



Order Decision

Site visit on 19 January 2021

by Mark Yates BA(Hons) MIPROW

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

Decision date: 18 February 2021

Order Ref: ROW/3243046

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as The District of North West Leicestershire Footpath O60 Main Street, Normanton Le Heath Public Path Diversion Order 2019.
- The Order was made by the North West Leicestershire District Council ("the Council") on 18 July 2019 and proposes to divert a section of Footpath O60, in the parish of Normanton Le Heath, as detailed in the Order Map and Schedule.
- There were two objections and two representations outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

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

Procedural Matters

1. Various matters have been raised in relation to the proposed diversion which have no apparent relevance to the main issues that I need to consider. Further, the majority of the consultation responses relate to a different diversion proposal that was previously explored.
2. The Council has provided details regarding the works that could be undertaken to address the wet area near to point E on the Order Map and the responses have been circulated to the other parties for information.

Main Issues

The statutory test

3. If I am to confirm the Order, I must be satisfied that it is necessary to divert the footpath to enable development to be carried out in accordance with the planning permission granted.

Other material considerations

4. The merits of the planning permission granted for the development is not an issue before me. However, the impact of the diversion on particular parties is a material consideration. This is reflected in paragraph 7.15 of Department for Environment, Food and Rural Affairs Circular 1/09, which advises in respect of Orders made under Section 257 of the 1990 Act:

"That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public

generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order”.

Reasons

Whether it is necessary to divert the footpath to enable development to be carried out

5. Planning permission was granted on 29 June 2018¹ for the *“Erection of outbuildings comprising stables, tack room and hayfeed/implement store with associated stable yard, erection of detached two storey triple garage with gym above, change of use of land to keeping of horses, change of use to garden land and laying of additional hardstanding to form turning space, field access and extended driveway”.*
6. It needs to be determined whether it is necessary to divert the footpath to enable this development to be carried out in full. Whilst it is apparent that certain works have been undertaken, there are works still to be completed in respect of the land crossed by the footpath. It cannot be said that the works in so far as they impact on the footpath (see paragraph 8 below) are substantially complete.
7. Condition 2 in the permission states that the development shall be carried out strictly in accordance with the plans numbered 10B and 11. It is plan 11 that shows the layout of features within the site. There are specific conditions which deal with boundary treatments and the erection of any gates.
8. The Council considers the diversion of the footpath is necessary to enable the development to be completed. It states that the diversion would allow for the driveway and turning circle to be properly surfaced, fencing and vehicular and pedestrian gates to be erected and the change of use for the keeping of horses to commence. Reference is also made in the submissions to the installation of a retaining wall.
9. Drawing 11 specifies that the driveway, up to the point it meets the turning circle, will be 3.7 metres wide and have verges on either side. The details provided indicate that the route of the footpath recorded on the definitive map initially proceeds adjacent to the boundary wall of the property known as ‘The Laurels’. This is distinct from any alternative route used by the public in this locality. It therefore appears to me that the existing path is initially located on the south western verge rather than the driveway itself. Moreover, no reason has been given as to why it is necessary for the footpath to be permanently diverted to facilitate the construction of the driveway and the turning area.
10. In terms of the change of use for the keeping of horses, there is nothing to show how a public footpath would prevent the land from being used in this manner. It is commonly the case that horses are kept in fields containing public rights of way. Additionally, I note that horses will potentially be kept on the land crossed by the proposed path.
11. A discharge of conditions plan shows the approved boundary fencing comprising of a mixture of hit and miss fencing and a post and rail fence. No provision is made in the approved plan for any means of access in the fence line in so far as the existing path is concerned. This means the approved fencing would obstruct the public right of way. It is uncertain whether the

¹ Application reference 18/00085/FULM

same is applicable to the change in level of approximately a few feet arising from the retaining wall near to the turning area.

12. Another discharge of conditions plan shows the approved design for the gates to be erected and retained in respect of the driveway. A pair of vehicular gates and a pedestrian gate have been approved along with associated pillars. The pillars are already in situ, but these gates are yet to be erected. Although it is feasible that the public could continue to use the footpath via an unlocked gate, it would presently constitute an unauthorised structure across the path.
13. I have not accepted that certain aspects arising from the planning permission require the diversion of the footpath and I have also expressed doubt regarding whether it is necessary to divert the footpath in respect of the retaining wall. However, the diversion is required to enable the approved fencing and gates to be erected. Therefore, it is necessary to divert the footpath to enable the development to be carried out in full.

