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## Order Decision

Inquiry held on 7 December 2011

Site visit made on 7 December 2011

by **Paul Dignan MSc PhD**

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

Decision date: **25 JAN 2012**

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### Order Ref: **FPS/H3700/3/19**

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as The Warwickshire County Council (Part of Footpath SM215 Priors Marston) Public Path Extinguishment Order 2009.
- The Order is dated 2 December 2009 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were 18 objections outstanding at the commencement of the inquiry.

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

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### The Main Issues

1. The requirements of s.118 of the 1980 Act are that I must be satisfied that it is expedient that the Order should be confirmed having regard to:
  - (a) the extent, if any, that it appears that the path would, apart from the Order, be likely to be used by the public;
  - (b) the effect which the extinguishment would have as respects land served by the path, having regard to the provisions for compensation; and
  - (c) any material provisions of a rights of way improvement plan (ROWIP) prepared by a local authority whose area includes land over which the Order would extinguish a public right of way.

### Reasons

#### *Background*

2. The right of way proposed to be extinguished is a section of footpath SM215 which runs between two public roads, both known as Keys Lane. The path section's north-western terminus, point A on the Order Map, is at the private vehicular access to three residential properties. From there it runs in a roughly south-easterly direction for a distance of about 75m to terminate at point B on the Order Map. The route runs initially along the private access-way, then across a residential property, Underhill, for a distance of about 25-30m, before leaving via a pedestrian gate and continuing to Keys Lane. It crosses Underhill along the front of the house, a detached extended cottage, between the dwelling and its main garden area.
3. The application to extinguish the right of way was made by the occupiers of Underhill for reasons of security and privacy.

#### *The extent that the path would be likely to be used by the public*

4. The section of footpath cuts the corner from the two sections of Keys Lane for walkers approaching along Keys Lane from the east or north. The alternative

route, staying on Keys Lane, is some 40m longer. The Order Making Authority (OMA) states that the section of footpath is currently little used, a position supported by those of the relevant landowners who expressed a view.

5. Evidence of the public use of the path was given by one of the occupiers of Underhill, Joanne Green. She describes the level of public use over the eight years that she has lived there as very very limited. A log of public use of the path was kept by the occupiers over a period from February 2010 to October 2011. Recorded usage, expressed on a monthly basis, varied from zero to 17 (24 individuals) uses, with the higher frequencies coinciding with events related to the Order. She believes that the background level of use is about three users per month on average.
6. To try to ascertain the level of public use, the Council sent a questionnaire to the objectors, 17 at the time. Of the 11 questionnaires returned, 4 stated that they used the path weekly, 1 used it monthly and an other used it 15-20 times per year. Evidence of use was also given at the inquiry by objectors and supporters.
7. It is difficult to draw firm conclusions from the evidence, particularly as there was a significant period of closure due to an oil spillage, and the installation of a pedestrian gate on the footpath at the entrance to Underhill from the south-east may also have deterred some users. The occupiers' user log relies upon someone being present in the house and noticing every incidence of use. Although all of the ground floor rooms face onto the path, it seems to me that it would be inevitable that a proportion of users would go unnoticed.
8. From the Underhill log it is also evident that the path is used occasionally by persons who did not object to the Order and hence were not surveyed by the OMA. Nonetheless, on the evidence that is available it is clear that the path is not heavily used, and when it is it is used mainly for recreational walks in and around the village. Given the presence of a ready and convenient alternative, its main value seems to be in allowing users to vary their route. I consider that it would be fair to describe the extent of use in recent years as regular but infrequent. I consider that, apart from the Order, this level and pattern of use by the public would be likely to continue.

*The effect on other land served by the path*

9. Confirmation of the Order would enable the applicants to secure their property and improve privacy. No adverse effects on other land served by the footpath have been identified. The issue of compensation does not arise.

*Rights of way improvement plan*

10. Nothing has been raised with respect to the ROWIP that would suggest the Order is incompatible with it. The OMA confirmed that there are no material provisions in the ROWIP that I should have regard to.

