



Order Decision

Inquiry opened on 5 March 2013

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 19 March 2013

Order Ref: FPS/P0119/4/9

- This Order is made under Section 119B(4) of the Highways Act 1980 and is known as The South Gloucestershire Council (Footpath PBN 10 at Oldland Common) Special Public Path Diversion Order 2011.
- The Order is dated 6 July 2011 and proposes to divert that part of Public Footpath PBN 10 running from the end of the bridge over the railway path, across the playing fields to High Street, Oldland Common, onto a line running to the north-east and then east to the High Street and also to a line running south-westwards, to North Street. Full details of the route are set out in the Order Plan and Schedule.
- There were eleven objections outstanding at the commencement of the Inquiry.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Preliminary Matters

The decision to make the Order

1. A concern was raised that the decision by the Public Rights of Way and Commons Registration Committee ("the Committee") of South Gloucestershire Council, the order-making authority ("the OMA"), to make this Order was not carried out correctly. The OMA confirmed that a complaint had been made and dealt with through their procedures. Whilst it appears that the party raising the matter with me was dissatisfied with the outcome of this complaint, it is not a matter I am able to take into account.
2. I have been appointed to determine whether or not this Order should be confirmed in accordance with the provisions of paragraph 2A of Schedule 6 to the Highways Act 1980 ("the 1980 Act"). Other than the complaints procedures already exercised, the correct course of action for any party aggrieved by procedural irregularities would be to seek judicial review of the decision. There was no indication that this had occurred and the opportunity to question the validity of the Order on these grounds has now lapsed.

The diversion

3. Generally, a diversion Order will extinguish one route and create a replacement. In this case, the Order proposes to extinguish the line A – B¹ and to create the line A – X – C – D, as well as the line A – F – E. I agree with the OMA that the wording of section 119b(4) does not appear to limit the extent of the creation and there have been no objections on this basis. I understand

¹ Points A – F and point X are indicated on the modified Order plan

that the line A – F – E was requested for inclusion in the Order by the Ramblers' Association, during the pre-Order consultation process. I am satisfied that I can consider confirmation of the Order as made.

Public access on the land

4. The land crossed by the relevant part of the footpath has been the subject of two applications to record public access, which appear to have arisen as a result of discussions about fencing the perimeter of the playing field². The first was to record a new town or village green, under the Commons Act, 2006. This matter was determined in 2010, following a Public Inquiry and the Committee decided that no town or village green should be registered.
5. Following that decision an application was made, under the Wildlife and Countryside Act 1981, to record a number of routes here. I understand this to have included the routes A – F – E and A – X - C. The Committee determined that no additional rights of way had been established over this land.
6. As a result of this, and following confirmation at the Inquiry that the land is not registered common land, I understand the only legal public right of access here to be on the public footpath PBN10 ("the footpath"), A - B.

Modification of the Order

7. There were two points relating to the drafting of the Order which I queried. The first was whether the apparent reduction in width at the culvert, point X on the modified Order, should be recorded. The second related to the description of the proposed pedestrian gate to be sited on the route C – D, which did not refer to the relevant British Standard, as recommended by the Department for Environment, Food and Rural Affairs guidance, '*Authorising structures (gaps, gates & stiles) on rights of way*', October 2010.
8. The OMA requested modifications to the Order with respect to these points and I am satisfied that, in confirming the Order, it is appropriate for me to do so.

Procedural Matters

9. I made an unaccompanied site visit on 4 March 2013 and held a Public Inquiry into the Order on 5 and 6 March. No-one requested a further accompanied visit following the close of the Inquiry.

Main Issues

10. The Order has been made as it appears to the OMA that part of the footpath should be diverted for the purposes of school security. The requirements of Section 119B of the 1980 Act are as follows:
 - (a) that the footpath is a relevant highway which crosses land occupied for the purposes of a school;
 - (b) that it is expedient that the footpath should be diverted for the purposes of protecting the pupils and staff from:
 - (i) violence or the threat of violence;

² This seems to have included the field to the north of REP, which is outside the area with which I am concerned

- (ii) harassment;
 - (iii) alarm or distress arising from unlawful activity, or
 - (iv) any other risk to their health or safety arising from such activity;
- (c) that it is expedient to confirm the Order having regard to all the circumstances, and in particular to:
- (i) any other measures that have been or could be taken for improving or maintaining the security of the school;
 - (ii) whether it is likely that the coming into operation of the Order will result in a substantial improvement in that security;
 - (iii) the effect which the coming into operation of the Order would have as respects land served by the existing footpath;
 - (iv) the effect which 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, account being taken of the provisions as to compensation.

