

From: [REDACTED]
To: [REDACTED]
Bcc: [Atkins OSM Plant Enquiry Team](#); [Auto-Cycle Union](#); [British Driving Society](#); [British Horse Society](#); [BT Openreach National Notice Handling Centre](#); [Byways and Bridleways Trust](#); [Cycling UK](#); [National Grid Electricity Transmission](#); [National Grid Gas Transmission](#); [One Search Direct](#); [Ramblers](#); [Ramblers Gloucestershire](#); [Severn Trent Asset Protection](#); [OSS](#); [National Grid Electricity Distribution](#); [Wales and West Utilities](#); [Stroud Walking Group](#); [Stroud District Council](#); [Painswick Parish Council](#); [WILLIAMS, Cllr Susan](#)
Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 14 March 2024 16:57:00
Attachments: [Statement of reasons MPA 95.pdf](#)
[Annex 1.pdf](#)
[Painswick MPA 95 diversion A41 aerial.pdf](#)

We have been asked to process a public path diversion order for part of footpath MPA 95 in the parish of Painswick.

I have attached a statement of reasons together with a map of the proposal for your consideration. Would you please let me have your comments by the 26th April 2024.

Please note that the proposed path on the attached plan, which is based on OS mapping, appears to cross a boundary fence between points F and G. However, the boundary shown on the plan does not correspond exactly with what is on the ground; the proposed path will be east of the boundary fence as shown on the attached an aerial plan.

If you have any queries please do not hesitate to contact me.

Kind regards

[REDACTED]
Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG
Tel: 01452 427794
Email: [REDACTED]

**HIGHWAYS ACT 1980 - SECTION 119
PUBLIC PATH DIVERSION ORDER
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL
DIVERSION OF PUBLIC FOOTPATH MPA 95 (PART) AT
TRENCH HILL
(PARISH OF PAINSWICK)**

Proposed Public Path Diversion Order

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

BACKGROUND

1. This statement of reasons relates to an application made by the owners of Trench Hill, Painswick, under section 119 of the Highways Act 1980 ("HA80") and the Wildlife and Countryside Act 1981 section 53A(2) to divert part of footpath MPA 95 in the parish of Painswick.

The application is made in the interest of the owners of the land crossed by the footpath, MPA 95, to move the footpath as shown on the Definitive Map away from the immediate vicinity of the house and garden. Currently the path proceeds along the driveway of the property, passing very close to the front door, before continuing through the garden and exiting via a pedestrian gate at the eastern end of the property onto a grassy track leading to an area of woodland. The landowners would like to move the path onto an adjacent grazed field and a wide grassy track, where the diverted path would reconnect with the definitive path to the east of the property. The proposal will improve privacy and security at the property and enable the landowners to make the property more secure.

DESCRIPTION OF DIVERSION ORDER ROUTE

2. MPA 95

The definitive path to be stopped up starts at point A on the attached plan (see Annex 1), at the junction with the class 4 road known as Saltridge Hill to Damsells Mill Lane, and follows the gravel driveway of Trench Hill in a generally east southeasterly direction up a gentle incline for 57 metres before continuing for 26 metres across a level gravel parking area, passing within a few metres of the front door of the property. The path then follows a woodland track through the garden for 88 metres to point C at the eastern boundary of the property, before exiting the garden via a pedestrian gate and continuing for 25 metres up a sloping grassy bank to join a grass track at point D. There is an existing vehicular gate on the driveway at point B.

The proposed new path starts at point E on the plan and enters the field via an existing stile that is to be replaced by a pedestrian gate. The path runs alongside the boundary fence of the grazed field in a generally easterly direction for 119 metres to point F where there is an existing wooden pedestrian gate. The field has a relatively even incline between points E and F. The path then turns in a generally southeasterly direction and continues along a mainly level mown grass track for approximately 107 metres, past a timber clad outbuilding, and passing through wooden field gates at points G and I, to point D where it re-joins the definitive path.

Although not dedicated by the landowners, the proposed path is currently in use on a permissive basis. Should the diversion be successful the stile at point E and the existing pedestrian gate at point F will be replaced by British Standard 5709:2018 (BS 5709:2018) compliant pedestrian gates with a minimum width of 1.1 metres to improve accessibility of the diversion route.

WIDTH AND LIMITATIONS

3. Between points E and F the new path will be bounded on one side by an existing post and wire stock proof fence with a wire mesh infill. The fence includes barbed wire and a strand of electric fence. Between points F and G the path will run alongside an existing post and wire fence with wire mesh infill, and between G and H the path will run alongside a timber outbuilding. The new path will be unenclosed between points H, I and D. The proposed path will have a recorded width of 2.5 metres between points E - F - G - H and 2 metres between points H - I - D.

STATUTORY PROVISIONS AND DEFRA GUIDANCE

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.
8. DEFRA's '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', issued in August 2023, states that:

"The majority of public rights of way cross privately owned land. In general, members of the public and farmers/landowners are used to the concept and see no inherent inconsistency between the fact that land may be privately owned and the presence of public routes across it for both passage from A to B, and enjoyment of the countryside and the natural environment.

However, the general view of both groups can change markedly in situations where public rights of way pass through contained spaces such as private gardens, farmyards or commercial premises.

Members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises. Such path alignments can deter people from exercising the public's right to use the path."

and that:

"In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given."

The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests."

REASONS FOR MAKING A DIVERSION ORDER

'Making' Tests to be satisfied.

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

9. It is expedient to divert footpath MPA 95 in the interests of the owners of the land. The existing footpath, MPA 95, passes through the garden and driveway of the property, passing very close to the front door of the dwelling house. Diverting the path would enable the landowners to better secure the property and would increase privacy.

Is it expedient to divert footpath MPA 95 having regard to the points of termination and whether these are substantially as convenient to the public?

10. The existing and proposed both start on the quiet class 4 road known as Saltridge Hill to Damsells Mill Lane, the start points are only 7 metres apart and there is no onward connection to another public right of way in the immediate vicinity. Both paths terminate at the same point to the east of Trench Hill, so the proposal meets the termination points test.

Agreement made under section 119(5) of the HA80

11. 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 landowners will at their own expense carry out any works required to bring the new path into being; all works will be inspected and certified before the order comes into force.

GCC's obligations under section 29 HA80

12. Although part of the diversion route will run alongside the boundary of an agricultural field, the field is primarily used for grazing cattle, so the new route will not impact on

the needs of agriculture or forestry. The proposed diversion does not impact on flora, fauna and geological and physiographical features and there are no disbenefits to the public.

GCC's obligations under the Equality Act 2010

13. The definitive path slopes up a grassy bank between points C and D whereas the proposed path has a more even gradient, and the section of the new path between points F and D will follow an existing generally level track that is mown regularly. Neither the existing nor proposed path has any steps. The existing field gates at points G and I are accessible, and the existing stile at point E and pedestrian gate at point F will be replaced by BS 5709:2018 compliant pedestrian gates; the proposal will therefore be in line with accessibility guidelines.

REASONS FOR CONFIRMING A DIVERSION ORDER

14. 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 set out above in 5(6) and (6A). Paragraph 2.3.8 of the PINS Advice Note 9 states that:

“The decision in *Ramblers Association v SSEFRA, Weston and others* [2012] EWHC 3333 (Admin) acknowledges that section 119(6) involves three separate tests (as endorsed by the High Court in *The Open Spaces Society v Secretary of State for Environment, Food And Rural Affairs* [2020] EWHC 1085 (Admin)):

Test 1: whether the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public (as set out in section 119(1) and subject to section 119(2)- see paragraphs 2.31 and 2.32 above). This was described in *R (Hargrave) v Stroud District Council* [2001] EWHC Admin 1128, [2002] JPL 1081 as being a low test.

Test 2: whether the proposed diversion is 'substantially less convenient to the

public'. In order to meet this test, the path or way must not be substantially less convenient to the public in consequence of the diversion (as per the wording in section 119(6)).

Both of these tests can be described as gateway tests - unless they are passed the decision-maker does not get to the third test.

Test 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 or way as a whole;
- (b) of the Order on other land served by the existing public right of way; and
- (c) of any new public right of way on the land over which it is to be created and any land held with it.

Any material provisions of a rights of way improvement plan must also be taken into account.”

In relation to Test 2 above, paragraph 2.3.7 of PINS advice Note 9 states that:

“In terms of the expression 'substantially less convenient to the public', features which readily fall within the natural and ordinary meaning of the word 'convenient' are matters such as the length of the diverted path, the difficulty of walking it and its purpose.”

Other factors to be considered in relation to Test 2 include the width, surface, gradient and accessibility of the diverted path compared to the existing path.

15. Paragraphs 9 and 10 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 length of the new route would be 226 metres, which is only 30 metres greater than the definitive route which has a length of 196 metres. Both paths start on the quiet class 4 road only 7 metres apart and both paths end at the same point.

The definitive and proposed paths are similar in terms of overall gradient, however the existing path includes a section of sloping bank between points C and D that has a cross fall, whereas the gradient of the proposed path is more even. A short section of the existing path has a grass surface, and the remainder is surfaced with bark chippings or gravel, whereas the proposed path will have a grass surface throughout; the grass track between F and D is mown regularly by the landowners and the section through the field between E and F is grazed by cattle. The path is in a rural location and is used mainly for leisure purposes.

The width of the definitive path is undefined whereas the new path will have a width of 2 metres where it is unenclosed and 2.5 metres where it runs alongside a boundary fence. The existing path includes a vehicular gate at point B and a pedestrian gate at point C. Although the new path will have two field gates and two pedestrian gates, these will all comply with accessibility requirements. The diversion route will therefore not be substantially less convenient than the existing path.

16. The third test is addressed as follows: -

Public enjoyment will be increased by the diversion of this path because the proposed diversion will take walkers away from the enclosed space of the dwelling house and garden. The new path will be an enjoyable walk through a grazed field and along a wide, level grassy track edged with trees and will provide far reaching views across the surrounding hills and valleys.

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 as it is all within the ownership of the applicant and no other parties are affected.

Is the diversion in line with DEFRA guidance on changes to public rights of way through gardens and curtilages of private dwellings, working farmyards and other commercial premises?

17. The definitive path proceeds through the garden and along the driveway of Trench Hill, passing very close to the front door of the property. DEFRA guidance acknowledges that the public might not be comfortable following a path through a contained space such as the garden of a dwelling house, because doing so feels like

infringing on the privacy of a house owner. Weighing the interests of the landowners in terms of privacy, security and safety, against the overall impact of the diversion proposal on the public as a whole, it is considered that the proposal meets the required legal tests and that diverting the path is in line with DEFRA guidance.

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

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 that offer sizeable benefits to the applicant.

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

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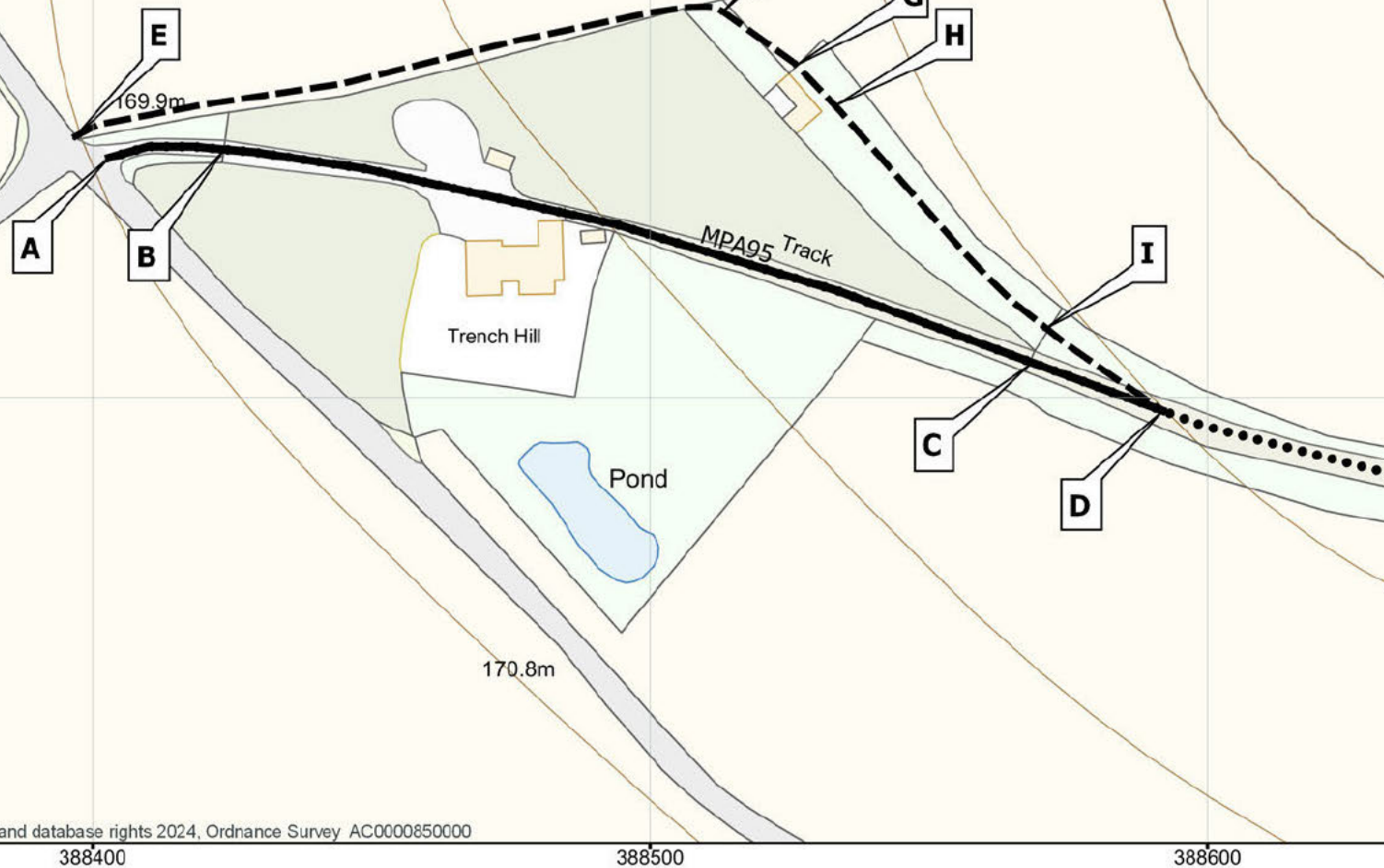
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Proposed diversion of footpath MPA 95 (part) at Trench Hill, Parish of Painswick

Key

Footpath to be stopped up
MPA 95 A - B - C - D

Proposed new footpath
MPA 95 E - F - G - H - I - D

Unaffected rights of way



Public Rights of Way

Shire Hall, Westgate Street,
Gloucester GL1 2TG

Tel. 08000 514 514

www.gloucestershire.gov.uk

Drawn by: [REDACTED]

SCALE: 1:1,250

DATE: 23/02/2024

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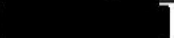
 Gloucestershire
COUNTY COUNCIL

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A

B

E

F

G

H

I

C

D

Trench Hill

Pond

MPA95 Track

169.9m

170.8m

MCR43

FW

From: [WILLIAMS, Cllr Susan](#)
To: [REDACTED]
Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 14 March 2024 19:32:29

Dear [REDACTED]

Do I need to make comments ? I have not received information from residents of Sheepscombe or Cranham regarding the footpath .

Please confirm whether i need to discuss with Parish council or district councillor .

Kind regards

Sue

Sue Williams

County Councillor for Bisley with Lypiatt and Painswick Division .

Vice Chair of Gloucestershire County Council

From: [REDACTED] <[REDACTED]>
Sent: Thursday, March 14, 2024 4:57:15 PM
To: [REDACTED]
Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

We have been asked to process a public path diversion order for part of footpath MPA 95 in the parish of Painswick.

I have attached a statement of reasons together with a map of the proposal for your consideration. Would you please let me have your comments by the 26th April 2024.

Please note that the proposed path on the attached plan, which is based on OS mapping, appears to cross a boundary fence between points F and G. However, the boundary shown on the plan does not correspond exactly with what is on the ground; the proposed path will be east of the boundary fence as shown on the attached an aerial plan.

If you have any queries please do not hesitate to contact me.

Kind regards

[REDACTED]
Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

From: [REDACTED]
To: [WILLIAMS, Cllr Susan](#)
Cc: [REDACTED]
Subject: RE: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 15 March 2024 10:48:00

Dear Sue,

The footpath is being diverted at the request of the owners of Trench Hill because it runs through their garden and they find it intrusive, also the presence of the path makes it difficult to make their property secure.

This is a pre-order consultation, where we ask for comments before determining whether to make a legal diversion order. The consultation has been sent directly to the Parish and District Councils for them to comment, as well as to path user groups and statutory undertakers. You may wish to discuss the proposal with the Parish Council or provide your own comments, but there is no obligation to do so.

Diverting a public right of way is a public process, it is also a discretionary power that GCC has rather than a statutory duty. If the proposal proceeds to the stage of us making a legal order, a notice will be published in the local newspaper and notices will be put up on site so that local path users (as well as our consultees) will be aware of the proposal. There is then a statutory 28 day period where anyone can make representations or object to the diversion if they so wish. If one or more objections are received once a legal diversion order has been made, GCC does not have the power to confirm the order but could decide to submit it to the Secretary of State who appoints the Planning Inspectorate to make an independent determination on whether to confirm the order.

I should make you aware that there have been previous attempts to divert this footpath, which have been unsuccessful:

1995

The owners of Trench Hill applied to Stroud District Council (SDC) to divert the footpath from their garden, but objections were received and the proposal did not progress beyond pre-order consultation.

2000

The owners again applied to SDC to divert the path; a diversion order was made, but Painswick Parish Council objected, as did a number of local people. SDC declined to submit the order to the Secretary of State (SoS) for determination. The applicants applied to the High Court for a Judicial Review of SDC's refusal to submit the order to the SoS, but their application was dismissed. They then appealed to the Court of Appeal in 2002 but their appeal was dismissed. The case attracted quite a lot of publicity at the time.

I hope that has provided you with sufficient background to the diversion proposal, but please let me know if you have any questions or require any further information.

Kind regards,

[REDACTED]
[REDACTED]
Public Path Order Officer
Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

From: WILLIAMS, Cllr Susan <Susan.Williams@gloucestershire.gov.uk>

Sent: Thursday, March 14, 2024 7:32 PM

To: [REDACTED] <[REDACTED]>

Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Dear [REDACTED]

Do I need to make comments ?I have not received information from residents of Sheepscombe or Cranham regarding the footpath .

