

Neil Stalker  
Honeyfield Farm,  
The Marsh,  
Wanborough,  
Swindon  
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## **Objection to the inspectors Proposed Modifications (Footpath 44)**

**20, January 2020**

**Dear Sir or Madam**

I refer to the summary of decision made by the inspector order ref ROW/3209564 and raise the following objections in relation to the points raised by the inspector.

### **Points 56, 57, 60, 61, 62 - Intent**

The inspector has surmised that our actions are insufficient to show “no intention of dedicated the route” by making considerable interpretation of our intention as landowners in the points above, however we feel key facts have been overlooked in reaching this decision and that our intent has been overlooked despite being unequivocally clear that we had/have no intent to dedicate any part of the F-E “the race” and F-G “the track” (also the owned access/driveway to our private property) (Fig 1).

In various cases of this nature the contrary intention consideration of the act has been deliberated and the means by which it is sufficient to show contrary intention does not need the landowners to make their intent not to dedicate clear to the public, as a result there is much case law to support this stance.

With this in mind there is case law to support the view such as in *R v Secretary of State for the Environment, Transport and the regions ex parte Dorset cc (1999)* and the case *R Godmanchester town council) v secretary of state for the environment food and affairs (2005)* where the court of Appeal Auld JT stated In their judgement made it clear “it is not necessary for the contents of [the letter from the agents] to have been known to the user of the path for it to satisfy the criteria of the 1980 act” and therefore “The lodging of a statutory declaration under section 31(6) was just one way in which a contrary intention could be shown. The existence of the procedure did not mean that other means of showing a contrary intention could not be employed”.

The proviso in section 31 therefor merely uses the word ‘sufficient’. There was nothing in this to require that the intent should be expressed in a way that would enable the public to become aware of it. With this in mind I feel that my intent as the landowner has been overlooked and ill-considered, I believe my intent to not dedicate any part of the route F-E-

G (Fig 1) had been made clear before the route was brought into question in communication both verbally and in email (as submitted in the case) with Ms Ellis SBC rights of way officer.

Given the nature therefore of these discussions to dismiss the views of SBC officers as that of opinions and not formal advice/guidance in their capacity of their official positions seems to be dismissed off hand as occurred in a case of similar nature were the view of the intent shown in *Norman and Bird v sec of state for environment, food and rural affairs (2006)* where an appeal held the view that this decision was ill founded applying the view that *"one looks at the evidence given by the landowner and then one sees whether there is material to support it, and if the evidence of the landowner at the inquiry that he had no intention to dedicate was generally speaking, acceptable, truthful and there was no reason to reject it the evidence required to support it need not a great deal"*.

To further re-enforce this point, in our initial objection, letter dated 11 Jan 2018 there was email excerpt included (Fig 6) once again to Swindon SBC Mr Enright by my wife Mrs Stalker whom stated our intent once more very clearly:

*"By Allowing a footpath to be closed at a point where there is no access/exit to the continuation of that right of way, you are in actual fact responsible for the general public trespassing over my land. The right of way should be closed at a point where it is still usable"*

This point is part of a wider discussion where our we formally acknowledge that the use of the track E-G-D (Fig 1) in our view is considered trespass and therefore it seems protenant to include the entire email (Fig 2)

At the start of this discussion my wife states:

*"Signs again this weekend, were placed either end of the Ducksbridge development requesting people to use my private property to enter/exit the right of way due to the closure of the Ducksbridge route.*

*I am requesting that the section of the right of way that crosses my land, which due to Ducksbridge is inaccessible, is temporarily closed immediately to avoid further transgression over private property."*

Mr Enright responded stating: *"I shall be addressing a number of issues and concerns, including the current definitive route and the suggested diversion route, with Mr Mapson following a site visit tomorrow.*

*Mr Mapson has been told to take down any signage referring to a "temporary" diversion using the verge of The Marsh and your private track to access the rest of Footpath 25. I am sympathetic to your concerns, but please understand that the Council has no power to prevent members of the public from walking along your track if they so choose."*

And did later go on to close the route providing the following:

*"Because of the problems you have been experiencing with trespassers on your property owing to the current situation with Footpath 25, the Council will be making a temporary*

closure order on that part of the footpath between the crossing of Footpath 23 and The Marsh, with effect from tomorrow. I've attached an extract of the Rights of Way map to show you what will be happening. The affected path will be between the two red discs, and there will be notices and maps at both points directing walkers to the alternative route.

Although there will be a notice and map at the closure point at the "crossing", you may, if you wish, erect a temporary barrier of some kind at the closure point, once the notice and map are actually on display. This will give you extra peace of mind, and make it absolutely clear to walkers that that section of footpath is officially closed for a period and is not to be used. It may be necessary to keep it closed for 6 months, but of course I'll keep you informed."

It is pertinent therefore to note that SBC closed the route as state *"Because of the problems you have been experiencing with trespassers on your property owing to the current situation with Footpath 25, the Council will be making a temporary closure order on that part of the footpath between the crossing of Footpath 23 and The Marsh"* therefore SBC has acknowledge that the routes across our land have been closed to prevent trespass between points E-D-G and this intention would have been made public, carried out formally by the issuing of diversion/closure notices.

This Action was taken on the 1<sup>st</sup> of February 2017 some 9 months prior to the order being submitted on the 22 November 2017. I must also confirm that we did take physical action to erect barriers as suggested at point J on the attached map (Fig 1) ensuring both the other route and FP25 where inaccessible thus making our intention physically clear to users of the way from the 1<sup>st</sup> of February 2017, these barriers where set to one side during the site visit and my son Charlie Stalker pointed out he indicated and these to the Inspector and their purpose/position in closing the route.

Further to these points and regarding the matter of public declaration of intent, there has been evidence I overlooked that seems pertinent in this regard. In 2008 a court case was raised against myself and my wife (the respondents) by Malcom and Christine Hinton (the claimants), this regarded the matter of ownership of a proportion of the track. I have attached as evidence the relevant sections of the Judge's decision but, if necessary, I can/will provide the full decision document at the inspector's request. The section I reference in particular is Findings Of Fact: 15:k (page 14)

*"Eleventh, I accept the Respondents' evidence that they gave express permission to the Applicants to place ploughs and other machines on the Track in order to prevent members of the public from obtaining access as an alternative to using the public footpath."*

The pertinence of this statement is likely apparent but clear, but the Adjudicator and respondents accepted that that I had expresses communicated/permitted to a member of the public (the respondents) my permission to prevent the use of the track by the public to prevent them obtaining access as an alternative to the existing footpaths.

This statement and evidence to support it would also have been known or at least observed by other members of the public and locality both at the case and subsequently in writing (given the publishing of the case decision).

