Table of Contents Appendix 3

From: Alan Hill
To: Harlow, Craig
Subject: Re: Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).
Sent: 14/05/2024 10:25:33

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Craig,

Thank you for your email dated 10 May relating to the application to upgrade Bridleway CALW89 in the vicinity of Mister and Mrs Moore's property at The Mill House, Calstone Wellington.

My interest in this case is due to the fact that The Mill House used to be in the Division of Calne South and Cherhill for which I was the elected member; however, the boundary changes which came in 3 years ago meant that this Division no longer exists.

My understanding of the situation is that the British Horse Society submitted an application requesting that the bridleway adjacent to The Mill House should be restricted, without realising that the restrictions already imposed upon it were greater than they were requesting. Consequently, in my view there is no alternative but to either dismiss or refuse the BHS application; whichever action is appropriate the outcome will be the same. I believe it is in the interests of all parties for this to happen as soon as possible; I trust that you will do so at your earliest convenience.

Regards,

Alan Hill, Cllr

On 10-May-24 2:23 PM, Harlow, Craig wrote:

Dear All

Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).

I am emailing you in reference to the above application which affects the bridleway (CALW89) which leads through the property The Mill House, Calstone Wellington, Calne, SN11 8QF . Wiltshire Council are now in a position to begin the process of determining this application. I have been assigned as the case officer and will be the point of contact henceforth.

I attach a copy of the initial consultation to this email for your information and the 3 relevant plans referred to in the letter.

I would be pleased to receive any responses by 14th June 2024.

If you have any queries on the matter, please contact me.

Best Regards

Craig

Craig Harlow MIPROW
Definitive Map Officer
Definitive Map and Highway Records
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

Wiltshire Council

Direct Line: 01249 468568
Email: craig.harlow@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

Calne Without Parish Council – June 2024

Wildlife and Countryside Act 1981 – Section 53. Application by the British Horse Society ("BHS") to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref:D/2022/020)

Calne Without Parish Council requests that the application by the BHS be refused, for the following reasons:-

1. The BHS has already asked, in August 2022, that their application be withdrawn because it was made in error and cannot succeed.

2. The BHS has repeated its request on 15th May 2024 and stated "we would welcome the Council determining the application and refusing the request to record the route as a restricted byway".

3. The route from Manor Farm to the top of the driveway at The Mill House is subject to the Stopping Up Order dated 23rd April 2007, "authorising the stopping-up of public vehicular rights over [the track] subject to the reservation of public footpath and bridleway rights thereover." This prevents the use of the route as a restricted byway.

4. The Stopping Up Order was obtained following a request from Calne Without Parish Council to Wiltshire Council. It was obtained by your Highways Department with the assistance of your Legal Department.

5. On 6th November 2019 an application, made by Mr and Mrs Moore, to divert the bridleway passing through The Mill House (CALW89,89A and 89B), was considered and approved unanimously by the Northern Area Planning Committee of Wiltshire Council.

6. At the Planning Committee Meeting, Ms Madgwick reported that the Stopping Up Order would, amongst other things, prevent the route from becoming a restricted byway.

7. In her Report dated 24th October 2019 to the Northern Area Planning Committee, Paragraph 5, Ms Madgwick says: -

   "5. .....Further to an application by the owner of The Mill House public vehicular rights (both mechanically propelled and horse drawn) over this road were stopped up by the magistrates acting under the powers of s.116 of the Highways Act 1980 on 23 April 2007. The reserved footpath and bridleway rights were recorded in the definitive map and statement in March 2008.

   5.1 The order of the magistrates also stopped up public vehicular rights over a section of highway north of the bridge leading past The Mill House. Hence public vehicular rights were stopped up over a continuous length leading from Manor Farm to a point north of The Mill House and these are the sections now recorded as bridleways CALW89, 89A and 89B."

8. The Inspector appointed by the Planning Inspectorate approved the diversion.

9. The stretch of the route from The Mill House to the corner leading to Theobalds Green is a public road, U/C 7008, and therefore already has higher rights than a restricted byway.

Charles Reis
[redacted]
Compton Bassett
Calne
Wiltshire
SN11 [redacted]

Craig Harlow MIPROW
Definitive Map Officer
Definitive Map and Highway Records
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

13th May 2024

Ref: **Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).**

Dear Mr Harlow

The application, which, I understand was made in error by the British Horse Society, should be refused on the grounds that: -

1. The length of the land subject to the application which lies north of The Mill House, Calstone is a made up unclassified road, U/C 7008, and therefore already has higher rights than a restricted byway;

2. The remaining part of the route is subject to the Stopping Up Order dated 23rd April 2007 which, amongst other things, prevents use of the route as a restricted byway. The Order was obtained by Wiltshire Council's Highways Department, with the help of the Legal Department, following a request from Calne Without Parish Council.

3. I understand that The British Horse Society had asked that their application should be withdrawn and if that was not permissible that it should be refused.

Kind regards

Charles Reis

From:	Graham Bennett
To:	Harlow, Craig
Cc:	graham.bennett1
Subject:	Re: Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).
Attachments:	Consultation letter - CALW89 - 10th May.pdf;Current public rights of way.pdf;2007 Stopping up Order.pdf;Application map.pdf;
Sent:	16/05/2024 16:12:41

Follow Up Flag:	Follow up
Flag Status:	Flagged

Dear Craig,

Myra forwarded to me the email that you sent to her on 10th May (see below) re CALW89 (Ref D/2022/020), since I have dealt with this on behalf of the BHS Wiltshire Branch, since 2015.

I have the benefit of having seen both John Moore's Response to you as Applicant and the response of Will Steel on behalf of BHS HQ, who originally submitted theApplication for the DMMO in question.

I entirely endorse the reasoning of John Moore as Applicant set out in his Response to your email and have nothing to add to it. If Mr Moore's Response was not enough, the abject continued apology from BHS HQ (Will Steel) for this ill-considered submission merely endorses the view that the DMMO submitted should be rejected in every way possible and as soon as possible. As the response from Will Steel makes clear the BHS HQ submission was badly researched and materially wrong and should never have been made.

I should add that I would like it clear, on the face of the record, that BHS Wiltshire had absolutely nothing to do with this DMMO Application. We were not even informed that it was contemplated nor that it had been made and we found out about it in exactly the same way as the Applicant, namely through the Inquiry Proceedings, and some 6 months after it had been submitted. Had we been consulted we would have stopped it from being made for all the reasons expressed by the Applicant and acknowledged and accepted by BHS HQ.

Regards

Graham Bennett
BHS Wiltshire Bridleway Officer(Legal)

Begin forwarded message:

From: "Harlow, Craig" <Craig.Harlow@wiltshire.gov.uk>
Subject: Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).
Date: 10 May 2024 at 14:23:39 BST

Dear All

Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).

I am emailing you in reference to the above application which affects the bridleway (CALW89) which leads through the property The Mill House, Calstone Wellington, Calne, SN11 8QF . Wiltshire Council are now in a position to begin the process of determining this application. I have been assigned as the case officer and will be the point of contact henceforth.

I attach a copy of the initial consultation to this email for your information and the 3 relevant plans referred to in the letter.

I would be pleased to receive any responses by 14th June 2024.

If you have any queries on the matter, please contact me.

Best Regards

Craig

Craig Harlow MIPROW
Definitive Map Officer
Definitive Map and Highway Records
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

Wiltshire Council

Direct Line: 01249 468568
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From:	John Moore
To:	Harlow, Craig
Cc:	O'Neill, Ashley; Doug Price;
Subject:	Re: Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).
Attachments:	Enclosure 2.pdf;Enclosure 4.pdf;Enclosure 1 .pdf;Enclosure 5.pdf;Enclosure 3.pdf;
Sent:	13/05/2024 17:01:07

Follow Up Flag:	Follow up
Flag Status:	Flagged

Dear Mr Harlow.

Thank you for your e mail dated 9th May.

I would ask you, please, to refuse or dismiss the Application by the British Horse Society ("BHS") for a DMMO to upgrade CALW89 and CALW89A at Calstone Wellington to a restricted byway.

1. The BHS Application was submitted on 28th January 2022, by a researcher, without the knowledge of the Wiltshire Branch of the BHS, who were very familiar with and supported the application to divert the bridleway at The Mill House.

2. Neither we, nor the Wiltshire Branch of the BHS, became aware of the BHS Application until after Sally Madgwick submitted her Statement of Case dated 25th July 2022 to the Planning Inspector.

3. The BHS researcher did not realise that a Stopping Up Order had been made in 2007 and that the route could never be used as a restricted byway. She did however make the point that her application was dependent on there not being a Stopping Up Order in place (Page 23 Paragraph 22). She wrote: -

".....in the absence of a stopping up order, it follows that...."

4. On realising the mistake, the BHS e mailed Sally Madgwick on 5th August 2022 to say: -

"I am writing to confirm that the BHS no longer supports the DMMO application and is content for it to be withdrawn or refused, whichever is administratively easier for Wiltshire Council". (Enclosure 1).

The route is not and cannot be a restricted byway. I would like to draw your attention to the following: -

5. On 28th September 2005 an application to designate our driveway as a bridleway was made by Bill Riley of the Trailriders Federation based on historical documents he produced at the time. These happen to be the same documents submitted with the BHS

Application. The matter was considered by Barbara Burke who determined on 5th January 2009 that "the status of the land is as a bridleway…" (Enclosure 2)

6. As a matter of history, and from documents produced by the Bowood Estate, Calstone Wellington was in the ownership of the Lansdowne Family from 1776 until 1954. The land was settled land governed by the Settled Land Acts. It was not until sometime between 1802 and 1818 that the bridge across the River Marden was installed. This was to allow the tenant farmers on the south side of the river to gain access more easily to Calstone Mill (now, The Mill House). Until then, the track leading to The Mill House is shown in the Tithe Maps as being subject to tithe, as land in production. All the evidence relating to this is with Wiltshire Council.

7. In 2007, Calne Without Parish Council requested Wiltshire Council to apply for a Stopping Up Order to stop public vehicular rights over the track leading from Manor Farm, Calstone to, and through, The Mill House, Calstone - CALW89 and CALW89A.

8. Wiltshire Council Highways Department agreed and an application to the Magistrates Court was made by the Highways Department, with the help of Wiltshire Council's Legal Department.

9. The Stopping Up Order was granted on 23rd April 2007 "authorising the stopping-up of public vehicular rights over [the track] subject to the reservation of public footpath and bridleway rights thereover." (Enclosure 3). The plan attached to the Stopping Up Order shows the extent of the route. This is the same as the BHS Application, except that the application also includes a stretch of the publicly adopted highway, U/C 7008, running from the entrance to The Mill House to the corner leading to Theobalds Green.

10. The Stopping Up Order prevents the route being used as a road, byway and restricted byway.

11. On 6th November 2019 an application to divert the bridleway passing through The Mill House (CALW89,89A and 89B), made by me and my wife, was considered and approved unanimously by the Northern Area Planning Committee of Wiltshire Council.

12. At the Planning Committee Meeting, Sally Madgwick reported that the Stopping Up Order would, amongst other things, prevent the route from becoming a restricted byway.

13. In her Report dated 24th October 2019 to the Northern Area Planning Committee (Enclosure 4), Paragraph 5, Sally Madgwick says: -

> "5 …….Further to an application by the owner of The Mill House public vehicular rights (both mechanically propelled and horse drawn) over this road were stopped up by the magistrates acting under the powers of s.116 of the Highways Act 1980 on 23 April 2007. The reserved footpath and bridleway rights were recorded in the definitive map and statement in March 2008.
>
> 5.1 The order of the magistrates also stopped up public vehicular rights over a section of highway north of the bridge leading past The Mill House. Hence public vehicular rights were stopped up over a continuous length leading from

Manor Farm to a point north of The Mill House and these are the sections now recorded as bridleways CALW89, 89A and 89B."

14. The application to divert the bridleway passing through The Mill House was finally determined by an Inspector appointed by the Planning Inspectorate. A copy of the decision, dated 5th July 2023, approving the diversion, is Enclosure 5.

I therefore ask that, as requested by the BHS, you refuse the Application.

Yours sincerely,

John E Moore

On 9 May 2024, at 15:38, Harlow, Craig <Craig.Harlow@wiltshire.gov.uk> wrote:

Dear Mr Moore,

Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).

I am emailing you in reference to the above application which affects the bridleway (CALW89) which runs over your property. Wiltshire Council are now in a position to begin the process of determining this application. I have been assigned as the case officer and will be the point of contact henceforth.

My first action will be to conduct an initial public consultation on the application. I attach a copy of that consultation to this email for your information, but I have also posted a copy to yourself and Mrs Moore today. Other parties will receive the consultation either by letter (sent today) or email tomorrow. You will note I have set an end date of 14th June 2024 for the consultation for any responses to be received, this time period should permit any parties to consider their response and submit any relevant evidence as appropriate. At the end of the consultation period, I will consider all responses received in addition to any and all available evidence regarding the route in question in a written report which will recommend a determination of the application. Once signed off by the appropriate authorising officer that report and decision will be published. I will inform you as soon as a decision is published.

If you have any queries on the matter, please contact me.

Best Regards

Craig

Craig Harlow MIPROW
Definitive Map Officer
Definitive Map and Highway Records
Wiltshire Council
County Hall
Trowbridge
BA14 8JN
<image001.png>

Direct Line: 01249 468568
Email: craig.harlow@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

<image002.png> <image003.gif>

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<Consultation letter - CALW89.pdf><Application map.pdf><2007 Stopping up Order.pdf><Current public rights of way.pdf>

From: **Will Steel** [redacted]
Subject: DMMO Application D/2022/20 - BW to RB Upgrade at Calstone Mill
Date: 5 August 2022 at 10:14
To: Sally Madgwick (sally.madgwick@wiltshire.gov.uk) sally.madgwick@wiltshire.gov.uk
Cc: [redacted]

WS

Hi Sally

I hope you are well.

Earlier this year, Natalie White submitted a DMMO application on behalf of the BHS to upgrade the Bridleway at Calstone Mill (Calne Without BWs 89, 89A and 89B) to Restricted Byway status. This was registered by Wiltshire Council as application no. D/2022/20. I understand that this route is the subject of an opposed diversion order which is being determined by the Planning Inspectorate imminently (case reference ROW/3273510). I've also been made aware that the route was the subject of an earlier 2007 stopping up order which had the effect of removing all public vehicular rights from it and retaining bridleway rights.

I have had sight of the stopping up order and, in light of this evidence, I am writing to confirm that the BHS no longer supports the DMMO application and is content for it to be withdrawn or refused, whichever is administratively easier for Wiltshire Council.

I hope this is satisfactory but do let me know if you have any queries. I have discussed this case with Natalie White and she is in agreement with the withdrawal of the application. I have copied this email to John Moore, owner of Calstone Mill, and Graham Bennett, so they are aware.

Thanks

Will

Will Steel
Head of Access

The British Horse Society

Abbey Park, Stareton,
Warwickshire CV8 2XZ

Telephone: [redacted]
Email: [redacted]
Website: www.bhs.org.uk

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George Batten BSc (Hons) C.Eng FICE FIHT
Director of Environmental Services

Wiltshire COUNTY COUNCIL

Mr J. E. Moore
[redacted]
Calstone Wellington
Near Calne
SN11 [redacted]

Website: www.wiltshire.gov.uk
Fax : 01225 713400
Direct Line : 01225 713044
Operator : 01225 713000
E-mail : barbaraburke@wiltshire.gov.uk

05 January 2009

Please ask for: Barbara Burke Our ref:BB/2005/76 Y/R

Dear Mr Moore

Schedule 14 application at Calstone Mill

I have now had an opportunity to consider Mr Riley's application to record a byway open to all traffic at Calstone Mill. After much thought I have conclude the status of the land is as a bridleway with a width as I have shown on the enclosed plan

Mr Riley has 42 days in which to appeal against this decision to the Government Office. Should he do so I will let you know as quickly as possible.

Yours Sincerely

Barbara Burke

Barbara Burke
Senior Rights of Way Officer

GIS by ESRI (UK)

Legend

IN THE COUNTY OF WILTSHIRE

IN THE LOCAL JUSTICE AREA OF NORTH WEST WILTSHIRE

Before the Magistrates' Court sitting at **Chippenham**
on 23rd April 2007

Complaint having been made by Stephen Guy Gerrard, Solicitor to the Council, of County Hall, Trowbridge, in the County of Wiltshire (hereinafter called "the Complainant") for an Order under Section 116 of the **Highways Act 1980** authorising the stopping-up of public vehicular rights over the two areas of highway referred to in Schedule 1 to this Order and shown hatched respectively pink and blue on the plan attached to this order , subject to the reservation of public footpath and bridleway rights thereover.

On the ground that the areas of highway referred to in Schedule 1 to this Order and shown hatched respectively pink and blue on the plan attached to this order are unnecessary for public vehicular use.

And the Court having heard the Complainant.

And the Court being satisfied that the Complainant has given the Notices required by Part 1 of the 12th Schedule of the **Highways Act 1980**.

And the Court being satisfied that the areas of highway referred to in Schedule 1 to this order and shown hatched respectively pink and blue on the plan attached to this order are unnecessary for public vehicular use.

IT IS HEREBY ORDERED that the lengths of highway referred to in Schedule 1 to this Order and shown hatched respectively pink and blue on the plan attached to this order be stopped-up subject to the reservation of a bridleway thereover.

.....