11. The objections to the Order centred on the desirability of keeping the route in its current location, as it was used by local people. It was argued that the alternative routes proposed to be provided were not as convenient, particularly with respect to distance. There was disagreement as to the potential effect on safety and security for staff and pupils and whether there was any need to divert the route, with a suggestion that the issues raised were exaggerated.

Reasons

Whether the footpath is a relevant highway

12. In November 2007 an application was made to the OMA, on behalf of Sir Bernard Lovell ("SBL") and Redfield Edge Primary ("REP") Schools to divert the footpath in question. The route runs from a bridge crossing the Old Midland Railway line, known as Battley Bridge, point A, to the High Street, point B.
13. The route is recorded as part of a public footpath on the Definitive Map and Statement of the former Warmley Rural District Council. I am satisfied that this is a relevant highway for the purposes of this Order, as defined in section 119B(2)(a) of the 1980 Act. There was no argument that the OMA were not the relevant highway authority and I am satisfied on this point.

Whether the land which the footpath crosses is occupied for the purposes of a school

14. I was informed that SBL was in the process of applying to become a Trust School with Foundation status and it was argued that this would remove the playing fields from the ownership of the local education authority and so affect whether or not this legislation could be used to divert the route.
15. A school is defined in Section 329(1) of the 1980 Act as having the same meaning as in the Education Act 1996 ("the 1996 Act"). The 1996 Act defines it as an educational institution providing primary or secondary education, whether or not also providing further education. Section 14(2) sets out that a school must provide "appropriate education" offering such variety of instruction and training as may be desirable. Section 507A(1) sets out that the facilities

provided should include adequate facilities for recreation and social and physical training for children who have not attained the age of 13, which would include playing fields and playgrounds.

16. REP is a mainstream state school for girls and boys aged 4 – 11, whilst SBL is a county maintained co-educational comprehensive school for ages 11 – 18. I agree with the OMA that the ownership of the land is not relevant for the purposes of this legislation, only the use of the land. I further agree that it has not been shown that a potential change to the status of SBL would alter its definition as a school under the 1996 Act or, by extension, the 1980 Act.
17. The use of the land for formal physical education purposes, as well as informal play, means that it is occupied for the purposes of a school, or in this case, two schools. I am satisfied that the Order route is currently a relevant highway, for the purposes of Section 119B of the 1980 Act, and would remain so even if Foundation status was granted prior to the issue of this decision.

Whether it is expedient that the footpath should be diverted for the purposes of protecting the pupils and staff

18. In reaching the decision to make the Order the OMA took account of incidents that had occurred on the playing fields, submitted by the schools. In objection, it was argued that such matters had occurred on the field to the north of REP, rather than the playing field with which I am concerned.
19. I heard direct evidence, given under cross-examination, from representatives of both schools. I am satisfied that the matters to which they spoke occurred on the southern playing field, crossed by the Order route. It was fairly conceded that it was not known which field was referred to by the dog warden, within her letter, however, both schools gave direct evidence of the use of the south field by dog walkers and the problems which arose were the issues identified by the dog warden, with the associated risks arising as a result. Whilst one party indicated that he believed the mess on the field arose predominantly from foxes, I am satisfied from the cross-examination, that dog mess is an issue.
20. There was again a fair concession in relation to the Summary of Police Recorded Incidents, supplied by the Crime Prevention Design Advisor of the Police Community Safety Department. It was agreed that the old gym was not on the relevant field and had now been demolished. It was also noted that the Report from the Anti-Social Behaviour Team may include reports relating to land around the field, rather than on it, due to the way in which the areas were identified. However, with cross-reference to the evidence from the schools, it was clear that a significant proportion of these reports did relate to incidents on the field. The representative from REP indicated that she had personally called the police out to the field on more than one occasion.
21. The reported incidents are, as may be expected, past events, as it was their occurrence which led to the application to divert the route. However, I am satisfied that such incidents still occur, or are likely to reoccur. It was noted that a number of them take place outside school hours, or term-times, however, they continue to affect the ability to use the playing field during school hours, as desired and required as part of the curriculum.

