

AGENDA

Meeting: Western Area Planning Committee

Place: Council Chamber – County Hall, Bythesea Road, Trowbridge, BA14 8JN

Date: Wednesday 7 July 2021

Time: 3.00 pm

Please direct any enquiries on this Agenda to Ben Fielding, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718656 or email Benjamin.fielding@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Christopher Newbury (Chairman)	Cllr Stewart Palmen
Cllr Bill Parks (Vice-Chairman)	Cllr Antonio Piazza
Cllr Trevor Carbin	Cllr Pip Ridout
Cllr Ernie Clark	Cllr David Vigar
Cllr Andrew Davis	Cllr Suzanne Wickham
Cllr Edward Kirk	

Substitutes:

Cllr Matthew Dean	Cllr George Jeans
Cllr Jon Hubbard	Cllr Gordon King
Cllr Tony Jackson	Cllr Mike Sankey
Cllr Mel Jacob	Cllr Graham Wright

Covid-19 safety precautions for public attendees

To ensure COVID-19 public health guidance is adhered to, a capacity limit for public attendance at this meeting will be in place. **Please contact the officer named on this agenda no later than 5pm on Monday 5 July if you wish to attend this meeting.**

To ensure safety at the meeting, all present at the meeting are expected to adhere to the following public health arrangements to ensure the safety of themselves and others:

- Do not attend if presenting symptoms of, or have recently tested positive for, COVID-19
- Wear a facemask at all times (unless due to medical exemption)
- Maintain social distancing
- Follow one-way systems, signage and instruction

Where it is not possible for you to attend due to reaching the safe capacity limit at the venue, alternative arrangements will be made, which may include your question/statement being submitted in writing.

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County Hall, Trowbridge
Bourne Hill, Salisbury
Monkton Park, Chippenham

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meetings at County Hall you will need to log your car's registration details upon your arrival in reception using the tablet provided. If you may be attending a meeting for more than 2 hours, please provide your registration details to the Democratic Services Officer, who will arrange for your stay to be extended.

Public Participation

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

AGENDA

Part I

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 7 - 22*)

To approve and sign as a correct record the minutes of the meeting held on 9 June 2021.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

Statements

Members of the public who wish to submit a statement in relation to an item on this agenda should submit this in writing to the officer named on this agenda no later than 5pm on Monday 5 July 2021.

Submitted statements should:

State whom the statement is from (including if representing another person or organisation);

State clearly whether the statement is in objection to or support of the application;

Be readable aloud in approximately three minutes (for members of the public and statutory consultees) and in four minutes (for parish council representatives – 1 per parish council).

Up to three objectors and three supporters are normally allowed for each item on the agenda, plus statutory consultees and parish councils.

Those submitting statements would be expected to join the online meeting to read the statement themselves, or to provide a representative to read the statement on their behalf.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions electronically to the officer named on the front of this agenda no later than 5pm on Wednesday 30 June 2021 in order to be guaranteed of a written response.

In order to receive a verbal response questions must be submitted no later than 5pm on Friday 2 July 2021.

Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent. Details of any questions received will be circulated to members prior to the meeting and made available at the meeting and on the Council's website. Questions and answers will normally be taken as read at the meeting.

6 **Planning Appeals and Updates** *(Pages 23 - 24)*

To receive details of completed and pending appeals and other updates as appropriate.

7 **Rights of Way Applications**

To consider and determine the following rights of way applications.

7a **Highways Act 1980 Section 119 The Wiltshire Council Bratton 42 Diversion and Definitive Map and Statement Modification Order 2021** *(Pages 25 - 264)*

To consider the 66 representations and 20 objections to The Wiltshire Council Parish of Bratton Path No.42 Definitive Map and Statement Modification Order 2021.

8 **Planning Applications**

To consider and determine the following planning applications.

8a **20/11601/REM - Land East of Spa Road, Melksham** *(Pages 265 - 276)*

Reserved Matters for 25 homes forming Phase 1A of outline planning permission originally granted under 14/10461/OUT and varied by consented application 17/09248/VAR. REM approval is sought for all outstanding matters relating to this phase, comprising Scale, Layout, External Appearance, Landscaping, Internal Access Arrangements and the Mix and Type of Housing.

8b **21/01111/REM - Land East of Spa Road, Melksham** *(Pages 277 - 288)*

Reserved Matters for 50 homes forming part of Phases 4A and 5A of outline planning permission originally granted under 14/10461/OUT and varied by consented application 17/09248/VAR. REM approval is sought for all outstanding matters relating to this phase, comprising Scale, Layout, External Appearance, Landscaping, Internal Access Arrangements and the Mix and Type of Housing.

Urgent Items

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency.

Part II

Item during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

Western Area Planning Committee

MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 9 JUNE 2021 AT COUNCIL CHAMBER - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Christopher Newbury (Chairman), Cllr Bill Parks (Vice-Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Edward Kirk, Cllr Stewart Palmen, Cllr Antonio Piazza, Cllr Pip Ridout, Cllr David Vigar and Cllr Suzanne Wickham

Also Present:

Cllr Matthew Dean and Cllr Gordon King

16 **Apologies**

There were no apologies for absence.

17 **Minutes of the Previous Meeting**

The minutes of the meeting held on 17 February 2021 were presented for consideration, and it was,

Resolved:

To approve and sign as a true and correct record of the minutes of the meeting held on 17 January 2021.

18 **Declarations of Interest**

Though not a pecuniary interest, Councillors Edward Kirk, Stewart Palmen, David Vigar and Antonio Piazza declared an interest in Item 8a, due to being members of Trowbridge Town Council.

19 **Chairman's Announcements**

The Chairman made those in attendance aware of the Covid regulations that were in place for the meeting.

20 **Public Participation**

No questions had been received from councillors or members of the public.

The Chairman welcomed all present. He then explained the rules of public participation and the procedure to be followed at the meeting.

21 **Planning Appeals and Updates**

The update report on planning appeals was received with details provided that all appealed decisions had been upheld.

Resolved:

To note the Planning Appeals Update Report for 9 June 2021.

22 **Rights of Way Applications**

The Committee considered the following Rights of Way applications:

23 **Parish of Melksham Path No.107**

Public Participation

Katherine Evans, Solicitor representing Cooper Tyres, spoke in objection to the application.

Francis Morland, spoke in support of the application but questioned the procedures in place.

Dr Phil Wadey, spoke in support of the application.

Definitive Map and Highway Records Manager, Sally Madgwick presented a report which had the purpose to consider the two objections and thirty representations relating to the above Order to add footpaths over land near to the River Avon, Melksham Forest, Melksham. The report recommended that Wiltshire Council support the confirmation of the Order when the matter is referred to the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA).

Members of the Committee had the opportunity to ask technical questions regarding the application. Details were sought on the claimed route, specifically points C and D within the report and presentation which make up an on-going right of way. Additionally, whether the Council could take a neutral stance regarding the proposal, which was not recommended for this application as the Councillors had sufficient information within the report to decide on the matter.

Members of the public then had the opportunity to present their views to the Committee as detailed above.

The local Unitary Member, Councillor Jack Oatley, was unable to attend the meeting, therefore Democratic Services Officer, Ben Fielding read out a statement in support of the application on his behalf.

A motion to move and accept the proposal was moved by Councillor Trevor Carbin and seconded by Councillor Andrew Davis.

At the conclusion, it was,

Resolved:

That the Wiltshire Council Parish of Melksham Path No. 107 and Melksham Without Path No. 151 Rights of Way Modification Order 2020 is forwarded to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that it be confirmed with a modification to the Order plan correcting the symbol used in the key for points C to D.

24 **Westbury Path No.68**

Public Participation

Christopher Smith, Liabilities Negotiations Manager for Network Rail was unable to attend the meeting and therefore his statement was read out by Democratic Services Officer, Ben Fielding on his behalf. Francis Morland spoke in support of the application.

Definitive Map and Highway Records Manager, Sally Madgwick presented a report which had the purpose to consider the two objections and one representation received relating to the above Order to add a footpath leading from footpath Westbury 15 to Westbury railway station. The report recommended that Wiltshire Council takes a neutral stance when the matter is referred to the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA).

Members of the Committee had the opportunity to ask technical questions regarding the application. Details were sought on statements provided by Network Rail, that there had been intention to lock a gate blocking the path on Good Fridays. It was queried how any response other than the Officer recommendation to take a neutral stance would result.

It was clarified that though plans for the nearby Spinnaker development include a parallel footpath, this route has not yet been constructed and was not relevant to the decision to be considered by the Committee.

Members of the public then had the opportunity to present their views to the Committee as detailed above.

The local Unitary Member, Councillor Matt Dean, then spoke in support of the application. Councillor Dean stated that the report presented had only been partial and did not include the primary documents which the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA) had access to at the Schedule 14 appeal stage, which would therefore prevent a balanced decision from being made.

A debate then followed where the following issues were discussed, including whether the Committee should opt to defer the decision in order to receive further information and whether this would consequently lead to a different

stance other than one of neutrality after consideration. It was also questioned what the additional evidence and information would consist of and whether this would change the officer's recommendation.

During the debate, a motion to defer was moved by Councillor Wickham and seconded by Councillor Kirk.

At the conclusion of the debate, it was,

Resolved:

That the Wiltshire Council Parish of Westbury Path No. 68 Rights of Way Modification Order 2020 would be deferred until further documentary evidence is available for the consideration of the committee.

25 **Planning Applications**

To consider and determine the following Planning Applications:

26 **19/10805/FUL - Land to East of Trowbridge Rugby Club, Hilperton BA14 6JB**

Councillors Kirk, Palmen, Piazza and Vigar left the meeting at 16:27 following their earlier declarations in relation to Item 8a.

Public Participation

Lance Allan, representing Trowbridge Town Council, spoke in support of the application.

Senior Conservation and Planning Officer, Steve Sims, presented a report, which outlined a new sports facility to include a new fenced and floodlit 3G artificial grass pitch and a new pavilion providing inclusive ancillary facilities to support the pitch, together with new community coaching and education rooms and a training room/gym for use by football rugby club users. A new access road and additional parking is also proposed. The report recommended that the application be approved subject to conditions.

Details were provided of the site, including the principle of development (including loss of agricultural land), impact on character of the area, ecology issues, highway issues, impact on the living conditions of neighbouring residents, archaeology issues and drainage issues.

Members of the Committee had the opportunity to ask technical questions regarding the application. Details were sought on which direction vehicles are expected to turn when exiting the site.

Members of the public then had the opportunity to present their views to the Committee as detailed above.

The local Unitary Member, Councillor Ernie Clark, then spoke in objection of the application. Councillor Clark stated that Hilperton currently has its own playing field including changing facilities and a bar. Additionally, the location of the proposed application was referenced, the size of the carpark, the deficiency of public transport as well as the quality of the land and the use of the proposed building within the application. The planning officers responded to each of the points made.

Councillor Ernie Clark then moved a motion to reject the Officer's recommendation, which was not seconded and consequently did not progress to a vote.

A debate then followed where the following issues were discussed, including concerns about the use of the building for conference and non-sporting use. It was however clarified that the existing rugby club building is used for such events and the floor plan of the proposed building would only be 25% dedicated to club house use.

Additionally, other issues were raised such as whether conditions and informatives could be added to the officer's recommendations such as the need to improve local bus services to serve the application and additionally the need for covered cycle parking to be provided prior to completion. The potential for brown road signage was also questioned.

During the debate, a motion to accept the Officer's recommendation with and additional informative with regards advising the applicant to liaise with the council to seek improvements to local bus routes and services and amending condition 8 to include details of covered cycle facilities was moved by Councillor Davis and seconded by Councillor Ridout.

At the conclusion of the debate, it was,

Resolved:

That the recommendation be approved subject to conditions.

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site location plan scale 1:1000 dwg no. 170815-029.03

Site plan proposed scale 1:1000 dwg no. 170815-330.04

Pavilion layout - proposed scale 1:100 dwg no. 170815-326.03

Pavilion elevations - proposed scale 1:100 dwg no. 170815-328.03
Landscape strategy scale 1:1000 dwg no. 359-P-006 rev B
Hard works plan 1 of 2 scale 1:250 dwg no. 359-P-001 rev A
Hard works plan 2 of 2 scale 1:250 dwg no. 359-P-002 rev A
Planting plan 1 of 3 scale 1:250 dwg no. 359-P-003 rev B
Planting plan 2 of 3 scale 1:250 dwg no. 359-P-004 rev B
Planting plan 3 of 3 scale 1:250 dwg no. 359-P-005 rev C
AGP development layout scale 1:500 dwg no. 18-0108 BM25583 0346 03
rev 1
AGP elevations scale 1:200 dwg no. 18-0108 BM25583 0346 05 rev 1
AGP elevations and fence/enclosure/mast details scale 1:100 dwg no. 18-
0108
BM25583 0346 06 rev 1
AGP proposed pitch scale 1:250 dwg no. 18-0108 BM25583 0346 02 rev 1
Drainage strategy scale 1:500 dwg no. TRC-BWB-DGN-XX-DR-C-500 rev
P8
Proposed earthworks strategy scale 1:500 dwg no. TRC-BWB-DGN-XX-
DR-C 630 rev P5
Proposed external works finished levels scale 1:500 dwg no. TRC-BWB-
DGN-XX-DRC-600 rev P5
Floodlighting design by Surfacing Standards Ltd publication dated
18.09.2020, project LSUK005

REASON: For the avoidance of doubt and in the interests of proper
planning.

3) No development shall commence on site except for site clearance, ground investigation and demolition works, until further ground remediation and infiltration soakaway testing works have been undertaken and the findings have been submitted to and approved in writing by the Council along with the finalised soakaway design details to verify that the designed soakaways are suitable for the development. If the infiltration test results or site groundwater levels demonstrate that soakaways are not appropriate, an alternative method of surface water drainage shall be designed, submitted to and approved in writing by the Local Planning Authority prior to any operational development commencing pursuant to the pavilion and pitch. Thereafter, any approved drainage scheme shall be completed prior to the development being brought into use.

REASON: To ensure that the development can be adequately drained without increasing flood risk elsewhere.

4) None of the development hereby approved shall commence on site (including demolition, ground works or vegetation clearance) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include, but not necessarily be limited to, the following:

1. A method statement for vegetation clearance, including the times when an Ecological Clerk of Works will be on site to supervise the works.
2. A plan showing 'no-go' areas which will be fenced off from contractors for the entire duration of the construction works.
3. A method statement for the demolition and/or removal of buildings in the north of the site including surveys required before demolition, times when an Ecological Clerk of Works will be on site to supervise the works and provision of the mitigation which will be provided in the event bat roosts are found.
4. Measures, including surveys, mitigation and translocation, which will be undertaken to ensure risks to other protected species are identified and adequately reduced across the site before construction commences and throughout the construction period.

The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details. A report prepared by a competent person(s), certifying that the required mitigation and/or compensation measures identified in the CEMP have been completed to their satisfaction, shall be submitted to the Local Planning Authority within 3 months of the date of substantial completion of the development or at the end of the next available planting season, whichever is the sooner.

REASON: To ensure adequate protection, mitigation and compensation for protected species, priority species and priority habitats.

5) No development hereby approved shall commence (save for groundclearance, site enabling, and demolition works) until:

a) A written programme of archaeological investigation, which should include on-site work and analysis, publishing and archiving of all archaeological findings, has been submitted to and approved by the Local Planning Authority; and that the approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: In order that the development is undertaken in an acceptable manner, to enable the recording of any matters of archaeological interest.

6) Prior to the development hereby approved being brought into use, a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The LEMP shall include:

- A. A plan identifying the location and specific management aims for each identifiable landscape area.
- B. 1-5 year and long-term maintenance requirements for each identifiable landscape area which demonstrate how the Landscape Strategy will be achieved after the initial 12-month planting contract.

C. Any requirements for replanting where planting stock becomes diseased or dies after the initial 12-month planting contract.

Annual and five-year work schedule capable of being rolled forward,

The LEMP shall be implemented in full in accordance with the approved details and shall enure for the lifetime of the development.

REASON: In order that the development is undertaken in an acceptable manner and to ensure adequate protection, mitigation and compensation for protected species, priority species and priority habitats.

7) The development hereby approved shall not be brought into use until the vehicular access, turning area and parking spaces have been completed in accordance with the details as shown on the approved plans. Thereafter, the aforesaid provision shall be maintained and retained for the lifetime of the development.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

8) The development hereby approved shall not be brought into use until the cycle parking facilities as shown on the approved plans have been provided in full and are available for use. Thereafter, the cycle parking facilities shall be maintained and retained for such use for the lifetime of the development.

REASON: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car.

9) The floodlighting hereby approved shall only be used between the hours of 15:00 and 22:00.

REASON: In order to minimise light pollution and nuisance and to protect and safeguard rural setting and any protected species.

NOTE: This condition is consistent with the approved decision issued for the adjoining rugby club site floodlighting (as granted by applications W/05/00822/FUL and W/12/01169/FUL).

10) No external lighting shall be installed on the site until detailed plans showing the type of light appliance, the height and position of the fitting, the illumination levels and light spillage levels in accordance with the appropriate Environmental Zone standards as set out by the Institute of Lighting Professionals in their publication GN01:2020, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2020), and have been submitted to and approved in writing by the Local Planning Authority

REASON: In the interests of the amenities of the area, to minimise unnecessary light spillage above and outside the development site and to

core bat habitat meets the requirements of the Trowbridge Bat Mitigation Strategy.

Note: This condition will be discharged when a post-development lighting survey conducted in accordance with section 8.3.4 of the Trowbridge Bat Mitigation Strategy has been submitted to the Local Planning Authority demonstrating compliance with the approved lighting plans, having implemented and retested any necessary remedial measures.

11) The development hereby approved shall be completed in accordance with the Landscape Strategy (Urban Wilderness 359-P-006 Rev B), the Planting Plans 1 (Rev B), 2 (Rev B), and 3 (Rev C) (Urban Wilderness 359-P-003-005); and, the floodlighting design (Surfacing Standards Ltd publication dated 18.09.2020, project LSUK005)

REASON: To ensure adequate protection and mitigation for protected species, priority species and priority habitats.

12) No sound reproduction or amplification equipment (including public address systems and loudspeakers) which would be audible at the site boundaries, shall be operated on the site, unless approved in writing by the local planning authority.

REASON: To define the terms of this permission and to safeguard the rural setting and nearby amenities.

13) All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

14) Any on site works undertaken in relation to trees shall be carried out in strict accordance with section 4 of the Arboricultural Impact Assessment Report produced by BWB (dated November 2019) and protective fencing shall be erected prior to any operational development commencing on the site in accordance with the approved details. The protective fencing shall remain in place for the entire development phase and until all equipment,

machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during the construction operations.

REASON: In order that the development is undertaken in an acceptable manner and to enable the Local Planning Authority to ensure the retention of trees on the site in the interests of visual amenity.

15) Prior to bringing the development into use the applicant shall submit details of stopping up the existing field access served off the A361 and shown on approved plan drawing 170815-330.04 which shall require the written approval of the Council and thereafter, the stopping up of the field access shall be carried out in accordance with the approved details within 2 months of the site being brought into use.

REASON: To define the terms of this permission and in the interests of highway safety.

Planning Informatives:

1) Should the applicant wish to apply to vary the floodlighting condition as referenced above, the applicant would be required to undertake additional protected species surveys and light impact assessments in accordance with the TBMS requirements and appropriate future standards of the Institute of Lighting Professionals (or its equivalent) and/or adopted policy.

2) The applicant is advised to consider the provision of additional road signage and to liaise with the Council's highways team where necessary, to assist with directing visitors to and from the site.

Councillor Ernie Clark requested his vote in abstention be recorded.

26a 20-08785-FUL - Land at 66A Westbury Leigh, Westbury BA13 3SQ

Councillors Kirk, Palmen, Piazza and Vigar returned to the meeting at 17:26, following the conclusion of Item 8a.

Public Participation

Brian Osbourn, spoke in objection to the application.

Paul Stevens, Architect representing client, spoke in support of the application.

Head of Development Management, Mike Wilmott, presented a report, which outlined the demolition of an existing building as well as the construction of four new dwellings. The report recommended that the application be approved subject to conditions.

Details were provided of the site, including the principle of development, impact upon the area and wider landscape, heritage matters, highway impacts, biodiversity matters and neighbouring impacts.

Members of the Committee had the opportunity to ask technical questions regarding the application. Details were sought on the provision of carparking and how vehicles would be able to rotate and then emerge on to the carriageway.

Members of the public then had the opportunity to present their views to the Committee as detailed above.

The local Unitary Member, Councillor Gordon King, then spoke in objection to the application. In his statement, Councillor King spoke of the unique and historic identity of Westbury Leigh, the impact on surrounding properties and local amenities as well as the land being within a Zone 1 flood zone. Additionally, the size of the proposed buildings and the current street scene was referenced.

A debate then followed where the following issues were discussed including the current building make up of Westbury Leigh, including a large number of listed buildings and the potential need for a conservation area. Additionally, the similar height level of the proposed houses in comparison to the malthouse as well as the improved aesthetic design of the proposed houses in comparison to the building currently situated in the location.

During the debate, a motion to accept the officer's recommendation was moved by Councillor Andrew Davis and seconded by Councillor Edward Kirk.

At the conclusion of the debate, it was,

Resolved:

To approve the application subject to the following planning conditions

Conditions: (11)

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing 841:03B (Existing & Proposed Location & Site Plan) received 03.03.2021

Drawing 841:01 (Existing Building) received 09.10.2020

Drawing 841:02A (Existing Levels) received 05.05.2021

Drawing 841:12B (Proposed Elevations and Floor Plans for Detached House) received 02.03.2021
Drawing 841:05D (Proposed Plans and Elevations of Terrace) received 02.03.2021
Drawing 841:11 (Proposed Eaves Heights) received 30.11.2020
Drawing 841:07E (Proposed Street Scene) received 02.03.2021
Drawing: 841:10A (Proposed Stormwater Drainage) received 03.03.2021
Drawing 841:04F (Proposed Site Plan with Vehicle Tracking) received 11.05.2021

REASON: For the avoidance of doubt and in the interests of proper planning.

3) No development shall commence on site, except for enabling works and ground investigations and remediation, until detailed infiltration testing and soakaway design in accordance with BRE 265 and Wiltshire Council's Surface Water Soakaway Guidance have been submitted for the written approval of the LPA to verify that soakaways would be suitable for the development. If the infiltration test results demonstrate that soakaways are not appropriate, an alternative method of surface water drainage with the requisite details, shall be submitted to and approved in writing by the Local Planning Authority; and in either case, the approved drainage systems shall be installed and completed prior to the occupation of the development.

REASON: To comply with Core Policy 67: Flood Risk within the Wiltshire Core Strategy (adopted January 2015) and to ensure that the development can be adequately drained without increasing flood risk to others.

4) No development shall commence on site until a scheme for the discharge of surface water from the site, including sustainable drainage systems, drainage drawings, calculations and all third party approvals, has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority.

REASON: To comply with Core Policy 67: Flood Risk within the Wiltshire Core Strategy (adopted January 2015) and to ensure that the development can be adequately drained without increasing flood risk to others.

5) No development beyond slab level shall commence on site until the details (with samples made available on the site) of the materials to be used for the external walls, roofs, porches and windows/doors have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the character and appearance of the area.

6) No gates, fences, walls or other means of enclosure, shall be erected on site until the details have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved plans and be maintained in perpetuity.

REASON: to maintain the character and appearance of the area.

7) All the compensatory tree planting and soft landscaping proposals forming part the approved plans shall be implemented and completed during the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape feature

8) None of the dwellings hereby approved shall be occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans. Thereafter, the areas shall be maintained for those purposes for the lifetime of this development.

REASON: In the interests of highway safety.

9) None of the dwellings hereby approved shall be occupied the following windows shall be glazed with obscure glass only to an obscurity level of no less than level 4 and the windows shall be permanently maintained with obscure glazing in perpetuity:

- **The dormer windows in the north west elevation serving the bathrooms as shown on Drawing 841:05D;**
- **The windows in the south west and north east elevation serving the downstairs WC and the stairwell window on the north eastern elevation shown on drawing number 841:05D;**
- **The stairwell window on the north western elevation shown on Drawing 841:12B**

REASON: In the interests of residential amenity and privacy.

10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (England) Order 2020 (or any Order revoking or reenacting or amending that Order with or without modification), the

garage hereby approved shall be retained for vehicle parking and shall not be converted to habitable accommodation.

REASON: To secure the retention of adequate parking provision, in the interests of highway safety.

11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (England) Order 2020 (or any Order revoking or reenacting or amending that Order with or without modification), no windows, dormer windows or rooflights, other than those shown on the approved plans, shall be inserted in the dwellings hereby approved.

REASON: In the interests of residential amenity and privacy and the character and appearance of the area

INFORMATIVES TO APPLICANT:

1) The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's website <https://www.wiltshire.gov.uk/dmcommunityinfrastructurelevy>

2) Bats and their roosts are protected by law and it is illegal to disturb, harm, obstruct, damage or obstruct them. If there is any evidence of bats found on site, all works on site should cease and advice should be sought for a licensed ecologist.

3) The applicant should note that the works hereby approved involve the removal and disposal of asbestos and should only be removed by a licenced contractor. Asbestos waste is classified as 'special waste' and as such, can only be disposed of at a site licensed by the Environment Agency. Any contractor used must also be licensed to carry 'special waste'.

4) The applicant is encouraged to install 5 integral swift nest bricks in this

development as an ecological enhancement measure. Suggested locations would be 3 integral bricks in the north east gable end of the block of three houses and 2 bricks in the western elevation of house no.5 and should be installed/made available prior to the first occupation of the development hereby approved.

27 **Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.00pm – 6:05pm)

The Officer who has produced these minutes is Ben Fielding of Democratic Services, direct line 01225 718656, e-mail Benjamin.fielding@wiltshire.gov.uk
Press enquiries to Communications, direct line (01225) 713114/713115

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**Wiltshire Council
Western Area Planning Committee
7th July 2021**

Planning Appeals Received between 28/05/2020 and 25/06/2021

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
20/11515/OUT	Land South of Sandhole Lane, Westbury	Westbury	Outline planning permission for demolition of existing outbuildings and the development of up to 67 dwellings with associated access and highways works, drainage and attenuation, open space, play area, allotments and landscaping (access to be determined, all other matters reserved).	DEL	Inquiry	Refuse	11/06/2021	No
21/00023/ENF	12 Mustang Close Westbury, Wiltshire BA13 3FH	Westbury	Alleged unauthorised siting of shipping container in rear garden	DEL	Written Representations	-	15/06/2021	No
21/01146/FUL	Tynings Farm 24 Bulkington Drove Bulkington, SN10 1SN	Bulkington	Proposed holiday accommodation (resubmission of 20/07148/FUL)	DEL	Written Representations	Refuse	01/06/2021	No

There are No Planning Appeals Decided between 28/05/2020 and 25/06/2021

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

7 JULY 2021

HIGHWAYS ACT 1980 SECTION 119
THE WILTSHIRE COUNCIL BRATTON 42 DIVERSION AND DEFINITIVE MAP
AND STATEMENT MODIFICATION ORDER 2021

Purpose of Report

1. To:
 - (i) Consider the 66 representations and 20 objections to The Wiltshire Council Parish of Bratton Path No.42 Definitive Map and Statement Modification Order 2021.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (**SoSEFRA**) with a recommendation from Wiltshire Council that the Order be confirmed without modification.

APPENDIX 1. The made Order and Order Plan showing the existing route and proposed change.

APPENDIX 2. The officers' report following the initial consultation on the proposal.

APPENDIX 3. The representations and objections to the made Order in full.

APPENDIX 4. Photographs of the current route, the proposed route and the continuation of the path showing Footpath Bratton 42 in its entirety.

Relevance to the Council's Business Plan

2. Working with the local community to provide a rights of way network which is fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. The Order to add Footpath Bratton 42 to the definitive map was confirmed on 31 October 2018 following a public inquiry; Wiltshire Council received an application to divert a section of the right of way five days later under Section 119 of the Highways Act 1980. The application was made by the landowner, Henry Pelly, Luccombe Mill, Imber Road, Bratton, Wiltshire, BA13 4SH predominantly on the grounds of privacy, the landowner also lists health and safety and wildlife concerns within his application. The proposal is to divert the footpath from Luccombe Mill garden running along the mill pond and create a route on the other side of the hedge line through the neighbouring paddock to have a recorded legal width of 2 metres. The diversion route will re-join the footpath at the bridge prior to the locations known locally as watercress beds and paradise pool. The proposal deletes approximately 170 metres of footpath and adds approximately 160 metres.

4. The new route has already been constructed and is available for the public to use as a permissive path. Representations to the Order and evidence of use on the ground suggest the route is popular and well used.
5. An initial consultation on the proposal took place between 12 August 2020 and 10 September 2020. The consultation included landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council Member for Ethandune and Bratton Parish Council. A notice of the application was also placed on site as it was believed there was a great deal of public interest in this right of way following its addition to the Definitive Map and Statement in 2018 as a result of a public inquiry. There were 8 supporting responses received to the proposal; additionally Bratton Parish Council and the Countryside Access Officer did not object to the proposal. There were 30 objections received including the Ramblers and West Wilts Ramblers.
6. A decision report was written and can be seen in full at **Appendix 2** in which the legal tests are discussed in detail. The report concluded that in this case the legal tests for the making of a diversion Order to divert Footpath Bratton 42 under Section 119 of the Highways Act 1980 were met. The proposal is in the interests of the landowner and the route not substantially less convenient. From the initial consultation responses there was concern that the proposed diversion does have an adverse effect on public enjoyment due to its historic nature and unique location. However, when looking at the path in its entirety access to the watercress beds and paradise pool remain. If the diversion fails, the landowner has reiterated in several correspondences that a 2 metre high fence will be installed along the current path to protect the privacy of the property; therefore, views of the mill pond are expected to cease. The officer believes the public will continue to use the route in its entirety if this section was diverted; therefore, the diversion would have minimal impact on the level of public use (notwithstanding any loss of views and enjoyment) but would make a considerable difference to the landowner.
7. The proposed diversion also meets other considerations which the Council must take into account such as the provisions of the Rights of Way Improvement Plan, the Equalities Act 2010 and the needs of agriculture, forestry and biodiversity. The report concluded that at the initial consultation stage the legal tests for the confirmation of the Order appear to be met. However, the report recognised that the evaluation of enjoyment is subjective. The balance of the legal tests may have been altered by representations and objections received during the advertisement period for the made Order meaning that Wiltshire Council must again consider the balance of issues affecting this proposed diversion before forming a view on the merits of confirmation.
8. The Order was made under Section 119 of the Highways Act 1980 to divert Footpath Bratton 42, and Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of public rights of way on 16 February 2021. The consultation ran from 26 February 2021 to 9 April 2021 and included the previous consultees; it was advertised on site and in the Warminster Journal on 26 February 2021. All respondents to the initial consultation were contacted asking if they wished their comments to be taken to the next stage of the process.

9. In total, there were 65 responses received in support of the made Order, additionally Bratton Parish Council and the Countryside Access Officer did not object to the made Order. There were 3 withdrawn objections, the Ramblers, West Wilts Ramblers and another objector who wished to withdraw her previous objection as she was now in support of the made Order. In total there are 20 objections to the made Order. Of the responders to the initial consultation 5 of the 8 supporters asked for their support to be taken forward to the next stage. Bratton Parish Council and the Countryside Access Officer continue to not object to the made Order. Of the 30 initial objections to the proposal 13 asked for their comments to be taken to the next stage and as previously stated 3 objectors withdrew. All responses to the made Order can be read in full in **Appendix 3**.
10. Due to the objections received, the Order now falls to be considered by the Western Area Planning Committee whose Members should consider the legal tests for diversion against the objections received, in order to decide whether Wiltshire Council continues to support the making of the Order.
11. Where the Authority continues to support its original decision to make the Order, it should be forwarded to the SoSEFRA for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or with modification.
12. Where the Authority no longer supports its original decision to make the Order, it may be withdrawn with reasons given as to why the legal tests for diversion are no longer met. The making of a public path diversion order is a discretionary duty for the Council, rather than a statutory duty; therefore, the Order may be withdrawn at any time.

Main Considerations for the Council

13. The legal tests that must be applied by Wiltshire Council in considering whether or not an Order should be confirmed are contained within Section 119 (1) and (2) of the Highways Act 1980. The Council is entitled to further consider the tests for confirmation contained within Section 119(6) at this stage.
14. **Section 119(1)** of the Highways Act 1980 states that:

“Where it appears to a Council as respects a footpath, bridleway or restricted byway 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) below, 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, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and*

- (b) *extinguish, as from such date as may be [specified in the order or determined] in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the Council requisite as aforesaid.*

An order under this section is referred to in this Act as a 'public path diversion order'.

15. **Section 119(2)** of the Highways Act 1980 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".*

16. **Section 119(6)** of the Highways Act 1980 states:

"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 Sub-section (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.*

17. The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP) - the current plan is entitled Wiltshire Countryside Access Improvement Plan 2015 – 2025 – Rights of Way Improvement Plan 2.

18. The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.

19. **S.119(1) – The landowner's interest**

The application is made predominantly on the grounds of privacy. The landowner also lists health and safety and wildlife concerns within his application. The footpath is approximately 70 metres from the house and opinion has been voiced by some objectors that it is not in the garden. However, the landowner clearly believes this footpath is within the garden and that use of the route affects the privacy of the property. Privacy is clearly of principal importance to the landowner, the application to divert the section of footpath was received 5 days after confirmation of the Order to add Footpath Bratton 42 to the Definitive Map

and Statement of Public Rights of Way. The landowner states in correspondence received during the consultation process *“If the diversion does not get approved, then regrettably we would erect a 2m high solid wooden fence ... This action although not attractive for us, would at least solve the problem of privacy which I cannot stress highly enough is paramount”*.

20. Objectors have stated that the landowner would have known about the footpath from searches on the property and surveyors would have seen the route on the ground. *“The owner of the house at Watercress walk should have discovered through his pre-contract searches that a footpath existed on his proposed purchase and made his purchase decision accordingly.”* *“I would like to reiterate that the landowner would have been in full knowledge of the path on his land, prior to purchase.”* However, the right of way was not recorded on the definitive map and no application under Section 31(1) of the 1980 Highways Act to add Footpath Bratton 42 had been received prior to the purchase of Luccombe Mill so legal searches would not have shown a public right of way at this location. The previous owners had stated during the public inquiry that use of the land was by permission throughout their ownership. This would have meant the use of the path was by right and therefore a right that could be withdrawn at any time by the landowner. However, it was found during the public inquiry that the use of the path by the public had been not by right but as of right, i.e. without force, without secrecy and without permission and without interruption for a full period of 20 years and therefore the right of way had become established and is required to be recorded in the Definitive Map and Statement. Therefore, it is demonstrated that the diversion would be in the landowner’s interests based on privacy.

21. **S.119(2) – Location and convenience of termination points**

The diversion of the footpath must not alter the termination points of the path where these are not on a highway and where they are on a highway they must not be altered, other than to another point on the same highway or a highway connected with it and which is substantially as convenient to the public. The current route starting point although different is off the same highway (Imber Road) and the termination will not be altered by the diversion. Therefore, termination points are considered to be substantially as convenient.

22. **S.119(6) – Convenience of the new path**

23. It is important to compare the convenience of the two routes, the test being that the new one must not be substantially less convenient to the public than is the existing one. Convenience of the path is covered in full in **Appendix 2** paragraph 10.7. In summary:
24. The length of the diversion is 160 metres, 10 metres shorter than the current route and the width would be recorded at 2 metres, 0.5 metres wider than the current route.
25. The surface of the current route has a distinct camber towards the mill pond and several tree roots protrude from the surface. Most of the proposed route runs through a paddock on a level grass route, the last 20 metres runs down a gravel bank made easier to negotiate by the installation of wide steps. When using the right of way in its entirety there are steeper gradients to negotiate and steeper steps to access the bridge.

