


RECORD OF OFFICER DECISION FOR DECISION REPORT ON HIGHWAYS ACT 1980 – SECTION 118 AND 26 PROPOSED EXTINGUISHMENT OF PURTON RESTRICTED BYWAY 104 AND BRIDLEWAY 104 (PART) AND CREATION OF PURTON BRIDLEWAY 104 (PART) AND SECTION 53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 PURTON BRIDLEWAY 104 (PART)

Name	Signature	Date	Approved Yes/No
Sally Madgwick As Definitive Map and Highway Records Manager, pursuant to section 110 of the Scheme of Sub-Delegation dated 8 April 2025, I am authorised under Wiltshire Council's Constitution to make the above decision on behalf of Parvis Khansari, Corporate Director Place		26 August 2025	Yes
From:	Ali Roberts Definitive Map Officer		
Date of Report:	21 August 2025		
Return to:	Ali Roberts		

This decision is in accordance with the relevant requirements in Part 1 and the Local Authorities (Executive Arrangements) (Meetings and access to information)(England) Regulations 2012

Nature of Report:

This report by Ali Roberts (Case Officer) is seeking authorisation from the officer with the delegated power to affect the recommendation to consider the proposal to extinguish Purton Restricted Byway 104 and Bridleway 104 (part) (PURT104) under Section 118 and create the used bridleway under Section 26 of the Highways Act 1980. An application to divert PURT104 was made under Section 119 of the Highways Act 1980 by Mr and Mrs Moseley on 10 July 2023. The application was to divert the PURT104 on to the used route on the other side of the hedge line from the garden of Restrop Farm for privacy and security of the home.

An order was made under the Highways Act 1980 s.116 by the Magistrate's Court Swindon, on 12 March 2018, to stop up the mechanically propelled vehicular rights over Mud Lane, Purton reserving a restricted byway over the highway concerned. A subsequent variation order was made by the Magistrate's Court Swindon, on 12 September 2023 correcting measurements of the area concerned. As all of the route to be diverted is not a bridleway, and as diversion under Highways Act 1980 s.119 cannot alter the status of a right of way, officers will use s.118 and s.26 of the same Act to extinguish and to create the right of way.

The current route is through a garden effecting the privacy and security of the property. Therefore, as instructed by the Defra guidance, there is a presumption that an Order making authority should be predisposed to make an Order and a confirming authority will similarly be predisposed to confirm it, should the proposal satisfy the relevant legislative tests.

Should the extinguishment order be successful there would clearly be a need to create the proposed bridleway to retain the connectivity for the network. The proposed route was installed as an alternative to the definitive route by the landowner a number of years ago, it runs through similar grass terrain, and inclination as the current route and will have no significant detriment to the purpose of the path which continues to Ringsbury Camp. The route is away from the home resolving any potential sense of intrusion for the user.

The section of bridleway to be deleted is approximately 140 metres with a recorded width of 3.66 and 7.62 metres and the section of restricted byway to be deleted is 50 metres with a width recorded hatched on the proposed plan. The path to be created is approximately 270 metres and will have a width of 4 metres.

Officers consider that legal tests under Section 118 and 26 of the Highways Act 1980 have been met and at present the legal tests for the confirmation of the orders are met and the orders would be capable of being confirmed.

Officer's Recommendation:

An order be made under Section 118 of the Highways Act 1980 to extinguish Restricted Byway and Bridleway (part) Purton 104 and to make an order under Section 26 of the Highways Act 1980 to create Bridleway (part) Purton 104, and Section 53A of the Wildlife and Countryside Act 1981, to amend the definitive map and statement of public rights of way and to confirm the orders if no representations or objections are received.

DECISION REPORT

PROPOSED EXTINGUISHMENT UNDER SECTION 118 OF THE HIGHWAYS ACT 1980 – RESTRICTED BYWAY AND BRIDLEWAY (PART) PURTON 104 PROPOSED CREATION UNDER SECTION 26 OF THE HIGHWAYS ACT 1980 – BRIDLEWAY PURTON 104 (PART) AND SECTION 53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 – BRIDLEWAY PURTON 104 (PART)

1. Application

Application No: P/2023/013
Application Date: 10 July 2023
Applicant: Richard and Leila Moseley
Restrop Farm
Purton
Wiltshire
SN5 4LW

- 1.1 The application to divert Restricted Byway and Bridleway (part) Purton 104 (PURT104) was made by the landowners Mr and Mrs Moseley, under s.119 of the Highways Act 1980. The application is made on the grounds that it is in the interests of the owners of Restrop Farm to improve the privacy and security of the home.

The applicant states the following reasons for applying to divert the right of way are as follows:

“This application is made primarily in the interests of the landowner, to improve both privacy and security of the private residence and operational farm. Issues of concern that have been shown through personal experience to have already occurred include:

