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Mark Hanson
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Date: 14th December 2021

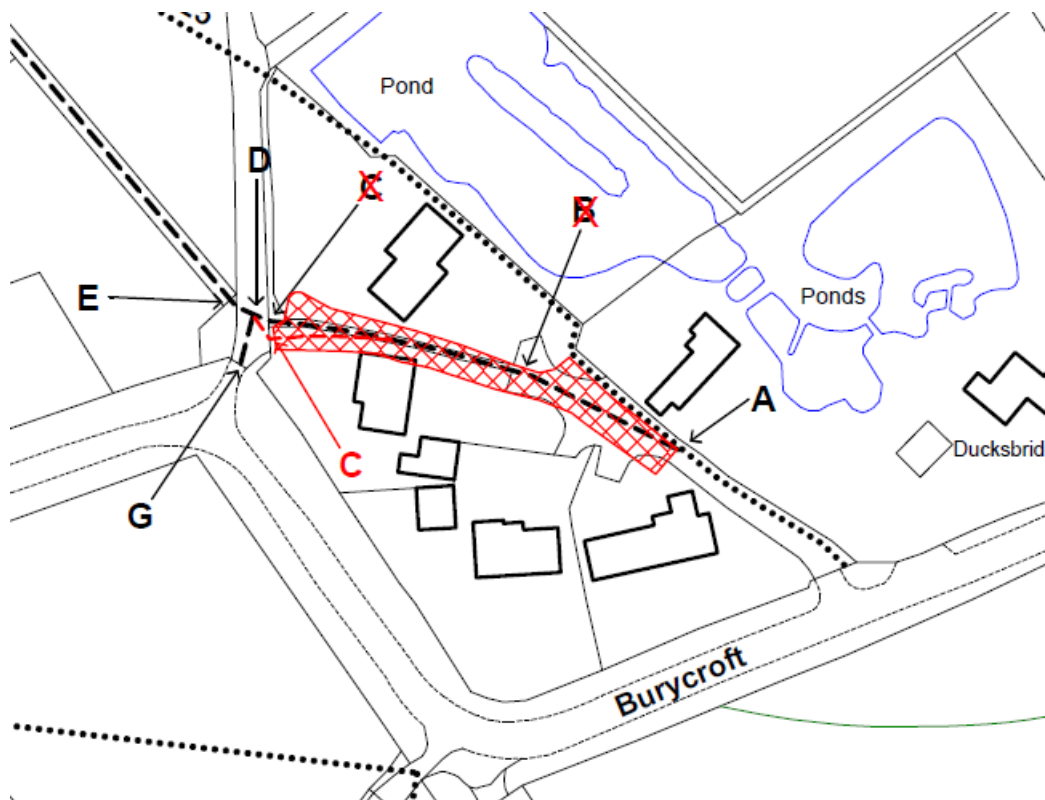
Suters Lane Closing Statement regarding ROW/3209564

Dear Sir or Madam,

I am writing to you on behalf of the residents of Suters Lane, Wanborough regarding ROW/3209564 Public Inquiry 7-8 December 2021.

Our closing statement for consideration by the inspector.

1. Modification of the width relating to Points A-C Plan No WA44/11/17/MF/Nov21



Plan No WA44/11/17/MF/Nov21

We object to Swindon Borough Council's (SBC) request for the Inspector to modify the order to increase the width and movement of location C on the following grounds:

- 1) We believe that the modification requested by SBC would be classified as 'substantive' and should therefore not be approved by the Inspector according to SBC's definition, points 3.4 and 3.5 below from their submission.

- 3.4 The Council's considers that the above proposal is an entirely appropriate exercise of the Inspector's power to confirm an order "with or without modifications" (see paragraph 7(3) of Schedule 15 to the Wildlife and Countryside Act 1981). In this regard the Council relies on PINS' Advice Note 20, dated 14 October 2021. In so far as relevant, this states:
- 3.5 Thus if an order [made under s.53(2) of the Wildlife and Countryside Act 1981] contains an error that does not **(i) prejudice the interests of any person, (ii) render the order misleading in its purpose, or (iii) appear to result in incorrect information being recorded on the definitive map (hereafter a 'minor' error), it may be corrected by modification.** However, if the error is 'substantive', the correct approach is for the order to be rejected and returned to the relevant surveying authority with a written explanation as to why the order was rejected, together with a written recommendation that the surveying authority should notify all relevant parties of such rejection and of the reasons for such rejection.

The request for modification is inaccurate:

- a) As demonstrated in our PowerPoint presentation, denoted in square boxes (Diagram 1 below) and maps presented to the inquiry the SBC's relocation of the gate at Point C is inaccurate in relation to the Brunel Survey. In addition, the applicant was in agreement at the inquiry that the gate shown on the Brunel Survey was indeed correct. Suters Lane demonstrated at the inquiry that the original gate was approximately 8 inches inside the present path marked in red lines below and the applicant stated that he believed it to be 1ft inside, so a discrepancy of 4 inches but nevertheless inside the lines of the present footpath. The SBC movement of C would, in our opinion result in clause (i), (ii) and (iii) above being triggered and therefore be classed as 'substantive'.

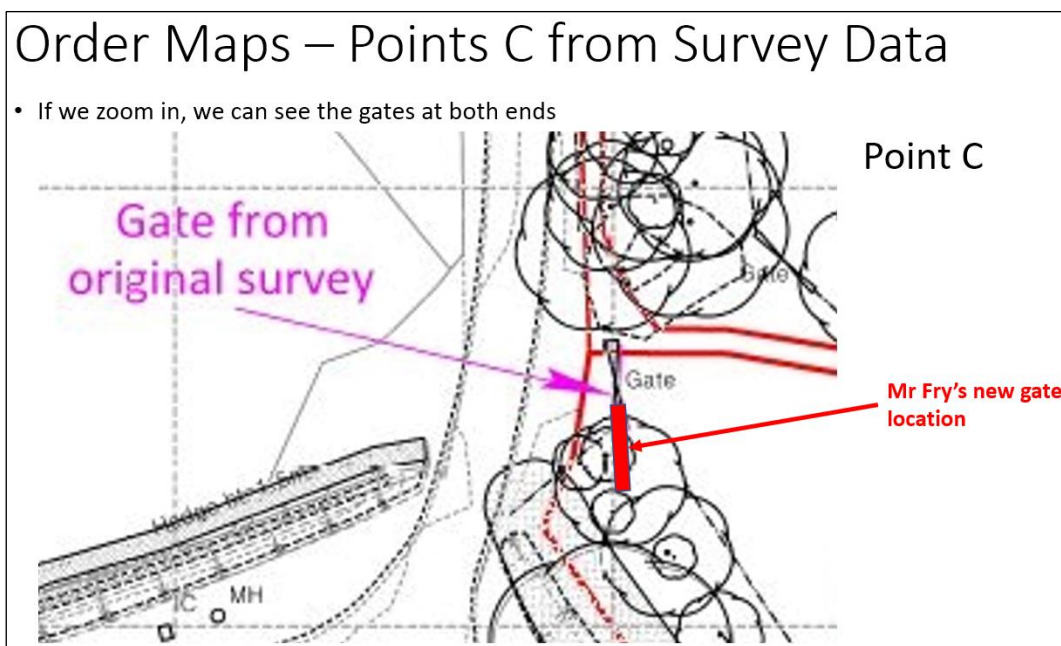


Diagram 1

- b) As demonstrated in our PowerPoint presentation (Diagram 2 below) and maps presented to the inquiry the SBC GIS shape coloured **yellow** below does not represent the gravel caravan track between points B to C on the order map.