26. Bratton 42 was added with historic stiles in situ and remains in place at point A on the Order plan **Appendix 1**. The proposed route is accessed via kissing gates and a kissing gate has now been provided at the northern access point of Bratton 42 on to Imber Road which would mean the entirety of the route would be kissing gate accessed.
27. Objections have been received stating the proposed route is less convenient *“I still find the proposed diversion unsafe for the more elderly or slightly infirm”*. However, there is an obvious walked route along the proposed path so this is clearly an option already taken by many users as confirmed by the 65 supporting representations received to the made Order, many noting the improvement to accessibility for example:
“I have lived in the village for over 40 years and believe this is a great improvement on the previously used path. The kissing gates make access really easy, especially with children and dogs and the ground underfoot is level and firm”
“The new route has certainly enabled me, my mum, and others to enjoy our outdoor activities as well as enjoying the continued loop around Danes’ Ley”
“Mr Pelly has made many improvements to the new pathway i.e. several kissing gates, easy access for dogs, hardcore on the ground and has introduced new levelled steps (great for the elderly)”
“it is a far better and more accessible route, We use it regularly with our dog and our parents who are in their 80s can now access and enjoy the walk.”
“The new route through the paddock is much easier and safer for small unsteady feet, and we much prefer the open field, avoiding uneven ground, trees roots and low branches. Our children love the kissing gates ...”
“the owner has made considerable adjustments to make the walk a lot easier.”
28. The proposed route is considered to be expedient in terms of section s.119(6), i.e. convenience of the paths.
29. **S.119(6) – Effect on public enjoyment of the path or way as a whole**
- Public enjoyment of the path is covered in full in the decision report, **Appendix 2** paragraph 10.8. It should be noted that the decision report states that public enjoyment of the path would be adversely affected. However, the report was written prior to the consultation on the making of the Order to which 65 supporting representations were subsequently received. The report did recognise that the evaluation of enjoyment is subjective, and the balance may be altered by representations and objections received during the consultation period and thus need to be considered again to inform a view on the merits of confirmation.
30. Correspondence received is divided on public enjoyment; however, in balance the majority of representations, 65 in total, many of whom are local residents, were in support of the diversion detailing the improvement the proposed route provides and state that their enjoyment is not adversely affected. For example:
“The owners have gone above and beyond to create excellent alternative access for all residents, visitors and walkers – it is a vast improvement, creates a beautiful walk that will continue for generations because the owner has invested in landscaping and use of natural materials and respected the site”

“the new route offers far better views of the Luccombe Bottom and Edington Hill beyond”

“I have lived in the village for over 40 years and believe this is a great improvement on the previously used path ... the views are open and spectacular”.

31. However, there have been 20 objections received stating that enjoyment would be affected for example:

“It would be a stretch of credulity to suggest that the public amenity of the walk through the field along the proposed diversion compares with the beauty of the Watercress Walk”

“I feel strongly that the original footpath must be maintained for the benefit of villagers who have enjoyed these views for over 40 years”

“The attraction of a walk which encompasses this short stretch in much enhanced by the beautiful views one has of the lade and the old mill”

“My young family and I love the Watercress Walk. The surroundings are so distinctive, and my three children love the surrounding wildlife”

“The public enjoyment and indeed our own family’s enjoyment of the stunning views over the valley and Paradise Pool would be severely impacted by the proposed new route”

“I do hope the Council will now listen to the voices of the local residents and walkers, and prevent this historic and popular route being blocked off and diverted onto what will be a more boring, muddy and probably badly maintained new route”

“This is very disappointing, and it is evident that the Council is disregarding the wishes of most of the Bratton residents and other walkers from out of the immediate area.”

32. Following the consultation for the made Order the vast majority of responses received were in support of the diversion. Many of these respondents are local residents. However, there can be no denying that the characters of the current route and proposed route are very different. The current route runs through a tree-lined path with view of the mill pond and the proposed route runs through an open grass paddock with a view of Luccombe Down access land. It is clear that there are extremely disparate views on the effect of enjoyment of the diversion on the public and it is recommended that a site visit is undertaken to appreciate the unique nature of the location. Looking at the path in its entirety from the bridge the path continues through a wooded area providing the canopy of large trees. However, it does not provide a view of the mill pond but does continue to provide access to the watercress beds and paradise pool, regularly referenced as the destinations of the walk.

” My wife and I have lived in Bratton for 17 years and have always enjoyed our walks through the watercress beds ... the main purpose of these walks is to enjoy the unusual scenery beyond Mr Pelly’s millpond, than that of his garden itself. The new route of the footpath ... makes no substantial change to the highlight of the walk beyond”

“I am pleased to hear we can still visit paradise pool as normal”

33. Concern has been raised regarding the proposed route running through the open paddock *“The proposed diversion passes through land which is leased for farming activities. In the event that the diversion was to be confirmed, I would worry about unruly dogs worrying sheep and lambs, and also in the event that*

cattle with young were grazed, the danger posed to walkers from cattle protecting their young". The landowner has responded to this concern as follows: "Dogs in the paddock vs livestock. There are many PROWS that pass through fields that have livestock. In this particular case, the paddock, as you know, is owned by me and only occasionally do I have sheep grazing. This is to help out the local farmer. Dogs should, if they are not properly trained (or incapable) should be kept on a lead. Should the rights of way officer find this to be an issue, then it can be easily resolved by running an additional line of stock fencing to enclose the path. The reason I haven't done this, is because many people in the village like to let their dog run free when there are no livestock present. A nice gesture from me and one that is widely appreciated."

34. Some users have made it clear that they do not enjoy passing through Luccombe Mill garden and feel uncomfortable in doing so:
"In particular I have enjoyed being able to walk through to the watercress beds and beyond without feeling like I am intruding on the owner's privacy, something I would not wish to do and I am sure there are many others who feel the same"
"It feels like I am unnecessarily intruding on Mr Pelly's privacy"
"I would prefer the new path, because you can still access the pool and enjoy a walk. Also, the current path makes me feel like I am invading someone else's space, you can see the residence and the tenants when there are using their garden, which makes me feel like I am in their garden".
35. The Court of Appeal upheld the High Court's decision in the case of *The Open Spaces Society v Secretary of State for the Environment, Food and Rural Affairs [2020] EWHC 1085 Admin* as to the correct criteria to be applied when considering applications to divert a footpath, under Section 119 of the Highways Act 1980. The judgment confirms that in carrying out the test of expediency under Section 119(6) of the Act, the decision making is not confined to determining the matter solely on the basis of the criteria under Section 119(6)(a), (b), and (c). The benefit of the diversion to the landowner can be one of the factors taken account when carrying out the expediency test under Section 119(6)(a) to (c) of the Act.
36. If the effect on the use and enjoyment is not clear, the expediency of the confirmation of an Order may be balanced against the interests of the owner. The officer believes the public will continue to use the route in its entirety if this section was diverted; therefore, the diversion would have minimal impact on the level of public use notwithstanding potential loss of views and enjoyment to some users, but it would make a considerable difference to the landowner.
37. **S.119(6) – Effect on land served by the existing right of way**
It is considered that there is no risk of compensation arising from the extinguishment of the existing route.
38. **S.119(6) – Effect on land served by the new right of way**
It is considered that there is no risk of compensation arising from the creation of the new route.

39. **Consideration of the Rights of Way Improvement Plan**

Wiltshire Council's rights of way improvement plan is entitled Countryside Access Improvement Plan 2015 – 2025. Within the plan on 4.1 page 16 the Council recognises that considering the needs of those with mobility impairments is a statutory responsibility and Policy number 7 Gaps, Gates and Stiles recognises that the authority must consider the needs of those with mobility impairments when managing rights of way and access and that this requirement particularly applies when authorising structures (e.g. stiles and gates) on rights of way and seeking improvements to existing structures to make access easier. Bratton 42 was added with historic stiles in situ and remains in place on the current line. The proposed route provides two kissing gates, one at each of the access points to the paddock. The landowner has already replaced a stile with a kissing gate at the northern intersection of the path on to Imber Road, therefore if the diversion is successful the whole circular route would be accessible by kissing gate.

40. **Regard to the needs of agriculture, forestry and conservation of biodiversity**

There will be no likely adverse impact on biodiversity, agriculture or forestry however the diversion will take people into the paddock and away from the tree-lined path resulting in less footfall impact on the exposed tree roots.

Overview and Scrutiny Engagement

41. Overview and scrutiny engagement is not required in this case.

Safeguarding Considerations

42. There are no safeguarding considerations associated with the confirmation of the making of this Order.

Public Health Implications

43. There are no identified public health implications which arise from the confirmation of the making of this Order.

Corporate Procurement Implications

44. In the event this Order is forwarded to the SoSEFRA there are a number of potential requirements for expenditure that may occur and these are covered in paragraphs 46, 47 and 48 of this report.

Environmental and Climate Change Impact of the Proposal

45. There are no environmental or climate change concerns associated with the confirmation of the making of this Order. This is wholly rural and recreational route and is unlikely to form any part of a sustainable transport route now or in the future.

Equalities Impact of the Proposal

46. Issues with accessibility have been addressed in the report at paragraph 37.

Risk Assessment

47. There are no identified risks which arise from the confirmation of the making of the Order. The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.

Financial Implications

48. The applicant has agreed to pay all of the Council’s costs associated with the making of the Order, with the advertisement of the confirmed Order and with the creation of the new path (works which have been completed). However, Wiltshire Council is not empowered to charge the applicant any costs related to forwarding the application to the SoSEFRA for confirmation by the Planning Inspectorate and accordingly will have to fund these from existing rights of way budgets. Where an application for an Order is refused no costs are payable by the applicant. In this instance, where an Order is made and confirmed the cost to the applicant will be £2,225 plus the cost of any associated works incurred by the Council. The applicant has agreed to this.
49. Where there are outstanding objections to the making of the Order, the Committee may resolve that Wiltshire Council continues to support the making and confirmation of the Order. The Order will then be determined by the Planning Inspectorate by way of written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is negligible; however, where a local hearing is held the costs to the Council are estimated to be around £200 if no legal representation is required and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation.
50. There are no costs associated with the Council resolving to abandon the Order though the decision may be subject to judicial review and the Council may incur associated costs as a result of that action (see Legal Implications below).

Legal Implications

51. Where the Council does not support confirmation of the making of the Order and resolves to abandon it, clear reasons for this must be given and must relate to the legal tests contained within Section 119 of the Highways Act 1980. The applicant may seek judicial review of the Council’s decision if the process followed is seen as incorrect. The cost for this may be up to £50,000.

Options Considered

52. Members may resolve that:
- (i) The Order is forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation as made.

- (ii) The Order is forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation with modifications.
- (iii) The Order is revoked and abandoned.

Reason for Proposal

- 53. Unless the objections and representations are withdrawn the Order must be forwarded to the SoSEFRA for determination.
- 54. It is considered that in this case the legal tests for the making of a diversion order to divert Footpath Bratton 42 (part) under Section 119 of the Highways Act 1980 were met, and the additional legal tests for confirmation contained within Section 119(6) have also been met.
- 55. The Order is made in the interests of the landowner for privacy reasons as the diversion would take the path out of Luccombe Mill garden to the neighbouring paddock. The proposed route is not substantially less convenient and although correspondence received is divided on public enjoyment, in balance the majority of representations were in support of the diversion detailing the improvement the proposed route provides and state that their enjoyment is not adversely affected. If the effect on the use and enjoyment is not clear, the expediency of the confirmation of an Order may be balanced against the interests of the owner. The officer believes the public will continue to use the route in its entirety if this section was diverted; therefore, the diversion would have minimal impact on use of the route by the public but would make a considerable difference to the landowner.
- 56. The proposed diversion also meets other considerations which the Council must take into account such as the provisions of the ROWIP, the Equalities Act 2010 and the needs of agriculture, forestry and biodiversity.

Proposal

- 57. That the Wiltshire Council Footpath Bratton 42 Diversion Order 2021 and Definitive Map Modification Order 2021 be forwarded to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that it be confirmed as made.

Jessica Gibbons

Director – Communities and Neighbourhood Services

Report Author:

Ali Roberts

Definitive Map Officer

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

None

CM10031/3

Appendices:

- Appendix 1 - Order and Order Plan
- Appendix 2 - Decision report for the making of the Order
- Appendix 3 - Representations and objections in full
- Appendix 4 - Photographs of the current route, the proposed route and the continuation of the path showing Footpath Bratton 42 in its entirety

**PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER**

HIGHWAYS ACT 1980 – SECTION 119

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53A (2)

**THE WILTSHIRE COUNCIL BRATTON 42 (PART) DIVERSION AND DEFINITIVE
MAP AND STATEMENT MODIFICATION ORDER 2021**

This order is made by Wiltshire Council (“the authority”) under section 119 of the Highways Act 1980 (“the 1980 Act”) because it appears to the authority that in the interests of the owner of the land crossed by the footpath described in paragraph 1 of this order it is expedient that the line of the path should be diverted.

This order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the Warminster and Westbury Rural District Council area definitive map and statement dated 1953 require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the diversion (as authorised by this order) of a highway shown or required to be shown in the map and statement.

The applicant has agreed to defray any compensation which becomes payable in consequence of the coming into force of this order and any expenses which are incurred in bringing the new site of the path into a fit condition for use by the public.

Bratton Parish Council has been consulted as required by section 120(2) of the 1980 Act.

BY THIS ORDER:

1. The public rights of way over the land situate east of Luccombe Mill, Imber Road, Bratton in the parish of Bratton and shown by a bold continuous line on the plan contained in this order and described in Part 1 of the Schedule to this order shall be stopped up on such date as the authority certifies that the work bringing the new site of the path into a fit condition for use by the public has been carried out and thereupon the Warminster and Westbury Rural District Council area definitive map and statement dated 1953 shall be modified by deleting from it that public right of way.
2. There shall at the end of 28 days from the date of confirmation of this order be an alternative public footpath over the land situate east of Luccombe Mill, Imber Road, Bratton in the parish of Bratton described in Part 2 of the Schedule and shown by a bold broken line on the plan contained in this order,

and thereupon the Warminster and Westbury Rural District Council area definitive map and statement dated 1953 shall be modified by adding that path to it.

3. The Warminster and Westbury Rural District Council area definitive map and statement dated 1953 shall be modified as described in Part 3 of the Schedule to this order.

THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
was hereunto affixed this }
16 February 2021 }
in the presence of:

[Handwritten signature]

Senior Solicitor



SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

That length of footpath leading from point A on the attached plan, at OS Grid Reference ST 9205-5204 leading in a broadly east north easterly direction for approximately 170 metres to point B at OS Grid Reference ST 9222-52207.

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

That length of footpath from point C on the attached plan, at OS Grid Reference ST 9206-5204, leading in a broadly east north easterly direction for approximately 160 metres to point B at ST 9222-5207. Having a width of 2 metres.

PART 3

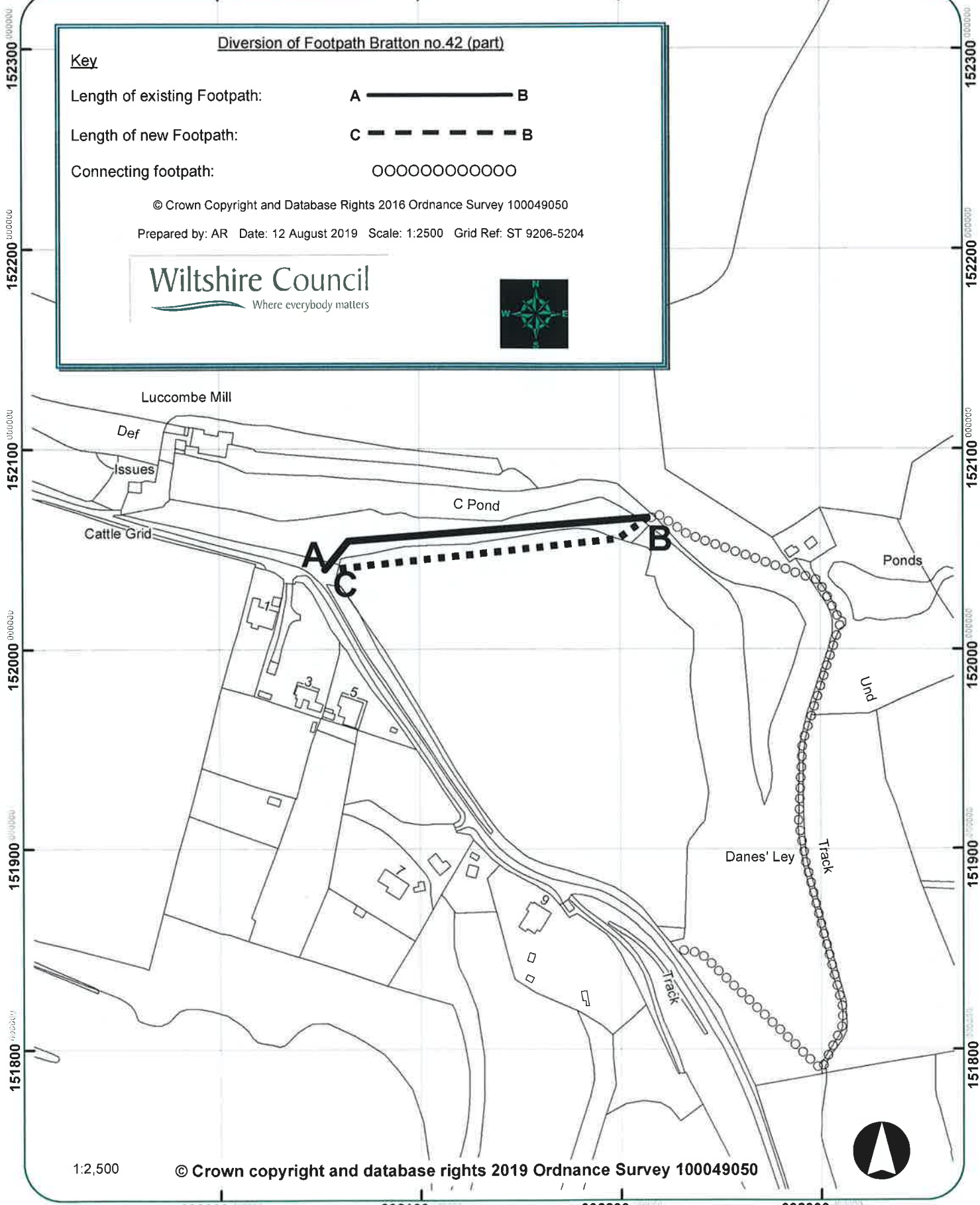
Modification of Definitive Statement

Variation of particulars of path or way

<u>Parish</u>	<u>Path No.</u>	<u>Modified Statement to read:-</u>	<u>Modified under Section 53 (3) as specified</u>
Bratton	42	<p><u>FOOTPATH.</u> From OS Grid reference ST 9205-5204 at its junction with Imber Road, Bratton leading in an east-north-easterly direction for approximately 160 metres where the path crosses onto a raised walkway across the waterbed to the Edington parish boundary at ST 9225-5204. At ST9230-5200 the path re-enters the parish of Bratton continuing in a southerly direction on a well-defined track to ST 9229-5179 where the path turns in a north westerly direction uphill to Imber Road at ST 9222-5184.</p> <p>Approximate length 493 metres.</p> <p>Width- 2 metres from OS Grid Reference ST 9206-5204 to OS Grid Reference ST 9222-5207. The remainder of the footpath width is 1.5 metres for length of path except the section over the raised walkway leading to the Edington Parish boundary which has a width of 1 metre.</p> <p>Limitations and conditions: Kissing gate compliant with BS 5709:2018 at ST 9206-5204 and ST 9220-5206</p>	53 (3) (a) (i)

Highways Act 1980 Section 119 Footpath Bratton no.42 (part)

392000 392100 392200 392300



DECISION REPORT

HIGHWAYS ACT 1980 – SECTION 119

PROPOSED DIVERSION OF FOOTPATH BRATTON 42

AND SECTION 53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 –

FOOTPATH BRATTON 42

1. Application

Application No: 2018/14
Application Date: 5 November 2018
Applicant: Henry Pelly
Luccombe Mill
Imber Road
Bratton
Wiltshire BA13 4SH

1.1. The landowner has proposed this diversion for the following reason:

“1. Privacy

“2. Protecting the birds which nest all along the edge of the lake from dogs

3. Better level access

4. Health and safety

(a) existing route is steep and banked and often slippery

(b) there are many trip hazards from large tree roots

(c) the avenue of mature trees frequently drop heavy branches

(d) the path at this section runs close to deep water”

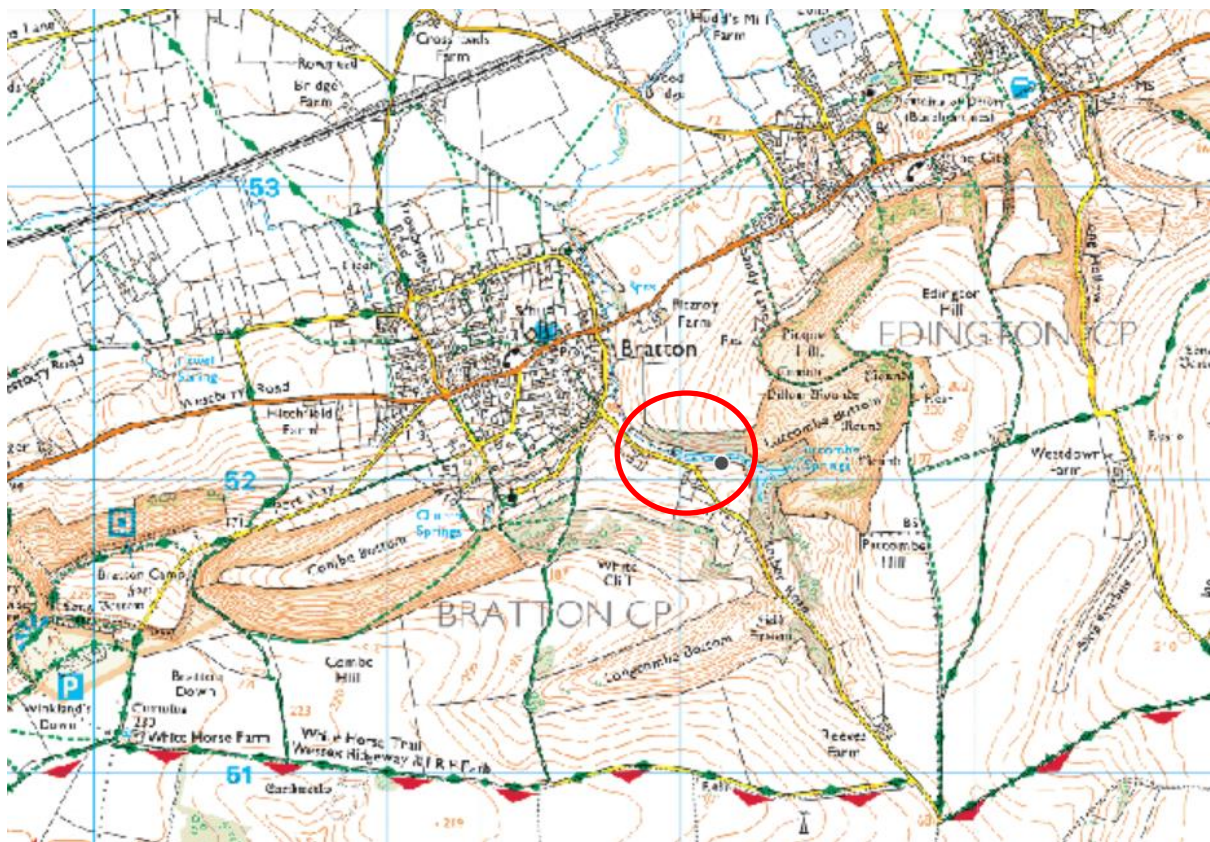
1.2. It is proposed to divert a section of Footpath Bratton no.42 under Section 119 of the Highways Act 1980 from Luccombe Mill garden situated through a treelined path close to the mill pond and create a route through the neighbouring paddock to have a recorded legal width of 2 metres. The diversion route will re-join the footpath at the bridge prior to the watercross

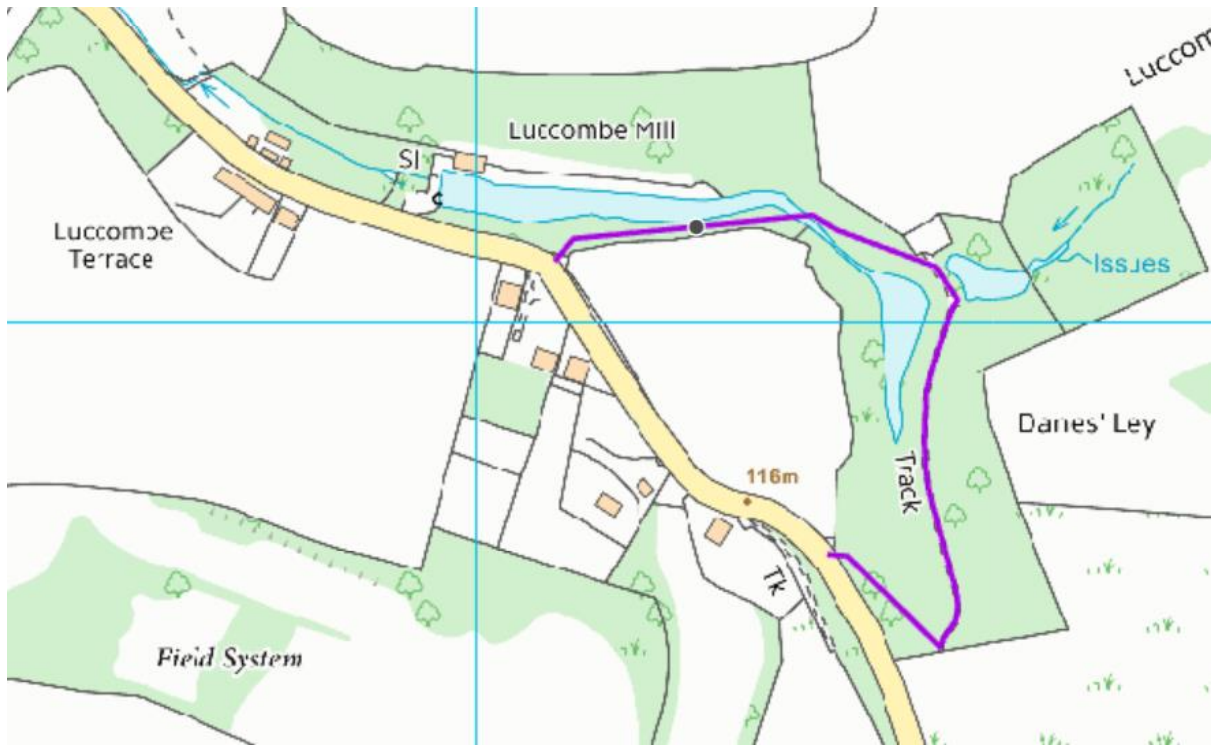
beds and paradise pool.

2. Relevance to Council's Business Plan

2.1. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

3. Location Plan and working copy of the definitive map and definitive statement



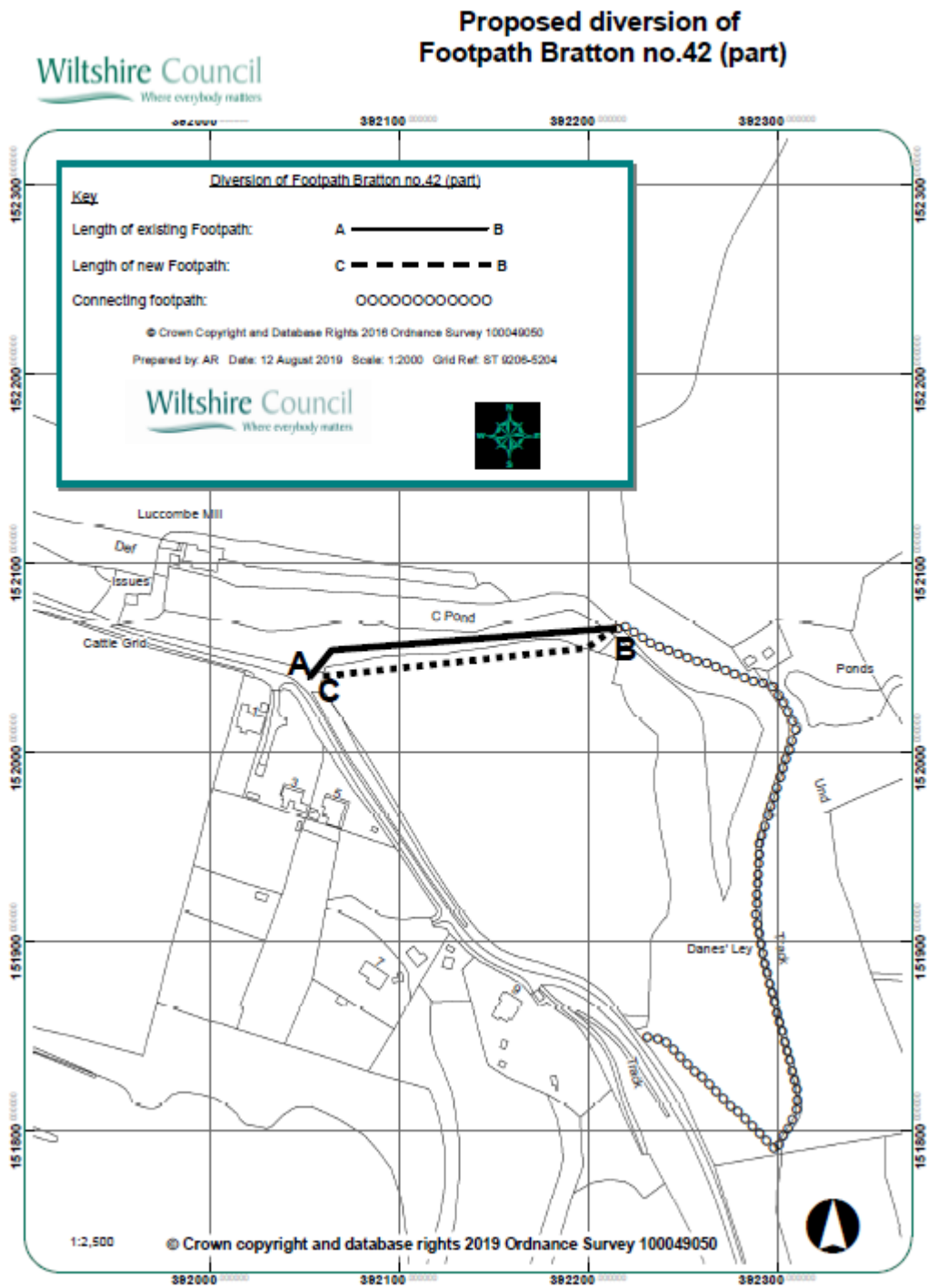


Bratton	42	<p>FOOTPATH. From OS Grid reference ST 9205-5204 at its junction with Imber Road, Bratton leading in an east-north-easterly direction for approximately 165 metres where the path crosses onto a raised walkway across the waterbed to the Edington parish boundary at ST 9225-5204. At ST9230-5200 the path re-enters the parish of Bratton continuing in a southerly direction on a well-defined track to ST 9229-5179 where the path turns in a north westerly direction uphill to Imber Road at ST 9222-5184.</p>	<p>Relevant date</p> <p>31st October 2018</p>
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Approximate length 503 metres.

Width- 1.5 metres for length of path except the section over the raised walkway leading to the Edington Parish boundary which has a width of 1 metre.

4. Proposed Diversion Plan



- 4.1 It is proposed to divert Footpath Bratton 42 as shown by a bold continuous line on the plan A-B and to create a new section of footpath as shown by a bold broken line on the plan C-B.

5. **Photographs of site**



5.1 Current route – heading from the access at point A on the proposed diversion plan there is a stile and locked gate as accepted by the Countryside Access Officer following the definitive map modification order to add Footpath Bratton 42. There is a view of Luccombe Mill which is limited during the summer months with tree foliage. The path continues along a treelined path with a view of the mill pond. The path is on a camber and there are tree roots protruding from the surface. The proposed section to be diverted culminates at the bridge where there is a waymark pointing towards the definitive route.

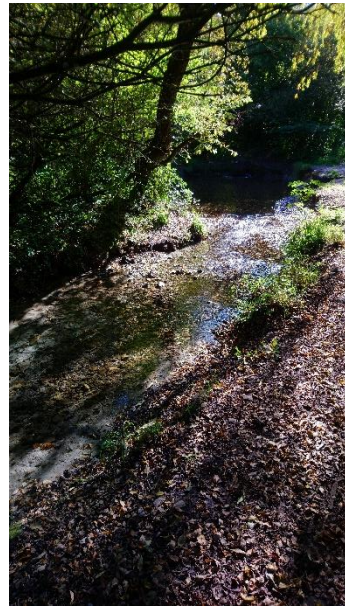




5.2 Proposed route – the route is accessed at point C via a kissing gate with a view of Luccombe Bottom access land to the east. The path runs through an open paddock which is periodically grazed by sheep. Although the field does camber the proposed route runs on generally flat land. Leaving the field via a kissing gate the path leads along a gravelled path down a steep bank to the bridge. There is a notice at this point requesting walkers use this path “Polite notice. Walkers please us this path through the paddock”



5.3 Footpath in its entirety leading from the proposed diversion route - there is a wooden bridge on the route past the proposed intersection point accessed by steps on both sides. – the footpath continues through the watercress beds and along to paradise pool. The route is treelined as it is situated through a wooded area and has a steep gradient bank to the footpath’s intersection with Imber Road.



6. Applicant and Registered Landowner

6.1. Landowner

Henry Pelly
Luccombe Mill
Imber Road
Bratton
Wiltshire BA13 4SH

7. Legal Empowerment

7.1. The application to divert Footpath Bratton 42 is made under Section 119 of the Highways Act 1980 and states:

“119. Diversion of footpaths, bridleways and restricted byways

(1) Where it appears to a council as respects a footpath, bridleway or restricted byway 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) below, 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, bridleway or restricted byway as appears to the council requisite for effecting the diversion; and

(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below,

the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a 'public path diversion order'.

- (2) 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.*
- (3) Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall-*

 - (a) specify a date under subsection (1)(a) above, and*
 - (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.*
- (4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.*
- (5) Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-*

- (a) *any compensation which may become payable under section 28 above as applied by section 121(2) below; or*
 - (b) *where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public; or*
 - (c) *where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.*
- (6) *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) above.*

(6A) *The considerations to which-*

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and

(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.”

8. Background

8.1. Wiltshire Council is in receipt of an application dated 5 November 2018 for Bratton 42 diversion from Henry Pelly, Luccombe Mill, Imber Road, Bratton, Wiltshire, BA13 4SH and has been applied for under Section 119 of the Highways Act 1980. The landowner has proposed this diversion for the following reason:

“1. Privacy

2. Protecting the birds which nest all along the edge of the lake from dogs

3. Better level access

4. Health and safety

(a) existing route is steep and banked and often slippery

(b) there are many trip hazards from large tree roots

(c) the avenue of mature trees frequently drop heavy branches

(d) the path at this section runs close to deep water”.

8.2. The Order to add Footpath Bratton 42 to the definitive map was confirmed on 31 October 2018 following a public inquiry, the application to divert the section of the right of way was received 5 days later. It is proposed to divert Footpath Bratton no.42 under Section 119 of the Highways Act 1980 from Luccombe Mill garden running along the mill pond and create a route through the neighbouring paddock to have a recorded legal width of 2 metres. The diversion route will re-join the footpath at the bridge prior to the watercross

beds and paradise pool. The proposal deletes approximately 170 metres of footpath, approximately 30% of the path in its entirety and adds approximately 160 metres.

9. Public Consultation

- 9.1. A public consultation exercise was carried out on 12 August 2020. A closing date for all representations and objections to be received in writing was given of not later than 5:00pm on 10 September 2020.
- 9.2. The consultation included landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council Member for Ethandune and Bratton Parish Council. A notice of the application was also placed on site.
- 9.3. There were 10 supporting responses received including Bratton Parish Council and the Countryside Access Officer and 30 objection responses including the Ramblers. All comments on this application can be found in Appendix A

10. Main Considerations for the Council

10.1. The main considerations for the council relate to the legal tests to be satisfied for an order to be made to divert the footpath in the manner the applicant desires.

