

Application P-2023-013 Public Path Diversion Order Public Bridleway Purton 104 (part).

Applicant's statement to accompany Wiltshire Council's initial pre-consultation on the making of an Order.

Date: 20 January 2025

Revised Government Guidance, introduced in August 2023.

Hansard records that on 23 March 2016 the Government Minister Baroness Williams of Trafford made the following statement,

“...guidance that will effectively act as a presumption to divert or extinguish public rights of way that pass through the gardens of family homes, working farmyards or commercial premises where privacy, safety or security are a problem.

The guidance will give authorities more scope to confirm orders made in the interests of the landowner where a right of way may cause hardship because it goes through the garden of a family home, a working farmyard or other commercial premises.”

In August 2023, the guidance was published by the Department for Environment, Food and Rural Affairs.

The guidance sets out the matters that the local authority should consider in the above situations, alongside all other relevant considerations including those within rights of way circular 1/09 (or as revised), Sections 118, 119, 118ZA and 119ZA of the Highways Act 1980 and Section 54B of the Wildlife and Countryside Act 1981. At the time of our writing this statement, the guidelines apply only where local authorities choose to consider diverting or extinguishing a right of way under Section 119 and Section 118 respectively.

The guidance reflects the government's view that members of the public may not be comfortable following a path through a contained space such as a private garden, farmyard or commercial premises, due to concerns about invasion of privacy of a houseowner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises. Such considerations can deter people from exercising the public's right to use the path. The more that a route over privately owned land brings people into close proximity with the associated house or operational farm buildings, the less likely they are to be comfortable using it. The guidance to local authorities is that these are matters that they should consider.

Equally, the Government recognises that even where a public path through a private garden has existed for centuries, and perhaps even pre-dates the use of the land for these purposes, the presence of the path could be problematic for the landowner.

Reasons that the Government has identified are:

- a) A reasonable expectation of being able to relax in the garden or spend time with family and friends without strangers appearing in the same contained space.
- b) Greater concerns today than in previous eras about the security of children or property in such situations

- c) An increased use of public rights of way for general leisure and recreational use rather than local people using them to get around the locality, particularly where rights of way are promoted by local authorities.
- d) A concern that having a public path close to the house has a negative impact on the value of a property.
- e) Farmyards or commercial operations putting the public potentially at risk or being regularly disturbed, because of the limited space within which a route passes.

Local authorities should also consider the potential for improving a path so diverted or replaced (for example by replacing stiles with gates).

To summarise, it is for the local authority to consider in particular the impact of the existing path on the property owner and/or occupier against the benefit that having the right of way through the land brings to the public, taking account of this guidance.

Recent history of Public Bridleway Purton 104:

A Public Path Order, for which the Planning Inspectorate's reference is FPS/Y3940/4/8, was made by Wiltshire Council on 20 September 2011, in accordance with the provisions of Section 119 of the Highways Act 1980. The Order proposed to divert part of Public Bridleway Purton 104, with the difference in length between the existing route (approximately 410 metres) and the proposed new route (approximately 445 metres) being approximately 35 metres. The Order attracted both support and objections in response to the statutory public advertisement and was considered by an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs at a Public Inquiry held on 13 and 14 November 2012. There were 83 supporters of the Order and 39 objectors to it.

The existing route of the bridleway, historically of between 3.7 to 7.6 metres in width and leading eastwards from Ringsbury Camp to an unclassified road east of Restrop Farm comprised two distinct sections, the western part following a clearly ancient sunken lane, but which had remained relatively undisturbed and in more recent years largely unmaintained (resulting in considerably less width having been available for use, and the eastern part having been incorporated within the maintained garden and immediately surrounding land immediately the west of and beside the farmhouse. The entire length of the bridleway to be diverted is known as Mud Lane; the unmaintained and partly obstructed but otherwise mostly preserved section being prone to flooding in prolonged periods of wet weather, the name suggesting that this might have been a long-standing situation.

The Inspector was not helped by the lack of information provided by the supporters of the order as to their reasons for their support, such that he was unable to assess whether or not the extent of that support would have been as high had the sunken lane section of the path been well maintained.

The Inspector identified that the majority of the objections were concerned with the loss of their use and enjoyment of the historic value of the ancient lane, should the Order be confirmed. On balance, he considered this to be the deciding factor and to outweigh the comparative greater ease of use for some users of the proposed alternative route, currently in use as a permissive bridleway created by the landowner as a level grass-surfaced path between hedges, of approximately 4.0 to 4.2 metres in width.

