



Order Decision

Site visit made on 2 August 2018

by Vicki Hirst BA(Hons) PG Dip TP MA MRTPI

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

Decision date: 9 October 2018

Order Ref: ROW/3193169

- 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 Footpath NTU 18 Parish of Tetbury Upton Diversion Order 2017.
- The Order is dated 27 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 Wildlife and Countryside Act 1981, once the provisions relating to the diversion come into force.
- 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 confirmed subject to a modification set out below in the Formal Decision.

Procedural Matters

1. I carried out an unaccompanied site inspection on 2 August 2018. I was unable to walk a short section of the route to be diverted due to the presence of high hedges and fencing. Nonetheless I was able to view much of the route and I am satisfied from my observations on site that I am able to reach a decision.
2. None of the parties requested a hearing or inquiry to present evidence in respect of the Order. I have therefore considered the case on the basis of the written representations forwarded to me.
3. Reference has been made to British Standard 5709:2006, "Gaps, Gates and Stiles" (BS 5709). BS 5709 was updated in March 2018 and supersedes the 2006 version. I sought views on the new version and have taken the responses received into account in reaching my decision.

The Main Issues

4. In determining whether it is expedient to confirm the Order to divert the footpath I am required by Section 119 of the 1980 Act to have regard to:
 - whether it is expedient in the interest of the landowner that the footpath be diverted;

- whether the new footpath will be substantially less convenient to the public;
 - the effect of the diversion on the public enjoyment of the path as whole;
 - the effect the Order coming into operation would have on land affected by the Order routes; and
 - the provisions for compensation.
5. In considering these issues I am required to take into consideration any material provisions of a rights of way improvement plan (ROWIP).

Reasons

Whether it is expedient in the interest of the landowner that the footpath be diverted

6. The Order has been made in the interests of the owner of the land crossed by the footpath. From the evidence before me it is apparent that the definitive map route indicated on the Order plan between points A and B has not been used for a number of years with the walked path taking an alternative route from point A via points C and D to point B. It is this route that is proposed in the diversion Order.
7. Part of the definitive route at its southern end crosses the rear garden of No 18 Longfurlong Lane. At the time of my site visit this section was not accessible and was obstructed by a hedge and fence. Nonetheless it was evident that the legal line of the route is within the private garden area of No 18.
8. The proposed route follows the gap between Nos 18 and 20 along the western boundary of No 18. It then crosses fields on a direct route to point B on the plan. The owners of No 18 wish to divert the path to avoid the garden area of their property. They wish to sell the property and they are concerned that the definitive route through the garden would potentially cause problems in securing a sale.
9. I am satisfied for the reasons given that it is expedient in the interests of the landowner that the footpath should be diverted to provide a private garden area for No 18 unencumbered by a right of way.

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

10. The proposed diversion does not alter the termination points of the path onto the highway. The path is not materially longer in length and follows a route comprising similarly level ground to the existing route comprising of a mixture of made up surfaces and pasture. The path continues to traverse open fields between points B and C albeit a short distance further to the west of the definitive route.
11. The section of path to be diverted between points A and C is very short and follows the existing gap between Nos 18 and 20 Longfurlong Lane. Whilst this section of the path is narrow and enclosed with limited views of the surroundings, in the context of the continuation of an existing narrow passageway and an overall much longer recreational route I do not find this to be significant.

