



Order Decision

Hearing held on 2 February 2021

Site visit made on 23 January 2020

by Susan Doran BA Hons MIPROW

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

Decision date: 11 February 2021

Order Ref: ROW/3220645M

'Order B'

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Kirklees Council (Clayton Fields, Edgerton) Public Path Stopping Up Order 2018.
- Kirklees Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 26 September 2018.
- The Order proposes to extinguish the public rights of way shown on the Order plan and described in the Order Schedule.
- In accordance with paragraph 3(6) of Schedule 14 to the Town and Country Planning Act 1990 I have given notice of my proposal to confirm the Order so as to modify the preamble and include widths for seven replacement paths described.
- There were 11 objections and representations outstanding at the commencement of the Hearing.

Summary of Decision: The Order is confirmed subject to the modifications previously proposed, as set out below in the Formal Decision

Procedural Matters

1. This decision concerns the second of two orders made by Kirklees Council ('the Council') concerning land at Clayton Fields, Edgerton. On 17 February 2020, following a Public Inquiry held between 21 and 23 January 2020, I confirmed Order A, the Kirklees Council (Huddersfield Public Footpaths 477, 478, 479, 480, 481 and 482 – Clayton Fields, Edgerton) Public Path Modification Order 2018¹. I also proposed to modify Order B, the Kirklees Council (Clayton Fields, Edgerton) Public Path Stopping Up Order 2018, with modifications that required advertising.
2. The effect of Order B if confirmed with the modifications that I previously proposed², would be to remove a reference in the preamble to the Order concerning maintenance responsibility for the Woodland Walk, and to add widths for the seven replacement paths described in Part 2 of the Schedule to the Order.

Virtual Event

3. Three of those submitting objections and representations exercised their right to be heard. Accordingly, it was envisaged that a Hearing in person would be

¹ Accordingly, I have not addressed matters concerning Order A as raised in some of the objections and representations submitted following the advertising of proposed modifications to Order B

² In paragraph 71 of my decision dated 17 February 2020

held into the proposed modifications. However, the introduction of restrictions as a result of the Covid-19 pandemic meant a public event of this nature could not be held as planned. In order to progress this matter without delay, all interested parties were invited to complete questionnaires to help inform a decision about the best way to proceed. The decision taken was to hold a virtual event, that is online. Concerns were expressed that this was unfair to those who were unable to participate in this way, and/or took insufficient account of the technical abilities of participants, and the costs likely to arise for some. I understand these concerns and appreciate that, for everyone involved, a virtual event would not be the same as one held in person and, that for some, participating in an online event, or joining one via the telephone, would not be their preferred choice. Nevertheless, in deciding to run the event in this way it should be recognised that, given the situation prevailing at the time, it was necessary to find a way to move forward in a safe and stable manner for all parties involved.

4. Holding a virtual event meant there was no need for people to travel to a venue, with participants instead able to take part from their own home, office or other location that best suited them. Concerns about any local, or national, restriction that could be put in place at short notice, could be avoided, whilst at the same time taking account of the potential vulnerability of participants and observers. An event of this type allows participants to take part, or watch/listen in, using a computer, laptop, tablet, smart 'phone or landline.
5. Moreover, the purpose of the Hearing remains the same - to enable the Inspector to hear the evidence and explore the issues concerning the proposed modifications and, together with the written submissions, to reach their decision. I regard it as important to deliver decisions on Orders in as timely a manner as possible for the benefit of all parties involved so they are able to decide what to do next, depending on the outcome. In proceeding with a virtual event, I consider that a fair balance was reached between the needs and concerns surrounding the opportunity for public involvement and participation in the Hearing (made more difficult by the current pandemic), and the need to deliver a decision in a fair, open and impartial manner for all parties concerned.
6. Letters were sent out to the parties some two months prior to the Hearing providing a further explanation and information to enable them to participate in the event, together with joining instructions. A test event was held on 21 January 2021 to enable those wishing to take part in the Hearing itself an opportunity to familiarise themselves with the technology. At the Hearing, two parties joined via the telephone, with one taking part. I recognised that anyone joining in this way would be unable to see any documents referred to that may be shared on-screen, should the need arise. However, opportunities were available for all parties to access the relevant documents before the event (paragraphs 8 and 9 below). The remaining participants and observers joined online.