22. The incidents included littering, with broken glass, condoms, barbeques, drug paraphernalia, and dog mess on the playing fields; vandalism; abusive and threatening behaviour; streaking; arson; motorbike scrambling; interaction with strangers; and theft. I was also informed of incidents in which the REP witness was personally involved, resulting in the threat of violence to her.
23. There was a clear difference in the risks perceived by objectors to the Order and those perceived by the schools and the OMA. I understand that the objectors may not have been aware of the amount and seriousness of the incidents referred to, perhaps due to the time of day at which they themselves used the Order route. I also accept that they will not have been approached by school staff, who would have no right to prevent legitimate use of the footpath.
24. REP, which is situated on the northern edge of the playing field, has now enclosed the immediate area around the school buildings and hard play areas with fencing and installed closed circuit television ("CCTV"). It was confirmed that this had reduced incidents occurring in this area. REP and SBL, which is situated to the south-east, off North Street, indicated an intention to fence the playing field, if the Order was confirmed, in line with Department for Education guidelines. This would allow them to prevent unauthorised access and use the playing field as they wished.
25. I was informed of some additional access points onto the playing field and whilst some incidents may have arisen from access via these, I consider that the footpath provides an obvious and easy access, particularly from the more urbanised area to the west. I agree with the supporters that the footpath provides a legitimate reason for people to be on the playing field, meaning the schools cannot physically prevent access, allowing the incidents to occur.
26. I consider that the matters raised indicate that there is violence or the threat of violence, harassment, alarm or distress arising from unlawful activity and other risks to the health or safety of pupils or staff as a result. Taking all the evidence into account I consider that the diversion of the footpath would be expedient for the purpose of protecting the pupils and staff of both schools.

Whether it is expedient to confirm the Order

Other measures that have been or could be taken for improving or maintaining the security of the school

27. It was argued that the existing signs referred to out-of-date legislation and that action should have been taken to update them. The OMA confirmed that the quoted legislation had been superseded, however, I agree with them that, regardless of this, the signs do make it clear that there is no general public access right on the field, but this has not prevented the problems arising; even if such signs were updated it would be unlikely that this would keep users on the only legitimate access of the footpath itself. The fact that the sign at point A has been vandalised demonstrates that there are issues occurring in the area which should not be acceptable on a school premises.
28. The lack of bye-laws was said to prevent action being taken in relation to dogs, however, there is no public right to walk dogs over the playing field at the present time but this still occurs, along with the associated problems. With the

footpath in place, the right to walk it remains and it is unlikely that dogs would be kept to the footpath, even with bye-laws in place.

29. It was noted that REP did not lock a gate leading from High Street into the field, just to the south-west of point D. It was suggested such a failure in relation to any proposed gates in the fencing would render the purpose of the fencing useless. REP indicated that the gate referred to gave access only to the field and that the gates associated with the school buildings and immediate surroundings were kept locked for safety and security reasons. I am satisfied that the treatment of this gate, at a time when legal access continues to be available via the footpath, does not indicate the situation likely where security can be improved, if the footpath is diverted.
30. There was discussion regarding the possibility of fencing the footpath from the surrounding land, providing gates for pupils and maintenance equipment to cross from one side to the other. However, SBL indicated that this would prevent them making the improvements to the playing fields which they hoped would be possible with diversion of the footpath. It would prevent the provision of a running track and also the rotation of the position of formal pitches to different areas, which is currently a problem, as they need to avoid the line of the footpath and so worn areas arise on certain parts of the pitches. I do not consider that double-fencing the footpath would provide a suitable solution for walkers or the schools in this instance.
31. I also agree with the OMA that there appears to be no practical way to gate the entrance at point A. Without diverting or fencing the footpath itself, I cannot see how this would resolve the issues discussed above.
32. I consider that most measures that could reasonably be taken to improve security have already been taken or considered, without a significant reduction in the problems being experienced. I do not believe that the legislation means that it would be inappropriate to confirm an Order unless all possible measures had actually been taken. Although some small adjustments could still be made, I am satisfied that they would not lead to the significant improvement in the security that is sought by the schools. It would seem to me to be a waste of public money to take significant further measures, unless the footpath was diverted, as access would still remain over the playing field, making it difficult to control access generally. SBL indicated that as far as they were concerned this was the next step, required in order to be able to fence the playing field.

The likelihood that the coming into operation of the Order will result in a substantial improvement in security

33. I consider that confirmation of the Order would, at the very least, allow more robust challenges to be made to anyone on the playing field, as there would be no legitimate right of access, except at the perimeter, on the line F – E – A – X – C – D. However, more significantly, it would allow fencing to be put in place to secure the site perimeter, acting as a line of defence against unauthorised access. Whilst there may be issues to resolve around planning permission and financing, I am satisfied that there is a clear intent to pursue this matter, following the outcome of this decision. I do not consider that the perimeter can be adequately secured whilst the footpath allows access onto the playing field.

