



Order Decision

by Helen Slade MA FIPROW

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

Decision date: 28 June 2019

Order Ref: ROW/3208578

- This Order is made under Section 119 of the Highways Act 1980 ('the 1980 Act') and Section 53(A)(2) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Gloucestershire County Council Public Footpath RLY 1 Parish of Lydbrook Diversion Order 2017.
- The Order is dated 22 May 2017 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule and to modify the Definitive Map and Statement accordingly.
- 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 the modifications set out below in the Formal Decision.

Procedural Matters

1. The objector and Gloucestershire County Council (the Order Making Authority or 'OMA') have agreed to this matter being dealt with by way of the papers on the file.
2. I have not made a visit to the site but I consider that I can make a decision without the need to do so.
3. The objection relates to the nature of the limitation to the use of the right of way as set out in Part 3 of the Schedule to the Order. The Council has requested that the Order be modified to amend the description of the limitation by removing the reference to a kissing gate situated beside a vehicular barrier at Ordnance Survey Grid Reference SO5896:1752. The objector has agreed to this proposed modification.

The Main Issues

4. The main legal criteria relating to this public path diversion order are set out in Section 119 of the 1980 Act. Since there is no dispute regarding any issue relating to these requirements I do not consider that it is necessary for me to set these out in detail.
5. The main issue between the parties has largely been resolved. The objector has agreed to withdraw his objection on the basis that a gap is provided adjacent to the vehicular barrier rather than a kissing gate; on the proviso that the resultant description on the Order is deemed acceptable.

Reasons

6. The Order has been made to correct a situation on the ground which results in the line of the path on the Definitive Map and Statement passing through a area fenced-off for business use. The line of the path in use on the ground appears to be the route which was always intended to be the public right of way, the inaccuracy having arisen due to poor drafting many years ago.
7. I am satisfied that the Order meets the requirements of Section 119 of the 1980 Act. It is clearly in the interests of the landowners that the anomalous situation be resolved, and there are no objections to the principle of the diversion from any party. I have no reason to believe that the clarification of the route will result in any detriment whatsoever to the public, and it will in fact be to their benefit to have the location of the path formalised.
8. The objector has agreed to the provision of a gap to the side of the existing vehicular barrier (to which no-one has objected) which will facilitate the lawful use of the footpath without impediment, but has expressed doubts about the way in which the revised limitation has been worded.
9. The current limitation is described thus:
"Point F Kissing gate compliant with British Standard 5709:2006 at OSGR SO 5896/1752 with adjacent vehicle barrier".
10. The OMA has proposed revised wording as follows:
"Point F gap of 1.5 metres adjacent to a 3m vehicle barrier/gate compliant with BS 5709:2018 at OSGR SO 5896/1792".
11. I agree with the objector that the revised wording suggested by the OMA is rather confusing. The British Standard for Gaps, Gates and Stiles¹ covers gaps, pedestrian gates, bridle gates, kissing gates, dog gates, horse stiles (of two kinds), kent carriage gaps and step over and flat top pedestrian stiles. It does not cover vehicular barriers or gates.
12. The present 2018 standard for gaps is for a minimum width of 1.1 metres on a footpath. The width of 1.5 in the Order is ample to satisfy BS 5709:2018.
13. I therefore consider that the wording of the limitation would be more appropriately expressed thus:
"Point F Gap of 1.5 metres compliant with BS 5709:2018 at OSGR SO5896/1752 with adjacent 3 metre vehicular barrier."
14. The details of the modified limitation as expressed in Part 3 of the Order will also need to be recorded in Part 4 of the Order – the modification of the Definitive Statement.
15. The modification to the nature of the limitation contained in the Order is not one which would require advertising as it does not affect any land not affected by the Order as submitted.

¹ Latest version is BS5709:2018

Conclusions

16. Having regard to these and all other matters I conclude that the Order should be confirmed with modifications.

Formal Decision

17. I confirm the Order subject to the following modifications:

- In Part 3 of the Schedule to the Order, substitute the existing description of the limitation with the following:
- *Point F Gap of 1.5 metres compliant with BS 5709:2018 at OSGR SO5896/1752 with adjacent 3 metre vehicular barrier."*
- In Part 4 of the Schedule to the Order, in the right-hand column of the grid, delete the words 'kissing gate &' following the word 'Limitations' and substitute the words:

'Gap (BS 5709:2018) and 3 metre'

Helen Slade

Inspector

**Proposed diversion of
Public Footpath RLY 1**

Parish of Lydbrook



KEY:

Footpath to be stopped up

A - E - B

Footpath to be stopped up by
separate order

D - E

Proposed replacement footpath

C - F - D - B

unaffected public footpaths



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SCALE: 1:2,500

DATE: 9th February 2017

DRAWING NO

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