

THE GLOUCESTERSHIRE COUNTY COUNCIL PUBLIC FOOTPATHS GDY 57 (PART)
(PARISH OF DYMOCK) AND GKE 38 (PARISH OF KEMPLEY) DIVERSION ORDER 2023

**PUBLIC PATH DIVERSION AND DEFINITIVE MAP
AND STATEMENT MODIFICATION ORDER
HIGHWAYS ACT 1980
WILDLIFE AND COUNTRYSIDE ACT 1981**

**GLOUCESTERSHIRE COUNTY COUNCIL
PUBLIC FOOTPATHS GDY 57 (PART) (PARISH OF DYMOCK)
AND GKE 38 (PARISH OF KEMPLEY) DIVERSION ORDER 2023**

Order Reference: ROW/3369910

**Gloucestershire County Council's comments on the Statement of
Case from Gloucestershire Ramblers Area**

1. The following comments are Gloucestershire County Council's (GCC's) response to the Statement of Case from Gloucestershire Ramblers (hereinafter referred to as 'the Ramblers').
2. Diversion order

The Ramblers state that "*The Creation Order is welcome*" and suggest that "*The effect of this Order should be to add at least the missing path A-D to the Definitive Map.*"

However, there is no stand alone creation order; the creation of a new route forms part of the Diversion Order, and the order needs to be considered as a whole.

3. Width

In their objection, the Ramblers state that the width of the proposed new path "*should be 5 metres for consistency along the route...as it continues the GKE 39 restricted byway*".

The width of the new path A - D specified in Part 2 of the Diversion order is 2.5 metres, which is acceptable for a field headland footpath, allowing for the hedge. The 2.5 metre width has been agreed with the owner of the land, who has

THE GLOUCESTERSHIRE COUNTY COUNCIL PUBLIC FOOTPATHS GDY 57 (PART)
(PARISH OF DYMOCK) AND GKE 38 (PARISH OF KEMPLEY) DIVERSION ORDER 2023

consented to the path being diverted onto his agricultural field. The Definitive Statement does not specify a width for restricted byway GKE 39 or footpath GDY 55, and GCC can find no evidence that GDY 55 has a width of 5 metres.

4. Historic maps

The Ramblers state that the proposed diversion route A - D “*appears to be a lost way, missing from the Definitive Map*” and that “*it is not permissible to divert a path entirely onto an existing right of Way*”. They refer to a County Roads Map where the path is shown by a dashed line and marked with the word ‘Path’.

The inclusion of a route on a historic map does not necessarily indicate a public right of way. The proposed new path A - D in the Diversion Order is not shown on the OS 25 inch 1st Edition base map (see appendix 1), the 1903 OS 2nd Edition map (see appendix 2) or on the 1925 OS map (see appendix 3). Neither does it appear on the Definitive Map and Statement for Gloucestershire, or on the draft map of 1924 (see appendix 4).

It is acknowledged that the path is shown on current OS mapping, however OS documentation states the following:

“Paths

For Ordnance Survey purposes, a path is defined as any established way other than a road or track. They can be considered as either ‘made’ or ‘unmade.’”

See <https://docs.os.uk/os-downloads/products/maps-and-imagery-portfolio/os-mastermap-topography-layer/os-mastermap-topography-layer-technical-specification/product-themes/roads-tracks-and-paths>

This definition would include permissive paths, paths with only private rights of access and paths created by livestock or other animals.

Where the path is shown on OS maps, the maps include a disclaimer that “*The representation on this map of any other road, track or path, is no evidence of the existence of a right of way.*” Although the path might form part of a historic way, there is little evidence of it, and no Definitive Map Modification Order has been considered to date.

It is accepted that a field edge path between points A - D can be seen on aerial mapping. Footpath GDY 57/GKE 38 is obstructed by a hedge at point B, and it’s likely that the unavailability of the definitive path has prompted some walkers to

THE GLOUCESTERSHIRE COUNTY COUNCIL PUBLIC FOOTPATHS GDY 57 (PART)
(PARISH OF DYMOCK) AND GKE 38 (PARISH OF KEMPLEY) DIVERSION ORDER 2023

follow an unofficial route between A - D to connect with other highways and reach Kempley Green.

The history of footpath GKE 38 is that it was recorded as a footpath on the Newent Rural District Definitive Map for Gloucestershire which has a relevant date of 1 November 1952. No width was recorded.

5. Path length

The Ramblers claim that diverting the path *“would result in a circuitous and less convenient route to the centre via the outskirts of the village.”*

GCC accepts that the loss of GKE 38 does remove a link to the centre of the village, however footpath GKE 29 and restricted byway GKE 39 offer a suitable alternative. GKE 39 retains the link to the Three Choirs Way and the Daffodil Way to the southwest, and footpath GKE 39 to the north retains the link to the Three Choirs Way.

The Parish Council makes clear in its statement in support of the Diversion Order, that it supports the diversion of the footpath.

6. Views

The Ramblers make the point that *“The [definitive] path gives enjoyable views over the village and to the hills beyond.”*

GCC considers that the views are substantially the same from the proposed new path, and better views are available at the point where GDY 54 and GDY 57 meet.

7. DEFRA presumptions guidance

The Ramblers state that *“Any concerns raised of security and privacy should be little different from any other property adjoining a path or road...”* and that *“Presumptions Guidance on Curtilage should not be a concern as the path crosses the field of [REDACTED] some 160 metres away from house. Other public paths and roads are closer.”*

DEFRA presumptions guidance, which applies where a public right of way passes through a garden or curtilage of a residential dwelling, states that:

THE GLOUCESTERSHIRE COUNTY COUNCIL PUBLIC FOOTPATHS GDY 57 (PART)
(PARISH OF DYMOCK) AND GKE 38 (PARISH OF KEMPLEY) DIVERSION ORDER 2023

“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.”

And that:

“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.”

The guidance applies to the section of path from B - C, which passes through the garden of one house and along the driveway of another, because GCC considers that the diversion meets the legal tests.

8. For the reasons provided above Gloucestershire County Council respectfully requests that the Inspector confirms the Diversion Order for footpaths GDY 57 and GKE 38.

List of appendices:

- | | |
|-------------|--|
| Appendix 1: | 1844 - 1888 OS 25 inch 1 st Edition map |
| Appendix 2: | 1903 OS 2nd Edition |
| Appendix 3: | 1925 OS map |
| Appendix 4: | 1924 draft map for Gloucestershire |