34. Concerns were raised about the section C – D bringing walkers closer to the school buildings, however, I am satisfied that the existing security fencing and CCTV in this area will assist. I consider there is a balance in gaining security over the playing field, without preventing the public having rights of access in the area.
35. I consider that securing the perimeter of the field will allow the schools greater control over casual access, which is likely to reduce the type of incidents that have been identified but I do not believe that this could occur with the footpath in this location. I consider that diverting the footpath would result in a substantial improvement in security in relation to this area of land.

The effect on land served by the footpath, account being taken of the provisions as to compensation

36. The affected land is owned by the OMA and the land crossed by the existing footpath would remain part of the school playing field, whilst proposed routes would be created on land in the same ownership. I am satisfied that there should be no detrimental effect in this respect.

Whether the points of termination are on the same highway or one connected to it

37. I am satisfied that points D and E meet the test set out above.

Expediency

38. I fully understand that legitimate users of the footpath do not wish to lose the amenity that they have enjoyed over many years, due to the actions of, no doubt, a small minority. Whilst the legislation does not specifically allow consideration of the types of concern raised, I consider it to be part of the overall expediency test, which I shall take into account here.

Distance

39. One of the main concerns raised by objectors was the additional distance introduced by the proposed routes in comparison to the existing. I note that the existing route does not provide direct access to shops or facilities and so, with the exception of access to and from the properties on the High Street, near point B, there appears to be little utilitarian need for the route.
40. I heard from one party, who used the route for recreation and to visit friends and relatives living in the properties on High Street. Whilst I understand that he would like a choice as to use of the footpath, rather than the road route along North Street and High Street, the reality is that there will only ever be limited numbers of people who desire access to and from these properties.
41. In terms of public access for recreation the link route would be Footpath PBN29, on the eastern side of High Street. I agree with the OMA that the proposed route A – C – D gives a closer link to that footpath and, although overall it is slightly longer than the route A – B – D, this is not a significant distance in terms of someone taking a recreational walk.
42. I agree that for some users, for example the elderly or those with young children, the additional distance may be more significant than for an 'average' walker. However, given the limitation of the stile at point B it is likely that

these users would not use the route to a great extent in any case. I understand that an additional distance, no matter how short, is likely to be inconvenient to at least some users but I do not consider that the extra distance in this case means that the alternatives are not reasonable, when considering the likely use of the Order route.

Health & Safety

43. An issue was raised regarding sharing section C – D with vehicles. I agree that it may not be ideal, however, the most usual access would appear to be for parking by school staff, with vehicle movements at limited times. The lorry referred to was present when there was no recorded right of way and so, not unreasonably, would not have taken account of general public access. The recording of a route in this location may lead to the need to consider such access in terms of delivery times or locations, however, I am satisfied that this is a matter on which the OMA, in their role as the highway authority, would be best placed to advise.
44. High Street itself has a pavement alongside the length of the playing field. I do, of course, understand that people might prefer to use the off-road footpath but, as the pavement would need to be used in any case to gain access to and from point B, I do not consider that users are placed at any significant disadvantage by the proposed diversion in this respect. I agree with the OMA that there may be an advantage to some in not having to use a grass route, which may be muddy at certain times of the year.
45. Concerns were raised that the fencing of the proposed route created a 'corridor', from which it would be difficult to escape should the need arise. There were concerns that this would leave users vulnerable and I note that police provided advice in this respect, prior to the making of the Order. As a result of their input the width of the route will be 5 metres, including substantial verges. Additionally, the fencing will be of permeable visibility, such that views are available along the length, so far as possible, as well as across the corner at point C, the alignment of which was altered following police advice.
46. I understand that some people may be concerned about the use of proposed routes, and may choose not to use them; however, I consider that the OMA have taken the appropriate advice to ensure that they will be as safe and inviting as possible. I note that the police were not supportive of the section E – F, however, this route appears to already be in use and has been included on request. There was no evidence of incidents occurring on this route.

Historic route

47. Several people referred to the historic origins of this footpath, expressing concern at the loss of the heritage of such a path. The 1882 Ordnance Survey ("OS") map, shows the route follows an "Old Tramway", which some people refer to as the "dramway". The 1969 OS map shows that there was still a feature on the ground at that time and I agree with the OMA that there appears to have been an embankment leading from point A at the western end. Reference was made to there having been an avenue of trees.

