

## 1. Introduction.

I am here to present the objection of Wanborough Parish Council to Footpath 44 Wanborough Modification Order 2017. Firstly I would like to confirm that Wanborough Parish Council:

- Takes its duties very seriously and considers the views of all residents and landowners in the parish when making decisions.
- The WPC considered the cost of legal representation but decided, even though the result of this matter will affect all residents, those costs were too great to be borne by all residents. We accept that some of the points the PC raise may not be relevant in law to the decision but feel they are important in the context of a decision on allowing the Order.
- Whilst we accept that Inspectors accord greater weight to evidence given in person under the circumstances we will not call witnesses to give evidence.

On a personal level I confirm that I have lived in the village for almost 30 years and have been a Parish Councillor for 11 years since May 2008. I first became aware of the dispute with the footpaths in this area in 2016 when a resident alerted me that the footings on the development on what was to become Suters Lane made no allowance for a footpath from The Marsh to Burycroft, a route used so pedestrians could avoid walking on the road round a dangerous bend.

WPC raise no objection to the points A-B-C-D-G on the route in the Modification Order. This is The Marsh to Burycroft route mentioned above.

WPC objected to points E-F on the Footpath 44 Modification Order map as it cannot be demonstrated that the Order Route has been used for a period of 20 years without “interruption” and without “permissive” access.

A summary of WPC’s objections which I will go into more detail later are:-

1. There are clear interruptions in the past 20 years, as shown on aerial photos, mentioned in User Statements and by the Landowner;
2. The footpath is referred to as a “permissive path” by both SBC’s RoW Officers and by residents in the UEF’s;
3. There hasn’t always been a stile at point E on the Modification Order map as shown in the aerial photos contrary to UEF’s;
4. The exact route of Footpath 25 was very fluid, the land is marshy farmland and residents chose their route depending on the farming activity and ground conditions at the time to reach the bridge by the pond.

The situation we face today started on 25<sup>th</sup> July 2013 when SBC received an application for planning permission from developers Bower Mapson Ltd for 5 houses on the land previously owned by Mr Sadler and known today as Suters Lane. The planning application confirmed that *“pedestrian right of way across the site will be maintained”*.

A consultee comment from Ms Ellis RoW Officer dated 6<sup>th</sup> August 2013 [WPC letter 02/01/2018 app 6] included a map and advised the alignment of FP25 (erroneously referred to as FP23) but noted the Landowner had *“unofficially”* diverted the path along the route that is shown by points A-B-C-D-G on the Order. The email went on to advise there were 2 paths, FP25 and the unofficial diversion, as it was suggested the diversion had been used for 20 years or more. Ms Ellis went on to state that *“this illegal rerouting of the path needs to be addressed”*.

It is regrettable that the Planning Officers did not act on this and it appears nothing was done until it was noticed by nearby residents that the footings of houses appeared to be on the line of FP25 and the *“unofficial path”*.

In April 2017 I wrote to Mr Enright RoW Officer on behalf of residents to object to a proposed Order to divert FP25 which would have crossed the development, but before accessing the road at the track turned north on a route alongside the track to re-join FP25 before it crossed the track. I explained my concerns about the danger to pedestrians on the road at the dangerous corner but Mr Enright could not accept my objection because *“there has never been a legal connection provided by FP25 to the Marsh”* and the purpose was to *“re-establish only the public right of way”* and *“not the route between Burycroft and The Marsh”*.

The Mr Enright went on to explain *“It should be pointed out that the current owners of the land which is now known as Honeyfield Farm accepted this arrangement as the status quo when they acquired the land and not only retained but improved the permissive path over their land by constructing, at their own expense, a fenced route across their southernmost paddock, with a stile and appropriate signage at the entrance.”* He also advised *“Please be aware that because this path, and its connections with The Marsh and with the remainder of FP 25, has only ever been a permissive path, neither the developer nor the adjoining landowner was acting unlawfully in closing the path.”*

The email ended *“You will be pleased to know that an application to claim this particular path as a public right of way is already in the process of being made. Whatever the outcome of the diversion order, this path will become a public right of way, as the user evidence is likely to cover an uninterrupted period of at least 40 years, making the claim irrefutable.”*

