

From: [REDACTED]
Sent: 23 March 2023 10:17
To: [Green, Janice](#)
Subject: RE: Wildlife & Countryside Act 1981 s.53 - DMMO Footpath no.42 Whiteparish (The Drove) - Southern Area Planning Committee 30th March 2023

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Green,

Wildlife & Countryside Act 1981 – Section 53
The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022

-

Southern Area Planning Committee – Thursday 30th March 2023, 3:00pm

Thank you for information regarding the forthcoming meeting. I am sorry that neither my husband nor I can attend but we would wish to make the following points, which we consent to being used at the meeting, if required.

1. Wiltshire Council has recognised The Drove as a Historic Monument and included in its register where it is described as 'A medieval trackway between fields formed by medieval assarting. Ref: SU22SW467.
2. The permissive use of The Drove extends back over more than 50 years to our knowledge and, probably, for hundreds of years.
3. Several owners of properties backing onto The Drove have rights of access onto it written into the deeds of their properties. These people have provided witness statements which can be verified.

We consider the conservation of this historic feature to be particularly significant, as well as its use as a public right of way. **Its incorporation in part into gardens should not exclude this duty of care.**

The fields adjacent to The Drove have been used for exercise and dog walking for decades and the incorporation of The Drove as proposed would provide

considerable community benefits, as currently encouraged by national government in order to officially establish these ancient routes.

Our priorities are therefore to

- To conserve the historic feature
- To provide improved public amenities.

We ascertain that all of the information provided in our witness statements remains, to the best of our knowledge, correct.

Kind regards,

Pat and Brian Woodruffe

From: Green, Janice [mailto:janice.green@wiltshire.gov.uk]

Sent: 10 March 2023 08:51

To: 'Pat Woodruffe' [REDACTED]

Subject: Wildlife & Countryside Act 1981 s.53 - DMMO Footpath no.42 Whiteparish (The Drove) - Southern Area Planning Committee 30th March 2023

Dear Mr and Mrs Woodruffe,

Wildlife & Countryside Act 1981 – Section 53

The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022

-

Southern Area Planning Committee – Thursday 30th March 2023, 3:00pm

I am writing to advise you that a report regarding the above-mentioned Order which proposes to add a footpath in the parish of Whiteparish, Footpath no.42 (The Drove), is due to be considered by Members of the Wiltshire Council Southern Area Planning Committee at their meeting dated Thursday 30th March 2023. The meeting starts at 3:00pm and will be held at The Pump Room, The Old Fire Station Enterprise Centre, 2 Salt Lane, Salisbury, Wiltshire, SP1 1DU.

I understand that the agenda and report will be published shortly before the meeting, (generally about 5-7 days before the meeting) and may be viewed on the Wiltshire Council website using the following link:

[Browse meetings - Southern Area Planning Committee | Wiltshire Council](#)

Please note: in the unlikely event that this agenda item is not considered at the meeting dated 30th March, or the meeting is cancelled, the agenda item will be taken forward to the next meeting on 27th April, please check the agenda for updated information before attending.

Public participation at the meeting is possible and members of the public who wish to speak either in favour or against the agenda item are asked to register with the Senior Democratic Services Officer, before the deadline specified in the agenda. Please contact Lisa Alexander, Senior Democratic Services Officer on 01722 434560, or e-mail lisa.alexander@wiltshire.gov.uk

The agenda will contain full details of public participation. The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an item. Each speaker will be given up to 3 minutes to speak and will be invited to speak immediately prior to the item being considered. Speakers for the Parish Council are in addition to the above and are given up to 4 minutes to speak.

I hope this information is helpful.

Kind regards,

Janice Green
Senior Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN



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Email: janice.green@wiltshire.gov.uk

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From: [Green, Janice](#)
Sent: 28 March 2023 08:25
To: [Green, Janice](#)
Subject: FW: SOUTHERN AREA PLANNING COMMITTEE - THURSDAY 30 MARCH 2023

From: Jennifer Harrison [REDACTED]
Sent: 27 March 2023 14:26
To: Alexander, Lisa <Lisa.Alexander@wiltshire.gov.uk>
Subject: SOUTHERN AREA PLANNING COMMITTEE - THURSDAY 30 MARCH 2023

[REDACTED]

Dear Ms Alexander

**AGENDA ITEM NO 6
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53
THE WILTSHIRE COUNCIL WHITEPARISH PATH NO 42
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2022**

Thank you for sending us the agenda and paperwork for the above Committee Meeting and I regret that we are unable to attend so please record our apologies. We would like to submit the following statement:

After due consideration and with some reluctance we have decided to withdraw our support for the above application. This is because we can see no amicable neighbourly result if this application for The Drove to become a public footpath is approved.

