



**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**

PROOF OF EVIDENCE

24 JUNE 2019

1 INTRODUCTION

- 1.1 I am Martin Fry and have been employed by Swindon Borough Council (“the Council”) as the Rights of Way and Highway Information Manager since July 2014. I started working within countryside access in 1988 for Surrey County Council, where I had a number of roles, before moving to Warwickshire County Council as the Countryside Access Manager. I am a full member of the Institute of Public Rights of Way and Access Management.
- 1.2 This Proof of Evidence is in respect of The Swindon Borough Council Footpath 44 Wanborough Modification Order 2017 (“the Order”) and the Council’s comments on the Statements of Case forwarded by the Secretary of State to the Council on 1 May 2019.
- 1.3 This Proof of Evidence is in addition to the Statement of Grounds (SOG), previously submitted to the Secretary of State by the Council in August 2018, which contained the full particulars of the case.

2 WANBOROUGH PARISH COUNCIL

- 2.1 The Statement of Case from Angela Raymond, Clerk to Wanborough Parish Council, has changed the objection from that Council. Their objection to the Order is now limited to that section of the Order route between Points E and F and no longer includes the section between Points G and D (**Appendix 15, SOG**).
- 2.2 The application to add the Order route to the definitive map and statement (**Appendix 2, SOG**) included a plan of the path. The same route is shown on the plan used for the informal consultation plan (**Appendix 5, SOG**) and Order plan (**Appendix 12, SOG**) with the modifications detailed in **Paragraph 4.3, SOG**.

- 2.3 The Council has a statutory duty to process applications for modifications to the definitive map and statement under section 53 Wildlife and Countryside Act 1981.
- 2.4 The paragraph concerning closeness of other public rights of way includes references to a footbridge over the Lyden Brook and other features on paths that are not located on the Order route.
- 2.5 The Statement of Case includes little if no additional evidence to the correspondence from the Parish Council dated 2 January 2018, 8 January 2018 and 24 April 2018 included as **Appendices 15, 16 and 17, SOG**. The contents of that correspondence is considered in **Paragraphs 9.2 to 9.12, SOG**.
- 2.6 The Statement of Case contains information that the Inspector cannot consider, as stated in paragraph 6.2 of The Planning Inspectorate's Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England, January 2018.

3 NEIL STALKER

- 3.1 The Statement of Case from Neil Stalker also contains information that cannot be considered in determining the Order.
- 3.2 Point 3.6.3 in this Statement considers the temporary traffic regulation order for Public Footpath WA25. That temporary order only affected Public Footpath WA25 and not the Order route. However, during the time that order was in place, if the public were to walk the Order route they would not have been able to continue their walk north west of Point F (**Appendix 12, SOG**) as the section of Public Footpath WA25 between that point and the next public right of way (Public Footpath WA23) was closed as stated in the order notice (**Appendix 7 SOG**). The timing of that closure fits in with the date the existence of the Order route was brought into question, as defined in **Paragraph 2.2, SOG**.

- 3.3 Point 10 in this Statement accepts that the Order route was not the definitive route of Public Footpath WA25 and that it was not covered by any of the points in **Paragraph 10.2, SOG**. As the Order route was available to the public and not a public right of way the landowner should have taken advice from their own independent advisers.
- 3.4 Point 10.4/5 in this Statement considers Fig 3 of Neil Stalker's objection, (**Appendix 18 SOG**). That temporary diversion notice was not displayed on the definitive route of Public Footpath WA25 but at Point E on the Order route (**Appendix 12, SOG**). The status of a path cannot be established purely by the type of structures along it; many public footpaths have stiles and many permissive paths have gates.

4 DEREK WILLIAMS

- 4.1 The Statement of Case from Derek Williams does not contain any relevant additional information to his objection already considered within the Council's Statement of Grounds. Derek Williams' objection is attached as **Appendix 19** in that document and considered in **Paragraphs 9.20 to 9.24** of the same document.

5 RESIDENTS OF SUTERS LANE

- 5.1 The Statements of Case from Mark and Tracey Hanson, Paul and Katie Gurr, Christopher Trybus and Michael Webster also contain much information that the Inspector cannot consider.
- 5.2 In addition to the above, Appendix C of the Case from Mark and Tracey Hanson, Appendix B of the Case from Paul and Katie Gurr, and, Appendix C of the Case from Christopher Trybus are hybrid documents. Despite the title appearing to be correct, they relate to a previous definitive map modification order submitted to the Secretary of State for determination. The documents are dated 18 February 2017 whilst The Swindon Borough Council Footpath 44 Wanborough Modification Order 2017 was made on 22 November 2017. Those

documents are misleading and have no relevance in determining the current Order.

- 5.3 All of the residents of Suters Lane bought their properties after the Order route was closed during the first half of 2017.
- 5.4 The undated letter from Michael Webster, received by the Planning Inspectorate on 29 March 2019, also contains some points that cannot be considered as in paragraph 5.1 above.
- 5.5 In response to other points in Michael Webster's letter, the application to add the Order route to the definitive map and statement (**Appendix 2, SOG**) included 19 user evidence forms signed by 23 individuals citing use of the route from 1957 to 2017. That evidence relates to the Order route and no evidence has been presented to the Council for a public footpath along the drive to Honeyfield Farm north of Point D (**Appendix 12, SOG**). Similarly, no evidence has been presented to the Council that shows the landowners took any actions to prevent the Order route being dedicated to the public as a public footpath.

6 SUMMARY

- 6.1 The Statements of Case from Wanborough Parish Council, Neil Stalker, Derek Williams, Mark and Tracey Hanson, Paul and Katie Gurr, Christopher Trybus and Michael Webster have not presented any substantial new evidence to negate the claim for the Order route to be added to the definitive map and statement as a public footpath.
- 6.2 Section 11 of the Council's Statement of Grounds clearly illustrates how the Order meets the relevant statutory criteria.
- 6.3 The Inspector is respectfully requested to confirm the Order as the Council considers that the evidence proves that the Order route has been enjoyed by the public as of right without interruption for more than 20 years.