Because this Diversion Order and the concerns I raised related only to the footpath across the corner of the development I assumed the forthcoming application related solely to this and reported to WPC the problem of safety at the corner would soon be solved. [E01]

This assumption proved to be a mistake as on 7<sup>th</sup> July 2017 WPC received notification of a consultation regarding an Application for a Modification Order for a proposed new footpath 44 which included the permissive path across Honeyfield Farm in addition to the path across the corner between The Marsh and Burycroft. During the consultation period WPC received queries questioning the validity of the proposal which resulted in a decision to object to the Order at a full WPC meeting on 18<sup>th</sup> December 2017.

WPC received redacted copies of the UEF's supporting the Application on 19<sup>th</sup> January 2018. After re-considering the comments received and the statements supporting the Application the Parish Council resolved it had no objection to part of the route connecting Burycroft to The Marsh (A-B-C-D-G) but there were concerns about the part of the route across Honeyfield Farm (D-E-F).

It became evident that the queries received by WPC from residents were caused because Mr Warr omitted any reference to the definitive FP25 on the map he produced when seeking UEF's from residents. This omission of any reference to FP25 was repeated in a series of detailed Facebook posts by Mr Warr over 5 days on the Wanborough community groups, supporting a "Save our footpath" campaign which the majority of residents assumed to be FP25.

This omission led residents to conclude that WPC were seeking to prevent a footpath on a route north from Buryfield and The Marsh at this point; perhaps they thought the definitive FP25 had disappeared during the development of Suters Lane? The number of queries meant the Parish Clerk had to include a note in the March 2018 edition of the parish magazine confirming WPC were not seeking to close any footpaths and that FP25 remained open. [E02]

Previously, Mr Enright had emailed the Parish Clerk on 24<sup>th</sup> April 2017 to advise that he had received a copy of what he referred to as a "bulletin" which had been distributed to residents in The Marsh and Burycroft. The Mr Enright wrote that he was "*rather concerned about false information which is currently spreading around the village about the diversion of FP25.*" The email explained "*the information in this bulletin is wrong on a number of points*" and after listing those he continues "*Mistakes such as appear on the bulletin are **careless and irresponsible***" and later that he presumed that whoever is responsible "*had reacted to incorrect information spread by word of mouth.*" [WPC Statement of Case 25/04/2019 Appendix 3]

The Parish Clerk responded promptly to confirm the bulletin "*has nothing to do with Parish Council*" and offered to "*put something on the website*". Mr Enright replied to thank the Clerk and noted "*feelings are running high in the locality, but about the bypass path rather*

*than the proposed diversion of FP25, which no-one seems the least bit bothered about!" He went on to explain "Of course **proper procedures weren't carried out from the very beginning, when the planning permission was first submitted.** What is frustrating to me regarding this is that as soon as I found out that planning permission had been applied for, I made it clear to Planning that the site was affected by the presence of FP25 and that the applicant would be required as a matter of urgency to submit an application to divert under the Town and Country Planning Act. My advice to Planning was unfortunately not heeded, hence the mess we have now."*

WPC were concerned that if the Order went to an Inquiry this would delay the creation of a safe footpath for pedestrians across the corners through Suters Lane and held several meetings with the RoW Officer, Applicant and Landowner of Honeyfield Farm to try and resolve this.

The first had been on 8<sup>th</sup> September 2017 when Councillors met the Mr Fry to discuss several issues concerning footpaths in the Parish and briefly about the Order.

On the 30<sup>th</sup> January 2018 Councillors met Mr Fry specifically to discuss the Order. That meeting confirmed that having received 3 objections to the Order it would be referred to Secretary of State even if WPC withdrew its objection; that FP25 is open without obstruction; and, concerning WPC's attempt to open the footpath joining Burycroft to The Mash on safety grounds, that if this Order was withdrawn a new Order for that section could be in place quicker if there were no objections. [N01]

On 13<sup>th</sup> February 2018 Councillors met Mr Warr and Mr Finch to confirm they had met Mr Fry and as it had been confirmed there were 3 objections the Order would go the Secretary of State even if WPC withdrew its objection. The meeting concentrated on assessing whether Mr Warr would withdraw his Application to allow a new Order for the route from Burycroft to The Marsh which could be in place much quicker. Mr Warr was not prepared to withdraw the Order as he was concerned that landowner could withdraw access to the permissive path on either points A-B-C-D or D-G and the process would be back to the start.

