

**HIGHWAYS ACT 1980 - SECTION 119
PUBLIC PATH DIVERSION ORDER
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL
(PUBLIC FOOTPATH CWE 69) at LACYS
(PARISH OF WOTTON UNDER EDGE)**

Gloucestershire County Council’s Statement of Reasons for processing a Public Path Diversion Order.

BACKGROUND

1. This statement of case relates to an application made by the owner of Lacys, Wortley, Wotton Under Edge under section 119 of the Highways Act 1980 (“HA80”) and the Wildlife and Countryside Act 1981 section 53A(2) to divert the path CWE 69 in the Parish of Wotton Under Edge.

The application is made in the interest of the owner of the land crossed by the footpath, CWE 69, to move the footpath as shown on the Definitive Map away from the immediate vicinity of the house and garden.

DESCRIPTION OF DIVERSION ORDER ROUTE

2. The definitive path to be stopped up starts at point A on the attached map, see *annex 1*, and proceeds in a west south westerly and then westerly direction for 200 metres along the drive, past the house and up an incline to a gate. The path continues through fields to a point marked B on the attached map. There is an existing gate at point A and a gate as you leave the property.

The proposed path starts at point C at the roadside and will pass west north west uphill through a small woodland to a field where it turns south and then west to a point marked D. A gap will be created in the hedge at point C and the ditch will be culverted at this point. The proposed path has an overall length of 230 metres, with an additional 27 metres from point D to B.

WIDTH AND LIMITATIONS

3. The new path will have a recorded width of 2 metres. There are no limitations to be recorded.

STATUTORY PROVISIONS

4. Section 119 of the Highways Act 1980 sets out as follows:
 - (1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—
 - (a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and
 - (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a “public path diversion order”.

- (2) A public path diversion order shall not alter a point of termination of the path or way—
 - (a) if that point is not on a highway, or
 - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

- (3) Where it appears to the council that work requires to be done to bring the new site of the footpath or bridleway into a fit condition for use by the public, the council shall—
- (a) specify a date under subsection (1)(a) above, and
 - (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.
- (4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.
- (5) Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or
 - (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public, or
 - (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.
- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the

diversion and that it is expedient to confirm the order having regard to the effect which—

- (a) the diversion would have on public enjoyment of the path or way 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,

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.

(6A) The considerations to which—

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.

5. Section 53A (2) of the Wildlife and Countryside Act 1981 sets out as follows:
An Order made by the Authority to modify the definitive Map and Statement of Public Rights of Way in consequence of the occurrence of an event specified in Section 53(3) (a) (1) of the 1981 Act, namely the stopping up, diverting, widening or extending (as authorised by the order) of a highway shown or required to be shown in the map and statement.
6. GCC also has a duty under section 29 of the HA80 to have due regard to—
 - (a) the needs of agriculture and forestry, and
 - (b) the desirability of conserving flora, fauna and geological and physiographical features.

Section 29 holds that “agriculture” includes the breeding or keeping of horses.

7. GCC also has a duty to consider its obligations under the Equality Act 2010.

REASONS FOR MAKING A DIVERSION ORDER

8. A highway authority may make a diversion order if it is expedient to do so in the interest of the landowner and/or the public.
9. When considering the test of expediency the highway authority must ensure the following:
- (i) that the point of termination of the path is not altered if that point is not on a highway, or
 - (ii) that where the point of termination is on a highway, it is not altered unless to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

Is it expedient to divert the route in the interest of the landowner?

10. It is expedient to divert footpath CWE 69 in the interests of the owner of the land on the grounds of privacy and security. The existing footpath passes along the drive passing close by the house and garden before continuing out of the property and into open fields. The definitive path is a popular route for walkers to and from Kingswood to the Cotswold escarpment and the Cotswold Way. It is also part of an annual sponsored walk where up to 1,000 walkers pass through during a 24 hour period, some often stopping to picnic in the garden.

Is it expedient to divert footpath CWE 69 having regard to the points of termination and whether these are substantially as convenient to the public?

11. The proposed route is fractionally longer. The start points are only a metre or so apart and the termination points are only 27 metres apart. In this respect the path is not considered to be substantially less convenient. The proposed route does include a steeper incline through the small woodland than that of the definitive path although this is not inconsistent with the surrounding hilly countryside.

Agreement made under section 119(5) of the HA80

12. The landowner has agreed to defray –
- (a) any compensation which may become payable under section 28 as applied by section 121(2)
 - (b) any expenses which they may incur in bringing the new site of the path into a fit condition for use for the public.

The new footpath will need a gap through the roadside hedge and a small culvert at point C. All works will need to be completed and certified before the order is confirmed.

GCC's obligations under section 29 HA80

13. There are no additional considerations under this section to be considered.

GCC's obligations under the Equality Act 2010

14. The existing path for 66 metres from point A passes along the drive and has a good level surface. From here the path is grassy. The proposed route will be unmade but clear of vegetation through the woodland. There will be no limitations.

REASONS FOR CONFIRMING A DIVERSION ORDER

15. The legal tests for the confirmation of a diversion order, by either a highway authority or the Secretary of State, are set out in section 119(6) of the HA80. The interpretation of section 119(6) was considered in the case of *R (on the application of Young) v The Secretary of State for the Environment, Food and Rural Affairs* [2002] EWHC 844. Paragraph 26 of the PINS Advice Note 9, commenting on the above case, states that subsection 119(6) has three separate tests to it.
- (i) Firstly, the order is expedient in terms of section 119(1), i.e. that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path be diverted but not so as to alter the point of termination if not on to a highway or to a point on the same highway not substantially as convenient to the public.

- (ii) Secondly, that the diverted path will not be substantially less convenient to the public in terms of, for example, features which readily fall within the natural and ordinary meaning of the word “convenient” such as the length of the diverted path, the difficulty of walking it and its purpose.
- (iii) Thirdly, that it is expedient to confirm the order having regard to the effect:
 - (a) the diversion would have on the public enjoyment of the path or way as a whole;
 - (b) of the order on other land served by the existing public right of way; and
 - (c) of the new path or way on the land over which it is to be created and any land held with it.

16. Paragraphs 10 and 11 above address the first two tests of expediency and the diversion being substantially as convenient to the public. The third test is addressed as follows:

Is it expedient to confirm the Order having regard to the effect which -

- (a) the diversion would have on public enjoyment of the path or way as a whole;*
- (b) the coming into operation of the order would have as respects other land served by the existing 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?*

17. It is well known that walkers would prefer not to walk through what appears to be private gardens and so close to a residential property. The proposed route will arguably offer a more enjoyable walk than the definitive path.

There are no adverse effects in respects of neither other land served by the existing or the new public right of way nor the land over which the path is created.

Is the Diversion Order affected by a Rights of Way Improvement Plan?

18. There are limited elements of the Rights of Way Improvement Plan relevant to this order. See and full RoWIP on the county council webpages https://www.gloucestershire.gov.uk/media/3278/rowip_2011_to_2026-45038.pdf

