

HIGHWAYS ACT 1980 SECTION 119
THE WILTSHIRE COUNCIL WESTBURY 29 AND DILTON MARSH 20
DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2021

HIGHWAYS ACT 1980 SECTION 118
THE WILTSHIRE COUNCIL WESTBURY 28 AND DILTON MARSH 19
EXTINGUISHMENT AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2021

Objections and officer responses

Westbury Town Council (WTC)

Comment: *“At a meeting held on Monday 21st June 2021, Westbury Town Council Highways, Planning and Development Committee considered the proposed diversion on Westbury 29 (part), Dilton Marsh 20 (part), Westbury 29 (part) and Dilton Marsh 19 (part). Westbury Town Council object to the diversion, with the following response: Public footpaths are for the public. It is difficult to see any merit in this application when the occupiers bought the house next to the public footpath and being aware of the footpath. Public footpaths are sacrosanct, and we move them at our peril, creating a precedent for the future.”*

Officer response: Westbury Town Council stated that rights of way are sacrosanct, this is legally incorrect, requirements on land where rights of way are situated can change therefore legislation is in place to divert routes within highway law, Highways Act 1980 and planning law, Town and Country Planning Act 1990. Wiltshire Council policy recognises one of the weaknesses of the rights of way network is that it is historic and may not meet present and future needs. ROWIP Appendix 8 – Strengths, weaknesses, opportunities and threats assessment of the Countryside Access Network, Weaknesses, W1 states: *“The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users”*. The extensive number of rights of way culminating at Dilton Vale Farmhouse travelling from all directions is likely to be because it was formally a significant employer for the area, the property is now a private home.

Comment: *“The owner would have been made aware during the process of purchasing this property, of the location of any public footpaths crossing their land.”*

Officer response: A landowner can apply to divert a right of way if it is in their interests even if they were aware of a right of way at time of purchase. In this case the applicant has lived at the property for 11 years, over time the use of the footpaths has increased due to the growth of the population of Westbury and it has been found that there has been a general increase of use of local networks due to lockdown.

Comment: *“The town council would like to comment, and it noted that the application states that it is a family home, however it is being run as a business and marketed as a wedding venue, as well as rental on outlets such as air B&B.”*

Officer response: The applicant/landowner has confirmed that Dilton Vale Farm is a family home and is not run as a business. There is no wedding business on site and the only holiday let is in the building north of point A. If there were businesses run from the property this would not be a reason not to make an Order. However, if the applicant had applied to divert the routes due to business requirements this would still meet with s.119(1) in the interests of the landowner.

Mr Morland

Comment: *“I have reservations about the Decision Report dated 5 August 2021; in particular, its wholesale rejection of Westbury Town Council's objection (see at [9.6]), and the reliance it places on a non-statutory and very restricted public consultation. It is odd and unusual that no responses are shown from any of the stipulated Rights of Way user bodies, but instead, it relies on numerous responses (17), all in support of the proposals, but heavily redacted as being apparently from individual users, the identities of whom have all been hidden, and only one of whom even gives an address. There is nothing to show how many of them live in Westbury, or in Dilton Marsh, or further away, how many of them are from the same family, or any other characteristics linking them, apart from them all clearly having received some sort of circular, leaflet or pro forma template, probably promoted via social media (indicated by the close similarities in the points made and words used by almost all of them).”*

Officer response: The initial consultation on the proposal was distributed to landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council Members for Westbury East and for Ethandune, Westbury Town Council and Dilton Marsh Parish Council. Westbury Town Council in response to the initial consultation on the proposal was addressed in full in the decision report. The 18 supporting responses, including the supporting response from Dilton Marsh Parish Council, and the objection received from Westbury Town Council, were the only responses received during the initial consultation. No responses were received to the initial consultation from user bodies and no responses were received to the made Order from user bodies. The responses are not heavily redacted, they have had their email addresses removed in line with data protection.

Comment: *“My concerns centre on the historic importance of the location of Dilton Vale Farm, at the junction of no less than five public footpaths, which I know of no other instances of locally, and the excessively circuitous nature of the proposed diversion, around the current ownership boundary, which is of an entirely different character from the existing routes, even though the specific privacy and security points made by the applicants could be more than adequately met by a much shorter and more direct diversion from a point north of point B and linking to Footpath Dilton Marsh 19 at point H, but avoiding point G. I see no justification for stopping up the*

routes along the existing track between points E, D and F, which is the historic continuation of Honey Lane and will in any event, it appears, remain in use as the private vehicular access to the stables/farm buildings complex serving the Dilton Vale Farm rural enterprise(s). The existing fences along the north east side of the track, suitably augmented, would adequately ensure the privacy and security of the listed dwelling itself."

Officer response: Wiltshire Council policy recognises one of the weaknesses of the rights of way network is that it is historic and may not meet present and future needs. ROWIP Appendix 8 – Strengths, weaknesses, opportunities and threats assesment of the Countryside Access Network, Weaknesses, W1 states: *"The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users"*. The extensive number of rights of way culminating at Dilton Vale Farmhouse travelling from all directions is likely to be because it was formally a significant employer for the area, the property is now a private home.