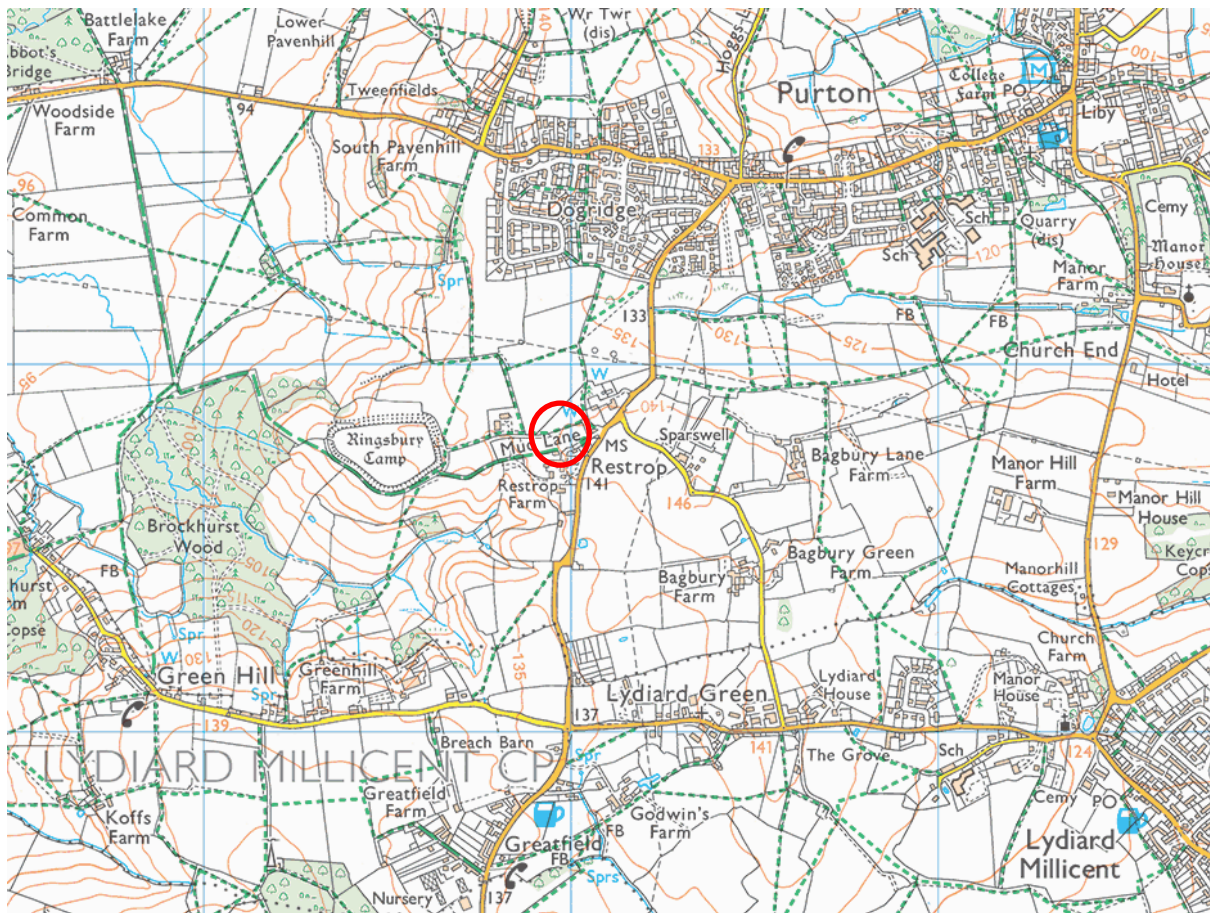
- *Intruder used the bridleway to gain access to the property at night and disturbed sleeping guest*
- *People leaving the bridleway to walk around the house and look through windows. Dogs being allowed to jump up at windows. These incidents have occurred during the night as well as in the day.*
- *People parking their cars in the driveway and picnicking in the garden*
- *People with uncontrolled dogs, animals chased in garden and farmyard*
- *People using the bridleway through the garden at night can be startling and frightening*
- *Groups of males using the bridleway for access then roaming the farmyard, clearly not genuine walkers.*
- *Prospect of horses coming through the garden is concerning, but has never happened due to the proposed diversion route being already available as a permissive bridleway*
- *Farm animals have been let out by walkers, e.g., cattle released into the garden*
- *Immediate neighbour burgled via access at the back of the house, near to the bridleway.*
- *Vandalism of property, lighting of fires, drug abuse, fireworks, lamping using firearms, other vermin coursing using dogs, motorcycle riding, raves etc. on surrounding land. Concern that people engaged in such activities have right of access along the bridleway through the garden and so close to the house and farmyard/buildings.*

There will also be some benefits to people using the path, primarily due to concerns over the occupier's privacy and the feeling of intrusion and invasion into what in all other respects appears to be a private space. Also, some users, mainly cyclists, have started to use the route through the garden but have found it unsuitable and turned back. The diversion route avoids this issue arising, and horse-riders likewise have shown a preference for the diversion route. To this extent the diversion may be considered to be in the interests of the public."

