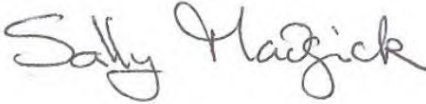


**RECORD OF OFFICER DECISION FOR DECISION REPORT ON HIGHWAYS ACT 1980 – SECTION 119 PROPOSED DIVERSION OF FOOTPATH SUTTON MANDEVILLE 13 AND SECTION 53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 – SUTTON MANDEVILLE 13**

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		31 July 2025	Yes
<b>From:</b>	Ali Roberts Definitive Map Officer		
<b>Date of Report:</b>	23 July 2025		
<b>Return to:</b>	Ali Roberts		

**Nature of Report:**

This report by Ali Roberts (Case Officer) is seeking authorisation from the officer with the delegated power to effect the recommendation to consider an application from Birketts LLP on behalf of the landowners Andrew and Emily Lodge, under s.119 of the Highways Act 1980, dated 2 October 2023 to divert Footpath Sutton Mandeville 13 (SMAN13). The application is made in the interests of the landowner due to privacy and safety grounds for the residential dwelling. It is proposed to delete 135 metres of SMAN13 and create a new path a distance of approximately 165 metres. The proposed width of the path will be 2 metres, whereas the current path has a width of 0.93 metres.

Officers consider that legal tests under Section 119 of the Highways Act 1980 have been met, i.e. the diversion is in the interests of the landowner and the termination points are on the same or connected highways. The right of way lies in close proximity to the home with a clear view through the full-length windows and continues through the garden impacting the privacy of the homeowner. The proposed diversion runs through the same terrain and inclination and follows a similar trajectory as the current path with the same views of the surrounding countryside. There is no material impact on distance and the proposed route will be recorded at more than double the current recorded width. The officer believes the public will continue to use the route in their entirety if the section is diverted; therefore, the diversion would have minimal impact on the level of public use but would make a considerable difference to the landowner. Defra presumption guidance dated August 2023 states *"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. The order-making authority should therefore be predisposed to make,*

*and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests”*

**Officer’s Recommendation:**

**An order be made under Section 119 of the Highways Act 1980 to divert Footpath Sutton Mandeville 13 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 order if no representations or objections are received.**

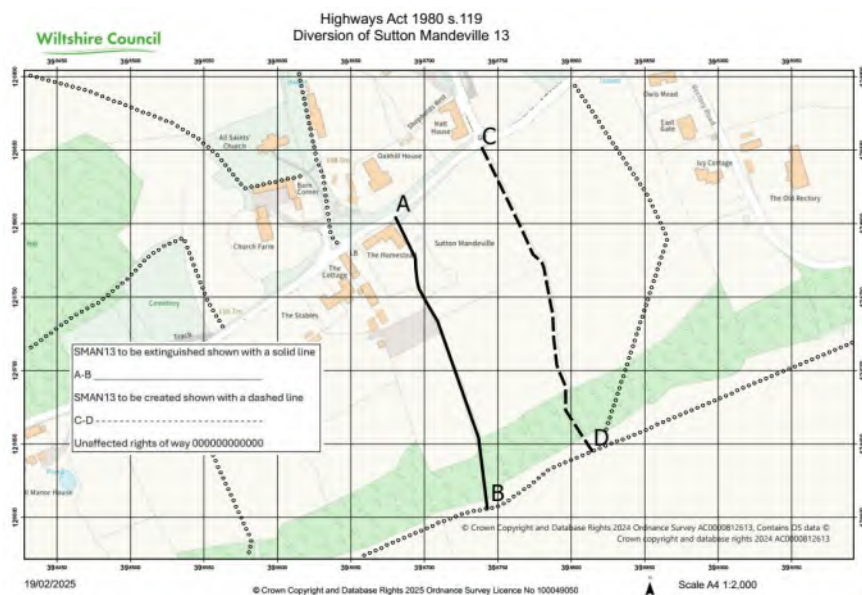
This decision is in accordance with the relevant requirements in Part 1 and the Local Authorities (Executive Arrangements) (Meetings and access to information)(England) Regulations 2012

**DECISION REPORT**  
**HIGHWAYS ACT 1980 – SECTION 119**  
**PROPOSED DIVERSION OF FOOTPATH SUTTON MANDEVILLE 13**  
**AND SECTION 53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 –**  
**FOOTPATH SUTTON MANDEVILLE 13**

**1. Application**

Application No: P/2023/016  
Application Date: 2 October 2023  
Applicant: Andrew and Emily Lodge  
The Homestead  
Sutton Mandeville  
Salisbury  
Wiltshire SP3 5ND  
Agent: Birketts LLP  
Providence House  
141-145 Princes Street  
Ipswich  
Suffolk IP1 1QJ

- 1.1 The application to divert Footpath Sutton Mandeville 13 (SMAN13) was made by Birketts LLP on behalf of the landowners Andrew and Emily Lodge, 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 The Homestead to improve the privacy and security of the home.