10.2 s.119. Diversion of footpaths, bridleways and restricted byways (1) Expediency in the interests of the landowner/public

10.2(a) The landowner has applied to move the footpath as stated in the application

“1. Privacy

2. Protecting the birds which nest all along the edge of the lake from dogs

3. *Better level access*

4. *Health and safety*

(a) *existing route is steep and banked and often slippery*

(b) *there are many trip hazards from large tree roots*

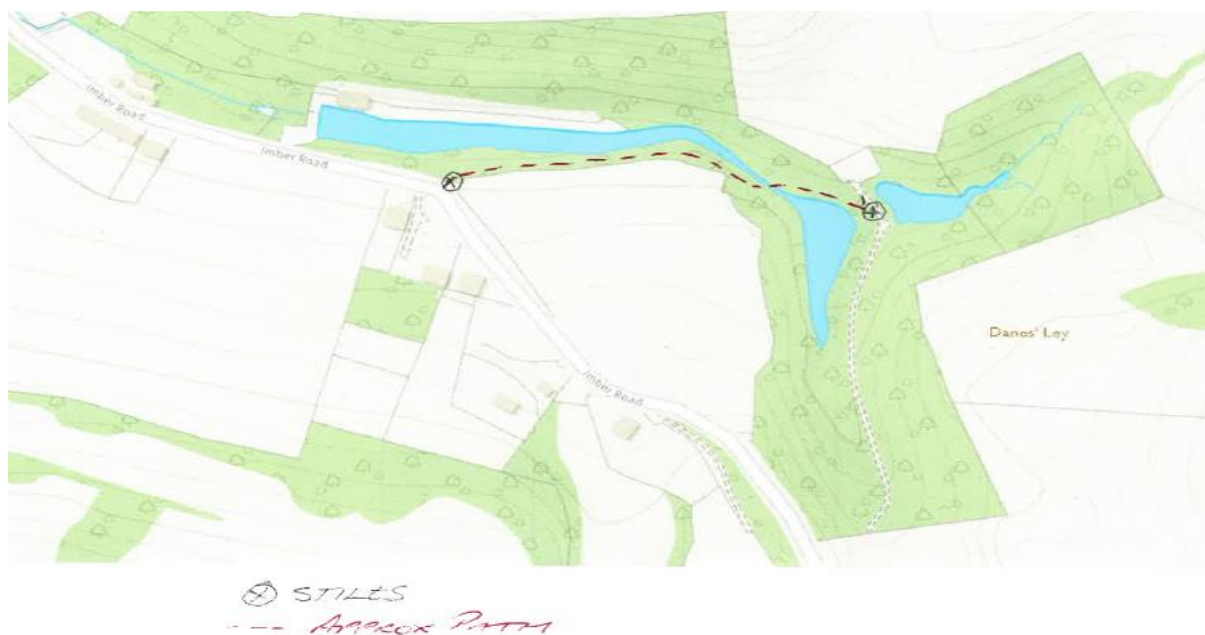
(c) *the avenue of mature trees frequently drop heavy branches*

(d) *the path at this section runs close to deep water”.*

10.2(b) The footpath is approximately 70 metres from the house and opinion is voiced by some objectors that it is not in the garden but part of the woodland e.g. *“I understand that the previous landowner allowed permissive access where the existing Right of Way is, so presumably privacy distance was defined then. The footpath that is in contention goes through beautiful parkland, it is not a back or front garden that most would define as private”, “The house is 70 metres away, few people have such a degree of privacy”.* The landowner clearly believes this footpath is within the garden and that use of the route affects the privacy of the property. *“I don’t think you really appreciate some of the things my partner and I have endured. It shouldn’t be much to ask, to be able to enjoy one’s own garden in relative peace and harmony. As you know, walking the current footpath affords no privacy as at any point along this small stretch, you can clearly view the entire garden. That is just the first point. Frequently people do not stick to the path and they come walking down to the edge of the lake to take photos or to just stop and stare. Dogs jump into the water frequently (they are never kept on a lead), I have had several drunken youths earlier this summer strip off completely and jump into the water to cool off.”*

10.2(c) The applicant may have a greater awareness and concern for privacy because of the interest in his life demonstrated by the press interest during the Definitive Map Modification Order process adding the applied for path which made the national news. This is also an apparently well used path established by the 81 user evidence forms received during the DMMO process.

10.2(d) A number of objectors have stated that the landowner would have known about the footpath from searches on the property *“The owner of the house at Watercress walk should have discovered through his pre-contract searches that a footpath existed on his proposed purchase and made his purchase decision accordingly. It seems to me that he wants to circumvent planning law and that is unacceptable.”* *“We have long campaigned to get the route open again, following the landowners’ illegal closure, and do not want that effort wasted with a totally inappropriate revised route.”* Bratton Footpath 42 was not a recorded public right of way on the definitive map and Wiltshire Council did not have a Definitive Map Modification Order application to add a footpath at this location. The previous owners had not declared the footpath when they submitted their Section 31 (6) deposit. On 22nd January 2016 Francis Seymour made a deposit under s.31(6) Highways Act 1980 declaring no public footpaths had been dedicated over the land owned by Mary Seymour (his mother) at that time. A duly made deposit under s.31(6) HA80 is, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway. It is noted that as part of the correspondence in relation to making the s.31(6) deposit the solicitor acting on behalf of Francis and Mary Seymour, Venetia Taylor, stated *“The plan attached to the statement shows all the land owned by Mrs Seymour edged in red. The area of particular concern is the western part of the property adjacent to the stream, where private footpaths converge around the mouth of the stream. I attach to this letter a hand-drawn sketch provided by Mr Seymour, showing the rough location of the private footpath he is concerned about.”* It appears Ms Taylor was mistaken when stating the ‘western part of the property’ as the path marked by Mrs Seymour is at the eastern end of the property and matches the claimed route of this application. A copy of the map is provided below.



There are also statements that the landowner would have been aware that there was a permissive path at this location and that his surveyors would have seen this route following a site visit *“Mr Pelly was fully aware of the situation before he bought the house, and he knew that many villagers and walkers used this path every day.”* The previous owners had stated during the public inquiry that use of the land was by permission throughout their ownership and a statement was provided from the Seymour family *“I find it slightly galling that the applicants seek to interpret my father’s community spirit and his generous easy going nature approach to use of the path by others as an indication that he intended to dedicate the path as a public right of way. This was never his intention for the reasons stated above there is no basis for presumed dedication when the use was with his permission.”*

Therefore the legal searches conducted when purchasing Luccombe Mill would not have shown a public right of way and if the landowner was aware of a path on the ground he would have been informed it was a permissive path and therefore used by right, a right that can be withdrawn at any time by the landowner. Section 31(1) of the 1980 Highways Act requires that the use by the public must have been as of right without interruption for a full period of 20

years as of right which is considered to mean without force, without secrecy and without permission.

Arguments that when a landowner buys a property in full knowledge of the existence of a right of way and therefore should not be able to alter it were considered in *Ramblers Association v SSEFRA Oxfordshire County Council* and *Weston EWHC 3333 (Admin) Case No. CO/457/2012*. It confirms that there is no statutory bar to a person making an application in such circumstances. The question that must be asked under s119(1) is whether the diversion is expedient in the interests of the landowner and occupiers.

Mr Justice Ouseley at paragraph 33 [2012] EWHC 3333 (Admin) *“The question that has to be asked under section 119(1) is whether the diversion is expedient in the interests of the land owner. I cannot see that the question of whether the land owner bought knowing the footpath, or bought not knowing of it, or bought taking a chance that he might be able to obtain a diversion order, has got anything to do with whether it is expedient in his interests that the order be made. If it is more convenient, beneficial or advantageous to him, it is expedient in his interests. I cannot see either that the question of whether the order which set a disadvantageous precedent has anything to do with the expediency of the order in his interests, nor historical integrity. Those issues only arise when it comes to the consideration of section 119(6), the second question.”*

10.2(d) Privacy is clearly of paramount importance to the landowner, the application to divert the section of footpath was received 5 days after confirmation of the Order to add Bratton 42. The officer is therefore satisfied that it is in the interests of the landowner to divert the path

10.3 s.119 Diversion of footpaths, bridleways and restricted byways

(2) Alteration of the termination point

10.3(a) The diversion of the footpath must not alter the termination points of the path where these are not on a highway and where they are on a highway they must not be altered, other than to another point on the same highway or a highway connected with it and which is substantially as convenient to the public. The current route start point although different is off the same highway Imber Road, the termination will not be altered by the diversion.

10.3(b) The officer is satisfied it is expedient in terms of section s.119(2) that the termination points are on the same or connected highways and are substantially as convenient to the public.

10.4 In *Hargrave v Stroud* (2002) EWCA Civ 1281, Lord Justice Schieman stated:

‘On the face of the subsection therefore the authority has discretion as to whether or not to make an order. I do not consider that the mere fact that it is expedient in the interests of the owner that the line of the path should be diverted means that Parliament has imposed on the authority a duty to make such an order once it is satisfied that this condition precedent has been fulfilled.’

10.5 Subsection s.119(6) sets out the factors which are to be taken into account at the confirmation stage. However, it has been held that the Authority is entitled to take these factors into account at the order making stage. In *Hargrave v Stroud* (above), Lord Justice Schieman stated:

‘..the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my judgment entitled to take into account the matters set out in section 119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed.’

10.6 The Planning Inspectorate produce a number of Advice Notes to provide some general background information on rights of way matters. Advice Note 9 is a publicly available guide to some of the various types of rights of way Orders which are submitted to the Secretary of State for confirmation. The Note provides a definition of local authorities in the context of the relevant legislation and sets out the primary and secondary legislation and guidance. In relation to Orders made under section 119 of the Highways Act 1980 the Note states:

'27. Section 119(6) was considered in R (on the application of Young) v Secretary of State for the Environment Food and Rural Affairs [2002] EWHC 844 and the view taken that subsection (6) has 3 separate tests to it.

- (i) Firstly, that the Order is expedient in terms of section 119(1). i.e. that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path be diverted but not so as to alter the point of termination if not on to a highway or to a point on the same highway not substantially as convenient to the public.*
- (ii) Secondly, that the diverted path will not be substantially less convenient to the public in terms of, for example, features which readily fall within the natural and ordinary meaning of the word 'convenient' such as the length of the diverted path, the difficulty of walking it and its purpose.*
- (iii) Thirdly, that it is expedient to confirm the order having regard to the effect:
 - (a) The diversion would have on the public enjoyment of the path or way as a whole;*
 - (b) Of the order on other land served by the existing public right of way;*
and
 - (c) Of the new path or way on the land over which it is to be created and any land held with it.**

10.7 s.119(6) Convenience of the path

10.7(a) In assessing the relative convenience of the present and proposed routes, consideration has been given to various factors including length, width, surface, gradient, etc.

10.7 (b) Length of path – The full length of the footpath is 610 metres including the short section of Footpath Edington 36 as the path briefly crosses the border of Bratton into Edington Parish. The proposed section to be diverted is 170 metres totalling approximately 30% of the entirety of the path. The proposed diversion route is 160 Metres and will have a recorded width of 2 metres, currently the right of way width is recorded as 1.5 metre.

10.7(c) Surface condition – In the application to divert the public right of way the landowner states *“the existing route is steep and banked and often slippery and there are many trip hazards from large tree roots.”* On the site visit officers found there to be a number of large tree roots protruding from the surface and there was a distinct camber of the path towards the mill pond. On a rural treelined walk this is not unexpected however the majority of the proposed route through the paddock does offer a level grassed route, the last 20 metres head down a steep gravelled bank will be made easier to negotiate by the landowner and is discussed at 10.7(d).

10.7 (d) Gradient – There is not a substantial change in gradient of the current definitive route, it is undulating but not significantly so. The majority of the proposed route is on grassed even ground except for (approximately) the last 20 metres towards the intersection with the bridge at point B. As stated in some objections to the application *“His 'new path' down to the bridge is steep and for the elderly it's not an ideal alternative route. The path has no retaining sleepers or a handrail to help those who might need better stability”*. Wiltshire Council's Countryside Access Officer also stated, *“The only concern I have about the diversion is the steep gradient of the path where it leaves the field at*

ST 92206 52039 and heads towards the wooden footbridge”.

When using the entirety of the path there is a steeper gradient to negotiate as the user heads towards the northern access point on to Imber Road.



To resolve the issue of the steep gradient of this section of the proposal the landowner suggested two solutions to the Countryside Access Officer

“Regarding the path down to the bridge, the two options I had in mind was either to make some large steps on the second half of the slope where it is slightly steeper (there are steps on the bridge so didn’t think that would be an issue) or we could look at adding a turn in the path, which would extend the route slightly but reduce the gradient

These are the steps we have in the village, that go down past the church. This is a very popular public footpath ... (using concrete on the leading edges as its less slippery)”



The Countryside Access Officer responded to the proposal of steps in the slope *“I’m happy for you to install some steps on the slope and providing they are constructed to the same standard as those found on the Public Rights of Way near the church in Bratton then that would be acceptable to me”*

The bridge on the path just after the proposed diversion does have steps at both access points so when using the entirety of the path steps are to be negotiated which are far steeper than those which are being proposed.



10.7 (f) Access to the mill pond –

The landowner has raised health and safety concerns about access to the mill pond *“Since the lake was dredged last winter, the depth along the centre of the lake from the Mill to the duck house has a depth of 2.5m of clear water. The area at the far end has the same depth but in mud format. This area is particularly hazardous to those who trespass (particularly children)”*. Although no specific incidents have been documented as observed by a number of objectors e.g. *“If he considers the health and safety of the route so concerning we suggest he takes a walk along some coastal paths where there are often sheer drops within a few feet of a PROW.”* *“The path really does not run close to deep water and I am yet to hear of an incident regarding this.”*

The landowner also raises concerns regarding dogs trespassing and disturbing the wildlife on the mill pond. *“All the birds that currently reside on the lake, nest along this stretch of the bank. The reason they do this is*

because it is away from the house and the bank is naturally formed, instead of the continuous brick wall the lines the opposite side. The birds that have nested here this year are: 2 families of ducks, a moorhen and the newly introduced pair of swans who started to build a nest but weren't successful this time. As already mentioned, dogs are never kept on a lead and frequently charge into the water to swim or to chase the birds"

One objector suggested that the landowner erected a fence around the lake *"if Mr Pelly is really concerned about unruly dogs disturbing wildlife, it would be a relatively small matter to erect a 1 metre high fence with standard sheep netting along the lake side of the path. This would effectively deter those few dogs which are able to access the path from leaving the path and would be entirely reasonable.*

The proposed diversion would alleviate this concern as the route is situated predominantly through an open paddock away from open water.

- 10.7(f) Furniture – The definitive map modification order application to add a public footpath, now Bratton 42 stated *"Adding the footpath leading from the stile on Imber Road, Bratton at OS Grid Reference ST921521 to the stile at ST923520 which leads on land owned by Wessex Water"*. Many of the user evidence forms stated a stile is situated at the access point to Luccombe Mill. Therefore on the current definitive line there is a stile at point A there had been a stile at this location. The proposed route provides 2 kissing gates at the access points of the paddock for stock control.

Some objectors have raised concern that the current line does not provide dog access e.g. *"Mr Pelly has refused to include the customary dog access in the stile at the lower Imber Lane access point, only a few dogs which are young enough or fit enough or have owners capable of lifting them over the stile, can access the path."* The Countryside Access Officers states *"One of the main complaints that we have had from users of the path is that the stiles are difficult for some users to get over and that no provision for dogs has been made to get through the stile with the only option being to lift dogs over. This*

application would solve that problem as the permissive path is already equipped with kissing gates". The proposed route is accessed via kissing gates and a kissing gate has now been provided at the northern access point of Bratton 42 on to Imber Road which would mean the entirety of the route would be kissing gate accessed and therefore useable without difficulty with dogs.

10.7(g) An obvious walked route can be seen along the proposed path so this is clearly an option already taken by many users of the path.

10.7(h) The officer is satisfied that it is expedient in terms of section s.119(6), i.e. convenience of the paths.

10.8 Section 119(6)(a) Effect of the diversions on public enjoyment of the path or way as a whole

10.8(a) Consultation responses – Although there have been 30 objections received to this proposal including the Ramblers there have been 10 responses in support including Bratton Parish Council and the Countryside Access Officer.

10.8(b) Historic route – A number of objectors have raised concerns that the route of the public right of way may be diverted following an extensive DMMO process and lengthy public inquiry establishing the rights on the definitive route.

"We have long campaigned to get the route open again, following the landowners' illegal closure, and do not want that effort wasted with a totally inappropriate revised route." "I fear that to change the route of the footpath adopted by the public enquiry by the inspector on behalf of The Secretary of State, would mean that we would be denied its use in the future." "It is, in my view, disrespectful to challenge an inspector who put in an extraordinarily large amount of time and emotional energy into this enquiry to make a fair decision."

Legislation, i.e. Highways Act 1980 Section 119 is in place so that public rights of way can be diverted and the landowner is open to make an application if the diversion is in their interests

This is a historic path much loved and fought for by the residents of Bratton. *“The original route has many special memories and great historical interest. I took part in a local walking group many years ago arranged by women in the village. Mrs White who has since sadly died was on the walk and grew up in Bratton and re-laid childhood memories of the history of the cloth that was made at the water cress beds and hung out to dry against the walls that are still there. Red cloth for the Army uniforms. This was a wonderful walk with her explaining all the history of the watercress beds and its importance to Bratton and its people”. “A Wiltshire County Asset that is known as ‘The Watercress Walk’. I am sure that the landowner knows the Watercress Walk is special to the villagers and walkers who have walked it for many years and know it to be their right to do so for decades to come.”*

During the DMMO process the walk was referred to as The Watercress Walk and is still referred to as such. The importance of accessing Paradise Pool was also discussed at great length. Supporters of this proposal have stated that the watercress beds and paradise pool are the locations of the greatest interest. *“The destination of the path is paradise pool; this diversion does not detract from this destination”*. Access to these sites will not be affected by the diversion.

10.8(c) Character – There can be no denying that the character of the current route and proposed route are very different. The current route runs through a treelined path with views of the mill pond and the proposed route runs through an open grass paddock with a view of Luccombe Down access land to the east. *“The proposed alternative path may be the same distance, but it is the impact of being near the water and the lovely beech trees which make the first part of the official path so special” “The PROW is an integral part of the total*

walk and the alternative is a totally different aspect. Some walkers may view the PROW as getting from A to B, as it were, but for walkers who have used the path for decades and for those who appreciate woodland and lake views this is much more preferable” “If the walk was changed to go through the paddock, it would be boring with very little to look at, the whole point of this walk is to enjoy walking under the canopy of the large trees with the water just to one side of you.”

Looking at the path in its entirety from the wooden bridge the path continues through a wooded area providing the canopy of large trees. However it does not provide a view of the mill pond but does continue to provide access to the watercress beds and paradise pool and circles back to Imber Road. The report to Bratton Council stated, *‘Whilst the alternative route does not pass alongside Stradbrook, in my opinion, the loss of public enjoyment is minimal.’*

If the diversion of Bratton Footpath 42 cannot be achieved then it is the stated intention of the landowner to build a 2 metre fence along the current route preventing access to the mill pond. *“ If the proposed (very reasonable) request for a small diversion of the path does not go ahead, I will be faced with little alternative but to erect a solid 2m high fence that will run from the stile to the bridge. Thus protecting my privacy.”* This does not appear to be a baseless statement, and it is acknowledged by a number of objectors, as the landowner, at some cost, fought the DMMO to add this footpath to the definitive map, and privacy is clearly the motivation for seeking a diversion of the path.

- 10.8 (d) Stock in paddock – Concern has been raised regarding the proposed route running through the open paddock *“The proposed diversion passes through land which is leased for farming activities. In the event that the diversion were to be confirmed, I would worry about unruly dogs worrying sheep and lambs, and also in the event that cattle with young were grazed, the danger posed to walkers from cattle protecting their young”*. The landowner has responded to this concern as follows: *“Dogs in the paddock vs livestock. There are many*

PROWS that pass through fields that have livestock. In this particular case, the paddock as you know, is owned by me and only occasionally do I have sheep grazing. This is to help out the local farmer. Dogs should, if they are not properly trained (or incapable) should be kept on a lead. Should the rights of way officer find this to be an issue, then it can be easily resolved by running an additional line of stock fencing to enclose the path. The reason I haven't done this, is because many people in the village like to let their dog run free when there are no livestock present. A nice gesture from me and one that is widely appreciated."

10.8(d) The officer believes that the public enjoyment of the path would be affected by the proposed diversion for a number of users to the path. However when looking at the path in its entirety access to the watercress beds and paradise pool remain. The path continues through a wooded area providing the canopy of trees although views of the mill pond will cease but this is expected to happen anyway if the diversion fails with the installation of a 2 metre fence. The officer believes the public will continue to use the route in its entirety if this section was diverted, therefore the diversion would have minimal impact on the public but would make a considerable difference to the landowner.

10.9 Section 119(6)(b) Effect of the diversion on lands served by the existing right of way

10.9(a) The path has no utility purpose beyond recreational access for the public.

10.9(b) As the applicant owns all the land affected by the proposal there would be no concern about payment of compensation.

10.10 Section 119(6)(c) Effect of the diversion over which new rights of way are proposed

10.10(a) Works on the proposed route must be undertaken to the Countryside Access Officer's satisfaction before the route can be certified. These works include the installation of wide steps to minimise the impact of the gradient in the last 20 metres of the proposed route towards point B. The rest of the proposed route is already in place with kissing gates at both access points through the paddock installed.

10.11. Officers consider that at present the legal tests for the confirmation of the order appear to be met and the order appears capable of being confirmed, however this is subject to a further consultation period once the formal order has been made.

10.12. The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP) - the current plan is entitled Wiltshire Countryside Access Improvement Plan 2015 – 2025 – Rights of Way Improvement Plan 2. ROWIP 2 recognises the Council's duty to have regard to the Equality Act 2010 and to consider the least restrictive option:

- At 4.1 page 16 the Council recognises that considering the needs of those with mobility impairments is a statutory responsibility:
"..consider the needs of those with mobility impairments when maintaining the network and authorising structures (e.g. stiles and gates) on the rights of way network and seek improvements to existing structures where it would be beneficial (Equality Act 2010).";

On the current definitive line there is one stile. The proposed route provides two kissing gates, one at each access point of the paddock. There is a proposal to install wide steps similar to the steps in place at Bratton church which the Countryside Access Officer has accepted as a suitable solution to the issue of the steep gradient..

At 7.4 page

32 the Council recognises the following:

“The requirements for improving accessibility for people with these sorts of disability are generally the same as discussed in conclusion 5.”

Conclusion 5 states:

“If older people are to keep active and therefore healthy, they will need a more accessible network as they are more likely to find stiles (and sometimes surfacing and latches) difficult than other people. This highlights the need to replace stiles with gaps or gates on key routes, which can also benefit wheelchair users and parents with buggies and children.”

ROWIP 2

refers to the Council’s Gaps, Gates and Stiles Policy. This is Policy number 7 and is appended to ROWIP2

The Policy recognises that the authority must consider the needs of those with mobility impairments when managing rights of way and access and that this requirement particularly applies when authorising structures (e.g. stiles and gates) on rights of way and seeking improvements to existing structures to make access easier.

The landowner has already replaced a stile with a kissing gate at the northern interection of the path on to Imber Road which would make the whole route, if the diversion is successful, accessible by kissing gate.

Wiltshire Council relies on DEFRA (2010) Good Practice Guidance for Local Authorities on Compliance with the Equality Act 2010 version 1 and recognises at 7.2.1 that:

A highway authority has a duty, under the Highways Act 1980, to assert and protect the rights of the public to use and enjoy a highway. The Equality Act 2010 adds a further dimension by requiring (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from those functions as others would do or to show that there are good

reasons for not doing so.

- As previously stated the proposed route provides two kissing gates, one at each access point of the paddock. There is a proposal to install wide steps similar to the steps in place at Bratton church which the Countryside Access Officer has accepted as a suitable solution to the issue of the steep gradient.

10.13 In making diversion orders, Sections 29 and 121(3) of the 1980 Act, require authorities to have due regard to the needs of a) agriculture and forestry and b) the desirability of conserving flora, fauna and geological physiographical features. Section 40 of the Natural Environment and Rural Communities Act 2006 also place a duty on every public authority exercising its functions to have regard to the conservation of biodiversity, so far as is consistent with the proper exercise of those functions. In this section, conserving biodiversity includes that in relation to a living organism, or type of habitat and restoring or enhancing a population or habitat.

There will be no likely adverse impact on biodiversity, agriculture or forestry however the diversion will take people into the paddock and away from the treelined path resulting in less footfall impact on the exposed tree roots and a positive impact on the disturbance of birds.

10.14.(a) Officers must consider if the proposed route is substantially less convenient and whether the negative impact on the public use and enjoyment caused by the loss of the historic route and a view of the mill pond outweighs the landowner's interest in diverting the route. The Planning Inspectorate produce Advice Note 9 is a publicly available guide to some of the various types of rights of way Orders which are submitted to the Secretary of State for confirmation.

28. It is possible that a proposed diversion may be as convenient as the existing path but less enjoyable, perhaps because it is less scenic. In this event, the view in Young [R on the application of Young V SSEFRA [20020] EWHC 844] was that the decision maker would have to balance the interests of the applicant for the order against those of the public to determine whether it was expedient to confirm the order.

29. Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way, for example). In such circumstances, the diversion order should not be confirmed, since a diversion order cannot be confirmed under s.119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion.

.10.14 (b) In a recent High Court case [2020] EWHC 1085 (Admin) Open Spaces Society v SoSEFRA Lieven J further considers the scope of any balancing test at the confirmation stage that can be considered and at paragraph 49 of the judgement Lieven J considers that PINS Advice note number 9 is over reliant on the judgement in the Young case (which addressed the matter of expediency as a separate test), and that the benefit to the landowner (s.119(1) Highways Act 1980) may also be re-introduced into the weighing of the consideration of expediency when Section 119 (6)(a – c) are taken into account.

10.14 (c) The Appellant in that case, the Open Spaces Society (a statutory objector to this application) has just been granted leave to appeal. A Court of Appeal date has not yet been set but once the case is heard and decided it is expected that it will provide further clarity for this area of law.

10.14 (d) However it is clear from the law as it currently stands at this time the council or other decision making body should consider the benefits to the

landowner of the diversion and weigh them against the loss to the public of enjoyment of use of the way as a whole and other effects on affected land.

10.15 This proposal is in the interests of the landowner, not substantially less convenient although it does have an effect on public enjoyment of the route of this section of the path. However when looking at the path in its entirety access to the watercress beds and paradise pool remain. The path continues through a wooded area providing the canopy of trees although views of the mill pond will cease but this is expected to happen if the diversion fails with the installation of a 2 metre fence. The officer believes the public will continue to use the route in its entirety if this section was diverted, therefore the diversion would have minimal impact on the level of public use (notwithstanding any loss of views and enjoyment) but would make a considerable difference to the landowner. Officers therefore consider that at present the legal tests for the confirmation of an order are met and the order would be capable of being confirmed. However, once an order is made it is advertised for a period of at least 28 days and during this time any person or body may make representations or objections to the Order which will need careful consideration before the order is either supported and forwarded to the Secretary of State for determination or abandoned by the Council.

11. Safeguarding Considerations

11.1. DEFRA's "Rights of Way Circular (1/09) Guidance for Local Authorities" Version 2, October 2009, states at paragraph 5.5:

"The statutory provisions for creating, diverting and extinguishing public rights of way in the 1980 Act have been framed to protect both the public's rights and the interests of the owners and occupiers. They also protect the interests of bodies such as statutory undertakers. The requirements for making, confirming and publicising orders are set out in Schedule 6 to the 1980 Act."

If an order to divert Footpath Bratton 42 is made, Wiltshire Council will follow procedures set out in Schedule 6 of the 1980 Act and in doing so Wiltshire Council will fulfil its safeguarding considerations.

12. Public Health Implications

12.1. None.

13. Risk Assessment

13.1. There is a risk to the council in making the orders. If objections were received to it and the council believes the grounds for the confirmation of the orders are still met, notwithstanding the objection, the orders should be sent to the Secretary of State for determination where associated costs must be borne by Wiltshire Council. To not send the orders to the Secretary of State when the council believes it is capable of being confirmed would be arguably unreasonable and the applicant could seek redress in law against the council decision.

14. Financial Implications

14.1. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permit authorities to charge applicants costs in relation to the making of orders, including public path diversion orders. Authorities may charge only the actual costs incurred.

- 14.2. The applicant has agreed in writing to meet the actual costs to the Council in processing the order, including advertising the making of the order and should the order be successful, the confirmation of the order and certification that the new route has been provided to a suitable standard for use by the public, in one local newspaper, (i.e. three advertisements).
- 14.3. The applicant has agreed in writing that if diversion made, to pay any compensation which may arise in consequence of the coming into operation of the order.
- 14.4. The applicant has also agreed in writing to pay any expenses which may be incurred in bringing the new footpath into a fit condition for use by the public, as required by the Council.
- 14.5. If an order is made under Section 119 of the Highways Act 1980 and there are no objections to the making of the orders, Wiltshire Council may itself confirm the order and there are no additional costs to the Council.
- 14.6. If there are outstanding objections to the order which are not withdrawn and the Council continues to support the making of the order, it must be forwarded to the Secretary of State for decision. The outcome of the order would then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations, the cost to the Council is negligible, however where a local hearing is held the costs to the Council are estimated at £200-£500 and £1,000 - £3,000 where the case is determined by local public inquiry. There is no mechanism by which these costs may be passed to the applicant and these costs must be borne by Wiltshire Council.
- 14.7. The making of a diversion order is a discretionary power for the Council rather than a statutory duty, therefore a made order may be withdrawn up until the point of confirmation if the Council no longer continues to support it, for

example where it is considered that the proposals no longer meet the legal tests set out under Section 119 of the Highways Act 1980.

15. Legal Considerations

- 15.1. There is no right of appeal for the applicant where the Highway Authority refuses to make a public path order diversion ; however the Council's decision would potentially be open to judicial review.
- 15.2. If the Council does make a public path diversion order and objections are received, where the Council continues to support the order it may be forwarded to the Secretary of State for decision which may lead to the order being determined by written representations, local hearing or local public inquiry. The Inspector's decision may be subject to challenge in the High Court.

16. Options Considered

- 16.1. (i) To refuse the application, or
(ii) To make an order to divert Footpath Bratton 42, under Section 119 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981, to amend the definitive map and statement of public rights of way and to confirm the order if no representations or objections are received.

17. Reasons for Proposal

- 17.1. It is considered that in this case the legal tests for the making of a diversion order to divert Footpath Bratton 42 under Section 119 of the Highways Act 1980 have been met as discussed in paragraph 10. i.e. the order can be

made in the interests of the landowner to divert Bratton 42 out of Luccombe Mill garden to the neighbouring paddock.

- 17.3. It is also considered that at this stage the legal tests for the confirmation of the order appear to be met. However, it is recognised that the evaluation of the diminution of use and enjoyment is subjective. The balance of the legal tests may be altered by representations and objections received during the advertisement period meaning that Wiltshire Council must again consider the balance of issues affecting this proposed diversion before forming a view on the merits of confirmation.
- 17.4. The proposed diversion also meets other considerations which the Council must take into account such as the provisions of the ROWIP, the Equalities Act 2010 and the needs of agriculture, forestry and biodiversity.

18. Proposal

- 18.1. That an order be made under Section 119 of the Highways Act 1980 to divert Footpath Bratton 42, and Section 53A of the Wildlife and Countryside Act 1981, to amend the definitive map and statement of public rights of way and to confirm the order if no representations or objections are received.

Ali Roberts
Definitive Map Officer
25 January 2021

**HIGHWAYS ACT 1980 SECTION 119
THE WILTSHIRE COUNCIL BRATTON 42 DIVERSION
AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2021**

65 Supporting Representations

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highwat Act 1980, Section 119 Proposed Diversion Bratton Footpath 42 (Part)
Date: 13 March 2021 19:28:44

Dear Ali Roberts

I am writing to you in support of the diversion bratton footpath 42.

Mr Pelly has made many improvements to the diversion since the beginning of lockdown. The new route has certainly enabled me, my mum and others to enjoy our outdoor activities aswell as enjoying the continued loop around Danes' Ley.

I'm also respectfully aware of the owners need for privacy and so I see it to be a fair deal.

Your Sincerely

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Date: 08 March 2021 18:45:29

High ways act 1980,,section 119,Bratton foot path 42,,,,,,,,,,,,, to Mrs Roberts, I am a local resident who walks my dog across Mr Pellys land, and I think he has gone out of his way to improve the foot path, he has put in new kissing gates improved the paths altogether making it a very nice and pleasant walk,, Well done Mr pelly and thank you,,,
[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 15 March 2021 17:53:21

Dear Ms Roberts,

I am writing to add my support to the footpath diversion above.

I walk the footpaths regularly and it is clear that the landowner has taken great care in establishing the newly proposed route.

The route is virtually identical to the old and provides good access through newly constructed gates with the added benefit of nice wide open views of the countryside through the field.

Best Regards

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: The Proposed Diversion of Footpath BRATTON 42 Section 119 Luccombe Mill.
Date: 01 April 2021 20:23:16

Dear Miss Roberts,

I would like to submit this email as a way of our full unequivocal support for Mr H Pelly's application of re-routing the footpath.

My Husband and myself have lived in the village for 6 years and are keen outdoor people who loves the unique landscape of Bratton and it's surrounding area.

During Mr Pelly's time in Bratton, he has undoubtedly invested so much time, thought and no doubt money into making the walk to the water cress beds a beautiful, safe and easily accessible experience for all concerned. Unfortunately, I have witnessed unauthorised personnel encroaching on his lawn in front of his house allowing their dogs to run a mock over his land, leaving litter and dog mess behind them! Totally unacceptable behaviour.

Mr Pelly has made an alternative route for walkers which in our opinion is a much improved footpath across the field to the water cress beds. My husband and I would not dream of walking on the lower foot path, adjacent to his property. We find that far too intrusive on Mr Pelly's privacy. So, let's do the right thing here please and allow common sense to prevail and allow Mr Pelly to have his right of privacy,

Kind regards

[REDACTED]

[Sent from the all-new AOL app for iOS](#)

From: [REDACTED]
To: Roberts, Ali
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 06 March 2021 09:43:26
Attachments: [image004.gif](#)
[image003.png](#)
[image006.png](#)
[image005.jpg](#)

Dear Ali

I can confirm I would like my comments to be forwarded to the next stage of the process. The diversion has my full support.

Please keep me up to date with progress.

Best wishes

[REDACTED]

[REDACTED] Luccombe Terrace | Bratton | Wiltshire | BA13 [REDACTED] | [REDACTED]

On Thursday, 25 February 2021, 13:49:07 GMT, Roberts, Ali <ali.roberts@wiltshire.gov.uk> wrote:

Highways Act 1980 Section 119

The Proposed Diversion of Footpath BRATTON 42

Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

Please note that any responses to this email will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)

Definitive Map Officer

Rights of Way and Countryside
Wiltshire Council

County Hall
Trowbridge

BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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From: [REDACTED]
To: [Roberts, Ali](mailto:ali.roberts@wiltshire.gov.uk)
Subject: Re: Highways Act 1980 – Section 119 The Proposed Diversion of Footpath Bratton no.42 (part)
Date: 03 September 2020 12:22:26
Attachments: [image002.png](#)

Hi Ali

I see no problem with this diversion and happy for it to go ahead.

Best wishes

[REDACTED]

[REDACTED] | Luccombe Terrace | Bratton | Wiltshire | BA13 [REDACTED] | [REDACTED]

On Tuesday, 1 September 2020, 15:14:28 BST, Roberts, Ali <ali.roberts@wiltshire.gov.uk> wrote:

Highways Act 1980 – Section 119

The Proposed Diversion of Footpath Bratton no.42 (part)

Wiltshire Council are in receipt of an application, dated 5 November 2018, to divert Footpath Bratton no.42 (part), under Section 119 of the Highways Act 1980. The proposal is to divert the right of way as shown on the enclosed plan with a bold line from points A to B to the dashed line from points C to B, having a recorded width of 2 metres. The current recorded footpath is situated along the southern boundary edge of Luccombe Mill garden; the proposed route runs along the northern boundary of the pasture field to the south of the garden.

The landowner has stated the reasons for the application are as follows:

“1. Privacy.

2. Protecting the birds which nest all along the edge of the lake from dogs.

3. Better level access.

4. Health and safety:

(a) the existing route is steep and banked and often slippery.

(b) there are many trip hazards from large tree roots.

(c) the avenue of mature trees frequently drop heavy branches.

(d) the path at this section runs close to deep water.”

If you would like to make any observations or representations regarding the proposal, I would be very grateful if you could forward them to me via email or in writing to the contact details below, before Wednesday 30 September 2020.

Please note that any responses to this letter will be available for public inspection in full.

Information relating to the way Wiltshire Council will manage your data can be found at: <http://www.wiltshire.gov.uk/recreation-rights-of-way>

Kind regards,

Ali

Ali Roberts (Miss)

Definitive Map Officer

Rights of Way and Countryside
Wiltshire Council

County Hall
Trowbridge

BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42 - Lucombe Mill - Henry Pelly Esq
Date: 15 March 2021 12:09:48

Dear Ms Roberts

I write in connection to the above application from Mr Henry Pelly of Lucombe Mill, Bratton.

I am a resident of Stradbroom the road leading to Lucombe Lane and Imber Road in Bratton. I would like to register my support of the proposed Bratton footpath.

It is a great shame that Mr Pelly has had to contend with such negative and hostile reactions in the past. Throughout the process, he has acted with integrity unlike people who have exploited the situation to gawp, snoop and behave antagonistically without need or reason.

The owners have gone above and beyond to create excellent alternative access for all residents, visitors and walkers - it is a vast improvement, creates a beautiful walk that will continue for generations because the owner has invested in landscaping and use of natural materials and respected the site.

The way Mr Pelly and his partner have gone about painstakingly and sympathetically making changes to their land and committing significant funds to do this to such a high standard, should be appreciated and applauded. It is through their carefully considered approach, that the entire village community and all residents benefit.

I feel most fortunate to have neighbours, who go the extra mile to ensure that our beautiful local landscape is well-maintained without compromise. It is as a direct consequence of such diligent ownership, that this land and countryside can be enjoyed by so many, bringing much-needed pleasure, joy and solace.

This application has my full support and I hope others will unite in confirming their support for the good of our village and the Wiltshire landscape.

