

OBJECTIONS RECEIVED TO THE MAKING OF THE ORDER

REPRESENTATIONS OPPOSING THE PROPOSAL = 39 (including one received post-statutory period)

POINT MADE BY OBJECTORS	BY HOW MANY	OFFICER'S COMMENTS
1. General objections to the diversion.	39	All responses against the diversion Order claim that they would like the existing line of the route opened up. The reasons given for this vary. Some of the main reasons are given in the rest of the table immediately below
2. Historic significance (e.g. Connections to Ringsbury Camp. Part of local heritage. Duty to protect our past/Old Drovers Road/ will set precedent.	25	<p>There is undoubtedly a degree of historical significance attached to the existing route which may be lost to public use but this should be weighed against any possible public advantages gained by having an all-weather route that is easily accessible all year round and open to all users e.g. horse-riders, cyclists and pedestrians including the very young, the elderly and the not so able-bodied.</p> <p>This diversion will not set a precedent. Arguments on this issue have been very common nationally for decades and each case is decided on its own merits and as though the original route was not obstructed.</p>
3. Privacy: The proposed diversion is on the whim of a landowner and nothing to do with 'privacy and security'/ Landowner fully aware when he bought property/ Could set a precedent to encourage landowners to divert paths due to privacy and overgrown routes.	21	<p>The existing route passes in closer proximity to the landowner's dwelling and outbuildings than the diverted route. It is reasonable to assume from this that there is an inference of increased privacy and security. Indeed, draft minutes from Purton Parish Council meeting on 13 June 2011 state the following:</p> <p style="padding-left: 40px;"><i>"the Chairman highlighted that the proposed diversion would improve the security of the Moseley's home considering its rural situation as Mud Lane runs within a few feet of the rear of their house..."</i></p> <p>This is a common and legitimate reason that entitles a landowner to apply for a diversion and, as long as the other legal tests are met so that the public are not unduly compromised; an Order can subsequently be made. If any diversion made on these grounds enhances the value of the property it is simply because future purchasers see that the dwellings on the property are private and secure, this holds no hidden agenda that is detrimental to the public.</p> <p>This diversion will not set a precedent, see Officers final comment in point 2 above.</p>

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4. Public Inquiry: A substantial number of objectors have called for a public inquiry stating that this is now in the public interest.	15	Officers agree that this is the best platform to determine the matter considering the degree of public interest it has attracted from both objectors and supporters.
5. Wiltshire Council has not carried out its statutory duties and has allowed the path to become overgrown and impassable. This should not now be an excuse for a diversion.	15	It is not only the state of being overgrown that has to be overcome, there are also other deep-rooted problems with very high associated costs that need to be addressed in order to bring this route into a state fit for public use (see officers comments on point 6 below). The expenditure of that amount of money by the Council is difficult to justify when a perfectly adequate alternative route has been supplied without these problems at the expense of the landowner, especially in the current economic climate. Costs to local authorities (relative to public benefit) have been a material consideration in similar cases determined by the Secretary of State for DEFRA (see officers comments on point 1 above). However, costs are not the only element when considering this diversion and there is very strong local support consisting of 83 written representations in support of the Order from users of the alternative route that is being offered as a public bridleway.
6. Loss of character & tranquillity. Old drove sunken hollow way. Flooding and poor drainage not seen as a problem and can be overcome by using other paths during periods of wetness. Should not be used as an excuse to divert. Many other paths in Purton have similar characteristics.	14	It is acknowledged that the path has specific positive qualities such as being an old sunken and relatively dark hollow way but it is also beset by certain problems/drawbacks such as flooding and problematic changes in height midway along the route and whilst there may be those who do not mind muddy and wet conditions on public paths, there are many others who would prefer not to embrace such conditions. There have been 83 written representations in favour of the diversion Order, one of the most common remarks in these responses have been regarding the superiority of using an easily accessible, dry path all the year round. All public user-groups who have a right to use the way have to be considered. The existing route is a bridleway so horse-riders and cyclists are among those that have a right to use the route and these types of user find flooding and poor drainage particularly difficult. Whilst there are suitable alternative footpaths in close proximity which may be used by walkers when this bridleway is impassable due to flooding, there are no other bridleways nearby. Horse riders and cyclists would not be able to take another route. The objectors are correct to say that many other paths in the area have similar characteristics as regards a tendency to flood and surely for the benefit of the general public this is one more common-sense reason to support the diversion which is dry, level and safe for all users all the year round.

