

Neil Stalker
Honeyfield Farm,
The Marsh,
Wanborough,
Swindon
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Email: neil@okusdevelopments.co.uk

Objection to the inspectors Proposed Modifications (Footpath 44)

20, January 2020

Dear Sir or Madam

I refer to the summary of decision made by the inspector order ref ROW/3209564 and raise the following objections in relation to the points raised by the inspector.

Points 56, 57, 60, 61, 62 - Intent

The inspector has surmised that our actions are insufficient to show "no intention of dedicated the route" by making considerable interpretation of our intention as landowners in the points above, however we feel key facts have been overlooked in reaching this decision and that our intent has been overlooked despite being unequivocally clear that we had/have no intent to dedicate any part of the F-E "the race" and F-G "the track" (also the owned access/driveway to our private property) (Fig 1).

In various cases of this nature the contrary intention consideration of the act has been deliberated and the means by which it is sufficient to show contrary intention does not need the landowners to make their intent not to dedicate clear to the public, as a result there is much case law to support this stance.

With this in mind there is case law to support the view such as in *R v Secretary of State for the Environment, Transport and the regions ex parte Dorset cc (1999)* and the case *R Godmanchester town council) v secretary of state for the environment food and affairs (2005)* where the court of Appeal Auld JT stated In their judgement made it clear "it is not necessary for the contents of [the letter from the agents] to have been known to the user of the path for it to satisfy the criteria of the 1980 act" and therefore "The lodging of a statutory declaration under section 31(6) was just one way in which a contrary intention could be shown. The existence of the procedure did not mean that other means of showing a contrary intention could not be employed".

The proviso in section 31 therefor merely uses the word 'sufficient'. There was nothing in this to require that the intent should be expressed in a way that would enable the public to become aware of it. With this in mind I feel that my intent as the landowner has been overlooked and ill-considered, I believe my intent to not dedicate any part of the route F-E-

G (Fig 1) had been made clear before the route was brought into question in communication both verbally and in email (as submitted in the case) with Ms Ellis SBC rights of way officer.

Given the nature therefore of these discussions to dismiss the views of SBC officers as that of opinions and not formal advice/guidance in their capacity of their official positions seems to be dismissed off hand as occurred in a case of similar nature were the view of the intent shown in *Norman and Bird v sec of state for environment, food and rural affairs (2006)* where an appeal held the view that this decision was ill founded applying the view that *"one looks at the evidence given by the landowner and then one sees whether there is material to support it, and if the evidence of the landowner at the inquiry that he had no intention to dedicate was generally speaking, acceptable, truthful and there was no reason to reject it the evidence required to support it need not a great deal"*.

To further re-enforce this point, in our initial objection, letter dated 11 Jan 2018 there was email excerpt included (Fig 6) once again to Swindon SBC Mr Enright by my wife Mrs Stalker whom stated our intent once more very clearly:

"By Allowing a footpath to be closed at a point where there is no access/exit to the continuation of that right of way, you are in actual fact responsible for the general public trespassing over my land. The right of way should be closed at a point where it is still usable"

This point is part of a wider discussion where we formally acknowledged that the use of the track E-G-D (Fig 1) in our view is considered trespass and therefore it seems pertinent to include the entire email (Fig 2)

At the start of this discussion my wife states:

"Signs again this weekend, were placed either end of the Ducksbridge development requesting people to use my private property to enter/exit the right of way due to the closure of the Ducksbridge route."

I am requesting that the section of the right of way that crosses my land, which due to Ducksbridge is inaccessible, is temporarily closed immediately to avoid further transgression over private property."

Mr Enright responded stating: *"I shall be addressing a number of issues and concerns, including the current definitive route and the suggested diversion route, with Mr Mapson following a site visit tomorrow."*

Mr Mapson has been told to take down any signage referring to a "temporary" diversion using the verge of The Marsh and your private track to access the rest of Footpath 25. I am sympathetic to your concerns, but please understand that the Council has no power to prevent members of the public from walking along your track if they so choose."

And did later go on to close the route providing the following:

"Because of the problems you have been experiencing with trespassers on your property owing to the current situation with Footpath 25, the Council will be making a temporary

closure order on that part of the footpath between the crossing of Footpath 23 and The Marsh, with effect from tomorrow. I've attached an extract of the Rights of Way map to show you what will be happening. The affected path will be between the two red discs, and there will be notices and maps at both points directing walkers to the alternative route.