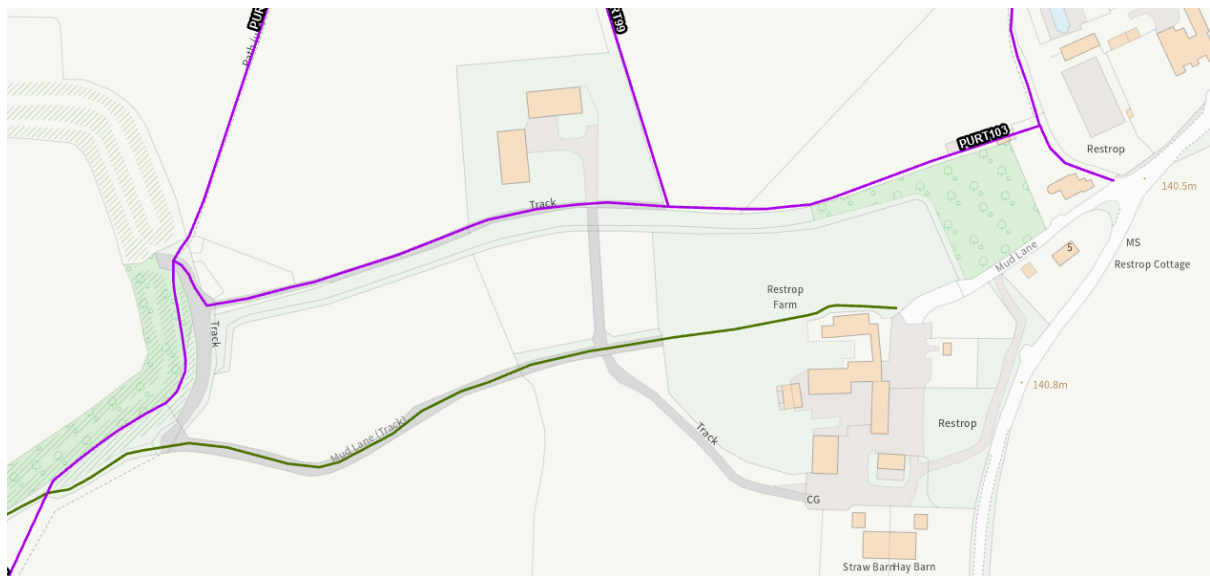
- 1.2 On 12 March 2018 the Chairman of the Magistrates' Court sitting at Swindon confirmed an order made under Highways Act 1980 s.116 entitled: *An Order for the stopping up of highway rights for mechanically-propelled vehicles over part of Mud Lane, Purton, Wiltshire*. The legal event stopped up the highway rights for mechanically-propelled vehicles of part of Mud Lane, thus reserving a restricted byway over the highway concerned. On 12 September 2023 the Chairman of the Magistrates' Court sitting at Swindon confirmed a Variation Order under Civil Procedure Rules 3.1.7 entitled: *A Variation Order for the stopping up of highway rights for mechanically-propelled vehicles over part of Mud Lane, Purton*. The order made under Highways Act 1980 Section 116 dated 12 March 2018 should be varied to reflect the correct measurements of the area concerned.
- 1.3 Planning Inspectorate Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders dated June 2025 states at paragraph 23.1.33. *"A diversion order can only amend the definitive map and statement insofar as the course or line of the right of way is concerned, it cannot alter the status of the way. For example, a diversion order can neither downgrade a bridleway to a footpath, nor upgrade a footpath to a bridleway."* Therefore, officers will use Highways Act 1980 s.118 to extinguish the restricted byway that was reserved by the S.116 stopping up order and the continuing bridleway section of Purton 104; and will use Highways Act 1980 s.26 to create the bridleway over the applied for diversion route.

2. Location Plan and definitive statement

2.1 Location plan



2.2 Working copy of the definitive map showing the public right of way.



Decision Report

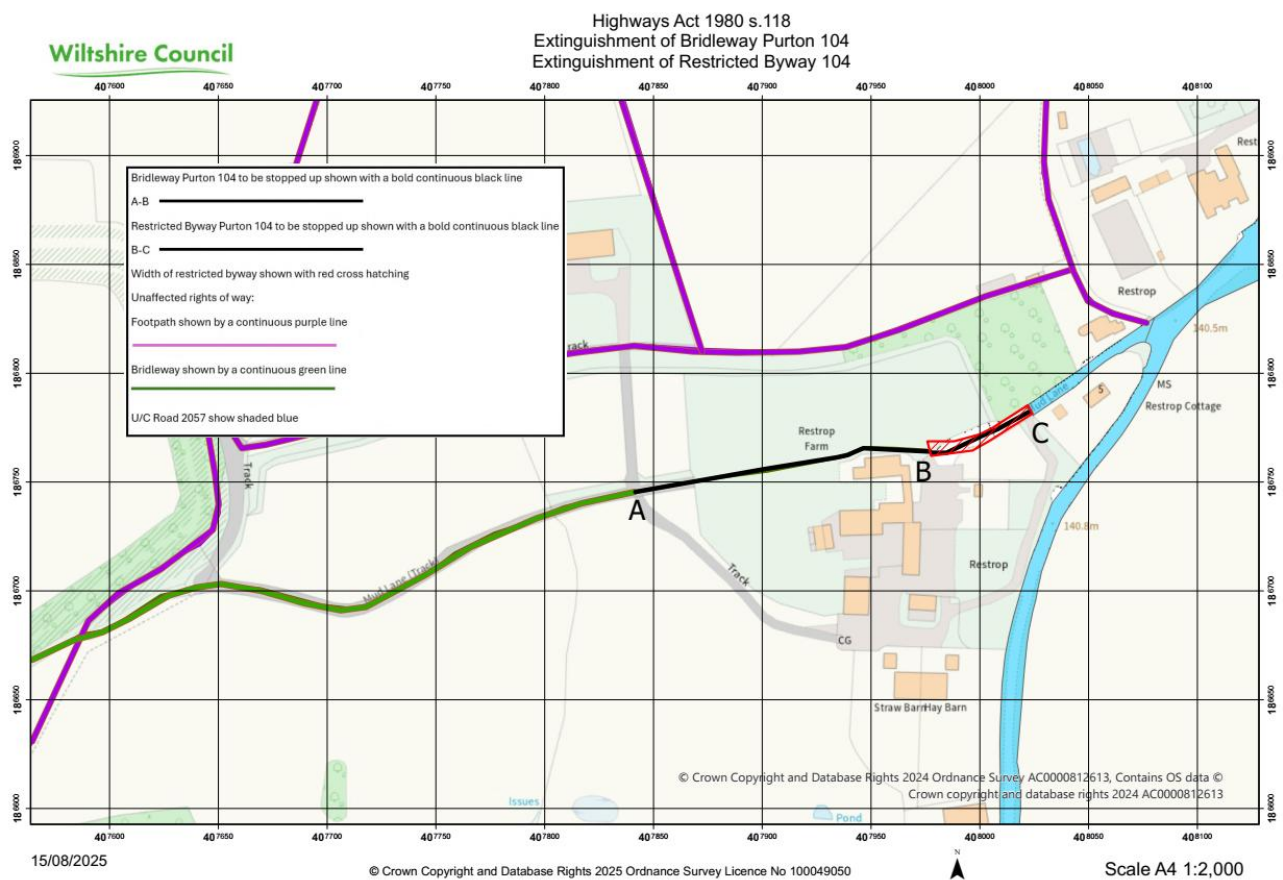
Highways Act 1980 (Section 118 and 26) – Proposed extinguishment of Restricted Byway and Bridleway (part) Purton 104 and creation of Bridleway Purton 104 (part)

