

Secretary of State (at the Planning Inspectorate)  
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Christopher Trybus  
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Swindon  
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Date: 31<sup>st</sup> March 2019

## ROW/3209564

**OBJECTION / STATEMENT OF FACT** with regard to the

NOTICE OF MODIFICATION ORDER SECTION 53 WILDLIFE AND COUNTRYSIDE ACT 1981

SWINDON BOROUGH COUNCIL HIGHWORTH RURAL DISTRICT DEFINITIVE MAP AND STATEMENT

FOOTPATH 44 WANBOROUGH MODIFICATION ORDER 2017

Dear Sir,

I am writing to you to strongly object to the above proposed dedication. My objections are based on the following points relevant to the section of the diversion through the new housing developed at Suters Lane.

### **Enhanced Risk of Trespass, Burglary and Anti-Social behaviour**

I travel a lot for work so can be away from home for long periods at a time, leaving the house empty. The addition of the new route marked **G,D,C,B** on the **Order Map Footpath 44** diagram (**APPENDIX D**) will in my opinion, increase the risk of burglary, trespass and anti-social behaviour to my property Wren Cottage, 4 Suters Lane and my neighbours (marked as No2, 3. and 4 Suters Lane on the map).

The closure of Footpath 25 by the Council in December 2014 was following complaints from a large number of local residents whose properties adjoin the path. The complaints were largely about residents' concerns about their safety and the use of the path by some members of the public for criminal and anti-social acts. (Source: *Section 2.2 of WILDLIFE AND COUNTRYSIDE ACT 1981, SWINDON BOROUGH COUNCIL, HIGHWORTH RURAL DISTRICT DEFINITIVE MAP AND STATEMENT, THE SWINDON BOROUGH COUNCIL, FOOTPATH 44 WANBOROUGH MODIFICATION ORDER 2017, 18th FEBRUARY 2017 – APPENDIX C*). So, our concerns in this area are more than justified. The new path would allow burglar's easy access and escape from Suters in darkness and they could park behind our house in Burycroft/Marsh laybys.

### **Public Scrutiny and Privacy**

The addition of the new route marked **B to C** on the **Order Map Footpath 44** diagram will significantly reduce my privacy as anyone walking the path from **B – C** can look directly into my downstairs living room and dining room as it passes less than 2 meters from my house.



Views from footpath of my house





### **Public Benefit**

There is no public benefit in siting a path a few feet and parallel to the existing right of way, footpath 25.

### **Usage of footpath 25**

When I am not working abroad, I work from home and my upstairs office overlooks Footpath 25 (*see photographs below*). Since I moved into the property in July 2018, I have not noticed very few people using the footpath.

Therefore, if the existing path is little used, it makes no sense and not in the public interest/purse to create and maintain another path just a few feet from Footpath 25.



*View of footpath from my home office*

### **Continual uninterrupted use**

The continuous, uninterrupted use of a single defined route has not been proven to a reasonable degree. The statements of those claiming to have used sections at various times do not appear to add to a complete uninterrupted history over the relevant timeframe. Furthermore, the statements are redacted to hide personal details therefore it is not possible to be certain that they are genuine residents who would have had reason to use the path in the ways stated.

The line of the path through the new housing development was never a defined route, but was a moving feast as it wended its way through a caravan site and consequently caravans and buildings were put up across the route shown and alternative routes were walked as a general shortcut over multiple routes was used to cut the corner off the public highway towards footpath 25. A defined route is an essential part of any footpath permissive or otherwise.

The various owners of the land over the period of use claimed did not intend to dedicate a right of way over the route in question.