As a result, the inspectors view that “at no time did Mr and Mrs stalker provide sufficient indication to the public of their lack of intention to dedicate a highway over the order route until they closed it in 2017” is ambiguous and not strictly supported in evidence, it also does not consider the timing within 2017 or the acts of us as a landowner that took place at different times both physically and in writing, that should have brought the way into question much earlier.

#### Point 21,52 - Inconsistency

The inspector has deemed it sufficient that “on balance the order route between points A and G via C, became unavailable to use for some time in early 2017 , due to the erection of safety fencing or the temporary closure, or both” and that this was enough to bring the route into question notwithstanding the fact there was an official diversion. However later in summation It seems the temporary closure of the routes F-E-G in 2009 for the installation of sewage works for no less than 3 months (on the grounds of safety – 3m wide/deep open trench) are being dismissed on the grounds “no one appears to have considered that their use of way was being challenged by these works” despite the circumstances of the closures and diversions being intrinsically the same the same conclusion seems to not have been reached. It cannot therefore stand that this determination cannot be applied to one and not the other.

#### Points 47,48,49 – Validity on balance and additional evidence

Given the nature of the photography and deliberations over the location of water troughs, fences, and the exitance of water revealed in the later stages of the inquiry it seemed necessary to seek further evidence to support our stance and bring into question the weight the inspector has attributed to the statement given by a previous tenant, including Linda Moore whom stated that there was “no water supply laid on and that she had to provide water for her animals by hand”.

As water was available along with troughs as stated when I took over the land as I have maintained throughout. To this ends I have sought clarification from Thames Water (Fig 3), whom verbally and in writing have confirmed that a dedicated water supply for the land that is now known as Honeyfield farm was installed in 1985 and has been in use and billed cautiously since that date (the bill taken over by us in 2008).

This matter has also been noted within the court case in the decision introduction, 2. (page 2) “

*They [myself/my wife] bought this land [honeyfield farm] in July 2008, from Mr Gerald Arthur Sadler, intending to use it for the purpose of keeping horses. At that time there was an open barn and some corrugated iron stables on the land, as well as a water supply"*

I therefore believe the inference of lack of water has coloured further points, along with verbal evidence which on balance in light of this confirmation cannot be true which is something the inspector must take into consideration.

To this ends the inspector also refers to the intent for the period of ownership of Mr Sadler through the verbal statements provided by Linda Moor and Sian Lewis whom where both "adamant that Mr Sadler had told them the footpath was not to be obstructed" and that "neither of them where aware that there was any other path across the land (on the line of the definitive path Footpath 25)" this however cannot be factually correct and does not seem routed in evidence.

It follows that Mr Sadler made his intend clear to not obstruct the route across the land to his tenants, however it is also clear that this must have at the very least in part referred to the definitive footpath 25, as there has never been any dispute that from point F to the boundary of Honeyfield farm is footpath 25. As such the "footpath" referred to by Linda Moor and Sian Lewis must have included Footpath 25 whether or not they were formally aware "The Footpath" included footpath 25, they were aware of its position and existence.

#### Point 30 – Need/Safety

The inspector refers to need, in particular to residents further along the marsh and the use of safe route proposed instead of actual evidence. It seems however there is confusion over the "safe route" and it is clear the route supported by F-E-G (Fig 1) is not consistent with the use or indeed safe use proposed to support this claim. The suggested need likely refers more so to A-B-C-D (Fig 1) to avoid the bend between H and G (Fig 1) indicated on the attached map. For residents of the marsh there are clearer, safer and faster alternative routes that avoid both bends between G and H (Fig 1). However, F-E-G (Fig 1) would unintentionally leave anyone deviating at point F (Fig 1) from FP25 presented with an unsafe set of double bends on which numerous vehicular accidents have occurred.

For anyone attempting to use Footpaths to traverse the marsh in particular, residents, in all instances there long established, clearer, safer and faster alternatives footpaths readily available as shown on the attached map. As a result, the need for F-E-G (Fig 1) on the grounds of safety seems questionable and notably prominent supporters of the order are owners of land with these long-established Footpaths and as such should be aware of their existence.

This is also in fact the supported view of SBC rights of way office Mr Enright in his comments and map in the email attached in Fig 2, where the route was closed at our request and alternatives implemented, I quote:

*“Council will be making a temporary closure order on that part of the footpath between the crossing of Footpath 23 and The Marsh, with effect from tomorrow. I’ve attached an extract of the Rights of Way map to show you what will be happening. The affected path will be between the two red discs, and there will be notices and maps at both points directing walkers to the alternative route.*

*For example, coming from the direction of Covingham, walkers wishing to reach The Marsh (and beyond) will be directed to turn right at the crossing point, as indicated by the green arrows, and take FP 23 and FP 9 to The Marsh, and logically most walkers will probably want to continue to the village, so will cross The Marsh and take FP 20 to the northern end of Green Lane (Bridleway 42). They can then continue along Green Lane or, if they fancy a pint, along The Marsh to the Cross Keys!*

*The main advantage of this alternative route is that it will take walkers completely away from your track. The alternative route between the crossing point and Green Lane is 485 metres, without having to walk along The Marsh at all, whereas using FP 25 between the same two points is 385 metres, 85 metres of which would involve walking along The Marsh.”*

This route therefore must have been used for some considerable time during the closure before the order route was brought into question.

#### General Observation – Width

The order has proposed a 3 meter wide path F-E-G (Fig 1) however no evidence has been submitted to support this width, when questioned on several occasions Mr Fry has confirmed this width is not a result of measurement or evidence and therefore I still object to the order as it stands as there are no other footpaths of that width present on our property.

#### Conclusion

I once again ask that this order *must not be confirmed*. It is clear that assumptions to my intention not to dedicate have been made in error and without grounds, that there are clear inconsistencies in parts of the decision, that the validity of evidence is questionable where used, unfairly balanced and something I have sought to redress through new evidence. That lastly that there is no clear need on the grounds of safety and the in fact the order as it stands would represent an the inspector confirming and unneeded unsafe route for the public a view that is held by myself, clearly Mr Enright and Wanborough Parish Council and other objectors to the order.

I must further ask that my intent be re-evaluated and must confirm that both myself and my wife are more than willing to write sworn statements to clarify the matter, however, feel our actions both written and verbally should have been sufficient and have been accepted in other similar cases.