Chairman of the Magistrates' Court
sitting at Chippenham
In the County of Wiltshire
Local Justice Area of North West Wiltshire
on 23rd April 2007

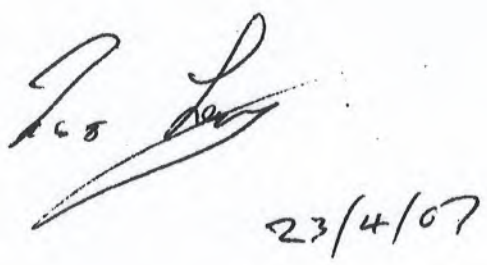
HIGHWAYS ACT 1980 – SECTION 116 APPLICATION

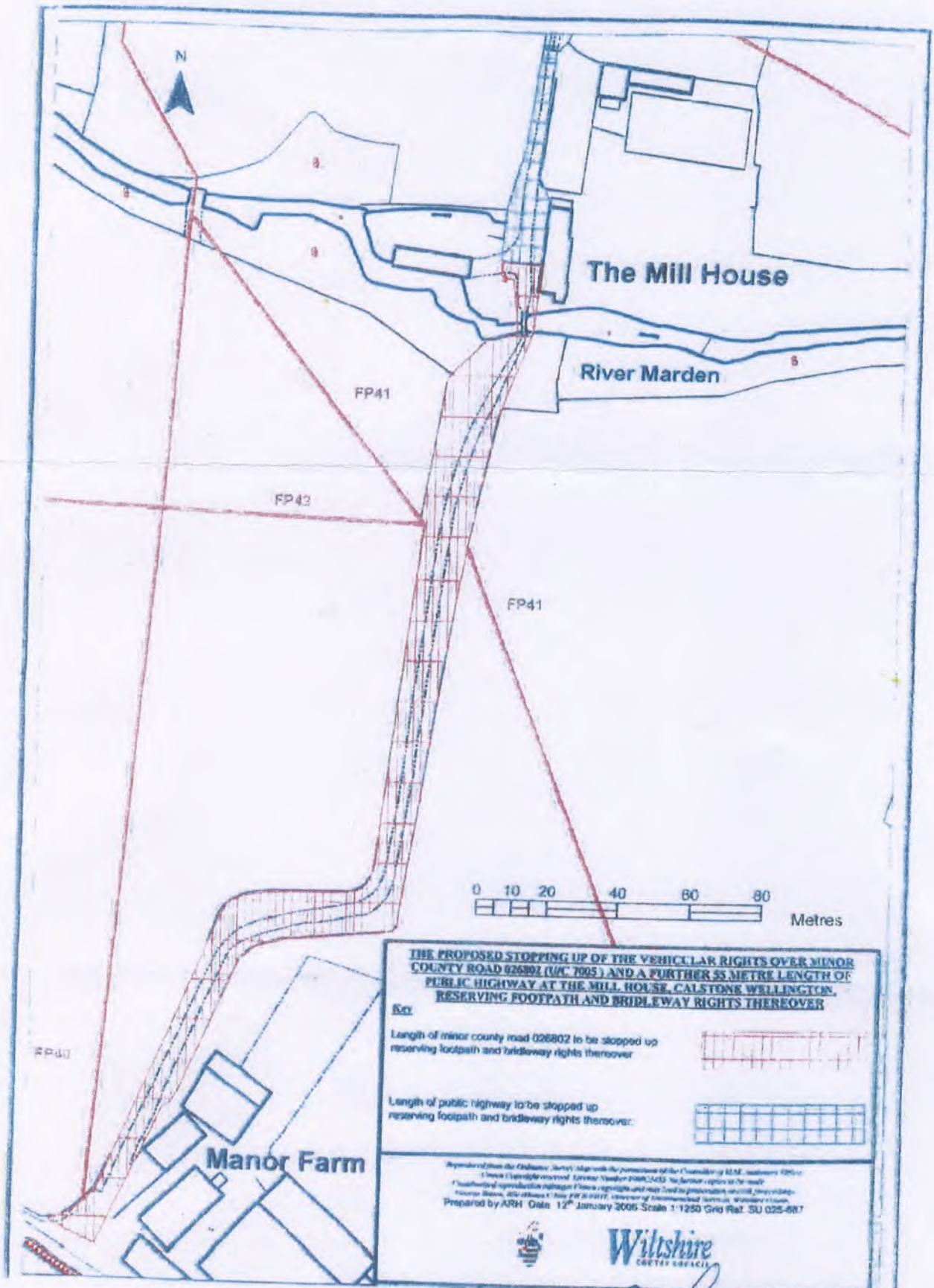
SCHEDULE 1

Description of the areas of highway subject to the stopping up of public vehicular rights at Calstone Wellington Near Calne, Wiltshire

(i) The length of public highway including part of U/C 7008 which extends from a point approximately 15 metres north of the small bridge over the river Marden to the gated entrance to the property known as Calstone Mill in a northerly direction for a distance of approximately 55 metres. The legal width of the highway is a maximum of approximately 8.1 metres.

(ii) The part of Minor County Road 026802 (unclassified road U/c 7005) which extends in a southerly direction from a point approximately 20 metres north of the River Marden by Calstone Mill for a distance of approximately 289 metres to a point adjacent to Manor Farm. It contains a small bridge over the River Marden of 1 metre in width and 5.2 metres long. The passable highway width is approximately 4 metres and the legal width is a maximum of approximately 10 metres.

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The Mill House
River Marden
FP41
FP42
FP41
FP40
Manor Farm
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Metres
THE PROPOSED STOPPING UP OF THE VEHICULAR RIGHTS OVER MINOR COUNTY ROAD 026802 (U/C 7005) AND A FURTHER 55 METRE LENGTH OF PUBLIC HIGHWAY AT THE MILL HOUSE, CALSTONE WELLINGTON, RESERVING FOOTPATH AND BRIDLEWAY RIGHTS THEREOVER
Key
Length of minor county road 026802 to be stopped up reserving footpath and bridleway rights thereover
Length of public highway to be stopped up reserving footpath and bridleway rights thereover
Prepared by ARH Date 12th January 2006 Scale 1:1250 Grid Ref. SU 025-687
Wiltshire
23/4/07

APPENDIX 1

DECISION REPORT

HIGHWAYS ACT 1980 S.119

APPLICATION TO DIVERT BRIDLEWAYS CALSTONE WITHOUT 89 (part), 89B AND 89B AT THE MILL HOUSE, CALSTONE WELLINGTON

1. Purpose of report

i) To investigate an application to divert part of a bridleway (CALW89(part), 89A and 89B) at The Mill House, Calstone Wellington under section 119 of the Highways Act 1980

ii) To recommend that Wiltshire Council refuses the application.

2. Details of the application

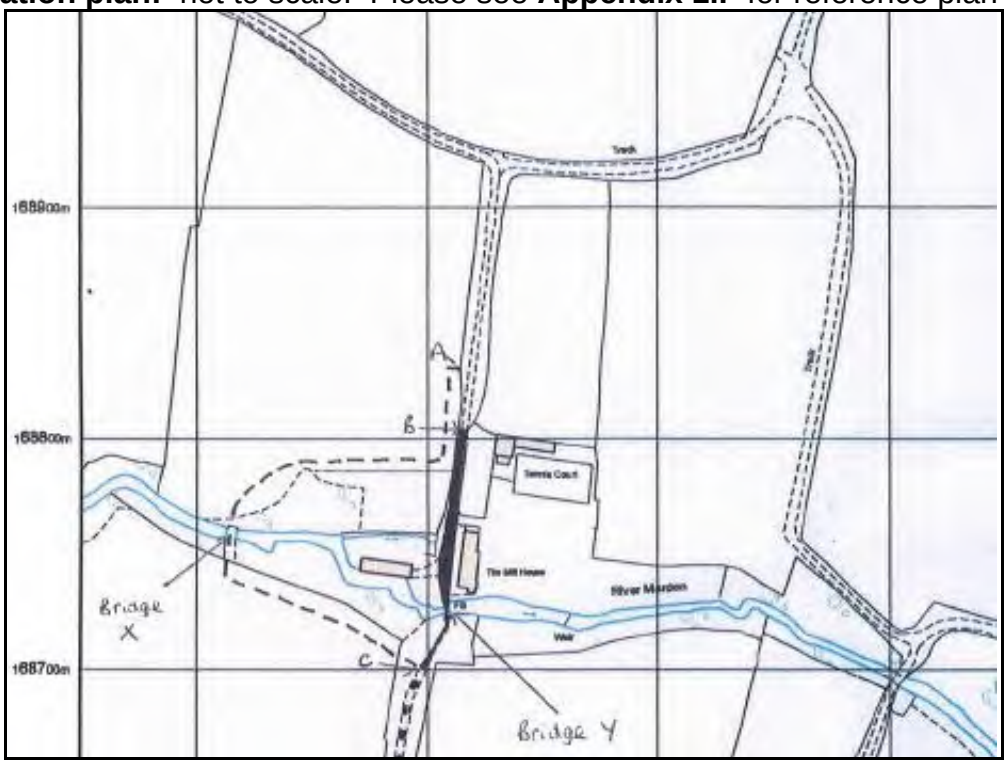
Applicant: Mr and Mrs J Moore
The Mill House
Calstone Wellington
Calne
SN11 8QF

Date of application: 31 May 2018

Reasons for diversion: Please see the submission of the applicant **Appendix 1.A**

The principal reasons are given as *"the impact on our clients' privacy and security."*

Application plan: not to scale. Please see **Appendix 1.F** for reference plan (to scale).



3. Considerations for the Council

The Council must consider the legal tests contained within section 119 of the Highways Act 1980 (HA80):

119. Diversion of footpaths, bridleways and restricted byways

(1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, -

(a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion; and

(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.
An order under this section is referred to in this Act as a 'public path diversion order'

(2) A public path diversion order shall not alter a point of termination of the path or way –
(a) if that point is not on a highway; or
(b) (where it is on a highway) otherwise that to another point which is on the same highway, or highway connected with it, and which is substantially as convenient to the public.

(3) Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall –
(a) specify a date under subsection (1)(a) above, and
(b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.

(4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.

(5) Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contributions as may be specified in the agreement towards,-
(a) any compensation which may be payable under section 28 above as applied by section 121(2) below; or

(b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path into fit condition for use for the public; or

(c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.

(6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm a public path diversion order, unless he, or as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which –

(a) the diversion would have on public enjoyment of the path or way as a whole;

(b) the coming into operation of the order would have as respects other land served by the existing public right of way; and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it;

So, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.

(6A) The considerations to which –

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and

(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.

(7) A public path diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed,-

(a) showing the existing site of so much of the line of the path or way as is to be diverted by the order and the new site to which it is to be diverted;

(b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a footpath, bridleway or restricted byway; and

(c) where some part of the new route is so comprised, defining that part.

(8) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path orders.

(9) Section 27 above (making up new footpaths, bridleways and restricted byways) applies to a footpath, bridleway or restricted byway created by a public path diversion order with the substitution, for references to a public path creation order, of references to a public path diversion order and, for references to section 26(2) above, of references to section 120(3) below.

Section 27 Making up of new footpaths, bridleways and restricted byways

(1) On the dedication of a footpath, bridleway or restricted byway in pursuance of a public path creation agreement, or on the coming into operation of a public path creation order, being –

(a) an agreement or order made by a local authority who are not a highway authority for the path in question; or

(b) an order made by the Secretary of State under section 26(2) above in relation to which he directs that this subsection shall apply,

The highway authority shall survey the path or way and shall certify what work (if any) appears to them to be necessary to bring it into a fit condition for use by the public as a footpath or bridleway, as the case may be, and shall serve a copy of the certificate on the local authority mentioned in paragraph (a) above or, where paragraph (b) applies, on such local authority as the Secretary of State may direct.

(2) It shall be the duty of the highway authority to carry out works specified in a certificate under subsection (1) above, and where the authority have carried out the work they may recover from the authority on whom a copy of the certificate was served any expenses reasonably incurred by them in carrying out that work, including any expenses so incurred in the discharge of any liability for compensation in respect of the carrying out thereof.

(3) Notwithstanding anything in the preceding provisions of this section, where an agreement or order is made as mentioned in subsection (1)(a) above, the local authority making the order may –

(a) with the consent of the highway authority carry out (in place of the highway authority) the duties imposed by that subsection on the highway authority; and

(b) carry out any works which apart from this subsection, it would be the duty of the highway authority to carry out under subsection (2) above.

(4) Where the Secretary of State makes a public path creation order under section 26(2) above he may direct that subsection (5) below shall apply.

(5) Where the Secretary of State gives such a direction –

(a) the local authority who, on the coming into force of the order, became the highway authority for the path or way in question shall survey the path or way and shall certify what work (if any) appears to them to be necessary to bring into a fit condition for use by the public as a footpath, bridleway or restricted byway, as the case may be, and shall furnish the Secretary of State with a copy of the certificate.

(b) if the Secretary of State is not satisfied with a certificate made under the foregoing paragraph, he shall either cause a local inquiry to be held or shall give to the local authority an opportunity of being heard by a person appointed by him for the purpose and, after considering the report of the person appointed to hold the inquiry or the person so appointed as aforesaid, shall make such order either confirming or varying the certificate as he may think fit; and

(c) subject to the provisions of the last foregoing paragraphs, it shall be the duty of the highway authority to carry out the work specified by them in a certificate made by them under paragraph (a) above.

(6) In this section 'local authority' means any council.

3.1 Although the Council is only required to consider s.119(1) and (2) to make an order it is clear that it is appropriate for it to also consider s.119(6) at the order making stage.

3.2 In the Court of Appeal Hargrave v Stroud DC[1], at para.15 Schieman L.J. stated that:

"On the face of the subsection therefore the authority has discretion as to whether or not to make an order. I do not consider that the mere fact that it is expedient in the interests of the owner that the line of the path should be diverted means that Parliament has imposed on the authority a duty to make such an order once it is satisfied that this condition precedent has been fulfilled."

3.3 Subsection (6) sets out factors which are to be taken into account at the confirmation stage. However, it has been held that the Authority is entitled to take these factors into

[1] R(on the application of Hargrave and another) v Stroud DC [2002] EWCA Civ 1281

account at the order making stage. In Hargrave v Stroud (above), at para. 17 Schieman L.J. held that:

"…the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my judgment…entitled to take into account the matters set out in s.119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed."

3.4 The Council must have regard to The Equality Act 2010. This act requires (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that a disabled person is not put at a substantial disadvantage in comparison with a person who is not disabled. The Equality Act goes further than just requiring that a public authority does not discriminate against a disabled person. Section 149 imposes a duty, known as the "public sector equality duty", on the public bodies listed in sch. 19 to the Act, to have due regard to three specified matters when exercising their functions.

3.5 These three matters are:

- Eliminating conduct that is prohibited by the Act
- Advancing equality of opportunity between people who have a disability and people who do not; and
- Fostering good relations between people who have a disability and people who do not.

3.6 The Equality Act applies to a highway authority's provision of public rights of way services. (DEFRA Guidance, Authorising structures (gaps, gates and stiles) on rights of way, Oct 2010 – a good practice guide now archived by Defra). See also https://www.gov.uk/guidance/public-rights-of-way-local-authority-responsibilities

3.7 The Council should also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP). The ROWIP recognises the Council's duty to have regard to the Equality Act 2010 and to consider the least restrictive option. http://www.wiltshire.gov.uk/recreation-rights-of-way

3.8 The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.

3.9 The Council is also empowered to make a 'combined order' under s.53(2)A of the Wildlife and Countryside Act 1981. The effect of this means that on the confirmation of the order the definitive map and statement may be changed without the further need to make an order under s.53(3)(a)(i) of the 1981 Act (also known as a 'legal event order' or an 'unadvertised order').

3.10 Any Order made may come into effect a set time after confirmation. It is therefore important that works to create the new path are completed to the satisfaction of Wiltshire Council before the end of this period or in a manner prescribed in the Order. Failure to do this can result in a situation where the existing route is not extinguished yet public rights have been created over the new route even though it has not been accepted as a highway maintainable at public expense.

3.11 Where the new path requires construction that falls within s.55(1) of the Town and Country Planning Act 1990 planning permission for the works will be required.

3.12 Section 55(1) of the 1990 Act states that development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Engineering operations are defined within the 1990 Act (s.336(1)) as including the formation or laying out of means of access to highways and means of access includes any means of access whether private or public for vehicles or for passengers, including a street.

3.13 It is noted that the proposed route for the diversion is over a part surfaced route already in use as a permissive bridleway. Permission for the construction of the hard surfaced parts has been granted by Wiltshire Council (applications 16/03821/FUL and 18/02808/FUL).

3.14 It is an essential tenet of section 119 HA80 that the various legal tests to be applied rely upon comparison of the existing route with the proposed new route. Clearly problems arise when the definitive line is unavailable, obstructed or poorly maintained as a reasonable comparison cannot be made, either by members of the public or the council.

3.15 Section 118 (6) HA80 recognises this and provides that, for the purposes of decision any temporary circumstances preventing or diminishing use by the public shall be disregarded. There is no such provision within s.119 and the Council is guided by the Planning Inspectorate's Advice Note No. 9 General Guidance on Public Rights of Way Matters (11th revision 2019). In the event of the matter proceeding to the Planning Inspectorate they would also have regard to this advice:

Para. 30 "Whereas section 118(6) provided that. For the purposes of deciding whether a right of way should be stopped up, any temporary circumstances preventing or diminishing its use by the public shall be disregarded, section 119 contains no equivalent provision. However, [it is the Inspectorate's view that] when considering orders made under section 119(6) whether the right of way will be/will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. Therefore, in all cases where this test is to be applied, the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have a right to use it."

This is an important principle and one that underpins officers' considerations throughout this report.

3.16 Guidance on Definitive Map Changes issued by Natural England (A guide to definitive maps and changes to pubic rights of way – 2008 revision) at page 17 underlines the consideration that applicants should give to applications for public path orders:

"Careful consideration is therefore needed before deciding whether to apply for a public path order. The Rights of Way Review Committee has published a Practice Guidance Note Securing agreement to public path orders (see p38) from which the following is taken:

"Applicants for orders should bear in mind that there must be good reasons for wanting to make any changes to the existing network. Public rights of way and private rights of ownership should not be interfered with lightly. The 'do nothing' option should always be evaluated alongside any proposals for change. It may prove to be the best option even though the existing situation may be inconvenient for the owner or inadequate for the user."

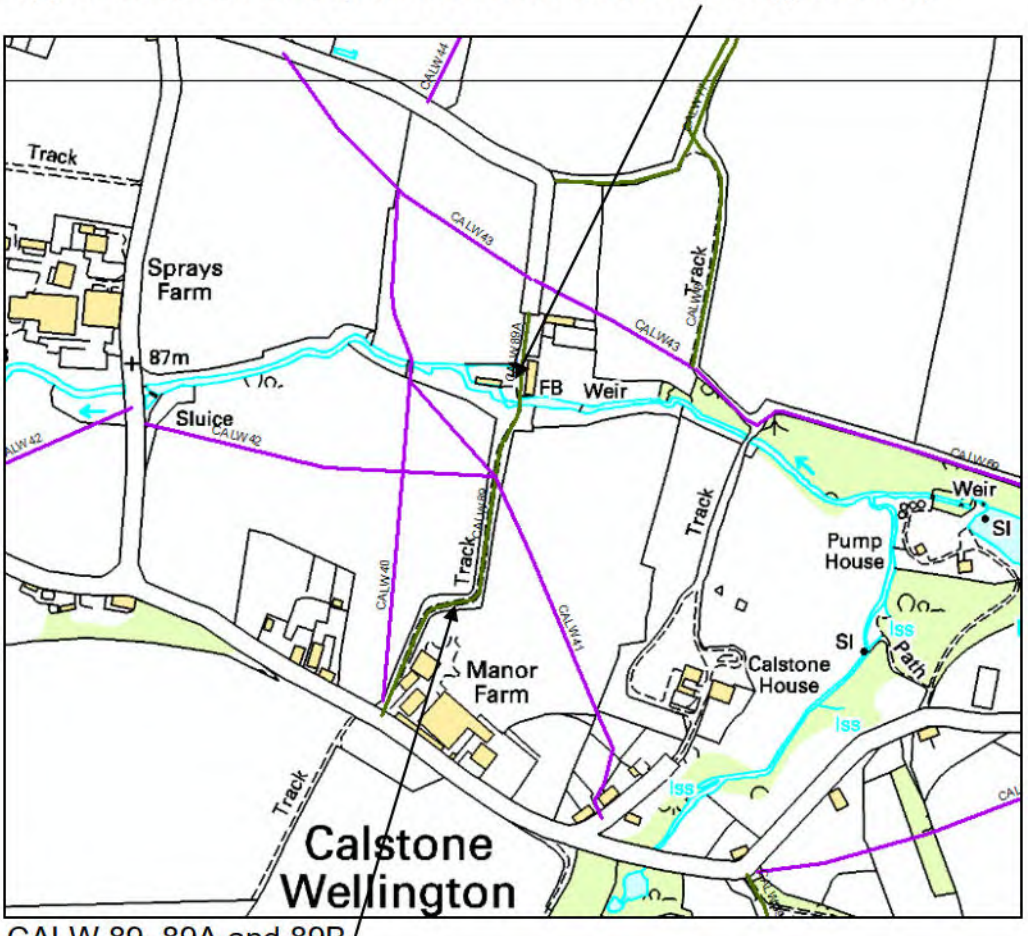
4.0 Current Records

Bridleways Calne Without 89, 89A and 89B were added to the Calne and Chippenham Rural District Council area dated 1953 definitive map and statement in 2008 and 2009 further to the stopping up of public vehicular rights over the route in 2007. They form a continuous bridleway linking road u/c7005 at Manor Farm with the u/c7008 north of Calstone Mill (The Mill House). The route crosses the River Marden south of The Mill House over bridge R7/98 which is maintainable at public expense.

