

Decision Report

Wildlife and Countryside Act 1981 – Section 53

Application to Add a Footpath to the Definitive Map and Statement of Public Rights of Way – Idmiston (Porton)

Appendix 1 – Summary of Representations and Objections Received at Initial Consultation

1. **Mr Adrian Jones** (Owner of the green area of land) – letter dated 4th February 2016 and landowner evidence form dated 6th February 2016:

- Owned the land for 12 years
- Do not believe the way to be public, have held this belief for over 35 years.
- Never seen members of the public using the claimed route.
- It is private land so I would expect anyone to ask permission before using the way, but I have not seen anyone use it.
- No plan and statement deposited with Wiltshire Council under Section 31(6) of the Highways Act 1980.
- Never stopped or turned anyone back.
- I haven't seen anyone use the way to tell them that it was not public.
- It was not necessary to erect signs or notices stating that the way was not public.
- No stiles or gates on the claimed route.
- I have obstructed the line A – B by fencing in the whole plot.
- Between 1999 and 2006 I lived opposite this piece of land and maintained it, I also used it to park vehicles and machinery including tractors.
- There is presently a planning application for the plot of land over which section A to B passes (i.e. over the green area).
- The application is an attempt to stall and prevent the planning application.
- The land was subject to an application to register the land as an Asset of Community Value by the Porton Conservation Group which was rejected on the grounds that the land is privately owned and it is therefore not considered to further the social wellbeing of the community, nor is it likely to do so in the future.

- 21 witness statements from 19 different households. 17 of the 21 people who have sent in witness forms were also members of the Porton Conservation Group. 14 of the people who sent statements have made objections to the building proposals.
- There has never been a footpath over the land. In 2000 Idmiston Parish Council wrote the Porton, Idmiston and Gomeldon Community Plan in which they list footpaths in the parish including path no.7 which is only 33m long, but there is no path listed from the High Street, through Bourne Close to the recreation ground.
- One of the respondents has not walked the path.
- There is great variation in the position of the footpath on the maps and the width.
- People do walk from the High Street, through Bourne Close to the recreation ground. The main entrance to the recreation ground is on Winterslow Road, which is safer and more direct for the respondents who live in The Avenue: Nalhasen Close; Buller Park; Bonaker Close; Winterslow Road and Parkland Way. There are only 3 respondents who live in the High Street whose walk would be shortened by the claimed footpath. Those living in Bourne Close would have their walk to the High Street shortened by approximately 10m by the claimed footpath.
- 20 respondents cite that they have not been given permission to use the land, many appear to be unaware this is private land.
- There has often been dog fouling of the land caused by dog owners letting their dogs loose on the land whilst walking in Bourne Close or High Street and I have on occasion asked people not to do this. I have also asked people who have parked without permission on this land to remove their vehicles.
- If I had been aware of anyone walking on the land, I would have asked them to stop doing so.
- My wife lived opposite the land from 1985 and she also is not aware of people using the section A-B, however, according to the statements they have walked a total of 948 times a year, which equates to 2/3 people every day. With this footfall there would be an obvious well worn pathway, this has never been apparent.

- Photographic evidence has been shared amongst witnesses.
- If you zoom in on the aerial photographs from 1980 purporting to show the claimed route, it can be seen that this is just a variation in the grass, with clumps close to Rose Cottage and smoother grass elsewhere (over the green area). This rougher grass and variation in soil levels is also shown in later photographs such as the 1993 photograph from Fieldings and the 2009 Google photograph. When viewed from different angles, there is no path shown, but it does show compaction and tyre marks due to vehicles driving over the land. A Google aerial view (2001) and a more recent the estate agents photograph taken from Jayesmoor, (the house opposite the green area), show no evidence of a right of way.
- I believe that there is no historic evidence for a path between A and B and people use the road in Bourne Close to get to the recreation ground.
- There are no advantages for the residents of Porton, either in distance walked or safety.
- If a footpath is recorded it should follow the road in Bourne Close from the High Street to the recreation ground.

