

**THE PROPOSED DIVERSION OF FOOTPATH 53 MERE (PART) MAYPOLE FIELD**  
**OBJECTIONS TO THE MAKING OF THE PUBLIC PATH DIVERSION ORDER, DATED 18<sup>TH</sup> AUGUST 2005, AND OFFICERS' RESPONSE**

Nature of Objection/Representation	Officers' Response
<p><b>Planning Permission</b></p> <p>The application for a diversion order is a retrospective application which has been made to try and change a very carefully worded planning approval.</p> <p>The purchasers of Maypole Field were aware of the location of the footpath prior to the purchase of the land.</p> <p>The planning permission granted to the landowners has a condition that the footpath should remain in-situ.</p> <p>The diversion order condones the illegal re-routing of an old right of way for personal gain. The owners of the property have already been allowed to build in a "green area" under special rules, moving the path will allow them to extend their domain further and this is not what was envisaged when the planning permission was granted.</p> <p>To reward the developers for ignoring procedure and unilaterally altering an ancient right of way is wrong and an insult to residents of Mere who uphold the law.</p> <p>The purchase and development was undertaken in the full knowledge of the condition for the development of maintenance and fencing of the footpath. The condition has failed to be adequately enforced throughout the development and granting the diversion makes a further mockery of a considerably flawed planning system.</p> <p>The planning application granted by Salisbury District Council included a detailed planting plan of trees, long grass and wild flowers and the construction of a mound on the land between the present path and the boundary of Woodlands Manor. Such planting would be an acceptable and laudable use of the space and would provide a screen for the owners of Woodlands Manor and preserve its seclusion.</p> <p>The lack of enforcement and bad judgement has cost the rate payers and public officials a considerable amount of totally unnecessary time, effort and money, when there was a reasonable planning condition placed on the development and no need for a footpath diversion.</p>	<p>Officers have consulted with the Planning Department at Salisbury District Council and understand the present situation regarding the planning application, to be as follows:</p> <p>Wiltshire County Council commissioned a survey to establish and set out the legal line of Footpath 53 Mere, where it crosses Maypole Field, as this line had previously been indeterminate and difficult to establish on the ground.</p> <p>A fence erected by the developer on the south-western side of the footpath, (as required by the planning permission), has been removed as it was found to be an obstruction of the definitive route, once the true legal line had been set out.</p> <p>The developers have now erected temporary fencing on both sides of the footpath, on the north-eastern side of the application site to enclose the residential curtilage and on the south-western side of the footpath between the footpath and the agricultural land (edged in blue). Although this does not meet the planning requirement for stock-proof post and wire fencing, we understand that the planners are satisfied with this as a temporary measure until the diversion of the footpath is determined. The planners have acknowledged that this measure will not discharge the planning condition regarding the fencing and this must be resolved at the outcome of the diversion order, when the situation will be reviewed.</p> <p>The Local Planning Authority have identified a number of scenarios with regard to the planning permission, as follows:</p> <p>If the diversion is refused it is likely that the planners will require the erection of two permanent stock proof fences on the same alignment as the agreed temporary fencing.</p> <p>If the diversion is approved, the planners would seek the erection of a permanent stock proof fence on the same alignment as the temporary fencing on the north-eastern side of the present legal line of the footpath to enclose the residential curtilage. If the footpath were diverted it would negate the requirement for fencing on the south western side of the present legal line, but it is likely that the Planners would seek the erection of a fence on the north-eastern side of the revised footpath to separate it from the adjacent land.</p>