Diagram 2

In fact, the top half of the shape points A – C actually represents the line of the Avery (Diagram 3 below). The hand draw black line shows the track line (not to scale but by way of demonstration).

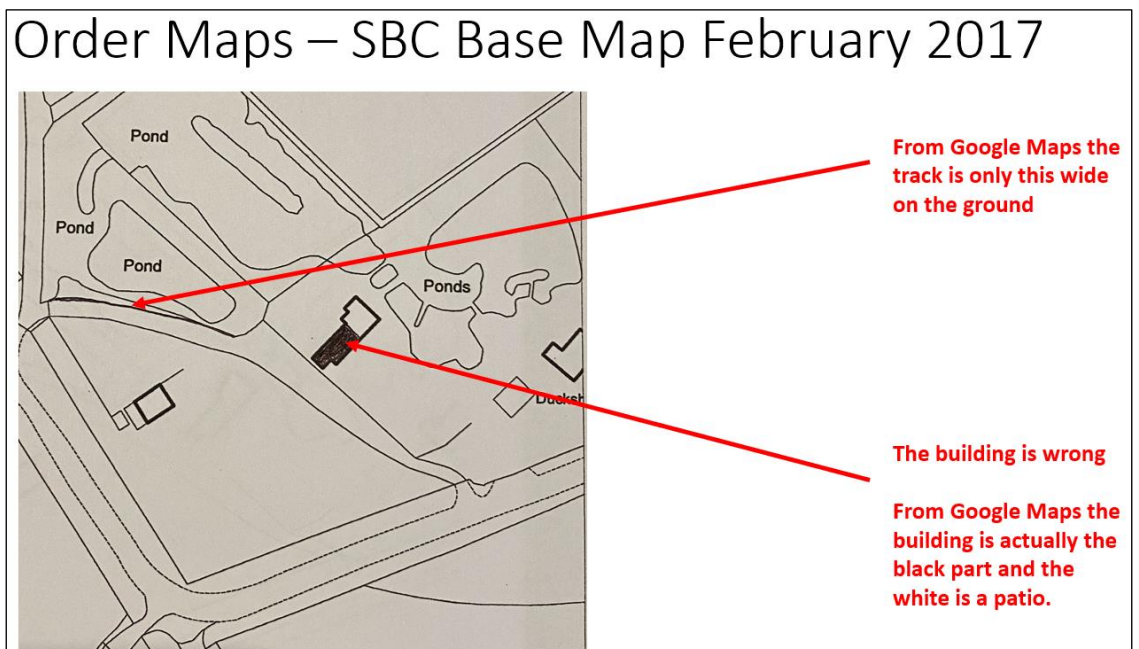


Diagram 3

Diagram 4 shows the Avery fencing from the Brunel Survey (red circle below).

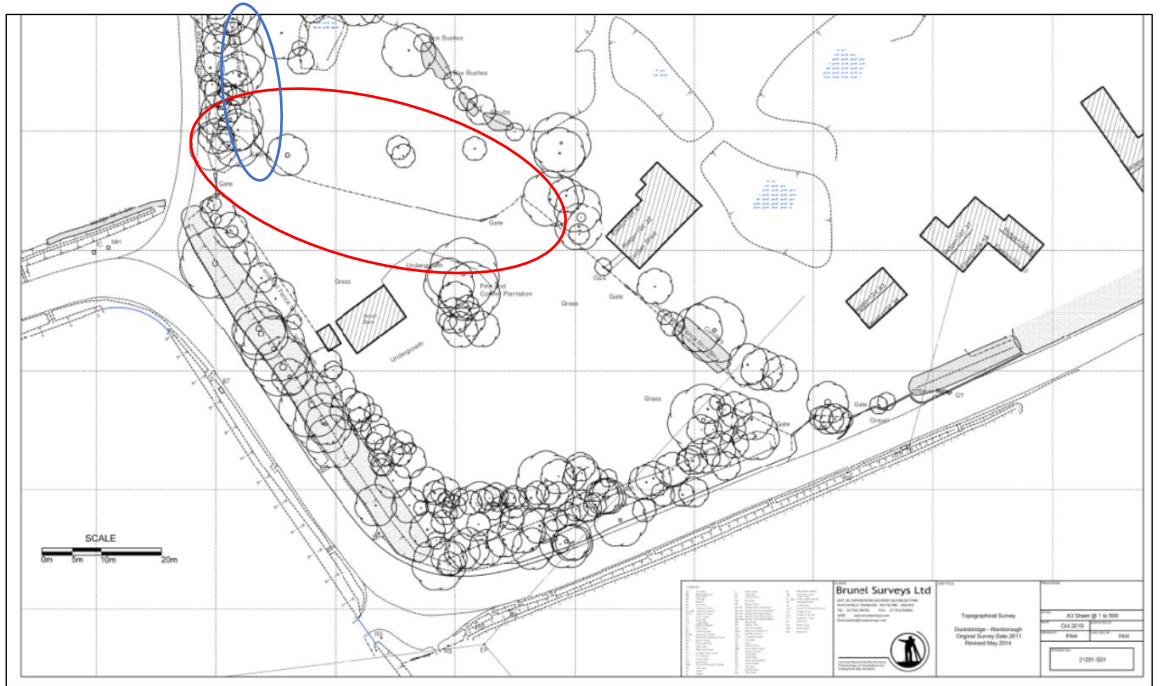


Diagram 4

As demonstrated with the house on our PowerPoint presentation (diagram 3 above), the lines on the GIS plan can represent a collection of objects. In the case of the house, it includes its patio and gives the impression the house is larger than it is on the SBC GIS. In the case of SBC hatched area (Plan No WA44/11/17/MF/Nov21 at the beginning of this section), shown in yellow above in Diagram 2 it combines the track together with the surrounding land up to the Avery fencing. In fact, even this is incorrect as the GIS shows the Avery ending in a circle where it actually carries on behind the property as seen in Diagram 4 above (blue circle).

Therefore, we believe that this would trigger clause (ii) and (iii) above and therefore be classed as **'substantive'**.

- c) At the inquiry we demonstrated through diagram 5 below that the existing footpath between point B to C of the order map includes the Avery fencing.

Order Maps – Raw Survey Plan from Brunel



Diagram 5

We explained at the inquiry that the Bower Mapson path between points B to C originally followed the line of the Avery exactly as this is where the developers were led to believe the illegal diversion was routed according to local consultation in 2013 during the planning process.

Unfortunately, once the wall was built, the developers realised that they did not allow for the Gas box meter (Diagram 6 below) and planning would not sign off as the width past the house would be less than 0.8 meters due to the obstruction on the ground (Diagram 6).

Order Maps – Raw Survey Plan from Brunel



Diagram 6

The wall was knocked down by Bower Mapson, and then reconstructed 40cm North of its intended location and this is why there is a kink in the path that exists today.

Having established the Avery line is now within the path shown (in Diagram 5 and 6 above) when you overlay the councils increased width proposal, a very large area of it is now inside the Avery where people could not have walked due to the 10ft Electric fence (diagram 7).

