

**HIGHWAYS ACT 1980 - SECTION 119 AND SECTION 118
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL
(PUBLIC FOOTPATHS GNE 96 & GNE 208)
(PARISH OF NEWENT)**

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

BACKGROUND

1. This statement of reasons relates to orders made under sections 119 and 118 of the Highways Act 1980 (“HA80”) and the Wildlife and Countryside Act 1981 section 53A(2) to divert and extinguish part of public footpaths GNE 96 and GNE 208 respectively in the Parish of Newent, as a result of an application made by [REDACTED]

The diversion application was made in the interest of the owner of the land crossed by footpath GNE 96 to move the footpath, as shown on the Definitive Map, away from the very busy farmyard for reasons of health and safety and to allow the landowner to better secure the farm buildings.

The Definitive path, GNE 96, passes north to south along the drive and through the farmyard. Should the diversion be successful, the extinguishment of 143 metres of the eastern end of footpath GNE 208, which comes into the farmyard from the west, would be necessary so as not to leave a cul-de-sac spur.

The farm produces vast quantities of blackcurrants and stores arable crops. There is a constant flow of tractors, loaders and grain lorries loading and unloading. At the height of the harvest season, up to 20 articulated lorries visit the farm daily. There are also 3 large telescopic handlers with limited visibility which are used to move materials around the yard, as well as numerous tractor, trailer and other machinery movements. *See photographs, appendix 3.2.*

The definitive route of GNE 96 passing through the farmyard raises significant safety issues for walkers, as highlighted in a Health and Safety audit carried out by the NFU, see *appendix 3.3*. There are also potential bio-contamination risks with walkers and dogs passing through the yard where arable crops are stored. The farm is registered with Trading Standards Service under the EC Feed Hygiene Regulations (183/2005).

There have also been several instances of crime where barns were broken into and on one occasion a quad bike was stolen. All incidents were reported to the police. The diversion, if successful, will help with site security as it will enable the owner to securely lock the farmyard to prevent unauthorised pedestrians and vehicles from entering.

The proposed new route will take walkers through arable fields around the barns to the west of the farmyard and onto a headland path that skirts a small pond.

2. Footpath GNE 208 was created as part of a wider diversion order (1993), confirmed on 29th March 1994. The extinguishment of part of footpath GNE 208 will be necessary to remove a dead-end spur of path should the diversion order be successful.
3. On 14th June 2019 GCC consulted with the town 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 revised, and on 12th February 2020 GCC consulted on the revised proposal. On 24th July 2020 GCC undertook a consultation on a further revision to the proposal.
4. The Diversion and Extinguishment Orders were made on 15th December 2020 and were advertised in accordance with the requirements of paragraph 1 of Schedule 6 of the HA 1980 on 14th January 2021. Eight duly made objections and three duly made representations to the Diversion Order were received during the period when the Orders were advertised; one of the objectors also objected to the Extinguishment Order.

DESCRIPTION OF DIVERSION ORDER ROUTE

5. The definitive path, GNE 96, to be stopped up starts on the concrete track leading to the farmyard at point A on the map attached to the diversion and proceeds in a south southeasterly direction for 243 metres through the farmyard to a point marked C on the diversion map.

The proposed new path starts at point E on the diversion map and passes into a field cultivated with blackcurrant bushes. The diversion proposal includes the removal of a small section of land currently under cultivation to allow for future plans to extend the current barns. The path proceeds in a west southwesterly direction for 123 metres and then in a south southeasterly direction for 98 metres before turning south and crossing a ditch where a bridge will be provided at point D. The path crosses a farm track before turning in an east southeasterly direction and proceeding along a field edge, passing a small pond before re-joining the definitive path on the drive at point C.

Following receipt of objections to the diversion order, the landowner has undertaken to install a surface of crushed stone on two sections of the new path: to the north of the barns close to point E, where the diversion route leaves the concrete track, and to the west of the barns close to point D, where the proposed diversion route approaches the bridge over the ditch. The remainder of the path will have a grass surface, except where it crosses the ditch and the existing stone farm track at point D.

WIDTH AND LIMITATIONS

6. The new path will have a recorded width of 2 metres between points E to D to C and there will be no limitations recorded.

DESCRIPTION OF EXTINGUISHMENT ORDER ROUTE

7. The path to be stopped up starts at point D and proceeds in an easterly direction for 143 metres to point B. It will become necessary to stop up this length of footpath GNE 208 if the diversion order is successful, to avoid a cul-de-sac path remaining on the Definitive Map.

STATUTORY PROVISIONS

8. 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.