At this meeting Mr Warr also confirmed that it was not his aim to extinguish FP25 that crossed his land in the future, but that the landowner of Honeyfield Farm was free to do so. [N02]

Mr Warr subsequently confirmed his position by email. [N03]

On 20<sup>th</sup> February 2018 Councillors met Mr Stalker of Honeyfield Farm who is also an Objector to put forward the points raised in our meeting with Mr Warr. A discussion took place about the timing of a withdrawal of the Order and any guarantees Mr Stalker would provide. Mr Stalker indicated his approval could be forthcoming regarding points D-G if the

Order was withdrawn and an Application made for a new Order that did not include points E-F. [N04]

The Parish Clerk wrote to Mr Fry to clarify some points discussed at our meetings but Mr Stalker of Honeyfield Farm had subsequently written, on reflection following the meeting, to explain he was not prepared to continue as discussed because of a number of concerns. [N05}

At this point the WPC had to accept that it had done all it could do to resolve that matter and there was no alternative than letting the process continue and allow an Inquiry decide the outcome.

On 9<sup>th</sup> January 2019 Councillors arranged a final meeting with Mr Warr to show reasonableness and to outline the concerns that would be raised at an Inquiry but WPC did not receive any follow up from Mr Warr, although further new evidence was submitted to the Inspector with the Proofs of Evidence.

I think this shows that the Parish Council went to extraordinary lengths to try and resolve the matter and avoid the Inquiry we now have.

The Application relies on evidence that the proposed FP44 has met the relevant criteria to claim a deemed dedication. I will now turn to the evidence supporting the application.

## 2. Historic evidence – Maps

The earliest Ordnance Survey map of c.1850 includes a trackway leading north from Upper Wanborough via Kite Hill and Green Lane that continues as what is now the track leading to Honeyfield Farm. No footpaths are shown at this stage and the map shows more dwellings on the east side of the track than at Burycroft. [M01]

On the OS 6" map of 1878 the track is omitted and a footpath is shown on the current route of FP25. At this time the map also shows another path that followed the straight line of the track from Wrightsbridge to join Burycroft at the same point as FP25. Instead of the current track this map, shows 2 tracks leading to Foxbridge and the Wansdyke to the east from Ermin Street. Also this map is the first to record the field boundaries and a large pond in the land bordered by the track, FP25 and the current FP23. [M02]

Following a survey in 1883 OS 25" map confirmed the 6" but in greater detail. [M03]

However, the OS 1" map of 1896, attached as M2 to the Application, is much simplified and shows a path running north from the corner where the present track meets the road. This map also downgrades the road from The Marsh to Moorlease to a track. [M04]

The OS 6" and 25" maps revised in 1898 show a more complicated layout of footpaths with the present track running solely to Wrightsbridge and shows the current FP25. Where they crossed a previously unrecorded path or track lead from the intersection of those to a since demolished dwelling between Wansdyke and Wrightsbridge. At that time a separate path or track still connected Foxbridge and Wansdyke to Ermin Street, and this was later to become FP23. [M05 & M06]

This layout was transferred to the OS 6" map issued 1938 and the OS 1:25,000 from 1937 to 1961 [M07 & M08], whereas the OS 1" maps included as M3 with the application, continued with the simplified route mentioned previously.

