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| **Order Decisions** |
| Site visit made on 14 May 2024 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
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| **Decision date: 11 June 2024** |

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| **Order Ref: ROW/3309318** | **Order A - Diversion Order** |
| * This Order is made under section 119 of the Highways Act 1980 and section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Gloucestershire County Council Public Footpath GNE 96 Parish of Newent Diversion Order 2020. | |
| * The Order is dated 15 December 2020 and proposes to divert a public footpath as 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, once the provisions relating to the diversion come into force. | |
| * There were five objections 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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| **Order Ref: ROW/3309323** | **Order B - Extinguishment Order** |
| * This Order is made under Section 118 of the Highways Act 1980 and section 53A(2) of the Wildlife and Countryside Act 1981. It is known as The Gloucestershire County Council Public Footpath GNE 208 Parish of Newent Extinguishment Order 2020. | |
| * The Order is dated 15 December 2020 and proposes to extinguish part of a public footpath as 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, once the provisions relating to the extinguishment 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.** | |
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Preliminary Matters

1. I undertook an unaccompanied site inspection on 14 May 2024.
2. In this decision I will refer to the points on the Order routes. I have appended a copy of the Order plan to the end of my decision. The Order plan is the same for both Orders. Gloucestershire County Council as the Order Making Authority (OMA) are supporting the Order.

**Main Issues**

***The Diversion Order***

1. Section 119(6) of the 1980 Act 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 rights of way, and (c) any new public rights 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 determining whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to the enjoyment of the land affected by the new path must be taken into account, where applicable. Other relevant factors are not excluded from consideration and could include those pointing in favour of confirmation.

***The Extinguishment Order***

1. The Order is made on the grounds that the path is not needed for public use. Under Section 118(2) of the 1980 Act, if I am to confirm the Order, I must be satisfied that it is expedient to extinguish the path having regard to:
2. the extent, (if any) to which it appears that the path would, apart from the Order, be likely to be used by the public; and
3. the effect that the extinguishment of the path would have as respects land served by the path, account being taken of the provisions for compensation.
4. Where an extinguishment is being considered concurrently with a diversion, Section 118(5) provides that I may have regard to the extent to which a path provided by the diversion Order will provide an alternative path or way when considering the likely future use of the path proposed for extinguishment.
5. In accordance with section 118(6), any temporary circumstances preventing or diminishing the use of the path or way by the public shall be disregarded.
6. I have had regard to the judgments of *R v SSE ex parte Stewart* [1980] KPL 537 and *R v SSE (ex parte Cheshire County Council)* [1991] JPL537 which clarified the relevant tests to be applied. Whilst the Authority must consider the need for the path for public use when making the Order, my primary consideration is to look at its likely future use.

***Both Orders***

1. I need to have regard to any material provision of any rights of way improvement plan (ROWIP) prepared by any local highway authority whose area includes land over which the Orders would create, extinguish, or divert public rights of way.
2. The government guidance on “diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises” was issued by the Department for Environment Food and Rural Affairs (Defra) in August 2023. It is also known as the ‘presumption guidance’. Although this was issued after the making of the Orders the OMA has mentioned the guidance. It states that I should weigh the interests of the owner against the overall impact of the proposal on the public as a whole. Reducing or eliminating the impact of the current route of the right of way on the owner, in terms of privacy, security and safety are important considerations to which due weight should be given.

**Reasons**

***The Diversion Order – Order A***

1. The diversion Order, if confirmed, would divert public footpath GNE 96. Section A-B-C would be stopped up and replaced with section E-D-C.
2. The existing footpath cuts through a farmyard with buildings on each side, it then follows the access drive from point B, between two ponds, to point C. The diverted path would take users on a route to the west of the farmyard, through a field and then over a ditch at point D and into a second field. The path would then follow the field edge to re-join footpath GNE 96 at point C.

*Whether it is expedient in the interests of the owners, lessees, or occupiers of the land and the public that the path should be diverted*

1. The diversion Order has been made in the interests of the owner of the land, primarily for reasons of health and safety. The landowner also states the diversion would enable them to improve the security of the farmyard.
2. As the current route passes through the busy working farmyard this does present some significant health and safety issues. There can be many vehicles manoeuvring including tractors, loaders, and lorries, loading and unloading materials. There are also telescopic handlers, used to move materials around the yard, which have limited visibility. It is clear this is a busy working environment, particularly at harvest time when there are many lorries passing through the farmyard on a daily basis.
3. These reasons for the diversion could be said to be in the interest of the users. I consider that they are in the interest of both the landowner and the public. It is in the public interest to avoid the hazards presented for their own safety. Conversely, I understand the landowners’ desire to prevent any accidents and potential liability they may incur. I agree with the OMA that the diversion would significantly reduce the risk of any accidents.
4. The landowner is also concerned about the bio-contamination risk, as walkers and dogs are currently passing through near to where arable crops are stored. Therefore, for farm management reasons, I would also consider the diversion to be in the interests of the landowner.
5. Although only one incident of crime has been reported, in which a quad bike was stolen, the landowner would like to improve security at the farm. The diversion would enable the security to be enhanced.
6. For these reasons, I consider that the diversion is in the interests of the landowner.

*Whether any new termination points are substantially as convenient to the public*

1. The northern termination point would move from point A to point E, however, there remains a section of footpath GNE 96 between these points as footpath GNE 97 joins GNE 96 at point A. There is a distance of 26 metres between points A and E. The only slight disadvantage of this is for users walking from east to west. From GNE 97 at point A, a user would need to initially turn north west before turning south west at point E to follow the diverted route of footpath GNE 96. However, in this context I do not consider 26 metres to be a significant distance. Furthermore, for users travelling east to west the overall length of their diverted route (A-E-D) would be shorter than the current route (A-B-D).
2. The southern termination point at point C would remain unchanged. Therefore, I consider the new termination points would be substantially as convenient to the public.