1.2 During the initial consultation there were 25 objectors, including Cranborne Chase National Landscape, The Ramblers, Tisbury Footpath Club, the Area Highway Engineer and local residents. During the initial consultation stage, the consultation responses received may raise issues that could potentially be resolved by amending the original diversion proposal applied for. During this phase officers look to work with the applicant, the local community and user groups in an attempt to address concerns that may prevent objections to a made order. The applicant had sight of the objections to their original proposal and following a site meeting with the applicant, the case officer, and the area Countryside Access Officer, in which potential resolutions to these concerns were discussed, a revised diversion plan for SMAN13 was submitted.

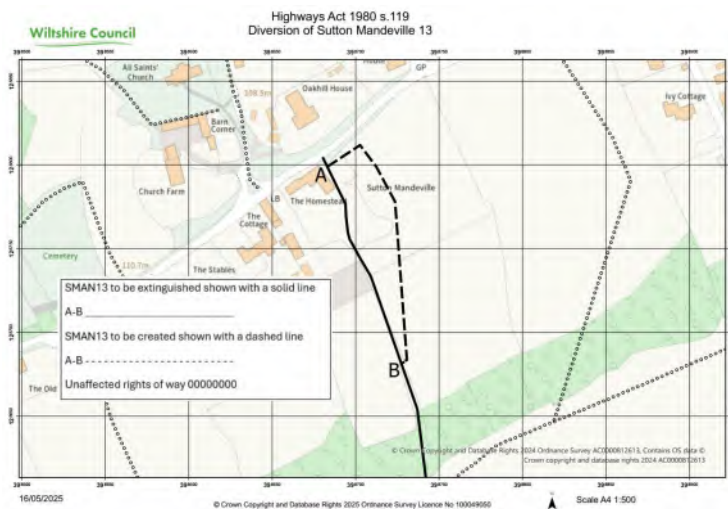
### 1.3 Issues raised regarding the original proposal and resolutions to these concerns potentially addressed by the revised diversion.

1. Health and safety concerns were raised regarding the originally proposed termination point on to Sutton Hill.
  - The revised diversion will retain the termination point at The Homestead on to Sutton Hill linking to SMAN18 leading to All Saints Church.

2. Comments on the originally proposed route included that the route was longer and steeper, was less diverse and scenic than the current route and would be very similar to SMAN3.
  - The revised proposal is a minimal diversion which adds approximately 30 metres to the route and retains the same ground levels as the current route. As can be seen from the plan showing the planned works, this proposed route will run alongside a vegetable plot, through an orchard, past mature trees and lead into the sunken lane heading south up the hill retaining its diverse character and avoiding any feeling of intrusion on the home.
3. Concern was also raised that the originally proposed route would bring walkers in close proximity to the solar array.
  - The revised diversion proposal is further away from the solar array than the original proposal but is approximately 20 metres closer to the current route. However, the solar array will be shielded by mature trees, a planned orchard and a new hedge.
4. Objections stated that the rights of way network is historic and diverting this path would set an unfortunate precedent.
  - Referring to the recent Planning Inspectorate decision regarding a diversion order at Dilton Marsh and Westbury (ROW3301931) which can be seen in full at Appendix 4, which tackled this issue, in particular at paragraph 52 the Inspector states “... *I do not attribute any weight to the Objectors’ assertion that the route of a public footpath is ‘sacrosanct’. Self-evidently that is not a correct statement of the law, given the procedures available under sections 118 and 119 of the 1981 [1980] Act and the Guidance which specifically provide a regime for diversion of public rights of way. The Guidance [Defra Presumption Guidance which is attached] states at paragraph 6 “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*

