



Order Decision

Site visit made on 20 October 2020

by Alan Beckett BA MSc MIPROW

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

Decision date: 12 November 2020

Order Ref: ROW/3239340

- This Order is made under Section 119 of the Highways Act 1980 ('the 1980 Act') and is known as The Borough Council of Pendle Part of Public Footpaths 30 and 32 Brierfield Public Footpath Diversion Order 2019.
- The Order is dated 11 March 2019 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Pendle 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 paths at issue on Tuesday 20 October 2020.
2. As noted above, there was one objection outstanding when the Council submitted the Order for confirmation. The objection raised two matters; first, that the current line of footpaths 30 and 32 does not cross the house or garden of High Withens; secondly, that the land at issue is common land and the diversion is an attempt to unlawfully enclose common land for development.
3. Contrary to the objector's assertions, the land surrounding Little Toms Farm is not registered common land. As regards development, I saw on my site visit that there was an area of ground to the west of The Barn and the south-west of Hill View that had been excavated, but there was no evidence of new buildings being erected on the site. Any development or potential redevelopment would be a matter for the landowner and the local planning authority to determine in accordance with the relevant local policies but would not be precluded on the grounds that the land was registered common land. This part of the objection is without merit.
4. As regards the contention that footpaths 30 and 32 do not cross the land occupied by High Withens, the position of the footpaths was recorded on the definitive map prior to Little Toms Farm being extended by the construction of High Withens. Ordnance Survey maps published between the mid-nineteenth century and up to the 1960s consistently show a footpath on the alignment shown in the definitive map with High Withens being absent. Photographic evidence from the 1960s provided by Lancashire County Council demonstrates that High Withens did not exist at the date the photograph was taken.

5. The available evidence suggests that High Withens was erected in the 1970s without footpaths 30 and 32 being formally diverted; neither Lancashire County Council, the Council or the owners of the property have any record of a diversion order being made in relation to the footpaths. In my view, the objector's submission with regard to the position of the footpaths is erroneous and without merit.

The Main Issues

6. Section 119(6) of the 1980 Act involves three separate tests for an Order to be confirmed. These are:

TEST 1: whether it is expedient in the interests of the landowner, occupier or the public for the path to be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.

TEST 2: whether the proposed diversion is substantially less convenient to the public.

TEST 3: whether it is expedient to confirm the Order having regard to the effect which (a) the diversion would have on public enjoyment of the path as a whole; (b) the coming into operation of the Order would have as respects other land served by the existing public right of way; and (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

7. In deciding expediency at the Test 3 stage, (a)-(c) are mandatory factors. Other factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to enjoyment of the land affected by the new paths must be taken into account where applicable.
8. I shall also have regard to any material provision contained in a rights of way improvement plan ('ROWIP') for the area when considering the Order. Furthermore, I need to consider what impact (if any) the proposed diversion would have upon the needs of agriculture and forestry¹ or the biodiversity² and natural beauty of the area³. I must also consider whether the Public Sector Equality Duty ('PSED') would be discharged by this proposal.

Reasons

Whether it is expedient, in the interests of the owner of the land crossed by the footpaths, that the footpaths in question should be diverted

9. The application to divert parts of footpath 30 and 32 was made by the Executors of the estate of the registered owner of the affected land who died on 27 June 2016. In the course of their duties, the Executors became aware that the footpaths were shown as passing through High Withens. The Executors wish to divert the footpaths as it would be unlikely that any prospective

¹ Section 121 (3) of the 1980 Act

² Section 40 of the Natural Environment and Rural Communities Act 2006 - duty to have regard to the purpose of conserving biodiversity.

³ Section 11 of the Countryside Act 1968 duty to have regard to the desirability of conserving natural beauty and amenity of the countryside.

purchaser would be able to secure a mortgage on the property with a public footpath passing through it given that the Highway Authority has a duty to protect and assert the right of the public to use the footpath.

10. I saw from my site visit that the definitive line of footpath 32 crosses the rear garden area of High Withens and passes directly through the house. The proposed diversion will be in the interests of the Executors as it would enable them to sell High Withens as a residential property unencumbered by a public right of way. I conclude that it would be expedient in the interests of the owners of the land that the footpaths should be diverted.

