
Highways Act 1980 S119

Diversion of Part of Footpath SMAN 13

Response to the Outcome of the Council's Informal Consultation on the Amended Proposal

1. INTRODUCTION

- 1.1 The amended proposal (ie as shown on the plan attached at Appendix 1), was submitted to the Council on 6 May 2025. The amended proposal included a revised Statement of Reasons for the diversion which set out how the tests for the making and confirmation of an order were met (as attached at Appendix 2).
- 1.2 The Council undertook informal consultation on the amended proposal very promptly, between 7 May and 18 June 2025, and accommodated responses received after the end date.
- 1.3 As at 3 July 2025, the Council's website showed responses as follows:
- 1.3.1 That there was no objection to the proposal from the local Ramblers' representative and one individual, and initial support from the Cranborne Chase National Landscape (who had all objected to the original proposal) – the last also pointing out that it had subsequently been lobbied by the local community to no longer support the amended proposal.
- 1.3.2 That there was objection to the proposal from Sutton Mandeville Parish Council (although the Council had not held a meeting at which to make a decision on a response to the consultation) and 14 individuals.
- 1.4 This document comments on the objections and establishes that, notwithstanding the objections, the tests for the making and confirmation of an order remain met by the proposal.

2. COMMENTS ON THE OBJECTIONS

Sutton Mandeville Parish Council

- 2.1 **The Legal Test:** The Parish Council states that the application is not in the interest of the public. There is no requirement in s119(1) of the Highways Act 1980 ("the Act") for a change to the network to be in the interest of the public. The application is made on the grounds it is in the interest of the owners of the land crossed by the route for it to be diverted; this is valid grounds and the benefit which results to the owner of the land is set out in paragraph 2.2 of the Statement of Reasons.
- 2.2 The change to the route is minor and any 'sense of place' felt when walking the existing route is as likely to be that of discomfort when walking so close to a private dwelling. This discomfort is acknowledged by paragraph 4 of the Government Guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises ("The Presumptions Guidance"): *Members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises. Such path alignments can deter people from exercising the public's right to use the path.*"
- 2.3 No information is supplied to support the statement that the proposed route will 'damage a feature of the landscape', so that no weight can be attached to this assertion.
- 2.4 There is in fact no change to the northern termination point of the route.
- 2.5 There is no intention for the proposed route to be gated. If livestock is kept in the field crossed by the route north of point J it is easy for the corner of the field to be fenced out by fencing on the eastern side of the footpath. In the event that the field is used for grazing, this is also likely to add interest for walkers, while avoiding direct contact with livestock. Any livestock kept in the area of the agricultural building and orchard (eg chickens) can also be contained by fencing within the area and away from the footpath.
- 2.6 **Objections from the Public:** The Parish Council's support for local objection to *any* diversion of the route is noted and is wholly understandable. However, it fails to acknowledge that the legislation provides for diversion of a footpath in accordance with the legislative tests and government guidance, not on the basis of whether there is or is not local support for a change.
- 2.7 The Parish Council's statement that the Cranborne Chase National Landscape has rescinded its support for the amended proposal in the light of lobbying by the local community is disputed. In any event, it does not object to the amended proposal.

