

Summing Up Statement to Footpath 44 Inquiry 2 on behalf of Applicant

John and Ginny Warr

14/12/2021

1. As set at the outset of this second part of the Inquiry, the residents of the Marsh and Burycroft accept the decision of the first Inspector and support Swindon Borough Councils proposal to modify the order to reflect the re-alignment of the footpath 44 along section A-C, to increase its width to more accurately reflect the actual walked route used by the public and thus confirm the order in full to adopt footpath 44 in its entirety as a right of way on the definitive map.

Section A-C-D the "Old Caravan Park"

2. Attached to my proof of evidence for this part of the Inquiry, were 7 written statements from residents of the Marsh and Burycroft, 2 of which were new user statements, providing additional evidence on the walked route through A-C-D.
3. The first Inquiry was supported by 23 user statements, we heard from 9 witnesses at the first Inquiry and not wishing to overly repeat evidence being presented at the second inquiry we had a further 5 witnesses give evidence at the second Inquiry, of which 3 gave evidence for the first time. These were Martin Savage, Robert Inskip and David Birley.
4. All user statements and witness testimonials across both Inquiries confirmed that the path A-C-D was well used and continuously used for over 20 years.
5. The inspector in her decision from the first Inquiry Paragraph 30 also confirmed "I am satisfied for convenience and safety, a route across this piece of land has been used by local people"
6. The statements and witness evidence, confirmed it was used for over 20 years back to at least the mid-1980s and if there was any interruption it was only in the last couple of years between 2015 and 2017 when construction of the new development took place.
7. With respect to the walked route itself, all witnesses that took the stand confirmed there were no obstructions to restrict users from wandering across the path between the entry and exit points. All witnesses confirmed the existence of a gravel track, which in later years became grassed over, for use by caravans and tractors. Both Martin Savage in his evidence and Graham Finch in his written statement confirmed the high wire electric fencing to the north of the route was touched by a child indicating that users both walked and strayed over the verges of the gravel and later grass track.
8. With regard to the exit and entry points, there were gates at the entry at Burycroft and at point C on the Wrightsbridge track. User evidence was consistent, in that all users confirmed the gate at Burycroft was almost always locked and users accessed the path via a step over

stile to the west side of the 5-bar gate, which was later replaced by “V” stile. Peter Hunt in his statements and testimonials confirmed he installed the “V” stile.

9. It should be noted that at Burycroft is a footpath sign installed by the Swindon Borough Council marking the entry to the path. The original entry to the definitive route 25 is about 4m to the east of the footpath sign. Witnesses who took the stand notably Peter Hunt, Robert Inskip, Steve Savage and Graham Finch in his written testimonial confirmed the official route 25 was closed since the late 80s through the erection of fencing around Ducksbridge to protect the birds and other wildlife in the ponds at Ducksbridge. This caused confusion for many walkers who often mistook the unofficial path footpath 44 with the official footpath 25 and were unaware of any other alternative routes.
10. This confusion is perfectly illustrated with the Parish Councils own Parish Walks Booklets “A walk Around Lower Wanborough” dated 1994 and revised in 2012. The map attached in the booklets shows footpath 25 as per the definitive map taking a route that runs parallel but to the North of footpath 44, but the descriptions as confirmed by Steve Savage and unchallenged supports an actual walk through the old caravan park. The 1994 booklet states “Just **besides** Ducksbridge is a public footpath we will take. It leads **past** the garden and aviaries of Ducksbridge to the driveway at Wrightsbridge” This is consistent with witness testimonial who often referred to the “aviaries” behind the wire fencing running parallel to the walked route so you walked “past” them not “through” them. Further the 1994 edition goes on to say “those wishing to continue cross the style on the opposite side of the drive and walk alongside the field fence”. This is consistent with user evidence both at this Inquiry and in more detail the previous Inquiry describing the route E-F-G prior to 2009.
11. When the walk booklet was updated in 2012, referring to the path beside Ducksbridge “It **cuts off the corner** and leads to the driveway of Wrightsbride, cross the driveway and over the stile to the footpath between two open fences” Charlie Stalker confirmed the Race was installed in 2009 (Document P30 of first POE supplied by myself to the first Inquiry) and these description in the booklets are consistent and accurately reflects the changes to E-F-G as confirmed by user evidence at this Inquiry.
12. With regard to the exit of the footpath at point C, there were some differences in written and witness evidence with regard the 5-bar gate. Some believed the 5-bar gate was occasionally to often open, some suggests it was always closed. However, all witnesses except for that of Angela Raymond, confirmed that the walked path was never interrupted and if the gate was closed either a rickety stile or open gap to the north side of the gate allowed access. Peter Hunt in his written, previous Inquiry testimonial and at this Inquiry confirmed his job was to maintain this path and ensure brambles and foliage was cleared to allow uninterrupted use of the path.
13. Whether the 5-bar gate was locked at point C is really only relevant in determining the central alignment of the modified order route. This will be a call for the Inspector, but there is some evidence that the gate was occasionally open, particularly in the period mid-90s to 2010, as confirmed by Steve Savage and by Sian Lewis and Linda Moore from the first Inquiry, and would be consistent with active management of the farm and caravan park during this period. It is likely the 5-bar gate was more often locked in the period 2010 to

2015, when Gerald Sadler was in poor health and during the period of ownership by Bower Mapson.

