

HIGHWAYS ACT 1980 – S119

GLOUCESTERSHIRE COUNTY COUNCIL
(PUBLIC FOOTPATH HBW26) BOURTON ON THE WATER
DIVERSION ORDER 2020

Statement of Reasons of Gerald Stewart Local Correspondent for the Open Spaces Society, in objecting to the confirmation of the order.

Note - (Stmnt) refers to the Council's Statement (App) refers to my evidence

My main objection being that the proposed path will be substantially less convenient and enjoyable for users than either the definitive or currently used route.

In considering the issue no doubt you will take the view expressed by the Inspectorate (Advice Note 2.3.12) 'that an equitable comparison between the existing and proposed routes can only be made by disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public'

You may be guided further by the decision in RA v SSEFRA, Weston & others (2012) that three tests are also to be considered –

1. Whether the diversion is expedient in the interests of the owner of the land crossed by the path,
2. Whether the proposed diversion is substantially less convenient to the public in consequence of the diversion,
3. Whether it is expedient to confirm the Order having regard to the effect (a) of the diversion on the public enjoyment of the path as a whole....

The further decision in OSS v SSEFRA (2021) allowing you to have regard to the general public interest as well as that of the landowner in the diversion. 'The word expedient indicates that a broad judgement is to be made and the different considerations weighed'.

The length of HBW 26 extinguished by the order (A - B on the plan) was, prior to the erection of the obstructing barns, an open field route and walkers from Bourton would have been presented with open skies and views across the fields towards Clapton on Hill - their likely destination.

From a short walk in the adjacent field the unrestricted nature and enjoyment of the path can be readily assessed.

The available route through the yard, freely used by the public about fifty years, since the definitive path was obstructed, is similarly open and unrestricted The only Limitations being field gates at either side which are at least 3m in width. The councils photograph (Statement p 10) shows the openness of this route, which I have also witnessed several times since my first visit in 2012 when a diversion was first mooted.

During my visits the only visible signing directed at the public have been standard council waymarks in the fields and a wooden public footpath signpost at the road side indicating the path through the yard.

The attached photographs (P1020642/644/778) from 2017 show the unrestricted nature of the route much the same as it was on my visit five years earlier.

In comparison, the proposed path A-C-D in the order plan, is to be enclosed to 3m with between A-C diminishing to 2m to point D.

Walkers from Bourton will be obliged to depart from their desired line to follow Marshmouth Lane, already a right of way, before re-joining HBW 26 via the proposed path. It would be unsurprising if many walkers choose to continue along the lane.

The 2m width section C-D, will follow the course of an infilled drainage ditch which, in an area which the Environment Agency describe as flood plain, may not prove ideal for public access in the future.

This section will be enclosed narrowly between the overhanging hedge and garden fencing described ambiguously as 'stock' fencing. My comment to the council that this will probably amount to a 2m high close boarded fence has not been refuted.

This narrow length, over a water course and without benefit of sunlight or drying breeze will remain dank and wet and likely to remain a muddy trough for long periods.

The council's photograph (Stmt p10) shows the surrounding ground slightly sloping to the infilled ditch. Surface water will filter down to the low point fulfilling the purpose for which the field drainage system was designed.

With or without a high fence, a path in this location is in contradiction of the desire for privacy and security. It will bring the public considerably closer to the play area and rear of the bungalow than is the case with either of the public paths at the front of the property. An extract of the site development plan shows this clearly (App 2)

The landowners comment that a path 3m wide in that location would attract antisocial behaviour, shows further the inadvisability of creating a path close to the rear of the bungalow.

The path and fence will prove ideal for the concealment, not only of possible intruders, but also for prying eyes. A Crime Prevention Officer would advise firmly against the location.

Mr Alan Bently, the council's rights of way manager has expressed doubt about the path surface recognizing it as a wet area necessitating the addition of surface material.

None of these factors, I suggest, reveal the path as being substantially as convenient for public use as the path being extinguished.

The enclosed section proposed between points A-C will lose walkers the freedom and ambience of walking across an open field. The photograph (App 3) is an example of this and also shows the uneven surface likely to result by regular use of an enclosed surface.

Anxiety has also been expressed in similar correspondence about the health of occupants, relating to Covid-19, and the proximity of members of the public passing in front of the bungalow. It must be obvious that the proposed path will bring the public in much closer contact with the occupants.

The 2m wide enclosed path will have a margin inaccessible to walkers feet thereby reducing the width still further and bringing passing walkers into close contact which is not particularly satisfactory with the resurgence of Covid cases throughout Europe and the UK,

The inconvenience of this section is likely to inhibit disabled walkers relying on sticks for support, mobility scooter users, grandparent holding a child by the hand.

These factors are not unlikely to be encountered on country paths in a promoted destination area as popular as Bourton on the Water. It is not unusual to find more than a dozen tourist coaches, from all parts of the country, in the coach park during much the year.

A width of 2m for a right of way diverted across an open field can be an acceptable and pleasant experience and the county council have processed many such in recent years.

A similar width enclosed by fences presents the opposite view and experience, and cannot, I believe, be justified as substantially as convenient and enjoyable as an unenclosed path.

Neither the definitive path HBW 26 nor the used path require such fencing or improvement of the surface..

Security at the barns could be vastly improved with floodlighting and an alarm system as recommended by the Rural Crime Prevention Unit and in use in many similar locations. Locking the gates would restrict motor access but will not deter. Hand gates or suiyable gaps could be provided for walkers of the path.

Privacy from users of the path is provided by the existing fencing and shrubbery between the yard and bungalow which is not the case with the proposed path to the rear of the bungalow.

In your considerations I would indicate a possible alternative route following the perimeter fence towards point B on the plan to a point where it appears feasible to bridge the drainage channel (not marked on the order plan) fairly close to the line of the definitive path.

In the event that you are persuaded not to confirm the order I suggest that a diversion along these lines would provide privacy for the residents and be less convoluted and restrictive as the current proposal. It would be substantially as convenient as the definitive path.

A plan (App 4) provided to me in earlier discussions, shows the possibility and that HBW 26 conforms much more closely to the definitive map than shown on the order plan.

In concluding my Statement I ask you to consider that the proposed diversion is substantially less convenient for the use of the general public and decline to confirm the present order.

Should you be inclined to confirm the order I ask you to consider modifying it to provide a width of 3m throughout the length of the diverted path.

G Stewart
Local Correspondent Open Spaces Society