Site Visit

7. I had carried out an unaccompanied site visit prior to the Public Inquiry held in January 2020 and a further visit immediately following its close, on that occasion accompanied by parties supporting and opposing the Orders. Due to the Covid-19 restrictions and guidance in place at the time of the Hearing, and

taking account of the type of modifications proposed, no further visit was made³.

Documents

8. With Council buildings closed to the public due to the Covid-19 pandemic, the Council helpfully afforded public access to the documents relating to the Order via their website and arranged to provide paper copies on telephone or email request, as detailed in the Site Notice and advertisement of the event.
9. I circulated an Agenda for the Hearing the week before the event which included a list of the documents it was anticipated may be referred to.
10. A late document submitted by the main Objector was circulated prior to the Hearing and a further document from the same Objector circulated at the event itself. The Council and Paddico (267) Limited ('the Supporter'), both supporting the modifications as proposed, were content to deal with these submissions, where relevant, at the Hearing.

The Main Issue

11. The main issue is whether there is any evidence or argument which has a bearing on the modifications I proposed to the Order which might indicate that those modifications should be amended or not pursued; that is whether, in the preamble to the Order, to delete the sentence, "The proposed Woodland Walk Y-Z will be privately maintained in accordance with planning requirements", and, whether in Part 2 of the Schedule to the Order after the description of the first six alternative highways to add the words "Width 2 metres", and after the description of the Woodland Walk to add the words "Width 1.8 metres".

Reasons

Proposed deletion of the wording relating to the maintenance of the Woodland Walk

12. It was argued that the Order should state who will be responsible for the Woodland Walk's maintenance – to avoid ambiguity and provide clarity were the path to fall out of repair in the future. At paragraph 16 of my 2020 decision, I noted that future maintenance of the Woodland Walk, a route guaranteed within the planning conditions and approvals, would be carried out by the Council as highway authority – a matter confirmed by them at the Inquiry.
13. Clearly the current reference in the Order to private maintenance is incorrect and should be removed. The Council clarified the inclusion of the sentence referring to private maintenance was due to that situation not being the norm. The question for me is whether the reference to maintenance should remain but be amended so as to record it as public and carried out by the Council (or highway authority) as the responsible body.
14. I have considered the Objectors' views on this matter and understand the concerns expressed for some certainty in this regard. Nevertheless, I prefer the argument put forward by the Council, and endorsed by the Supporter. The Council's maintenance responsibility as highway authority (paragraph 12

³ Several parties had requested an accompanied site visit. However, the issues they raised concerned Order A rather than matters relevant to Order B.

above), should Order B be confirmed and come into effect, stems from section 36(2)(d) of the Highways Act 1980⁴ ('the 1980 Act'). The duty to maintain a highway maintainable at public expense is further covered by section 41 of the 1980 Act. Accordingly, there is no requirement for the maintenance responsibility to be stated in the Order because it is implicit and is already covered by legislation as set out in the 1980 Act. In addition, if reference to the Council as highway authority being responsible for the Woodland Walk were to be included within the Order, then it would need to encompass all of the paths described, a point on which the main Objector concurred. Nevertheless, and for the same reasons given above, I consider there is no requirement nor need for this to be stated.

15. It follows in my view that there is nothing to cause me to amend or not pursue the modification as proposed.

The proposed recording in the Order of a width of 1.8 metres for the Woodland Walk and a width of 2 metres for the six other alternative highways

16. No specific objections or representations were raised in this regard in writing, although at the Hearing the issue of social distancing requirements under the Covid-19 restrictions was raised. The Council pointed out the proposed widths exceed that of many of the public rights of way recorded in its Definitive Map and Statement ('DMS') which fall short of a 2 or 1.8 metres width. The current social distancing requirements are a response to an unprecedented health situation. However, I am not aware of any Government guidance or legislation further to the pandemic concerning the width of public rights of way to be recorded in the DMS, that would require a reconsideration of the widths proposed for the footpaths in this Order.
17. I am satisfied that there is nothing to cause me to amend or not pursue these modifications as proposed.

