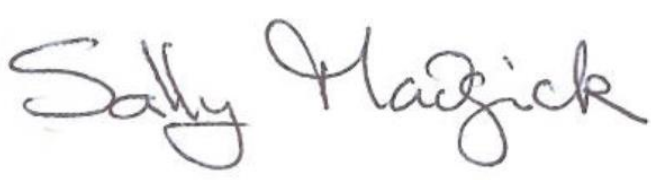


**COVERING PAGE FOR DECISION REPORT  
WILDLIFE AND COUNTRYSIDE ACT 1981 S.53**

**Application to upgrade footpath North Tidworth 11 to a Byway Open To All Traffic and add a new section of Byway Open To All Traffic in the parish of Collingbourne Ducis**

Ref 2004/09

Name	Signature	Date	Approved Yes/No
Sally Madgwick Definitive Map and Highway Records Manager		05 Nov 2021	Yes
<b>From:</b>	Craig Harlow Definitive Map Officer		
<b>Date of Report:</b>	3rd November 2021		
<b>Return to:</b>	Craig Harlow		

**SUMMARY:**

1. Wiltshire Council received an application made under section 53 of the Wildlife and Countryside Act 1981 in March 2004 to upgrade footpath North Tidworth 11 to a byway open to all traffic and add a byway open to all traffic from the northern end of fp11 leading north across the A.342 to byway Collingbourne Ducis 19.
2. The application was supported by a summary of historical documentary evidence which the applicant believes demonstrates on the balance of probabilities the footpath should be upgraded and a new section of byway added to the map and statement.
3. Officers undertook a public consultation on the application. A number of responses were received which objected to the recording of a byway open to all traffic. Officers cannot consider the want, need, desirability or suitability of the route , only the evidence can be considered.
4. The case has been considered in two parts, the upgrading of footpath NTID11 and the addition of a byway leading north from that footpath in the parish of Collingbourne Ducis. Not only do the two sections apply different legal considerations, one being an upgrade of existing rights and one being an addition of rights, the two sections also have distinct evidence.
5. The upgrading of footpath NTID11 requires the evidence to show on the balance of probabilities that the route should be upgraded. All of the submitted evidence has been viewed and considered in detail . It is the officers' belief that the evidence is insufficient to show , on the balance of

probabilities, the route should be upgraded to a byway open to all traffic. However evidence exists that supports that a width should be recorded of between 3 and 8 metres for the footpath.

6. The addition of an unrecorded byway open to all traffic in the parish of Collingbourne Ducis is subject to a different test at the order making stage, that is whether there is a reasonable allegation that rights subsist over the route, though to confirm the order would require the further balance of probabilities test. The reasonably alleged test can only be defeated by incontrovertible evidence at the order making stage. Officers have considered the available evidence and based on the deposited plans of the Upavon and Andover Railway 1866, which record the route as a public road, and other supporting evidence, the reasonably alleged test has been met to record this route on the definitive map and statement. Whether an order recording this route is capable of being confirmed would be subject to the further balance of probabilities test and would take into consideration any further evidence adduced at that time.
7. The route to be recorded north of footpath NTID11 is subject to the Winchester case law, *(Warden and Fellows of Winchester College and Humphrey Feeds Limited) v Hampshire County Council and SoSEFRA [2008] EWCA Civ 431*, which prevents this route being recorded as a byway open to all traffic. The case concluded that any applications to record a byway open to all traffic which are subject to s.67(3) of the Natural Environment and Rural Communities Act 2006, must be strictly compliant with schedule 14 (1) of the Wildlife and Countryside Act 1981. Applying the ruling of the court, this application, made in 2004, is not strictly compliant with Schedule 14 WCA81 and accordingly the saving of a public vehicular right is not saved by s.67(3) NERCA 2006. Further savings contained within s.67(2) of the 2006 Act were not found to apply and as a result the highest status that can be recorded would be a restricted byway (a right for pedestrians, equestrians, bicycles and carriage drivers, but no mechanically propelled vehicles).
8. As a result of the above, the route found to meet the reasonably alleged test, will record a restricted byway with a width of between 5 and 7.5 metres north of footpath NTID11 to its junction with CDUC19.
9. It has been suggested by the main landowner, the MOD, that if rights are found they may wish to seek to divert the route to a more practical route, this possibility can be explored with the landowner but will require the rights to be accepted and further legal considerations. This report has investigated whether the rights applied for exist and are capable of being subject to legal orders.

## **RECOMMENDATION**

**An order is made to add a recorded width for footpath NTID11 under section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 and an order is made to record a section of restricted byway within the parish of Collingbourne Ducis linking bridleway CDUC21 and byway open to all traffic CDUC19 under section 53(3)(c)(i) of the same act and that the orders are confirmed if no objections are made or are made and subsequently withdrawn.**