48. Whilst I agree that such features may have assisted in keeping people on the line of the footpath, they are no longer visible on the ground; they were probably removed to extend the available area of the playing field. The suggestion that the feature should be listed is an entirely separate matter.
49. I do understand that people often enjoy the historic value of a site, however, given that there is no visible feature, the historic connection is, in my view, compromised. I note the comments of the Historic Environment Records Officer, however, I consider there to be little value in preserving the alignment, where there is no indication of it on the ground.

Wildlife

50. Concerns were raised regarding the effect of the route on wildlife, as slow-worms and newts, or lizards, apparently sunbathe on the surfaced path between points A and X. The OMA confirmed that although the recorded width of the route would be 5 metres in this location, there was no intention, at this stage, to surface an additional width. The majority of the width would be verge and so any wildlife currently making use of the area should not be affected.
51. The additional sections, which may be surfaced, are already generally subject to a worn route on the ground, being clear desire lines in relation to accessing REP, the playing field and the western section of the footpath, from point A. I am satisfied that there would be minimal impact on wildlife habitats.

Conclusions

52. I accept that some of the issues raised would be likely to make the proposed alternative routes less pleasant than the existing route of the footpath and, for some users, may be less convenient. However, I also note that the much of the alternative route E – F – A – X already exists and is used for school access. Taking all the above matters into account, I consider, on balance, that they provide reasonably convenient alternatives to the Order route.
53. Whilst I understand that people do not like the idea of change to an historic situation, we must, unfortunately, deal with the situation now. The introduction of the relevant legislation, by the Countryside and Rights of Way Act 2000, was to enable the closure or diversion of rights of way crossing school land, due to the altered circumstances and society to that which may have existed when the land was first used for this purpose.
54. I must balance the conflicting interests, of diverting the footpath for the safety of pupils and staff, against the value of retaining the footpath on the current alignment for the benefit of walkers. These are strong and legitimate competing interests, however, in balancing them, I consider that greater weight should be given to the safety of potentially vulnerable individuals, over the possible inconvenience of alteration to a preferred route for users.
55. Keeping in mind all the matters raised I consider that it is expedient, for reasons of school security, that the Order should be confirmed.

Other Matters

56. Views were expressed that the school playing field, accessed by using the footpath, should not be closed to the public as there was no comparable green

space in this area. However, this is not public green space but a school site and, whilst some people appeared to feel that it was publicly owned and should be publicly available, there is no right of access on school property.

57. I understand there to be some access onto the field from the rear gardens of private properties on High Street, to the east of the school grounds. Whether or not private rights have been acquired onto the field is not a matter for me.

58. Discontent regarding the response of Bitton Parish Council is a matter for the individuals concerned.

59. Some people raised concerns the Order has been made to allow the sale and development of the playing fields, although this appears to relate to the north field. Such a possibility is not a matter I am able to take into account.

Conclusions

60. Having regard to these and all other matters raised at the Inquiry, and in the written representations, I conclude that the Order should be confirmed, subject to the modifications discussed at paragraphs 7 and 8. These modifications do not require advertisement.

Formal Decision

61. I confirm the Order subject to the following modifications:

- Within Part 2 of the Schedule:
 - after text “...of 5 metres...” add text “*except at point X, width of 2 metres...*”;
- Within Part 3 of the Schedule:
 - after text “...1.2 metres width...” add text “...*compliant with BS 5709...*”;
- Within Part 4 of the Schedule, in relation to the particulars of Footpath PBN/10/40:
 - after text “*Width 5 metres...*” add text “*except at point X, width of 2 metres. BS 5709 compliant...*”;
- On the Order map:
 - add point X.

Heidi Cruickshank

Inspector

APPEARANCES

For the Order Making Authority:

Mrs D Leamon	Solicitor, South Gloucestershire Council
<i>who called:</i>	
Nicola Chidley	Senior Public Rights of Way Officer
Mr D Plumbridge	<i>on behalf of</i> Sir Bernard Lovell School
Mrs C Pursey	<i>on behalf of</i> Redland Edge Primary School

In Objection to the Order:

Mr G Burchill

Mr A Harris

Mr T Hayward

DOCUMENTS

- 1 The Order
- 2 Highways Act 1980, section 329
- 3 Education Act 1996, parts
- 4 Trust School Proposal: A Guide for Governing Bodies and Local Authorities
- 5 Information relating to travellers on the north field
- 6 E-mail regarding ownership and rights on the playing field
- 7 Photographs of signs
- 8 Ordnance Survey maps
- 9 Requested modifications to the Order
- 10 Closing submissions on behalf of South Gloucestershire Council
- 11 Statement of Mr G Burchill
- 12 Statement of Mr T Hayward