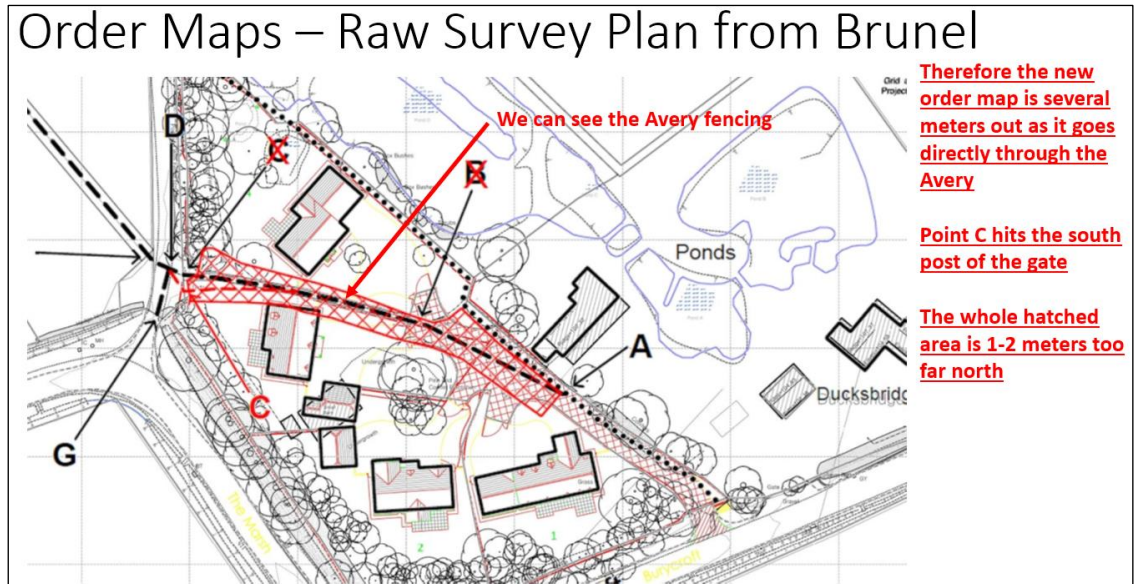


Diagram 7

The zoomed version of the above is shown in Diagram 8 below.



Diagram 8

Therefore, we would argue that the plan is invalid as it would trigger clause (i), (ii) and (iii) above and therefore be classed as **'substantive'**.

- d) Moreover, approving the width increase would put the right of way through 3 properties on the land, namely No1, No3 and No4 Suters Lane (diagram 8 above) where the original order did not. This act would alter the LTV (Loan To Value) on the properties and could invalidate the mortgages secured on them. This would trigger clause (i) above and therefore be classed as **'substantive'**.
- e) Approving the width increase would put the right of way directly through the study, utility room and kitchen of 3 Suters Lane (diagram 9 below, blue circle) invalidating the properties mortgage where the previous order did not, and trigger clause (i) above and therefore be classed as **'substantive'**.



Diagram 9

- f) The right of way width increase above would also go over the gas supply box as it would be in its path (diagram 6 above) the previous order did not, and trigger clause (i) above and therefore be classed as **'substantive'**.
- g) The right of way width increase above would also mean that the back door of No3 Suters Lane would open directly onto the right of way. Which is in the middle of the blue circle above marked with a blue triangle where the previous order did not, and trigger clause (i) above and therefore be classed as **'substantive'**.
- h) Lastly, Mr Fry told the inspector at the inquiry that the width of 3 meters had been chosen to take into account verges as you would on a highway. Virtually all of the witnesses who claimed to use the route as this inquiry said they used the hard surface of the track to avoid muddy ground. Plus, they couldn't have got too close to the Avery on the verge adjacent to it as the fence was electrified, one witness commenting that their grandson got a shock from it.

We would ask the inspector to consider whether it is normal practise when establishing a footpath width to include verges?

2. Right and without interruption for a full period of 20 years

We believe that the above is to be calculated retrospectively from the date when the right of the public to use of the way is brought into question. SBC claim this was 2017 in their latest submission and subsequently claim uninterrupted use between 1997-2017.

Excerpts from SBC's submission:

4.2 As for when the route at A-B-C-D was brought into question, this was considered by the Inspector at paragraphs 23 to 26 of the Decision, with the conclusion that the route was brought into question in early 2017. No new evidence has since been obtained which indicates that the Inspector was wrong in this regard.

4.3 The next question is whether the use of the route at A-B-C-D (whatever its parameters) meets the tests in section 31(1) of the Highways Act 1980. The Council considers that it does for the following reasons.

4.6 Secondly, even without the Inspector's findings referred to above, there is significant evidence of uninterrupted use as of right by the public from 1997 (and earlier) to 2017. This evidence is summarised in the Council's Statement of Case dated 14 August 2018, and especially sections 11 and 12 of that document. In particular the Council relies on:

1. 19 user evidence forms signed by 23 individuals. These show that the route was used between 1957 and 2017. 13 of those individuals used the route from 1997 to 2017 with a further 6 individuals using it for at least 13 years during the same period. The use varied from daily to occasionally.

We believe that the date of 2017 from the inspector came from the closure of the race further along footpath 25 earlier the same year.

Excerpt from the Inspectors Interim report below:

Path A-B-C-D-G

The date on which the use of the way was brought into question

23. The application was made by Mr and Mrs Warr in June 2017. It appears to have been prompted by the closure of the race in conjunction with the re-opening of the definitive line of Footpath 25. The Borough Council as Order Making Authority ('OMA') have examined the evidence in relation to this event. However, evidence given at the public inquiry suggested that the construction site may have been fenced off (for health and safety reasons) prior to that date; opinions varied between 2013, 2015 and not until 2017.

The dates of the photographs of the Heras fencing submitted by the Stalker family were not known at the last inquiry, except bar the one taken in August (see diagrams 10 and 11 below).

We have established that the photograph in diagram 10 was taken in the later autumn/winter of 2015 by the fact that No4 Suters Lane does not exist at this point and there is a lack of leaves on the trees. The photograph in diagram 11 was definitively taken on 31st August 2016 as Mr Charlie Stalker produced the file information to the inquiry.



Diagram 10 – POINT C - Winter of 2015



Diagram 11 – POINT C - 31st August 2016

Suters Lane also submitted Diagram 11a below showing the fencing panel blocking point C which was known to exist from February 2017 – July 2017 when Mr and Mrs Hanson moved into No3 Suters Lane to be replaced by the steel barrier erected by Mr Stalker on his land which still exists today.



However, there was an incident in November 2018 when someone broke down the steel barrier and people suddenly started to appear in our driveway at which point the barrier was re-erected. So, we agree with the applicant that the path had been walked for a couple of days in 2018.

However, we established at the inquiry there was no route across Suters Lane from the autumn/winter of 2015 to the present-day bar an incident in 2018 for a couple of days. In addition, 5 witness statements said they used the route until the development commenced (diagram 12 below)

Right and without interruption for a full period of 20 years

- The follow statements claimed to use the route across Suters Lane until the **Heras fencing was installed in 2015:**
 - *Mr and Mrs Bell statement date 18/6/2017*
 - *David and Sue Birley statement date 14/6/2017*
 - *Mr Ivor Coles and Mrs Margaret Coles statement date (no date but 2017)*
 - *Catherine I Inskip Statement date (no date but 2017)*
 - *John and Nicky Sutton statement date 12/6/2017*

Diagram 12

Which does bring into question the reliability of the following witness statements where they claimed they had used the order route until the present day, this being June 2017 when the statements were made. (Diagram13).