Yours sincerely,

Neil Stalker

**List of figures**

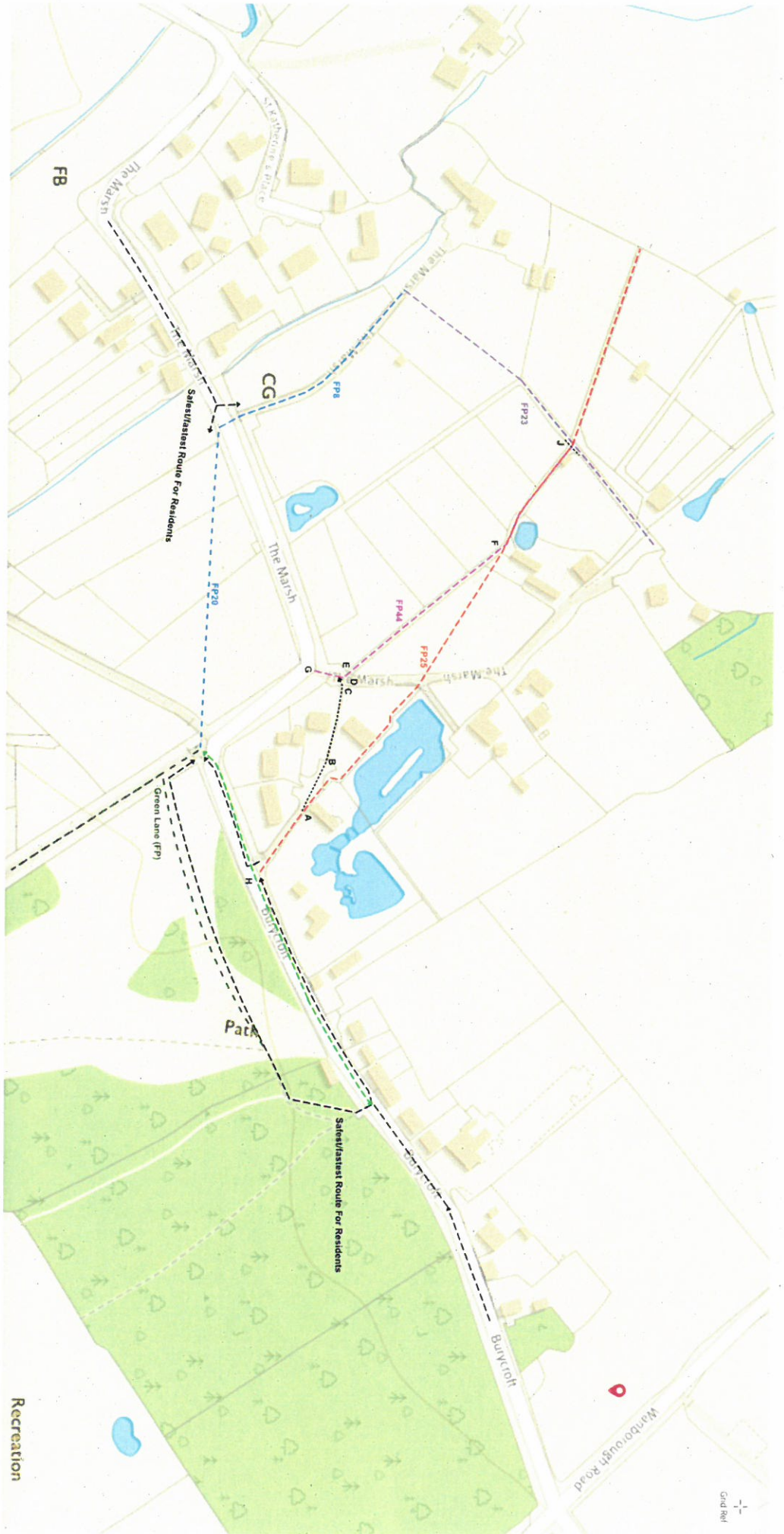
- Fig 1 - OS Map overlaid with data to make clear the points raised in this letter/case
- Fig 2 - Emails between Mrs Stalker and Mr Enright Regarding the closure of FP25 and the order route F-E-G on the grounds of trespass at E-D-G. Excerpts of which were included in the case on our objection dated 11 Jan 2018 Fig 6
- Fig 3 - Letter From Thames Water confirming a dedicated billed water supply to the land from 1985 to date
- Fig 4 – Appropriate sections of the decision of case REF/2011/1055 Between Malcom Trelawney Hinton, Christine Ann Hinton (applicants) and Neil Fraser Stalker, Donna Marine Stalker (respondents) Before Mr Owen Rhys sitting as Deputy Adjudicator to HM Land Registry, Swindon Magistrates court 16<sup>th</sup>, 17<sup>th</sup> of October 2012

# Fig 1

An OS map overlaid with the order/case lettering with additional lettering/detail to help illustrate points raised in this objection and to avoid ambiguity.

Jan 20 **2020**






# Fig 2

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**Full email correspondence by Mr Enright SBC Rights of way officer confirming closure at our request on the grounds of trespass, in addition the proposal of a safe alternative route, the view shared by other objectors.**

Jan 31-Feb 1

2017

**From:** Donna Stalker murrayprice@hotmail.co.uk   
**Subject:** FW: ME/HMU - day2  
**Date:** 20 January 2020 at 9:08 pm  
**To:** charlie@csn-uk.net

DS

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**From:** Michael Enright <MEnright@swindon.gov.uk>  
**Sent:** 01 February 2017 17:05  
**To:** Donna Stalker (murrayprice@hotmail.co.uk) <murrayprice@hotmail.co.uk>  
**Subject:** FW: ME/HMU - day2

I'm really sorry! Something went wrong with the attachment.  
Here it is.

---

**From:** Michael Enright  
**Sent:** 01 February 2017 17:03  
**To:** 'Donna Stalker'  
**Subject:** RE: ME/HMU - day2

Good afternoon, Mrs Stalker.

Because of the problems you have been experiencing with trespassers on your property owing to the current situation with Footpath 25, the Council will be making a temporary closure order on that part of the footpath between the crossing of Footpath 23 and The Marsh, with effect from tomorrow. I've attached an extract of the Rights of Way map to show you what will be happening. The affected path will be between the two red discs, and there will be notices and maps at both points directing walkers to the alternative route.

For example, coming from the direction of Covingham, walkers wishing to reach The Marsh (and beyond) will be directed to turn right at the crossing point, as indicated by the green arrows, and take FP 23 and FP 9 to The Marsh, and logically most walkers will probably want to continue to the village, so will cross The Marsh and take FP 20 to the northern end of Green Lane (Bridleway 42). They can then continue along Green Lane or, if they fancy a pint, along The Marsh to the Cross Keys!

The main advantage of this alternative route is that it will take walkers completely away from your track. The alternative route between the crossing point and Green Lane is 485 metres, without having to walk along The Marsh at all, whereas using FP 25 between the same two points is 385 metres, 85 metres of which would involve walking along The Marsh.

Although there will be a notice and map at the closure point at the "crossing", you may, if you wish, erect a temporary barrier of some kind at the closure point, once the notice and map are actually on display. This will give you extra peace of mind, and make it absolutely clear to walkers that that section of footpath is officially closed for a period, and is not to be used. It may be necessary to keep it closed for 6 months, but of course I'll keep you informed.

