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Warrington Road,
Rainhill
L35 6PG

11th January, 2018

DELIVER BY HAND AND EMAIL

Mr Martin Fry,
Rights of Way and Highway Information Manager
Highways and Transport Service Delivery
Swindon Borough Council
4th Floor
Wat Tyler House
Beckhampton Street
Swindon
SN1 2JH

Dear Mr Fry,

OPPOSITION TO MODIFICATION ORDER 2017 TO FOOTPATH 44, WANBOROUGH

This letter of opposition with regard to Swindon Borough Councils modification order of 22nd November 2017 forms part of my objection to the proposed footpath 44 which crosses the land owned by Mr and Mrs Stalker and is identified by the route marked on the order map as F - E - D - G. Comments and information supplied relate to this route only, points A - B - C fall on land outside of the ownership of Mr and Mrs Stalker. Any comments relating to public footpath 25 relate to that section from point F on the order map and the point at which it intersects the track to Honeyfield Farm which is 35 metres north of point D and can be clearly identified on the map.

In an email to yourself dated 27th November 2017 Mrs Stalker asked you to provide her with copies of any evidence in the Councils possession in support of this modification order, your reply later on the same day was that you would cover these points at the meeting with Mrs Stalker on the 6th December 2017.

Mrs Stalker informed you at the time of the meeting on the 6th December that due to the fact that she is registered dyslexic that she had need to record the meeting. You stated at this meeting "the evidence for this route at the moment is based on the evidence we have received from users and there is no historical evidence going back 100 years".

The only information supplied at this meeting and subsequently emailed later that day were the 19 user evidence forms, the only conclusion we can deduce from this having given you the required time to produce any other supporting evidence which you stated at the meeting you would do if any further evidence or correspondence became available, is that the user evidence forms the only basis of evidence in the councils possession.

The order made by Swindon Borough Council under section 53(2) (b) of the Wildlife and Countryside Act 1981 is made in consequence of the occurrence of events specified in section 53(3) (c) (i) of the 1981 Act (addition of a way to the map). In deciding whether to make an order the test to be applied is not whether the evidence establishes that a right of way exists (footpath 25) across Mr and Mrs Stalkers land but whether the right of way alleged and as described in the witness statements (path X - B - Y in Map 1) is the actual footpath to which it is reasonably alleged that they used. Map 1 enclosed with the witness statements does not show footpath 25 and as evidence is deficient in this regard, it could be reasonably assumed that the path to which the supporters claim to have walked across Mr and Mrs Stalkers land was in fact footpath 25. It is helpful and good practice for each evidence form to be linked to a plan on which the alleged right of way is shown and identified, highlighting any stiles or obstructions and for this plan to be duly

signed and dated by the person providing the evidence. The user evidence fails to accurately confirm the use of proposed footpath 44 and should be disregarded

I will at this point bring to your attention some of the evidence that we have in our possession to support our claim to oppose this order and the evidence as supplied by the witness statements.

