

SMAN13-4

Highways Act 1980 s. 119 The Wiltshire Council Parish of Sutton Mandeville Path 13 Diversion and Definitive Map and Statement Modification Order 2025

Statement of Grounds and Statement of Case

It is the intention of Wiltshire Council that the papers contained here at SMAN13-4 form the Council's Statement of Case and a further submission will not be made. This is based on the following documents.

- Report to Southern Area Planning Committee following objections to the made Orders
 - Appendix A – The made Order and Order Plan
 - Appendix B – Officer Decision Report
 - Appendix B - Appendix 1 – Representations and objections to the initial consultation
 - Appendix B – Appendix 2 – Objection comments and officer responses to the initial consultation
 - Appendix B – Appendix 3 – Defra government guidance on diversion and extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises, dated August 2023
 - Appendix B – Appendix 4 – PINs decision ROW/3301931
 - Appendix C – Representations and objections to the made Order
 - Appendix D – Objection comments and officer responses to the made Order
1. It is the council's case that the above diversion order meets the legal tests contained within Section 119 of the Highways Act 1980 and should be confirmed with the modification to delete '*Southwick path no.13*' from Schedule part 1 and replace with *Sutton Mandeville path no.13*'.
 2. The application to divert Footpath Sutton Mandeville 13 (SMAN13) was made on 2 October 2023 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
 3. An initial consultation on this proposal received 25 objections including Cranborne Chase National Landscape (CCNL). 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, which brings the proposed route closer to the current path whilst providing the desired privacy for the home.

4. The revised proposal will delete approximately 130 metres with a recorded width of 0.91 metres. The path to be created is approximately 160 metres with a recorded width of 2 metres with no additional furniture. In response to concerns about the health and safety of the termination point on to Sutton Hill and that the route was longer and steeper, the revised proposal retains the current termination points, has a minimal increase in distance of 30 metres and retains the same ground levels.
5. The revised proposal received 14 objections. 2 objectors to the original application route had no objection to the revised route. Two responses were received from CCNL, one in support of the proposed revised route, the other, following lobbying, concerned that the applicants had brought the situation on themselves. Following a telephone discussion between the case officer and the Principal Landscape and Planning Officer, to confirm the position CCNL wished to take on this proposed diversion, CCNL requested both their responses remain as comments on this revised route.
6. The officer decision report was written in which the legal tests were discussed in detail. The report concluded that in this case the legal tests for the making of an Order to divert SMAN13 under Section 119 of the Highways Act 1980 were met. The consultation received 5 representations in support, 1 of which requesting anonymity and 1 received after the statutory consultation period and 10 objection responses from 11 individuals and the parish council. 1 objection is on the drafting of the order but not the diversion of SMAN13 itself. The CCNL did not object.
7. The application is made in the interests of the landowner to improve the privacy and security of the home. The current definitive route is located in very close proximity to the dwelling with a clear view through the full-length windows into the home 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, 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. Objectors raise concerns that diverting this right of way would set a precedent. However, 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.

9. Objectors also state that the applicant knew of SMAN13 before they bought it and assert that the applicants are responsible for their own loss of privacy by removing hedging that screened the footpath. However, images from Rightmove sales particulars dated 2013, prior to the applicant's purchase of The Homestead, show that hedging and the post and rail fence that delineated the footpath within the curtilage of The Homestead afforded very little privacy for the garden and patio of the property before any works were undertaken by the applicant. Nevertheless, arguments that when a landowner buys a property in full knowledge of the existence of a right of way or makes amendments to their home and therefore should not be able to alter the path have been considered in rights of way case law which 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. The proximity of the current path to the home and its continuation through the private garden raises privacy and security concerns stated in the application. It is therefore demonstrated that the diversion would be in the landowner's interests based on privacy and security and meets the legal test.
10. Section 119(2) The diversion of the footpath must not alter the termination points of the path where these are not on a highway. 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 are not altered, so there is no impact on convenience and therefore meets the legal test.
11. Planning Inspectorate. Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders, updated 13 August 2025, advises there are 3 tests under S.119(6) to confirm an order.
12. Test 1 whether it is expedient in the interests of the landowner, occupier, or public for the path to be diverted. This is subject to any altered point of termination of the path being substantially as convenient. This test is met by this order.
13. Test 2 whether the proposed diversion is substantially less convenient to the public. In assessing the convenience of the present and proposed routes, consideration has been given to various factors including length, width, surface, furniture and purpose of the path. The minimal increase of 30 metres is of little material difference as it will add 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. To provide the landowner privacy there is a minor deviation of the diversion route. This limited change of direction will have no significant detriment to the purpose of the path as it reverts to the same trajectory of the current route within 20 metres and continues to run through the same terrain and inclination. There will also be no additional rights of way furniture. Officers believe that any public use of SMAN13 will continue if this section was diverted, therefore the diversion would have minimal impact on the public but

would make a considerable difference to the landowner.

14. Test 3, as advised by the Planning Inspectorate guidance, whether it is expedient to confirm the Order having regard to the effect the new path would have on public enjoyment of the path as a whole. The effect on other land served by the existing path and the effect on land where the new right of way is created.
As stated by the guidance. *“Those specified factors in Test 3 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. 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.”* It is therefore clear that 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 enjoyment of use of the way as a whole.
15. Wiltshire Council has no record of complaints regarding SMAN13 prior to this diversion application. Images from Google Street View dated 2011 show the route overgrown from its junction with Sutton Hill and obstructed by a field gate. A wooden stile with a slat through the field gate rungs provides the only access on to SMAN13 for the public, directly next to the porch of The Homestead, in situ prior to the now built extension.
16. The proposed, minimal diversion, runs through the same landscape, with the same views. 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.
17. 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 have changed. The path subject to the diversion has no historically significant character or feature that has been identified that requires protection, other than it has been in existence for centuries. Diverting the right of way will have no direct impact on the features of the landscape at The Homestead but is in consequence of the changes already made and planned to be undertaken. The revised route maintains the path’s diverse character as it retains the section of sunken lane heading south up the hill from the southern termination point. It is not proposed to extinguish the path, it will remain, all but on a slightly different alignment, for users to walk in the same general direction as per the current route of the path. 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.
18. The path 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 which states as follows. *“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. The degree of proximity can also make a difference.”* The 5 representations in support received from local residents have all stated discomfort in potentially infringing on the applicant’s privacy when using the path.

19. There is no effect on the land served by the existing right of way and by the new right of way as the applicant owns all the land effected and works on the proposed route must be undertaken to the Countryside Access Officer’s satisfaction before the route can be certified.
20. Wiltshire Council’s rights of way improvement plan titled Countryside Access Improvement Plan 2015 – 2025 (CAIP). Within the plan on 4.1 page 16 the Council recognises that considering the needs of those with mobility impairments is a statutory responsibility and Policy number 7 Gaps, Gates and Stiles 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. The new footpath will have a recorded width of 2 metres where the current route is recorded at 0.91 metres.
21. 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.*

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 extension of the home which affects the privacy of the property.
22. Consideration must also be given to the effect on agriculture, forestry and diversity of fauna and flora. There will be no likely adverse impact on biodiversity, agriculture or forestry.
23. 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”*. 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 legal tests.

24. The matter was considered by Wiltshire Council's Southern Area Planning Committee at the meeting on 11 December 2025. There were 2 speakers in support and 3 in objection including Sutton Mandeville Parish Council. Members of the committee unanimously voted to forward the above Order to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that the diversion Order is confirmed with the modification to delete '*Southwick path no.13* from Schedule part 1 and replace with *Sutton Mandeville path no.13*'.
25. The officer's report to the committee is enclosed here and form the Council's Statement of Case.
26. The objectors' comments have been addressed in SMAN13-6.
27. The Inspector is invited to walk the current route, that runs in close proximity to the home and continues through the garden; and the proposed route that is situated away from the home which negates the feeling of intruding on the home owner; and to ultimately confirm this order.

