



Order Decision

Site visit made on 18 June 2020

by Rory Cridland LLB(Hons), Solicitor

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

Decision date: 29 July 2020

Order Ref: ROW/3235387

- 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 and is known as the Gloucestershire County Council Public Footpaths KCH 17 and KCH 19 Parish of Chedworth Diversion Order 2019.
- The Order is dated 12 February 2019 and proposes to divert the public right of way 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 Wildlife and Countryside Act 1981 Act, once the provisions relating to the diversion come into force
- There was 1 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 modifications.

Procedural Matters

1. The Order seeks to divert part of footpath KCH 17 (shown A-C on the Order plan) and footpath KCH 19 (shown F – A on the Order plan). In considering whether or not to confirm the Order, I have considered each proposal separately.
2. The Order, as made, also shows part of Footpath KCH 15 between points B-D as a solid black line. This footpath is unaffected by the Order and I note that the route depicted has already been stopped up. This is potentially misleading. Nevertheless, the Order is clear in its intentions and I am satisfied that no one will have been prejudiced by its inclusion. Should the Order be confirmed, I consider that it would be necessary to modify the Order to remove the references to footpath KCH 15 from the Order plan. I am satisfied that such amendments would not require re-advertising by virtue of Paragraph 2(3) of Schedule 6 to the 1980 Act.
3. I undertook an unaccompanied site visit on 18 June 2020 where I walked that part of footpath KCH 17 to be diverted as well as the proposed new route. However, part of the existing route of footpath KCH 19 is currently obstructed by a tractor shed and is inaccessible. Nevertheless, I was able to observe the general alignment of both the existing and proposed new route and was able to gain a good understanding of the effect that the proposed diversion would have on both public convenience and enjoyment.
4. I have considered the Order on the basis that the Order route is available for public use and maintained to the appropriate standard.

The Main Issues

5. Section 119 of the 1980 Act requires that before confirming the Order, I must first be satisfied that it is expedient in the interests of the owner of land crossed by the paths that the footpaths in question should be diverted. In addition, section 119(2) requires that where the Order alters a point of termination, I must be satisfied that it is substantially as convenient to the public.
6. The other tests for confirmation set out in section 119 which are relevant to this Order are, firstly, whether the diverted footpaths would be substantially less convenient to the public than the present ones, and secondly, what effect the proposed diversions would have on public enjoyment of the path as a whole.
7. In addition, I am required to take into consideration any material provisions of any Rights of Way Improvement Plan (ROWIP) prepared by the Council. However, in this case there are no material provisions of the ROWIP which are relevant.

Reasons

Whether it is expedient in the interests of the owner of the land that the footpaths in question should be diverted.

Footpath KCH 17

8. The section of footpath KCH 17 to be diverted commences at point A on the Order plan and proceeds in a north westerly direction along the driveway of Hartshill. As it reaches the property, it continues in a north north westerly direction passing around the outside of the buildings and through the vegetable garden to reach a stile at point C.
9. The Order is made to address privacy and security concerns arising from the proximity of the existing footpath to the property. It proposes to divert the footpath away from the property so that it passes to the rear of the vegetable garden outside the established fence line.
10. I have been provided with a Household Survey Report dated July 2017 in which Gloucestershire Constabulary note the property is closely overlooked from footpath KCH 17. This accords with my own on-site observations and I agree that diverting the route would improve both security and privacy for the occupiers of Hartshill. As such, I am satisfied that it would be expedient in the interest of the landowner that footpath KCH17 is diverted.

Footpath KCH 19

11. The part of footpath KCH 19 to be diverted commences at Point F on the Order plan and proceeds in a northerly direction to point A where it connects with footpath KCH 17 on the driveway to Hartshill. It is obstructed at its northern end by a tractor shed and is currently inaccessible.
12. The Council's evidence indicates that the main reason for the diversion is to overcome the obstruction. While I do not, in general, consider the obstruction of a public right of way provides grounds for its diversion, diverting the route away from the tractor shed would nevertheless enable the landowner to more effectively utilise his land. Accordingly, I consider the diversion of footpath KCH 19 would be expedient in the interests of the landowner.

The convenience of the point of termination.

Footpath KCH 19 only

13. Although it would involve the alteration of a point of termination from point A to G, it would continue to connect to footpath KCH 17 albeit a little further south. Having viewed both the existing and proposed routes, I am satisfied that the altered point of termination would be substantially as convenient to the public.

