



Order Decision

Site visit made 25 April 2016

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 1 June 2016

Order Ref: FPS/D3450/4/16

referred to as 'Order A'

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as Staffordshire County Council (Public Footpath No. 7 (part) Sheen Parish) Public Path Diversion and Definitive Map and Statement Modification Order 2014.
- The Order is dated 12 August 2014 and proposes to divert part of Footpath No. 7 in the vicinity of Pool Farm, Sheen, as shown in the Order map and described in the Schedule.
- There were seven objections and representations outstanding when Staffordshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Order Ref: FPS/D3450/3/3

referred to as 'Order B'

- This Order is made under Section 118 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Staffordshire County Council (Public Footpath No. 10 (part) Sheen Parish) Public Path Extinguishment and Definitive Map and Statement Modification Order 2014.
- The Order is dated 12 August 2014 and proposes to extinguish part of Footpath No. 10 in the vicinity of Pool Farm, Sheen, as shown in the Order map and described in the Order Schedule.
- There were ten objections and representations outstanding when Staffordshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Preliminary Matters

1. It is my understanding that these Orders have arisen as a result of negotiations to alter that part of Sheen Footpath 10 ("FP10") which passes through the property Pool Farm, west of Ball Ridge Lane. There have apparently been two other proposals to alter the route, removing it from the driveway and part of a small field which appears to be attached to the property. The proposal seeks to extinguish that part of FP10 and, by way of providing an alternative, divert part of Sheen Footpath 7 ("FP7"). FP7 crosses land in separate ownership.
2. As this matter is focussed on resolving actual or perceived concerns in relation to FP10 this has been a focus of some of the comments, which has led to some misunderstanding, or misinterpretation, of the relevant parts of the Highways Act 1980 ("the 1980 Act"). Whilst I understand the applicant is the owner of Pool Farm, the test as to whether a proposal is in the interests of the

landowner only relates to section 119 of the 1980 Act, that is Order A. It is not relevant to Order B, which is the Order to extinguish FP10, except insofar as I may consider it in relation to the expediency of confirming that Order.

3. There has also been a misunderstanding with regard to the tests of convenience to the public in relation to Order A. The relevant tests to which I shall have regard in this decision are set out in the *Main Issues* below.

Procedural Matters

4. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations.

Main Issues

5. The OMA have made two separate Orders, which are considered in this decision and each must be considered against the relevant tests.
6. Order A is made under section 119 of the 1980 Act in the interests of the owner of the land crossed by the footpath. Sub-section (6) of the 1980 Act sets out that "*The Secretary of State shall not confirm a public path diversion order...unless [she is]...satisfied that the diversion to be effected by it is expedient...in the interests of the owner, lessee or occupier of land crossed by the path or way [my emphasis] or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted...and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—*
 - (a) *the diversion would have on public enjoyment of the path or way 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,*

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a)..."
7. Sub-section 2 sets out that a "*...diversion order shall not alter a point of termination of the path or way...(where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.*"
8. Under sub-section 4, "*A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.*"
9. The objections focussed on matters relating to the convenience of the proposed route in comparison to the existing. The OMA argued that it was not substantially less convenient and that the change would offset any

inconvenience to walkers needing to use an alternative to FP10, if that route were to be extinguished.

10. Order B is made under section 118 of the 1980 Act. This sets out that “...*the Secretary of State shall not confirm a public path extinguishment order...unless [she is]...satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to [her]...that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2)...*”. Sub-section 121(2) of the 1990 Act simply sets out that “...*compensation for loss...applies in relation to public path extinguishment orders...and...public path diversion orders...as it applies in relation to public path creation orders...*”.

