

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

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

BACKGROUND

1. This statement of reasons relates to an order made under section 119 of the Highways Act 1980 (“HA80”) and the Wildlife and Countryside Act 1981 section 53A(2) to divert part of public footpath MPA 95 in the Parish of Painswick as the result of an application made by the owner of Trench Hill, Painswick.

The diversion application, dated 4th December 2020, was made in the interest of the owner of the land crossed by the path to move the footpath, as shown on the Definitive Map, away from the garden of Trench Hill for reasons of privacy and security. The section of path to be diverted proceeds along the driveway of the property, 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 proposed route would follow the edge of 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.

2. On 14th March 2024 GCC consulted with the parish and district councils, the county councillor for the area and other user groups who have indicated that they wish to be consulted for such applications. Painswick Parish Council, Stroud District Council and the Ramblers indicated that they had no objection to the diversion. A representative for the Open Spaces Society raised some concerns and, following a site meeting on 18th June 2024, it was agreed to increase the width of the diversion

through the field and put in place some mitigation to address concerns about bogginess around the cattle drinking trough.

3. The Diversion Order was made on 22nd October 2024 and was advertised in accordance with the requirements of paragraph 1 of Schedule 6 of the HA 1980 on 31st October 2024. Two duly made objections and seventeen duly made representations to the Diversion Order were received during the period when the Order was advertised.

DESCRIPTION OF DIVERSION ORDER ROUTE

4. The definitive path to be stopped up has a total length of 196 metres and starts at point A on the plan attached to the Diversion Order, 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 approximately 57 metres before continuing for approximately 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 approximately 88 metres to point C at the eastern boundary of the property, before exiting the garden via a pedestrian gate and continuing for approximately 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 path, which has a total length of 226 metres, starts at point E on the order plan and currently enters the field via an existing timber stile. The path runs alongside the boundary fence of the grazed field in a generally easterly direction for approximately 119 metres to point F where there is an existing wooden pedestrian gate. The field has a relatively even incline, on a gradient of approximately 17% 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.

Between points E and F the proposed new path is 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 runs alongside an existing post and wire fence with wire mesh infill, and between G and H the path runs alongside a timber outbuilding. The new path runs through a wider fenced and hedged grassy track area between points H, I and D.

Although not dedicated by the landowners, the proposed path is currently in use on a permissive basis as an alternative to walking through the garden area.

WIDTH AND LIMITATIONS

5. The diversion order, as made, records a width of 3 metres between points E - F, a width of 2.5 metres between F - G - H and 2 metres between points H - I - D.

The diversion order records British Standard 5709:2018 (BS 5709:2018) compliant pedestrian gates with a minimum width of 1.1 metres at points E and F and BS 5709:2018 compliant field gates with a minimum width of 1.2 metres at points G and I.

STATUTORY PROVISIONS AND DEFRA GUIDANCE

6. Section 119 of the Highways Act 1980 sets out as follows:

- (1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—

- (a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and
- (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

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

- (2) A public path diversion order shall not alter a point of termination of the path or way—
 - (a) if that point is not on a highway, or
 - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- (3) Where it appears to the council that work requires to be done to bring the new site of the footpath or bridleway into a fit condition for use by the public, the council shall—
 - (a) specify a date under subsection (1)(a) above, and
 - (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force 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.

7. Section 53A (2) of the Wildlife and Countryside Act 1981 sets out as follows:

An Order made by the Authority to modify the definitive Map and Statement of Public Rights of Way in consequence of the occurrence of an event specified in Section 53(3) (a) (1) of the 1981 Act, namely the stopping up, diverting, widening or extending (as authorised by the order) of a highway shown or required to be shown in the map and statement.

8. GCC also has a duty under section 29 of the HA80 to have due regard to—

- (a) the needs of agriculture and forestry, and
- (b) the desirability of conserving flora, fauna and geological and physiographical features.

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

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

10. 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' ("Presumptions Guidance"), 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?

11. 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?

12. The existing and proposed paths 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, point D on the Order plan, to the east of Trench Hill, so the proposal meets the termination points test.

Agreement made under section 119(5) of the HA80

13. 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.
14. The landowner 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. In view of concerns raised by one of the objectors about walkers coming into contact with cattle, the landowner has agreed to fence the new path with a post and rail or post and wire fence to separate walkers from livestock. The existing stile at point E on the order plan is to be replaced by a BS 5709:2018 compliant pedestrian gate with a minimum width of 1.1 metres

The landowner has entered into a maintenance agreement (“The agreement”) with GCC, under Section 33 of the Local Government Act 1982, to maintain the vegetation on and in the footpath between points E F G H I and D to maintain the required path widths (see Appendix 3.3). The agreement as sealed was made on 18 December 2025 and would come into operation on confirmation of the Order.

GCC's obligations under section 29 HA80

15. The proposed diversion route through the field where the cattle are grazed has been well used as a permissive alternative for a number of years. A fence will be installed alongside the new path between points E - F - G and, although this will reduce the area of land available for grazing, it will address safety concerns about contact between walkers and cattle. Therefore, it is considered that the new route will not significantly impact on the needs of agriculture and forestry.

