



SWINDON
BOROUGH COUNCIL

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Rights of Way Section
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Please ask for: Martin Fry
Direct Dial No: 01793 466382
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Our Ref:
Your Ref: ROW/3209564
Date: 16th January 2020

Dear Ms Sparks

**SWINDON BOROUGH COUNCIL
HIGHWORTH RURAL DISTRICT DEFINITIVE MAP AND STATEMENT
FOOTPATH 44 WANBOROUGH MODIFICATION ORDER 2017**

I write with regard to the above Order that has been submitted to the Secretary of State for determination and for which an Inspector has published an Interim Decision to modify the Order.

The Council wishes to **object** to the modification proposed by the Inspector in the Interim Decision dated 29 November 2019.

The Council does not consider that the Order or Order plan are fundamentally incorrect. The Ordnance Survey base plan used by Mr Enright for the informal consultation process showed a track through the area of the former caravan site and aviaries. The route put on that plan by Mr Enright, a black dashed line between Points A and B, for the line of the proposed footpath is generally within the width of that track. The length of that route has subsequently been affected by the diversion order for Public Footpath 25 as detailed in para 4.3 of the Council's Statement of Grounds.

The route for Footpath 44 shown on the Order plan between Points A-B-C is within the width of the track shown on the base plan used for the informal consultation process except for approx. 5 metres of that route near Point C. Therefore over 90% of the Order route between Points A-B-C is located within the width of the former caravan site/aviaries track. The attached plan (Plan No WA44/11/17/MF/Dec19) shows the width of the former caravan site/aviaries track on the Order plan as a red line on both sides of the track with red cross hatching infill.

cont ...

However it is accepted that the Order plan can only reflect the route used by the public and not the route desired by walkers or constructed by the developers of Suters Lane. The route shown on the Order plan is predominantly within the route used by the public but the extent of that route is not correct. Therefore it is accepted that the Order plan needs to be modified to reflect the route used by the public, the former caravan site/aviaries track, and the description within the Order also modified accordingly.

The length of the Order route affected by the above suggestion, ie between Points A-B-C-D, is only 73.5m of the total Order length of 197m. That length is only 37% of the Order route and it is not the majority of the Order route that requires modifying. It is also considered that the proposed modification is not such a substantial difference that it could not be included in the Order before confirmation.

During the three days of the public inquiry no one was in any doubt as to the purpose of the Order. Similarly all the landowners of the route between Points A-B-C-D have been involved in the Order process to date; Bower Mapson Properties Ltd and Mr and Mrs Stalker for the whole process and the new residents of Suters Lane were represented at the public inquiry.

The powers of the Secretary of State to modify an Order are not specifically defined by legislation, guidance or case law. Indeed Inspectors appointed by the Secretary of State to determine rights of way orders have previously accepted that their powers of modification are quite wide. Advice Note No 20, published by The Planning Inspectorate, includes an extract from *Trevelyan v Secretary of State for the Environment, Transport and the Regions* [2001] EWCA Civ 266. In that case Lord Phillips states that "the scheme of the procedure under Schedule 15 to the Wildlife and Countryside Act 1981 is that if, in the course of the inquiry, facts come to light which persuade the inspector that the definitive map should depart from the proposed order, he should modify it accordingly, subject to any consequent representations and objections leading to a further inquiry."

Therefore the Inspector is requested to use their powers to modify the Order plan and Order description to show the route used by the public through the caravan site and aviaries.

