

MR HARRIS (Footpath and Open Spaces Chairman) OF PURTON PARISH COUNCIL LISTED THE FOLLOWING CONCERNS REGARDING THE PROCESSING OF THE ORDER

Wiltshire Council Case Officer's comments follow each point made

1. "Mud Lane is an ancient drovers' way and bridleway which is part of the heritage of the local area. The bridleway is capable of being restored to provide the normal benefits of a bridleway for use by the public. It is in the public interest that it should be preserved".

Officer's comment: It is true that Mud Lane is an historic route, but it also has accessibility problems and is prone to severe flooding (**Appendix D**: Objections Received to the Making of the Order; Point 6 in the table). Benefits to the public of the diverted route outweigh the disadvantages of losing the original route (these reasons are laid out in the tables forming **Appendix D** and in the Committee Report paragraphs 12-16). The restoration is also likely to cost Wiltshire Council approximately £150,000 (Committee Report; paragraph 17). This is more than the entire Rights of Way operational budget for the North Area of Wiltshire and so would not be in the public interest.

2. "The process by which the Order of 20 September 2011 was made was flawed and it is in the public interest that a Public Inquiry should be held into the Order for the following reasons".

Officer's comment: The Order process was not flawed for the reasons stated in answer to Mr Harris's questions below.

3. "Wiltshire Council has not stated the delegated powers under which the Order of 20 September 2011 was made or who gave authority for it to be made. If Wiltshire Council relies on the decision of the Regulatory Committee dated 21 May 2008 as the only delegated power for the making of the Order, then the Order lacks validity".

Officer's comment: The Order was duly made on 20 September 2011 under delegated powers conferred on the Corporate Director of Neighbourhood and Planning under the 'Wiltshire Council Constitution Delegation for Officers part 3b'. The required newspaper advertisement giving notice of the Order was placed in the Wiltshire Gazette and Herald and had the Corporate Director's name at the bottom.

4. "The Order was made on misleading information relating to the policy of the Parish Council in respect of the application for the diversion. Potential objectors who may have read the misleading statements in the Decision Report trivialising the policy decision of the Parish Council not to support the proposed diversion may have been deterred from objecting".

Officer's comment: Order decisions are made purely on the legal tests laid out in the Order making legislation (Highways Act 1980 s.119). It is accepted that the Parish Council has historically wanted Wiltshire Council to open the route but this has not been possible due to the same budgetary constraints that are explained in the Committee Report; paragraph 17.

The decision report stated that '*Purton Parish Council expressed their wish for Wiltshire Council to take no action against the previous landowner when the existing route became overgrown*'. This statement was not meant to mislead or trivialise any policy decision taken by the Parish Council. To clarify the

matter and to be fair to the Parish Council it should be pointed out that this was only due to the Parish Council being compassionate on behalf of the elderly landowner and Wiltshire Council Officers recognise that the long-term aim of the Parish Council was to open Mud Lane for use.

The ratio of people objecting to the Order, compared with those in support, is the same now as it was before the decision report was made, this ratio is slightly better than 2 to 1 in favour of the diversion which suggests that any possible misunderstanding had little or no effect. People tend to object to demonstrate their own views and not to reflect the views of another person or organisation. The point of seeking views is to help determine if the legal tests legal Order-making tests laid out in s.119 of the Highway Act 1980 have been met.

5. "Through correspondence conducted with its Officers, Wiltshire Council is aware that the Parish Council has had a long standing policy to have Mud Lane opened for access to the public. The Parish Council has over many years campaigned to persuade Wiltshire Council to fulfil its statutory duty to cause Mud Lane to be opened to the public".

Officer's comment: Agreed, although this has not been possible due to the reasons and constraints detailed in paragraph 17 of the Committee report.

6. "The Parish Council has always dealt with the matter in a considered way as the following outline of events shows".

Officer's comment: The fact that the Parish Council has dealt with the matter in a considered way is not in dispute, therefore many of the points below are superfluous to the argument and have not been commented on; however, they have been included for completeness. It has already been noted, both in the Decision Report and the Committee Report, that Purton Parish Council does not support the Order.

