
Order Decision

Site visit made on 12 November 2015

by Martin Elliott BSc FIPROW

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

Decision date: 17 December 2015

Order Ref: FPS/T1600/4/50

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Gloucestershire County Council (Public Footpath CDU 34)(Parish of Dursley) Diversion Order 2014.
- The Order was sealed on 17 July 2014 and proposes to divert part of public footpath CDU 34 as shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with Section 53(3)(a)(i) of the 1981 Act, once the provisions relating to the diversion come into force.
- There was one objection outstanding when Gloucestershire 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 subject to modification.

Procedural Matters

1. I carried out an accompanied site inspection on 12 November 2015 when I was accompanied by Mrs Macaulay-Lowe, representing Gloucestershire County Council, and Mr R Coombes, the objector.
2. The objector questions whether the Order plan is correct 'for the diversion of CDU 34' as it differs from the route shown on a 1920s Ordnance Survey map. From my examination of the definitive map showing the route of footpath CDU 34 I am satisfied that the route A to B¹ depicted on the Order map reflects the route of the existing footpath as identified on the definitive map.
3. The objector also contends that the Order makes it impossible to join CCA 98 at point B without diverting CCA 98 so as to make a continuous right of way. Whilst I note the representations of the objector, the definitive statement describes footpath CCA 98 as connecting with CDU 34 and Part IV of the Schedule to the Order clearly indicates that footpath CDU 34 leads to CCA 98. The Order map identifies the proposed alternative route terminating at its junction with CCA 98. I am aware of the existence of a stile close to point B but this is not the termination point of the proposed alternative route.
4. Looking at the Order as a whole it is clear that the proposed alternative for CDU 34 terminates at its junction with footpath CCA 98. Nevertheless, for the avoidance of any doubt the Order, if confirmed, will be modified at Part II of the Schedule to make it clear that the Order route connects with footpath CCA 98.

¹ Letters A, B and C relate to points on the Order plan.

5. The objector also considers that the route A to B as presently walked has been subject to a statutory dedication.
6. I have been appointed to consider an Order made under section 119 of the Highways Act 1980. Whilst I note the views of the objector I have been provided with insufficient information for me to conclude that the alternative route is an existing public right of way. It is not my role to make a determination on the status of the alternative route based on limited evidence. Such investigations should be properly dealt with under the provisions of the Wildlife and Countryside Act 1981. In any event, from the information before me, it would appear that only part of the proposed alternative route follows a route which has previously been walked. There is nothing which prevents the diversion of the route along part of an existing public right of way.
7. Bearing in mind the above I do not consider that the Order is defective. The Order is capable of confirmation subject to the relevant statutory tests being met.

The Main Issues

8. This Order has been made in the interests of the owner of the land crossed by the footpath. Section 119 of the Highways Act 1980 therefore requires that, before confirming the Order, I must be satisfied that:
 - (a) it is expedient in the interests of the owner of the land crossed by section of footpath to be diverted that the line of the path or way, or part of that line should be diverted; and
 - (b) the path or way will not be substantially less convenient to the public; and
 - (c) that it is expedient to confirm the Order having regard to:
 - (i) the effect which the diversion would have on public enjoyment of the path or way as a whole; and
 - (ii) the effect which the coming into operation of the Order would have as respects other land served by the existing rights of way; and
 - (iii) the effect which any new public rights 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, account being taken of the provisions as to compensation.
9. Section 119(6A) of the 1980 Act provides that I must have regard to any material provision contained in a Rights of Way Improvement Plan (ROWIP) for the area covered by the Order.
10. The existing route is currently obstructed at a number of points. An equitable comparison between the existing and proposed routes can only be made by disregarding any temporary circumstances preventing or diminishing the use of the existing route. The convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.

Reasons

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

11. The Council and the applicant contend that the Order is in the interests of the landowner on the grounds of security and privacy. I have not been provided with any information as to issues of security and it is difficult for me to give this element any weight. In terms of privacy, I noted on my site visit that the existing footpath runs close to the applicant's house and parts of the garden. The footpath provides clear views through the windows of the dwelling into the living spaces of the property. The diversion of the footpath to the alternative route will improve the privacy of the property as views into the property and the garden will be reduced.
12. In view of the improvements in privacy I conclude that the diversion is in the interests of the landowner.
13. The objector makes the point that the diversion can only be in the interests of the applicant for the purpose of building expansion such that the Order is totally against the interest and enjoyment of the public. I consider below the effect on the public enjoyment but it must be noted that the Order has been made in the interest of the landowner. It is not necessary for an Order under section 119 of the 1980 Act to be made in the interest of the public although orders may be made on such grounds. Nevertheless, for the Order to be confirmed, it must satisfy the requirements as set out in paragraph 8 above. As regards any potential for building development, my determination must be made on current circumstances. The Order has been made in the interest of the landowner on the grounds that the diversion of the path will improve security and privacy.

