



Order Decision

Site visit on 4 April 2017

by Sue Arnott FIPROW

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

Decision date: 04 May 2017

Order Ref: FPS/E2001/3/5

- This Order, dated 2 March 2015, 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 East Riding of Yorkshire Council (Goole Footpath No. 11) Public Path Extinguishment and Definitive Map and Statement Modification Order 2015.
- The Order proposes to permanently close part of Public Footpath No. 11 between Grasmere Close and Footpath 10 (Goole) as detailed in the Order map and schedule, and would modify the definitive map and statement accordingly.
- There were two objections outstanding when East Riding of Yorkshire Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is not confirmed.

Procedural matters

1. I visited the site on Tuesday 4 April 2017 accompanied by Mr G Grimley and Mr P Wharam (on behalf of East Riding of Yorkshire Council), Mr T Corrigan (representing East Yorkshire and Derwent Area Ramblers' Association) and Mr M Jackson (formerly a representative for the same organisation).

Main Issues

2. The Order was made by East Riding of Yorkshire Council (ERYC) under Section 118 of the Highways Act 1980 (the 1980 Act). The requirements of this section are that, before confirming the Order, I must be satisfied that it is expedient to extinguish part of Footpath 11 (Goole) as proposed by the Order (and shown as A-B-C on the Order map) having regard to:
 - (a) the extent to which it appears that the footpath would, apart from the Order, be likely to be used by the public; and
 - (b) 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.
3. In addressing the issue of expediency, I am not required to examine too closely the question of whether or not this footpath is needed¹. That was an issue of foremost importance for the Council when it decided to make the Order but, at this (confirmation) stage I must focus on the path's likely use in future. The path in question may not be needed if there is an adequate alternative route

¹ As demonstrated in the case of *R v Secretary of State for the Environment ex parte Cheshire CC [1991] (QBD)[1991] JPL 537*

available, but even if so, the path may still be used simply because people prefer it. Nevertheless the Courts have accepted that confirmation is not necessarily ruled out by the fact that the path is likely to be used to more than a minimal extent² in future.

4. Further, in determining this Order I am required to have regard to any material provisions in any rights of way improvement plan for the area, and I am also mindful of the requirements of the Equality Act 2010.

Reasons

Background

5. The route at issue here leads from the end of Grasmere Close, a cul-de-sac estate road, first south eastwards then southwards along a passage enclosed by 1.7-1.8m high fences. To the west lie allotment gardens administered by Goole Town Council; to the east are the rear gardens of residential properties in Ullswater Grove.
6. The section to be extinguished ends at point C, its junction with Footpath 10. At this point Footpath 11 turns broadly eastwards towards and across the railway line where it joins Footpath 2 (Hook) and continues to Millhouse Lane. However east of point C, this public right of way is obstructed by fencing and vegetation and is not usable in its present state. ERYC reports that Network Rail has expressed an intention to seek closure of this section.
7. From C, Footpath 10 continues southwards before turning west, passing the Hills Skate Park and Children's Play Area (to which the path affords the only access³) which lie to the east and south. The path then turns north westwards, passing the entrance to the allotments on its north side before joining Footpath 4, the route which connects Cheviot Avenue with Lime Tree Avenue and Fountayne Street via a footbridge over the railway.
8. This Order was initiated by ERYC following requests to address problems arising from complaints over crime and anti-social behaviour in the vicinity of Footpath 11. The Council's Anti-Social Behaviour Team had been dealing with these issues for some time and consulted with Goole Town Council in November 2013. It was their opinion that closure of the footpath would go some way towards alleviating the problems. Although ERYC recognised that this did not constitute a valid reason to extinguish the footpath, it nonetheless accepted that the path was not needed for public use and that a suitable alternative route via the footways of Grasmere Close, Buttermere Road and Cheviot Avenue is available and is being used by the public. Footpath 10 would be retained and continue to provide access to the skate park and play area.

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

9. ERYC acknowledges that the section of footpath concerned receives *some* use by the public. That was clear from the worn trod and footprints seen in the path's earth surface on my visit to the site. However no formal survey has

² A principle articulated by Phillips J in *R v Secretary of State for the Environment ex parte Stewart* [1980] JPL 175.