Although there will be a notice and map at the closure point at the "crossing", you may, if you wish, erect a temporary barrier of some kind at the closure point, once the notice and map are actually on display. This will give you extra peace of mind, and make it absolutely clear to walkers that that section of footpath is officially closed for a period, and is not to be used. It may be necessary to keep it closed for 6 months, but of course I'll keep you informed."

It is pertinent therefore to note that SBC closed the route as stated *"Because of the problems you have been experiencing with trespassers on your property owing to the current situation with Footpath 25, the Council will be making a temporary closure order on that part of the footpath between the crossing of Footpath 23 and The Marsh"* therefore SBC has acknowledge that the routes across our land have been closed to prevent trespass between points E-D-G and this intention would have been made public, carried out formally by the issuing of diversion/closure notices.

This Action was taken on the 1st of February 2017 some 9 months prior to the order being submitted on the 22 November 2017. I must also confirm that we did take physical action to erect barriers as suggested at point J on the attached map (Fig 1) ensuring both the other route and FP25 where inaccessible thus making our intention physically clear to users of the way from the 1st of February 2017, these barriers where set to one side during the site visit and my son Charlie Stalker pointed out he indicated and these to the Inspector and their purpose/position in closing the route.

As a result, the inspectors view that "at no time did Mr and Mrs stalker provide sufficient indication to the public of their lack of intention to dedicate a highway over the order route until they closed it in 2017" is ambiguous and not strictly supported in evidence, it also does not consider the timing within 2017 or the acts of us as a landowner that took place at different times both physically and in writing, that should have brought the way into question much earlier.

Point 21,52 - Inconsistency

The inspector has deemed it sufficient that "on balance the order route between points A and G via C, became unavailable to use for some time in early 2017 , due to the erection of safety fencing or the temporary closure, or both" and that this was enough to bring the route into question notwithstanding the fact there was an official diversion. However later in summation It seems the temporary closure of the routes F-E-G in 2009 for the installation of sewage works for no less than 3 months (on the grounds of safety – 3m wide/deep open trench) are being dismissed on the grounds "no one appears to have considered that their use of way was being challenged by these works" despite the circumstances of the closures and diversions being intrinsically the same the same conclusion seems to not have been

reached. It cannot therefore stand that this determination cannot be applied to one and not the other.

Points 47,48,49 – Validity on balance and additional evidence

Given the nature of the photography and deliberations over the location of water troughs, fences, and the existence of water revealed in the later stages of the inquiry it seemed necessary to seek further evidence to support our stance and bring into question the weight the inspector has attributed to the statement given by a previous tenant, including Linda Moore whom stated that there was “no water supply laid on and that she had to provide water for her animals by hand”.

As water was available along with troughs as stated when I took over the land as I have maintained throughout. To this end I have sought clarification from Thames Water (Fig 3), whom verbally (awaiting the written statement) have confirmed that a dedicated water supply for the land that is now known as Honeyfield farm was installed in 1985 and has been in use and billed continually since that date (the bill taken over by us in 2008).

I therefore believe the inference of lack of water has confused further points, along with verbal evidence which on balance and in light of this confirmation cannot be true which is something the inspector must take into consideration.

To this end the inspector also refers to the intent for the period of ownership of Mr Sadler through the verbal statements provided by Linda Moor and Sian Lewis whom where both “adamant that Mr Sadler had told them the footpath was not to be obstructed” and that “neither of them where aware that there was any other path across the land (on the line of the definitive path Footpath 25)” this however cannot be factually correct and does not seem based on evidence.

It follows that Mr Sadler made his intentions clear to not obstruct the route across the land to his tenants, however it is also clear that this must have at the very least in part referred to the definitive footpath 25, as there has never been any dispute that from point F to the boundary of Honeyfield farm is footpath 25. As such the “footpath” referred to by Linda Moor and Sian Lewis must have included Footpath 25 whether or not they were formally aware “The Footpath” included footpath 25, they were aware of its position and existence.

Point 30 – Need/Safety

The inspector refers to need, in particular to residents further along the marsh and the use of safe route proposed instead of actual evidence. It seems however there is confusion over the “safe route” and it is clear the route supported by F-E-G (Fig 1) is not consistent with the use or indeed safe use proposed to support this claim. The suggested need likely refers more so to A-B-C-D (Fig 1) to avoid the bend between H and G (Fig 1) indicated on the attached map. For residents of the marsh there are clearer, safer and faster alternative routes that avoid both bends between G and H (Fig 1). However, F-E-G (Fig 1) would

unintentionally leave anyone deviating at point F (Fig 1) from FP25 presented with an unsafe set of double bends on which numerous vehicular accidents have occurred.