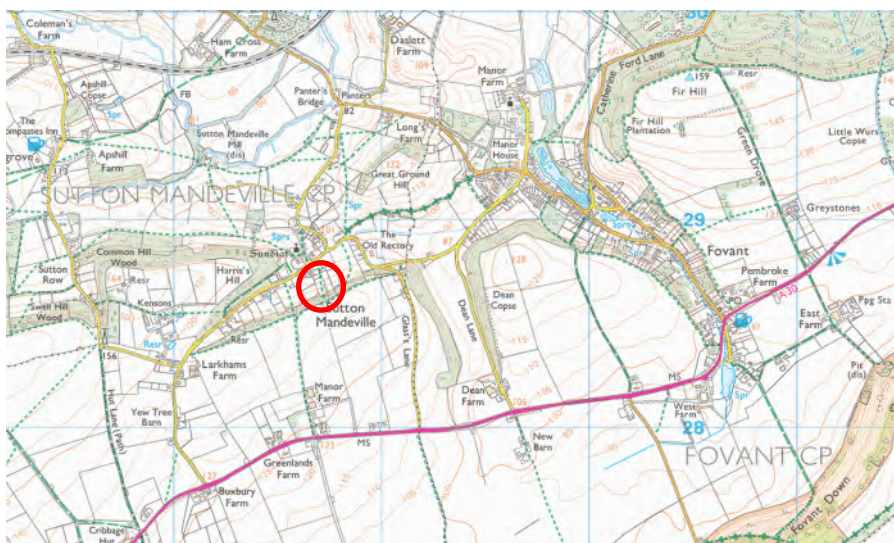
*or more reasons why its presence could be problematic for the landowner.””*

- 1.4 The second proposal is to divert Footpath SMAN13 from point A to point B shown on the attached revised plan with a bold continuous line, a distance of approximately 130 metres with a recorded width of 0.91 metres, to a new route from point A to point B shown with a dashed line, a distance of approximately 160 metres with a recorded width of 2 metres.