Please confirm whether i need to discuss with Parish council or district councillor .

Kind regards

Sue

Sue Williams

County Councillor for Bisley with Lypiatt and Painswick Division .

Vice Chair of Gloucestershire County Council

From: [REDACTED] <[REDACTED]>

Sent: Thursday, March 14, 2024 4:57:15 PM

To: [REDACTED]

Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

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If you have any queries please do not hesitate to contact me.

Kind regards

[REDACTED]
Public Path Order Officer
Public Rights of Way

9.1.2

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 14 March 2024 17:09:09
Attachments: [image001.png](#)

Hi [REDACTED]
Having looked at this I can confirm on behalf of SDC that it has no objections to the proposed diversion.

Regards,

[REDACTED]



[REDACTED]
Property Services
Stroud District Council
Ebley Mill, Ebley Wharf
Stroud, Gloucestershire. GL5 4UB

T [REDACTED]
W www.stroud.gov.uk

Working together to make Stroud district a better place to live, work and visit

From: [REDACTED] <[REDACTED]>
Sent: Thursday, March 14, 2024 4:57 PM
To: [REDACTED]
Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

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Kind regards

[REDACTED]

Public Path Order Officer
Public Rights of Way
Gloucestershire County Council

9.1.3

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

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From: [Box.Assetprotection \(National Gas\)](#)
To: [REDACTED]
Subject: FW: [EXTERNAL] Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 15 March 2024 09:48:00
Attachments: [image001.png](#)
[Statement of reasons MPA 95.pdf](#)
[Annex 1.pdf](#)
[Painswick MPA 95 diversion A4L aerial.pdf](#)

Good Morning,

Thank you for your email.

Regarding the proposed diversion of part of public footpath at site location 'MPA 95 at Trench Hill, Painswick' there are no National Gas assets affected in this area.

If you would like to view if there are any other affected assets in this area, please raise an enquiry with www.lsbud.co.uk. Additionally, if the location or works type changes, please raise an enquiry.

Kind regards

[REDACTED]
Asset Protection Assistant



National Gas Transmission, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA
nationalgas.com | [Twitter](#) | [LinkedIn](#)

Please consider the environment before printing this email.

From: [REDACTED] <[REDACTED]>
Sent: 14 March 2024 16:57
To: [REDACTED]
Subject: [EXTERNAL] Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

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We have been asked to process a public path diversion order for part of footpath MPA 95 in the parish of Painswick.

I have attached a statement of reasons together with a map of the proposal for your consideration. Would you please let me have your comments by the 26th April 2024.

Please note that the proposed path on the attached plan, which is based on OS mapping, appears to cross a boundary fence between points F and G. However, the boundary shown on the plan does not correspond exactly with what is on the ground; the proposed path will be east of the boundary fence as shown on the attached an aerial plan.

If you have any queries please do not hesitate to contact me.

Kind regards

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

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For the registered information on National Gas Transmission please use the attached link: <https://nationalgas.com/about-us/corporate-registrations>.

From: [.box.assetprotection](#)
To: [REDACTED]
Subject: RE: [EXTERNAL] Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 19 March 2024 19:04:54

Hi [REDACTED]

Please can you share the grid reference so that I can map the location on our internal system.

Kindest regards,

[REDACTED]
Asset Protection Technical Assistant
Engineering Services
nationalgrid

National Grid House, Warwick Technology Park,
Gallows Hill, Warwick, CV34 6DA (Floor B1)

Please consider the environment before printing this email.

From: [REDACTED] <[REDACTED]>
Sent: 14 March 2024 16:57
To: [REDACTED]
Subject: [EXTERNAL] Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

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Kind regards

[REDACTED]

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Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

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For the registered information on the UK operating companies within the National Grid group please use the attached link: <https://www.nationalgrid.com/group/about-us/corporate-registrations>

From: [REDACTED]
To: [.box.assetprotection](#)
Subject: RE: [EXTERNAL] Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 20 March 2024 15:11:00

Hi [REDACTED]

Ordnance Survey Grid References are as follows:

Point A: SO 8840/1104
Point B: SO 8842/1104
Point C: SO 8856/1100
Point D: SO 8859/1099
Point E: SO 8839/1104
Point F: SO 8851/1106
Point G: SO 8852/1105
Point H: SO 8853/1105
Point I: SO 8857/1101

Kind regards,

[REDACTED]

[REDACTED]
Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG
Tel: [REDACTED]
Email: [REDACTED]

From: .box.assetprotection <assetprotection@nationalgrid.com>

Sent: Tuesday, March 19, 2024 7:04 PM

To: [REDACTED] <[REDACTED]> [REDACTED]
[REDACTED]

Subject: RE: [EXTERNAL] Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Hi [REDACTED]

Please can you share the grid reference so that I can map the location on our internal system.

Kindest regards,

[REDACTED]
Asset Protection Technical Assistant
Engineering Services
[nationalgrid](#)

National Grid House, Warwick Technology Park,

Gallows Hill, Warwick, CV34 6DA (Floor B1)

Please consider the environment before printing this email.

From: [REDACTED] <[REDACTED]>
Sent: 14 March 2024 16:57
To: [REDACTED]
Subject: [EXTERNAL] Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

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If you have any queries please do not hesitate to contact me.

Kind regards

[REDACTED]
Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG
Tel: [REDACTED]
Email: [REDACTED]

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This email and any attachments are believed to be free from viruses but it is your

9.1.5

responsibility to carry out all necessary virus checks and Gloucestershire County Council accepts no liability in connection therewith.

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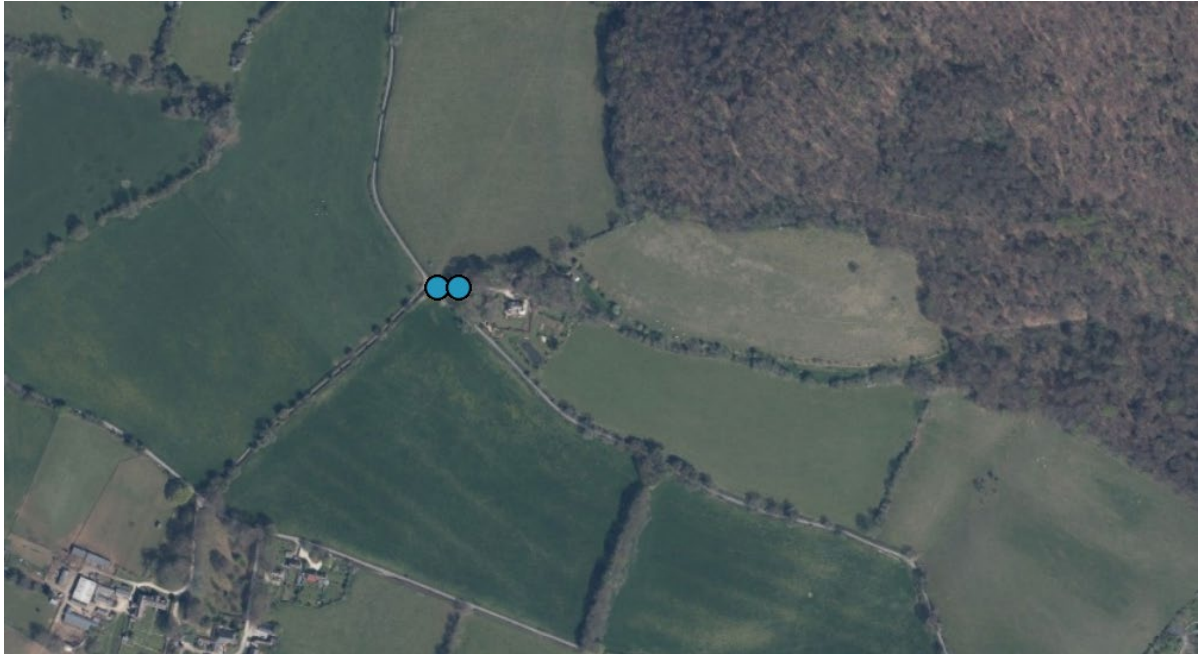
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For the registered information on the UK operating companies within the National Grid group please use the attached link: <https://www.nationalgrid.com/group/about-us/corporate-registrations>

From: [.box.assetprotection](#)
To: [REDACTED]
Subject: RE: [EXTERNAL] Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 22 March 2024 12:32:24
Attachments: [image001.png](#)

Hi [REDACTED]

Thank you for sharing the grid references. Please see below map which confirms that NGET have no assets in the area of your works, therefore we have no objections.



Kindest regards,

[REDACTED]
Asset Protection Technical Assistant
Engineering Services
[nationalgrid](#)

National Grid House, Warwick Technology Park,
Gallows Hill, Warwick, CV34 6DA (Floor B1)

Please consider the environment before printing this email.

From: [REDACTED] <[REDACTED]>
Sent: 20 March 2024 15:12
To: .box.assetprotection <assetprotection@nationalgrid.com>
Subject: RE: [EXTERNAL] Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

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Hi [REDACTED]

Ordnance Survey Grid References are as follows:

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Point B: SO 8842/1104
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Point D: SO 8859/1099
Point E: SO 8839/1104
Point F: SO 8851/1106
Point G: SO 8852/1105
Point H: SO 8853/1105
Point I: SO 8857/1101

Kind regards,

[REDACTED]
[REDACTED]
Public Path Order Officer
Public Rights of Way
Gloucestershire County Council

9.1.5

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

From: .box.assetprotection <assetprotection@nationalgrid.com>

Sent: Tuesday, March 19, 2024 7:04 PM

To: [REDACTED] <[REDACTED]> [REDACTED]

Subject: RE: [EXTERNAL] Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Hi [REDACTED]

Please can you share the grid reference so that I can map the location on our internal system.

Kindest regards,

[REDACTED]
Asset Protection Technical Assistant
Engineering Services
[nationalgrid](#)

National Grid House, Warwick Technology Park,
Gallows Hill, Warwick, CV34 6DA (Floor B1)

Please consider the environment before printing this email.

From: [REDACTED] <[REDACTED]>

Sent: 14 March 2024 16:57

To: [REDACTED]

Subject: [EXTERNAL] Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

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If you have any queries please do not hesitate to contact me.

Kind regards

[REDACTED]
Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG
Tel: [REDACTED]
Email: [REDACTED]

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From: [National Plant Enquiries](#)
To: [REDACTED]
Subject: RE: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 20 March 2024 03:30:02
Attachments: [image001.png](#)

Please note - We have created an electronic response for you in reply to your postal enquiry. For ALL future plant enquiry requests please email to osm.enquiries@atkinsglobal.com

Please accept this email as confirmation that Vodafone: Fixed **does not** have apparatus within the boundary of your proposed works detailed in the reference/location above.

For all future requests please include a 12-digit grid reference and location details within the body of the actual email.

Many Thanks,

IMPORTANT - PLEASE READ = Your Next Step?:-

Where apparatus is affected and requires diversion, please send all the scheme related proposals that affects the Vodafone Network to c3requests@vodafone.com with a request for a 'C3 Budget Estimate'. Please ensure you include a plan showing proposed works. (A location plan is insufficient for Vodafone to provide a costing). These estimates will be provided by Vodafone directly, normally within 20 working days from receipt of your request. Please include proof of this C2 response when requesting a C3 (using the 'forward' option). Diversionary works may be necessary if the existing line of the highway/railway or its levels are altered.

Kind regards

Plant Enquiries Team(SM)

T: +44 (0)1454 662881

E: osm.enquiries@atkinsglobal.com

ATKINS working on behalf of Vodafone: Fixed

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From: [REDACTED] <[REDACTED]>
Sent: Thursday, March 14, 2024 10:27 PM
To: [REDACTED]

Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick




We have been asked to process a public path diversion order for part of footpath MPA 95 in the parish of Painswick.

I have attached a statement of reasons together with a map of the proposal for your consideration. Would you please let me have your comments by the 26th April 2024.

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If you have any queries please do not hesitate to contact me.

Kind regards


Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG
Tel: 
Email: 

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From: [REDACTED]
To: [REDACTED]
Subject: 911384 - Site at Footpath MPA 95 at Trench Hill Street near Trench Hill, Stroud,
Date: 20 March 2024 10:16:32
Attachments: [image001.png](#)
[Short Form Stopping Up Response iss3_911384.pdf](#)
[Site at Footpath MPA 95 at Trench Hill, Street near Trench Hill, Stroud NOTICE PLAN.pdf](#)

Hi [REDACTED]

Thanks for your notice of stopping up. Openreach response is attached with plan of our network.

If you have any queries feel free to give me a call.

Regards

[REDACTED]

openreach

Job title: Network Rearrangement Engineering Professional

Mobile: [REDACTED]

Web: openreach.co.uk

We're the people that make the net work as the nation's largest wholesale broadband network, we're rolling out Ultrafast Full Fibre broadband across the UK. It's our fastest and most reliable broadband yet, and we're well on our way to making it available to 25m homes and businesses—building the UK's fibre future.

[Check to see when Ultrafast Full Fibre may be available at your address](#)

-



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Openreach Limited

Registered Office: Kelvin House, 123 Judd Street, London WC1H 9NP

Registered in England and Wales no. 10690039



GLOUCESTERSHIRE COUNTY COUNCIL
Shire Hall
5th Floor West, Block 5
Westgate Street
Gloucester
GL1 2TG

Our Ref: 911384
Your Ref:
20th March 2024

FAO: [REDACTED]

Dear Madam

**PROPOSED CLOSURE UNDER of HIGHWAYS ACT 1980 - SECTION 119 PUBLIC PATH
DIVERSION ORDER WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL DIVERSION OF PUBLIC FOOTPATH MPA 95
(PART) AT TRENCH HILL (PARISH OF PAINSWICK)**

I am returning one copy of an Openreach drawing marked up to show the approximate position of Openreach's apparatus in the vicinity of your proposal. I have no objections to your stopping up order as shown on your diagram. Please note that as we retain the same statutory rights as before the order was made, should alterations be required to Openreach apparatus due to redevelopment of this area, Openreach will recover the cost of the alterations from the developer.

If you have any queries regarding this communication, please do not hesitate in contacting me.

Yours faithfully,

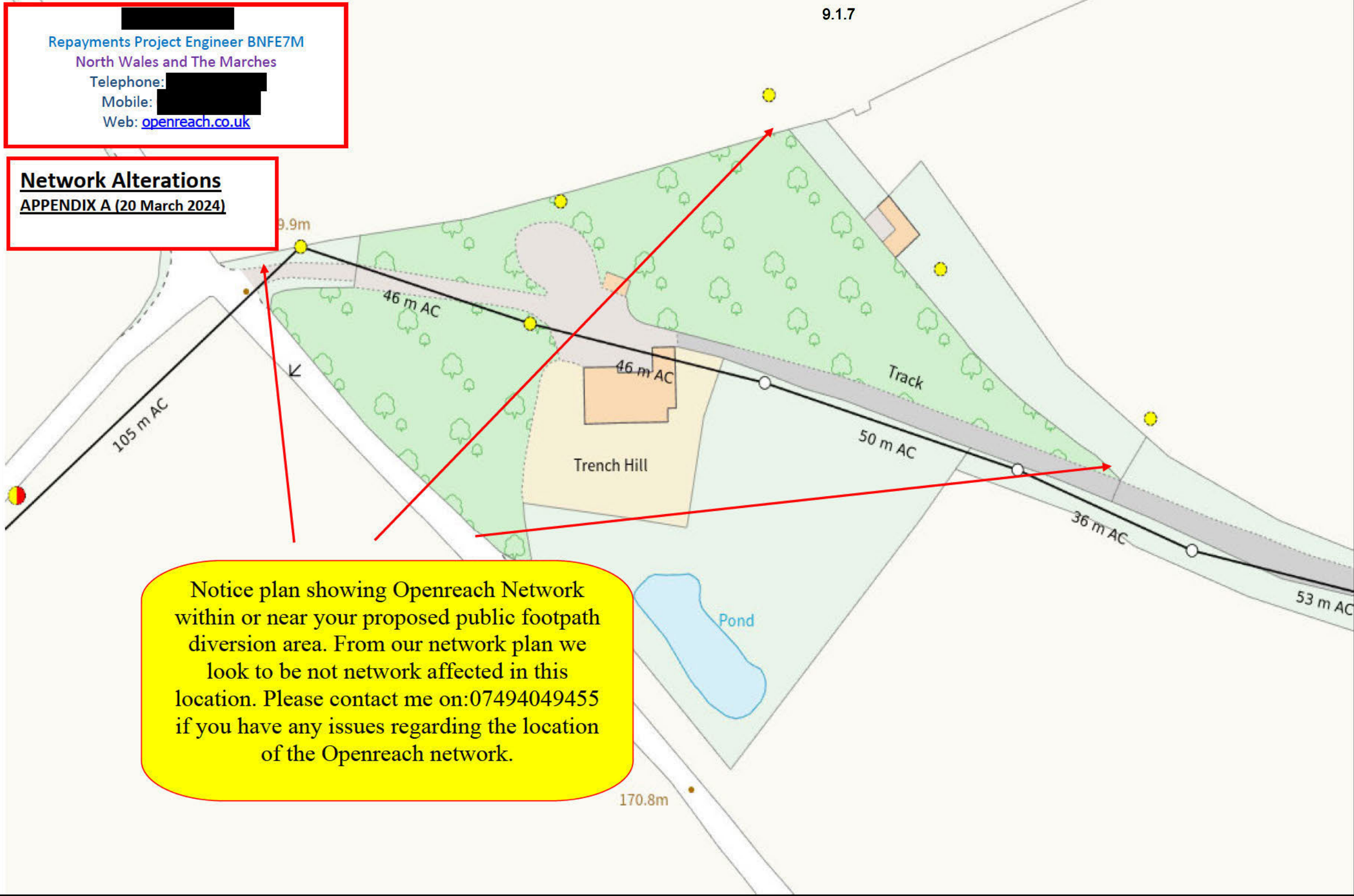
[REDACTED]

[REDACTED]

Repayments Project Engineer

Repayments Project Engineer BNFE7M
North Wales and The Marches
Telephone: [REDACTED]
Mobile: [REDACTED]
Web: openreach.co.uk

Network Alterations
APPENDIX A (20 March 2024)



Legend

CAUTION AREA

BT.CAUTION_AREA

EQUIPMENT

- FIBRE, TCODE
- COPPER, CABINET
- COPPER, DP

DUCT

- AERIAL
- TUNNEL
- DUCT

PROPOSED

- AERIAL
- DUCT

STRUCTURE

- YCODE
- CABINET SHELL
- SPLIT COUPLING
- POLE
- KIOSKS
- MANHOLE
- JOINTBOX
- CHANGE OF STATE
- DUCT TEE

PROPOSED

- MANHOLE
- JOINTBOX
- DUCT TEE

Other proposed plant is shown using dashed lines.