- 2.8 **Heritage and the National Landscape:** As stated above, legislation provides for the public rights of way network to be diverted. It is the case that the vast majority of routes currently recorded on Definitive Maps and Statements have existed for a considerable period of time. This is not, in principle, a reason for them not to be diverted. The existence of the route on previous Ordnance Survey and other historic mapping is not an uncommon occurrence, with very many recorded routes featuring on such mapping nationally. No evidence has been produced that the footpath is of especial historic significance on its current alignment. Rather it is argued that the route is of historic significance simply as a result of its existence; this argument is incompatible with the legislative provision for routes to be diverted.
- 2.9 The Parish Council's objection on 'historic' grounds also fails to consider paragraph 6 of the Presumptions Guidance which acknowledges that historic routes can be the subject of applications: *"Even where a public path through a private garden or farmyard has existed for centuries, and perhaps even pre-dates the use of the land for these purposes, there may be one or more reasons why its presence could be problematic for the landowner"*. The reasons acknowledged include *"a reasonable expectation of being able to relax in the garden or spend time with family and friends without strangers appearing in the same confined space"*.
- 2.10 The Parish Council also promotes that the historic existence of the route and Wiltshire Council's adoption of the Cranborne Chase management plan means that it must consider the route as a 'heritage asset' which is not to be diverted. However, this fails to consider the role of the Council as highway authority and the Wiltshire Countryside Access Improvement Plan 2015 -2025. This indeed acknowledges the historic nature of the public rights of way network at paragraph 6.1: *"Public rights of way, often known just as rights of way, are routes which anyone can use to cross private land. They generally reflect historic use by members of the public. Many date back hundreds of years but some have been created recently."* However, the Foreword to the Plan concludes *"Wiltshire Council will continue to work in partnership with countryside access users, volunteers and local communities to ensure that the network evolves to meet the changing needs of both Wiltshire's residents and visitors."*
- 2.11 It is for Wiltshire Council to conclude how to balance the application of its policies and plans, but there is no prescription on a decision to exercise its powers in s119 of the Act to divert public rights of way within the Cranborne Chase National Landscape area.
- 2.12 **Development at The Homestead:** The Parish Council also argues that the need for the diversion is the result of development of the property and other actions by the applicant for the order and that this provides grounds for refusal.

- 2.13 First, the extent to which route abutted the property and/or affected the privacy of the previous owners of the property is disputed with, for example, the photograph on page 6 of the Parish Council's objection showing the route running immediately adjacent to a door and window. There was also no hedging to the south of the large beech tree in the photograph which would have provided privacy in the rear garden. The tree would have provided only very limited privacy at ground level, given the height of its canopy.
- 2.14 Secondly, this photograph and the first Google Earth satellite image included on page 7 are both dated 2011. The current owner did not view or own the property until 2013. The owner has been told that the large beech tree in the photograph was rotten and it had been taken down prior to their viewing the property. The extent of this one tree can clearly be seen in the 2011 images, with the huge canopy casting a large shadow over the property. A gap immediately south of the tree canopy can also be seen; there was no continuous hedge line here.
- 2.15 The short section of laurel hedge shown in the 2011 photograph has been removed but this did not screen the rear of the property from being viewed closely by those on the footpath previously. A length of low beech hedge was also removed to the south of the garden, but this also did not provide privacy from the footpath.
- 2.16 Notwithstanding the above, the Parish Council's argument ignores the decision in *Ramblers Association v SSEFRA, Oxfordshire County Council, Weston et al* [2012] 3333 (Admin). Here Ousley J said "*The question that has to be asked under section 119(1) is whether the diversion is expedient in the interests of the landowner. I cannot see that the question of whether the landowner bought knowing the footpath, or bought not knowing of it, or bought taking a chance that he might be able to obtain a diversion order, has got anything to do with whether it is expedient in his interests that the order be made. If it is more convenient, beneficial or advantageous to him, it is expedient in his interests.*" and "*It is plain that there is no statutory bar to a person making an application in circumstances where they have acquired the property with knowledge. Indeed, that would normally be the position that appertains, otherwise one is looking at existing land owners who bought before the footpath existed and those who inherited the property.*"
- 2.17 *I have very real doubts as to whether the concession made by the Secretary of State that this factor is legally relevant can be correct, any more than it could be correct that a person who makes an application for planning permission on property he owns is to face an argument that he ought not to have bought the property for that purpose because he knew that the relevant building did not exist on it.*"
- 2.18 The fact that alterations to the garden and approved development have been carried out at the property since 2013 when it was purchased by the current owner and

applicant for the order is therefore irrelevant. It does not alter that the grounds for the making of an order in the interest of the owner of the land are met.