7. "On 3 March 2003, the Parish Council's Footpath Committee was advised that the Council had".... Received a request from Mr Moseley to close the historic route of Mud Lane and divert it elsewhere". A Working Party of Councillors had considered the request and recommended that Mud Lane should not be closed. The Footpath Committee accepted that recommendation".
8. "At its meeting on 14 February 2005, the Council resolved not to support the diversion of Mud Lane suggested by Mr Moseley".
9. "In 2007, Mr Moseley made a further approach to the Council in relation to his proposal to divert Mud Lane. On 24 September 2007, the Parish Council's Rights of Way and Open Spaces Committee agreed to host a public meeting to discuss the proposal".
10. "The meeting was held on 1 October 2007. An Officer of Wiltshire Council attended the meeting. The meeting discussed a variety of issues relating to the status of Mud Lane".
11. "On 10 December 2007, the Council reviewed the situation including an assessment of the condition of Mud Lane. A résumé of the various options to preserve Mud Lane, including a lease arrangement proposed by Mr Moseley was given by an officer of Wiltshire Council. The Parish Council resolved:

"That the possibility of the Parish Council entering into a lease agreement with Mr Moseley for Mud Lane will be explored and that Mr Moseley will be asked to provide the Parish Council with the terms for the agreement".

12. Correspondence between Mr Moseley and the Council ensued, including emails about the scope and potential status of such an agreement. On 14 January 2008, Mr Moseley withdrew the proposal for a lease and proposed a form of covenant for the preservation of some public rights in Mud Lane.

13. "On 10 March 2008, the Parish Council resolved:

"That a covenant for Mud Lane would be entered into if the permissive route becomes the definitive route. That a Working Party comprising three Councillors and the Clerk would be set up to draft/write the conditions of the covenant which will be designed to maintain access for the public in perpetuity in conjunction with the landowner and that it would be preferable if the access to the site is administered by the Parish Council rather than the landowner as a further safeguard for the access to Mud Lane".

14. "On 12 May 2008, a meeting of the Parish Council considered a draft covenant that was circulated with the Agenda and resolved to approve it subject to the inclusion of some amendments. The wording of the covenant (as amended) was as follows:

"This Covenant applies to that section of Mud Lane running from Restrop Farm House to its juncture with Ringsbury Camp. The historical and structural aspects of Mud Lane will be retained – that is there will be no changes to the fabric of the path or the adjacent flora. Mr Moseley and subsequent landowners will allow access to Mud Lane to interested parties for any historical, academic or archaeological reasons. If the permissive route once adopted as the definitive route is challenged in the future then it should revert to the old route of Mud Lane. Mr Richard Moseley the current owner will use best endeavours to ensure that this covenant will be preserved in perpetuity and passed with any future changes in title to new landowners. Maintenance and upkeep will be provided by the landowner".

The Council further resolved that: The covenant would only be required if the diversion from the current definitive route to the permissive route is formally approved". The Clerk was asked to get an updated on Mud Lane from the County Council."

15. "The report to the Wiltshire Council Regulatory Committee held on 21 May 2008 at paragraph 15 stated:

"It should be noted that the support from the Parish Council has been influenced by an offer from the landowner to enter into a covenant that if the public right of way is moved out of Mud Lane, (he) would allow local people to access the lane to enjoy and study its history. The Council Council will not, and cannot legally be a party to the proposed covenant".

Officer's comment: Points 11-15 above refer to a potential covenant between Purton Parish Council. Wiltshire Council has not, and cannot legally be, involved in this. The hedgerows already have legal protection under the hedgerow regulations under which planning permission is required to alter or remove hedgerows. Further protection cannot be pro-active but any planning application by the present or future landowners involving the hedgerows would trigger a hedgerow inspection by a Planning Officer. It is only at this stage that any necessary added legal protection may be placed upon a particular hedgerow.

16. "On 9 June 2008, The Parish Council meeting was advised that:

"The CC Regulatory Committee had met on 21 May to discuss the application for the diversion of Mud Lane. The Clerk gave an update that she had received from WC which was that the proposal to divert Mud Lane will go out for public consultation".

Officer's comment: A public consultation duly took place in the summer of 2008.