11. Section 28 itself sets out that:

- (1) “*Subject to the following provisions of this section, if, on a claim made in accordance with this section, it is shown that the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path [extinguishment] order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.*”
- (2) “*A claim for compensation under this section shall be made...to the authority by whom the order was made...*”
- (4) “*Nothing in this section confers on any person, in respect of a footpath...[extinguished] by a public path [extinguishment] order, a right to compensation for depreciation of the value of an interest in the land, or for disturbance in his enjoyment of land, not being in either case land over which the path or way was [extinguished] or land held therewith, unless the [extinguishment] of the path or way would have been actionable at his suit if it had been affected otherwise than in the exercise of statutory powers.*”
- (5) “*In this section “interest”, in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights.*”

12. Sub-section 118(5) allows that “*Where...proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a...public path diversion order...then, in considering—*

- (a) *under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use, or*
- (b) *under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public,*

...the Secretary of State...may have regard to the extent to which the...public path diversion order...would provide an alternative path or way." Taking account of this, I shall firstly determine the diversion order, Order A.

13. Sub-section 118(6) shows that *"For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded."*
14. The objections focussed on the need for the route, with an owner of neighbouring land referring to his use of it to serve his land. The OMA felt that the extent that the route was likely to be used was limited by its locality in relation to other rights of way in the area and, therefore, that it was not needed for public use. They did not believe private rights to be their concern.
15. For both Orders the considerations to which the Secretary of State is to have regard in determining whether or not to confirm the Orders include any material provision of a rights of way improvement plan ("ROWIP") prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way. The OMA submitted the ROWIP for Staffordshire but did not draw my attention to any specifically relevant policies.

Reasons

Order A

Whether it is expedient, in the interests of the owner of land crossed by the path or way, that the footpath in question should be diverted

16. The OMA Committee Report of March 2013 correctly indicated that an opposed Order can be confirmed by the Secretary of State if it is shown to be expedient in the interests of the party in whose interests the Order is made, whether that is the landowner or the public.
17. This Order has been made in the interests of the landowner and it is my understanding that the landowner referred to by the 1980 Act is the one whose land is crossed by the part of the path being diverted, see paragraph 6 above. It appears that part of FP7 probably crosses land owned by the applicant to the south of point C; landownership details have not been provided but it seems that the field immediately to the west of Pool Farm, being used in part for chickens at the time of my site visit, probably belongs to this property. However, I consider it would be a stretch to suggest that because part of the route crosses land in the applicant's ownership the tests under section 119(1) have been met.
18. I am not satisfied that the OMA, the applicant, the landowner, or any other party have demonstrated that confirmation of this Order is expedient in the interests of the owner of the land crossed by this part of FP7, in whose interest this Order is stated to be made. There is also no evidence that the Order would be in the interests of the public. Therefore I do not consider that it is expedient for me to confirm this Order, as it has not been demonstrated to be in any of the relevant interests to do so. For the sake of completeness, I will deal with the other relevant tests.

Whether the new route will be substantially less convenient to the public

19. I understand FP7 to be part of a promoted route, the Manifold Trail, and it runs to the east of the River Manifold ("the river"). I agree with the Ramblers that the proposed diversion interrupts this route running south from Longnor, introducing an unnecessary kink. I consider this does introduce some inconvenience for users seeking to follow the obvious generally north – south alignment of FP7.
20. Whilst the proposed route C – E – F¹ is of a similar length to the existing route C – D, users do then need to travel along part of Footpath 11 ("FP11") to continue their journey. Taking account of the alignment and distance together I consider that the diversion of FP7 is less convenient to the public, although I do not consider it be to substantially so, which is the test I must apply.
21. I agree that the surface of the proposed route appears a little less convenient to use than the existing route, being more boggy and poached in the corner, in comparison to the route over the central section of the field. In this respect I consider that the proposed route is less convenient to the public, although I note that the applicant has referred to providing surfacing and the fencing of cattle from the route, which would prevent such poaching of the ground.
22. Although arguments were made that the gradient of the proposed route would be inconvenient in comparison to the existing I did not find it to be so. It remains on the low-lying alignment of the stream, rather than traversing the hill, albeit that this is of only slight gradient.
23. The Order indicates gates to be placed at points C, where there is an existing gate, and F. I am not clear whether this is another gate in addition to that existing in this area. An additional footbridge over the stream would be needed. I consider that the proposal would probably be less convenient to the public in respect of potential limitations.
24. I consider that the Order as drafted would generally be less convenient with respect to the above matters. However, I do not consider it would be substantially less convenient to the public.