When the small development of three dwellings was first proposed we were dismayed and in a state of disbelief that the developer destroyed part of The Drove in such a wanton manner with no regard to the environment and any wildlife.

Subsequently the development was approved on Appeal by the Planning Inspectorate and part of The Drove was incorporated into two of the new gardens. Our understanding is that The Drove was classified as an Ancient Monument and that no permanent dwelling can be built on it.

We have lived in Clay Street since 1985 and although we have withdrawn our support we stand by our initial statement that we submitted in applying for consideration to be given to The Drove being designated a public footpath. The main points of our statement were that it was possible to negotiate the whole length of The Drove to the point where it joined Footpath No 6 - we clearly remember seeing and hearing groups of people coming from the Common Road entrance going past our back garden (as well as individual dog walkers) and never turning back. We fail to understand how newcomers to Whiteparish can assert that The Drove has never been a through-route. Also Mr Andrews, the then-co-owner of The Drove, was fully aware that our children played in The Drove during the late 1980s and early 1990s and he never protested that they were on private land.

We would like to acknowledge that Wiltshire Council did not approve the planning application for the three new dwellings and that there has been a very comprehensive report undertaken in respect of this footpath application. We are grateful for the part that Wiltshire Council played in attempting to stop this development going ahead.

Finally the deeds to our dwelling show that we are legally entitled to use The Drove from where there is now a barrier in the form of a wooden fence outside our boundary hedge to the junction with Common Road. We trust that this means that this part of The Drove will always be protected and we shall continue to exercise our right to use it.

With thanks and regards

Jenny and John Harrison


Clay Street
Whiteparish

Sent from [Mail](#) for Windows

Southern Area Planning Committee – 30th March 2023

Wildlife and Countryside Act 1981 – Section 53

The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022

Officers' Response to Additional Representations of Mr and Mrs Woodruffe 23rd March 2023

The Applicants in this case are the “Residents of Clay Street” (Whiteparish), Mrs Woodruffe being the main contact for the application. In correspondence dated 23rd March in relation to “The Wiltshire Council Whiteparish Path no.42 Definitive Map and Statement Modification Order 2022”, Mr and Mrs Woodruffe make a number of points in support of the Order, as set out below, with Officers comments attached:

- 1) *Wiltshire Council has recognised The Drove as a Historic Monument and included in its register where it is described as “A medieval trackway between fields formed by medieval assarting. Ref: SU22SW467.”*

The Drove is included in the Wiltshire and Swindon Historic Environment Record (HER) ref: SU22SW460 – MWI17191, which contains information on archaeological sites, monuments and finds in Wiltshire and Swindon, being a local listing rather than a nationally recognised designation. The site is included in the HER as follows: Monument, Medieval Settlement 1066-1539, Common Road – “A settlement site which except for one platform, the earthworks of which were ploughed by 1967. 12th to 14th century coarse black pottery.”

In the making and confirmation of an Order under Section 53 of the Wildlife and Countryside Act 1981, only the evidence of public rights may be taken into account. The designation of the route as an historic monument in the Wiltshire and Swindon HER, is not a relevant consideration for the Committee in its consideration of the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State for determination.

The Wiltshire Council Archaeology Service has been consulted regarding the proposed addition of Footpath no.42 Whiteparish (The Drove) and advised that they have no archaeological concerns and no further action is required as regards the buried archaeological heritage.

- 2) *The permissive use of The Drove extends back over more than 50 years to our knowledge and, probably, for hundreds of years.*

In order for user evidence to be qualifying evidence in support of an application, it is necessary for user to be “as of right”, i.e. without permission; without force and without secrecy. As set out in the Sunningwell caselaw:

“The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect a landowner to resist the exercise of the right...”

R v Oxfordshire County Council and Another ex parte Sunningwell Parish Council [1999] 3 WLR 160.

The Applicant refers to “permissive” use of the Drove dating back more than 50 years, which would accord with the evidence of property owners in Clay Street who have a private right within their deeds to access the rear of their properties using the upper section of the Order route from Cottage Field, and the evidence of Mrs Cook, the landowner, who states that her Great Grandmother granted the private easement for the five properties, over the upper section of The Drove, (over the land in her ownership), in May 1957. Any other use prior to that date; use by non-residents and the property owners’ use continuing past the properties on the south-west section of the route to Footpath no.6, is likely to have been without permission. Of 27 witness evidence forms in total, where those having a private right to the upper section of The Drove, were excluded from qualifying user, 14 users remained who appeared to be using the route without permission, sufficient to make the Order based on a reasonable allegation.