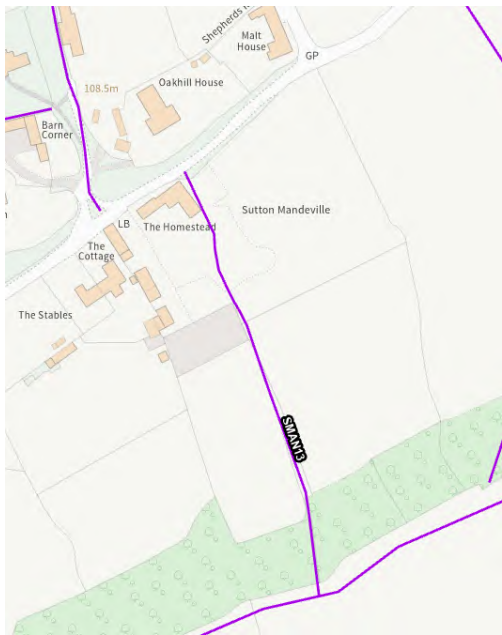


## 2 Location Plan and working copy of the definitive map and definitive statement

### 2.1 Location Plan



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



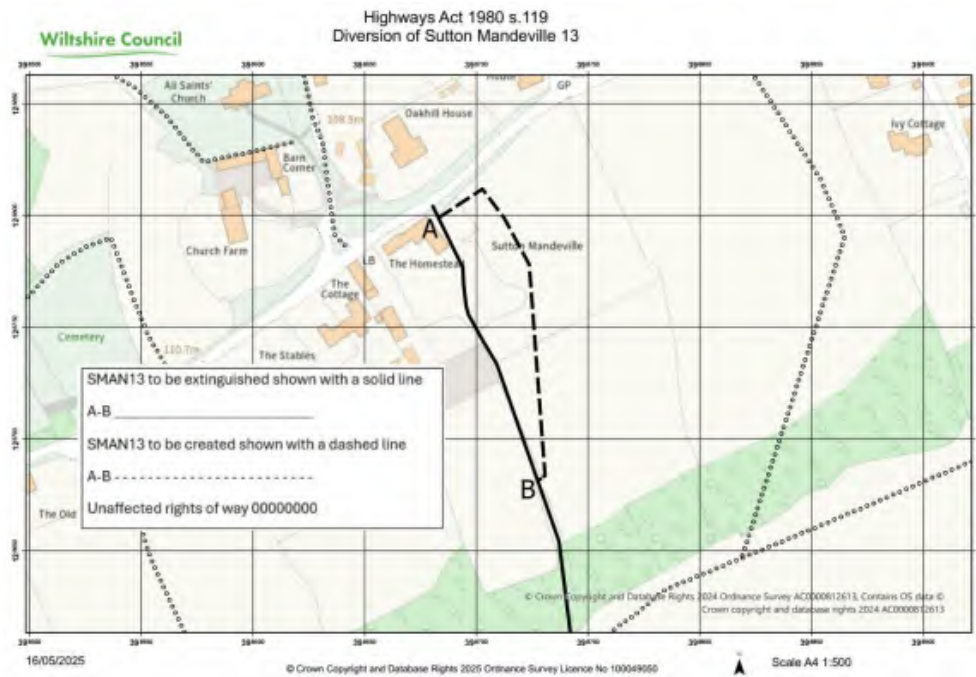
2.3 Definitive statement for SMAN13

Sutton	13	<u>FOOTPATH.</u> From path No.9 by Barrett's Farm leading north to road C.317 near the Church.	relevant date
Mandeville		Approximate length 183 m.	15th February 1994
		Width 0.91 m.	

3 **Proposed Diversion Plan**

3.1 Proposed Diversion Plan - It is proposed to divert SMAN13 as shown on the attached plan by a bold continuous line from Points A-B, a distance of approximately 130 metres with a recorded width of 0.91 metres and create a new path shown by a bold broken line from Points A-B a distance of approximately 160 metres with a recorded width of 2 metres. There will be no additional furniture on the right of way.





#### 4. Photographs of site

##### 4.1. Aerial photograph





#### 4.2 Current Path



Access from Sutton Hill is through a pedestrian gate



The footpath running in close proximity to the home



The footpath is currently situated in close proximity to the home with a clear view through the full-length windows into the kitchen/dining room extension.



SMAN13 is currently recorded at 0.93 metres



The access point into the sunken lane which is not subject to diversion

#### 4.3 Proposed Path



Access from Sutton Hill through a pedestrian gate





The vegetable garden has yet to be built but it is clear to see the user view will be directed away from the home.



The solar array will be approximately 20 metres from the footpath.



The path trajectory will be towards the access point of the sunken lane.



The access point to the sunken lane that is not part of the diversion.

## 5. **Applicant and Registered Landowner**

- 5.1. Andrew and Emily Lodge  
The Homestead  
Sutton Mandeville  
Salisbury  
Wiltshire SP3 5ND

## 6. **Legal Empowerment**

- 6.1. The application to divert SMAN13 is made under Section 119 of the Highways Act 1980 and states:

### ***“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 than to another point which is on the same highway, or a 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 contribution as may be specified in the agreement towards,-*
- (a) any compensation which may become 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 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.*
- (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 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. Public Consultation**

7.1. An initial public consultation exercise was carried out from 19 February 2025. The consultation included landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council Member for Fovant, Chalk Valley, Sutton Mandeville Parish Council and Cranborne Chase National Landscapes. The consultation received 25 objections, including Cranborne Chase National Landscape, The Ramblers, Tisbury Footpath Club, the Area Highway Engineer and local residents. The applicant had sight of the objections to their original proposal and following a site meeting with the applicant, the case officer, and the area Countryside

Access Officer in which potential resolutions to these concerns were discussed, a revised diversion plan for SMAN13 was submitted. The application was consulted on from 7 May 2025. The consultation included landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council Member for Fovant and Chalk Valley, Sutton Mandeville Parish Council, Cranborne Chase National Landscape and all parties who responded to the original proposed diversion route.

- 7.2 The revised application received 14 objections. These objections can be read in full at Appendix 1. The case officer response to the objection points is at Appendix 2.
- 7.3 2 objectors to the original application route had no objection to the revised route. David Cordle remarked it *“provided a sensible compromise”*. The Ramblers stated, *“the new proposal ... does address the key points made in my original response”*. These representations can be read in full at Appendix 1.
- 7.4 2 responses were received from Cranborne Chase National Landscape. Following a telephone discussion on 2 June 2025 between the case officer and the Principal Landscape and Planning Officer, to establish what position CCNL wished to take on this proposed diversion, CCNL requested both their responses remain as comments on this revised route. Response 1 *“the current proposal is hugely better than the original diversion, and we are happy to support you in taking this forward.”* Response 2 *“I think you should know that CCNL is being lobbied by the local community on this proposal, with concerns that the householder has brought the situation upon themselves ... Whilst CCNL supports you in your efforts to resolve the situation, it does seem that the householder has brought the situation upon themselves by their own actions. We can, therefore, appreciate the community view that it is for the householder to resolve an issue they appear to have created and not for the*

*community to suffer a loss by the diversion of the footpath.”* These responses can be read in full at Appendix 1.