According to *WILDLIFE AND COUNTRYSIDE ACT 1981, SWINDON BOROUGH COUNCIL, HIGHWORTH RURAL DISTRICT DEFINITIVE MAP AND STATEMENT, THE SWINDON BOROUGH COUNCIL, FOOTPATH 44 WANBOROUGH MODIFICATION ORDER 2017, 18th FEBRUARY 2017* after the council reviewed the evidence in the above, and in section **"5.0 CONCLUSION, 5.1 In view of the reasons set out, the Council respectfully requests that the Secretary of State does not confirm the Order to add the path to the Definitive Map and Statement"** as no credible proof was given that the footpath had been in use uninterrupted for 25 years. Moreover, it has been closed since 2014.

#### **ALTERNATIVE PROPOSAL**

However, the residents of Suters Lane have recently been made aware of an alternative proposal from the owners of Honeyfield Farm made to the Parish Council (see **APPENDIX A**) that is acceptable to everyone. The proposal is to allow a public right of way from point **A** to **B** shown on the map where point **B** joins the existing Footpath 25.

This proposal is fully supported by us and the other residences of Suters Lane (refer to their individual Statement of Facts from No 1,2, and 4 Suters Lane).

It should also appease the Villagers as they would not have to walk around the bend where Burycroft meets the Marsh which was one of the main reasons villagers wanted Footpath 44.

It would also be in the best public interest / public purse to accept this proposal.

Yours Sincerely



Mr Christopher Trybus



## **APPENDIX – A**

Alternative Route Proposed by the owners of Honeyfield Farm to the Parish Council