For anyone attempting to use Footpaths to traverse the marsh in particular, residents, in all instances there long established, clearer, safer and faster alternatives footpaths readily available as shown on the attached map. As a result, the need for F-E-G (Fig 1) on the grounds of safety seems questionable and notably prominent supporters of the order are owners of land with these long-established Footpaths and as such should be aware of their existence.

This is also in fact the supported view of SBC rights of way office Mr Enright in his comments and map in the email attached in Fig 2, where the route was closed at our request and alternatives implemented, I quote:

“Council will be making a temporary closure order on that part of the footpath between the crossing of Footpath 23 and The Marsh, with effect from tomorrow. I’ve attached an extract of the Rights of Way map to show you what will be happening. The affected path will be between the two red discs, and there will be notices and maps at both points directing walkers to the alternative route.

For example, coming from the direction of Covingham, walkers wishing to reach The Marsh (and beyond) will be directed to turn right at the crossing point, as indicated by the green arrows, and take FP 23 and FP 9 to The Marsh, and logically most walkers will probably want to continue to the village, so will cross The Marsh and take FP 20 to the northern end of Green Lane (Bridleway 42). They can then continue along Green Lane or, if they fancy a pint, along The Marsh to the Cross Keys!

The main advantage of this alternative route is that it will take walkers completely away from your track. The alternative route between the crossing point and Green Lane is 485 metres, without having to walk along The Marsh at all, whereas using FP 25 between the same two points is 385 metres, 85 metres of which would involve walking along The Marsh.”

This route therefore must have been used for some considerable time during the closure before the order route was brought into question.

General Observation – Width

The order has proposed a 3 meter wide path F-E-G (Fig 1) however no evidence has been submitted to support this width, when questioned on several occasions Mr Fry has confirmed this width is not a result of measurement or evidence and therefore I still object to the order as it stands as there are no other footpaths of that width present on our property.

Conclusion

I once again ask that this order *must not be confirmed*. It is clear that assumptions to my intention not to dedicate have been made in error and without grounds, that there are clear inconsistencies in parts of the decision, that the validity of evidence is questionable where

used, unfairly balanced and something I have sought to redress through new evidence. That lastly there is no clear need on the grounds of safety and in fact the order as it stands would result in the inspector confirming an unneeded and unsafe route for the public a view that is held by myself, clearly Mr Enright and Wanborough Parish Council and other objectors to the order.

I must further ask that my intent be re-evaluated and must confirm that both myself and my wife are more than willing to write sworn statements to clarify the matter. However, we feel our actions both written and verbally should have been sufficient and have been accepted in other similar cases.

Yours sincerely,

Neil Stalker

List of figures


- Fig 1 - OS Map overlaid with data to make clear the points raised in this letter/case
- Fig 2 - Emails between Mrs Stalker and Mr Enright Regarding the closure of FP25 and the order route F-E-G on the grounds of trespass at E-D-G. Excerpts of which were included in the case on our objection dated 11 Jan 2018 Fig 6
- Fig 3 - Letter From Thames Water confirming a dedicated billed water supply to the land from 1985 to date, to be sent as soon as is made available by Thames Water (Freedom of information delays).

Fig 2

Full email correspondence by Mr Enright SBC Rights of way officer confirming closure at our request on the grounds of trespass, in addition the proposal of a safe alternative route, the view shared by other objectors.

Jan 31-Feb 1

2017

From: Donna Stalker murrayprice@hotmail.co.uk 
Subject: FW: ME/HMU - day2
Date: 20 January 2020 at 9:08 pm
To: charlie@csn-uk.net

DS

From: Michael Enright <MEnright@swindon.gov.uk>
Sent: 01 February 2017 17:05
To: Donna Stalker (murrayprice@hotmail.co.uk) <murrayprice@hotmail.co.uk>
Subject: FW: ME/HMU - day2

I'm really sorry! Something went wrong with the attachment.
Here it is.

From: Michael Enright
Sent: 01 February 2017 17:03
To: 'Donna Stalker'
Subject: RE: ME/HMU - day2

Good afternoon, Mrs Stalker.

Because of the problems you have been experiencing with trespassers on your property owing to the current situation with Footpath 25, the Council will be making a temporary closure order on that part of the footpath between the crossing of Footpath 23 and The Marsh, with effect from tomorrow. I've attached an extract of the Rights of Way map to show you what will be happening. The affected path will be between the two red discs, and there will be notices and maps at both points directing walkers to the alternative route.