Whether the new footpaths will not be substantially less convenient to the public

11. Although the southerly terminal point of footpath 30 will be diverted approximately 15 metres to the west, the new terminal point will maintain a connection with footpath 32. I am satisfied that the new southerly terminal point for footpath 30 will be substantially as convenient for the public.
12. For those users undertaking a journey north-west to south-east (or vice versa) along footpaths 30 and 32, the proposed diversion would require them to walk an additional 12 metres between points A and D compared with what would be required if the current lines of the footpaths were open and available. I do not consider this additional distance would inconvenience users.
13. The proposed path between points D and C would run between fences that mark the boundaries of adjacent fields and domestic gardens. Immediately to the south-east of point C the field boundary shown on the Order plan does not cross the proposed path to link with the garden boundary of High Withens but turns to the east to separate the proposed path from the adjacent field. At this point there is a wide gap between the field boundary to the south and the garden boundary of High Withens to the north. There are no stiles or gates for pedestrians to negotiate on the proposed path and users would not find the proposed path inconvenient in this respect.
14. The ground traversed by the proposed path rises gently from the south-east as does the existing definitive path and offers a walking surface comparable to that of the existing route and is unlikely to inconvenience users of the path in this respect. Overall, I consider that the proposed footpath would not be substantially less convenient to the public.

Whether it is expedient to confirm the Order having regard to

(a) the effect the diversion would have on public enjoyment of the path as a whole

15. The enjoyment derived from the use of a public right of way is, to a large extent, a personal and therefore subjective assessment. For example, enjoyment can be influenced as much by the weather during a walk as by individual personal preferences. However, I have attempted to assess this matter objectively, comparing such matters as the physical condition of both routes and the views afforded by both routes.
16. There are a number of public footpaths that converge on the land in the vicinity of Little Toms Farm which provide opportunities for short circular walks to be undertaken from the residential estates which lie to the north of Hillingdon Road. These footpaths provide a link in the wider network of public rights of

way in and around Brierfield. The ability of the public to undertake such walks would not be adversely affected by the proposed diversion.

17. The proposed footpath would diverge from the current line by approximately 15 metres at the widest point of divergence. The proposed diversion would have limited, if any, impact upon the extensive views of the surrounding countryside to the east, south and west which are currently available from the existing route.
18. On balance, I feel the enjoyment of those who seek pleasure from informal recreation on footpaths such as these would not be diminished as a result of this Order.

(b) the effect the coming into operation of the Order would have with respect to the land served by the existing path

19. The diversion of the footpaths would have a positive impact upon High Withens as the property would no longer be encumbered by a public right of way. I conclude that it is unlikely that the diversion would have any adverse impact upon the land served by the existing path.

(c) The effect any new right of way created by the Order would have as respects land over which the new right is created together with any land held with it, account being taken of the provisions as to compensation

20. No evidence has been submitted which suggests that the proposed diversion would have any negative impact upon the land over which the alternative path would run. The Executors have entered into an undertaking with the Council to defray any compensation which may arise as a result of the proposed diversion.

Consideration given to the provisions of a ROWIP

21. The Lancashire Rights of Way Improvement Plan 2015 – 2025 draws broad strategic conclusions to identify improvements to the rights of way network within the area of the plan. The proposed diversion does not appear to conflict with the policies set out in the ROWIP.

Consideration given to the needs of agriculture and forestry and the conservation of biodiversity and natural beauty

Agriculture and forestry

22. The land to the south of High Withens over which the proposed footpath would run is fenced from adjacent grazing and private amenity land and provides an means by which pedestrians can travel between the junction of footpaths 32 and 35 and the junction of footpaths 30 and 32. This land is not used for agriculture or forestry. To the north-west of High Withens, the proposed footpath would run over the same area of pasture as the current path. I consider it unlikely that there would be any negative impact upon agricultural or forestry operations arising from the proposed diversion.

Biodiversity

23. The land crossed by the proposed footpaths is not classified as a Site of Special Scientific Interest and is not covered by any other local designations aimed at

conserving habitat types or species diversity. There is no evidence before me that the proposed diversion would have any adverse impact upon biodiversity.

Natural beauty

24. The land crossed by the proposed footpaths is not located within any area which is designated as being of special importance in a national context although the path is set in attractive countryside on an elevated position beyond the residential part of Brierfield. The diversion of the footpaths is unlikely to have any adverse impact upon the conservation of the natural beauty of the area.

Public Sector Equality Duty

25. The proposed alternative route would be predominantly over land which rises gently from the south-east. There would be no gates or stiles for users to negotiate on the proposed route, although existing structures encountered on unaffected parts of the footpaths would remain. The increase in the overall length of the path by approximately 12 metres is unlikely to be an issue for current users of the path, and taking into account the characteristics of those parts of the path unaffected by the Order, there should be no disproportionality introduced to persons with protected characteristics (over and above the effects likely to be experienced by the rest of the population). I consider that the PSED would be discharged by the proposal.