## **APPENDIX – B**

Order Map Footpath 44

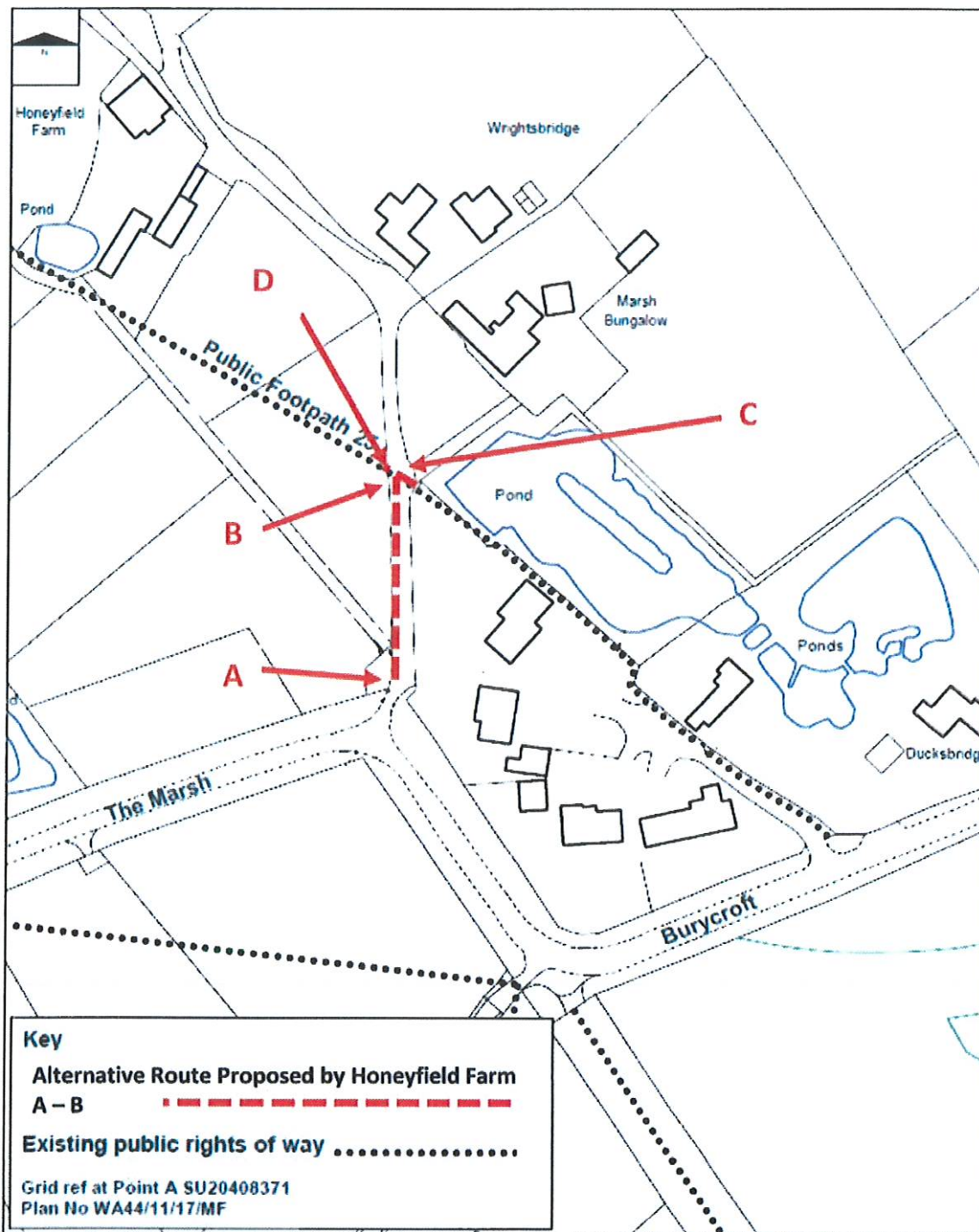
## **APPENDIX – C**


WILDLIFE AND COUNTRYSIDE ACT 1981, SWINDON BOROUGH COUNCIL, HIGHWORTH RURAL DISTRICT DEFINITIVE MAP AND STATEMENT, THE SWINDON BOROUGH COUNCIL, FOOTPATH 44 WANBOROUGH MODIFICATION ORDER 2017, 18th FEBRUARY 2017