WILTSHIRE COUNCIL

AGENDA ITEM NO.

SOUTHERN AREA PLANNING COMMITTEE

DATE 13 November 2025

HIGHWAYS ACT 1980 SECTION 119
THE WILTSHIRE COUNCIL PARISH OF SUTTON MANDEVILLE PATH 13
DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER
2025

Purpose of Report

1. To:
 - (i) Consider the 5 representations in support and 10 objections to The Wiltshire Council Parish of Sutton Mandeville Path 13 Diversion and Definitive Map and Statement Modification Order 2025.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (**SoSEFRA**) with a recommendation from Wiltshire Council that the diversion Order be confirmed with modification to delete *Southwick path no.13* from Schedule part 1 and replace with *Sutton Mandeville path no.13*.

APPENDIX A. The made Order and Order Plan showing the existing route and proposed change.

APPENDIX B. Officer decision report

Appendix 1 to decision report – representations and objections

Appendix 2 Objection comments and officer response

Appendix 3 Defra Presumption Guidance

Appendix 4 PINs decision ROW33101931

APPENDIX C. Representations and objections to the made order

APPENDIX D. Representations and objections comments to the made order and officer response

Relevance to the Council's Business Plan

2. Working with the local community to provide a rights of way network which is fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. The application to divert Footpath Sutton Mandeville 13 (SMAN13) was made on 2 October 2023 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.

4. An initial consultation was carried out from 19 February 2025. The consultation included the 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 and Cranborne Chase National Landscapes and the Area Highway Engineers. The initial consultation received 25 objections, 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. 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.
5. The revised proposal will delete approximately 130 metres with a recorded width of 0.91 metres. The path to be created is approximately 160 metres with a recorded width of 2 metres with no additional furniture. In response to concerns about the health and safety of the termination point on to Sutton Hill and that the route was longer and steeper, the revised proposal retains the current termination points, has a minimal increase in distance of 30 metres and retains the same ground levels.
6. The revised proposal was consulted on from 7 May 2025. The consultation included all the previous consultees and all parties who responded to the original proposed diversion route. This proposal received 14 objections. 2 objectors to the original application route had no objection to the revised route. Two responses were received from Cranborne Chase National Landscape, one in support of the proposed revised route, the other, following lobbying, concerned that the applicants had brought the situation on themselves. Following a telephone discussion between the case officer and the Principal Landscape and Planning Officer, to confirm the position CCNL wished to take on this proposed diversion, CCNL requested both their responses remain as comments on this revised route. The representations and objections can be read in full at **Appendix 1** contained in **Appendix B** Officer decision report. The case officer response to the objection points is at **Appendix 2** of **Appendix B**.
7. The officer decision report was written and can be seen in full at **Appendix B** of this committee report in which the legal tests are discussed in detail. The report concluded that in this case the legal tests for the making of an Order to divert SMAN13 under Section 119 of the Highways Act 1980 were met.
8. The Order was made on 4 August 2025 under Section 119 of the Highways Act 1980 to divert SMAN13, and Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of public rights of way. The consultation ran from 15 August 2025 to 12 September 2025 and included the previous consultees, a notice was placed in the Wiltshire Times 15 August 2025 and on site at the termination points. The consultation received 5 representations in support and 10 objections to the order and can be seen in full at **Appendix C**.
9. Due to the objections received, the Order must be considered by the Southern Area Planning Committee whose members should consider the legal tests for

diversion against the representations and objections received, in order to decide whether Wiltshire Council continues to support the making of this Order.

10. Where the Authority continues to support its original decision to make this Order, it should be forwarded to the SoSEFRA for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or with modification.
11. Where the Authority no longer supports its original decision to make the Order, it may be withdrawn with reasons given as to why the legal tests for diversion are no longer met. The making of the public path diversion order is a discretionary duty for the Council, rather than a statutory duty; therefore, the Order may be withdrawn at any time.

Main Considerations for the Council

13. The legal tests that must be applied by Wiltshire Council in considering whether or not the diversion Order should be confirmed are contained within Section 119 (1) and (2) of the Highways Act 1980. The Council is entitled to further consider the tests for confirmation contained within Section 119(6) at this stage.

14. **Section 119(1)** of the Highways Act 1980 states that:

“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’.

15. **Section 119(2)** of the Highways Act 1980 states:

“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”.*

16. **Section 119(6)** of the Highways Act 1980 states:

“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 Sub-section (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.*

17. 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.
18. The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.
19. **S.119(1) – The landowner’s interest**

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 route continues over an area of lawn, used for the family’s recreation.*
- The proximity of the footpath to the house also affects the owners’ perception of their security.*
- The proposed route resolves these concerns.”*

20. 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 contained within **Appendix B** 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.” Therefore, 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 passes through private dwellings or their curtilages and gardens.

21. 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** contained within **Appendix B**. 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, which can be viewed in **Appendix D** and images taken from Rightmove sales particulars dated 2013, prior to the applicant’s purchase of The Homestead, seen below, 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** contained in **Appendix B**, tackled the issue that diverting a historic right of way would set a 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.

22. The proximity of the current path to the home and its continuation through the private garden raises privacy and security concerns stated in the application. Therefore, it is demonstrated that the diversion is in the landowner's interests.

23. **S.119(2) – Location and convenience of termination points**

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. Therefore, termination points are substantially as convenient.

24. **S.119(6) – Convenience of the new path**

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

25. 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.

26. 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. The photograph below is taken from the southern termination point exiting the sunken lane. The current route and proposed route can be seen in their entirety in this image.



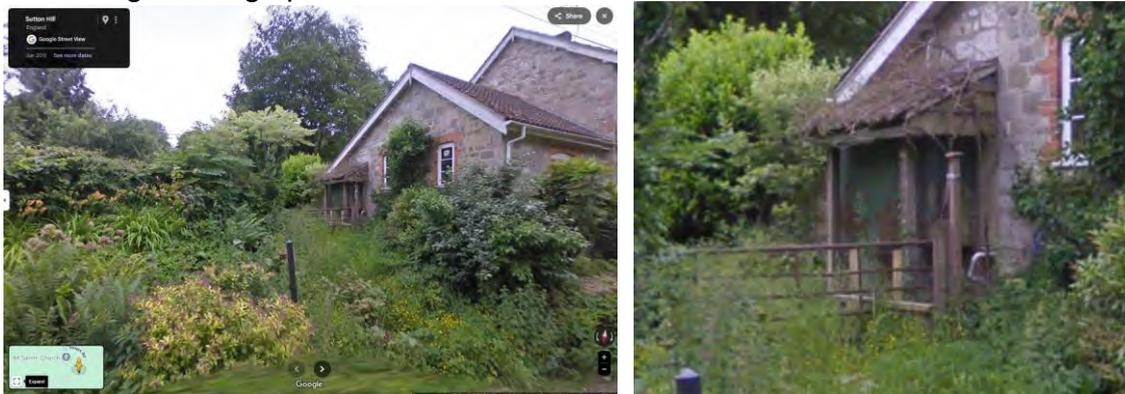
27. Surface conditions – The proposed route runs through the same terrain and inclination as the current route as can be seen in the photograph at paragraph 26.
28. Furniture – There will be no additional furniture across the proposed route. The trajectory of the proposed route will cut the corner of the current paddock. However, to avoid the need for additional 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
29. The proposed route is considered to be expedient in terms of section s.119(6) i.e. convenience of the path.
- 30. S.119(6) – Effect on public enjoyment of the path or way as a whole**

Consultation responses – During the initial consultation there were 25 objectors, including Sutton Mandeville Parish Council, Cranborne Chase National Landscape (CCNL), The Ramblers, Tisbury Footpath Club, the Area Highway Engineer and local residents. The revised proposal received 14 objections. 2 objectors to the original application route had no objection to the revised route. Two responses were received from Cranborne Chase National Landscape (CCNL), one in support of the proposed revised route, the other, following lobbying as stated within the response, concerned that the applicants had brought the situation on themselves. Following a telephone discussion between the case officer and the Principal Landscape and Planning Officer, to confirm the position CCNL wished to take on this proposed diversion, CCNL requested both their responses remain as comments on this revised route. Following the

consultation on the made order, 10 objections were received, 1 of which is on the drafting of the order but not the diversion of SMAN13, and 5 supporting representations were received, 1 of which was anonymous and 1 was received after the statutory consultation period. The CCNL have not objected to the order. These objections and representations can be read in full at **Appendix C**. The case officer's response to the objector's comments can be seen in full at **Appendix D**.