12. An objection has been received on the grounds that the Order includes a limitation in the form of a stile at point D on the Order plan. The objector contends that this would be inappropriate and against the aims of the Equality Act 2010 and current government advice intended to obtain the least restrictive obstruction to public rights of way. He also states that the stile does not conform to the advice in DEFRA's good practice guidance¹ or BS 5709.
13. Section 149(1) of the Equality Act 2010 places a Public Sector Equality Duty (PSED) on a public authority or person exercising a public function. This requires due regard to be given to the need to eliminate conduct prohibited under the 2010 Act, advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those that do not. Due regard should be had to any impact on any person with a protected characteristic and where there are disbenefits these need to be considered with regard to the overall benefits of the scheme.
14. DEFRA's guidance offers good practice on the way that disability discrimination legislation impacts on local authorities' functions in relation to gates, stiles and other structures on public rights of way. It recognises that making it easier for people with disabilities to use rights of way needs to be balanced against the operational needs of landowners. Account should be taken of the wider context, such as the accessibility of the route as a whole. Where new structures are proposed the least restrictive option in terms of accessibility should be sought. Standards for structures could be based on designs such as those within BS 5709.
15. BS 5709 relates to best practice for the performance requirements of structures such as gates and stiles. It does not seek to provide performance requirements in relation to land management needs which should be individually assessed according to the circumstances. It requires, amongst other things, the least restrictive option for all lawful users whilst meeting the needs of the land manager. It emphasises that just because other parts of a path are impassable to mobility vehicles perhaps because of existing stiles, this should not result in stiles or non-mobility vehicle passing gates to be put elsewhere on the path. It states that new structures on public paths shall not be stiles other than in exceptional circumstances.
16. It is evident that the needs of the land manager should be balanced against the needs of all lawful users of the path with as little restriction as possible. The fields within the central section of the path are clearly used by livestock and a suitable boundary treatment is required to keep livestock contained. Both the definitive route and proposed diverted route of the path cross the fields' perimeter boundary and some form of crossing point for users of the path would be required on either route. I acknowledge the concerns of the fields' landowners that the provision of less restrictive structures such as a latched gate could be left open or a kissing gate could be potentially dangerous to the horses that graze the land and could allow dogs to roam. However these considerations need to be balanced against the potential for use of the path by a range of users.
17. In this regard, the Order Making Authority (OMA) has drawn my attention to the presence of a number of other stiles along the route and the characteristics

¹ Authorising Structures (gaps, gates & stiles) on rights of way – Good practice guidance for local authorities on compliance with the Equality Act 2010, October 2010

- of the overall path that prohibit access by those less able. I walked the full extent of the path from Longfurlong Lane to Berrells Road on my site visit. I noted that the path at the Longfurlong Lane end commences through two side hinged gates and continues along a very narrow passageway between Nos 18 and 20 and including steps. In my assessment the existing definitive route restricts those in mobility vehicles from progressing along the path from this end. Similarly, at the Berrells Road end, the path progresses between a stone wall and the gardens of adjacent properties and is considerably restricted in width. At each end of this section are stone stiles and a change in levels. Again, mobility vehicles could not progress along this section of the path.
18. At both ends, the potential for providing access to all at some future date would be difficult to rectify due to the restrictive width of the path. In my view the characteristics of the path are such that those with disabilities requiring the use of a mobility vehicle are not able to use the path to even access a short stretch. This would not be worsened by the proposed limitation because those restrictions exist prior to reaching the proposed stile from either end of the path.
 19. Nonetheless I note that BS 5709 emphasises that existing restrictions on a path should not be decisive on new limitations. Whilst the overall path may be restrictive to those reliant on mobility vehicles there is the potential for those who are not reliant on a mobility vehicle but have lesser mobility to access the path if stiles were not present. Whilst it is not open to me to influence other limitations on the overall path, I am able to consider an alternative proposal to a stile on the diverted route. In my assessment the needs of the landowners to provide safety and security for livestock and to enable those less able to access at least the southern end of the path could be addressed through an alternative structure. I consider that a latched, kissing gate would be the most appropriate option in balancing these considerations. Whilst I note the landowners' concerns, I have no evidence before me that a kissing gate, which is commonly used to contain livestock, would cause any significant hazard. Furthermore, it would not be able to be left open.
 20. In reaching this view I have taken into account the OMA's comment that a stile will be removed at point C and there will be a net decrease in the number of stiles on the route. However, the stile to be removed has little bearing on my considerations as it is currently not on the definitive route but on the as walked route.
 21. I note the objector's request that the Order include a limitation in the form of a gap at point C on the Order map. However, the gap that will result from the removal of the stile at point C occupies a clearly defined space between the fence on the western boundary of No 18 and the southern side of a shed at No 20. As such, I do not consider it necessary to include a limitation in the form of a gap in the Order.
 22. In conclusion, the diverted route follows a similar length, terrain and gradient. Whilst in my assessment the path is not useable by those with mobility vehicles, the provision of a latched kissing gate at point D on the Order plan would enable others that are less able to access part of the path whilst meeting the landowners' needs. Subject to a modification to the Order to allow for a latched kissing gate to the standard in the 2018 BS 5709, I conclude that the diverted footpath is no less convenient to the public. In reaching this decision I