The effect of the diversion on public enjoyment of the path as a whole

25. I consider that the alteration to alignment, with the introduction of additional limitations into the route to be used as a whole, and the proposal to fence this section of the route, which would make it different from the majority of the promoted route, would negatively impact upon public enjoyment of the path as a whole.

The effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, account being taken of the provisions as to compensation

26. The land crossed by the existing route would remain part of the property to which it belongs, which I understand to be Froghall Farm. The proposed route would be created on the edge of the same field and into the neighbouring field,

¹ Letters C – D – E – F are shown on the Order plan

which appears to be part of Pool Farm. There is no evidence that there would be a negative effect on any land served by the existing or proposed routes.

Whether the point of termination of the new footpath will be on the same highway or a highway connected with them, and will be substantially as convenient to the public

27. As FP11 terminates on FP7 at point D I am satisfied that the termination point F, which is on FP11, is on the same highway. Walkers can turn to the north-west from point F and resume their use of FP7 to the north.
28. I do not agree with the argument made on behalf of the Peak & Northern Footpath Society or Open Spaces Society² that the diversion would mean that one footpath would be diverted onto another or that there would be any problem with FP7 no longer being a continuous footpath; the numbering of rights of way is simply an administrative issue.
29. I am satisfied that the proposed point of termination would be substantially as convenient to the public.

Expediency

30. There is a matter of expediency within the 1980 Act and I consider that this might mean that confirmation may be found to be advantageous, taking account of all the factors. The overall intention of the two Orders is to remove part of FP10 from the area of Pool Farm and I understand the proposal to divert this part of FP7 is intended to provide an alternative 'east – west' route from this location for the public to support the confirmation of Order B.
31. However, I do not consider that the alteration to FP7 provides a route which is significantly better as an alternative for FP10 than the existing alignment of FP7 to point D and then south-east along FP11. I consider it is better for the public to have the obvious existing alignment of FP7, which is part of a promoted route, rather than an awkward kink in that route. As a result, I do not consider it to be expedient, in the interests of any party, to confirm the Order to 'assist' the overall package.

Conclusions regarding Order A

32. I am not satisfied that the diversion has been shown to be in the interests of the owner of the land crossed by FP7. Although I do not consider the proposed route to be substantially less convenient to the public, the failure to demonstrate that a relevant interest will be met, even taking account of the intention of the two Orders together, means that I am satisfied that it is expedient for me to confirm this Order. Furthermore, I consider that public enjoyment of the route of FP7, which is part of a promoted route, would be negatively affected by the alteration and therefore confirmation of the Order is not expedient.
33. Having regard to these, and all other matters raised in the written representations, I conclude that Order A should not be confirmed.

² A single statement of case was produced for both societies, who are represented by the same person, who is also the Area Footpath Secretary for the Ramblers

Order B

34. Whilst some of the matters raised in objection related to whether or not the OMA had shown that the route was not needed for public use it will be noted that this is a separate test under sub-section 118(1) of the 1980 Act. It is not directly a matter for me at the confirmation stage.

The extent to which it appears that the footpath in question would, apart from the Order, be likely to be used by the public