31. 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, 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 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.
32. Views – As can be seen by the photograph at paragraph 26 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. 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.
33. 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**, contained in **Appendix B**, 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 5 representations in support received from local residents have all raised concern about infringing on the applicant's privacy and their discomfort in infringing on this privacy.
34. Extent of use of SMAN13 - Wiltshire Council has no record of complaints regarding the obstruction of SMAN13 prior to this diversion application. The

photograph from Google Street View dated 2011 shown below, 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.



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

35. S.119(6) – Effect on land served by the existing right of way

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

36. S.119(6) – Effect on land served by the new right of way

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

37. Consideration of the Rights of Way Improvement Plan

Wiltshire Council's rights of way improvement plan is entitled Countryside Access Improvement Plan 2015 – 2025. Within the plan on 4.1 page 16 the Council recognises that considering the needs of those with mobility impairments is a statutory responsibility and Policy number 7 Gaps, Gates and Stiles 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 route. The new footpath will have a recorded width of 2 metres where the current route is recorded at 0.91 metres.

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*

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.

38. **Regard to the needs of agriculture, forestry and conservation of biodiversity**

There will be no likely adverse impact on biodiversity, agriculture or forestry

39. Planning Inspectorate. Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders, updated 13 August 2025, paragraph 23.1.28 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.”*

40. 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.

41. 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.

Overview and Scrutiny Engagement

42. Overview and scrutiny engagement is not required in this case.

Safeguarding Considerations

43. There are no safeguarding considerations associated with the confirmation of the making of this Order.

Public Health Implications

44. There are no identified public health implications which arise from the confirmation of the making of these Order.

Corporate Procurement Implications

45. In the event this Order is forwarded to the SoSEFRA there are a number of potential requirements for expenditure that may occur, and these are covered in paragraphs 49, 50, 51 of this report.

Environmental and Climate Change Impact of the Proposal

46. There are no environmental or climate change concerns associated with the confirmation of the making of this Order. This is wholly rural and recreational route and is unlikely to form any part of a sustainable transport route now or in the future.

Equalities Impact of the Proposal

47. Issues with accessibility have been addressed in the report at paragraph 37.

Risk Assessment

48. There are no identified risks which arise from the confirmation of the making of this Order. The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.

Financial Implications

49. The applicant has agreed to pay all of the Council’s costs associated with the making of this Order, with the advertisement of the confirmed Order and with the creation of the new path (works which have been completed). However, Wiltshire Council is not empowered to charge the applicant any costs related to forwarding the application to the SoSEFRA for confirmation by the Planning Inspectorate and accordingly will have to fund these from existing rights of way budgets. Where an application for an Order is refused no costs are payable by the applicant. In this instance, where an Order is made and confirmed the cost to the applicant will be the application costs, the advertisement costs, plus the cost of any associated works incurred by the Council. The applicant has agreed to this.
50. Where there are outstanding objections to the making of this Order, the Committee may resolve that Wiltshire Council continues to support the making and confirmation of this Order. The Order will then be determined by the Planning Inspectorate by way of written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is negligible; however, where a local hearing is held the costs to the Council are estimated to be around £200 if no legal representation is required and £3,000 to £5,000 where the case is determined by local public inquiry with legal representation.
51. There are no costs associated with the Council resolving to abandon this Order though the decision may be subject to judicial review and the Council may incur associated costs as a result of that action (see Legal Implications below).

Legal Implications

52. Where the Council does not support confirmation of the making of this Order and resolves to abandon it, clear reasons for this must be given and must relate to the legal tests contained within Sections 119 of the Highways Act 1980. The applicant may seek judicial review of the Council’s decision if the process followed is seen as incorrect. The cost for this may be up to £50,000.

Options Considered

53. Members may resolve that:
- (i) The Order is forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation as made.
 - (ii) The Order is forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation with modifications.
 - (iii) The Order is revoked and abandoned.

Reason for Recommendation

54. Unless the objection and representation are withdrawn the Order must be forwarded to the SoSEFRA for determination.
55. It is considered that in this case the legal tests have been met for the confirmation of the public path diversion order under Section 119 of the Highways Act 1980.
56. The proposed diversion order also meets other considerations which the Council must take into account such as the provisions of the ROWIP, the Equalities Act 2010 and the needs of agriculture, forestry and biodiversity.

Recommendation

57. That the Wiltshire Council Parish of Sutton Mandeville Path 13 (part) Diversion and Definitive Map and Statement Modification Order 2025 be forwarded to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that the order be confirmed with the modification to delete *Southwick path no.13* from Schedule part 1 and replace with *Sutton Mandeville path no.13*.

Chris Clark

Head of Local Highways

Report Author:

Ali Roberts

Definitive Map Officer

Appendices:

APPENDIX A. The made Order and Order Plan showing the existing route and proposed change.

APPENDIX B. Officer decision report

Appendix 1 to decision report – representations and objections

Appendix 2 Objection comments and officer response

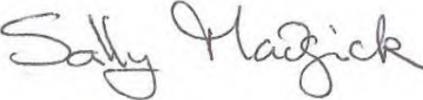
Appendix 3 Defra Presumption Guidance

Appendix 4 PINs decision ROW33101931

APPENDIX C. Representations and objections to the made order

APPENDIX D. Representations and objections comments to the made order
and officer response

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
From:	Ali Roberts Definitive Map Officer		
Date of Report:	23 July 2025		
Return to:	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.

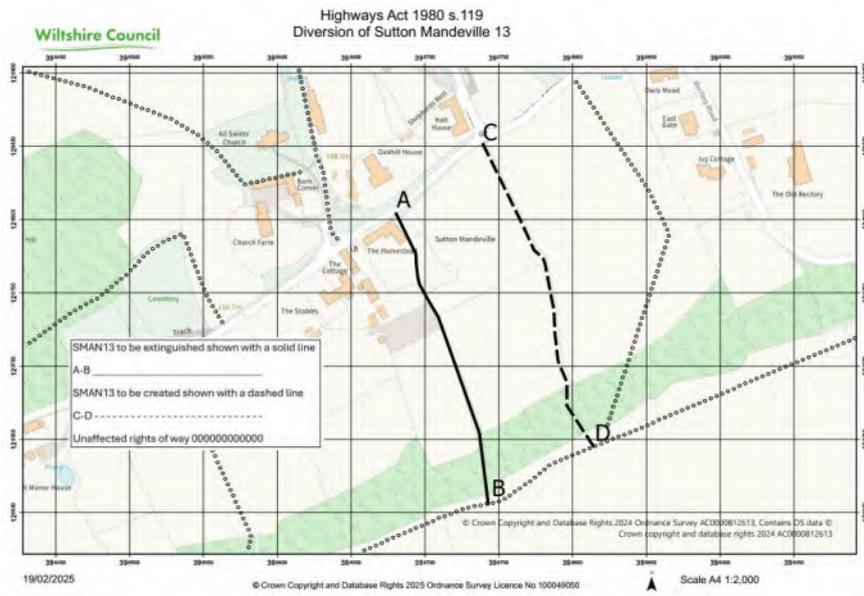
This decision is in accordance with the relevant requirements in Part 1 and the Local Authorities (Executive Arrangements) (Meetings and access to information)(England) Regulations 2012

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.