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<p>The footpath diversion is being carried out for the financial gain of the landowners. New comers arrive and want to change things to suit themselves for their own benefit.</p> <p>Condition 6 of the planning consent has been broken, as no stock proof post and wire fence has yet been erected on the south-western side of the footpath.</p> <p>The diversion application is in defiance of conditions 4, 6 and 7 of the planning permission. The developers are attempting to break out of the clearly defined residential curtilage and incorporate into the planned area the agricultural land to the south-west of the footpath. They have made no change of use application to Salisbury District Council. By accepting the planning permission they locked themselves into a situation where they agreed not to interfere with Footpath 53 and they must now carry out the agreed planting plan along the boundary with Woodlands Manor to create a screen for the benefit of the owners of the adjoining property.</p> <p>Wiltshire County Council's Regulatory Committee should not be party to this illegal, attempted seizure of land and at their meeting of 2<sup>nd</sup> February 2005, Members of the Committee were misled by the Officer's report which contained references to a "private garden". There is no such thing and this is what the developers would like to achieve.</p> <p>The footpath was not diverted under the planning procedure (i.e. under Section 257 of the Town and Country Planning Act 1990), as there was not sufficient need to do so. The Local Planning Authority have in fact expressly required the preservation of the definitive line of Footpath 53 Mere, by the conditions attached to the planning consent. The diversion of the footpath is cutting across the planning conditions.</p> <p>In this particular case, planning and highways issues must be viewed together.</p> <p>The site owners brought the land with the full knowledge of the existence of the footpath and the rules to protect it. The building on site has already exceeded planning parameters and further disregard should not be condoned.</p>	<p>The planners have also acknowledged that if the footpath is diverted, the developers may wish to change the use of the land edged blue on the plans, from agricultural to residential. In the event of this situation arising a planning application for change of use would need to be lodged and if successful it is likely that the planners would require only the erection of a stock proof fence on the north-eastern side of the diverted footpath to separate it from the surrounding land which would be the residential curtilage of the property. The landowners should seek amendments to the planning permission granted, where necessary, with the Planning Department at Salisbury District Council and Wiltshire County Council Officers can make no comment upon this.</p> <p>The diversion of the footpath is not illegal. The applicants have applied in the correct manner and Wiltshire County Council has followed the statutory procedures set out for the making and advertising of a public path diversion order. It is quite legitimate for a public path diversion order to be applied for simply in the interests of a landowner. However, in this case Officers have also identified public benefits of the diversion, as set out at paragraph 44 of the report, which Officers consider make the order capable of being confirmed.</p> <p>Officers are unable to comment upon aspects of the planning permission granted for the building of the property, which do not affect Footpath 53 Mere, i.e. special conditions attached to the permission to enable the developers to build in a "green area" and planting schemes etc. Nor are Officer's able to comment upon any potential amendments to the planning permission granted, which the applicants may seek, i.e. the change of use of the agricultural land to form part of the residential curtilage, particularly when no such application has yet been made to Salisbury District Council. Officers are only able to consider the diversion application, based on the present use of the land.</p> <p>The duties of Wiltshire County Council, as the Highway Authority, are to ensure that the legal line of the footpath is protected and remains open, unobstructed and available for public use and to apply the relevant highway legislation to the footpath diversion application received. Officers are now satisfied that the legal line of the path is now open and available and are confident that it will remain so until the diversion order is resolved. Therefore we do not find it necessary to carry out any enforcement action against the developers. Any issue of breach of the planning conditions are a matter for the Planning Department at Salisbury District Council and highways legislation cannot be used to address issues which are a matter for the relevant planning authority.</p>

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	<p>The owners of the field should have been aware of the presence of a footpath across the field upon purchasing the land. However, the planning permission does not preclude the developers from making an application to Wiltshire County Council for a public path diversion order. Any member of the public may apply for a diversion order to be made and Officers then have a duty to consider this application on its own merits, in relation to the legal tests. If the application does meet the legal tests a diversion order can be made, but it is unlikely to succeed unless there is a public benefit as the diversion must also be capable of being confirmed.</p> <p>Officers understand that the footpath presently runs between the residential curtilage of the property (edged red) and an area of land edged blue, which retains agricultural use (see planning permission attached at <b>Appendix C</b>). At present the footpath runs alongside the residential curtilage of the newly built property and could appear to be intimidating to users. It is not considered that Members were in any way misled by the references to “<i>private garden</i>”, but rather Members were considering the diversion proposals with reference to the legal tests which must be applied. The report did not centre upon the references to “<i>private garden</i>”, the land use is not material to the legal tests which must be applied and Officer's are only able to consider the diversion in respect of the present land use for which planning permission has already been granted. The Highway Authority cannot speculate upon any change of use of the land, particularly when no application for change of use has been made to Salisbury District Council.</p> <p>It would not have been possible to divert this footpath as part of the planning process, as the relevant legal tests were not met under that legislation. Under Section 257 of the Town and Country Planning Act 1990 a footpath may be diverted as follows:</p> <p><i>“(1) Subject to subsection 259, a competent authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied that it is necessary to do so in order to enable development to be carried out-</i></p> <p style="padding-left: 40px;"><i>(a) in accordance with planning permission granted under Part III, or</i>  <i>(b) by a government department.”</i></p> <p>The presence of the footpath has in no way prevented the development from being carried out and therefore the legal tests of this legislation are not met. However, the planning permission granted does not preclude the developer from making a public path diversion order application in the future under Section 119 of the Highways Act 1980.</p>