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

1. The proposed diversion would be longer and less direct for those users travelling north to south or vice versa. There would be an increase in their journey of 195 metres. However, the overall distance of footpath GNE 96 is 1.06 kilometres, therefore I do not consider the additional distance in this context to be substantially less convenient to the public, particularly where the use is primarily for leisure.
2. For those users travelling east to west, or from the north to the west, and vice versa the diverted route would be a shorter distance than the current route. For those travelling from the south to the west, or vice versa, the route is very similar in length.
3. On my site visit I noted there was a field gate on the current route, near to point B, this gate was left open and therefore users were unhindered. However, if the gate were closed, users would need to negotiate opening and closing this large gate. In comparison no furniture would be required on the proposed route making it more convenient.
4. The surface of the current route is mostly concrete and tarmac, it is therefore firm under foot. The proposed route is mostly a grass and natural earth surface which may become muddy with heavy use and wet weather. However, I note the landowner has put stone chippings down in places where it may become muddy. Therefore, I do not consider this issue would make the proposed route substantially less convenient to the public.
5. Overall, I consider that the new path would not be substantially less convenient to the public.

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

1. The current route goes through the working farmyard between points A and B, this may have an impact on the enjoyment of some users. They may feel like they are intruding into an area where people are working. There are also buildings on each side and therefore the views of the surrounding countryside are obstructed.
2. The proposed route between points E-D-C has open views to the west of the fields and pleasant views into the distance. The historic Moat Farmhouse can be seen from a distance from the proposed route; however, I did find that the view of the house was better from a point slightly to the east of point B on the current route.
3. Taking account of all the factors, I conclude that, on balance, public enjoyment of the route as a whole would not be significantly negatively affected by the diversion and may in some respects be enhanced.

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

1. There is no evidence that the diversion would have any negative impact on the land affected by either the new route or the existing route. The applicant is the landowner for the new and existing route, there is nothing before me to indicate a third-party landowner would be affected.

*Conclusions on whether it is expedient to confirm the Diversion Order*

1. I have concluded that it is expedient in the interests of the landowner to divert the path. The Defra guidance referred to at paragraph 10 above guides that I should weigh the interests of the owner against the overall impact on the public. The safety issues, referred to at paragraph 14 above, are important considerations. Diverting the route would reduce the impact significantly on the landowner.
2. The change to one termination point and the increase in length of the route for some users, would not make the diversion substantially less convenient to the public. It would not significantly impact on the enjoyment of the footpath and some users would find the diversion more enjoyable.
3. Having regard to these and all other matters raised, I conclude it is expedient to confirm the diversion Order.

***The Extinguishment Order - Order B***

1. The Extinguishment Order, if confirmed, would extinguish part of public footpath GNE 208 (section D-B). This currently runs from point D along a field edge then through the farmyard to join GNE 96 at point B.

*The extent to which it appears that the path would, apart from the Order, be likely to be used by the public*

1. The current route, section D-B, follows a route roughly parallel to section D-C. Order A proposes to divert part of footpath GNE 96 onto the section E-D-C. On considering Order A it is proposed to confirm the Order. Therefore, in light of my conclusions above, I consider that this footpath is unlikely to be used by the public, as Order A would leave footpath GNE 208 as a cul-de-sac.
2. I consider there would be no connection issues for walkers as they would be able to use the diverted route of footpath GNE 96 in whichever direction they are travelling.

*The extent to which the Diversion Order would provide an alternative path*

1. As previously concluded, if the diversion Order A is confirmed, an alternative route would be available by following the diverted route of footpath GNE 96. From point D users would go north or south depending on their direction of travel.

*The effect that the extinguishment of the path would have as respects land served by the path, account being taken to the provisions as to compensation*

1. There is nothing before me to indicate that the extinguishment of section D-B would negatively affect land served by the existing route.
2. The extinguishment of section D-B and proposed diversion Order A would allow for improved safety in the farmyard. The alternative route proposed by the diversion Order interferes less with farming activities and vehicle movements in the farmyard. Therefore, the extinguishment of this section of the footpath would have a positive effect on the land served by it.

*Conclusions on whether it is expedient to confirm the Extinguishment Order*

1. The extinguishment of section D-B is dependent on the alternative route, proposed in Order A, being created. If GNE 96 is diverted, section D-B is unlikely to be used by the public, as it would become a cul-de-sac. I have concluded in paragraph 32 above that it is expedient to confirm diversion Order A. Accordingly, I conclude it would be expedient to confirm the extinguishment Order.

**Rights of Way Improvement Plan (‘ROWIP’)**

1. The OMA have submitted an extract from the ROWIP. The extract appears to be guidelines used to determine the position of an application within a queue awaiting to be processed. It states that applications in the landowner interest that are intended to overcome health and safety problems for the applicant may be taken into consideration.
2. Nothing further has been raised by the parties in relation to the ROWIP.

**Overall Conclusions**

1. Having regard to the above, and all other matters raised in the written representations, I conclude that the diversion Order and the extinguishment Order should be confirmed.

**Formal Decision**

***The Diversion Order - Order A***

1. I confirm the Order.

***The Extinguishment Order - Order B***

1. I confirm the Order.

*J Ingram*

INSPECTOR