The definitive statement records:

Calne Without	89	BRIDLEWAY. From the unclassified road south of Manor Farm, 7005, leading in a general north easterly direction to the south end of public bridleway 89A, to the north of Calstone Mill House. Approximate length: 344 metres Width: 4 -10 metres.
Calne Without	89A	BRIDLEWAY. From the northern end of public bridleway 89 leading north past Calstone Mill House to public bridleway 89B. Approximate length: 53m Width: 4 – 8 metres as coloured green on the Order map
Calne Without	89B	BRIDLEWAY. From the southern end of u/c road 7008 leading south to public bridleway 89A Approximate length; 7m Width: 4m

The working copy of the definitive map shows the routes as follows (green line):



CALW 89, 89A and 89B

5.0 Background

Prior to 2008 the path now called CALW89 was only recorded in the highway record by the highway authority (Wiltshire Council) as a road maintainable at public expense (u/c 7005). Further to an application by the owner of The Mill House public vehicular rights (both mechanically propelled and horse drawn) over this road were stopped up by the magistrates acting under the powers of s.116 of the Highways Act 1980 on 23rd April 2007. The reserved footpath and bridleway rights were recorded in the definitive map and statement in March 2008.

5.1 The order of the magistrates also stopped up public vehicular rights over a section of highway north of the bridge leading past The Mill House. Hence public vehicular rights were stopped up over a continuous length leading from Manor Farm to a point north of The Mill House and these are the sections now recorded as bridleways CALW89, 89A and 89B.

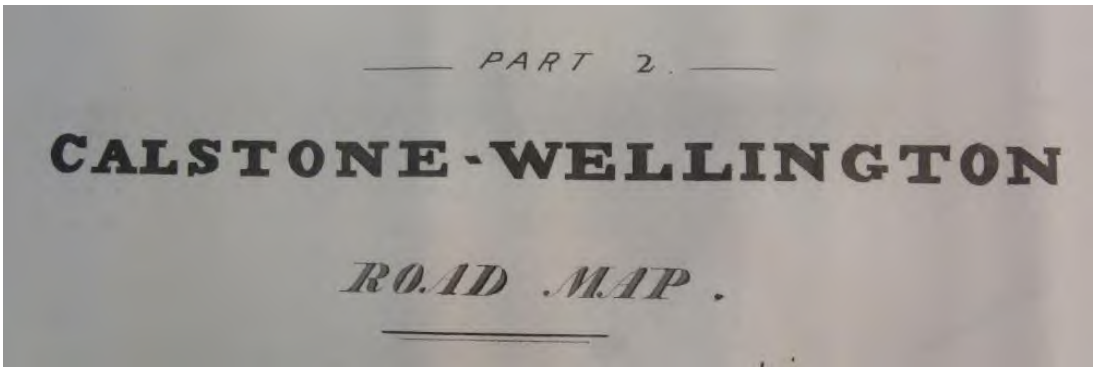
5.2 Although CALW89 and CALW89B were added to the definitive map using 'legal event orders' (s.53(3)(a) Wildlife and Countryside Act 1981) the order that added CALW89A to the definitive map was the result of historical research which showed that on the balance of probability, a public vehicular right had subsisted and that although extinguished by the 2007 s.116 order, the remaining rights fell to be recorded in the definitive map and statement. The order was made under a different section of the Wildlife and Countryside Act 1981, duly advertised and no objections or representations to it were received. It was confirmed in May 2009 and recorded in the definitive map and statement as a result.

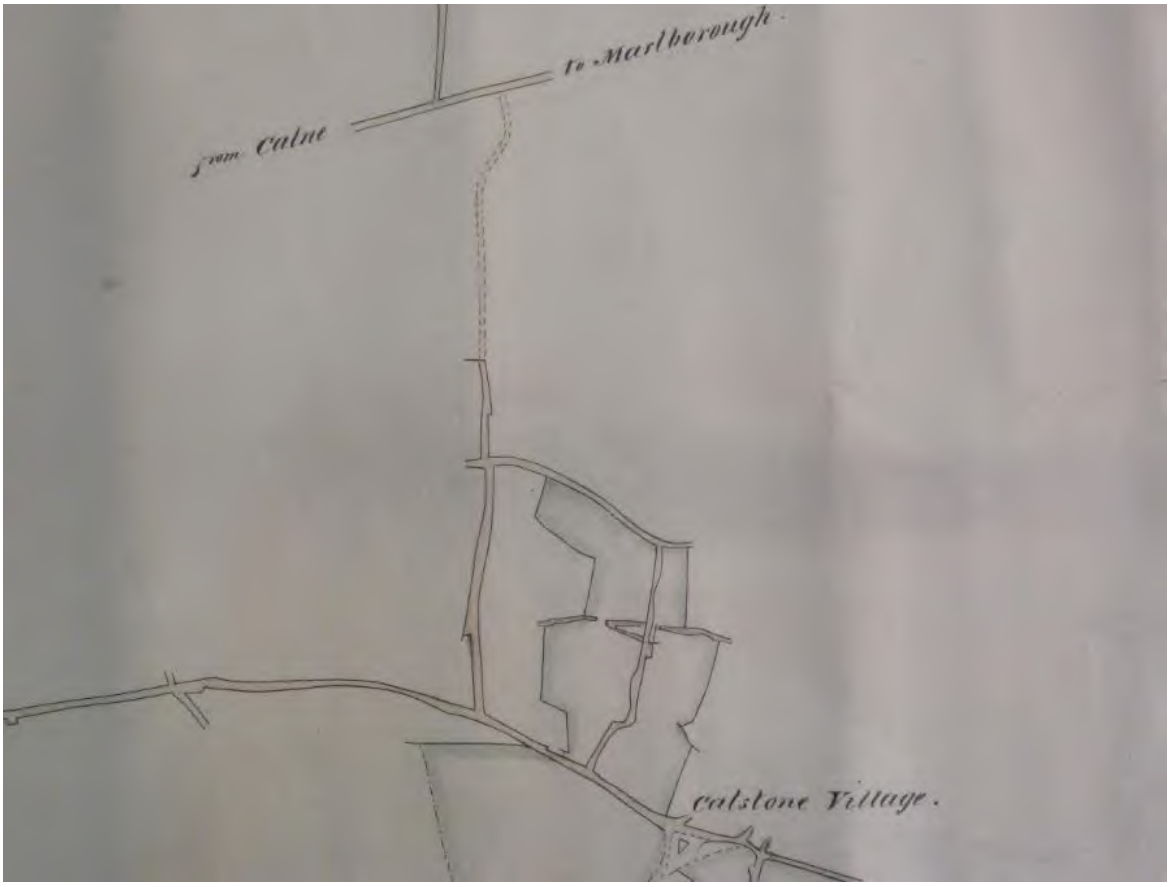
5.3 Matters relating to the historical nature of this highway are relevant to the consideration of the legal tests contained within s.119(6) of the Highways Act 1980 and are covered briefly as follows:

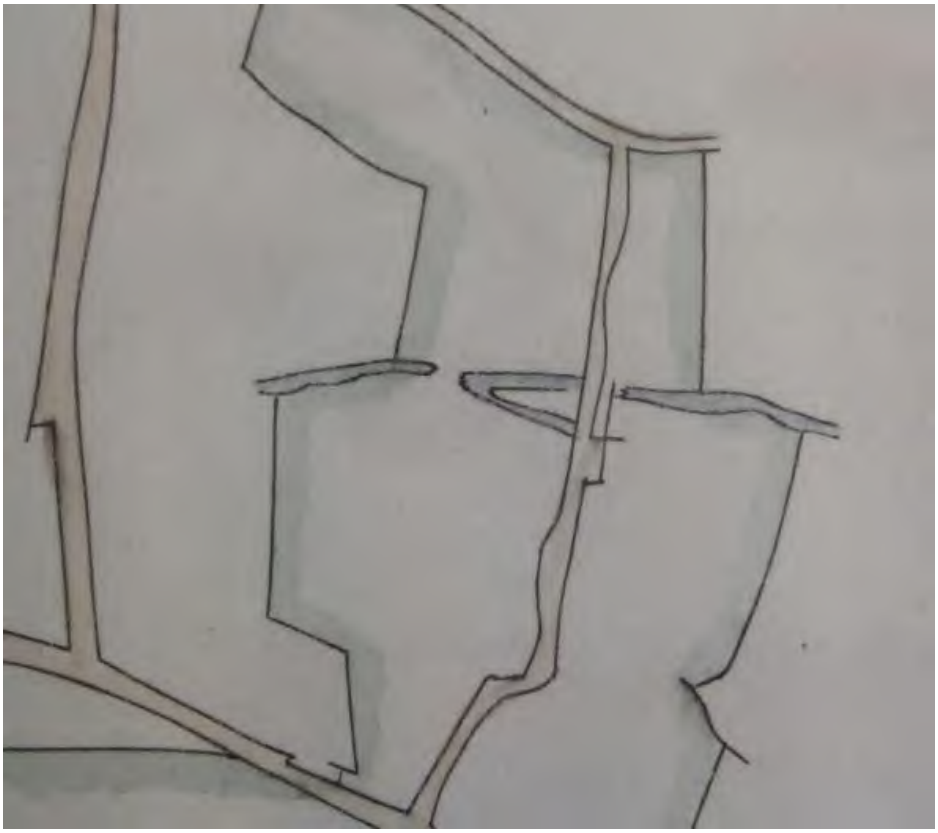
5.4 Parliamentary enclosure of much of the commonable land and fields in the parish of Calne Without occurred in **1818** and records relating to this, held at the Wiltshire and Swindon History Centre (WSHC) under catalogue number EA110 have been viewed. Map C shows land in the Calstone area referred to in the award and the local road network. The route that now forms CALW89,89A and 89B and part of u/c7005 is shown as a continuous lane bordered in the most part by hedges. The river at this time is shown only passing through the mill reflecting the need for water at a working mill. The road was not created by the award and pre-dates it.

5.5 A map of the parish of Calstone Wellington dated **1830** (WSHC 807/27) drawn at the scale of 6 chains to the inch shows the road network coloured sienna, coloured numbered fields and land ownership details. Buildings are shown coloured red or grey in line with practice common to plans of this era to represent dwellings and outbuildings. The route now recorded as CALW89, 89A, 89B and u/c7005 is shown as a through route over the River Marden and past the mill. The main river is shown through the mill with a southern watercourse as a small pond, backbrook or drain only.

5.6 The Tithe Commissioners survey dated **1845** (WSHC TA/Calne Without and The National Archive IR/30/38/55) is in two parts, one of which, Part 2, is a “Road Map”, Part 1 is similar, but not the same, as the 1830 map at para. 5.5. Both maps show the route of CALW89,89A,89B and u/c7005 as a through route and road coloured sienna.




to Marlborough
from Calne
Calstone Village.




THEOBALDS GREEN
A
Part 1 Map
CALNE
BLACKLAND
5.
4.
5.
6.
8.
10.
13.
15
19.


4.
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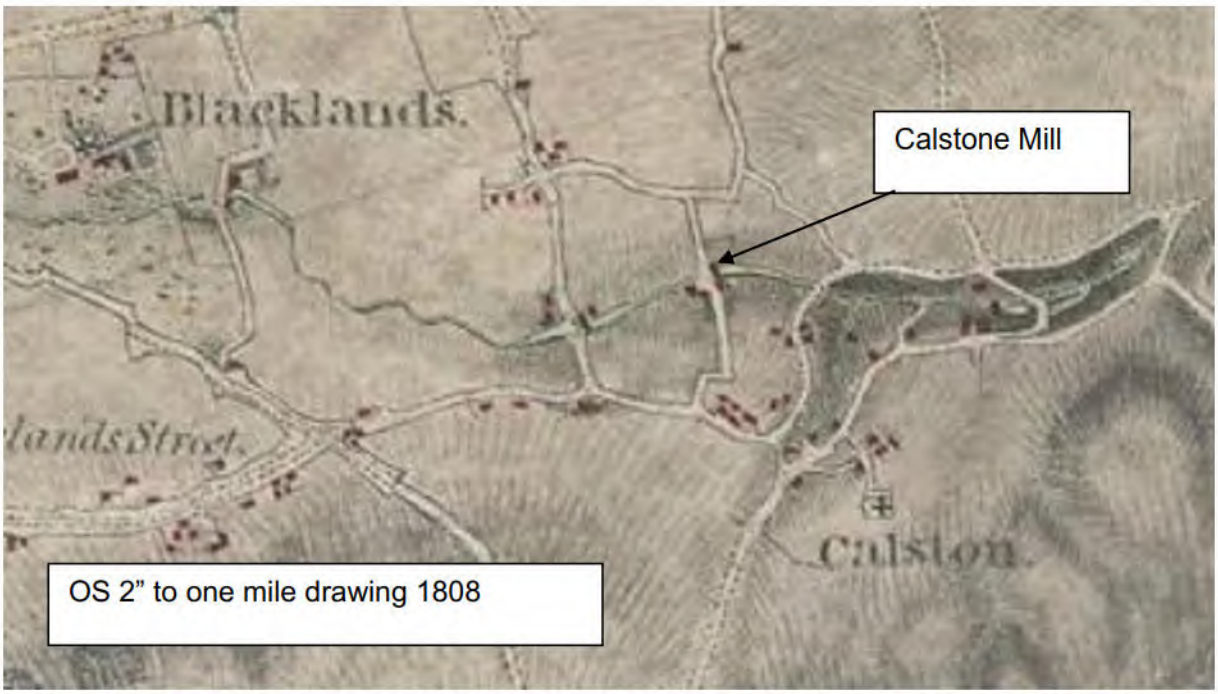
5.7 The records of the Inland Revenue relating to the Finance Act **1909/1910** exclude the route of CALW89,89A,89B and u/c7005 from the valuation of surrounding hereditaments showing it uncoloured and connecting to the local road network. The usual interpretation of this is that it was a highway in the control of the highway authority and other evidence is consistent with this interpretation. An extract from the Record Copy held at the National Archive at Kew (catalogue number IR/125/11/319/xxvii/10) is below:

5.8 The records included above (5.4 – 5.7), with the exception of the 1830 Parish map, were public documents arising out of Acts of Parliament. These maps consistently show a through road over the River and past the mill and certainly from 1808 onwards (when the road is shown on an Ordnance Survey drawing) a clear picture emerges of a continuous road. A large number of other commercially available maps and plans, especially those produced by the Ordnance Survey, but including others, show the route as a through road.



5.9 Submissions from the applicant arising from records held at the Bowood Estate refer to the northern section of the road as "Mill Lane" and the southern section as a "Drove" ("Sr Ed's Drove") in 1728. The drove is represented in the same characteristic shape as the route today open to the road network to the south. Any titheable productivity of a route is no barrier to public rights existing over it. Likewise an extract from a plan from 1760 to 1765 shows the same characterisitic double hedged route leading to the mill. It is accepted that nothing in these records demonstrates anything further than the physical existence of a route but the shape and representation of the road appears broadly the same from 1728 to the current day suggesting land boundaries were laid out to accommodate a highway.

5.10 The earliest records held by Wiltshire Council relating to the extent of maintenance liabilities over the route are the Takeover Maps arising from the Local Government Act 1929 when the responsibility for rural roads was handed over from the Rural District Councils to the County Council. This record shows most of the route coloured blue with the central section past the mill coloured brown. The bridge over the River Marden is recorded as a road bridge maintainable at public expense (R/7/98).

5.11 Roads coloured brown have been viewed as “non-repairable tracks” or “u/c roads on which there is no grant available” and relate to the level of public maintenance liability and not to public rights. See also Wiltshire Council’s Policy 6 relating to bridges (para 9.55 this report).

5.12 The route of the u/c7005, u/c7008 and section shown coloured brown are all recorded as highways in the Council’s records. Publicly maintainable highways can be created in a number of ways including:

i) by historic precedent if it pre-dated the Highways Act 1835 (thereby an ‘ancient highway’)
ii) By formal dedication or conveyance for highway use
iii) By formal adoption as public highway (i.e. s.26, s.38, s.119 (and others) Highways Act 1980)
iv) Specifically by Act of Parliament (i.e. parliamentary inclosure)
v) see also s.47 National Parks and Countryside Act 1949 for highways recorded in the original definitive map and statement

On the balance of probability the inclusion of this road in the highway authority’s records as being publicly maintainable arises from it being an ‘ancient highway’ within the usual use of the term.

5.13 Regardless of the history of the road it is now correctly recorded as a bridleway owing to the Highways Act 1980 s.116 Order of 2007(which extinguished all public vehicular rights), and it remains wholly maintainable at public expense.

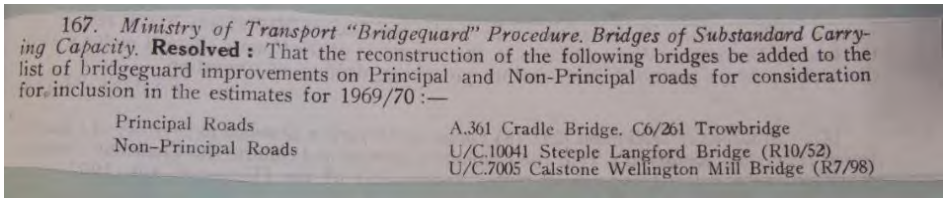
5.14 An application also made by Mr Moore to divert part of the bridleway at The Mill House was received by Wiltshire Council in 2013 and the decision to refuse the application was circulated to the applicant and all interested parties in January 2016.

5.15 The application to divert the bridleway currently being considered will be considered wholly distinct from that 2013 application.

5.16 **The Bridge over the River Marden R.7/98**

Wiltshire Council’s bridge files support that the original masonry bridge (R.7/98) was demolished in November 1968 owing to its poor condition. Wiltshire Council has a duty in law to replace and maintain a bridge that is fit for purpose at this location.

5.17 Prior to demolition the road was closed in August and September 1968. During this period the Council consulted on the possible provision of a narrower replacement bridge that was not suitable for vehicular traffic. Both Calne and Chippenham Rural District Council and Calne Without Parish Council objected to any down-grading of the route which was still used by vehicles. Accordingly Wiltshire Council’s Roads and Bridges Committee resolved at their meeting held on the 27th September 1968 to schedule the new road bridge for inclusion in estimates for 1969/70.



167. *Ministry of Transport "Bridgeguard" Procedure. Bridges of Substandard Carrying Capacity.* **Resolved :** That the reconstruction of the following bridges be added to the list of bridgeguard improvements on Principal and Non-Principal roads for consideration for inclusion in the estimates for 1969/70 :—

Principal Roads	A.361 Cradle Bridge. C6/261 Trowbridge
Non-Principal Roads	U/C.10041 Steeple Langford Bridge (R10/52)
	U/C.7005 Calstone Wellington Mill Bridge (R7/98)

5.18 As a temporary measure a footbridge was provided for the convenience of pedestrians. The following photograph shows this footbridge. The image is undated but likely to date from between 1968 and 1970. The image is useful as it shows the open aspect and road like appearance of the route at this time. There are no gates and the width of the highway is obvious.

Later image showing replacement footbridge and open width and nature of the road.

5.19 Correspondence reveals that by 1973 the council had still not erected the new bridge and instead considered providing a bridle bridge of greater width. Agreement for this was reached and a wider bridge was put in place in December 1975. This bridge was 1.2 metres wide.