17. "The Order made under the Regulatory Committee decision of 21 May 2008 was subject to objections and foundered at the Public Inquiry opened on 8 September 2010, because it described Mud Lane as a public path whereas it should have been described as a bridleway".

Officer's comment: In the 2008 Order, Mud Lane was actually described as a public footpath which was its legal recorded status at that time. The Planning Inspectorate took the view that a footpath could not be diverted to a path with the status of public bridleway. An outstanding application to upgrade Mud Lane to bridleway status was then determined and an Order to upgrade to bridleway status was made, then subsequently confirmed as there were no objections.

18. "On 13 September 2010, the Parish Council resolved to support the upgrading of Mud Lane to a bridleway from a footpath. Wiltshire Council confirmed the Order to upgrade part of Mud Lane to a bridleway from 3 March 2011".

19. "On 17 May 2011, the Parish Council received a new proposal from Wiltshire Council which said that Wiltshire Council was considering whether or not to divert part of bridleway 104 (known as Mud Lane)".

20. "The proposal, together with a copy of the covenant that the Parish Council had previously approved was considered by the Council at a meeting held on 13 June 2011. Eleven of the twelve Parish Councillors were present. The Councillor who was absent had written a letter that was circulated at the meeting objecting to the proposed diversion. At the meeting, the Council was advised that the Covenant proposed would have little or no legal standing. The proposal that the Council should continue to support the diversion without the Covenant was put to the vote and was lost by six votes to five. A copy of the minute is annexed to this Statement of Objection".

21. "A copy of this minute was sent to the Officers of Wiltshire Council who were aware of its contents before the Decision Report was prepared".

22. "The Decision Report at Section 8.3 paragraphs 3 and 11 fails to present an unbiased view of the Parish Council's decision not to support the diversion. The way in which the Parish Council's decision is presented may have discouraged other potential objectors from objecting. It is fair to say that, over time, conflicting opinions have been expressed by Parish Councillors as to the meeting, effect and enforceability of the proposed covenant but the Council's decision on 13 June was unequivocal".

Officer's comment: The parts of the Decision Report mentioned above merely show that some Parish Council Members expressed some positive views on the diversion, it is fact and it is only fair to show this for completeness. It is accepted that the Parish Council's decision on 13 June was unequivocal and how it reached that decision is an internal matter. With reference to the presentation of the way the Parish Council reached its decision please see the final paragraph in answers to point 4 above and point 23 below.

23. "The Decision Report at Section 8.5 misrepresents the decision of the Council by selecting one comment made by a Parish Councillor and seeks to misrepresent and trivialise the Parish Council's decision by the following statement:

"The Parish Council were originally in support of the diversion and explained the reason for their change in stance was that they have recently had an influx of 4 new Parish Councillors".

The Parish Council has never made any such statement in respect of its decision on 13 June 2011. The Parish Council's decision of 13 June was made on an objective analysis of the facts which led to an unequivocal decision. The trivialisation of the Parish Council's decision in the Decision Report may deter other potential objectors from objecting and shows an element of bias".

Officer's comment: There is no element of bias intended. The following email extract was sent by the official Purton Parish Council representative in a direct answer to the query from the Case Officer as to why the Parish Council changed its stance on supporting the Order.

From: Shirley Bevington [mailto:clerk@purtonpc.eclipse.co.uk]
Sent: 15 June 2011 09:53
To: Chinnick, Tim
Subject: RE:

..... The vote was very close 6 to 5. The reason for the change is that we have lost some Councillors who had supported the diversion and have new members who do not hence the swing in votes. I suppose it is inevitable that with long drawn out disputes such as this people come and go with different ideas it is democracy at work.....

This is a reasonable explanation for the change in voting pattern and in the Officer's opinion it does not trivialise the Parish Council's decision in any way. However, it arrives at a decision, that is an internal matter for the Parish Council and the result of its decision is taken on face value. Every point of consultation and statutory objection made by the Parish Council has been added into the tables set out in the Decision Report and the Committee Report respectively.

24. "Wiltshire Council has not made available to potential objectors information relating to the letter calling for comments and other documents to which they are legally entitled under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004".