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<p>7. Wiltshire Council has overestimated costs to clear the path and/or shouldn't be wasting public money on pursuing this diversion. Ramblers have volunteered to clear the route.</p>	<p>11</p>	<p>One of the principal objectors, Dr Richard Pagett, representing Ps & Qs (Purton's Qualities), stated in his consultation response that: "... (<i>Wiltshire Council is</i>) pursuing unnecessary spending on this proposed diversion when the emphasis, currently, should be on cuts, savings and investment". Officers totally agree with the objectors That the emphasis, currently, should be on cuts, savings and investment.</p> <p>The sunken nature of Mud Lane with its tendency to flood and the abrupt height changes half way along the route means that the nature of the work needed is beyond the skills of volunteers, however well meaning. A quote from an approved contractor for bringing the existing path into a fit state for its intended use as a public bridleway was in the region of £150,000 (Appendix D). It has been claimed by some objectors that an independent expert assessment of the costs from the Ramblers produced a figure of £30,000. However, officers consider that the consultant appointed by the Ramblers did not fully appreciate the flooding problems or the need to make the route safe and useable all year round as a bridleway to be shared by walkers, horse riders and cyclists. The Wiltshire representative of the British Horse Society supports the proposed diversion in providing a better route for horse riders.</p> <p>Purton Parish Council believes that the actual costs may be somewhere in between the two figures given above. The entire Rights of Way operational budget for the North of Wiltshire to maintain public paths is set at £49,000 for the year 2011-2012.</p> <p>The proposed diversion is already in widespread use as a permissive route after being constructed at the expense of the landowner and the only further costs to the Council in pursuing the diversion Order to have the public rights transferred to this route would be costs for a statutory public inquiry should there be objections if an Order is made. The estimated costs to the Council for a statutory local public inquiry lasting two days are estimated to be in the region of £2,500 which would increase for a longer inquiry. Provision has been made within existing budgets for the routine costs involved in processing the application, including Officer time and costs for advertising the Order and confirmation of the Order. Advertisement costs are estimated to be in the region of £700.</p>

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8. It is unfair to compare a temporarily overgrown path with a non-overgrown grass track.	3	In the Order decision, the routes have been equitably compared as advocated in government advice, by disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. The obstructions to the existing route are not confined to temporary overgrowth but include considerable differences in levels on the old route as well as persistent severe flooding in winter.
9. Alternative route very similar to route of footpath 103 and therefore this just an extinguishment of bridleway 104.	3	Horses and cycles cannot be ridden along Purton 103 due to its status as a public footpath and the Council must take all users into consideration.
10. Purton Parish Council does not support the proposed diversion. The Parish Council are elected members and represent the Parish. Wiltshire Council should respect the wishes of the people of the Parish.	2	<p>In 2008 Purton Parish Council supported the original proposed diversion which was on the same route. The make-up of Parish Councillors has recently changed and when Parish Council Members discussed the current diversion the voting was against supporting the diversion by 6-5. Draft Parish Council Minutes state;</p> <p><i>"...Other councillors said that they could see the benefits to the public if it were to be diverted to the permissive route, given the nature of Mud Lane and its tendency to flood in winter".</i></p> <p>There were no members of the public present at the meeting who spoke in support or against the proposal but there were two letters set before the council against the proposal, one from a member of the Parish Council and one from Dr Padgett, one of the principal objectors.</p> <p>The views of the Parish Council are important as are all other responses, all of which are being fully taken into consideration.</p> <p>125 responses have been received to the making of the Order from user groups and members of the public; with those supporting the diversion outnumbering those against it by a ratio of over two to one (83 in support, 38 against, 4 neutral).</p>
11. The proposed route has more obstructions than the existing route	1	The proposed route has two bridle-gates to current BS5709 standard (as at July 2011) which are 'disabled-friendly' being easy to open for all and can also be opened without a horse-rider having to dismount. Although it is true that there are no gates or stiles listed on the definitive statement for the existing Purton 104, it is not uncommon for Wiltshire Council's definitive statements not to record stiles or gates that were in existence when public rights were first recorded in the early 1950's. There has been a stile on the existing route at point B on the Order map and a