The extent to which the diversion of the footpath would disadvantage members of the public generally or persons whose properties adjoin or are near to the footpath affected by the Order

14. No details have been provided of any disadvantages to properties in the immediate locality arising out of the Order. The diversion would move the footpath only marginally nearer to the property known as 'Tree Tops'. There is also little in the objections to suggest that the public would be disadvantaged by this diversion. The legislation provides for a footpath to be diverted where it is necessary to do so. It therefore does not matter that the applicants were aware of the existence of the footpath when they purchased the land. Nor does this decision set a precedent for other cases elsewhere.
15. I note that reference is made to the historical nature of the path. However, I am not satisfied that the diversion would have a significant bearing on this issue given the relatively minor nature of the proposed change to the alignment of the footpath. This also means the diversion would have little impact on people wishing to continue eastwards or for access to the church and churchyard. Additionally, the wide-ranging views to the north west are also available from the proposed path.
16. It is apparent that a section of the existing path will have a firm surface where it crosses the driveway and turning circle, but the section concerned is relatively short in length. Further, the change in level arising from the retaining wall will impact on the convenience of the path for the less mobile even if permanent steps were put in place to replace the current temporary arrangement.
17. The Order makes provision for certain works to be undertaken which generally address the points raised in the representation made by the local correspondent of the Open Spaces Society.
18. I noted during my visit that there is a wet area in the field beyond point E, which impacts on the convenience of the proposed path. Whilst the section concerned is confined to about 5 metres, it is around this point that people would enter the field. It is not appropriate to expect people to deviate away from the designated public right of way to avoid this area. I asked for further information on this matter and the Council provided details of works that would address the issue and the Order could be modified accordingly.

Conclusions

19. I have concluded that the diversion of the footpath is necessary to enable development to be undertaken in accordance with the planning permission granted for the site. In light of my conclusions regarding the other relevant matters, I am not satisfied that there are any disadvantages to the public generally, or for local residents, arising out of the diversion of the footpath that are of such substance to outweigh the benefits of confirming the Order.