35. The eastern end of FP10 forms a clear link from Ludburn Farm to the west through to Ball Ridge Lane and I agree with objectors that it is the most obvious alignment if simply travelling east-west. The owner of the land immediately to the south of Pool Farm said that he had found indications of people trespassing through his land to link to Ball Ridge Lane, apparently due to obstruction of the definitive line at times. He believed this indicated that the route was needed for public use.
36. This objector said that FP10 was used by Duke of Edinburgh Award Scheme participants ("the DOEAS"), although the *EXPEDITION ROUTE CARD* ("ERC") directed users to turn onto the western end of FP10. Nonetheless, the applicant indicated that there had been an increase in use of FP10 over the ten years he had been at the property, with some being DOEAS. Guides apparently parked at the top of the drive and sat in their cars, however, it may be that the proposed alterations would not alter that situation, as FP11, which would be the next most logical 'Escape' point, also joins the road at point A.
37. It appears from the evidence in objection that the use by DOEAS explains trespass onto the field to the south. If FP10 were extinguished then the DOEAS would not be able to include it in their ERC and would need to identify another 'escape'. There is no evidence that FP10 has been identified as an 'escape' for the DOEAS for any particular reason; other rights of way have also been identified as such and no-one representing the DOEAS scheme objected to the proposed extinguishment.
38. More general concerns were raised that if anyone needed to access the road in an emergency then they would need to use the field if FP10 was extinguished. There is no legal requirement for an emergency route to be provided from a right of way to any specific point. Neither is there a requirement under section 118 of the 1980 Act for any alternative to be substantially as convenient to the public; that test only arises in relation to section 119 of the Act.
39. Concerns were also raised that people would continue to try to use FP10 as it would remain on old Ordnance Survey maps and, therefore, use the land to the south instead. I agree with the OMA that new maps, including those online, which are increasingly used either to print or as part of electronic mapping on-site, would be updated. The applicant indicates that notices can be placed on-site to show the available alternative. I am satisfied that this is an appropriate way to deal with the power to extinguish, which is given by the 1980 Act.
40. I agree with the OMA that there are no direct links to rights of way near point A and this reduces the likely general public use of this route. Any links involve a walk along Ball Ridge Lane, which I consider to be adequate in width and forward visibility for normal shared use by walkers, horse-riders, cyclists and

vehicles, despite the misgivings of the OMA and owners of Pool Farm; an accident may have occurred here but there is nothing to suggest it is any different from other local lanes, which are open to all users.

41. The links to and from point A would be those to the south-east, e.g., Sheen Hill or Sheen and beyond, for example to Hartington. There is no identifiable reason, such as a larger town or village, to indicate why people would be travelling to or from the west, apart from the DOEAS, discussed above. Anyone travelling from the north, Longnor and beyond, and wishing to travel south-east would be likely to follow FP11 rather than FP10 or, more logically, the footpaths further east passing through Lower Boothlow, Hill End and Slate House Farm. If travelling north-east, either from the south or west, then Footpath 9 ("FP9"), which passes through Ridge End Farm a little to the north, is the obvious route. Although an objector indicates that this route can become wet in winter it is a public right of way and the most obvious choice.
42. Having determined that FP7 should not be diverted, the existing alignment of FP7/FP11 remains as an alternative for those users who are following an east – west alignment. I agree with objectors that FP10 would be more likely to be used than this alternative; however, for the reasons discussed above, there appear to be other routes in the vicinity which are more likely to be in use by the general public than the east – west route of FP10 in any case.
43. I agree with the local County Councillor that there are some people who would prefer not to use routes close to residential properties. Such people will already be likely to be following an alternative.
44. Reference was made to sub-section 118(6) of the 1980 Act regarding temporary circumstances. It does not seem that the OMA have relied upon lack of use of the route, potentially arising from people being questioned by the owner of Pool Farm, to demonstrate a lack of need. I have considered the likely extent of use on the basis of probable links in the network.
45. On the evidence as a whole there is likely to be some use of this part of FP10, however, I consider that the extent of that use would be limited, due to the other available rights of way. I am satisfied that these are more likely to be used as they form links between identifiable towns and villages in this landscape.

The effect which the extinguishment of the right of way would have as respects land served by the footpath, account being taken of the provisions as to compensation.

46. It was argued by the owner of the fields to the south and west that there was 'land served by the footpath', as he used FP10 to access fishing rights on the river to the west, particularly in the summer when there was a hay crop in the field. Of course, I understand that farmers would not wish to cause damage to any crop, however, in my experience most farmers access their own land, making use of headlands, or 'tramlines' made by tractor tyre marks, to limit damage to crops or in this case ground-nesting birds. As FP7 passes through the second field from the road there is only limited need for this party to walk on his own land before gaining access to the public rights of way, which would then allow him to continue west to the river. I note his concern that he may

wish to sell some of the land, however, it remains open to any vendor to reserve rights or retain a strip of land from sale for such purposes.

