



Order Decision

Site visit made on 11 November 2020

by Alan Beckett BA MSc MIPROW

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

Decision date: 02 December 2020

Order Ref: ROW/3241920

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Hampshire (Test Valley Borough No. 13) (Parish of Braishfield – Footpath No. 4) Public Path Diversion and Definitive Map and Statement Modification Order 2018.
- The Order is dated 31 October 2018 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection and 1 representation outstanding when Hampshire County 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 path at issue on Wednesday 11 November 2020.

The Main Issues

2. Section 119(6) of the Highways Act 1980 requires that I must be satisfied that three separate tests are met before the Order can 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 would not be 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.
3. 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 path must be taken into account where applicable.

4. In reaching my decision I am also required to have regard to any material provision contained in a rights of way improvement plan (ROWIP) for the area. 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.
5. The Order has been made in the interests of the owner of the land crossed by the line of footpath 4.

Reasons

6. *Whether it is expedient, in the interests of the owner of the land crossed by the footpath, that the footpath in question should be diverted*

7. The current line of footpath 4 crosses an area of pasture immediately to the south-west of the garden area of Paynes Hay Farm. The applicant for the diversion is currently in the process of renovating the property with the intention of creating a family home in a building which I understand has been unoccupied for some time. The application has been made to increase the privacy and security of the applicant's family by moving the line of footpath 4 westward by approximately 100 metres. Although the sole objector contends that the previous occupier of the farm did not need further screening from the path, it is evident that the current owner of the property takes a different view.
8. I saw from my site visit that renovation works were underway at the property and that the current line of the footpath ran adjacent to a lawned area to the south west of the house and adjacent to a tennis court; users of the path would have direct views over the lawned area toward the rear of the house and of anyone playing tennis. Although the property is not yet occupied (the extensive renovation works not yet being complete), it is not difficult to appreciate the concerns that the applicant has regarding privacy and security given the proximity of the footpath to the garden and tennis court.
9. Although users of the diverted footpath would still have a view towards the farmhouse from the proposed alternative path, any intrusion would be reduced as the diversion would take the public further away from the gardens and tennis court. I am satisfied that the diversion of the footpath to the west would enhance the amenity of the property.
10. Overall, I am satisfied that the proposed diversion would be in the interests of the owner of the land crossed by footpath 4.

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

11. The diversion would result in the junction of footpath 4 and Paynes Hay Road moving to the south-west by approximately 110 metres. For those undertaking a circular walk which takes in footpaths 6, 7, 23, 8 and 9, the new junction with Paynes Hay Road is likely to be as convenient as the current terminal

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.

- point as the proposed diversion would reduce the amount of road walking needed to reach footpath 6.
12. For those undertaking a shorter circular walk from Braishfield along footpath 4 and returning via footpath 9, this would involve additional walking along Paynes Hay Road. The road appeared to be lightly trafficked and there were good sight lines in both directions from point D. The verges of the road also appeared to be sufficiently wide to provide pedestrians with a refuge from oncoming traffic. I consider that those users undertaking circular walks from the village along footpath 4 would find the altered terminal point at D to be substantially as convenient as point A.
 13. The proposed diversion would increase the length of footpath 4 by approximately 211 metres. The two circular walks identified above are approximately 5 Km and 2 Km in length. For pedestrians making use of footpath 4 as part of either circular walk, the additional distance which would arise from the diversion is unlikely to present a substantial inconvenience.
 14. The existing route of footpath 4 requires the user to negotiate 3 stiles; one at Paynes Hay Road, one at the entrance to the woodland and one near the property known as Cherry Hill. The proposed diversion would remove two of these stiles as it is proposed to install a pedestrian gate at point D, with no path furniture being required between points D and B along the field and woodland edges. The absence of stiles on the proposed path is likely to make it more convenient for some users.
 15. Where footpath 4 currently enters the woodland to the south-east of Paynes Hay Farm, the path runs over a moderately steep gradient on heavy clay ground which is wet and slippery and is crossed by the exposed roots of the laurel trees growing on the west side of the path. In contrast, the proposed path would follow the edge of the woodland on a gentle east – west slope over a grass and earth surface which is firm underfoot. For most users, the provision of a wide grass path over a gentle gradient which does not require the negotiation of a slippery incline is likely to be welcomed.
 16. Overall, I consider that the proposed path 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