Whether the diverted path would be substantially less convenient to the public

Footpath KCH 17

14. The proposed diversion would add a further 16 metres to the overall length of footpath KCH 17 which, while longer, would not be substantially so. However, instead of the existing gentle gradient over a surfaced drive, walkers would pass through the adjacent fields, along an earth-based path. Furthermore, the proposed new route (E-D-C) would be less direct than the present one and would introduce limitations at points D1 and E.
15. Nevertheless, the differences between the routes are modest. The gradient, while steeper, is only moderately so and the earth-based surface would be similar to other parts of footpath KCH 17 as well as a number of connecting routes. It would not appear out of place in the surrounding network of countryside paths and while I accept that the introduction of a field gate at point D1 and a pedestrian gate at point E would result in some reduction in convenience, similar structures are common features in the surrounding countryside.
16. On balance, while I acknowledge the proposed new route would be somewhat less convenient to the public, I do not consider it would be substantially so.

Footpath KCH 19

17. The differences in length between the current alignment of footpath KCH 19 and the proposed new route are marginal. However, I note that the proposed new route would require walkers to change direction at points F and G and would require navigating the existing field gate at point G. Nevertheless, these differences are modest and while they may result in some small loss of convenience to users, it would not be substantial.
18. I am therefore satisfied that the proposed diversion would not be substantially less convenient to the public than the current path.

Whether it is expedient to confirm the Order having regard to the effect the diversion would have on public enjoyment of the path as a whole.

Footpath KCH 17

19. Some of the effects on convenience will also affect enjoyment. The increased gradient and length would pose some additional challenges to some walkers, but in the context of the overall path and the surrounding countryside network of routes, any effect on public enjoyment would be small. For similar reasons to those noted above in respect of convenience, I do not consider they would materially affect the public's enjoyment of the route, either along this particular section or more generally.

20. I accept that there will be some users who will prefer to use the tarmacked drive to Hartshill. However, the surface of the proposed new route would not be noticeably different to the rest of footpath KCH 17 or many other nearby paths. As such, I am not persuaded that these differences would have any material impact on the public's enjoyment of the route.
21. Furthermore, the existing stile at point C is difficult to navigate and although the addition of a pedestrian gate at point E and a further field gate at point D1 would introduce additional limitations to the path, they would, in my view, be easier to navigate than the existing stile. Overall, I consider their effect on public enjoyment would be neutral.
22. I accept that the route is well used by walkers of all ages and varying abilities and that it provides an important link to the surrounding highway network. However, there is no robust evidence which would indicate that it is in any way related to nearby heritage assets or that the proposed diversion would result in any harm to their significance. Likewise, there is nothing to indicate that the proposal would affect public access to the wider highway network.
23. Consequently, I am satisfied that there would be no material impact on public enjoyment which would lead me to the conclusion that the Order is not expedient in this respect.

Footpath KCH 19

24. The Council has stated in its written evidence that there are no differences in public enjoyment for footpath KCH 19. No objection has been made on the basis that the proposed diversion of this footpath would impact on public enjoyment and having viewed the route I have no reason to conclude otherwise.

Conclusions

25. For the reasons set out above and having had regard to all matters raised in the written representations, I consider the proposed diversion meets the statutory tests in respect of both footpath KCH 17 and footpath KCH 19. Consequently, I conclude that the Order should be confirmed subject to the modifications set out in the formal decision below.

Formal Decision

26. I confirm the Order is confirmed subject to the following modifications:

- The Order Plan shall be amended as follows:
 - the solid black line between points B-D shall be removed.
 - the words "stopped up by separate order KCH 15 D-B" (together with the accompanying solid black line) in the legend shall be removed.

Rory Cridland

INSPECTOR

TITLE:
 Division of
 footpaths KCH 17, KCH 19,



DRAWN BY: Martine Tyler
DATE: 31st January 2019
SCALE: 1:1,250

Legend

Footpath to be stopped up
 KCH 17 A - B - C
 KCH 19 F - A

~~stopped up
 by separate Order
 KCH 15 D - B~~

Footpath to be created
 E - D - C
 F - G

Unaffected rights of way

Public Rights of Way

Shire Hall, Westgate Street
 Gloucester GL1 2TG
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 Gloucestershire County Council