I hope this meets with your approval, but I would welcome your comments.

Kind regards,

Michael J Enright

Rights of way Officer (Mapping)  
Swindon Borough Council  
4<sup>th</sup> Floor Wat Tyler House West  
Beckhampton Street  
Swindon SN1 2JH

**From:** Donna Stalker [<mailto:murrayprice@hotmail.co.uk>]  
**Sent:** 01 February 2017 12:51  
**To:** Michael Enright  
**Subject:** ME/HMU - day2

Good afternoon,

In response to your email, I afraid I don't agree. By allowing a footpath to be closed at a point where there is no access/exit to the continuation of that right of way, you are in actual fact responsible for the general public trespassing over my land. The right of way should be closed at a point where it is still usable.

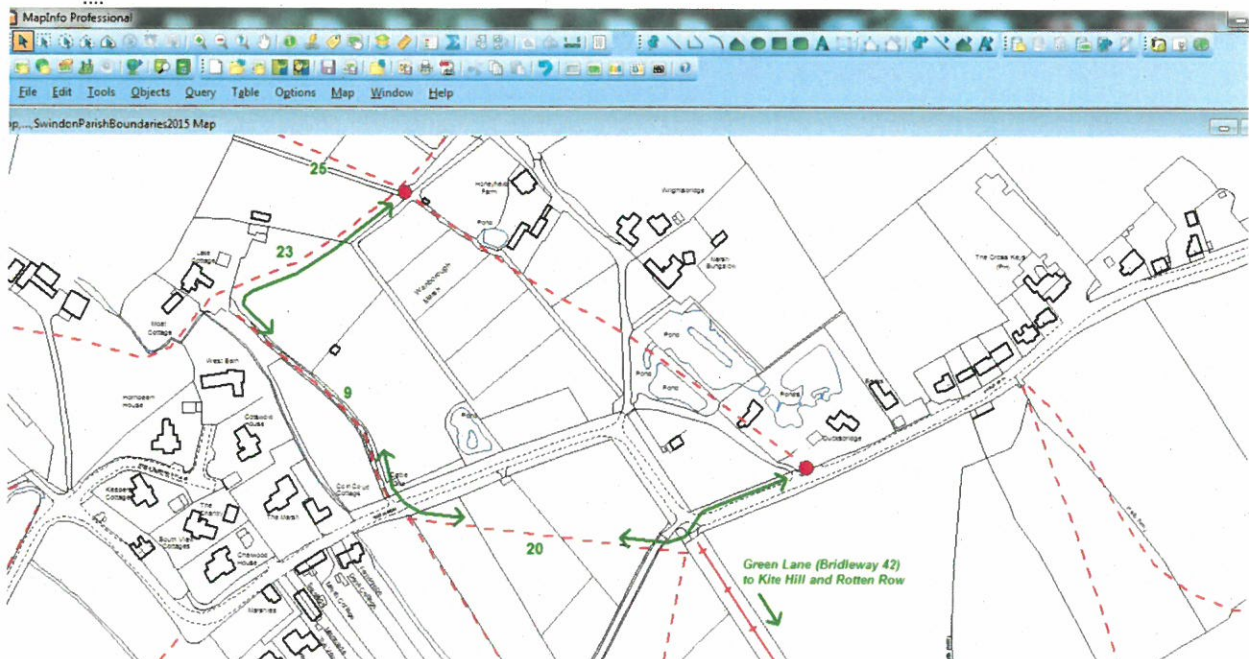
I look forward to hearing your solution to this issue.

Yours Sincerely

Donna Stalker

Sent from [Mail](#) for Windows 10

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Zoom: 628.1 m

Editing: ROW

Selecting: None

**From:** Donna Stalker <murrayprice@hotmail.co.uk>  
**Subject:** FW: ME/HMU - day2  
**Date:** 20 January 2020 at 9:10 pm  
**To:** charlie@csn-uk.net

DS

---

**From:** Donna Stalker <murrayprice@hotmail.co.uk>  
**Sent:** 05 December 2017 11:44  
**To:** Derek Williams <derekwilliams1296@icloud.com>  
**Subject:** FW: ME/HMU - day2

Sent from [Mail](#) for Windows 10

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**From:** Donna Stalker <murrayprice@hotmail.co.uk>  
**Sent:** Thursday, February 2, 2017 9:30:48 AM  
**To:** Michael Enright  
**Subject:** RE: ME/HMU - day2

Good Morning,

Message received and thank you, it is very much appreciated.

Regards

Donna

Sent from [Mail](#) for Windows 10

**From:** [Michael Enright](#)  
**Sent:** 01 February 2017 17:07  
**To:** [Donna Stalker \(murrayprice@hotmail.co.uk\)](#)  
**Subject:** FW: ME/HMU - day2

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**Subject:** RE: ME/HMU - day2

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For example, coming from the direction of Covingham, walkers wishing to reach The Marsh (and beyond) will be directed to turn right at the crossing point, as indicated by the green arrows, and take FP 23 and FP 9 to The Marsh, and logically most walkers will probably want to continue to the village, so will cross The Marsh and take FP 20 to the northern end of Green Lane (Bridleway 42). They can then continue along Green Lane or, if they fancy a pint, along The Marsh to the Cross Keys!

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I hope this meets with your approval, but I would welcome your comments.

Kind regards,

**Michael J Enright**  
Rights of Way Officer (Mapping)  
Swindon Borough Council  
4<sup>th</sup> Floor Wat Tyler House West  
Beckhampton Street  
Swindon SN1 2JH

---

**From:** Donna Stalker [<mailto:murrayprice@hotmail.co.uk>]

**Sent:** 01 February 2017 12:51

**To:** Michael Enright

**Subject:** ME/HMU - day2

Good afternoon,

In response to your email, I afraid I don't agree. By allowing a footpath to be closed at a point where there is no access/exit to the continuation of that right of way, you are in actual fact responsible for the general public trespassing over my land. The right of way should be closed at a point where it is still usable.

I look forward to hearing your solution to this issue.

Yours Sincerely

Donna Stalker

Sent from [Mail](#) for Windows 10

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**From:** Donna Stalker murrayprice@hotmail.co.uk  
**Subject:** FW: ME/HMU - day2  
**Date:** 20 January 2020 at 9:08 pm  
**To:** charlie@csn-uk.net

DS

---

**From:** Michael Enright <[MEwright@swindon.gov.uk](mailto:MEwright@swindon.gov.uk)>  
**Sent:** 31 January 2017 16:12  
**To:** Donna Stalker <[murrayprice@hotmail.co.uk](mailto:murrayprice@hotmail.co.uk)>  
**Cc:** Martin Fry <[MFry@swindon.gov.uk](mailto:MFry@swindon.gov.uk)>  
**Subject:** RE: ME/HMU - day2

Good afternoon.