Other Matters

Whether Order B should state the replacement paths will be recorded in the Definitive Map and Statement as public rights of way, and when

18. I agree with the Council and Supporter that there is no requirement for Order B to state that the replacement footpaths described will be recorded in the Council's DMS, nor when this will happen. Indeed, as the Council pointed out at the Hearing, it is possible that Order B may never come into effect. The Order cannot come into effect until such time as, or if, firstly it is confirmed, and then secondly, the alternative paths are created to a standard acceptable to the Council – that is they need to be constructed, inspected and certified as satisfactory. If that never happens then the routes set out in Order A would remain extant as public rights of way. If Order B is confirmed *and* comes into effect, then the existing paths would be stopped up and the replacement paths would be provided (in accordance with Article 3 to the Order). Following this and further to the relevant legislation⁵, the Council would be required to modify

⁴ Which states, "(2) Without prejudice to any other enactment (whether contained in this Act or not) whereby a highway may become for the purposes of this Act a highway maintainable at public expense...the following highways...shall for the purposes of this Act be highways maintainable at the public expense-(d) a highway, being a footpath, bridleway or restricted byway, created in consequence of ...an order made...under...the Town and Country Planning Act 1990...by a competent authority under section 257 of that Act..."

⁵ Wildlife and Countryside Act 1981, sections 53(2) and 53(3)(a)(i) and(iii)

its DMS. Whilst I note concerns expressed that the public require certainty, as it appeared the recording of the routes would be deferred indefinitely, I agree with the Council and Supporter that presently it cannot be known when, or if, Order B will come into effect, if it is confirmed. However, if so then the Council will need to follow the appropriate steps described above.

19. I further note from the Council's submissions that confirmation of Order A has been published and advertised without objection. Accordingly, the paths set out in that Order exist both on the ground and legally since the Order itself forms part of the records comprising the Council's DMS of public rights of way, notwithstanding that a new consolidated version of the DMS has yet to be published⁶.

Conclusions

20. Having regard to these and all other matters raised at the Hearing and in the written representations, I conclude that the Order should be confirmed with the modifications previously proposed.

Formal Decision

21. The Order is confirmed subject to the following modifications:

- In the preamble to the Order, delete the following, "The proposed Woodland Walk Y-Z will be privately maintained in accordance with planning requirements."
- In Part 2 of the Schedule to the Order, add "Width 2 metres" after the description of the first six alternative highways, and add "Width 1.8 metres" after the description of the Woodland Walk

S Doran

Inspector

⁶ The Council confirmed there was no requirement for it to produce a consolidated map further to confirmation of an individual order

APPEARANCES

For the Council

Anthony Gill *of Counsel*

instructed by Julie Muscroft, Service Director, Legal, Governance and Monitoring, Kirklees Council

