

PURTON: DIVERSION OF PURTON PUBLIC FOOTPATH 104 (PART)

SUPPORT FOR THE DIVERSION NATURE OF SUPPORT	NO. OF SUPPORTERS	OFFICER'S COMMENTS
The permissive (diversion) route is an improvement on the former path.	22	This is a general comment which is best assessed through analysis of the more specific representations detailed below.
The permissive (diversion) route is safer.	24	This is a general comment which is best assessed through analysis of the more specific representations detailed below.
The proposal is not a problem as it is only a diversion and not a total ban of use.	1	The diversion will transfer all existing rights of access to the new route.
The existing path has fallen into disuse and not been used for many years.	4	Officers have been given to understand that the path along Mud Lane has been allowed to fall into disuse over the last sixty years because the Parish Council did not wish to oppose the wishes of the then landowner, who was known to be in ill-health. Correspondence on file suggests that it was decided that the matter should be left until the land changed hands. Only within the last eight years has there been significant local enthusiasm for having the path made available for use.
The permissive (diversion) route makes it possible to link with other routes.	9	If the proposed diversion of Mud Lane on to the current permissive route does not proceed, it will be necessary to make Mud Lane available for bridleway use. Links to other routes will not be affected.
The permissive (diversion) route provides a new route for riders.	1	The Diversion Order seeks to make the current permissive route a public bridleway to replace the path along Mud Lane. It does not provide an additional route for horseriders because if the path is not diverted it will be necessary to make Mud Lane available as a bridleway. There will be no obligation upon the landowner to retain the permissive bridleway if the path is not diverted.
It is an advantage to other road users as horseriders will be able to keep public road work to the minimum.	3	The Diversion Order does not change this situation, because if it is not confirmed Mud Lane will need to be made available as a bridleway. However, supporters of the Diversion Order have expressed their view that the new route will be easier for horseriders to use than will be Mud Lane.
The diversion route offers more convenient and direct access to Ringsbury Camp.	3	Neither Mud Lane nor the proposed diversion route provide direct access to Ringsbury Camp. Supporters of the Order have stated that the new route will be more convenient to use.
The permissive (diversion) route provides access to safe riding within the area without having to cross main roads.	1	The proposed diversion does not change the points of access to the surrounding road network.
The permissive (diversion) route has no cost to the public.	5	The diversion route has been provided entirely at the landowner's expense and will require little public expenditure to maintain in future if it becomes a public bridleway.

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The diversion route provides year-round access for all users.	7	The contractors who quoted for the work involved to make Mud Lane available for safe use as a bridleway have made it clear that, although there will, of necessity, be improvements made to the surface, they cannot guarantee to resolve the drainage and flooding problems, which will make good all year round access difficult to achieve. There are no such difficulties with the surface of the diversion route.
The diversion route is not susceptible to flooding.	4	The contractors who quoted for the work involved to make Mud Lane available for safe use as a bridleway have made it clear that they cannot guarantee to resolve the drainage and flooding problems, which will make good all year round access difficult to achieve. There are no such difficulties with the surface of the diversion route.
The permissive (diversion) route's foliage is less susceptible to becoming overgrown and the hedge cutter can pass without obstruction.	1	The additional width and level nature of the diversion route makes it easier to maintain than the path along Mud Lane.
Low cost maintenance reduces the likelihood that subsequent landowners would let the diversion route fall into disrepair.	1	The additional width and level nature of the diversion route makes it easier to maintain than the path along Mud Lane.
It is more possible for the landowner to maintain the permissive (diversion) route than the old route.	8	The additional width and level nature of the diversion route makes it easier to maintain than the path along Mud Lane.
The permissive (diversion) route has been used for over 3 years with no known problems.	3	Officers have no information that suggests that there have been any problems on the diversion route.
Attempts to alleviate flooding along the existing route would lead to flooding on adjacent land.	1	This representation has been made by the landowner who can be assumed to have a good awareness of the land management concerns.
Maintenance of the existing route would have to be done manually due to its narrow width.	3	The work needed to make Mud Lane accessible as a bridleway will require the surface level of what is currently a narrow sunken lane to be raised, which will increase the width available to carry out maintenance. However, this is likely to be no greater than 3.0 - 3.5 metres and access for machinery will be limited.
Steep ramps will be needed on the existing route to allow users to climb over obstructions.	3	If the path is not diverted, the construction of two ramps will be required in order to cross the track that connects the fields each side of the lane.
If the existing route is cleared, gates will be needed along the short stretch making it frustrating for users.	3	If the path is not diverted, four gates will be required along Mud Lane. There are two gates to be negotiated on the diversion route.
The permissive (diversion) route provides a better surface.	7	The work that will be needed to make Mud Lane available for safe use as a bridleway will be extensive, and will of necessity include improvements to the surface. However, the contractors who quoted for the work involved have made it clear that they cannot guarantee to resolve the drainage and flooding problems which will make long-lasting surface improvements very difficult to achieve. There are no difficulties with the surface of the proposed diversion route.