I shall be addressing a number of issues and concerns, including the current definitive route and the suggested diversion route, with Mr Mapson following a site visit tomorrow.

Mr Mapson has been told to take down any signage referring to a "temporary" diversion using the verge of The Marsh and your private track to access the rest of Footpath 25. I am sympathetic to your concerns, but please understand that the Council has no power to prevent members of the public from walking along your track if they so choose.

We are working to resolve this issue as soon as possible.

## Michael J Enright

Rights of Way Officer (Mapping)  
Swindon Borough Council  
4<sup>th</sup> Floor Wat Tyler House West  
Beckhampton Street  
Swindon SN1 2JH

---

**From:** Donna Stalker [<mailto:murrayprice@hotmail.co.uk>]  
**Sent:** 31 January 2017 15:16  
**To:** Michael Enright  
**Subject:** ref: ME/HMU - day2

Dear Mr Enright,

Signs again this weekend, were placed either end of the Ducksbridge development requesting people to use my private property to enter/exit the right of way due to the closure of the Ducksbridge route.

I am requesting that the section of the right of way that crosses my land, which due to Ducksbridge is inaccessible, is temporarily closed immediately to avoid further transgression over private property.

I understand that Bower/Mapson have now officially applied to change the route and I would therefore appreciate if you could forward details of where/how we can lodge our objection.

On a final note, could you confirm ref your earlier telephone conversation with me, stating that the new route of the right of way was Mr Mapsons suggestion.

I look forward to hearing from you.

Yours Sincerely

Sent from [Mail](#) for Windows 10

The views expressed in this email are personal and may not necessarily reflect those of Swindon Borough Council unless explicitly stated otherwise. This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error, please notify me immediately. If you are not the intended recipient of this email, you should not copy it for any purpose, or disclose its contents to any other person. Senders and recipients of email should be aware that, under the Data Protection Act 1998 and Freedom of Information Act 2000, the contents may have to be disclosed. The contents may be subject to recording and/or monitoring in accordance with relevant legislation. This footnote also confirms that this email has been swept by Anti-Virus software for the presence of computer viruses. However, Swindon Borough Council cannot accept liability for viruses that may be in this email and we recommend that you check all emails with an appropriate virus scanner.

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# Fig 3

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Feb 10

**Thames water statement about the use of/existence of a water supply  
to the property**

**2021**



**Mr Neil Stalker**

Honeyfield Farm  
The Marsh  
Wanborough  
SWINDON  
SN4 0AR

 Our reference number  
15341546

 [thameswater.co.uk](https://thameswater.co.uk)

 **0800 009 3657**  
Mon – Fri 9am-5pm

10 February 2021

## Your meter supply

Dear Mr Stalker

Thank you for speaking with my colleague, Micha, on 25 January 2021.

I can confirm an active water meter has been fitted at your property since May 1985. We can confirm the meter is still active and supplying water to the trough. Prior to the meter being fitted, the pipe would always be active, unless we were updated by the property owner or landowner in this case to have the supply capped and therefore becoming inactive.

As we've never received notice of the supply being capped, this supply has always been active.

If you have any questions, you can call me on **0800 009 3657**. Our lines are open between 9am and 5pm, Monday to Friday. If I'm not available when you call, one of my colleagues will be happy to help.

Alternatively, you can call our Customer Service Contact Centre on **0800 316 9800**. Their lines are open Monday – Friday, 8am – 8pm.

Yours Sincerely

Frances New

Case Manager

To view the Thames Water quality promise leaflet, please go to [thameswater.co.uk/complaintsprocedures](https://thameswater.co.uk/complaintsprocedures)

## **Witness Statement – Footpath 44 modification order**

Name: Angela Raymond

Address: 15 Springlines, Wanborough SN4 0ES

I moved into Wanborough village in January 1997 with my husband and family and have lived here ever since.

I am a keen walker and even prior to moving into Wanborough in 1997 when I lived in Eldene and previous to that in Haydon Wick having moved to Swindon in 1983. I have always been a regular walker of the footpaths in and around Swindon.

Having moved to Wanborough in 1997 my husband and I walked and explored a number of the village footpaths, it was obvious at the time that there were a number of very overgrown paths, some difficult to find and navigate, some completely blocked, but we always enjoyed walking the paths and finding new routes.

To get to The Marsh from where we live you could either walk across the footpaths through Warneage Woods which were fine in the summer but very water logged / flooded in areas over the winter, or walk along Green Lane. Green Lane was extremely difficult to use when we first moved in to the village as it was always very overgrown, muddy with a very uneven surface making it a challenge to use especially during the winter months when it was also very water logged. Green Lane was vastly improved to how it is now when the developer for Suter's Lane completely cleared and re-instated a new path / bridleway in 2017 making the access from where I live and from Rotten Row to The Marsh / Burycroft much easier.

Alternatively we could walk by following the roads to get to The Marsh via the High Street which prior to the improvements on Green Lane this was the easiest route during the winter months.

All the footpaths around The Marsh are marked with the same green footpath sign which must have been installed at the same time many years ago by the Council in charge at the time, they are all identical and clearly very old and in desperate need of replacement. The footpath sign (fingerpost) very near to the entrance to Suter's Lane on the Order Map marks the beginning of footpath WA25. During the whole time I have lived in Wanborough there has never been a footpath sign (fingerpost) at points C, E and G on the Order Map.

Going from the green footpath sign at the start of footpath WA25 from Burycroft there used to be a small stile which you stepped over (which is now the entrance to Suter's Lane) as you stepped over you would walking to a very overgrown disused area, there were many mature trees, I remember there was an old derelict caravan on the right hand side as you followed footpath WA25 and there was also a track that ran across the corner. To follow footpath WA25 you had to walk past some ponds which again during the winter months was difficult, it was better to walk the path in the summer, although overgrown it was possible to walk. You would then come out on the track and from there the path was supposed to go straight over into the field, but to cross over the field you would have to climb over a barbed wire fence and even if you managed that you would still find it difficult to get through by the derelict barn (near point F on the Order Map), so often it was easier to walk along the track, until you reached the small pond and then continue on the route of footpath WA25.

Although I did not walk across the corner regularly as it's not a marked path, I confirm that when I did at the other end of the track having turned off the route of footpath WA25 was a gate that was closed and locked with a chain and padlock, of all the times I walked this route I have never seen this gate open, the only way I could get through was to climb the gate. I remember standing in front of the gate looking over into the overgrown area just before the developer bought it thinking about how the area had become so neglected. Having walked across the corner in the earlier years it was not then possible to then walk across the field opposite unless you climbed over barbed wire, I also remember seeing horses in this field. After walking across the corner I would have then continued to walk along the road.

Later on when the new owners of Honeyfield Farm moved in a new stile and walkway between two fence lines were installed so you could walk across the field to the small pond. The new owners improved the footpaths in this area, there was lot of clearance work carried out making it easier to walk sections of footpath WA23 and footpath WA25.