14. Peter Hunt was very helpful in showing the first Inspector the exact location of the gates and style in a site visit, and I therefore wanted to bring forward Peter as a witness at the second Inquiry. I will leave the Inspector to make her own mind over the evidence he presented, but I would ask the Inspector consider his age and stress he was under giving evidence. I thank the Inspector to helping to mediate. Under the circumstances Peter clearly got easily confused with regards to the positioning of the “fence” and “aviaries” in the picture of the “Caravan Park” (P14 POE myself first enquiry”) and may I suggest that the gate that was “always” closed was the Burycroft end, which is consistent with User evidence presented at both the first and second Inquires. The “keys” were kept at the house, and were collected to open the “Burycroft” end gate to allow caravans in and to ensure fees are collected.
15. Contrary to “hearsay” claims from Mark Hanson, about Gerald Sadler, all other witnesses who gave evidence at this and the previous Inquiry confirmed that Gerald Sadler intended the whole path footpath 44 be used by the public. Employees of Gerald Sadler were expected to keep the path clear. We heard from the first Inquiry, Sian Lewis and Linda Moore, were told they could section the fields at Honeyfield Farm for horse grazing management, but in doing so must not obstruct the footpath. Indeed, Gerald Sadler did not object to a footpath sign at Burycroft pointing to the path, or his path being described in the Village Walks booklets. He installed and maintained styles with the sole intent for the public to walk the path.
16. Colin Offer provided evidence that the Rights of Way officer in 2013 was aware of the existence of footpath 44 (D31 POE myself first Inquiry) confirming “this route has been in use for 20 years or more”, the agent confirmed in the officers report 2013 page 73 6.29 that “the land remains in the ownership of the applicant, none of the proposed development obstructs the original route 25, although the route appears no longer to be in use, the applicant sees no need to alter it as the “unofficial” new route now deemed to be a highway and this is the route our development proposals have already incorporated”. The promotional brochure page 3 for Suters Lane states “using the caravans site entrance a gravel drive leads in to the homes with the route of the public footpath preserved through the site” It is clear that the Developer Bower Mapson understood the importance of footpath 44 and incorporated the path into his development and demonstrated clear intent to retain the path for public use.
17. In my own user statement, I confirmed I used the Bower Mapson footpath between October 2016 and May 2017. When constructing the new development Bower Mapson took reasonable steps to maintain the footpath. The Heras fencing had a gap to facilitate a walk though across the park. We have one picture at an instant of time that shows the path obstructed by a wire mesh fence across the gap. It should be noted that no statement has been provided to this Inquiry from Peter Mapson. Therefore, we cannot determine his intent or otherwise, but it plausible that the wire fencing was drawn across the gap when building activity deemed it unsafe to walk the path. Certainly, by October 2016, the walled path was in place and I used it regularly, noting the path was constructed first before the houses 3 and 4 were built.

18. The first inspector in her decision para 38, notes that the Bower Mapson path may have been used for a period of time prior to 2017, but as this is not correctly aligned to the previously walked route it does not meet the 20-year usage test. If the Inspector was minded not to include usage of the path during 2016 then I and the residents would be supportive of a 20-year usage test running back from say 2015.
19. The only statement that suggests the path was blocked at any time was received from Angela Raymond. As noted at the Inquiry, Angela is the Clerk and employee of the Parish Council, who are objectors to this path. There are some inconsistencies in her written statement that it would have been helpful to clarify had she given direct witness testimonial.
20. In her statement Document 30 on the SBC website, she describes in the paragraph starting "Going from the green footpath sign" at the entrance of Suters Lane there was an old derelict caravan on the right. Steve Savage in his evidence confirmed the newish Caravan shown in the picture P14 was only there in that picture at that moment of time. The derelict caravan was actually on the other side of the track and would have been therefore on the left as approached from Burycroft.
21. The statement then seems to indicate that footpath 25 was walkable, but as we heard from many witnesses this route was fenced off, and in any event is not relevant to this Inquiry.
22. It is not clear in the statement at which point Angela arrived at the Wrightsbridge track. If it was point C she would have had the opportunity to cross over path and use the stile to cross Honeyfield farm. Her statement is more consistent with the crossing point on footpath 25, where indeed you could not cross onto Honeyfield Farm until 2017 when as the Inspector from the first Inquiry in her Decision report para 21, confirms a gate was installed at this point in 2017. Further from this point walking north along Wrightsbridge track and around the barn would be a natural route to return to footpath 25 and the intersection with footpath 23.
23. The location of the locked gate mentioned in her statement is not absolutely clear, but it may have been at point C. Given that Angela refers to a recent visit under Bower Mapson ownership, it may be growth of shrubbery that made the gap less obvious and she felt the need to climb over the gate. She goes to say "Having walked the route in earlier years" suggesting that apart from this one incident access was possible. Angela confirms she does not live near the footpath and only walked these footpaths occasionally and this should be balanced with 30 or so User Evidence statements of local people who walked this route regularly and were tested in this Inquiry.
24. All users who gave testimonial and most of the user statements were from residents in the Marsh or Burycroft. They all confirmed that the route A-C-D was used as "cut through" between the Burycroft and the Marsh. Of the full path this section was the most walked section as acknowledged by the first Inspector and provided a convenient safe route avoiding a dangerous bend. Although not to be considered as part of the statutory tests for confirming this order, it should be noted that those users who gave testimonial did not consider FP20 or Green Lane an acceptable alternative route.