7.5 Statutory undertakers contacted:

Linesearch

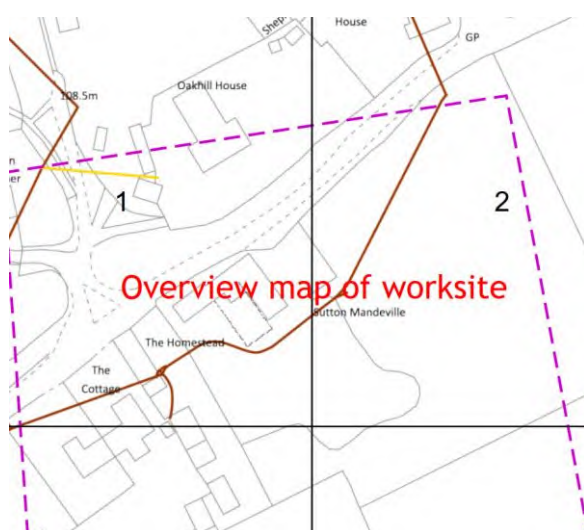
Wessex Water

SGN

Openreach

National Grid

7.6 Scottish & Southern Electricity Networks – there is apparatus in the vicinity of the diversion



The case officer sent the following email SSEN

**“Highways Act 1980 – Section 119**

**Application to Divert Footpath Sutton Mandeville 13, Wiltshire**

*We have been notified that SSEN has apparatus in the vicinity of the above-mentioned application to divert Footpath Sutton Mandeville 13 (part) (SMAN13), Wiltshire. Please find attached plan of the proposals to divert SMAN13, as shown by a bold line between points A and B, to a new route as shown by a bold dashed line from points A to B. If the application is successful*

*the footpath will be recorded on the definitive map and statement of public rights of way on the new route, which will not involve any ground works or excavation. Where immediately before the date on which the footpath is diverted there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.*

*Under Section 121(4) of the Highways Act 1980, a Highway Authority may not confirm a public path diversion order until the consent of all affected statutory undertakers has been provided. I am therefore writing to seek the permission of Scottish & Southern, to the diversion of (SMAN13), as shown on the enclosed plan. I would be very grateful for your reply by 5:00pm 25 June 2025, if I have not received a reply by that date, I will assume that SSEN consents to the proposals.”*

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

## **8. Main Considerations for the Council**

- 8.1 The application to divert SMAN13 was made under Section 119 of the Highways Act 1980, in the interests of the landowner due to privacy and safety grounds of the residential dwelling. Following a revision of the initial proposal it is proposed to delete 130 metres of SMAN13 and create a new path through the same terrain, a distance of approximately 160 metres. The proposed width of the path will be 2 metres, whereas the current recorded path is 0.91 metres. There will be no additional furniture on the right of way.
- 8.2 The main considerations for the council relate to the legal tests to be satisfied for an order to be made to divert the footpath in the manner the applicant

desires.

**8.3 s.119. Diversion of footpaths, bridleways and restricted byways**  
**(1) Expediency in the interests of the landowner/public**

8.3(a) The application has stated that the diversion has been applied for to improve the privacy and security of the home. *“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:*

- 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.*
- 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.*
- 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.*
- 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.”*

8.3(b) As can be seen from the photographs at paragraphs 4.2 the current definitive route is located in very close proximity to the home with a clear view through the full-length windows into the kitchen/dining room extension and continues through the garden of the home. 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 *“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.”* The guidance concludes *“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.”* The order making authority (Wiltshire Council) and confirming authority (the Planning Inspectorate) are directed by the Defra government guidance which clearly sets out a presumption to divert a right of way which pass through private dwellings or their curtilages and gardens.