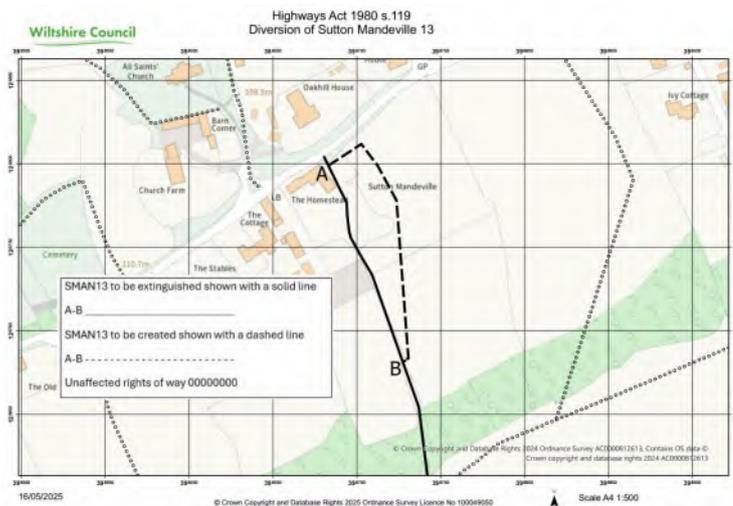
1.3 **Issues raised regarding the original proposal and resolutions to these concerns potentially addressed by the revised diversion.**

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*

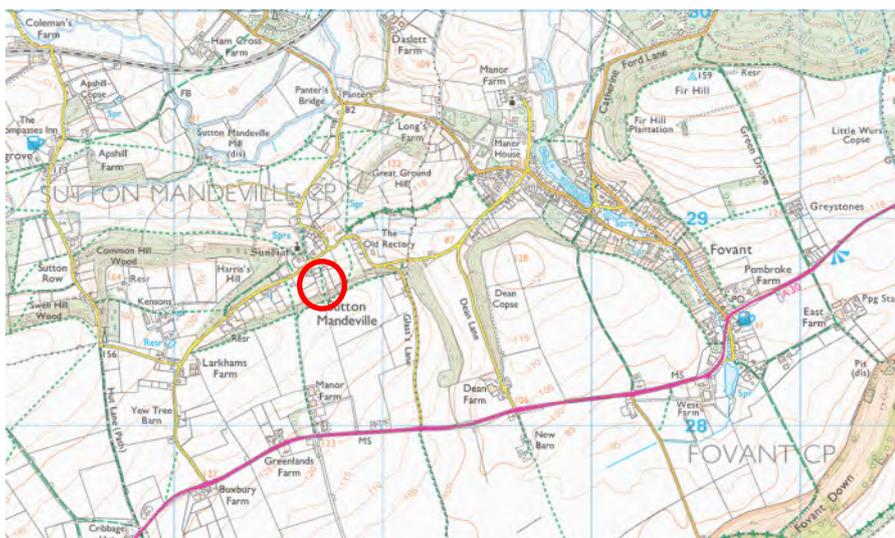
or more reasons why its presence could be problematic for the landowner.””

- 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.

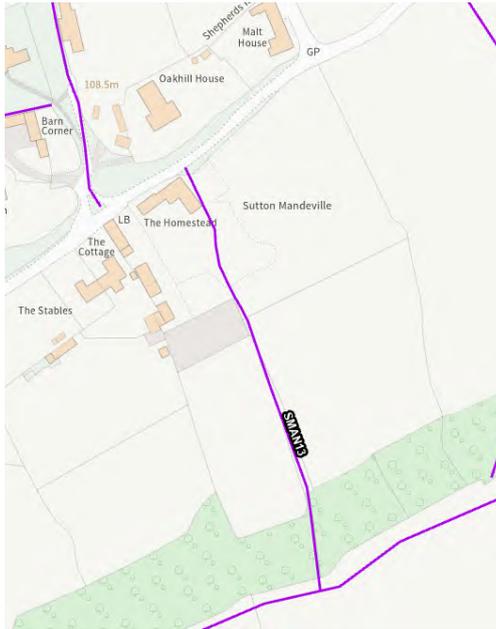


2 Location Plan and working copy of the definitive map and definitive statement

2.1 Location Plan



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

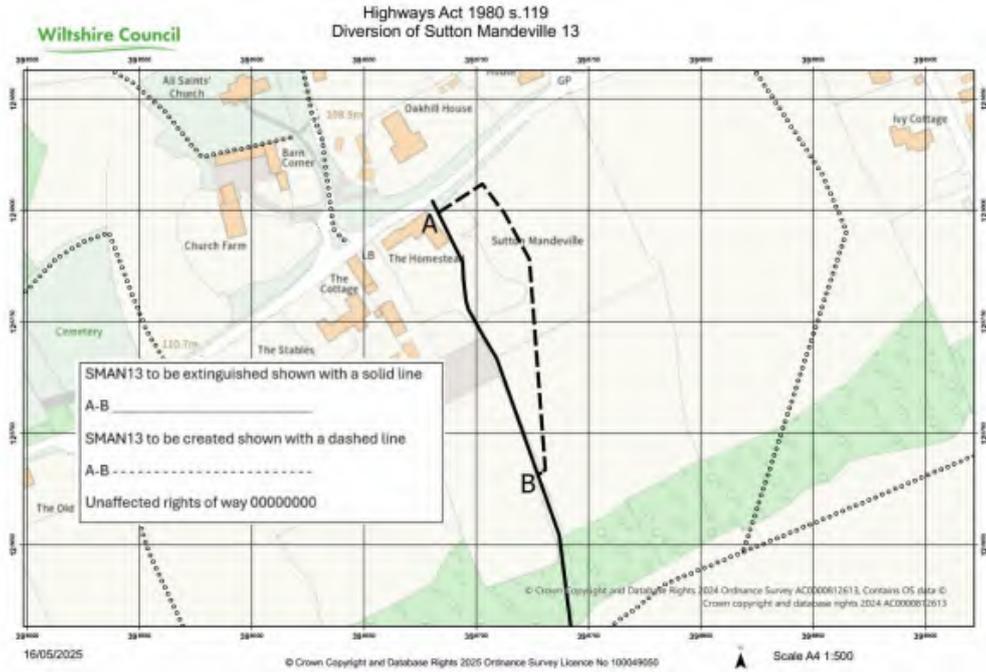


2.3 Definitive statement for SMAN13

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

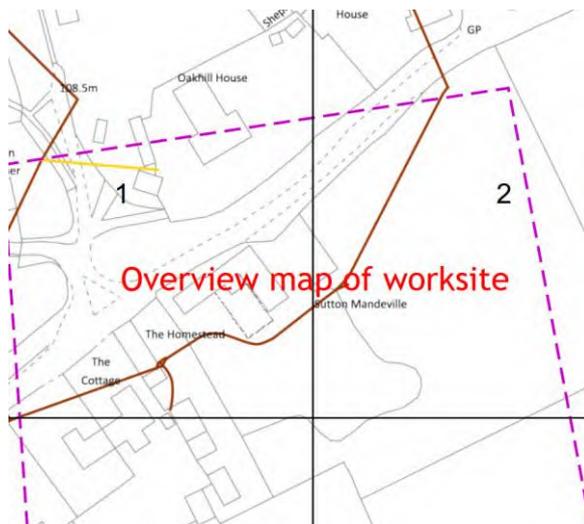
Wessex Water

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

**PUBLIC PATH DIVERSION
AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER
HIGHWAYS ACT 1980 – SECTION 119
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53A (2)
WILTSHIRE COUNCIL**

**THE WILTSHIRE COUNCIL PARISH OF SUTTON MANDEVILLE PATH 13
DIVERSION AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2025**

This order is made by Wiltshire Council (“the authority”) under section 119 of the Highways Act 1980 (“the 1980 Act”) because it appears to the authority that in the interests of the owner of the land crossed by the public right of way described in paragraph 1 of this order it is expedient that the line of the path should be diverted.

