



## Order Decision

Site visit made on 30 June 2016

**by Heidi Cruickshank BSc (Hons), MSc, MIPROW**

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

**Decision date: 30 August 2016**

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### Order Ref: FPS/T1600/3/16

- This Order is made under Section 118 of the Highways Act 1980 and section 53A (2) of the Wildlife and Countryside Act 1981 and is known as The Gloucestershire County Council Public Footpath HOD 9 (Parish of Oddington) Extinguishment Order 2015.
- The Order is dated 17 June 2015 and proposes to extinguish the public footpath running between the A436 and the 40723, Upper Oddington.
- 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 not confirmed.**

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### Procedural Matters

1. The Order was first advertised in July 2015. However, due to an error in the notice, Gloucestershire County Council, the order-making authority ("the OMA"), re-advertised the Order in September 2015. The statutory objection from the Open Spaces Society ("the OSS") was made in response to the first advertisement.
2. No further objections or representations were received in either statutory notice period. The OMA forwarded some letters from neighbouring landowners which they referred to as 'representations and objections' although these were not made within the statutory period. I have taken these into account as appropriate.
3. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations.
4. I am required to have regard to the material provision of a rights of way improvement plan ("ROWIP") prepared by any local highway authority whose area includes land over which an Order would create or extinguish a public right of way. In doing so I asked the OMA to comment on certain matters in relation to their ROWIP<sup>1</sup>, also allowing the statutory parties the opportunity to respond. Whilst this delayed the decision I am satisfied that this ensured that the matters were properly addressed.

### Main Issues

5. The Order is made because it appears to the OMA that the footpath is not needed for public use. Section 118 of the Highways Act 1980 ("the 1980 Act") requires that, before confirming the Order, I must first be satisfied that it is expedient to stop up the footpath as proposed in the Order having regard to;

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<sup>1</sup> Gloucestershire County Council Rights of Way and Countryside Access Improvement Plan 2011 – 2026. Statutory document approved as part of Local Transport Plan 3 by full council on 23/3/11.

- (i) the extent to which it appears that the footpath in question would, apart from the Order, be likely to be used by the public; and
  - (ii) the effect which the extinguishment of the right of way would have as respects land served by the footpath, account being taken of the provisions as to compensation.
6. Section 118(6) of the 1980 Act requires that I disregard any temporary circumstances preventing or diminishing use of the path in question when determining the likely use that might be made of it.
7. The OSS queried whether the termination of the route at a busy road, point A<sup>2</sup>, was sufficient reason to extinguish the footpath. It was also argued that the route should not be extinguished simply because it ran through a residential property.
8. The OMA and the applicant, the owner of Brans Cottage through which the footpath passes in part, argued that the route was not used and would not be likely to be used due to the road at the north. The OMA referred to Annex D of the ROWIP, which sets out the priority guidelines for consideration of applications received by them.
9. Section 53A (2) of the Wildlife and countryside Act 1981 allows the modification of the Definitive Map and Statement ("DMS") on confirmation of this Order. The Order would be a legal event, requiring modification of the DMS.

## Reasons

### **The extent to which it appears that the footpath in question would, apart from the Order, be likely to be used by the public**

10. The application to extinguish the footpath was made by the owner of Brans Cottage, through which the central part of the Order route passes. Point A, to the north runs from the verge of the A436, passing through a squeeze stile and crossing a ditch via a small wood bridge into a field. Passing close to the eastern edge of this field the footpath enters the applicant's property, the first part being on a wildflower area, with a gravel garden path. At the property itself the footpath crosses a paved patio area immediately alongside doors and windows, including a kitchen window. From the front gate the footpath traverses the vehicular access, Brans Lane which also serves other properties, before reaching the unclassified road, number 40723, Oddington main road, at point B.
11. The OSS argued that development of Brans Cottage, dating back to the 1950s, had left the area appearing private such that the public were put off from using the route. The applicant has lived in the property since 1988 and indicates that the route has not been used during his ownership, which he puts down to access to the north discouraging use. However, I agree with the OSS that the complaints and works referred to by the OMA suggest that members of the public have previously used or tried to use the route.
12. I found the Order route generally open, signed and waymarked, although very overgrown at the northern end, with no appearance of recent use. I agree that

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<sup>2</sup> Points A and B are shown on the Order map.

the fact that the route passes through the garden, immediately adjacent to the property, is likely to make some people feel uncomfortable and unwilling to use the route. It is clear that there have been changes, as shown by the planning information and aerial photographs, which have made the area crossed by the footpath within the curtilage of the property appear to be more private.

