

## Penderfyniad ar y Gorchymyn

Ymweliad â safle a wnaed ar 08/05/17

**gan Joanne Burston BSc MA MRTPI**  
**Arolygydd a benodir gan Weinidogion Cymru**  
**Dyddiad: 14/07/2017**

## Order Decision

Site visit made on 08/05/17

**by Joanne Burston BSc MA MRTPI**  
**an Inspector appointed by the Welsh Ministers**  
**Date: 14/07/2017**

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**Order Ref: ROW/3164871**

**The Welsh Ministers have transferred the authority to decide this Order to me as the appointed Inspector.**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Powys County Council (Diversion of part of public bridleway No 139 in the Community of Llanfihangel) Public Path Diversion Order 2013.
- The Order is dated 12 June 2013 and there was one objection outstanding when Powys County Council submitted the Order for confirmation to the Welsh Ministers.
- The Order proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.

**Summary of Decision: The Order is confirmed subject to the modification set out in the formal Decision**

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### Procedural Matters

1. The parties to the case have agreed that the matter be dealt with by way of the written representation procedure. I made an unaccompanied site visit to the area on 8 May 2017.
2. In accordance with the appropriate Regulations for the drafting of Orders, the wording concerning the consent of the consulted local authority to the making of the Order has been omitted. Therefore the Council has requested that the Order be amended to include the wording "and have consented to the making of the Order as required by section 120(2) of the 1980 Act".
3. I am content that the proposed modifications are necessary, by adding clarification of the diverted path and also to correct minor drafting anomalies contained within the Order. On this basis if I decide to confirm the Order I will do so with appropriate modifications. Due to the nature of these modifications I do not believe any persons would be prejudiced by them. Furthermore, such modifications would not require re-advertising.

### The Main Issues

4. The Order has been made by Powys County Council. Nevertheless, Section 119 of the 1980 Act requires that before confirming the Order, I must first be satisfied it is expedient in the interests of the landowner that the public right of way in question should be diverted, and that the new right of way will not be substantially less
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convenient to the public than the existing route. I must also consider whether the proposed diversion satisfies the test set out in Section 119(2) which states that a proposed diversion order must not alter the point of termination of the path otherwise than to another point on the same highway, or highway connected to it, and which is substantially as convenient to the public.

5. I shall then consider whether it is expedient to confirm the Order firstly having regard to the effect which the diversion would have on public enjoyment of the path as a whole, and then its effect on the land affected by the Order routes. I must also have regard to the provisions for compensation.
6. In addition, I am required to take into consideration any material provisions of a rights of way improvement plan prepared by the Council.

## **Reasons**

### ***Whether it is expedient in the interests of the owner of the land that the Bridleway in question should be diverted***

7. I walked the existing route from point 'B'<sup>1</sup>, which commences from the public highway, travelling in a broadly east – west direction. The path continues through a farm gate and across a farmyard. The path then turns sharply to the north and through a further gate between two farm buildings. Turning west the path goes through another gate and onto an earth surfaced track. The track slopes down to the west and is bounded by hedges and low hanging trees. It passes through a field gate and bridle gate before it reaches point 'A'.
8. The path currently runs through a working farmyard and close to the farmhouse and associated farm buildings. The movement of cattle, sheep and agricultural machinery through the yard are daily operations.
9. Therefore I consider that the diversion of the route, away from the farmyard, would have benefits for those working on the farm and would increase privacy and security for those occupying the farmhouse. On this basis I conclude that it would be expedient, in the interests of the landowner, to divert the footpath.

### ***Whether the new footpath will be substantially less convenient to the public***

10. Although the proposed diversion would be approximately 92 metres longer than the existing line of the bridleway it would follow a route through open fields and meadows rather than along an earth surfaced track and through a working farmyard. Moreover, the existing bridleway travels through a number of gates, whereas the diverted route would only have 1 bridle gate, which would be sited to allow access on to the council road.
11. As I saw on my site visit a significant part of the earth surfaced track is used by sheep for sleep and shelter, which makes it somewhat muddy and slippery. Furthermore, as the path travels down the hillside the narrow track, gradient and overhanging branches make it less easy for equestrian users. Whereas the diverted route passes through relatively level pasture and along an unsurfaced track that is to be made up, following the line of the stream. The diverted bridleway would be 3 metres in width, passable all year round and more convenient to equestrian users.