47. I understand this objector to have a property off Ball Ridge Lane, to the north-east of point A. He argues that FP9, which is the most obvious route to the river from this direction, is not suitable for the elderly or less able bodied. However, FP10 to the west of the junction with FP7 requires use of a stone stepping stile over the wall, which appears to be the boundary of Pool Farm, which I do not consider would be easy to use for such individuals either. For that reason I agree with the applicant that FP10 as a whole, which involves not only this wall/stile arrangement but further gates, stiles and a footbridge before reaching the road west of Ludburn, seems unlikely to be used as a 'health' walk. I consider FP9 to be as easy to use, if not preferable, in this respect.
48. I bear in mind that there are compensation provisions under the 1980 Act. As such, I give less weight to the concerns of the neighbouring landowner as compensation would ameliorate any demonstrable loss.

Expediency

49. The issue as to whether or not it is expedient to confirm the Order means that I can take account of wider considerations. The owners of Pool Farm would benefit from the proposal by removing part of FP10 from the area directly adjacent to the residential property and used for vehicular access and parking. I accept that this may be better for the privacy and security aspects relating to this property, although I give little weight to the argument regarding child safety. I agree with objectors that the detached walled and gated garden provides a relatively safe play area for small children, whilst older children are more likely to be wandering further from home and so out of view in any event.
50. There would remain a link on public rights of way to the north of Pool Farm in order to reach point A, should people wish to. I recognise that this route is not as convenient as the existing route of FP10 as it is not as direct and introduces additional limitations and more difficult gradients. However, this is still only a very short diversion around the farm.
51. I consider the likely extent of use of the route to be limited, for the reasons set out above, and I agree with the point made by a supporter that the potential inconvenience of the alternative route on FP7/FP11 is relatively insignificant when weighed against the potential benefits to the landowner.
52. I therefore consider that the expediency in confirmation of the Order, which I recognise exists for the applicants, is sufficient to outweigh the public interest in retaining a direct east – west link in this particular location. If there is land served by the footpath, which is not also served by land in the same ownership, then the compensation provisions apply.

Conclusions regarding Order B

53. Having given careful consideration to the above, and also to all other matters raised in the written representations, I conclude that it is expedient that Order B should be confirmed.

Other matters

54. Concerns regarding the OMA Committee procedures should be addressed to the appropriate officers within the OMA; they are not relevant to this decision.
55. I note that one objector suggested a sensible alternative would be to provide a concessionary path on the land south of Pool Farm. It was also said that in earlier consultations the user groups suggested a short diversion to the south of the property would probably be acceptable. The owner of that land indicated that a request to provide land free of charge was unacceptable; both creation and diversion orders have provision for compensation under section 28 of the 1980 Act, however, I am not able to propose such modifications in relation to the Orders before me.
56. The fact that other farms in the vicinity have rights of way passing close to property is not a relevant matter.
57. It is a great shame that there appears to be a family disagreement, however, I have not taken account of the comments made in relation to this situation.