The OS 25" map revised in 1941, included as M4 with the Application, shows a clearly defined route matching the Order route. We cannot find any reason for this and assume it must have been a simplification or error by the cartographer which was corrected on future issues of the map after a more accurate survey. As Mr Warr notes in the Proof of Evidence *"The Cartographers removed the straight lined distinct footpath 44 from the OS Maps of 1947"* [M09]

The OS 1" map revised in 1961 amends the route to that of FP25 although, probably through simplification, ends at the track and does not continue to Burycroft. This lack of clarity is accepted by SBC in para 9.6 of their Statement of Grounds which says *"due to the scale of the mapping it is not possible to exactly reflect the Order route."* [M10]

There are examples of maps and other documents WPC think are significant:

During WW2 a map was produced to show the locations of police, wardens, rest centres and the various HQ's for the Home Guard, based on the latest edition of the OS 6" 1898 map. Although the Home Guard used the nearby Cross Keys as a HQ there is no attempt to amend the footpath from the route of the current FP25 at a time when accuracy was paramount. [M11 &M12]

The National Parks and Access to the Countryside Act 1949 required local authorities across England and Wales to keep an official record of public rights of way known as a 'definitive map and statement'. The task of compiling details of the local footpaths was undertaken by Marjorie Adams. The book *Wanborough in Pictures* notes Mrs Adams was "*not only a long-serving member of the parish council but also a very active member of the Footpaths Committee*". The purpose of the survey under the 1949 Act was to record all public footpaths, even if there were 2 or more in the same field. Having seen the meticulous details she submitted, it is inconceivable that she would have overlooked the route on the Order footpath if there was any evidence that it was being used regularly. [M13]

In 1994 Barbara Parnell, another long-serving member of the parish council, produced a booklet *A Walk around Lower Wanborough*. In this Mrs Parnell explains "*Just beside Ducksbridge is a public footpath....It leads past the gardens and aviaries of Ducksbridge to the driveway to Wrightsbridge.*" It is significant that the booklet includes a specially drawn map of the route for the walk which clearly shows the route of FP25. A revised version of the booklet in 2012 was amended to read "*Just beside Ducksbridge is a public footpath.....It cuts of the corner and leads to the driveway to Wrightsbridge, across the driveway and over the stile to the footpath between two open fences.*", clearly the new permissive footpath across Honeyfield Farm.

The more recent OS maps, Pathfinder [M14] surveyed between 1969 and 1977 and Explorer [M14] revised 2014 and produced for walkers both agree with the definitive map and show FP25.

Of more than a dozen OS maps examined, only the 1" map of 1896 and reprinted in 1919 and the 6" map of 1941 show any variation to FP25. On balance and from the overwhelming historic evidence it is clear that the route of the footpath is that that became FP25. It should also be noted that there is no evidence that FP25 and the new proposed path existed at the same time.

### 3. Evidence - photos

Although the aerial photos included with Mr Warr's Proof of Evidence show clearly tracks following points A-B-C-D and D-G on the Order route we consider they provide no conclusive proof of a footpath following points D-E-F.

P7 shows a fence with a similar appearance in the photograph to one in a field to the east and there is no mention of points D-E-F in the Proof of Evidence document.

P8, P9 and P10 show the fence following the Order route but do not show a footpath line as mentioned in the covering document. The image reflects the ground effects of farm management and the change of vegetation growth below a fence but there is no clear mark that would be expected if there was a well-used path. P10 clearly shows an electric fence and the effects of grazing and there is no stile at the point E on the order route.

P11 appears to show the double track of a vehicle following the fence on the opposite side to the Order route and shows no marking to show a footpath, but does show at a gate in that fence the effect usage has on the ground and which would be expected alongside the fence if there had been a well-used footpath.

P12 was taken after the double fence was erected and the effect of a footpath along a defined route can be seen.

WPC therefore conclude the photographs show no clearly defined evidence of a well-used footpath on the Order route prior to the double fence and merely show the single fence and the effects of vegetation and animals.

#### 4. User Evidence Forms

WPC have received copies of 19 User Evidence Forms, of which 9 are signed on behalf of 2 residents and the forms therefore represent the views of 28 residents.

None of the UEF's include a map or plan prepared by the user. Although it is accepted that the accuracy of any map will depend on the talents of the user it has been noted at another Inquiry that it would "*raise suspicions if all users had produced identical plans*". Four UEF's have maps attached and 3 are copies of M01 provided by Mr Warr and we assume this map was issued to all residents who completed the form but not attached by many when the form was submitted.