³ However at the time of my visit (11am – 12 noon) on April 4 both gates into the park were locked.

been carried out to ascertain either the present level or nature of use of Footpath 11 by the public, or its likely use in future if it is retained.

10. Whilst strategically it may be accepted there is no absolute need for a public right of way between A, B and C since one can clearly walk from A to C by another route, establishing the likely future use of Footpath 11 requires at least *some* investigation of how it is used at present so as to assess the effect the path's closure may have on those who currently do, or may in future, use it.
11. In its present form, the public is unable to enjoy the full legal width of the path between points B and C. Whilst the section to the north was diverted long ago to allow for housing development, the original line of Footpath 11 is derived from an old inclosure award and is recorded in the definitive statement as having a width of 15 feet (4.57m). However the public is restricted to using less than half of this along the east side of the route by a high fence⁴ which runs the entire length from B to C.
12. The Ramblers' Association (RA) submits that if the definitive width is enforced, maintained and the path signposted as a public right of way, this would reduce anti-social behaviour and encourage the public to use it more. I recognise that this argument may have some merit but there is no firm evidence to support it.
13. When addressing the question of likely future use, Section 118(6) of the 1980 Act requires that I disregard any temporary circumstances preventing or diminishing use of the path in question when considering the use that might be made of it. I must therefore approach the issue on the basis that the public has use of the full 4.57m width. Similarly, despite reports of vegetation encroaching onto the path and restricting use in the past, I shall assume that the footpath will remain clear, especially since ERYC confirms that the route is now in its annual clearance programme.
14. ERYC has argued that the objectors have not provided evidence to show that the Order route *is* needed or the extent to which it would be used if not closed. However the onus is on the promoter of the Order to show that it satisfies the tests set out in the legislation.
15. It seems to be accepted there is currently some, but probably not heavy, use by the public. There is no reason to suggest that this would diminish in future; indeed if the full width of the path is restored, it is possible more may use it. However this is guesswork. No baseline has been established from which to gauge likely use in the future and I therefore am unable to reach any firm conclusion on this essential issue.

The effect the extinguishment would have on land served by the footpath

16. The land over which the Order route passes is unregistered and ownership is unknown. Although it has been pointed out that Yorkshire Water maintains a drain that runs the length of the footpath and requires access to it, no evidence has been provided to confirm the company's interests (other than the existence of a drain cover in the path's surface). No other land is served solely by the Order route and compensation issues have not been raised.

⁴ It appears this was erected by a former authority to counter problems arising from unauthorised vehicular access along Footpath 11 although other solutions, such as bollards, had been suggested at the time.

17. Whether as a direct consequence of the continued requirement for access or because of the lack of clarity regarding ownership, there appears to be no firm plan for the future of the land in question. ERYC has stated that, if the Order is confirmed, it will ensure that the ends of the extinguished footpath are fenced⁵. The Council recognised⁶ that leaving this as an area of 'dead space' could create a potential for fly-tipping and other unacceptable behaviour and could exacerbate the existing problems rather than solve them. However there is no explicit evidence that a workable solution has been agreed.
18. Whilst it is possible that closure of the public right of way might have a positive effect in terms of reducing anti-social behaviour in the neighbourhood, the absence of any clear plan for the future of the 4.57m width of the footpath leaves open the possibility that it may worsen any problems already being experienced.

Material provisions in the rights of way improvement plan for the area

19. ERYC reports that the East Riding of Yorkshire Rights of Way Improvement Plan (ROWIP) 2008-2018 (refreshed in 2011) does not specifically address the extinguishment of rights of way. Further, the Council submits that the proposed closure of some 112 m of footpath would not seriously affect the network which, in Goole, extends to some 6149m.
20. To the contrary, the RA contends that ERYC has failed to consider the spirit of its ROWIP. In particular it argues that the effect on people with visual impairment or mobility problems has not been taken into account. Removing the option to use Footpath 11 fails to consider the problems caused by parking on footways along the alternative route and the potential impact of bollards installed on the pavement outside the Steam Packet Public House. Although ERYC challenges the view that parking on the 1.8m wide footway is a regular occurrence, on the site visit Mr Jackson drew my attention to a car parked on Buttermere Road considerably reducing the width available for pedestrians.
21. In the ROWIP there appears to be no stated policy on what should be taken into account when considering requests to alter the public rights of way network. Thus, with no directly material provision in this document that needs to be considered in determining this Order, I can find no support either for the path's retention or for its closure.

