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Your Ref: LSG4/JM9/5.31213/JM9
Our Ref: FPS/Q2371/4/41
Date: 19 MAR 2013

Dear Madam

HIGHWAYS ACT 1980 SECTION 119
Lancashire County Council
Public Footpaths Nos. 1 and 5 (Parts), Whittingham, Preston City
(Public Path Diversion) Order 2008

I enclose herewith a copy of the Inspector's decision with regard to the above-named Order.

For your information, you will also find enclosed two leaflets entitled *Our Complaints Procedure* and *Challenging the Decision in the High Court*.

I enclose herewith ^{both} ~~one~~ of the sealed Orders.

If you have any queries about the enclosed decision, please contact the Quality Assurance Unit at the following address:

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Tel: 0303 444 5884

<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback/>

An electronic version of the decision will shortly appear on the Inspectorate's website.

Yours faithfully

John Greenslade
(Rights of Way Section)



Despatch 10MA



Order Decision

Hearing held on 9 January 2013

by **Michael R Lowe BSc (Hons)**

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

Decision date: **19 MAR 2013**

Order Ref: **FPS/Q2371/4/41**

- This Order is made under section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Lancashire County Council Public Footpaths Nos 1 and 5 (Parts), Whittingham, Preston City (Public Path Diversion) Order 2008.
 - The Order is dated 23 January 2008 and proposes to divert part of Footpaths 1 and 5 near Sandbank Estate as shown on the Order map and described in the schedule.
 - There was 1 objection outstanding when Lancashire County Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
-

Decision

1. I do not confirm the Order.

Preliminary Matter

2. I held a public hearing into the Order at the Old Station, Longridge, Preston, Lancashire on 9 January 2013. I visited the site in the company of the parties after the close of the hearing.
3. The Council submitted a series of modifications to the Order in the event that I was to confirm the Order. The proposed modifications were mainly of a technical nature, but included the substitution of gates in place of stiles.

Background

4. The Order was made following an application from William & Michael Hayhurst of the Sandbank Estate. Consultations with the Parish Council and the Ramblers' Association resulted in agreement to the proposal provided that the alternative footpath to be created was hard surfaced and provided with gates. After publication one objection was received from Mr Newsham of Gatehouse Barn, a property adjoining the proposed alternative route. Following discussions between the Council, the applicant and the objector, the Council decided to proceed with the Order in accordance with the wishes of the applicant.
5. The proposal would divert parts of Footpath Nos. 1 & 5 to a more easterly alignment and thereby avoid the footpath passing through the small industrial estate of Sandbank. However, the proposed alternative route would pass alongside the curtilage and paddock of Gatehouse Barn.

Main Issue

6. The requirements of section 119 of the Highways Act 1980:
- (1) Whether it is expedient in the interests of the owner of the land or of the public that the footpath in question should be diverted;
 - (2) Whether the diverted footpath will (or will not) be substantially less convenient to the public;
 - (3) Whether it is expedient to confirm the Order, having regard to;
 - (a) The effect the diversion would have on public enjoyment of the footpath as a whole;
 - (b) The effect the coming into operation of the Order would have as respects other land served by the existing public rights of way; and
 - (c) The effect any new public rights created by the Order would have as respects the land over which the rights are so created and any land held with it.

A diversion must not alter the point of termination of a footpath: (a) if that point is not on a highway, or (b) (where it is on a highway) otherwise than to another highway connected with it, and which is substantially as convenient to the public.

I must have regard to any material provisions of the rights of way improvement plan of the area.

Reasons

Whether it is expedient in the interests of the owner of the land or of the public that the footpath in question should be diverted

7. The Order has been made because it appears to the Council that the diversion is expedient in the interests of the landowner. The Council and the applicant submitted that the proposed diversion would (i) improve the security of the industrial units, which have been the subject of a number of thefts, (ii) remove the footpath from the vehicular access road and a storage yard in which vehicles are likely to be reversing, thereby enhancing the safe operation of the site and (iii) divert the footpath away from Gate House Farm providing increased security and privacy to the dwelling. The objectors have pointed out that the public tend to use the footpath in an evening and at weekends, times at which the industrial units are not in use.
8. In my view there are clear benefits to the landowner from the diversion of the footpath in terms of security to the properties, increased safety and the privacy of Gate House Farm.
9. I am therefore satisfied that the proposed diversion of the footpath would be expedient in the interests of the owner of the land. No case has been made that the diversion is in the interests of the public.