17. 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 characteristics of both routes and the views afforded by both routes.
18. The sole objector submits that the current line of footpath 4 runs through three distinct landscape types; pasture at the western end, woodland in the centre and arable at the east. The objector finds a walk through the woods offers a particularly pleasant contrast in terms of light, temperature and sound in comparison with the arable or pasture land crossed by the footpath. The objector considers that as the proposed path would run through a wholly arable landscape the amenity value to path users would be reduced.

19. The applicant submits that the land to the west of C – D has been sown to pasture and that this element of landscape type would not be lost as a result of the diversion. In addition, whilst the footpath would not run through the woodland, the proposed path would run along its perimeter and users would have views into the wood and to the copse adjacent to Paynes Hay Road. Furthermore, conservation margins have been sown along the northern and eastern edges of the proposed path to provide a pollen and food source for insects and birds; the applicant contends that these margins will provide a diverse habitat which will add interest and amenity for users. The Council made similar submissions regarding the path running adjacent to the woodland.
20. I saw that whilst the proposed path would not run within the woodland, users would walk immediately adjacent to it for around 450 metres; the diversion would not therefore disengage users from the woodland landscape although I accept that such an experience would inevitably be different from walking through the wood itself. However, path users would still be able to see into and through the woodland and be able to observe some of the wildlife present within it.
21. The proposed path is not without its attractions and interest, due to the land management work undertaken by the applicant; the pasture element of the landscape found on the current route will be retained, and the conservation margins between the path and the pasture will add a degree of interest for users which is not present on the current path. Although the enjoyment to be derived from a walk through the woodland may be diminished as a result of the diversion, an experience of the woodland would remain due to the proximity of the proposed path to it.
22. Although gradient and ground conditions on the current and proposed routes may be matters of convenience, they are also factors which have an impact upon the enjoyment to be derived from a walk in the countryside. I consider that for most users, the amenity to be derived from the physical characteristics of the proposed path, in terms of the absence of slip or trip hazards currently present on footpath 4, would outweigh any perceived loss of enjoyment to be derived from walking through the woodland.
23. Consequently, I do not consider that the diminution in amenity value for which the objector contends is of such significance that it would lead to a conclusion that the footpath should not be diverted. Furthermore, and as a counterweight to any loss of enjoyment which may arise, I consider that the land management works already undertaken by the applicant will provide a more diverse environment for the user to walk through, and which would add to the enjoyment to be derived from a walk along footpath 4.
24. The objector also submits that the proposed path would contribute little to amenity as the views over the surrounding countryside are the most extensive from the elevated part of footpath 4 unaffected by the diversion. I noted that the ground from point B sloped gradually east to west and that the extensive views of the surrounding countryside between B and C were not dissimilar to those available on the unaffected part of footpath 4. Between points C and D, the user would have an extensive view of the wooded ridge to the north of Red Cottage and a view of the house at Paynes Hay Farm before reaching the copse near the road. The views of the countryside to the north beyond Red Cottage are not available from the current route due to the surrounding woodland and