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Regular use of the permissive (diversion) route indicates its success.	5	The diversion route provides an excellent route for horseriders, but it is currently the only route available to them. The question to be considered is whether or not it provides a better route than would Mud Lane if it were available for bridleway use.
The permissive (diversion) route is well maintained.	12	Officers agree with this observation.
The permissive (diversion) route has no obstructions.	3	There are two gates to be negotiated on the diversion route. If the path is not diverted, four gates will be required along Mud Lane together with the removal of numerous fallen trees, and the construction of two ramps in order to cross the track that connects the fields each side of the lane.
The permissive (diversion) route has good access with riding gates at both ends.	12	There are two gates to be negotiated on the diversion route. If the path is not diverted, four gates will be required along Mud Lane.
The diversion route is wide enough for walkers and riders to pass each other safely.	4	The additional width and level surface of the diversion route, along with its more open nature, will make it safer for all users.
The existing path is a field ditch and so will always be liable to flooding.	5	The contractors who quoted for the work involved to make Mud Lane available as a bridleway have made it clear that they cannot guarantee to resolve the drainage and flooding problems. There are no such difficulties with the surface of the diversion route.
If the existing footpath is upgraded to bridleway use by horses will worsen the problem of mud.	3	The contractors who quoted for the work involved to make Mud Lane available as a bridleway have made it clear that they cannot guarantee to resolve the drainage and flooding problems. There are no such difficulties with the surface of the diversion route.
Mud and floods are particularly dangerous for young and less able walkers.	4	The contractors who quoted for the work involved to make Mud Lane available as a bridleway have made it clear that they cannot guarantee to resolve the drainage and flooding problems. There are no such difficulties with the surface of the diversion route.
The landowner agrees to retain the integrity and character of the existing footpath if the diversion proceeds.	5	The landowner has given assurances that if the path is diverted away from Mud Lane, he will preserve it as a physical feature within the landscape while allowing permissive access on foot to the lane through a covenant with Purton Parish Council. This will have the added benefit that comparatively little change to the lane will be necessary.
The diversion may help to protect Mud Lane.	1	The work that will be needed to make Mud Lane available for safe use as a bridleway will be extensive. It will be extremely difficult to avoid significantly changing its character, which is one of the main factors that people would like to be preserved. The landowner has given assurances that if the path is diverted away from Mud Lane, he will preserve it as a physical feature within the landscape while allowing permissive access on foot to the lane through a covenant with Purton Parish Council. This will have the added benefit that comparatively little change to the lane will be necessary.
Reopening and widening of the existing path to make it usable as a bridleway would destroy the character and habitat of the ditch.	7	The work that will be needed to make Mud Lane available for safe use as a bridleway will be extensive. It will be extremely difficult to avoid significantly changing its character, which is one of the main things that people would like to be preserved.

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The permissive (diversion) route takes users away from the farmhouse, yard and buildings increasing the owners security, safety and privacy.	5	The proposed diversion will have benefits to the security, safety and privacy of the farmhouse and buildings but the main reason for the proposed change is improved ease of use for members of the public.
The permissive (diversion) route is more easily located meaning people no longer get lost in the farmyard.	5	Adequate waymarking can be provided to ensure that either the present route of the path or the diversion route are easy to follow.
The money needed to reopen the existing route could be spent in better ways.	2	The cost of the works needed was quoted in May 2008 by contractors at £148,434.17 exclusive of VAT. It is expected by officers that this will prove to be the minimum cost, as items such as design fees and construction site security have not been included in the quotation, a copy of which is provided at Appendix E of this report. It should be noted that this figure amounts to over half of the total £280,000 annual maintenance budget for public rights of way in Wiltshire for 2008-09, of which £60,000 is available for the North Wiltshire District in which this path is situated.

