

**HIGHWAYS ACT 1980 - SECTION 119
PUBLIC PATH DIVERSION ORDER
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL
(PUBLIC FOOTPATH MPA 67) at Old Greenhouse Farm
(PARISH OF Painswick)**

Gloucestershire County Council’s Statement of Reasons for processing a Public Path Diversion Order.

BACKGROUND

1. This statement of case relates to an application made by the owner of Old Greenhouse Farm, Painswick under section 119 of the Highways Act 1980 (“HA80”) and the Wildlife and Countryside Act 1981 section 53A(2) to divert the path MPA 67 in the Parish of Painswick.

The application is made in the interest of the owner of the land crossed by the footpath, MPA 67, to move the footpath as shown on the Definitive Map to the adjacent field.

DESCRIPTION OF DIVERSION ORDER ROUTE

2. The definitive path to be stopped up starts at point A on the attached map, see *annex 1*, and proceeds in a north easterly direction for 94 metres to a point marked B on the attached map. There is an existing field gate at point A and a stile at point B.

The proposed path starts at point B on the map and will skirt the field following a track. The track heads in a south easterly direction for 30 metres then turns south westerly for a further 100 metres to point D at the roadside. A gap will be created in the wall at this point and steps will be cut into the bank. A handrail will be added if required. Photographs see *annex 2*.

WIDTH AND LIMITATIONS

3. The new path will have a recorded width of 3 metres along the new track between points B and D. There are no limitations to be recorded.

STATUTORY PROVISIONS

4. Section 119 of the Highways Act 1980 sets out as follows:

- (1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—
 - (a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and
 - (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a “public path diversion order”.

- (2) A public path diversion order shall not alter a point of termination of the path or way—
 - (a) if that point is not on a highway, or

- (b) (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.

- (3) Where it appears to the council that work requires to be done to bring the new site of the footpath or bridleway into a fit condition for use by the public, the council shall—
 - (a) specify a date under subsection (1)(a) above, and
 - (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.

- (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.

- (5) Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—
 - (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or
 - (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public, or
 - (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.

- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as

the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, 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) above.

(6A) The considerations to which—

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.

5. Section 53A (2) of the Wildlife and Countryside Act 1981 sets out as follows:
An Order made by the Authority to modify the definitive Map and Statement of Public Rights of Way in consequence of the occurrence of an event specified in Section 53(3) (a) (1) of the 1981 Act, namely the stopping up (as authorised by the order) of a highway shown or required to be shown in the map and statement.
6. GCC also has a duty under section 29 of the HA80 to have due regard to—
 - (a) the needs of agriculture and forestry, and

- (b) the desirability of conserving flora, fauna and geological and physiographical features.

Section 29 holds that “agriculture” includes the breeding or keeping of horses.

- 7. GCC also has a duty to consider its obligations under the Equality Act 2010.

REASONS FOR MAKING A DIVERSION ORDER

- 8. A highway authority may make a diversion order if it is expedient to do so in the interest of the landowner and/or the public.
- 9. When considering the test of expediency the highway authority must ensure the following:
 - (i) that the point of termination of the path is not altered if that point is not on a highway, or
 - (ii) that where the point of termination is on a highway, it is not altered unless to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

Is it expedient to divert the route in the interest of the landowner?

- 10. It is expedient to divert footpath MPA 67 in the interests of the owner of the land. The existing footpath passes along the drive to the Old Greenhouse Farm and the adjacent properties Little Greenhouse and Greenhouse Barn passing the residential properties and entering a small paddock where ponies are kept. The applicant has asked that we consider the privacy and security of the residents including children.

Is it expedient to divert footpath MPA 67 having regard to the points of termination and whether these are substantially as convenient to the public?

- 11. The proposed route is 36 metres longer with a further 57 metres to return to point A. The existing and diverted path do not connect with any other public rights of way although Wick Street on the opposite side of the road is roughly equidistant between points A and D and would provide a pleasant walk to join with footpath MPA 59 to

walk back to Painswick. The diverted route finishes 57 metres to the south east of the existing starting point, A.

Agreement made under section 119(5) of the HA80

12. The landowner has agreed to defray –
 - (a) any compensation which may become payable under section 28 as applied by section 121(2)
 - (b) any expenses which they may incur in bringing the new site of the path into a fit condition for use for the public.

The new footpath will be levelled to provide a good surface. Steps will be required to be cut into the bank from the road at point D and a handrail installed if necessary. All works will need to be completed and certified before the order is confirmed.

GCC's obligations under section 29 HA80

13. The existing definitive path passes through a small paddock where ponies are kept. There have been instances where walkers have allowed their dogs to roam freely and not clear up after them. The proposed route will skirt a field not currently used for agriculture.

GCC's obligations under the Equality Act 2010

14. The existing path includes a field gate at point A and a stile at point B. The initial 57 metres of the definitive path passes along the drive and is wide, level and surfaced before passing into the paddock which is grassy. The proposed path will be level and wide with no limitations, although there will be several steps to negotiate in the bank.

REASONS FOR CONFIRMING A DIVERSION ORDER

15. The legal tests for the confirmation of a diversion order, by either a highway authority or the Secretary of State, are set out in section 119(6) of the HA80. The interpretation of section 119(6) was considered in the case of *R (on the application of Young) v The Secretary of State for the Environment, Food and Rural Affairs* [2002]

EWHC 844. Paragraph 26 of the PINS Advice Note 9, commenting on the above case, states that subsection 119(6) has three separate tests to it.

- (i) Firstly, the order is expedient in terms of section 119(1), i.e. that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path be diverted but not so as to alter the point of termination if not on to a highway or to a point on the same highway not substantially as convenient to the public.
- (ii) Secondly, that the diverted path will not be substantially less convenient to the public in terms of, for example, features which readily fall within the natural and ordinary meaning of the word “convenient” such as the length of the diverted path, the difficulty of walking it and its purpose.
- (iii) Thirdly, that it is expedient to confirm the order having regard to the effect:
 - (a) the diversion would have on the public enjoyment of the path or way as a whole;
 - (b) of the order on other land served by the existing public right of way; and
 - (c) of the new path or way on the land over which it is to be created and any land held with it.

16. Paragraphs 12, 13 and 17 above address the first two tests of expediency and the diversion being substantially as convenient to the public. The third test is addressed as follows:

Is it 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 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?*

17. Public enjoyment will not be affected by the diversion of this path.

There are no adverse effects in respects of neither other land served by the existing or the new public right of way nor the land over which the path is created.

Is the Diversion Order affected by a Rights of Way Improvement Plan?

18. There are limited elements of the Rights of Way Improvement Plan relevant to this order. See and full RoWIP on the county council webpages https://www.gloucestershire.gov.uk/media/3278/rowip_2011_to_2026-45038.pdf