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	We must of course have in mind the planning conditions within this site, however, Wiltshire County Council are only required to apply the legal test as set out under the relevant legislation to the diversion applied for.
<p><b>Effects on Woodlands Manor</b></p> <p>The diversion of the path is to the detriment of the neighbouring property, Woodlands Manor.</p> <p>The diversion would be detrimental to the privacy and interests of the owners of Woodlands Manor.</p> <p>Woodlands Manor is a Grade I Listed building, i.e. it is of "exceptional interest" and this classification covers only 2% of listed buildings. The Government Planning Policy Guidance Note no.15 (PPG 15) "Planning and the Historic Environment" states that "setting is often an essential part of the buildings character". In the planning consent the new house is located centrally within the plot (Maypole Field). Planning Officers therefore considered that there would be no adverse effect upon the amenities of Woodlands Manor due to the separation distance and tree screening to be planted to the boundary of Woodlands Manor. The effect of this is negated if the footpath is moved.</p> <p>The diversion enhances the risk of trespass and the chances of public scrutiny of Woodlands Manor.</p>	<p>At the initial consultation Wiltshire County Council received an objection that the setting of the Grade I listed building, Woodlands Manor, would be adversely affected by moving the footpath to its boundary, in direct contravention of Section 16 of Central Governments PPG 15 "Listed Buildings and Conservation Areas". The Surveying Authority is requested only to look at the legal tests under Section 119 of the Highways Act 1980, as stated at paragraphs 42-51 of the report. Officers have additionally sought the advice of the Salisbury District Council Conservation Officer, who has advised, in a letter dated 20<sup>th</sup> December 2004 (attached at Appendix F), that the proposed diversion would not adversely affect the setting of the adjacent listed building.</p> <p>Woodlands Manor cannot be seen from Footpath 53 Mere, on the legal line, or from the proposed diversion route. This is illustrated by the aerial photograph attached at Appendix E, which shows a wooded area between Woodlands Manor and Maypole Field, screening this property. Officers do not consider that the diversion of the footpath will affect the privacy or the security of Woodlands Manor.</p> <p>Section 28 of the Highways Act 1980, provides for compensation for loss as a consequence of the coming into effect of a Public Path Creation Order and also applies in relation to Public Path Diversion Orders, however Officer's consider that the effect on Woodlands Manor and its setting will be negligible (please see paragraphs 49 and 50 of the main report).</p>
<p><b>Suitability of Alternative Route</b></p> <p>The continuation of the footpath to the north, towards Mere is already a narrow jungle for much of the year. Walkers would not wish to proceed on the proposed path, closer to the tree line when it is possible to proceed in open land on the current designated path.</p> <p>The footpath had a stone base as it was on clay and took the route that best avoided the wet areas of Maypole Field, there is no reason to alter the wisdom of previous generations by siting the footpath to follow the hedge as this is an area that can be wet and soggy.</p> <p>There is no public benefit in the siting of the proposed diverted footpath.</p>	<p>Officers understand that prior to the development of the site, the legal line of the footpath was indeterminate, overgrown and waterlogged at certain times of the year. Officers have only been able to establish the true legal line of the footpath through Maypole Field, by commissioning consultants to undertake a professional survey. Officers consider that the field edge path is an improvement as it provides a level, surfaced path available to path users of all abilities, in all weathers.</p>

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<p>The responsibility for maintenance of the footpath and its adjacent fences resides with the owners of the property. The diversion of the path alongside the adjacent landowners hedges, will transfer responsibility for overhanging trees, hedges etc. to this landowner, where they were previously unencumbered. This is solely in favour of the applicants and is an unacceptable derogation of responsibility at the expense of others.</p> <p>Footpath users presently 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. 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 the hedges and trees which are outside their ownership.</p>	<p>There is some difference of opinion regarding the stone discovered on site. Some have presented this as evidence of the existence of a stone base to the footpath where it became boggy and wet, whilst we have also received conflicting reports that this stone formed the remnants of bungalows which had been present on site in the past. If the stone paving was in place to provide a firm base for the footpath, drainage works have now been carried out on site as part of the development and it is unlikely that wet conditions will create a problem in the future either on the legal line or on the proposed diversion route.</p> <p>Section 154 of the Highways Act 1980 does place the responsibility for hedges, trees shrubs etc. upon the owner of the land or the owner of that vegetation. Sub-section 1 states:</p> <p><i>"Where a hedge, tree or shrub overhangs a highway or any other road or footpath to which the public has access so as to endanger or obstruct the passage of vehicles or pedestrians ... a competent 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 growing, require him within 14 days from the date of service of the notice so to lop or cut it as to remove the cause of the danger, obstruction or interference."</i></p> <p>Sub-section 2 states:</p> <p><i>"Where it appears to a competent authority for any highway or for any other road or footpath to which the public has access-</i></p> <ul style="list-style-type: none"> <li><i>(a) that any hedge, tree or shrub is dead, diseased, damaged or insecurely rooted, and</i></li> <li><i>(b) that by reason of its condition it, or part of it is likely to cause danger by falling on the highway, road or footpath, 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 service of the notice so to cut or fell it as to remove the likelihood of danger".</i></li> </ul> <p>Section 41 of the Highways Act also places a duty upon the Highway Authority to maintain a highway maintainable at the public expense:</p> <p><i>"(1) The authority who are for the time being the highway authority for a highway maintainable at the public expense are under a duty ... to maintain the highway".</i></p>