Right and without interruption for a full period of 20 years

- The follow statements claimed to use the route across Suters Lane right up to June of 2017 which is **incorrect**:
 - *Mr John M Errington statement date 19/06/2017*
 - *Mrs Margaret J Errington statement date 19/6/2017*
 - *Graham Finch and Sue Bruce statement date 16.06.2017*
 - *Dave Grittiths –Cay statement date 18/06/2017*
 - *Malcom Trevney Hinton statement date 20/06/2017*
 - *Michael Pethide statement date 16/6/2017*
 - *Stephen and Caroline Read statement date 18/6/2017*
 - *Steve and Tanya Savage statement date 16/7/2017*
 - *John Shirreff statement date 16/06/2017*
 - *Mr Peter Waldren statement date 14/6/2017*
 - *Mr Robert Charles Conrad Inskip statement date 16/06/2017*
 - *Mr Warr statement date 17/6/2017 (November 2016 to January 2017)*

Diagram 13

We suggest that due to the witness statements this could have contributed to the confusion with regard to dates and may explain the Inspectors statement made in section 23. of the interim report (above on page 8).

3. Dedication of the route and uninterrupted usage

Our submission and presentation included the following timelines (diagram 14, 15 below).

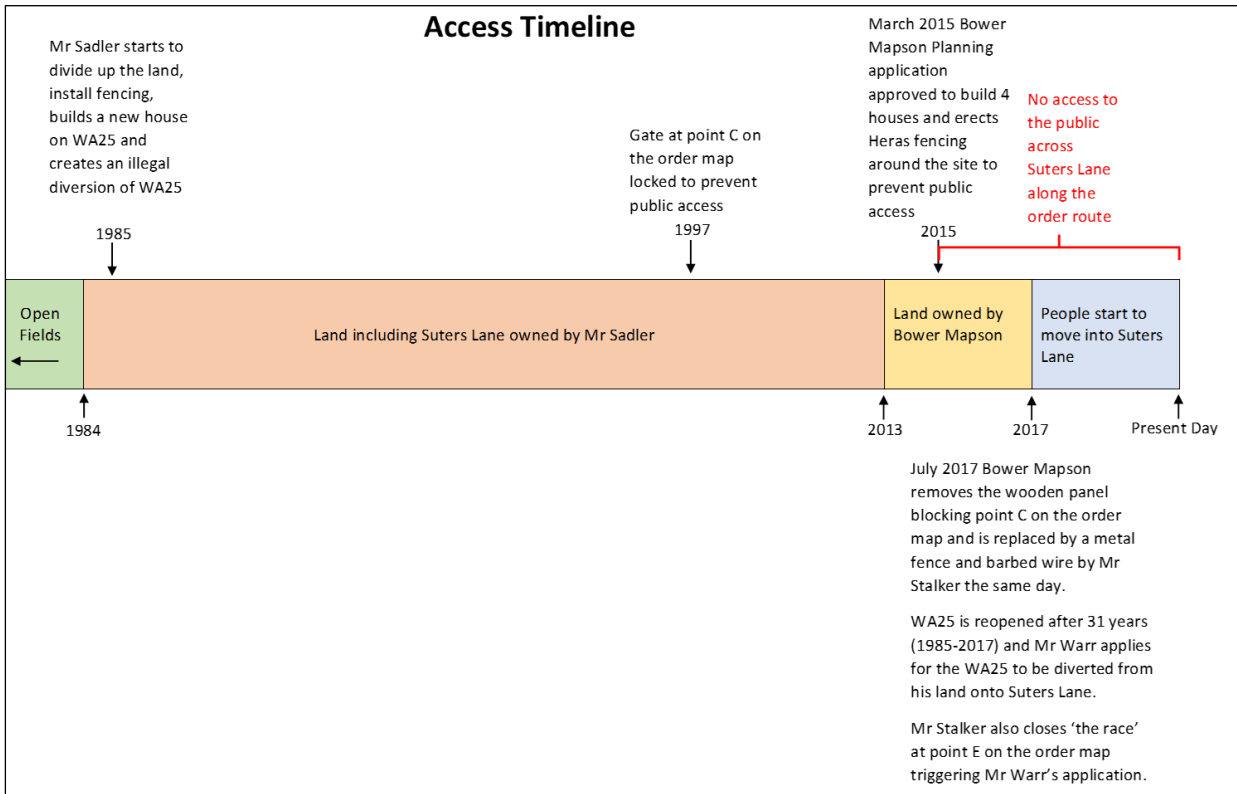


Diagram 14

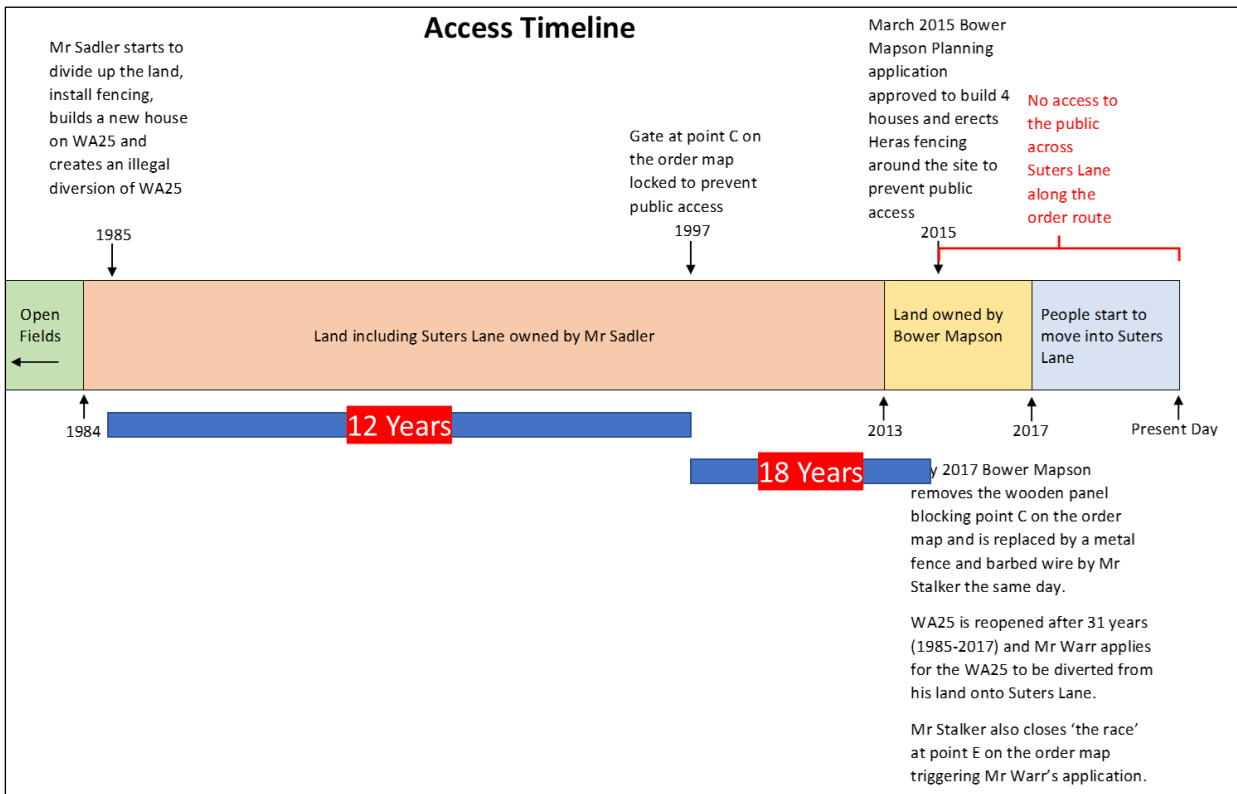


Diagram 15

At the last inquiry we knew that Mr Gerald Sadler had a change of heart and no longer wanted people on his land as he told Mr Peter Mapson “as they were getting up to no good” at point C however, we didn’t know the date until Angela Raymond’s statement. It could well have been before 1997, but 1997 is the first date we can establish that the gate was locked and no route around it.