9. Section 118 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 it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a 'public path extinguishment order'.

- (2) The Secretary of State shall not confirm a public path extinguishment 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 it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (3) A public path extinguishment order shall be in such a form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such a scale as may be prescribed, defining the land over which the public right of way is thereby extinguished.
- (4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.
- (5) Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion or rail crossing diversion order then, in considering-
 - a) Under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use; or
 - b) Under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public;the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order would provide an alternative path or way.

(6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

(6A) The considerations to which-

a) The Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment 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 extinguish a public right of way.

10. 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.

11. 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.

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

REASONS FOR MAKING THE DIVERSION ORDER

'Making' Tests to be satisfied.

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

13. It is expedient to divert footpath GNE 96 in the interests of the landowner, who has significant concerns about the safety of walkers using the definitive route through the farmyard, in view of the number and nature of heavy vehicles operating there. Removing the footpath from the farmyard will also increase the biosecurity for the site and will allow the landowner to improve the security of the farm buildings, which have been the target of break-ins.

Is it expedient to divert footpath GNE 96 having regard to the points of termination and whether these are substantially as convenient to the public?

14. The diverted route starts 26 metres northwest of the existing path and finishes at the same point as the existing route, so the proposed diversion satisfies the termination points test.

Agreement made under section 119(5) of the HA80

15. 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.

A new bridge will be required to cross the ditch at point D; this will need to be installed, checked and certified before the order is confirmed.

GCC's obligations under section 29 HA80

16. The proposed diversion will benefit the needs of agriculture by improving safety in the farmyard by and by increasing protection for arable crops stored on site.

GCC's obligations under the Equality Act 2010

17. The definitive and the proposed paths have a similar gradient, and neither path has steps. The new path will be a predominantly level grassy path with no gates or stiles.

The proposed diversion provides a safer route for walkers by taking them away from the busy farmyard. The bridge will be fully accessible so as to prevent obstacles along the new section of path.

REASONS FOR MAKING THE EXTINGUISHMENT ORDER

'Making' Tests to be satisfied.

Is it expedient to extinguish the route on the ground that it is not needed for public use?

18. A 143 metre long section of footpath GNE 208 would remain as a cul-de-sac spur should the diversion of footpath GNE 96 be successful. This section of path would therefore not be needed for public use.

REASONS FOR CONFIRMING THE DIVERSION ORDER

19. 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.

20. Paragraphs 13 and 14 above address the test of expediency and the termination points. As to the second test, the diversion being not substantially less convenient to the public, the proposed route is approximately 221 metres longer than the definitive path but is of a similar gradient. The additional distance is not considered to be significant in the context of a path that is mainly used for leisure purposes by walkers and runners following circular routes from Newent and surrounding areas. The new path will be unenclosed and there will be no limitations.
21. The third test is addressed as follows: - Public enjoyment will arguably be increased by the diversion of this path because the new route, which passes through a field planted with blackcurrant bushes, alongside a watercourse and around a pond, will be a safer and more pleasant walk than the definitive path through the busy farmyard where heavy vehicles and machinery operate. The proposed route arguably provides better views across open farmland than the definitive path, and a view of the historic Moat farmhouse can be obtained from the diverted route.

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.

REASONS FOR CONFIRMING THE EXTINGUISHMENT ORDER

22. Section 118(2) sets out conditions for confirmation of an order. The decision maker must be satisfied that it is expedient to confirm the order. Whether it is expedient is to be answered, though not exclusively, by reference to a number of matters. These are: the extent which the way would, apart from the order, be likely to be used by the public and; the effect that extinguishment would have on the land served by the way, account being taken of the provision for compensation in section 28 as applied by section 121 of the HA 80.

23. These two tests, which appear in both subsections 118(1) and 118(2), were considered in the *Stewart* and the *Cheshire County Council* cases¹. The use of the word 'expedient' in subsection (2) means that other relevant considerations can be taken into account when deciding whether an order is expedient, in addition to those expressly set out in the subsection. However, this test in subsection 118(2) is not the same as in subsection 118(1). At the confirmation stage, the decision maker does not have to be satisfied that the way is not being used in order to conclude that it is not needed for public use. An Inspector could confirm an order even if he/she thought the way was likely to be used to a limited degree but was not actually needed.
24. The *Stewart* case also considered the situation where a footpath could not be used because it was obstructed. Section 118(6) requires temporary obstructions to be disregarded when considering the merits of the order. In *Stewart*, the court found that a pine tree with a girth of 2'6", a hedge 4' wide and 12' high and an electricity substation were capable of being temporary obstructions and could be disregarded under subsection (6). There are no temporary obstructions along this section of path.
25. Paragraph 18 above addresses the test of expediency and that the path is considered not to be needed for public use. The third test is addressed as follows:
Is it expedient to confirm the Order having regard to the effect which -
- (a) the extent which the way would, apart from the order, be likely to be used by the public,
 - (b) the effect that the extinguishment would have on the land served by the way, account being taken of the provision for compensation in section 28 as applied by section 121 of the HA 80.
 - (c) For the purposes of subsection (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.
26. Should the diversion of footpath GNE 96 be confirmed this 143 metre length of path will become a cul-de-sac, therefore the path is needed for public use.

