



## Order Decision

Site visit on 14 December 2015

**by Sue Arnott FIPROW**

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

**Decision date: 21 December 2015**

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### **Order Ref: FPS/P0119/4/14**

- This Order is made under Section 119 of the Highways Act 1980 and Section 53A(2) of the Wildlife and Countryside Act 1981. It is known as the South Gloucestershire Council (Footpath LDO 3/20 at The Old Rectory, Wapley) Public Path Diversion Order 2014 and is dated 23 July 2014.
- The Order proposes to divert part of public footpath LDO 3/20 at The Old Rectory at Wapley in the Parish of Dodington, as detailed in the Order map and schedule, and would modify the definitive map and statement accordingly.
- There was one objection outstanding when South Gloucestershire Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

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

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### **The Main Issues**

1. The requirements of Section 119 of the Highways Act 1980 (the 1980 Act) are that, in this case, before confirming the Order I must be satisfied that:
  - (a) it is expedient in the interests of the owner of the land crossed by Footpath LDO 3/20 that the right of way in question should be diverted;
  - (b) the new route to be provided will not be substantially less convenient to the public; and
  - (c) it is expedient to confirm the Order having regard also to (i) the effect of the diversion on public enjoyment of the path as a whole, and (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing path and the land over which the new path would be created together with any land held with it, having had regard to the provision for compensation.
2. 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. I am also mindful of the requirements of the Equality Act 2010.

### **Reasons**

#### *The interests of the owner of the land*

3. This Order was made by South Gloucestershire Council (SGC) at the request of the owner of The Old Rectory. The main reasons given in support of the proposal were to allow the applicant to manage livestock more efficiently, and to improve privacy and security at the property.
4. No information has been provided to indicate the applicant's involvement with livestock on the land, the type of agricultural enterprise in operation or the

- types of animals that are kept here. However I noted on my site visit that 'Annie Hall's Poultry' is based at The Old Rectory and in addition to ducks and chickens, I also observed goats in small paddocks to the east of the proposed path C-D.
5. The objector questions the first reason for the diversion, submitting that 'more efficient livestock management' is implausible when the proposed route B-D-C would entail a longer walk around the field edge and therefore potentially cause greater disturbance to animals in the field.
  6. It is hard to form a conclusion on the benefit likely to be derived by the landowner from this diversion in terms of livestock management when so few details are available. Some types of animals tend to congregate in field corners and gateways whereas others may graze the whole field and avoid the edges if these are frequented by walkers.
  7. The Order map does not mark the position of the new agricultural building which now lies to the south west of the point marked B on the Order map, or the access road which leads to it from The Old Rectory. It has not been submitted that the outside pen attached to this building obstructs the definitive line although it appears to me to come very close to it. That being so, it would be understandable that the applicant should seek to realign the footpath so that walkers, and particularly those with dogs, do not disturb the birds kept within this enclosure.
  8. It seems clear that whatever the strategy, the landowner is convinced that it is in his best interest to realign the public footpath around the east and southern edges of the field rather than a more direct route across it towards point C, or indeed the definitive line. No evidence has been provided to the contrary.
  9. The objector challenges the applicant's claim that the existence of the public footpath (which passes the kitchen window of The Old Rectory) "takes away" the privacy of residents there. He argues that the applicant knew the footpath was there when the property was purchased and points out that many paths run immediately outside the doors and windows of private dwellings in more built up areas without difficulty or complaint.
  10. Although the applicant has every right to seek a diversion on the grounds of privacy, I do not place a great deal of weight on this factor, particularly as the ground floor rooms with windows facing the footpath are said to be some 6 metres from the public right of way. Indeed, on my visit to the site, the path appeared to be at least that distance from the house.
  11. Yet I recognise the benefits residents would enjoy if the public footpath does not pass in close proximity to the house and along its otherwise private drive. However, that benefit must be tempered slightly by acknowledging the impact of business customers and their vehicles in this vicinity.
  12. Addressing the security concerns of the applicant as a reason for the diversion, the objector highlights the benefits of having the public pass by, submitting that criminals do not want to be observed or disturbed. That is an arguable point but in fact I find the security issue to be wholly unsupported here. No evidence of any criminal activity has been presented, nor any security reports identifying the public footpath as a factor in any previous incidents or a particular risk in future. Nevertheless, I recognise the general concerns often expected with a rural property of this nature.

13. I can see that it would be in the applicant's interests generally to move the footpath further from his house and buildings, to increase his privacy and security but I consider these reasons to be largely unsubstantiated and to lack any significant weight. Whilst the main reason for the diversion - the better management of livestock - has not been fully explained, I accept that it would be expedient in the interests of the landowner to realign the footpath as proposed.