Whether it is expedient to close the footpath

22. It is important to be clear that what is proposed by this Order is not a diversion of Footpath 11. If that were to be the case, then the relative convenience of A-B-C and the alternative via estate footways would need to be addressed. That is not what is at issue here.
23. With an extinguishment order, the question is initially whether there is a need for this path but at this stage the point is whether or not the likely use of the path by the public in future is such as to outweigh the reason for closure, taking into account all other relevant considerations.

⁵ In Mr Jackson's Statement of Case he quotes from ERYC "Delegated matters dated 18th August 2015 which states: "If the S of S confirms the order Goole Town Council have agreed to take on the maintenance of the land, the Countryside Access Team will pay for the removal of the central fence and ERYC Safer Communities will pay for the fence at either end."

⁶ In a letter dated 23 September 2015 to Goole Town Council as submitted by Mr Jackson.

24. When it decided to make this Order, ERYC concluded there is no need for Footpath 11. The objectors challenge that conclusion; both submit that in a populated location such as this, the path is clearly needed for public use. In particular the RA argues it is needed for dog-walkers and for people walking to the skate park and play area. In fact there is little *actual* evidence either way.
25. ERYC draws attention to the narrow, restricted feel of the Order route which has no street lighting; only the first 15m of the Order route (A-B) has a tarmac surface with the remaining 97m being mostly earth, weeds and stones. In contrast the alternative has street lighting, an open outlook, is better surfaced and is not significantly longer⁷ wherever one is walking from or to.
26. However it is not a comparison that is required here. Both routes are currently available and both appear to be used to a greater or lesser degree. The availability of a reasonably acceptable alternative route does not necessarily mean that the Order route should be extinguished, especially in the absence of any data to indicate current or future usage and given the lack of any clear reason for its closure.
27. There is no proposal for change here that might justify closure of the Order route. No development is intended. The restricted width aside, there are no inherent problems with the footpath itself causing a danger to the public that could warrant the removal of the public right of way for safety reasons.
28. The background to this Order stems from serious concerns about crime and anti-social behaviour in the area and I do not under-estimate the effects of this on residents of this neighbourhood. However, from the limited information that has been supplied⁸ it appears the four crimes reported within a 50m radius of the footpath during the period August 2011 and July 2013 were either in Grasmere Close or near the footbridge over the railway. Similarly the 35 reports of anti-social behaviour within the same radius and during the same period were either in Grasmere Close or associated with youths causing annoyance or disturbance at the skate park or at the end of Cheviot Avenue. In both cases it appears that the footpath itself was not directly implicated in these incidents.
29. As objector Mr Kind points out, there are other statutory tools available to highway authorities to manage situations where anti-social behaviour is a problem, such as implementing night-time gating. The RA highlights the lack of lighting and surveillance cameras, both of which can help to limit regular mis-behaviour. It is also possible that restoring the full width of Footpath 11 between B and C may have a positive effect by increasing the confidence of lawful users to walk the path more frequently, thereby reducing its attraction to miscreants.
30. On balance I find no convincing case for the extinguishment of A-B-C such that the disadvantages to those members of the public who presently choose to use the Order route in preference to the estate footways should be set aside. It has not been possible to ascertain the likely future use of this footpath since no data is available to indicate the nature of its current use, but taking into account all other relevant factors I find that the statutory tests in Section 118

⁷ Other than for residents of the 8 properties in Grasmere Close

⁸ Primarily amongst the material submitted by Mr Jackson

of the 1980 Act have not been met. I therefore conclude it would not be expedient to confirm the extinguishment proposed by this Order.