Kind regards

[REDACTED]

--

[REDACTED]

From: [Nicola Duke](#)
To: [Roberts, Ali](#)
Subject: RE: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 10 March 2021 12:24:01
Attachments: [image001.png](#)
[image003.png](#)
[image004.gif](#)
[image005.jpg](#)
[image006.png](#)

Yes, that's right Ali. Thank you.

Nicola Duke B.A (Hons), FSLCC
Parish Clerk
For and on behalf of
Bratton Parish Council

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 10 March 2021 12:16
To: Nicola Duke <nicola.duke@bratton-parish.co.uk>
Subject: RE: Highways Act 1980 Section 119 Bratton Footpath 42

Hi Nicola,

Thank you for getting back to me. Can I just confirm if your response means that you wish the parish council's supporting email be taken forward as your response to the formal consultation?

Thanks

Ali

Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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From: Nicola Duke <nicola.duke@bratton-parish.co.uk>
Sent: 10 March 2021 10:16
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Subject: RE: Highways Act 1980 Section 119 Bratton Footpath 42

Dear Ali

Thank you for your email, the contents of which were considered at last night's meeting of the PC. I can confirm that the PC has no further comments to make.

Kind regards,

Nicola Duke B.A (Hons), FSLCC
Parish Clerk
For and on behalf of
Bratton Parish Council

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 25 February 2021 13:49
Subject: Highways Act 1980 Section 119 Bratton Footpath 42

Highways Act 1980 Section 119
The Proposed Diversion of Footpath BRATTON 42

-
Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

Please note that any responses to this email will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be found at:

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Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

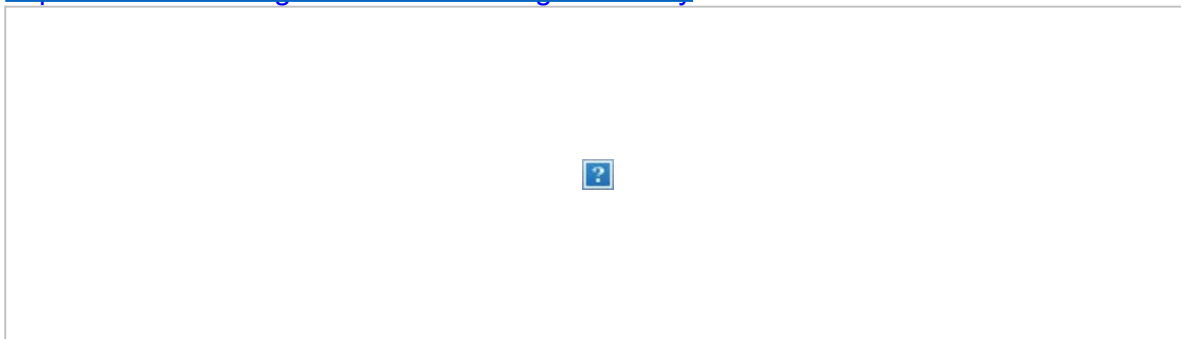
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From: [Nicola Duke](#)
To: [Roberts, Ali](#)
Subject: RE: Highways Act 1980 - Section 119 The Proposed Diversion of Footpath Bratton no.42 (part)
Date: 10 September 2020 09:46:14
Attachments: [image001.png](#)

Dear Ali

Thank you for this information, which was considered at a meeting of the Parish Council held on 8th September.

I am directed to inform you that the Parish Council has No Objection to the proposal.

Kind regards,

Nicola Duke B.A (Hons), FSLCC
Parish Clerk
For and on behalf of
Bratton Parish Council

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 01 September 2020 15:14
Subject: Highways Act 1980 – Section 119 The Proposed Diversion of Footpath Bratton no.42 (part)

Highways Act 1980 – Section 119
The Proposed Diversion of Footpath Bratton no.42 (part)

-

-

Wiltshire Council are in receipt of an application, dated 5 November 2018, to divert Footpath Bratton no.42 (part), under Section 119 of the Highways Act 1980. The proposal is to divert the right of way as shown on the enclosed plan with a bold line from points A to B to the dashed line from points C to B, having a recorded width of 2 metres. The current recorded footpath is situated along the southern boundary edge of Luccombe Mill garden; the proposed route runs along the northern boundary of the pasture field to the south of the garden.

The landowner has stated the reasons for the application are as follows:

- “1. *Privacy.*
2. *Protecting the birds which nest all along the edge of the lake from dogs.*
3. *Better level access.*
4. *Health and safety:*
 - (a) *the existing route is steep and banked and often slippery.*
 - (b) *there are many trip hazards from large tree roots.*
 - (c) *the avenue of mature trees frequently drop heavy branches.*
 - (d) *the path at this section runs close to deep water.”*

If you would like to make any observations or representations regarding the proposal, I would be very grateful if you could forward them to me via email or in

writing to the contact details below, before Wednesday 30 September 2020.

Please note that any responses to this letter will be available for public inspection in full.

Information relating to the way Wiltshire Council will manage your data can be found at: <http://www.wiltshire.gov.uk/recreation-rights-of-way>

Kind regards,

Ali

Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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From: [REDACTED]
To: Roberts, Ali
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 10 March 2021 17:51:31
Attachments: [image006.png](#)
[image003.png](#)
[image004.gif](#)
[image005.jpg](#)

Dear Ms Roberts,

We are very pleased to see that the Council approved the Order on 16th February subject to a final consultation period expiring 9th April.

Whilst we have very recently moved away from Bratton, we were resident in Imber Road for over 31 years, and always thought the previous line of the footpath was very intrusive as far as the occupants of Locombe Mill were concerned.

The quality of the new footpath is also a great improvement, being certainly no less commodious than the previous route, and we sincerely hope the Council will give it their final approval following this consultation period.

Yours sincerely

[REDACTED] (late of [REDACTED] Imber Road, Bratton)

----- Original Message -----

From: "Roberts, Ali" <Ali.Roberts@wiltshire.gov.uk>

To:

Sent: Thursday, 25 Feb, 2021 At 13:49

Subject: Highways Act 1980 Section 119 Bratton Footpath 42

Highways Act 1980 Section 119

The Proposed Diversion of Footpath BRATTON 42

Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

Please note that any responses to this email will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be found at:

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Ali Roberts (Miss)

Definitive Map Officer

Rights of Way and Countryside
Wiltshire Council

County Hall
Trowbridge

BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

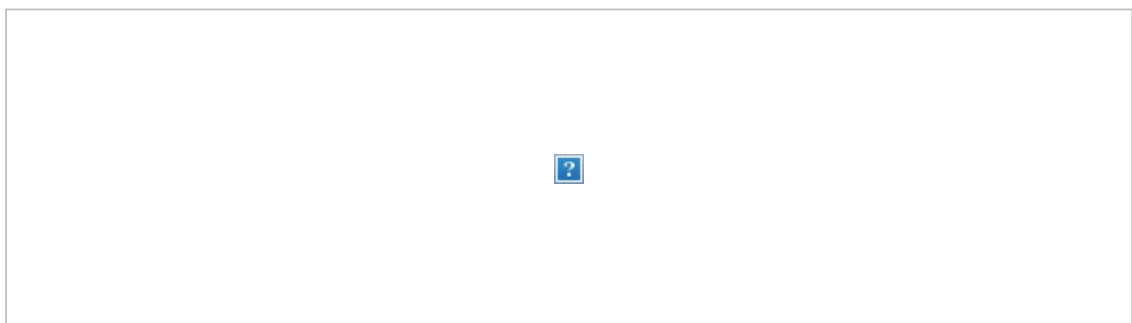
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From: [REDACTED]
To: [Roberts, Ali](#)
Subject: The proposed diversion of footpath Bratton no.42 (part)
Date: 28 February 2021 17:35:48

Dear Ali Roberts,

I am writing to you in response to the new pathway.

I am happy to say that Mr Pelly has my FULL SUPPORT for the new diversion plan.

I have been living in Bratton since 2018 and since covid I have been taking the opportunity to walk alot more.

The new path is a very acceptable and pleasing access route for myself and many others that have adopted it.

Mr Pelly has made many improvements to the new pathway i.e. several kissing gates, easy access for dogs, hardcore on the ground and has introduced new levelled steps (great for the elderly) reaching towards the end of the footpath near the wooden footbridge.

Please consider my response for Mr Pelly, so that he can get the privacy he deserves.

Yours sincerely,

[REDACTED]

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From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 27 March 2021 15:27:33

We have lived in Bratton since July 2016 and fully support the diversion of the Watercress Walk footpath to reach Paradise Pool. The alternative route provided not only affords Henry and Cameron the privacy that they deserve in their own home and grounds, but is also a far better and more accessible route. We use it regularly with our dog, and our parents who are in their 80s can now access and enjoy the walk.

We have found Henry and Cameron to be very considerate neighbours, going to great effort and expense to make the alternative route safe and pleasurable.

Kind regards

[REDACTED]
[REDACTED], Stradbrook, Bratton

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Proposed Diversion of Footpath Bratton 42
Date: 07 March 2021 15:53:38

Dear Ali Roberts,

Re: Highways Act 1980 Section 119 Proposed Diversion of Footpath Bratton 42.

I was pleased to see the Wiltshire County Council's proposal to initiate the proposed diversion of footpath Bratton 42. As a regular user of the path and dog walker, I support the proposed diversion in effort for the landowner, Mr Pelly. I see no reason why the access route onto the division shouldn't be allowed. The diversion has allowed me to enjoy easier strolls with my dog in an open field as there are fewer if not seldom other parks to do so in the village. Please consider my support.

Your Sincerely,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 The Proposed Diversion of Footpath BRATTON 42
Date: 06 March 2021 15:52:54

Dear Ali Roberts,

I would like to register my support for the proposed new footpath at Luccombe Mill.

I feel that this is a viable and practical solution to the ongoing discussion around access to the Paradise Pool circular walk.

Best Regards,

[REDACTED]
[REDACTED] Luccombe Terrace, Bratton. BA13 [REDACTED]
[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: New footpath at Luccombe mill.
Date: 02 April 2021 20:29:23

I use the footpath from the front of Luccombe mill accross the watercress beds to Paradise pool on a daily basis to walk my dogs.
Subsequent to the recent changes,although following a slightly different route, the path is easily traversed and has been well laid out.
New kissing gates have been installed at either end of the field and recently far more useful steps laid out down to the bridge.
I support these changes.
Yours, [REDACTED].

Sent from my Galaxy

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Footpath in Bratton no.42
Date: 08 April 2021 16:37:29

Dear Ms Roberts,

I am writing regarding the proposed diversion of the footpath in Bratton (no.42).

I wholeheartedly support the owner, Mr Pelly, of Luccombe Mill with his request that the footpath be moved to the other side of the fence line, so giving his property more privacy. I have been at the house when people have been walking on the existing path and it feels like they are walking right into Mr Pelly's private garden.

The new route will still give full access down to the 'Paradise Pool' and Mr Pelly has even improved the ground and steps therefore making it safer and more accessible in the winter months.

Mr Pelly is being very fair in providing the alternative route through his field and I really see no problem in this minor diversion.

Yours sincerely,

Katherine

[REDACTED]
[REDACTED]

[REDACTED], Old Down Road
Badminton
GL9 [REDACTED]

Sent in haste from my iPhone!

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Footpath at Bratton
Date: 09 April 2021 14:07:10

Dear Ms Roberts,

I am writing to add my support for Mr H Pelly's proposed diversion of the footpath at Bratton.

We are a local family and I often take my children down to play near the water at Paradise Pool. The new route through the paddock is much easier and safer for small unsteady feet, and we much prefer the open field, avoiding uneven ground, tree roots and low branches. Our children also love the kissing gates, and take great pride and pleasure in recounting how the gates got their name.

We believe Mr Pelly's new route is a big improvement, and we would also like to support his plea for more privacy. Why should our family walk so close to his home to get to the pool, when there is another more accessible option? Although we have always been respectful of Mr Pelly's property, I am aware of many others who have not been.

We urge Wiltshire Council to pass this amendment.

Kind Regards,

[REDACTED]

Sent from my iPhone

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 The Proposed Diversion of Bratton Footpath 42
Date: 24 March 2021 13:45:49

Miss Ali Roberts,
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge, BA14 8JN

Dear Miss Ali Roberts,

Reference: The Proposed Diversion of Bratton Footpath 42.

I am writing to you in response to the new pathway to the watercress beds to the East of Luccombe Mill to which, I notice, Mr Pelly has made a number of improvements, such as laying hardcore on the path, the installation of some gates, and the laying of new steps.

I think that the new path is now very acceptable. We, that is the residents of Bratton, should welcome the new path and accept that Mr Pelly should be allowed some privacy which the new path allows and which was absent with the old path.

Hence, please record my full support for the new diversion plan and include my comments on to the next stage of the process.

Yours sincerely,

[REDACTED]
[REDACTED]
Melbourne Street
Bratton, BA13 [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Bratton footpath 42
Date: 26 March 2021 10:46:21

Dear Ali Roberts,

I am writing to you to express my full support for the diversion of the footpath made by Mr Pelly. Myself and my family have been using the new diversion and find the access a great improvement over the old pathway. Therefore I see no reason to object to it.

Regards,

[REDACTED]

[REDACTED]

Bratton Road
Westbury
Wiltshire
BA13 [REDACTED]

Sent from my iPhone

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: The proposed diversion of footpath Bratton no.42 (Part)
Date: 02 March 2021 18:14:02

Dear Ali Roberts,

I am writing to you regarding the proposed diversion of the path that I occasionally use for leisure.

In my personal opinion, I would prefer the new path, because you can still access the pool and enjoy a walk. Also, the current path makes me feel like I am invading someone else's space, you can see the residence and the tenants when they are using their garden, which makes me feel like I am in their garden.

With all this in mind, I am happy to support the new diversion.

Kind regards,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 The Proposed Diversion of Footpath BRATTON 42
Date: 04 March 2021 16:16:39

From [REDACTED] (Regular footpath users)

The footpath provides a popular short circular walk and also access to open access lands to Picquet Hill. Previously the path was a narrow path through the property which took a lot of work to maintain in a safe condition. The current owner has offered excellent access through the paddock which provides a much better route and the advantage of more open area for dog exercising. I can see no logic as to why anyone would object to this much improved access to the circular route.

We support the Order for the revised route through the paddock.

[REDACTED]
Imber Rd
Bratton
BA13 [REDACTED]
[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 30 March 2021 09:23:25

Hello

I believe you are kindly handling comments for the above pathway proposal.

As we have visited the site on several occasions, & have seen both the existing & proposed pathways, we fully support the proposal to alter the route as requested by Mr Pelly, & feel that this new route positively enhances the communal benefits to all involved.

Therefore we very much hope this plan will be implemented as soon as possible

With thanks,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Date: 01 April 2021 16:16:28

Dear Ms Roberts,

I wish to register my support for the diversion of the footpath at Luccombe Mill.

I am acutely aware of the lack of privacy that the current footpath gives to the owner. The Mill has always attracted interest from people in the village who I know like to go and have a look at it as it is rather impressive and beautiful. I have witnessed people, including people well known to me, using the existing path, standing, and staring across to the house and garden.

The proposed new route is almost the same in length but with easier, more level access across the paddock. This change in my view, is a fair compromise. It allows full access to the old watercress beds, 'paradise pool' and the circular route back to Imber Road whilst affording the owner of Luccombe Mill the privacy any of us would like in our own homes.

In the interest of fairness I would encourage Wiltshire Council to pass this amendment at the earliest opportunity.

Yours sincerely, [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 15 March 2021 14:43:31

Dear Ms Roberts

I am aware of the proposed new footpath crossing the paddock, skirting the garden at Luccombe Mill and wish to register my full support for this proposal.

As a former hotelier at nearby Bishopstrow House I have for many years been supportive of local and county walks and have myself walked the new path many times.

The proposed diversion is a significant improvement on the old pathway by providing easier access all round and in my opinion will very much benefit walkers in the area and without any loss of amenity.

I fully support the scheme and am very grateful for the efforts made by the owner.

Yours sincerely

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: The proposed diversion of footpath Bratton no.42 (Part)
Date: 04 March 2021 16:32:35

Dear Ali Roberts,

My partner and I have been visiting Bratton for sometime as we both enjoy the opportunity to walk and to see what is locally known as paradise pool. Ian and I want to express our full support for the diversion.

In 2016, we used to walk the old pathway when the previous owner Mrs Seymour was alive and knowing that it was given with permission at the time. Since then, we've begun to use the diversion route only because we have spoken to the landowner and understand his need for privacy.

When we last spoke, I was pleased to hear that we can still visit paradise pool as normal, providing that we are mindful of the landowners wishes for privacy. We both agree that there is no problem with the diversion and we would like to offer our support to the landowner of Lucombe Mill.

Yours sincerely,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Proposed footpath diversion at Luccombe Mill
Date: 06 March 2021 10:05:34

Dear Ali,

I can see no reason as to why the proposed new footpath that runs parallel to the old one shouldn't be adopted. We are fortunate to have people in the village like Mr Pelly who are in a position to contribute to village life and improving the environment.

I look forward to using the new route for years to come. Best wishes, [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 15 March 2021 09:10:46
Attachments: [image001.jpg](#)

Dear Ali Roberts,

I have been a regular visitor to Luccombe Mill over the last few years and enjoyed walking the grounds on both the private and public footpaths.

I would like to add my support to the proposed changes to the footpath as these both make perfect sense to keep the private and public domains well defined and quite frankly the new route offers far better views of the Luccombe Bottom and Edington Hill beyond.

Regards,

[REDACTED]

[REDACTED]

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From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Footpath Bratton no.42 (part)
Date: 15 March 2021 09:33:45

Dear Ms. Roberts,

I am writing in response to the new pathway.

Mr.Pelly has my support in his plan to divert the walkway down to the watercress beds from Imber Road.

I feel that he has developed a very pleasant alternative pathway and he has made a real effort to make the rest of the walk a really enjoyable experience.

Yours sincerely

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](mailto:ali.roberts@wiltshire.gov.uk)
Subject: Fwd: Ref: Highways Act 1980. Section 119 Bratton footpath 42
Date: 08 March 2021 13:02:21

[REDACTED]
Ardington
Wantage
OX12 [REDACTED]

Begin forwarded message:

From: [REDACTED]
Date: 8 March 2021 at 12:52:35 GMT
To: ali.roberts@wiltshire.gov.uk
Subject: Ref: Highways Act 1980. Section 119 Bratton footpath 42

Dear Ms Roberts

I wish to register my support for the diversion of the footpath at Luccombe Mill

I have visited Henry Pelly on several occasions, in his lovely house and garden..all reflected in the stunning water flowing by..and can't help feeling that it's humanly understandable that he should wish to have some privacy, in his own property, to enjoy it all...however he has done everything possible to enhance a new footpath/access route putting in attractive gates with easy access for dogs, hardcore on the ground with new levelled steps for older people...I understand that this new route is almost the same length as before but with more level access across the paddock to the old watercress beds, paradise pool and whole way round to Imber road...and would give the owner a bit more peace and privacy.

I hope Wiltshire Council will pass this amendment as soon as is possible

Yours faithfully. [REDACTED]

[REDACTED]
Ardington
Wantage
OX12 [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton 42
Date: 28 March 2021 16:33:43

To Ali Roberts,

Please register my support for the new diversion path. Since the new path has been laid out, I have found myself using it all the time.

I live not far from Bratton in a village called Edington. I live in a small residence and don't have much of a garden as it's only a few square metres wide and so I like take every opportunity to go out for long a distance walk, to help build my health and strength.

When I walk, I venture onto open access land from Westbury road. I go up towards Piquet hill and down towards Paradise pool. From there, I take the diversion, pass through Stradbrook onto Westbury road and back to Edington.

I thanked the owner only recently when passing his driveway as he was gardening.

I would like to say that I have no problem with the diversion, particularly as the owner has made considerable adjustments to make the walk a lot easier.

Kind Regards,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Luccombe Mill footpath
Date: 13 March 2021 15:29:16

Dear Ms Roberts,

I'm writing in support of Mr Pelly's new diversion path which replaces the footpath that cuts through the garden of Luccombe Mill.

I've been a resident of Bratton since 2017 and have used the replacement path many times. I consider it a fair and pleasant alternative to the original path and have no problem accessing it as it's well maintained and clearly marked.

Occasionally I've met local villagers who have insisted on using the original path, stating that they have a right to walk through Mr Pelly's land. Although I understand their point of view, I wouldn't do this personally as it feels as if I'm unnecessarily intruding on Mr Pelly's privacy. For me, it's no inconvenience at all to take the diversion path through the paddock, and I view it as a happy compromise which enables walkers to continue to reach the watercress beds.

Yours sincerely,

[REDACTED]

Stradbrook
Bratton

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 26 March 2021 11:24:11

Dear Ali Roberts,

I am a local resident and a keen walker of the many public footpaths in the area.

I have seen the notices that have appeared recently about the diversion.

Since the new route through the paddock has been created, I have been using this instead. Mainly because the signage put up by the landowner encourages it but also because I actually find it easier to use.

I would therefore like to support the new diversion.

Yours sincerely

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Cc: [REDACTED]
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 06 March 2021 21:54:32

Dear Miss Roberts

We are writing in reference to the above footpath diversion.

We have lived at [REDACTED] Lower Road in Bratton since August 2016. We have a dog so walk in the area almost every day. We frequently use the footpath in question.

We would like to express our strong support for the footpath diversion. The new footpath and gates are far superior to how it was before. Mr Pelly has gone to great trouble to ensure that the new path is attractive and high quality, with new steps, easy to use gates, and with good drainage. It is about the same length as the old one, and we can see no appreciable advantage to the old path. Mr Pelly has made additional improvements to the pathways in the watercress beds at the end of the path which add to the general experience of walking through his land.

Yours faithfully

[REDACTED] (email in CC in case you need to confirm his support too)

From: [REDACTED]
To: [Roberts, Ali](#)
Cc: [REDACTED]
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 04 March 2021 14:13:26

Dear Ms Roberts,

My wife and I have lived in Bratton for 17 years and have always enjoyed our walks 'through the watercress beds' in the combe along and below the Imber Road, out of Bratton. The main purpose of these walks is to enjoy the unusual scenery beyond Mr Pelly's millpond, rather than that of his garden itself. The new route for the footpath along the perimeter of the adjacent field is very acceptable, and maintains his privacy while making no substantial change to the highlight of the walk beyond. The rearrangement has also added clarity to the location of the right of way. In addition, the maintenance of the path back up to the Imber Road from the 'watercress beds' has much improved in recent months.

Best wishes, [REDACTED]

[REDACTED]
Lower Road
Bratton
Westbury
Wiltshire
BA13 [REDACTED]

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 16 March 2021 09:55:27

Dear Ali,

I am writing to register my support for the proposed diversion of the Luccombe Mill footpath.

I live nearby & have frequently used this route. On several occasions I have observed other users of the footpath taking photos of the house, gardens & lake. While I'm sure they make lovely instagram photos, I can only imagine the distress it must cause the owner of the house having such blatant intrusions on his privacy.

Having reviewed the proposed new route, I was pleased to see that not only is it of a very similar length (and probably easier under foot), but it still enables walkers to enjoy full access to the old watercress beds, paradise pool, connecting to the circular route back to Imber Road.

I have noticed that the owner has also made several improvements to the new pathway, which I wholeheartedly approve of.

I hope that Wiltshire Council will approve this diversion as soon as possible.

Kind regards,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways act 1980 section 119: Bratton Footpath 42
Date: 14 March 2021 19:08:16

Dear Ms Roberts

I am writing to you today to voice my support for the the diversion of the footpath (no 42) in Stradbrook, Bratton that runs parallel to the lake by Locombe Mill.

The new footpath is a well thought out alternative to the existing path that will be just as enjoyable and provides a safer route to walk along. The ground is much firmer and the new steps make it much less likely to slip down in the mud. It will also mean that the landowner is not overlooked.

I would be most grateful if you could make a formal note of my support.

Many thanks

[REDACTED]

Reference: Highways Act 1980 119 Bratton Footpath 42, Luccombe Mill

FAO: Ali Roberts ali.roberts@wiltshire.gov.uk


I write in regards to the official order for the diversion of the footpath at Luccombe Mill, Bratton. I have enjoyed the pleasure of this footpath for over 40 years.

Mr. Pelly has invested considerable resources to improve this well loved footpath. These improvements have been done with much consideration and the result is an enhanced and safer footpath for all to enjoy.

I fully support the proposed diversion for these reasons:-

- The diverted footpath runs adjacent and close to the original footpath.
- The diversion is easily accessible and provides a level open area with no trip hazards for walkers. Tree roots visible on the original footpath are a trip hazard.
- Steps have been provided making it easier to negotiate gradients.
- Hardcore has been provided in muddy, waterlogged areas.
- The footpath has been cleared of overgrown vegetation.
- Accessible gates have been provided replacing difficult to negotiate stiles.
- The water pool has been cleared and dredged and what a delight.
- The entire footpath is maintained to a high standard.

The diversion is only a short segment of much longer footpath. Given that the diversion runs adjacent and in close proximity to the original footpath, the experience for users remains the same but with a now safer and improved footpath. I am grateful for this improved footpath.


Bratton Resident

From: [REDACTED]
To: [Roberts, Ali](#)
Cc: [REDACTED]
Subject: Highways Act 1980 119 Bratton Footpath 42, Luccumbe Mill
Date: 09 March 2021 10:10:52
Attachments: [Highways Act 1980 119 Bratton Footpath 42.docx](#)

Dear Ms. Roberts,

Please find attached my submission supporting the diverted footpath (119 Bratton Footpath).

Regards,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 The Proposed Diversion of Footpath BRATTON 42
Date: 24 March 2021 19:38:28

Dear Ms Roberts

I'm contacting you to give support to the proposed amendment to the footpath in Bratton.

I know this area well, from an earlier time of life, and have enjoyed many walks in the surrounding countryside. I'm aware of the publicity the topic of the footpath has created.

I do sympathise with the owner of the property - the current path does go right through his garden and must really infringe on his privacy of being at home.

The new proposed route is great, in my opinion no-one can legitimately complain about it.

With kind regards

[REDACTED]

Sent from my iPad

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 The Proposed Diversion of Footpath BRATTON 42
Date: 18 March 2021 10:20:02

Application No: 2018/14

Dear Ms Roberts,

I wish to register my support for the diversion of the footpath at Luccombe Mill.

As I am sure you are now aware, the current footpath is not able to provide Mr Pelly with privacy whilst in his house or garden. This matter is then not helped by those that might have little or no respect for his privacy, by peering in.

The proposed new route is almost exactly the same in length but with easier more level access across the paddocks. Along with this Mr Pelly has put considerable effort to provide the ramblers preferred kissing gates, therefore making access much easier for humans and dogs.

I do hope that Wiltshire Council can see that this is a much more improved route and pass this amendment.

Many thanks
[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: The Proposed Diversion of Footpath Bratton 42
Date: 03 March 2021 18:01:25

Dear Ms Roberts,

I just wanted to write and register my support for the new pathway at Bratton.

This proposal clearly affords the privacy desired by the owners of Luccombe Mill without compromising the convenience in any respect whatsoever for users of the new proposed pathway.

This would seem to be an eminently sensible solution for all concerned.

Yours sincerely,

[REDACTED]

Sent from my iPad

From: [REDACTED]
To: [Roberts, Ali](#)
Cc: [REDACTED]
Subject: Diversion of footpath at Luccombe Mill
Date: 08 March 2021 12:57:45

Dear Ali Roberts

I am writing to you in support of Mr Pelly's diversion of the footpath at Luccombe Mill.

I have lived in Bratton for the last 17 years at No [REDACTED] Imber Road, which is opposite the start of this footpath. In the past my wife and I used to walk the original path with our dogs. We stopped using the path when we realised that our dogs were venturing into the lake/mill pond and disturbing the nesting birds and those on the surface of the pond. Since Mr Pelly has owned Luccombe Mill he has worked tirelessly to improve and refurbish the Mill and its environs. I can fully understand and support Mr Pelly's concerns and right to his privacy and the obvious solution to divert the route of the existing footpath.

Mr Pelly has carried out a great deal of works to ensure that the new route is safe for walkers and indeed introduced much easier access via kissing gates either end of the path. Mr Pelly is obviously well aware of his obligations as a land owner concerning the health and safety of all who wish to walk this path.

My wife and I support Mr Pelly 100 per cent and urge you to support the footpath diversion as soon as possible.

Yours sincerely

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Britton Footpath 42
Date: 04 March 2021 10:48:05

Dear Ms Roberts,
Highways Act 1980 Section 119
Bratton Footpath 42

I am writing to say that we fully support Mr.Pelly and the proposed new diversion of the Footpath at Luccombe Mill.

My husband & I are keen walkers and think the new route with kissing gates and very helpful new steps is a huge improvement on the old path. So much easier for both of us and our dogs to manage. It is a very attractive route and still gives us the circular walk we much enjoy.

We feel there is no reason that Wiltshire Council should not support this excellent diversion.

Yours sincerely

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 08 April 2021 22:21:05

Dear Miss Roberts,

I am writing to give my full support for the diversion of the footpath through the paddock at Luccombe Mill.

I have lived in the village for over 40 years and believe this is a great improvement on the previously used path. The kissing gates make access really easy, especially with children and dogs, and the ground underfoot is level and firm. In addition the views are open and spectacular.

In particular I have enjoyed being able to walk through to the watercress beds and beyond without feeling like I am intruding on the owner's privacy, something I would not wish to do and I am sure there are many others who feel the same.

Kind regards,

[REDACTED]

[REDACTED]

Emms Lane
Bratton
BA13 [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Proposed diversion of footpath 42 in Bratton
Date: 05 March 2021 13:55:41

To whom it may concern,

I would like to write in support of the diversion of the footpath adjacent to Luccombe Mill in Bratton. Footpath no.42.

The revised location is a welcomed resolution to the current footpath as it will afford the landowner his privacy while maintaining a similar enjoyable route for walkers and ramblers.

Kind regards

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 The Proposed Diversion of Footpath BRATTON 42
Date: 09 March 2021 10:51:17

Fao Ali Roberts,

I am writing to register my support for the alterations to the footpath at Lecombe Mmill, Bratton. The walk is such short simple one, and the 'diversion' of the new path is so minor that I cannot see any reasons to object. The land owner has taken many measures to ensure a safe and easily accessible walk. He has our full support.

[REDACTED]
Residents, Imber Rd, Bratton.

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 section 119 Bratton Footpath 42
Date: 22 March 2021 23:44:06

Dear Ali Roberts

I am writing to give my support to the diversion of footpath (Bratton 42).

I have lived in the village for over 60 years and as children we often used the old footpath knowing full well it was not a public right of way.

The new footpath is a good compromise allowing all (including my 83 year old mother) to access the old watercress beds. A lot more people seem to use the path now, which is good to see.

Yours Sincerely

[REDACTED]

Sent from [Mail](#) for Windows 10

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Bratton Footpath 42
Date: 13 March 2021 08:31:36

[REDACTED]
[REDACTED] West Ashton Road.
Trowbridge.
BA14 [REDACTED]
[REDACTED]
13 March 2021.

The Proposed Diversion of Footpath BRATTON 42.

Dear Miss Roberts,

I would just like to add my support to the above proposed footpath diversion.

Although I do not live in the village, myself and my partner have used the paths at Luccombe Mill for many years in order to visit Paradise Pool and the old watercress beds.

The old permissive path is very uneven and sloping towards the mill pond in places and in the winter becomes very slippery. The exposed roots of the large trees create another hazard for walkers.

Mr Pelly has gone to great lengths to provide a much safer and easier route through the paddock, placing kissing gates at each end, instead of the old stiles and constructing a sloping walkway and steps with a stone base down to the original pathway.

He has also replaced the very high and awkward stile at the upper end of the footpath to Imber Road with a kissing gate making the whole route more user friendly and a vast improvement on the old path.

Yours sincerely

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways act 1980 section 119 the proposed diversion of footpath Bratton 42
Date: 08 April 2021 17:24:02

To Ali Roberts,

I was out on a walk with my two children and my dog to see Paradise pool and I noticed on the way back the details of the consultation regarding the diversion footpath and would like to share my views.

I wish to support the new diversion on Luccombe Mill. I have walked along the new path many other times and I am happy with the new alternative that has been created.

Many thanks,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Cc: [REDACTED]
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 10 March 2021 21:48:48

Dear Miss Roberts

I would like to take this opportunity to declare my unequivocal support for the proposed diversion of footpath Bratton 42.

The reasons for my position, based on using the new route many times, are as follows:

- The diversion will result in little to no disruption for any member of the general public as seen on the plan
- The new route, is well marked, the ground has been improved and maintained by Mr Pelly, and includes entry and exit points that provide ease of access and egress
- The new route is considerably more sympathetic to individuals less physically able with reduced risk of injury or harm from terrain in poor condition
- The new route provides greater opportunity for walking dogs off the lead and reduces any threat to birds or other animals within the Luccombe Mill grounds or on the lake
- The diversion will afford privacy and security to Mr Pelly that should be a simple and basic societal requirement, particularly in a relatively remote setting

I would like to add that Mr Pelly has been a generous and considerate landowner who has worked hard to improve the routes on his land to the benefit of all users. I regard the proposal as fair and reasonable and I recommend it to you.

Yours sincerely

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: RE: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 01 March 2021 14:39:16
Attachments: [image003.png](#)
[image004.gif](#)
[image005.jpg](#)
[image002.png](#)

Dear Ali

Many thanks for this. Please forward my comments to the next stage.

I would like to add that Mr Pelly has made a number of welcome improvements along the path, including steps on a steep section down to the foot-bridge, gravel infills on several very muddy sections, repair to the concrete near the foot-bridge, a kissing gate at the southern end of the path where it joins Imber Road, and (in conjunction with neighbouring land-owner, Mr Gale) a new metal gate leading up into Luccombe. He has also trimmed some of the overhanging branches through the watercress beds. All in all, his commitment to improving access is to be applauded.

Yours sincerely

[REDACTED]

World Heritage Trails
Imber Road, Bratton BA13 4 [REDACTED]
[REDACTED]
www.worldheritagetrails.co.uk

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 25 February 2021 13:49
To: Undisclosed recipients:
Subject: Highways Act 1980 Section 119 Bratton Footpath 42

Highways Act 1980 Section 119
The Proposed Diversion of Footpath BRATTON 42

Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

Please note that any responses to this email will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be

found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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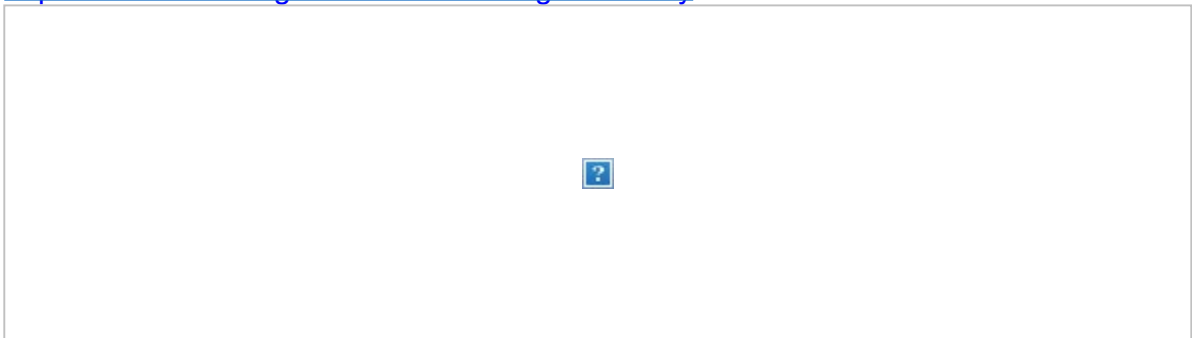
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From: [REDACTED]
To: [REDACTED]; [Roberts, Ali](#)
Subject: Highways Act 1980 - Section 119 The Proposed Diversion of Footpath Bratton no.42 (part)
Date: 07 September 2020 12:44:13

As a resident of Bratton Parish, and of Imber Road, I wish to register my support for the proposed diversion. It offers permanent access to the former cress beds and the spring, known locally as 'Paradise Pool', and maintains the whole of the right of way which emerges further up Imber Road. It also affords Mr Pelly the privacy he desires. As a frequent user of the route though the field I notice that the majority of walkers actually prefer to use this, rather than the current Right of Way route through Mr Pelly's garden.

The recent lock-down due to Covid-19, and the unfortunate effects of social media, saw a considerable increase in the number of people going to the springs. I suggest that the use of the path has increased beyond the intention of past owners to allow local people to cross their garden, and beyond what any current or future owner of Luccombe Mill should be asked to tolerate. The proposed diversion is a very reasonable and practical solution, and it has my whole-hearted support.

I shall attend the Parish Council meeting on Tuesday and would be pleased to address the committee should they deem it appropriate.