8.3(c) Several issues are raised in the objections that are not relevant to the legal test for 119(1) and have been addressed in detail at Appendix 2. The issues shown in italics include;

- *The diversion proposal is not in the interests of the public.* Officer response - There is no legal requirement for the diversion to be in the interests of the public, the application is made in the interests of the landowner.
- *The applicants are responsible for their own loss of privacy by removing hedging that screened the footpath.* Officer response - Aerial photographs from 2002 onwards, images from Google Street View 2011 and Rightmove sales particulars dated 2013, which can be viewed in Appendix 2, show that hedging and the post and rail fence that delineated the footpath from the garden of The Homestead afforded very little privacy for the property before any works were undertaken by the applicant.
- *Diverting this right of way would set a dangerous precedent.* Officer response - Requirements on land where rights of way are situated can change therefore legislation is in place to divert routes within highway law



and planning law. Planning Inspectorate decision regarding a diversion order at Dilton Marsh and Westbury (ROW3301931) which can be seen in full at Appendix 4, tackled the issue that diverting a historic right of way would set an unfortunate precedent. Specifically at paragraph 52 the Inspector states “... *I do not attribute any weight to the Objectors’ assertion that the route of a public footpath is ‘sacrosanct’. Self-evidently that is not a correct statement of the law, given the procedures available under sections 118 and 119 of the 1981 [1980] Act and the Guidance which specifically provide a regime for diversion of public rights of way. The Guidance [Defra Presumption Guidance] states at paragraph 6 “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 applicant knew of SMAN13 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. The question that must be asked under s.119(1) is whether the diversion is expedient in the interests of the landowner and occupiers.

8.3(d) The officer is satisfied that it is in the interests of the landowner to divert the path.

#### **8.4 s.119 Diversion of footpaths, bridleways and restricted byways**

##### **(2) Alteration of the termination point**

8.4(a) The diversion of the footpath must not alter the termination points of the path where these are not on a highway and where they are on a highway they must

not be altered, other than to another point on the same highway or a highway connected with it and which is substantially as convenient to the public. The termination points for SMAN13 are not altered.

8.4(b) The officer is satisfied it is expedient in terms of section s.119(2) that the termination points are on the same or connected highways and are substantially as convenient to the public.

8.5 In *Hargrave v Stroud* (2002) EWCA Civ 1281, Lord Justice Schieman stated:

*‘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.’*

8.6 Subsection s.119(6) sets out the 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 account at the order making stage. In *Hargrave v Stroud* (above), Lord Justice Schieman stated:

*‘...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 section 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.’*

## 8.7 **s.119(6) Convenience of the path**

8.7 (a) In assessing the relative convenience of the present and proposed routes, consideration has been given to various factors including length, width,

surface, furniture, purpose, etc.

8.7 (b) Length and width of path – The section of SMAN13 to be diverted is approximately 130 metres, the proposed route will be 160 metres so there is little material difference. This is a very minimal diversion which adds approximately 30 metres to the path, adding approximately 25 seconds to the average walker's journey. As a recreational and not utility route, this is not regarded as substantially less convenient. The current path has a recorded width of 0.91 metres; the proposed path will have a recorded width of 2 metres.

8.7(c) Purpose of the path – To provide the landowner interests of privacy as stated in the application, SMAN13 will head north east for approximately 20 metres, this right angle will be required to take the walker away from the home. Once past the vegetable plot, SMAN13 would turn south east and regain its trajectory by heading in a broadly south easterly, southerly direction to the access point of the sunken lane. This limited change of direction of 20 metres will have no significant detriment to the purpose of the path.

8.7 (d) Surface conditions – The proposed route runs through the same terrain and inclination as the current route.

8.7(e) Furniture – There will be no additional furniture across the proposed route. The trajectory of the proposed route will cut the corner of the current paddock. However, to avoid the need for further gates, the paddock fencing will be realigned so that the proposed route will be fenced out of the paddock, as discussed during a site meeting with the Countryside Access Officer. This would be the requirement for the path to be certified by Wiltshire Council

8.7 (f) The officer is satisfied that it is expedient in terms of section s.119(6), i.e. convenience of the paths.

## **8.8 Section 119(6)(a) Effect of the diversions on public enjoyment of the path or way as a whole**

8.8(a) Consultation responses – All parties who responded to the original diversion proposal were included in the consultation on the revised proposal. There were 25 objections to the original proposal, the revised proposal received 14 objections. 2 objectors to the original application route sent representations stating they had no objection to the revised route. 2 responses were received from Cranborne Chase National Landscape. The first response stated the current route is hugely better than the original and the second response stated that the CCNL had been lobbied by the local community and that they appreciated the community's view that the householder had brought the situation on themselves and the community should not suffer a loss by the diversion. Following a telephone discussion between the case officer and the Principal Landscape and Planning Officer, to establish what position CCNL wished to take on this proposed diversion, CCNL requested both their responses remain as comments on this revised route. These objections and representations can be read in full at Appendix 1. The case officer's response to the objector's comments can be seen in full at Appendix 2.