Bridge widths

Prior to 1968 Vehicular width
1968 0.6 m wide
1975 1.2 m wide
1992 1.2 m wide
2002 1.8 m wide bridge proposed but not installed

5.20 Complaints relating to this width of bridge and its unsuitability for horses were received in the 1990s and early 2000s and correspondence files reveal that by 2002 the council had decided to put in place a wider bridge as the existing one was "causing some concern to local equestrian users". The council also sought the removal of the gate by the mill as it was an obstruction to the highway.

5.21 In September 2003 the installation of the new bridge was delayed at the request of Mr Moore who identified that he could see no problem with the existing bridge that required what was proposed (i.e. that it was adequate). The replacement of this bridge remains 'on hold' at the date of this report.

5.22 Photographs contained within the bridge files are helpful in appreciating the changes to the site with time. In 2003 the area south of the bridge was open to the sun and air whereas by 2018 trees had been planted and an additional gate installed.


2018
End of bridge


2004
End of bridge

2004 **2018**

5.23 In 2015 Wiltshire Council's Principal Bridge Engineer advised that the current bridge has an overall width of 1200 mm but that the clear width is less than this. He further advised that the British Horse Society guidance suggests a width of between 2 and 3 metres with a parapet height of 1200mm.

5.24 The historical background is essential in understanding how temporary obstructions should be disregarded and that all considerations should relate to the full extent of the route being available to the public (as per the images at para. 5.10 and 5.18), that a bridge of vehicular width is available (the 2007 order only stopped up the vehicular right, not the extent or width of the highway), that there is no restricting vegetation or parked vehicles and no gates or other obstructions along the route. The comparison should also be made with the route as if it were maintained and that the surface was not out of repair and had the benefit of sun and air (i.e. not poorly drained or muddy). The route was clearly in vehicular use as a through route in 1968 (as evidenced by Parish Council and Rural District Council correspondence) and should, with appropriate maintenance, be capable of being so again (notwithstanding the extinguishment of the public vehicular right and that the local traffic of the area is now on foot, horseback or bicycle i.e. as a bridleway).

6.0 Consultation

When considering this application the case officer noticed that the lines of footpaths 40 and 41 as recorded in the definitive map and statement did not accord with the historic record or the situation on the ground. As the footpaths are in part coincident with the proposed bridleway diversion it was considered necessary to first correct the record relating to them. A letter of consultation on both of the issues was circulated on 16 November 2018. The matter of the footpaths has now been resolved and the working copy of the definitive map included here at paragraph 4.0 shows the corrected positions. There were no objections to this change. Any order now made would only affect CALW89, 89A & 89B.

6.1 The following letter of consultation was circulated:

"***Highways Act 1980 s.119 and Wildlife and Countryside 1981 s.53***
Consultation regarding Calne Without Footpaths 40 and 41 and Bridleways 89, 89A and 89B at SN11 8QF

Wiltshire Council has received an application to divert the bridleway at Calstone Mill, Calstone Wellington to a route to the west. The proposed route has a variable width from 4.5 metres to 10.5 metres with a surface approved by the British Horse Society over most of the length for part of the width and would be ungated. It is currently available as a permissive bridleway. The route of this proposed diversion shares a bridge with footpath Calne Without 40 before the routes diverge south of the River Marden.

While looking at the definitive map for this area officers realised that the legal record of the route of footpath Calne Without 41 was incorrectly reflected in the working copy of the definitive map and also did not agree with the situation on the ground. Historical mapping supports that there was only one footpath crossing of the River Marden at this point and not two as the definitive map shows.

The purpose of this consultation is therefore two fold. The Council would appreciate any views you may have on diverting the bridleway and on correcting the definitive map to reflect the historic line of the footpaths.

I have enclosed the following maps to assist:
1) Location Plan
2) Plan A Definitive Map – the legal record relating to Calne Without paths 40 and 41
3) Plan B Ordnance Survey County Series map c.1924 showing the route of the footpaths
4) Plan C Working copy of the definitive map showing the network including the error with 40 & 41
5) Plan D Application map showing proposed diversion of bridleway 89 (pt), 89A and 89B

The application to divert the bridleway is supported by a detailed justification for the proposal and is available on request by e.mail. Please don't hesitate to contact me to request this.

I would be grateful to receive any responses you have, on either the diversion of the bridleway or the correction of the definitive map for the footpath by Friday January 4th 2019."

6.2 The deadline was extended to Friday 18th January 2019 at the request of Wiltshire Bridleways Association though in practice representations were accepted and are included up to 22 July 2019. This is a non-statutory pre-consultation phase (other than with other local authorities and statutory undertakers who have to be consulted pre-order) and accordingly response times can be flexible.

6.3 The following were consulted:

The Auto Cycle Union
Open Spaces Society
British Driving Society
British Horse Society (national and Wiltshire)
Mr Graham Bennett
Byways and Bridleways Trust
Cycling Touring Club
Trail Riders Fellowship
Wiltshire Council Senior Rights of Way Warden
Wiltshire Councillor for the area
Wiltshire Council County Ecologist
Calne Without Parish Council

Wiltshire Bridleways Association
The Ramblers (Wiltshire)
The applicant (Mr and Mrs Moore)
Mr D Walsh Coffin Mew LLP
Mr P Maundrell (Manor Farm)
Mr R Hislop (Sprays Farm)
Scottish and Southern Electric plc
Wessex Water
National Grid (gas and electric)
Southern Gas Networks
Open Reach BT
Linesearch BefureUDig
DigDat – Thames Water and Virgin Media

6.4 The following responses were received:

6.4.1 **Mr Moore 19 November 2018**

"We confirm that we are very happy for you to correct the Definitive Map and to show the footpaths converging at the bridge.

Also we support the diversion of the bridleway!!"

6.4.2 **Wiltshire Councillor Mr Hill 19 November 2018**

"Thank you for your letter relating to the proposal to re-route various footpaths and bridleways in the vicinity of The Mill House, Calstone, SN11 8QF. As I am sure you are aware, I support the proposals.

I also support the correction to the definitive map as you describe."

6.4.3 **Wiltshire Ramblers 26 November 2018 and 27 November 2018**

"Further to your letter of 16 November about the correction of the definitive map re CALW40 & 41, and the proposed diversion of bridleways CALW89, 89A and 89B at Calstone Mill, I visited the site today.

The maps B & C you provided with your letter do indeed show the actual situation on the ground whereby CALW41 joins CALW40 south of the River Marden, as opposed to north of it, as shown on Map A (I think) and the definitive map, there being only one bridge across the Marden at that point, so correcting this is a no-brainer. However I did notice, as I walked the area, that there is no sign of the continuation of CALW41 to the south-east of CALW89, neither is there any sign of a stile or other entrance into the field allegedly containing CALW42 and CLAW40 where CALW42 goes west off CALW89.

As for the proposed diversion of the bridleways, as noted there is already a permissive bridleway in use on the route of the proposed diversion, which is clearly already being well used by horse riders. Whether the diverted route is also preferable for walkers is debatable; it is slightly longer and does not have the "quaintness" of the existing route over the Marden and past the mill, however I could be persuaded not to object to it if the mill owners were prepared to reinstate the two apparently "lost" footpaths of CALW41 and 42; all that would be needed as far as I can see would be a means of access into the fields concerned."

The case officer asked the respondent to clarify this with regard to the legal tests in s.119 and they responded:

"As this was a consultation rather than an actual path order, I did not think it appropriate to get too legalistic! However, since you ask, I don't think the proposed diversion would be as convenient as the existing bridleway, but not substantially less so, and I can see little difference in the public's possible enjoyment of the route if it was diverted – so I would not object. However it would be good to get those other paths reinstated!"

And from another respondent from the organisation:

I would agree with [the comments above]. On behalf of North West Wiltshire Ramblers I agree that the Definitive Map should show one crossing of the Marden for both CALW40 and CALW41. I agree to the diversion of Bridleway 89 onto the permissive route. However, the footpaths need to be reinstated south of the Marden before the footpath Calstone Mill is closed and there needs to be clear signage and a map displayed so that walkers are certain of the legal route.

I note that there are issues with previous diversions near Sherston where the new routes have not been clearly waymarked, nor are there maps to show walkers the new routes. These are around the menage at Lady's Wood on SHER15 and at Lordswood House on SHER17. Unless Ramblers can be assured that diversions will be well signed and easy to use, we will have no choice but to object to any proposed diversions in future."

6.4.4 **Calne Without Parish Council 12 December 2019**

Thank you for consulting the Parish Council on the above. The Parish Council considered the proposal to divert the bridleway at Calstone Mill and the correction of the definitive map at its meeting on the 10th December 2018.
The Parish Council is in support of the application to divert the bridleway at The Mill House, Calstone Wellington, Calne, SN11 8QF for the following reasons:

- The previous route of the bridleway was virtually impassable for up to six weeks every year, owing to the ground being waterlogged.
- The alternative route is now being used by riders, walkers and cyclists all year round in preference to the established route.
- The route is much more convenient and has been created as an all-weather bridleway, with a gentler gradient, which can be enjoyed all the year round.
- The proposed route is much wider and more convenient than the present bridleway. It also offers better views of The Mill House and the local countryside and is capable of being used by people who are unable to use the present route. It has real public benefit.

We also confirm our approval to the correction of the error on the Definitive Map.

6.4.5 **Trail Riders Fellowship 28 November 2018 and 27 December 2018**

"I support the proposed route correction for Calne footpaths 40 & 41 because evidence appears to demonstrate that an error has been made in recording, though object to the proposed diversion of Bridleways 89, 89A and 89B because the recorded route appears to be wholly accurate. Furthermore the bridleway is a former public road so may well carry higher public rights.

Therefore the proposed bridleway diversion is not in the public's interest as it would:

1. Reward and incentivise landowner preference over historical public use.

2. Be contrary to the established principle of a landowner accepting public rights of access upon purchase of land and property.

If the applicant wishes to be sincere in their claim of providing a superior alternative route then they should dedicate it accordingly and let the public decide which route is the more commodious through its use.

Finally – and as a side note – the proposed footpath realignment will make the Wiltshire Council's approach to such matters inconsistent given its lack of will to remedy an identical issue with Ogbourne St George 1 (Gypsy Lane)"

NB The case officer responded to explain that whilst the route had once carried a public vehicular right this had been extinguished in 2007 and accordingly the classification of the bridleway was correct.

And from another respondent from the organisation:

Consultation regarding Calne Without Footpaths 40 and 41 and Bridleways 89, 89A and 89B

"Thank you for your letter of 16 November 2018, together with enclosures. I support the proposal to correct the definitive map in respect of the route of Footpath 41.

Turning to the new application to divert bridleway 89(pt.), 89A and 89B; I have known and used this lane since the 1970s, both on a motorcycle (when it was still a carriageway) and on foot. No one ever questioned my use. I object to this proposal on the same grounds as for the previous application, which was refused. Please see my response to that consultation, dated 15th October 2014. In this response, I will, if applicable, refer to the applicant's paragraph numbers during my various comments. [appendix 1A]

Disregarding all the evidence to the contrary, the applicant persists in asserting that the bridleway is not an ancient or historical route (3.6, 6.7, 12.20.5 & 16.1)). The Ordnance Survey Drawing of 1808 shows the lane as being then an established part of the local road network; and the Calne Inclosure Award 1818 describes the road as an 'ancient lane'. The continuation of the road in Cherhill was awarded in 1822 as a Public Carriage Road "towards Calstone Wellington". It could only have passed along the present bridleway, because the alternative was set out as a private carriage road. The summary of evidence submitted with my 2005 DMMO application lists a host of 19th century and later historical evidence confirming the former importance of the road.

The lane forms part of a network of ancient roads, some of which are now green lanes, including the Old Bath to London Road over Cherhill Down. There would be a significant loss of history if the existing road were to be closed. Although the present mill dates from the 18th century (3.6.1) there has been a mill on the site, and hence the need for a road, for nearly 500 years (see VCH Vol.17).

The applicant's notion (3.6.8) that farmers would stop their carts south of the river and manhandle their sacks of grain (2 cwt. minimum; standard 280lbs.) across the bridge to the mill is laughable. The customary method was to winch the sacks straight off the wagons to an upper floor. The road was maintained by the highway authority and had a stone arched carriageway bridge until 1968. It was a right of way for traffic of all kinds until public vehicular rights were stopped up in 2007.

No one needed consent to pass along this highway, contrary to the applicant's assertion (3.6.10); and the suggestion that the highway could not be dedicated until after 1925 (3.6.12) is absurd, it had already been established as a highway for centuries by then.

The diversions in Pewsey (12.12) and Bishops Cannings (12.20) cited by the applicant for comparison, are not relevant. No ancient public carriage roads were affected. On the other hand, contrary to the opinion of the applicant, the Purton example (6.6 & 6.7) is a very good comparison. I was one of the objectors and gave evidence at the public inquiry. I carried out in-depth historical research on both routes and can vouch for the fact that the historical evidence confirming the antiquity of both roads is very similar. The Purton route was in a significantly worse state of repair than the Calstone one.

With regard to the comparative lengths of the existing and proposed routes, the applicant's measurements do not agree with the routes shown on the application map (12.4 & 12.5). I can provide accurate measurements if required. The proposed diversion is more than 2½ times longer than the length proposed to be closed and lacks any sense of purpose. Even using the applicant's dubious mode of comparison (12.2), it is more than twice as long, with the added disadvantage of four sharp bends, making it "substantially less convenient to the public", and having an adverse effect on "public enjoyment of the path or way as a whole". There is no guarantee that any future owner would keep it in repair. As stated in my objection to the previous application, much of the pleasure derived from travelling along old lanes and roads, is the knowledge that you are following in the footsteps and wheel tracks of countless generations before you.

The applicant states that the proposed diversion will not be gated (8.3.1 & 8.3.4). The existing route should not be gated either. It does not meet the statutory criteria.

The physical characteristics of Bridge Y are not proper matters of comparison (7.5.6). The Council has already agreed to provide a suitable bridge on the existing route.

Whilst the surface condition south of the bridge is not as good as it should be (6.1), this is due to insufficient maintenance, and can be rectified. For the purposes of the diversion application, the current state of the surface, and the suitability of the bridge, has to be disregarded. Until at least 1920, the mapping evidence shows the whole length of the existing route as a metalled public road in the control of the highway authority, and it remained a County repairable carriageway until 2007, so it will have a firm base.

Although some supporters of the diversion allege that the definitive route is in a bad or even dangerous state, it is noteworthy that Wiltshire Council has received no complaints about it. When I reported some fallen trees to the Council in 1994 (WCC Ref. AA/AB/PC 74 of 11

October 1994), they were removed promptly and the lane cleared. Users obviously need to report problems if they want them resolved. It is understandable that the supporters (mainly local horse riders) welcome an extra place to ride, though I doubt whether many of them have given much thought to the historical value of the existing route.

The applicant has an obligation not to obstruct the highway with parked cars or anything else (21.16) and to keep his dog under control (2.10 & 21.16). It suits the applicant's plans to deter users. In March 2006, the owner (presumably the present applicant) was warned by Wiltshire County Council in respect of an incident of intimidation against a legitimate user (WCC Ref. ARH/LMW/PC 45(b)).

As far as I am aware, there were no complaints about lack of privacy from previous owners of the property. Presumably, they accepted that living adjacent to public road offers less privacy than a more remote dwelling.

To sum up, in this case as before, the interests of the landowner are significantly outweighed by the interests of the public and the application should be refused."

Letter of 2014 referred to:

Thank you for your letter, applicant's submission statement and map, referring to an application to divert Calstone Mill Lane.

In this case I think the interests of the public heavily outweigh those of the landowner. This lane has existed for centuries, and is of great historical value. Much of the pleasure derived from using old roads and lanes is the knowledge that you are following in the footsteps and wheel tracks of countless generations. There has been a mill here for nearly 500 years, although the present one was rebuilt in the 18th century. Being forced to view the mill from a distance would diminish the pleasure of using the lane. It is illogical to argue that the existence of the lane is detrimental to the new owners of the mill house. The lane has almost certainly existed for as long as there has been a mill, and its existence was obvious when the property was purchased. Even the most cursory search of the Council's highway records would have revealed its existence.

Except for a length of 53 metres which was repairable *ratione tenurae*, the lane was an unclassified road until April 2007, so it has a sound base. Any mud on the surface is due to the Council failing to carry out its maintenance duties. The old stone carriageway bridge over the River Marden (a county bridge) was demolished by the County Council in 1968 and replaced with a temporary wooden bridge. The Council is still liable to reinstate a substantial bridge and this liability must not be used as an excuse for diversion.

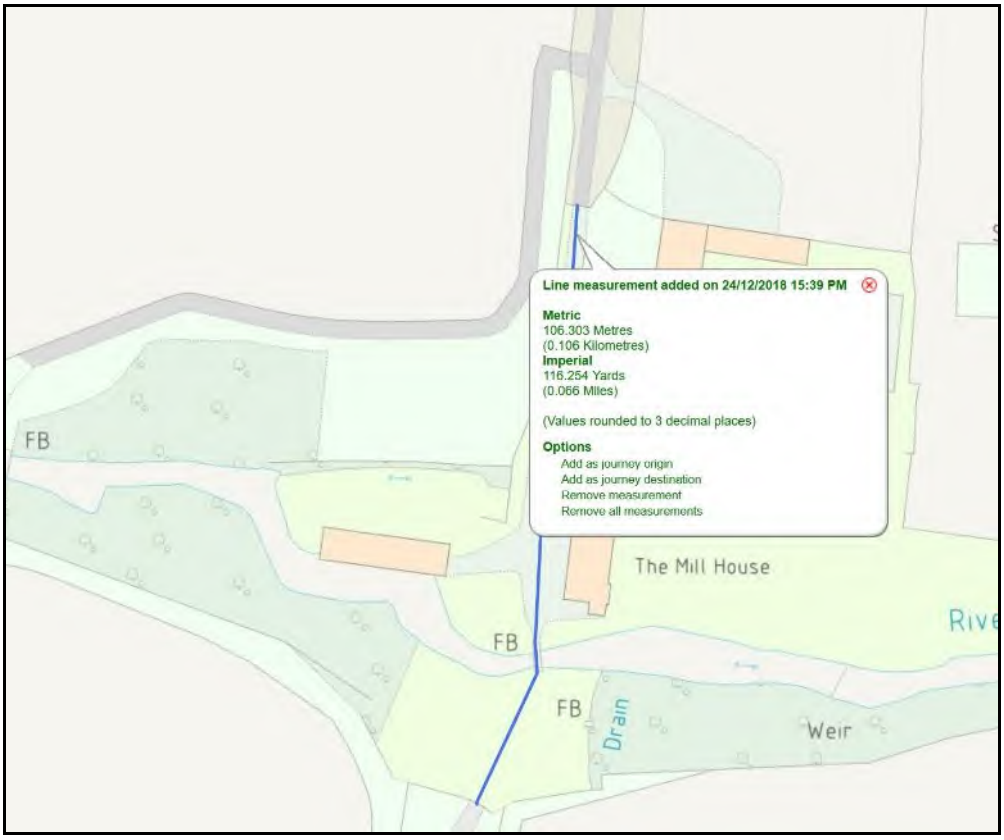
The legal width of the existing lane varies between 4 metres and 10 metres; nowhere is it 2.8 metres wide as asserted by the applicant.

The loss of an historically important route is sufficient reason on its own to refuse this application, but the circuitous alternative route is also unacceptable.

