

APPENDIX 4

Wildlife and Countryside Act 1981 s.53

The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2015

Representations and Objections

The advertisement period for the above order ran from 22 January 2014 to 06 March 2014 inclusive. During this time 1 representation in support and 4 objections were received. Additionally some additional evidence was adduced and investigated and this is included at the end of this appendix.

Representation

Mr B Riley 26 January 2015

“Wildlife and Countryside Act 1981 s.53

The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2015

I wish to record my support for this Order, which if confirmed, will constitute another small step towards achieving an accurate and up to date Definitive Map and Statement.

Having viewed the original documents cited in support of the Order, it is clear that the historical evidence more than satisfies the statutory tests.

You may wish to evaluate three additional maps (images sent separately) which also show, on the balance of probability, that the Order route is an ancient public carriage road.

These are:

- 1. Philip’s District Map, Cycling Edition 1893: Shown as a “Cross Road”, as are the local minor public roads and byways.*
- 2. The London Guarantee Touring Map, Salisbury District, c.1914 (George philip) : Shown as part of the local minor road network in the same way as nearby unclassified (and some classified) roads and byways.*
- 3. The Automobile Association Touring Department Map, Sheet 33, 1924 (Bartholomew): Shown as an uncoloured road – “The uncoloured roads are inferior and not to be recommended”. This description is akin to local authority signs on unsealed unclassified roads which read “Unsuitable for motors”. In other words ‘use at your own risk’.*

Individually these maps are not important but they all accord with other maps listed in support of the Order.

If the Order is opposed, I anticipate that I would attend any subsequent inquiry to support the Council’s Order.”

Officer’s comment:

The three additional maps have been inspected and all show the route of Teffont 9 as described by Mr Riley. These additional 3 maps add to the considerable list of commercial maps listed at page 97 and 98 of Appendix 3 (Decision Report) dating from 1773 to 1945.

Objections

1. Mrs S Kilgour 24 February 2015

"I am writing to object to the modification order issued by Wiltshire Council in respect of Teff 9 a bridleway/footpath.

I feel it is totally unnecessary to widen any part of the path, it is also a ridiculous waste of taxpayers money, it is also a ridiculous waste of time especially when there must be more important things for the Council to deal with ie the state of the main road through Teffont which is in an appalling state.

As far as Teff 9 path way is concerned I have ridden, walked and even cycled along it as have many others who live nearby. There is nothing wrong with its width or its current state of repair. It is perfectly fit for use if some of the largest farm vehicles used in this area can get from one end to the other without any problem then I can see no reason to widen it.

I would also like to question who will pay for such a task I would not like think that my council tax is going to pay for this, if it is the landowners whose property the path goes through then I think they would rather not waste money on such a pathetic action either."

Officers wrote to Mrs Kilgour enclosing a copy of the Decision report and inviting her to withdraw her objection as the content of it was irrelevant to the provisions and considerations of s.53 of the Wildlife and Countryside Act 1981. She wrote again in a letter dated 4th March 2015:

"Further to your letter 25th February and in reference to the modification order of Teffont 9 to restore it to its original width of 30 ft.

I would like to continue with my objection and add some further points, after reading the documents you kindly sent me I find there are a few comments made by so called users of Teff 9 that I find need some clarification.

Firstly I would question that many of the witness statements are very if not the same in wording therefore looking extremely scripted and biased, rather than their own individual thought. The common comment is about being given permission was given by past owners of manor farm when it was one whole plot so access to Teff 9 wasn't really an issue. The last owner (Lord Sharmen) gave only a select few the privilege to sue the short cut through track to teff 9 and Mr Waddington did not contest this as he and Sharmen were on good terms. It is only since the current owner of the manor house Mr wood has been on the scene that any issue with the state of the bridleway or access to it have arisen. I must also reiterate a point made by Mr Waddington and Mr Durtnall I believe, that access rights for Mr Wood to cross from his track to Teff 9 were refused in a court row last year, and I believe because he lost he is now trying every other route possible to get what he wants, because while this application has been in process he has put in planning for a gateway from manor farm track up the westerly side of Mr Durtnalls property (in the old football pitch) to the old Dinton road and a hunting hate and surfaced slope the gradient I would think is the same as the entrance to the

bridleway some 50 ft or so away to the east)which many witnesses quote as being not suitable even dangerous) this planning has been given and work is under way or may be complete by now.