Then in 2015 the site on the corner was purchased by a developer (Bower Mapson) they firstly erected Heras fencing all the way around the development site and then soon replaced this with wooden 6ft closed board fencing which closed off the whole corner. Swindon Borough Council also closed footpath WA25 while the construction work to build the new houses took place.

I started work as the Parish Clerk in July 2000, during this time I was heavily involved in footpath inspections working with SBC Officer Annie Ellis, Denise Chandler and Dennis Cole. I always remember that one of my first goals when I become Clerk was to improve the footpath along the top of the Lower Rec as this was just a muddy track and difficult to use when we first moved in. When I first started I was given a hand drawn map showing all the footpaths in the village along with their numbering. Although I already knew most of the paths from my own ordnance survey maps, I was not aware of the numbering so this map was useful for that reason. The hand drawn map (appendix 1) was drawn by a long serving Parish Councillor and previous chair to the Parish Council who again was heavily involved in the inspection of the paths. Footpath WA25 was shown on this map but there was no other path across the corner or across the field opposite marked, if there had been a path at these locations I'm pretty sure the Councillor who hand drew the map would have shown them.

Progress to get any of the footpaths improved was slow when I first started as Parish Clerk, maintenance of the footpaths were Swindon Borough Council's responsibility, numerous e-mails were sent to Annie Ellis & Denise Chandler confirming what needed to be done in the village. In April 2008 the Parish Council appointed a Lengthsman who we were then able to carry out work to help maintain some of the footpaths.

I left the role as Parish Clerk November 2008, but was reappointed again (after 3 Clerk's came and left) in September 2012 and have continued to work as the Parish Clerk to date.

Since starting back in 2012 I continued to inspect all the footpaths and report any problems to Swindon Borough Council. In 2016 as a result of a number of services being transferred to Parish Council's Wanborough agreed to take on some of the maintenance of the footpaths, as we were already carrying out a lot of the work ourselves. Since 2016 there has been a huge progress in improving the footpath network around the village. My husband and I have repaired & replaced a large number of stiles, fixed bridges. Parish Council have met with landowners to gain their permission to make improvements. There is still a long way to go, with still a large number of outstanding matters raised with SBC's Rights of Way Officer that are yet to be sorted but the improvements that have taken place have made a difference. In 2014 SBC's Rights of Way Officer Annie Ellis left SBC, taking over her role was Martin Fry and we also corresponded with Mike Enright.

In 2015 I helped start village community walks, firstly with another resident, then since 2017 as the Parish Clerk. The regular monthly walks over the spring and summer months have been hugely successful, many residents have attended and it has raised the awareness of all the rural footpaths around the village, it has been great to show residents all the footpaths around the village, including those who have lived in the village all their lives and never knew some of the paths existed.

I also compiled a book of "circular walks" in and around Wanborough, to date I have sold nearly 400 copies to village residents, again to raise awareness of the footpaths in the village.

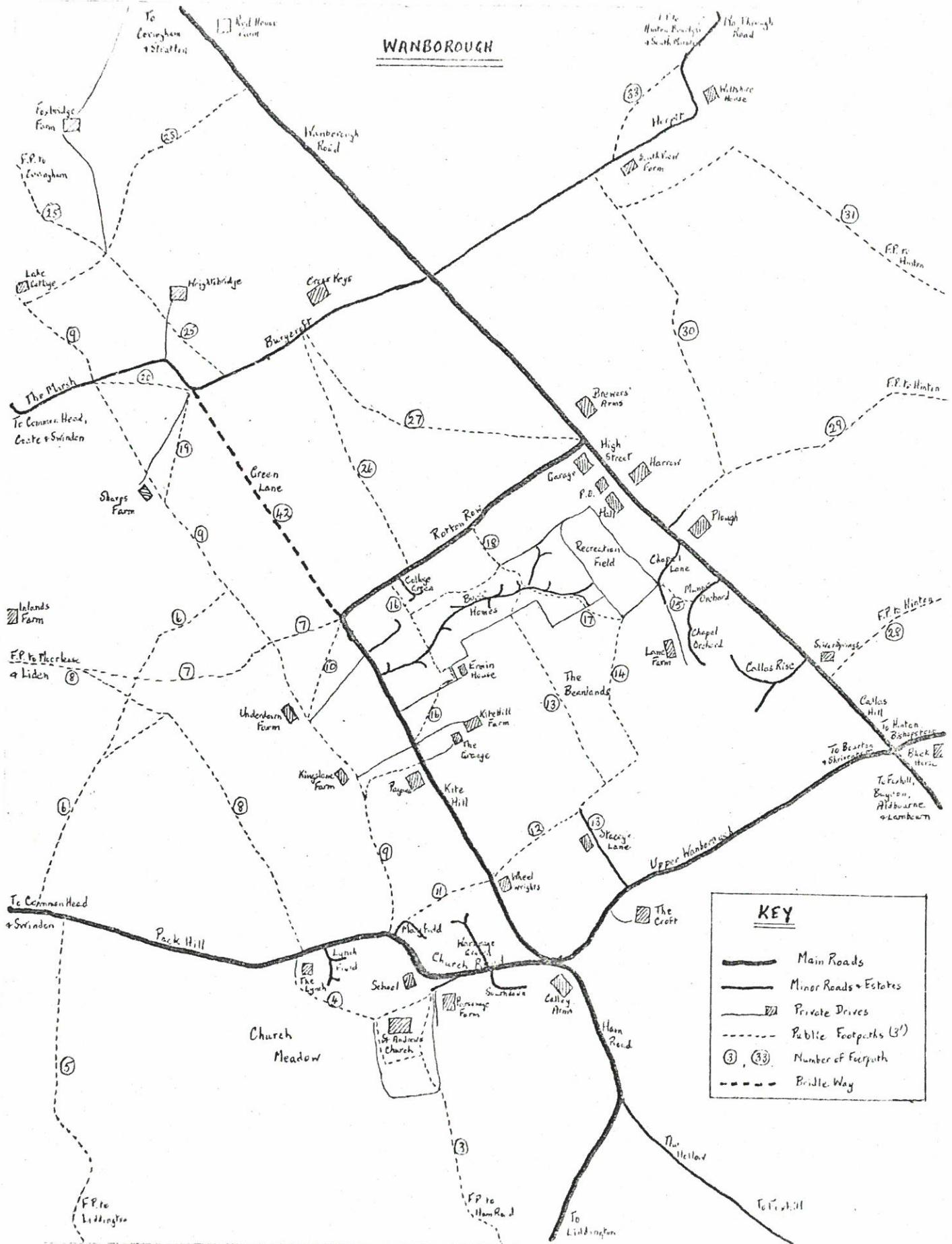
I hope this confirms my extensive knowledge of the footpaths in the village and provides a truthful summary of the paths in the village since I moved here in 1997.

