

THE PROPOSED DIVERSION OF FOOTPATH 53 MERE (PART), MAYPOLE FIELD

OBJECTIONS TO THE INTIAL CONSULTATION AND OFFICERS' RESPONSE

OBJECTION NUMBER	NATURE OF OBJECTION/REPRESENTATION	OFFICERS' RESPONSE
1.	Placing the footpath close to the boundary of adjoining land, places an onus of responsibility onto the adjoining landowner to keep hedges and overhanging trees cut back, where at present the adjoining landowner does not have this responsibility. Whilst the current owners of Maypole Field may well undertake to keep the footpath clear, this may not always be the case and they will not legally be responsible for hedges and trees which are outside their ownership. It is unreasonable to divert this part of the footpath for the convenience of the owners of Maypole Field (who currently have the responsibility for maintaining access along the footpath), and in doing so create an inconvenience and burden of responsibility for an adjoining landowner, without any real benefit to footpath users.	<p>Section 154 of the Highways Act 1980 does place the responsibility on the owner of the land, or the owner of the tree/hedge/s</p> <p><i>“Where a hedge, tree or shrub is situated on land on which the public has access so as to endanger the safety of the highway, a competent authority may, by notice in writing to the occupier of the land on which it is situated, require him to cut or fell the tree or shrub or to lop or cut it as to remove the likelihood of danger.”</i></p> <p>Sub-section 2 states:</p> <p><i>“Where it appears to a competent authority for any highway on which the public has access-</i></p> <p><i>(a) that any hedge, tree or shrub is dead, diseased, damaged or likely to be so, or</i></p> <p><i>(b) that by reason of its condition it, or part of it is likely to be so, to be a danger to the highway, road or footpath,</i></p> <p><i>the authority may, by notice either to the owner of the hedge, tree or shrub or to the occupier of the land on which it is situated, require him within 14 days from the date of the notice to cut or fell it as to remove the likelihood of danger”.</i></p> <p>Section 41 of the Highways Act also places a duty upon the authority to maintain the highway maintainable at the public expense, which includes the footpath.</p> <p><i>“(1) The authority who are for the time being the highway authority and the occupiers of the land on which the highway is situated are under a duty (...) to maintain the highway in a state of repair so as to be safe and convenient for the public.”</i></p> <p>The maintenance of a path is a shared responsibility between the Highway Authority and the landowner. The Highway Authority would be responsible for ensuring the path is safe and convenient for the public, whilst the landowner would be responsible for ensuring the path is not obstructed by hedges or trees etc. The owner of a hedge or tree etc. would be responsible for ensuring it is not a danger to the public.</p> <p>At a site meeting in July 2004, Officers did not identify any problem on the alternative route.</p> <p>Sub-section 1 of Section 119 of the Highways Act 1980 states that the diversion is in the interests of a landowner.</p>
2.	Users of the footpath on its definitive line have an unobstructed access across this field. By diverting the footpath nearer to the boundary of hedges and trees, the footpath may become obstructed by overhanging branches etc. which would be detrimental.	The County Council has been advised that the legal line of the footpath is on the boundary of the field. The footpath is a state during the summer months and in a flooded, wet and muddy state during the winter months, so it is likely that path users have been diverted from the footpath in the past. The diverted route is surfaced, less likely to become muddy and is usable by walkers of all abilities, in all weathers, although Officers do not recommend the diversion. Obstructions are less likely to be a problem in the diverted route.
3.	The proposed diversion adds distance to the footpath.	The diversion adds approximately 6 metres to the route of the footpath, although the diversion of the path does not make it nearer to the boundary of the field. The diversion is a level, surfaced section of the path, useable by path users.

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4.	The present route passes over open ground, whereas the new route would be adjacent to hedges which give rise to many insects, flies etc. which is now not a current problem.	It is understood by Officers that before the field was cleared, it was overgrown and further along the legal line, past the proposed diversion, there were trees. The proposed route would pass adjacent to the boundary of hedges and trees. It is considered a significant increased presence of insects in the area of the field.
5.	Objection to the changing of traditional routes of very long standing. The route was underlaid by stone paving accidentally exposed by building work on site and now re-buried. The path in dispute is that which runs from Whitehill Farm directly to Mere Church and was a path for pedestrian use long before there were other means of travel to and from the ancient church.	<p>The footpath is believed to be a historical route, but the legal status is under Section 119 of the Highways Act 1980, (set out at paragraph 7 of the report).</p> <p>Officers have also received some letters of support for the diversion, stating that the public will benefit from a surfaced level section of footpath in all weathers.</p> <p>Officers have also been advised that the stone surface footpath was used by the bungalows previously present on site, which have now been demolished.</p>
6.	The owners of the land bought the site with the full knowledge of the existence of a right of way and the rules to protect it. A building on the site has already exceeded planning parameters and further disregard should not be condoned.	The owners of the field should have been aware of the presence of the footpath upon purchasing the property. Officers have noted clauses in the planning permission to protect the footpath, but are unable to make any comment on the planning permission. It is possible that the fence has been placed close to the footpath, but not a stock proof fence as requested by the planning permission. The fact that the legal line of the path has been obstructed in any way and whether a planning permission is a matter for the Planners at Salisbury District Council.
7.	Attempts have been made to obliterate and/or move this public right of way without even trying to consult their neighbours, these attempts "to physically divert or close a path" constitute an indictable offence.	The landowners contacted the County Council at an early stage to request to divert the footpath and enquire how they should legally establish a new path. Upon application, the County Council carried out an initial consultation, which all statutory consultees were contacted. Officers also received comments regarding the proposals, as shown on the initial consultation report. This letter is available to be viewed in the Members' Room .
8.	The owners of the property have ignored all obligations set out within their planning approval regarding the footpath.	The legal line of the footpath has not been obstructed. Any obstruction is a matter for Salisbury District Council and cannot be taken into account for diversion.
9.	The historical integrity of the Grade I listed building, Woodlands Manor to the south of the boundary of Maypole Field, especially its setting, would be undermined by bringing path users directly up to the boundary, and any such action would be in direct contravention of Section 16 of Central Government's PPG 15 "Listed Buildings and Conservation Areas". The increase in overlooking would undoubtedly affect the enjoyment of the setting, which under this Act, should not be compromised.	The Surveying Authority is requested only to look at the legal status of the footpath under the Highways Act 1980, as stated at paragraph 7 of the report. The Salisbury District Council Conservation Officer who advised that the proposed diversion would not adversely affect the setting of the building. This letter is available for inspection in the Members' Room .
10.	There is no discernable communal or social advancement in these proposals. There is no single reason to move the path other than for the convenience of the applicants. This application is being made solely for private and financial benefit and it could only be achieved at the expense of the public good.	<p>Sub-section 1 of Section 119 of the Highways Act 1980, states:</p> <p><i>"Where it appears to a council as respects a footpath or bridleway (not being a trunk road or a special road) that, in the interests of the public, it is expedient to divert that line, should be diverted".</i></p> <p>The legal test of this legislation is fully met if the diversion is in the interests of the landowner. In this case as well as the benefits of moving the path, there are also public benefits, which are fully explained at paragraph 7 of the report.</p>
11.	Transco, as a statutory undertaker, has identified a medium pressure gas main in the vicinity of the legal	If a public path diversion order is made under Section 119

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	line of Footpath 53 Mere. Scottish and Southern Energy plc has identified low voltage mains in the vicinity of the legal line of Footpath 53 and the proposed diversion route.	should contain wording to ensure that the statutory undertakers