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| **Order Decision** |
| Site visit made on 31 January 2023 |
| **by J J Evans BA (Hons) MA MRTPI** |
| **appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 30 May 2023** |

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| **Order Ref: ROW/3290135** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and also Section 53A(2) of the Wildlife and Countryside Act 1981, and is known as the Gloucestershire County Council Public Footpath CWE 69 Parish of Wotton Under Edge Diversion Order 2020. |
| * The Order is dated 30 January 2020 and proposes to divert the public right of way shown on the Order Plan and described in the Order Schedule. |
| * 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 confirmed.** |
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**Preliminary Matters**

1. I made an unaccompanied inspection of the area and was able to walk and view the whole of the new path and the route of the existing one.

**Main Issues**

1. The Order has been made in the interests of the owners of the land crossed by the footpath. Section 119 of the Highways Act 1980 involves three separate tests for an Order to be confirmed. These are:

TEST 1: whether it is expedient in the interests of the landowner, occupier or the public for the path to be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.

TEST 2: whether the proposed diversion is substantially less convenient to the public.

TEST 3: whether it is expedient to confirm the Order having regard to the effect which — (a) the diversion would have on public enjoyment of the path as a whole; (b) the coming into operation of the Order would have as respects other land served by the existing public right of way; and (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

1. In reaching a decision, I am required to have regard to any material provision contained in a Rights of Way Improvement Plan for the area. I also need to consider what impact, if any the proposed diversion would have upon the needs of agriculture and forestry, and upon the biodiversity and natural beauty of the area. In addition, I must also consider whether the Public Sector Equality Duty set out under Section 149 of the Equality Act 2010 would be discharged by the proposal.
2. The Order also allows for modification of the Definitive Map and Statement by reference to Section 53A(2) of the Wildlife and Countryside Act 1981.

**Reasons**

***Whether it is expedient in the interests of the owners of the land that the path in question should be diverted***

1. Lacy’s is a historic house positioned to the western side of Wortley Road. Footpath CWE 69 runs along the driveway of this property towards the house, and continues on through part of its garden before crossing through arable fields. The path then continues towards the west, and links with paths CWE 79 and CWE 71.
2. The application was made by the owners of Lacy’s. This attractive stone and tile building is positioned within generous gardens that include an area of mixed woodland to the north of the house. In addition to this area, there are lawns, planting borders, and a tennis court near to the path. Beyond the garden the path has become overgrown, although it remains passable. An alternative route is signposted on a permissive basis and shows evidence of regular use. The Order seeks to move the legal route (Points A-B) away from the house, and to divert the path to create a new link to Footpath CWE 71 (Points C-D).
3. Footpath CWE 69 is positioned very close to the house allowing users direct and immediate views into all of the north-facing windows. The occupiers of this property would experience a loss of privacy both within the house and within the garden. These effects have been exacerbated in recent years due to the increased use of the path. This use includes by organised events some of which have over 1000 walkers in a 24-hour period.
4. In addition to these events, the Council have referred to the route being a popular one for leisure walkers as it provides a link to the Cotswold escarpment and to the popular Cotswolds Way. I saw from my site visit that all the paths in the area show evidence of regular and frequent use, apparent from the worn tracks that exist through the grass and crops.
5. The owners of Lacy’s have cited incidences of property damage, people looking through windows, attempted burglaries by individuals on foot, trespass, and noise and disturbance incidences, including occasions during the night. Diverting the path away from the house would be in the interests of the occupiers as they would benefit from improved privacy both in their house and in their garden. In addition, their safety and security would be enhanced, thereby improving the enjoyment of their property in consequence.
6. Objections have been made that the change of use of land from agriculture to garden has created the privacy and security issues for the occupiers of Lacy’s. The presence of a footpath would not prevent the submission of a planning application for a change of use, albeit the landowner would be obliged to ensure the legal route was free from obstruction.
7. I appreciate the footpath has been in existence for many years, and that the occupiers of Lacy’s would have had walkers passing through their property. A loss of privacy can be the inevitable consequence of living close to a public footpath, as cited by an objector. However, my consideration of the Order is limited to the tests set out above.
8. The diversion would enhance the safety and security of Lacy’s and its occupiers. For these reasons, it would be expedient in the interests of the landowners that the path should be diverted.

***Whether any new termination point would be substantially as convenient to the public***

1. The legal line of CWE 69 is to the south of an existing field boundary hedgerow and links to CWE 79 at Point B. The diverted path would be to the other side of the hedgerow and would create a link with CWE 71 (Point D). To continue walking towards the west along CWE 69 would necessitate a detour of approximately 27m. At the other end of the path Points A and C are separated by a short triangular section of grass which at its narrowest is about 1m, widening to approximately 3m next to the wall and hedge. Having regard to these factors, the diversion would maintain connectivity within the network and the short additional distance to continue walking along CWE 69 would not be substantially inconvenient to the public.