2.3 Definitive statement for PURT104

Purton	104	<p><u>RESTRICTED BYWAY</u> Mud Lane. From the western end of road U/C 2057 at Restrop Farm heading in a generally westerly direction to its junction with Bridleway PURT104 at OS Grid reference SU 0798-8676.</p> <p>Width shown hatched on the plan</p> <p><u>BRIDLEWAY</u> Then continuing to its junction with PURT103 at Ringsbury Camp,</p> <p>Approximate length 460 metres.</p> <p>Width varying between 12 and 25 feet</p> <p><u>FOOTPATH</u> From its junction with path Purton 103 at Ringsbury Camp, thence southwest to the Lydiard Milicent Parish Boundary at the spring approximately 130 metres to the north of road U/C 2060 at Green Hill</p> <p>Approximate length 1,130 metres</p>	53(3)(a)(i)
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3. Proposed Order Plan

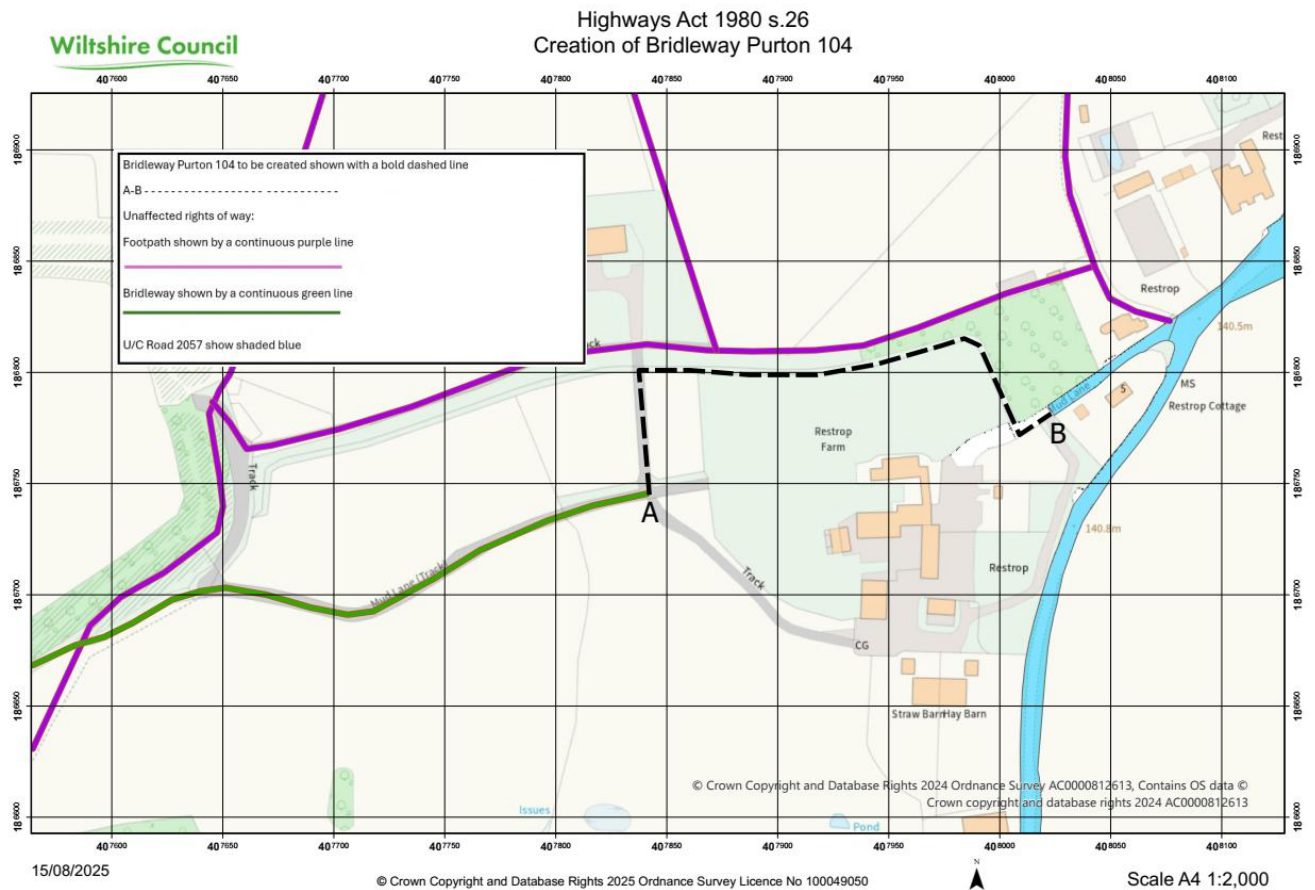
- 3.1 Proposed extinguishment plan - It is proposed to extinguish Bridleway PURT104 as shown on the attached plan by a bold continuous black line from Points A-B, a distance of approximately 140 metres with a recorded width between 3.66 and 7.62 metres. It is also proposed to extinguish Restricted Byway PURT104 as shown on the attached plan by a bold continuous black line from Points B-C, a distance of approximately 50 metres, with a width recorded as shown hatched in red.