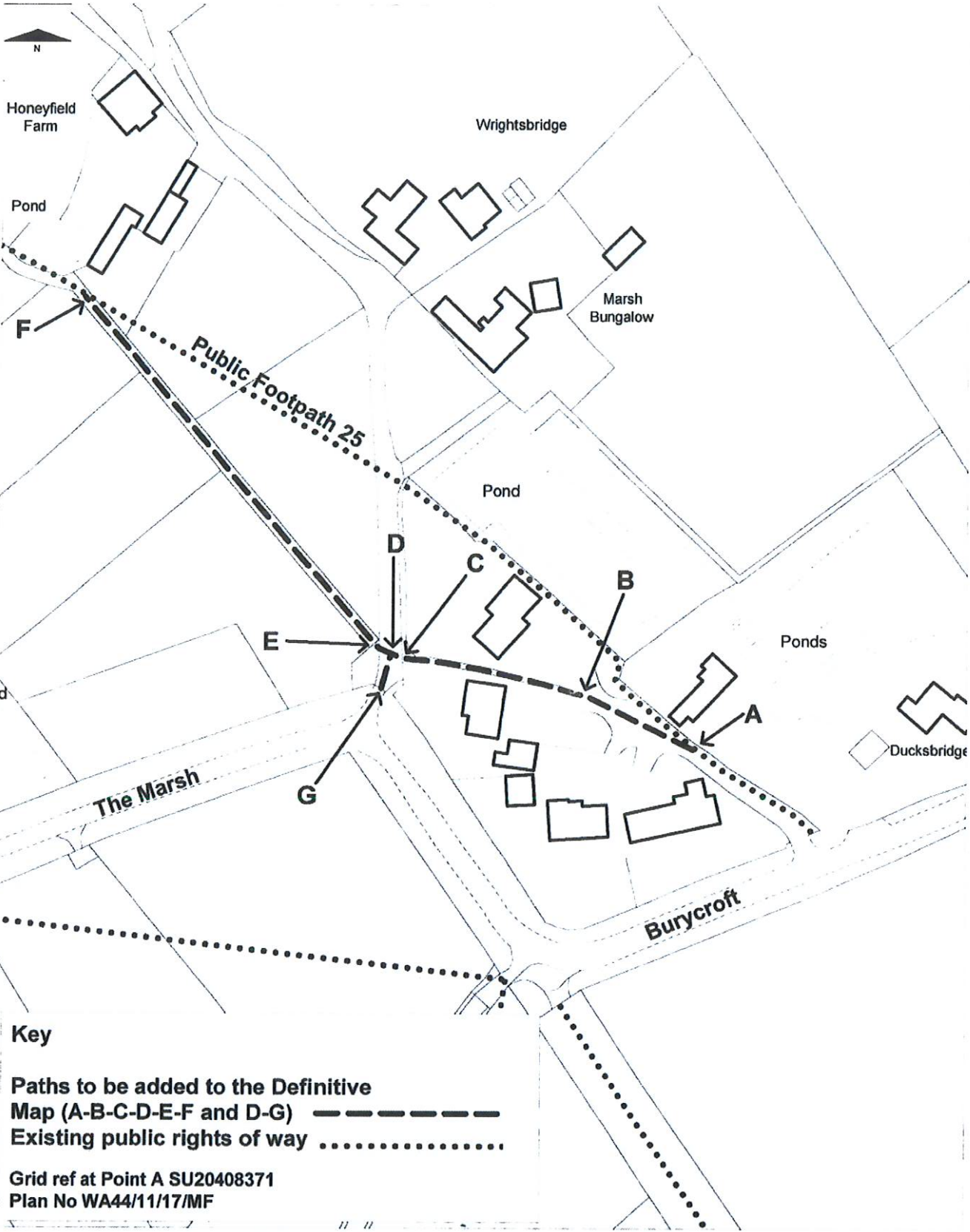
**APPENDIX – D**

Order Map Footpath 44

# APPENDIX A – Alternative Route Proposed by Honeyfield Farm



 <p><b>SWINDON</b> BOROUGH COUNCIL</p>	<p><b>Order Map</b> <b>Footpath 44</b> <b>Parish of Wanborough</b></p>	<p>Swindon Borough Council HIAM Service Delivery 4th Floor Wat Tyler House West Beckhampton Street Swindon SN1 2JH Tel 01793 445600</p>
<p><b>Scale 1:1,250 (A4)</b></p>	<p>© Crown copyright and database rights Swindon Borough Council 100024296 2017</p>	




**Key**

Paths to be added to the Definitive Map (A-B-C-D-E-F and D-G) **-----**

Existing public rights of way **.....**

Grid ref at Point A SU20408371

Plan No WA44/11/17/MF

 <p><b>SWINDON</b> BOROUGH COUNCIL</p>	<p><b>Order Map</b> <b>Footpath 44</b> <b>Parish of Wanborough</b></p>	<p>Swindon Borough Council HIAM Service Delivery 4th Floor Wat Tyler House West Beckhampton Street Swindon SN1 2JH Tel: 01793 445500</p>
<p><b>Scale 1:1,250 (A4)</b></p>	<p>© Crown copyright and database rights Swindon Borough Council 100024296 2017</p>	





**WILDLIFE AND COUNTRYSIDE ACT 1981  
SWINDON BOROUGH COUNCIL  
HIGHWORTH RURAL DISTRICT DEFINITIVE MAP AND STATEMENT  
THE SWINDON BOROUGH COUNCIL  
FOOTPATH 44 WANBOROUGH MODIFICATION ORDER 2017**

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**STATEMENT OF CASE**

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**18<sup>th</sup> FEBRUARY 2017**

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## **1.0 INTRODUCTION**

1.1 This Statement of Case is in respect of Swindon Borough Council's ("the Council") stance to support The Swindon Borough Council Footpath 44 Wanborough Modification Order 2017 ("the Order") and the Council's comments on the objections received to the Order.