Whether the diverted footpath will (or will not) be substantially less convenient to the public

10. The existing and proposed routes are of a similar length and gradient. Subject to the works to bring the proposed new footpath into a fit condition for public use, including the provision of a hard surface, no objections have been raised

to indicate that the proposed diversion would be substantially less convenient to the public and I am satisfied that the proposed diversion would not be substantially less convenient to the public.

Termination point

11. The proposed diversion would alter the termination points of Footpath Nos. 1 & 5 at the junction with Ashley Lane. There are no objections to the Council's assessment that the proposed alteration of the termination points would be substantially as convenient and I am satisfied in this regard.

Whether it is expedient to confirm the Order

The effect which the coming into operation of the Order would have as respects other land served by the existing public rights of way

The effect which the 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

12. These issues are not in dispute and I am satisfied that such matters do not adversely impact upon the confirmation of the Order.

The effect the diversion would have on the public enjoyment of the footpath as a whole

13. There are no objections to the Council's assessment that the proposed diversion would adversely affect the public enjoyment of the footpath as a whole and I am satisfied in this regard.

The Rights of Way Improvement Plan

14. The Council indicated that the Rights of Way Improvement Plan has no significant material provisions in respect of the proposed diversion.

Overall Expediency

15. Whilst the 1980 Act details specific matters that must be considered within the expediency test there is no limit upon other material matters which may be considered under the heading of expediency. Mr Newsham's objection concerns the effect of the proposed diversion upon his property. His land is not directly affected and therefore the provisions for compensation in section 28 of the 1980 Act do not apply. Nonetheless, I am satisfied that the impact of a proposed diversion upon the privacy, security and amenity of persons occupying an adjoining property are a material consideration.
16. The proposed diversion would result in the footpath passing alongside the southerly and easterly boundaries of a paddock used by Mr Newsham and his family for the riding of ponies, and along the easterly boundary of the dwelling and garden. The garden area is partially screened by a row of conifer trees, but the footpath would afford views into the paddock and garden area.
17. In my view the proposed diversion would result in a substantial reduction in the privacy of the garden and paddock of Gatehouse Barn and may also impact upon the security of the property. Whilst I attach less weight to the impact upon the paddock, I am satisfied that the impact upon the privacy of the garden area and the immediate curtilage to the property would be significant. I therefore conclude that the proposed diversion would harm the living condition of those occupying Gatehouse Barn.

18. No objection has been made to indicate that the proposed diversion would have any adverse effects upon agriculture, natural beauty or biological diversity and I am satisfied in these regards.
19. Overall I consider that the interests of the landowner in securing the diversion do not outweigh the harm that would be caused to the interests of those occupying Gatehouse Barn. As a result, it is not expedient to confirm the Order.
20. I have considered whether or not to propose a modification to the Order that would provide an alternative route on a more easterly alignment and avoid the adverse impact upon Gatehouse Barn. However, such a proposal would be likely to extend beyond the area of the existing map to the Order and would, in my view, amount to a significantly different proposal. In the light of my decision the parties may wish to pursue a new proposal.

Conclusion

21. Having regard to all these and all other matters raised at the hearing and in the written representations, I conclude that the Order should not be confirmed.