For example, coming from the direction of Covingham, walkers wishing to reach The Marsh (and beyond) will be directed to turn right at the crossing point, as indicated by the green arrows, and take FP 23 and FP 9 to The Marsh, and logically most walkers will probably want to continue to the village, so will cross The Marsh and take FP 20 to the northern end of Green Lane (Bridleway 42). They can then continue along Green Lane or, if they fancy a pint, along The Marsh to the Cross Keys!

The main advantage of this alternative route is that it will take walkers completely away from your track. The alternative route between the crossing point and Green Lane is 485 metres, without having to walk along The Marsh at all, whereas using FP 25 between the same two points is 385 metres, 85 metres of which would involve walking along The Marsh.

Although there will be a notice and map at the closure point at the "crossing", you may, if you wish, erect a temporary barrier of some kind at the closure point, once the notice and map are actually on display. This will give you extra peace of mind, and make it absolutely clear to walkers that that section of footpath is officially closed for a period, and is not to be used. It may be necessary to keep it closed for 6 months, but of course I'll keep you informed.

I hope this meets with your approval, but I would welcome your comments.

Kind regards,

Michael J Enright

Rights of way Officer (Mapping)
Swindon Borough Council
4th Floor Wat Tyler House West
Beckhampton Street
Swindon SN1 2JH

From: Donna Stalker [<mailto:murrayprice@hotmail.co.uk>]
Sent: 01 February 2017 12:51
To: Michael Enright
Subject: ME/HMU - day2

Good afternoon,

In response to your email, I afraid I don't agree. By allowing a footpath to be closed at a point where there is no access/exit to the continuation of that right of way, you are in actual fact responsible for the general public trespassing over my land. The right of way should be closed at a point where it is still usable.

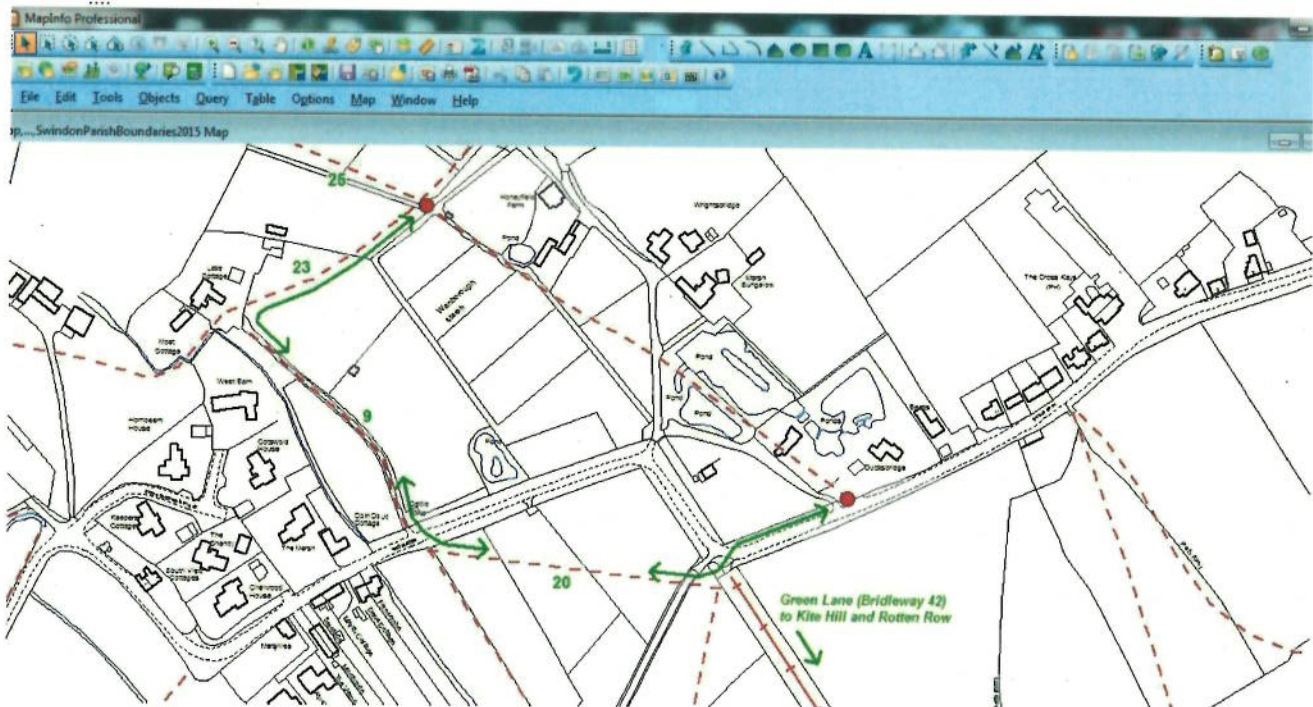
I look forward to hearing your solution to this issue.

