

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

Purpose of Report

1. To:
 - (i) Report on the objections received by the County Council to proposals to divert that part of Footpath 53 Mere, Maypole Field, as shown on the plan attached at **Appendix A**.
 - (ii) Seek approval for the making of a Public Path Diversion Order under Section 119 of the Highways Act 1980.

Background

2. The plan attached at **Appendix B** indicates the location of Maypole Field, Mere.
3. The applicants are in the process of building a residential property on the site of Maypole Field, Woodlands Road, Mere. At present Footpath 53 Mere crosses the field through what will eventually become the garden of the new build property. As part of the development the applicants have erected a maintenance path running alongside the southern and western boundaries of the plot to facilitate access to control vegetation growth at the field edge.
4. The applicants are proposing to divert the present route of Footpath 53 Mere onto the maintenance path at the field edge.
5. Following receipt of a formal application dated 25th June 2004 to divert the path under Section 119 of the Highways Act 1980, as shown on **Appendix A**, the County Council carried out an initial consultation regarding the proposals on 3rd August 2004.
6. The initial consultation letter and all subsequent responses, including the objections, are available for inspection in the **Members' Room**. The objections are summarised, together with the Officers' responses, in the table attached at **Appendix C**. The main reasons for objection are as follows:
 - (i) Responsibility for, and obstructions caused by overhanging trees/vegetation on the proposed diversion route, close to the boundary of Maypole Field.

- (ii) The proximity to vegetation could give rise to increased numbers of flies and insects.
- (iii) The proposed diversion adds distance to the footpath.
- (iv) Objection to the diversion of longstanding/historical routes.

- (v) Contraventions to the planning permission granted by Salisbury District Council, in relation to the footpath.
- (vi) Lack of consultation amongst neighbours regarding the proposed diversion.
- (vii) The effects of moving the footpath closer to the boundary of the adjacent Grade I listed building.
- (viii) The proposals are being made only in the interests of the landowner.

Main Considerations for the Council

7. Section 119 of the Highways Act 1980 provides for the diversion of footpaths and bridleways. Sub-section 1 states:

“Where it appears to a council as respects a footpath or bridleway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) (as set out in paragraph 9 of this report), by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order:

- (a) create, as from such date as may be specified in the order, any such new footpath or bridleway as appears to the council requisite for effecting the diversion; and*
- (b) extinguish, as from such date as may be so specified in accordance with the provisions of subsection (3), the public right of way over so much of the path or way as appears to the council requisite as aforesaid.”*

8. The application meets the legal tests as set out above, i.e. the diversion proposed is in the interests of the owner of the land, by taking the path out of what will be a private garden and diverting it to the field edge. Additionally, the applicant has pointed out some benefits to the public of diverting the path to the field edge, as follows:

- (i) The alternative path is suitable for all users including the disabled and the elderly etc. at all times of the year. The applicants have noticed that some path users are using the maintenance path already, in preference to the definitive line.
- (ii) Walkers using the footpath may feel less intimidated following a field edge route, rather than walking through what will be a private garden.
- (iii) The present route of the path is flooded and very boggy at certain times of the year. The field edge diversion will be level and surfaced for use in all weathers. However, land drainage works have been carried out on site as part of the development and it is unlikely that flooding will be a future problem on the present legal line.

- (iv) When the applicant moved to the site, much of the path was very overgrown and neglected through the field and path users could only walk it with great care and certainly not the definitive line which has now been established with the assistance of the County Council Rights of Way Warden. The new path will be surfaced and maintained with no obstructions caused by the overgrowth of vegetation. However, Officers note that if the legal line were to be retained, this is less likely to be a problem in the future, as the path will pass through a maintained, private garden.
- (v) The definitive line of the path is presently undefined and indeterminate as it crosses Maypole Field. The diversion route provides a defined, well maintained, level, surfaced path. However, Officers note that if the legal line were to be retained, the landowners could take action to clearly define the path as it runs through the garden.

9. The path also meets the criteria set out in sub-section 2 of Section 119 of the Highways Act 1980, which states:

“A public path diversion order shall not alter a point of termination of the path or way-

- (a) if that point is not on a highway; or*
- (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.”*

10. The diversion proposals do slightly alter the junction of the footpath with Woodlands Road, i.e. the path is moved slightly to the south, but remains on the same highway and is substantially as convenient to the public. As the diversion continues northwards it converges with the original definitive line.

11. Sub-section 6 of Section 119 of the Act, makes clear the priorities of the Secretary of State in confirming any public path diversion order, as follows:

“The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which:

- (a) the diversion would have on public enjoyment of the path or way as a whole;*
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way; and*
- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it;*

so, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a)."

12. Despite the objections received, Officers have assessed that the diversion does meet the requirements of Section 119 of the Highways Act 1980. The way will not be substantially less convenient to the public, it is to be moved onto land in the same ownership and the public enjoyment of the path is enhanced by the provision of a well maintained, level, surfaced way, for use in all weathers and by users of all abilities.

Environmental Impact of the Proposal

13. None.

Risk Assessment

14. None.

Financial Implications

15. As the making of a diversion order is a discretionary duty for the Surveying Authority rather than a statutory duty, the applicants have confirmed that they will meet the County Council's reasonable costs in connection with the making of a diversion order, which includes advertising. The alternative route has already been provided by the applicant.

Options Considered

16. The alternative to the proposed diversion is to retain the present legal route of Footpath 53 Mere as it crosses Maypole Field. It would then pass through a private garden.

Reasons for Recommendation

17. Officers believe that although objections have been received to the proposals to divert that part of Footpath 53 Mere as it passes through Maypole Field, the diversion application does meet the legal tests as set out under the legislation at Section 119 of the Highways Act 1980. There are clear benefits of the diversion, to both the owner of the land and the public, as follows:
 - (i) The footpath is removed from the private garden of the property owner.
 - (ii) The public may feel less intimidated by walking at the edge of a field, rather than through what will be a private garden.
 - (iii) The diverted section of path will be level and surfaced, suitable for users of all abilities.

- (iv) The path is not substantially less convenient to the public despite the entrance point being moved slightly to the south. This point remains on the same highway and the termination point at the north of the path is not altered.
- (v) The new route will be free from vegetation obstruction, clearly defined and suitable for use in all weathers, although Officers acknowledge that these are unlikely to be problems on the legal line in the future due to drainage works carried out as part of the development and it will pass through a maintained private garden.

Recommendation

18. That a public path diversion order be made under Section 119 of the Highways Act 1980 to divert that part of Footpath 53 Mere as it passes through Maypole Field, to the field edge, as shown on the plan attached at **Appendix B**, and:-
- If no objections are received, the order be confirmed as an unopposed order.
 - If objections are received, the order be submitted to the Secretary of State for decision.

GEORGE BATTEN
Director of Environmental Services

Report Author
JANICE GREEN
Rights of Way Officer

The following unpublished documents have been relied on in the preparation of this Report:

Application for a public path diversion order regarding Footpath no.53, Mere, dated 25th June 2004.

Initial consultation by Wiltshire County Council dated 3rd August 2004 and subsequent responses.