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		<p>gate at point A since at least the 1960's and if the existing route were to be re-opened as a public bridleway then there would have to be gates in place not only at these two positions but also one each side of the raised 'field-link' half way along the existing route for the purposes of stock control. Purton Historical Society (Objector) acknowledges this fact and states in their letter of objection</p> <p style="text-align: center;"><i>"To make Mud Lane viable as a walkway, it only requires ... and four stiles or kissing gates at each end of the sections of Mud Lane...."</i></p> <p>The raised field-link is also a difficult obstruction on the existing route which would need two ramps in place to enable horse-riders to pass. Stiles and kissing gates are not acceptable on a public bridleway.</p>
<p>12. Natural landscape compromised by the planting of conifers and non-native plants such as Laurel along the diverted route.</p>	<p>1</p>	<p>The concept of the natural landscape being compromised is arguably misguided as the field landscape that predominates in the vicinity is already a manufactured and controlled landscape. The conifers which are incorrectly referred to as Leylandii by objectors are in fact Lawson Cyprus which is not such a rampant species as Leylandii and are, in any case, only temporary. A third of them have already been removed having served their purpose as an aid to the establishment of more vulnerable slower growing deciduous species. The remainder of the conifers will be thinned out by a third every year until only deciduous species are left. The relevance that this issue has on the legal tests for an Order is how any planting would possibly affect the views (and therefore by inference, the enjoyment of the way as a whole) and any planting should be compared to the existing route which is screened on both sides by high hedgerows consisting of trees and dense shrubs thereby making it difficult to see how the diverted route can be any less enjoyable with regards to the planting issue.</p>
<p>13. Will leave a 'stub' of dead-end highway.</p>	<p>1</p>	<p>The lane which is an unclassified road will remain as it was. It is a cul-de-sac like many other lanes, this is not unusual. In the unlikely event that it proves necessary for any reason to stop up any part of the lane in the future, that issue may be addressed at that time. It is not a relevant factor in a confirmation decision which is made with regard to the legal tests set out in s.119 of the Highways Act 1980.</p>
<p>14. Change of status to Bridleway contrived to allow application for diversion.</p>	<p>1</p>	<p>Wiltshire Council was under a legal duty under S. 53 (2) of the Wildlife and Countryside Act to upgrade the existing route to the status of bridleway because documentary evidence proving the rights was known to be in existence.</p>

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<p>15. It may not be in the interests of the landowner if public carriageway rights are found to exist over Mud Lane, because diverting only bridleway rights would leave any carriageway rights intact resulting in two parallel rights of way instead of one.</p>	1	<p>The continuation of Mud Lane immediately to the west of the Order section was upgraded from footpath to only bridleway status at a Public Inquiry in 1975. Mud Lane (called "Shooters Hill" on Old maps) was a connecting road forming a short cut across the corner of two major routes and whereas, on the balance of probability, horse riders and pedestrians would have taken the shortcut, carriages would probably not have attempted it due to the sunken, uneven nature of the route coupled with its tendency to flood. There has been no significant new evidence discovered that would not have been available to the inspector at the time of that inquiry.</p> <p>The objector raising point 15 (shown opposite), is exceptionally well versed in these matters and he himself submitted an application to Wiltshire Council in 1996 to upgrade the Order section of Mud Lane, but only to the status of bridleway and not with carriageway rights. The public, including the objector who makes point 15, also had the opportunity to object to the recent Order which recorded bridleway rights over the Order section if they thought that higher rights existed; no objections were received and the Order was confirmed. See paragraph 13 (i) below, which sets out why the diversion is in the interests of the landowner.</p>
<p>16. Council presenting every aspect of existing route in bad light so as to support the proposal.</p>	1	<p>It is acknowledged that the existing route holds some degree of historic value but it is a matter of fact that the existing route is overgrown, prone to flooding and that it has an obstruction due to differences of ground levels half way along which would require much engineering to resolve. It is also a matter of fact that a very large sum of money would be needed to bring it into a fit state for use as a public bridleway. It is very difficult to explain these points without seemingly putting the existing route in a bad light (the overgrown state will be ignored for the purposes of comparing the route for the legal tests of convenience and enjoyment, but most people see flooded conditions and abrupt changes of level in a bad light). Officers support the diversion because the advantages to the public are seen to outweigh any disadvantages.</p>
<p>17. Two letters have raised concerns regarding the Order-making process, these are quite lengthy and so are dealt with as appendices to this document.</p>		<p>The 28 points of concern from the Footpath and Open Spaces Chairman, Purton Parish Council and Officer's comments on the points are attached to this document as Appendix E.</p> <p>The 4 points of concern from the Chairman of P's and Q's (Purton's Qualities) and Officer's comments on the points are attached to this document as Appendix F.</p>