At the hearing I did not disclose what Mr Gerald Sadler was referring to when he said, “as they were getting up to no good”. However, after I had made my statement, I was asked if I was referring to drugs, as it had been common knowledge that this was happening. I then disclosed to the Inspector the “as they were getting up to no good” referred to drug taking.

With regard to usage, at the last inquiry, after cross examining the large number of verbal statements made by witnesses, the inspector determined that “the necessary statutory requirements of 20 years use” had not been met and detailed her reasoning in her interim report items 31 thru 37. From 38 onwards is detailed below

38. I conclude that the Order as made does not reflect the location of the way that was used by the majority of the user witnesses who have provided user evidence. I accept that those people who have only used the way for a short period of time prior to 2017 may have used the way reflected in the Order, but that does not meet the necessary statutory requirements of 20 years use dating back from the date on which the use of the way was brought into question.

39. As a consequence, and in respect of the Order route A-B-C-D-G, I am not inclined to exercise my powers of modification and find that the Order does not satisfy the criteria as it does not show the route used, although I accept that it may reflect the route claimed. This part of the Order cannot be confirmed.

The inspector then deleted the following points from the order.

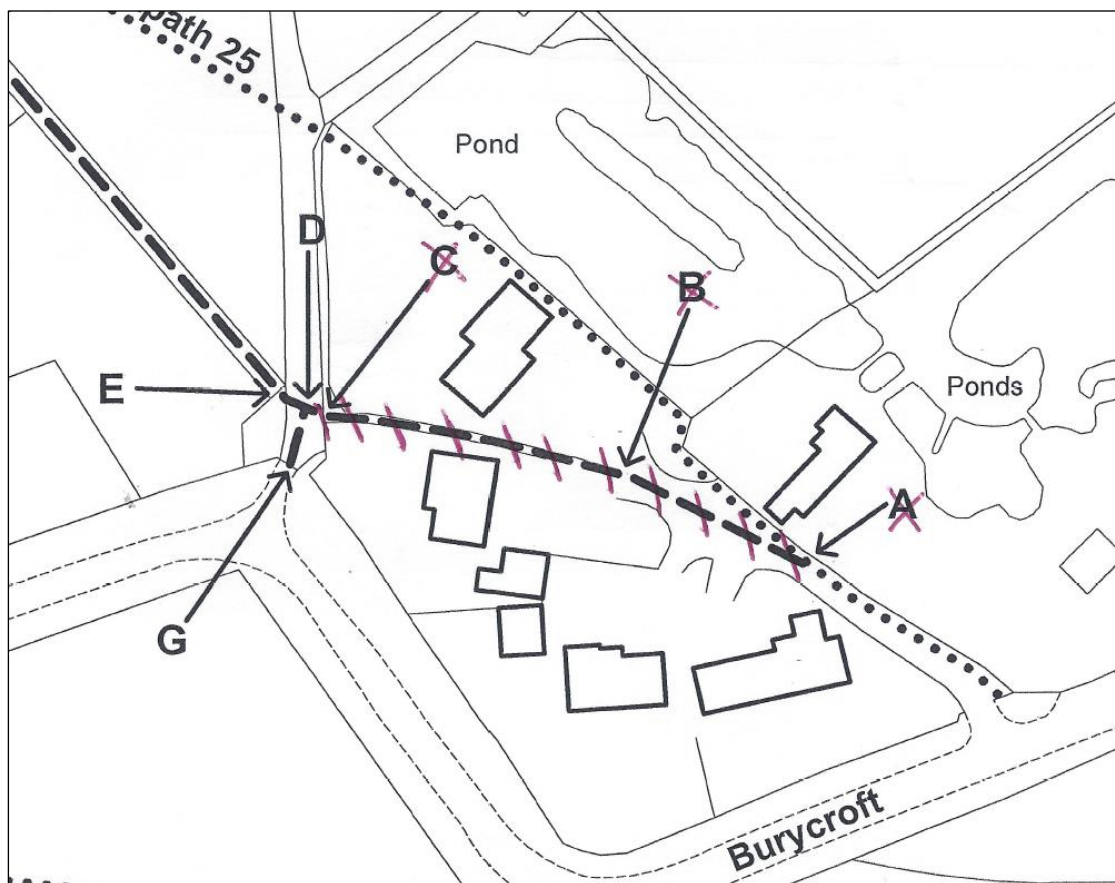


Diagram 16

4. Consideration of the unmodified Original Order Plan No WA44/11/17/MF

Originally witnesses claimed to have walked the order route hugging the Avery and despite the order being a few meters out it matched to what Bower Mapson put in place after local consolation. After the locked gate was discovered at the previous enquiry at point C the witnesses then changed their statements to say they used a gap in the hedge north of point C, which is precisely where the present Bower Mapson path terminates. At this inquiry, **a few** of the same witnesses have changed their statements yet gain to support the new proposition submitted by SBC saying actually they used the track leading to the locked gate at the new Point C.

Mr Peter Hunt, a key witness for the proposers, claimed that the gates were always locked, and he always had to get keys from the house to open them. He also claimed that he never drove plant through the caravan park but went around the road. Which is contrary to one of Mr Fry's previous arguments regarding the width of the track had to cater for plant.

Despite users having submitted several written statements, they now can't recollect how they exited the field, just that they could get through.

What we believe, from what people have told us, is that between circa 1986 to 1997 they used the illegal diversion, stiles and maybe a gap in the hedge when the stile collapsed which would make sense.

After 1997 we now know that there was no exit at point C unless you climbed a locked gate across the path. A clear statement of intent by Mr Gerald Sadler.

From information we have gained, we agree with the previous inspectors finding that the 20 years usage has not been met.

Now consideration of the route, if the inspector decides the 20-year usage has been met despite the previous inspectors' findings and that there should in fact be a 2nd route across Suters Lane all parties are now in agreement with the original order of November 2017 and is the closest route matching what most witnesses claimed to have walked at previous inquiries. Regardless of the merits and usage regarding the case, this being offered at the inquiry as way of settlement. Furthermore, a gesture of good will to the community, the Stalker family would agree to G via a piece of land behind the fence of 3 Suters Lane shown below in **Red** including a picture (more than 1.2m wide) keeping people off of their track and away from heavy plant and traffic (Diagram 17 below).

