

██████████
Pen Y Garn Cefneithin
Carmarthenshire
SA14 7EU

T: 0203 ██████████
██████████

Ms Sally Madgwick
Rights of Way Officer
Wiltshire Council
Bythesea Road
Trowbridge
Wiltshire BA14 8JN

Date: 06 March 2018

Our ref: MW

Your ref: SM/TISB83

By email only

Dear Ms Madgwick

**Wiltshire Council Southern Area Planning Committee 8 March 2018
Highways Act 1980 Section 119
The Wiltshire Council Parish of Tisbury Path No 83 Diversion Order and Definitive Map
Modification Order 2017**

I have reviewed your published Committee Report with my clients ahead of the Committee Meeting on 8 March. As the Council's policy is not to provide a draft in advance of publication for comment and corrections to be made, the applicants have had no opportunity to ensure that matters are stated accurately before Members read the report. As you have moved from a position of support for the making of the Order to one of opposing the continuation of the process, this is of particular concern.

My clients believe that the report does not address the statutory tests fairly or equitably. Section 119 makes it clear that an Order may be made and ultimately confirmed if it is expedient in the interests of the occupier of land. The interests of the School as occupier are clearly of far greater weight than the interests of the owner of the School's land who owes no direct duty to the primary school pupils. The balance between this interest and any impact on public enjoyment is also a compelling reason for the ultimate confirmation of the Order. It is plainly expedient under both Section 119(1) and 119(6) Highways Act 1980. My clients will be taking further advice regarding a legal challenge if necessary, based upon your interpretation of the legislation and the appropriate weight to be afforded to the evidence as dealt with in your report which is at the heart of this.

As you know, the School has recently provided a letter confirming their support and identifying that they do have real safeguarding issues. Even without this letter, we cannot conceive of a situation of a public right of way passing through a school playground which

would not be of serious concern to a school, and this was evidenced by the letters and emails from parents, neighbours and governors.

It is almost beyond belief that the owners of the land would not wish to lend their support to ensuring the safety of the school children. It cannot be expedient in their interests as owners to permit the current position to continue when a solution has been offered by my clients. The School could not resolve the safeguarding issue at the time a diversion of the footpath was secured for the development of buildings (in agreement with the Chapel Trust) because as you are aware, diversions under the Town and Country Planning Act 1990 are to enable development to take place, and cannot address wider issues associated with the established planning use for the land. This is the first opportunity presented to the School to resolve the impact of a public right of way through their playground field and passing close by school classrooms.

For the record, the School advised my clients in May 2016 that the Chapel Trust had been advised of the intended application for a diversion and we had proceeded on the basis that they would share the interests of the School.

The section of the diversion through the School does not directly benefit my clients and taking the path out of the grounds of the School and onto their land is, to some extent, to my clients' disadvantage as it would affect their ability to manage their field in the future.

However, it did appear to my clients that the diversion out of the grounds of the School was the right thing to do in conjunction with a diversion of the path away from their house to a route which was less intrusive. The alignment of the diversion was accepted by the Council after the site meeting between Nick Cowen and Mike Walker. That followed the initial consultation with local people from which you were already aware of potential objections, yet you proceeded nonetheless.

Your reference to the footpath being fenced from the field at the time of a site visit is noted but it was only done so by the owners of St Anne's Cottage and Old Bridzor to whom my clients had loaned their field for grazing, as members of the public had repeatedly left the gate open allowing the livestock to escape. It is regrettable that before reaching a substantive view on the importance of this in the report, that my clients were not asked for their comments, or how they would intend managing the field after the diversion of the footpath.

My clients have become aware of a significant degree of local lobbying against the proposal and are sceptical about the motives of those involved. Although you have noted that it is not a relevant consideration, some of this lobbying has been promulgated on the basis that my clients, as recent arrivals into the village, should not be permitted to alter anything.

My clients wholly reject the implied criticism in the report of the supporting correspondence from parents who have responded in identical terms, especially as this support had been generated by the activity of a concerned parent rather than from canvassing by my clients. Ultimately there is not much a parent can add to the proposition that removing the path from the School would be beneficial to the safety of their child. Others have highlighted the

additional benefits for example by improving the accessibility of the path for mobility impaired children. This material has been dismissed and given little if any weight.

The School had doubtless assumed that since you had made the order there would be no need to mount a campaign to rival the 30 objections, as the natural process would follow based on the fairness of the case, rather than it favouring he who shouts loudest.

Whilst they would still wish to pursue this diversion, my clients feel it is probable that the Committee will act on your advice and accept your recommendation as you are providing them with professional advice even though they consider it to be entirely unbalanced, and therefore see no purpose in attending the Committee meeting or in being represented. Within a three-minute time slot it is simply impossible to convey in detail the relevant issues to rebut the matters in your report. However, they have asked me to point out that they reserve all their rights in this matter and expect the Committee to proceed properly, balancing all of the relevant issues.

We will be informing the representatives of the Governors of the School, and it will be a matter for them to determine whether they wish to take any further steps themselves to address the impact of the path.

[REDACTED]

[REDACTED]

[REDACTED]

DIRECTOR