- 2.19 **The Defra Presumptions Guidance:** The Parish Council's comment references and quotes from a government announcement on 26 December 2024 which is not relevant to the diversion of public rights of way. This statement was made in respect of the decision of the government to rescind the implementation of the 'cut-off' date for the recording of additional public rights of way on the basis of their historic existence. The government has made no statement which implies that the Presumptions Guidance is not to be adhered to in respect of the diversion of public rights of way in the form in which it was published in August 2023.

- 2.20 The route passes within the curtilage of The Homestead. The Presumptions Guidance therefore applies, as set out above and in the Statement of Reasons, leading to the conclusion that the tests for the making and confirmation of an order are met.

Claire Morris

- 2.21 Objection is made on grounds to which responses have been provided above.

David Willis

- 2.22 Objection is made on grounds to which responses have been provided above.
- 2.23 It is also not the case that approval of any application for the diversion of a public right of way would set a precedent for the approval of any other. There is no reason to doubt that the Council properly considers each application for an order against the relevant legislative tests and government guidance.

Elizabeth Beeley

- 2.24 Objection is made on grounds to which responses have been provided above and also on the grounds that the applicant did not consult with or obtain approval from neighbours. There is no requirement that neighbour consultation or approval is a prerequisite for an application, or indeed the making of an order. The current consultation by Wiltshire Council has in any event clearly enabled local views to be submitted.
- 2.25 The diversion is only approximately 30 metres longer than the existing route, an insignificant increase in the context of a long route used for recreational purposes. It is unclear how it is more 'difficult' given the comparable terrain. It is also the case that there is no 'destruction' of the land crossed by the existing route; rather it will simply become grass.

Emma Heard

- 2.26 Objection is made on grounds to which responses have been provided above.
- 2.27 It is also stated that the route if diverted will be as intrusive for the applicants as the existing alignment. This is not the case, the route being further from the dwelling itself and enabling quiet enjoyment of the rear garden without the presence of the public in this most private area. It also passes behind and not through the vegetable garden. It is agreed that it is not as unintrusive as the originally proposed route, but the applicants have proposed the alignment to provide a meaningful compromise between their understandable wish for privacy in the garden and the wishes of some of the local community.
- 2.28 There is no planning requirement for screening planting for the tennis court. However, hornbeam has been planted along the southern side.
- 2.29 No public amenity is served by the existing route. The proposed route retains the rural character of the route overall and is likely to add to the enjoyment of use of the path by those who do not enjoy being in such close proximity to a private dwelling.

Helen Havard

- 2.30 Objection is made on grounds to which responses have been provided above.

JA Prince and DT Foston

- 2.31 Objection is made on grounds to which responses have been provided above. In addition:
- 2.32 In respect of the footpath becoming substantially less convenient as a result of its diversion, as set out in the Statement of Reasons, the difference in distance to be walked is an increase of approximately 30 metres and the proposed route takes approximately an extra 15 seconds to walk. Moreover, the distance to be walked is not the only factor by which the impact on convenience is to be determined and the proposed route, over similar terrain and incline, offers a width of twice that of the existing alignment. Overall, the diversion cannot be considered a substantial inconvenience, and especially in the context of a route used for a recreational purpose.
- 2.33 The objector places emphasis on the route being closer to the solar panels but acknowledges that screening is a requirement; in fact this has now been planted. The objector also refers to 'a history of non-compliance' but the owners maintain they have complied with all planning conditions. In addition to planning requirements additional planting was carried out along the eastern boundary previously and any

dissatisfaction with it could have been raised directly with the owners over the last ten years.

- 2.34 The Presumptions Guidance sets out that the public can be embarrassed at passing so close to a private dwelling, as cited in paragraph 2.2 above. Weight is therefore to be attached to this factor by Wiltshire Council.
- 2.35 It is not the case that 'diversions are intended to be to the advantage of both applicants, and other members of the public.' For a diversion order to be made and confirmed it needs to meet the legislative criteria; this assertion is not a relevant criteria.

