

**PROPOSED DIVERSION OF MARSTON MEYSEY
FOOTPATH 10 (PART) AT ROUNDHOUSE FARM**

Purpose of Report

1. To:
 - (i) Consider and comment on the objections received to an Order proposing the diversion of sections of Marston Meysey Footpath 10 (MM10) under Section 257 of the Town and Country Planning Act 1990.
 - (ii) Recommend that the Order be submitted to the Secretary of State for the Environment, Food and Rural Affairs and be confirmed as made.

The proposed diversions are shown on the plan attached at **Appendix A**.

Background

2. In April 2008, David Jarvis Associates applied on behalf of M C Cullimore (Gravels) Ltd to divert a section of MM10 on to an alternative route around areas permitted for mineral extractions. The proposed route ran in a general southerly direction around Wetstone Cottage then alongside Marston Meysey Brook to the River Thames. The path then continued along the northern bank of the Thames before turning north east to rejoin the original route of MM10 near the Second Chance Touring Caravan Site. The route is shown on the plan attached at **Appendix B**.
3. Planning Permission to extract sand and gravel from this site and restore to reed beds was approved on 3 July 2003.
4. An informal consultation was undertaken with statutory consultees and interested persons and groups. The following comments were received.
 - (i) Mr Derek Richards of Wetstone Cottage:

"I strongly object to the proposed diverted/rerouted MM10 being the only access to the planned "Nature Reserve" on the following grounds:

 - (a) *The current route of MM10 through the driveway and garden of Wetstone Cottage is suitable for the occasional fit/able pedestrian. It is totally unsuited as "Nature Reserve" access by large numbers of pedestrians.*
 - (b) *It is unsuited for access by disabled people.*
 - (c) *Line of site vision on the C116 near Wetstone Cottage is at best 60 metres on a 60 mph plus HGV route.*

- (d) *The planned route of the diverted MM10 is along the banks of the Marston Meysey Brook and along the Thames. The planned route is alongside what I believe is planned to be a natural wildlife habitat. As a consequence of rerouting this habitat would be continually disturbed by pedestrians, dogs etc.*
- (e) *The planned route would result in a footpath on both banks of the Thames (the Thames Long Distance Footpath runs along the other bank) and this would mean that the Thames would no longer provide a natural wildlife habitat due to disturbances caused by use of both paths.*
- (f) *The current MM9 + MM10 or MM6 + MM10 provide routes between Marston Meysey and Castle Eaton. The planned diversion of MM10 more than doubles the distance that must be walked to get to Castle Eaton”.*

Mr Richards suggested a new path be created along the banks of the old canal.

- (ii) Mr K Stimson, on behalf of the Ramblers Association, also objected to the proposal stating in an email dated 18 June 2008:

“We consider the proposed alternative to be substantially less convenient to walkers. In particular users travelling south from Marston Meysey along footpath 6 will cross the east-west road, reach the vicinity of the Roundhouse and will be unable to proceed any further in either an easterly direction towards Castle Eaton or in a westerly direction towards Wetstone Cottage. Under the proposal any alternative route for users of footpath 6 would involve walking along this narrow road which is subject to fast-moving traffic. The proposed diversion A to D is considerably longer than the existing Right of Way and, being close to water courses may be more liable to flooding”.

- (iii) Sally Francis, Chairman of Marston Meysey Parish Meeting stated in a letter dated 17 June 2008.

“We noted that you refer to the proposed diversion as a permanent diversion; we are completely opposed to this proposal being considered as permanent and formally object. In our view MM10, or a path following the line of the old canal, should be reinstated at the first opportunity following diversion.

Considering the application, and assuming it to be temporary to facilitate work on site, we offer the following comments:

- (a) *The C116 crossing at Wetstone Cottage is considered dangerous by Wiltshire Police, it would be much safer to use the crossing adjacent to the Roundhouse (MM footpath 6) and then continue with a new section of temporary footpath parallel to the C116 and then around Wetstone to join up with the temporary diversion shown on your map. We have marked up your map to show how this might work.*
- (b) *If the proposed diversion became permanent you would have a footpath on either side of the Thames as the long distance path is on the southern bank of the Thames.*

