

PLANNING INSPECTORATE REFERENCE: ROW/3209564M1  
WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53  
SWINDON BOROUGH COUNCIL  
FOOTPATH 44 WANBOROUGH MODIFICATION ORDER 2017

**PROOF OF EVIDENCE OF MR PETER GALLAGHER**

1. My name is Peter Gallagher, resident of Swindon, Footpaths and Walking Environment Officer for Ramblers Swindon and North East Wiltshire Group (a volunteer role). I am representing Ramblers at this inquiry.
2. Ramblers objects to the Inspector's decision to modify the Order by deleting all reference to the route A-B-C-D.
3. Confirmation of the Order with this modification would produce a result which most if not all the parties to the inquiry are likely to find unsatisfactory and which is unlikely to resolve the matter. Obviously I cannot speak for Swindon Borough Council but, bearing in mind the Inspector's findings as set out in her Decision Report, I would expect the Council to make a new Order with the Order plan redrawn to show the route which accurately reflects the user evidence. Such an Order may well again attract objections and will leave the residents of Suters Lane facing an even longer period of uncertainty as to whether a second public right of way exists across their land.
4. In Mr Fry's letter dated January 2020, Swindon Borough Council accepts that the Order plan needs to be modified to reflect the route used by the public, and the description within the Order modified accordingly. As set out in my letter dated 17 January 2020, which also serves as my statement of case, Ramblers believes that there is good legal authority to allow the Inspector herself to confirm the Order with such a modification. This authority derives in particular from *Trevelyan v Secretary of State for the Environment, Transport and the Regions* [2001] EWCA Civ 266. (A copy of the judgment was provided with my statement of case).
5. Ramblers believes that the facts of this case render it entirely appropriate for the Inspector to make such a modification.
6. Firstly, the Inspector has concluded at para 30 of her Decision Report that a way across the land which now forms part of the Suters Lane development was used by the public during the relevant period. Although the Inspector chose not to go on to consider the other statutory criteria, there was to the best of my recollection no evidence presented at the first inquiry (I attended on all three days) to suggest either that the use by the public was not "as of right" or that the then landowner(s) demonstrated any intention not to dedicate.
7. Secondly, I believe there is no dispute as to the location of the termination points A and C and that these points are shown correctly on the Order plan. Point C is directly opposite point E across Mr & Mrs Stalker's track. Para 45 of the Decision Report refers to Mr Hunt's evidence of this location.
8. Turning to the section of the Order route G-D-E-F, Ramblers supports the Inspector's decision to confirm this part of the Order and does not believe that Mr Stalker's statement of case contains any new evidence which would justify revising this decision. I would like to comment briefly on two of Mr Stalker's points.

9. In support of his contention that the law does not require a landowner's intention not to dedicate to be communicated to the public, Mr Stalker quotes remarks made by Auld LJ in the Court of Appeal judgment in *Godmanchester*. He seems to be unaware that Auld LJ's opinion was not supported when *Godmanchester* reached the House of Lords. The current state of the law is accurately set out in the Inspector's Decision Report at para 59, the HL judgment being referred to in the footnote.
10. The letter from Thames Water does not assist Mr Stalker either, as it shows purely that he had a water trough somewhere on his land, but not where it was located.

Peter Gallagher

18 July 2021