



Order Decision

Site visit on 30 May 2019

by Mark Yates BA(Hons) MIPROW

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

Decision date: 9 July 2019

Order Ref: ROW/3212004

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Herefordshire Council Footpath MM19 Much Marcle Public Path Diversion Order 2018.
 - The Order was made by the County of Herefordshire District Council ("the Council") on 6 July 2018 and proposes to divert Footpath MM19, in the parish of Much Marcle, as detailed in the Order Map and Schedule.
 - There was one objection and one representation outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Preliminary Matter

1. As outlined by the Council, the Order can be modified to make provision for a gate at point F on the Order Map. This modification would address the representation to the Order.

Decision

2. The Order is confirmed subject to the modifications set out in paragraph 11 below.

Main Issues

3. Section 119 of the 1980 Act sets out the criteria to be considered. The main issues raised in the objection relate to whether it is expedient to confirm the Order having regard to the interests of the owner of the land crossed by the footpath and the effect of the diversion on the public's enjoyment of the path.

Reasons

4. The diversion would benefit the landowner by removing a section of the footpath from fields presently crossed by the path. This is the case irrespective of the current use of the land. The path would also be diverted away from the farm buildings. Therefore, it can be concluded that the diversion is in the interests of the landowner.
 5. It is apparent that the diversion would remove the need for a bridge to be repaired. Although the parties disagree regarding the amount involved, the diversion would lead to some saving of public funds and this provides an additional reason in favour of it being expedient to confirm the Order. I note that the Malvern Hills District Footpaths Society originally proposed the diversion as they consider it provides a better route.
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6. From my observations of the site I do not find that the diversion would lead to any significant loss of enjoyment for the public in terms of its setting. The proposed path initially proceeds along a driveway and passes a bungalow, but its aspect is reasonably pleasant. It is not suggested that the driveway is heavily used by vehicles. The diversion would also remove the need to walk between farm buildings. I concur with the Council that there are varying views of the surrounding landscape in connection with both the existing and proposed routes. In terms of the iron age camp at Gwynne's Hill, the diversion makes no change to the access to this site. Nor has anything been provided to suggest that any historical significance is attached to this footpath.
7. The objector draws attention to the potential impact of the diversion on the privacy of the occupier of the bungalow and I noted during my visit that the path affords close views of the garden of the property. It is also stated that attempts have previously been made to deter public access along the driveway. Nonetheless, the tenant of the property has consented to the diversion.
8. Whilst concern was previously raised in relation to the convenience of the proposed north-eastern termination point, no objection has been sustained on this ground. The diversion would move the termination point further along a minor public road, but this point is closer to the nearest public right of way. I found the road itself to have limited traffic and the proposed termination point has a wide junction with the road and good visibility in either direction.
9. Nothing has been raised in the written representations, or was apparent from my observations of the site, which indicates to me that it would not be expedient to divert the footpath. On this basis, I conclude that the Order would meet the requirements of Section 119 of the 1980 Act and I have not addressed any additional matters in this decision to those detailed above. The Order should therefore be confirmed with a modification to record an additional limitation of a gate at point F. Further, all gates recorded in the Order are to be specified as complying with the standard adopted by the Council.

Other Matter

10. Whilst I note the objector's concern that the diversion could set a precedent where there is an issue involving the maintenance of a public right of way, each proposal needs to be assessed on its own merits.

Modifications

11. The Order Schedule is modified as follows:

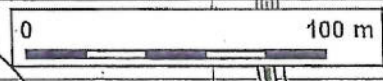
- Delete the reference to "*BS5709: 2006*" in Part 3 of the Schedule and insert "*the Herefordshire Standard*".
- Insert at the end of Part 3 of the Schedule "*OS Grid Reference SO 6569,3031 pedestrian gate to the Herefordshire Standard (point F on the order plan)*".

Mark Yates

Inspector



PROPOSED EXTINGUISHMENT OF FOOTPATH MM19
 A—B—C—D—E—F
PROPOSED DIVERSION FOOTPATH CW29
 G—C—H—I—F



Highways Act 1980, Section 119
 Herefordshire Council Public Footpath MM19 (part)
 Parish of Much Marcle
 Proposed Public Path Diversion Order 2018
 DWG No.: D483/277-19
 SCALE 1:2,500 @ A3

**MAP NOT TO
 ORIGINAL SCALE**

PUBLIC FOOTPATH	
PUBLIC BRIDLEWAY	
RESTRICTED BYWAY	
BYWAY OPEN TO ALL TRAFFIC	

Balfour Beatty Living Places
 Unit 3, Thorn Business Park
 Rotherwas Industrial Estate
 Hereford
 HR2 6JT

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