It is significant that this map which was provided by Mr Warr for residents to use when completing their UEF's did not show the definitive footpath FP25. This is misleading and, as I have mentioned regarding the queries WPC received, gives the impression that without the addition of the Order route to the definitive map there would be no footpath on following a route north of Burycroft.

It is interesting that the fourth map attached to a UEF [S13] was produced in 2013 and attached to comments from the Ms Ellis RoW Officer to Planning about the problems with footpaths included in the application for planning permission for the development that was to become Sutlers Lane. The email and this map which included an erroneous reference to FP23 instead of FP25 was uploaded to the Planning Portal and available for download.

Only 1 UEF refers to FP25 and as the resident lives on the track it is probable they would walk along the track to where FP25 crosses the track, and then on to Burycroft via FP25.

The second thing to note is that residents consider the proposed Order routes is in 2 parts, on the map provided this is A-B-X across the corner and X-B-Y from The Marsh across Honeyfield Farm to FP23. This is clear from comments included on the UEF under "Other Relevant Information" and confirmed on UEF's [S05/S06 and S19/S20].

While many of the forms include what appears to be a standard *Description of Path: from Burycroft to The Marsh and outbuildings at Honeyfield Farm via Sutlers Lane* (8 forms), 4 forms specify only *Description of Path: from Burycroft to The Marsh*.

We also note that some forms include possible factual inaccuracies, for example Mr and Mrs Bell [S01] refer to “*standard public footpath sign from .....(2) the corner/bend in the road showing footpath across field toward Honeyfield Farm*”. If a “standard public footpath” sign refers to finger signs there was never one at this point because there has never been a footpath on the definitive map at this location.

Other comments we note are:

Mr Boston [S03] mentions the Landowner “made it difficult to walk, especially with a dog”.

Mr and Mrs Coles [S05 & S06] includes the comment “the fenced section of the paddock is unnecessary” which we don’t understand but we can find no attempt to seek and explanation.

Ms Cripps [S07] mentions “livestock...&.....which restricted us somewhat”.

Mr and Mrs Errington [S08 & S09] refer to a sign saying “*Footpath Closed sign at Y*”, which is point F on the Order Route. This is a consideration when deciding if a footpath is regarded as Permissive.

We feel that it should be noted that UEF’s submitted by Mr Hinton, Mr Shirreff and Mr and Mrs Sutton [S12, S18, S19 & S20] and supplementary statements from Mr Shirreff, Mrs Hinton and Mr and Mrs Hopper [S22, S25 and S28] are all submitted by users who live adjacent and have rights to use the track to Honeyfield Farm. It has to be questioned why they used the Order route when that had rights to use the track but only the UEF from Mr Hinton refers to using FP25 from the track to Burycroft.

## 5. Other Evidence

### Applicants Proofs of Evidence

At the final meeting with Mr Warr on 9<sup>th</sup> January 2019 WPC outlined our concerns and the points we still had regarding the evidence supporting the Order. We heard nothing until we received a copy of the Proofs of Evidence. This included no new historic evidence but did include new witness statements.

Mr Jenner [S16] is a former employee of the previous landowner Mr Sadler of all the land covered by the proposed new footpath. He explains that when Mr Sadler bought the land it *“was open fields and marshland”* and that land around the house and garden was fenced during late 1980’s. There is no mention of any fences on the land which is now Honeyfield Farm but in the late 1990’s or early 2000’s a fence was erected along the track and one corresponding to the route on the Order. This confirms the evidence we have received that users wandered freely across the paddock until late 1990’s to 2000’s.

Mr Waldron [S17] expands on his UEF [S16] in that from 1972 and previous 25 years he had walked across the *“well walked open fields”*. Referring to the land that became Honeyfield Farm he agrees with his UEF that it *“was open, it had been fenced in too”* although no dates are included.

Mr Fisher confirms our comments on points A-B-C-D-G in detail but makes no comment regarding points D-E-F. He also alludes to an agreement regarding the track between points D-G although there is no evidence for this.