Measurements referred to:


Line measurement added on 24/12/2018 15:44 PM
Metric
129.876 Metres
(0.13 Kilometres)
Imperial
142.034 Yards
(0.081 Miles)
(Values rounded to 3 decimal places)
Options
Add as journey origin
Add as journey destination
Remove measurement
Remove all measurements
Solar P
The Mill House
River Ma
FB
FB
Drain
Weir


Line measurement added on 24/12/2018 15:37 PM
Metric
267.871 Metres
(0.268 Kilometres)
Imperial
292.947 Yards
(0.166 Miles)
(Values rounded to 3 decimal places)
Options
Add as journey origin
Add as journey destination
Remove measurement
Remove all measurements
Tennis Co
FB
The Mill House
FB
FB
Drain



6.4.6 **Wiltshire Bridleways Association 13 December 2018 and 18 January 2019**

"*I and the remainder of the WBA committee received the full consultation documentation, 131 pages, relating to the Calstone Mill application during the evening of Tue 11 Dec 18. Our committee meeting was held on Wed 12 Dec 18, clearly not sufficient time for the information to be digested and discussed to a degree upon which any rational decision could be formulated. Our meeting was also attended by six Calne residents wishing to submit their thoughts. Those wishing to speak did so, but in order to ensure that none of their points were missed, I asked that they forward their submissions via email to me. This they agreed to do.*

I have also asked each committee member to study the consultation papers and make relevant notes for discussion at our next meeting to be held on Wed 9 Jan 19. However, I understand that the response date for this application is Fri 4 Jan 19.

In order to allow time for the committee to consider and discuss the matter fully before formulating a reply, I would request that if possible, the response date be extended to Fri 18 Jan 19.

During the morning of Wed 12 Dec 18, I walked the bridleways concerned, including the permissive route, and met briefly with Mr Moore.

I trust this application will be looked upon favourably."

The case officer agreed to an extension until 18 January 2018.

Owing to its length the full response to the consultation is appended at **APPENDIX 1B**

6.4.7 **The British Horse Society 14 January 2019**

Owing to its length the full response to the consultation is appended at **APPENDIX 1C**

6.4.8 **Coffin Mew acting for Mr Moore 07 January 2019**

"*Application to divert part of bridleway CALW89 and bridleways CALW89A and CALW89B*

Further to the Submission Letter dated 31 May 2018 from my former firm (Thrings) to Richard Broadhead, I am writing now to let you have the most up to date figures for the use of the present bridleway and the proposed bridleway for the period March 2018 to December 2018.

I attach the following documents:

- *Record of Use from March to December 2017 (Appendix 1 and Enclosure 12 to the Submission Letter).*
- *Record of Use from March to December 2018 (Appendix 2).*

As set out at paragraph 12.16 of the Submission Letter, "the best evidence that the proposed bridleway is not "substantially less convenient" and is preferred is the fact that, given a choice between using the present bridleway and the proposed bridleway, users have chosen to use the proposed bridleway."

In the period from March 2017 to December 2017 the use can be broken down as follows:

Users	*Present bridleway*	*Proposed bridleway*
Riders	*0*	*659*
Walkers	*14*	*934*
Cyclists	*0*	*26*

In the period from March 2018 to December 2018 the use can be broken down as follows:

Users	*Present bridleway*	*Proposed bridleway*
Riders	*1*	*695*
Walkers	*25*	*1,152*
Cyclists	*2*	*28*

NB (i) Groups of users travelling together are counted as 1.
(ii) Proposed bridleway closed between 4 June and 12 June 2018 for track works.

As you will see, not only do users choose to take the proposed bridleway but the number of users has increased significantly.

I hope you find these figures helpful."

Appendix 1 (Enclosure 12)

Record of Use of Bridleways 2017

Proposed Bridleway

Month	***Riders***	***Cyclists***	***Walkers and Runners***	***Total***
March	*34*	*1*	*41*	*76*
April	*83*	*1*	*82*	*166*
May	*98*	*6*	*84*	*188*
June	*79*	*3*	*103*	*185*
July	*82*	*6*	*93*	*181*
August	*103*	*0*	*144*	*247*
September	*74*	*3*	*121*	*198*
October	*50*	*3*	*125*	*178*
November	*39*	*3*	*76*	*118*
December	*17*	*0*	*65*	*82*

NB *Groups of individuals travelling together are counted as 1.*

Official Bridleway

Month	***Riders***	***Cyclists***	***Walkers and Runners***	***Total***
March			***3***	*3*
April			*0*	*0*
May			*1*	*1*
June			*1*	*1*
July			*0*	*0*
August			*0*	*0*
September			*3*	*3*
October			*3*	*3*
November			*1*	*1*
December			*2*	*2*

NB *Groups of individuals travelling together are counted as 1.*

Appendix 2

Record of Use of Bridleways 2018

Proposed Bridleway

Month	***Riders***	***Cyclists***	***Walkers and Runners***	***Total***
March	*22*	*0*	*154*	*176*
April	*49*	*4*	*94*	*147*
May	*73*	*1*	*102*	*176*
*June**	*74*	*2*	*52*	*128*
July	*85*	*7*	*89*	*181*
August	*98*	*4*	*155*	*257*
September	*82*	*1*	*118*	*201*
October	*96*	*7*	*122*	*225*

November	*66*	*1*	*140*	*207*
December	*50*	*1*	*126*	*177*

** Proposed bridleway closed between 4 June and 12 June 2018 for track works.*

***NB** Groups of individuals travelling together are counted as 1.*

Official Bridleway

Month	***Riders***	***Cyclists***	***Walkers and Runners***	***Total***
March	*1*	*0*	*1*	*2*
April	*0*	*0*	*4*	*4*
May	*0*	*0*	*2*	*2*
*June**	*0*	*0*	*11*	*11*
July	*0*	*1*	*1*	*2*
August	*0*	*1*	*1*	*2*
September	*0*	*0*	*0*	*0*
October	*0*	*0*	*2*	*2*
November	*0*	*0*	*1*	*1*
December	*0*	*0*	*2*	*2*

** Proposed bridleway closed between 4 June and 12 June 2018 for track works.*
***NB** Groups of individuals travelling together are counted as 1.*

6.5 The applicant responded to the objections received and their response is appended at **APPENDIX 1.D** Further correspondence was received in July 2019 and this is included here at **APPENDIX 1.G**

6.6 **Statutory Undertakers**

No apparatus has been identified as being affected by the application. However, it is noted Openreach do have plant on the road u/c7008 between points A and B (telephone line crossing over the proposed junction at A and a pole on the road u/c7008) and in the event that the diversion was successful and the applicant further applied for an extinguishment of the road u/c7008 spur created by the diversion, an allowance for Openreach apparatus would need to be made and consented to by them.

7.0 Representations not solicited by Wiltshire Council

Wiltshire Council has received a number of representations from members of the public relating to the new route. The responses appear not to be in direct response to the Council's consultation (no respondents refer to the proposals regarding CALW40 and 41) and it is not known what prompted parties to respond or what information they were given. Correspondence from 88 individuals was received. Owing to the need to comply with General Data Protection Regulations (GDPR) all parties were written to and their attention drawn to not only the Council's privacy statement and details of how their data would be held but also to the public facing nature of the process to which they had contributed. As a result of this 28 were withdrawn (and have been deleted) leaving 60 who confirmed that they were content for the Council to hold their data and use it in this way (though some

elected for anonymity whereby only their response and not their identity forms part of the case).

7.1 Notwithstanding that the Council does not have a duty to make an order here (or to forward any so made to the Secretary of State), it is only a power it has, in the event that an order is made and objected to and Wiltshire Council decides to support that order, all consultation responses must be forwarded to the Secretary of State for Environment, Food and Rural Affairs where they will be considered by an Inspector and become part of the case.

These responses are appended at **APPENDIX 1E**

7.2 Responses have been categorised as follows:

Comment	**Number of responses**	**Case officer's comment**
The diversion will be wider	28	The proposed new route will be between 4 and 11 metres wide. The existing route has a recorded width of between 4 and 10 metres wide. The comparison must be made as if the whole width is available.
The diversion has a better bridge	21	The Council must consider that the existing route has a bridge appropriate for the width of the highway.
The diversion is safer	34	Matters raised relating to safety are slipping on gravel driveway, the bridge and dogs. All of which are partial or temporary obstructions and should be disregarded from considerations
The diversion has less mud	25	The Council must consider that the existing route is in good repair and maintained to a standard suitable for the use it gets
The diversion has better gradient	29	The gradient north of the River Marden (after the steeper section to the bridge) is less than the existing route
The diversion is better for privacy and security	17	Agreed
The diversion is good for people with buggies and the elderly	7	The Council must consider that the existing route is in good repair and maintained to a standard suitable for the use it gets.

Comment	Number of responses	Case officer's comment
Definitive route has partial or temporary obstructions limiting use i) dogs ii) cars iii) gates iv) bridge	 8 8 1 21	 Includes 1 dog bite incident reported Parked cars regularly obstruct the route The two gates are obstructions Comparison must be made with a wider bridge than is currently provided on the existing route
The diversion has better views	7	The diversion has different views, some of which are already available from footpath CALW40
The diversion is pleasant and enjoyable	10	The Council must consider that the existing route is clear, in good repair and maintained to a standard suitable for the use it gets when a comparison is made.
The diversion is convenient	15	Convenience must be weighed against the existing route as if fully available, maintained and with a wider bridge

7.2 Responses number 1 and 2 are identical as are 74b and 75.

7.3 Some responses demonstrate that comparison has been made with the existing route in its current condition:

No 41 *"In 24 years I have not noticed that the official route has ever been maintained by Wiltshire Council."*

No 8b *"The bridge is too narrow and the surface of the bridge is unsuitable for horses and ponies used by Pony Club members, and I understand that accidents have been recorded on this bridge in the past. It is therefore my view that continued use of the existing bridleway is unsafe.."*

No 48b *"Should we be required to use the original bridge then I will not use it at all as it is an unnecessary danger."*

No 70 *"…the old bridge was an accident waiting to happen from a rider's viewpoint."*

No 73 *"I have ridden in this area for many years and the original bridleway was impossible for most of the year, the bridge made it downright dangerous. On the occasions when I did ride it I was always in fear of clipping my knees or even worse the bridge giving way under the pair of us".*

7.4 It is not disputed that the bridge on the existing route is considered unusually narrow for equine use and should be replaced. Wiltshire Council proposed to replace this with a wider

bridge in 2003/4 but were delayed from doing so. It is important to stress that the narrow bridge and the unmaintained nature of the grown in and muddy ground to the south should not be considered when making the comparison. In reality the bridge comparison should be the same for either route. In the event that a diversion were to be successful Wiltshire Council would approve the same structure at either location meaning there would be no material difference between the bridges themselves (unless the stone structure was brought up to a condition certified as acceptable by Wiltshire Council). The applicant has verbally indicated a willingness to provide whatever bridge was deemed suitable and required by Wiltshire Council.

8 Photographs of the route

8.1 The following images are taken from similar locations and demonstrate the effect of trees growth and parked vehicles on the accessibility of the highway.

c.1968 (temporary bridge in place) **2014** **2018**

8.2

Existing route
From Bridge Y north towards Point A (Application plan and Appendix 1.F)

8.3

Existing route from Bridge Y south towards Point C (Application plan and Appendix 1.F))

8.4

Proposed new route from Point C leading south west (Application plan and Appendix 1.F)

8.5

Proposed new route approaching Bridge X (Application Plan and Appendix 1.F)

8.6

Proposed new route over Bridge X (Application Plan and Appendix 1.F))
NB Bridge is shared with footpath CALW 40

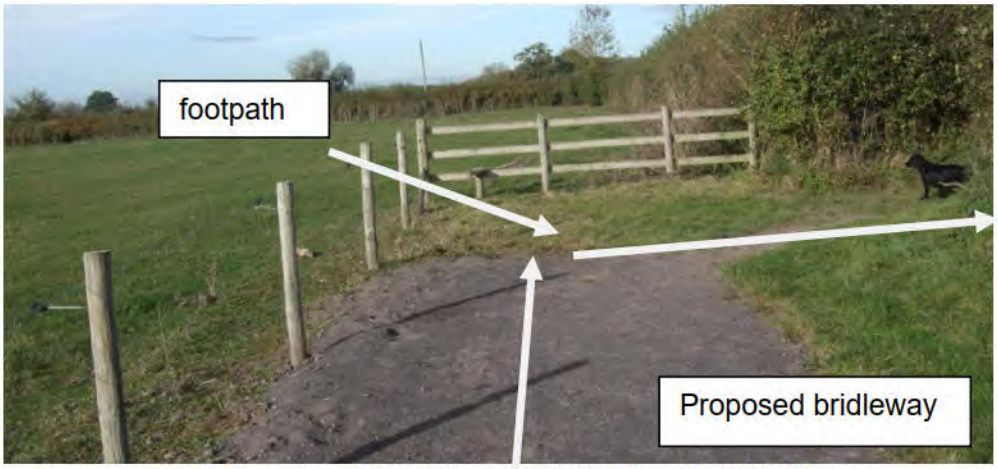
8.7

Proposed route from Bridge X leading north and north west

8.8

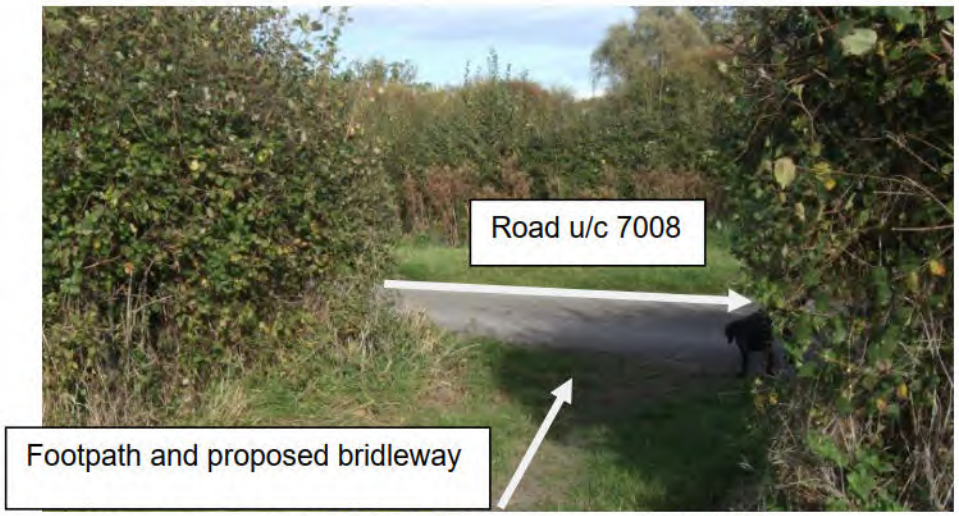
Proposed route leading east

8.9



Proposed route at junction with footpath CALW43

8.10



Proposed route at junction with road u/c7008

8.11

Continuation of road u/c 7008 north

8.12

View of The Mill House from proposed new route

8.13

Proposed route over existing bridge carrying footpath CALW40

9 The legal tests

Summary of Legal Position and Tests

Wiltshire Council is not under a statutory duty to make an order to divert the right of way though it has a power to do so. In deciding whether it will or not make an order it must consider the legal tests contained within section 119 of the Highways Act 1980. These are detailed below. To make an order it must be shown that tests s.119(1) and s.119(2) are satisfied. It may consider the tests within s.119(6) at this stage. If it proceeds to make an order, it must consider the tests at s.119(6) in order to either confirm the order itself or send the order to the Secretary of State for determination. Where an order is made but the Council does not consider s.119(6) is satisfied, it has the power to abandon the order.

9.1 The council must consider the tests at s.119(1) and (2) and may consider the legal tests at s.119(6) at this order making stage (see paragraph 3 this report). Consideration is made with reference to the plan appended at **APPENDIX 1. F.** Although the bridleways CALW89 (part to be diverted), 89A and 89B are recorded in 3 parts they are regarded throughout this analysis and comparison as being one highway “the bridleway” (i.e. length B to C on plan). The distance A to B on the plan is the road u/c 7008.

9.2 **Section 119(1)**

“*Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or special road) that, in the interest of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, -*

(a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and

(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a "public path diversion order"."

9.3 The diversion of the bridleway as proposed in the application would remove the bridleway from its current location past The Mill House (approximately 3 metres from the front of the house) to land bordering agricultural land to the south west and west at its furthest point approximately 100 metres from the front of the house; this would improve the privacy of the house and associated areas. With appropriate planting it would become possible to screen the view of the house windows from the bridleway if it were moved to the proposed location, further promoting privacy. The removal of the bridleway from its current location would enable the house owner to gate his property securely and hence assist with matters relating to security. It is agreed that it is in the landowners' interest to remove the bridleway from the front of the house and buildings.

9.4 A route past The Mill House is clearly a popular and well used part of the highway network (reference data supplied by the applicants at paragraph 6.4.8) and extinguishment would not be an option without an alternative being provided. Accordingly to achieve the applicant's aspiration it is agreed that it would be expedient that the line of the path would need to be diverted and that an alternative route is required to achieve this.

9.5 **Section 119(2)**

"*A public path diversion order shall not alter a point of termination of the path or way –*

(a) if that point is not on a highway

(b) (where it is on a highway) otherwise than to another point which is on the same highway or highway connected with it, and which is substantially as convenient to the public."

The southern end of the diversion (Point C Appendix 1.F) does not alter the point of termination of the highway.

9.6 The northern end of the diversion (Point B Appendix 1.F) is affected by the diversion and is moved to point A. Currently the bridleway ends at the road u/c 7008 where it continues north in a straight line. Point A is 30 metres north of Point B and is a 90 degree turn from the same road. It cannot be argued that joining another highway at a right angle is more, or as, convenient than joining one straight on and the applicant route creates a physical highway T junction where there was not one before. S.119(2) allows for a small degree of inconvenience and the legal test is that the new junction is *substantially as convenient,* that is, that it is largely as convenient. Matters relating to the need to stop and give way, visibility and conflicts between users are all issues that would be relevant with a junction but that are simply not present to consider with the existing continuous highway situation.

9.7 The reality may be that there is relatively little contact with vehicular traffic since the only destination is The Mill House itself but levels of other traffic using the bridleway are

considerable. With as many as 257 users on the route in a month (applicants' figures August 2018) it is easy to envisage a situation where a cyclist, walker or runner rounds the corner from the u/c 7008 to spook a horse going in the opposite direction. It is noted that the junction already exists for footpath CALW43 and that there is an additional potential for conflict between users of this path; levels of use are not known for CALW43, it is however likely to be significantly lower than for the mixed use bridleway and officers consider the junction of CALW43 at the stile with the proposed new route unlikely to be a problem.

9.8 Issues related to visibility may be addressed by widening of the splay and maintenance of hedgerows but the need to slow, look and turn cannot be mitigated and can never be as convenient as a straight line route. Cyclists would be forced to break cadence and slow or possibly stop and look, likewise horse riders and walkers. The Council must consider whether it is *substantially as convenient* and it is considered that deviating from the existing straight line route at this point is considerably less convenient than the existing. Owing to the end of the public highway being 30 metres south of point A there is also the risk of cyclists, especially those who are travelling down the hill, overshooting or missing the junction completely. Any gate erected by The Mill House after a successful extinguishment of the bridleway would only be at point B and could not be across the highway at A.

9.9 The diversion of the applicant route creates a section of cul-de-sac highway. The most southerly 30 metres of road u/c 7008 would remain as a cul-de-sac maintainable at public expense (between points A and B Appendix 1.F). This is a vehicular highway and rights over it may only be addressed by the Magistrates Court (s.116 Highways Act 1980) or the Minister where affected by planning consent (s.247 Town and Country planning Act 1990). No resources are available to address the extinguishment of rights over this length of highway and if the diversion as applied for were successful it would remain as a 30 metre spur of vehicular highway maintainable at public expense serving only The Mill House.