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IMPORTANT WARNING:
Information regarding the location of BT apparatus is given for your assistance and is intended for general guidance only. No guarantee is given of its accuracy. It should not be relied upon in the event of excavations or other works being made near to BT apparatus, which may exist at various depths and may deviate from the marked route.

Existing BT plant may not be recorded.
Information valid at time of preparation.

FOR FREE ON-SITE LOCATION & MARKING SERVICE EMAIL
CLICK-BEFORE-YOU-DIG cbvd@openreach.co.uk

NOT TO SCALE



ADDRESS: Site at Footpath MPA 95 at Trench Hill Street
near Trench Hill, Stroud,

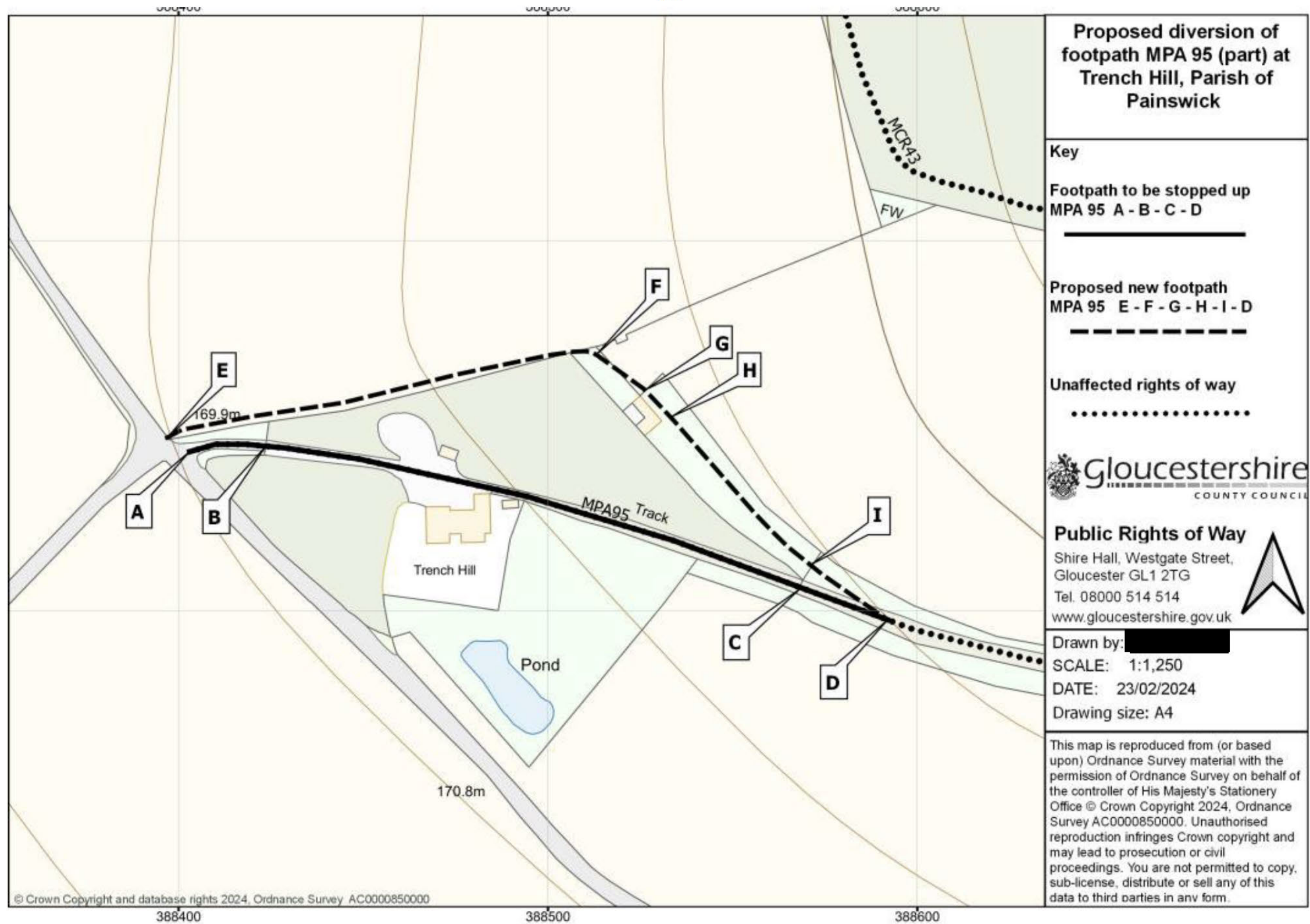
Grid Reference: 388508211068

Drawing 1 of 1

Our Ref: 911384

Drawn: 20/03/2024

openreach



From: [REDACTED]
To: [REDACTED]
Bcc: [REDACTED]
Subject: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 07 May 2024 11:01:00
Attachments: [Statement of reasons MPA 95.pdf](#)
[Annex 1.pdf](#)
[Painswick MPA 95 diversion A4L aerial.pdf](#)

Good morning,

I don't seem to have received a response to this consultation. Please could you let me have any comments you wish to make by 21st May.

Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer
Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

-
Please report highway issues online at www.gloucestershire.gov.uk/fixmystreet
Or download the app: FixMyStreet

Please note:

I work Tuesdays, Wednesdays and Thursdays. Outside of my work days, if you have an urgent enquiry, please email prow@gloucestershire.gov.uk

From: [REDACTED]
Sent: Thursday, March 14, 2024 4:57 PM
To: [REDACTED]
Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

We have been asked to process a public path diversion order for part of footpath MPA 95 in the parish of Painswick.

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If you have any queries please do not hesitate to contact me.

Kind regards

[REDACTED]

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

**HIGHWAYS ACT 1980 - SECTION 119
PUBLIC PATH DIVERSION ORDER
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL
DIVERSION OF PUBLIC FOOTPATH MPA 95 (PART) AT
TRENCH HILL
(PARISH OF PAINSWICK)**

Proposed Public Path Diversion Order

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

BACKGROUND

1. This statement of reasons relates to an application made by the owners of Trench Hill, Painswick, under section 119 of the Highways Act 1980 ("HA80") and the Wildlife and Countryside Act 1981 section 53A(2) to divert part of footpath MPA 95 in the parish of Painswick.

The application is made in the interest of the owners of the land crossed by the footpath, MPA 95, to move the footpath as shown on the Definitive Map away from the immediate vicinity of the house and garden. Currently the path proceeds along the driveway of the property, passing very close to the front door, before continuing through the garden and exiting via a pedestrian gate at the eastern end of the property onto a grassy track leading to an area of woodland. The landowners would like to move the path onto an adjacent grazed field and a wide grassy track, where the diverted path would reconnect with the definitive path to the east of the property. The proposal will improve privacy and security at the property and enable the landowners to make the property more secure.

DESCRIPTION OF DIVERSION ORDER ROUTE

2. MPA 95

The definitive path to be stopped up starts at point A on the attached plan (see Annex 1), at the junction with the class 4 road known as Saltridge Hill to Damsells Mill Lane, and follows the gravel driveway of Trench Hill in a generally east southeasterly direction up a gentle incline for 57 metres before continuing for 26 metres across a level gravel parking area, passing within a few metres of the front door of the property. The path then follows a woodland track through the garden for 88 metres to point C at the eastern boundary of the property, before exiting the garden via a pedestrian gate and continuing for 25 metres up a sloping grassy bank to join a grass track at point D. There is an existing vehicular gate on the driveway at point B.

The proposed new path starts at point E on the plan and enters the field via an existing stile that is to be replaced by a pedestrian gate. The path runs alongside the boundary fence of the grazed field in a generally easterly direction for 119 metres to point F where there is an existing wooden pedestrian gate. The field has a relatively even incline between points E and F. The path then turns in a generally southeasterly direction and continues along a mainly level mown grass track for approximately 107 metres, past a timber clad outbuilding, and passing through wooden field gates at points G and I, to point D where it re-joins the definitive path.

Although not dedicated by the landowners, the proposed path is currently in use on a permissive basis. Should the diversion be successful the stile at point E and the existing pedestrian gate at point F will be replaced by British Standard 5709:2018 (BS 5709:2018) compliant pedestrian gates with a minimum width of 1.1 metres to improve accessibility of the diversion route.

WIDTH AND LIMITATIONS

3. Between points E and F the new path will be bounded on one side by an existing post and wire stock proof fence with a wire mesh infill. The fence includes barbed wire and a strand of electric fence. Between points F and G the path will run alongside an existing post and wire fence with wire mesh infill, and between G and H the path will run alongside a timber outbuilding. The new path will be unenclosed between points H, I and D. The proposed path will have a recorded width of 2.5 metres between points E - F - G - H and 2 metres between points H - I - D.

STATUTORY PROVISIONS AND DEFRA GUIDANCE

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.
8. DEFRA's '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', issued in August 2023, states that:

"The majority of public rights of way cross privately owned land. In general, members of the public and farmers/landowners are used to the concept and see no inherent inconsistency between the fact that land may be privately owned and the presence of public routes across it for both passage from A to B, and enjoyment of the countryside and the natural environment.

However, the general view of both groups can change markedly in situations where public rights of way pass through contained spaces such as private gardens, farmyards or commercial premises.

Members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises. Such path alignments can deter people from exercising the public's right to use the path."

and that:

"In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given."

The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests."

REASONS FOR MAKING A DIVERSION ORDER

'Making' Tests to be satisfied.

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

9. It is expedient to divert footpath MPA 95 in the interests of the owners of the land. The existing footpath, MPA 95, passes through the garden and driveway of the property, passing very close to the front door of the dwelling house. Diverting the path would enable the landowners to better secure the property and would increase privacy.

Is it expedient to divert footpath MPA 95 having regard to the points of termination and whether these are substantially as convenient to the public?

10. The existing and proposed both start on the quiet class 4 road known as Saltridge Hill to Damsells Mill Lane, the start points are only 7 metres apart and there is no onward connection to another public right of way in the immediate vicinity. Both paths terminate at the same point to the east of Trench Hill, so the proposal meets the termination points test.

Agreement made under section 119(5) of the HA80

11. 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 landowners will at their own expense carry out any works required to bring the new path into being; all works will be inspected and certified before the order comes into force.

GCC's obligations under section 29 HA80

12. Although part of the diversion route will run alongside the boundary of an agricultural field, the field is primarily used for grazing cattle, so the new route will not impact on

the needs of agriculture or forestry. The proposed diversion does not impact on flora, fauna and geological and physiographical features and there are no disbenefits to the public.

GCC's obligations under the Equality Act 2010

13. The definitive path slopes up a grassy bank between points C and D whereas the proposed path has a more even gradient, and the section of the new path between points F and D will follow an existing generally level track that is mown regularly. Neither the existing nor proposed path has any steps. The existing field gates at points G and I are accessible, and the existing stile at point E and pedestrian gate at point F will be replaced by BS 5709:2018 compliant pedestrian gates; the proposal will therefore be in line with accessibility guidelines.

REASONS FOR CONFIRMING A DIVERSION ORDER

14. 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 set out above in 5(6) and (6A). Paragraph 2.3.8 of the PINS Advice Note 9 states that:

“The decision in *Ramblers Association v SSEFRA, Weston and others* [2012] EWHC 3333 (Admin) acknowledges that section 119(6) involves three separate tests (as endorsed by the High Court in *The Open Spaces Society v Secretary of State for Environment, Food And Rural Affairs* [2020] EWHC 1085 (Admin)):

Test 1: whether the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public (as set out in section 119(1) and subject to section 119(2)- see paragraphs 2.31 and 2.32 above). This was described in *R (Hargrave) v Stroud District Council* [2001] EWHC Admin 1128, [2002] JPL 1081 as being a low test.

Test 2: whether the proposed diversion is 'substantially less convenient to the

public'. In order to meet this test, the path or way must not be substantially less convenient to the public in consequence of the diversion (as per the wording in section 119(6)).

Both of these tests can be described as gateway tests - unless they are passed the decision-maker does not get to the third test.

Test 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 or way as a whole;
- (b) of the Order on other land served by the existing public right of way; and
- (c) of any new public right of way on the land over which it is to be created and any land held with it.

Any material provisions of a rights of way improvement plan must also be taken into account.”

In relation to Test 2 above, paragraph 2.3.7 of PINS advice Note 9 states that:

“In terms of the expression 'substantially less convenient to the public', features which readily fall within the natural and ordinary meaning of the word 'convenient' are matters such as the length of the diverted path, the difficulty of walking it and its purpose.”

Other factors to be considered in relation to Test 2 include the width, surface, gradient and accessibility of the diverted path compared to the existing path.

15. Paragraphs 9 and 10 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 length of the new route would be 226 metres, which is only 30 metres greater than the definitive route which has a length of 196 metres. Both paths start on the quiet class 4 road only 7 metres apart and both paths end at the same point.

The definitive and proposed paths are similar in terms of overall gradient, however the existing path includes a section of sloping bank between points C and D that has a cross fall, whereas the gradient of the proposed path is more even. A short section of the existing path has a grass surface, and the remainder is surfaced with bark chippings or gravel, whereas the proposed path will have a grass surface throughout; the grass track between F and D is mown regularly by the landowners and the section through the field between E and F is grazed by cattle. The path is in a rural location and is used mainly for leisure purposes.

The width of the definitive path is undefined whereas the new path will have a width of 2 metres where it is unenclosed and 2.5 metres where it runs alongside a boundary fence. The existing path includes a vehicular gate at point B and a pedestrian gate at point C. Although the new path will have two field gates and two pedestrian gates, these will all comply with accessibility requirements. The diversion route will therefore not be substantially less convenient than the existing path.

16. The third test is addressed as follows: -

Public enjoyment will be increased by the diversion of this path because the proposed diversion will take walkers away from the enclosed space of the dwelling house and garden. The new path will be an enjoyable walk through a grazed field and along a wide, level grassy track edged with trees and will provide far reaching views across the surrounding hills and valleys.

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 as it is all within the ownership of the applicant and no other parties are affected.

Is the diversion in line with DEFRA guidance on changes to public rights of way through gardens and curtilages of private dwellings, working farmyards and other commercial premises?

17. The definitive path proceeds through the garden and along the driveway of Trench Hill, passing very close to the front door of the property. DEFRA guidance acknowledges that the public might not be comfortable following a path through a contained space such as the garden of a dwelling house, because doing so feels like

infringing on the privacy of a house owner. Weighing the interests of the landowners in terms of privacy, security and safety, against the overall impact of the diversion proposal on the public as a whole, it is considered that the proposal meets the required legal tests and that diverting the path is in line with DEFRA guidance.

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

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 that offer sizeable benefits to the applicant.

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

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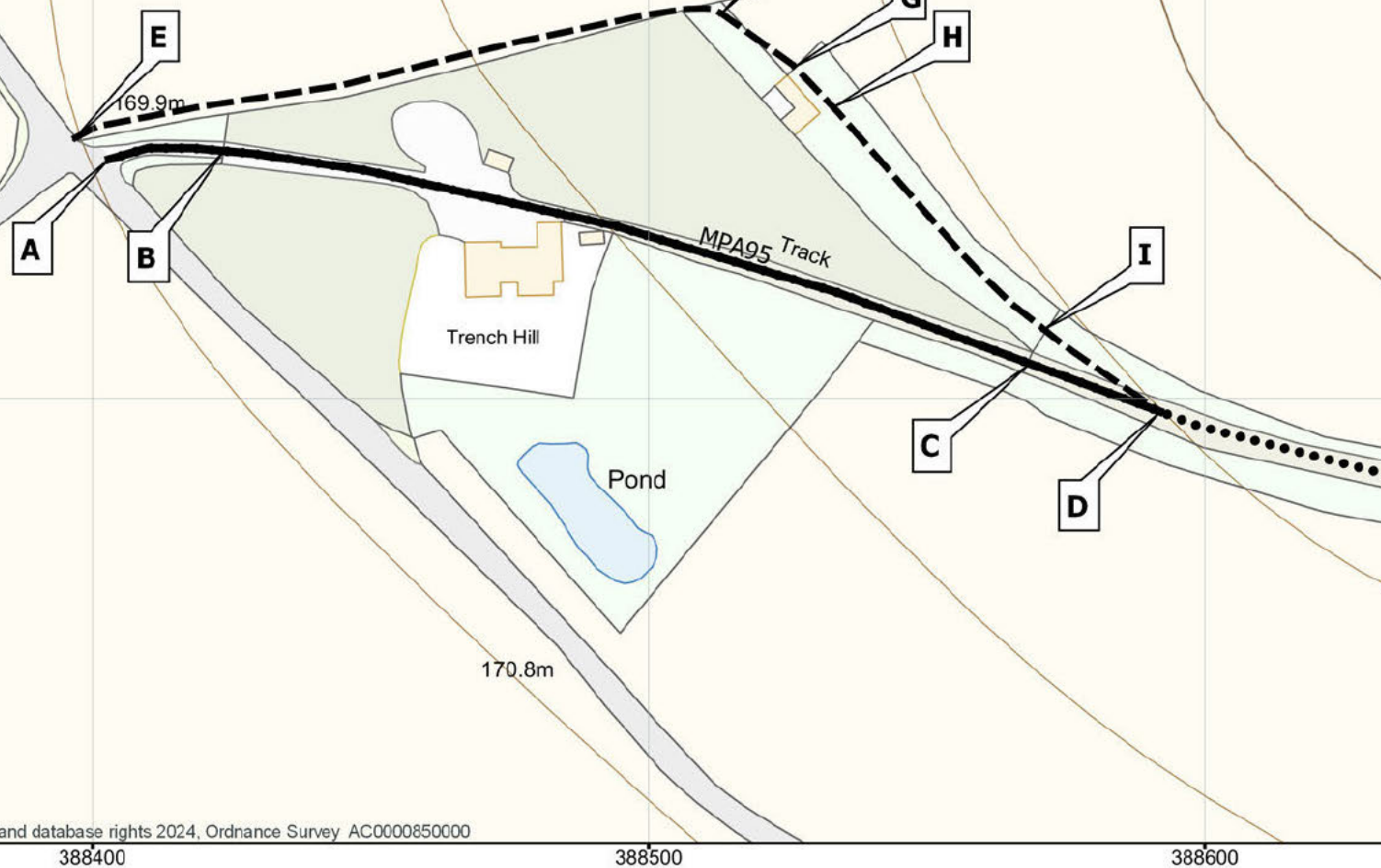
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Proposed diversion of footpath MPA 95 (part) at Trench Hill, Parish of Painswick

Key

Footpath to be stopped up
MPA 95 A - B - C - D

Proposed new footpath
MPA 95 E - F - G - H - I - D

Unaffected rights of way

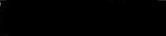
 **Gloucestershire**
COUNTY COUNCIL

Public Rights of Way

Shire Hall, Westgate Street,
Gloucester GL1 2TG

Tel. 08000 514 514

www.gloucestershire.gov.uk

Drawn by: 

SCALE: 1:1,250

DATE: 23/02/2024

Drawing size: A4

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Proposed diversion of footpath MPA 95 (part) at Trench Hill, Parish of Painswick

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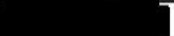
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A

B

E

F

G

H

I

C

D

Trench Hill

Pond

MPA95 Track

170.8m

169.9m

FW

MCR43

From: [REDACTED]
To: [Painswick Parish Council](#)
Subject: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 07 May 2024 11:08:00
Attachments: [Statement of reasons MPA 95.pdf](#)
[Annex 1.pdf](#)
[Painswick MPA 95 diversion A4L aerial.pdf](#)

Good morning,

I understand the diversion proposal for part of footpath MPA 95 at Trench Hill was on the agenda for the 17th April Parish Council meeting. Please could you let me know the Council's response to the consultation.

Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

-
Please report highway issues online at www.gloucestershire.gov.uk/fixmystreet
Or download the app: FixMyStreet

Please note:

I work Tuesdays, Wednesdays and Thursdays. Outside of my work days, if you have an urgent enquiry, please email prow@gloucestershire.gov.uk

From: [REDACTED]
Sent: Thursday, March 14, 2024 4:57 PM
To: [REDACTED]
Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

We have been asked to process a public path diversion order for part of footpath MPA 95 in the parish of Painswick.

I have attached a statement of reasons together with a map of the proposal for your consideration. Would you please let me have your comments by the 26th April 2024.

Please note that the proposed path on the attached plan, which is based on OS mapping, appears to cross a boundary fence between points F and G. However, the boundary shown on the plan does not correspond exactly with what is on the ground; the proposed path will be east of the boundary fence as shown on the attached an aerial plan.

If you have any queries please do not hesitate to contact me.

Kind regards

[REDACTED]

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

**HIGHWAYS ACT 1980 - SECTION 119
PUBLIC PATH DIVERSION ORDER
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL
DIVERSION OF PUBLIC FOOTPATH MPA 95 (PART) AT
TRENCH HILL
(PARISH OF PAINSWICK)**

Proposed Public Path Diversion Order

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

BACKGROUND

1. This statement of reasons relates to an application made by the owners of Trench Hill, Painswick, under section 119 of the Highways Act 1980 ("HA80") and the Wildlife and Countryside Act 1981 section 53A(2) to divert part of footpath MPA 95 in the parish of Painswick.

The application is made in the interest of the owners of the land crossed by the footpath, MPA 95, to move the footpath as shown on the Definitive Map away from the immediate vicinity of the house and garden. Currently the path proceeds along the driveway of the property, passing very close to the front door, before continuing through the garden and exiting via a pedestrian gate at the eastern end of the property onto a grassy track leading to an area of woodland. The landowners would like to move the path onto an adjacent grazed field and a wide grassy track, where the diverted path would reconnect with the definitive path to the east of the property. The proposal will improve privacy and security at the property and enable the landowners to make the property more secure.

DESCRIPTION OF DIVERSION ORDER ROUTE

2. MPA 95

The definitive path to be stopped up starts at point A on the attached plan (see Annex 1), at the junction with the class 4 road known as Saltridge Hill to Damsells Mill Lane, and follows the gravel driveway of Trench Hill in a generally east southeasterly direction up a gentle incline for 57 metres before continuing for 26 metres across a level gravel parking area, passing within a few metres of the front door of the property. The path then follows a woodland track through the garden for 88 metres to point C at the eastern boundary of the property, before exiting the garden via a pedestrian gate and continuing for 25 metres up a sloping grassy bank to join a grass track at point D. There is an existing vehicular gate on the driveway at point B.

The proposed new path starts at point E on the plan and enters the field via an existing stile that is to be replaced by a pedestrian gate. The path runs alongside the boundary fence of the grazed field in a generally easterly direction for 119 metres to point F where there is an existing wooden pedestrian gate. The field has a relatively even incline between points E and F. The path then turns in a generally southeasterly direction and continues along a mainly level mown grass track for approximately 107 metres, past a timber clad outbuilding, and passing through wooden field gates at points G and I, to point D where it re-joins the definitive path.

Although not dedicated by the landowners, the proposed path is currently in use on a permissive basis. Should the diversion be successful the stile at point E and the existing pedestrian gate at point F will be replaced by British Standard 5709:2018 (BS 5709:2018) compliant pedestrian gates with a minimum width of 1.1 metres to improve accessibility of the diversion route.

WIDTH AND LIMITATIONS

3. Between points E and F the new path will be bounded on one side by an existing post and wire stock proof fence with a wire mesh infill. The fence includes barbed wire and a strand of electric fence. Between points F and G the path will run alongside an existing post and wire fence with wire mesh infill, and between G and H the path will run alongside a timber outbuilding. The new path will be unenclosed between points H, I and D. The proposed path will have a recorded width of 2.5 metres between points E - F - G - H and 2 metres between points H - I - D.

STATUTORY PROVISIONS AND DEFRA GUIDANCE

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.

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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.

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"The majority of public rights of way cross privately owned land. In general, members of the public and farmers/landowners are used to the concept and see no inherent inconsistency between the fact that land may be privately owned and the presence of public routes across it for both passage from A to B, and enjoyment of the countryside and the natural environment.

However, the general view of both groups can change markedly in situations where public rights of way pass through contained spaces such as private gardens, farmyards or commercial premises.

Members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises. Such path alignments can deter people from exercising the public's right to use the path."

and that:

"In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given."

The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests."

REASONS FOR MAKING A DIVERSION ORDER

'Making' Tests to be satisfied.

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

9. It is expedient to divert footpath MPA 95 in the interests of the owners of the land. The existing footpath, MPA 95, passes through the garden and driveway of the property, passing very close to the front door of the dwelling house. Diverting the path would enable the landowners to better secure the property and would increase privacy.

Is it expedient to divert footpath MPA 95 having regard to the points of termination and whether these are substantially as convenient to the public?

10. The existing and proposed both start on the quiet class 4 road known as Saltridge Hill to Damsells Mill Lane, the start points are only 7 metres apart and there is no onward connection to another public right of way in the immediate vicinity. Both paths terminate at the same point to the east of Trench Hill, so the proposal meets the termination points test.

Agreement made under section 119(5) of the HA80

11. 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 landowners will at their own expense carry out any works required to bring the new path into being; all works will be inspected and certified before the order comes into force.

GCC's obligations under section 29 HA80

12. Although part of the diversion route will run alongside the boundary of an agricultural field, the field is primarily used for grazing cattle, so the new route will not impact on

the needs of agriculture or forestry. The proposed diversion does not impact on flora, fauna and geological and physiographical features and there are no disbenefits to the public.

GCC's obligations under the Equality Act 2010

13. The definitive path slopes up a grassy bank between points C and D whereas the proposed path has a more even gradient, and the section of the new path between points F and D will follow an existing generally level track that is mown regularly. Neither the existing nor proposed path has any steps. The existing field gates at points G and I are accessible, and the existing stile at point E and pedestrian gate at point F will be replaced by BS 5709:2018 compliant pedestrian gates; the proposal will therefore be in line with accessibility guidelines.

REASONS FOR CONFIRMING A DIVERSION ORDER

14. 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 set out above in 5(6) and (6A). Paragraph 2.3.8 of the PINS Advice Note 9 states that:

“The decision in *Ramblers Association v SSEFRA, Weston and others* [2012] EWHC 3333 (Admin) acknowledges that section 119(6) involves three separate tests (as endorsed by the High Court in *The Open Spaces Society v Secretary of State for Environment, Food And Rural Affairs* [2020] EWHC 1085 (Admin)):

Test 1: whether the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public (as set out in section 119(1) and subject to section 119(2)- see paragraphs 2.31 and 2.32 above). This was described in *R (Hargrave) v Stroud District Council* [2001] EWHC Admin 1128, [2002] JPL 1081 as being a low test.

Test 2: whether the proposed diversion is 'substantially less convenient to the

public'. In order to meet this test, the path or way must not be substantially less convenient to the public in consequence of the diversion (as per the wording in section 119(6)).

Both of these tests can be described as gateway tests - unless they are passed the decision-maker does not get to the third test.

Test 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 or way as a whole;
- (b) of the Order on other land served by the existing public right of way; and
- (c) of any new public right of way on the land over which it is to be created and any land held with it.

Any material provisions of a rights of way improvement plan must also be taken into account.”

In relation to Test 2 above, paragraph 2.3.7 of PINS advice Note 9 states that:

“In terms of the expression 'substantially less convenient to the public', features which readily fall within the natural and ordinary meaning of the word 'convenient' are matters such as the length of the diverted path, the difficulty of walking it and its purpose.”

Other factors to be considered in relation to Test 2 include the width, surface, gradient and accessibility of the diverted path compared to the existing path.

15. Paragraphs 9 and 10 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 length of the new route would be 226 metres, which is only 30 metres greater than the definitive route which has a length of 196 metres. Both paths start on the quiet class 4 road only 7 metres apart and both paths end at the same point.

The definitive and proposed paths are similar in terms of overall gradient, however the existing path includes a section of sloping bank between points C and D that has a cross fall, whereas the gradient of the proposed path is more even. A short section of the existing path has a grass surface, and the remainder is surfaced with bark chippings or gravel, whereas the proposed path will have a grass surface throughout; the grass track between F and D is mown regularly by the landowners and the section through the field between E and F is grazed by cattle. The path is in a rural location and is used mainly for leisure purposes.

The width of the definitive path is undefined whereas the new path will have a width of 2 metres where it is unenclosed and 2.5 metres where it runs alongside a boundary fence. The existing path includes a vehicular gate at point B and a pedestrian gate at point C. Although the new path will have two field gates and two pedestrian gates, these will all comply with accessibility requirements. The diversion route will therefore not be substantially less convenient than the existing path.

16. The third test is addressed as follows: -

Public enjoyment will be increased by the diversion of this path because the proposed diversion will take walkers away from the enclosed space of the dwelling house and garden. The new path will be an enjoyable walk through a grazed field and along a wide, level grassy track edged with trees and will provide far reaching views across the surrounding hills and valleys.

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 as it is all within the ownership of the applicant and no other parties are affected.

Is the diversion in line with DEFRA guidance on changes to public rights of way through gardens and curtilages of private dwellings, working farmyards and other commercial premises?

17. The definitive path proceeds through the garden and along the driveway of Trench Hill, passing very close to the front door of the property. DEFRA guidance acknowledges that the public might not be comfortable following a path through a contained space such as the garden of a dwelling house, because doing so feels like

infringing on the privacy of a house owner. Weighing the interests of the landowners in terms of privacy, security and safety, against the overall impact of the diversion proposal on the public as a whole, it is considered that the proposal meets the required legal tests and that diverting the path is in line with DEFRA guidance.

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

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 that offer sizeable benefits to the applicant.

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

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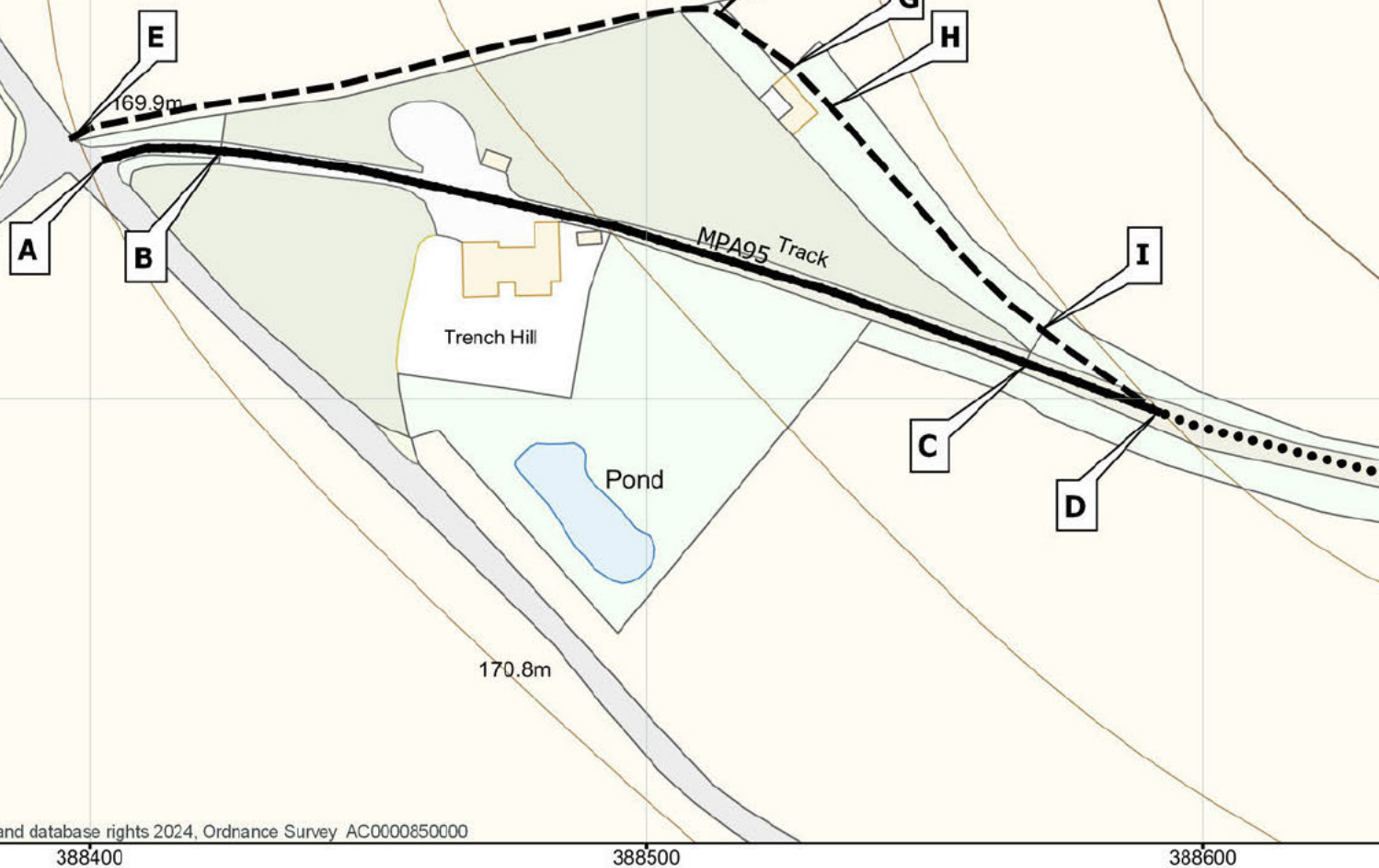
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Proposed diversion of footpath MPA 95 (part) at Trench Hill, Parish of Painswick

Key

Footpath to be stopped up
MPA 95 A - B - C - D

Proposed new footpath
MPA 95 E - F - G - H - I - D

Unaffected rights of way



Public Rights of Way

Shire Hall, Westgate Street,
Gloucester GL1 2TG
Tel. 08000 514 514
www.gloucestershire.gov.uk



Drawn by: [REDACTED]

SCALE: 1:1,250

DATE: 23/02/2024

Drawing size: A4

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 Gloucestershire
COUNTY COUNCIL

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A

B

E

F

G

H

I

C

D

Trench Hill

Pond

MPA95 Track

170.8m

169.9m

FW

MCR43

From: [REDACTED]
To: "clerk@painswick-pc.gov.uk"
Subject: RE: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 08 May 2024 09:56:00

Hi [REDACTED]

Thank you for getting back to me so promptly.

Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

-
Please report highway issues online at www.gloucestershire.gov.uk/fixmystreet
Or download the app: FixMyStreet

Please note:

I work Tuesdays, Wednesdays and Thursdays. Outside of my work days, if you have an urgent enquiry, please email prow@gloucestershire.gov.uk

From: clerk@painswick-pc.gov.uk <clerk@painswick-pc.gov.uk>
Sent: Wednesday, May 8, 2024 9:08 AM
To: [REDACTED] <[REDACTED]>
Subject: RE: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Dear [REDACTED]

I can confirm that the Parish Council has no objections to the proposed diversion.

Kind Regards

[REDACTED]

Clerk

-----Original Message-----

From: "[REDACTED]" <[REDACTED]>
Sent: Tuesday, 7 May, 2024 11:08am
To: "Painswick Parish Council" <clerk@painswick-pc.gov.uk>
Subject: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Good morning,

I understand the diversion proposal for part of footpath MPA 95 at Trench Hill was

on the agenda for the 17th April Parish Council meeting. Please could you let me know the Council's response to the consultation.

Kind regards,

[Redacted]

[Redacted]

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [Redacted]

Email: [Redacted]

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Or download the app: FixMyStreet

Please note:

I work Tuesdays, Wednesdays and Thursdays. Outside of my work days, if you have an urgent enquiry, please email prow@gloucestershire.gov.uk

From: [Redacted]

Sent: Thursday, March 14, 2024 4:57 PM

To: [Redacted]

Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

We have been asked to process a public path diversion order for part of footpath MPA 95 in the parish of Painswick.

I have attached a statement of reasons together with a map of the proposal for your consideration. Would you please let me have your comments by the 26th April 2024.

Please note that the proposed path on the attached plan, which is based on OS mapping, appears to cross a boundary fence between points F and G. However, the boundary shown on the plan does not correspond exactly with what is on the ground; the proposed path will be east of the boundary fence as shown on the attached an aerial plan.

If you have any queries please do not hesitate to contact me.

Kind regards

[Redacted]

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [Redacted]

Email: [REDACTED]

----- Think
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responsibility to carry out all necessary virus checks and Gloucestershire County
Council accepts no liability in connection therewith.

From: clerk@painswick-pc.gov.uk
To: [REDACTED]
Subject: RE: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 08 May 2024 09:08:07

Dear [REDACTED]

I can confirm that the Parish Council has no objections to the proposed diversion.