***Whether the new path would not be substantially less convenient to the public***

1. The diversion would increase the total distance and journey times as there is a difference in distance of around 57m, with an additional 27m to join to Point B. However, such an increase in distance and time would not be a significant inconvenience for users, many of whom are likely to use the route as part of a longer recreational walk. The direction of travel would be broadly similar, and linkages with nearby footpaths including those to the eastern side of Wortley Road would be maintained. The surface across the fields would be agricultural, and when used for arable crops they would be cultivated at various times during the year, as also occurs on the legal line. Furthermore, the landowner is required to reinstate paths that are disturbed by ploughing and cultivation.
2. There would be a short section through the wooded part of the garden of Lacy’s, and this would be unsurfaced, and the combination of this and the gradient could make it slippery in wet weather. This section would have a steeper incline when compared to the more gradual slope when walking along the gravelled drive. However, handrails have already been provided on the new route in several places. A distinctive and attractive feature of the area is the dramatic topography which comprises undulating hill tops, steep scarp slopes, and sharply incised valleys. In such a context the short incline through the wood would not be inconvenient to users.
3. There are two gates on the legal route, one being the electric gate to the driveway of Lacy’s. There would be a gate installed at Point C, but no other gates, stiles, or steps on the proposed route, thereby making it more convenient to use. Close to Point C the drainage ditch has already been culverted to provide a level access into the woods. There is a stile and steps on the existing line between Points B and D. Whether walkers used the legal route or that proposed they would in either case encounter the stile and steps.
4. For these reasons, the proposed route would not be substantially less convenient to the public and there would be no conflict with the Public Sector Equality Duty.

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

1. The diverted route shows signs of frequent and regular use, and there have been several letters of support for the proposal. Some users may feel uncomfortable walking through a domestic garden, especially if as is the situation in this case, the legal line is very close to the windows and doors of the house. Walking along the property’s drive would also necessitate a degree of alertness to vehicular movements. The proposed diversion would remove the requirement for walkers to walk close to Lacy’s, but they would still be able to enjoy views of this fine example of a historic vernacular Cotswold house. In addition, walking through the small woodland area with its variety of plant and trees species would be a point of interest.
2. Wortley and the surrounding area is rich in historic buildings and features. The attractive appearance of Lacy’s, along with its relationship to the other nearby historic buildings in the settlement would all remain visible from the proposed route, as would the legible appreciation of their landscape context and historic relationships. Objectors have referred to the presence of a hollow way on the existing route, and that there would be a loss of the historic links to nearby buildings and Hillmill Lane. However, the landowner has explained that earthworks to one side of the route resulted from the creation of the tennis courts, whilst the bank to the northern side is the field boundary. No substantiated evidence has been provided that the footpath is a hollow way of historical significance and interest. Moreover, the proposed diversion would maintain the direction of travel as well as the connectivity with other routes in the area.
3. Once past the house and through the garden, there are extensive views over the surrounding area when using the legal route, albeit during the summer months the mature, verdant nature of the field hedge would restrict views towards the north. Similarly, this hedgerow would restrict views to the south when walking the proposed path. The overall experience for walkers would be of the extensive, attractive panoramas of the surrounding countryside, and the proposed route would not deny walkers of such views.
4. On balance, the enjoyment of those who use the network, including those who seek pleasure from informal recreation, would not be substantially diminished by the diversion.

***The effect of the diversion on other land served by the existing paths and the land over which the new paths would be created***

1. No evidence is before me that the diversion would have any negative effect separately identifiable from those considered above in relation to the other requirements of Section 119 of the 1980 Act. The owner of the land has agreed to defray any compensation which becomes payable in consequence of the Order coming into force, and there is no evidence that the diversion would have any adverse effect on land served by the existing routes or on the land over which the alternative routes would be created.

**Right of Way Improvement Plan**

1. The Council have drawn my attention to Annex D of the Rights of Way and Countryside Access Improvement Plan 2011 – 2026 (ROWIP), which details recommended practices for Public Path Orders. An objector considers the ROWIP to no longer be valid because it has not been reviewed. The Council have not provided evidence to confirm the validity of the ROWIP, albeit the plan covers the period up to 2026. Whilst noting the comments of the objector, the proposed diversion would not conflict with the requirements of Annex D.

**Agriculture, forestry, the conservation of biodiversity and natural beauty**

1. Both the existing path and that proposed would cross fields currently used for arable crops. However, like the existing route, the proposed path would be close to an existing field boundary, and the impact upon agricultural uses and activity would be similar and the diversion would have a neutral impact on agricultural activity.
2. There is no evidence before me that the proposal would impact upon habitat conservation or species diversity.
3. The land crossed by the current and proposed path is in an attractive rural location, within the Cotswolds Area of Outstanding Natural Beauty (AONB). The diversion of the path would be unlikely to have any adverse impact upon the conservation of the landscape and scenic beauty of the AONB.

**Other Matters**

1. Objectors have suggested that both the legal route and the permissive path could exist together. However, it is my role to consider the merits of the diversion in the Order rather than alternative proposals suggested by objectors.
2. As regards the description of the site of the new path in the Order, the Council has included sufficient and accurate information to allow the path to be unambiguously identified in accordance with the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (as amended). As it is a section of the path that is to be diverted there is no need for it to be given a new number.
3. Finally, concerns regarding the Council’s and the Planning Inspectorate’s handling of the case have to be pursued by other means separate from the consideration of the Order.

**Conclusion**

1. I have found that the Order is expedient in the interests of the landowners. The proposed route would not be substantially less convenient, and it is expedient for the Order to be confirmed having regard to its effect on public enjoyment and upon other land served by the existing path and that over which the new path would be created. There is nothing in the submissions nor what I observed at my site visit that would lead me to conclude that it would not be expedient to confirm the Order.
2. Having regard to the above and all other matters raised, I conclude the Order should be confirmed.

**Formal Decision**

1. The Order is confirmed.

J J Evans

INSPECTOR