*Convenience to the public*

14. In assessing the relative convenience of the present and proposed routes I have considered various factors including length, width, gradient, surface and limitations in the context of the role Footpath LDO 3/20 plays in the local network. The Order route forms part of a definitive footpath that runs from Wapley Hill to Dodington Road just south of Chipping Sodbury.
15. There is little difference between the two routes in terms of gradient and in one respect the proposed route would offer advantages over the present path: it would have a defined width of 2 metres throughout whereas the existing definitive footpath has no specified width.
16. The objector has raised concerns about the surface of the new route being wetter and muddier in part, especially around the gateway north of point C. It is reported that goats tend to congregate here and the ground becomes more waterlogged as a consequence.
17. The whole of the proposed new route would have a grass surface whereas around half of the existing section A-B follows the hard surfaced drive and access track at The Old Rectory with only 80 metres or so on grass. However SGC points out that the vast majority of the 2 kilometre long Footpath LDO 3/20 passes through fields with a grass surface and I agree that the inclusion of further field-walking would not be out of character here. I also note that the applicant has undertaken to address any drainage issues and to remedy the muddy area around the gate near point C.
18. In any event, if the Order is confirmed, the diversion cannot come into effect until SGC certifies that it is satisfied that work has been carried out to bring the site of the new path into a fit condition for use by the public, thus providing an additional safeguard to ensure that a suitable surface is provided.
19. When considering the effect of the diversion in terms of length and the limitations on use by the public it depends to a large extent in which direction the walker is going. If using Footpath LDO 3/20 between Chipping Sodbury and the public road Wapley Hill, there would be an increase in distance of 90-100 metres (including the section of Footpath LDO 6/10 between C and A) and an additional two (or three<sup>1</sup>) gates to be negotiated. If walking along Footpath LDO 3/20 from Chipping Sodbury to then turn south eastwards via Footpath LDO 6/20 towards the public road to Claypit Hill, there would be a saving of 40-50 metres and only one (new<sup>2</sup>) pedestrian gate, not four.
20. No information is available to me to indicate present levels of usage beyond my own inspection of the paths in this vicinity and I am therefore unable to reach

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<sup>1</sup> There is a gate in a new fence beside the access road to the new building which is broadly on the definitive line of Footpath LDO 3/20 but no information has been provided to indicate whether this new limitation has been authorised by the highway authority.

<sup>2</sup> Fully compliant with the current British Standard

any reliable conclusion as to which of these two options may be more popular. It therefore appears to me that some may gain from the diversion whereas others may find their route slightly longer and may need to open additional gates along the way.

21. The objector submits that the proposed new route is significantly less direct and less convenient than the original and he speculates that fewer people will be inclined to use it as a consequence. He argues that the additional distance could amount to a substantial loss of convenience for someone who uses the route on a regular basis although he provided no evidence to suggest that anyone actually does so.
22. The statutory test requires a comparison between present and proposed routes. I accept that the objector is quite right in saying that the proposed route is less direct and that walking around two sides of a rectangular field is never going to be as convenient for people who prefer to walk diagonally across it. However the question is whether that amounts to 'substantial inconvenience'. In reaching the conclusion that the additional distance is not significant in the context of a footpath of this overall length, I also take into account that consultation with interested parties has shown support for the proposal from Dodington Parish Council and no objections from the Ramblers' Association or the District Church Council.
23. To summarise my findings having considered all the factors which fall under the 'convenience' heading, I conclude that the new route would be less convenient to the public in some respects but not substantially so.

#### *Public enjoyment*

24. The objector contends that enjoyment of Footpath LDO 3/20 would be diminished as a consequence of the diversion since the present close views of The Old Rectory, an important historic building, would be lost.
25. Having walked the route myself, it appears to me that views of the building will not be lost altogether since it can be seen from point A beside the church although obviously that is from a greater distance. The present views of the church from the north would remain along the new route B-D, and in the context of the path as a whole, I conclude that overall public enjoyment of the footpath in question would not be adversely affected to such an extent as to prevent confirmation of the diversion.

#### *Other considerations*

26. Compensation issues are not relevant here and no adverse effects arising from the diversion on any of the land concerned have been drawn to my attention. The owner of the land affected by the proposal is the applicant who clearly supports the Order.
27. SGC has highlighted aspects of its Joint Rights of Way Improvement Plan 2012-2016, produced as part of the West of England Partnership and from which it developed its own policies for dealing with public path orders. No issues have been drawn to my attention to suggest this present proposal conflicts in any way with the policies and plans relevant here.
28. The objector commented that "*The proposed diversion would doubtless increase the value of the property, giving a windfall profit to the owner at the*

*expense of the wider community.*" This is not a benefit to which I attach any weight in addressing the statutory tests.

*Whether it is expedient to confirm the Order*

29. In reaching a final conclusion on the expediency of this diversion I must weigh the advantages that would accrue to the landowner in whose interest the Order is made against any disadvantages that may result for the public. Overall, taking into account all relevant factors and having addressed the statutory tests in Section 119 of the 1980 Act, I conclude it would be expedient to confirm the diversion proposed by this Order.

**Conclusion**

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

**Formal Decision**

31. I confirm the Order.

*Sue Arnott*

**Inspector**