*Whether it is expedient that the Order be confirmed*

11. The other matters that I consider relevant to the expediency of confirming the Order are the privacy and security of the residential property Underhill, and the effect that confirmation of the Order would have on public enjoyment and convenience.
12. Underhill is a family home. Notwithstanding that the path is not heavily used, the close proximity of the path to the dwelling itself adversely affects the privacy of its

occupiers. This is particularly so at the south-eastern end of the dwelling where path users would be uncomfortably close to the kitchen windows. Similarly, the presence of the footpath also means that the enjoyment of the garden is likely to be significantly diminished by real or perceived loss of privacy. The reluctance of Mr and Mrs Green to allow their young children to play unsupervised in the garden, for reasons of security, is also understandable and adds to the unsatisfactory impact of the footpath on private residential amenity. Confirmation of the Order would have significant benefits for the occupiers of Underhill.

13. In terms of public enjoyment, I recognise that any judgement must be significantly subjective. However, there is an alternative route that, in my view, offers a similar level of public enjoyment and convenience. The route along the public road is only marginally longer, a matter that does not generally concern recreational users, and provides equivalent accessibility to the wider public rights of way network, so that confirmation of the Order would not lessen the connectivity of the network. The village is criss-crossed by public footpaths, and I do not doubt that their existence is part of the character of the village. Those that I saw, however, have a very different character to the Order route. In this context I consider that confirmation of the Order would not significantly affect the character of the village.
14. I have also considered whether the alternative route using the public road would be as safe for walkers as the Order route. It was submitted that the route provides a refuge from traffic. It is not completely traffic free, serving as it does residential properties from the northern limb of Keys Lane, but this part of Keys Lane is a cul-de-sac and is likely to be lightly trafficked in any case. Extinguishment of the route would mean that walkers travelling eastwards would have to walk an additional 60m or so along the east-west Keys Lane, which is a through route and may occasionally carry faster traffic. There is however a footway and grass verge to assist pedestrians, and the additional traffic that a user would encounter over such a short journey would not, in my view, amount to a significant additional hazard. In view of this I consider that the footpath is not needed for pedestrian safety.

### *Conclusion*

15. In considering the Order for confirmation, the use of the word 'expedient' means that I can take into account considerations other than those specifically set out in the 1980 Act. I do not have to be satisfied that the path proposed for extinguishment is not being, or is not likely to be, used to conclude that the Order should be confirmed. That is my conclusion in this case. Having regard to my conclusions above on the use and likely future use, I consider that the path is not needed for public use, and that the limited benefits that it provides in terms of public enjoyment would be outweighed by the benefits that its extinguishment would have on the living conditions of the occupiers of Underhill. On balance, therefore, and having considered all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed.

### **Formal Decision**

16. I confirm the Order.

*Paul Dignan*

INSPECTOR

**APPEARANCES**

**FOR WARWICKSHIRE COUNTY COUNCIL:**

Lisa Arben	Senior Solicitor, Warwickshire County Council
She called	

Ann Marie Grace	Definitive Map Officer, Warwickshire County Council
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**FOR THE APPLICANT:**

Stephen Whale	Of Counsel
He called	
Joanne Marie Green	Applicant
Carl Middleditch	Local resident

**SUPPORTERS:**

Cllr. Chris Williams	
Christine Hawkins	Gardener
Pete Dunkley	Local resident

**OBJECTORS:**

Alan Flint	Local resident
Peter Brown	Local resident
Sue Benson	Local resident
Wendy Sheldon	Local resident
Mollie Cross	Local resident
John Sheldon	Local resident
Tess Simmons	Local resident
Neil Justice	Local resident
Kate Morgan	Local resident
Barry Payne	Local resident

**DOCUMENTS**

- 1 Opening Statement – Lisa Arben
- 2 Addendum to Ann Marie Grace Proof of Evidence