Conclusion

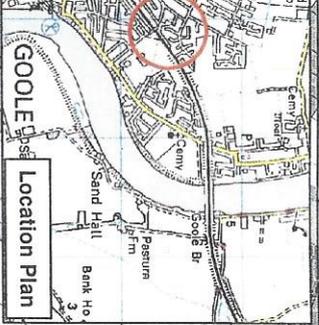
31. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

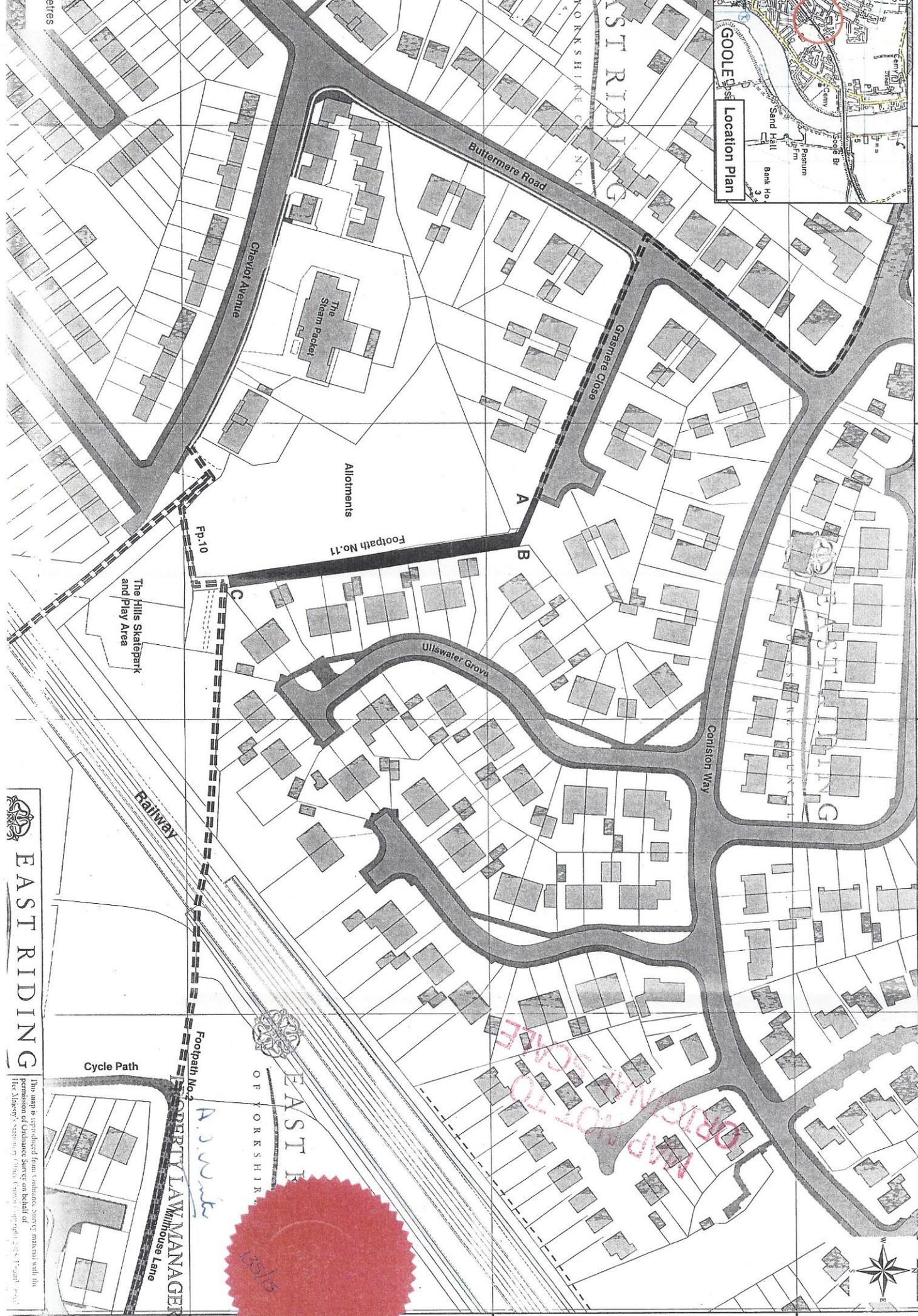
32. I do not confirm the Order.

Sue Arnott

Inspector



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EAST RIDING

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PROPERTY LAW MANAGER
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