OBJECTIONS TO THE DIVERSION NATURE OF SUPPORT	NO. OF SUPPORTERS	OFFICER'S COMMENTS
Public interest.	22	<p>Eight of the 22 people who made this objection gave additional information which has been included in the more specific objections below. The remaining 14 were asked by the Officers to explain why they believe the proposed diversion not to be in the public interest. Only 4 of these responded with additional information which has also been included in the more specific objections below. However, this has left ten outstanding objectors who have stated only that their objection is, <i>"on the grounds of public interest"</i>.</p> <p>Public Path Diversion Orders may be made under Section 119 of the Highways Act 1980. It is not necessary that they should be in the interests of both the landowner and the public. In this case the landowner has confirmed that he considers the diversion to be in his interests. Other supporters of the Order have made it clear that they consider it to be in the interests of the public.</p>
There seem to be insufficient grounds to justify the proposed diversion.	2	Officers believe that there are more than sufficient grounds to justify the proposed diversion.
The footpath dates back to the Enclosure Act 1738. If the diversion is approved it would set precedence for other rights of way protected by the Enclosure Act to simply be amended for the convenience of the landowner.	6	Section 119 of the Highways Act 1980 provides for the diversion of public footpaths, bridleways and restricted byways provided that certain criteria are met, one of which is that the diversion must be in the interests of the landowner or of the public. There is no legal prohibition on the diversion under Section 119 of ways that were created by an Enclosure Act. All proposals to divert public rights of way are considered by the County Council against the set criteria and also on their individual merits and are only pursued if the Council is satisfied that they can be legally justified. This ensures that no precedents are set by the confirmation of any particular Diversion Order.
Loss of a historic right of way.	12	The Countryside and Rights of Way Act 2000 required Highway Authorities to produce Rights of Way Improvement Plans to ensure that local rights of way meet the present and likely future needs of the public. Officers believe that the proposed diversion will provide a path which offers improved accessibility over a re-instated path along Mud Lane and that this extra convenience of use outweighs the historic value of the existing path.
Public enjoyment of the existing route is due to its history, the proposed route could not provide this.	3	Officers take the view that the proposed diversion will provide a path which offers improved accessibility over a re-instated path along Mud Lane and that this extra convenience of use outweighs the historic value of the existing path.
The proposed diversion seems incompatible with Natural England's policy to encourage the opening up of historic rights of way.	1	Natural England, has also supported Highway Authorities to produce statutory Rights of Way Improvement Plans to ensure that local rights of way meet the present and likely future needs of the public. Officers take the view that the proposed diversion will provide a path which offers improved accessibility over a re-instated path along Mud Lane and that this extra convenience of use outweighs the historic value of the existing path.