- (c) *The proposed route along the Thames to the South of the site is subject to flooding and would be impassable at times during the winter.*
 - (d) *If in the long term, as has been envisaged, the site reverts to a nature reserve the increased number of visitors would be better, and safely, served by the MM footpath 6 crossing”.*
5. The views received were brought to the attention of M C Cullimore (Gravels) Ltd’s agents and a revised plan taking into account the Marston Meysey Parish Meeting’s suggestion was submitted. This is taken into account in the Diversion Order as made.
 6. A further consultation was carried out on the revised proposal.
 7. On behalf of Marston Meysey Parish Meeting Mr Skellern made the following comments in a letter dated 10 April 2009:
 - (i) *“We are objecting to the proposed diversion in that it does not afford what was once a cross country route, the first part merely following the C116 road until the junction with MM6.*
 - (ii) *We are objecting to the proposal for the path to terminate at the C117 forcing walkers to take the track to the caravan park in order to access the remainder of MM10.*

Using your map as reference our comments are as follows:

In general we consider MM6 and MM10 as the traditional means of travelling between the villages of Marston Meysey and Castle Eaton. This has been possible, up to now, by traversing across country and not by walking on a road until one exits by the footbridge onto the C117 near Castle Eaton.

This proposal, with the line of path following the C117 from Wetstone Cottage until it joins MM6 at the Roundhouse is not acceptable to us, and we suggest the following;

We would prefer a route that either follows the drainage ditch south from Wetstone until the disused canal is reached, or follows the Marston Meysey Brook south to the canal then along the canal until the Roundhouse is reached. The path then follows round the Northern Boundary of Roundhouse and on to the route as set out in your map: but instead of exiting on the C117 as shown, we propose that the path turns south, around block 3A on your map, until the existing crossing of the access track to the Second Chance Caravan Park is reached and thus onto the unchanged section of MM10 to the new footbridge. If walkers wished to continue to Castle Eaton as proposed, they would be forced to access the final part of MM10 via the Second Chance Caravan Site track which is a private road”.

8. Mr Ken Stimson, on behalf of the Ramblers Association, stated in an email dated 17 April 2009:

“The proposed section of the diversion from Wetstone Bridge to the Roundhouse travels in part alongside a road (C116). The existing route has a rural cross country aspect and the amenity value would be reduced by the longer and less attractive proposed route for this section”.

9. Copies of the consultation documents were passed to the landowner's agents for comments. The agent made the following comments in a letter dated 29 April 2009:

"Further to my email to you dated 9 April 2009 I have discussed the suggested alternative routing put forward by Mr Skellern with my client and I enclose a copy of a revised proposed diversion plan, reference 1771/FPD/1C for consideration.

My client's wish is to incorporate the proposed diversion routing shown on the attached plan. This incorporates the suggested alternative route much as described by Mr Skellern between points E to F (Plant site to Second Chance Caravan Park). We have specific concerns in respect of the suggested routing between points A and B (Wetstone Cottage to the Roundhouse) for the following reasons:

- (1) The route via the Meysey Brook is less direct (approximately 230 metres longer).*
- (2) The route will cross a haul route during the works whereas our alternative adopts a secure undisturbed route.*
- (3) The Cotswold Water Park biodiversity officer has previously expressed a preference for less potential disturbance affecting the proposed habitat restoration. The suggested route would bring the public further into the site.*
- (4) There is a slightly increased chance of flood events on land to the south of Wetstone Cottage (which was one of the reasons the parish meeting originally objected to the southern diversion route).*

Nevertheless we appreciate the point made regarding the possible canal restoration. Our suggestion is that the alternative route via the brook will be incorporated as the permanent diversion by our client only if the canal route within and beyond the site is restored and following completion of the site restoration. This is indicated on the plan and I suggested represents a suitable and practical compromise.

The proposed timetable of the works is as follows. To establish the proposed footpath diversion route between points A-B and rope off the existing footpath MM10 (effectively extending the existing protected length) during April 2009.

Section C-D would be installed at a later date prior to the working of Phase 4. Section E-F would be constructed prior to working Phase 3".

10. With respect to the comments supplied by the Ramblers Association the landowner's agent replied as follows:

- (1) "The revised diversion route between points E to F should meet the Association requirement for a more direct route terminating at the continuation point (F),*
- (2) The proposed routing between Wetstone Cottage and the Roundhouse is set well back from the Eastern Spine Road (C116) and follows this route for a short length (260 metres) only before turning south into the site. It will be located behind established hedgerow and new screen planting. I consider any adverse affects on the amenity*

value will be very low in level and countered by the proposed restoration.