This order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the Mere and Tisbury Rural District Council Area Definitive Map dated 1952 requires modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the diversion (as authorised by this order) of a highway shown or required to be shown in the map and statement.

Mr and Mrs Lodge of The Homestead have agreed to defray any compensation which becomes payable in consequence of the coming into force of this order and any expenses which are incurred in bringing the new site of the paths into a fit condition for use by the public.

Sutton Mandeville Parish Council has been consulted as required by section 120(2) of the 1980 Act.

BY THIS ORDER:

1. The public right of way over the land situated at The Homestead, Sutton Mandeville, Salisbury, Wiltshire, SP3 5ND and shown by a bold continuous black line on the plan contained in this order and described in Part 1 of the Schedule to this order shall be stopped up on such date as the authority certifies that the work bringing the new site of the path into a fit condition for use by the public has been carried out and thereupon the Mere and Tisbury Rural District Council Area Definitive Map dated 1952 shall be modified by deleting from it that public right of way.
2. Where immediately before the date on which the public right of way 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.

3. There shall be at the end of 7 days from the confirmation of this order be public footpath over the land situated at The Homestead, Sutton Mandeville, Salisbury, Wiltshire, SP3 5ND, in the parish of Sutton Mandeville, as described in Part 2 of the Schedule and shown by bold black broken line on the plan contained in this order, and thereupon the Mere and Tisbury Rural District Council Area Definitive Map dated 1952 shall be modified by adding that public right of way to it.

3.A The Mere and Tisbury Rural District Council Area Definitive Statement dated 1952 shall be modified as described in Part 3 of the Schedule to this order

THE COMMON SEAL OF
THE WILTSHIRE COUNCIL
was hereunto affixed this
4 August 2025
in the presence of:

} 
}
} MIKE EDGAR
} Authorised Signatory
} Wiltshire Council



SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

That entire width and length of public right of way Sutton Mandeville 13 shown leading from point A, on the attached plan, at OS Grid Reference ST 9868-2880, in a broadly southerly direction for approximately 130 metres to point B at OS Grid Reference ST 9873-2868, known as Southwick path no.13.

PART 2

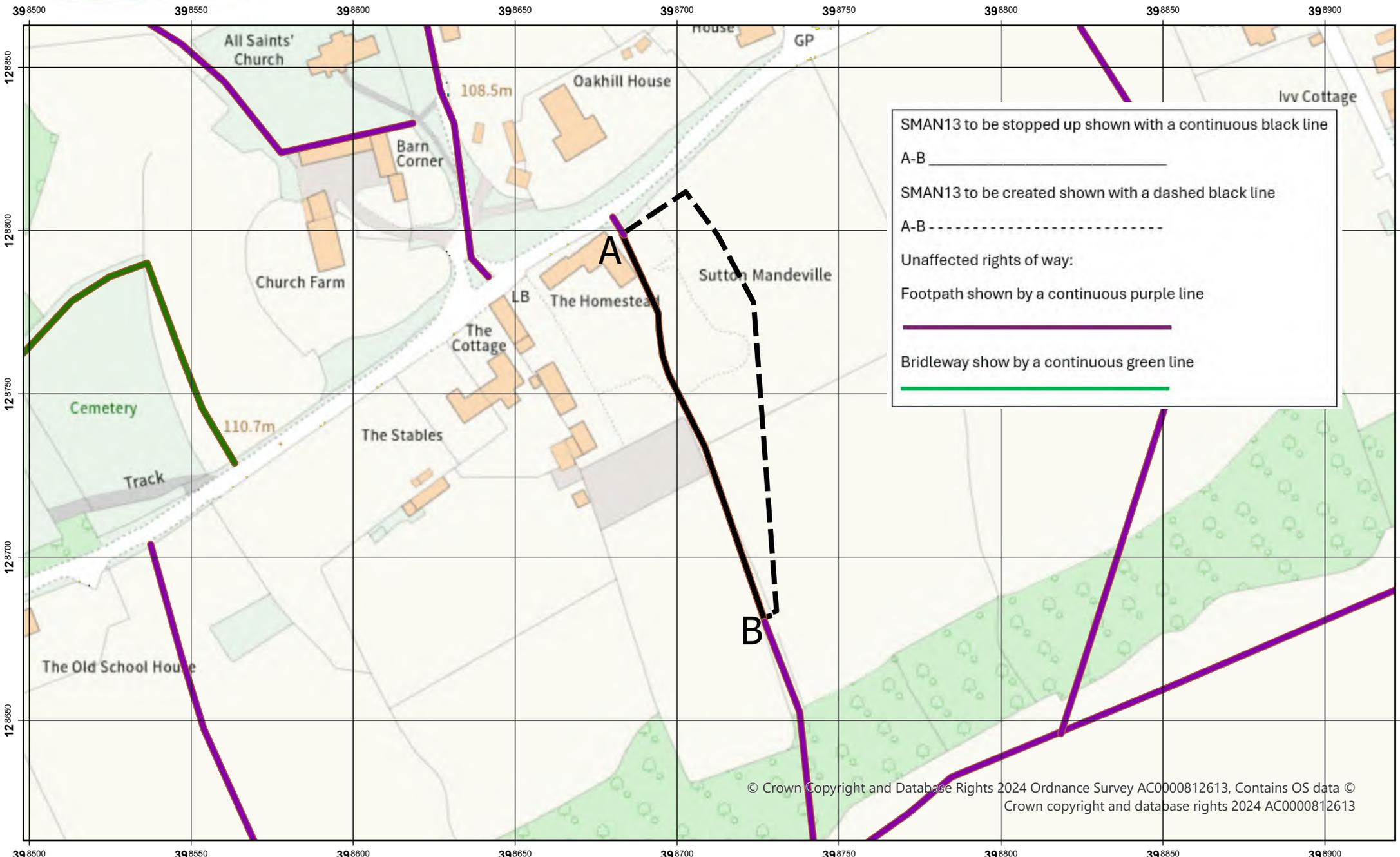
DESCRIPTION OF SITE OF NEW PATH OR WAY

That length of public footpath, Sutton Mandeville 13, leading from point A on the attached plan, at OS Grid Reference ST 9868-2880 leading in a broadly north easterly direction for approximately 20 metres, then southerly direction to point B at OS Grid Reference ST 9873-2868, a distance of approximately 160 metres in total, the path having a width of 2 metres.