## **2.0 THE APPLICATION**

2.1 On 2<sup>nd</sup> March 2015 the Seven Fields Conservation Group ("the applicant") made an application under section 53 Wildlife and Countryside Act 1981 for a path to be added to the definitive map and statement. The route of the path is shown on the plan contained within the Order which is attached as **Appendix 1**.

2.2 The application was made following the closure of the path by the Council in December 2014. The Council had exercised its right as landowner to close the path following complaints from a large number of local residents whose properties adjoin the path. The complaints were largely about residents' concerns about their safety and the use of the path by some members of the public for criminal and anti-social acts.

2.3 The application was accompanied by user evidence establishing that the path had been used by the public as of right and without interruption for a period of twenty years up to the date of closure. The span of user evidence provided was sixty years from 1954 to 2014.

2.4 The application was objected to by a number of people, including local residents, as well as local councillors. The evidence for and against the application was detailed in a report presented to the Planning Committee on 10<sup>th</sup> November 2015. The report is attached as **Appendix 2**.



- 2.5 At its meeting the Planning Committee heard representations for and against the application. In addition to the analysis of the evidence contained in the committee report (**Appendix 2**), members of the committee heard representations which indicated that the path had not been used continuously for 20 years as of right by the public prior to the closure in December 2014. The Committee heard that there had been an interruption within the twenty year period due to the erection of a fence to prevent the use of the path.
- 2.6 The Committee decided, on a vote, against the application to make a Definitive Map Modification Order. That decision was reached, after considering the evidence that on the balance of probability the applicant had been unable to prove an uninterrupted period of twenty years use.
- 2.7 On 8<sup>th</sup> January 2016, the applicant lodged an appeal with the Secretary of State against the Council's decision to refuse the application. The Council's Statement of Case is attached as **Appendix 3**. On 4<sup>th</sup> May 2016 the Secretary of State allowed the appeal and directed the Council to make a Definitive Map Modification Order.

### **3.0 COUNCILS INTERPRETATION OF EVIDENCE**

- 3.1 The Council refused the application on the basis that upon careful consideration of the evidence presented to the Planning Committee, the applicant had failed to prove on the balance of probability that the path has become a public footpath by virtue of twenty years uninterrupted use.
- 3.2 The Council believed the evidence presented to the Planning Committee that fences were erected across the path during 1998 to prevent public use. The applicants did not at any time contradict the evidence relating to the erection of the fences.

3.3 It was the decision of the Council that the fence obstructions negated the applicant's claim of twenty years uninterrupted use of the path up to December 2014.

### **3.0 THE ORDER**

3.1 On 22<sup>nd</sup> June 2016 the Council made a Definitive Map Modification Order, **Appendix 1**, which was publicised in accordance with the statutory requirements.

3.2 The published Order received one representation from "The residents of Kennet Avenue" within the statutory objection period which is attached as **Appendix 4**. That representation although unsigned was handed in at the Council offices by David Peacey of 34 Kennet Avenue. Upon seeking clarification with Mr Peacey a further communication was received by the Council, objecting to the Order and signed by 15 residents of Kennet Avenue. That document is attached as **Appendix 5**.

### **4.0 COMMENTS ON REPRESENTATION AND OBJECTION**

4.1 The initial representation raised a number of points in regard to the Secretary of States appeal decision mentioned in para 2.7 above. These points concern the history of the area, a locked gate across the route, ownership of the route, the fence erected in 1998, permissive access along the route and an existing nearby alternative route.

4.2 Some of the points raised in the representation support the Council's view that the use of the route has not been continuously enjoyed by the public for twenty years without interruption.

4.3 The objection states that the residents closed the Order route in August 1998, when they believed they owned the land crossed by the route, by the erection of barriers.



4.4 The objection concurs with the view of the Council that the use of the route has not been continuously enjoyed by the public for twenty years without interruption.

## **5.0 CONCLUSION**

5.1 In view of the reasons set out, the Council respectfully requests that the Secretary of State does not confirm the Order to add the path to the Definitive Map and Statement.