[REDACTED]

World Heritage Trails
Imber Road, Bratton BA13 4 [REDACTED]
[REDACTED]
www.worldheritagetrails.co.uk

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 11 March 2021 18:54:02

WCC,

I am a regular walker in and around Bratton. I am happy to support the application for diversion by Mr Pelly as I think there are mutual benefits. Currently the path gives the owner little privacy and the proposed route has no detrimental impact on walkers.

Yours sincerely,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: The Proposed Diversion Of Footpath Bratton - 42 Part.
Date: 02 March 2021 21:15:21

Dear Ms Roberts,

I hope this finds you well. I live locally and a frequent visitor to the Mill pond on Imber road. I've read the notice that has gone up over the weekend and I would like to give my support.

The landowner is unknown to me, however, I do understand that if the diversion does not go ahead then there will be a two-metre high fence that will be erected and no access to a view which will spoil the walking experience. So, I do not object to the proposed diversion as the new route is no bother and I and the community will still be able to enjoy the views.

Kind Regards,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Bratton 42 Footpath Diversion
Date: 30 March 2021 21:14:58

HIGHWAYS ACT 1980 – SECTION 119
PROPOSED DIVERSION OF FOOTPATH BRATTON 42
AND SECTION 53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 – FOOTPATH BRATTON 42

Dear Miss Roberts

I write in support of the footpath Bratton No 42 diversion. The land owner, Mr Pelly has done a great deal of environmental work to enhance the proposed new section of the footpath installing kissing gates and steps on one sloping section. The new route is also far safer in wet weather as the terrain is mostly level and well away from deep water. The diversion will also keep the public and dogs from disturbing nesting birds and wildfowl on the lake.

The proposed diversion has my full support.

Yours Sincerely, [REDACTED]

[REDACTED] BA13 [REDACTED]



Virus-free. www.avast.com

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Re: Bratton footpath No 42 (Luccombe Mill residence of Mr Henry Pelly)
Date: 05 March 2021 21:17:24

Dear Ms Roberts

Re: Application 2018/14 Bratton footpath No 42 Luccombe Mill residence of Mr Henry Pelly

As residence of Bratton Village since 2014, both my wife and I, are in FULL SUPPORT and favour of the above application regarding the footpath to the side of Luccombe Mill on the grounds of privacy, animal and wildlife welfare and health and safety of the public.

I hope Wiltshire planning depth will take into account our support and favour towards the new footpath proposed by Mr Pelly.

Yours sincerely

[REDACTED]
[REDACTED] Spring Gardens, Stradbrook Lane Bratton Wilts BA13 [REDACTED]
[REDACTED]

From: [redacted]
To: [redacted]
Subject: [redacted]
Date: [redacted]

Dear A. Robb,

I hope to be down on the footpath at Luccombe M. I think it's extremely important to see people like you who have seen me and I see you at the house on many occasions.

My father has done a nice message to Luccombe M. I can't help but see him every day and I'm glad. The footpath was at my house for many years and thanks to M. P. I know it.

He sent me a message just as it did but he can't see me every day. I'm glad to see you on the footpath every day and I hope you'll be able to do it. I'm glad to see you on the footpath every day and I hope you'll be able to do it.

My father's a kind person and I hope he'll be able to see you. I'm glad to see you on the footpath every day and I hope you'll be able to do it.

Thank you very much for asking me and I hope he'll be able to see you.

[redacted]

I hope to be down on the footpath at Luccombe M. I think it's extremely important to see people like you who have seen me and I see you at the house on many occasions.
My father has done a nice message to Luccombe M. I can't help but see him every day and I'm glad. The footpath was at my house for many years and thanks to M. P. I know it.
He sent me a message just as it did but he can't see me every day. I'm glad to see you on the footpath every day and I hope you'll be able to do it. I'm glad to see you on the footpath every day and I hope you'll be able to do it.
My father's a kind person and I hope he'll be able to see you. I'm glad to see you on the footpath every day and I hope you'll be able to do it.
Thank you very much for asking me and I hope he'll be able to see you.

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Footpath Bratton 42
Date: 15 March 2021 12:41:44

Dear Miss Roberts,

Highways Act 1980 Section 119
The Proposed Diversion of Footpath BRATTON 42

I am writing to support the proposal for the diversion of the above footpath which to my mind is a perfect compromise for both the landowner and us walkers! We still get full reach to the areas we wish to visit with new levelled steps for the youth challenged among us and easier access for our dogs. This is a sensible proposal which will make everyone happy and should be approved.

Thank you for your attention.

Yours sincerely,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980. Section119. Bratton Footpath 42.
Date: 21 March 2021 15:06:43

I am writing on the matter of the above proposed footpath change at Luccombe Mill.
Normally I do not approve of changes or new routes to existing historical Footpaths.
However, in the case of the above, I see no reason not to accept the proposed alternative Path as it has the same desired effect of enabling walkers to reach the same destination.
Indeed it has the positive advantage of improving the walk for the more elderly walkers and those with dogs.
The new 'kissing gate' provides easier access and the path itself has been well constructed and provides an overall improvement.
I see no reason not to accept this plan which will provide a sound alternative for the long term.

Kind regards

[REDACTED]

Sent from my iPad

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Luccombe Mill
Date: 10 March 2021 15:33:30

Dear Ms Roberts,

As a near neighbour of Henry Pelly, I wish to state that I have no objection to the proposed alternative footpath. I live just opposite, as I have done for the last 48 years, and have never seen it so used as during this pandemic, allowing families to get out and explore our beautiful countryside. On my walks, and talking to locals, it would seem the new route meets with general approval.

Yours Sincerely

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 11 March 2021 09:19:51

Dear Ms Roberts

Re: Highways Act 1980 Section 119 The Proposed Diversion of Footpath BRATTON 42

Further to above Proposed footpath diversion, I am in support this makes total sense given that the current footpath dose does not offer any levels of privacy to the current occupiers.

For us as family with dog and two young children the new route will be far easier to negotiate. In our view the improvements that have already been installed to the alternative route make a positive difference to access and overall safety.

We are in full support of the new diversion route.

Kind regards

[REDACTED]

[REDACTED] Long

Director

Mobile: [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 24 March 2021 11:03:46

Dear Ms Roberts,

I am writing to add my support to the footpath diversion.

Having walked both footpaths regularly I see no real hardship in taking the new proposed route.

There is a slight loss of a view of the water, mainly in summer when the leaves are on the trees but the new route provides lovely wide open spaces and good access.

I have two dogs and one of them is pretty old and doesn't like stiles. So the kissing gate alternative is actually much preferred.

Regards

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: New Message 1.
Date: 26 February 2021 21:22:20

Dear Miss Ali Roberts,

Thank you for the 'new info + maps' providing insight into the 'footpath' process and adjustments.

Please go ahead and use my 'earlier correspondence' to continue to help 'Henry' in his efforts to find a solution for 'his footpath on his estate'.

Sincerely, [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Fw: Highways Act 1980-Section 119 The Proposed Diversion of Footpath Bratton no. 42 (part)
Date: 12 September 2020 00:32:59

From: [REDACTED]
Sent: 07 September 2020 19:29
To: [REDACTED]
Subject: Highways Act 1980-Section 119 The Proposed Diversion of Footpath Bratton no. 42 (part)

My name is [REDACTED], apart from some 'travel' I have lived in the Village of Bratton 46 years.

Previously I committed myself in support for Henry Pelly regarding his wish to 'close off' that particular route to the natural springs at 'Danes Wood'. My support to him carries me back further to years of 'late Mr Seymour' whom was very 'specific' who he gave permission to walk the path, and during what times, for example, bird nesting / special flowers....

It was the 'rightful owners' wish, to ether control, alter, or deny access to the property, I respected that.

this 'conditional use' sadly was breached on many occasions, and, Hugh Seymour was irritated about the fact that 'people he had not met' were accessing the land during the wrong times and without any kind of permission.

I continue with the 'theme' of this document to support Henry in his wish to retain the path, but re-locate it in accordance with his 'private garden'. I'am very sure that many people in the future will always be able to enjoy these beautiful natural surrounds and at the same time respecting the wishes of the rightfull landowner 'Henry'.

Regards, [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119, Bratton Footpath
Date: 24 March 2021 13:14:30

To whom this may concern,

We would like to express our utmost support in relation to the proposed diversion path on Luccombe Hill.

We fully support the owners right to privacy and we're satisfied with the adjustments they have made to make it more accessible and safer to use, including the addition of steps and gravel.

We have become regular users of the diversion pathway and enjoy its idyllic views of the countryside and fields, which we believe many dog lovers and walkers will continue to enjoy. Therefore, we would be grateful if you could pass on our support in relation to this proposal.

Yours sincerely, [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 15 March 2021 16:10:42

Dear Ali Roberts,

REF Highways Act 1980 Section 119 Bratton Footpath 42

I am writing to you in response to the new pathway.

I am happy to say that Mr Pelly has my FULL SUPPORT for the new diversion plan.

I have been living in Bratton since 2005 and myself and my family walk daily in the village and surrounding area including along the footpath in question. The footpath diversion, in my view, is a very fair compromise as it still allows full access to the old watercress beds, 'paradise pool' and the circular route back to Imber Road whilst affording the owner of Luccombe Mill his privacy. Mr Pelly has made many improvements to the new pathway i.e. several kissing gates, easy access for dogs, hardcore on the ground and has introduced new levelled steps reaching towards the end of the footpath near the wooden footbridge.

The proposed new route is almost exactly the same in length but with easier more level access across the paddock.

I see no reason why Wiltshire Council shouldn't pass this amendment at the earliest opportunity.

Yours sincerely,

[REDACTED]
Westbury, Wiltshire. BA13 [REDACTED]

[REDACTED] White Horse Cottages, Bratton,

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath
Date: 10 March 2021 15:22:55

Dear Miss Robert's,

I am writing to give my full support to the proposed new footpath at Bratton and urge the Planning Officers to agree to this.

The new footpath is very well laid out and gives easier access for walkers, especially the elderly with a new kissing gate.

This is a very acceptable new footpath.

Yours sincerely,

[REDACTED]

[REDACTED]

Sent from my iPad

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 09 March 2021 15:50:36
Attachments: [image003.png](#)
[image004.gif](#)
[image005.jpg](#)
[image006.png](#)

Hi Ali,

Thank you for the update. My comments still stand and I would like them forwarded to the next stage.

Many thanks

[REDACTED]

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 25 February 2021 13:49
Subject: Highways Act 1980 Section 119 Bratton Footpath 42

Highways Act 1980 Section 119
The Proposed Diversion of Footpath BRATTON 42

Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

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<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN



Tel: 01225 756178
Email: ali.roberts@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

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From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 - section 119 The Proposed Diversion of Footpath Bratton no 42 (Part)
Date: 22 September 2020 18:13:43

Dear Ali,

I wish to register my support for the proposed diversion of the footpath at Luccombe Mill, Imber Road.

I am acutely aware of the lack of privacy that the current footpath gives to the owner of Luccombe Mill. I have personally witnessed people, using the existing path, standing and staring across to the house and garden with little or no respect to those living there.

The proposed new route is almost exactly the same in length, but with easier, more level access across the paddock. This change, in my view, is a very fair compromise as it still allows full access to the old watercress beds, "paradise pool", and the circular route back to Imber Road whilst affording the owner of Luccombe Mill his privacy

I see no reason why Wiltshire council shouldn't pass this amendment at the earliest opportunity.

Kind regards

[REDACTED]
Melbourne Street
Bratton
BA13 [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Watercress walk Bratton
Date: 11 March 2021 15:28:27

Hi Ali,

Thank you, I will sleep better tonight knowing it has been withdrawn

I met him one day and had a chat. I found Mr.Pelly a totally different person to what I imagined.

I mentioned the horrible iron bars I had great difficulty getting over and said it would be nice to have a gate

or style because it's hard when you get old.

When I was over there again and a nice gate was there I did go down and thank him personally.

What a shame, he aproached it the wrong way when he moved there first.

Regards [REDACTED]

[Sent from Yahoo Mail on Android](#)

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Watercress walk
Date: 11 March 2021 05:06:07

Dear Ali.

I don't know if one of the emails I sent objecting about this path still stands.

I would like it withdrawn as I will NOT be objecting.

He has done good work on the paths

Thank you. Regards

[REDACTED]

[Sent from Yahoo Mail on Android](#)

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Proposed Diversion of Footpath Bratton 42
Date: 04 March 2021 17:56:53

Dear Ms Roberts

I am writing to support the Order for the diversion of this footpath.

It is clear that the existing route of the footpath adversely impinges on the privacy and enjoyment of Lucombe Mill and its gardens and grounds. The new route provides an attractive alternative through unspoiled agricultural land. It is more level and easier under foot, especially for the elderly (I am aged 75), and the attractive new wooden kissing gates make it a more dog-friendly walk.

I therefore support the Order for the footpath diversion.

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 The Proposed Diversion of Footpath BRATTON 42
Date: 07 April 2021 15:48:32

Dear Miss Roberts

I am writing in wholehearted support of the footpath diversion past Lucombe Mill, Bratton. We live nearby and we're never at ease walking so obviously through someone's garden. The new route is so much better and gives easy access to "Paradise Pool" and beyond.

The new gates are a pleasure to use and we no longer worry that our dog will disturb the wildlife in and around the lake which is still visible from the diverted path.

We hope it is approved.

Yours sincerely

[REDACTED]

**HIGHWAYS ACT 1980 SECTION 119
THE WILTSHIRE COUNCIL BRATTON 42 DIVERSION
AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2021**

3 Withdrawn Representations

From: [Roberts, Ali](#)
To: [Roberts, Ali](#)
Subject: FW: Path alongside Luccombe Mill Pond
Date: 16 April 2021 15:47:41
Attachments: [image004.png](#)
[image005.gif](#)
[image006.jpg](#)
[image002.png](#)

Good morning [REDACTED],

Thank you for your email I acknowledge your withdrawal of the West Wilts Ramblers objection and submission to the diversion of Bratton Footpath 42 (part)

Kind regards,

Ali

Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

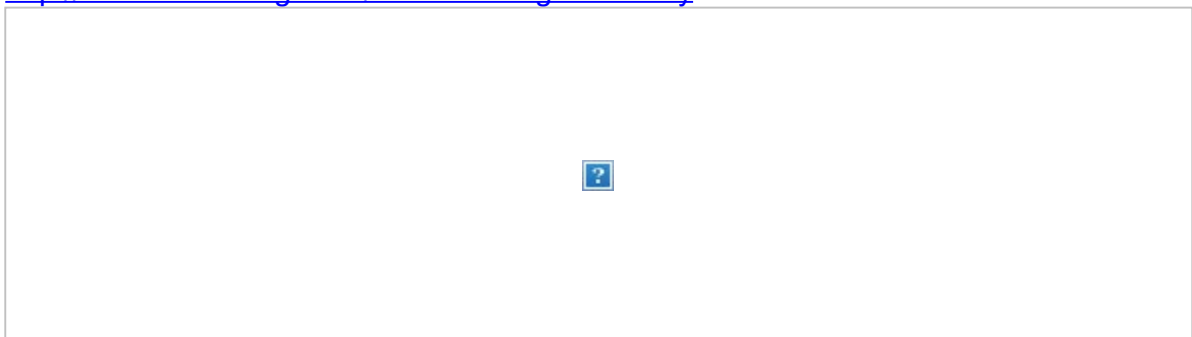
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<http://www.wiltshire.gov.uk/recreation-rights-of-way>



From: [REDACTED] >

Sent: 10 March 2021 17:50

To: [REDACTED]
[REDACTED]

Subject: RE: Path alongside Luccombe Mill Pond

Hi Henry,

Many thanks.

Provided your required diversion to Footpath Bratton 42 is finally confirmed it is understood that the two additional paths (as per image) will in due course become Rights of Way.

I am hoping that The Ramblers decision (Tim Lewis and myself) to withdraw our objections and submission will help to speed the process of your required diversion to Footpath Bratton 42.

Hi Ali

On behalf of West Wilts Ramblers, I confirm that, I withdraw my objection and submissions made regarding the diversion of Footpath Bratton 42. I understand Tim Lewis of Wiltshire and Swindon Ramblers has said the same.

If there are individuals who claim to speak of behalf of The Ramblers (or Open Space Society) would it be possible for either you or myself to let them know of Mr Pelly's commitment to assist in the creation of additional Rights of Way near 'Paradise Pond'.

I will let current membership of West Wilts Ramblers know of Mr Pelly's generous commitment.

The YouTube video 'Walking with Viv and Friend The Bratton Watercress Walk' is now not available. It might be re-edited or just deleted.

Hi Both,

Hope this make sense!

Once again,

Many thanks
[REDACTED]

Sent: 10 March 2021 15:45

Cc: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>; [REDACTED] Millard, Paul
<Paul.Millard@wiltshire.gov.uk>

Subject: Re: Path alongside Luccombe Mill Pond

Hi [REDACTED]

Thanks for your email.

Just so i understand this correctly, you are suggesting that The Ramblers will not object and the submission made in September 2020 will be withdrawn **IF** i dedicate the two paths you have highlighted below are to be made Public Rights of Way?

And any objections received by members of the Ramblers Society would be made personally and not on behalf of The Ramblers?

As you aware i have substantially improved the path that goes past the pumping station with approximately 20 tons of hardcore to raise it out of the surrounding marshy land and installed a hinged gate (in consultation with the local farmer who owns the open access field beyond) to make it easier for walkers to navigate this route. The additional path you have marked has been defined much more recently, with the increase in walkers due to lockdown and from the person (whom i know) in the village that formed the stile at the top, which allows walkers to get over the sturdy wire fence that exists.

My position is that i am happy for both these paths to be made Public Rights of Way provided that **A.** The Ramblers do not object to my proposed route. **B.** That the proposed route does get confirmed.

I trust you find the above acceptable.

Best regards

Henry

[REDACTED]

From: [Roberts, Ali](#)
To: [Roberts, Ali](#)
Subject: FW: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 16 April 2021 15:41:52

From: [REDACTED]
Sent: 09 March 2021 12:16
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
[REDACTED]
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42

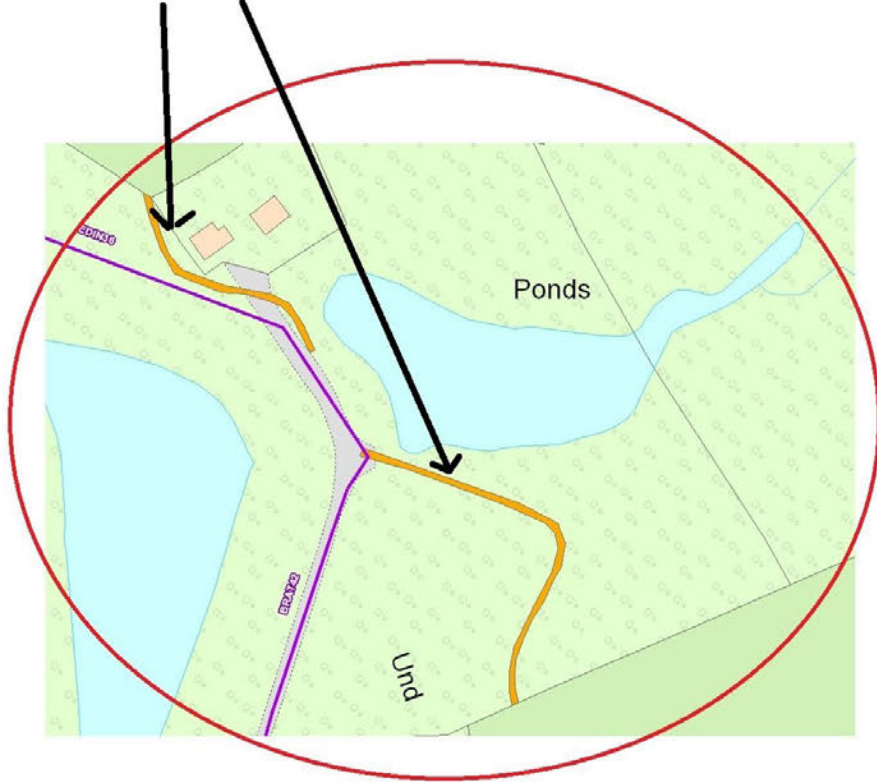
Hi Ali,

I would like to withdraw my objection to the order for Bratton 42.

Best wishes,

[REDACTED]

These additional paths, if dedicated by Mr Pelly would allow better access to Access Land and more off-road routes both shorter and for longer distance walkers. And such dedication would avoid future confusion.



From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Watercress walk
Date: 11 March 2021 05:06:07

Dear Ali.

I don't know if one of the emails I sent objecting about this path still stands.

I would like it withdrawn as I will NOT be objecting.

He has done good work on the paths

Thank you. Regards

[REDACTED]

[Sent from Yahoo Mail on Android](#)

**HIGHWAYS ACT 1980 SECTION 119
THE WILTSHIRE COUNCIL BRATTON 42 DIVERSION
AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2021**

20 Objection Representations







From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Watercress walk : Luccombe Mill, Imber Lane, Bratton.
Date: 14 September 2020 12:09:30

Dear Ms Roberts,

I am writing in response to Wiltshire Council's notification that there has been an application to divert the public footpath as shown on Footpath modification Bratton Path No. 42.

I do not wish to burden you with a lot of irrelevant personal opinion, but if I may I should like to comment on Mr Pelly's reasons for making this application.

Mr Pelly states that his reasons are : 1) Privacy. 2) Protecting birds. 3) Better level access. 4) Health and Safety.

Following this format I should like to comment as follows: 1) Privacy. This seems to be the only real reason for this campaign. Mr Pelly's house is however 78 yards from the footpath at its closest, or approximately three and a half cricket pitches. Few people have such a degree of privacy along their boundaries. In any event Mr Pelly bought Luccombe Mill in full knowledge that there was a well established footpath, which after a long and costly enquiry became the public footpath which he seeks to divert.

2) Protecting birds. So far as I am aware there are no records of unruly dogs harassing birds. The comprehensive clearance of scrub along the lakeshore which he has carried out has had a far more damaging effect on nesting birds, Similarly the dredging of the lake to a reported depth of 2 1/2 metres will of course mean that dabbling ducks (Mallard, Teal etc) cannot feed anywhere except along the shallow margins. (They do not dive for food and can only reach edible weed as far as their necks can reach). In addition it should be borne in mind perhaps that as Mr Pelly has refused to include the customary dog access in the stile at the lower Imber Lane access point, only a few dogs which are young enough or fit enough, or have owners capable of lifting them over the stile, can access the path.

3) Better level access. This is demonstrably incorrect. The watercress walk is level. In contrast the permissive path which Mr Pelly has created has a steep slope between points C and B on the plan.

I have personally spoken to one resident who was using the permissive path. He told me that he had difficulty in navigating the steep slope I refer to, as he was awaiting a hip replacement. When I enquired as to why he did not use the public footpath he drew my attention to his elderly dog. The dog couldn't jump over the stile, and the gentleman concerned could not lift the dog over.

It seems to me that if the criteria for the modification of a footpath is that it is of benefit to the public at least as much as the landowner, the application should fail on the matter of reasonable access for users.

4) Health and Safety. Much of the cited reasoning here seems to me to be of little or no merit. The path does not run near to deep water. If one goes off the path (which is of course trespass), then hazards can be encountered. I know a footpath on National Trust land along the Jurassic coast near Kimmeridge where the path runs within 5 metres of the edge of the cliff. One may assume a certain level of common sense in footpath users, I think. The Watercress walk is no more slippery than any footpath, and less so than many. Tree roots are a feature of most footpaths in wooded areas, Generally speaking people look where they are walking. Similarly trees do shed branches. This is not a new phenomenon.

I expect that you are aware of the lengths to which Mr Pelly has gone to try to prevent people using the public footpath. These include misleading signage, intimidating cctv surveillance, and dumping a heap of mud at the end of the public footpath. I actually emailed him and offered to remove the mud. I had no reply.

I am aware that the Bratton Parish Council has resolved to agree to the modification. I believe that partisan interests within the Council may have contributed to this.

If Mr Pelly is really concerned about unruly dogs disturbing wildlife, it would be a relatively small matter to erect a 1 metre high fence with standard sheep netting along the lake side of the path. This would effectively deter those few dogs which are able to access the path from leaving the path, and would be entirely reasonable.

The proposed diversion passes through land which is leased for farming activities. In the event that the diversion were to be confirmed, I would worry about unruly dogs worrying sheep and lambs, and also in the event that cattle with young were grazed, the danger posed to walkers from cattle protecting their young.

For the above reasons I object to the footpath modification.

Kind regards,

██████████.

Bratton.

From: [REDACTED]
Subject: Fwd:
Date: 18 March 2021 21:59:01
Attachments: [IMG_20210314_153054.jpg](#)
[IMG_20210314_153622.jpg](#)
[IMG_20210310_140810.jpg](#)

Dear Ali,

Please accept this as my objection to the diversion of Bratton Watercress Walk.

The attached pics show the Watercress walk and the proposed diversion.

It would be a stretch of credulity to suggest that the public amenity of the walk through the field along the proposed diversion compares with the beauty of the Watercress Walk.

Regards,

[REDACTED]

----- Forwarded message -----

From: [REDACTED] >
Date: Sun, 14 Mar 2021, 16:55
Subject:
To: [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](mailto:Ali.Roberts@wiltshire.gov.uk)
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 01 March 2021 11:15:47

Hello Ali

Yes please to forwarding my comments and photographs to the next stage of the process.

All the best

[REDACTED]

On 25 Feb 2021, at 13:49, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980 Section 119
The Proposed Diversion of Footpath BRATTON 42

-
Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

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Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN
<image006.png>
Tel: 01225 756178
Email: ali.roberts@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

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<image005.jpg>

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<notice of making an order - BRAT42.docx><Sealed and signed made Order BRAT42.pdf><Bratton 42 plan.pdf>

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Footpath at Watercress Beds, Bratton
Date: 07 September 2020 10:21:30

Hello Ali

I am a Bratton resident and I have been given your email address in order to object to the diversion to the footpath at Bratton watercress beds, as proposed by Mr Pelly. The part of the walk which Mr Pelly is attempting to divert is in fact the most interesting part of the walk, as it has views over the watermill pond and passes beneath some beautiful beech trees.

The arguments that he puts forward for this diversion are not valid, especially considering that people from the village have been using this part of the route safely for over 40 years.

The arguments are as follows:

- 1) Privacy. Mr Pelly must have been aware when he bought this property that the footpath had been used for many years by villagers. It is very sad that he wants to block the view of this most beautiful part of the village from the eyes of the people who live here.
- 2) Protecting birds There have been no reports of birds being disturbed by dogs or walkers during the long history of this footpath usage. This argument, if valid, would apply to both the original footpath and the proposed diversion, as trees line the route. The field with the proposed diversion often has lambs in spring, so disturbance of livestock is likely to be a bigger problem.
- 3) Better level access The original footpath is level. The access to the proposed diverted path has a steep slope where it joins the bridge.
- 4) Path runs close to deep water The path runs close to water which is very shallow, which is why water cress grows in it.
- 5) Most walkers use the permissive path I always use the original path. The path is worn, which indicates that it is used. I object strongly to the sign which encourages walkers to follow the permissive path in preference to the original path.

I hope you take my views into account.

Many thanks

[REDACTED]

From: [REDACTED]
Subject: Fwd: Footpath at Watercress Beds, Bratton
Date: 04 October 2020 14:15:46
Attachments: [fullsizeoutput_5f68.jpeg](#)
[fullsizeoutput_5f69.jpeg](#)
[fullsizeoutput_5f6b.jpeg](#)
[fullsizeoutput_5f6c.jpeg](#)
[fullsizeoutput_5f6d.jpeg](#)

Hello Ali

I am emailing again about the diversion of the Bratton footpath at Luccombe Mill. As I stated in my previous email (see below), the diversion of the footpath will result in the removal of the most interesting part of the walk. I am attaching photos of the section in question which were taken on the 27th September, and which indicate what villagers stand to lose by accepting a diversion. Views over this beautiful mill pond and stream will be replaced by a hedge which will block out these views. I feel very strongly that the original footpath must be maintained for the benefit of villagers who have enjoyed these views for over 40 years.

Many thanks

[REDACTED]



Begin forwarded message:

From: [REDACTED]
Subject: Footpath at Watercress Beds, Bratton
Date: 7 September 2020 at 10:21:27 BST
To: ali.roberts@wiltshire.gov.uk

Hello Ali

I am a Bratton resident and I have been given your email address in order to object to the diversion to the footpath at Bratton watercress beds, as proposed by Mr Pelly. The part of the walk which Mr Pelly is attempting to divert is in fact the most interesting part of the walk, as it has views over the watermill pond and passes beneath some beautiful beech trees.

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2) Protecting birds There have been no reports of birds being disturbed by dogs or walkers during the long history of this footpath usage. This argument, if valid, would apply to both the original footpath and the proposed diversion, as trees line the route. The field with the proposed diversion often has lambs in spring, so disturbance of livestock is likely to be a bigger problem.

3) Better level access The original footpath is level. The access to the proposed diverted path has a steep slope where it joins the bridge.

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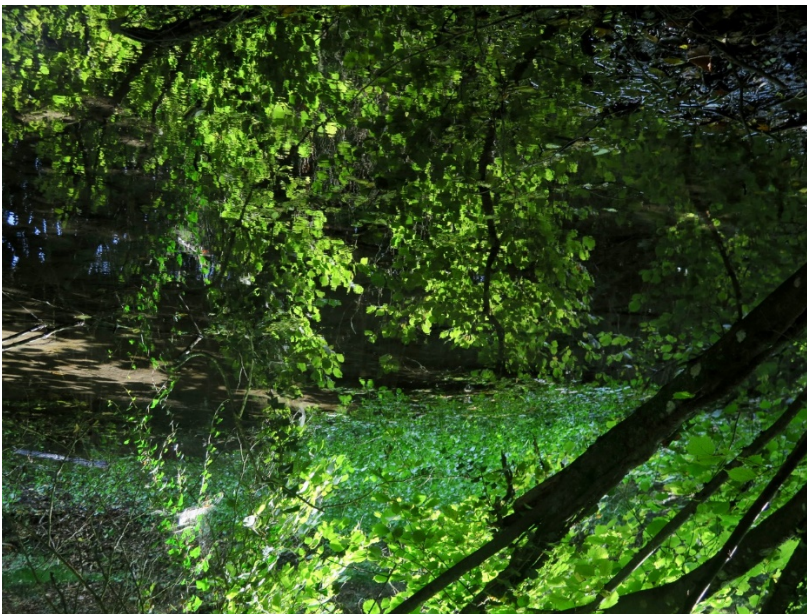
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I hope you take my views into account.

Many thanks

██████████





From: [REDACTED]
To: [Roberts, Ali](mailto:Ali.Roberts@wiltshire.gov.uk)
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 09 March 2021 16:00:10
Attachments: [image003.png](#)
[image004.gif](#)
[image005.jpg](#)
[image006.png](#)

Good afternoon,

Thank you for your email.

I confirm that I wish the comments detailed in my email to be forwarded on to the next stage of the process now that the order has been made.

Kind regards

[REDACTED]

On Thu, Feb 25, 2021 at 1:49 PM Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980 Section 119

The Proposed Diversion of Footpath BRATTON 42

Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

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Ali Roberts (Miss)

Definitive Map Officer

Rights of Way and Countryside
Wiltshire Council

County Hall
Trowbridge

BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Re: Footpath diversion
Date: 19 September 2020 20:17:40
Attachments: [image002.png](#)
[image003.gif](#)
[image004.png](#)
[Luccombe mill 6.docx](#)

Dear Ali Roberts.

I have sent you an amended letter because I have just discovered I have spelt the name Pelly incorrectly.

I remember reading that these letters will be available for people to read on request therefore I need to correct the spelling of Mr Pelly's name.

Please delete my first letter and substitute it with this one.

Thank You

On Thu, Sep 17, 2020 at 11:22 AM [REDACTED]

wrote:

Dear Ali Roberts,

Thank you for your immediate reply.

I thought you may require my address which I had not included.

[REDACTED]
Church Lane

Bratton

Westbury

Wiltshire

BA13 [REDACTED]

On Thu, Sep 17, 2020 at 7:18 AM Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Dear [REDACTED],

Thank you very much for taking the time to respond to the consultation. Your comments will be included and considered in my decision report on this application.

Kind regards,

Ali

Ali Roberts (Miss)

Definitive Map Officer

Rights of Way and Countryside
Wiltshire Council

County Hall
Trowbridge

BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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From: [REDACTED]
Sent: 16 September 2020 19:52
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Subject: Footpath diversion

Dear Ali,

Please find attached my letter stating reasons why the Right Of Way at Luccombe Mill should not be diverted.

Many thanks

[REDACTED]

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Highways Act 1980-Section119

Application for The Proposed Diversion of Public Footpath Bratton no 42(part)

Application dated 5th November 2018.

Dear Ali Roberts,

With reference to the above application I would like to make the following observations against the proposed diversion.

I am sure you are fully aware of the Public enquiry held in September 2018 resulting in the footpath at Luccombe Mill becoming a Right of Way.

I would like to address individually the reasons Mr Pelly is now giving for diverting this Right of Way.

- **PRIVACY**

The Right of Way begins at a point far away from the house as can be seen on the map. The Right of Way does not run through Mr Pelly's garden it runs through a woodland area under an avenue of mature trees alongside the boundary with the field. Mr Pelly acknowledges that he purchased the house with full knowledge that there was a well established footpath in that position.

- **PROTECTING THE BIRDS**

I have never heard of any accounts of dogs harassing birds. When replacing the stile at the Lower Imber road access point Mr Pelly did so without any dog access (as was his right) which means many dogs are unable to use the stile(unless assisted by their owner) resulting in the dog owner unable to access the Right of Way. I would also like to point out that this stile causes difficulties for people with mobility problems and young families although it received the approval of Wiltshire Council

Mr Pelly has stated a reason for his proposed diversion is to protect nesting birds I am sorry to say he had no regard for any wildlife when he drained the lake last August/September without any warning to our village filling the stream with slime and sludge which took several months to clear and would have killed so much wild life. On receiving written and verbal complaints there were no apologies just the

comment it had not been dredged for two hundred years. Mr Pelly's actions were reported to the Environment Agency because a long stretch of the 'Stradbroom' or 'Milbourne' stream were so badly affected.

He has also removed a very long stretch of a well-established Beech hedge running along the boundary of his land and Imber Road which offered huge wildlife value with the foliage making shelter for nesting birds and small mammals such as hedgehogs. This was replaced by Laurel.

- BETTER LEVEL ACCESS

This is simply not true. The Right of Way footpath is very level, running parallel to the boundary of the property with the field, following the line of the hedge. Whereas the permissive footpath at the Lower Imber Road access passes through the field until you reach a gate leading to a very steep downward slope with a surface composed of loose stones, a hazard for the older and less able walker and parents with young children with a pushchair, who wish to access the bridge to continue their walk through the watercress beds. We have a disabled grandson age 7 years who has a specially designed push chair and we are unable to negotiate this slope.

- HEALTH AND SAFETY

I have walked this path for forty-five years in all weathers and have never considered it to be steep and slippery. As a walker you are aware of trip hazards from tree roots and the occasional fallen branch wherever you are walking, there have never been any more on this Right of Way than anywhere else! The lake is not very deep, and this was highlighted during the recent dredging process last year. The Right of Way does not go anywhere near the lake.

Last year it was necessary to close for several months the Right of Way whilst the dredging took place. During the dredging process a very large mound of mud was deposited at the end of the Right of Way blocking the path and this

remained there for a very long while .The closure would have obviously explained the percentage increase of people using the permissive path that Mr Pelly claims he has proof of.

Another contributing factor for using the permissive footpath and not the Right of Way is the misleading signage Mr Pelly has erected directing walkers through his gate and across his field at the Lower Imber Road access. When walking the other way in order to return to Lower Imber Road the signage directs people to use his permissive path and not the Right of Way.

The permissive path takes you through the field that is leased for farming. In Springtime sheep with lambs and cows with calves can be seen. This could deter people using the field if cattle with their young were grazing there.

These are my objections to the proposed diversion of the Public Footpath Bratton no 42(part)

Kind regards

A solid black rectangular box used to redact the sender's name and contact information.

20th September 2020

Dear Ms Roberts,

I am writing in response to Wiltshire Council's notification that there has been an application to divert the public footpath as shown on Footpath modification Bratton Path No. 42.

Bratton Path 42 is path I have walked since childhood. I grew up in the village in the 1970's and I am the daughter of parents who used this footpath before me.

It is fair to say that the current landowner has led an aggressive campaign to remove this path; beginning with the destruction of the bridge and stiles to prevent access and more recently, installing a stile that the elderly and dogs find it hard to access and providing misleading signage. The photo below, shows the official sign has been removed and the misleading signs directing people to the permissive path.

Whilst I regret to include evidence from a social media site, I cannot ignore that the landowner has been recorded as turning people away from the official footpath and telling people they must use his permissive path. This evidence can be found on the Facebook group, 'Spotted Bratton, Westbury, Edington, Erlestoke', on the 29th June. The landowner was well aware of this post and was more than happy to engage. The 'Watercress Beds' is a beautiful walk and requires no alteration and never has done. If this application is passed, a precedent will be set for other like-minded landowners.



