
Highways Act 1980 S119

Diversion of Part of Footpath SMAN 13

Reasons for the Diversion of the Footpath

1. CONTEXT

- 1.1 Section 119(1) of the Act enables a council to make and confirm an order for the diversion of a footpath or bridleway in its area if it appears to the council that it is expedient to do so in the interests of the owner, lessee or occupier of the land crossed by the way, or of the public, and subject to other provisions of the Act, and as set out below.
- 1.2 S119 of the Act enables an order for the diversion of a footpath or bridleway to be made and confirmed as follows:
- 1.2.1 S119(1) It is expedient to divert the public right of way in the interest of the owner, lessee or occupier of the land crossed by the route or of the public
 - 1.2.2 S119(2) The termination points of the route are not altered, otherwise than to points which are as convenient to the public
 - 1.2.3 S119(6) The route is not substantially less convenient to the public as a result of the diversion
 - 1.2.4 S119(6)(a) With regard to the effect on public enjoyment of the route as a whole
 - 1.2.5 S119(6)(b) With regard to the effect the coming into operation of the order would have as respects other land served by the existing public right of way
 - 1.2.6 S119(6)(c) With regard to the effect which any new public right of way would have on the land over which it is created, and any land held with it.
 - 1.2.7 S119(6A) With regard to any material provision of a rights of way improvement plan for the area

- 1.3 S29 of the Act requires Councils to have due regard to the needs of agriculture and forestry and to the desirability of conserving flora, fauna and geological and physiographical features.
- 1.4 Guidance on the making and confirmation of orders is contained in Rights of Way Circular (1/09) (October 2009) published by Defra.
- 1.5 Government guidance to local authorities on the diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises was published by Defra on 1 August 2023. This new guidance, known as the Presumptions Guidance, is relevant to the determination of the order and concludes:
- 1.6 In making its decision as to whether the existing path should be diverted or extinguished, an authority should 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.

2. **GROUNDINGS FOR THE MAKING AND CONFIRMATION OF THE ORDER**

S119(1) It is expedient to divert the public right of way in the interest of the owner, lessee or occupier of the land crossed by the public rights of way

- 2.1 The application has been revised following informal consultation undertaken by the highway authority during February and March 2025.
- 2.2 The revised application is made on the grounds that it is in the interest of the owners of the land crossed by the footpath, and known as the curtilage of Homestead, Sutton Mandeville, for the footpath to be diverted. The interests of the owners are served as follows:
 - 2.2.1 The northern termination point is immediately adjacent to the property. The footpath then runs by a side door and small patio area. It passes close by large windows and so affects the privacy of the property.
 - 2.2.2 The route continues over an area of lawn, used for the family's recreation with a football goal and other play equipment. It affects the use and privacy of the garden.
 - 2.2.3 The proximity of the footpath to the house also affects the owners' perception of their security, knowing that anyone passing so close to the house and within the garden cannot be challenged.
 - 2.2.4 The proposed route resolves these concerns, with additional hedging near the northern termination point accommodating the route while protecting

privacy, supported by a redesign of the garden. Quiet enjoyment of, and security at, the property is enhanced.

S119(2) The termination points of the route are not altered, otherwise than to points which are as convenient to the public

2.3 The termination points are not altered.

S119(6) The route is not substantially less convenient to the public as a result of the diversion

2.4 The proposed route is not substantially less convenient as:

2.4.1 The general direction of travel is unaffected.

2.4.2 The difference in distance to be walked is an increase of approximately 30 metres and the proposed route takes approximately an extra 15 seconds to walk. This cannot be considered a substantial inconvenience, especially in the context of a route used for a recreational purpose.

2.4.3 An increased width of 2 metres is proposed, twice that of the existing footpath.

2.4.4 The proposed footpath passes over similar terrain to the current route.

S119(6)(a) With regard to the effect on public enjoyment of the route as a whole

2.5 It is submitted that public enjoyment of the route as a whole is enhanced by:

2.5.1 The diversion away from the property, to a location outside the main domestic area of the garden, removing any sense of intrusion or embarrassment, so encouraging use of the network.

2.5.2 Some local residents have said they avoid using the path as they feel uncomfortable intruding into the owners' privacy but would like to have accessibility to the path, particularly as it now forms a convenient route to the popular Stalls Café on the A30 <https://www.thestallscafe.com/>. The new alignment therefore improves, in real terms, accessibility to the footpath and encourages residents to use the route to walk to the café.

2.5.3 The proposed route maintains the existing incline south of point J on the application plan and will pass by existing trees, and through what will become a new orchard area, with additional tree planting as shown on the plan. Solar panels to the east will be shielded by existing trees and new hedge planting as approved under planning application PL/2024/03227.

S119(6)(b) With regard to the effect the coming into operation of the order would have as respects other land served by the existing public right of way

- 2.6 The land served is all within the ownership of the applicants. No public facilities are served by the route and the impact on the land served is positive for the landowners.

S119(6)(c) With regard to the effect which any new public right of way would have on the land over which it is created and any land held with it.

- 2.7 The effect would be to preclude use of the land other than in accordance with the public's right of way. This is acceptable to the landowners.

S119(6A) With regard to any material provision of a rights of way improvement plan for the area: The Wiltshire Council Local Transport Plan 2011 – 2026 – Accessibility Strategy and the Countryside Access Improvement Plan

- 2.8 The proposal is compatible with the Plans in encouraging walking given concerns about intruding, and especially visits to the local café to the south.

S29 Due regard to the needs of agriculture and forestry and to the desirability of conserving flora, fauna and geological and physiographical features

- 2.9 No adverse impact on flora, fauna or geological and physiographical features has been identified.

The Presumptions Guidance

- 2.10 The provisions of the guidance are relevant to the application, given the proximity of the route to the private dwelling and its alignment across the garden. The Council is therefore requested to attach due weight to the benefits to the landowner in determining the application.