Yours Sincerely

Donna Stalker

Sent from [Mail](#) for Windows 10

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Zoom: 828.1 m

Editing: ROW

Selecting: None

From: Donna Stalker murrayprice@hotmail.co.uk
Subject: FW: ME/HMU - day2
Date: 20 January 2020 at 9:10 pm
To: charlie@csn-uk.net

DS

From: Donna Stalker <murrayprice@hotmail.co.uk>
Sent: 05 December 2017 11:44
To: Derek Williams <derekwilliams1296@icloud.com>
Subject: FW: ME/HMU - day2

Sent from [Mail](#) for Windows 10

From: Donna Stalker <murrayprice@hotmail.co.uk>
Sent: Thursday, February 2, 2017 9:30:48 AM
To: Michael Enright
Subject: RE: ME/HMU - day2

Good Morning,

Message received and thank you, it is very much appreciated.

Regards

Donna

Sent from [Mail](#) for Windows 10

From: [Michael Enright](#)
Sent: 01 February 2017 17:07
To: [Donna Stalker \(murrayprice@hotmail.co.uk\)](#)
Subject: FW: ME/HMU - day2

I'm really sorry! Something went wrong with the attachment.
Here it is.

From: Michael Enright
Sent: 01 February 2017 17:03
To: 'Donna Stalker'
Subject: RE: ME/HMU - day2

Good afternoon, Mrs Stalker.

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I hope this meets with your approval, but I would welcome your comments.

Kind regards,

Michael J Enright

Rights of Way Officer (Mapping)
Swindon Borough Council
4th Floor Wat Tyler House West
Beckhampton Street
Swindon SN1 2JH

From: Donna Stalker [<mailto:murrayprice@hotmail.co.uk>]

Sent: 01 February 2017 12:51

To: Michael Enright

Subject: ME/HMU - day2

Good afternoon,

In response to your email, I afraid I don't agree. By allowing a footpath to be closed at a point where there is no access/exit to the continuation of that right of way, you are in actual fact responsible for the general public trespassing over my land. The right of way should be closed at a point where it is still usable.

I look forward to hearing your solution to this issue.

Yours Sincerely

Donna Stalker

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From: Donna Stalker murrayprice@hotmail.co.uk
Subject: FW: ME/HMU - day2
Date: 20 January 2020 at 9:08 pm
To: charlie@csn-uk.net

DS

From: Michael Enright <MEwright@swindon.gov.uk>
Sent: 31 January 2017 16:12
To: Donna Stalker <murrayprice@hotmail.co.uk>
Cc: Martin Fry <MFry@swindon.gov.uk>
Subject: RE: ME/HMU - day2

Good afternoon.

I shall be addressing a number of issues and concerns, including the current definitive route and the suggested diversion route, with Mr Mapson following a site visit tomorrow.

Mr Mapson has been told to take down any signage referring to a "temporary" diversion using the verge of The Marsh and your private track to access the rest of Footpath 25. I am sympathetic to your concerns, but please understand that the Council has no power to prevent members of the public from walking along your track if they so choose.

We are working to resolve this issue as soon as possible.

Michael J Enright

Rights of Way Officer (Mapping)
Swindon Borough Council
4th Floor Wat Tyler House West
Beckhampton Street
Swindon SN1 2JH

From: Donna Stalker [<mailto:murrayprice@hotmail.co.uk>]
Sent: 31 January 2017 15:16
To: Michael Enright
Subject: ref: ME/HMU - day2

Dear Mr Enright,

Signs again this weekend, were placed either end of the Ducksbridge development requesting people to use my private property to enter/exit the right of way due to the closure of the Ducksbridge route.

I am requesting that the section of the right of way that crosses my land, which due to Ducksbridge is inaccessible, is temporarily closed immediately to avoid further transgression over private property.

I understand that Bower/Mapson have now officially applied to change the route and I would therefore appreciate if you could forward details of where/how we can lodge our objection.

On a final note, could you confirm ref your earlier telephone conversation with me, stating that the new route of the right of way was Mr Mapsons suggestion.