However, I do not consider that this seems to have been a deliberate attempt by the applicant to make the footpath appear to be private and so prevent or discourage use.

13. I have, as required, disregarded such temporary circumstances preventing or diminishing use of the path. Even so, it appears that the footpath would be little used by the general public.

**The effect which the extinguishment of the right of way would have as respects land served by the footpath, account being taken of the provisions as to compensation.**

14. The land over which the footpath passes would remain part of the properties over which it passes. The owner of the field to the north supports the Order, as do owners of properties to the south, on Brans Lane.
15. I consider that the extinguishment of the footpath would leave the properties situated on the A436, just to the east of point A, with no pedestrian access to the village and amenities. As noted, there was no indication of regular use of the footpath and there was no objection to the Order from the residents of these properties, suggesting that the current owners do not use the route. Nonetheless, I consider that the footpath does effectively serve these properties, allowing off-road access with only a short walk along the A436 roadside verge, to the village hall, where local events will be held, public house and potentially to visit friends and/or family. Without the footpath such access would be along the A436 on foot, bicycle or, far more likely, with a vehicle.
16. It appears unlikely that residents of these properties could claim compensation under the provisions of the 1980 Act. Financial loss arising from the Order can be compensated and, therefore, I have not taken any such potential loss into account.

**Expediency**

17. The issue as to whether or not it is expedient to confirm the Order means that I can take account of wider considerations. I am required to take account of the ROWIP. I am satisfied that the applicant would benefit from the proposal by removing the footpath from the immediate vicinity of the residential property. I consider the likely extent of general public use of the footpath to be limited both because it passes through a private garden area, which will put some people off, and due to the termination onto the A436 to the north. Access along this road is undoubtedly an unattractive prospect, with the need to travel some distance to the links east and west. I do not agree with the argument of the OSS that this indicates that links should be made to the existing rights of way off the A346 both to the east and west.
18. However, in looking at the wider issues in encouraging off-road access I consider that removing such a potential link to amenities from the edge of a village should be a last resort. There are a number of strategies and aims within the ROWIP which I do not consider are supported or met by this Order.

The Sustainable Community Strategy refers to aims to make concerted local efforts to address climate change, manage the local heritage as an asset for the future, encourage people to take regular exercise and have good and accessible community facilities.

19. The OMA's Corporate Strategy includes priorities to provide access to all forms of transport including alternatives to car use and raise awareness of alternative ways to travel. Mention is made of Personal Safety with reference to the desirability that pedestrian routes are integrated with the road network, which could include the provision of well-maintained verges, which can provide safe, traffic-free routes to schools and pubs, and for shopping and commuting, recognising the functional use and value of some public rights of way. I disagree with the OMA comment on the narrowness of the verge from point A as I found it adequate to walk along to reach the two semi-detached properties, with the verge in front of them wider again giving access to the garage and residential property there.
20. Whilst there may be some concern for the safety of the public walking to the A436 there is no indication of any safety related incidents arising as a result of the existence of this route. Weighing the possible use by the public travelling to the road with the intention of continuing along it against the potential use by local people wishing to access services to the south, I am satisfied that the latter use is more likely. The route provides a short off-road access to the village centre, with an existing verge alongside the A436 and I consider that it forms part of the wider functional highway network for village residents.
21. I consider that, even if not used by the current occupants of the properties on the A436, the extinguishment of the footpath removes the opportunity to meet many of the ROWIP aims. I do not consider that the OMA have given sufficient weight to the ROWIP.
22. Although I recognise and understand the desire on the part of the applicants to extinguish the footpath, I do not consider it expedient, when taking account of the wider public interest which is given weight by the ROWIP.

### **Other matters**

23. Whether there are outstanding planning issues relating to the use of the land around the property is not a relevant matter. Neither have I taken any account of the argument as to whether it is or is not possible to divert the route around the garden.

### **Conclusions**

24. Having regard to these and all other matters raised in written representations I conclude that the Order should not be confirmed.

### **Formal Decision**

25. I do not confirm the Order.

*Heidi Cruickshank*

**Inspector**



Proposed extinguishment  
of public footpath HOD 9



LEGEND:

footpath to be stopped up

A - B

unaffected footpaths

HOD 5

HOD 7

HOD 6

unaffected restricted byways

HOD 4

HOD 19

AMEY GLOUCESTERSHIRE  
Shire Hall, Westgate Street,  
Gloucester GL1 2TG  
Tel: 08000 514514

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