



PRESERVING OUR RIGHTS OF WAY
FOR FUTURE GENERATIONS

HIGHWAYS ACT 1980 SECTION 119

MISINTERPRETATION BY WILTSHIRE COUNTY COUNCIL

These notes, dated 8th May 2008, have been prepared by Alan Hill after studying a letter dated 24th April from Barbara Mills (WCC's Deputy Head of Legal Services), together with other communications from the Wiltshire Highways Authority.

1. Permission and obligation

The Council are routinely failing to understand the difference between 'permission' and 'obligation'. The Council wrongly believe that, in addition to permitting the Council to divert a right of way, Section 119 obliges the Council's officers to process an application, and to recommend that the diversion should be permitted, subject only to the satisfaction of certain technical 'tests' as specified within the Act.

In reality, the Council possess unfettered discretion as to whether, after assessing the overall circumstances in a particular case, the diversion should be made, taking into account the Council's general obligation to preserve all rights of way without modification. Where there is no clear case for granting an exception to preservation of the status quo, or where any doubt prevails, no diversion order should be made.

Whilst the Council must not exercise this right in an arbitrary or discriminatory manner, the Council are the sole arbiter in determining each application. For the guidance of officers as to the general circumstances (if any) under which a diversion might be considered acceptable, it is preferable for the Council to specify a clear strategic policy for observance in all cases.

Routinely, the Council's Regulatory Committee are wrongly advised that a requested diversion should be approved if the Committee believe that all technical 'tests' have been satisfied. Instead, in the absence of any clear strategic policy predetermined by the Council, the Committee should be advised that, even if the technical 'tests' are fully satisfied, they possess unqualified discretion as to whether or not the diversion should be sanctioned.

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