Other matters that the Inspector also had to consider included whether or not the availability of the diversion route, provided by the landowner and maintained to a high standard, when compared to the costs of restoring the accessibility and ease of use of the historic route, was a significant consideration in terms of the diversion being in the public interest. There were differences in the opinions of the objectors and Wiltshire Council about the costs of undertaking this work, the Council believing that its statutory duty was to clear and maintain the bridleway to a higher standard than the objectors considered to be necessary. The Inspector concluded that this was not a matter to which he could apply significant weight when making his decision, however it is notable that, on the presumption that both the existing bridleway and the proposed route were in future to be maintained to the appropriate standards, the Inspector considered that the proposed new route would not be substantially less convenient to the public.

The Inspector accepted that the diversion would be in the interests of the landowner, providing greater privacy and security in the vicinity of the farmhouse and through the garden, but in making his decision that the Order should not be confirmed, he did not consider that the landowner's interests outweighed the value of the public's enjoyment of the use and continuing existence of the historic lane.

How does our new application vary from the 2011 application, by taking account the decisions of the Inspector at the 2012 Public Inquiry and the also the new guidance issued by DEFRA?

1. We fully understand and accept the Inspector's conclusions that the ability of the public to experience and enjoy the historic route of the bridleway along the sunken lane outweighs all the other matters that were considered, so we have excluded from the new application that section of the bridleway in order to ensure that use and experience is protected and can continue. The length of bridleway now proposed to be diverted is approximately 172 metres. The length of the proposed new route is approximately 252 metres and so would an additional 80 metres to the overall length of the bridleway.
2. The extent of the diversion now proposed now includes only the part of the bridleway that falls within the area that forms the garden to the farmhouse and the buildings associated with the residential use of the farm, plus the short section across the driveway to the farm and the farmhouse which is in regular frequent use by motor vehicles including farm machinery. There is limited time to see approaching vehicles, so there are obvious safety risks and a strong likelihood of disturbance to members of the public using the bridleway, who may be on foot, bicycle or leading or riding horses. Few bicyclists and no horse riders, as far as we are aware, use the bridleway at the moment, because their preference is for the permissive alternative onto which it is proposed to divert this part of the route. The diversion route initially follows a level and straight stone-surfaced farm track between low fences, where there is good all-round visibility, before continuing along a level grass-surfaced bridleway which is hedged on both sides, providing an opportunity to enjoy the abundant wildlife.
3. Privacy and security, as the Government clearly understands and recognises to be issues that the local authorities should take into account, are both relevant issues for us as the owners and occupiers of the farmhouse and the farm. There are the obvious

issues of the adverse effect upon our enjoyment of the garden in the constant knowledge that we may at any time be interrupted by walkers, bicyclists or horse-riders who may themselves prefer to have been able to take an alternative route that is at least of equal convenience. There have also been two occasions when intruders have been able to use the bridleway as a means of access in order to enter the buildings close to it; the existence of the bridleway in its present position makes it difficult to challenge anyone who appears to be acting with intent to do anything other than to simply exercise their right of passage along the bridleway. Examples of incidents affecting our privacy and security have included:

- An intruder who used the bridleway to gain access to the property at night, disturbing sleeping guests.
 - Groups of males using the bridleway for access and then roaming the farmyard; these people were clearly not genuine walkers.
 - People leaving the bridleway to walk around the house and look through the windows. Dogs have been allowed to jump up at the windows. These incidents have occurred at night as well as during the day.
 - People with uncontrolled dogs, who have allowed them to chase animals within the garden and farmyard.
 - People parking their cars in the driveway and picnicking in the garden.
4. The present route of the bridleway requires users to pass through three separate gates. The gates are legally permitted but are undoubtedly an inconvenience, particularly to horse-riders and cyclists. The proposed diversion route will be free of any gates and in that way will be more easily accessible. We have no intention at present to close the permissive bridleway but we cannot guarantee that circumstances will not change at some time in the future. Should the permissive route become the public right of way through the diversion order now applied for, any new gates would require the approval of the local highway authority, under very specific circumstances.

We trust that this information will be of assistance to persons considering the merits of our application in the light of the government guidance.