PART 3

MODIFICATION OF DEFINITIVE STATEMENT

<u>Parish</u>	<u>Path No.</u>	<u>Variation of particulars of path or way</u> <u>Modified Statement to read:-</u>	<u>Modified under Section 53 (3) as specified</u>
Sutton Mandeville	13	<u>FOOTPATH.</u> From path No.9 by Barrett's Farm leading north to Sutton Hill, Road C.317 near the Church. Approximate length 231 m. Width 0.91 m. Width 2 metres between OSGR ST 9873-2868 and ST 9868-2880	53(3)(a)(i)



SMAN13 to be stopped up shown with a continuous black line

A-B _____

SMAN13 to be created shown with a dashed black line

A-B - - - - -

Unaffected rights of way:

Footpath shown by a continuous purple line

Bridleway show by a continuous green line



APPENDIX 1**Representations**

1. David Cordle
2. The Ramblers
3. Cranborne Chase National Landscape

Objections

1. Sutton Mandeville Parish Council
2. Claire Morris
3. David Willis
4. Elizabeth Beeley
5. Emma Heard
6. Helen Havard
7. JA Prince and DT Foston
8. John Shakespeare
9. Kate Barker and B Millington
10. Liz Barraha
11. Nicholas Shakespeare
12. Peter Ellis
13. Sarah Beddington
14. Tim Martin

Applicant's response to representations and objections

1. Birketts

From: [Paul Cordle](#)
To: [Roberts, Ali](#)
Subject: RE: Revised Proposal for the diversion of Sutton Mandeville 13
Sent: 07/05/2025 19:25:47

Dear Ali

Thank you for this. The proposed re-routing of the path and planting of shrubs & hedging seems to provided a sensible compromise to which I have no objection.

Best wishes,
 Paul

Paul Cordle

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 07 May 2025 15:57

Subject: Revised Proposal for the diversion of Sutton Mandeville 13

Highways Act 1980
The Proposed Diversion of Footpath Sutton Mandeville 13

We are currently in the initial consultation phase on the proposed diversion of SMAN13. During this stage, the consultation responses received may raise issues that could potentially be resolved by amending the original diversion proposal applied for. During this phase we 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 has had sight of the objections to their original proposal and following a site meeting with the applicant, myself, and the area Countryside Access Officer in which potential resolutions to these concerns were discussed, a revised diversion plan for SMAN13 has been submitted. The 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 135 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 165 metres with a recorded width of 2 metres. A revised statement of reasons is also attached detailing the applicant's grounds for making and confirming a diversion order.

Issues raised regarding the original proposal and potential resolutions to these concerns.

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 15 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.
 - I would refer to the recent Planning Inspectorate decision regarding a diversion order at Dilton Marsh and Westbury (ROW3301931) which can be seen in full by following the attached link [P/2020/010 - Rights Of Way - Wiltshire Council](#), 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.""

From: [Footpaths](#)
To: [Roberts, Ali](#)
Cc: [Ford, Carys](#)
Subject: RE: Revised Proposal for the diversion of Sutton Mandeville 13
Sent: 16/06/2025 20:34:09

Dear Ali,

Thank you for the update to the proposal for SMAN13. I have reviewed the new proposal for a diversion, and I believe that this does address the key points made in my original response. I therefore have no further comments at this stage.

Regards
 Charles

Charles Penn
 Footpath Secretary
 South Wiltshire Ramblers

From: Roberts, Ali [mailto:Ali.Roberts@wiltshire.gov.uk]
Sent: 08 May 2025 09:56
To: Roberts, Ali
Subject: FW: Revised Proposal for the diversion of Sutton Mandeville 13

Highways Act 1980
The Proposed Diversion of Footpath Sutton Mandeville 13

We are currently in the initial consultation phase on the proposed diversion of SMAN13. During this stage, the consultation responses received may raise issues that could potentially be resolved by amending the original diversion proposal applied for. During this phase we 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 has had sight of the objections to their original proposal and following a site meeting with the applicant, myself, and the area Countryside Access Officer in which potential resolutions to these concerns were discussed, a revised diversion plan for SMAN13 has been submitted. The 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 135 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 165 metres with a recorded width of 2 metres. A revised statement of reasons is also attached detailing the applicant's grounds for making and confirming a diversion order.

Issues raised regarding the original proposal and potential resolutions to these concerns.

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 15 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.
 - I would refer to the recent Planning Inspectorate decision regarding a diversion order at Dilton Marsh and Westbury (ROW3301931) which can be seen in full by following the attached link [P/2020/010 - Rights Of Way - Wiltshire Council](#), 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.""

If you would like to make any observations or representations regarding the proposal, I would be very grateful if you could reply to me via email, no later than 5pm on 18 June 2025.

Kindest regards,

Ali

Please note that any responses to this letter will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be found at:
<http://www.wiltshire.gov.uk/recreation-rights-of-way>

From: [Burden, Richard](#)
To: [Roberts, Ali](#)
Cc: [Nunn, Linda](#); [Newland, Sarah](#);
Subject: RE: Revised Point B Sutton Mandeville 13
Sent: 29/05/2025 08:10:29

Hello Ali

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. We are told that the original path did not pass tight to the house until the householder built a substantial extension, with extensive areas of glazing, right up to the edge of the path. We are also told that to build that extension a hedge was removed which screened the path from the house. We are also told the existing route is of some historic significance and that altering the route would be a cultural loss to the community.

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.

Regards Richard

Richard Burden BSc DipCons MSc MCMI(rtd) MCIPD FLI PPLI
 Chartered Landscape Architect
 Principal Landscape & Planning Officer (part-time, Mon-Wed)
Cranborne Chase National Landscape
 an Area of Outstanding Natural Beauty
 Cranborne Chase NL Office, Rushmore Farm, Tinkley Bottom, Tollard Royal, Wiltshire, SP5 5QA
 Tel: 01725 517417
 Hosted by [Wiltshire Council](#)
 Click to get our web site and [AONB Management Plan](#)
 14th International Dark Sky Reserve in the World: [Dark Night Skies](#)

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 19 May 2025 09:56
To: Burden, Richard <RichardBurden@cranbornechase.org.uk>
Cc: Nunn, Linda <LindaNunn@cranbornechase.org.uk>; Newland, Sarah <SarahNewland@cranbornechase.org.uk>; Willis, Angela <AngelaWillis@cranbornechase.org.uk>
Subject: RE: Revised Point B Sutton Mandeville 13

Good morning Richard,

Thank you for sending through the CCNL support for this proposed diversion.

Kind regards,

Ali

Ali Roberts (Miss)
 Definitive Map Officer
 Definitive Map and Highway Records
 Wiltshire Council
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From: Burden, Richard <RichardBurden@cranbornechase.org.uk>
Sent: 19 May 2025 09:51
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Cc: Nunn, Linda <LindaNunn@cranbornechase.org.uk>; Newland, Sarah <SarahNewland@cranbornechase.org.uk>; Willis, Angela <AngelaWillis@cranbornechase.org.uk>
Subject: FW: Revised Point B Sutton Mandeville 13

Hello Ali

Many thanks for all the information you have been sending through.

From the CCNL position the current proposal is hugely better than the original diversion, and we are happy to support you in taking this forward.

Regards Richard

Richard Burden BSc DipCons MSc MCMI(rtd) MCIPD FLI PPLI
Chartered Landscape Architect
Principal Landscape & Planning Officer (part-time, Mon-Wed)
Cranborne Chase National Landscape
an Area of Outstanding Natural Beauty
Cranborne Chase NL Office, Rushmore Farm, Tinkley Bottom, Tollard Royal, Wiltshire, SP5 5QA
Tel: 01725 517417
Hosted by Wiltshire Council
Click to get our web site and AONB Management Plan
14th International Dark Sky Reserve in the World; [Dark Night Skies](#)

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 16 May 2025 15:46
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Subject: Revised Point B Sutton Mandeville 13

Highways Act 1980
The Proposed Diversion of Footpath Sutton Mandeville 13

Good afternoon,

I have been asked to revise Point B on the proposed diversion plan for SMAN13 to show the route on the ground where there is a bend heading west into the sunken lane section of SMAN13, as can be seen in the attached photographs.