Giles Cheetham

Public Rights of Way Officer, Kirklees Council

Supporter

Martin Carter *of Counsel*

instructed by Weightmans LLP *for* Paddico (267) Limited

Objectors

Jonathan Adamson

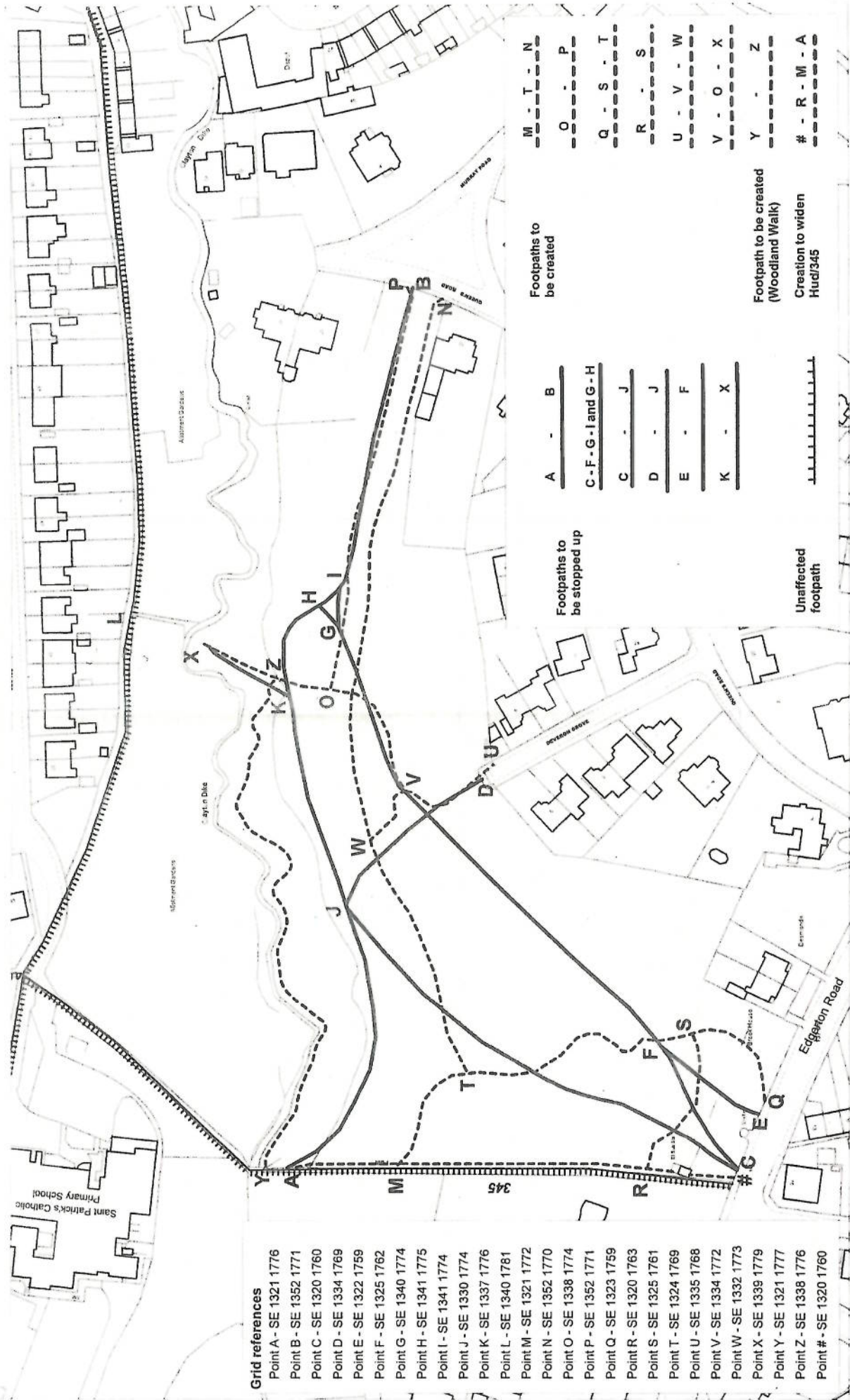
Chair, Clayton Fields Action Group

Simon Goodyear

DOCUMENTS SUBMITTED IN CONNECTION WITH THE HEARING

1. Statement of Case and comments on objections and representations from Kirklees Council dated 9 October 2020
2. Statement of Case from Paddico (267) Ltd dated 14 October 2020
3. Submission from Mr Adamson, adding to his original representation/objection, dated 11 December 2020
4. Submission from Mr Adamson dated 25 January 2021

Town & Country Planning Act 1990, section 257. Stopping up of footpaths at Clayton Fields, Edgerton and provision of alternative footpath routes



Grid references

- Point A - SE 1321 1776
- Point B - SE 1352 1771
- Point C - SE 1320 1760
- Point D - SE 1334 1769
- Point E - SE 1322 1759
- Point F - SE 1325 1762
- Point G - SE 1340 1774
- Point H - SE 1341 1775
- Point I - SE 1341 1774
- Point J - SE 1330 1774
- Point K - SE 1337 1776
- Point L - SE 1340 1781
- Point M - SE 1321 1772
- Point N - SE 1352 1770
- Point O - SE 1338 1774
- Point P - SE 1352 1771
- Point Q - SE 1323 1759
- Point R - SE 1320 1763
- Point S - SE 1325 1761
- Point T - SE 1324 1769
- Point U - SE 1335 1768
- Point V - SE 1334 1772
- Point W - SE 1332 1773
- Point X - SE 1339 1779
- Point Y - SE 1321 1777
- Point Z - SE 1338 1776
- Point # - SE 1320 1760

Footpaths to be created

- A - B
- C - F - G - I and G - H
- C - J
- D - J
- E - F
- K - X

Footpaths to be stopped up

- M - T - N
- O - P
- Q - S - T
- R - S
- U - V - W
- V - O - X
- Y - Z
- # - R - M - A

Footpath to be created (Woodland Walk)

Creation to widen Hud/345

Unaffected footpath

Map prepared on 3 September 2018
Scale 1 : 1250

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Ordnance Survey 100019241

MAP NOT TO ORIGINAL SCALE

