

**HIGHWAYS ACT 1980 - SECTION 119
PUBLIC PATH DIVERSION ORDER
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53A(2)
GLOUCESTERSHIRE COUNTY COUNCIL
DIVERSION OF PUBLIC FOOTPATHS GKE 38 AND GDY 57 AT
THE REDLANDS AND FELANIA
(PARISHES OF KEMPLEY AND DYMOCK)**

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 jointly by the owners of The Redlands and Felania, Kempley, under section 119 of the Highways Act 1980 (“HA80”) and the Wildlife and Countryside Act 1981 section 53A(2) to divert footpath GKE 38 and part of footpath GDY 57 in the Parishes of Kempley and Dymock.

The application is made in the interest of the owners of the land crossed by the paths, to move the footpaths as shown on the Definitive Map away from the driveway of The Redlands and the grounds of Felania and onto an adjacent grassy field. Moving the paths would increase privacy and security for the landowners and would provide walkers with a convenient link to connect footpath GDY 57 with footpath GDY 55 and restricted byway GKE 39.

DESCRIPTION OF DIVERSION ORDER ROUTE

2. GKE 38 and GDY 57
The definitive path GDY 57 to be stopped up starts at point A on the attached map, see annex 1, and proceeds in a south westerly direction for 151 metres diagonally across a grassy field to the parish boundary at point B. The path then continues as GKE 38 across the field for a further 5 metres before crossing the field boundary

onto the property Felania. At the field boundary the path is obstructed by a hedge. The path then continues across the grounds of Felania in a south westerly direction for 97 metres before turning west southwest and proceeding for 50 metres along the driveway of The Redlands to join road number C55 at point C, 16 metres southeast of restricted byway GKE 28. The path is further obstructed by a hedge at the eastern end of the driveway of The Redlands.

The proposed path starts at point A and proceeds across a grassy field alongside the boundary hedge in a generally southerly direction for 141 metres to point D at the junction with footpath GDY 55.

The proposed path will have a grass surface.

WIDTH AND LIMITATIONS

3. The new path will have a recorded width of 2 metres. There will be no limitations recorded.

STATUTORY PROVISIONS

5. 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.

6. 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.
7. 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.
8. GCC also has a duty to consider its obligations under the Equality Act 2010.

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 footpaths GKE 38 and GDY 57 in the interests of the owners of the land. The existing footpath GKE 38 crosses a grassy area that forms part of the garden of Felania before proceeding along a driveway, passing close to a garage. Diverting the footpath would increase privacy and security for the landowners.

The new route following the field edge will enable the landowner to make better use of the land for grazing cattle.

Is it expedient to divert footpaths GKE 38 and GDY 57 having regard to the points of termination and whether these are substantially as convenient to the public?

10. The existing and proposed routes both start at the same point. The definitive route A - B - C has a length of 303 metres and ends at the junction with road C55 at Kempley Green, although the route is obstructed by two hedges and is not useable. The proposed route has a length of 141 metres between points A and D, with an additional 271 metres along footpath GDY 55 and restricted byway GKE 39 to re-join road C55 at Kempley Green. The proposed route finishes 250 metres southeast of the definitive path. The proposed route will provide a convenient link between footpath GDY 57 and footpath GDY 55 and onto the Three Choirs Way and Daffodil Way beyond.

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.

GCC's obligations under section 29 HA80

12. The diversion will benefit the needs of agriculture by moving a cross field section of footpath GDY 57 to the boundary of the same field to enable the landowner to make better use of the land.

GCC's obligations under the Equality Act 2010

13. A 50 metre section of the definitive path runs along a surfaced driveway, however the majority of the path has a grass surface as does the proposed route. Both the definitive and proposed paths are level and the new route will have no limitations.

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). The interpretation of section 119(6) was considered in the case of *R (on the application of Young) v The Secretary of State for the Environment, Food and Rural Affairs* [2002] EWHC 844. Paragraph 26 of the PINS Advice Note 9, commenting on the above case, states that subsection 119(6) has three separate tests to it.
- (i) Firstly, the order is expedient in terms of section 119(1), i.e. that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path be diverted but not so as to alter the point of termination if not on to a highway or to a point on the same highway not substantially as convenient to the public. These are dealt with in paragraphs 9 and 10 above.
 - (ii) Secondly, that the diverted path will not be substantially less convenient to the public in terms of, for example, features which readily fall within the natural and ordinary meaning of the word “convenient” such as the length of the diverted path, the difficulty of walking it and its purpose.
 - (iii) Thirdly, that it is expedient to confirm the order having regard to the effect:
 - (a) the diversion would have on the public enjoyment of the path or way as a whole;
 - (b) of the order on other land served by the existing public right of way; and
 - (c) of the new path or way on the land over which it is to be created and any land held with it.
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 141 metres plus an additional 271 metres to re-join the road and a further 250 metres along the road to point C, the termination point of the definitive path. Whilst this is longer than the definitive route, which is 303 metres, the new path would replace a path that is not useable and offers a pleasant route through a field to connect with footpath GDY 55.

For walkers wanting to travel between footpath GDY 57 and the Daffodil Way to the west or the Three Choirs Way to the south, the diverted path forms a convenient link

to footpath GDY 55 and onto restricted byway GKE 39, which connects to both of these promoted routes. There are no significant changes in gradient or surface between the current and proposed route.

16. The third test is addressed as follows: - Public enjoyment will be increased by the diversion of this path as it is generally accepted that walkers would prefer not to walk through what appears to be a private driveway and garden. The proposed route is a pleasant walk along the edge of a grassy field with enjoyable views of the surrounding countryside.

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.

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

17. 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