Signed



Angela Raymond

# WANBOROUGH



KEY	
	Main Roads
	Minor Roads + Estates
	Private Drives
	Public Footpaths (3')
	Number of Footpath
	Bridle Way



REF/2011/1055

**THE ADJUDICATOR TO HER MAJESTY'S LAND REGISTRY  
LAND REGISTRATION ACT 2002**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**BETWEEN**

**(1) MALCOLM TRELAWNEY HINTON  
(2) CHRISTINE ANN HINTON**

**APPLICANTS**

**and**

**(1) NEIL FRASER STALKER  
(2) DONNA MARIE STALKER**

**RESPONDENTS**

**Property Address: Land at Marsh Farm, Wanborough,**

**Title Number: WT290725**

**Before: Mr Owen Rhys sitting as Deputy Adjudicator to HM Land Registry**

**Sitting at: Swindon Magistrates Court**

**On: 16<sup>th</sup> and 17<sup>th</sup> October 2012**

**Applicant representation: Mr Peter Riddle of Morrison & Masters Solicitors  
Respondent representation: Mr Tim Walsh of Counsel instructed by Bevirs Solicitors**

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**DECISION**

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**INTRODUCTION**

1. The Applicants are the registered proprietors of the house and grounds known as Wansdyke, The Marsh, Wanborough, Swindon SN4 0AR under Title number WT290715. They were first registered with title on 25<sup>th</sup> November 2011, but the property had originally been the subject of an Assent to Mr Hinton dated 22<sup>nd</sup> October



1982 ("the Wansdyke Assent") under the terms of the Will of his grandfather, Frederick James Hinton. According to Mr Hinton, his grandfather had already made a gift of the land to them as a wedding present, just before he married the second Applicant, Christine in 1971. At that time the land contained a derelict farm cottage, and over the next few years the Applicants demolished the cottage and built a new bungalow on the site, and generally re-modelled the garden and grounds. This is not controversial. The land is accessed by means of a metalled track ("the Track") that runs north and then north-west from the public road. At the south-western corner of Wansdyke the Track bifurcates. The drive into Wansdyke turns east, and the Track continues northwards. I should say that the present surface of the Track was laid in 2009, and prior to that time the surface was much rougher and not sealed, although there were some chippings embedded in it. The physical boundary of Wansdyke on its western side consists of a stream or watercourse ("the Stream") which runs parallel with the Track and to its east. The western bank of the Stream is quite steep and noticeably higher than the bank on the eastern side, and is overgrown with substantial trees and shrubs which form a more or less impenetrable barrier. Until recently, there was a wire fence within this undergrowth on the western bank. The Applicants' garden lies to the east of the Stream, and a well-tended lawn runs up to the eastern bank of the Stream. About half way up between the entrance to Wansdyke and the northern boundary, the Stream is bridged by two large stone slabs. Before the rebuilding of the house in the 1970s, the only means of access into Wansdyke was on foot and over this little stone bridge. However, as part and parcel of the rebuilding works, a new vehicular entrance was created at the south-western corner, leading off the Track, and the stone bridge has every appearance of being disused. According to the filed plan, the western boundary of the Applicants' registered title coincides with the line of the Stream.

2. The Respondents are the registered proprietors of the land situated to the west and south-west of Wansdyke, under Title number WT274471 ("the Respondents' Title"). The Respondents' Title includes the Track and the land between the Track and the western boundary of Wansdyke. They bought this land in July 2008, from Mr Gerald Arthur Sadler, intending to use it for the purpose of keeping their horses. At that time there was an open barn and some corrugated iron stables on the land, as well as a water supply, and although somewhat run down, the land suited their needs. They

*inclusion in the Trial Bundle*". No permission had been given, or even requested, for the late submission of evidence. When the hearing commenced, I asked Mr Riddle if there was any explanation for the lateness of the evidence, but none was forthcoming. The Respondents objected, and I gave them the option of adjourning the hearing in order to be able to deal with this new evidence. They did not wish to take this course, and in the event I gave permission for the Applicants to rely on this new evidence. To be fair, Mr Hinton's witness statement largely repeats the facts set out in the ST1. Beyond this, however, the statements are surprisingly thin as regards the acts of adverse possession relied on, notwithstanding the number of witnesses involved. The Applicants' son, James, refers to parking vehicles on the Disputed Land, riding a motorbike up and down the track, and keeping the track clear of brambles and weeds. Martin Maslin refers to using the track to get to Foxbridge Farm, and seeing vehicles parked on it. Geoffrey Maslin refers to using the track to access Foxbridge Farm, and parking and sometimes repairing vehicles on the Disputed Land when taking part in ploughing matches. Mr Williams mentions using the track between Foxbridge Farm and Wansdyke on many occasions, and putting his own implements and machinery on the Disputed Land with the Hintons' permission. Mr McFadyen and refers to Bonfires being held on the Disputed Land by the Hintons. Under cross-examination, he accepted that these in fact took place on the land to the north. Mrs Errington, Malcolm Hinton's sister, supports her brother's witness statement. All the witnesses say that they believed that the Disputed Land belonged to the Hintons. They also say that they believed that Mr Sadler erected the barbed wire fence in order to mark the boundary.

#### **FINDINGS OF FACT**

15. On the basis of the witness statements and extensive cross-examination of the Applicants and their witnesses, I make the following findings of fact.
  - a. First, at or around the time of the Applicants' marriage, in 1971, Mr F J Hinton said that he would give them the area known as Wansdyke upon which to build their matrimonial home. Since he already owned it, as well as the land to the west (including the Respondents' title), there was no need to execute any formal documents at this stage. Instead, he made a Will in which

the half acre plot was devised to Mr Hinton, and after his death the October Assent by the personal representative gave effect to this gift.