REPRESENTATIONS RECEIVED IN SUPPORT OF THE ORDER

REPRESENTATIONS SUPPORTING THE PROPOSAL = 39 (including one received post-statutory period)

POINT MADE BY SUPPORTERS	BY HOW MANY	OFFICER'S COMMENTS
1. General support for the diversion	83	All responses in support of the diversion Order claim that it is a better route. The reasons given for it being a better route vary. Some of the main reasons are given immediately below in the rest of this table
2. Superior accessibility for all users (not only for walkers, but also for horse riders and cyclists) / better layout	30	<p>When considering accessibility, the Council must have regard to Section 149 of The Equality Act 2010 (which has now superceded the Disability Discrimination Acts 1995 and 2005). The 2010 Act imposes the <i>'public sector equality duty'</i> (laid out in paragraph 14 of this document) which requires (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that a disabled person is not put at a substantial disadvantage in comparison with a person who is not disabled.</p> <p>The County Access & Bridleways Officer for the BHS and patrons of local livery/stables are among those people who have used the diverted route over the past six years and regard the diversion to have far better accessibility than the existing legal route along Mud Lane. This is due to the diversion being flat, wide, naturally well drained and having an easy-to-open gate at each end. The gates can be opened without the need for a horse-rider to dismount and they comply with the current British Standard 5709, the standard recommended by the Government that is suitable for disability access gates on public rights of way routes.</p>
3. Miscellaneous general benefits/advantages to public	19	As above.
4. Proposed diversion is safer than the existing legal route	14	<p>Public safety is a concern that Wiltshire Council takes very seriously and is a high priority in the current Wiltshire Council Rights of Way Improvement Plan (R.O.W.I.P.), relevant extracts of which are set out in paragraph 15 of this document.</p> <p>Wiltshire Council is under a legal obligation to have regard to the R.O.W.I.P. when making a decision on whether or not to divert a public path under section 119 of the Highways Act 1980. One of the ROWIP's aims is;</p> <p><i>'The promotion and development of the public rights of way network, enabling pedestrians, cyclists and horse riders to avoid heavy or intrusive traffic'.</i></p>