GCC's obligations under the Equality Act 2010

16. Both paths are on a gradient. A section of the definitive path climbs up a steep grassy bank between points C and D whereas the proposed path has a more even gradient, and the section of new path between points F and D will follow an existing generally level track. Neither the existing nor proposed path has any steps. The existing pedestrian gate at point F and field gates at points G and I are accessible and are required to remain BS5709:2018 compliant in relation to their latching, hanging, ease of movement and weight. The existing stile at point E will be replaced by BS 5709:2018 compliant pedestrian gate; the proposal is therefore considered to be in line with accessibility guidelines.

REASONS FOR CONFIRMING A DIVERSION ORDER

17. The legal tests for the confirmation of a diversion order, by either a highway authority or the Secretary of State, are set out in section 119(6) of the HA80 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.

18. Paragraphs 11 and 12 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 point D. 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; a maintenance agreement for the landowner to mow the grass surface will come into effect on confirmation of the order. The path is in a rural location and is used mainly for leisure purposes.

The width of the definitive path is undefined whereas the diversion order specifies a width of 3 metres for the new path where it runs alongside the existing boundary fence between points E - F, a width of 2.5 metres between F - G - H where it runs alongside an existing timber and wire boundary fence, and 2 metres between points H - I - D where the new path is unenclosed. 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.

19. 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 along the edge of a field and along a wide, level grassy track edged with trees, providing 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 the occupier has consented to the diversion proposal.

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?

20. 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?

21. 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.goucestershire.gov.uk/media/zwpppu3l/rowip_2011_to_2026-45038.pdf

COMMENTS ON THE OBJECTIONS AND REPRESENTATIONS

22. There were two duly made objections to the Diversion Order from the members of the public, and nine duly made representations in support of it. Eight neutral duly made representations were also received during the statutory 28 day consultation period.

A summary of the grounds given for objecting is as follows:

Objection 1:

- The path would no longer go through the trees and give beautiful views down the valley, and visitors would no longer be able to view the memorial plaque in the garden.
- The footpath existed before the applicants moved into the property.
- It is unfair to advertise the diversion order at a time of year when the footfall could be lower than at other times of the year.

Objection 2:

- The diversion does not meet the accessibility or safety standards that the council should be requiring of a diversion order before it is confirmed.
- The old route has two gates and no cattle, and the new route will have 3 gates and a stile, none of which comply with BS 5709 (2018) Gaps, Gates and Stiles. [Note: the order as made includes four BS 5709 (2018) compliant gates as limitations.]
- The new route goes through two fields close to a drinking trough, meaning that users of the new route will have to interact with cattle.
- The structures and cattle on the new route mean that it is substantially less convenient than the current route.
- The proposed diversion is not in line with the stated policies within the ROWIP with regard to accessibility and one of the landowner interests listed since the diversion increases the risk of injury to the public from the cattle.
- The diverted path is substantially less convenient to the public and will impact upon the enjoyment of the path by able bodied people and disabled people and does not comply with the Councils' ROWIP.

23. GCC's response to the objections is as follows:

A response was sent to each of those who had made an objection or representation to the order.

24. Following receipt of the first objection, GCC held discussions with the applicants who agreed to erect, next to an existing timber bench east of point D, a new timber plaque inscribed or printed with the lines of poetry that can be seen from the existing path through their garden. This bench provides similar

views across the valley to the definitive path. It was noted that the memorial within the garden is a personal one. The objector subsequently agreed to withdraw their objection.

25. On receipt of the second objection a site meeting was arranged with the objector and the applicant to discuss the objection. Following this meeting the applicant agreed to some measures to improve accessibility on the diversion route and address concerns about contact between walkers and cattle, as follows:
 - To fence alongside the path between points E - F and F - G to separate walkers from cattle in the field, leaving a 3 metre width at point G.
 - Point E - remove the existing stile and install a pedestrian gate compliant with British Standard 5709:2018, to be set back 2 metres from the road (BS 5709:2018 - para 5.6).
 - Point F - the order specifies a pedestrian gate compliant with BS 5709:2018. The objector's preference is for a gap at point F. However, the applicant considers that a gate is needed to retain livestock on the few occasions when cattle are being moved from one field to another but has agreed that the gate will be secured open when not being used for transferring livestock (BS 5709:2018 - para 6.3.3).
 - Point G - remove the existing field gate, which will no longer be needed to retain livestock once the new path is fenced.
 - Point I - the order specifies a field gate compliant with BS 5709:2018. The applicant has agreed that the gate will be secured open when not being used for transferring livestock from one field to another (BS 5709:2018 - para 6.3.3)
 - The applicant has agreed to provide a 3 metre width for the new path throughout, except for pinch points adjacent to points E and F. At point E the width will be a minimum of 1.1 metres for a 2 metre long section between the road and the new pedestrian gate. East of the new pedestrian gate the width will widen out gradually to provide the agreed 3 metre width. At point F, the path will widen out gradually each side of the 1.1 metre wide pedestrian gate to provide the agreed 3 metre width.

The objector agreed to withdraw their objection based on the agreed mitigation measures above being implemented by the landowner. Should

these measures be considered necessary to confirm the order, the Council would request appropriate modification to the order to reflect them.

26. Privacy and security are valid reasons for diverting a public footpath in the interests of the landowner and diverting the path out of the garden of Trench Hill is in line with DEFRA's Presumptions Guidance. The Order was made in the interests of the landowner and GCC considers that all the relevant tests have been met to enable the Order to have been made and for it to be confirmed.
27. Gloucestershire County Council therefore respectfully requests the Inspector to confirm this Order, taking into account the measures discussed and agreed with the objector and modification of the order if it is required to reflect any of these measures.