2. Dr's Patricia and Geoffrey Appleyard (owners of 1A Bourne Close

(Appledown) and part owners of the private road, Bourne Close) – Letter dated 4th February 2016 and landowner evidence form dated 3rd February 2016:

- We have owned the land for 11 years and 10 months. Bourne Close is unadopted and I believe that we are jointly responsible for any necessary repairs and have a right of access to our property.
- Believe the claimed route to be a public footpath and we have held this belief since April 2004 (Patricia Appleyard) and since 1989 (Geoffrey Appleyard).
- Aware of members of the public using the route, have observed many people walking to and from the recreation ground and walking dogs etc. on a daily basis as long as we have lived at Appledown, such that we assumed it was a right of way.
- No plan and statement deposited with Wiltshire Council under Section 31(6) of the Highways Act 1980.

- We have not stopped or turned anyone back, we have never told anyone using the way that it is not public, we have not erected notices or signs stating that the way was not public.
- There is a gate at the recreation ground which is locked at night by the Parish Council to deter anti-social behaviour. The gate is open during daylight hours.
- Never obstructed the way, the section between A and B was in regular use until it was obstructed by fencing in late March 2015, we support the designation of the proposed footpath as a right of way.
- I am a frequent user of the proposed path since April 2004, my husband has also used the path and known it for longer as a resident of Porton since 1989. We use it from our property to access the shop; post office; doctors surgery and other parts of the village, until the route A-B was blocked by fencing in late March 2015. We have also used the section in the other direction from our property to the recreation ground on numerous occasions.
- When we purchased the property we knew about the path between 2 and 1A Bourne Close and assumed that this access to the recreation ground and the section through Bourne Close and across the grass to the High Street was already an established right of way. There was a clear well worn path from A-B across the grass at this time, this is supported by photographic evidence (i.e. photograph taken from Fieldings opposite the piece of ground, by Mr S Castellano over 20 years ago and aerial photograph dated 1980).
- Appledown was built in 1995.
- We can see much of the footpath from Appledown and confirm that it is well used by members of the public.
- Mr A M Jones purchased the grass area in 2004, at this time he lived at Jayesmoor opposite the land and could not have failed to be aware that members of the public walked over it both before and after he acquired it. He made no attempts to stop them and voiced no objections to the use. The only concern he expressed to us was that some people had parked vehicles on it without permission.
- Prior to 2004 the land was owned by Mr Pike at Appledown from whom we bought our property. Neither Mr Pike nor the first owners of Appledown made any attempt to fence the land to prevent access.

3. **Mr Wayne Maher** (owner of 1 Bourne Close and part owner of the private road, Bourne Close) returned a completed landowner evidence form, dated 5th January 2016:

- Owned the land for 8 years.
- Do not believe it to be a public right of way, it is private.
- Only on odd occasion saw child running across the child running across, very boggy on the grass.
- Never required people to ask permission before using the way.
- No plan and statement deposited with Wiltshire Council under Section 31(6) of the Highways Act 1980.
- Never stopped or turned back anyone using the way.
- Never told anyone it was not public.
- Never erected notices or signs stating that the way was not public.
- No stiles or gates on the way.
- Never obstructed the way.

4. **Mrs Laura Maher** (owner of 1 Bourne Close, part owner of the private road, Bourne Close) e-mail correspondence:

19th January 2016:

I have recently been informed that this footpath is believed to go through our front garden at 1 Bourne Close. We cannot allow a footpath through our garden and this is causing us great concern. The drawing we had sent appeared to show the footpath going along the road and not through our garden.

20th January 2016:

When I filled out the form, because of the planning permission they are trying to get on the green next to our house, I assumed the form was all in relation to the green and not anything on my property.

The public cannot and do not walk through our garden. When we purchased the property 7 years ago there was and still is a boundary wall, so the public have always walked along the Bourne Close road. There is also a very large willow

tree which was there when we bought the property, the footpath line marked on your map would go directly through this large tree. So I would find it hard to believe that the public would say they take this route.

The people requesting the footpath are possibly doing it to prevent the planning application on the green and for no other reason. There seems to be a lot of upset with the locals with regards to this planning permission on the green. Walking along Bourne Close road is quiet and I see no reason for an additional footpath.

I can confirm living next door to the green, that the public rarely walk across it, particularly in winter as there is no footpath and it is muddy. Occasionally in the warmer months we would see a child or dog take a shortcut across the green, but this would only happen if the land owner had cut the grass. Most other members of the public would walk along the Bourne Close road.