E-D-F runs within touching distance of the windows in the exact same manner the section at point G does. The character of the routes are very similar, grass and gravel tracks and are in keeping with the paths in their entirety.

The applicant has stated that Dilton Vale Farm Rural Enterprise(s) is a charitable venture.

Comment: *"Figures extracted from the Order illustrate how circuitous the proposed diversion is. The existing route C-B-F-D-E totals 223 metres. The proposed route C-A-I-H-E totals 388 metres, an increase of 165 metres or 74%. My own calculations indicate that the Order overstates the length of D-E by about 4 metres, so the extra distance may be even greater."*

Officer response: It could be argued that from point E at Honey Lane to point H heading towards Sand Hole Lane is shortened by the proposal. However these rights of way are recreational not utility routes therefore the minimal increase in distance will have no impact on public convenience of the paths. Users will already have chosen to walk significant distances to get to these rights of way at Dilton Vale Farm. I will take each of the 5 routes in turn, the distances are approximation; from Honey Lane UC road to diversion point E 180m, from Westbury Leigh to diversion point H 400m, from Sand Hole Lane to diversion point H 730m, from St Mary's Church Old Dilton Road to diversion point C 325m, from Old Dilton Road north of Dilton Farm to diversion point A 160m.

Comment: *"On the various tests of expediency to the public, convenience, and public enjoyment, I consider the proposals in the Order are deficient and do not reach the appropriate degree to confirm it. I also share the view of Westbury Town Council that it creates an unfortunate precedent for the future (viz. public footpaths which simply zigzag around property boundaries)."*

Officer response: This Order does not set a precedent. Highways Act 1980 section 119(1) paths can be diverted in the interests of the landowner. The new footpaths will have a recorded width of 3 metres, they are well defined tracks and easy to

follow. Currently the paths have no recorded widths, they weave around the property and are significantly narrow in places

Comments: *“It appears that point H is not a single point but a composite of locations used inconsistently in the Order. In Part 1 of the Schedule, it is said to be a point on Footpath Dilton Marsh 19 about 13 metres north of its southern end. In Part 2 of the Schedule, it is described as being at the boundary between the Town of Westbury and the Parish of Dilton Marsh - presumably at the mid-stream of the Biss Brook. In Part 3 of the Schedule, the descriptions of Footpaths Westbury 29 and Dilton Marsh 20 locate it similarly.*

This appears also to be the cause of the error in the description of Footpath Westbury 29 in Part 3 of the Schedule, where "Footpath Dilton Marsh 19" should read "Footpath Dilton Marsh 20" and should be preceded by the word "meet".”

Officer response: Point G where Westbury 29 and Dilton Marsh 19 meet, point H is 13 metres from its southern section. The green line is the boundary between Westbury and Dilton Marsh, point H is on this boundary. Point H is also grid referenced.



Comment: *“In the description of Footpath Dilton Marsh 20, "at Penknapp" is obsolete and uncertain and should be replaced by "at Honey Lane (outside 20 Tower Hill)" or similar. I am uncertain whether "road U/C 6188" is in fact Honey Lane or where its southern end lies.*

In the description of Footpath Westbury 28, "Leigh Fields Lane" is obsolete and uncertain and should be replaced by "Sand Hole Lane", "at" should be replaced by "north of", and "joins path No. 29" should be replaced by "connects to Footpath Dilton Marsh 19".

In the description of Footpath Dilton Marsh 19, "From the Corn Mill at Westbury Leigh" is obsolete and uncertain and should be replaced by "From its junction with Footpath Westbury 26 at Millstream House" or similar, and "the Westbury Urban District boundary" should be replaced by "its junction with Footpath Dilton Marsh 20" or similar.”

Officer response: The officer can only legally amend the section of the definitive statements in reference to the section to be diverted. These terms are used in the section not to be diverted so remain the same.

Comment: *“The reasons for reducing the stated lengths of Footpaths Dilton Marsh 20, Westbury 28 and Dilton Marsh 19 by 12 metres, 93 metres and 26 metres respectively are unclear and unexplained. Part 1 and 2 of the Schedule increase the length of Dilton Marsh 20 by 15 metres, and Part 1 of the Schedule stops up only 48 metres of Westbury 28 and 13 metres of Dilton Marsh 19.”*

Officer comment: This was an opportunity to correct the length of right of way as ArcGIS mapping is now more accurate

Mr and Mrs Davies:

Comment: *We object most strongly to this application. This footpath has been in existence for decades, if not hundreds of years and should not be changed at the whim of a relatively new owner / occupant who knew about the existence of these footpaths before purchasing the property and were obviously prepared to accept the presence of occasional walkers.*

Officer response: Legislation is in place to divert routes within highway law, Highways Act 1980 and planning law, Town and Country Planning Act 1990. Wiltshire Council policy recognises one of the weaknesses of the rights of way network is that it is historic and may not meet present and future needs. The extensive number of rights of way culminating at Dilton Vale Farmhouse travelling from all directions is likely to be because it was formally a significant employer for the area, the property is now a private home.