Another point to note is that the many so called users of this permission approach Teff 9 from manor farm track and turn RIGHT UP the hill towards the old Dinton road and then back down to the village church this is known as going round the block so are not using the full length of the bridleway in its proper use.

The comment about the size of the hunting gate at the northerly end of the way is not right, it is sufficient as deemed by the bridleways association when it was put in and is left open to make access even easier (I note a similar gate further down the byway heading east from Teff5 is actually smaller and looks more difficult to open, but no opposition has been made about this one).

The comment made by witness 9 referring to poles on the floor blocking the verge are not so and they do not appear in the many photos you have documented in the Decision Report. There is a consistent report of the slope at the entrance to Teff 9 on the old Dinton road being dangerous especially now it is tarmac ked. I have ridden down this on a few occasions and had no issue at all, I note that ALL RIDERS RIDE AT THEIR OWN RISK this is a common statement put up in stables county, country and worldwide, riding is a dangerous hobby and riders should be self aware and not complacent, it would also be a very boring hobby if all the bridleways were absolutely perfect and no risk what so ever existed, there would be no excitement, thrill or enjoyment. I think as far as the issues with vehicles passing and the shoot in progress at times then a mutual respect for each other should exist I do not tolerate rudeness from those who think themselves above everyone else, (these people give other countryside users a bad reputation).

I believe that most of the evidence given by the 24 witnesses is of an irrelevant nature as you so deemed my own points of view, so with that in mind I hope a rebuttal letter was sent to all other correspondence of no relevant evidence.

To close I reiterate I would like my objection to remain, primarily because of the ongoing legal issue the widening of teff 9 will almost certainly allow The Woods to gain access to Teff 9 via Mr waddingtons property, Which I do not agree with, Mr Woods is trying to bully his way in getting WHAT HE WANTS this is his general attitude to everything it seems."

Officer's Comment:

It is difficult to see any points of relevance in Mrs Kilgour's objection since although she challenges the integrity of the users of the way who submitted evidence at the application stage (and at the consultation stage), the points are irrelevant to the matter before this committee in terms of the historical evidence base on which this Order was made . A challenge to the integrity of user evidence may be relevant where a matter turns on that evidence (perhaps in the case of a deemed dedication under s.31(1) of the Highways Act 1980 or a dedication at common law relying on the user evidence in the period covered by the witnesses, but that is not the case here. In any event views relating to the size of the hunting gate, the nature of the sport of horse riding and the qualities of the characters of individuals are not matters for the Council to consider in this case.

2. Edward and Antonia Waddington 05 March 2015

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TEFF 9 DEFINITIVE MAP MODIFICATION ORDER

We are writing to object to the making of the above Order on the following grounds:

1. There is not sufficient evidence to show, on the balance of probabilities, that the way in question has been dedicated as a public right of way of higher status or greater width than currently recorded on the definitive records either under common law or under s31 Highways Act 1980.
2. The totality of the evidence is not sufficient to show on the balance of probabilities that a right of way subsists along the Order route as claimed. In particular, the evidence does not establish on the balance of probabilities that the route of Teffont 9 is an ancient public carriageway.

We reserve the right to add to or to amend these grounds of objection.

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Officer's Comment:

It is considered that the above objection meets the terms of the notice and is a duly made objection to the Order. However, it does not specifically challenge the Council's interpretation or bring to the Council any new evidence to consider. It is considered that there is a sufficiency of evidence relating to Teffont 9 to show that on the balance of probabilities the route should be recorded as a restricted byway as shown in the Order.