John Shakespeare

- 2.36 Objection is made on grounds to which responses have been provided above.
- 2.37 It is also not the case that the route will be 'much steeper', the incline being the same as on the present alignment. The route will still offer the same circular walk given that the termination points are unaffected by the diversion.
- 2.38 The consultation responses do not show that 'almost everyone else in Sutton Mandeville' shares these objections. The population of the parish is given as 243 in the 2021 census:
- 2.39 (https://citypopulation.de/en/uk/southwestengland/admin/wiltshire/E04011832_sutton_mandeville/) and there are 14 objections in response to the consultation. This is notwithstanding that it is surmised that significant lobbying has been undertaken by a few objectors.

Kate Barker and B Millington

- 2.40 Objection is made on grounds to which responses have been provided above. The solar panels will be screened by the new planting, which has now been carried out.

Liz Barrah

- 2.41 Upon the confirmation of an order diverting the footpath, works to the new route will include appropriate signing and clearance to ensure it is easy for the public to follow.
- 2.42 The approved development at the property and layout of the garden as shown on the application plan establish the impact of the proximity of the footpath on the dwelling and its curtilage. Enclosing the existing route in new hedging would preclude the enjoyment of the rear garden area and vegetable garden in conjunction with the dwelling once the works are completed.

- 2.43 The current footpath is not closed and has been kept open during development works, and walkers wishing to pass through during building works have been accommodated. It is anticipated that the majority of the works will be completed in the next four weeks and the existing alignment will continue to be available.

Nicholas Shakespeare

- 2.44 Objection is made on grounds to which responses have been provided above.
- 2.45 The proposal no longer involves the 'steep, wooded slope' to which the respondent maintains objection. It is unclear why the respondent considers that the revised alignment would not be 'safe and accessible' given its comparable terrain and that the incline is the same as along the existing alignment. Views of the countryside from north of point J on the application plan are now maintained.
- 2.46 The applicants do not agree that the footpath was 'guarded...by a thick and ancient hedge' at the time of their purchase, presuming this to be reference to the short section of laurel hedge referenced in paragraph 2.15 above.

Peter Ellis

- 2.47 Objection is made on grounds to which responses have been provided above.
- 2.48 The proposed alignment offers significant more privacy for the windows currently facing on to the footpath and for the rear garden of the property, which is where privacy is most valued by the applicants.

Sarah Beddington

- 2.49 Objection is made on grounds to which responses have been provided above.
- 2.50 Walkers will not be adjacent to the solar panels as a result of the diversion, which in any event will be screened from view by the new planting.
- 2.51 While not relevant to the determination of the application, the solar panels are not solely to heat a swimming pool. The solar panels also provide energy for a ground source heat pump, which will provide heating and hot water for all buildings on the property in due course and charging points for electric cars.
- 2.52 The 'dense and biodiverse hedge that previously screened' was a short section of laurel hedge, as set out in paragraph 2.15 above, immediately adjacent to the existing property (and planted by the previous owners no doubt to provide some relief from exposure to the footpath) and incompatible with approved development.
- 2.53 In addition it is the case that The Homestead is not a second home. It is the main residence of the applicant and the family's children and they have been fully resident

for 10 years. The family partly works abroad but does not own other property abroad or in the UK. It is regularly occupied by the family.

3. CONCLUSION

- 3.1 The objections to the diversion are made by a minority of the local community. They are in places very similar and the applicant is aware of lobbying by a few determined objectors.
- 3.2 It is also noted that the Parish Council now objects to the amended proposal – which proposes a smaller diversion of the footpath - whereas it was previously happy to work with the applicant in creating the originally submitted application.
- 3.3 The applicant is sensitive to the views of the community, which has resulted in the amended proposal to try to meet concerns. The applicant considers that the revised proposal also:
 - 3.3.1 meets the relevant legislative tests for the making and confirmation of an order under s119 of the Act
 - 3.3.2 is compatible with the advice to local authorities within the Presumptions Guidance
 - 3.3.3 will provide The Homestead with the privacy required to enable them to enjoy it as a long term family home.
- 3.4 The Council is therefore requested to make the order and, if formal sustained objection is received, to refer it to the Planning Inspectorate for determination.