- would provide an additional source of interest and enjoyment to users of footpath 4.
25. The objector also submits that the current line of footpath 4 has a heritage value as an historic route between the early eighteenth century farmhouse at Paynes Hay, the village and those farms at Merrie Mead and Fern Hill to the east of Braishfield. I have dealt with a number of cases where objectors to a proposed diversion have submitted that the route should not be diverted because it has historic significance. In almost all those cases, such assertions are not supported by any evidence. This case is no different; no evidence has been submitted which demonstrates that footpath 4 is of particular local or national significance.
26. In any event, the claimed antiquity of the path did not prevent a previous diversion in around 1970, when I understand the northern end of the path was diverted from within the courtyard of the farm to its current route which commences on Paynes Hay Road at point A.
27. Although the objector contends that the diversion would deprive a user of views of the roofline of the farmhouse, such views were available through the trees from the proposed path at the time of my site visit and a view of the farmhouse was available mid-way between points C and D.
28. On balance, I feel the enjoyment of those who seek pleasure from informal recreation on footpath 4 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*
29. The proposed diversion would enhance the amenity of the garden and other land in the immediate vicinity of Paynes Hay Farm; this is likely to have a positive impact upon the land held as part of that property. 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*
30. The land crossed by the proposed alternative route is in the same ownership as the land crossed by the current line of footpath 4. 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 applicant for the diversion has 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

31. The Hampshire Countryside Access Plan 2015 – 2025 draws broad strategic conclusions to identify improvements to the rights of way network within the area of the plan. One of the improvements sought is that, where possible, limitations such as stiles should be removed to assist those with mobility difficulties. As the proposed path would not contain any stiles and as a

pedestrian gate would be provided at point D to allow access to the path from Paynes Hay Road, the diversion would appear to be consistent with the policies set out in the Council's ROWIP.

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

Agriculture and forestry

32. The land crossed by the proposed path forms part of the wider land of Paynes Hay Farm. Whilst the proposed path is adjacent to both pasture and woodland, it is segregated from both by a hedge to the east and a conservation margin to the west. The land crossed by the proposed path does not appear to be used for agriculture or forestry. Consequently, I consider it unlikely that there would be any negative impact upon agricultural or forestry operations arising from the proposed diversion.

Biodiversity

33. The land crossed by the proposed footpath 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. However, the creation of conservation margins alongside the proposed path may have a positive impact upon local biodiversity.

Natural beauty

34. The land crossed by the current and proposed footpaths is located in an attractive rural setting to the east of the New Forest and to the west of the South Downs. 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

35. The proposed alternative route would be predominantly over land which rises gently to the east. There would be no stiles for users to negotiate on the proposed route and a pedestrian gate would be installed at point D. The increase in the overall length of the path by approximately 211 metres is unlikely to be an issue for current users of the path. Taking into account the lesser gradient of the proposed path and the improved accessibility arising from the removal of stiles, 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 conclude that the PSED would be discharged by the proposal.

Other matters

36. A representation was made by Braishfield Parish Council regarding the risk to the safety of path users posed by the condition of an old barn adjacent to the proposed path at point D. I understand it is the applicant's intention to remove the barn and replace it with one on a more appropriate site elsewhere on the applicant's land. In the meantime, I note that the applicant has secured the barn with Heras fencing to prevent path users from straying onto the land occupied by the barn.

Conclusions on whether it is expedient to confirm the Order

37. 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 footpath at issue, and that there would be no adverse impact upon the land currently served by the footpath 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 conclude that it would be expedient to confirm the Order.