Mr Hunt [S19], also a former employee of Mr Sadler who replaced Mr Jenner, provides a statement and we find the expression *“straight as a die”* extraordinary. Anyone who has observed walkers cross an open field, and animals for that matter, will have noticed the tendency to deviate from an undefined route, sometimes by a considerable distance. Mr Jenner has confirmed this was marshland and the prevailing conditions, boggy in the winter with lush growth in the summer, tend to make walking *“straight as a die”* extremely difficult if not impossible. The statement that the new landowner knew there was 2 footpaths at this point and the previous landowner was strict about the rights of way is clearly untrue as noted by the Ms Ellis RoW Officer who wrote the FP25 had been *“unofficially”* and *“illegally”* moved.

Mrs Bell [S20] again provides no reference to the route on the Order but confirms the witness at times walked a route *“through a fence”* and later *“I never actually followed an official route”* confirming the evidence we have received that users wandered quite freely and didn’t follow any defined route until it was double fenced by the current owners in 2009.

Mr Savage [S21] claims to have used the Order route *“daily”* in his UEF but in this statement part of the route was used *“extensively”* and another part *“frequently”*.

Statement S22 includes statements from 2 witnesses:

The first statement on the sheet from Mr Sheriff we accept as representing an honest and accurate description of this issue: *"I remember most footpaths were ill defined, hard to find and badly maintained, except where joining roads. I used to commute every day from Wrightsbridge to Dorcan in 1979/80, finding the route depended on crops, floods, fogs, etc. and varied every day. As for path 44 it ran from the lowest part of Burycroft to a rickety stile close to the gate at the road end of the Wrightsbridge track. There after it was indistinct though aimed at muddy gap between two ponds, sometimes blocked with fallen willows."*

The second correspondence on this page from Mrs Savage includes no evidence and is from a witness who together with her husband did not provide a UEF, nor is there any indication of a subsequent statement requested in this email. I can add that during a conversation I had with her husband the Order was mentioned and I indicated the WPC concerns about the actual route of the Order and that we had been informed that the fields were open and users did not stick to any defined route to which he replied *"it was right to roam"*.

A statement from Ms Moore [S23] makes no reference to the route on the order.

Another statement from Mr Waldron [S24] adds no new evidence to the previous statement and UEF from the same witness except to note that he was "prevented from passing" by the landowners wife, a clear indication that the footpath was permissive and not by right.

Mrs Hinton [S25], who assisted Mr Hunt and Mr Waldron write their statements, notes that the previous Landowner "respected both the footpaths here" but it has already been shown in Mr Hunts statement that the RoW Officer noted there was only one footpath because FP25 had been "unofficially" and "illegally" moved. The second last paragraph refers to the existing FP25, which her husband refers to in his UEF. This statement also confirms the statement from Mr Sheriff that he *"walked his dog for years"*.

Mr Birley's statement [S26] includes confirmation that there was no defined route because he says *"one chose what seemed to be the best route since it was not well marked"*. It also states the Order route is on "the Explorer 1 in 25,000 map" but that map clearly shows FP25.

Mr and Mrs Hopper only refers in detail to Order route A-B-C-D-G but states that *"FP25 hasn't been used for 30 years plus"* which conflicts with the statements that allege the previous owner Mr Sadler maintained 2 paths.

## 6. Summary

Historic records show the land crossed by the proposed Order route was open ground and could be very wet, as the name suggests.

There were several manors and landowners so footpaths and tracks probably followed the boundaries, hence the straight line that eventually became Kite Hill and the bridleway Green Lane. However when the footpath reached Wanborough Marsh the route of the path was probably determined by ground conditions and the season.

As time progressed the OS maps were developed to record topographical features but at that time were never intended to record public rights of way. The annotation *FP*, as shown on the map M4 of Mr Warr's Proofs of Evidence was used to distinguish a route not used by horses and vehicles and does not provide evidence of a public right of way.

As noted by Mr Fry in BSC's Statement of Grounds regarding M2 and M3, the later essentially a later issue of the former, *"due to the scale of the mapping it is not possible to exactly reflect the Order route."* Regarding M4 Mr Warr concedes that *"The Cartographers removed the straight lined distinct footpath 44 from the OS Maps of 1947"*.