- b. Second, I find that the "oral" gift did not include, and was not intended to include, any land to the west of the natural boundary of Wansdyke, formed by the Stream. At the time of the gift, and until Mr F J Hinton's death in 1981, the land to the west of the Stream (including the Disputed Land) formed part of a field which he used for grazing cattle. There has been a fence along the western bank of the Stream for many years, replaced several times by the Applicants, as they both confirmed in their evidence. It is very likely that this fence was originally erected as stock-proof fencing to prevent Mr F J Hinton's cattle from getting into the Stream from the west. I reject the Applicants' evidence that Mr F J Hinton indicated that the Disputed Land formed part of the gift to them. This would be quite improbable, given that it formed part of his working farm, and Wansdyke already had an obvious and distinct physical boundary formed by the Stream and bank. Further, if he had intended to include this land there is no explanation why the gift in his Will did not reflect that intention. The terms of the October Assent are entirely inconsistent with the Applicants' evidence in this regard. It follows that the Hintons never believed that the Disputed Land belonged to them as a matter of title.
- c. Third, I find that Mr Sadler erected a barbed wire fence along the western side of the Track in or about 1984 and, further, that the Applicants themselves on several occasions since 1982 replaced the fence along the western side of the Stream. Accordingly, once Wansdyke and the Respondents' Title came into separate ownership in 1984, the Disputed Land was fenced on either side. In the absence of any direct evidence from Mr Sadler, his intention in erecting the fence can only be a matter of inference. I have no difficulty in drawing the inference that he intended to erect a barrier between the vehicular right of way – the Track – and his own livestock. If no fence had been erected, there would have been nothing to prevent his horses from straying into the path of the agricultural and other vehicles that were entitled to use the Track in connection with Foxbridge Farm. It also follows, of course, that the statement in the Applicants' Statement of Case, that they erected the barbed wire fence along the western side of the Track, is untrue.

- d. Fourth, Mr Sadler installed a gate in the northern boundary of the Track – leading towards Foxbridge Farm – which he subsequently removed. This is the Applicant's own evidence. This strongly supports the inference that I have drawn that the western fence erected by Mr Sadler was not intended as a boundary fence. If it had been, he would have had no business installing a gate on the other side of the alleged boundary fence.
- e. Fifth, I find that the Track has been used as a vehicular access to Foxbridge Farm over a period of many years, as all of the Applicants' witnesses confirmed. I accept the Stalkers' evidence that there was some evidence of gravel or chippings on the Track when they bought their land. As to user, by way of example Mrs Hinton said in cross-examination that she was able to drive her Mini car up the Track to visit her mother-in-law at Foxbridge Farm until approximately 6 years ago. However, the state of the Track varied according to the weather, and it was often impassable in winter. Her son or some other person connected with the family would sometimes clear the weeds and grass with a strimmer. This was done solely to keep the access clear for the benefit of the access to Foxbridge Farm. However, by the time that the Stalkers arrived on the scene, in 2008, the Track was no longer used, and indeed the access to Foxbridge Farm was blocked by trees and undergrowth. This is entirely consistent with Mrs Hinton's recollection of the pattern of user.
- f. Sixth, use of the Track by the Hintons and others visiting Foxbridge Farm was always attributable to the legal right of way that existed over the Track in favour of Foxbridge Farm.
- g. Seventh, in or around 1990 Mr Hinton parked an old JCB tractor on the side of the Track, tucked partly into the undergrowth that grew on the western bank of the Stream. He intended at some point to restore and repair the vehicle, but in effect abandoned it there and allowed it to deteriorate. That JCB remains in place to this day.
- h. Eighth, on other occasions Mr Hinton or his friends would park vehicles on the Track for short periods, and occasionally repair vehicles. This was usually done in connection with ploughing competitions in which they participated, while they were assembling at Wansdyke before driving to the location, or for other temporary purposes. There was no longer-term use of the Disputed

Land, and any parking was always done so as to leave clear the main access route to Foxbridge Farm. Mr Hinton's own working vehicles were either parked within Wansdyke (the aerial photograph attached to his ST1 shows this clearly) or at the farms where he was working. I should say that he is an agricultural contractor, and own a variety of heavy plant and vehicles.

- i. Ninth, I do not accept that animals were kept on the Disputed Land. In this respect, it is highly significant that the keeping of animals was not part of the Applicants' case at the time of the ST1. The only reference to animals related to the "First Land" – lying to the north of the Disputed Land. It is quite improbable that animals would be kept in close proximity to an active vehicular right of way.
- j. Tenth, the Hintons made no claim to the Disputed Land until after Mr Stalker requested him to move the JCB in August or September 2010. It is common ground that Mr Hinton did remove a plough and other implements from the eastern edge of the Disputed Land as a result of Mr Stalker's initial request in the summer of 2010. The first documented claim to have title is made in their solicitors' letter dated 21<sup>st</sup> September 2010 which refers to their having "*owned and occupied*" the land for upwards of 40 years, and having "*a valid and good title*" to it. I do not accept their evidence that they discussed the ownership of the Disputed Land with the Stalkers when they first arrived, and claimed to own it. At all times until the delivery of the solicitor's letter, the Stalkers conducted themselves in the entirely understandable belief that they owned the Disputed Land, which was of course included within their registered title. They did not ask permission before digging a substantial trench in the roadway, which remained open for several months, in order to connect their electricity supply. Nor did they ask permission before carrying out a complete re-surfacing of the track at considerable expense. Furthermore, they committed themselves to buying Mr Yeandle's land to the north, and building a substantial new barn on it for the purposes of their business, on the footing that they had free access over the track. It is quite inconceivable that they would have done these things if there had been any inkling that the land was claimed by the Hintons. Actions speak louder than words. The fact that Mrs Hinton (as she grudgingly conceded in cross-examination) asked the Stalkers if she could use some of the clay that was dug out of the trench, for

her hobby as a potter, tells its own story. It indicates that at this stage – in early 2009 – the Hintons had not even begun to contemplate that the Disputed Land belonged to them.

- k. Eleventh, I accept the Respondents' evidence that they gave express permission to the Applicants to place ploughs and other machines on the Track in order to prevent members of the public from obtaining access as an alternative to using the public footpath.
- l. In the absence of any direct evidence from Mr Sadler, I am unable to make any finding as to whether or not he gave permission to the Hintons to leave the derelict JCB tractor within the Disputed Land, in its present position between the Track and the eastern boundary. I have reached my conclusions on the assumption that no such consent was given. If consent was given, of course, the Hintons' case is even weaker.

16. In reaching these conclusions, I have preferred the evidence of the Respondents to that of the Applicants where the two come into conflict. I found the Respondents to be transparently credible witnesses who did not embroider or exaggerate their evidence. This relates in particular to the conversations said to have occurred between the parties after 2008 and admissions made by the Respondents. The actions of the parties between 2008 and 2010 are quite inconsistent with the Applicant's evidence. In my judgment, the Applicants' credibility is also undermined by their insistence that they have always treated the Disputed Land as their own, and believed they owned, from the time of the original "gift" by Frederick James Hinton in 1971. Quite obviously, this contention is absurd. The land at that time was part of and indistinguishable from the field used by Frederick James Hinton for grazing cattle, and the only boundary features were on the east, between the Disputed Land and Wansdyke. Mr Hinton tried to persuade me that he had had a conversation with his grandfather in 1971 in which the latter indicated, with a sweep of his arm, that the Disputed Land thenceforth belonged to him. I am quite unable to accept that any conversation relating to the Disputed Land ever took place, nor can I accept that the Hintons genuinely believed at the time that the Disputed Land belonged to them.

#### **THE LEGAL CONSEQUENCES OF THESE FINDINGS**