449000

449100

258000

258000

MAP NOT TO ORIGINAL SCALE

257900

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257800

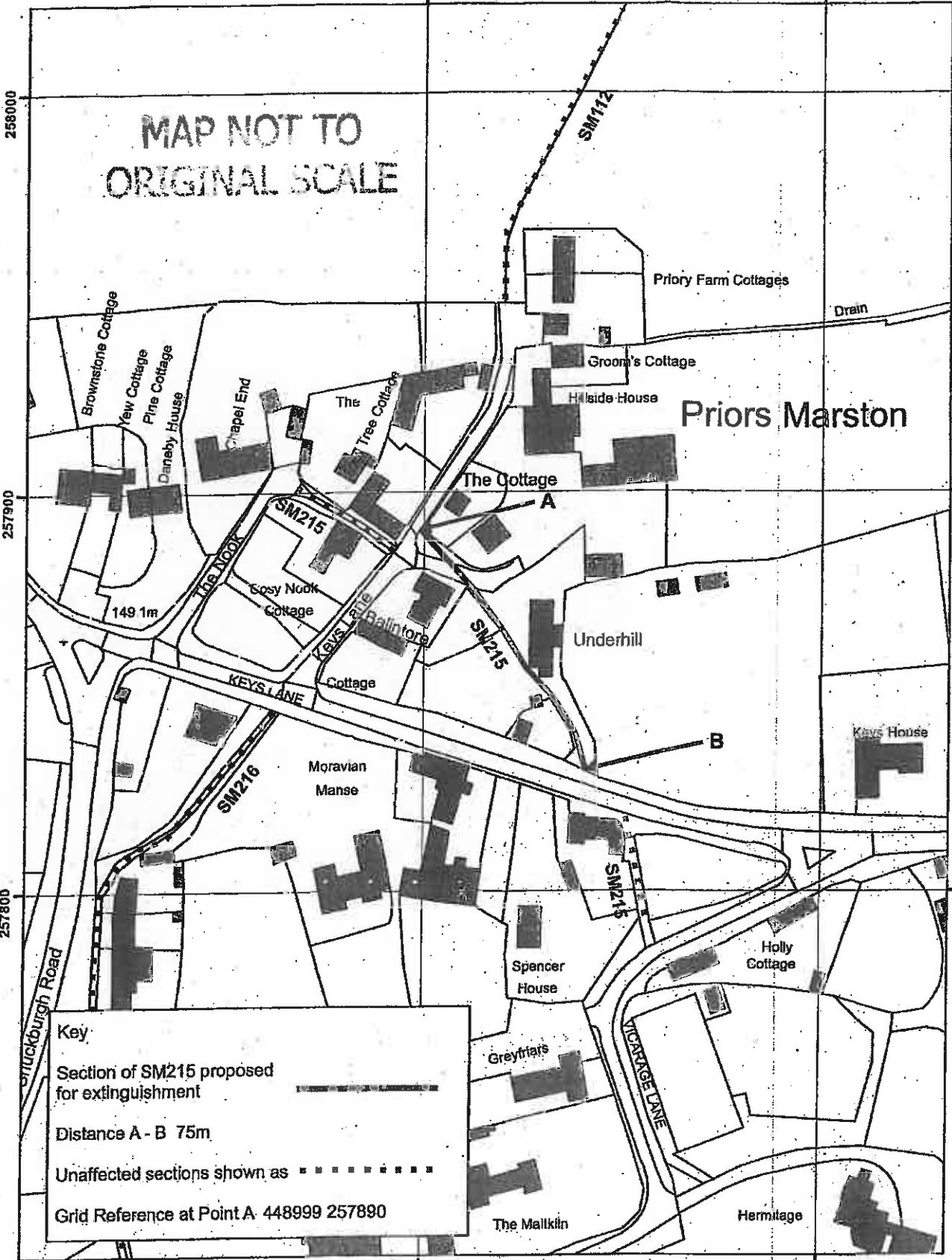
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**Key:**

- Section of SM215 proposed for extinguishment 
- Distance A - B 75m
- Unaffected sections shown as 
- Grid Reference at Point A 448999 257890



Plan P2008/005E/1  
 Public Path Extinguishment Order  
 Public Footpath SM215  
 Priors Marston