When an indication of footpaths was included on OS maps around 1878 the surveyors included the route of the current FP25. When the definitive maps were produced the existing footpath was included and became FP25.

There is no other evidence included with the Mr Warr's Proof of Evidence to confirm the historic use of the Order Route between points D-E-F.

The issue is therefore whether the evidence is sufficient to show, on the balance of probabilities, that a public footpath not shown on the definitive map meets the relevant criteria so that it should be added to the definitive map. The 1981 Act sets out the requirements and SBC have determined that the Application meets those requirements and have issued the Order.

WPC have examined the facts in the SBC Statement of Grounds and disagree with this on a number of points:

2.2 We consider the route of the Order was effectively closed in late 2015 when the developers of the land that was to become Suters Lane enclosed their site with a metal fence, replaced later by a wooden fence, on H&S grounds.

2.4 and 2.5 Although there has been analysis of the numbers involved there is no indication of any check for accuracy or test of veracity of their evidence.

4.2 WPC has been given maps of the definitive footpaths in the Parish that include footpaths 44 and 45 and although I am reluctant to mention this again it is not 45 and 46 as mentioned here that need correcting. If a revised working copy of that map was produced WPC has not received a copy and this led to the unfortunate scenes at the Parish Council meeting in January 2018.

8.1 If the representation mentioned is an email dated 9<sup>th</sup> January 2018 it should be noted this only refers to route A-B-C-D-G.

9.3 It is wrong to make assumptions and this is covered by Reason for Objection 2 which explains that WPC are considering the route claimed to be used which was A-B – to **a point near G** which avoided the track but provided a route from Burycroft to The Marsh. [WPC letter 08/01/2018]

9.4 The objection does not include any suggestion that *“E-F cannot be a public footpath as it hasn’t been fenced for 20 years”*.

9.5 Refers to 4.2 I have just mentioned.

9.6 It is wrong to state WPC’s letter *“provides useful evidence in support of the Order”*. Firstly there is an error of fact and *“Appendix 4”* should read Appendix 3 and consequently *“Appendix 5”* should read Appendix 4. Regarding the route A-C this supports my comments regarding 9.3 and although it may not be possible to exactly reflect the Order route the starting points for the route at The Marsh and Burycroft are quite clear. There is **no evidence** of the statement attributed to Annie Ellis RoW Officer that points E-F of *“the order route has been in use for over 20 years”*.

9.7 The letter was a request for advice and WPC question whether it is appropriate to include it in the Statement of Grounds.

9.9 It is quite possible that Google publish in one year photography recorded in the previous, a similar situation to OS maps. It is unfortunate that the Statement of Grounds insists that *“These points are contradictory and must cast doubt on the validity of the remainder of the photographic evidence”* when I am identifying so many errors.

9.10 This is a miss-interpretation of the statements. The reference to statement (a) that *“no public footpath leads to Foxbridge”* is wrong and the footpath is clearly shown and marked FP on the map M4 attached to the Applicants Proof of Evidence. The point missed here is that the witness’s husband was involved with Mrs Adams on the Footpath Committee. Mrs Adams as I mentioned earlier undertook the survey for the definitive map so it is likely the witness through her husband’s involvement with footpaths was aware of the route of all the footpaths. The point missed regarding statement (b) was the witness used the route of FP25 as shown on the attached maps, although there was a period when it was possible to walk freely across the fields. Maps are attached that show the route the witness is referring to Statement (c) states the witness was using FP25 until the fenced path along the Order route

was created, although at one time from where FP25 met the track he was diverted along the track because the part of the route now Suters Lane was overgrown. A copy of the map produced for the survey for the definitive map is attached. I cannot understand why this paragraph ends *“one map relates to Marsh Farm and not the land crossed by the Order route”* as this is simply untrue.