9.10 **Section 119(3)**

"Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall –

(a) specify a date under subsection (1)(a) above, and

(b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out."

The effect of s.119(3) is that the existing route is only extinguished when any order made under s.119 is not only made and confirmed but also certified by the highway authority.

9.11 The proposed new route has already been constructed to a specification that provides an all weather surface over part of the width for the majority of its length. However, Bridge X has been identified by Wiltshire Council as not meeting an acceptable specification for a bridleway in its current condition and would require works to meet the Council's specification before being certified. Agreement would need to be reached with Wiltshire Council regarding works and for any commuted funds for the future given the poor condition and limited life expectancy of Bridge X. In the event that the applicant preferred to provide a new bridle bridge in its place then this would be acceptable to Wiltshire Council, though all costs would need to be found by the applicant.

9.12 On certification of the route, the effect of any order made under s.119 would be to extinguish the existing route and to record the new route as a highway maintainable at public expense. Failure to bring the route and bridge to the Council's specification would result in the highway being created in addition to the existing route, but it would be one that was not maintainable at public expense. In other words, the creation of the new highway is not conditional on certification of the new route but the extinguishment of the existing route is.

9.13 The current bridge (bridge X) is a private bridge currently carrying a public footpath. The existing position is that Wiltshire Council is liable for a portion of the maintenance liability relative to the footpath status it already has.

9.14 The applicants' willingness to maintain the proposed route is noted but the facts of the matter are that the route would become maintainable at public expense on certification. This ensures that ongoing maintenance of the route becomes part of the Council's statutory duty and transcends any changes in land ownership or intentions of the current landowner. Indeed, once accepted as a highway maintainable at public expense authorisation from Wiltshire Council would be required to perform any works to it though, where a landowner is willing to maintain a route, it is common for agreement to be reached.

9.15 Wiltshire Council has an existing duty to maintain the existing bridleway and it is noted that works to vegetation, the surface (including drainage and provision of sun and air) and the provision of a suitable bridge have not been prioritised to date.

9.16 **Section 119(4)**

"A right of way created by a public path diversion order may be either conditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order."

9.17 Neither the existing or proposed new route has any conditions or limitations.

9.18 **Section 119(5)**

"Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-

(a) any compensation which may become payable under section 28 as applied by section 121(2) below, or

(b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public, or

(c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.

9.19 The applicants have agreed to pay any compensation which may arise in consequence of the coming into operation of the order and any expenses which may be incurred in bringing

the new route of the path into a fit condition for use by the public as required by the Council. The applicants have also agreed to pay the sum of £2070 plus the cost of any associated site works incurred by the Council on completion of the application or proportion of same if the application is withdrawn or if an order is made, advertised but subsequently not confirmed.

9.20 **Section 119(6)**

"The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which –

(a) the diversion would have on public enjoyment of the path or way as a whole

(b) the coming into operation of the order would have as respects other land served by the existing right of way and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

So, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.

(6A) The considerations to which –

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and

(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,
Include any material provision of a right of way improvement plan prepared by any local authority whose area includes land over which the order would create or extinguish a public right of way.

9.21 S.119(6) contains tests to be satisfied on confirmation of an order made under s.119. The Council is entitled to consider these at the order making stage (paragraph 3.2 and 3.3) and is required to consider them as distinct tests relating to convenience, and expediency with regard to public enjoyment of the way as a whole and the effect of any order on land of both the existing route and the proposed new route. A balancing consideration for the expediency of the confirmation of any order may be made between the interests of the landowner and the effect on the public's enjoyment of the path as a whole.

9.22 Officers are guided by Advice Note No 9 issued by The Planning Inspectorate Rights of Way Section 11th revision April 2019 as follows:

"27. Section 119(6) was considered in R (on the application of Young V SSEFRA [2002] EWHC 844 and the view taken that subsection (6) has 3 separate tests to it.

(i) Firstly, that the Order is expedient in terms of section 119(1), i.e. that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path be diverted but not so as to alter the point of termination if not on to a highway or to a point on the same highway not substantially as convenient to the public.

(ii) Secondly, that the diverted path will not be substantially less convenient to the public in terms of, for example, features which readily fall within the natural and ordinary meaning of the word 'convenient' such as the length of the diverted path, the difficulty of walking it and its purpose.

(iii) Thirdly, that it is expedient to confirm the order having regard to the effect:

(a) the diversion would have on the public enjoyment of the path or way as a whole;

(b) of the order on other land served by the existing public right of way; and

(c) of the new path or way on the land which is to be created and any land held with it.

There may nevertheless be other relevant factors to do with the expediency in the individual circumstances of an order.

28. It is possible that a proposed diversion may be as convenient as the existing path but less enjoyable, perhaps because it was less scenic. In this event, the view in Young was that the decision maker would have to balance the interests of the applicant for the order against those of the public to determine whether it was expedient to confirm the order.

29. Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer that the existing path/way, for example). In such circumstances, the diversion order should not be confirmed, since a diversion order cannot be confirmed under s.119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion.

30. Whereas section 118(6) provides that, for the purposes of deciding whether a right of way should be stopped up, or any temporary circumstances preventing or diminishing its use by the public shall be disregarded, section 119 contains no equivalent provision. However, [it is the Inspectorate's view that] when considering orders made under section 119(6), whether the right of way will be/will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. Therefore, in all cases where the test is to be applied, the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it."

9.23 **Is the proposed new path substantially less convenient than the existing?**

Convenience can be taken to include features such as length, difficulty of walking and purpose.

9.24 **Length** from Plan at **Appendix 1F**

Length of new route (A to C)	269 metres
Length of existing bridleway route (B to C)	107 metres
Length of road u/c7008 (A to B)	26 metres
Total length of existing route (A to B to C)	133metres

The effect of the diversion is to more than double the length of public right of way at The Mill House requiring the user to cover an additional 136 metres. This would have the effect of increasing the overall length of Calne Without 89,89A and 89B from 385 metres to 547 metres.

9.25 The proposed diversion route is significantly longer and lacks the clear sense of direction and purpose that the existing, essentially north south, route offers. As a consequence of the extra length it has a lesser gradient on the northern side of the river though has a short steep unsurfaced section immediately north of Bridge X as the path climbs away from or towards the river.

9.26 In considering convenience the Council may also consider the ease of use, however, this must be by way of comparison with the existing route as if it were open and available and maintained to a standard commensurate with the local traffic of the area (i.e. walkers, horse riders and cyclists). Users of the route have made it clear that many of them find the way more convenient (15 of the 60 unsolicited responses mentioned this) but it is more likely than not that they have compared the new route with the existing in the condition it is now in rather than how it would appear with a wider bridge and better maintained and drained surface. Certainly many correspondents refer to dangers of the bridge or mud on the existing route. Notwithstanding the appearance of greater width of the proposed new route (which has none of the overgrowth or obstructions of the existing) officers consider that the width of the existing (definitive statement width 4 to 10 metres) is little different to that of the proposed new route (4 to 11 metres).

9.27 The purpose of the existing route may also be a consideration for convenience. For example a route that leads to a bus stop would be substantially less convenient if it were any longer and took more time to traverse but there may be a ‘trade’ between length and convenience if say the proposed new route provided better network links or perhaps offered a safer place to cross a road.

9.28 The original purpose of the road past The Mill House (u/c 7005 and u/c 7008) appears to be as part of the local road network and responses to consultations relating to changes to vehicular use conducted in the 1960s by Wiltshire County Council support that this was the use it had (both the Parish Council and the Rural District Council responded to this effect). In more recent times, and with the extinguishment of the public vehicular right, use of the route is likely to be largely recreational by walkers, cyclists and horse riders.

9.29 Considerations of convenience should not be conflated with those of enjoyment and it is accepted that horse riders especially may find that a longer route adds to their enjoyment as it affords them the opportunity of a longer ride, however a route that more than doubles the distance of the section it replaces must fall to be considered as substantially less convenient. Not only is the proposed new route 136 metres longer it also includes a number of 90 degree bends all of which would significantly reduce the speed at which a horse or cyclist could traverse the route owing to maneuverability and visibility being impaired. The junction at point C offers a wide splay which disguises the angle but there is no relief from the steep angled turns at the bridge and at point A.

9.30 The proposed new route also shares the use of Bridge X with footpath CALW40. This cannot be said to enhance footpath CALW40 but could have the potential for an adverse effect for users of the footpath who seek to exclusively use the footpath network. Those users may find it less convenient or perhaps less enjoyable to share the route; however, officers doubt that any such detriment would be judged to be substantive.

9.31 In examples from other places where a longer diversion has been successful it has been the case that it is only longer when approached from one direction and is shorter when approached from the other or there has been a greater gain in convenience (for example the removal of a bridge or limitation like a stile or gate). In this case the diversion is always longer regardless of the direction of travel.

9.32 Guidance (Planning Inspectorate Advice Note No 9 paragraph 29) is clear that in these circumstances an order cannot be confirmed.

9.33 **Expediency to confirm the order having regard to the effect on the public enjoyment of the way as whole**

Matters relating to enjoyment may relate to views, flora and fauna or perhaps character. It is a wide ranging consideration and may be balanced against the interests of the landowner. The example given by the Planning Inspectorate in Advice Note no. 9 is that where a proposed diversion is as convenient but less scenic the decision maker (either Wiltshire Council or the Secretary of State) would have to balance the interests of the applicant against those of the public to determine whether it was expedient to confirm the order.

9.34 As with other parts of section 119 it is necessary to compare the proposed new route with the existing route in a fully open, appropriately maintained and bridged condition. For some members of the public the enjoyment of using the existing route lies in its history. One respondent writes;

"..this lane has existed for centuries, and is of great historical value. Much of the pleasure derived from using old roads and lanes is the knowledge that you are following in the footsteps and wheel tracks of countless generations. There has been a mill here for nearly 500 years, although the present one was rebuilt in the 18th century. Being forced to view the mill from a distance would diminish the pleasure of using the lane…"

9.35 Both the Mill House and the outbuilding opposite have been listed by Historic England as Grade 2. Historic England's website states:

"A building is listed when it is of special architectural or historic interest considered to be of national importance and therefore worth protecting."

Calstone Mill has been allocated List UID: 1253559 and is described as:

"Mill House, late C18…Lower Mill at Calstone recorded as owned by the Michell Family from 1545 to 1720 and by Baily Family in late C18 used for corn and cloth."

The outbuilding has been allocated List UID: 1253408 and is described as:

"Outbuilding, late C18 or early C19….An industrial range possibly connected with the use of Calstone Mill for cloth. Picturesquely set right on the river Marden."

9.36 The proposed diversion route currently allows more distant views of The Mill House (see page 35 this report) but denies the user close views of the building and the opportunity to pass between the mill building and the outbuilding. The user is denied views of the outbuilding in its picturesque setting (see listing) from the proposed new route. Although the user can currently see The Mill House from the new route and may have glimpses of the outbuilding these views or glimpses could be lost by tree growth or future planting. Wider views of the landscape are not lost from the proposed new route especially to the south west, where views remain very good. The new route currently offers more open views to a grazed field to the west and north. It is also noted that walkers on the existing footpath network already enjoy some of the longer views of The Mill House.

9.37 It is therefore accepted that the loss of historical context and close views of the listed buildings is diminished, or lost in the case of the outbuildings, by the diversion of the path. However, a number of respondents clearly dislike passing so close to The Mill House and feel they are intruding on the residents' privacy. It is therefore undoubtedly beneficial to their enjoyment to divert the path. 17 of the 60 unsolicited correspondants considered this a factor that made their use more enjoyable. Calne Without Parish Council consider that the new route has better views of The Mill House and the local countryside. It also submits that the route may be enjoyed by a wider range of people than the existing. The latter remark fails to address the need to compare the existing route in a properly maintained condition and in any event the adjoining network of footpaths and bridleways offer limited opportunities for access for the less able. Where the proposed new route offers opportunities for cul-de-sac use to view the river, the same may be said of the existing, notwithstanding concerns users may have of feeling intrusive when lingering at the river.

9.38 Although it is not unusual to pass close to a dwelling situated beside a highway it is accepted that anxieties arising from this can affect enjoyment of a route. Temporary obstructions like parked cars, a residential style gate, domestic road surfacing and lack of signage or way markers will all be factors that can make people feel uncomfortable but officers accept that the close proximity of users to the windows does make the question of effect on the public's enjoyment more finely balanced.

9.39 It is noted that the new route passes land currently grazed by cattle. A risk is raised by this to horse riders where horses may be 'spooked' by the presence of cattle or by inquisitive young cattle rushing up to the fence. Riders may be unseated by the reaction of horses under these circumstances and horses may seek flight in more extreme instances. Although this is not an unusual occurrence for anyone hacking in the countryside it is not a risk presented to users of the existing route.

9.40 To confirm the order the decision maker must consider whether losing the historical context of the former road and close views of the listed buildings has a greater or lesser effect on the enjoyment of the public of the way as a whole. The way as a whole is a relatively straight and purposeful historic route and inserting a significant bulge in this route does undoubtedly affect the enjoyment of those interested in journeys and their history. Views of The Mill House and outbuilding from the proposed new route may be lost as a result of tree growth and screening but users who have no interest in this would benefit from not feeling like they are intruding on the privacy of The Mill House.

9.41 It is these things that any decision maker may balance against the interests of the owner in determining whether it is expedient to confirm any order.

9.42 **Other relevant factors relating to expediency**

Submissions have been made related to the cost to the council of restoring the condition of the route to one suitable for the local traffic of the area (i.e. appropriate for horse riders, cyclists and walkers). In particular the condition of the ground immediately south of the bridge can become wet, muddy and poached with use. The ground to the east of this area has suffered movement in recent times and it is alleged that this would affect the stability of the highway.

9.43 Officers cannot confirm the severity of this effect or on any ability to maintain the existing highway. However, it is an established principle that the owner of the land supporting the highway is responsible for retaining the highway. In other words, any collapse of the highway as a result of movement in the adjoining land would not be a cost to the council but would be a cost to the landowner. This is therefore an additional factor for making the order in the landowner's interest but not so as to represent a saving for the council.

9.44 It is also alleged that the provision of a bridge would be an additional expense that the council would avoid if the way were to be diverted. The council resolved to build a replacement bridge over 40 years ago as the crossing of the River Marden at this point is by way of a bridge maintainable at public expense. Although the vehicular bridge was never re-built a series of narrow bridges were provided to enable limited access and it is one of these that is in use today. The duty to provide a suitable bridleway bridge remains and in 2004 the council was delayed in installing the planned wider bridge and this remains the case to this day. The duty to do so remains and will remain in the event that the existing route is diverted to a new bridge. Further to a recent survey, the current bridge on the proposed route was found not to be in an acceptable condition and would need improvement before it could be accepted as part of a new bridleway. Once accepted the council would accept ongoing liability commensurate with the public use. Where the bridge has a limited life (which the council's bridge team consider this one has) any replacement would be the responsibility of the council though it may be possible to agree to a commuted sum from the applicant.

9.45 In any event, the cost of a new bridleway bridge is limited to around £3000 - £4000 and will ultimately be the responsibility of Wiltshire Council anyway. Any saving would be limited to the short term. This must be weighed against the long term effects of diverting the public right of way.

9.46 **Effect of land served by the existing and proposed right of way**

Considerations must be made to the effect of the diversion on land served by the existing and proposed right of way. This may affect the expediency of confirming the order. Where a highway maintainable at public expense is recorded over land, the highway does not form part of the Title Absolute as the surface is vested in the highway authority.

9.47 Title Absolute to the land over which the proposed route leads is registered (WT309963) to the applicant. Possessory Title to the land over which the existing highway leads was registered (WT261018 and WT420850) to the applicant; however, Title No. WT261018 (the highway north of the bridge) has now been upgraded to Title Absolute and combined with WT190593 (the main property). This is notwithstanding the presence of a public highway over part of the land.

9.48 Owing to incomplete documentation land south of the bridge (including the highway land) was registered as Possessory Title (WT420850) in 2016 and can be upgraded to Title Absolute in 2028. This is notwithstanding the presence of a public highway over the land.

9.49 It is considered that there is no risk of compensation claims arising from the diversion of the existing highway. Planning permission was sought and granted for the construction of the access track. It is not known whether any consent or permission was required or granted specifically for the removal of agricultural land for highway use.

9.50 The land lies within the North Wessex Downs Area of Outstanding Natural Beauty who were consulted on the construction of the proposed bridleway at the planning application stage.

9.51 **Consideration of Wiltshire Council's Rights of Way Improvement Plan**

Section 119(6) also requires consideration to be given to any material provision of a rights of way improvement plan prepared by the council. In Wiltshire this document is entitled Countryside Access Improvement Plan 2015 – 2025

9.52 Opportunity O36 at page 22 of the Appendices to the Plan highlights the conflicting considerations that the Council has with changes to the existing network:

"Processing legal orders to change rights of way brings about positive changes to the network e.g. it protects ancient routes and diverts routes to meet modern requirements."

9.53 The proposed diversion of this bridleway would meet a modern need for greater security and privacy but it would fail to protect an ancient route.

9.54 Policy 4 at Page 7 of the Policies appendix confirms both the council's and landowners' key maintenance responsibilities:

"Maintenance responsibilities are divided between the council and landowners/occupier. The council's key responsibilities are:

- *Surface maintenance*
- *Signage and waymarking*
- *Repairing and replacing of bridges over natural watercourses, although there may be a shared responsibility where a bridge is also used by a landowner or occupier for private access (policy 6)*
- *Contributing toward repair and replacement of gates and stiles*
- *Clearance of annual growth and major clearance of overgrown paths"*

"The key responsibilities of landowners are:

- *Maintaining stiles, gates and other boundary crossings in a safe condition commensurate with the status of the path*
- *Obtaining consent from the highway authority before erecting new stiles or gates on footpaths or bridleways (there is no legal provision permitting landowners to erect new gates on restricted byways and byways open to all traffic)*
- *Cutting back encroaching hedges or overhanging vegetation that is growing from their land*
- *Keeping paths clear of obstructions such as padlocked gates, electric fences etc*

- *Ensuring that any animal known to have dangerous characteristics is not kept on land crossed by a public right of way*
- *Ensuring that no misleading signs are placed near rights of way that might deter people from using the path*
- *Reinstating ploughed cross field paths and bridleways to not less than their minimum widths within 14 days of initial ploughing. After this period any further disturbances must be reinstated within 24 hours….*

Appropriate maintenance standards will be identified by the council according to the status of the path, type of use, level of strategic importance within the regional and local network and the character of the surrounding area."

9.55 Policy 6 Bridges states:

The majority of rights of way bridges over natural water courses are provided, owned and maintained by the council. Where a privately maintainable bridge carries a public right of way the council will at its discretion contribute towards any justifiable repair or replacement. Contributions would not exceed 5% for a footpath and 10% for a bridleway. Such bridges are typically found on farm tracks, private drives and larger old country estates.

…….

When rights of way cross rivers near mills and sluices, bridges can often be part of the sluice structure. Generally these are privately maintained but ownership and responsibility is on a case by case basis."

9.56 Policy 7.2.2 Legal powers to authorise structures across public rights of way states:

"Rights of way are highways so must not be illegally obstructed. A structure which restricts the use of Public Right of Way is an offence under section 137 Highways Act 1980 and also a common law nuisance unless:

- *It is recorded on the definitive map and statement, the legal record of rights of way, as a limitation; or*
- *It has been authorised under section 147 Highways Act 1980*
- *It has been installed by the Highway Authority under either Section 66 or Section 115B of the Highways Act 1980*

In the case of unauthorized structures, if the structure can be shown to be unlawful the council may either consider requiring the landowner to remove the structure or take action itself to secure removal at the landowner's expense. Enforcement action will be undertaken in line with the council's enforcement policy."