Sutton Mandeville Parish Council response to revised proposed diversion of SMAN 13 (P/2023/016) received 6th May 2025

The Homestead, Sutton Mandeville

SMPC objects to the revised proposal on the following grounds:

1. It fails the legal tests for a Highways Act 1980 S.119 application
2. A significant number of respondents, including many residents of the parish, object to the proposed diversion.
3. The existing route of SMAN 13 is an important historical feature of the village, which is itself a heritage asset within the Cranborne Chase National Landscape.
4. Prior to planning application 14/02330/FUL, SMAN13 was not adjacent to the house, which abutted the highway. The path was in a field separated from the garden by a hedge.
5. The Defra Presumptions Guidance of 1st August 2023 is neither applicable nor valid in this case.

The Legal Test

Diversion of SMAN 13 is not in the interests of the public because it disrupts an ancient route connecting historical settlements and fields to the south with All Saints Sutton Mandeville and the River Nadder beyond. It would diminish walkers' sense of place and damage a feature of the landscape, as well as being inconvenient to diverge away from the north termination point. Furthermore, where the proposed route traverses an existing paddock, gates may be required, inhibiting accessibility, and giving rise to further inconvenience to walkers and future land users.

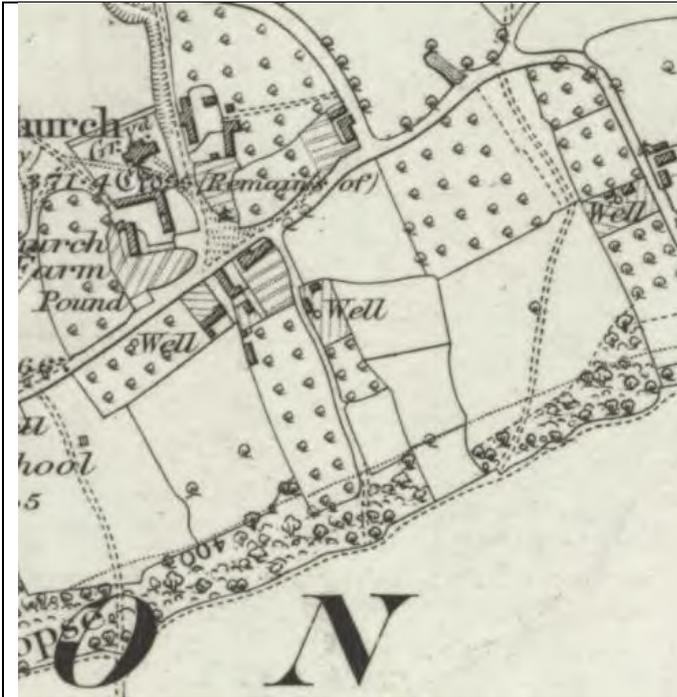
Objections from the Public

The initial consultation for extinguishment and rerouting of SMAN13 prompted some 25 letters of objection from the public. The revised proposal submitted following this outcry gave rise to fewer objections, but the majority remain resolute in their opposition. The Ramblers Association's response registers satisfaction that previous key points have been addressed and is therefore neutral rather than supportive. Only one resident individual altered their submission to support. The National landscape officer altered his initial response to the effect that he rescinded his support in favour of the opinions of the majority of the community. The message from this public consultation is, "don't interfere with or alter this right of way", and that *any* changes to SMAN 13 would be contrary to the wishes of many, and SMPC acknowledges these objections.

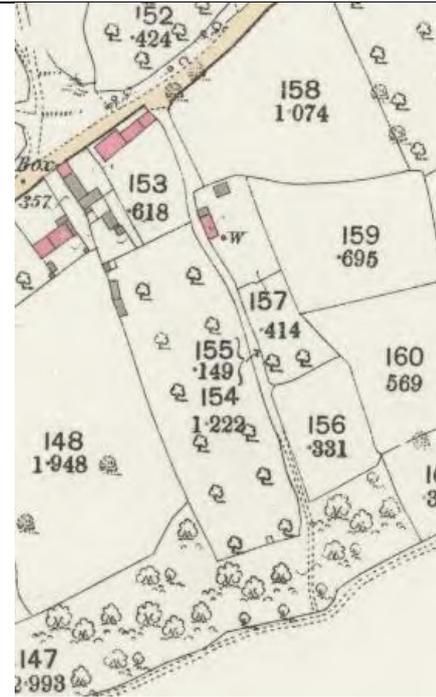
Heritage and the National Landscape

Historic maps

The OS Six-inch map (top left) shows that the right of way was, historically, the most prominent route between the centre of the village and the network of paths to the south of the village, forming a distinctive lane. The OS 25-inch map (top right) shows similar, in more detail. Its depiction as a lane continues on maps to the 1960s (maps from National Library of Scotland).



Six-inch. Wiltshire Sheet LXV. Surveyed: 1886,
Published: 1890



25-inch. Wiltshire LXV.13. Surveyed:
1886, Published: 1887



25-inch. Wiltshire LXV.13. Revised: 1939, Published:
1947



1:10,560. ST92NE – A. Surveyed /
Revised: Pre-1930 to 1961, Published:
1961

SMAN13 is clearly shown as a lane in the Tithe map of 1839 (map from Know Your Place, Wiltshire):



Although harder to make out, the OS Survey Drawing of 1807 also shows that the right of way was a prominent lane, central to the form and structure of the village. This map also underlines the connection between routes south out of the village to the network connecting to Manor Farm (map from Old Maps Online – British Library):



Wiltshire Council has recently endorsed and adopted the Cranborne Chase management plan, which is in place to conserve, protect and enhance a nationally important and protected landscape ([Wiltshire Council News and Communications 10th June 2025](#))

From Section 7. Historic and Cultural Heritage:

“The remnants [...] of working life, together with the layout of settlements, routeways and buildings, contribute to the historic character of the area.”

The Ambition of the management plan states that, “The historical and cultural environment of the National Landscape [should be] conserved and enhanced [so that] everyone understands, values and enjoys its cultural and heritage assets.”

Key Issues 3. Heritage at Risk – The National Landscape has heritage assets that Historic England considers to be vulnerable or ‘at risk’. There is a need for partners to take practical action to conserve and enhance these assets.

SMAN 13 is evidently a heritage asset which must be actively conserved, and its proposed diversion should therefore be refused by Wiltshire Council as a partner which has endorsed the vision of the National Landscape plan.

Development at The Homestead

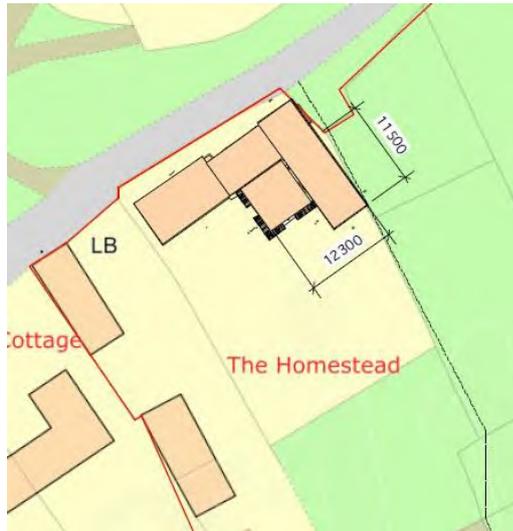
Owner’s planning application, 2014

14/02330/FUL (<https://development.wiltshire.gov.uk/pr/s/planning-application/a0i3z000014eIY6AAM/1402330ful>)

The Location Plan shows the east end of the house bordering the boundary of the property at the indent for the right of way. The right of way is only adjacent to the house on the public highway:



The Block Plans show the extension running back along the boundary, adjacent to the right of way: the right of way is only adjacent to the house because the house has been built up to it:



Both documents show that the right of way was on the other side of the field boundary to the garden, shown in yellow. The right of way only came into the garden as a result of the residents' alteration following planning consent in 2014 and is not shown in the documents accompanying that application.