8.8(b) 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 The Homestead has changed over time, as demonstrated by the historical maps provided in Sutton Mandeville Parish Council's objection, which can be viewed in Appendix 1, aerial photographs from 2002 onwards, images from Google Street View 2011 and Rightmove sales particulars dated 2013, which can be viewed in Appendix 2. The diversion of SMAN13 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 and planned to be undertaken. The revised

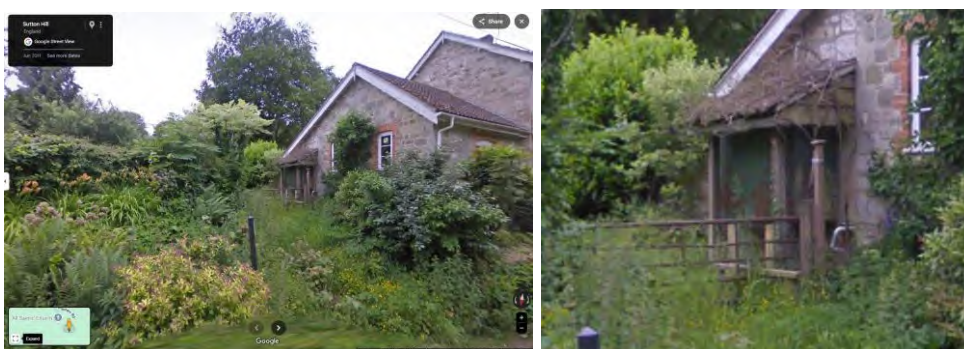
route maintains the diverse character of SMAN13 as it retains the section of sunken lane heading south up the hill. The Defra presumption guidance specifically deals with the diversion of historic paths, acknowledging that there should be a reasonable expectation for a landowner to be able to relax in their garden in private, even if the path has existed for centuries, as discussed at 8.3(b).

8.8(c) Views – As this is a very minimal diversion, through the same landscape, the views from the current route of SMAN13 will be largely the same as those from the proposed route. Following the current route heading north from Sutton Hill the view will be up the hill towards the copse. Following the proposed route heading from Sutton Hill the walker will briefly turn north east for 20 metres before turning south east to regain its trajectory towards the sunken lane with the same views of the copse, and vice versa. The proposed route is marginally closer to the solar array, however, if it can be seen from the proposed route it would be viewable from the current route as it is only 20 metres further away.

8.8(d) Discomfort due to intrusion - The footpath is currently situated in close proximity to the home with a clear view through the full-length windows into the kitchen/dining room extension. This may cause a feeling of intruding on the privacy of the residence for the user 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 (ROW3301931) 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.”*

8.8(e) Extent of use of SMAN13 - Wiltshire Council has no record of SMAN13 prior to this diversion application. There is no record of complaints received regarding the route. The photograph from Google Street View dated 2011 shows the route overgrown from Sutton Hill and obstructed by a field gate. A wooden slat through the field gate rungs provides the access to SMAN13.



Images from Rightmove sales particulars dated 2013, prior to the applicant's purchase of the property, show little privacy is afforded to the garden and patio of The Homestead by the post and rail fence delineating SMAN13 from the back garden.



SMAN3 offers a more progressive climb up the steep hill than SMAN13 and may be used in preference to SMAN13 to reach the peak.





SMAN3

SMAN13

Officers believe the public that have been using the SMAN13 will continue to use the route in its entirety if this section was diverted, therefore the diversion would have minimal impact on the public but would make a considerable difference to the landowner.

## 8.9 Section 119(6)(b) Effect of the diversion on lands served by the existing right of way

8.9(a) The applicant owns all the land affected by the proposal there is therefore no concern about the impact on the landowners.

## 8.10 Section 119(6)(c) Effect of the diversion over which new rights of way are proposed

8.10(a) The proposed diversion is through land owned by the applicant. Works on the proposed route must be undertaken to the Countryside Access Officer's satisfaction before the route can be certified.

