Order Decision

On papers on file

by Martin Elliott BSc FIPROW

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

Decision date: 28 April 2016

Order Ref: FPS/W2275/4/45

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 and is known as The Kent County Council (Public footpath CC34 (part) Canterbury) Public Path Diversion and Definitive Map and Statement Modification Order 2015.
- The Order was sealed on 11 December 2015 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981 Act, once the provisions relating to the diversion come into force.
- There were two objections outstanding when Kent County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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

Preliminary Matters

1. I have made this decision on the basis of the papers on file. I have not visited the site but am satisfied that I can make my decision on the information before me.

2. Following the making of the Order two objections were raised relating to the position of the alternative route, between points B and C on the Order map, being 1 metre from the existing boundary between these points. Following discussions with the Council the applicant for the Order agreed to the modification of the Order so as to remove reference to the alternative route being 1 metre from the boundary. The Council submitted the Order to the Secretary of State seeking confirmation subject to the modification of the Order as outlined above. The objections were subsequently withdrawn.

3. In submitting the Order the Council also requested that the Order be modified at paragraph 1 to specify that the existing route be stopped up after 28 days from the date of confirmation of the Order. This modification is consistent with paragraph 3 of the Order and there is nothing to indicate anyone will be prejudiced by such a modification. The Order, if confirmed will be modified accordingly.

4. I note that the duplicate order, whilst sealed, is only partly dated. I consider this to be an administrative oversight and there is nothing to indicate any prejudice. Again, the Order, if confirmed will be modified accordingly.

The Main Issues

5. This Order has been made under section 119 of the Highways Act 1980. There is no evidence before me to suggest that, when taking into account the modification requested (paragraph 2), the relevant criteria have not been satisfied such that the Order should not be confirmed.
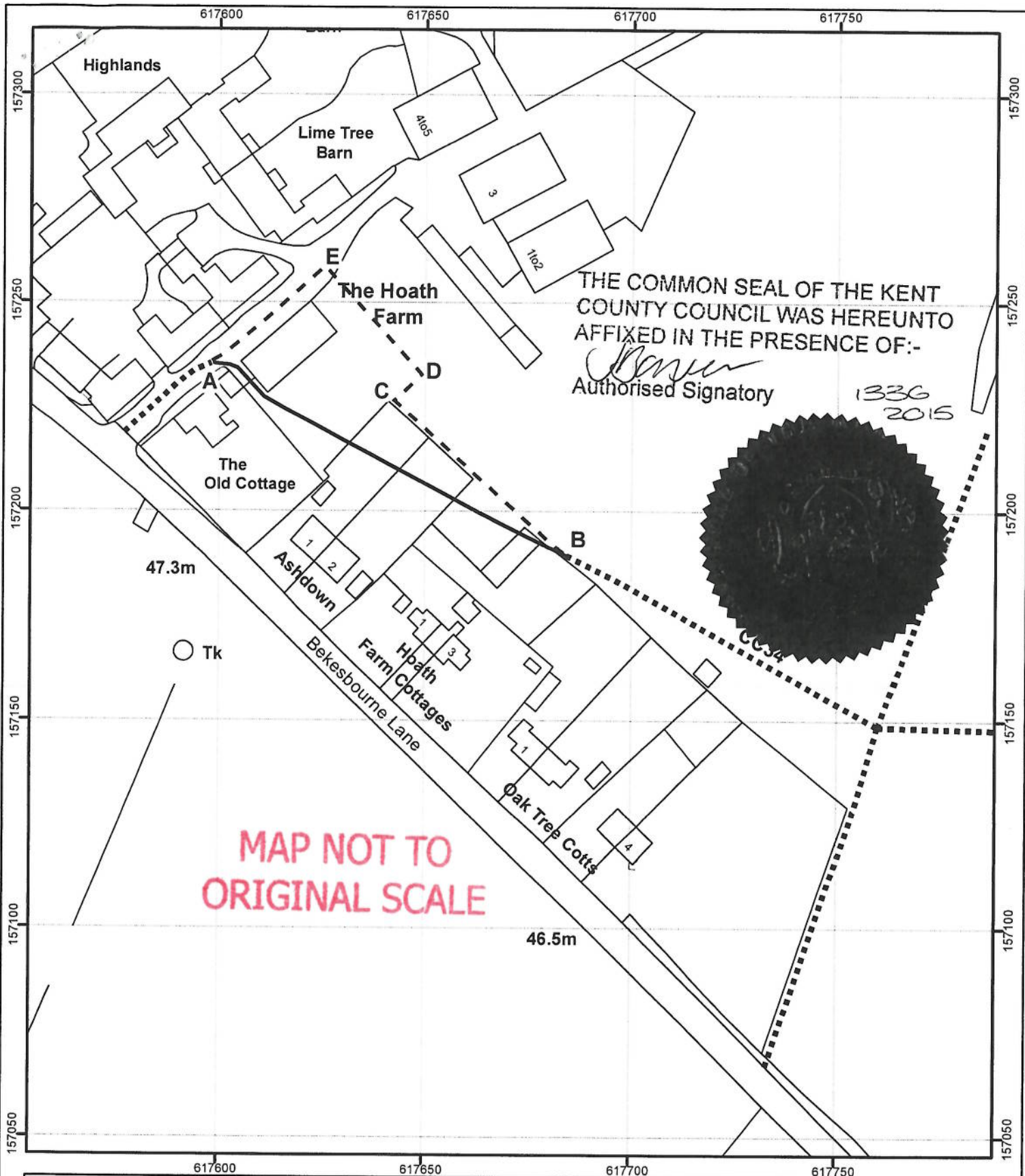
Conclusion

6. Having regard to these and all other matters raised in the written representations and in the papers on file I conclude that the Order should be confirmed subject to modifications.

Formal Decision

7. I propose to confirm the Order subject to the following modifications:

   - At paragraph 1 of the Order delete 'seven' and insert 'twenty eight'.

   - At Part II of the Schedule to the Order from line 8 delete 'measured one metre to the north east of the existing boundary, for approximately 54 metres, to then turn for 1 metre in a generally south south easterly direction' and insert 'following the north eastern side of the fence-line for approximately 55 metres'.

   - At page 2 of the duplicate Order at the end of the first line insert '11th'.

8. Since the confirmed Order would affect land not affected by the Order as submitted, I am required by virtue of paragraph 2(3) of Schedule 6 to the 1980 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.
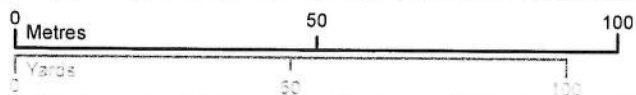

Martin Elliott

Inspector

Highlands

Lime Tree
Barn

4105

3

11o2

E

The Hoath
Farm

D

A

C

B

The
Old Cottage

47.3m

Ashdown

1

2

Tk

Hpath
Farm
Cottages

1

3

Bekesbourne Lane

1

Oak Tree Cotts

4

CC34

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

Authorised Signatory

1336
2015

**MAP NOT TO
ORIGINAL SCALE**

46.5m