Kind Regards

[REDACTED]

Clerk

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From: [REDACTED] <[REDACTED]>
Sent: Tuesday, 7 May, 2024 11:08am
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Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
5th Floor West Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG
Tel: [REDACTED]
Email: [REDACTED]

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[REDACTED]
Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG
Tel: [REDACTED]
Email: [REDACTED]

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From: [REDACTED]
To: [REDACTED]
Bcc: [REDACTED]
Subject: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 07 May 2024 11:01:00
Attachments: [Statement of reasons MPA 95.pdf](#)
[Annex 1.pdf](#)
[Painswick MPA 95 diversion A4L aerial.pdf](#)

Good morning,

I don't seem to have received a response to this consultation. Please could you let me have any comments you wish to make by 21st May.

Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer
Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

-
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Please note that the proposed path on the attached plan, which is based on OS mapping, appears to cross a boundary fence between points F and G. However, the boundary shown on the plan does not correspond exactly with what is on the ground; the proposed path will be east of the boundary fence as shown on the attached an aerial plan.

If you have any queries please do not hesitate to contact me.

Kind regards

[REDACTED]

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

**HIGHWAYS ACT 1980 - SECTION 119
PUBLIC PATH DIVERSION ORDER
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL
DIVERSION OF PUBLIC FOOTPATH MPA 95 (PART) AT
TRENCH HILL
(PARISH OF PAINSWICK)**

Proposed Public Path Diversion Order

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

BACKGROUND

1. This statement of reasons relates to an application made by the owners of Trench Hill, Painswick, under section 119 of the Highways Act 1980 ("HA80") and the Wildlife and Countryside Act 1981 section 53A(2) to divert part of footpath MPA 95 in the parish of Painswick.

The application is made in the interest of the owners of the land crossed by the footpath, MPA 95, to move the footpath as shown on the Definitive Map away from the immediate vicinity of the house and garden. Currently the path proceeds along the driveway of the property, passing very close to the front door, before continuing through the garden and exiting via a pedestrian gate at the eastern end of the property onto a grassy track leading to an area of woodland. The landowners would like to move the path onto an adjacent grazed field and a wide grassy track, where the diverted path would reconnect with the definitive path to the east of the property. The proposal will improve privacy and security at the property and enable the landowners to make the property more secure.

DESCRIPTION OF DIVERSION ORDER ROUTE

2. MPA 95

The definitive path to be stopped up starts at point A on the attached plan (see Annex 1), at the junction with the class 4 road known as Saltridge Hill to Damsells Mill Lane, and follows the gravel driveway of Trench Hill in a generally east southeasterly direction up a gentle incline for 57 metres before continuing for 26 metres across a level gravel parking area, passing within a few metres of the front door of the property. The path then follows a woodland track through the garden for 88 metres to point C at the eastern boundary of the property, before exiting the garden via a pedestrian gate and continuing for 25 metres up a sloping grassy bank to join a grass track at point D. There is an existing vehicular gate on the driveway at point B.

The proposed new path starts at point E on the plan and enters the field via an existing stile that is to be replaced by a pedestrian gate. The path runs alongside the boundary fence of the grazed field in a generally easterly direction for 119 metres to point F where there is an existing wooden pedestrian gate. The field has a relatively even incline between points E and F. The path then turns in a generally southeasterly direction and continues along a mainly level mown grass track for approximately 107 metres, past a timber clad outbuilding, and passing through wooden field gates at points G and I, to point D where it re-joins the definitive path.

Although not dedicated by the landowners, the proposed path is currently in use on a permissive basis. Should the diversion be successful the stile at point E and the existing pedestrian gate at point F will be replaced by British Standard 5709:2018 (BS 5709:2018) compliant pedestrian gates with a minimum width of 1.1 metres to improve accessibility of the diversion route.

WIDTH AND LIMITATIONS

3. Between points E and F the new path will be bounded on one side by an existing post and wire stock proof fence with a wire mesh infill. The fence includes barbed wire and a strand of electric fence. Between points F and G the path will run alongside an existing post and wire fence with wire mesh infill, and between G and H the path will run alongside a timber outbuilding. The new path will be unenclosed between points H, I and D. The proposed path will have a recorded width of 2.5 metres between points E - F - G - H and 2 metres between points H - I - D.

STATUTORY PROVISIONS AND DEFRA GUIDANCE

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.
8. DEFRA's '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', issued in August 2023, states that:

"The majority of public rights of way cross privately owned land. In general, members of the public and farmers/landowners are used to the concept and see no inherent inconsistency between the fact that land may be privately owned and the presence of public routes across it for both passage from A to B, and enjoyment of the countryside and the natural environment.

However, the general view of both groups can change markedly in situations where public rights of way pass through contained spaces such as private gardens, farmyards or commercial premises.

Members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises. Such path alignments can deter people from exercising the public's right to use the path."

and that:

"In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given."

The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests."

REASONS FOR MAKING A DIVERSION ORDER

'Making' Tests to be satisfied.

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

9. It is expedient to divert footpath MPA 95 in the interests of the owners of the land. The existing footpath, MPA 95, passes through the garden and driveway of the property, passing very close to the front door of the dwelling house. Diverting the path would enable the landowners to better secure the property and would increase privacy.

Is it expedient to divert footpath MPA 95 having regard to the points of termination and whether these are substantially as convenient to the public?

10. The existing and proposed both start on the quiet class 4 road known as Saltridge Hill to Damsells Mill Lane, the start points are only 7 metres apart and there is no onward connection to another public right of way in the immediate vicinity. Both paths terminate at the same point to the east of Trench Hill, so the proposal meets the termination points test.

Agreement made under section 119(5) of the HA80

11. 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 landowners will at their own expense carry out any works required to bring the new path into being; all works will be inspected and certified before the order comes into force.

GCC's obligations under section 29 HA80

12. Although part of the diversion route will run alongside the boundary of an agricultural field, the field is primarily used for grazing cattle, so the new route will not impact on

the needs of agriculture or forestry. The proposed diversion does not impact on flora, fauna and geological and physiographical features and there are no disbenefits to the public.

GCC's obligations under the Equality Act 2010

13. The definitive path slopes up a grassy bank between points C and D whereas the proposed path has a more even gradient, and the section of the new path between points F and D will follow an existing generally level track that is mown regularly. Neither the existing nor proposed path has any steps. The existing field gates at points G and I are accessible, and the existing stile at point E and pedestrian gate at point F will be replaced by BS 5709:2018 compliant pedestrian gates; the proposal will therefore be in line with accessibility guidelines.

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14. 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 set out above in 5(6) and (6A). Paragraph 2.3.8 of the PINS Advice Note 9 states that:

“The decision in *Ramblers Association v SSEFRA, Weston and others* [2012] EWHC 3333 (Admin) acknowledges that section 119(6) involves three separate tests (as endorsed by the High Court in *The Open Spaces Society v Secretary of State for Environment, Food And Rural Affairs* [2020] EWHC 1085 (Admin)):

Test 1: whether the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public (as set out in section 119(1) and subject to section 119(2)- see paragraphs 2.31 and 2.32 above). This was described in *R (Hargrave) v Stroud District Council* [2001] EWHC Admin 1128, [2002] JPL 1081 as being a low test.

Test 2: whether the proposed diversion is 'substantially less convenient to the

public'. In order to meet this test, the path or way must not be substantially less convenient to the public in consequence of the diversion (as per the wording in section 119(6)).

Both of these tests can be described as gateway tests - unless they are passed the decision-maker does not get to the third test.

Test 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 or way as a whole;
- (b) of the Order on other land served by the existing public right of way; and
- (c) of any new public right of way on the land over which it is to be created and any land held with it.

Any material provisions of a rights of way improvement plan must also be taken into account.”

In relation to Test 2 above, paragraph 2.3.7 of PINS advice Note 9 states that:

“In terms of the expression 'substantially less convenient to the public', features which readily fall within the natural and ordinary meaning of the word 'convenient' are matters such as the length of the diverted path, the difficulty of walking it and its purpose.”

Other factors to be considered in relation to Test 2 include the width, surface, gradient and accessibility of the diverted path compared to the existing path.

15. Paragraphs 9 and 10 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 length of the new route would be 226 metres, which is only 30 metres greater than the definitive route which has a length of 196 metres. Both paths start on the quiet class 4 road only 7 metres apart and both paths end at the same point.

The definitive and proposed paths are similar in terms of overall gradient, however the existing path includes a section of sloping bank between points C and D that has a cross fall, whereas the gradient of the proposed path is more even. A short section of the existing path has a grass surface, and the remainder is surfaced with bark chippings or gravel, whereas the proposed path will have a grass surface throughout; the grass track between F and D is mown regularly by the landowners and the section through the field between E and F is grazed by cattle. The path is in a rural location and is used mainly for leisure purposes.

The width of the definitive path is undefined whereas the new path will have a width of 2 metres where it is unenclosed and 2.5 metres where it runs alongside a boundary fence. The existing path includes a vehicular gate at point B and a pedestrian gate at point C. Although the new path will have two field gates and two pedestrian gates, these will all comply with accessibility requirements. The diversion route will therefore not be substantially less convenient than the existing path.

16. The third test is addressed as follows: -

Public enjoyment will be increased by the diversion of this path because the proposed diversion will take walkers away from the enclosed space of the dwelling house and garden. The new path will be an enjoyable walk through a grazed field and along a wide, level grassy track edged with trees and will provide far reaching views across the surrounding hills and valleys.

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 as it is all within the ownership of the applicant and no other parties are affected.

Is the diversion in line with DEFRA guidance on changes to public rights of way through gardens and curtilages of private dwellings, working farmyards and other commercial premises?

17. The definitive path proceeds through the garden and along the driveway of Trench Hill, passing very close to the front door of the property. DEFRA guidance acknowledges that the public might not be comfortable following a path through a contained space such as the garden of a dwelling house, because doing so feels like

infringing on the privacy of a house owner. Weighing the interests of the landowners in terms of privacy, security and safety, against the overall impact of the diversion proposal on the public as a whole, it is considered that the proposal meets the required legal tests and that diverting the path is in line with DEFRA guidance.

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

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 that offer sizeable benefits to the applicant.

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

388400

388500

388600

9.9.10

211100

211000

E

A

B

169.9m

Trench Hill

Pond

170.8m

MPA95 Track

F

G

H

C

D

I

FW

MCR43

Proposed diversion of footpath MPA 95 (part) at Trench Hill, Parish of Painswick

Key

Footpath to be stopped up
MPA 95 A - B - C - D

Proposed new footpath
MPA 95 E - F - G - H - I - D

Unaffected rights of way


 **Gloucestershire**
COUNTY COUNCIL

Public Rights of Way

Shire Hall, Westgate Street,
Gloucester GL1 2TG

Tel. 08000 514 514

www.gloucestershire.gov.uk

Drawn by: 

SCALE: 1:1,250

DATE: 23/02/2024

Drawing size: A4

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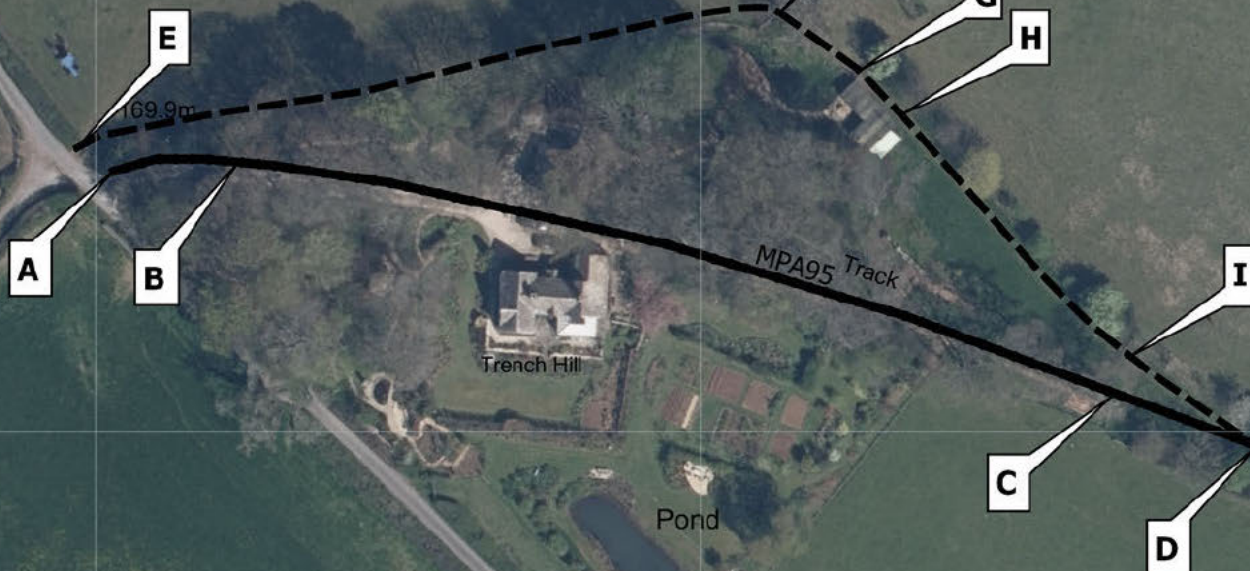
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From: [REDACTED]
To: [REDACTED]
Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 07 May 2024 12:39:14
Attachments: [Outlook-E2C1FFC4D3.png](#)
[Outlook-67A28DD8AF.png](#)
[Outlook-0365D6E10B.png](#)
[Outlook-1886BD7930.png](#)
[Response to GCC.pdf](#)

Hi [REDACTED]

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Have redated it and attached it to this email.

Kiind regards

[REDACTED]

[REDACTED]
Open Spaces Society Local Correspondent Stroud and Gloucester

Email: [REDACTED]

Phone: [REDACTED]

Contact Address: [REDACTED]

Open Spaces Society

25a Bell Street

Henley-on-Thames RG9 2BA

01491 573535

email: office2@oss.org.uk

website www.oss.org.uk

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From: [REDACTED] <[REDACTED]>
Sent: Tuesday, May 7, 2024 11:01 AM
To: [REDACTED] <[REDACTED]>
Subject: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Good morning,

I don't seem to have received a response to this consultation. Please could you let me have any comments you wish to make by 21st May.

Kind regards,

[REDACTED]

[REDACTED]
Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG
Tel: [REDACTED]
Email: [REDACTED]

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From: [REDACTED]
Sent: Thursday, March 14, 2024 4:57 PM
To: [REDACTED]
Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

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I have attached a statement of reasons together with a map of the proposal for your consideration. Would you please let me have your comments by the 26th April 2024.

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Kind regards

[REDACTED]

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Public Rights of Way

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Tel: [REDACTED]

Email: [REDACTED]

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Stroud District Local Correspondent: [REDACTED]

Correspondence Address: [REDACTED]

Email: [REDACTED]

Phone: [REDACTED]



TEL 01491 573535
EMAIL hq@oss.org.uk
WEB www.oss.org.uk

Proposed Diversion of Painswick Footpath MPA95 at Trench Hill

Draft 1

7 May 2024

[REDACTED]
Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
Shire Hall,
Westgate Street,
Gloucester
GL1 2TG

Dear [REDACTED]

The Open Spaces Society appreciates the County Council's invitation to be involved in pre-order consultation on the proposal to divert the right of way recorded in the definitive map as Painswick Footpath MPA95 at Trench Hill. We are, however, disappointed that the proposal is another disadvantageous change to the rights of way network on a route which has been degraded by incongruous residential development in a rural area.

Development History

Late Victorian mapping shows a track running from what is now recorded as the junction of USRN: 38500378/38501315 with MPA95 (Point A on the diversion proposal map) through point D at the east of the property to a junction with Craham Footpath 132, which in turn terminates as a junction with Cranham Bridleway 24 and Painswick Bridleway 119. The extent of this route is illustrated on the find my street mapping below.



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Comparing the representation of the roads to the west of Trench Hill on the 1882 25" to the mile mapping the likely width of this track is slightly less than the width of the roads but is more substantial than a footpath (which would have been shown as a single pecked line). The conclusion is therefore reached that this track is between 12 and 15 ft wide (approximately equivalent to 4 and 5 metres). On the earlier mapping there is no dwelling within the wood and this remains the situation until after the 25" to mile OS map in 1924. The next available mapping in the mid 1950's shows a small cottage to the east of the wood land and a copy of this map is attached to this letter. This appears to have been subsequently extended by a series of planning applications from 1958 (SDC planning ref: 3465) to 1997 (SDC planning ref 97/625). It therefore appears that the nature of development has proceeded without taking into account the public right of way.

Additionally, evidence to the width of this track might also be adduced from the documentation referred to in the Land Registry title for Trench Hill (GR156773) which records the existence of a private right of way in 1976, which was later agreed to be removed by a 1980 deed. It should also be noted that the effective width appears to have been narrowed through the section C-D and also slightly to the east, as a result of the creation of the route of the NFU Millenium Avenue. Consequently, these restrictions on the route, as illegal obstructions, should be disregarded in assessing the alternative route.

Status of Route recorded in the Definitive Map

The current legislative situation is that the evidence on the definitive map of a footpath is the minimum status of the right of way which exists and a legitimate question to consider is whether there are higher status rights that need to be accommodated in the proposed diversion. It is therefore submitted that the County Council, exercising all its relevant powers and duties, should be considering whether to upgrade the route of both MPA 95 and MCR 132 to a bridleway or Restricted Byway as part of the order to make the proposed diversion. Based on the bridleway status of the paths which join with MCR132 it is probable that a bridleway would be acceptable in this situation.

It is noted that the Rights of Way Improvement Plan (ROWIP) recognises that the riders consider the network to be fragmented. Additionally, the "presumptions guidance" published in August 2023 at paragraph 13 requires authorities to consider improvements to the diverted path and it is submitted that the reclassification of a route to bridleway status would be a relevant matter in this situation.

The diversion compared with the current path

The current route length following the longstanding route of the track at Trench Hill, in the statement of reasons is stated to be 196 metres against 226 metres for the diversion. But, it is not just the distance that needs to be taken into account, the diversion route, (ignoring likely illegal obstructions) is of a substantially lower convenience having a proposed gate to replace the stile at point E as well as gates at points F, G and I. This is compared to perhaps originally one gate at the eastern end of the woodland, based on the evidence of the tithe map, 25" to mile Ordnance Survey mapping used for the Lloyd George Survey and also the 6" to mile mapping (sheet S081SE) published in 1955. An additional factor is the steepness of the elevation on the proposed field edge path from point E to F which is some 14cm rise for each metre of travel, whereas the original is only in the region of 10cm per metre. The proposals do not include any works to the field edge path and whilst the path appeared to be acceptable during dry conditions some form of harder pathway might be required to enable this path to be used in all seasons of the year and also be of acceptable condition for use by both horseriders, cyclists and walkers. Consideration should also be given to the enhancement of the path surface as well as the section of the path included in the NFU Millenium Avenue (points F to D).