1. Copies of aerial photographs taken from Google earth for the years 2002, 2005 and 2007 that clearly show that no 3 metre wide or any other path existed across Mr and Mrs Stalkers land. The photographs clearly show fields and sub division of these fields by way of wire fencing thus disputing any permitted public use of the land following the route of the proposed path 44.
2. Evidence by way of emails from Mrs A Ellis and Mr Enright of Swindon Borough Council which clearly outline the Councils knowledge and courtship of Mr and Mrs Stalker in 2008 with regard to the temporary use of their 2.3 metre wide livestock race for use by the public whilst other footpaths were closed/blocked. This is now claimed as proposed path 44 a public right of way. This was only ever permissive for the duration of the other footpath closures and the council had full knowledge of this.
3. Photographic and written evidence from the council clearly showing the disruption to the livestock race (proposed path 44) for a period from December 2010 to March 2011, whilst works in connection to the mains sewer was undertaken by Mr and Mrs Stalker which again disputes any regular or long term use of the proposed path 44.
4. CCTV evidence for a period of some 16 consecutive days in 2015 which clearly shows the livestock race being used as a paddock and grazed by horses, again disputing use claims as a footpath.
5. Notwithstanding the actual use of the route but the claim of width of 3metres is also disputed as the livestock race only measured 2.3 metres. Evidence by way post hole marks in the existing land. The livestock race was removed in February 2017 and access to the route blocked. Mr and Mrs Stalker are legally entitled to do this is as this was only ever a temporary permissive route. The proposed route 44 was not passable on the relevant date 21st June 2017
6. A letter dated 11th June 2010 from Mrs A Ellis Swindon Borough Council to Mr Stalker clearly highlighting on the attached definitive rights of way map the routes of footpaths 23 and 25 Wanborough. This map and correspondence makes no reference to any other paths across Mr and Mrs Stalkers land or any definitive path along the spur as identified in the map accompanying the order and identified as route G-D-E, a path however is shown across the land not in Mr and Mrs Stalkers ownership.
7. The primary and intended use of the livestock race (proposed path 44 between point F and E on the order map) was for the safe and controlled movement of livestock around Mr and Mrs Stalkers farm. At the time of construction and with the layout of the paddocks radiating from this race it allowed separate groups of animals to be easily and safely herded from the farthest point on the land (point E) to the the livestock barn (point F) whilst not allowing these groups of animals to mix, i.e. in the case of moving a group of open females past or through intact males for shearing or mating purposes. At the time of construction Mr and Mrs Stalker also had a number of horses on their land and the width of 2.3 metres (not 3 metres as stated) allowed safe passage when leading horses past others and for safely turning a horse around whilst leading it, there was never any intention by presumption or otherwise to dedicate this essential farming tool for the use as a footpath the mere fact that this race ran between fences does not *per se* give rise to any presumption. The temporary stile was installed at the request of Mrs A Ellis (SBC) whilst other footpaths were closed. We have in our possession CCTV footage showing horses grazing this race, photographic evidence showing closure notices and CCTV footage showing the vandalism by persons to the closure obstructions placed across this path.

8. The action of Mr and Mrs Stalker to effectively verbally challenge trespasses across their land can be verified by correspondence with the council and digital information which can be corroborated by the clerk to Wanborough Parish Council. Whilst not relevant to this particular case I feel it necessary to mention that this verbally abusive digital information and CCTV footage forms part of an escalating campaign of harassment and abuse against Mr and Mrs Stalkers legal use and enjoyment of their land.

USER EVIDENCE FORMS

Please note for identification only the last 3 digits of the PDF files you supplied have been used.

MAP 1

It should be noted that this map which appears to have been used by the majority of user respondents omits footpath 25 and therefore has led to confusion as to where people have actually walked as footpath 25 is very close to the proposed path 44. The applicant appears not to have given the users any choice over which path they actually used.

PDF 114

User could not have used B to Y for 30 years as it can clearly be shown from aerial photos this section of path has not existed for 30 years.

The user relates to sign and stile at point A the end point of footpath 25, the user is confusing this with the proposed route 44 and appears to have used map 1 for reference.

No signed map attached.

PDF130

This evidence clearly refers to footpath 25 and refers to recent housing development.

No signed map attached.

PDF717

Map 1 attached but not signed, user clearly indicates use from A to B and B to A but makes no mention of using any part of the proposed route that crosses Mr and Mrs Stalkers land.

PDF729

No map attached or reference to any map, this user evidence is inadmissible as there is no clear indication as to where the user actually walked.

PDF025

No signed map attached, however it appears with the references, the user has had sight of map 1, but unfortunately we do not know the routes he walked and whether he was actually using footpath 25 and referring to the closure notice that was put on it by the council, aerial photos dispute user evidence.

PDF042

No signed map attached or any reference to map 1, no clear evidence to show routes used, user could have been using footpath 25.

PDF213

No signed map attached however it appears user has had sight of map 1, user clearly could not have used section B to Y once a week for 59 years as it did not exist and there is clear evidence to prove times at which this route was not accessible or even exist, user could again be referring to footpath 25 and the closure notice at point Y put on by the council.

PDF327

No signed map or reference to any map. It is not clear as to which route this user is referring to and again could have been using footpath 25.

PDF502

No signed map attached or reference to any map, user could have been using footpath 25 at times but does actually state that the stile at the end of the livestock race was blocked and the horses were on this enclosed livestock race, this highlights our assertion that there was no

intention to allow this route to be used as a public footpath. Mr and Mrs Stalker were well within their right to block the stile as the footpath was only ever temporarily permissive.