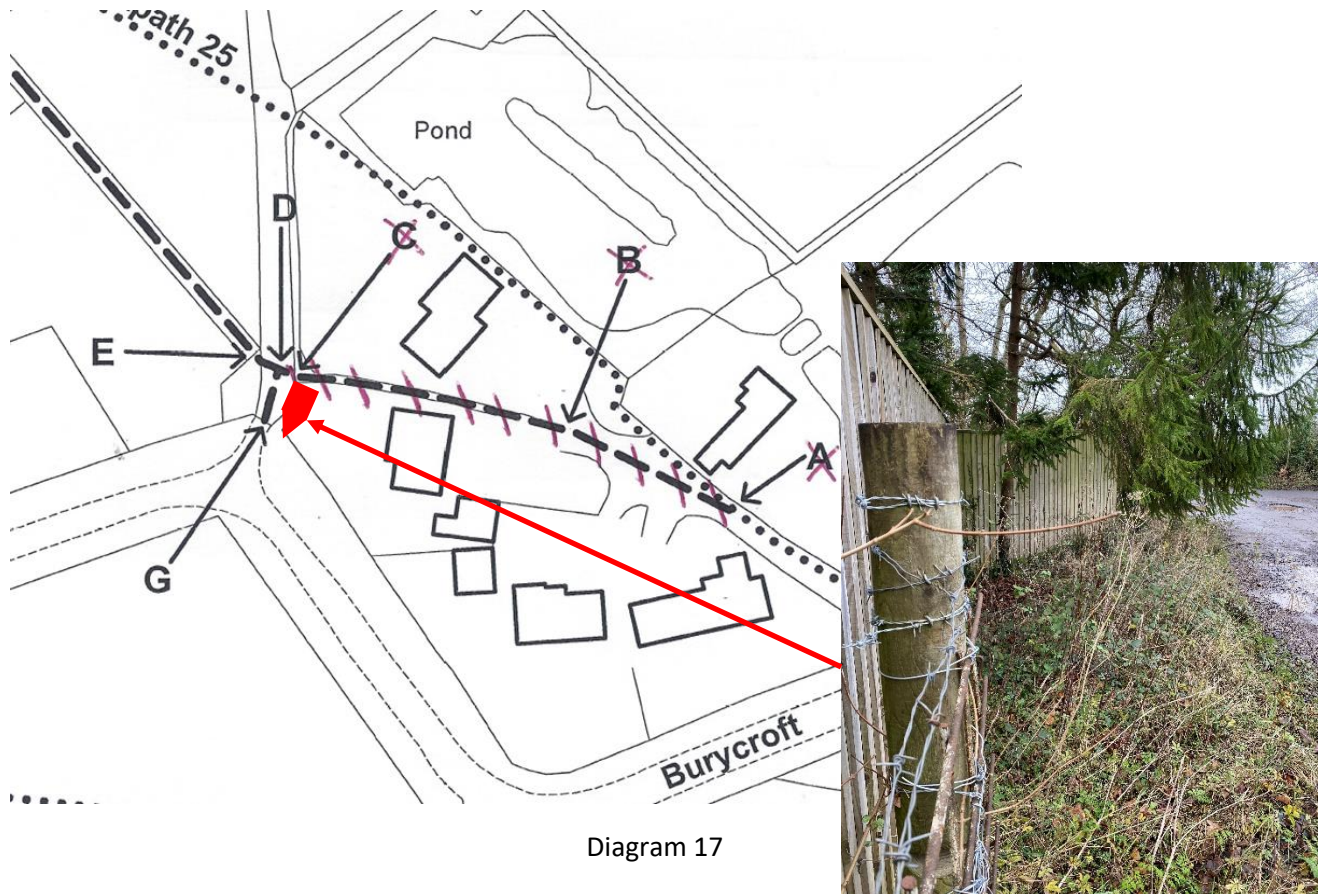


Diagram 17

We believe a new order would not need to be made as the co-ordinates of G are +/- 30ft as they are lacking digits. This may also appease SBC as this red area would cover the whole of the gate shown in Diagram 6 above from the Brunel plan.

We also believe that there is legislation for some dispensation with regard to new developments and some flexibility in footpath alignment which would allow this to go ahead, and WPC inform me that this has already been used elsewhere in Wanborough.

5. Witness Statement Anomalies

We could easily write 30+ pages of witness statement anomalies but I would only be repeating what has already been said, documented or confirm conclusions drawn by the previous inspector in this regard.

As demonstrated at the inquiry the same witnesses have changed their statements over time depending upon the direction of the case. Some users were adamant on some points at the previous inquiry when questioned and now can't recollect. The previous inspector commented in her interim findings that user statements were consistent, this was because it was observed in the hotel lobby that they were being coached on what to say and what not to say.

At the previous inquiry Mr Fry got quite a reprimand by the previous inspector for submitting evidence at face value with no due diligence as much turned out to be misleading under cross examination. Mr Fry claimed at the time that SBC had no formal process for such an inquiry and had taken evidence at face value. An unusual statement as he claimed he had some 30 years' experience and must have been involved in previous inquiries.

With regard to the same handwriting on the original user evidence forms (UEF), Mr Fry stated at this inquiry he didn't know how Suturs Lane could have known about these statements as he hadn't published them at this point. This statement was correct, Suturs Lane had never seen them at this point. It was in fact Mr Fry who told the residents meeting that he believed they had all been completed in the same hand.

At the previous inquiry, a large number of witnesses believed they were campaigning for the reopening of footpath 25 and didn't know what footpath they walked other than across the land as previously the footpaths were unnumbered and there was much confusion. This is why the inspector organised a site visit with villagers, myself, Stalker family and Mr Fry in an attempt to clarify matters.

We know for a fact that two witnesses who wish to remain anonymous made a false statement, though not deliberate, as they believed at the time, they were helping Mr Warr reopen footpath 25. They did walk across the field once or twice but had no recollection of any landmarks.

They deeply regret this act but don't want to come forward for fear of getting in trouble.

Moreover, as mentioned in the last inquiry potential witnesses who refute the supporters claims made in the application do not want to come forward due to intimidation.

Witnesses have made statements to us that they *"don't want to put their head above the parapet and get it blown off"*. While others do not want to get involved, as in their words *"it's not their fight"*.

Statements by the applicant like as follows have also not helped people coming forward, we draw the inspectors attention to Mr Neil Stalkers submission dated 11th January 2018, top of page 6 of 7:

• **Communications (social/misinformed)**

- Information has been circulated online along with an incorrect map/diagram in an attempt to drum up additional support. This has been used in an attempt to try to dissuade those whom may have objected *See fig 12*.
- Meeting 18th Dec 2017 Parish council – Discussions have taken place in public meetings where the applicant Mr Warr has misinformed those present that any objections could result in the individual being liable for costs, thus trying to dissuade others from objecting.

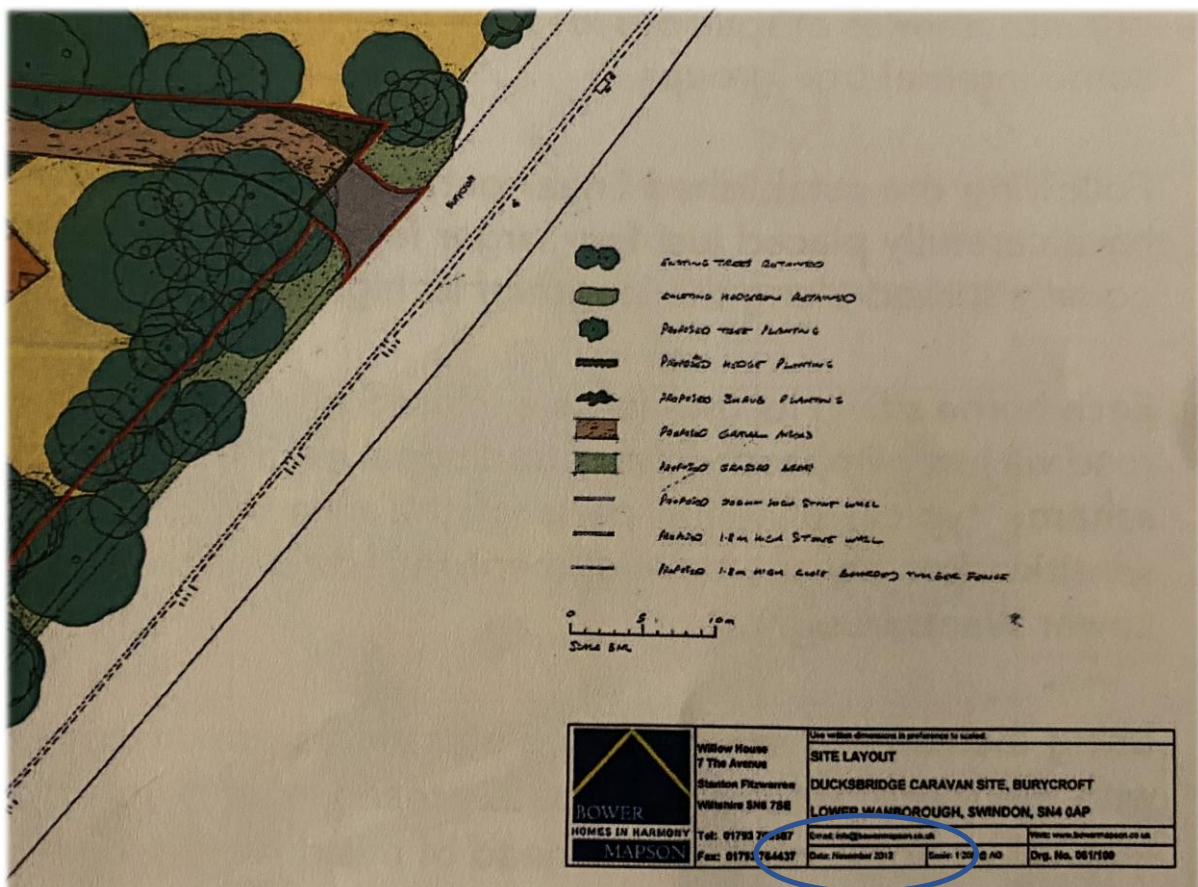
Going back to witness statement anomalies, an example of this is Mr Steve Savages previous statement saying that he walked the route every day to take his children to school and our last submission refuted this.