Decision Report

Highways Act 1980 (Section 118 and 26) – Proposed extinguishment of Restricted Byway and Bridleway (part) Purton 104 and creation of Bridleway Purton 104 (part)

- 3.2 Proposed creation plan - It is proposed to create Bridleway PURT104 as shown on the attached plan by a bold dashed black line from Points A-B, a distance of approximately 270 metres with a recorded of 4 metres.



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Highways Act 1980 (Section 118 and 26) – Proposed extinguishment of Restricted Byway and Bridleway (part) Purton 104 and creation of Bridleway Purton 104 (part)

4. **Photograph of location**

4.1 Aerial photograph



4.2 Current route





4.3 Proposed route, currently available as a permissive path





5. Registered Landowner

- 5.1. Richard and Leila Moseley
 Restrop Farm
 Purton
 Wiltshire
 SN5 4LW
 Wiltshire BA13 4LL

6. Legal Empowerment

- 6.1. It is proposed to extinguish restricted byway and bridleway PURT104, under Section 118 of the Highways Act 1980 and to create bridleway PURT104, under Section 26 of the Highways Act 1980, as follows:

“118. Stopping up 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 which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by*

order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a 'public path extinguishment order'.

- (2) The Secretary of State shall not confirm a public path extinguishment 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 it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.*
- (3) A public path extinguishment 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, defining the land over which the public right of way is thereby extinguished.*
- (4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.*
- (5) Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering –*

- (a) *under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use; or*
 - (b) *under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public;*
- the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order would provide an alternative path or way.*
- (6) *For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.*
- (6A) *The considerations to which-*
- (a) *the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment 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 extinguish a public right of way.”*

“26. Compulsory powers for creation of footpaths, bridleways and restricted byways

- (1) *Where it appears to a local authority that there is a need for a footpath, bridleway or restricted byway over land in their area and they are satisfied that, having regard to-*
- (a) *the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and*

(b) the effect which the creation of the path or way would have on the rights of persons interested in that land, account being taken of the provisions as to compensation contained in section 28 below, it is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath, bridleway or restricted byway over the land.

An order under this section is referred to in this Act as a 'public path creation order'; and for the purposes of this section 'local authority' has the same meaning as in section 25 above.

(2) Where it appears to the Secretary of State in a particular case that there is need for a footpath, bridleway or restricted byway as mentioned in subsection (1) above, and he is satisfied as mentioned in that subsection, he may, after consultation with each body which is a local authority for the purposes of this section in relation to the land concerned, make a public path creation order creating the footpath, bridleway or restricted byway.

(3) A local authority shall, before exercising any power under this section, consult any other local authority or authorities in whose area the land concerned is situated.

(3A) The considerations to which-

- (a) the Secretary of State is to have regard in determining whether or not to confirm or make a public path creation order, and*
 - (b) a local authority 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 proposed footpath, bridleway or restricted byway would be created.

(4) A right of way created by a public path creation order may be either unconditional or subject to such limitations or conditions as may be specified in the order.”

7. Public Consultation

7.1. An initial public consultation exercise was carried out from 12 June 2025. The consultation included landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council Member for Purton and Purton Parish Council. The consultation received 7 representations in support including the Ramblers, the Wiltshire Bridleway Association and both the Countryside Access Officers for the area and 9 objections, including Purton Parish Council. These responses can be seen in full at Appendix 1 which also includes the applicant’s response to the objection points.

7.2. The officer’s report on the representations in support and in objection can be found in full at Appendix 2

7.3 Statutory undertakers contacted:

- Wessex Water
- Scottish & Southern Electricity Networks
- Wales and West Utilities
- Openreach
- National Grid
- Linesearch

- 7.4 Where plant is located in the vicinity of the public path extinguishment proposal, the order regulations contain provision for statutory undertakers to maintain access to plant.

8. **Main Considerations for the Council**

- 8.1 Section 118 of the Highways Act 1980 – allows the Highway Authority to extinguish a footpath, bridleway or restricted byway, where they consider it expedient to do so on the grounds that the path or way is not needed for public use. Defra 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, dated August 2023, which can be seen at Appendix 3 states in its conclusion *“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 against the benefit that having the right of way through the land brings to the public, taking account of this guidance.”* It continues *“In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner .. against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner, in terms of privacy, security and safety, are important considerations to which due weight should be given”.*
- 8.2 As can be seen from the photographs at paragraph 4.2 the current definitive route is located through the garden with a well-maintained lawn and past children’s play equipment, such as a tree house, swings, a zip wire and cricket nets and is in close proximity to the home with a clear view through the windows of the large conservatory at the rear of the property. Defra presumption guidance, states *“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.” One of those reasons stated by the guidance is “A reasonable expectation of being able to relax in the garden or spend time with family and friends without strangers appearing in the same contained space.”