Overall Conclusion

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

Formal Decision

39. I confirm the Order.

Alan Beckett

Inspector

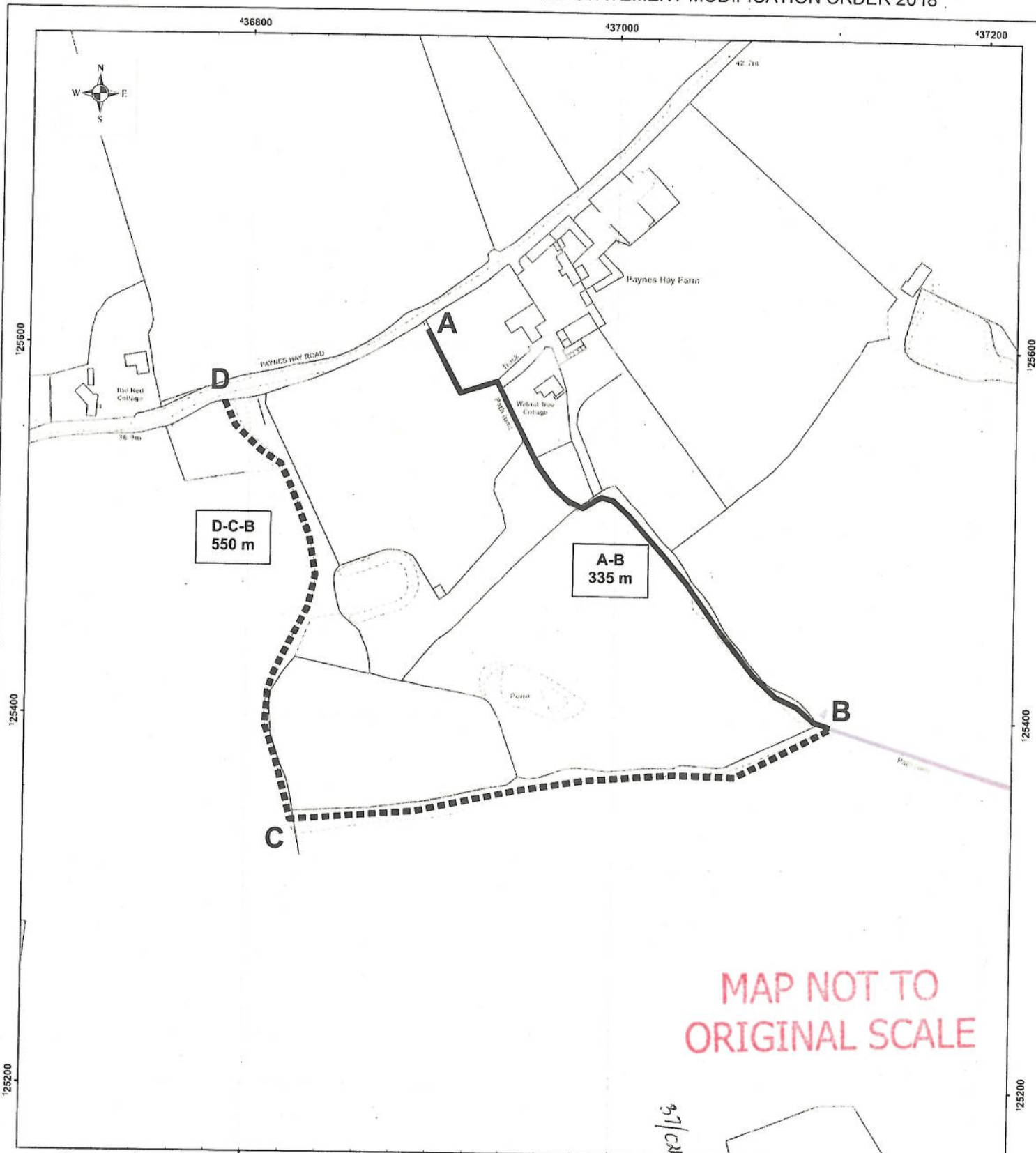
HAMPSHIRE COUNTY COUNCIL

MAP REFERRED TO IN

THE HAMPSHIRE (TEST VALLEY BOROUGH COUNCIL NO.13)

(PARISH OF BRAISHFIELD - PART OF FOOTPATHS NO.4)

PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2018



SCALE 1:1,500

LEGEND

FOOTPATH TO BE DELETED:-



FOOTPATH TO BE ADDED TO THE MAP:-



EXISTING FOOTPATH TO BE RETAINED:-



MAP No.1659 PRODUCED FROM DIGITAL DATA SUPPLIED BY ORDNANCE SURVEY

THE COMMON SEAL OF HAMPSHIRE COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-

DATE: 27 October 18



AUTHORISED SIGNATORY

KAREN MURRAY,
DIRECTOR OF CULTURE, COMMUNITIES
AND BUSINESS SERVICES, WINCHESTER

MAP NOT TO ORIGINAL SCALE

8/1/2018

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