Mr Savage claimed he and his wife Tanya walked four small children across muddy fields along FP23 then across the order route, and along Burycroft to the school in the centre of the village. Assuming he would collect them too, a 5-6 mile round trip. After he made this statement a number of villages after the inquiry told Councillor Hayward that this was not factual, and the Savages never walked and always used the car. The villagers that refuted this claim and told Councillor Hayward that they do not want to come forward or be named as it is not their fight.

The residents of Suters Lane are appalled that anyone can say anything at these inquiries with no recourse and it's up to the objectors to prove otherwise. It has also been noted that the applicant has the benefit of a barrister paid for by the taxpayers, while no support is given to the objectors. However, we did investigate legal representation but were unable to find any company that had the expertise to represent us before 2022, at a cost to us of £20-30K.

6. Colin Offer's Statement

In regard to Mr Colin Offer's *statement*, although the documents he presented are undated, if we refer to the glossy brochure entitled "**Design and Access Statement for Develop at Ducksbridge Caravan Site, Burycroft, Lower Wanborough, Swindon, SN4 0AP**" on **Page 6** the plan we were referring to was dated **November 2012** shown below ([blue circle](#)) and predates RoW officer Annie Ellis's bringing into question the re-alignment of Footpath 25 in August 2013 .



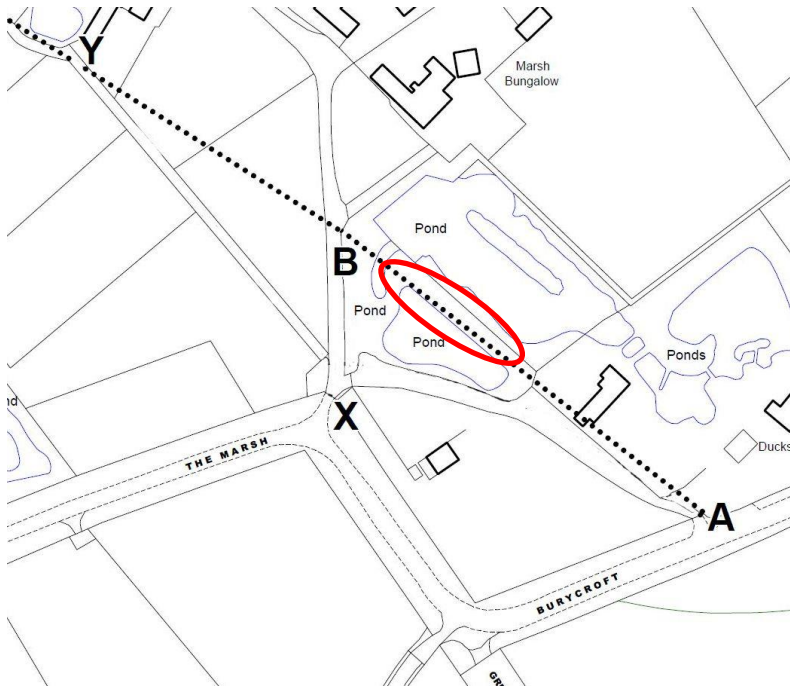
Therefore, the statement in **6.29** below, from the other undated document submitted by Mr Colin Offer, which looks like minutes, is actually referring to Footpath 25 and this was raised by Councillor Hayward at the inquiry.

Comments from agent regarding the Right of Way:

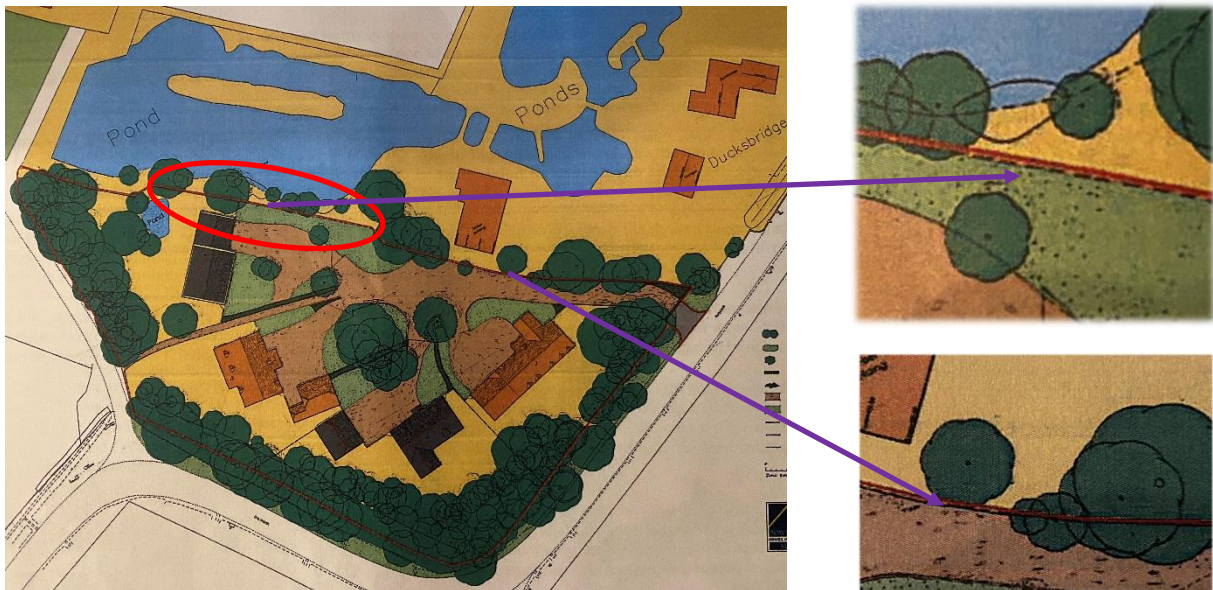
APR 2012

6.29 The land remains in the ownership of the applicant, none of the proposed development obstructs the original route of footpath 25, although the route appears to be no longer in use, the applicant sees no need to alter it as the 'unofficial', new route now deemed to be highway and this is the route our development proposals have already incorporated.