A factor to also consider is that the property boundary has electric stock proof fencing and in the event that the proposa is pursued, recommended that the path be meared some 1m away from the boundary. It is also recommended that a boundary fence is also included in the field from E – F some 6m away to provide a 4m wide path within a fenced trackway to provide a path of similar status of the path it is intended to be replaced. This would result in no need for a gate at point E but there would also be a potential to review the need for gates at points F, G and I to enable a more unrestricted trackway than is currently provided.

Conclusion

Open Spaces Society would be willing to support a diversion of this route providing that the diverted path is:-

- that the proposed diverted section of MPA 95 is specified to a minimum width of 4 metres wide;
- account is taken of providing a gap between the electric fencing and the adopted route;
- extent of gates is reduced, in part by reducing the gates between F and creating an enclosed trackway between points E and F, as discussed above; and;
- the right of way is upgraded to bridleway along the whole length of MPA95 and MCR 132, the Open Spaces Society is minded not to oppose this proposed order.

Yours sincerely



Open Spaces Society Local Correspondent for Stroud District

Library SO81SE - A
 Surveyed / Revised: Pre-1930 to 1954, Published: 1955
 Size: map 47-50 x 47-50 cm (ca. 19 x 20 inches), on sheet ca. 68 x 58 cm (27 x 23 inches)

[Ordnance Survey](#) > [National Grid maps, 1944-1973](#)



From: [REDACTED]
To: [REDACTED]
Bcc: [REDACTED]
Subject: RE: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 08 May 2024 12:13:00
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Hi [REDACTED]

Thank you for getting back to me so quickly with your comments on this proposal.

As you have proposed a few changes to the diversion, I wondered if you would be willing to meet the applicants and their agent on site, along with my colleague [REDACTED] and myself, to have a look at the route together and discuss the proposal?

If so, would you be available for a site meeting on any of the following dates/times:

Tuesday 28th May at 2.00 pm

Wednesday 29th May at 2.00 pm

Wednesday 12th June at 10.00 am or 2.00 pm

Thursday 13th June at 10.00 am or 2.00 pm

Tuesday 18th June at 10.00 am or 2.00 pm

If you are able to indicate several dates/times from the above options it will make it easier to find a time that suits everyone.

Kind regards,

[REDACTED]

[REDACTED]
Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG
Tel: [REDACTED]
Email: [REDACTED]

-
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From: [REDACTED]
Sent: Tuesday, May 7, 2024 12:39 PM
To: [REDACTED] <[REDACTED]>

Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Hi [REDACTED]

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Have redated it and attached it to this email.

Kiind regards

[REDACTED]

[REDACTED]

Open Spaces Society Local Correspondent Stroud and Gloucester

Email: [REDACTED]

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Sent: Tuesday, May 7, 2024 11:01 AM
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Subject: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

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From: [REDACTED]
Sent: Thursday, March 14, 2024 4:57 PM
To: [REDACTED]
[REDACTED]



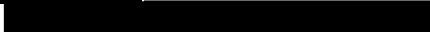
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From: [REDACTED]
To: [REDACTED]
Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 22 May 2024 07:29:38
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Hi [REDACTED]

Apologies for delay in replying but have been away on holiday for a bit. I'm not available on Tuesday next week but I am available for the following dates you suggested.

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- Tuesday 18th June at 10.00 am or 2.00 pm

Kind regards

[REDACTED]



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On Wed, May 8, 2024 at 12:13 PM [REDACTED]

<

[REDACTED] wrote:

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From: [REDACTED]
To: [REDACTED]
Subject: RE: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 30 May 2024 15:51:00
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Hi [REDACTED]

Thank you for getting back to me.

It looks like everyone is available on Tuesday 18th June at 10.00 am, so I suggest we meet on site then. I believe the agent will not be attending, but the applicants/landowners will be there as will [REDACTED] and I.

If possible please could you let me know your mobile phone number in case I need to contact you on the day.

Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer
Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

-
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From: [REDACTED]
Sent: Wednesday, May 22, 2024 7:29 AM
To: [REDACTED] <[REDACTED]>
Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

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Kind regards

[REDACTED]



Virus-free. www.avg.com

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[REDACTED]

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Email: [REDACTED]

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Contact Address: [REDACTED]

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[REDACTED]

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From: [REDACTED]
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Subject: RE: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 13 June 2024 09:31:00
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

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[REDACTED]

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From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 11 July 2024 16:15:00
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[2024.06.25 Resurfacing sketch map.pdf](#)
[Annex 1.pdf](#)

Hi [REDACTED]

Thank you for meeting [REDACTED] and I on site at Trench Hill a few weeks ago, and for the constructive discussion regarding the diversion proposal.

The applicant, [REDACTED], has taken on board your concerns and has proposed a solution for dealing with the boggy surface around the cattle water trough near point F, as shown on the attached sketch plan. The width that can be resurfaced is restricted 2 metres by the existence of the stop tap and water trough, and the presence of very large tree roots and the bank. [REDACTED] proposes to remove the top-soil and dig a rectangular pit up to a depth of approximately 200mm (the exact depth to depend on the extent to which the underlying ground is already solid impacted stone). The rectangular pit will be filled with natural Cotswold stone graded on the top surface and rammed flat to create an even walking surface. Mr [REDACTED] has undertaken to the site periodically to ensure the flat walking surface is maintained.

Your other point of concern was the width of the proposed path in the field where it runs alongside the electric fence (E to F). This section will now have a width of 3 metres measured from the boundary fence; it will have a grass surface and be unenclosed on the field side.

All works to create the new path would be inspected and certified by a member of the PROW team before any diversion order is confirmed.

Could you please let me know if this proposal is now acceptable to you.

Kind regards,

[REDACTED]

[REDACTED]
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From: [REDACTED]
Sent: Saturday, June 15, 2024 12:21 PM
To: [REDACTED] <[REDACTED]>
Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Hi [REDACTED]

All set for Tuesday

[REDACTED]
On Thu, 13 Jun 2024 at 09:31, [REDACTED] <[REDACTED]>
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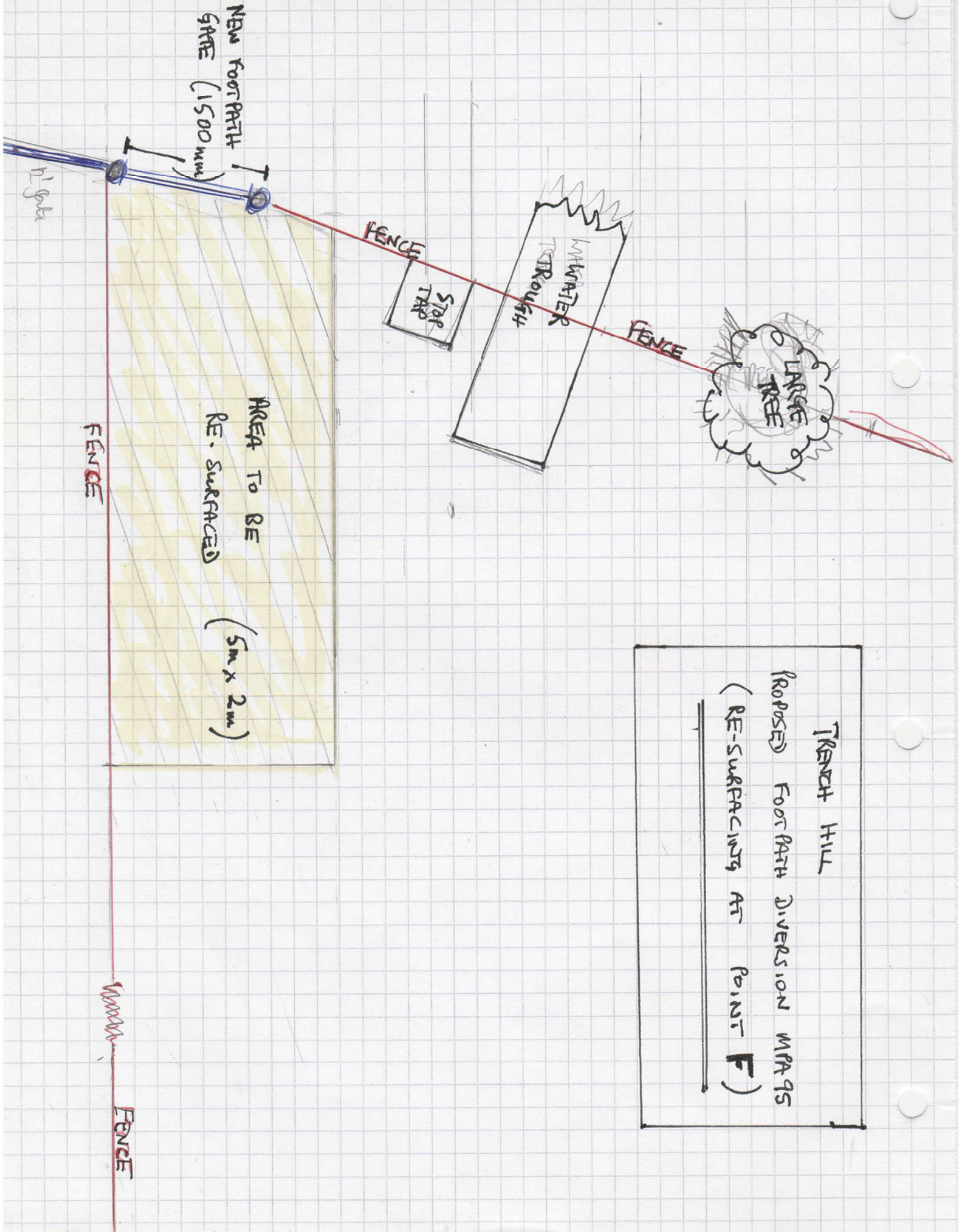
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388400

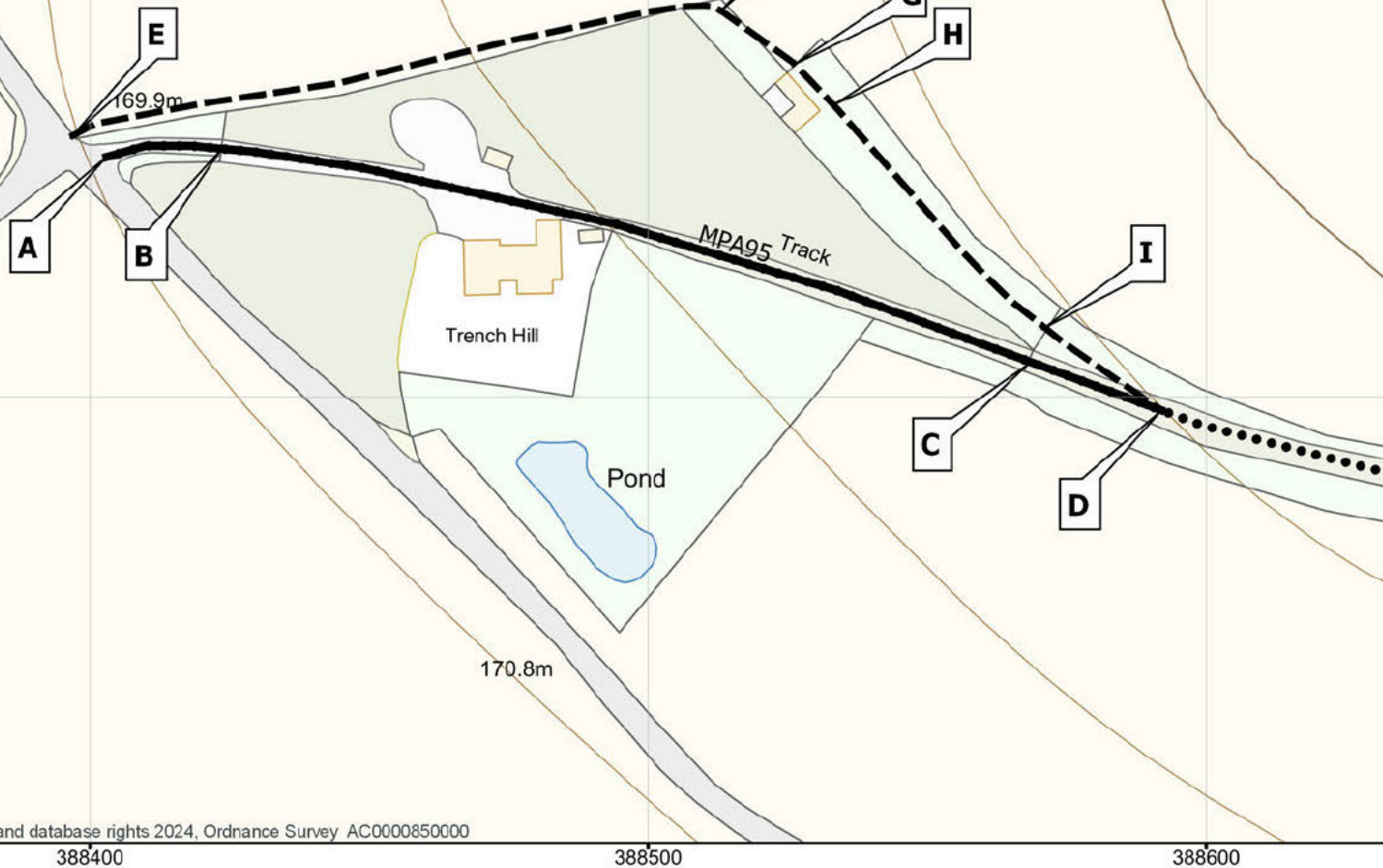
388500

388600

9.9.10

211100

211000



Proposed diversion of footpath MPA 95 (part) at Trench Hill, Parish of Painswick

Key

Footpath to be stopped up
MPA 95 A - B - C - D

Proposed new footpath
MPA 95 E - F - G - H - I - D

Unaffected rights of way



Public Rights of Way

Shire Hall, Westgate Street,
Gloucester GL1 2TG
Tel. 08000 514 514
www.gloucestershire.gov.uk



Drawn by: [REDACTED]

SCALE: 1:1,250

DATE: 23/02/2024

Drawing size: A4

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388400

388500

388600

From: [REDACTED]
To: [REDACTED]
Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 11 July 2024 17:06:44
Attachments: [image003.png](#)
[image005.png](#)
[image004.png](#)
[image002.png](#)

Hi [REDACTED]

Great to hear from you, as discussed on site happy to agree to accept the modifications set out in your note of today's date.

Best wishes

[REDACTED]

On Thu, 11 Jul 2024 at 16:15, [REDACTED] wrote:

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All works to create the new path would be inspected and certified by a member of the PROW team before any diversion order is confirmed.

Could you please let me know if this proposal is now acceptable to you.

Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

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Or download the app: FixMyStreet

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From: [REDACTED]

Sent: Saturday, June 15, 2024 12:21 PM

To: [REDACTED] <[REDACTED]>

Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Hi [REDACTED]

All set for Tuesday

[REDACTED]

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From: [REDACTED]

Sent: Thursday, May 30, 2024 3:51 PM

To: [REDACTED]

Subject: RE: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Hi [REDACTED]

Thank you for getting back to me.

It looks like everyone is available on Tuesday 18th June at 10.00 am, so I suggest we meet on site then. I believe the agent will not be attending, but the applicants/landowners will be there as will [REDACTED] and I.

If possible please could you let me know your mobile phone number in case I need to contact you on the day.

Kind regards,

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[REDACTED]

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From: [REDACTED]

Sent: Wednesday, May 22, 2024 7:29 AM

To: [REDACTED] <[REDACTED]>

Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Hi [REDACTED]

Apologies for delay in replying but have been away on holiday for a bit. I'm not available on Tuesday next week but I am available for the following dates you suggested.

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Kind regards

[REDACTED]

Virus-free www.avg.com

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<[REDACTED]> wrote:

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From: [REDACTED]

Sent: Tuesday, May 7, 2024 12:39 PM

To: [REDACTED] <[REDACTED]>

Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Hi [REDACTED]

Thanks for your reminder - Much apologies I thought I had sent my response.

Have redated it and attached it to this email.

Kiind regards

[REDACTED]

[REDACTED]

Open Spaces Society Local Correspondent Stroud and Gloucester

Email: [REDACTED]

Phone: [REDACTED]

Contact Address: [REDACTED]

Open Spaces Society

25a Bell Street

Henley-on-Thames RG9 2BA

01491 573535

email: office2@oss.org.uk

website www.oss.org.uk

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*and help fund our campaign to protect open space
through voluntary registration as town or village green*



The Open Spaces Society has staff with exhaustive experience in handling matters related to our charitable purposes. While every endeavour has been made to give our considered opinion, the law in these matters is complex and subject to differing interpretations. Such opinion is offered to help members, but does not constitute formal legal advice.

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From: [REDACTED] <[REDACTED]>
Sent: Tuesday, May 7, 2024 11:01 AM
To: [REDACTED] <[REDACTED]>
Subject: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Good morning,

I don't seem to have received a response to this consultation. Please could you let me have any comments you wish to make by 21st May.

Kind regards,

[REDACTED]

[REDACTED]

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From: [REDACTED]
Sent: Thursday, March 14, 2024 4:57 PM
To: [REDACTED]
Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

We have been asked to process a public path diversion order for part of footpath MPA 95 in the parish of Painswick.

I have attached a statement of reasons together with a map of the proposal for your consideration. Would you please let me have your comments by the 26th April 2024.

Please note that the proposed path on the attached plan, which is based on OS mapping, appears to cross a boundary fence between points F and G. However, the boundary shown on the plan does not correspond exactly with what is on the ground; the proposed path will be east of the boundary fence as shown on the attached an aerial plan.

If you have any queries please do not hesitate to contact me.

Kind regards

[REDACTED]

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Email: [REDACTED]

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From: [REDACTED]
To: [REDACTED]
Subject: RE: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 16 July 2024 12:22:00
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Hi [REDACTED]

Many thanks for getting back to me and for agreeing to the diversion with the modifications as proposed.

In due course we will proceed to the stage of making a legal order to divert the path and you will receive a copy of the made order when it is published.

Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer

Public Rights of Way

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From: [REDACTED]
Sent: Thursday, July 11, 2024 5:06 PM
To: [REDACTED] <[REDACTED]>
Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Hi [REDACTED]

Great to hear from you, as discussed on site happy to agree to accept the modifications set out in your note of today's date.