Photo 1:
The removal of the
official sign

Photo2:
Landowners
misleading signage

Whilst I aim to be concise and to the point, I hope to demonstrate the importance of responding to the landowner's points with the detail they deserve. I will address each point in the order set out by the landowner.

1. Privacy:

There are a few valid points that can be raised to address this.

- In the first instance, the landowner will have been aware that a path was present prior to buying the property. It is an assumption that a property is fully investigated before contracts are signed and that any conditions are in full acceptance of the buyer.
- Speaking for myself, I have no interest in the going's on of the buyer. I purely want to walk the path I have always known.
- The house is barely visible from the path.

2. Protecting of Birds:

- It is lovely to think that the landowner is interested in protecting wildlife. However, suggestion that wildlife is under threat from walkers is ridiculous. Has he provided evidence?
- There is however evidence that the landowner showed little regard for wildlife when he opened his sluice gate, allowing debris from the mill pond to silt up the stream for an extended period of time.
- In addition to this, the landowner has provided very limited access to dogs.

3. Better level access.

To be honest, the 'permissive path' that the landowner has created is steeper than any section of Path 42, which is largely flat in comparison.

4. Health and Safety.

Whilst I will address each of the points raised, the underlying theme here is that this is the countryside and should any of these points be taken seriously, who knows what this would mean for paths across the UK.

(a) the existing route is steep and banked and often slippery.

Quite simply- the path is flat. Paths get wet, walkers cope

(b) there are many trip hazards from large tree roots.

It's a path- there are tree roots, like many paths. People just watch where they are going. I have never tripped on a tree root here.

(c) the avenue of mature trees frequently drops heavy branches.

I have never felt threatened by tree branches here. If the trees are well maintained, this is not an issue. I have never known a branch here to fall and block the path. National statistics show that incidents where branches pose a threat are very rare and if we were to start worry about all of the above, we would never go out.

(d) the path at this section runs close to deep water.

The path really does not run close to deep water and I am yet to hear of an incident regarding this.

In conclusion, I object to the proposal of a diversion. There is evidently no need for this.

Yours sincerely,

██████████

From: [REDACTED]
To: [Roberts, Ali](mailto:Ali.Roberts@wiltshire.gov.uk)
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 14 March 2021 13:32:49
Attachments: [image003.png](#)
[image004.gif](#)
[image005.jpg](#)
[image006.png](#)

Dear Ms Roberts,

I would like to confirm that I would like my comments to proceed to the next stage of the process.

I think you will find that in my comments, I have made a point regarding each of the issues set out by the landowner.

I would like to reiterate that the landowner would have been in full knowledge of the path on his land, prior to purchase. They have chosen to pay no regard to this, demonstrated by the ripping out of stiles and bridges and subsequently making the replacement stiles unpassable to elderly and dogs and limiting access to members of the public with disability. If the belligerent approach taken to this order succeeds, it will set a worrying precedent for future rights of way.

Kind regards,

[REDACTED]

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 25 February 2021 13:49
Subject: Highways Act 1980 Section 119 Bratton Footpath 42

Highways Act 1980 Section 119
The Proposed Diversion of Footpath BRATTON 42

Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

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<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)

Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

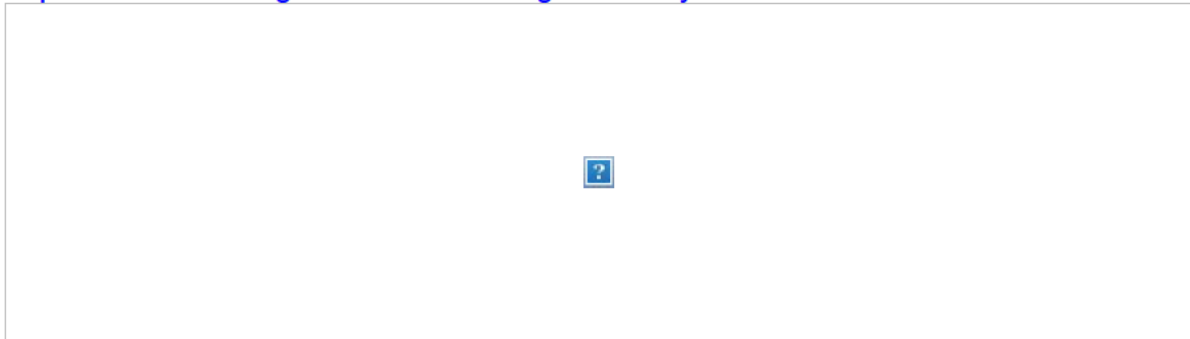
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From: [REDACTED]
To: [Roberts, Ali](#)
Subject: re Highways Act 1980 – Section 119 The Proposed Diversion of Footpath Bratton no.42 (part)
Date: 22 September 2020 17:05:33
Attachments: [letter to WCC Ms Roberts.docx](#)

Dear Miss Roberts,

Please find attached my observations outlining my reasons for objection of **Highways Act 1980 – Section 119**
The Proposed Diversion of Footpath Bratton no.42 (part).

Many thanks,
[REDACTED]

From: [REDACTED]
To: Roberts, Ali
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 08 March 2021 20:51:12

Dear Miss Roberts,

Thanks for your email. I confirm that I wish the comments detailed in my email of 24/09/2020 to be forwarded on to the next stage of the process.

Kind regards,

[REDACTED]

On 25 Feb 2021, at 13:49, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980 Section 119
The Proposed Diversion of Footpath BRATTON 42

-
Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

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Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN
<image006.png>
Tel: 01225 756178
Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

Report a problem <https://my.wiltshire.gov.uk/>

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<image005.jpg>

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<notice of making an order - BRAT42.docx><Sealed and signed made Order BRAT42.pdf><Bratton 42 plan.pdf>

LUCCOMBE MILL PUBLIC FOOTPATH / PERMITTED PATH - NUMBER OF WALKERS

	WEDNESDAY 16/09/2020	THURSDAY 17/09/2020	FRIDAY 18/09/2020	SATURDAY 19/09/2020	SUNDAY 20/09/2020	MONDAY 21/09/2020	TUESDAY 22/09/2020	TOTAL
7 am	1						1	2
8 am					1		1	2
9 am					1 + 2 pp			1 + 2 pp
10 am		2					1	3
11 am	1	2		1				4
12 noon						1	1	2
1 pm				1				1
2 pm			1	1				2
3 pm					2	1 + 3 pp		3 + 3 pp
4 pm				2	2			4
5 pm		3	3				1	7
6 pm				1	1			2
7 pm			1 + 1 pp			1		2 + 1 pp
TOTAL	2	7	5 + 1 pp	6	7 + 2 pp	3 + 3 pp	5	35 + 6 pp
KEY	pp = walkers on permitted path							

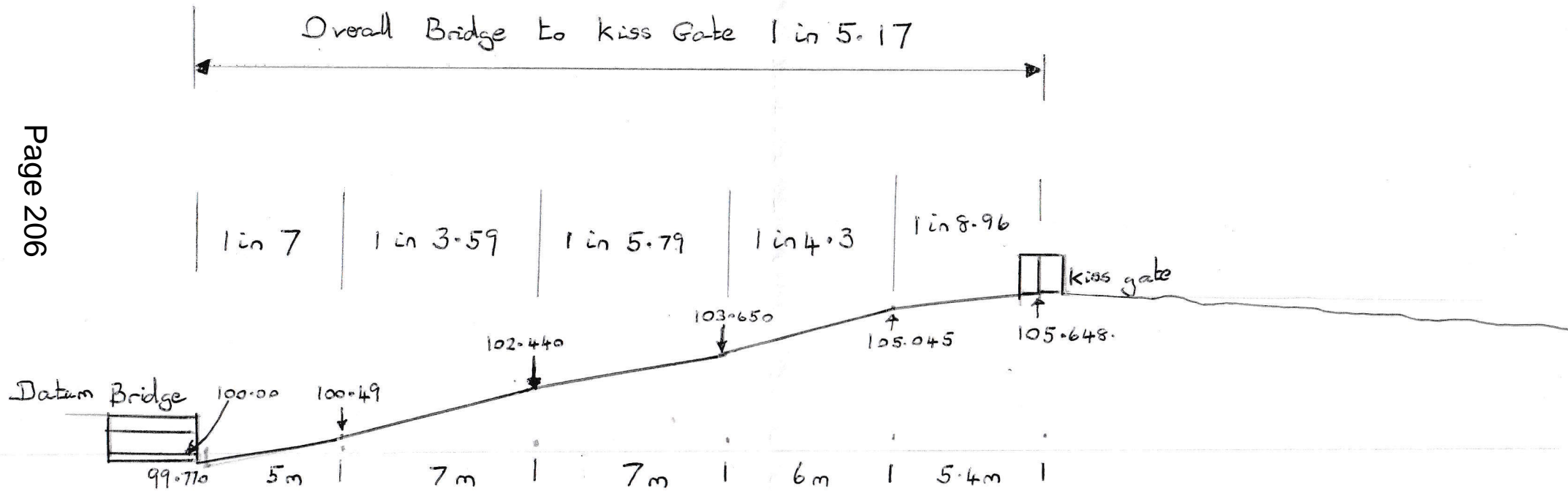
Table 1

The original footpath is within 1 in 12 for its entire length.

Mr. Pelly's footpath is within 1 in 12 from the road to the kiss gate however the last 30m from the kiss gate to the bridge is very steep at 1 in 5.17 with some sections at 1 in 3.59 and 1 in 4.3

(NB 1 in 12 is max recommended gradient for Urban footpath i.e Blacktop, so doesn't apply here but does show that this is a very steep path in the section highlighted below)

Page 206



Church Lane
Bratton
BA13

16th September 2020

Miss Ali Roberts
Definitive Map Officer
Wiltshire Council
Trowbridge

Dear Miss Roberts,

Highways Act 1980 - Section 119
The Proposed Diversion of Footpath Bratton no. 42 [part]

I write regarding the application to divert this footpath and notify you of my objection to the modification.

You have provided details of the landowner's reasons for the application, which I comment upon as follows.

Privacy.

The footpath, running along the southern boundary edge of this property, is not in the immediate vicinity of Luccombe Mill, but at its closest is at least 70 metres from the house and its outbuildings. There is consequently little impact upon the privacy of the house and its immediate garden surroundings, which are situated on the far side of the lake.

The landowner will have been aware of the existence of the publicly used path at the time of purchase through a normal due diligence search.

Protecting birds which nest all along the edge of the lake from dogs.

Having used the footpath regularly since 1975, I cannot recall any season in which birds were "nesting all along the edge of the lake". Walkers will currently encounter one or two swans and a number of ducks, but there has never been a proliferation of nests in this vicinity. Recent removal of the foliage between footpath and lake will actually discourage nest building for some time to come.

My experience is of responsible dog owners, who respected the privilege of being in such beautiful surroundings and acted accordingly. Despite repeated and sometimes hostile questioning at the Public Enquiry, the landowner's QC was unable to convince the Inspector that dogs or humans were a threat to nesting birds on the original footpath, which was one of the major contentions of his case.

The landowner's stile, in conjunction with a mesh fence, effectively prevents public footpath access for dogs, unless their owners are able to lift them over the stile.

Better level access

Both the public footpath and the landowners alternative route were surveyed in September by a qualified Civil Engineer, using industry standard equipment and methods.

Whilst the public footpath was found to be within 1 in 12 along its entire length [Imber Road stile to bridge], in line with Urban footpath recommendations, the alternative route provided by the landowner [Imber Road kissing gate to bridge] has an average gradient of 1 in 5.17, with the steepest sections being 1 in 3.59 and 1 in 4.30. The survey details are attached.

Health and Safety

[a] the existing route is steep and banked and often slippery.

The public footpath's steepness suggestion is completely unfounded, see evidence above.

Both paths are alongside each other, at the foot of a sloping field, separated by a hedge and bank. Each has a transverse camber [banked], which is not challenging to the walker. The permissive path was originally grass, but now is trodden earth along the major part of its length. As it is completely exposed there is a higher slip potential when wet, compared to the sheltered public footpath.

The public footpath runs along the property boundary beneath a steep bank, with established bushes and a canopy of trees. It is well sheltered from the elements and therefore rarely slippery. Loose chippings on the 1 in 3.59 / 1 in 4.30 sections of the permissive path constitute an ever present slip hazard, particularly when descending, an accident waiting to happen!

[b] there are many trip hazards from large tree roots.

Whilst there are a number of exposed tree roots on the footpath, they are a normal occurrence in any woodland, and walkers take appropriate care. Locally, the National Trust lakeside path at Stourhead has similar root exposed paths and welcomes the public to safely walk them.

[c] the avenue of trees frequently drop heavy branches.

I have no knowledge of this alleged regular happening. There certainly was a tree problem, when the landowner first took over the property. A large Beech tree, adjacent to Imber Road, split in a severe storm and was felled. Apart from this, I can recall no major dangerous branch dropping episodes during my years of footpath use. As can be expected in any woodland, one encounters occasional fallen branches. An examination of the trees along the public footpath indicates that breakages have occurred towards the end of low level dead tree limbs. Proper tree conservation practise calls for inspection and removal of this dead wood, which is the natural result of the growing process. Appropriate action by the landowner will greatly mitigate the chance of fallen branches.

[d] the path at this section runs close to deep water.

Following extensive dredging in 2019, the lake area adjacent to Luccombe Mill house, hopefully, now has deeper water. As can be clearly seen from the Ordnance Survey map enclosed with your 1st September email, the footpath enters the property at a considerable distance beyond this area. From this point, to the footbridge, the lake is shallow and its surface is covered with "wild watercress" [my terminology for these plants, that also choke the stream adjacent to my house]. They do not thrive in deep water. In several areas the bed of the lake can be clearly seen from the footpath.

The course of the public footpath is some distance from the lake shore, this varies from 5 metres to 13 metres [approximately] along its length, except in the footbridge area. As the footpath has a 1.50 metre width, walkers could not approach the lake shore without trespassing on the landowner's property.

On 19th August the landowner emailed Bratton Parish Council Chairman Jeff Ligo, with information that "He has carefully observed the use of the paths, and he believes that 99% of walkers use his permissive path."

As the statement appeared, at best, rather questionable a controlled study was recently carried out, to validate this important assertion.

During the study, village residents used the paths at specific times over a 7 day period, walking from the Imber Road stile, along the public footpath to the junction with the landowner's permissive path, turning right along this path to the Imber Road kissing gate.

The results are summarised below -

Number of walkers along the public footpath route	35
Total number of walkers seen on landowners permissive path	6

Refer to the attached chart for details

Conclusion : Had just 1 person walked the public footpath, they should have encountered 99 others on the permissive path!

Collective village experience, dating back over 50 years, of footpath use indicates that there has not been ongoing -

- Problems with dogs disturbing nesting birds.
- Difficulties regarding level access, steepness, camber, slipperiness or large tree roots.
- Injuries due to heavy branches dropping.

In addition there are no records or local history of drowning, or people in difficulty, due to the proximity of footpath and lake.

It is, however, pertinent to observe that the landowner's views and assertions are based upon two years of part time residence, between 2016 when the property was purchased and 5th November 2018, when the diversion application was made.

The manipulative actions of the landowner, in a search for complete privacy, continue to impact most unreasonably upon on villagers, visitors and the immediate habitat. Misleading signage, daunting cctv surveillance of the footpath and spurious claims regarding permissive path use, call into doubt the probity of the landowner's case, and I similarly believe that the diversion application reasons have little substance.

I would respectfully urge those charged with making this important decision, not to rely solely on the claims and counterclaims in the paperwork submitted, but to visit Bratton, walk the paths and use this first hand experience when determining the application's outcome.

Yours sincerely,



From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 - Section 119. The Proposed Diversion of Footpath Bratton no. 42 [part]
Date: 24 September 2020 19:57:59
Attachments: [Luccombe Mill Footpath Diversion Letter.pdf](#)
[Luccombe Mill footpaths - levels.pdf](#)
[LUCCOMBE MILL PUBLIC FOOTPATH WALK - NUMBER OF WALKERS.pdf](#)

Dear Miss Roberts,

Here is my letter [3 pages and 2 attachments] in response to your email of 1st September.
Please be good enough to confirm its safe receipt and legibility.

Thank you,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: BRAT 42 NOTICE OF MAKING AN ORDER
Date: 26 March 2021 07:01:45

Good Morning

I'm very disappointed and upset to hear and read about the proposed change to the footpath change in Bratton known locally as the watercress walk. I strongly object to this change to the footpaths rerouting. This has been a beautiful local walk enjoyed by local residences for at least 60 years if not more. Please reject this unnecessary change.

An upset walker.

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](mailto:Ali.Roberts@wiltshire.gov.uk)
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 25 February 2021 14:49:08

Dear Ali

Yes please, I most certainly do want my comments to be forwarded onto the next stage.

Many thanks

[REDACTED]

Sent from my iPad

On 25 Feb 2021, at 13:49, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980 Section 119
The Proposed Diversion of Footpath BRATTON 42

-
Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

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Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN
<image006.png>

Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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[<image005.jpg>](#)

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[<notice of making an order - BRAT42.docx>](#)

[<Sealed and signed made Order BRAT42.pdf>](#)

[<Bratton 42 plan.pdf>](#)

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Footpath at Luccombe Mill
Date: 03 September 2020 16:43:13

Dear Ali

I am most concerned to read that Mr Pelly of Luccombe Mill,wishes to divert the footpath from its original route.

I have lived in Bratton for nearly forty years and have ,like many others enjoyed the walk along the footpath in question,up to the watercress beds,and paradise pool.

I would like to make the following remarks.

1. Privacy

Mr Pelly was fully aware of the situation before he bought the house,and he knew that many villagers and walkers used this path every day.

2.Birds

We live in a rural area where birds nest in all manner of places,in hedges,banks and trees.Mr Pelly showed less concern about nesting birds,when he uprooted the original beech hedge along the road side.

3.Access

Walkers in rural areas do not expect “ level access”,when they are rambling.

This is part of the natural charm found in the countryside.

4. Health and Safety

All countryside has rugged areas,slippery places,tree roots etc.That is the difference between City life and living in the countryside. We are surrounded with these situations and embrace them as part of our rural life.

I totally object ,yet again to the original footpath being redirected,and remain very disappointed to hear that Mr Pelly has been misleading walkers,sending them away from the official footpath onto his preferred alternative.

Yours sincerely

[REDACTED]

Sent from my iPad

From: [REDACTED]
To: Roberts, Ali
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 26 February 2021 10:08:02
Attachments: [image003.png](#)
[image004.gif](#)
[image005.jpg](#)
[image006.png](#)

Dear Ali Roberts:

Please do forward the objection notice I sent you last year, regarding the then proposed diversion of the Watercress footpath. I have said all I have to say regarding Pelly's 'arguments'. I still find the proposed diversion unsafe for the more elderly or slightly infirm, and in contradiction to keeping the original and historic route open for future generations of villagers to enjoy. I cannot understand how, after such a long and costly legal process, and the great public opposition, the ruling is now being overturned.

Sincerely,

[REDACTED]

On Thu, 25 Feb 2021 at 13:49, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980 Section 119

The Proposed Diversion of Footpath BRATTON 42

Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

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<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)

Definitive Map Officer

Rights of Way and Countryside
Wiltshire Council

County Hall
Trowbridge

BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

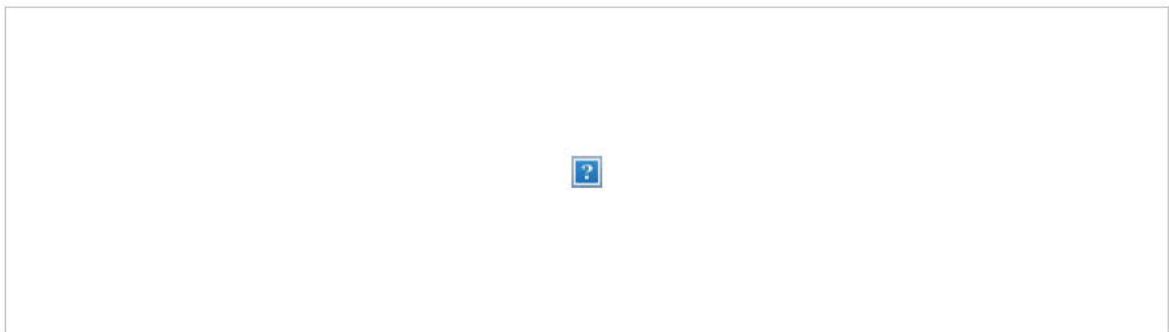
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In love and light



From: [REDACTED]
To: [Roberts, Ali](#)
Subject: The Proposed Diversion of Footpath Bratton no. 42
Date: 27 September 2020 16:24:45

Dear Ali Roberts:

Henry Pelly's Application to the Wiltshire Council Wiltshire Council to divert the public footpath as shown on Footpath modification Bratton Path No. 42.

I am writing to you to express my concerns regarding Mr Pelly's application seeking to divert the 'Watercress Walk' Public Footpath. I am deeply saddened that after the lengthy and costly legal process (begun in 2016) to create this Public Right of Way, Bratton villagers and other interested parties are once again faced with having to contest the right to access this historic footpath.

Ultimately, it is neither a matter of the public seeking access to Mr Pelly's land nor wishing to intrude on his privacy, but to be able to walk *this specific* path, which runs alongside the Luccombe Millpond, through the Watercress Beds – and on to Paradise Pool. The reason so many members of the public objected, when the path was closed following the purchase of Luccombe Mill by Mr Pelly), was because of the matchless and historic features of this footpath: The Watercress Walk has been an important part of Bratton village for at least a 100 years, not only as a recreational walk but as a historic site where locals once worked the Watercress beds. Moreover it is an area of archaeological interest with its connection to the Battle of Ethundun, as well as being an ancient Romano-British burial place (as cited in The Wiltshire Archaeological and Natural History Magazine Vol. 99 2006). Moreover, it is a magical area full of unusual flora and fauna, a unique walk which cannot be compared to other local footpaths. This isn't simply a footpath which can be moved into an adjoining field.

My observations regarding the reasons Mr Pelly's gave for wishing to divert the existing PROW:

- 1) **Privacy.**
 - a) The footpath and its popular use were evident at the time of purchase. The Seymour family (the previous owners for many years) were aware of the public's use of the footpath and never sought to prevent this. Mr Pelly's lawyer would have known this from his search.
 - b) The relatively dense growth of shrubs and undergrowth alongside the first part of the footpath, by the Millpond, was extensively cleared upon Mr Pelly instructions, thus opening up to a more unobstructed view of the house and grounds – thereby losing a considerable amount of the desired privacy.
 - c) The PROW is some 70 + meters from the house at its nearest point. Indeed, it is not in Mr Pelly's 'garden' as stated, but in a section of woodland the other side of the lake from Luccombe

Mill's front garden. It is an unobtrusive pathway largely meandering through woodland.

2. Protecting birds.

a) Again, Mr Pelly showed little concern for wildlife when he cleared away the undergrowth and shrubs and trimmed back trees alongside the millpond.

b) Birds were not considered when Mr Pelly had the Millpond spontaneously emptied. Rather than gradually releasing water through a filter of straw bales (or having it dredged) and thereby causing minimum disruption to birds, fish and plant-life; the complete and sudden emptying of the millpond caused undue damage to the Stradbroke stream with years of the Luccombe Millpond's accumulated silt; this caused blockages and points of overflow to gardens/properties adjoining the stream. The resident Kingfisher left, and the mallard population has been greatly reduced in consequence.

3. Better and level access

a) The existing PROW is considerably more level than the proposed alternative route. The Watercress Walk has been used for decades by older members of our village and beyond, because of its ease of access. Likewise, mothers with young children and pushchairs were able to easily access the footpath. Schoolchildren went on organised field trips along what was considered a safe path.

b) The proposed alternative route runs through a field where there are numerous potholes; potholes caused by sheep and cattle and obscured by long grass. I have managed to trip a couple of times when I sampled the viability of this alternative route – spraining my ankle on one occasion. It is not a suitable route for the elderly or infirm.

c) Better access, yes indeed, as Mr Pelly has had a kissing gate installed at his suggested entrance. Signage (in the form of large green arrows and instructions) has also encouraged the public to use the alternative route. Moreover, the PROW official disc at the stile entrance has been removed; and coming across the bridge, back towards Luccombe Mill, walkers are confronted with signs that direct them to the 'field' path – with no mention of the official PROW route.

d) Unfortunately, the PROW access is no longer as accessible as it was before the closure. The stile is quite high and difficult for us older and arthritic members of the public to negotiate. A kissing gate would have ensured easy and level access there! There is a gate as part of the PROW entrance point, but that is kept locked, thus preventing the infirm from gaining access. Access to dogs has also been prevented, as their previous points of entry at this stile entrance have been shored up or blocked.

4. Health and Safety

- a) The steep descent and ascent from the proposed 'field' route, before it re-joins the PROW footpath, is hazardous year-round. It is covered with large loose stones that have caused me to slip and lose my footing; I have heard of other villagers finding it a challenging task to negotiate its gradient in *both* directions.
- b) In terms of safety, dogs being made to use the alternative footpath through the field, where sheep and cattle frequently graze, is unwise: Mr Pelly had given this as a positive reason to use the walk through the field because dogs could run and play there! Moreover, in terms of health, sheep and cattle manure can contain pathogens such as E. coli and Listeria, antibiotics, Cryptosporidium and are proven to be poisonous to dogs – not to mention children who walk through the field.
- c) There is a potential danger from the cattle in the field, should they take offense to dogs passing through. As dogs might pose a threat to sheep.
- d) Falling tree limbs, deep water, and prominent roots cited as dangers to the public, have not caused a problem thus far, to the best of my knowledge. Locals with decades of stories to tell about the Watercress Walk have never mentioned drownings or concussions. Indeed, Mr Pelly has taken care to keep his trees well-trimmed.

It seems to me, that desire for privacy may be a valid reason for Mr Pelly to seek the PROW to be altered in favour of the alternative route he has set out. However, there are several methods that could be used to achieve this without going to the proposed extremes: whether he plants another mature laurel hedge at the most 'open' section of the PROW: something Mr Pelly was willing enough to do along the roadside edge of his property – removing a long-established healthy beech in favour of laurel. Another option, a willow screen or fence – though a fence would be less attractive from a natural point of view.

The other arguments stated in favour of an alternative route don't really stand up to close scrutiny - which I assume is why the original footpath was given the go-ahead to obtain its PROW status in 2018 by the HM Planning Inspectorate.

Thank you for listening.

Warm regards,

[REDACTED]

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](mailto:Ali.Roberts@wiltshire.gov.uk)
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 25 February 2021 14:24:07
Attachments: [image003.png](#)
[image004.gif](#)
[image005.jpg](#)
[image006.png](#)

Please forward my comments on to the next stage of consultation. It is a disgrace that well established historic land rights would be trampled on by private interests in this fashion.

On Thu, Feb 25, 2021 at 1:49 PM Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980 Section 119

The Proposed Diversion of Footpath BRATTON 42

Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

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Ali Roberts (Miss)

Definitive Map Officer

Rights of Way and Countryside
Wiltshire Council

County Hall
Trowbridge

BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

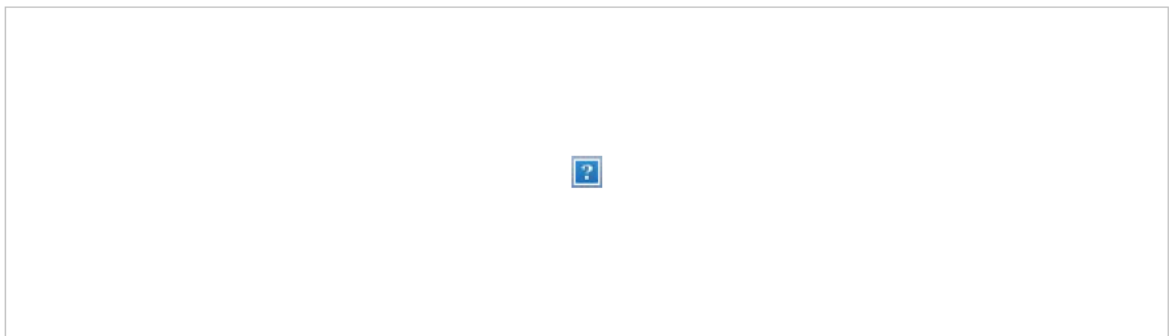
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Roberts, Ali

From: [REDACTED] >
Sent: 11 September 2020 01:14
To: Roberts, Ali
Subject: Watercress Walk

Hello

My grandparents ([REDACTED]) owned and lived in [REDACTED] imba road for the entirety of my life, before passing away a few years ago. My fondest memories with them are taking the dogs for the walk known as 'Watercress Walk' just down the road from them.

The landowner purchased the property knowing it had a historic public walk going through it and attempted to disrupt it heavily and forced locals to take legal action.

Now he wants to reroute it over an adjacent farm, completely destroying the beauty of the original historic walk.

Wealthy landowners should not be disrupting the public's right of way to walk the beautiful historic walks of this country.

Please do not let this man destroy the area of Wiltshire I am fondest of from the walks of my childhood and young-adulthood. I have pictures of myself and my grandparents on that walk 20 years ago. It is not private property, it is a historic path that a greedy man is trying to destroy to increase his property value.

[REDACTED]

 CHURCH STREET, STEEPLE ASHTON, WILTSHIRE

Ali Roberts
Rights of Way and Countryside
Waste and Environment
Wiltshire Council
County Hall, Bythesea Road
Trowbridge, Wiltshire BA14 8JN

5/3/2021

Dear Ms Roberts,

I am writing today to make my objection to the closure of the footpath that currently crosses the land adjacent to Luccombe Mill, Bratton (OS Grid References:ST 9205-5204 - ST 9222-5207).

My family and I have used this footpath for many years and have got great pleasure from walking alongside the lake. My objection to the diversion of the path is aesthetic. The attraction of a walk which encompasses this short stretch is much enhanced by the beautiful views one has of the lake and the old mill.

The general public would suffer a great loss if this footpath was to be closed for public use. It would be a terrible shame if the property interests of one owner were to encroach on the well being of the many.

Yours sincerely,



████████ ROAD
BRATTON
NR. WESTBURY
WILTSHIRE
BA13 ██████

5th April 2021

Dear Miss Roberts,

Please accept my formal objection to the proposed diversion of Footpath Bratton no.42 (part). I do not wish to withdraw it.

The original path has been in use for thousands of years. If you walk this particular path it is not hard to imagine that you are re-tracing the ancient footsteps of the monks from Edington Priory or even further back the Bronze Age settlers who farmed the terraces of the nearby valley. To connect to the past through the simple act of walking an historic route is important and should not be lost. These paths that traverse Great Britain are living history, many cross land that has changed hands over the centuries, it is a privilege to own a beautiful piece of land, but we are in truth the caretakers for many future generations who will come after us.

With kind regards,

████████

Formal objection - originally sent 29th Sept 2020 in relation to:

Highways Act 1980 – Section 119
The Proposed Diversion of Footpath Bratton no.42 (part) - Objection

Wiltshire Council are in receipt of an application, dated 5 November 2018, to divert Footpath Bratton no.42 (part), under Section 119 of the Highways Act 1980. The proposal is to divert the right of way as shown on the enclosed plan with a bold line from points A to B to the dashed line from points C to B, having a recorded width of 2 metres. The current recorded footpath is situated along the southern boundary edge of Luccombe Mill garden; the proposed route runs along the northern boundary of the pasture field to the south of the garden.

The landowner has stated the reasons for the application are as follows:

- “1. *Privacy.*
2. *Protecting the birds which nest all along the edge of the lake from dogs.*
3. *Better level access.*
4. *Health and safety:*
 - (a) *the existing route is steep and banked and often slippery.*
 - (b) *there are many trip hazards from large tree roots.*
 - (c) *the avenue of mature trees frequently drop heavy branches.*
 - (d) *the path at this section runs close to deep water.”*

IMBER ROAD
BRATTON
NR. WESTBURY
WILTSHIRE
BA13

My name is [REDACTED], I have lived at [REDACTED] Imber Road, Bratton since 1956. My grandfather, [REDACTED] bought the land on Imber Road and had built a house at [REDACTED] Imber Road by 1924. He also built the house that lies at No. [REDACTED] Imber Road by the 1930's. My father [REDACTED] and his brother [REDACTED] lived in both properties. No [REDACTED] Imber Road was sold in 1954. By then my father had married and was living at [REDACTED] Imber Road.

Including my sons, we have lived here for four generations. At no time (until September 2016) had access to the Watercress Beds been blocked, interrupted or denied for any members of our family or the public.

I have personal memories of walking along the path with my father when the beds were still laid out and growing watercress. The trees had not encroached the head of the path and the area was not overgrown. The watercress beds fell into disrepair from the 1960's onward. My father and his brother also talked of having free access to the path and the hills beyond in the 1920's.

The Water Board replaced the railway sleepers that formed the central path with a gravel path sometime in the 1970's. There was a small wooden bridge that was replaced in the 1970's by the metal bridge that was removed by Mr Pelly's builders in the autumn of 2016.

I have lived at [REDACTED] Imber Road all my life. Access to and along the path was free and unrestricted at any time of day, any day of the year until Mr Pelly purchased Luccombe Mill.

When Mr Pelly purchased Luccombe Mill in 2016 he would have had full knowledge that there was a path with historical usage running from Imber Road through to the surrounding 'Open Access' land. In fact the path was one of the reasons why a buyer before him withdrew their offer. This would have been known by the Estate agent and his solicitor.

As has been documented, soon after purchasing the property Mr Pelly cut off the path. After an enquiry, An Order Decision (Order Ref: ROW/3191558) was made by Heidi Cruickshank BSc (Hons), MSc, MIPROW, that a Right of Way be confirmed.

IMBER ROAD
BRATTON
NR. WESTBURY
WILTSHIRE
BA13

Mr Pelly has employed many devices to dissuade people from using this ancient right of way:



1. At the entrance to the Right of Way at Imber Road there is an arrow pointing into the adjoining field.



2. The first 15 yards of the path have been turfed over, obscuring it. The house is screened by trees here when walking towards Imber Road.

IMBER ROAD
BRATTON
NR. WESTBURY
WILTSHIRE
BA13



3. Before the path reaches the bridge crossing the watercress beds, a fence has recently been erected either side of the path.



4. Near the bridge, Mr Pelly has erected a sign directing walkers away from the Right of Way.

IMBER ROAD
BRATTON
NR. WESTBURY
WILTSHIRE
BA13

To conclude, my observations in reply to Mr. Pelly's reasons are;

1. *Privacy* Mr Pelly knew there was a path in existence when he purchased the property. When I recently walked at a modest pace down the path it took only 2 minutes and 30 seconds from Imber Road to the bridge at the old watercress beds. You can partially see the house when you cross the stile heading towards the Watercress Beds. Subtle planting would screen the house in the brief 20 odd seconds that a walker is on that specific part of path.

2. *Protecting the birds which nest all along the edge of the lake from dogs.*
There is a high probability that there are one or more bird's nest near the path but birds do not nest 'all along the edge of the lake', like an avian Centre Parks. I personally believe dogs should be on leads on Rights of Way after my son was once knocked over by a spaniel near Longleat.

3. *Better level access*
There is no problem with the access. Stiles have been used for centuries without misshap.

4. *Health and safety:*
 - (a) *the existing route is steep and banked and often slippery.*
The Right of Way is neither steep or slippery. I walked there recently in the rain and encountered no problems. The path is sheltered by the trees.

 - (b) *there are many trip hazards from large tree roots.*
There are some tree roots, but not concealed and at the most 1 to 2 inches high. They do not constitute a hazard.

 - (c) *the avenue of mature trees frequently drop heavy branches.*
I have walked the path for over 50 years. Only once, after the massive storm of 1987 did a large tree branch block the path.

 - (d) *the path at this section runs close to deep water .*
The water is not deep, greensand silt sits a few inches below the surface. I have never heard of anyone falling or slipping into the lake from the path, a good 15 metres away.

29th September 2020
5th April 2021

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 – Section 119 The Proposed Diversion of Footpath Bratton no.42 (part) - Upholding of original objection
Date: 05 April 2021 16:05:28
Attachments: [Watercress Footpath 2020 April 2021.pdf](#)

Dear Miss Roberts,

Please find attached the document that I wish to present in reference to - The Proposed Diversion of Footpath Bratton no. 42 (part). I do not wish to withdraw my objection.

With kind regards,

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 – Section 119 The Proposed Diversion of Footpath Bratton no.42 (part) - Objection
Date: 30 September 2020 19:46:54
Attachments: [Watercress Footpath 2020.pdf](#)

Dear Miss Roberts,

I am a Bratton resident and have lived opposite Locombe Mill at 3 Imber Road since birth. Please find attached my objection to the diversion of the Right of Way, Footpath Bratton no. 42 (part).