Overall Conclusion

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

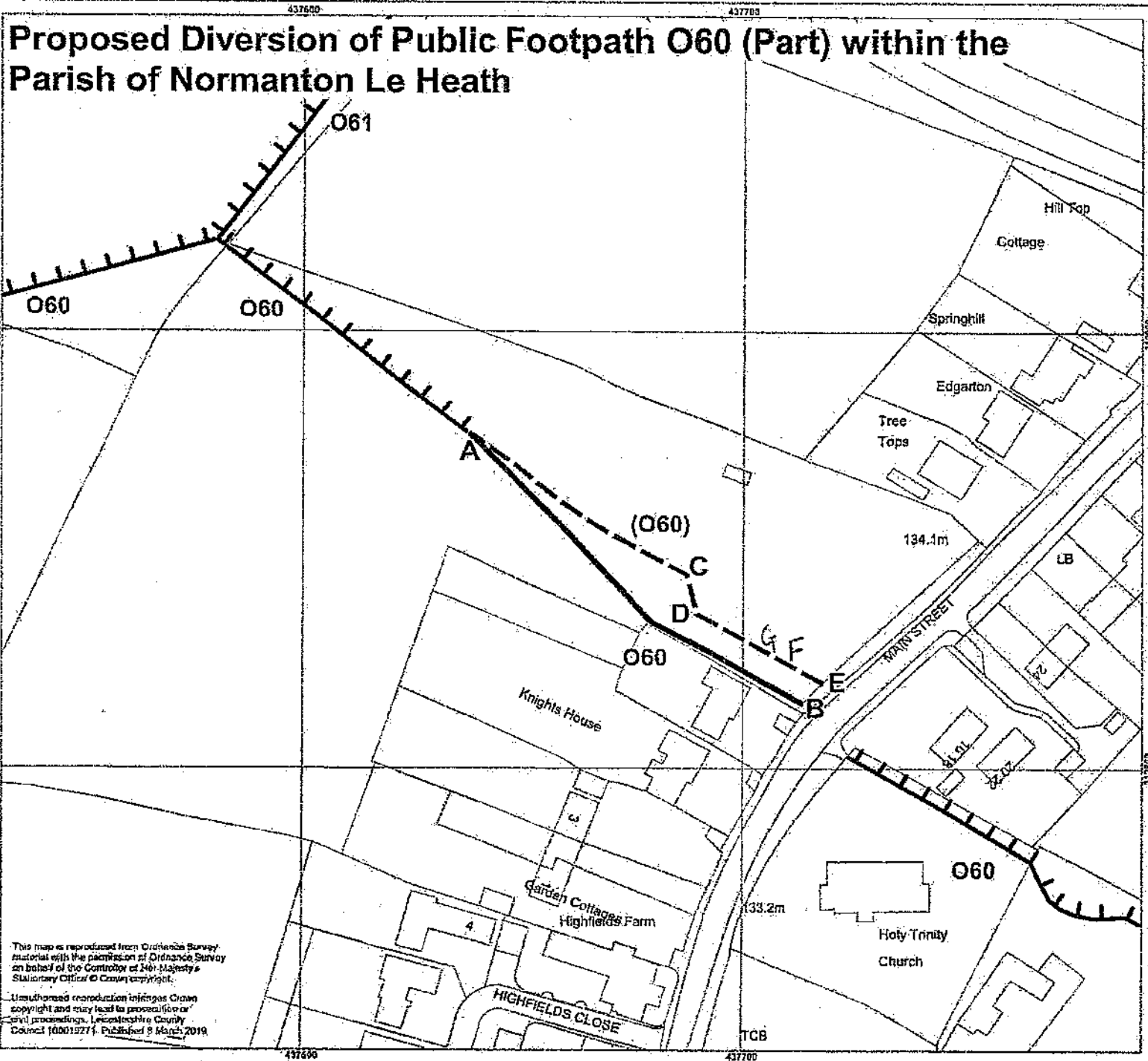
Formal Decision

21. I confirm the Order subject to the following modifications:

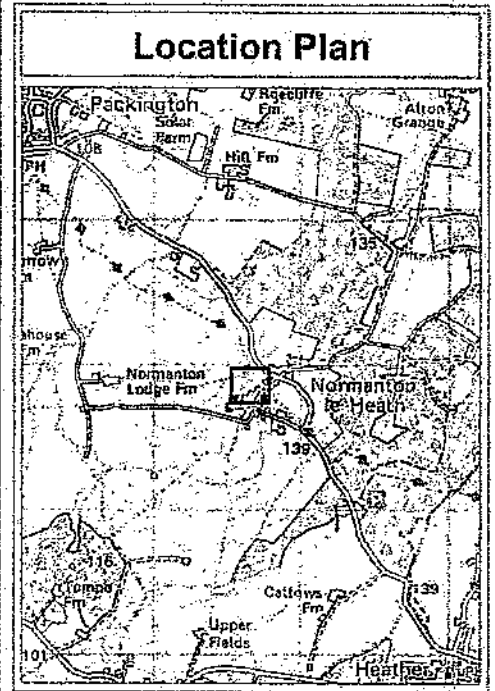
- Insert after Clause 4d in page 2 of the Order, *"e. A cellular paving system should be laid for five metres along the alternative route for the Public Footpath, from point F on the plan (the location of the gate) towards point G on the plan. The cellular paving system should have a width of two metres along its entire length and should be laid on a sub-base with a geotextile membrane laid beneath the sub-base for the entire five metre length of the cellular paving system. The gaps in the cellular paving system should be seeded with grass seed. The cellular paving system shall not be installed until its details, including a cross-section to a metric scale, have been submitted to and agreed in writing by the District Council"*.
- Insert "F" and "G" at the appropriate points on the Order Map.

Mark Yates




Inspector



Proposed Diversion of Public Footpath O60 (Part) within the Parish of Normanton Le Heath



Location Plan

- Key**
-  Footpath Proposed to be Diverted (A-B)
 -  Proposed Alternative Footpath (A-C-D-E)
 -  Unaffected Public Footpaths

Scale 1:1250

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