3. Matthew Fry (W. G. Fry and Son) 06 March 2015

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balance of probabilities that the route of Teffont 9 is an ancient public carriageway.
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Officer’s Comment:

It is considered that the above objection meets the terms of the notice and is a duly made objection to the Order. However, it does not specifically challenge the Council’s interpretation or bring to the Council any new evidence to consider. It is considered that there is a sufficiency of evidence relating to Teffont 9 to show that on the balance of probabilities the route should be recorded as a restricted byway as shown in the Order.

4. Mr P Durtnall 06 March 2015

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The Wiltshire Council Teffont Path No. 9 Rights of Way Modification Order 2015

I am writing to object to the above Order which was made on 13th January 2015.

1. The first 50 metres or so of the proposed public carriageway going northwards from Old Dinton Road do not follow the evidence as shown in the Wiltshire Council’s report. On the balance of probabilities the way in question has been dedicated as a public right of way of no higher status or greater width than currently recorded on the definitive records of 8 feet wide.

2. The totality of the evidence is not sufficient to show on the balance of probabilities that a right of way subsists along the Order route as claimed. What may have been privately agreed between the various parties in 1799 and documented in 1800 was superceded by an Inclosure Award in 1837 based on an Act of Parliament. This Award had the power to set out, appoint, divert, turn and stop up public carriageways and highways.

3. Wiltshire Council has declined to precisely identify the route of their DMMO on the ground prior to the end of the 42 day objection period.

4. The purpose of this DMMO is not for the convenience or enjoyment of a substantial section of the public or local residents. The Teff 9 bridle way is 8 feet wide and perfectly accessible to all riders and pedestrians who wish to pass along its length.

I reserve the right to add to or to amend these grounds of objection.

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Officer’s Comment

Point 1: The area of concern for Mr Durtnall is the first 50 metres from the Old Dinton Road northwards along Teffont 9 to a point approximately level with his garage. Although

the 1800 Inclosure award plan shows the route of Teffont 9 as being straight at this point it is clear from the Earl of Pembroke's estate map drawn up the year after inclosure (1801) that a 'funnel' shape better reflected the course of the road at this point. This is reflected in the 1808 Ordnance Surveyors drawing, the 1827 Map of the Manors of Dinton and Teffont, the 1837 Inclosure award plan, the Tithe Act plan and apportionment, the parish map of 1843 and subsequent Ordnance Survey drawings leading up to the current day when the path on the ground has a similar shape. The width of the public road at this point is 33 feet and would be recorded in the definitive statement, the line on the definitive map does not reflect width or represent the centre line.

Point 2: Mr Durtnall appears not to accept that the award of the Commissioners made pursuant to an agreement in 1800 is binding in the same way as the subsequent inclosure arising out of Acts of Parliament. Full transcripts of the agreement and award from 1800 have been provided to Mr Durtnall and it is difficult to see why he does not accept that an agreement, formerly drawn up and acted upon, between all parties, including the owner of the land, does not constitute a lawful act. The award was clearly executed and agreed upon and a landowner may dedicate any way he wishes over his land and subject to the acceptance by the public through use, that way may become a public right of way. Traditional means of access from the village of Teffont to the downs and beyond to Wyllye was prevented by the 1800 enclosures; the new public road detailed in the 1800 award came into existence and formed the way to the downs and beyond to Wyle after 1800 and is well shown in documents pre-dating the Parliamentary inclosure.

Point 3: Wiltshire Council is not required to accurately survey the land or to peg out any right of way within the 42 day objection period. The Order plan is produced at a larger scale than is required (the Order plan is at the scale of 1:10000 whereas the definitive map for this area is at the scale of 1:25000 and clearly shows Teffont 9 leading between fenced or hedged boundaries.

