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## Order Decision

Site visit made on 11 March 2018

**by D. M. Young BSc (Hons) MA MRTPI MIHE**

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

**Decision date: 24 April 2018**

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### **Order Ref: ROW/3181006**

- This Order is made under Section 119 of the Highways Act 1980 (the Act) and is known as the Essex County Council Public Path Diversion Order 2017 Footpath 16 Stanway in the Borough of Colchester.
- The Order is dated 19 May 2017 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Essex County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed.**

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### **Procedural Matters**

1. This case concerns the proposed diversion of Footpath 16 (FP16) between Warren Lane and its termination point at Footpath 15 (FP15). No-one requested an accompanied site visit, so my inspection was carried out unaccompanied.

### **The Main Issues**

2. The Order is made in the interests of the owner of the land crossed by the Footpath. Section 119 of the Act requires that, before confirming the Order, I should be satisfied that:
  - (a) it is expedient, in the interests of the owner, that the footpath in question should be diverted;
  - (b) the new footpath will not be substantially less convenient to the public;
  - (c) it is expedient to confirm the Order having regard to its effect;
    - i) on the public enjoyment of the path as a whole; and
    - ii) 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, having regard to the provisions as to compensation.
3. 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."
4. In addition, in determining whether or not to confirm the Order, I am required to have regard to the provisions of any 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.

## **Reasons**

### ***Whether it is expedient, in the interests of the owner of the land, that the footpath in question should be diverted***

5. The legal alignment of FP16 traverses a working quarry comprising mineral extraction and landfill operations and has been unavailable since 1996 when a temporary diversion Order was confirmed for a period of 15 years. As I saw on my site inspection, the legal route of FP16 is obstructed by areas of landfill, haulage routes and the like. Consequently, there are obvious operational and public safety advantages in diverting it. Having regard to the above and as there is no evidence to the contrary, I am satisfied that it is expedient in the interests of the landowner that FP16 should be diverted.

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

6. As temporary circumstances should normally be disregarded, my determination must be made as if the legal line of FP16 were currently available. The proposed route between points E-D-C is currently available as a permissive path. I therefore had the benefit of walking it in both directions when I conducted my site visit. Despite heavy rains in the area in the preceding days, I had little difficulty negotiating the slight incline up to FP15.
7. According to the Council the legal route of FP16 is 790 metres in length whereas the proposed route is 489 metres between points E-D-C. However, taking account of the new termination points, users would have to walk an additional 319 metres to reach the existing termination points A and B. Nonetheless, I do not consider this would be significant in terms of what is likely to be a much longer recreational walk using this and other paths in the area. There would be no reduction in the width of the path or any additional limitations. I am therefore satisfied that the new route would not be substantially less convenient to the public.

### ***The effect of the diversion on public enjoyment of the route as a whole***

8. From Warren Lane the proposed route runs parallel to the landfill site before turning northwards and intersecting with FP15. Despite the proximity of the landfill site, I found the route to be reasonably pleasant with an open setting to the north. Between points D-E the proposed route offers far reaching views of the countryside to the south-west of Colchester.
9. I can appreciate that noise and activity from the quarry and landfill site might on occasion cause some disturbance to users of the footpath. However the degree of disturbance would still be significantly less than that which would be experienced on the legal alignment of FP16. As I understand it, landfill operations are to cease by 31 March 2022 after which the area will be restored in accordance with an approved restoration plan which will provide for a range of new recreational routes across the quarry.
10. Based on the foregoing, I am satisfied that the diversion would not diminish the public's enjoyment of the route as a whole.

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

11. The land crossed by the existing and proposed routes would remain within the same ownership. There is no evidence that there would be any negative effect on land served by the existing or proposed routes. Although compensation issues have not been raised, the landowner has agreed to defray any compensation which becomes payable in consequence of the Order being confirmed.

***Termination points***

12. The northern termination point E is approximately 100 metres to the east of point B. To the south, termination point C would be 520 metres from point A. However both new termination points are either on the same highway, or a highway connected with it.
13. I accept that the Order would result in pedestrians having to use the footway along Warren Lane between points A-C. However, this has been the case since circa 1996 and I am not aware it has led to any significant problems in practice. Although I was aware of cars passing at relatively high speed when I walked along Warren Lane, the footway was in good order with landscaped verges along most of the route. I am thus satisfied that the new route is substantially as convenient to the public.

***ROWIP***

14. No issues have been raised by the parties in this regard, and there is nothing that would suggest the Order is incompatible with the Council's ROWIP.

***Other Matters***

15. The objector, states that the Order would result in the permanent closure of FP16. However that in itself is not a cogent reason not to confirm the Order. Moreover, the approved quarry restoration plan<sup>1</sup> shows that a north-south route on a similar alignment to FP16 will be provided at some future point along with a wide array of other recreational routes.
16. I do not intend stray into areas regarding the maintenance and upkeep of Warren Lane as these matters can be taken up directly with the Highway Authority and are not relevant to the specific tests set out in Section 119 of the Act. For similar reasons, I am attaching very limited weight to the allegation that the landowner has reneged on previous promises regarding FP16.