At the time this statement was made, Footpath 25's correct alignment was as follows from the bundle.



If we zoom into the site plan on Page 4 below, we can see the part of Footpath 25 they are referring to in the Red circle on both maps.



If we then zoom into the above map, we can see the dashed line of the Footpath 25 in this section, but it is not shown along the rest of the plan because at this time the correct alignment was through the Ducksbridge property.

Therefore, if we go back to the original minutes below **“None of the proposed development obstructs the original route of footpath 25, although the route appears to be no longer used”** it refers to the red circle above. As discussed at length in the last inquiry’s it was Bower Mapson original intent that the unofficial route was to be Footpath 25. It was not until August 2013 that the RoW officer, Annie Ellis raised this issue of alignment. After a lot of debate, the realignment was achieved by a land swap between Mr Mapson and Mr Warr whereby Footpath 25 was routed down the side of the development and across the back of Duckbridge.

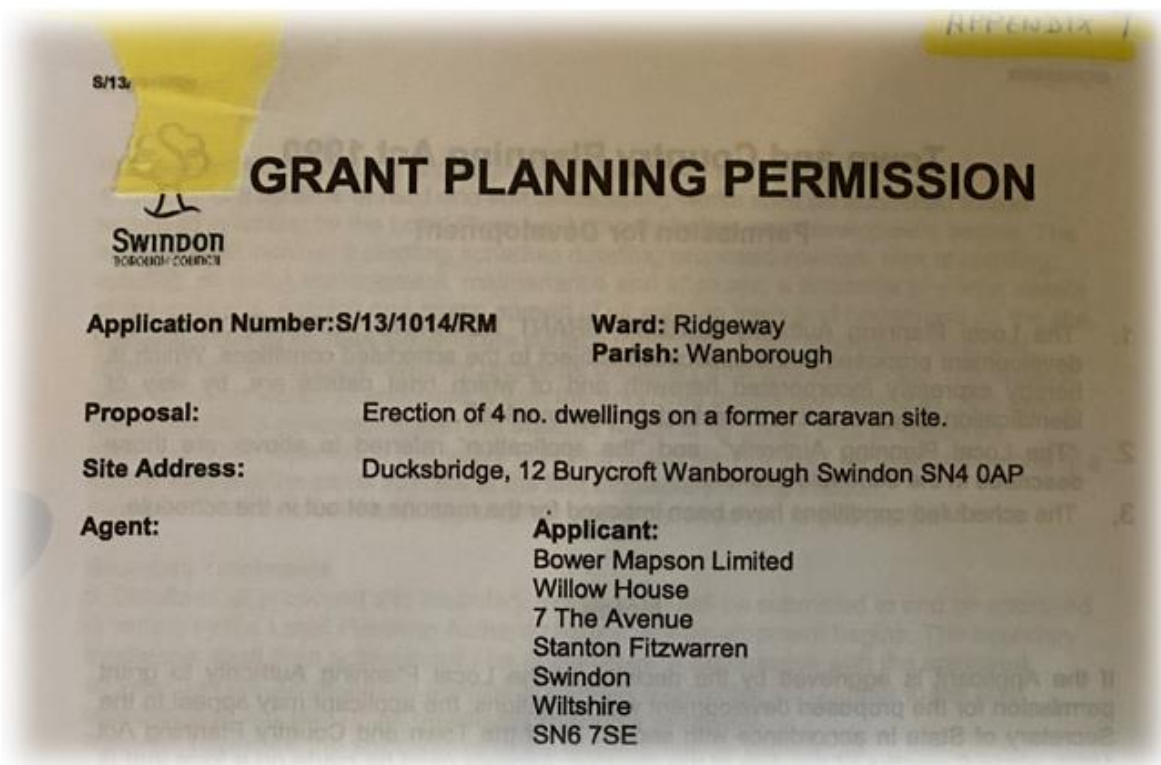
Comments from agent regarding the Right of Way:

Alpha

6.29 The land remains in the ownership of the applicant, none of the proposed development obstructs the original route of footpath 25, although the route appears to be no longer in use, the applicant sees no need to alter it as the ‘unofficial’, new route now deemed to be highway and this is the route our development proposals have already incorporated.

With regard to **“new route deemed as highway”** when this statement was made Bower Mason was not in possession of the facts and details, we have now as was hearsay.

As made in previous statements, there has only ever been one route across Suters Lane at one time. Bower Mapson in consultation with local residents planned to put the route Footpath 25 across the “unofficial” path and their planning application below approved on 30th March 2015 simply says:



S/13/1014/RM

point. If greater distances are proposed, the applicant should discuss this with the waste collection authority.

4. The footpath 25 crossing the site shall be kept clear and access retained following the completion of the development.

Authorised by Richard Bell,
Head of Planning, Regulatory Services,
Heritage & Libraries

Decision Dated: 30th March
2015

Richard Bell

In fact, Annie Ellis, stated in her e-mail dated 6th August 2013:

This illegal rerouting of the path needs to be addressed and I would therefore suggest that the applicant submits an application to divert the path preferably onto the route currently in use.

Yet despite all of this correspondence, the SBC planning department still signed off on the Suter Lane development in March 2015 instead of addressing this issue properly at the time.

7. Angels Raymond's statement

Although the SBC barrister claimed this statement didn't carry much weight as she could not be cross examined, we urge the inspector to reconsider its weight in light of the circumstances in which it was made. As explained at the inquiry, there was good reason why Angela Raymond did not attend the inquiry in person.

Later at the inquiry Angela Raymond stated in a conversation with Charlie Stalker that was relayed to the Inspector, that she would rather not answer questions as it could make her job difficult as Parish Clerk going forward. She originally made her statement in the hope that it would encourage others to come forward.

Furthermore, concerning the weight of her evidence, Mrs Raymond is a neutral party in this unlike many other witnesses, she is not a friend of the applicant or the objectors. She doesn't live on Burycroft or The Marsh so has no personal vested interest.

She wrote the book on Wanborough footpaths which has sold over 400 copies, so if anything, you would think she would support the opening of as many footpaths as possible.

8. Is there a real need for a second footpath?

Suter's lane residents did raise the need for a second footpath so close to the first at the last inquiry which was raised again at this inquiry by the Inspector.

At the enquiry we were told that significant improvements had been made to FP20 on the opposite side of the road which would also meet user's needs to avoid the sharp bend and some 35 meters shorter than the order route.

Lastly it is common knowledge that the motivation behind the applicant is to extinguish footpath 25 so that he can develop on his land.

9. Settlement Offer

The reasoning behind the Suters Lane settlement offer made at the beginning of the inquiry was twofold.

Firstly, with a privacy sacrifice from the residents of Suters Lane, although we did not want to give into bullying, we felt that for the sake of the community this was the right thing to do under the circumstances

Secondly, despite the merits or legitimacy of the case this was consuming vast amounts of time and money and was ultimately heading for litigation which in turn would be at a cost to the Tax payers, and take many years.

As we are bound by the law, if the inspector decides on balance there is a legal case for the footpath, then we ask the inspector to consider our suggestion (outlined in 4. above) to resolve this matter without further time and expense.

Whatever the inspector decides, Suters Lane reiterates that they are still prepared to work with the local community and always have been, to resolve this issue.

Yours Sincerely

Mr Mark Hanson

On behalf of the residents of Suters Lane, Wanborough.