



Order Decision

Site visit made on 27 March 2018

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 11 May 2018

Order Ref: ROW/3184388

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and Section 53 of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Public Path Diversion and Definitive Map and Statement Modification Order S119 Highways Act 1980/S53 Wildlife and Countryside Act 1981 Gloucestershire County Council Public Bridleway ASM25 - Southam Parish 2017 Diversion Order 2017.
- The Order is dated 12 April 2017 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 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 not confirmed.

Preliminary Matter

1. Public Bridleway ASM25 is shown on the definitive map as commencing on the junction of Bentley Lane and Southam Road (B4632) and proceeding in a generally easterly direction along the field boundary adjacent to, and parallel with, Bentley Lane. The route on the ground corresponds with that depicted on the definitive map. However, the Council has identified what it considers to be a conflict between the map and statement in that the statement fails to refer to the first part of the route. While I agree that the particulars are brief, the line marked on the definitive map is clear and when read with the statement, it is reasonably evident to users as to which route to follow. I do, however, recognise that, in the event that I was to confirm the Order, it would provide a useful opportunity to update the particulars set out in the statement.

The Main Issues

2. Section 119 of the 1980 Act requires, amongst other things, that before confirming the Order, I must first be satisfied that it is expedient in the interests of the public that the line of the path or way in question should be diverted.
3. In addition, I am required to take into consideration any material provisions of any rights of way improvement plan prepared by the Council. However, in this case no material provisions have been identified.

Reasons

Whether it is expedient in the interests of the public that the line of the path or way in question should be diverted.

4. The Order is made in the interests of the public on the basis that the route used by the public was along Bentley Lane until it was gated in 2010. Furthermore, the Council's evidence also indicates that the Order is seeking to rectify a drafting error on the definitive map. In support of its position, the Council has referred me to various pieces of documentary evidence, including user evidence, which they consider demonstrates that the route shown on the definitive map is incorrect and that the correct alignment is along Bentley Lane.
5. Nevertheless, the definitive map is conclusive evidence of the existence of the route until such time as an error is shown to have occurred. Furthermore, where there is evidence which shows that a path or way has not been recorded on its true line, or a new way has come into being by virtue of public use, the correct procedure is to make a modification order under Section 53 of the 1981 Act. I do not therefore consider the arguments advanced by the Council in respect of previous use or drafting errors provide any meaningful support in favour of an Order made under Section 119 of the 1980 Act.
6. The other reason given by the Council for making the Order is that Bentley Lane provides a wider, more accommodating route, without limitations, which will make the path more easily accessible, particularly to horse riders. This is supported by the Cleeve Ramblers Association who have pointed to a number of benefits which they consider would arise from the diversion of the proposed route. These include that the width and surface of the diverted route would be more suitable for a bridleway and that the proposed new route would provide a more direct route to the common.
7. However, while I note that Bridleway ASM25 is a difficult route for walkers and horse riders alike, its earthen based surface shows signs of heavy use. It is open, passable, appears well used and provides reasonably direct access to the common. While I accept that a new route along Bentley Lane would result in some improvement in relation to the surface and width, there is no robust evidence before me which would demonstrate that it would provide any meaningful benefit to the public.
8. Accordingly, I do not consider the Council has demonstrated that it would be expedient in the interests of the public that the route should be diverted. As such, the Order falls at the first hurdle and it is not necessary to consider whether the other tests set out in Section 119 of the 1980 Act have been met.

Other Matters

9. The parties have advanced various arguments regarding the status of Bentley Lane and whether it already benefits from public rights of way. However, whether or not such rights exist is outside the scope of my consideration of an Order made under Section 119.
10. I have noted the other comments in support of the proposed diversion made by the Cleeve Ramblers Association and other interested parties. However, while I note the views expressed, they are insufficient to show that there would be a demonstrable benefit to the public in diverting the route as proposed.