However, user “as of right” is disputed in the objections received following the making of the Order. One of the supporters withdraws his support where he now considers that it is his neighbours seen using the path, who have a private right, which is not qualifying use “as of right”. Additionally use by the 14 users remaining and property owners’ continuing south-west, may be affected by additional evidence of the 2 strand wire fence being present across the width of the way from 1979 – 2003, which may bring use of the way into question at an earlier date; prevent use and/or affect user “as of right”.

Although Mr and Mrs Woodruffe claim that use has taken place for probably hundreds of years, there is no evidence of use prior to 1962. If the 2 strand wire fence was in place across the width of the Drove in 1979 which brought use of the way into question, it would be necessary to consider an alternative 20 year period of 1959 – 1979. 6 users support use prior to 1979, however, the earliest user evidence of witnesses is provided in 1962, there is no evidence of a full 20 year user period prior to 1979 to satisfy Section 31(1) of the Highways Act 1980.

- 3) *Several owners of properties backing onto The Drove have right of access onto it written into the deeds of their properties. These people have provided witness statements which can be verified.*

As above, the property owners have a private right to use the upper section of The Drove to access the rear of their properties. This is not qualifying user under Section 31(1) of the Highways Act 1980, where it is undertaken with permission, and is therefore done “by right” rather than “as of right”. Therefore, the property owners’

evidence of use of the upper section of the Drove must be disregarded. However, their continuation south-westwards on The Drove appears to be user without permission, again such use may be affected by additional evidence of a 2 strand wire fence across the width of The Drove in 1979.

*We consider the conservation of this historic feature to be particularly significant, as well as its use as a public right of way. **Its incorporation in part into gardens should not exclude this duty of care.***

The fields adjacent to The Drove have been used for exercise and dog walking for decades and the incorporation of The Drove as proposed would provide considerable community benefits, as currently encouraged by national government in order to officially establish these ancient routes.

Our priorities are therefore to

- *To conserve the historic feature*
- *To provide improved public amenities.*

The conservation of the historic monument is not a matter for consideration in the making and confirmation of an Order under Section 53 of the Wildlife and Countryside Act 1981. The incorporation of a public right of way into the gardens, does not have the effect of extinguishing unrecorded public rights, if they are found to exist.

Mrs P Woodruffe states in her user evidence form: *“It would be a relatively simple matter to link this ancient track to other public footpaths and so create a new amenity for local people...”* In the determination of an application to add a public right of way, the Surveying Authority are not seeking to add “new” rights of way, but simply to record an existing public right, previously unrecorded.

We ascertain that all of the information provided in our witness statements remains, to the best of our knowledge, correct.

Where, since the making of the Order, the evidence is disputed and finely balanced in the balance of probabilities test to be applied at the confirmation of an Order, Officers’ consider that it is not possible for Wiltshire Council to make a recommendation regarding the determination of the Order. Dispute is likely to be resolved by the testing of evidence at a local public inquiry. Additional weight may be given to the oral evidence given at a public inquiry where it has been subject to testing through cross-examination.

Officers’ Response to Additional Representations of Mr and Mrs Harrison 27th March 2023

The attention of Committee Members is brought to correspondence from Mr and Mrs Harrison, who are “reluctantly” withdrawing their support for the Order, not for evidential

reasons, but where they “...can see no amicable neighbourly result if this application for The Drove to become a public footpath is approved.”

Matters with regards to the development of the three dwellings; environment and wildlife, cannot be taken into account in the making and determination of an Order under Section 53 of the Wildlife and Countryside Act 1981.

Mr and Mrs Harrison, as local residents, have a private right to access the upper section of The Drove, however, they maintain that it was possible to use the whole length of The Drove to the point where it joined Footpath no.6 and they have seen and heard groups of people coming from Common Road and continuing past their back garden, without turning back. Objectors maintain that there has been a fence across the width of the way since 1979 and that there has never been access to Footpath no.6 at the southern end of the Order route. Where the evidence is disputed and finely balanced in the balance of probabilities test to be applied at the confirmation of an Order, Officers’ consider that it is not possible for Wiltshire Council to make a recommendation regarding the determination of the Order. Dispute is likely to be resolved by hearing from witnesses at a local public inquiry and testing of the evidence through cross-examination.