have taken into account the PSED and am satisfied that my decision is in line with its requirements.

The effect of the diversion on the public enjoyment of the path as whole

23. As set out above, the proposed diversion affects a relatively short portion of the overall path, with the longest section between points A and B on the map being located a very short distance to the west of the definitive route across the same field. Whilst the section between A and C continues along a narrow alleyway between the houses, this comprises an extremely short section.
24. The experience of the path is largely the same as that on the definitive route, comprising a short section of passageway between houses followed by a section across open fields with views of the surrounding countryside and the rear gardens of nearby houses. The diversion provides a very similar walking experience and I am satisfied that there is no adverse effect on the public enjoyment of the path as a whole.

The effect the Order coming into operation would have on land affected by the Order routes and compensation issues

25. The use of the fields between points B and C would not be altered as the diverted path crosses the same land, albeit a short distance further to the west.
26. I have addressed the fields' landowners' concerns in respect of a kissing gate above. I do not find that the Order coming into operation would have any adverse effect on the land affected by the Order routes.
27. The landowner at No 18 has agreed to defray any compensation which becomes payable and no other relevant issues relating to compensation have been raised.

Other Matters

28. The OMA states that no part of its Rights of Way Improvement Plan is of relevance to the Order before me. I have no reason to disagree.
29. The OMA has suggested that the Order be modified to refer to it being in the interests of the landowner *and the public* (my emphasis) as the proposed route has been used for many years by the public. I have found above that the proposed route is in the interests of the landowner of No 18 and I find no reason to modify the Order in this respect.
30. Correspondence has been received in respect of whether the stile at point D on the Order plan and the fence that obstructs the definitive route of the path (both of which are in situ) were lawfully authorised by the Council under s147 of the Highways Act 1980 (the 1980 Act). Such historic matters are not pertinent to my considerations as to whether the Order before me (including the stile as a limitation) should be confirmed. Accordingly I have given them no weight in reaching my decision.

Conclusions

31. I conclude that the Order is expedient in the interests of the landowner, and subject to a modification to the limitation in the Order, is not substantially less convenient or causes any adverse effect on the public enjoyment of the path as

a whole. The proposed modification to the Order would address concerns in respect of providing the least restrictive option for all lawful users whilst meeting the fields' landowner's needs. In concluding on the balance between these requirements I am satisfied that my decision is in accordance with the requirements of the Equality Act and the PSED.

32. I have had regard to all other matters raised but none outweigh my conclusion that it is expedient to confirm the Order subject to the modification described above.

Formal Decision

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

- Amend Part 3 – Limitation and Conditions to delete "Stile compliant with British Standard 5709:2006" and insert "Latched kissing gate compliant with British Standard 5709:2018".

Vicki Hirst

INSPECTOR

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MAP NOT TO ORIGINAL SCALE

G.M. Parkinison

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Amey Gloucestershire
Public Rights of Way
Shire Hall, Westgate Street
Gloucester GL1 2TG
Tel: 08000 514514

DRAWN BY: Martine Tyler
SCALE: 1:1,250
DATE: 1st July 2016
DRAWING NO:



TITLE: Diversion of public footpath NTU 18
off Longfurlong Lane, Tetbury Upton

Legend

footpath to be stopped up A - B



footpath to be created A - C - D - B



unaffected rights of way



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