Whether the path or way will not be substantially less convenient to the public

14. The objector is of the view that the existing route is quite flat without obstructions other than those which could be removed easily. The point is also made that the alternative route is longer and is curved in nature.
15. As noted above, the convenience of the existing route will be assessed on the basis that it is unobstructed and maintained to an appropriate standard. The current route from point A to the existing kissing gate is steep and has been provided with steps, now removed. From the kissing gate the path crosses land which is gently undulating through to point B. The proposed alternative route from point A to point C is of a similar gradient to the initial section of the existing route. A flight of steps has been constructed on this section. From point C to point B the alternative route crosses land which is also gently undulating. In my view the existing and proposed routes are very similar in nature and the alternative route is not substantially less convenient.
16. As regards any increase in length, the proposed alternative route is 25 metres longer. This increase in length is minimal and I do not consider that this, and the curved nature, renders the alternative route to be substantially less convenient.
17. I note the objector prefers the existing route on the basis that the ground is quite flat and that there are no major obstructions which cannot be removed. However, the issue to be considered is whether the proposed alternative would be substantially less convenient. Bearing in mind my observations at paragraphs 15 and 16 above I conclude that the proposed alternative route is not substantially less convenient.

The effect which the diversion would have on public enjoyment of the path or way as a whole

18. The objector states that the alternative route is curved and that the public prefers to walk in straight lines. In my view the curve of the route is very slight and I do not consider that this will have any adverse effect on the enjoyment of the route as a whole.
19. I note the argument made by the Council that since the part of the current walked route was already being enjoyed by the public it was considered that the diversion would not affect the public's enjoyment. However, in terms of enjoyment it is necessary to compare the route to be diverted, the definitive route of CDU 34, with the proposed alternative. In my opinion the character of the existing and proposed alternative route are similar and the alternative route is no less pleasant than the existing route.
20. Overall I do not consider that the diversion of the route will have any adverse effect on the enjoyment of the path as a whole.

The effect which the coming into operation of the Order would have as respects other land served by the existing right of way

21. There is no evidence before me that the diversion would have any effect on land served by the existing way.

The effect which 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, account being taken of the provisions as to compensation

22. Both the existing and alternative routes pass over land in the ownership of the applicant who supports the Order. There is no evidence before me of any adverse effect on the land over which the new route passes such that compensation issues are relevant.

Whether the proposed point of termination is on the same highway, or another one connected with it, and is substantially as convenient to the public.

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Rights of Way Improvement Plan

24. No provisions from any ROWIP have been put before me which are material to my decision.

Whether it is expedient to confirm the Order

25. The objector makes reference to the reduction of the width of the path. The Council have stated that there is currently no defined width for the footpath and my examination of the definitive statement reveals that no width is stated. The proposed alternative route is identified as between 1.5 and 2.0 metres. In my view this width is reasonable taking in all the circumstances and there is nothing to indicate that the existing route is of a greater width such that confirmation of the Order is inexpedient on the grounds of a reduction in width.

26. The objector points out that the work to the alternative route has already been carried out and that this work is of very poor quality. The Council have confirmed that the new path will be ready for use before the Order comes into effect. Although the work viewed by the objector may not have been satisfactory the Order is not yet confirmed and therefore additional works may need to be carried out before the Order comes into effect. The authority for carrying out such works is not a matter which I can give any weight.
27. I am aware that there is a mound of rubble/stone on the alignment of the proposed alternative route. As stated above the Order has not been confirmed and the Council confirm that the alternative route will be ready for use before the Order comes into operation. The applicant has advised that this mound will be removed.
28. The objector makes a number of representations in respect of the obstruction and unofficial diversion of the definitive line of CDU 34 and other footpaths in the district. The objector also makes a number of observations as to the conduct of the authority in the making of the Order and the determination of his objections. These matters have no bearing on whether or not the Order should be confirmed and I give them no weight.
29. Having regard to all of the above, the Order is in the interest of the landowner as it will improve privacy. The proposed alternative route is not substantially less convenient and the diversion will not have an adverse effect on the enjoyment of the path as a whole. I conclude therefore that it is expedient to confirm the Order.

Conclusion

30. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to modification.

Formal Decision

31. I confirm the Order subject to the following modification:

- At Part II of the Schedule to the Order at line 5 after 'marked B' insert 'where it joins public footpath CCA 98'.

Martin Elliott

Inspector