Best wishes

[REDACTED]

On Thu, 11 Jul 2024 at 16:15, [REDACTED]

<[REDACTED]>

wrote:

Hi [REDACTED],

Thank you for meeting [REDACTED] and I on site at Trench Hill a few weeks ago, and for the constructive discussion regarding the diversion proposal.

The applicant, [REDACTED] has taken on board your concerns and has proposed a solution for dealing with the boggy surface around the cattle water trough near point F, as shown on the attached sketch plan. The width that can be resurfaced is restricted 2 metres by the existence of the stop tap and water trough, and the presence of very large tree roots and the bank. [REDACTED] proposes to remove the top-soil and dig a rectangular pit up to a depth of approximately 200mm (the exact depth to depend on the extent to which the underlying ground is already solid impacted stone). The rectangular pit will be filled with natural Cotswold stone graded on the top surface and rammed flat to create an even walking surface. [REDACTED] has undertaken to the site periodically to ensure the flat walking surface is maintained.

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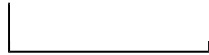
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[REDACTED]

Open Spaces Society Local Correspondent Stroud and Gloucester

Email: [REDACTED]

Phone: [REDACTED]

Contact Address: [REDACTED]

Open Spaces Society

25a Bell Street

Henley-on-Thames RG9 2BA

01491 573535

email: office2@oss.org.uk

website www.oss.org.uk

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From: [REDACTED]
To: [REDACTED]
Bcc: [REDACTED]
Subject: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 07 May 2024 11:01:00
Attachments: [Statement of reasons MPA 95.pdf](#)
[Annex 1.pdf](#)
[Painswick MPA 95 diversion A4L aerial.pdf](#)

Good morning,

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[REDACTED]

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**HIGHWAYS ACT 1980 - SECTION 119
PUBLIC PATH DIVERSION ORDER
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL
DIVERSION OF PUBLIC FOOTPATH MPA 95 (PART) AT
TRENCH HILL
(PARISH OF PAINSWICK)**

Proposed Public Path Diversion Order

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

BACKGROUND

1. This statement of reasons relates to an application made by the owners of Trench Hill, Painswick, under section 119 of the Highways Act 1980 ("HA80") and the Wildlife and Countryside Act 1981 section 53A(2) to divert part of footpath MPA 95 in the parish of Painswick.

The application is made in the interest of the owners of the land crossed by the footpath, MPA 95, to move the footpath as shown on the Definitive Map away from the immediate vicinity of the house and garden. Currently the path proceeds along the driveway of the property, passing very close to the front door, before continuing through the garden and exiting via a pedestrian gate at the eastern end of the property onto a grassy track leading to an area of woodland. The landowners would like to move the path onto an adjacent grazed field and a wide grassy track, where the diverted path would reconnect with the definitive path to the east of the property. The proposal will improve privacy and security at the property and enable the landowners to make the property more secure.

DESCRIPTION OF DIVERSION ORDER ROUTE

2. MPA 95

The definitive path to be stopped up starts at point A on the attached plan (see Annex 1), at the junction with the class 4 road known as Saltridge Hill to Damsells Mill Lane, and follows the gravel driveway of Trench Hill in a generally east southeasterly direction up a gentle incline for 57 metres before continuing for 26 metres across a level gravel parking area, passing within a few metres of the front door of the property. The path then follows a woodland track through the garden for 88 metres to point C at the eastern boundary of the property, before exiting the garden via a pedestrian gate and continuing for 25 metres up a sloping grassy bank to join a grass track at point D. There is an existing vehicular gate on the driveway at point B.

The proposed new path starts at point E on the plan and enters the field via an existing stile that is to be replaced by a pedestrian gate. The path runs alongside the boundary fence of the grazed field in a generally easterly direction for 119 metres to point F where there is an existing wooden pedestrian gate. The field has a relatively even incline between points E and F. The path then turns in a generally southeasterly direction and continues along a mainly level mown grass track for approximately 107 metres, past a timber clad outbuilding, and passing through wooden field gates at points G and I, to point D where it re-joins the definitive path.

Although not dedicated by the landowners, the proposed path is currently in use on a permissive basis. Should the diversion be successful the stile at point E and the existing pedestrian gate at point F will be replaced by British Standard 5709:2018 (BS 5709:2018) compliant pedestrian gates with a minimum width of 1.1 metres to improve accessibility of the diversion route.

WIDTH AND LIMITATIONS

3. Between points E and F the new path will be bounded on one side by an existing post and wire stock proof fence with a wire mesh infill. The fence includes barbed wire and a strand of electric fence. Between points F and G the path will run alongside an existing post and wire fence with wire mesh infill, and between G and H the path will run alongside a timber outbuilding. The new path will be unenclosed between points H, I and D. The proposed path will have a recorded width of 2.5 metres between points E - F - G - H and 2 metres between points H - I - D.

STATUTORY PROVISIONS AND DEFRA GUIDANCE

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.
8. DEFRA's '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', issued in August 2023, states that:

"The majority of public rights of way cross privately owned land. In general, members of the public and farmers/landowners are used to the concept and see no inherent inconsistency between the fact that land may be privately owned and the presence of public routes across it for both passage from A to B, and enjoyment of the countryside and the natural environment.

However, the general view of both groups can change markedly in situations where public rights of way pass through contained spaces such as private gardens, farmyards or commercial premises.

Members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises. Such path alignments can deter people from exercising the public's right to use the path."

and that:

"In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given."

The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests."

REASONS FOR MAKING A DIVERSION ORDER

'Making' Tests to be satisfied.

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

9. It is expedient to divert footpath MPA 95 in the interests of the owners of the land. The existing footpath, MPA 95, passes through the garden and driveway of the property, passing very close to the front door of the dwelling house. Diverting the path would enable the landowners to better secure the property and would increase privacy.

Is it expedient to divert footpath MPA 95 having regard to the points of termination and whether these are substantially as convenient to the public?

10. The existing and proposed both start on the quiet class 4 road known as Saltridge Hill to Damsells Mill Lane, the start points are only 7 metres apart and there is no onward connection to another public right of way in the immediate vicinity. Both paths terminate at the same point to the east of Trench Hill, so the proposal meets the termination points test.

Agreement made under section 119(5) of the HA80

11. 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 landowners will at their own expense carry out any works required to bring the new path into being; all works will be inspected and certified before the order comes into force.

GCC's obligations under section 29 HA80

12. Although part of the diversion route will run alongside the boundary of an agricultural field, the field is primarily used for grazing cattle, so the new route will not impact on

the needs of agriculture or forestry. The proposed diversion does not impact on flora, fauna and geological and physiographical features and there are no disbenefits to the public.

GCC's obligations under the Equality Act 2010

13. The definitive path slopes up a grassy bank between points C and D whereas the proposed path has a more even gradient, and the section of the new path between points F and D will follow an existing generally level track that is mown regularly. Neither the existing nor proposed path has any steps. The existing field gates at points G and I are accessible, and the existing stile at point E and pedestrian gate at point F will be replaced by BS 5709:2018 compliant pedestrian gates; the proposal will therefore be in line with accessibility guidelines.

REASONS FOR CONFIRMING A DIVERSION ORDER

14. 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 set out above in 5(6) and (6A). Paragraph 2.3.8 of the PINS Advice Note 9 states that:

“The decision in *Ramblers Association v SSEFRA, Weston and others* [2012] EWHC 3333 (Admin) acknowledges that section 119(6) involves three separate tests (as endorsed by the High Court in *The Open Spaces Society v Secretary of State for Environment, Food And Rural Affairs* [2020] EWHC 1085 (Admin)):

Test 1: whether the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public (as set out in section 119(1) and subject to section 119(2)- see paragraphs 2.31 and 2.32 above). This was described in *R (Hargrave) v Stroud District Council* [2001] EWHC Admin 1128, [2002] JPL 1081 as being a low test.

Test 2: whether the proposed diversion is 'substantially less convenient to the

public'. In order to meet this test, the path or way must not be substantially less convenient to the public in consequence of the diversion (as per the wording in section 119(6)).

Both of these tests can be described as gateway tests - unless they are passed the decision-maker does not get to the third test.

Test 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 or way as a whole;
- (b) of the Order on other land served by the existing public right of way; and
- (c) of any new public right of way on the land over which it is to be created and any land held with it.

Any material provisions of a rights of way improvement plan must also be taken into account.”

In relation to Test 2 above, paragraph 2.3.7 of PINS advice Note 9 states that:

“In terms of the expression 'substantially less convenient to the public', features which readily fall within the natural and ordinary meaning of the word 'convenient' are matters such as the length of the diverted path, the difficulty of walking it and its purpose.”

Other factors to be considered in relation to Test 2 include the width, surface, gradient and accessibility of the diverted path compared to the existing path.

15. Paragraphs 9 and 10 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 length of the new route would be 226 metres, which is only 30 metres greater than the definitive route which has a length of 196 metres. Both paths start on the quiet class 4 road only 7 metres apart and both paths end at the same point.

The definitive and proposed paths are similar in terms of overall gradient, however the existing path includes a section of sloping bank between points C and D that has a cross fall, whereas the gradient of the proposed path is more even. A short section of the existing path has a grass surface, and the remainder is surfaced with bark chippings or gravel, whereas the proposed path will have a grass surface throughout; the grass track between F and D is mown regularly by the landowners and the section through the field between E and F is grazed by cattle. The path is in a rural location and is used mainly for leisure purposes.

The width of the definitive path is undefined whereas the new path will have a width of 2 metres where it is unenclosed and 2.5 metres where it runs alongside a boundary fence. The existing path includes a vehicular gate at point B and a pedestrian gate at point C. Although the new path will have two field gates and two pedestrian gates, these will all comply with accessibility requirements. The diversion route will therefore not be substantially less convenient than the existing path.

16. The third test is addressed as follows: -

Public enjoyment will be increased by the diversion of this path because the proposed diversion will take walkers away from the enclosed space of the dwelling house and garden. The new path will be an enjoyable walk through a grazed field and along a wide, level grassy track edged with trees and will provide far reaching views across the surrounding hills and valleys.

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 as it is all within the ownership of the applicant and no other parties are affected.

Is the diversion in line with DEFRA guidance on changes to public rights of way through gardens and curtilages of private dwellings, working farmyards and other commercial premises?

17. The definitive path proceeds through the garden and along the driveway of Trench Hill, passing very close to the front door of the property. DEFRA guidance acknowledges that the public might not be comfortable following a path through a contained space such as the garden of a dwelling house, because doing so feels like

infringing on the privacy of a house owner. Weighing the interests of the landowners in terms of privacy, security and safety, against the overall impact of the diversion proposal on the public as a whole, it is considered that the proposal meets the required legal tests and that diverting the path is in line with DEFRA guidance.

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

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 that offer sizeable benefits to the applicant.

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

388400

388500

388600

9.9.11

211100

211000

A

169.9m

E

B

Trench Hill

Pond

170.8m

MPA95 Track

F

G

H

C

D

I

FW

MCR43

Proposed diversion of footpath MPA 95 (part) at Trench Hill, Parish of Painswick

Key

Footpath to be stopped up
MPA 95 A - B - C - D

Proposed new footpath
MPA 95 E - F - G - H - I - D

Unaffected rights of way


 Gloucestershire
COUNTY COUNCIL

Public Rights of Way

Shire Hall, Westgate Street,
Gloucester GL1 2TG

Tel. 08000 514 514

www.gloucestershire.gov.uk

Drawn by: 

SCALE: 1:1,250

DATE: 23/02/2024

Drawing size: A4

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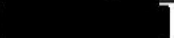
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A

B

E

F

G

H

I

C

D

Trench Hill

Pond

MPA95 Track

169.9m

170.8m

MCR43

FW

9.9.11

From: [REDACTED]
To: [REDACTED]
Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 08 May 2024 08:21:30

Good morning [REDACTED]

South Cotswold Ramblers have no objection to the re routing of the footpath through Trench Hill.

[REDACTED] (Chair SCR)

On 7 May 2024, at 11:01, [REDACTED]
<[REDACTED]> wrote:

Good morning,

I don't seem to have received a response to this consultation. Please could you let me have any comments you wish to make by 21st May.

Kind regards,

[REDACTED]

[REDACTED]
Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG
Tel: [REDACTED]
Email: [REDACTED]

Please report highway issues online at
www.gloucestershire.gov.uk/fixmystreet
Or download the app: FixMyStreet

Please note:

I work Tuesdays, Wednesdays and Thursdays. Outside of my work days, if you have an urgent enquiry, please email prow@gloucestershire.gov.uk

From: [REDACTED]
Sent: Thursday, March 14, 2024 4:57 PM
To: [REDACTED]
Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

We have been asked to process a public path diversion order for part of footpath MPA 95 in the parish of Painswick.

I have attached a statement of reasons together with a map of the proposal for your consideration. Would you please let me have your comments by the 26th April

2024.

Please note that the proposed path on the attached plan, which is based on OS mapping, appears to cross a boundary fence between points F and G. However, the boundary shown on the plan does not correspond exactly with what is on the ground; the proposed path will be east of the boundary fence as shown on the attached an aerial plan.

If you have any queries please do not hesitate to contact me.

Kind regards

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

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<Statement of reasons MPA 95.pdf><Annex 1.pdf><Painswick MPA 95 diversion A4L aerial.pdf>

From: [REDACTED]
To: [REDACTED]
Subject: RE: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 08 May 2024 08:24:00

Thanks [REDACTED]

Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

-
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From: [REDACTED]
Sent: Wednesday, May 8, 2024 8:21 AM
To: [REDACTED] <[REDACTED]>
Subject: Re: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Good morning [REDACTED]

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<Statement of reasons MPA 95.pdf><Annex 1.pdf><Painswick MPA 95 diversion A4L aerial.pdf>

From: [REDACTED]
To: [REDACTED]
Bcc: [REDACTED]
Subject: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 07 May 2024 11:01:00
Attachments: [Statement of reasons MPA 95.pdf](#)
[Annex 1.pdf](#)
[Painswick MPA 95 diversion A4L aerial.pdf](#)

Good morning,

I don't seem to have received a response to this consultation. Please could you let me have any comments you wish to make by 21st May.

Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer
Public Rights of Way

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If you have any queries please do not hesitate to contact me.

Kind regards

[REDACTED]

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

**HIGHWAYS ACT 1980 - SECTION 119
PUBLIC PATH DIVERSION ORDER
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL
DIVERSION OF PUBLIC FOOTPATH MPA 95 (PART) AT
TRENCH HILL
(PARISH OF PAINSWICK)**

Proposed Public Path Diversion Order

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

BACKGROUND

1. This statement of reasons relates to an application made by the owners of Trench Hill, Painswick, under section 119 of the Highways Act 1980 ("HA80") and the Wildlife and Countryside Act 1981 section 53A(2) to divert part of footpath MPA 95 in the parish of Painswick.

The application is made in the interest of the owners of the land crossed by the footpath, MPA 95, to move the footpath as shown on the Definitive Map away from the immediate vicinity of the house and garden. Currently the path proceeds along the driveway of the property, passing very close to the front door, before continuing through the garden and exiting via a pedestrian gate at the eastern end of the property onto a grassy track leading to an area of woodland. The landowners would like to move the path onto an adjacent grazed field and a wide grassy track, where the diverted path would reconnect with the definitive path to the east of the property. The proposal will improve privacy and security at the property and enable the landowners to make the property more secure.

DESCRIPTION OF DIVERSION ORDER ROUTE

2. MPA 95

The definitive path to be stopped up starts at point A on the attached plan (see Annex 1), at the junction with the class 4 road known as Saltridge Hill to Damsells Mill Lane, and follows the gravel driveway of Trench Hill in a generally east southeasterly direction up a gentle incline for 57 metres before continuing for 26 metres across a level gravel parking area, passing within a few metres of the front door of the property. The path then follows a woodland track through the garden for 88 metres to point C at the eastern boundary of the property, before exiting the garden via a pedestrian gate and continuing for 25 metres up a sloping grassy bank to join a grass track at point D. There is an existing vehicular gate on the driveway at point B.

The proposed new path starts at point E on the plan and enters the field via an existing stile that is to be replaced by a pedestrian gate. The path runs alongside the boundary fence of the grazed field in a generally easterly direction for 119 metres to point F where there is an existing wooden pedestrian gate. The field has a relatively even incline between points E and F. The path then turns in a generally southeasterly direction and continues along a mainly level mown grass track for approximately 107 metres, past a timber clad outbuilding, and passing through wooden field gates at points G and I, to point D where it re-joins the definitive path.

Although not dedicated by the landowners, the proposed path is currently in use on a permissive basis. Should the diversion be successful the stile at point E and the existing pedestrian gate at point F will be replaced by British Standard 5709:2018 (BS 5709:2018) compliant pedestrian gates with a minimum width of 1.1 metres to improve accessibility of the diversion route.

WIDTH AND LIMITATIONS

3. Between points E and F the new path will be bounded on one side by an existing post and wire stock proof fence with a wire mesh infill. The fence includes barbed wire and a strand of electric fence. Between points F and G the path will run alongside an existing post and wire fence with wire mesh infill, and between G and H the path will run alongside a timber outbuilding. The new path will be unenclosed between points H, I and D. The proposed path will have a recorded width of 2.5 metres between points E - F - G - H and 2 metres between points H - I - D.

STATUTORY PROVISIONS AND DEFRA GUIDANCE

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.
8. DEFRA's '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', issued in August 2023, states that:

"The majority of public rights of way cross privately owned land. In general, members of the public and farmers/landowners are used to the concept and see no inherent inconsistency between the fact that land may be privately owned and the presence of public routes across it for both passage from A to B, and enjoyment of the countryside and the natural environment.

However, the general view of both groups can change markedly in situations where public rights of way pass through contained spaces such as private gardens, farmyards or commercial premises.

Members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises. Such path alignments can deter people from exercising the public's right to use the path."

and that:

"In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given."

The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests."

REASONS FOR MAKING A DIVERSION ORDER

'Making' Tests to be satisfied.

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

9. It is expedient to divert footpath MPA 95 in the interests of the owners of the land. The existing footpath, MPA 95, passes through the garden and driveway of the property, passing very close to the front door of the dwelling house. Diverting the path would enable the landowners to better secure the property and would increase privacy.

Is it expedient to divert footpath MPA 95 having regard to the points of termination and whether these are substantially as convenient to the public?

10. The existing and proposed both start on the quiet class 4 road known as Saltridge Hill to Damsells Mill Lane, the start points are only 7 metres apart and there is no onward connection to another public right of way in the immediate vicinity. Both paths terminate at the same point to the east of Trench Hill, so the proposal meets the termination points test.