25. With regard to evidence submitted by Mark Hanson on behalf of Suters Lane, a lot of his evidence was based on “hearsay” and should not be admissible. All references attributed to Bower Mapson and Brunel services should be disregarded. The only “hard” evidence offered to the Inquiry, was Angela Raymond’s statements and a series of overlay maps.
26. Martin Fry explained that SBC in drawing up their proposed modification to the order used OS mapping. There has been no independent verification on the accuracy of the overlay maps provided by Mr Hanson. It therefore seems appropriate that the OS maps should be considered the benchmark for determining the order route.
27. If the Inspector is persuaded by the “late” overlay evidence on the combined map that showed that part of the hatched area as proposed for the modified order route sits north of the high wire fence running alongside the path at the west end near point C, and therefore could not have been waked, I and the residents would have no issue if this small section was excluded from the proposed modified route.

Section D-E-F-G “The race”

28. The Inspector in her first decision was minded to confirm the order for the section D-E-F-G. Although the Inspector indicated on the first day of this Inquiry that the decision on this part of the path could be reconsidered if NEW compelling evidence was presented. The only NEW evidence provided by Mr Stalker was details of a water supply letter.
29. Mr Stalker argued that the section E-F-G was not dedicated. This was covered extensively in the first Inquiry, with user evidence from Sian Lewis, Linda Moore, Steve Savage, Martin Savage, Bob Inskip and others confirming the route was well defined, used and actively encouraged by Gerald Sadler. The major debate at the first Inquiry was the position of the stile at point E with respect to the fence line.
30. Linda Moore at the first Inquiry confirmed that under Sadlers ownership there were no connected water troughs on the field for use of the horses. The troughs were manually filled using a connected water trough to the rear of the barn. Therefore, Stalkers evidence of a connected water trough since 1985 is not disputed.
31. Written testimonial from Bob Fisher at the first Inquiry and user evidence given at the first Inquiry confirmed that the Stalkers understood that the path E-F-G was established and should be maintained under their ownership. Indeed, as we heard from Steve Savage and Robert Inskip, the decision to erect the “race” over the path was welcomed by the villagers. The Stalkers made no efforts to suggest the path was not dedicated and indeed maintained a stile at point E and added helpful notices reminding the public to not feed the animals. (P30 POE myself first Inquiry).
32. The only interruption was to put in a sewer, which was covered extensively in the first part of the Inquiry, and the inspector was content that this was temporary and was not done for the purpose of closing the path.

33. No evidence was presented to this or the previous Inquiry that the Public could have had reason to believe this was not a dedicated path.
34. Again the Parish Councils official "walks of lower Wanborough" booklet in the 1994 version refer to "cross the stile on the opposite side of the drive and walk alongside the field fence" and the 2012 version updated following installation of the Race, "cross the driveway and over the stile to the footpath between the two open fences" is completely consistent with user evidence at both Inquires.

Conclusion

35. With respect to the path D-E-F-G no "new" evidence has been provided to suggest the Inspector should reconsider the first Inspectors decision to confirm the order to add this path to the definitive maps.
36. For the section across the "old caravan park" A-C-D, extensive user evidence has been provided and tested to confirm continual use of more than 20 years without interruption. The path has clearly been dedicated since the mid 80s, so should the Inspector be persuaded to adjust the point at which the path became in disputed to 2016 or 2015 we would not object.
37. In terms of the actual walked route, user evidence confirms that the public walked along the gravel track and it verges, so the proposed modified wider route reflects this usage. The gate at point C may at times have been opened, so a route aligned centrally to the gate with the width shown in the proposed modified route seems sensible. However again if the Inspector was persuaded that some of the hatched area was not walked or the central alignment should be altered slightly, then again, we would not object.
38. The evidence provided by those opposed to the path was mostly "hearsay" or unsubstantiated claims, and certainly no new material evidence was provided that was so compelling to outweigh the overwhelming evidence, than on balance confirmed the public used the footpath A-C-D-E-F-G for over 20 years or more of uninterrupted use, with no evidence to show it was not dedicated and runs along the wider and slightly re-aligned route as proposed in the modified order for A-C and follows the rest of route as previously confirmed.

John Warr

Applicant on behalf of residents of The Marsh and Burycroft

14/12/2021