(3) *The proposals for the rights of way in the vicinity of the Roundhouse (points B to C) retain the existing route and characteristics so there will be no significant effects on users”.*

11. The sand and gravel extraction site at Roundhouse Farm is bisected west to east by the disused Thames and Severn Canal which can be identified on plans at **Appendix B**.
12. The Area to the south of the canal is at a lower level and lies within the floodplain of the River Thames (which forms the southern boundary of the sand and gravel extraction site). It is therefore prone to flooding during the winter months.
13. Since acquiring the site and commencing extraction in 2006, M C Cullimore (Gravel) Ltd. has experienced severe flooding on several occasions, disrupting extraction. A revised planning application was submitted to overcome the risk of flooding disrupting production levels and market supply of material from the site. The revised application sought to amend the phasing and restoration operations at the site. The revised phasing and restoration scheme are shown at **Appendix D**.
14. The original application required the site being worked in a broadly anti-clockwise direction starting to the north of the disused canal.
15. The revised sequence of working the site would enable the landowner to continue to extract minerals from the site during flooding events by moving from the southern phases to a 'drier' phase held in reserve, north of the line of the canal. Mineral extraction would then recommence in the southern phases closest to the River Thames when the flood waters subside. A plan of the original application is attached at **Appendix C**.
16. A Flood Risk Assessment of the site has been carried out in accordance with Planning Policy Statement 25 Development and Flood Risk (PPS25) which requires that where there is potential for flooding, then flood risk is taken into account. The risk is to be appraised, managed and reduced where possible. The Flood Risk Assessment confirms that much of the Roundhouse Farm site is specified as Flood Zone 3 with areas at the north of the site within the lower risk Flood Zone 2. The likelihood of a flood event occurring on the Roundhouse site is 'significant' rather than 'moderate' or 'low'.
17. The first proposal submitted by the landowners and their agent did run the alternative path along the brook and River Thames. Adverse comments were received from the Ramblers Association, owner of Wetstone Cottage and the Marston Meysey Parish Meeting. The Parish Meeting suggested the path from Wetstone Cottage ran east, parallel with the C116 road as the proposed route. Taking into consideration the known flooding problems on the site (highlighted in the previous paragraph) and the ecological factors, officers supported making an Order in accordance with the revised application.
18. On 15 December 2009 an Order was made under Section 257 and paragraph 1 of Schedule 14 of the Town and Country Planning Act 1980.

19. An objection to the making of the Order was received from Mr Tony Skellern, who is the footpath representative on Marston Meysey Parish Meeting. He has made representations on this issue in the past on behalf of the parish meeting. Mr Skellern made it clear in his objection letter that his objection is entirely on his own behalf and is not associated in any way with the parish meeting. In his letter dated 21 January 2010 he stated:
- (i) *“My objection is to the section of the diversion, starting at Wetstone Cottage and running parallel to the C116 until it reaches the hedge line adjacent to the Roundhouse drive, where it turns south to run parallel to the drive until the exit from this section across the drive is reached.*
 - (ii) *The first section from Wetstone; parallel to the C116, will not inspire future walkers compared to the original line across a rural landscape; it will be no better than walking along the side of the road.*
 - (iii) *The next section running parallel to the Roundhouse drive duplicates MM footpath 6, a section of which actually runs down the Roundhouse drive some two metres away.*
 - (iv) *If this proposal, as set out in the Diversion Order, could be deemed as a temporary arrangement while work was in hand on site, there would be no need for an objection, but we have been informed that this is not possible under present legislation.*
 - (v) *Earlier proposals put forward by Marston Meysey Parish Meeting for the path to follow the Marston Meysey Brook south until the line of the old canal is reached and then to follow the canal to the Roundhouse, after which the non contentious part of the Diversion is reached, is my favoured route for this path. Alternatively, if the drainage ditch were to be retained, the path could follow alongside until the canal is reached.*
 - (vi) *It is worth mentioning, in support of my suggestion for the alternative Marston Meysey Brook route, that although this route has been dismissed by the site owner on the grounds of health and safety, because it would cross a haul road, the western section of the diversion endorsed by the owner also crosses the haul road!*
 - (vii) *It has also been said that this alternative route is longer than the old route, this may be so, but surely this is a purely technical objection, as most people who walk as a leisure activity would not object”.*
20. An objection has also been made by Mr Anthony Murison, Woodmancote, Gloucestershire. In his undated letter Mr Murison stated:

“I wish to object to the permanent diversion route in the Order caused by the permitted development because most stretches of it are substantially less convenient and substantially less enjoyable than the existing route it intends to replace. Alternative routes are available which are adequately convenient, adequately enjoyable and which enable the existing planning permission whose details have only recently been made available to be carried out in an efficient manner and which would not prove difficult for the Council or the landowner to manage”.