Conclusion

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

Formal Decision

12. The Order is not confirmed.

Rory Cridland

INSPECTOR

**BENTLEY LANE,
SOUTHAM -
PUBLIC
BRIDLEWAY
ASM25**

**PUBLIC PATH
DIVERSION AND
DEFINITIVE MAP
& STATEMENT
MODIFICATION
ORDER 2017**

Key:-

Bridleway to be
extinguished

Bridleway to be created

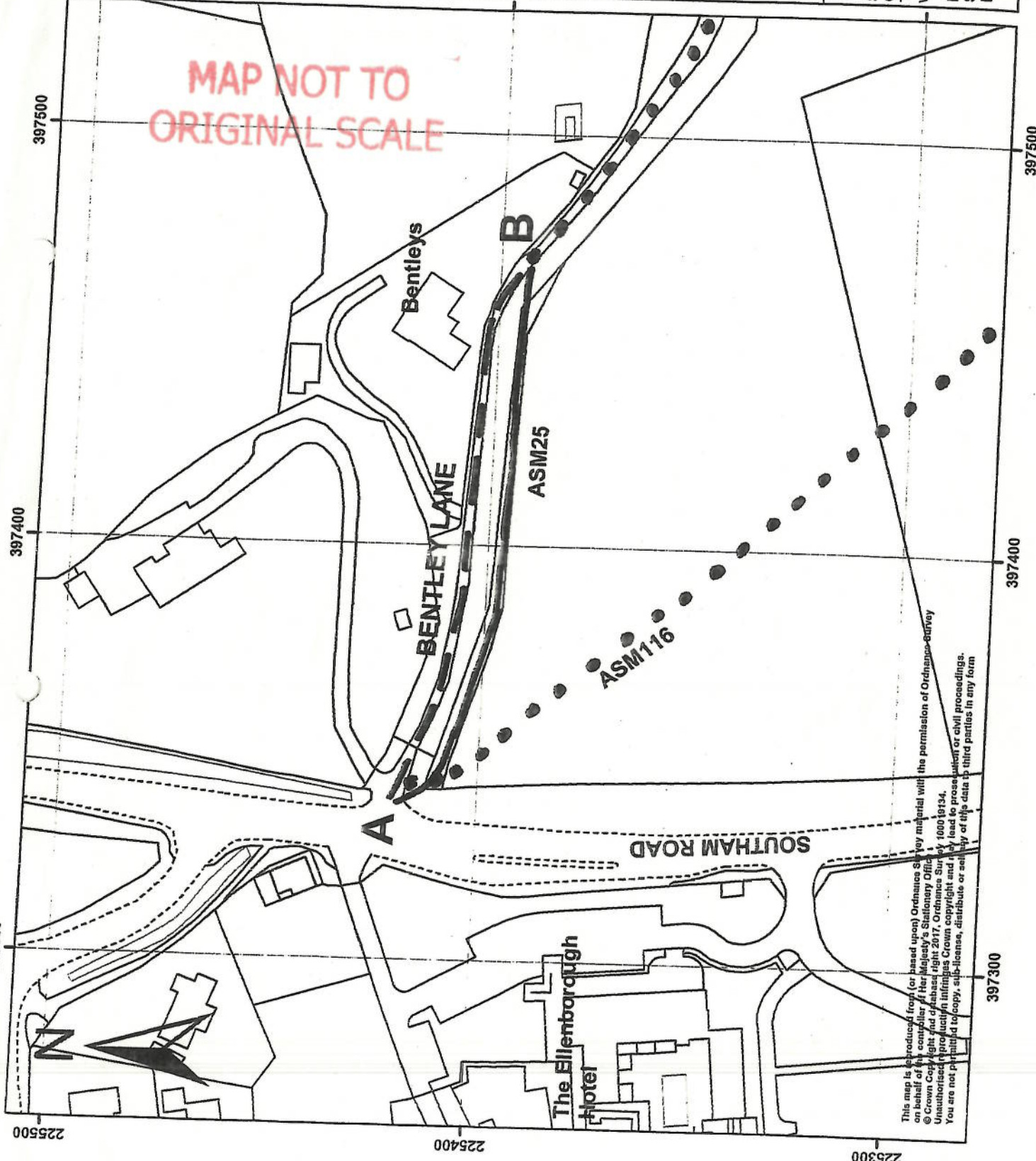
Unaffected paths

Highway Records

Shire Hall, Westgate Street,
Gloucester GL1 2TG
Tel: 01452 328981
www.gloucestershire.gov.uk

Drawn by: J Harris
SCALE: 1:1,250
DATE: 24 March 2017

MAP NOT TO
ORIGINAL SCALE



This map is reproduced from (or based upon) Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office. © Crown copyright and database right 2017. Ordnance Survey 100019134. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. You are not permitted to copy, sub-license, distribute or sell any or the data to third parties in any form.