8.11 The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP) - the current plan is entitled Wiltshire Countryside Access Improvement Plan 2015 – 2025 – Rights of Way Improvement Plan 2. ROWIP 2 recognises the Council's duty to have regard to the Equality Act 2010 and to consider the least restrictive option:

- At 4.1 page 16 the Council recognises that considering the needs of those with mobility impairments is a statutory responsibility:  
*“..consider the needs of those with mobility impairments when maintaining the network and authorising structures (e.g. stiles and gates) on the rights of way network and seek improvements to existing structures where it would be beneficial (Equality Act 2010).”*

ROWIP 2 refers to the Council’s Gaps, Gates and Stiles Policy. This is Policy number 7 and is appended to ROWIP2

The Policy recognises that the authority must consider the needs of those with mobility impairments when managing rights of way and access and that this requirement particularly applies when authorising structures (e.g. stiles and gates) on rights of way and seeking improvements to existing structures to make access easier.

There will be no additional furniture on the proposed path.

- ROWIP Appendix 8 – Strengths, weaknesses, opportunities and threats assesment of the Countryside Access Network, Weaknesses, W1 states:  
*“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”*.

The landscape at The Homestead has evolved over time. SMAN13 is currently situated in close proximity to the dwelling of The Homestead with a clear view through the full-length windows into the kitchen/dining room extension which affects the privacy of the property.

8.12 In the making of diversion 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.

- 8.13 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.
- 8.14 There will be no likely adverse impact on biodiversity, agriculture or forestry.
- 8.15 Planning Inspectorate. Rights of way advice Note 9: General guidance on public rights of way matters, paragraph 2.3.9 advises. *“Those specified factors in Test 3 (Section 119(6)(a), (b), and (c)) must be taken into account by the decision-maker but the expediency test is not limited to those matters, as confirmed by the Court of Appeal in The Open Spaces Society v SSEFRA [2021] EWCA Civ 241. The decision-maker may have regard to any other relevant matter including, if appropriate, the interests of the owner over which the path currently passes, or the wider public interest. Use of the word “expedient” indicates that a broad judgement is to be made and it will be for the decision-maker to weigh the different considerations.”*
- 8.16 It is clear from the law the council or other decision making body should consider the benefits to the landowner of the diversion and weigh them against any loss to the public of enjoyment of use of the way as a whole and other effects on affected land.
- 8.17 Defra government guidance sets out a presumption that if a public right of way that is subject to a diversion application goes through private dwellings or their curtilages and gardens, 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 Order satisfy the relevant legislative tests.

- 8.18 Officers consider that at present the legal tests for the confirmation of an order are met and the order would be capable of being confirmed. However, once an order is made it is advertised for a period of at least 28 days and during this time any person or body may make representations or objections to the order which will need careful consideration before the order is either supported and forwarded to the Secretary of State for determination or abandoned by the Council.

## **9. Reasons for Proposal**

- 9.1. It is considered that in this case the legal tests for the making of a diversion order to divert SMAN13 under Section 119 of the Highways Act 1980 have been met as discussed in paragraph 8, i.e. the order can be made in the interests of the landowner to divert SMAN13 to provide privacy and security for the home. The termination points are on the same or connected highways and are substantially as convenient to the public.
- 9.2. It is also considered that at this stage the legal tests for the confirmation of the order appear to be met. However, it is recognised that the evaluation of the diminution of use and enjoyment is subjective. The balance of the legal tests may be altered by representations and objections received during the advertisement period meaning that Wiltshire Council must again consider the balance of issues affecting this proposed diversion before forming a view on the merits of confirmation.
- 9.3 Defra presumption guidance states *"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. The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests”* In this case the right of way lies in close proximity to the home and through the garden impacting the privacy of the homeowner. Whereas the proposed diversion follows the same trajectory as the current path, has minimal impact on distance, terrain and inclination and provides the same views of the surrounding countryside. The officer believes the public will continue to use the route in its entirety if this section is diverted; therefore, the diversion would have minimal impact on the level of public use but would make a considerable difference to the landowner.

- 9.4 The proposed diversion also meets other considerations which the Council must take into account such as the provisions of the ROWIP, the Equality Act 2010 and the needs of agriculture, forestry and biodiversity.

## **10. Recommendation**

- 10.1 That:

**An order be made under Section 119 of the Highways Act 1980 to divert Footpath Sutton Mandeville 13 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 order if no representations or objections are received.**

Ali Roberts Definitive Map Officer

23 July 2025

Decision Report

Highways Act 1980 (Section 119) – Proposed Diversion of Footpath Sutton Mandeville 13