With kind regards,
[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Date: 26 February 2021 11:15:28

Hi Ali,

Yes please include my comments in the next stage of the process and forward on the decision report to me. I am flabbergasted that the right to walk a beautiful path in the village is being taken away from us all. It's been used for generations. Anyone who's not lived in the village for most of their lives wouldn't understand how important it is. So much for right to roam, so many children will now miss out on a magical walk with trees either side and birds singing all around. Especially in these current times when exercise, imagination and fresh air are more important than ever. What happens when sheep are in the paddock by the proposed new route and walkers have dogs with them?

Kind regards,

[REDACTED]

Sent from my iPhone

On 25 Feb 2021, at 13:49, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980 Section 119
The Proposed Diversion of Footpath BRATTON 42

-
Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

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Ali Roberts (Miss)

Definitive Map Officer
Rights of Way and Countryside
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<notice of making an order - BRAT42.docx>
<Sealed and signed made Order BRAT42.pdf>

<Bratton 42 plan.pdf>

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Re: Highways Act 1980 – Section 119 The Proposed Diversion of Footpath Bratton no.42 (part)
Date: 03 September 2020 19:03:59

Hi Ali,

I would like to add my objection / observation to the proposed footpath diversion. The current footpath which has been in use by 4 generations of my family over the past approximately 70+ years has always worked well for everyone and been regularly used by villagers and walkers / dog walkers alike. Until Mr Pelly purchased Lucombe Mill there has never been an issue with access to the current route.

Most people have some form of intrusion by the public near their property, even if it's only someone walking close to their house on a pavement. Perhaps if Mr Pelly wanted complete privacy he should have researched the village, village life, how often the footpath was being used, and maybe he should have purchased a house in the middle of nowhere with no neighbours or chance of anyone going within 200m of his property. The water acts as a boundary in any case, and as you enter the current footpath, the house and a lot of the grounds are behind you anyway.

To say that he wants the footpath closed to protect birds from dogs, seems a viable reason, yet how come birds nest they have been under threat by dogs? Dog walkers have used this route for as long as I can remember, so don't understand the basis of this. I highly doubt they nest all along the edge of the lake either. If this was the case, the footpath would have birds everywhere on it, and there was no evidence of such the last time I walked the path. Only a careless dog owner would let dogs go anywhere near nesting birds, and a simple sign to request dogs are kept on a lead until last a certain point at the start of the route would certainly help with Mr Pelly's concerns.

Mr Pelly wishes to have the paddock route used instead, yet at times there are sheep in here. So if this was made the route, how would people walk there with dogs (unless on a lead) which of course is a solution to the area where the birds nest also as mentioned before. Also, would the new footpath be roped off from the paddock so sheep could not enter the new path and possible damage it / poo all over it? If a dog attacked a sheep (god forbid) there would be huge consequences for the dog owner. In fact I'm sure dog owners would have no objection to keeping their dog(s) on a lead for the first 100m of the current walk if birds were nesting nearby.

Let's face it, this is a rural walk and as such walkers expect the ground to be uneven, have tree roots under foot and branches on the floor. It's all part of the countryside and gives children the chance to use their imagination, making this a magical walk as the path is followed along and down towards Paradise Pool. All that's needed is correct footwear and an able body.

The water has always been there and to my knowledge there has never been an issue with this. If the walk was changed to go through the paddock, it would be boring with very little to look at, the whole point of this walk is to enjoy walking under the canopy of the large trees with the water just to one side of you. The only comment I have about the current path is that the current stile does not allow access for dogs, whereas the old stile did. Which also begs the question why do birds need protecting from dogs when there's not an easy access for them to go though anymore?

Thank you for your time !

Kind regards,



Sent from my iPhone

On 1 Sep 2020, at 15:14, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980 – Section 119
The Proposed Diversion of Footpath Bratton no.42 (part)

-
-

Wiltshire Council are in receipt of an application, dated 5 November 2018, to divert Footpath Bratton no.42 (part), under Section 119 of the Highways Act 1980. The proposal is to divert the right of way as shown on the enclosed plan with a bold line from points A to B to the dashed line from points C to B, having a recorded width of 2 metres. The current recorded footpath is situated along the southern boundary edge of Luccombe Mill garden; the proposed route runs along the northern boundary of the pasture field to the south of the garden.

The landowner has stated the reasons for the application are as follows:

- “1. *Privacy.*
2. *Protecting the birds which nest all along the edge of the lake from dogs.*
3. *Better level access.*
4. *Health and safety:*
 - (a) *the existing route is steep and banked and often slippery.*
 - (b) *there are many trip hazards from large tree roots.*
 - (c) *the avenue of mature trees frequently drop heavy branches.*
 - (d) *the path at this section runs close to deep water.”*

If you would like to make any observations or representations regarding the proposal, I would be very grateful if you could forward them to me via email or in writing to the contact details below, before Wednesday 30 September 2020.

Please note that any responses to this letter will be available for public inspection in full.

Information relating to the way Wiltshire Council will manage your data can be found at: <http://www.wiltshire.gov.uk/recreation-rights-of-way>

Kind regards,

Ali

Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN
<image002.png>

Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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<Bratton 42 plan.pdf>

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 The Proposed Diversion of Footpath BRATTON 42
Date: 08 April 2021 18:21:20

To whom ever it may concern,

I am writing in opposition of the proposed diversion to footpath 42, Bratton. This picturesque and historical path has been enjoyed by the Bratton community for decades and the opportunity to enjoy the delights of this path would be a big loss. I do hope the landowner might rethink this and focus on the pleasure this brings so many.

Many thanks for your consideration,

[REDACTED]

_Sent from my iPhone

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 17 March 2021 09:55:07

Dear Sirs,

I have just heard that a long established and very popular and scenically attractive footpath is being diverted merely to appease a wealthy new landowner from out of the area. This is very disappointing and it is evident that the Council is disregarding the wishes of most of the Bratton residents and other walkers from out of the immediate area. Although due to lockdown I am not currently allowed to visit Bratton, I know the area well and have walked the path many times over the years.

I do hope the Council will now listen to the voices of the local residents and walkers, and prevent this historic and popular route being blocked off and diverted onto what will be a more boring, muddy and probably badly maintained new route.

[REDACTED]
[REDACTED],
Frome
BA11 [REDACTED]

From: [Roberts, Ali](#)
To: [REDACTED]
Subject: RE: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 26 March 2021 14:57:00
Attachments: [image003.png](#)
[image004.gif](#)
[image005.jpg](#)
[image006.png](#)

Dear [REDACTED],

Thank you for your email. Your comments have been forwarded as a formal objection to the made Order. I will keep you fully informed of any further actions on this case.

Just to clarify during this formal consultation for the made Order the vast majority of responses to date have been in support many of whom are local residents. 54 responses are in support of the made Order. 2 objectors at the initial consultation phase confirmed that they would not be objecting to the made Order, these include the Ramblers and the West Wilts Ramblers. There have been 16 responses objecting to the made Order, 10 of these were objectors at the initial consultation of the proposal who requested that their comments were taken forward to the made Order.

Kind regards,

Ali

Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN



Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

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From: [REDACTED]
Sent: 26 March 2021 13:00
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42

Dear Ali

Further to your email of 1 March.

Wiltshire Council have received thirty sincere and strongly held opinions against the proposed diversion, on the grounds of 'loss of public enjoyment' which have been considered, and in my opinion, unreasonably dismissed in apparent favour of the applicant's desire for greater privacy (greater than when he purchased the property). I, therefore, would like my submission to be forwarded to the next stage so that there may be deeper scrutiny of that decision.

Thank you

Your sincerely

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Highways Act 1980 – Section 119 The Proposed Diversion of Footpath Bratton no.42 (part)
Date: 30 September 2020 16:35:56

Dear Ms Roberts,

Re Application to divert the Public Footpath Bratton Path No. 42 (part).

Avoiding personal opinion, I wish to comment on the landowner's reasons for making this application.

The landowner states that his reasons are : 1) Privacy. 2) Protecting birds. 3) Better level access. 4) Health and Safety.

1) Privacy. Prior to the purchase of Luccombe Mill by the present landowner, the footpath through the grounds was well established; it was well away from the house on the other side of the lake, under trees and through substantial undergrowth. The new landowner's initial closure of the footpath was strongly objected to, and a decision was made (and upheld by Public Inquiry) to make it a Public Right Of Way. Meanwhile, however, the landowner cleared much of the undergrowth resulting in some loss of his own privacy. In practice, this has only affected the first 50m of the path (the application is to divert almost 200m of path); privacy-wise, this leaves the further 150m of the path almost unaffected.

2) Protecting birds. As the landowner has not included dog access in the stile at Point A in Imber Road, very few dogs are capable of accessing the path. Over very many years I am unaware of issues where birds or any animal has been harassed or frightened by a dog (this point was raised and at the Public Inquiry, and rejected).

3) Better level access. Incorrect. The Watercress Walk is actually very level; this is in contrast to the Permissive Path the landowner has created, as it has a steep slope on gravel of 1 in 3.

4) Health and Safety. People do not go off the path (trespass!). The Watercress Walk (as it has always been known) is no more slippery than any country footpath, and less so than many. Tree roots can be a feature of many footpaths in wooded areas and people look where they are walking. The steep slope on the Permissive Path is a Health and Safety risk.

Additional points.

The Council will be aware of the steps that the landowner has taken try to dissuade people using the public footpath since it was re-opened following the Public Inquiry. These include misleading signage and signs referring to CCTV surveillance.

Additionally, for most of 2020, there has no Public Right Of Way marker on the stile at Point A (this has been brought to the attention of the Rights of Way Section at the Council).

I understand that the landowner claims that only 1% of people use the Public Right

Of Way (99% using his permissive path). This claim should be ignored unless he brings forward demonstrable/verifiable evidence. Even my own use of the PROW, and that of my family, would probably add up to 1%, let alone the many others that I know who use it.

The Watercress Walk has always been known as a unique and special footpath at any time of the year and through all seasons. The loss of the first section of the footpath would be a significant loss of public enjoyment of the footpath as a whole.

Before any conclusion is made regarding the Application, I would ask that those involved in the process do acquaint themselves, and walk, both the whole of Footpath Brat 42, and also the proposed Diversion Path, in order to observe the evidence on the ground.

Thank you

A solid black rectangular redaction box covering the signature area.



Photo 1 View of house from stile July 19



Photo 2 View from near stile towards the house July 19



Photo 3 View of lake from path July 19



Photo 4 Footpath EDIN 6 at Old Mill lower Rd



Photo 5a Mud dumped on PROW 7 Dec 2018



Photo 5b Mud Dumped on PROW 10 Dec 2018: Planks removed by Who?



Photo 6 Pelly signs on the PROW by Bridge July 19



Photo 7 - Alternative route steep path July 19



Photo 8 - view along PROW



Photo 9 Outlook from Alternative path gate - July 19

Roberts, Ali

From: [REDACTED]
Sent: 28 March 2021 16:08
To: Roberts, Ali
Subject: PROPOSED DIVERSION OF FOOTPATH BRATTON 42: APPLICATION 2018/14

OBJECTION

Dear Ali,

Thanks for a copy of the decision report and the appendices. We confirm that we uphold our objection to the above application and want it to be included in any submission to the Secretary of State should the Council confirm the Order.

Decision Report

We would like to make some comments on the decision report particularly around the decision to make the order based the evidence presented by Mr Pelly and his supporting letters in Appendix A.

The evidence presented by Mr Pelly in his application, as we have said in our objection, is spurious and has no merit to support his application. The key issue for Mr Pelly is his privacy and other issues can be disregarded. The key point of our objection is the reduction in enjoyment of the path if the application is granted. We feel that the Council have given disproportionate weight to the "opinions" of Mr Pelly and Jeff Ligo over the reduction in enjoyment of the path. The 8 remaining supporter submissions do not contain any evidence to support the opinions and therefore cannot add to the application. In contrast the 30 objections clearly indicate the weight of user evidence that the diversion will make a material change to the enjoyment of the route. The Council say in the report that the diversion will make a difference to current users but this appears to be outweighed by the point that as the part of the path in contention is only a say 1/4 of the whole then this will not make much difference to the overall enjoyment. The objectors arguments clearly contradict this. We also contend that as the alterative path has access for dog walkers and as Mr Pelly refuses access by unlocking the gate to the PROW therefore making to order will reward him for his actions. On the matter of privacy we couldn't begin to count the number of gardens which can be viewed from a PROW up and down the country.

Your report indicates that there will be a reduction on the enjoyment for walkers if the application is granted but you rule this is not sufficient to outweigh Mr Pelly's threat to construct a barrier along the path the prevent a view of his house and lake.(We point out you can get a much better view of the house from the gate entrance but this appears not to invade Mr Pelly's privacy). As we said in our objection Mr Pelly cut down most if not all plants that obscured the view of the house (to enable CCTV coverage) and could easily put natural barriers to obscure the view.

Conclusion

We maintain our objection and recommend that the Council do not confirm the Order.

Regards

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: PROW DIVERSION ORDER 13/2018: BRATTON FOOTPATH 42. – "THE WATERCRESS"
Date: 19 September 2020 14:19:45
Attachments: [Obj letter photos.docx](#)

Dear Ali Roberts,

Thanks for the email you sent me on the legal issues around the above diversion order application by Henry Pelly of Luccombe Mill and Mr Pelly's application.

Objection

This objection is from my wife, [REDACTED]. We will set out below the reasons why we consider **the diversion application should be rejected** in terms of a) the legal tests and b) Mr Pelly's reasons for the diversion set out in his application.

Legal Tests

S.119 sets out the legal tests any diversion order has to satisfy. Although it is the prerogative of the Council to decide on legal tests we would, nonetheless, like to make the comments below on relevant paragraphs per your email.

For a), the application may be in the interests of the landowner but is not in the interests of those members of the public who have walked that path for decades (before it was recorded as a PROW after the Public Inquiry in September 2018). The PROW, in our view, does not impinge materially on Mr Pelly's privacy as he claims. I note that privacy was not an issue in the public Inquiry and I cannot see how the Council can approve a diversion when it spent considerable resources in recording the PROW. (See Privacy paragraph below and **photos 1-4** below).

Some users, such as some dog walkers and people less mobile may find the alternative route provided as easier to use (excepting c) below) but this is because Mr Pelly has deliberately made it difficult for some people to use the PROW and he has done the legal minimum in replacing the old stile with a similar one and deliberately blocking up gaps which allow dogs to go through. He has provided a gate next to the stile but this is kept permanently locked therefore blocking easy access to less mobile users and dog owners. By contrast he has provided a kissing gate for the alternative route, all the almost 'force' walkers to use it who cannot use the stile.

We should not need to point out that the aim of all Councils is to provide better access to all PROWs and encourage landowners to provide easier access. Mr Pelly has not done this, deliberately in our view.

Misleading Signage (Photo 6) and Mud (Photos 5a) and 5b))

There is also the matter of the misleading signage in white on a bright green background, placed on the stile and on the bridge itself which, attempting to divert people off the PROW I understand the bridge is Council furniture and therefore is this action illegal? It should also be remembered that when the path was opened Mr. Pelly was preparing his alternative route and the contractor dumped a huge amount of mud across the PROW by the bridge. Despite being asked to move it he did not. It is interesting to note that photo 5a) was taken on 7 December 2018 and 5b) on 10 December 2018. I can but wonder who removed the planks to make it even more difficult to access the legal PROW?

c) The alternative route Mr Pelly is proposing has a steep bank which in icy or wet weather can be difficult and poses a risk to the elderly and less mobile. The section of Footpath 42 in dispute is level for its entire course, (Photo 7). On one occasion we were by the bridge, in good weather, we saw walkers slipping and sliding down the slope.

d) Public enjoyment: This is the key objection as far as we are concerned. The PROW was recorded as such following a Public Inquiry in September 2018 (following a 2 year campaign). The path has to be viewed in its entirety and in our opinion, in what is ultimately a subjective judgement for all parties; the alternative route will materially affect the public's enjoyment of the path. **Photo 8** shows the disputed section on the PROW through the woodland which is entirely different aspect to the field view along the proposed diversion (**Photo 9**). The PROW is an integral part of the total walk and the alternative is a totally different aspect. Some walkers may view the PROW as getting from A to B, as it were, but for walkers who have used the path for decades and for those who appreciate woodland and lake views this is much more preferable.

Mr Pelly's Application: reasons

Privacy: This can be Mr Pelly's only serious reason for the diversion and he has admitted as much on Facebook. From what I understand no one under English Law has the legal right to **absolute** privacy. Mr Pelly seems to be obsessed with it, for instance, replacing the 200 year beech hedge at the front of his property with a laurel one so no one can have the smallest view of his house from the roadside. The House is some 75 to 100 metres from the Imber Road Stile and as Photos 1 -3 show the House and lake are mostly masked by trees and shrubs along the course of the path until it reaches the bridge. It is Mr Pelly's choice to clear shrubs and cover from near the stile, to ensure he can spy on people using the path with his CCTV. Whether he constructs fencing to hide the house if he were to lose this application is a matter for him, but there are alternatives available for him such as planting mature shrubs to obscure the view of his house. I note he had no trouble about planting mature laurel hedge!

As privacy is the only real issue for him issue then a greater claim could be made of the owners of the Old Mill, Lower Road Bratton (**Photo 4**) where a footpath passes within 3 metres of their front door! There is no doubt many more examples on PROWS up and down the country.

In his submission to Bratton Parish Council Mr Pelly makes the entirely spurious claim that 99% of people use his alternative route. The Council cannot let this go unchallenged and must ask Mr Pelly to produce documented independently verified data on this or dismiss it as an obvious ploy to bolster his application.

Mr Pelly claims that the current PROW runs through his garden. This is clearly not the case as the path runs through woodland along a field division. Any site visit will verify this.

Protecting Birds: This recalls the nesting ducks argument in the original Public Inquiry, where claims were made by objectors about signage advising walkers of nesting birds along this part of the path. Mr Pelly has cleared a lot of shrubs from the lake edge and dredged the lake which will affect the ability of birds to nest in any case. Nesting birds along lake and riversides is a common feature of public footpaths so I don't recall any paths being diverted for that reason!

Better Level access: This cannot be considered a serious reason as the PROW is mostly level along its course down to the bridge. We contend that a lot of PROWs would have to be diverted if such a spurious reason were accepted. As already pointed out the steep

gravel path on the alternative route is far more a health and safety risk in which case, using Mr Pelly's logic, the alternative path should disqualify itself.

Health and Safety: Our understanding is that a landowner has no liability for the public using the right of way except to keep the path free of obstacles or blockages of any kind. If he considers the health and safety of the route so concerning we suggest he takes a walk along some coastal paths where there are often sheer drops within a few feet of a PROW. There are usually warning signs up in such areas and the public are expected to show some common sense. This also applies to any PROW alongside a potential hazard, such as a river etc. Also there would not be many PROWs going through woodland if there the smallest risk of a branch falling. Again signs can be put up warning people of the potential danger in high winds and stormy weather. The lake is not that deep and again this is not a serious reason as most paths by river banks would be closed if that were the case.

There is also a health and Safety issue in the paddock used by the proposed diversion which is leased out to graze sheep, where dogs will be able to run freely.

Summary

We assert that the application to divert the relevant section of footpath 42 **should be rejected** as it is not in the interests of the users of the path who will suffer a material change in the nature of, and enjoyment of, the path. We would point out the path does not run through Mr Pelly's garden as claimed, but along a woodland field boundary, and his privacy would not be materially affected due to the distance of path from the house. The house is mostly shielded from view by trees and shrubs and Mr Pelly has compromised his own privacy by clearing shrubs in order to use a CCTV.

An alternative for Mr Pelly is to withdraw his diversion application, plant a natural screen of shrubs, cease using a CCTV and keep the alternative path open as a 'permissive' path. This would satisfy all concerned (excepting him of course).

Regards

[REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Objection to change of usage for Watercress Walk, Bratton
Date: 08 April 2021 10:10:46

Dear Ali

Please accept the below as our objection:

My young family and I love the Watercress Walk. The surroundings are so distinctive and my three children love the surrounding wildlife.
It would be so sad if members of the public were re-routed away from this pretty path.

With thanks

[REDACTED]

Roberts, Ali

From: [REDACTED]
Sent: 17 March 2021 10:12
To: Roberts, Ali
Cc: [REDACTED]
Subject: The Proposed Diversion of Footpath BRATTON 42

Dear Ali

I'm writing to add my support to the campaign to challenge the order to divert the footpath (Bratton 42) from its current position.

The public enjoyment and indeed our own family's enjoyment of the stunning views over the valley and Paradise Pool would be severely impacted by the proposed new route. The Council has a duty to consider the effect on public enjoyment of the path, not just as an access route. This consideration is all the more important given the known benefits of the enjoyment of the countryside to health and wellbeing. Whilst the Council also has a duty to consider the impact on the privacy of the landowner, I cannot see that this is significant in this instance given the distance of the house (c75-80 metres) from the path. The proposed new route would result in a considerable loss of amenity and public enjoyment of it.

With best wishes

[REDACTED]

From: [REDACTED]
To: Roberts, Ali
Subject: Re: Highways Act 1980 Section 119 Bratton Footpath 42
Date: 25 February 2021 16:41:26
Attachments: [image003.png](#)
[image004.gif](#)
[image005.jpg](#)
[image006.png](#)
[image006.png](#)

My comment is that it is unfortunate that the amenity of a rich and privileged individual should deprive the public of the visual and spiritual amenity long enjoyed by the public. I hope a more reasoned and dispassionate review will restore the public's long enjoyed rights of access, myself included.

[REDACTED]

On Thu, 25 Feb 2021, 13:49 Roberts, Ali, <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980 Section 119

The Proposed Diversion of Footpath BRATTON 42

Wiltshire Council has made the above Order on 16 February 2021. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

You have responded to the initial consultation. I am therefore contacting you to ask if you wish your comments to be forwarded on to the next stage of the process now that the Order has been made and if you have further comments you would like to make.

Please also let me know if you wish to see the decision report recommending an Order is made.

Kindest regards,

Ali

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<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)

Definitive Map Officer

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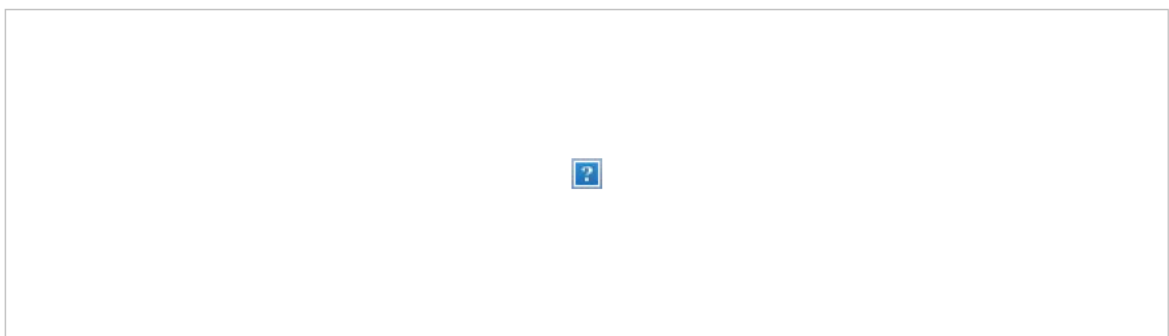
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Roberts, Ali

From: [REDACTED]
Sent: 07 September 2020 18:13
To: Roberts, Ali
Subject: The proposed diversion of footpath bratton no 42 (prt).

With regards to the above I wish to lodge an objection.

My reasons are as follows:

Amenity - the alternative route is behind a high fence with no view of the pools. It is in no manner equivalent. This is about the right of the public to enjoy a route and views going back not decades, not centuries but millenia. This is without a doubt a neolithic landscape no one has the right to claim it as their sole preserve. This an iconic landscape without compare in Europe.

I have walked this route frequently over the last 30 years and to be excluded now would leave me feeling that authority has completely capitulated to purchased privilege. It is a magical route and belongs to all not someone who has purchased privilege and entitlement.

The birds can manage very well without the faux security offered by this wholly spurious proposal.

The level access argument is patronising and self serving. I am 65 and if I wanted a level path I would walk in the city. This the argument of someone who clearly has no feel for rural living and walking.

I can manage my own health and safety. We can close all footpaths and be very safe and what a sad world that would be!

I should say I live in a rural setting and a footpath runs past my back gate and my garden is overlooked. No one has an absolute right to privacy, we live in a crowded country and should have the confidence to share our precious landscape.

As an aside the threat to close off the path with a high fence if he does not get his way should be seen for what it is, the act of a narcissistic self entitled bully. I hope your planning department is on the case. The protection of this path was recently fought for and should not be easily relinquished.

[REDACTED]

[REDACTED] brimhill rise chapmanslade Wiltshire ba13 [REDACTED]

[REDACTED]

Roberts, Ali

From: [REDACTED]
Sent: 15 March 2021 20:00
To: rightsofway
Subject: Luccombe (Near Bratton, Westbury Wilts) Proposed RoW change (Objection deadline 9 April 2021)

Hello,

I hope I have the correct email address to register my objection to the proposed change of route.

Whilst I use the Permissive route when the path is in good condition and to give the family privacy, I reserve the right to use the actual RoW. I do this rarely, but when the permissive path is not suitable. This seems to fall into 2 distinct categories. The first is on wet days when the permissive route just does not have the quality foundations and the route becomes much more a mud bog. If it is too slippery then the use of the RoW is advantageous. This is in far better condition. Therefore I object on the grounds that the quality of the path is not up to the standard on many days in the year. My second reason is that the proposed route runs through an open field. This field could be populated by livestock, whether Horse, Cow or Sheep. Some of these animals can be tricky to pass when out walking (ie Cows and some Horses) and in addition their wear will further degrade the path of the proposed Right of Way rerouting.

Yours sincerely

[REDACTED]
Westbury, Wiltshire. BA13 [REDACTED]

Photographs of current route, proposed route and continuation of path showing Footpath Bratton 42 in its entirety

Current route



Sept 2020 route accessed via a stile



Mar 2021 view of Luccombe Mill



Sept 2020 showing the tree lined route along the mill pond



Mar 2021 and view of the mill pond



Sept 2020 camber of path



Sept 2020 exposed tree roots



Mar 2021 exposed tree roots



Mar 2021 surface condition



Mar 2021 bike tracks can be viewed in the surface of the footpath

Proposed route



Sept 2020 access via a kissing gates



Sept 2020 view of Luccombe Down



Mar 2021 to show condition following heavy rainfall



Mar 2021 walked route clearly visible



Sept 2020



2021 following installation of steps



Continuation of Bratton 42 from the proposed diversion point through the wood taken



Sept 2020 the bridge is situated and the continuation point of the diversion



Sept 2020 watercress beds



Mar 2021 showing clearance work



Sept 2020 paradise pool



Sept 2020



Sept 2020



Sept 2020 gradient of section

REPORT FOR THE WESTERN AREA PLANNING COMMITTEE

Date of Meeting	7 July 2021
Application Reference	20/11601/REM
Site Address	Land East of Spa Road, Melksham
Proposal	Reserved Matters for 25 homes forming Phase 1A of outline planning permission originally granted under 14/10461/OUT and varied by consented application 17/09248/VAR. REM approval is sought for all outstanding matters relating to this phase, comprising Scale, Layout, External Appearance, Landscaping, Internal Access Arrangements and the Mix and Type of Housing.
Applicant	BDW South West Mr Mark Powell
Town / Parish Council	Melksham Without CP
Electoral Division	Melksham South – Cllr Sankey
Grid Ref	391581 - 163371
Type of Application	Reserved Matters Application
Case Officer	Jemma Foster

Reason for the application being considered by Committee

This application has been 'called in' for the Western Area Planning Committee to determine at the request of the local ward member (prior to the May election), by Cllr Nick Holder should officers be minded to support the application so that the elected members can consider the following material matters:

- The relationship to adjoining properties
- The environmental or highway impact
- To open this application to public debate at the request of the Parish Council and local residents.

1. Purpose of Report

The purpose of this report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application should be approved subject to conditions.

2. Report Summary

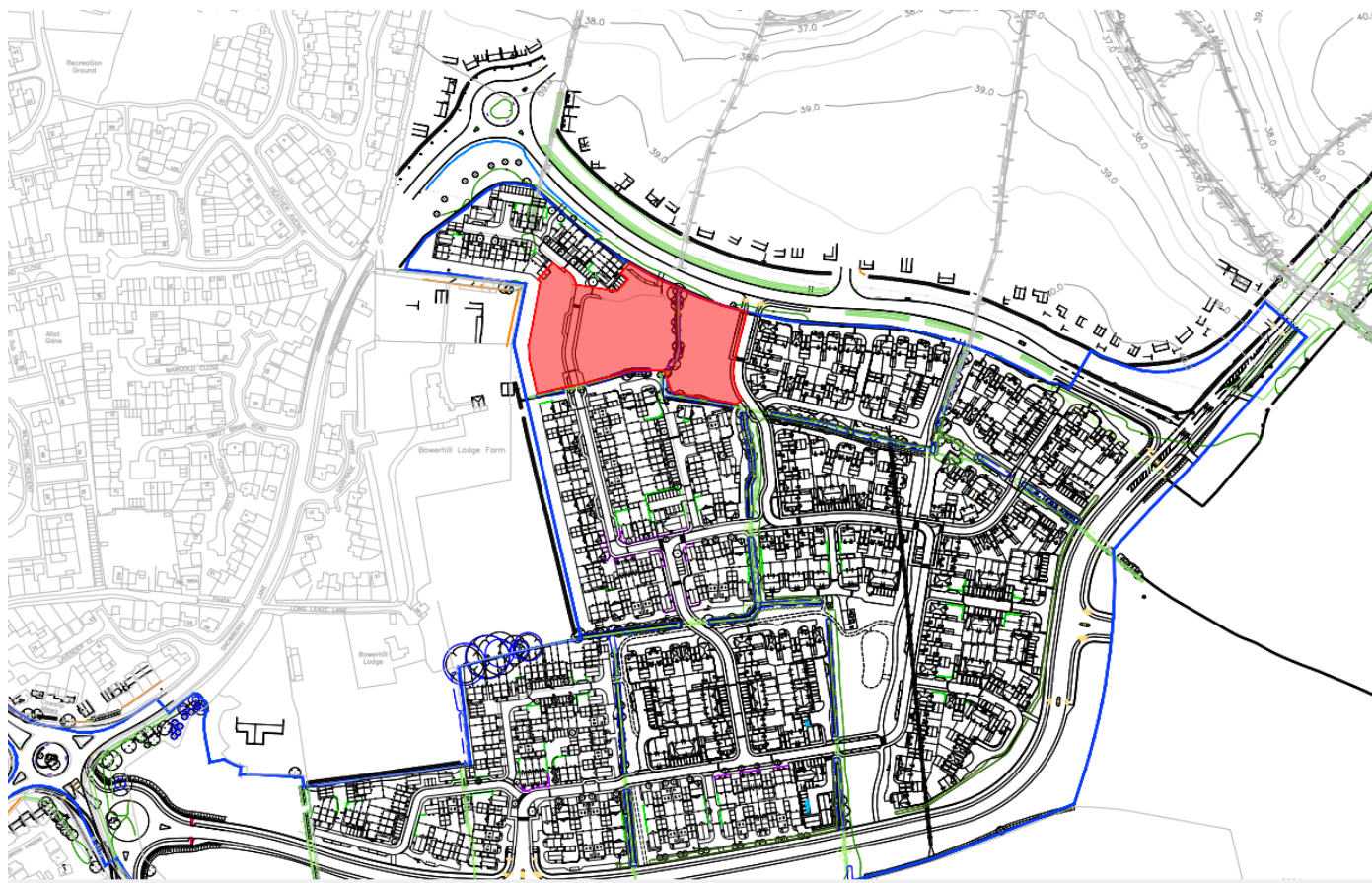
The key determining planning issues are considered to be: The principle of development, the impacts upon the area and wider landscape; drainage impacts, heritage asset setting impacts as well as highway impacts and neighbouring impacts.

3. Site Description

The red lined extent of the application site is shown below left – which is a parcel of land that is located outside the town policy limits of Melksham as map insert reveals below right (with the black line depicting the settlement limits). However, as referenced above within the application description, the site benefits from extant outline planning permission and reserved matters approval for 447 dwellings.



The site is known as Land East of Spa Road, Melksham and the particular phase to which this application refers, extends to approximately 1 hectare in size and forms part of the wider site's development for housing – which is illustrated below, and is well under way.



The site is relatively flat and previously comprised agricultural land forming part of two fields which are bisected by hedgerow with the southern boundary formed by hedgerow. The site is within the Melksham Without Parish.

4. Planning History

14/10461/OUT – Erection of 447 dwellings and access – Approved 22/09/2016

17/09248/VAR – Variation of Condition 32 of 14/10461/OUT relating to site access – Approved 09/08/2018

18/04644/REM – Erection of 447 Dwellings – Approved 05/12/2018

18/02128/FUL – Construction of surface water drainage detention basin, associated with permission 14/10461/OUT, including associated access, groundworks and landscaping – Approved 15/08/2018

21/01111/REM – Erection of 50 dwellings – pending a decision (reported to WAPC for consideration)

Note: There have been additional variation and REM applications for this site, but these have not been implemented.

5. The Proposal

This application seeks REM approval for various material revisions to the scheme previously consented under the 18/04644/REM application. The proposed changes are summarised as follows:

To reduce the number of dwellings within the phase from 27 to 25; and to: -
 To remove **two** 2bed dwellings and remove **five** 3bed dwellings as previously consented; and to erect **five** 4bed dwellings in their place.

The previous approved layout is illustrated below:



The proposed revised layout which requires committee determination is revealed next:



6. Planning Policy

The Wiltshire Core Strategy (adopted Jan 2015): CP1 – Settlement Strategy, CP2 – Delivery Strategy, CP15 – Spatial Strategy Melksham, CP45 (meeting Wiltshire’s housing need) CP57 – Ensuring High Quality Design and Place Shaping, CP58 – Ensuring the Conservation of the Historic Environment, CP60 – Sustainable Transport, CP61 – Transport and New Development, CP64 – Demand Management, CP67 – Flood Risk

Saved Policies for the West Wiltshire District Local Plan (1st Alteration): U1a Foul Water Disposal.

Other Matters

- The Wiltshire Waste Core Strategy (adopted 2009)
- Policy WCS6 - Waste Reduction and Auditing
- The Wiltshire Local Transport Plan (LTP) and Car Parking Strategy
- National Planning Policy Framework 2019 (NPPF)
- Planning Practice Guidance (PPG)
- Circular 06/2005 – Biodiversity and Geological Conservation
- “The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning 3” (HE GPA3)
- The emerging Joint Melksham Neighbourhood Plan (which has a referendum date set and can be afforded significant weight in the planning balance)

7. Consultations

Melksham Without Parish Council – Objects and expressed a disappointment that work is still taking place on the site whilst there are flooding issues affecting neighbouring properties and until the flooding issues are resolved, the Parish Council is unable to support any further changes to the planned redevelopment of the site. The application proposes the removal of several smaller dwellings and provide five 4bed units when there is local demand for smaller properties. Can some affordable/social housing be allocated on this application site in order to give an even spread?

Melksham Town Council – Objects and cannot support any further progress of building works until the specific issues are resolved.

Wiltshire Council Drainage – No objection.

Wiltshire Council Urban Designer – No objections to amended plans

Wiltshire Council Archaeology - No objection

8. Publicity

The application was advertised by a site notice and individually posed neighbour notification letters. The deadline for third party representations was 5 March 2021. In response to the public notification exercise, 6 letters of objection have been received. The objections and comments are summarised below:

Drainage Concerns

- The flooding that has occurred since building works began is not due to the exceptional weather events.
- The implementation of new drainage ditches must call into question the validity of the flood assessment for the whole site.
- The blue line on the flood mitigation proposal is an extended land drain – is this to be a ditch or buried?
- The green/yellow lines are ditches/hedge lines which run into areas with no external access – who will maintain these features?
- The enhanced flood mitigation should extend around Farmhouse Court to prevent further damage.
- The flooding may have an impact upon the stability and preservation of third-party boundary walls which forms part of the listed curtilage of Farmhouse Court.
- Has the flood mitigation proposal been presented to the Council for its approval?

Impact on Amenity

- The land has been raised by 1m which has had a greater impact on residential amenity.

- The proposed orientation of the new dwellings would result in additional loss of privacy/amenity.
- The bedroom windows would overlook neighbouring properties and gardens.
- The proposed dwellings would be built on elevated land and would lead to overbearing of neighbours.