Officer's comment: All case documents are held on file in the Rights of Way Section at Old County Hall and are available to any member of the public for viewing on request. This is normal practice and follows advice from the Department of Environment, Food and Rural Affairs. No such request was made by Mr Harris, who decided to submit a Freedom of Information (FOI) Request for hard copies. The response to Mr Harris's FOI request (No.3716) was processed jointly by the Case Officer and Wiltshire Council Freedom of Information Team. All questions were answered fully and over 130 documents were processed and sent to Mr Harris. There was a delay of a few days due to the Case Officer being in hospital and other staffing shortages, this was highly unfortunate, and Mr Harris was notified of these circumstances in advance of the date when the information was due to be received by him.

25. "The Decision Report contained no specification or other information to justify the high cost of £150k for the opening of Mud Lane. The Decision Report also ignored the possibility of voluntary labour to reduce the cost. Through its officers, Wiltshire Council is aware that the footpaths and bridleways in Purton Parish are maintained to a high standard with the input of voluntary labour and that voluntary labour would be available to assist in the works needed to open Mud Lane. The Decision Report ignored that possibility and whoever made the decision to make the Order on the basis of the Decision Report was inadequately informed".

Officer's comment: Justification for the £150,000 costs was given at point 6 in the table within paragraph 7 of the Decision Report, as being due to *"the sunken nature of Mud Lane with its tendency to flood and the abrupt height changes half way along the route"* and paragraph 10.11 states that ... *"in order to provide a safe and fully accessible bridleway for use by walkers, horse-riders and cyclists, the figure of £150,000 is realistic"*. The actual quotes by M J Church Ltd for £148,000 in 2008 and a 2011 revised quote of £151,000 have been submitted to Mr Harris on request and are attached to the committee report as **Appendix H**.

The Decision Report did not ignore the possibility of voluntary labour. It was stated in paragraph 8.3.6 that the work was *"beyond the scope of volunteers"* the reasons given for this were due to the engineering difficulties in addressing the level differences and the tendency for severe flooding. Similar comments were given in paragraph 8.3.8 *"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"* and in paragraph 10.9 ... *"The barrier formed by the abrupt 4-foot height changes half way along the existing route however, is not of such temporary nature and would certainly need considerable engineering works in place to allow free passage"*.

26. "The comments in the Decision Report contradict previous statements made by WC with regard to the weight that they attached to issues. For example: the WC has previously said that privacy

"is not the main concern of the County Council when considering whether the path should be diverted" (letter 24/2/2008)".

Officer's comment: There is no contradiction. It does not say in the Decision Report that privacy is the main concern. Privacy was not the main concern in 2008 and it is not now. This misconception leads from a misunderstanding of the law, expediency in the interests of the landowner or the public is one of the legal tests and in some cases privacy and/or security can contribute to this particular test.

27. "The letter that Wiltshire Council issued calling for comments did not advise the public that, when making comments, they should be aware that the purposes of deciding whether a right of way should be stopped up, any temporary circumstances preventing or diminishing its uses by the public shall be disregarded. Government guidance states that the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it".

Officer's comment: The Government guidance is intended to be applied by the Order-making authority or the Secretary of State when determining the Order, to help ensure that the legal tests are properly applied. Initial consultation letters are merely to invite comments on the proposals. These comments can be far-ranging and it is up to the individual to raise any point they see fit.

28. "Wiltshire Council has not made available the individual comments which it took into account in deciding to make the Order. The Decision Report contains an extensive analysis of the comments that have been made in objection to the proposed diversion but not of the comments made in support of the diversion, which raises a question about the way in which those comments were obtained. A Public Inquiry should be held so that those individual comments can be objectively analysed".

Officer's comment: Wiltshire Council's entire case documents for all Rights of Way Cases are held at County Hall and are always available to any member of the public on request. An extensive analysis of the comments made in support was actually made into a table but contained so many superlatives concerning the diverted route that it was decided not to include it because it would probably raise a call of bias from the objectors. However, because it has been requested by objector's, it is now included in the Committee Report as **Appendix D**. Officers strongly agree with the objectors that a Public Inquiry should now take place.