PDF619

Map 1 attached but not signed. The user does make reference to cutting off the corner but goes on to state that they used the old footpath 25, again we must pull into question the 50 year usage. Frequency and period of use would indicate that they used footpath 25.

PDF912

Map enclosed but not signed, there is a lot of confusion surrounding this user evidence, the map is entitled footpath 23 and this is indicated on the map, however it is actually footpath 25, the text refers to footpath 23 and 25 and refers to reference points which unfortunately are not highlighted on the map so we have no idea whatsoever of any path or route used. They do however refer to the development and the fact that the developers have ignored all the footpaths and built wherever they wished. The user states "didn't even apply to close the route before development" which refers to recently approved development. Again we must pull into question the 20 year usage.

PDF037

Map 1 enclosed but not signed. No reference in the user description to any of the points highlighted on map 1, this user has clearly used footpath 25. Again we must pull into question the 20 year usage.

PDF157

No signed map attached, no reference to any points on any map, no clear idea of where this user actually walked, however the frequency of usage and period of use would indicate that they used footpath 25.

PDF240

No signed map attached. However it appears the user has had sight of map 1, the frequency of use was only 3 times between November 16 to January 17, this does not constitute long term, regular or right of usage.

PDF118

No signed map attached. No reference to any points on any map, period and frequency of usage indicates that this user used footpath 25.

PDF947

No signed map attached. User clearly indicates in the description of the path that they used footpath 25, which again is confirmed by the period and frequency of usage.

PDF749

No signed map attached. No reference made to any points on any map, again this user clearly used footpath 25 which is again confirmed by the period and frequency of usage.

PDF637

No signed map attached. This user has clearly used footpath 25 and is mistaking this for the route highlighted on map 1 which he does refer to, however the period and frequency of usage and the fact that he used a bicycle would indicate his usage of footpath 25. The users answer to the question of stiles - "many years ago" clearly shows he did not access proposed path 44 in the ownership of Mr and Mrs Stalker.

PDF356

No signed map attached. No reference to any path or points on any map, the period and frequency of usage would again indicate the use of footpath 25.

All the above user evidence of unimpeded public use is insufficient to indicate that presumed dedication of the proposed path 44 as a public right of way has occurred.

FURTHER CONSIDERATIONS

In your email of the 24th November at 17.15 to Councillors, Statutory Consultees, Wanborough Parish Council and others.

Subject: **Footpath 44 Wanborough definitive map modification order 2017** you indicated to all those parties copied in that email that both yourself and the council were in possession of evidence that "the route has been used by the public for 20 years" (section 53(3)(b)) and not that **this use was alleged**, this promotes a misleading impression that the information supplied to substantiate this claim was factually correct and had been processed with regard to due diligence to eliminate spurious or unfounded claims.

At the Wanborough Parish Council meeting on the 18th December, the Parish Council verbally stated that they would be objecting to this order, the running order for the meeting was duly circulated prior to the meeting, this gave opportunity for all members of the Parish Council to view the user evidence for themselves as they had prior notification regarding proposed footpath 44. The Parish Council was notified in Mr Fry's email of 24th November as to the existence of user evidence which was in SBC's possession, this gave ample opportunity to ask for copy/view this user evidence.

On the 27th November 2017 you stated in an email to Wanborough Parish Council re footpath 44- the definitive map modification order. "An order to add this route to the definitive map was made by the council last week but if objections are received to the proposal the order will have to be forwarded to the Secretary of State for determination". This gave a misleading impression to the Parish Council that no objections had been received and yet Mr and Mrs Stalkers objection was duly accepted by the Council on the 4th August 2017 both by hand delivery and email (a receipt was obtained for the hand delivery).

The section of footpath A-B-C as shown on the order map (not in the ownership of Mr and Mrs Stalker) should have been appropriately dealt with by the Council when allowing the recent housing development. Mr and Mrs Stalker should not now have to be further disadvantaged by the so called "spur" on their land denoted by points D - G on the order map by the inaction of the Council to effectively deal with this during the planning process. Point D - G is private property and had nothing to do with the recent housing development.