Conclusions on whether it is expedient to confirm the Order

26. For the reasons given above, I do not find that there would be any detrimental impact upon the enjoyment to be derived from a walk along the footpaths at issue, and that there would be no adverse impact upon the land currently served by the footpaths or the land which the diverted path would cross. Consequently, there is no conflict between the outcomes of Test 3 and Tests 1 and 2. It follows that I consider that it would be expedient to confirm the Order.

Overall Conclusion

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

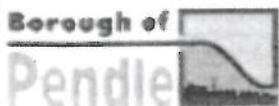
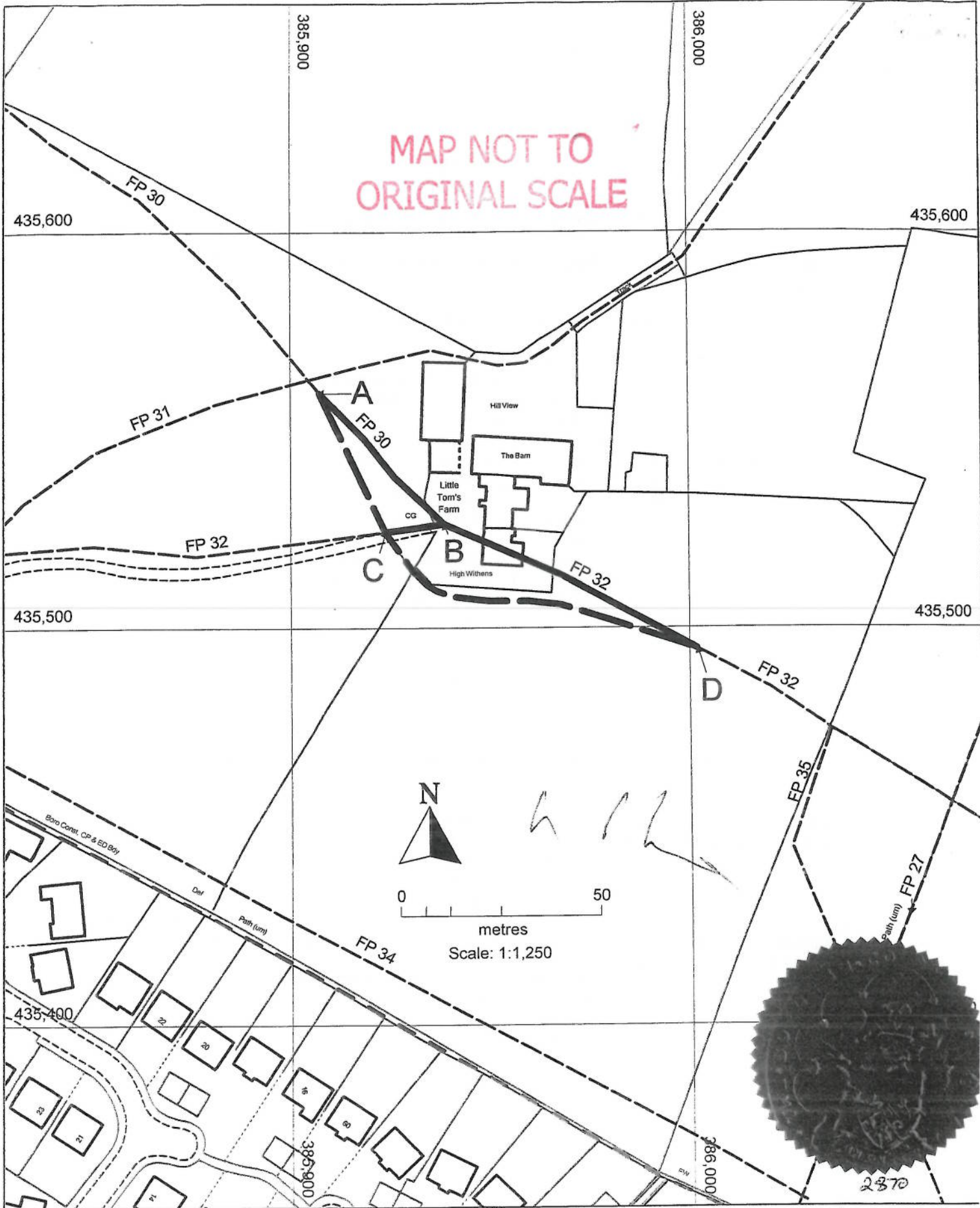
Formal Decision

28. I confirm the Order.

Alan Beckett

Inspector

MAP NOT TO ORIGINAL SCALE



Proposed diversion of public footpaths 30 and 32 Brierfield at Little Tom's Farm

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Drawn: T Partridge

Footpath to be diverted

Proposed diversion

Other footpaths