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	<p>The maintenance of a path is a shared responsibility between the landowner and the Highway Authority. The Highway Authority would be responsible for vegetation growing within the highway, whilst the landowner would be responsible for ensuring that the path remains free from obstruction. The owner of a hedge or tree etc, even if that is an adjoining landowner would be responsible for that vegetation overhanging a footpath.</p> <p>At a site meeting in July 2004, Officers did not identify overhanging vegetation as a potential problem on the alternative route. The new maintenance path, onto which it is proposed to divert the footpath, has been available since at least June 2004, to Officers knowledge. Overgrowth from the Woodlands Manor boundary has not yet posed a problem on this path and Officers consider that it is unlikely to become a problem in the future.</p> <p>Officers consider that there are public benefits in the relocation of the footpath to the edge of the field.</p> <p>At the initial consultation the Ramblers Association advised that some walkers may find the legal route of the path intimidating to use in the future as it will run alongside the residential curtilage of the newly built property. Walkers may feel more comfortable using a path to the edge of the field.</p>
<p><b>Historic Footpath</b></p> <p>There are no relevant grounds for moving an historic footpath that has been in place for a substantial number of years.</p> <p>The footpath appears on OS maps held by Mere Museum going back to at least 1901 and there seems to be no good reason for alteration being necessary.</p> <p>The diversion of the footpath sets a dangerous precedent and will encourage anyone that has a public footpath over their property to seek similar unwarranted diversions.</p> <p>Object to the changing of traditional routes of very long standing. The section of path in question forms part of a route from Whitehill Farm to Mere Church for pedestrians, long before there were other forms of travel to and from this ancient church.</p>	<p>The legislation under Section 119 of the Highways Act 1980, sets out a procedure by which even footpaths and bridleways of very longstanding may be diverted, if certain criteria are met. Officers have applied these legal tests to the proposals (as set out in paragraphs 42-51 of the report), and consider that they are met in this case. Officers have identified a benefit to the landowner, which itself is a legitimate reason for a diversion order to be made. We have also identified benefits to the public, as set out at paragraph 44 of the report, which Officers consider make the order capable of being confirmed. Officers are not required by the legislation to demonstrate that the diversion is "necessary", merely expedient.</p> <p>All landowners have the right to apply for a path to be diverted, but an order will not be made unless the Highway Authority consider that the legal tests are met and Officers must also consider whether or not the order is capable of being confirmed based on the second set of legal tests (see paragraph 47 of the report).</p>

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	<p>The traditional and historic use of the land around Footpath 53 Mere, at Maypole Field, has changed. The path was previously a cross-field footpath through agricultural land, however, if it remains in its present position it will be located at the edge of the residential curtilage of the new build property. The historic character of the footpath has changed due to the planning permission already granted upon the surrounding land.</p>
<p><b>Public Opinion</b></p> <p>It is astonishing that the opinions of both the Parish Council and long established local people have been dismissed by representatives of Wiltshire County Council as if being of little importance.</p> <p>No reasons have been given as to why the diversion order has been made, in spite of written objections by members of the public and Mere Parish Council.</p> <p>It is of great concern that civil servants appear to be able to override the views of Members of Mere Parish Council.</p>	<p>At the Regulatory Committee Meeting on 2<sup>nd</sup> February 2005, Members considered the objections received to the initial consultation, regarding the diversion proposals, in order to decide whether or not a formal diversion order should be made.</p> <p>All correspondence received, both in support and objecting to the proposals was made available to Members to assist in their decision making and public representations were made at the meeting.</p> <p>The County Council do take all objections very seriously, and Member's have taken all these points into account, however when applying the relevant legal tests, (see paragraphs 42-51 of the report), to the footpath diversion proposals, they resolved that a public path diversion order should be made under Section 119 of the Highways Act 1980.</p>