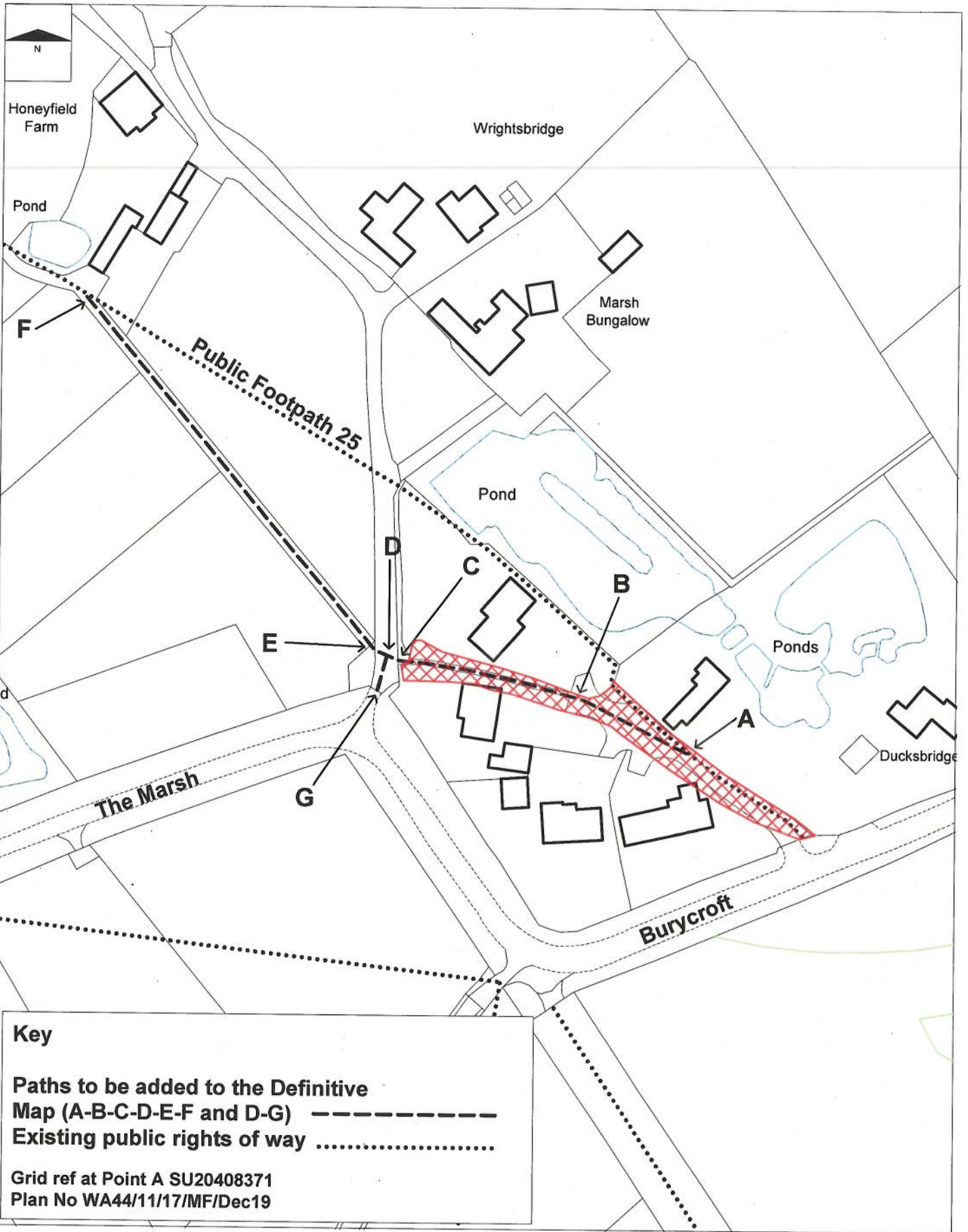
In conclusion the Council objects to the modification proposed by the Inspector in the Interim Decision. However it would like the Inspector to consider an alternative modification by recording the width of the track previously used by the public between Points A-B-C-D. That modification would result in an Order route not substantially different to the one submitted to the Secretary of State for determination; it would predominantly be the same route on a very similar alignment, not affecting any new landowners and not affecting the majority of the Order route. The only difference would be the width specified in the Order and shown on the Order plan.

The Council also requests that the Inspector's Decision in due course reflects that Waheed Rahman was the Council's Solicitor at the Inquiry on 23 and 24 July and that Malcolm Fry is changed to Martin Fry.

Yours sincerely



Martin Fry
Rights of Way and Highway Information Manager



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/Dec19



**Order Map
 Footpath 44
 Parish of Wanborough**

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Scale 1:1,250 (A4)

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