9.57 **Regards relating to the needs of agriculture, forestry and the conservation of diversity**

Although the creation of the proposed new route is over former agricultural land the creation and construction of the track has been approved by Wiltshire Council through planning applications. Matters relating to ecological impact would have been considered at that time. It is considered that recording the proposed route as a public right of way would have no detrimental or advantageous effect on the needs of agriculture, forestry and the conservation of diversity.

10 Risk Assessment

The consideration of applications for public path orders under s.119 of the Highways Act 1980 is a discretionary power for the council; it does not have to accept them. However, Wiltshire Council does accept these applications and they are processed by the Council's Rights of Way and Countryside Service. The processing of them is conducted alongside the council's duties relating to the definitive map and statement and accordingly the allocation of applications for public path orders have generally been subject to a delay of approximately 12 to 24 months unless a permitted development is affected which would give rise to a prioritisation of those applications.

10.1 This application was made at the end of May 2018. The timescale for considering the application is considered reasonable and officers do not consider that a risk is raised for the council.

10.2 There is a risk to the council of judicial review by any party in relation to either the council's behavior in this case or of any decisions it may make. The risk is both financial and reputational (see following section) and can be mitigated by the appropriate considerations of the law relating to the case.

10.3 During the consultation period some users of the proposed path have highlighted risks to the public arising from use of the existing right of way. Officers have been unable to find recent (post 2004) complaints submitted to the council relating to the existing path, however it has been acknowledged that a wider bridge is required and that maintenance of the existing right of way has not been prioritised. Where a route is not wholly obstructed it is rare for works to be prioritised when other routes in the County are unavailable or obstructed.

11 Legal and Financial Considerations

The decision of the council must be based on the legal tests contained within section 119 of the Highways Act 1980. Many of the considerations require a comparison to be made between the existing route and the proposed new route; temporary obstructions or difficulties should be ignored when making these comparisons.

11.1 In the event that a decision is taken to turn down the application and refuse to make an order there is no appeal process available within the Highways Act 1980 legislation. Any party may apply to judicially review the decision or processes of the council in the High Court. If the Council were to lose such an appeal it would be liable for the applicant's costs as well as its own. These costs are likely to be in the region of £50,000. If it were to win the case there would be no cost to the council as its costs would normally be paid by the losing party.

11.2 In the event that an order is made to divert the path it is possible that no objections would be received. If this was the case the order could be confirmed by the council (subject to the satisfaction of s.119(6)) and all costs recovered from the applicants. The order would come into effect only on certification of the new route and all costs for bringing the route and bridge into an acceptable condition would be met by the applicants.

11.3 In the event that an order is made to divert the path it is considered more likely than not that objections would be received and accordingly the matter would return to the council to decide whether to abandon the order or to send it to the Secretary of State for Environment,

Food and Rural Affairs (SoSEFRA) for determination. Any decision of the council at this point would again be liable to judicial review in the manner described at paragraph 11.1. Costs could be incurred in the same way. Whether or not Wiltshire Council supports any order made would be dependent on the further consideration of s.119(6) of the 1980 Act and any objections and representations received to that order during the advertisement period.

11.4 In the event that an order attracts objections which are not withdrawn and the order is sent to SoSEFRA for determination the council must bear all costs associated with supporting the order. SoSEFRA would determine the means of determination which could be by written representations, a local public hearing or a local public inquiry. There would be no costs other than officer time associated with written representations, a cost of around £300 for a hearing and costs of around £5000 associated with a 2 day public inquiry. It is open to either the council or any objector to apply for costs at a public inquiry. Such a claim would need to be based on unreasonable behavior by the other side to be successful; the decision on the award of costs would be taken by the Inspector appointed by SoSEFRA.

12 Equality Impact

The council's duty in relation to the Equality Act 2010 is outlined at paragraphs 3.4 to 3.6. As with the considerations of s.119 it is necessary to compare the proposed new route with the existing route appropriately maintained and with a wider bridge. Both routes are free from stiles and gates which can be obstacles to use for some people. The gradient of the northern side of the proposed new route is less than the existing but this is a result of the extra length leaving the balance between the gradient and the inconvenience of having to travel further as conflicting considerations. Additionally there is a short steep unsurfaced section of the proposed new route at the river which may present a barrier to some users.

12.1 The route as a whole is rural in nature and any access for users who are less mobile is likely to be restricted by the wider nature and limitations of the route as a whole and adjoining network than any specific considerations relating to the proposed change.

13 Options to Consider

i) The application for an order under s.119 Highways Act 1980 be refused.

ii) The application for an order under s.119 Highways Act 1980 is approved and an order (under s.119 Highways Act 1980 and s.53 Wildlife and Countryside Act 1981) is made and duly advertised.

14 Reasons for Recommendation

Officers consider that the termination point of the proposed new highway at the northern end is not substantially as convenient as the existing. The existing is a straight line continuation of the highway (u/c 7008 road) (**see Appendix 2**) whereas the proposed new termination point is a right angled turn on to or from the u/c 7008 road. A 'T-junction' and the requirement to give way or stop is created by the proposal. S.119(2)(b) is therefore not satisfied.

14.1 Additionally officers consider that the application fails the test contained within s.119(6) relating to the need for the new route not to be substantially less convenient to the public. The proposed new route more than doubles the length of the existing and involves a number of deviations and turns in the route that are not present in the existing which is essentially a straight line route.

14.2 It is considered that the diversion is in the landowners' interest and hence s.119(1) is satisfied.

14.3 Consideration of matters relating to the effect on use and enjoyment of the route are less clear cut. It is clear that some users value the history of the existing route and appreciate passing between two Grade 2 listed buildings. It is also clear that some users appreciate not passing so close to The Mill House windows and feel that they are intruding on the landowners' privacy. One user records that they are more likely to linger at the river with the proposed new route as they feel they are less intrusive.

14.4 Officers have been mindful that currently a good view of The Mill House (though not the Grade 2 listed outbuilding) may be had from the proposed new route. However, this could easily be lost should any owner or occupier of The Mill House choose to further screen their property with larger trees along this boundary. It is possible that current planting could at least partially achieve this (especially for walkers and cyclists) over time. It is further noted that walkers of the existing footpath network already enjoy longer views of The Mill House regardless of the position of the bridleway.

14.5 It is the consideration of use and enjoyment of the route as a whole that may be balanced against the interests of the landowner when considering expediency and officers consider that these matters are more finely balanced than for other sections of the Act where it is considered there is a clear failure.

15 Recommendation

It is recommended that the application to divert parts of CALW89, 89A and 89B as applied for is refused.

16 Other Considerations

Officers do not deny that the route created by the landowner offers a route that is well used by the public. However, this is against a background of an obstructed and problematic network for them which either wholly prevents or deters use. For example footpath CALW41 is obstructed by a fence where it meets CALW89 and it is known that CALW89 has a narrow bridge at the River Marden close to the Mill House. It is also known that there is a significant level of overhanging vegetation on the existing route and also that there are two unauthorised gates and vehicles parked on occasion on the highway. The route once supported vehicular use (it was used by vehicles in the 1960s) and is clearly capable of being brought into this condition again with attention to surface maintenance, drainage and cutting back growth.

16.1 If the existing route were to be made available to the public it would be possible to properly gauge the preference of the public through use.

16.2 In the event that figures support that the creation of the new route would add to the enjoyment of a substantial section of the public (and it is suggested that horse riders would be likely to be the main beneficiaries) it may be possible to meet the legal tests contained

within s.26 of the Highways Act 1980 relating to need and enjoyment (if those preferring it was a substantial section). An identified diminution of need for the existing could enable a concurrent extinguishment order for the existing route to be made.

16.3 S.26 HA80 addresses need and enjoyment of a substantial section of the public; it does not have to consider convenience of either route as a whole or of the termination point if the enjoyment aspect is satisfied.

16.4 S.118 HA80 contains the provision that the decision making body must disregard any temporary circumstances preventing or diminishing the use of the path by the public (s.118(6) HA80). Unless the existing route is open and available it is not possible to properly evaluate use and preferences therein; this approach is considered especially reasonable where the obstructions are of a temporary nature

16.5 Officers consider that this approach is the way that is fair to all members of the public in determining whether the existing line of the bridleway past The Mill House should, or should not be extinguished.

Sally Madgwick
Definitive Map and Highway Records Manager
24 October 2019

The Planning Inspectorate

Order Decision

Site visit made on 24 January 2023

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 5 July 2023

Order Ref: ROW/3273510

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Wiltshire Council Parish of Calne Without Bridleway 89 (part), 89A and 89B Diversion Order and Definitive Map and Statement Modification Order 2019.
- The Order is dated 16 December 2019 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were five objections outstanding when Wiltshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Preliminary Matters

1. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan.

2. An objection contends that the order is flawed because article 1 does not prevent the existing way from being stopped up before the replacement way is created. However, I consider that article 1 of the Order satisfactorily accords with section 119(3) of the 1980 Act, which requires the extinguishment date to be tied to the date on which the authority certifies that any works required to make good the new path have been carried out. Thus, I do not concur with the objection in this regard.

3. The proposed alternative path has already been laid out and elements of it have gained planning permission (local planning authority references 16/03821/FUL and 18/02808/FUL). Nevertheless, these matters are separate from the legal tests which I must consider under the 1980 Act and consequently they have not formed part of my decision.

4. The Council has received a definitive map modification order application seeking to record Bridleways CALW89 and CALW89A, and part of an unclassified road to the north of the Order route, as restricted byways. The application has not been determined. Whilst I note its contents, this decision must relate to the diversion Order before me, which concerns part of a public bridleway. Thus, if the diversion of any restricted byway rights over the Order route were subsequently sought, this would need to be by a separate Order.

Main Issues

5. Section 119(6) of the 1980 Act involves three separate tests for an Order to be confirmed. These are:

   - Test 1: whether it is expedient, in the interests of the landowner, the occupier or the public, that the path should be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.
   - Test 2: whether the proposed diversion is substantially less convenient to the public.
   - Test 3: whether it is expedient to confirm the Order having regard to the effect which:

     (a) the diversion would have on public enjoyment of the path as a whole;

     (b) the coming into operation of the Order would have as respects other land served by the existing public right of way; and

     (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

6. In deciding whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to enjoyment of the land affected by the new paths must be taken into account, where applicable. Regard must also be had to any material provision contained in a rights of way improvement plan ("ROWIP") for the area under section 119(6A). Other relevant factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation.

7. As the route is within an Area of Outstanding Natural Beauty (the North Wessex Downs AONB) ("the AONB"), section 85 of the Countryside and Rights of Way Act 2000 imposes a duty on me to have regard to the purpose of conserving and enhancing the natural beauty of the area of AONB. This includes, by virtue of section 92, the conservation of its flora, fauna or geological or physiographical features.

Background

8. The existing sections of bridleway run south from a lane which is an unclassified road over a track which passes the owner's property, The Mill House. The path then crosses the river Marden via a bridge before meeting the unaffected section of Bridleway 89. The Order seeks to divert the path further away from the Mill House via a separate bridge over the river.

Reasons

Whether it is expedient in the interests of the owner of the land that the path in question should be diverted

9. The Order states that it appears to the Council that it is expedient that the path should be diverted in the interests of the owners of the land crossed by the bridleways. Therefore I must consider whether the diversion is expedient in these

interests. The Council considers that the Order would improve the privacy and security of the owners' property.

10. Whilst an unclassified road ends towards the top of the property's drive, the existing bridleway passes closer to the front of the owners' property, which contains ground floor windows into which path users can see. The privacy of occupiers of the house is consequently adversely affected by the presence of the path, so that its removal would reduce this adverse effect.

11. The house has a relatively isolated position with minimal natural surveillance from other property, so that the presence of the path close to the house is likely to result in security concerns for the occupiers. Reference is made to the theft of items from the front of the house and a security incident in 2017 which resulted in police action. Whilst these incidents are unsubstantiated and the latter incident was some time ago and appears to have been a "one-off", they are undisputed in opposition. In providing the only public access to the property the Order route may well have facilitated the security incidents. The removal of public access within close proximity of the house by the Order would enable the owners to improve security at the property.

12. In summary, I am satisfied that the Order is expedient in the interests of the landowners in order to improve privacy and security at The Mill House.

Whether any new termination point is substantially as convenient to the public

13. The termination point of the existing route at point C would be unaltered. The termination point of the existing route would be altered at its north end to a point (point A) further north.

14. The alteration in the point of termination would not increase the length of the path, and any risk of cyclists overshooting and missing the new junction at point A could be adequately reduced by the use of appropriate signage.

15. Point A would form a junction into/out of the unclassified road where path users would need to turn approximately 90 degrees, instead of continuing in their line of travel from the current point B. Nevertheless, the purpose of this part of Test 1 is to ensure that a path user between two points is not left unable to reach their destination. In this case the proposed northern point of termination would lie a short distance further north, meeting the unclassified road near the existing point. The connectivity between points on the Order route and surrounding highways would consequently be unaffected.

16. Thus, the alteration in the point of termination of the path would be substantially as convenient to the public.

Whether the new path will not be substantially less convenient to the public

17. When comparing the convenience of the routes included in the Order it is appropriate to assess the existing routes as if they were available for use by the public to their full legal extent without obstruction. Therefore I shall disregard the existence of parked cars, gates and a narrow bridge forming obstructions to the definitive line of the existing path in assessing this test.

18. Several of the submissions in support of the Order refer to finding the proposed route more convenient due to the muddy or waterlogged condition of part of the

existing route's surface on occasion. Whilst an objector found the existing surface passable on a single occasion following a period of wet weather, the weight of evidence overall suggests that users find the surface of the proposed route more convenient than that of the existing route.

19. A five-bar gate was present at point B at the time of my site visit. Although this stood open, the owner submits that it is sometimes closed. In such cases the passage of users of the existing route would be delayed by the need to stop and open the gate, reducing the path's accessibility.

20. Correspondence from the Council to the owners in 2006 states that, if a proposed stopping up of vehicular rights at the Mill House were successful, a bridleway gate could be in place, which should be at the correct location and to the standard required by the authority. Nevertheless, the Council currently considers that the gate is an unauthorised obstruction to the public right. Furthermore, orders of 2008 and 2009 to record the bridleways did not refer to the gate as a limitation. Moreover, the evidence before me does not confirm whether the specifications set out by the authority in 2006 were complied with. Thus, it has not been demonstrated that the gate at point B forms a limitation to the public right. I consequently consider that it is possible to pass freely over that part of the existing path without the need to stop.

21. The existing paths have a relatively straight alignment, providing a route without significant changes of direction. However, factors including the gradient of the paths, the need to pass a property frontage and the presence of a bridge are likely to prevent users such as runners, cyclists and equestrians from using the existing route at speed, in the interests of safety.

22. The proposed path includes several corners, some of which form an abrupt change of direction. These would limit the ability of users to safely use the entirety of the proposed path at speed, so that any change in pace required to navigate the corners would not be considerable.

23. Users of both the existing and proposed routes are consequently unlikely to be doing so at any speed. As a result, when compared to the existing paths, the proposed paths would not unacceptably increase the need to change pace.

24. The length of the proposed path would be greater than twice that of the existing paths, increasing travel time for users. The Order would consequently increase the distance between the existing path's termini by a substantial degree. The additional distance may affect the convenience of the path for users with mobility issues, as referred to by an objector.

25. Nevertheless, as a route connecting lanes serving countryside hamlets, the path as a whole is less likely to be used for errands or for commuting to other locations, and more likely to be used for leisure purposes as part of a longer journey. Therefore, in increasing the travel time between the route's termini, the Order is unlikely to adversely affect the convenience of the majority of users.

26. The gradients of the existing route are relatively steep, whereas those on the proposed route are more level. A significant proportion of the correspondence in support indicates that users prefer the gentler gradients of the proposed route. The correspondence in question appears to have been independently written in each

case, and represents the views of a range of users including pedestrians, equestrians, cyclists and those with mobility issues.

27. As a result of these considerations, the letters in support attract significant weight in assessing Test 2, and demonstrate that the proposal would increase the ease of use of the route in this regard for a considerable proportion of users. The proposed route is consequently likely to be more accessible, in terms of gradient, to users such as those with mobility issues or those with pushchairs, although the additional distance would affect this increased accessibility. Overall, the new path would consequently be as convenient to these two groups.

28. The applicant provides the results of a survey made of users of the existing and proposed routes using closed circuit tv technology over 5 years. These show that a high proportion of users chose to use the proposed route, with relatively few people using the existing route.

29. Objectors submit a photograph of December 2018 showing cars parked on or adjacent to the existing route, which may have deterred some use. Furthermore, in January 2020 an objector provided two photographs showing plastic permissive bridleway signs of a plausible appearance which apparently cover waymarks for the existing route and attempt to direct path users along the proposed route. It is undisputed that all three photographs were taken during the period over which the use survey was undertaken. Therefore the parked cars and altered signs are likely to have deterred a proportion of users from making use of the existing route, and to have encouraged use of the proposed route.

30. Furthermore, whilst I note the submission that the recommendations of the Information Commissioner's Office were complied with by the erection of separate notices stating that cameras were in use, such notices are likely to have deterred a proportion of potential use of the existing route.

31. The above circumstances are consequently likely to have affected users' choice of route. As a result, the survey figures do not accurately represent the usual use of the two paths. Thus, the survey results attract very little weight in my determination.

32. Whilst a gate is present between Bridge Y and point C on the existing route, it is not recorded in the definitive statement as a limitation, and the evidence does not suggest that its presence has been authorised by the highway authority. It is considered by the Council to form an obstruction. Thus, although the proposed route is free of gates, this would not increase the convenience to the public because the existing route is, similarly, to be considered free of gates.

33. The legal widths of the existing and proposed routes are similar, so that an increase in the paths' width would not form a benefit of the Order.

34. Overall, I conclude that the proposed route would be less convenient in some respects, but more convenient in others. For these reasons, the new path would not, on balance, be substantially less convenient to the public.

Provisions within the ROWIP

35. Objective SO14 of the Council's Countryside Access Improvement Plan 2015-2025 seeks to promote travel modes that are beneficial to health. As users may already walk, cycle and ride a horse on the existing route, this objective does not provide any particular support for the Order.

36. Objective SO15 of the ROWIP seeks to reduce barriers to transport and access for people with disabilities and mobility impairment. Whilst there is minimal specific evidence on the Order's ability to meet this objective, I have found above that the proposed route would be as convenient for users with mobility issues. Therefore only a neutral effect in this regard has been shown, so that the ROWIP Objective does not provide any particular support for the Order.

Whether it is expedient to confirm the Order

37. Views of the two Grade II listed buildings at the Mill House are available from the proposed route. Nevertheless, these views are more distant than those of the buildings from the existing route. Furthermore, their availability would depend more on the maintenance of adjacent vegetation, which cannot be assured despite informal undertakings to do so, due partly to the potential for ownership of the property to change.

38. Views of the Mill House from "Bridge X" and surrounding land are already available to pedestrians as the bridge carries footpath CALW40. Thus, the Order would serve to remove closer-range views of the listed buildings for pedestrians, rather than providing alternative views of a different type to this type of user.

39. The proposal would, however, provide longer-range views of the Mill House from Bridge X which are not currently available to equestrians and cyclists, with a potential increase in appreciation of the historic interest contributed by the house's setting for these groups. Some of these users comment that they consider the views from the proposed route to be better, with one equestrian explaining that in using the existing route their attention was too focussed on the potential for their horse to be spooked by various matters in passing in front of a dwelling for them to be able to take in views of the buildings.