Formal Decision

Order A

58. The Order is not confirmed.

Order B

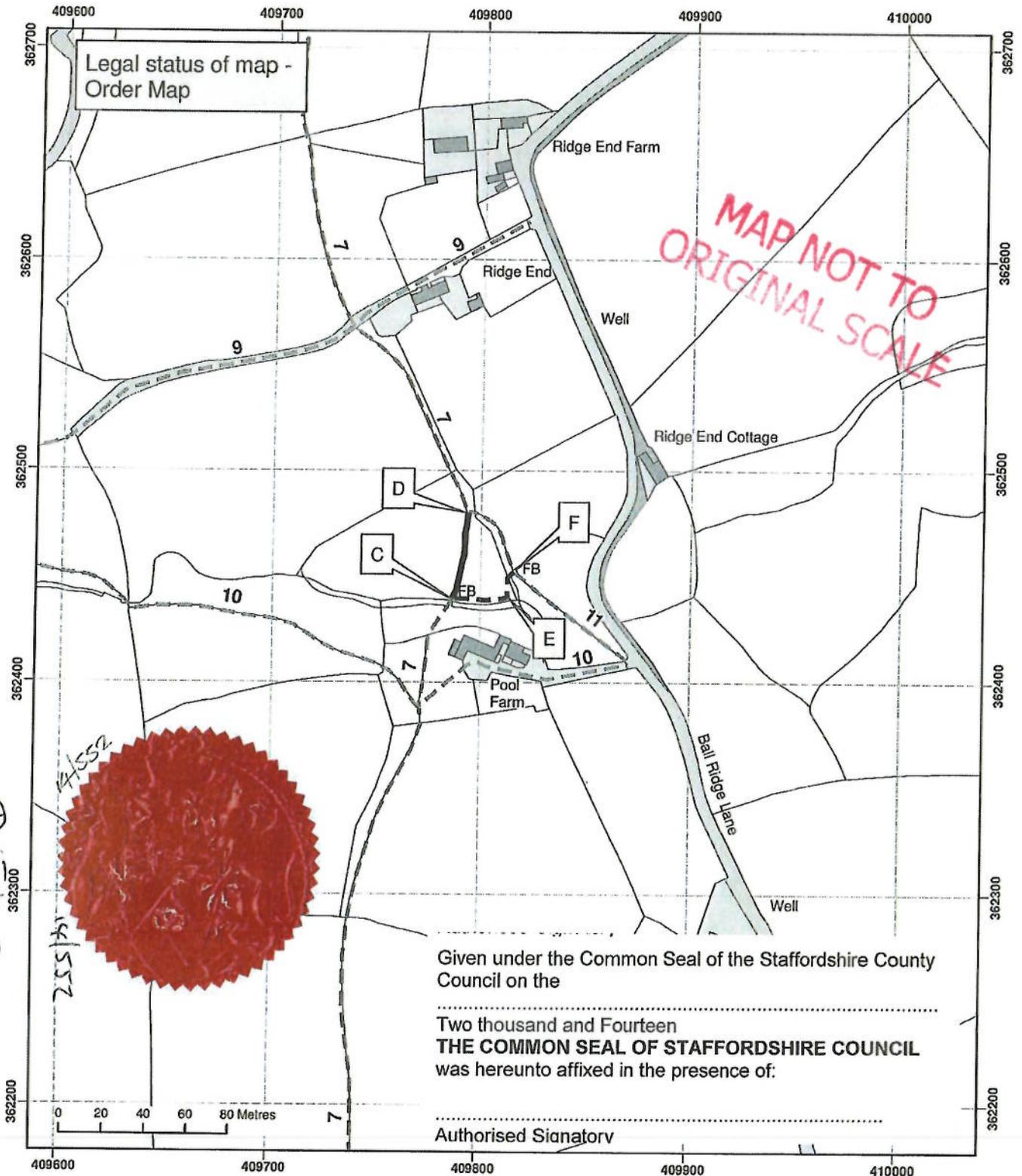
59. The Order is confirmed.

Heidi Cruickshank

Inspector

Highways Act 1980, Section 119.
Wildlife and Countryside Act 1981,
Section 53A(2).

Diversion of part of Public Footpath No.7 Sheen Parish.



Authorised Signatory
D. E. J. [Signature]



Given under the Common Seal of the Staffordshire County Council on the

Two thousand and Fourteen
THE COMMON SEAL OF STAFFORDSHIRE COUNCIL
was hereunto affixed in the presence of:

Authorised Signatory

Map created at the scale of 1:2500
(facsimiles may vary)

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-  Path to be extinguished (C - D)
-  Path to be created (C - E - F)
-  Rights of Way Unaffected
-  Footpath

Extinguishment of part of Public Footpath No.10 Sheen Parish.