A landowner can apply to divert a right of way if it is in their interests even if they were aware of a right of way at time of purchase. In this case the applicant has lived at the property for 11 years, over time the use of the footpaths has increased due to the growth of the population of Westbury and it has been found that there has been a general increase of use of local networks due to lockdown.

Comment: *“The alternative offered becomes waterlogged and slippery during the winter months (and indeed during this wet summer) and I am sure the homeowner would not want to be sued by a person sustaining an injury by slipping on the wet, muddy areas or on one of the two footbridges he has installed.*

Officer response: The surfaces for both the current routes and proposed routes are very similar encompassing grass and gravel tracks. When walking the entirety of the paths the conditions are the same. Part of the section of Westbury 28 proposed to be diverted is eroding significantly, as the path continues to wear away it would require expensive works to be undertaken by the highway authority or cease to exist entirely. The proposal would mean that this section of path is diverted alleviating

these concerns. A section of the proposed route has been repaired with land drainage to prevent the previous boggy condition. New bridges are to be installed by the applicant to Wiltshire Council's specification before the Orders are certified.

Comment: *"The idea of security is not relevant as anyone using the new route with intent is just as likely to intrude if they are 2 metres or 100 metres away. As for privacy, he knew the situation when he bought the house and the situation is no different to a house on any other street (especially ones that actually front the pavement) and the footfall would be much more than that which he is concerned about."*

Officer response: There are 5 rights of way in total culminating in the garden of Dilton Vale Farm passing in close proximity to both sides of the home in touching distance of the windows. It is clear that the paths are intrusive to the landowner as they provide little if any opportunity for privacy. The house is in a rural setting isolated away from other settlements therefore the landowners have understandable concern regarding a greater potential risk for antisocial or criminal activity. Use of these footpaths has increased as the population has grown due to the expansion of new housing in the local area. Lockdown has also increased the use of local rights of way networks. As a result the effect on the landowners and their feeling of intrusion has increased.

Comment: *"As a landowner he is obligated to maintain the footpaths on his property in a useable condition instead of which he has deliberately allowed them to become overgrown and difficult to use to deter walkers from using them. Those in the council responsible for footpaths should tell him that he should abide by these rules and correct the current situation."*

Officer response: Wiltshire Council as highway authority are responsible for the undergrowth and surface condition of the paths.

Comment: *In the past he has also used his dogs as a deterrent to people wishing to use the paths citing the fact that they "are only defending their property".*

Officer response: The applicant disputes this point. This is the only comment received about the dogs, by diverting the rights of way away from the dwelling the concerns this particular objector has regarding dogs would be eliminated.

Comment: *Finally, I and many other walkers believe that the sole reason for applying for this diversion is because he has holiday lets on his property and also a wedding venue business and he doesn't want walkers interfering in his business interests.*

Officer response: The applicant/landowner has confirmed that Dilton Vale Farm is a family home and is not run as a business. There is no wedding business on site and the only holiday let is in the building north of point A. If there were businesses run from the property this would not be a reason not to make an Order. However, if the

applicant had applied to divert the routes due to business requirements this would still meet with s.119(1) in the interests of the landowner.

Mrs Ellis and Mrs Collier

Comment: *“I would like it noted that I object to the footpath around Dilton Vale farm being diverted. I have walked this way on a number of occasions over the last 50+ years. Every other owner has had no problem with people walking across the path. As far as I am aware there has never been any damage to land or property. This walk way was often used by my grandparents to reach the church at Old Dilton from where they live in Westbury Leigh.”*

Officer response: Wiltshire Council policy recognises one of the weaknesses of the rights of way network is that it is historic and may not meet present and future needs. ROWIP Appendix 8 – Strengths, weaknesses, opportunities and threats assesment of the Countryside Access Network, Weaknesses, W1 states: *“The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users”*. The extensive number of rights of way culminating at Dilton Vale Farmhouse travelling from all directions is likely to be because it was formally a significant employer for the area, the property is now a private home.

Comment: *“I & a number of others have raised complaints regarding the overgrown vegetation from Mill Stream, to which nothing seems to be done. It feels like they are deliberately causing an obstruction, now for the owners of Dilton Vale to want to divert the path just adds to that thought!”*

Officer response: Wiltshire Council as highway authority are responsible for the undergrowth and surface condition of the paths. The applicant has confirmed that Mill Stream is not on their land.

Comment: *“If you don’t want people walking past your door don’t buy a home with a right of way/footpath/bridleway or whatever on your doorstep”*

Officer response: A landowner can apply to divert a right of way if it is in their interests even if they were aware of a right of way at time of purchase. In this case the applicant has lived at the property for 11 years, over time the use of the footpaths has increased due to the growth of the population of Westbury and it has been found that there has been a general increase of use of local networks due to lockdown.