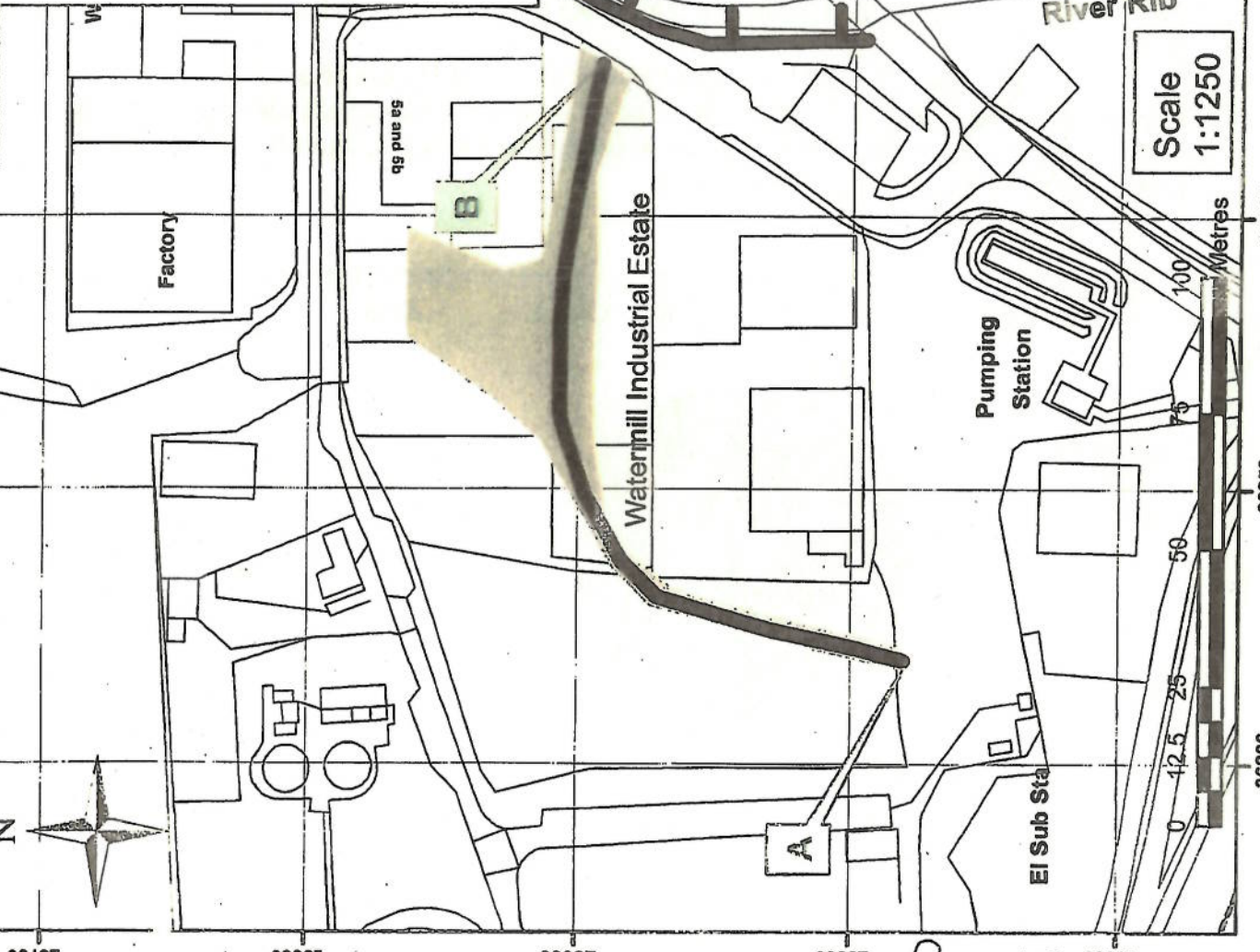
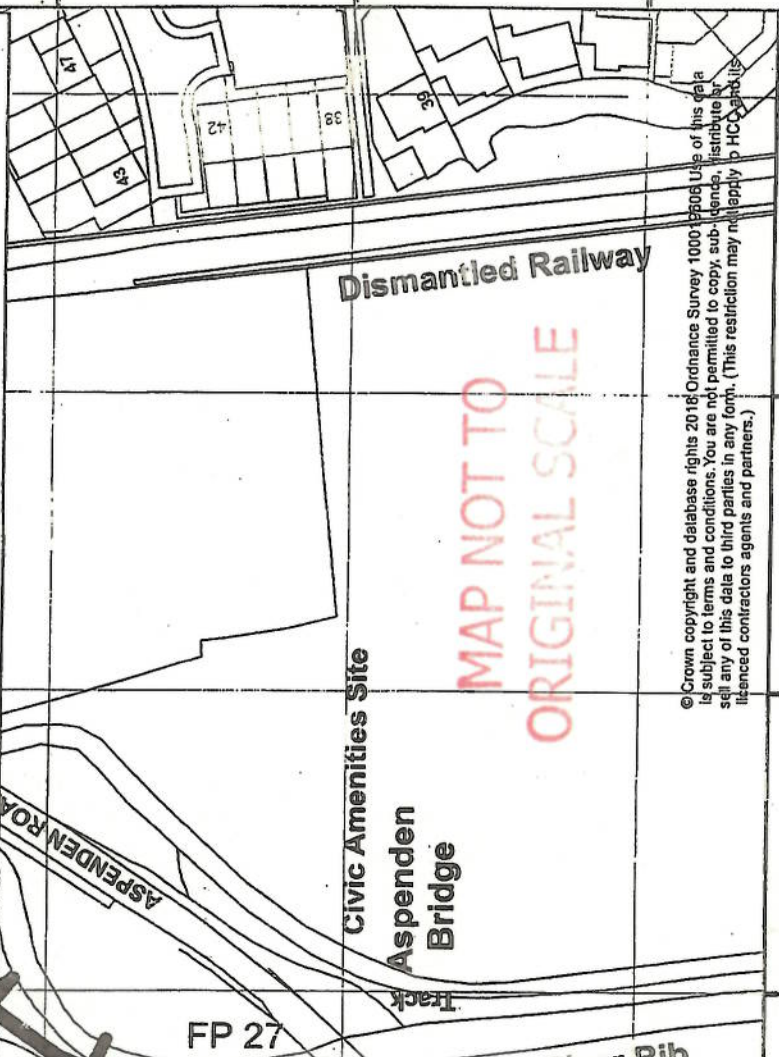
This Plan Forms part of the
 Hertfordshire County Council
 (Aspenden Old Lane, Buntingford)
 Extinguishment Order 2018

Old Lane to be extinguished

Existing footpath

Parish boundary

Appears on DM Sheet No. 24



28700 28650 28600 28550 28500

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MAP NOT TO ORIGINAL SCALE

Scale 1:1250

Metres

36500 36450 36400 36350 36300 36250 36200