9.11 I have already mentioned that points A-B-C-D-G is wrong.

9.12 This comment includes misinterpretation and is factually incorrect.

9.15 As I have mentioned earlier, OS maps were developed to record topographical features and were never intended to record public rights of way. The annotation *FP*, as shown on the map M4 of the Application Proofs of Evidence was used to distinguish a route not used by horses and vehicles and does not provide evidence of a public right of way. As pointed out by an inspector at another Inquiry *“The OS mapping is insufficient to demonstrate public rights and there is no other documentary evidence which suggests the existence of such rights.”* Even Mr Warr notes in his Proof of Evidence *“The Cartographers removed the straight lined distinct footpath 44 from the OS Maps of 1947”*. It is therefore wrong to state *“a footpath route existed across the land that now forms part of Honeyfield Farm”*.

9.17 Although it might be correct to say there is *“considerable evidence from individuals living elsewhere”*, as opposed to living adjacent to the track leading the Honeyfield Farm we think it is a failure to note that all the UEF’s were submitted from residents of Burycroft, The Marsh or Foxbridge. This shows further evidence that we are possibly here to resolve a neighbours and locals dispute rather than a genuine attempt to add a footpath to the definitive map.

9.23 WPC agree there is no statutory requirements for a plan, but plans or drawings attracted significance weight at another Inquiry where it was noted when considering slight variances in the details of the plans submitted that *“it would raise suspicions if all users produced identical plans.”* We consider this omission of any individual plans, together with the use of a generic Description of the Path and in many cases no entry in Other Relevant Information, indicate the UEF’s were completed using details provided rather than a true reflection of the actual use. This is further confirmed by a late addition to the Proof of Evidence where a witness simply agrees to a statement prepared by the Applicant. Despite the reliance of the UEF’s to provide evidence of use for 60 years we note none of the forms refer to points D-G and therefore fail to provide the evidence for the claim of 20 years continual use during the Relevant Period. I have already referred to the use of the OS map mentioned here and that it was unreliable evidence that was subsequently amended and we feel it should not be relied on to provide evidence of the proposed route.

9.25 Once again the Order relies on evidence of continual use for the entire Relevant Period and an unreliable OS map and we argue that these do not provide the evidence required to establish beyond all reasonable doubt.

10.1 WPC agree there is no evidence of a formal agreement for a Permissive Path but note that 2 RoW Officers, the Landowner of Honeyfield Farm and the Users all accepted this and that the evidence confirms the Landowner had no intention of it becoming a public right of way.

10.5 WPC disagree that there is no evidence that *“shows the use was by permission and not of right.”* We consider the comment that the signs were *“to inform walkers of their horses’ eating habits”* flippant and has no place in a Statement of Grounds supporting an Order. It does perhaps indicate the lack of gravity SBC has applied to this Order.

11.3 WPC consider the quote from a previous case is not appropriate here and in this case it is not only the local residents ever use the Order route. WPC’s opposition is based on comments from the whole parish and consider it wrong the SBC have relied on UEF’s only from users that live within such a restricted area.

11.4 It is wrong to say users of the route *“did not know they were using the route with permission”* as there is clear evidence that users knew and accepted this. The UEF from Mrs Inskip [S13] specifically refers to *“the permissive path”* on an attached map which has no reference to that delegation. Considering very tight geographical spread of the users it is likely that this view was shared by all those submitting UEF’s. There is evidence the route was used with permission.

11.8 It is wrong the state *“The witness statements provided by WPC attached to their letter of 24<sup>th</sup> April 2018 provide further evidence of the long use of the Order route.”* The witnesses are referring to the definitive FP25 but also explain there were times when users wandered across the open fields. The only reference to the route of FP44 is when the double fence was erected in 2009 as prior to that the route was not defined and proves that the requirement of 20 years has not been met.

So to conclude WPC take the view regarding points D-E-F on the Order route:

- There is sufficient evidence the show that this route was a Permissive footpath from 2009 when the field was fenced with fox and badger proof fences;
- The evidence shows no intent by the Landowners to dedicate a footpath as shown on the Order route; and
- We understand Dedication in Common Law can be for a shorter period than the 20 years required under Statute Law but weight is given to the number of users. In this case we consider the low number of users indicates the period should not be shortened.