40. As a result of the above considerations, the Order would have both beneficial and adverse effects in terms of the contribution of views of the listed buildings to public enjoyment.

41. The wider path as a whole is partially enclosed by mature hedgerow, giving the impression of a landscape feature of some age, which it is currently possible to follow by reference to existing longstanding features. The submission that the existing paths have some historic interest is supported by documentary evidence showing their existence over centuries as part of a longer route between highways, irrespective of a 2007 order which stopped up public vehicular rights but reserved bridleway rights over the Order route. The case in opposition indicates that this history, supporting the generally linear alignment of the existing route as a track of some age with a sense of purpose, contributes to the public's enjoyment of the path as a whole. This enjoyment is enhanced by the existing route's proximity to the listed buildings at the former mill.

42. An objector considers the diversion to form a "contrived detour". In introducing a number of "dog-leg" corners and a more circuitous and less purposeful route between the current termini, the proposed route would disrupt the identified historic interest of following a linear route between defined features. The diversion would consequently have an adverse effect on public enjoyment of the path as a whole in this regard.

43. However, the matter is referred to by only a small number of objectors, and is not referred to as a concern by a considerable number of letters in support. The circumstances in this case consequently differ from those in my colleague's decision (FPS/Y3940/4/8) concerning a route elsewhere in Wiltshire, where a considerable number of objections referred to the loss of a historic route and/or features as their reasons for objecting to a diversion order under section 119.

44. Furthermore, the diversion in this case relates to part of the wider route only, so that the historic interest of the track to the south would remain.

45. For these reasons, the adverse effect on public enjoyment in this regard would consequently be limited.

46. It is submitted that the existing route's surface between Bridge Y and point C is boggy for a few weeks in winter, even if the highway authority meets its maintenance duties. Although the extent to which this is the case is disputed by an objector, the parish council refers to waterlogging issues on the route and some photographs of boggy ground are provided. Furthermore, there was some standing water on the route at this point at the time of my site visit. These circumstances are likely to make use more challenging at certain times of the year, affecting public enjoyment of the path as a whole.

47. The proposed route has a hard surface and passes through more open land, and therefore it would not be subject to waterlogging in the same way as the natural surface of the existing route, which passes through a shaded area at this point and which may be more subject to surface disturbance due to landslip referred to by the landowners. Access to the proposed route is consequently more assured to all users throughout the year, so that the proposed route would increase enjoyment of the path as a whole in this regard.

48. There is minimal evidence before me to suggest that the risk of encountering vehicles outside the Mill House has caused concern to users of the existing route, and given the likely slow speeds of all parties and the limited domestic traffic associated with the property, the removal of exposure to vehicles is not a factor which would increase public enjoyment of the route.

49. Similarly, factors which may "spook" horses such as faster flowing water and children or animals from the dwelling have not been sufficiently evidenced for me to find that the proposed route would bring any particular benefits in this regard. Furthermore, the latter two elements are temporary circumstances associated with the current occupiers, who may change.

50. Whilst some users may appreciate the increased distance of off-road path which the proposal offers, others, for example users with mobility issues, are likely to consider that this reduces their enjoyment of the route.

51. The combined gentler gradient and separation from the dwelling of the proposed route are likely to provide more opportunities for equestrians to canter than are available on the existing route, although these would be relatively brief in view of the distances concerned.

52. A number of submissions in support state that the diversion would remove a sense of intrusion on the landowners' privacy which correspondents experience when

using the existing route. The proposal would increase the enjoyment of these users because the proposed route is further from the dwelling.

53. There is no evidence that the diversion will have any adverse effect on land served by the existing route or on the land over which the alternative route will be created.

54. Taking all the above considerations into account, the Order would have a neutral effect on public enjoyment of the path as a whole.

55. I have concluded above that the Order is expedient in the interests of the landowners. The alteration to a point of termination would be substantially as convenient to the public, and the new path would not be substantially less convenient to the public. The proposed diversion would have a neutral effect on public enjoyment of the path as a whole. As such, it is expedient to confirm the Order.

AONB

56. I have not identified any harm resulting from the Order to the purpose of conserving and enhancing the natural beauty of the AONB, including the conservation of its flora, fauna or geological or physiographical features.

Other Matters

57. Whilst the Order does not specify the form that its junction with existing public footpaths will take, this matter does not arise for consideration of Test 2 because, as the stiles concerned lie on adjoining paths and provide access only onto or from those, they do not affect the convenience of use of the proposed path.

Overall Conclusion

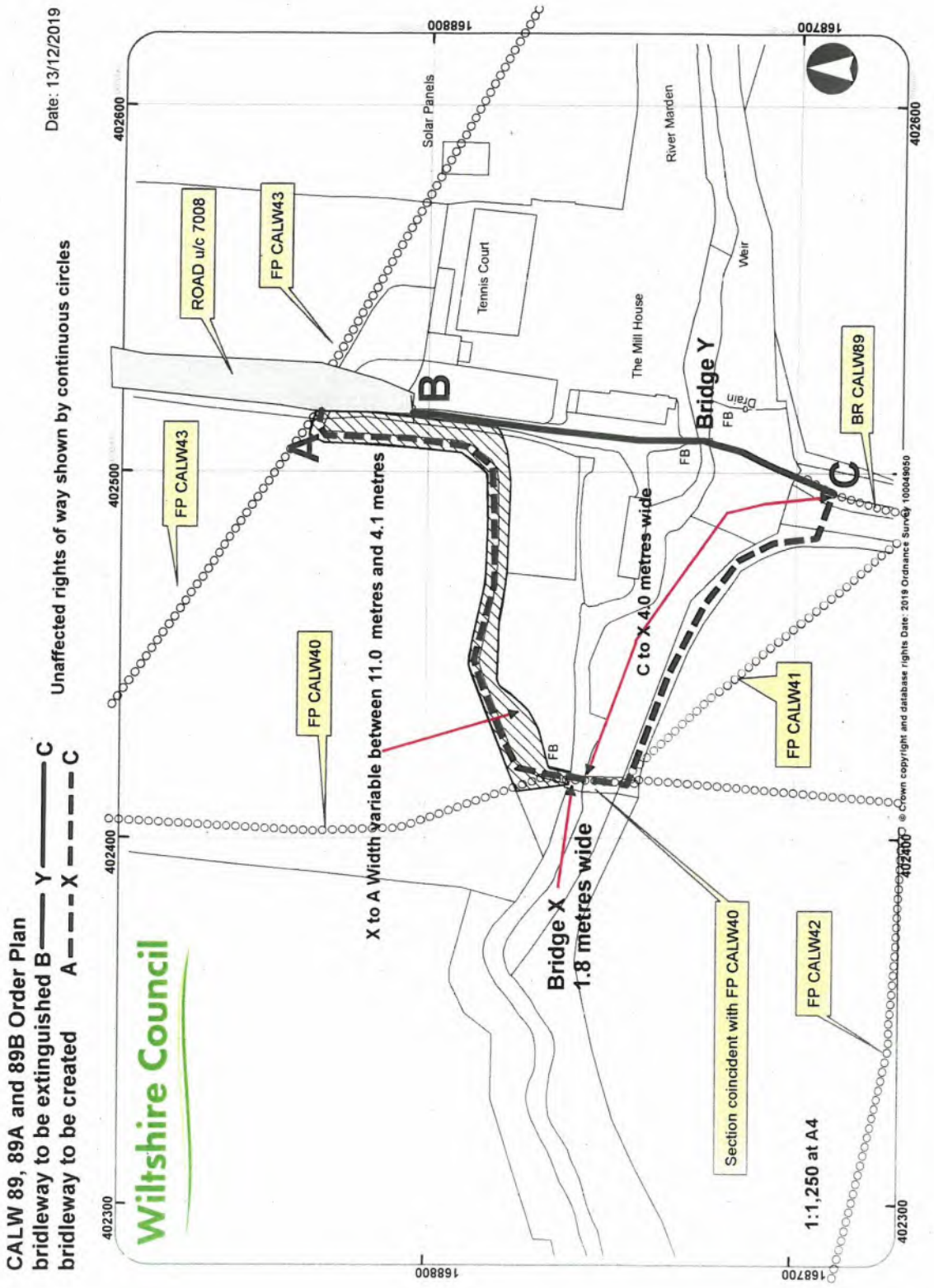
58. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

59. I confirm the Order.

C Beeby

INSPECTOR


CALW 89, 89A and 89B Order Plan
bridleway to be extinguished B——— Y ——— C
bridleway to be created A — — X — — — C
Unaffected rights of way shown by continuous circles
Date: 13/12/2019
Wiltshire Council
ROAD u/c 7008
FP CALW43
FP CALW43
FP CALW40
Solar Panels
Tennis Court
The Mill House
River Marden
Weir
Bridge Y
BR CALW89
A
B
C
X to A Width variable between 11.0 metres and 4.1 metres
C to X 4.0 metres wide
Bridge X
1.8 metres wide
FP CALW41
Section coincident with FP CALW40
FP CALW42
1:1,250 at A4
FB
Drain
© Crown copyright and database rights Date: 2019 Ordnance Survey 100049050
402600
402500
402400
402300
168800
168700

From: Judy Hible
To: Harlow, Craig
Cc: Tim Lewis
Subject: Re: Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).
Sent: 12/05/2024 15:52:52

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Craig

This route has been the subject of consideration since before I was appointed as Footpath Secretary for Chippenham (now North West Wiltshire) Ramblers.

I think that more than enough time and effort has been spent creating a route acceptable to all parties. To have to reconsider the old route when it has been stopped up as a byway in 2007 and the new route has been confirmed for less than a year is vexatious.

To have a restricted byway running between The Mill House and their garden would be intolerable to the householders. For it to be 7m wide is also impractical.

The existing bridleway is usable by walkers, horses and cyclists but it is not suitable for mobility scooters or powered wheelchairs. The previous line of the bridleway, running down from Manor Farm to the River Marden is too steep and rutted to be used safely by mobility scooters or powered wheelchairs; and, for most of the year, too wet and boggy.

North West Wiltshire Ramblers do not support this application.

Yours Sincerely

Judith Hible, Footpath Secretary, North West Wiltshire Ramblers.

On 10/05/2024 14:23, Harlow, Craig wrote:

Dear All

Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).

I am emailing you in reference to the above application which affects the bridleway (CALW89) which leads through the property The Mill House, Calstone Wellington, Calne, SN11 8QF . Wiltshire Council are now in a position to begin the process of determining this application. I have been assigned as the case officer and will be the point of contact henceforth.

I attach a copy of the initial consultation to this email for your information and the 3 relevant plans referred to in the letter.

I would be pleased to receive any responses by 14th June 2024.

If you have any queries on the matter, please contact me.

Best Regards

Craig

Craig Harlow MIPROW
Definitive Map Officer
Definitive Map and Highway Records
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

Wiltshire Council

Direct Line: 01249 468568
Email: craig.harlow@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

Craig Harlow MIPROW
Definitive Map Officer
Definitive Map and Highway Records
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

13 June 2024

Dear Mr Harlow,

I am responding to the Application made by the British Horse Society ("BHS") to **Upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).**

I request that the application by the BHS be refused, for the following reasons: -

1. The BHS has already asked, in August 2023, that their application be withdrawn because it was made in error and cannot succeed. The BHS has already acknowledged in the application that had they known about the stopping up order then the application would not have been made.

2. The route from Manor Farm to the top of the driveway at The Mill House is subject to the Stopping Up Order dated 23rd April 2007," authorising the stopping-up of public vehicular rights over [the track] subject to the reservation of public footpath and bridleway rights thereover." This prevents the use of the route as a restricted byway.

3. The Stopping Up Order was obtained following a request from Calne Without Parish Council to Wiltshire Council. It was obtained by your Highways Department with the assistance of your Legal Department.

4. On 6th November 2019, Sally Madgwick reported to the Northern Area Planning Committee of Wiltshire Council that the Stopping Up Order would, amongst other things, prevent the route from becoming a restricted byway.

5. The stretch of the route from The Mill House to the corner leading to Theobalds Green is a public road, U/C 7008, and therefore already has higher rights than a restricted byway.

Yours sincerely,

N Gamage
[redacted], Calne, Wiltshire, SN11 [redacted]

Dear Craig,

From:	Peter Alberry
To:	Harlow, Craig
Cc:	Peter Alberry
Subject:	Re: Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).
Sent:	16/05/2024 12:57:06

Follow Up Flag:	Follow up
Flag Status:	Flagged

Thank you for your email relating to the Application made by the British Horse Society to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).

I am very familiar with the issues regarding this route and I am aware of the prior issues on which I have also corresponded previously and which I had thought had been substantially resolved..

I was dismayed to find that yet another spurious issue has arisen due to an unfortunate error by the BHS.

As a consequence, I would like to request that the erroneous application by the British Horse Society ("BHS") should be refused, for the following reasons:-

1. The BHS has already asked, in August 2023, that their application be withdrawn because it was made in error and cannot succeed.

2. The route from Manor Farm to the top of the driveway at The Mill House is subject to the Stopping Up Order dated 23rd April 2007, "authorising the stopping-up of public vehicular rights over [the track] subject to the reservation of public footpath and bridleway rights thereover." This includes a restricted byway.

3. The Stopping Up Order was obtained following a request from Calne Without Parish Council to Wiltshire Council (WC). It was obtained by WC's Highways Department with the assistance of WC's Legal Department.

4. On 6th November 2019, Sally Madgwick reported to WC's Northern Area Planning Committee that the Stopping Up Order would, amongst other things, prevent the route from becoming a restricted byway.

5. The stretch of the route from The Mill House to the corner leading to Theobalds Green is a public road, U/C 7008, and therefore already has higher rights than a restricted byway.

best regards

Dr Peter Alberry

[redacted]

[redacted] Compton Bassett
Calne
SN11[redacted]

On 10 May 2024, at 14:23, Harlow, Craig <Craig.Harlow@wiltshire.gov.uk> wrote:

Dear All

Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).

I am emailing you in reference to the above application which affects the bridleway (CALW89) which leads through the property The Mill House, Calstone Wellington, Calne, SN11 8QF . Wiltshire Council are now in a position to begin the process of determining this application. I have been assigned as the case officer and will be the point of contact henceforth.

I attach a copy of the initial consultation to this email for your information and the 3 relevant plans referred to in the letter.

I would be pleased to receive any responses by 14th June 2024.

If you have any queries on the matter, please contact me.

Best Regards

Craig

Craig Harlow MIPROW
Definitive Map Officer
Definitive Map and Highway Records
Wiltshire Council
County Hall
Trowbridge
BA14 8JN
<image001.png>

Direct Line: 01249 468568
Email: craig.harlow@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

<image002.png> <image003.gif>

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<Application map.pdf><2007 Stopping up Order.pdf><Current public rights of way.pdf><Consultation letter - CALW89 - 10th May.pdf>

From:	Robert Hislop
To:	Harlow, Craig
Subject:	Bridleway Calne Without 89 89(CALW89)
Sent:	16/05/2024 12:48:16

Follow Up Flag:	Follow up
Flag Status:	Flagged

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Dear Mr Harlow,

I am responding to the Application made by the British Horse Society ("BHS") to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).

I request that the application by the BHS be refused, for the following reasons:-

1. The BHS has already asked, in August 2023, that their application be withdrawn because it was made in error and cannot succeed.The BHS has already acknowledged in the application that had they known about the stopping up order then the application would not have been made.

2. The route from Manor Farm to the top of the driveway at The Mill House is subject to the Stopping Up Order dated 23rd April 2007, "authorising the stopping-up of public vehicular rights over [the track] subject to the reservation of public footpath and bridleway rights thereover." This prevents the use of the route as a restricted byway.

3. The Stopping Up Order was obtained following a request from Calne Without Parish Council to Wiltshire Council. It was obtained by your Highways Department with the assistance of your Legal Department.

4. On 6th November 2019, Sally Madgwick reported to the Northern Area Planning Committee of Wiltshire Council that the Stopping Up Order would, amongst other things, prevent the route from becoming a restricted byway.

5. The stretch of the route from The Mill House to the corner leading to Theobalds Green is a public road, U/C 7008, and therefore already has higher rights than a restricted byway.

I understand that Calne Without Parish Council will be submitting a respone after their next Meeting on 10th June.

Yours sincerely,

Robert Hislop

Hi Craig.

From:	Sue Raven
To:	Harlow, Craig
Subject:	Re: Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).
Attachments:	image001.png;image002.png;image003.gif;
Sent:	10/05/2024 15:51:11

Thanks for your email.

Please find my response

The application, which, I understand was made in error by the British Horse Society, should be refused on the grounds that: -

1. The length of the land subject to the application which lies north of The Mill House, Calstone is a made upunclassified road, U/C 7008, and therefore already has higher rights than a restricted byway;

2. The remaining part of the route is subject to the Stopping Up Order dated 23rd April 2007 which, amongst other things, prevents use of the route as a restricted byway. The Order was obtained by Wiltshire Council's Highways Department, with the help of the Legal Department, following a request from Calne Without Parish Council.

3. I understand that The British Horse Society had asked that their application should be withdrawn and if that was not permissible that it should be refused.

Regards
Sue Raven
Sent from my iPhone

> On 10 May 2024, at 15:24, Harlow, Craig <Craig.Harlow@wiltshire.gov.uk> wrote:

Dear All

Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).

I am emailing you in reference to the above application which affects the bridleway (CALW89) which leads through the property The Mill House, Calstone Wellington, Calne, SN11 8QF . Wiltshire Council are now in a position to begin the process of determining this application. I have been assigned as the case officer and will be the point of contact henceforth.

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I would be pleased to receive any responses by 14th June 2024.

If you have any queries on the matter, please contact me.

Best Regards

Craig

Craig Harlow MIPROW
Definitive Map Officer
Definitive Map and Highway Records
Wiltshire Council
County Hall
Trowbridge
BA14 8JN
<image001.png>

Direct Line: 01249 468568
Email: craig.harlow@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

<image002.png>

<image003.gif>

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<Application map.pdf>
<2007 Stopping up Order.pdf>
<Current public rights of way.pdf>
<Consultation letter - CALW89 - 10th May.pdf>

From:	Will Steel
To:	Harlow, Craig
Subject:	RE: Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).
Sent:	15/05/2024 15:25:00

Follow Up Flag:	Follow up
Flag Status:	Flagged

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HI Craig

Thank you for your email on this issue.

The BHS has no further evidence to provide. Following the submission of the application, I became aware of the 2007 stopping up order. As a result, I wrote to Sally Madgwick on 5 August 2022 stating "*that the BHS no longer supports the DMMO application and is content for it to be withdrawn or refused, whichever is administratively easier for Wiltshire Council*". We recognise that since then the diversion of the bridleway has been confirmed. Our position remains unchanged, and we would welcome the Council determining the application and refusing the request to record the route as a restricted byway.

Regards

Will

From: Harlow, Craig <Craig.Harlow@wiltshire.gov.uk>
Sent: Friday, May 10, 2024 2:24 PM
Subject: Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).

Dear All

Application to upgrade bridleway Calne Without 89 (CALW89) to a restricted byway (ref: D/2022/020).

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I attach a copy of the initial consultation to this email for your information and the 3 relevant plans referred to in the letter.

I would be pleased to receive any responses by 14th June 2024.

If you have any queries on the matter, please contact me.

Best Regards

Craig

County Hall
Trowbridge
BA14 8JN

Wiltshire Council

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Will Steel
Head of Access

The British Horse Society

Abbey Park, Stareton,
Warwickshire CV8 2XZ

Telephone: [redacted]
Email: [redacted]
Website: www.bhs.org.uk

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