***Conclusions***

17. There is nothing in the submissions or from my site visit that would lead me to conclude that it would not be expedient to confirm the Order. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed.

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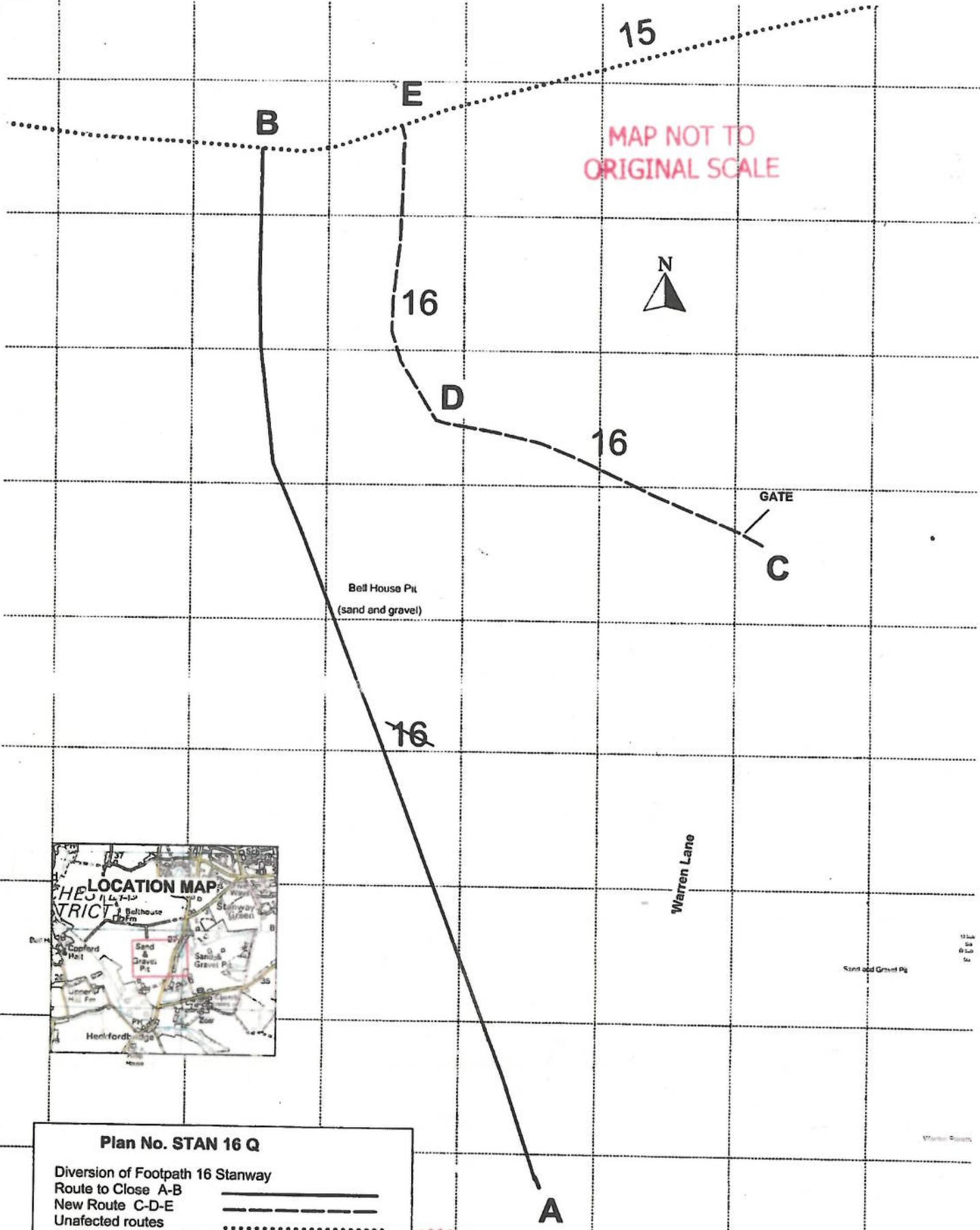
<sup>1</sup> Dwg ref: B30/455 rev C attached to planning permission ESS/07/01/COL/REV

**Formal Decision**

18. The Order is confirmed.

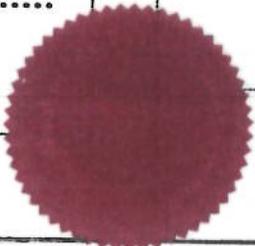
*D. M. Young*

**Inspector**



**Plan No. STAN 16 Q**

Diversion of Footpath 16 Stanway  
 Route to Close A-B      \_\_\_\_\_  
 New Route C-D-E        - - - - -  
 Unaffected routes        .....  
 Definitive Map Sheet TL 82 SW  
 Scale 1:2500 at A3



*[Signature]*  
**Attesting Officer**

 integrated expertise	 Essex County Council
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