Michael R. Lowe

INSPECTOR

APPEARANCES

Lancashire County Council

Jane Turner
Ros Paulson

Senior Solicitor
Rights of Way Officer

Supporters

William Hayhurst
Peter Bamber

The applicant for the Order

The Objectors

Paul Newsham
John & Margaret Halsall

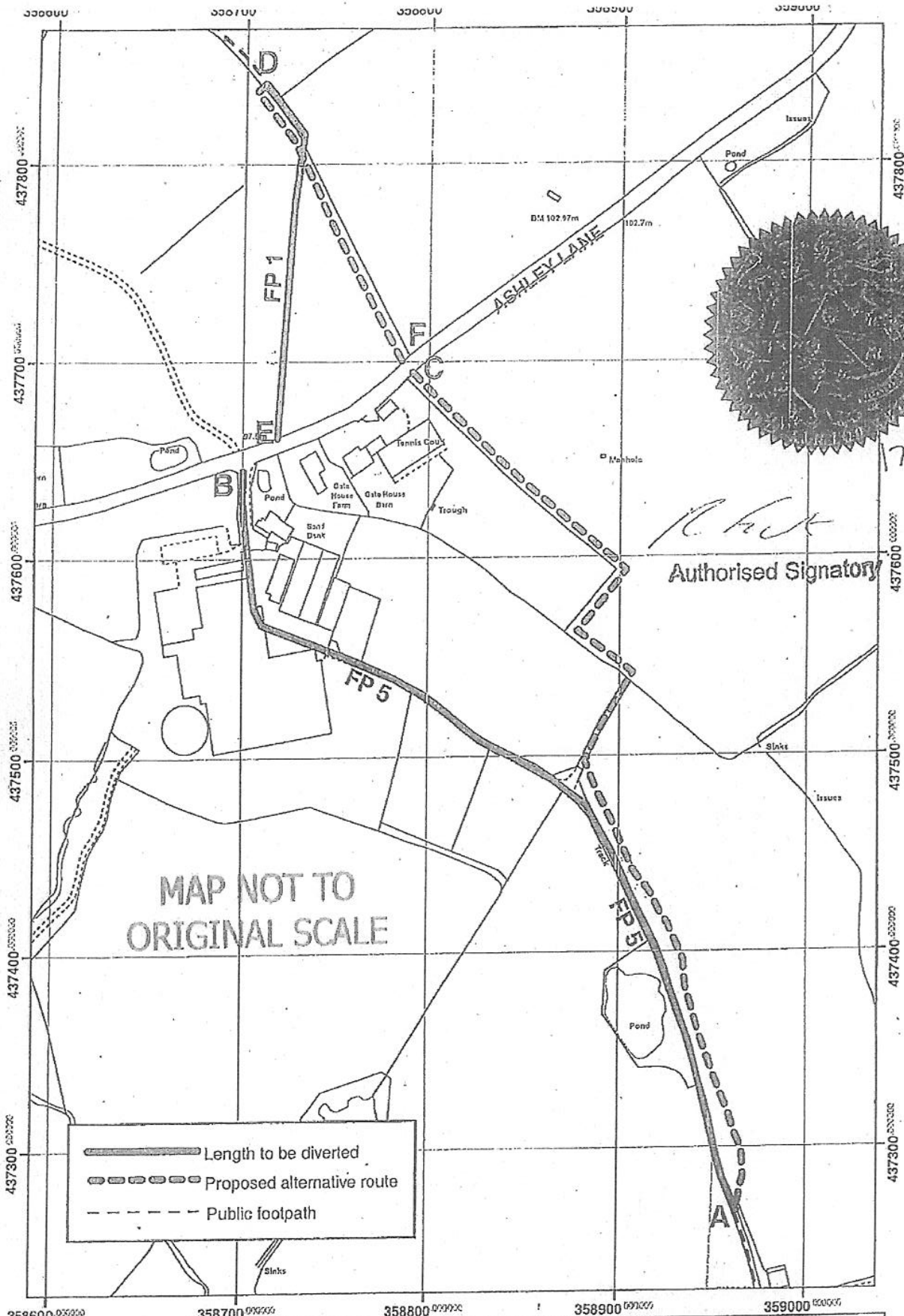
Other Parties

Janet Ward
Margaret Rigby

Goosnargh Parish Council
Whittingham Parish Council


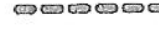

DOCUMENTS (submitted at the Hearing)



- 1 Letter from Michael Hayhurst dated 7 January 2013
- 2 Certificate of posting of notices for the hearing
- 3 Letter from John Halshall
- 4 Photograph of flooding at point F from Mr Newsham



[Signature]
 Authorised Signatory

MAP NOT TO ORIGINAL SCALE

-  Length to be diverted
-  Proposed alternative route
-  Public footpath

	Highways Act 1980 Section 119. Proposed diversion of parts of Public Footpath Nos. 1 and 5, Whittingham, Preston City.	1:2,500		G. Harding B.Eng., C.Eng., FICE., FIIT, MCI, L Environment Director
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