- 8.3 Some objector’s have suggested that the Defra government guidance cannot apply in this case as the landowner altered the landscape to make it appear in the garden and Purton Parish Council requested confirmation that the land had changed use from agricultural land to residential land. In response the landowner stated, *“The grass area to the north of Path 104 was referred to as the Sunday lawn. It was planted a century or so ago with fine, slow-growing lawn-type grass and used as a weekend lawn, i.e. not ideal for livestock. Realising this, we added a treehouse, zipwire, trampoline and cricket nets from 2012-2013, mowed it regularly and used it as a garden. We also planted more garden hedging and trees (now mature) . This garden area (up to the fence line between Y1 and Y2) has undergone a material change in use and the use has continued for more than 10 years without interruption, Hence the use is lawful due to the passage of time under Section 171 of the Town and Country Planning Act 1990 (The 10-year rule). The parcels are registered as garden with the Rural Payment Agency.*



Restrop Farm - Year 2014 Google Earth View

Please note

1. Treehouse and zipwire
2. In-ground trampoline
3. Cricket nets
4. Fenceline Y1 to Y2 separating the grazing field to the West

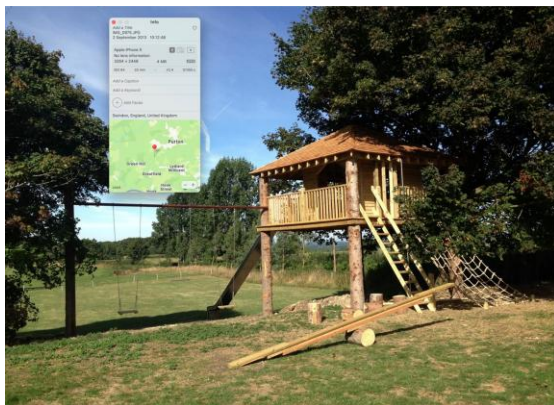


Image 20-06-2025 and IMG 1360

Please note The pictures were taken in 2013 The Treehouse, the In-ground Trampoline, and Cricket nets were added sometime 2012-2013

It is clear the current definitive route of PURT104 is located through what is, and has been for a number of years, used as a garden of Restrop Farm.

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Highways Act 1980 (Section 118 and 26) – Proposed extinguishment of Restricted Byway and Bridleway (part) Purton 104 and creation of Bridleway Purton 104 (part)

Therefore, as instructed by the Defra guidance, there is a presumption that an Order making authority should be predisposed to make an Order and a confirming authority will similarly be predisposed to confirm it, should the proposal satisfy the relevant legislative tests.

- 8.4 In their application the landowners have listed a number of incidents of antisocial behaviour and criminal activity taking place at Restrop Farm. Some of the objector's have disputed this claim in their response. However, the landowners have provided an extensive list of incidents, many with police reference numbers as evidence as can be seen in Appendix 1 pages 23 and 24. There are clearly legitimate security concerns at Restrop Farm. Although leading off the busy Restrop Road, Restrop Farm does feel quite isolated due to the high hedging from the road screening the property. As PURT104 leads through the garden the path provides legitimate access to the secluded property.
- 8.5 The legislation states that the authority should take into account the effect of the extinguishment on other land served by the path or way and the provisions for compensation. Both the path to be extinguished and the path to be created are located on land owned by Mr and Mrs Moseley, it is therefore considered that no claims for compensation will be received. The path to be extinguished is through the garden and in close proximity to the home. The landowner has provided evidence that this proximity has a detrimental effect on privacy and raises legitimate security concerns.
- 8.6 In confirming a public path extinguishment Order where a creation Order is made concurrently, the Council or the Secretary of State may have regard to the extent to which the public path creation Order would provide an alternative path. The route to be created concurrently with the extinguishment in this proposal was installed as an alternative to the definitive route by the landowner a number of years ago, it follows a similar trajectory and has been

used in preference by the public. To provide the landowner interests of privacy and security as stated in the application, PURT104 will head north north west for approximately 45 metres, this right angle will be required to take the walker away from the home. Once on the other side of the garden boundary, PURT104 would turn west in parallel with the current path, then, once past the garden boundary the path will turn south and regain its trajectory heading south west. These limited changes in direction will take the user out of the garden of Restrop House but there will be no significant detriment to the purpose of the path which continues to Ringsbury Camp. The proposed route runs through similar grass terrain, and inclination as the current route. However, the proposed route does not lead through a well-maintained, manicured lawn where an equestrian may well be mindful that they will be poaching the ground. The view from the current path is of the garden and play area. The view from the proposed route is of a tree and hedge lined bridleway with a distant view of Restrop Farm that would cause no sense of intrusion. There are 7 representations in support including the Ramblers, Wiltshire Bridleways Association, who state that the proposed bridleway is more harmonious for riders, local residence stating a preference for the proposed route due to its convenience both on foot and on horseback and both the area Countryside Access Officers focus on the convenience of the proposed extinguishment and creation. There are 9 objections to the proposal including Purton parish Council, however, many of their comments focus on the historical nature of the current route, query the status of the garden and the evidence of illegal use. The case officer's response to the objector's comments can be seen in full at Appendix 2. Therefore, the section of PURT104 that is located through the garden is not needed for public use and can be extinguished.