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		<p>There are no other suitable alternative bridleways that allow all year round passage for horse riders or cyclists to get from Purton or Restrop to the Red Lodge Woods bridleways and the bridleway networks southeast of Purton, without going through Purton and down the dangerous Paven Hill.</p> <p>The diversion is also safer for the public (especially the very young, the elderly, horse riders and cyclists) because it does not have a tendency to flood which can mask treacherous trip hazards such as holes, exposed tree roots or fallen branches, etc.</p>
5. Much appreciated by those that have young families or elderly relatives	9	<p>The public rights of way network reflects historical patterns of use. Current demands made on our rights of way are different today than when many of our public paths took shape and in some places the network has become inappropriate to modern needs. Government Statutory Guidance to Local Highway Authorities in England states:</p> <p><i>'Rights of way improvement plans are intended to be the prime means by which local highway authorities will identify the changes to be made, in respect of the managements and improvements, to their local rights of way network in order to meet the Government's aim of better provision for walkers, cyclists, equestrians and people with mobility problems'.</i></p> <p>Wiltshire Council R.O.W.I.P (see paragraph 15 of this document) states as two of its specific aims;</p> <ul style="list-style-type: none"> • <i>To provide more usable public rights of way network, suitable for changing user demands.</i> • <i>Increase access to the countryside for buggies, older people, people with mobility problems and other impairments.</i>
6. The diversion is expedient in the interests of the Landowner (the remainder of the points in this table demonstrate it is also expedient in the interests of the public).	7	<p>This is one of the legal tests to be met and one that has been challenge by several objectors who say the diversion is only a cynical attempt to increase the value of the property. The landowners themselves are best placed to justify this test and Mrs Moseley (joint landowner) puts a very compelling case showing this diversion to be expedient in the interests of the landowner for reasons of privacy and security, both of which are acceptable reasons, her comments are as follows:</p> <p><i>"I continue to support the diversion. As a mother of three young children, security is among my chief concerns. When we first moved to Restrop Farm nine years ago, we frequently had people trespassing through our driveway and farmyard, walking in any direction they wished. It was disconcerting to say the least. With the addition of the permissive path all this has changed.</i></p>

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		<p><i>Walkers have felt happy and confident to walk a clearly marked route away from a domestic house... On the rare occasions that people still seek the old, impassable footpath, they walk right by our house and frequently look in the windows. It is a big infringement on our privacy and makes the children feel vulnerable and frightened. Footpath 104 runs right along our garden and if it were to be made passable again, I would feel unable to allow our children to play freely outside. We have had repeated incidents involving questionable characters trespassing on the farm as documented in police reports. With crime levels as high as they are, it is in our best interests and those of future families that may live here, to keep people a safe distance away from the house”.</i></p> <p>Similar views were also expressed by two other local members of the public as well as certain members of Purton Parish Council (see point 10 in the table in paragraph 7).</p>
7. The diversion doesn't flood.	6	The diversion is on naturally well drained land that is higher and flatter. This therefore has advantages over the legal route with its tendency to flood and affords all year round access for all types of user. Certain members of Purton Parish Council also recognise this advantage to the public (see point 10 in the supporters' table in paragraph 7).
8. The diversion is easy to maintain/ has been well maintained.	6	As well as positive comments regarding the fact that the new route is easy to maintain, being the correct width for a tractor with mowing and hedge trimming attachments, it is also important to note that it actually has been well maintained by the landowner to a high standard since its inception 6 years ago. It should be pointed out that if the route becomes a public bridleway then future maintenance of the surface would be the legal responsibility of Wiltshire Council, whilst responsibility for any encroaching or overhanging vegetation would remain with the landowner.
9. Opening up the existing route would incur unnecessary and very heavy costs to the public purse.	2	It is likely that the opening up of the existing route would take more than the entire maintenance budget for the north of Wiltshire (see point 7 in the supporters' table in paragraph 7). This budget covers not only the rights of way network in Purton, but also in 48 other parishes in the north area which includes 1,600 km of rights of way.

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		<p>Heavy costs to the public purse, especially in this time of national austerity, of opening up Mud Lane compared with diverting the public rights onto an excellent alternative bridleway which benefits all users (horse-riders, cyclists and pedestrians) and which has been laid out by the landowner at no cost to Wiltshire Council is not justifiable in the opinion of the Council's Officers.</p> <p>Although not laid out in the legislation under which an Order confirmation decision is made, in a recent case an Inspector representing the Secretary of State for DEFRA confirmed an Order and concurred with Devon Council that the relative costs of the proposed diversion as opposed to the re-instatement of the definitive lines is a material factor that should be taken into consideration (see paragraph 18 of this document). The decision was not challenged. In that case the sum involved was estimated to be between £2,000 and £3,000. In this case the work involved at Mud Lane, even at the conservative estimate suggested by the Ramblers, is likely to be at least £30,000.</p>