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<sup>1</sup> As shown on the Order Map appended to this Decision

12. I consider that the diverted route would be equally easy to navigate as the existing route and despite the diverted route being slightly longer than the existing route I am satisfied that it would not be substantially less convenient to the public.

***Whether the new termination of the bridleway on the public road would be substantially as convenient as the current one***

13. The termination point of the diverted bridleway at point 'A' remains the same. However, at point 'D' the termination point would be some 130 metres to the south of the existing route on the same highway. However, visibility from the proposed termination point in both directions along the highway is as good as the visibility from the current termination point and horse riders would have sufficient space to stop and look before emerging on to the highway.
14. The Order satisfies the test that the termination points would be on the same highways as the existing bridleway and that the routes would remain substantially as convenient to the public.

***Whether it is expedient to confirm the Order having regard to:***

*(a) the effect the diversion would have on public enjoyment of the path as a whole*

15. There would be minimal distance and visual difference between the existing and diverted route. The existing route is confined in some parts by the existing vegetation, which limits views out across the surrounding countryside. Whereas the diverted route would allow wider, more open, views up and along the valley. Furthermore, the diverted route would avoid the requirement for the public to pass through the farm yard and would travel over relatively flat terrain.
16. The objector to the Order considered that the diverted route along the stream side is wet and less pleasant than the existing route which he states follows a historic route to Pentre Herin.
17. Although the existing route is along an established track, it is narrow, steep and muddy in parts. Whilst at the time of my visit I found the proposed diversion relatively firm underfoot, the Council intend to carry out substantial works to create a level 3 metre wide route alongside the stream and clear overhead vegetation. A raised causeway would also be constructed on the more boggy ground and the Diversion Order would not be confirmed until these works were completed. Furthermore, the path would be at least 3 metres in width and walkers with dogs or children are likely to find this greater separation distance beneficial as horses can be inquisitive. It should also be acknowledged that both equestrian users and walkers would find it more convenient to use a bridleway with only one gate, than the existing route with four gates.
18. Whilst a path may have existed at this location for many years, there is nothing to suggest that the bridleway is of any particular long established or historic significance. Accordingly I attach little weight to this as an argument in favour of the bridleway's retention on its current line.
19. I have noted that part of the bridleway forms a short section of the Glyndwr's Way National Trail. If the Diversion Order is confirmed then a Varying Order will be needed to designate the new section of bridleway as the National Trail. The diverted route would secure the long term security of the National Trail by affording it legal status

and provide people with greater access to the wider countryside. Natural Resources Wales funds the National Trail and supports the diverted route.

20. On balance, I find that there is no significant detrimental impact on amenity or enjoyment that would lead me to conclude the Order is not expedient in this regard.

*(b) the effect which the coming into operation of the Order would have with respect to the land served by the existing right of way and the land over which the right is so created and any land held with it, having regard to the provisions for compensation*

21. Natural Resources Wales have agreed to defray any compensation which becomes payable if the Order comes into force and will fund the necessary works. No adverse effects on the land served by the existing path or the land over which any new right of way would be created have been identified.

### ***Rights of way Improvement Plan ('ROWIP')***

22. The ROWIP's aim to make access easier for horse riders would be assisted by the reduction in the number of gates on the route.

### ***Whether it is expedient to confirm the Order***

23. I have concluded that it is expedient in the interests of the landowner that the path be diverted, and that although there may be some disadvantages to the public as a result of the increase in length this does not amount to being classed as substantial.
24. I have further concluded that there would be no detrimental effect on the enjoyment of the route as a whole. Indeed I have identified some improvements to the route. It follows that it is expedient to confirm the Order.

### **Conclusions**

25. In reaching my decision, I have taken account of the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WCFG Act.
26. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed with a modification.

### **Formal Decision**

27. The Order is confirmed subject to the following modification:

- At the end of paragraph (3) of the Order, the following words shall be added "and/or when the authority certifies that work required to bring the bridleway described in Part 2 of the Schedule into a fit condition for use by the public has been carried out and have consented to the making of the Order as required by section 120(2) of the 1980 Act".

*Joanne Burston*

INSPECTOR

## APPENDIX : ORDER MAP