- 8.7 Section 26 of the Highways Act 1980 allows the authority to make an order to create a footpath, bridleway or restricted byway where they are satisfied that it is expedient to do so on the grounds that there is a need for a path and having

regard to the extent to which the new path would add convenience or enjoyment to a substantial section of the public, or convenience to local residents. Should the extinguishment order be successful there would clearly be a need to create this proposed bridleway to retain the connectivity for the network.

- 8.8 Length and width of path – The section of PURT104 to be extinguished is approximately 190 metres, the route to be created will be 270 metres. The path is a recreational rather than a utility route therefore the minimal change to distance will have no impact on public convenience and is not regarded as substantially less convenient. The current Bridleway has a recorded width of 3.66 and 7.62 metres, the current restricted byway has a width shown hashed on the plan at paragraph 3.1; the proposed path will have a recorded width of 4 metres.
- 8.9 Discomfort due to intrusion - The section of PURT104 to be diverted is currently situated through what is clearly used as a garden with a well maintained lawn and past children's play equipment such as a tree house, swings, a zip wire, cricket nets and is in close proximity to the home with a view through the windows of the large conservatory at the back of the property. This may cause a feeling of intruding on the privacy of the residence for the user which maybe more intensely felt due to its isolated location, as confirmed by the Defra guidance. *"Members of the public may not be comfortable following a path through a contained space [such as a private garden] because doing so feels like infringing on the privacy of a house owner ... Such path alignments can deter people from exercising the public's right to use the path. ... People are used to walking past a house along an adjacent road or pavement, and this feels acceptable because they are clearly outside its visible domain. The degree of proximity can also make a difference."* Planning Inspectorate decision regarding a diversion order at Dilton Marsh and Westbury (ROW/3301931) which can be seen in full at Appendix 4,

tackled the issue of discomfort due to intrusion. Specifically at paragraph 26 and 17, the Inspector states *“The proximity of the DMS [Definitive Map and Statement] routes to the dwelling gives rise to the sense of intrusion that I referred to in the description of my site visit ... There were chairs, planted pots and other features of domestic life, suggesting that the area is well used by the occupants and which were sufficient for me to feel a sense of real intrusion.”* The proposed route is a clear and obvious track out of the garden, providing clarity of route and avoiding any intrusion on the home.

- 8.10 Ancient route through a historical landscape – The public rights of way network is historic in nature, however the network has evolved over time through legal mechanisms to divert, extinguish and create paths, where requirements on land has changed. The landscape at Restrop Farm has changed over time. The extinguishment and creation of PURT104 will have no direct impact on the features of the landscape at this location but is in consequence of the changes already made over time. The section of PURT104 to be diverted is currently situated through what is clearly used as a garden as previously discussed. It is noted that the character of the section of sunken lane that is proposed to be diverted has been irrevocably altered, it has been levelled and cleared so that it is indistinguishable from the rest of the garden. However once past the garden the sunken lane retains its historic character, this section is not part of the extinguishment and creation proposal. The Defra presumption guidance specifically deals with the extinguishment of historic paths, acknowledging that there should be a reasonable expectation for a landowner to be able to relax in their garden in private, even if the path has existed for centuries, as discussed at 8.2.
- 8.11 Again under Section 26 of the Highways Act 1980, the authority may also take into account provisions for compensation for parties with an interest in the land. The footpath to be created is on land owned by the applicants, as a result it is considered that no claims for compensation will be received.

- 8.12 Whilst it is proposed to make public path orders under section 118 and section 26 of the Highways Act, concurrently, the making and confirmation of the orders are not dependent upon each other and they must be treated as separate orders.
- 8.13 When confirming public path extinguishment and creation orders, the Council or the Secretary of State may take into account the material provisions of the rights of way improvement plan (ROWIP), prepared by the local highway authority, in this case the Wiltshire Council *“Wiltshire Countryside Access Improvement Plan 2015 – 2025 Rights of Way Improvement Plan 2”* (CAIP).
- 8.14. In the production of the CAIP, a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis of the countryside access network, was undertaken with user groups who recognised the following (Appendix 8, page 19 of Appendices):
- *The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users*
 - *There are many “missing links”, i.e. no route where people want to go.*
- In this case the proposed path has been available to the public for many years as an alternative to the recorded route.
- 8.15. The Action Plan also includes the following aims:

- *Improve conditions on the network for those with mobility impairments.*

The newly created route would have a recorded width of 4 metres, open and available for public use and there will be no detriment to the user.

- *Protect the rights of the public – Add records of public rights of way to the Definitive Map to ensure they are legally recognised.*

The making of a public path extinguishment order PURT104 and creation order of PURT104 ensures that the situation on the ground is correctly reflected within the definitive map and statement.

- *Maintain and update the Definitive Map and Statement.*

Although within the CAIP, this aim refers mainly to definitive map modification order applications, it is also relevant to public path orders and by extinguishing and creating that part of PURT104, the definitive map and statement correctly records the situation on the ground.

8.16 Wiltshire Council relies on DEFRA (2010) Good Practice Guidance for Local Authorities on Compliance with the Equality Act 2010 version 1 and recognises at 7.2.1 that:

A highway authority has a duty, under the Highways Act 1980, to assert and protect the rights of the public to use and enjoy a highway. The Equality Act 2010 adds a further dimension by requiring (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from those functions as others would do or to show that there are good reasons for not doing so.

Where a route is being created Wiltshire Council will specify a level of accommodation works that must be met before the new route is accepted by the council and any order is certified.