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NOTES

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The contractor is responsible for checking dimensions, tolerances and reference. Any discrepancies to be checked with the architect before proceeding with the works.

Where an item is covered by drawings to different scales, the larger scale drawing is to be worked to.

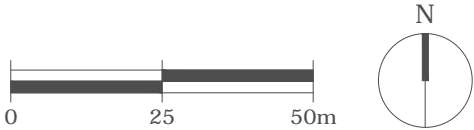
Scale for planning purposes only, figured dimensions to be worked to at all times.

All work and materials to be in accordance with the building regulations and to comply with the relevant codes of practice and British Standards.

Please note the information is based upon the independent survey information provided. The contractor is to report any discrepancies between the drawings and the site configurations.

PROPOSED KEY	
	UNAFFECTED LINE OF PATH
	EXISTING FOOTPATH
	ALTERNATIVE PROPOSED ROUTE
	EXISTING TREE
	PROPOSED TREE
	PLANTING AREA

EXISTING FOOTPATH DISTANCE	
A - J	142.3 m
PROPOSED FOOTPATH DISTANCE	
A - J	161.5 m
B - C	5.2 m
A - G	23.9 m
G - H	39.6 m
H - J	94.1 m



GENERAL AMENDMENTS	14.05.25	H
GENERAL AMENDMENTS	06.05.25	G
GENERAL AMENDMENTS	02.05.25	F
FOOTPATH AMENDMENT	30.04.25	E
details	date	rev

PRELIMINARY

HOMESTEAD, SUTTON MANDERVILLE

PROPOSED FOOTPATH DIVERSION PLAN

Date	Client	
MAY 2022	MR & MRS LODGE	
Scale	Drawing no.	Revision
1: 1250 @ A3	22 / 782 / P001	H

Highways Act 1980 S119

Diversion of Part of Footpath SMAN 13

Reasons for the Diversion of the Footpath

1. CONTEXT

- 1.1 Section 119(1) of the Act enables a council to make and confirm an order for the diversion of a footpath or bridleway in its area if it appears to the council that it is expedient to do so in the interests of the owner, lessee or occupier of the land crossed by the way, or of the public, and subject to other provisions of the Act, and as set out below.
- 1.2 S119 of the Act enables an order for the diversion of a footpath or bridleway to be made and confirmed as follows:
- 1.2.1 S119(1) It is expedient to divert the public right of way in the interest of the owner, lessee or occupier of the land crossed by the route or of the public
 - 1.2.2 S119(2) The termination points of the route are not altered, otherwise than to points which are as convenient to the public
 - 1.2.3 S119(6) The route is not substantially less convenient to the public as a result of the diversion
 - 1.2.4 S119(6)(a) With regard to the effect on public enjoyment of the route as a whole
 - 1.2.5 S119(6)(b) With regard to the effect the coming into operation of the order would have as respects other land served by the existing public right of way
 - 1.2.6 S119(6)(c) With regard to the effect which any new public right of way would have on the land over which it is created, and any land held with it.
 - 1.2.7 S119(6A) With regard to any material provision of a rights of way improvement plan for the area

- 1.3 S29 of the Act requires Councils to have due regard to the needs of agriculture and forestry and to the desirability of conserving flora, fauna and geological and physiographical features.
- 1.4 Guidance on the making and confirmation of orders is contained in Rights of Way Circular (1/09) (October 2009) published by Defra.
- 1.5 Government guidance to local authorities on the diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises was published by Defra on 1 August 2023. This new guidance, known as the Presumptions Guidance, is relevant to the determination of the order and concludes:
- 1.6 In making its decision as to whether the existing path should be diverted or extinguished, an authority should consider in particular the impact of the existing path on the property owner and/or occupier against the benefit that having the right of way through the land brings to the public, taking account of this guidance.