2nd February 2016:

My husband saw Valerie yesterday, I believe it is Valerie who is proposing the footpath. My husband informed her that her diagram isn't correct as it is drawn through our front garden. She agreed and said it was an error and she should be contacting you today to sort this out.

5. Mr Raymond Bray (owner of 4 Bourne Close and part owner of the private road, Bourne Close) returned a completed landowner evidence form, dated 20th January 2016:

- Owned the land for 18 years.
- Seen it being used daily over 18 years.
- Never required people to ask permission before using the way.
- No plan and statement deposited with Wiltshire Council under Section 31(6) of the Highways Act 1980.
- No gates or stiles on the way.

6. Gillian and Richard Green – E-mail dated 7 February 2016:

We walk frequently up the High Street past this land and at times walk through Bourne Close when walking to, or from the recreation ground. We have paid

regular visits to this area of the High Street between 1985 and 2006 to visit my sister and her family. On no occasion have we seen people walking over the land between A and B and there was no sign of any footpath or regular walking over the land.

Between 2006 and the present we have continued to walk in these areas, either on our own or with our grandchildren. During this time we have not seen people walking on the land or signs of it being used as a footpath. However, when we have been in this area we have seen other people who, like ourselves, were walking on the road through Bourne Close. I should imagine that like ourselves they prefer the safety of the smooth surface of the road and the fact that they do not have to avoid the dog fouling on the land.

We can see no advantage in putting a footpath across this land as there is a perfectly good road with minimal traffic that takes everyone to the same place.

7. Roly Grimshaw – E-mail dated 5 February 2016:

I strongly object to the application.

I have lived in Winterslow Road, adjoining the High Street for nearly 15 years. I have 2 dogs and when we first came here, small children who used the playground. My wife and I are regular walkers and have never seen anyone use the route A to B described on the application. Access round the land into the cul-de-sac of Bourne Close is so easy with minimal traffic to the 4 or 5 houses in the close.

There has never been a footpath there and indeed most people would not wish to venture over the land on which dogs have made a mess.

I am also well aware of the planning application to build on the land. It is not surprising to hear that most of the supporters of the footpath are using this application as a means of blocking the planning. Indeed I am a strong supporter of our public rights of way and it is irritating to find that such an application is being used as a political tool, not for the benefit of walkers.

I hope this application will be rejected.

8. Mr W G Baker – Letter undated:

I have lived here (Fairview, Gomeldon) for over 40 years. I have never known a footpath to go over this land, A to B. This is private property. I have never seen anybody walk across the land.

I have also done a lot of building works in the area, I am a builder by trade, but now retired.

9. Mr Geoffrey Pike – E-mail dated 3rd February 2016:

I owned the relevant piece of land in Bourne Close, Porton, along with the adjacent property, Appledown, from July 1998 to March 2004. At no time during my ownership was there a footpath across the land and neither did I give anyone permission to use or walk across the land. I sold the land to Mark Jones.

10. Mr P Jay – Letter undated:

I have lived in this village for 70 years, there has never been a footpath between A to B. Also I have never seen people walking between A to B in all the time I have been living in this village.

11. Mr T C Lodge – E-mail dated 16th March 2016

For many years I have lived in the parish of Idmiston and served on the Parish Council, as such I have some historical knowledge of the Porton area in particular, however I now live in Winterbourne.

The area in question is a relatively small plot of grassland, owned by Mr Jones, adjacent to Bourne Close and I had some involvement in the design of the dwellings therein. I do not believe that there was ever a “bona fide” right of way. Certainly residents took a short cut across the grass instead of using the nearby roadway and many used the area as a dog fouling spot. To my certain knowledge there was or is not a “way marker” or finger post indicating a “public footway”.

I have no material connection with the applicant or the objectors but I do believe that there is a “head of steam” being generated quite unjustifiably by some newcomers to the village.

12. Councillor Mike Hewitt, Bourne and Woodford Valley – E-mail dated 3rd

January 2016:

I have no problem with the footpath from B to C although I see no justification in formalising the access to the Playpark. As for A to B, this is over private land and the access from A to B is easily obtained by walking a short distance along the road where there has always been access to the Playpark.

The only reason this has been asked for at the moment is because of a potential planning application that 2 neighbours disagree with. The area between A and B was requested to become Community Land but has been rejected by the Council out of hand.