By allowing this modification order Mr and Mrs Stalker could be additionally disadvantaged and again suffer the possibility of claims of a further footpath across their land as there will be no physical barrier to prevent people using the length of their access track as a footpath between point G - D (spur) shown on the order map and footpath 25 where it crosses their access track some 35 metres North of point D, the reverse would obviously apply if they came from footpath 25 to point D.

The user evidence forms issued by the Council (form 3) are deficient in content and do not state or ask the following :-

- (1) I hereby certify that to the best of my knowledge and belief the facts that I have stated are true.
- (2) I am/am not willing to attend a hearing, public enquiry or court to give evidence on this matter, if this should prove to be necessary.

The forms do not test the willingness of the person giving evidence to attend a public enquiry for cross examination, the applicant in receipt of the information pack from SBC may be aware of this information, the user submitting evidence may not.

The validity of the modification order is questionable as there is an obvious error between the "description of path to be added" in part I of the schedule and that described in the statement in part II. In part II the new description of this path shall be: - this incorrectly describes the proposed route as "The path continues west across the access road to a stile and then northwest for a distance of 117 metres with a width of 3 metres to rejoin public footpath 25". This is obviously flawed as in the description of the path to be added in part I of the schedule the measurement

from the stile at point E to the point at which it rejoins public footpath 25 point F is stated as only 110 metres. Whilst the measurements as stated are only approximate they must not conflict with one another and they must accurately represent their position in relation to the map supplied with the order. These measurements must be equal to confirm the validity of the order.

In an email from Mr Enright (SBC) dated 26th January 2017 to Mr Stalker he outlines that the actual length of the path described both in the text and on the map he enclosed with the email as "permissive" as being 93 metres in length (E - F on the order map). The discrepancy of some 24 metres between the length stated in the order schedule, and that actually measured highlights the error in the order. This is not a small discrepancy. In addition to Mrs A Ellis, this email and map also highlights that this 2nd officer of SBC was also fully aware that the proposed route was only ever temporary permissive. It is highly unlikely that both of these officers were not aware of the law regarding public rights of way and presumed dedication.

The order is invalid by virtue of Footpath 44 already existing in a different location within Upper Wanborough. See map published by Swindon Borough Council, available to view on the Wanborough Parish Council website.

When checking the order it should be checked to ensure that it complies with the legal requirements e.g. that facts such as location, identification, path lengths and directions are correctly and accurately stated.

You will no doubt be aware with procedures for determination of a public path order or definitive map modification order to which objections have been lodged and not withdrawn and where the order making authority decides to proceed with the order. In this case the authority has no option but to refer the order and objections to the Secretary of State for determination. Reference opposed orders schedule 15 section 7 (1) "if any representation or objection duly made is not withdrawn the authority shall submit the order to the Secretary of State for confirmation by him". If a local authority (Parish Council) enters an objection to a public path order a public enquiry must be held as per HA1980 schedule 6 paragraph 2 (2)(p528) and the TCPA 1990 schedule 14 paragraph 3 (2)(p614)

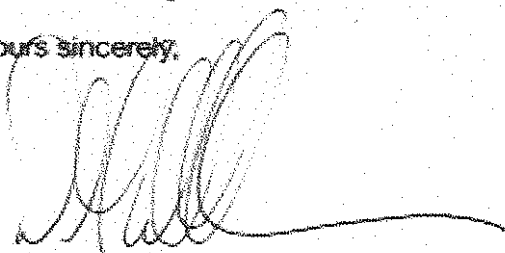
I am aware by way of the Wanborough website of the correspondence between Wanborough Parish Council on the 2nd January and 8th January 2018 to SBC in which they have objected to this order and offered an alternative route. I reserve the right to comment on this at a later date.

I would suggest that in order not to waste anymore time and tax payers money Swindon Borough Council should take the decision not to confirm this order and instruct the Secretary of State with a request that he refuses to confirm this order.

In relation to schedule 15 of the Wildlife and Countryside Act 1981 would you please confirm that this objection is duly made and has been received within the allotted time schedule i.e. prior to 12th January 2018, grounds for objection as above.

I reserve the right to withdraw, comment or add further objections to this modification order.

Yours sincerely,



Derek Williams B.Sc (Hons).