2. **GROUND'S FOR THE MAKING AND CONFIRMATION OF THE ORDER**

S119(1) It is expedient to divert the public right of way in the interest of the owner, lessee or occupier of the land crossed by the public rights of way

- 2.1 The application has been revised following informal consultation undertaken by the highway authority during February and March 2025.
- 2.2 The revised application is made on the grounds that it is in the interest of the owners of the land crossed by the footpath, and known as the curtilage of Homestead, Sutton Mandeville, for the footpath to be diverted. The interests of the owners are served as follows:
 - 2.2.1 The northern termination point is immediately adjacent to the property. The footpath then runs by a side door and small patio area. It passes close by large windows and so affects the privacy of the property.
 - 2.2.2 The route continues over an area of lawn, used for the family's recreation with a football goal and other play equipment. It affects the use and privacy of the garden.
 - 2.2.3 The proximity of the footpath to the house also affects the owners' perception of their security, knowing that anyone passing so close to the house and within the garden cannot be challenged.
 - 2.2.4 The proposed route resolves these concerns, with additional hedging near the northern termination point accommodating the route while protecting

privacy, supported by a redesign of the garden. Quiet enjoyment of, and security at, the property is enhanced.

S119(2) The termination points of the route are not altered, otherwise than to points which are as convenient to the public

2.3 The termination points are not altered.

S119(6) The route is not substantially less convenient to the public as a result of the diversion

2.4 The proposed route is not substantially less convenient as:

2.4.1 The general direction of travel is unaffected.

2.4.2 The difference in distance to be walked is an increase of approximately 30 metres and the proposed route takes approximately an extra 15 seconds to walk. This cannot be considered a substantial inconvenience, especially in the context of a route used for a recreational purpose.

2.4.3 An increased width of 2 metres is proposed, twice that of the existing footpath.

2.4.4 The proposed footpath passes over similar terrain to the current route.

S119(6)(a) With regard to the effect on public enjoyment of the route as a whole

2.5 It is submitted that public enjoyment of the route as a whole is enhanced by:

2.5.1 The diversion away from the property, to a location outside the main domestic area of the garden, removing any sense of intrusion or embarrassment, so encouraging use of the network.

2.5.2 Some local residents have said they avoid using the path as they feel uncomfortable intruding into the owners' privacy but would like to have accessibility to the path, particularly as it now forms a convenient route to the popular Stalls Café on the A30 <https://www.thestallscafe.com/>. The new alignment therefore improves, in real terms, accessibility to the footpath and encourages residents to use the route to walk to the café.

2.5.3 The proposed route maintains the existing incline south of point J on the application plan and will pass by existing trees, and through what will become a new orchard area, with additional tree planting as shown on the plan. Solar panels to the east will be shielded by existing trees and new hedge planting as approved under planning application PL/2024/03227.

S119(6)(b) With regard to the effect the coming into operation of the order would have as respects other land served by the existing public right of way

- 2.6 The land served is all within the ownership of the applicants. No public facilities are served by the route and the impact on the land served is positive for the landowners.

S119(6)(c) With regard to the effect which any new public right of way would have on the land over which it is created and any land held with it.

- 2.7 The effect would be to preclude use of the land other than in accordance with the public's right of way. This is acceptable to the landowners.

S119(6A) With regard to any material provision of a rights of way improvement plan for the area: The Wiltshire Council Local Transport Plan 2011 – 2026 – Accessibility Strategy and the Countryside Access Improvement Plan

- 2.8 The proposal is compatible with the Plans in encouraging walking given concerns about intruding, and especially visits to the local café to the south.

S29 Due regard to the needs of agriculture and forestry and to the desirability of conserving flora, fauna and geological and physiographical features

- 2.9 No adverse impact on flora, fauna or geological and physiographical features has been identified.

The Presumptions Guidance

- 2.10 The provisions of the guidance are relevant to the application, given the proximity of the route to the private dwelling and its alignment across the garden. The Council is therefore requested to attach due weight to the benefits to the landowner in determining the application.