21. Mr Derek Richards of Wetstone Cottage, Marston Meysey wrote on 16 January 2010 objecting to the Order:

“While I recognise the need to extract gravel over the areas marked Phase 8, 9B and Phase 9A, the proposed permanent diversion of MM10 does not provide a sensible route for walkers.

It provides a route up against the roadside hedge alongside the C116/C124 and against the hedge of the access lane to The Roundhouse from the C116/C124 (thereby almost duplicating footpath MM6 along the driveway to the Roundhouse).

The proposed route would seem to be less convenient than just walking along the C116/C124 and then along the MM6.

Alternative routes which should be considered are either:

- *For MM10 to be diverted alongside the drainage ditch between 8 and 9A and between 9B and 9A and then alongside the canal to join MM6.*
- *For MM10 to be diverted from point A alongside Marston Meysey Brook and then alongside the canal to join MM6.*

The diversion near the caravan site provides a rather lengthy diversion in order to reconnect with MM10 on adjoining land. MM10 should more closely follow the existing route near the caravan site and walkers should not be required to follow such a lengthy detour to reconnect with MM10 on adjoining land.

The proposed diversion is needed in order to enable gravel to be extracted from the Roundhouse Farm site and to achieve restoration to a wildlife habitat. The amenity value of this wildlife habitat is likely to attract heavy usage of MM9 and MM10. These paths can only be accessed by crossing the C116/C124 at a bend by my cottage. The Council’s Police Safety Officer has previously condemned the access to these footpaths as completely unsafe.

The road crossing point from MM9 and MM10 should be moved to near the junction of “The Street” (Marston Meysey) and the C116/C124”.

Main Considerations for the Council

22. Wiltshire Council has the power to make an Order under Section 257 of the Town and Country Planning Act 1990 to authorise the stopping up or diversion of any footpath or bridleway or restricted byway if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with a planning permission.
23. Planning permission for the extraction of sand and gravel for the Roundhouse Farm site was approved on 3 July 2003.
24. An Order may be made to temporarily divert a footpath under Sections 257 and 261 for the purpose of allowing minerals to be worked by surface working, and if the Council can be satisfied that the path can be restored after cessation of working to a condition not substantially less convenient to the public.

25. In order to carry out the granted development, it is necessary to divert lengths of footpath MM10 crossing the Roundhouse Farm site. It is not possible to temporarily divert the path, as on the restoration of the site, the land over which the line of MM10 crosses over the site will be reed beds.
26. Marston Meysey Parish Meeting suggested the footpath could be diverted parallel to the C116 road from Wetstone Cottage, now proposed on the Order. The landowner and Council officers believe this is the more direct alternative route for the path.
27. The route via the Meysey Brook and River Thames is substantially longer. It is not possible to define for the purposes of an Order under Section 257 a route along the disused canal. Its restoration is aspirational, not yet finalised, and its route, should the project succeed, may not be exactly the same as the historic original canal.
28. As has previously been pointed out by Mr Richards of Wetstone Cottage and the agents for the landowner there are concerns of potential disturbance to wildlife and wildlife habitat by pedestrians and dogs.
29. The increased chance of flood events on land to the south of the disused canal makes a more northerly alternative for the path more practicable and enjoyable. The land on which the proposed alternative path runs between Wetstone Cottage and MM6 to the east runs 0.5 metres higher than the land south of the canal.

Environmental Impact of the Recommendation

30. There is no environmental impact in submitting the Order to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that it be confirmed.

Risk Assessment

31. There are no risks arising from the recommendation set out within this report.

Financial Implications

32. The administrative costs for making the Order to date will be paid by the owner of the land over which the footpath crosses. If the Council decides to send the Order to the Secretary of State for determination, it is likely a Public Inquiry would ensue for which budgetary provision is made.

Options Considered

33. That the Order be abandoned. It would be unsafe to do this as this option would put the Council in danger of being judicially reviewed, given that the grounds for making the Order are soundly made.

Reasons for Recommendation

34. The proposed diversions satisfy the test contained in Section 257 of the Town and Country Planning Act 1990.

Recommendation

35. That the Order proposing to divert sections of Marston Meysey footpath 10 as shown on **Appendix A** to this report be submitted to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that it be confirmed as made.

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The following unpublished documents have been relied on in the preparation of this Report:

None.