¹ *R v Secretary of State for the Environment ex parte Stewart* [1980] JPL 175 and *R v Secretary of State for the Environment ex parte Cheshire County Council* [1991] JPL 537.

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

27. There are limited elements of the Rights of Way Improvement Plan relevant to this order. Annex D – Priority guidelines for public path orders

Part A – Landowner Interest

The following factors may be taken into consideration:

- Applications that are fully paid for by the applicant;
- Applications from owners and occupiers of land used for agriculture, forestry and the breeding and keeping of horses as defined by the CROW Act;
- Applications that are intended to overcome health and safety problems for the applicant, for example, diversion of a path out of a farmyard.

See the full Rights of Way Improvement Plan on the County Council webpages:

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

COMMENTS ON THE OBJECTIONS AND REPRESENTATIONS

28. There have been eight duly made objections and three duly made representations in support of the Diversion Order. The Open Spaces Society also objected to the Extinguishment Order. The grounds given for objecting are based on the following:
- The existing footpath has a hard concrete surface whereas the proposed diversion through fields would be likely to become muddy in wet weather and during the winter.
 - The proposed diversion route would not be properly managed, maintained and protected in the future.
 - The new bridge would require maintenance.
 - Moving the footpath would not deter potential burglars.
 - The existing footpath GNE 96 is a historic public right of way and existed prior to the developments at Moat Farm.
 - The proposed route is not significantly safer than the existing path through the farmyard.
 - The width of the new path would be less than the existing concrete farm track.
 - The proposed route is longer and more circuitous than the definitive path.
29. The Open Spaces Society objected to the initial proposal at pre-order consultation stage in June 2019; the proposal was subsequently revised in February 2020 and again in July 2020. Three routes proposed by the Open Spaces Society were put to the landowner, but none was acceptable because they did not alleviate the health and safety concerns at the farm. The two routes to the east of the farm suggested by the Open Spaces Society were considered by the landowner to be unsuitable for walkers because of the very muddy condition of the track in that location.
30. GCC's response to the objections is as follows:
- A response was sent to each of those who had made an objection or representation to the orders.

Following receipt of objections to the diversion order on the grounds that the proposed path would become muddy in wet weather, the landowner agreed to install a surface of crushed stone on two sections of the proposed new path: to the north of the barns close to point E, where the diversion route leaves the concrete track, and to the west of the barns close to point D, where the proposed diversion route approaches the bridge over the ditch. In view of these proposed improvements, three of the objectors subsequently agreed to withdraw their objections, subject to surface improvements, suitable signage being installed and future monitoring of the proposed route.

The landowner installed a concrete surface on the section of path that runs into the farmyard from the north in 2014; prior to that the path had a surface of compacted soil and stone and was prone to becoming muddy during periods of wet weather and during the winter. The definitive path GNE 96 is of undefined width whereas the width of the proposed new route is 2 metres, therefore it cannot be argued that the width of the new path would be less than the existing route.

Although the proposed new path is approximately 221 metres longer than the definitive path, the three routes put forward by the Open Spaces Society were all longer than the diversion route. For walkers travelling east to west between footpaths GNE 97 and GNE 208, the new route between points A - E - D is 43 metres shorter than the Definitive route A - B - D. Similarly, for walkers coming from the south along GNE 96 and travelling west to GNE 208 there is little difference in length between the existing and proposed routes.

The landowner has concerns that a serious accident could occur as a result of walkers coming into contact with farm vehicles operating in the farmyard and is seeking to address those concerns by providing a safer route around the outside of the farm buildings for path users. Walkers and runners using the path at weekends or during quieter times of the year might not be aware of the volume of lorries and heavy machinery operating in the farmyard during busier periods.

31. The Orders are made in the interests of the landowner and GCC considers that all the relevant tests have been met to enable the Orders to have been made and for them to be confirmed.
32. Gloucestershire County Council therefore respectfully requests the Inspector to confirm these Orders.