Point 4: The purpose of the DMMO is to correct the definitive map and statement. This is the legal record for public rights of way. The question of the adequacy of width for a bridleway (or any right of way) is irrelevant for the application of s.53 of the Wildlife and Countryside Act 1981.

Additional submissions and evidence viewed during the advertisement period:

- 1) Three User evidence forms were submitted. These were from:
Mr J C Atterton, Wisteria Cottage, Teapot Street, Wyllye, Warminster, BA12 0OT
Mr R A Lovell, Gilston House, Salisbury Road, Chilmark, Salisbury
Mr D J Jones, High Street, Codford, Warminster, BA12 0ND

Mr Atterton, a retired farm manager, believed the way to be a bridleway which he had used between the years 1970 and 2015 while travelling from home for business at Manor Farm.

He used the way between 40 and 50 times a year in a Land Rover or walking and saw others walking, riding and cycling. He believes the way to be 8 feet wide and he has always used the same route. He has worked for Mr and Mrs Waddington as a casual worker. He had never asked permission to use the way or been told he could not. No map was submitted. Not aware of any documentary evidence.

Mr Lovell, a vermin controller, described the route of Teffont 9 in detail and included a detailed hand drawn map. He first used the way through his work and used it from 1992 to 2015 as a means of going to work on the farm. He used it weekly by several means and saw others walking and riding a horse. He believes the way to be 8 feet wide and always following the same route though he also used entrances to fields in association with his work. He recalled seeing various signs on tracks leading away from the bridle path. He worked for the current and previous owner of the land and knew the way well. He was given permission to use the way by the previous owner. Not aware of any documentary evidence.

Mr Jones, a farm manager for 14 years (Potter Pitcairn Partnership) knew the way between 1978 and 1992 and used the route of Teffont 9 to get to work. He describes the way as "approx. 8 feet wide bordered by ditches and hedges for most of its length. During my time as manager verges were left as wildlife habitat". A hand drawn map was included. He used the way walking and with farm vehicles and occasionally saw a walker or horse rider. His employer instructed him that public use was a restricted bridleway. He had turned vehicles away for illegal use of the track as requested by his employers. Not aware of any documentary evidence.

Officer's Comments:

All three of these users of the way have used it while in the employ of the landowner and were clearly well aware of the route during that time. They confirm that the public have not used the way with vehicles in more recent times (post 1970) which is in agreeance with other evidence.

2) Teffont Parish Council Minutes 05.05.1953

The minutes of the meeting of Teffont Parish Council on the 5th May 1953 state:

"A discussion took place on the widths of the road of (sic) the Ox Drove and the road leading from the old Turnpike past the Manor Farm Buildings to its junction with the Ox Drove. It was decided not to take any action on this matter."

Officer's Comments:

No further information has been found as to the detail of the discussion about widths but it is noted that the Parish Council referred to Teffont 9 as "the road" in the same way it referred to the Ox Drove road (now Byway Open to All Teffont 12).

3) Survey of Teffont c.1800 WSHC 2057/S113

This is a full and detailed survey of Teffont Magna in a terrier form using allotment numbers and details from the 1800 award. For example Pc164 is described as "allotment to be enclosed". It contains some detail relating to earlier leases in note form and has been updated where leases were surrendered or people died. The document was clearly a working document for the Earl of Pembroke's estate – for example one dwelling has entries dated 1800, 1801, 1819 and 1856.

It is useful in confirming the execution of the 1800 Inclosure Award, for example:

"The above was allotted to H ? Wyndham Esq. in lieu of cutting wood in Teffont Common a Right belonging to Dinton Farm. An annuity of £10 per year is paid to Mr Wyndham's tenant for the same and to continue for the life of Mr Wyndham, when Dinton Farm will fall into hand."

4) Map of Wyly 1796 WSHC 2057/PI/8

The map shows a road leading out of Wylye parish towards Teffont but not labelled as such. No part of Teffont Magna is shown.

Sally Madgwick
Rights of Way Officer
17 March 2015