Agreement made under section 119(5) of the HA80

11. 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 landowners will at their own expense carry out any works required to bring the new path into being; all works will be inspected and certified before the order comes into force.

GCC's obligations under section 29 HA80

12. Although part of the diversion route will run alongside the boundary of an agricultural field, the field is primarily used for grazing cattle, so the new route will not impact on

the needs of agriculture or forestry. The proposed diversion does not impact on flora, fauna and geological and physiographical features and there are no disbenefits to the public.

GCC's obligations under the Equality Act 2010

13. The definitive path slopes up a grassy bank between points C and D whereas the proposed path has a more even gradient, and the section of the new path between points F and D will follow an existing generally level track that is mown regularly. Neither the existing nor proposed path has any steps. The existing field gates at points G and I are accessible, and the existing stile at point E and pedestrian gate at point F will be replaced by BS 5709:2018 compliant pedestrian gates; the proposal will therefore be in line with accessibility guidelines.

REASONS FOR CONFIRMING A DIVERSION ORDER

14. 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 set out above in 5(6) and (6A). Paragraph 2.3.8 of the PINS Advice Note 9 states that:

“The decision in *Ramblers Association v SSEFRA, Weston and others* [2012] EWHC 3333 (Admin) acknowledges that section 119(6) involves three separate tests (as endorsed by the High Court in *The Open Spaces Society v Secretary of State for Environment, Food And Rural Affairs* [2020] EWHC 1085 (Admin)):

Test 1: whether the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public (as set out in section 119(1) and subject to section 119(2)- see paragraphs 2.31 and 2.32 above). This was described in *R (Hargrave) v Stroud District Council* [2001] EWHC Admin 1128, [2002] JPL 1081 as being a low test.

Test 2: whether the proposed diversion is 'substantially less convenient to the

public'. In order to meet this test, the path or way must not be substantially less convenient to the public in consequence of the diversion (as per the wording in section 119(6)).

Both of these tests can be described as gateway tests - unless they are passed the decision-maker does not get to the third test.

Test 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 or way as a whole;
- (b) of the Order on other land served by the existing public right of way; and
- (c) of any new public right of way on the land over which it is to be created and any land held with it.

Any material provisions of a rights of way improvement plan must also be taken into account.”

In relation to Test 2 above, paragraph 2.3.7 of PINS advice Note 9 states that:

“In terms of the expression 'substantially less convenient to the public', features which readily fall within the natural and ordinary meaning of the word 'convenient' are matters such as the length of the diverted path, the difficulty of walking it and its purpose.”

Other factors to be considered in relation to Test 2 include the width, surface, gradient and accessibility of the diverted path compared to the existing path.

15. Paragraphs 9 and 10 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 length of the new route would be 226 metres, which is only 30 metres greater than the definitive route which has a length of 196 metres. Both paths start on the quiet class 4 road only 7 metres apart and both paths end at the same point.

The definitive and proposed paths are similar in terms of overall gradient, however the existing path includes a section of sloping bank between points C and D that has a cross fall, whereas the gradient of the proposed path is more even. A short section of the existing path has a grass surface, and the remainder is surfaced with bark chippings or gravel, whereas the proposed path will have a grass surface throughout; the grass track between F and D is mown regularly by the landowners and the section through the field between E and F is grazed by cattle. The path is in a rural location and is used mainly for leisure purposes.

The width of the definitive path is undefined whereas the new path will have a width of 2 metres where it is unenclosed and 2.5 metres where it runs alongside a boundary fence. The existing path includes a vehicular gate at point B and a pedestrian gate at point C. Although the new path will have two field gates and two pedestrian gates, these will all comply with accessibility requirements. The diversion route will therefore not be substantially less convenient than the existing path.

16. The third test is addressed as follows: -

Public enjoyment will be increased by the diversion of this path because the proposed diversion will take walkers away from the enclosed space of the dwelling house and garden. The new path will be an enjoyable walk through a grazed field and along a wide, level grassy track edged with trees and will provide far reaching views across the surrounding hills and valleys.

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 as it is all within the ownership of the applicant and no other parties are affected.

Is the diversion in line with DEFRA guidance on changes to public rights of way through gardens and curtilages of private dwellings, working farmyards and other commercial premises?

17. The definitive path proceeds through the garden and along the driveway of Trench Hill, passing very close to the front door of the property. DEFRA guidance acknowledges that the public might not be comfortable following a path through a contained space such as the garden of a dwelling house, because doing so feels like

infringing on the privacy of a house owner. Weighing the interests of the landowners in terms of privacy, security and safety, against the overall impact of the diversion proposal on the public as a whole, it is considered that the proposal meets the required legal tests and that diverting the path is in line with DEFRA guidance.

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

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 that offer sizeable benefits to the applicant.

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

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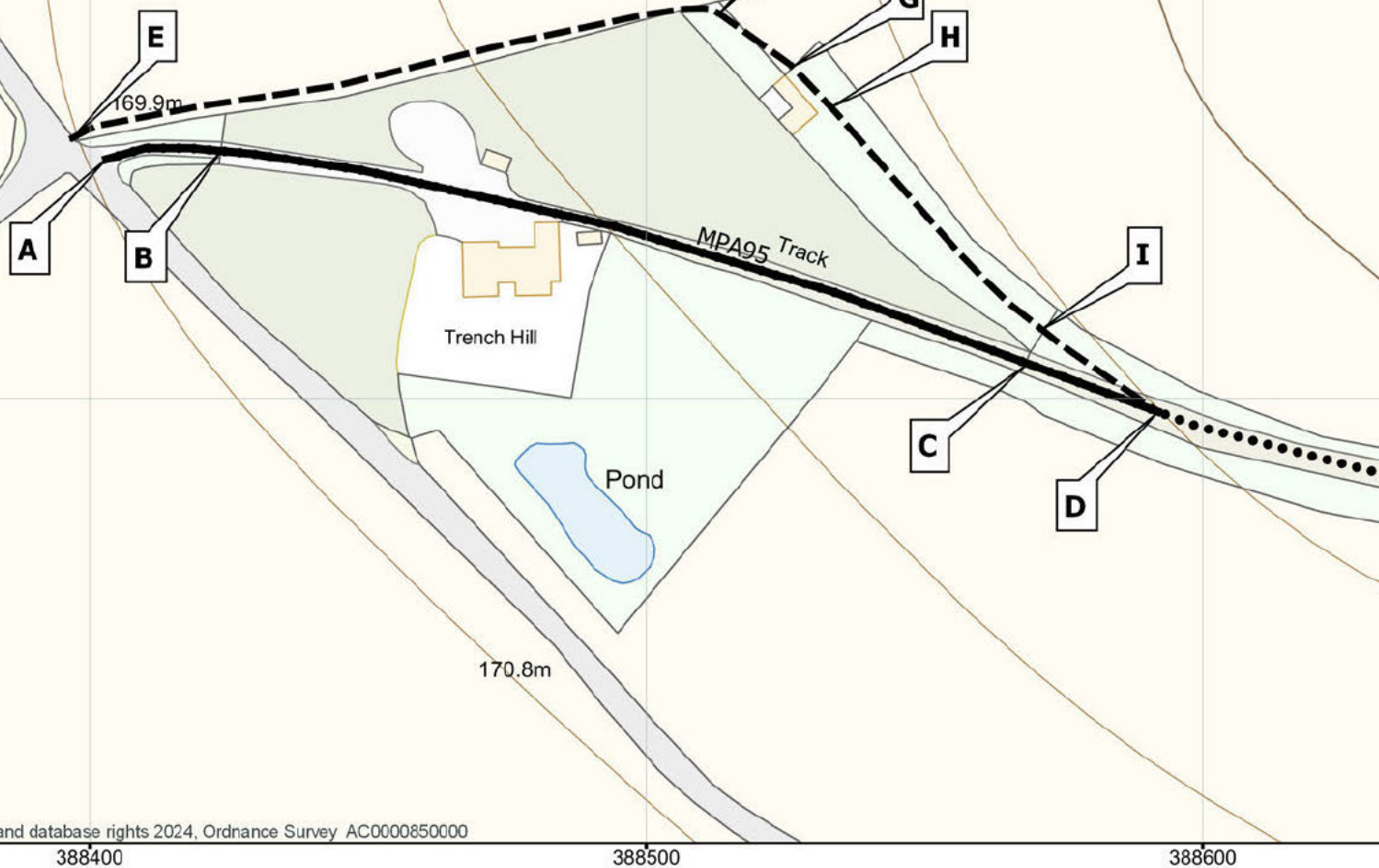
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Proposed diversion of footpath MPA 95 (part) at Trench Hill, Parish of Painswick

Key

Footpath to be stopped up
MPA 95 A - B - C - D

Proposed new footpath
MPA 95 E - F - G - H - I - D

Unaffected rights of way



Public Rights of Way

Shire Hall, Westgate Street,
Gloucester GL1 2TG

Tel. 08000 514 514

www.gloucestershire.gov.uk

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A

B

E

F

G

H

I

C

D

Trench Hill

Pond

MPA95 Track

170.8m

169.9m

FW

MCR43

9.9.12

From: [REDACTED]
To: [REDACTED]
Subject: Re: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 13 May 2024 12:42:11

[REDACTED]

Apologies, I wrongly thought I has replied.

If local Ramblers have accepted proposal then I have no comment other than in regard to limitations BS 5709 should be quoted without the date.

BS are updated every ten years or so and the the widths quoted may be increased. By omitting the date '2018' would allow the latest BS always to be relevant.

regards

[REDACTED]

----- Original Message -----

From: [REDACTED]
To: [REDACTED]
Sent: Tuesday, May 7th 2024, 11:04
Subject: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

Good morning,

I don't seem to have received a response to this consultation. Please could you let me have any comments you wish to make by 21st May.

Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

Please report highway issues online at
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Or download the app: FixMyStreet

Please note:

I work Tuesdays, Wednesdays and Thursdays. Outside of my work days, if you have an urgent enquiry, please email prow@gloucestershire.gov.uk

From: [REDACTED]
Sent: Thursday, March 14, 2024 4:57 PM
To: [REDACTED]
Subject: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

We have been asked to process a public path diversion order for part of footpath MPA 95 in the parish of Painswick.

I have attached a statement of reasons together with a map of the proposal for your consideration. Would you please let me have your comments by the 26th April 2024.

Please note that the proposed path on the attached plan, which is based on OS mapping, appears to cross a boundary fence between points F and G. However, the boundary shown on the plan does not correspond exactly with what is on the ground; the proposed path will be east of the boundary fence as shown on the attached an aerial plan.

If you have any queries please do not hesitate to contact me.

Kind regards



Public Path Order Officer

Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: 

Email: 

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9.9.12

From: [REDACTED]
To: [REDACTED]
Subject: RE: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick
Date: 14 May 2024 14:06:00

H [REDACTED]

Thank you for your response, I can confirm the Ramblers have no objection to the diversion proposal.

As regards quoting the date of BS 5709 for limitations, I've been unable to find any specific advice on the IPROW website. However, GCC follows the convention that many other order making authorities follow, of specifying the current version of the British Standard, i.e. BS 5709: 2018 in their public path orders.

Kind regards,

[REDACTED]

[REDACTED]

Public Path Order Officer
Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

-
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Or download the app: FixMyStreet

My usual work days are Tuesdays, Wednesdays and Thursdays. Outside of my work days, if you have an urgent enquiry, please email prow@gloucestershire.gov.uk

From: [REDACTED]
Sent: Monday, May 13, 2024 12:42 PM
To: [REDACTED] <[REDACTED]>
Subject: Re: FW: Proposed diversion of part of public footpath MPA 95 at Trench Hill, Painswick

[REDACTED]

Apologies, I wrongly thought I has replied.

If local Ramblers have accepted proposal then I have no comment other than in regard to limitations BS 5709 should be quoted without the date.

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Kind regards,

[REDACTED]
Tamsin Hyde
Public Path Order Officer
Public Rights of Way
Gloucestershire County Council
5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG
Tel: [REDACTED]
Email: [REDACTED]

-
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Kind regards


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Email: 

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From: [REDACTED]
To: [REDACTED]@nationaltrust.org.uk
Subject: Possible bridleway creation, Lady's Wood, Cranham
Date: 04 June 2024 12:41:00
Attachments: [Annex 1.pdf](#)
[Public footpaths MPA 95, MCR 132 location plan A4L.pdf](#)

Hi [REDACTED]

I hope you don't mind me contacting you, I have your contact details from my colleague [REDACTED] who recently worked with your colleague [REDACTED] on the creation of a new section of bridleway at Ebworth Lodge in Cranham.

The reason from my email is that I am working on a proposal to divert a section of public footpath MPA 95, which currently runs through the garden of a property called Trench Hill at Sheepscombe, see Annex 1 attached. One of our consultees has asked if it would be possible to upgrade the diverted footpath to a bridleway, along with the remainder of footpath MPA 95 and the whole of the connecting footpath MCR 132 in Lady's Wood, Cranham, which would improve the network of routes available to equestrians and cyclists by providing a connection with bridleways MCR 24 and MPA 119, see attached location plan.

Part of the land crossed by footpaths MPA 95 and MCR 132 is National Trust land, and I would therefore like to seek the views of the National Trust on potentially upgrading the footpaths to bridleway. If the National Trust and the owners of Trench Hill are agreeable to the proposal, the upgrade could be achieved by way of a S25 Highways Act 1980 dedication agreement. The Public Rights of Way team would draw up and advertise the agreement, and the section of bridleway on National Trust land would become maintainable at public expense, so there would be no cost implications for the National Trust.

I would be very grateful if you could please let me know whether the National Trust considers that this proposal has merit and whether they would be willing to consider it. I look forward to hearing from you, and if you have any questions about the proposal or would like to discuss this further please let me know.

Kind regards,

[REDACTED]

Public Path Order Officer
Public Rights of Way

Gloucestershire County Council

5th Floor West, Block 5, Shire Hall, Westgate Street, Gloucester GL1 2TG

Tel: [REDACTED]

Email: [REDACTED]

-
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E
A
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169.9m

Trench Hill

Pond

170.8m

MPA95 Track

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G

H

C

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I

FW

MCR43

Proposed diversion of footpath MPA 95 (part) at Trench Hill, Parish of Painswick

Key

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MPA 95 A - B - C - D

Proposed new footpath
MPA 95 E - F - G - H - I - D

Unaffected rights of way


 Gloucestershire
COUNTY COUNCIL

Public Rights of Way

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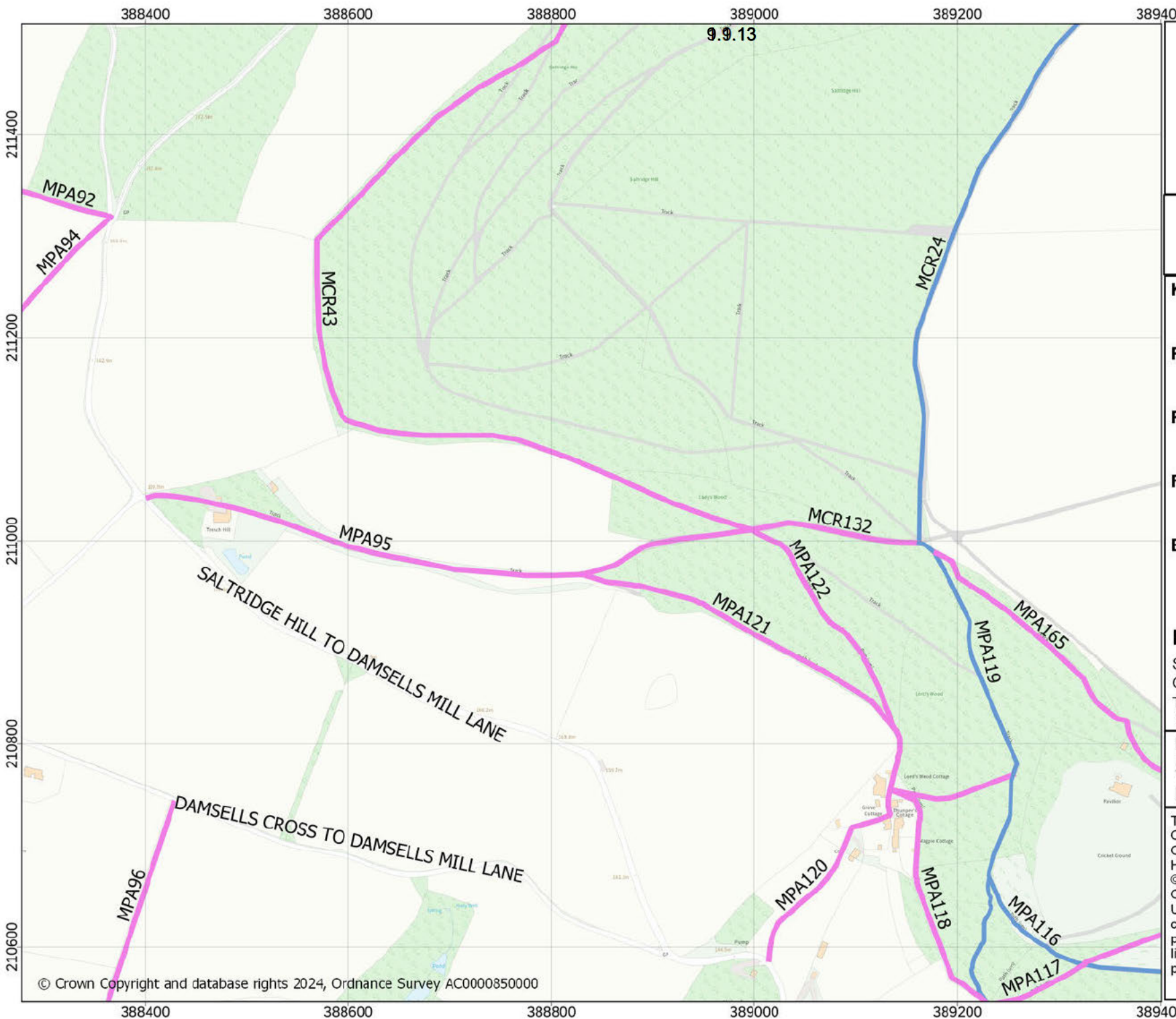
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Public footpaths MPA 95, MCR 132 location map

Public Rights of Way

Key

- Public Footpath
- Public Bridleway
- Restricted Byway
- Byway

Public Rights of Way
Shire Hall, Westgate Street,
Gloucester GL1 2TG
Tel. 08000 514514
www.gloucestershire.gov.uk

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