

APPENDIX 8

From: F M [<mailto:francismorland@hotmail.com>]
Sent: 08 August 2012 18:40
To: Tonge, Richard; Tonge, Richard
Cc: christophernewbury@gmail.com; Clark, Ernie; Hubbard, Jon; Burke, Barbara; rightsofway; Ward, Tom; Bishton, Roger; Democratic and Member Services
Subject: Newly Published Decision : HT-039-12 Intention - Proposed Application to Stop Up North Bradley Footpath 1

Dear Dick Tonge,

As you invite in your "Intention to make decision" notice, I wish to comment on the displayed Report as follows:-

1. The officers must be well aware that the first paragraph of my e-mail sent 16 April 2012 was intended to draw attention to the longstanding and clear direction by the Secretary of State to Local Highway Authorities that in the circumstances which are applicable in this case they should not use the magistrates' court procedure but should instead make use of the other powers available unless there are good reasons for not doing so (DOE Circular 2/1993: Public Rights of Way [35]; Rights of Way A guide to law and practice 3rd edition (2001) page 639 (text) and pages 189-190 - "An outmoded relic from the past?" - as to the involvement of the magistrates' courts in such matters). Presumably they have failed to draw your attention to this aspect because they do not think that there are any "good reasons" for the procedure they are recommending you to adopt. Their comments at [8] of the displayed Report are a less than transparent attempt to circumvent this issue. In particular, the many shortcomings of the magistrates' court procedure are well documented elsewhere.
2. My wish to link the stopping up of this footpath with the formal adoption and addition to the Definitive Map and Statement of the alternative route nearby is wholly in accordance with good practice and the comment in [8] of the displayed Report that " it is understood that this is now available for use" may be true but it is an inadequate response which, it seems to me, intentionally fails to address the point I raised.
3. The relevant test for stopping-up under the procedure proposed is that the footpath in question is "unnecessary". This is clearly not the reason for stopping it up being advocated in the Community Consultation document displayed in Appendix 4, which I was never sent a copy of and have never previously seen until your "Intention to make decision" notice was drawn to my attention by Councillor Ernie Clark (even that was not sent to me by Wiltshire Council itself, nor any notification of it either). From the displayed responses in support of what is proposed in that document, said to number 76 in [6] of the displayed Report, it is clear that the wish to stop up this footpath has nothing whatever to do with it being unused; quite the contrary - the complaints are that it is being used excessively by dog walkers and/or other members of the public for antisocial purposes, and although, as far as I am aware, its route does not cross any of the pitches (I believe that [13] of the displayed Report is factually incorrect - "which crosses the area of the pitch" - about this) nor interfere with any of the football club's other facilities, the suggestion is made repeatedly that it is nevertheless a health risk to football players on the pitches, particularly to young children. Whatever the merits of these arguments, which appear to me to be wildly exaggerated, they demonstrate beyond doubt that the footpath is in fact rather well used and the wish to stop it up has nothing at all to do with it being "unnecessary". The case law makes clear that the convenience of the landowner (or their tenants) is not a relevant factor under this procedure

(see pages 187-188 of "Rights of Way"), although it would be under the alternative procedures.

4. I have real concerns about the manner in which the displayed Report comments upon the stopping-up proposal, which seems to me to be seriously lacking in balance or objectivity, and includes a number of propositions about the case law on the matter which I am doubtful about.

5. There is uncertainty about the route of North Bradley footpath 2 nearby, which may run over land in the same ownership and tenure as footpath 1, and in respect of which there have been long-running exchanges of e-mails between North Bradley Parish Council and Paul Millard, but no agreement yet on a course of action, so that the footpath in question remains obstructed and unavailable for use pending a resolution to alleged discrepancies between the previous accustomed route and that shown on the Definitive Map. Unhappily, this only adds to the state of mutual distrust and conflict which currently exists between the football club and its very vociferous supporters, and some local residents.

For these and other reasons, I urge you not to go forward with the proposed decision tomorrow, but to carefully reconsider the matter in the light of my comments above and my e-mail sent 16 April 2012.

Yours sincerely,

Francis Morland
Wiltshire Councillor
Southwick Division

Response of Solicitor to the Council to Cllr Morland's email of 8 August 2012

1. Officers do not share Mr Morland's opinion of the magistrates' courts procedure and consider that the use of section 116 of the Highways Act 1980 is an efficient and fair way to proceed in the circumstances. Anyone objecting has the opportunity to make representations to the magistrates. The section remains on the statute book and is available for use by the council. The reference to Rights of Way: A guide to law and practice 3rd edition (2001) stops directly before the publication makes it clear that the advice on section 116 applications is not binding on local authorities. It is also a possibly quicker way to proceed. The Secretary of State may elect to deal with an opposed order by way of written representations but he may well prefer to hold a public inquiry or other public hearing.

2. Mr Morland's wishes are noted but I am instructed that the link between Boundary Walk and Bradley Road is already used by the public but was not needed for Footpath 1 to be considered as unnecessary.

3. It would be quite correct to say that the football club is not asking the council to make an application to stop up Footpath 1 primarily because the club views the footpath as necessary. This is not a requirement and it is hardly unusual for a person or organisation making a request to be motivated by other considerations (eg a request the council has received to apply to stop up highway at Glovers Court, Malmesbury). The requirement in order to make an application is that the *Council* needs to be satisfied that the highway is unnecessary. I am instructed that it is considered to be unnecessary. The presence of the footpath does make part of the use of the ground lawful (even though there is considerable deviation from the legal route of the footpath) and if the footpath were stopped up, the club would be able to take extra security measures. The club wishes to improve security both to alleviate the problem of dog mess and littering but also the vandalism of premises, of which Wiltshire Constabulary is well aware. It is appropriate to include in the report the responses to the public consultation, including some from Mr Morland's constituents.

4. Mr Morland does not substantiate his objections to the case law referred to in the report. The objector's views are given in full. It is submitted that the report has taken the various factors into account and is a fair and reasonable reflection of the view of Rights of Way and the Safer Communities Team towards the club's request for an application to be made.

5. I understand that, in fact, the route of North Bradley Footpath 2 runs over land in separate ownership. The council intends to address the obstruction referred to by Mr Morland but I am instructed that this does not need to be resolved in order to proceed with an application relating to Footpath 1.