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The route was awarded as public bridleway as part of the Purton Enclosure Award 1738. Therefore it is in public ownership and the Order has made no provision for the disposition of this land.	1	The Enclosure Award affected a right of passage for the public over the land. For maintenance purposes, the ownership of the surface of the bridleway is vested in the County Council as Highway Authority, but the subsoil is privately, not publicly, owned. If the diversion of the bridleway is confirmed the ownership of the surface of the new route will be vested in the County Council.
The footpath links to other footpaths in the area.	1	Links to other paths in the area will not be adversely affected by the proposed diversion.
The path is an important part of the footpath system of Purton.	1	The proposed diversion will not see any loss of public rights of way and will serve to improve accessibility of this path.
The proposed diversion follows a route too similar to that of Footpath 103.	2	The majority of the proposed diversion lies on the opposite side of the hedge from Footpath 103 and offers little advantage to walkers other than a path which is easier to use than Mud Lane. However, this objection does not take account of the advantages that will be gained by horseriders and cyclists by providing them with an easily useable bridleway that is not duplicated by the close proximity of other paths.
The proposed diversion offers no benefits in terms of access between the village and Ringsbury Camp.	1	There are a number of public footpaths which provide access between the village of Purton and Ringsbury Camp but neither, the existing path along Mud Lane nor the proposed diversion, form a direct route for that purpose, although either one could be used as part of a more circuitous journey.
The proposed diversion is inconvenient to the public, taking walkers significantly out of their way.	1	The proposed diversion is approximately 60 metres longer than the existing path along Mud Lane. Officers consider that this is not a substantial inconvenience when the full extent of a walk or ride in this area is taken into account.
The footpath has only become impassable recently due to negligence which is not a legitimate reason to stop up an ancient right of way.	7	Officers have been given to understand that the path along Mud Lane was not so much neglected but was allowed to fall into disuse and has become impassable over the last sixty years, because the Parish Council did not wish to oppose the wishes of the then landowner who was known to be in ill-health. Correspondence on file suggests that it was decided that the matter should be left until the land changed hands. Only within the last eight years has there been significant local enthusiasm for having the path made available for use. Officers take the view that the proposed diversion will provide a path which offers improved accessibility over a re-instated path along Mud Lane and that this extra convenience of use outweighs the historic value of the existing path.
The muddy state of the lane is not a valid reason. It could easily be rectified.	1	Mud Lane acts as a ditch for the surrounding land and in periods of wet weather is subject to muddy, inconvenient and sometimes impassable conditions which include long stretches of the lane that can become flooded to a depth of a metre. The contractors who quoted for the work involved to make Mud Lane available for safe use as a bridleway have made it clear that they cannot guarantee to resolve the drainage and flooding problems. There are no such difficulties with the surface of the diversion route.

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The cost to clear the road would not be as high as stated as many volunteers have offered to clear it and maintain it in the future.	4	Both the Ramblers' Association and the rights of way volunteer group in Purton have offered to provide volunteers to undertake the clearance of the path along Mud Lane. However, whilst Officers are appreciative of these offers of help, the magnitude of the task and degree of mechanical and construction work required are such that the use of volunteers is not appropriate.
That the footpath floods is not a valid argument as many footpaths become wet and muddy during the winter.	2	Officers consider that the fact that other paths may be subject to muddy conditions and flooding is not a reason to reject the opportunity to divert this path on to a route that is free from such problems.
The existence of the public right of way was known to the present owner when he purchased the property. The diversion of the path would result in financial gain for the owner. It is wrong to request the diversion of a footpath for personal gain.	10	There is nothing in the legislation that prevents a landowner from gaining financially from the confirmation of a Diversion Order. Section 119 of the Highways Act 1980 provides for the diversion of public footpaths, bridleways and restricted byways provided that certain criteria are met, one of which is that the diversion must be in the interests of the landowner or of the public. Even where an Order is made only in the interests of a landowner this is permitted as long as the path will not be substantially less convenient to the public as a result of the diversion. In this case Officers believe that the new path will be more convenient to the public.
The cost of reinstating the footpath is irrelevant if the convenience test and other tests in Section 119 of the Highways Act 1980 are considered.	2	Section 119 of the Highways Act 1980 contains no specific provision for the costs of reinstating a public right of way to be taken into account as a reason for diversion. However, a decision in June 2008 by the Secretary of State to confirm a Diversion Order made by Devon County Council established that, provided the criteria set out in Section 119 are met, the relative costs of the proposed diversion as opposed to the re-instatement of the definitive route is a material factor that should be taken into consideration.
Any proposal to upgrade the diverted footpath to bridleway is irrelevant for the purposes of Section 119.	1	Section 119 of the Highways Act 1980 allows for the diversion of public footpaths, bridleways and restricted byways. Purton 104 is currently recorded in the Definitive Map and Statement as a Public Footpath but there is clear historic documentary evidence that it should properly be recorded as a Public Bridleway. By creating the diversion route as a Public Bridleway the public rights of way will be formally and properly recorded. If the Diversion Order is not confirmed the County Council will need to make a Definitive Map Modification Order to record the existing path along Mud Lane as a bridleway.
The officers report (paragraph 12(vi) of the report presented to the Regulatory Committee on 21 st May 2008) fails to meet one of the tests required under Section 119. Therefore the officers conclusion is opinion only.	1	Officers are satisfied that all the legal tests under Section 119 of the Highways Act 1980 have been met.
The Order is lacking in detail as the beneficiaries and the advantage of the Order to them are undefined.	2	The Order has been made in the interests of both the landowner and the public and in the form prescribed in the relevant legislation.