- 8.17. In the making of creation agreements/orders, diversion orders and extinguishment orders, Sections 29 and 121(3) of the Highways Act 1980 require authorities to have due regard to the needs of:
- (a) agriculture and forestry, and
 - (b) the desirability of conserving flora, fauna and geological and physiographical features.
- 8.18. Section 40 of the Natural Environment and Rural Communities Act 2006 also places a duty on every public authority exercising its functions to have regard to the conservation of biodiversity, so far as is consistent with the proper exercise of those functions. In this section, conserving biodiversity includes that in relation to a living organism, or type of habitat and restoring or enhancing a population or habitat.
- 8.19. The path to be created was installed many years ago and is used by the public with no adverse comments having been received regarding the effect of the proposed bridleway creation, on agriculture and forestry.
- 8.20. With regard to conserving flora, fauna and geological and physiographical features and biodiversity, no adverse comments have been received on the route has already been created.
- 8.21 Several issues are raised in the objections that are not relevant to the legal test for 118 and have been addressed in detail at Appendix 2. The issues shown in italics include;
- 8.21.(e)(1) *The applicant knew of PURT104 before they bought it.*
- Officer response - Arguments that when a landowner buys a property in full knowledge of the existence of a right of way and therefore should not be able to alter it were considered in *Ramblers Association v SSEFRA* Oxfordshire County Council and Weston EWHC 3333 (Admin) Case No.

CO/457/2012. It confirms that there is no statutory bar to a person making an application in such circumstances. Requirements on land where rights of way are situated can change therefore there are legal mechanisms in place to divert public rights of way within highway law, Highways Act 1980 and planning law, Town and Country Planning Act 1990.

8.21.(e)(2) *The applicant knowingly incorporated the right of way into the garden area.*

Officer's response; The landowner states they were instructed to clear the public right of way of obstruction following the public inquiry in November 2012 where a more extensive diversion of PURT104 was determined. It is clear that the section of PURT104 to be diverted, has been substantially altered, the sunken lane through the garden has been levelled to the same height as the surrounding land and the vegetation has been cleared. The path is now routed across a well-maintained lawn and past children's play equipment; therefore, the distinct character of the route has been irrevocably changed. The extinguishment and creation of PURT104 will have no direct impact on the features of the landscape at this location.

8.21.(e)(3) *The diversion was considered and refused by an Inspector from the Planning Inspectorate in November 2012 following a public inquiry. Nothing has changed since this decision.*

Officer's response: There is nothing in the legislation that states a landowner cannot make another application to alter a public right of way. Since the Inspector's decision in 2012 of a similar, but longer diversion, of PURT104, Defra government presumption guidance, has since been released. The Planning Inspectorates decision report of 2012, states within the refusal *"that the existing route is an ancient and attractive feature with a distinct history and character which is highly valued by many people ... in addition to the existing route having great historic value, it also offered a rare opportunity for people to walk or ride along a sunken way bounded by*

ancient hedges full of interesting vegetation and wildlife”. It is noted that the character of the section of sunken lane that is proposed to be diverted has been irrevocably altered, it has been levelled and cleared so that it is indistinguishable from the rest of the garden. However the application proposal has been revised, it is shorter than the 2012 proposal, and once past the garden the sunken lane retains its character. The applicant states “We fully understand and accept the Inspector’s conclusions that the ability of the public to experience and enjoy the historic route of the bridleway along the sunken lane outweighs all the other matters that were considered, so we have excluded from the new application that section of the bridleway in order to ensure that use and experience is protected and can continue. The length of bridleway now proposed to be diverted is approximately 172 metres. The length of the proposed new route is approximately 252 metres and so would add an additional 80 metres to the overall length of the bridleway. The extent of the diversion now proposed now includes only the part of the bridleway that falls within the area that forms the garden to the farmhouse and the buildings associated with the residential use of the farm, plus the short section across the driveway to the farm and the farmhouse which is in regular frequent use by motor vehicles including farm machinery.”

- 8.22 In summary, the current route is through a garden effecting the privacy and security of the property. Therefore, as instructed by the Defra guidance, there is a presumption that an Order making authority should be predisposed to make an Order and a confirming authority will similarly be predisposed to confirm it, should the proposal satisfy the relevant legislative tests. Should the extinguishment order be successful there would clearly be a need to create this proposed bridleway to retain the connectivity for the network. The proposed route was installed as an alternative to the definitive route by the landowner a number of years ago, it runs through similar grass terrain, and inclination as the current route. The route is away from the home resolving

any potential sense of intrusion for the user and avoids the garden area. Therefore; officers believe that the legal tests for the making and confirmation of both concurrent orders have been met.

9. Reasons for Proposal

- 9.1. It is proposed to make a public path extinguishment order under Section 118 of the Highways Act 1980, to extinguish Restricted Byway and Bridleway (part) Purton 104, where it is no longer needed for public use, and to make a creation order under Section 26 of the Highways Act 1980, to add Bridleway 104 (part) Purton 104, which is already used by the public, and Section 53A of the Wildlife and Countryside Act 1981, to amend the definitive map and statement of public rights of way and to confirm the orders if no representations or objections are received. The legal tests for extinguishment and creation are met as discussed in paragraph 8.

10. Recommendation

- 10.1. That
- An order be made under Section 118 of the Highways Act 1980 to extinguish Restricted Byway and Bridleway (part) Purton 104 and to make an order under Section 26 of the Highways Act 1980 to create Bridleway (part) Purton 104, and Section 53A of the Wildlife and Countryside Act 1981, to amend the definitive map and statement of public rights of way and to confirm the orders if no representations or objections are received.**

Ali Roberts, Rights of Way Officer

21 August 2025