

**HIGHWAYS ACT 1980 - SECTION 119
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL
(PUBLIC FOOTPATH HBW 26) AT TAGMOOR HOLLOW
(PARISH OF BOURTON ON THE WATER)**

**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 [REDACTED], the owner of Tagmoor Hollow, Bourton on the Water, under section 119 of the Highways Act 1980 (“HA80”) and the Wildlife and Countryside Act 1981 section 53A(2), to divert footpath HBW 26 in the Parish of Bourton on the Water.

The application is made in the interest of the owners of the land crossed by the footpath on the grounds of privacy and security. The owner of Tagmoor Hollow would like to increase the security of the barns and farm outbuildings that have been the subject of break ins, burglaries and an arson attack. Moving the path would allow the access gates to be locked, preventing unauthorised pedestrians and vehicles from entering.

The definitive line of footpath HBW 26 is obstructed at its northern end by farm outbuildings. A path through the farmyard is in use, although not dedicated by the landowner, which joins the public highway Marshmouth Lane at its junction with footpath HBW 27. *See photographs appendix 3.1.*

2. On 16th August 2017 GCC consulted with the parish and district councils, the county councillor for the area and other user groups who have indicated that they wish to be consulted for such applications. An objection was received from the Open Spaces Society. The proposal was resubmitted for consultation on 15th April 2019, along with a statement setting out the reasons for the diversion, and again there was an objection from the Open Spaces Society.

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3. The proposal was revised and the Order was made on 8th September 2020 and was advertised in accordance with the requirements of paragraph 1 of Schedule 6 of the HA 1980 on 17th September 2020. One duly made objection was received.

DESCRIPTION OF DIVERSION ORDER ROUTE

4. Footpath HBW 26 was subject to a previous public path diversion order, confirmed with modifications on 15th August 1994 by the Secretary of State for the Environment. See *appendix 3.3*.

The definitive path, HBW 26, to be stopped up, starts in a field at point A on the order map and proceeds in a north north easterly direction across the field for 68 metres, before continuing across the farmyard for 75 metres, turning in a northerly direction for 36 metres to point B where it joins footpath HBW 27. At some time in the past a barn has been built over the line of the path and walkers have needed to use a route that enters the farmyard via a stile, passes through a field gate and exits through a second field gate onto Marshmouth Lane.

The proposed path starts at point A and passes in a north easterly direction alongside the hedgerow for 98 metres to join Marshmouth Lane at point D. The path between points A and D is to be enclosed with a stock fence along the northern boundary. The ditch running alongside the hedge will be culverted and the path will be surfaced with rolled stone to provide a level surface. The ditch at the junction with Marshmouth Lane will be culverted.

WIDTH AND LIMITATIONS

5. The proposed new path to replace HBW 26 will have a recorded width of 3 metres within the field between points A and C, narrowing to 2 metres between points C and D. A self closing pedestrian gate will be recorded as a limitation at point A.

STATUTORY PROVISIONS

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6. 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

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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

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(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.

7. 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 (as authorised by the order) of a highway shown or required to be shown in the map and statement.

8. 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.

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

REASONS FOR MAKING THE DIVERSION ORDER

10. 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.

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11. 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?

12. It is expedient to divert footpath HBW 26 in the interests of the owner of the land for increased security where the walked path crosses the farmyard. There have been a number of thefts from the barns and yard and an incident of arson. Diverting the path from the farmyard will allow the owner to secure the field gates at the entrance to the yard. The proposed route would be a less intrusive route and may be more pleasurable to walkers.

Is it expedient to divert footpath HBW 26 having regard to the points of termination and whether these are substantially as convenient to the public?

13. There is no inconvenience to the public with regards to the points of termination.

The proposed route, A to C to D, and along the quiet lane and footpath HBW 27 to re-join HBW 26 at point B is approximately 43 metres longer than the definitive path, A to B. There is little difference in the distances and the proposed route is not considered to be any less convenient to the public.

Agreement made under section 119(5) of the HA80

14. 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.

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The landowner has agreed to undertake at their expense work to culvert the ditch alongside the boundary hedge and to level the new path, providing a rolled stone surface between points A to D. The landowner intends to install a stock proof fence between points A to D to prevent dogs mixing with horses in the field or straying into the garden. The landowner has agreed to install a culvert across the ditch at the roadside at point D. The landowner will enter into a maintenance agreement with GCC to maintain vegetation along the new enclosed section of footpath A to D.

GCC's obligations under section 29 HA80

15. The new route will enable the landowner to make better use of the fields to the rear of the property for the keeping of horses.

GCC's obligations under the Equality Act 2010

16. The proposed path for HBW 26 will be level, with a pedestrian gate at point A recorded as a limitation. The current walked route has a stile and two gates as limitations.

REASONS FOR CONFIRMING A DIVERSION ORDER

17. 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

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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.

18. Paragraphs 12 and 13 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?*

19. The proposed diversion of footpath HBW 26 takes walkers from the farmyard and drive to the property boundary for a short distance before joining a quiet cul de sac lane. The whole length of this path provides a walk of just over 2 kilometres passing in the main through pastoral fields with this northern section at present through a farmyard. The views are the same from both the definitive, current walked route and the proposed path along this section.

There are no significant differences in public enjoyment for the proposed diversion of footpath HBW 26.

There are no adverse effects in respects of either other land served by the existing or the new public rights of way or the land over which the paths are created.

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

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20. There are limited elements of the Rights of Way Improvement Plan relevant to this order. See section 11 for clauses relevant to Public Path Orders and full RoWIP on the county council webpages.

https://www.gloucestershire.gov.uk/media/3278/rowip_2011_to_2026-45038.pdf

COMMENTS ON THE OBJECTIONS AND REPRESENTATIONS

21. One duly made objection was received during the advertising of the Order from ■■■■■ representing the Open Spaces Society. The grounds given for objecting are as follows:

“I have been consistent throughout the last 12 years in seeking a greater width than two metres for a diversion, particularly where the intention is to permanently enclose the public way.

This is unacceptable for a new definitive path in 2020 where people access the countryside for health and pleasure and, at this time, no doubt seeking relief from the perils and monotony of the current restrictions.

There is no apparent reason to restrict the proposed path to the width of the culverted ditch while there is space available for a more commodious surface between the proposed boundaries.

When we last communicated I was quite clear that only a width of 3 metres with an undertaking for maintenance would be an acceptable replacement for the current path. However, publishing the Order has forestalled the possibility of such agreement being reached!

Please record, and acknowledge, my objection to confirmation of the current Order please.” *See section 4 for copy of correspondence.*

22. GCC’s response to the objection is as follows:

The proposed route has a 3 metre width for half of its length, and the 2 metre width applies only to a 49 metre section that runs alongside the applicant’s rear garden. The path is on the outskirts of the town of Bourton on the Water and the landowner has concerns that providing a 3 metre width for the proposed path at its junction with Marshmouth Lane would attract antisocial behaviour. The applicant has agreed to install a stock fence between their garden and the path, and to maintain the hedge running along the southeast side of the path, allowing for a useable width of 2 metres between points C to D.

The rolled stone surface of the proposed diversion will be equally as commodious to walkers as the surface of the existing path through the farmyard and provides a better surface than the existing section of path through the grassy field, which

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regularly becomes waterlogged at certain times of the year. It is therefore not considered that the diverted path is less convenient to the public than either the definitive path or the used path.

23. The Order is made in the interests of the landowners and GCC consider that all the relevant tests have been met in order to enable the Order to have been made and for it to be confirmed.
24. Gloucestershire County Council therefore respectfully requests the Inspector to confirm this Order.