I look forward to hearing from you.

Yours Sincerely

Sent from [Mail](#) for Windows 10

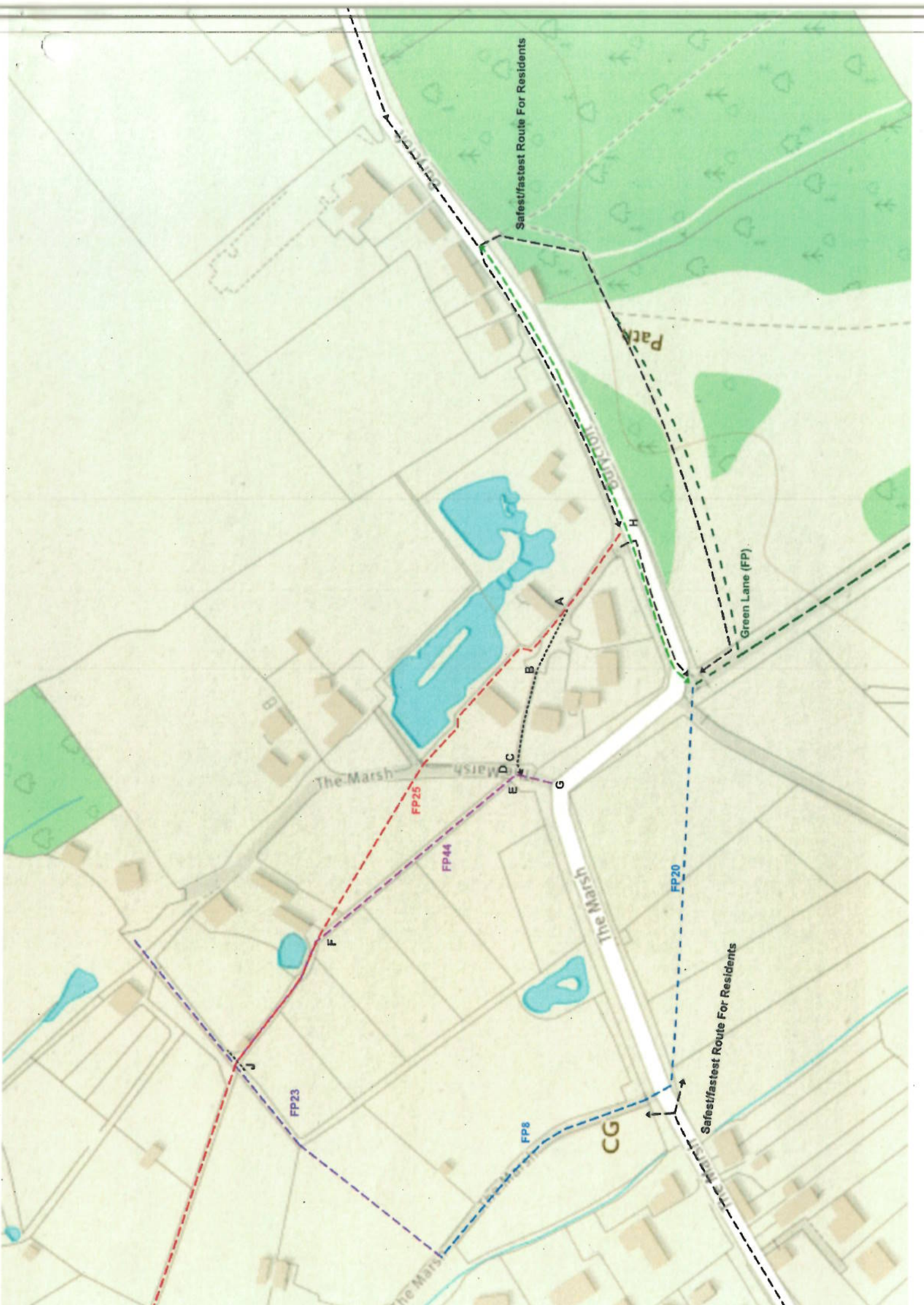
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Fig 1

An OS map overlaid with the order/case lettering with additional lettering/detail to help illustrate points raised in this objection and to avoid ambiguity.

Jan 20 2020



Safest/fastest Route For Residents

Park

Green Lane (FP)

The Marsh

The Marsh

Safest/fastest Route For Residents

CG

The Marsh

The Marsh

FP25

FP44

FP23

FP8

FP20

F

J

A

B

C

D

E

G

H