Other Matters

- Works should be stopped on site as Wiltshire Council are aware of the issues and are yet to take any action.
- An ecological survey is being redone by the same company that provided the flawed assessment previously.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

9.1 Principle of Development

The principle of residential development for this site has already been established through the approval by the Council of the 2014 outline application and the 2018 reserved matters application. This application seeks consent for material revisions to the previously approved reserved matters and the Council can only consider those matters which are reserved by the outline and the details of the REM submission which in the case of this application, includes the proposed reduction in the number of homes to be built within the identified phase (from 27 to 25); and the construction of five 4bed dwellings and to not construct two 2bed homes and five 3bed dwellings as previously approved. The following table sets out the spread of the previously consented phase and what is now proposed:

	<u>As-approved in</u> 18/04644/REM	Proposed in 20/11601/REM
2 bed	2	-
3 bed	9	4
4 bed	16	21
Total	27	25

Melksham Without Parish Council have enquired whether additional affordable social housing can be secured for the development site within their consultation response. This cannot be secured at this REM stage as the quantum of social housing has been set by the 2016 outline application - which has been implemented via subsequent approved REM/VAR applications. The Council cannot impose additional obligations at this stage, as doing so would be *Ultra Vires*; and in any case, it should be noted that the proposed housing quantum would be less than what was previously consented. It is important to confirm that the spread of the policy required affordable/social housing provision across the entire site has already been agreed and is not open for re-consideration. The proposed revised layout for this REM submission reveals the nearest pepper potted A/H provision to the immediate north of this phase - indicated by way of yellow and blue dots on the submitted plans.

Whilst the local concern is noted about the proposed removing of seven 2 and 3bed units from this particular phase, it is important to be cognisant of the fact that the consented 2018 reserved matters application, to which this parcel of land forms a part, included the following market housing (19) 2bed units, (60) 3bed units and (104) 4bed market houses (totalling 183). If approved and implemented, the total for the wider land parcel area would be (17) 2bed units, (55) 3bed units and (109) 4bed units (181 units).

The affordable housing provision would remain unchanged and would still comprise: (8) 1bed units, (34) 2bed units, (24) 3bed properties and (2) 4bed homes in addition to the above.

Officers are satisfied that there would still be a good spread of housing types to meet a range of housing demands across the wider site.

9.2 Impacts upon the character and appearance of the area

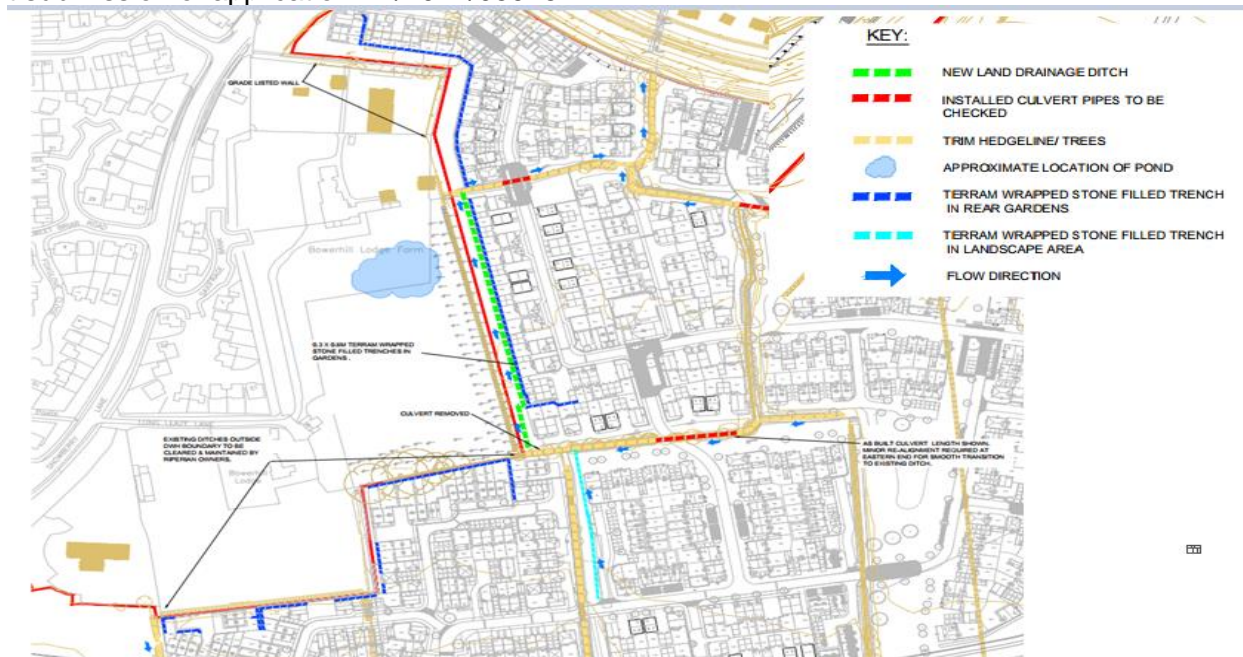
The proposed revision to this phase of development would not have an adverse impact upon the character and appearance of the area. The proposed dwellings would remain two storey and would use materials that have already been approved for the wider site. The orientation of the new house types would be similar to the layout previously approved and the land levels have not been significantly increased.



It has been noted that concerns have been raised regarding the landscaping of the buffer zone. This was subject to a suspensive planning condition which was approved under application 19/01789/DOC that includes a structural woodland mix for the buffer and the planting of wild cherry, birch, hornbeam and field maples – which is illustrated above. This REM application does not seek to change this approved buffer.

9.3 Drainage and Flooding Concerns

The local concerns expressed about site flooding and neighbouring impacts are duly noted. Officers are aware of some dwellings near the site experiencing some surface flooding to their gardens. Officers from the development management and planning enforcement team as well as the Councils drainage team engaged with the developers and the affected neighbours to ascertain the source of the flooding which led to the recent submission of application PL/2021/05925.



The recently submitted PL/2021/05925 application was submitted on the back of the recent off-site surface water flooding events, which updated and addressed the drainage condition requirements set within the original outline consent for 14/10461/OUT. Officers can confirm that the additional technical details submitted to the Council have been appraised by the Councils drainage team and Wessex Water, and both are satisfied with the revised surface water drainage plans that reflect the land level changes made on the site during construction, and have confirmed that the surface water and foul drainage connections are to be adopted by Wessex Water, and would fall within the scope of the extant s104 adoption agreement.

Officers are therefore satisfied that the drainage system and the remedial works enshrined within the recent DoC application (as shown below) would mitigate the impacts of the development and would not make things worse, thus satisfying the Framework requirements.

It is important to fully appreciate that the changes submitted as part of this reserved matters application do not impact upon the recently submitted discharge of condition application and as such, it does not result in any drainage or flooding concerns that would warrant a reason to refuse the application.

9.4 Impact upon the setting of the Listed Building

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires ‘*special regard*’ to be given to the desirability of preserving a listed building or its setting.

Paragraph 193 of the NPPF states that “*when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. ... This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*”

The following points are taken from the Historic England document “The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning 3” (HE GPA3) that are considered to be particularly relevant:

HE GPA3 Part 1:

“The NPPF makes it clear that the setting of a heritage asset is the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset.”

“The extent and importance of setting is often expressed by reference to visual considerations. ...views of or from an asset will play an important part...”

“While setting can be mapped in the context of an individual application or proposal, it cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset. This is because the surroundings of a heritage asset will change over time.”

“The importance lies in what the setting contributes to the significance of the heritage asset or to the ability to appreciate that significance.”

The listed building in question is Berkeley House (which is grade II listed), which was originally listed as Bowerhill Lodge Farmhouse was split into four dwellings and is located North East of this application site. Also, to the north, there is an inverted U shape stable block that is considered to be a curtilage listed building to the main farmhouse and has been considered as such, when the stable block was converted to residential use.

This revised REM proposal does not compromise the previous conservation officer conclusions which recognised that the proposed dwellings facing the listed buildings were all two storey which would have a landscape buffer. The approved buffer between the proposed development and the boundary of the listed buildings would be maintained at 10 metres to 12.75 metres.

Officers are satisfied that this REM proposal would not harm the setting of the nearby listed and curtilage listed buildings, and the development would comply with the relevant policies of the adopted Core Strategy namely CP57 and CP58, as well as conforming with the Historic England guidance contained within “The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning” and would accord with the NPPF.

9.5 Neighbouring Amenity Impacts

This revised AREM proposal would not result in any additional housing units along the north western site boundary which is closest to the existing dwellings/neighbours. There would still be seven units as previously approved and would remain two storey with the same orientation and maintain the same separation distances as previously approved with the 15 metre landscape buffer which would secure at least a 21m separation from the proposed rear elevations to the boundaries of the neighbouring properties.

Officers raise no neighbour impacts grounds of concern with respect to overlooking, overshadowing or overbearing when the revisions are compared against the extant approved plans.

Concerns have been raised regarding the increased land levels on the site which has consequently led to the proposed dwellings on the boundary being higher than the neighbours initially thought. For clarification purposes the approved finished ground levels along the north western boundary varied between 40.8m AOD to 41m AOD. At the outline stage, the existing land levels in this area were shown as between 39.6m AOD to 40m AOD which represents a 1.4m increase of the land levels along the northern part of this site which has been approved.

Under this revised REM application, that are a few plots with increased land levels of between 10-20cm which officers are satisfied would not result in demonstrable harm to neighbouring interests, and it has been observed that in the main, the proposed finished floor levels would be slightly lower across the site. The following insert reveals what was previously approved and what is now proposed in terms of the finished floor levels for the properties near to the north west site boundary - which officers are satisfied about.



9.6 Highway Impacts

The vehicular access and highway layout are not subject to any revision under this application. The car parking provision and proposed garaging all comply with the Wiltshire Car Parking Strategy.

10. Conclusion

The proposed REM revisions to what was previously approved are considered acceptable when assessed against the adopted Wiltshire Core Strategy and the emerging Neighbourhood Plan and the NPPF, and as such, officers recommended that the committee approves this REM application subject to the following conditions.

11. Recommendation – Approve subject to the following conditions:

Conditions: (11)

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing RP1-PL: 01A (site location plan); Drawing 02-A (context plan); Drawing 03-A (coloured site plan layout); Drawing 03-E (planning layout replan 1); Drawing 04-B (materials plan); Drawing RP1-SS-01A (street scene plan); Drawing 4769-L: 209R (strategic landscape drawing 1 of 5); Drawing 218-O (landscape hedgerow corridor drawing 1 of 1); Drawing 219-K (landscape boundary 1 of 1); Drawing 22-P (landscape proposal 1 of 4); Drawing RP1-HT: GAR 01 (garage) and GAR-02 (garage); Drawing AVO-18023-CIV-5000 A; Drawing of House Types: RP1-HT: HADLEY-01, ARCHFORD-01A, INGLEBY-01, KIRKDALE-01, AVONDALE-01, AVONDALE-02, HOLDEN-01, CORNELL-01

REASON: For the avoidance of doubt and in the interests of proper planning

- 2 The development hereby approved shall be carried out in strict accordance with the Construction Environmental Management Plan (CEMP) approved by the Local Planning Authority under application reference number 19/01795/DOC.

REASON: To ensure the development is undertaken in an acceptable manner, in the interests of preventing pollution of the water environment

- 3 The materials to be used for the external walls and roofs shall be carried out in accordance with the details approved by the Local Planning Authority under application reference number 19/05715/DOC.

REASON: In the interests of visual amenity and the character and appearance of the area

- 4 The area of hardstanding adjacent to the Grade II Listed Building that is to be removed shall be carried out in accordance with the method statement that was approved by the Local Planning Authority under application reference 19/01795/DOC.

REASON: In the interest of preserving the Grade II Listed Wall.

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order

with or without modification), the garage(s) hereby permitted shall not be converted to habitable accommodation.

REASON: To secure the retention of adequate parking provision, in the interests of highway safety.

- 6 The development hereby permitted shall be carried out in accordance with the drainage scheme for the southern area of the site including the associated attenuation pond, landscaping and infrastructure works that was approved by the Local Planning Authority under application reference 19/04603/DOC

REASON: To ensure suitable drainage for the site.



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REPORT FOR THE WESTERN AREA PLANNING COMMITTEE

Date of Meeting	7 July 2021
Application Reference	21/01111/REM
Site Address	Land East of Spa Road, Melksham
Proposal	Reserved Matters for 50 homes forming part of Phases 4A and 5A of outline planning permission originally granted under 14/10461/OUT and varied by consented application 17/09248/VAR. REM approval is sought for all outstanding matters relating to this phase, comprising Scale, Layout, External Appearance, Landscaping, Internal Access Arrangements and the Mix and Type of Housing.
Applicant	BDW South West Mr Mark Powell
Town / Parish Council	Melksham Without CP
Electoral Division	Melksham East – Cllr Sankey
Grid Ref	391504 - 163062
Type of Application	Reserved Matters Application
Case Officer	Jemma Foster

Reason for the application being considered by Committee

This application has been ‘called in’ for the Western Area Planning Committee to determine at the request of the local ward member (prior to the May election), by Cllr Nick Holder should officers be minded to support the application so that the elected members can consider the following material matters:

- The relationship to adjoining properties
- The environmental or highway impact
- To open this application to public debate at the request of the Parish Council and local residents.

1. Purpose of Report

The purpose of this report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application should be approved subject to conditions.

2. Report Summary

The key determining planning issues are considered to be:

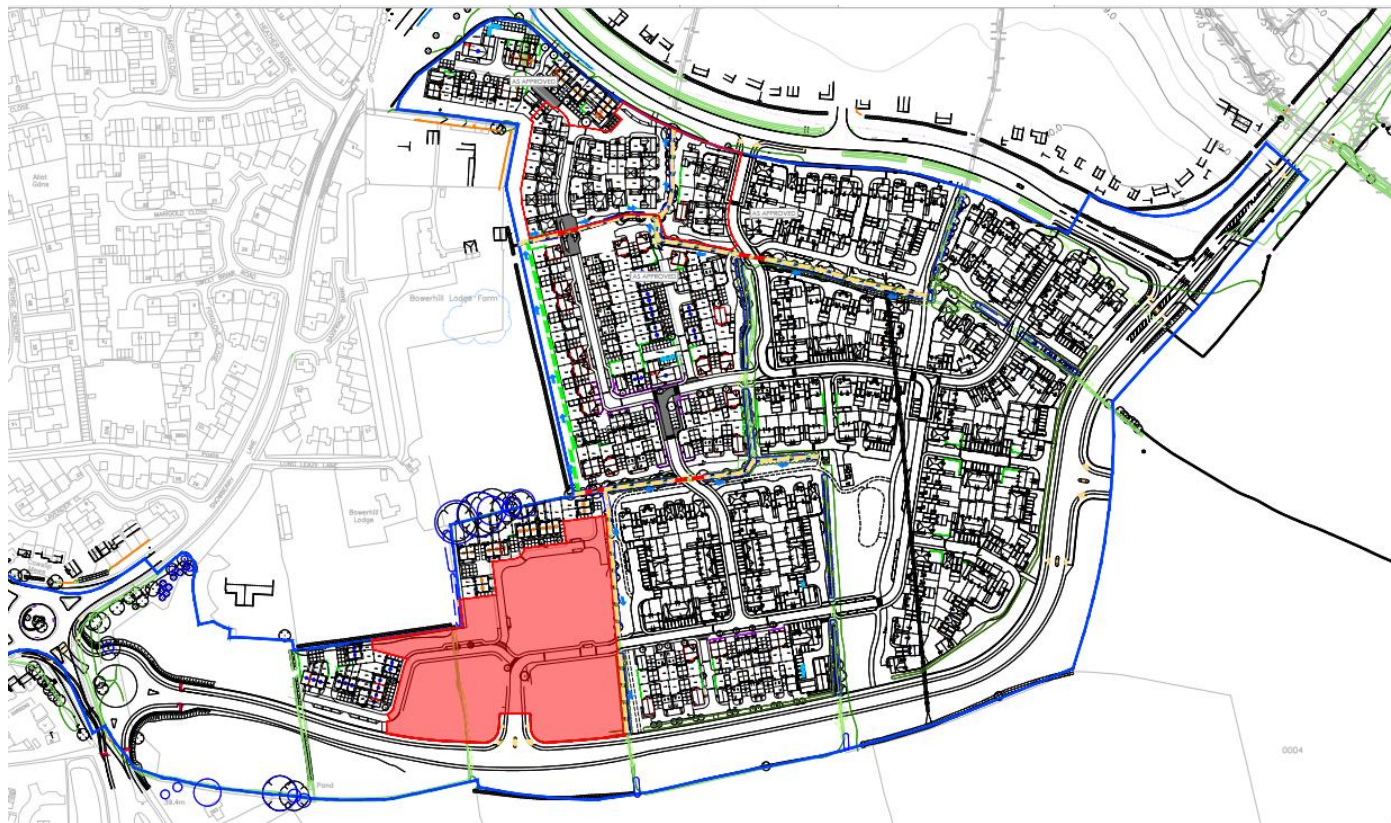
The principle of development, the impacts upon the area and wider landscape; drainage impacts, heritage asset setting impacts as well as highway impacts and neighbouring impacts.

3. Site Description

The red lined extent of the application site is shown below left – which is a parcel of land that is located outside the town policy limits of Melksham as map insert reveals below right (with the black line depicting the settlement limits). However, as referenced above within the application description, the site benefits from extant permission for 447 dwellings.



The site is known as Land East of Spa Road, Melksham and the particular phase to which this application refers, extends to approximately 1.57 hectares (referred to as phases 4A and 5A) and is part of the wider site's development for housing – which is illustrated below and is well under way.



The site is relatively flat and comprises agricultural land forming part of two fields which are bisected by hedgerow with the southern boundary forming hedgerow. The site is within the Melksham Without parish.

4. Planning History

14/10461/OUT – Erection of 447 dwellings and access – Approved 22/09/2016

17/09248/VAR – Variation of Condition 32 of 14/10461/OUT relating to site access – Approved 09/08/2018

18/04644/REM – Erection of 447 Dwellings – Approved 05/12/2018

18/02128/FUL – Construction of surface water drainage detention basin, associated with permission 14/10461/OUT, including associated access, groundworks and landscaping – Approved 15/08/2018

20/11601/REM – Erection of 25 dwellings – pending a decision (reported to WAPC for consideration)

Note: There have been additional variation and REM applications for this site, but these have not been implemented.

5. The Proposal

This application seeks REM approval for various material revisions to the scheme previously consented under the 18/04644/REM application. The proposed changes are summarised as follows:

To increase the number of dwellings within the phase from 48 to 50; and to: -

To replace **three** 2bed dwellings and **two** 3bed dwellings from the phases as previously consented; and to erect **seven** 4bed dwellings in their place.

The proposed 2 additional units should be considered as an equalisation of the housing numbers with due regard given to the proposed deletion of two units from the 20/111601/REM scheme layout.

The approved phased layout of this part of the site is illustrated below:



The proposed revised layout (which would sit alongside the remainder of the consented residential development) is shown below:



6. Planning Policy

The Wiltshire Core Strategy (adopted Jan 2015): CP1 – Settlement Strategy, CP2 – Delivery Strategy, CP15 – Spatial Strategy Melksham, CP45 (meeting Wiltshire’s housing need) CP57 – Ensuring High Quality Design and Place Shaping, CP58 – Ensuring the Conservation of the Historic Environment, CP60 – Sustainable Transport, CP61 – Transport and New Development, CP64 – Demand Management, CP67 – Flood Risk

Saved Policies for the West Wiltshire District Local Plan (1st Alteration): U1a Foul Water Disposal.

Other Matters

- The Wiltshire Waste Core Strategy (adopted 2009)
- Policy WCS6 - Waste Reduction and Auditing
- The Wiltshire Local Transport Plan (LTP) and Car Parking Strategy
- National Planning Policy Framework 2019 (NPPF)
- Planning Practice Guidance (PPG)
- Circular 06/2005 – Biodiversity and Geological Conservation
- “The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning 3” (HE GPA3)
- The emerging Joint Melksham Neighbourhood Plan (which has a referendum date set and can be afforded significant weight in the planning balance)

7. Consultations

Melksham Without Parish Council – No objection, but asks that consideration be given to the provision of a roundabout (in line with the rest of the current relief road/Eastern Way) on the exit to this development to provide a safer egress for vehicles, onto the new road proposed off Eastern Way to Spa Road, which would be used as a relief road from Sandridge Road to access the A365/A350.

Melksham Town Council – Objects and requests confirmation that the floor level of the new properties would be at the level of those originally proposed on drawings 4769-L-226 and 4769-L-227, which indicates that the new houses should have had the same floor level as existing properties. The floor levels of the new properties already developed are at least 1m higher than that indicated on the plan drawings. The higher floor levels have created overlooking of existing properties. The Town Council is also extremely concerned about flooding with the area and argues that more housing would exacerbate the problem.

Wiltshire Council Urban Designer – No objections.

Wiltshire Council Highways – No objection.

Wiltshire Council Drainage Team – No objection

8. Publicity

The application was advertised by a site notice and individually posed neighbour notification letters. The deadline for third party representations was 9 April 2021. In response to the public notification exercise, 5 letters of objection have been received. The objections and comments are summarised below:

Drainage Concerns

- There is a flooding problem due to the raising of the road level and surrounding development. This has led to flooding of neighbouring land. One objector asserted that this was the first time they had experienced surface water flooding in 46 years.
- The flooding has caused damage to the boundary fencing, third party property and garden and had access to my heating and hot water turned off as their propane tank was positioned within the flooded garden.
- No proper drainage system has been installed.
- The flooding has submerged trees and hedges

Other Concerns

- The ecology reports are out of date
- The elevation plans do not show that the houses are to be built higher than the existing land levels.
- There has been no response to a planning enforcement complaint.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

9.1 Principle of Development

The principle of residential development for this site has already been established through the approval by the Council of the 2014 outline application and the 2018 reserved matters application. This application seeks consent for material revisions to the previously approved reserved matters and the Council can only consider those matters which are reserved by the outline and the details of the REM submission which in the case of this application includes the proposed increased (equalisation) of new houses to be built within the identified phase (from 48 to 50); and to construct seven 4bed dwellings and not construct three 2bed and two 3bed dwellings as previously approved. The following table sets out the spread of the previously consented phase and what is now proposed:

	As-approved in 18/04644/REM	Proposed in 20/01111/REM
2 bed	4	1
3 bed	14	12
4 bed	30	37
Total	48	50

It is important to appreciate that the Council cannot seek to impose additional affordable housing obligations on the developer pursuant to affordable social housing if this application is approved along with 20/11601/REM, as the developer is not proposing to build any more houses beyond what was previously consented and the quantum of social housing has already been agreed and secured by the 2016 and the 2018 applications.

Whilst the local concern is noted about this proposed deletion of three 2bed and two 3bed homes from these two phases, it is important to be cognisant of the fact that the consented 2018 reserved matters application, to which this parcel of land forms a part, included the following approved market housing mix: (19) 2bed units, (60) 3bed units and (104) 4bed market houses (totalling 183).

If this application is approved along with 20/11601/REM (which is also on committee agenda) the house type mix would be:

(14) 2bed units (**5 fewer** overall with 3 less for phases 4a and 4b), (53) 3bed units (**7 fewer** overall with 2 less for phases 4a and 4b) and (116) 4bed units (**12 more** overall with 7 more for phases 4a and 4b).

The affordable housing provision would remain unchanged and would still comprise: (8) 1bed units, (34) 2bed units, (24) 3bed properties and (2) 4bed homes in addition to the above.

Officers are satisfied that there would still be a good spread of housing types to meet a range of housing demands across the wider site.

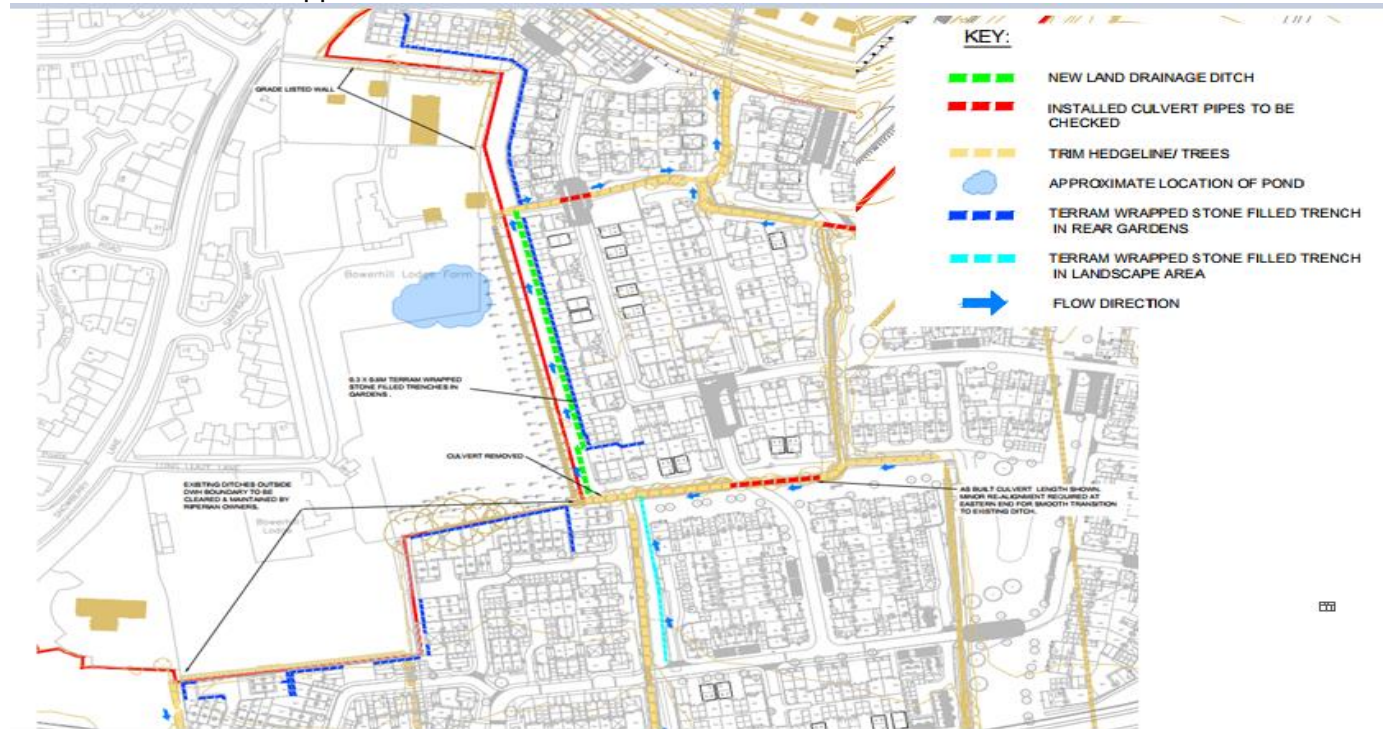
9.2 Impacts upon the character and appearance of the area

The proposed revision to this phase of development would not have an adverse impact upon the character and appearance of the area. The proposed dwellings would be two storey and would utilise materials that have already been approved for the wider site. The orientation of the new house types would be similar to the layout previously approved and the land levels have not been significantly increased.

9.3 Drainage and Flooding Concerns

The local concerns expressed about site flooding and neighbouring impacts are duly noted. Officers are aware of some dwellings near the site experiencing some surface flooding to their gardens. Officers from the

development management and planning enforcement team as well as the Councils drainage team engaged with the developers and the affected neighbours to ascertain the source of the flooding which led to the recent submission of application PL/2021/05925.



The recently submitted PL/2021/05925 application was submitted on the back of the recent off-site surface water flooding events, which updated and addressed the drainage condition requirements set within the original outline consent for 14/10461/OUT. Officers can confirm that the additional technical details submitted to the Council have been appraised by the Councils drainage team and Wessex Water, and both are satisfied with the revised surface water drainage plans that reflect the land level changes made on the site during construction, and have confirmed that the surface water and foul drainage connections are to be adopted by Wessex Water, and would fall within the scope of the extant s104 adoption agreement.

Officers are therefore satisfied that the drainage system and the remedial works enshrined within the recent DoC application (as shown below) would mitigate the impacts of the development and would not make things worse, thus satisfying the Framework requirements.

9.4 Impact upon the setting of the Listed Building

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires ‘special regard’ to be given to the desirability of preserving a listed building or its setting.

Paragraph 193 of the NPPF states that “when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. ... This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”

The following points are taken from the Historic England document “The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning 3” (HE GPA3) that are considered to be particularly relevant:

HE GPA3 Part 1:

“The NPPF makes it clear that the setting of a heritage asset is the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset.”

“The extent and importance of setting is often expressed by reference to visual considerations. ...views of or from an asset will play an important part...”

“While setting can be mapped in the context of an individual application or proposal, it cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset. This is because the surroundings of a heritage asset will change over time.”

“The importance lies in what the setting contributes to the significance of the heritage asset or to the ability to appreciate that significance.”

The listed building in question is Berkeley House (which is grade II listed), which was originally listed as Bowerhill Lodge Farmhouse that was split into four dwellings and is located North East of this application site. Also, to the north, there is an inverted U-shaped stable block that is considered to be a curtilage listed building to the main farmhouse and has been considered as such when the stable block was split into five dwellings.

The Berkeley House property is however more than 190m from the site and would not be materially harmed by this development.

There are also grade II listed buildings to the south of the application site known as The Spa buildings – which are over 170m from the site and the listed houses would not be materially harmed by this development.

This revised REM proposal does not compromise the previous conservation officer conclusions. Officers are satisfied that this REM proposal would not harm the setting of the distant listed buildings, and the development would comply with the relevant policies of the adopted Core Strategy namely CP57 and CP58, as well as conforming with the Historic England guidance contained within “The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning” and would accord with the NPPF.

9.5 Neighbouring Amenity Impacts

This revised REM proposal would not result in any additional housing units along the north western site boundary which is closest to the existing dwellings/neighbours. There would still be two units as previously approved and would remain two storeys with the same orientation and maintain the same separation distances as previously approved.

Officers raise no neighbour impacts grounds of concern with respect to overlooking, overshadowing or overbearing when the revisions are compared against the extant approved plans.

Concerns have been raised regarding the increased land levels on the site which has consequently led to the proposed dwellings on the boundary being higher than the neighbours initially thought. For clarification purposes the approved finished ground levels along the shared boundaries vary between 41.15m AOD to 41.25m AOD.

At the outline stage, the existing land levels in this area were shown as between 39.6m AOD to 40m AOD which represents a 1.65m increase of the land levels along the northern part of this site which has been approved.

Under this revised REM application, the land levels would not be increased and in fact, there a few plots with proposed reduced land levels of between 10-20cm which officers are satisfied would not result in demonstrable harm to neighbouring interests.

The following inserts reveal what was previously approved and what is now proposed in terms of the finished floor levels for the properties near to the shared site boundary which officers are satisfied about.

Previously Approved



Proposed



9.6 Highway Impacts

The vehicular access and highway layout are not subject to any revision under this application. The car parking provision and proposed garaging all comply with the Wiltshire Car Parking Strategy. The request made about seeking a material revision to the highway provisions is not considered necessary or reasonable. It should also be noted that access is not a reserved matter that is open for Council consideration.

10. Conclusion

The proposed REM revisions to what was previously approved are considered acceptable when assessed against the adopted Wiltshire Core Strategy and the emerging Neighbourhood Plan and the NPPF, and as such, officers recommended that the committee approves this REM application subject to the following conditions.

11. Recommendation – Approve subject to the following conditions:

Conditions: (5)

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing PL-01 (site location plan); Drawing PL-02 (context plan); Drawing PL-03C (coloured layout), Drawing PL-03C (planning layout); Drawing PL-04A (materials layout), Drawing SA-01 (sales area); Drawing 4769-L: 211-R (soft works drawing 3 of 5); Drawing 214-M (structural landscape road drawing 1 of 4); Drawing 215-N (structural landscape proposal road drawing 2 of 4); Drawing 218-O (structural landscape drawing 1 of 1); Drawing 219-K (structural landscape north west boundary 1 of 1); Drawing 222-P (hard landscape proposal 2 of 4); Drawing RP2: SS-01 (street scene); Drawing HT-GAR-01 (garage); Drawing HT-GAR-02 (garage); Drawing AVO-18023-CIV-5000 Rev A (engineering levels); Drawing House Types RP2-HT: AL-01, ALD-02, ALD-03, ALV-01A, ELLERTON-01, KINGSLEY-01, KINGLSEY-02, KINGSVILLE-01, KINGSVILLE-03A, MORESBY-01, MORSEBY-02, MORSEBY-03, RADLEIGH-01, RADLEIGH-02, WOOD-01, WOOD-02.

REASON: For the avoidance of doubt and in the interests of proper planning.

- 2 The development hereby approved shall be carried out in strict accordance with the Construction Environmental Management Plan (CEMP) approved by the Local Planning Authority under application reference number 19/01795/DOC.

REASON: To ensure the development is undertaken in an acceptable manner, in the interests of preventing pollution of the water environment

- 3 The materials to be used for the external walls and roofs shall be carried out in accordance with the details approved by the Local Planning Authority under application reference number 19/05715/DOC.

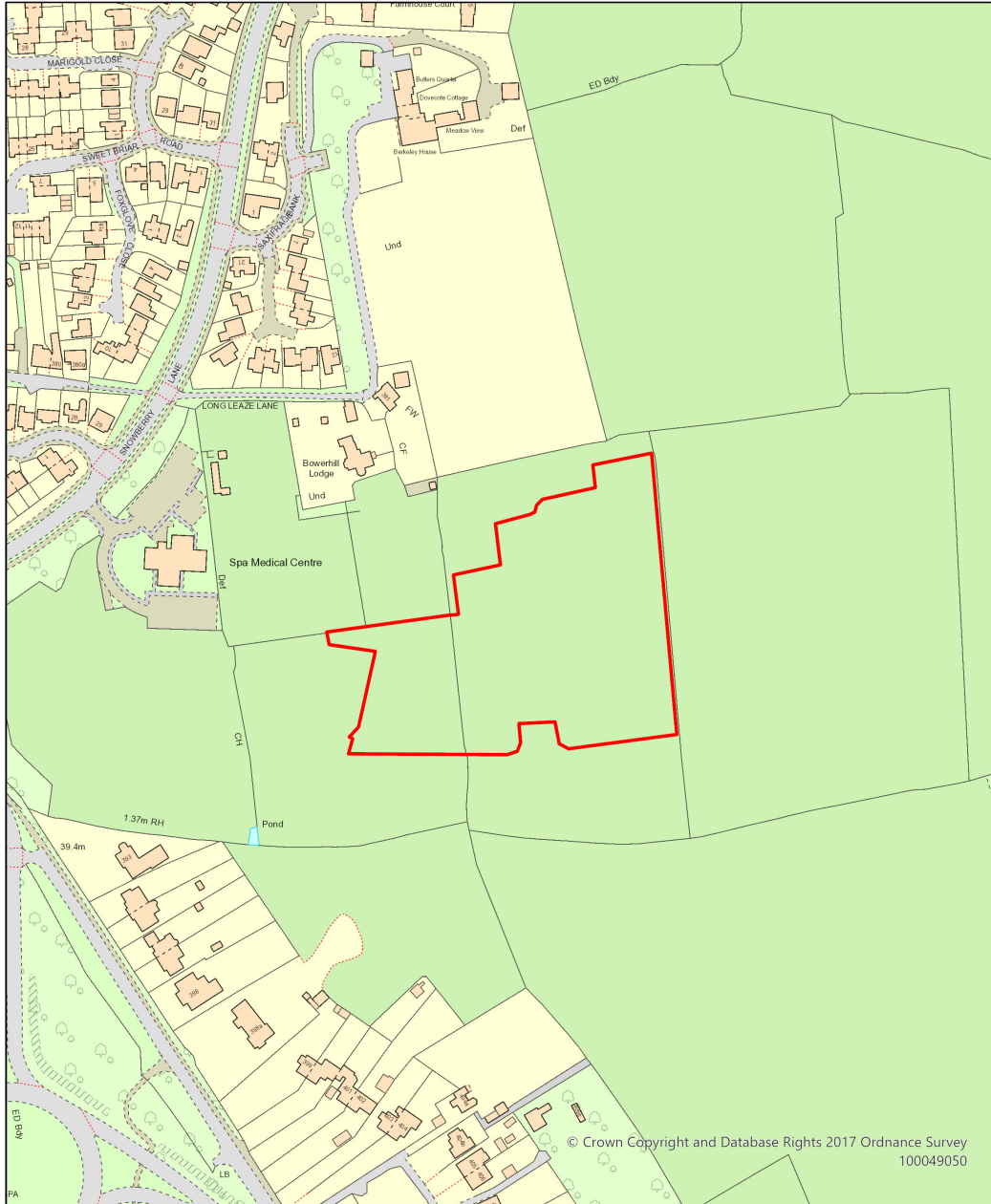
REASON: In the interests of visual amenity and the character and appearance of the area

- 4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the garage(s) hereby permitted shall not be converted to habitable accommodation.

REASON: To secure the retention of adequate parking provision, in the interests of highway safety.

- 5 The development hereby permitted shall be carried out in accordance with the drainage scheme for the southern area of the site including the associated attenuation pond, landscaping and infrastructure works that was approved by the Local Planning Authority under application reference 19/04603/DOC

REASON: To ensure suitable drainage for the site



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