The Officer Report noted that 'The proposed extension would be approximately 7.4m in height with 3m of the extension screened from view by existing boundary treatments. This will ensure that there will be no overlooking, loss of privacy or overshadowing to a detrimental degree.'; and 'The proposal would be of an acceptable scale and partially screened from view at the rear of the property'. The Officer Report does not raise any concern about privacy or disturbance in connection with the right of way. Notably, the Officer did not impose a condition of retention of the screening. Such a condition is in place for an approved solar array application PL/2024/03227.

Google Street View, from 2011

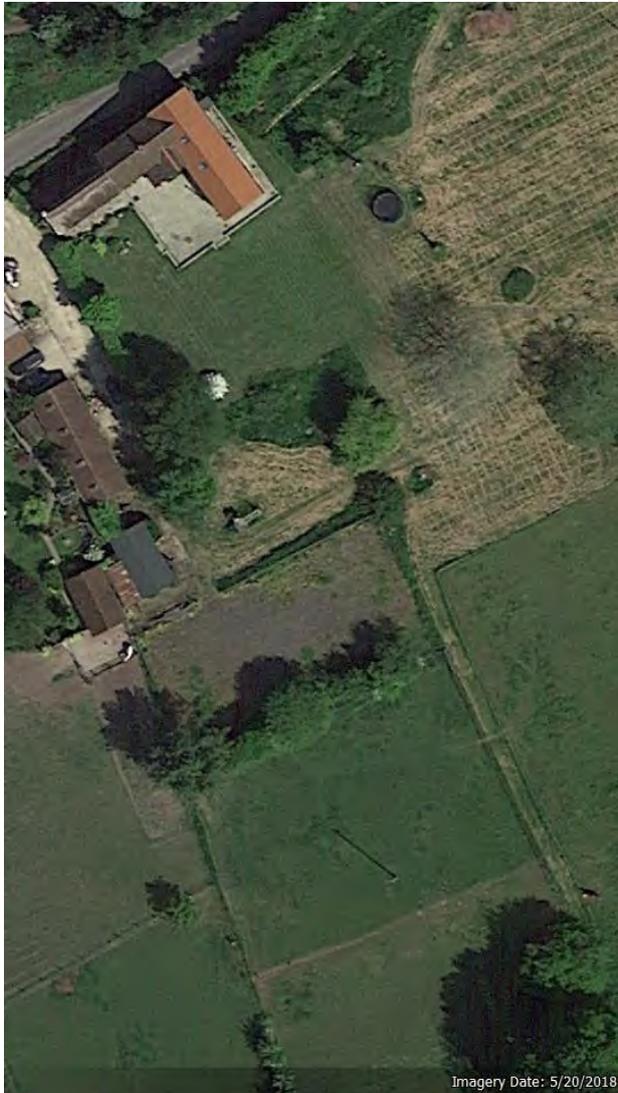
Google Street view shows on an image captured in June 2011 that the right of way ran through fields and was screened from the house and garden by a high laurel hedge:



The actions of the current owners in building an extension, expanding the garden over former fields and removing hedges has given rise to the perceived loss of privacy. It is analogous to removing window blinds from a house in a public place and then complaining that passers-by can see in.

Google Earth

Comparison of Google Earth satellite images from 2011 and 2018 shows that the right of way was formerly beyond the property and its garden, and that it is extension of the house and garden and removal of mature boundary vegetation that has caused the right of way to become proximate.



The Defra Presumptions Guidance

Defra recently articulated its policy towards access to the countryside and historic rights of way as follows:

A healthy and thriving natural environment which everyone can access is a critical part of delivering long-term sustainable change across the country. Boosting access to nature will also help drive economic growth in rural communities, as part of the government's Plan for Change.

Minister for Access, Baroness Hayman said:

These well-trodden routes, many of which have been in place for hundreds of years, are a part of our shared heritage and it is critical that we bring forward these measures to protect their long-term future.

26 Dec 2024: <https://www.gov.uk/government/news/government-steps-in-to-save-historic-rights-of-way-from-being-lost-to-the-nation>

Considering these policy statements, Defra's 2023 guidance is equivocal and must be left open to interpretation and used with discretion. It could be drawn upon, for example, in instances of malicious trespass or regular nuisance where the interests of the landowner are demonstrably of paramount importance. There is no evidence in this case that the interests of the owners of The Homestead outweigh those of users of the public right of way, nor that its current route is 'problematic' (para 6.).

Para 7. Of the guidance says it only applies where a public right of way passes through a garden or curtilage of a residential dwelling. In fact, the owners have encroached upon SMAN13: this guidance would not apply to SMAN13 except because of the actions of the owners, representing a perverse incentive contrary to intended policy. Misapplication of this Defra guidance in these circumstances could be challenged and there should be greater clarity on the status of RoWs in a National Landscape.

In weighing the interests of the owner against the overall impact of the proposal on the public (para. 9), the authority should reflect on both the actions of the owners in creating the current situation.

A more appropriate balance between the interests of the owners and the impact on the public could be obtained if the owners reversed their previous actions by screening their house and garden from SMAN13 rather than diverting the right of way. The perceived impact on privacy and security that has arisen from the owners' actions could be remedied directly by themselves without impacting the public. Verbal consultation with parishioners and walkers confirms that none feel discomfort and embarrassment walking past the house and that this will not deter them from so doing. Most people will mind their own business and concentrate on the path itself, even if no change is made.

Conclusion

SMAN 13 should remain unaltered for present and future generations in the interests of heritage, sense of place and enjoyment of the historic landscape. These interests far outweigh those of the current owners of The Homestead, and Sutton Mandeville Parish Council object to this proposal. The Homestead is a cherished centrepiece of Sutton Mandeville, despite extensive developments to the property, and SMAN 13 should remain untouched.

From: [Claire Morris](#)
To: [Roberts, Ali](#)
Cc: [Definitive Map](#)
Subject: Objection to diversion of Footpath SMAN13
Sent: 30/06/2025 15:28:06

[REDACTED]

Dear Ali Roberts,

I would like to register my objection to the diversion of SMAN13.

For context: my family bought a farm in this area 1911. Throughout my childhood I enjoyed the extensive network of footpaths, bridleways and byways. As an adult I have lived here since 1986 and continue to explore the local public Rights of Way. There has, of course, been much change.

These ancient routes have been in use for many hundreds of years and should only ever be closed or diverted for a very good reason.

As many others have already stated, the new owners were fully aware of the ROW running over the property when they bought it. Over the past years they have made significant alterations including removing the hedge that screened the footpath. Their stated reasons for seeking to divert the path ("privacy and security") are not a sufficient reason to justify its diversion, as detailed by other local residents.

This is not, however, about localism, local resentment of incomers or change, but about the respect for existing, long established, legal, public Rights of Way.

I ask that the footpath remain unchanged.

Best wishes,

Claire Morris

From: [David Willis](#)
To: [Roberts, Ali](#)
Subject: SMAN13
Sent: 05/06/2025 15:26:14

Dear Ms Roberts,

I previously lodged an objection to the original application and although I am conscious that modifications have now been made, I remain of the view that the original footpath should stay in place.

In order that I can give further thought to the matter, I would be interested to hear how you see your role in this matter. Are you an impartial arbiter, hearing both sides and then coming to a recommendation or is your role to facilitate the application?

You seem to ignore the fact that the applicants have brought about this problem for them so it would be very wrong, in my view, for their reward to be a revision to a historic footpath. This would create a terrible precedent and I think that future generations will deem the destruction of an historic right of way to be a great tragedy.

You seem to dismiss historic significance but even if you are right (which I do not accept) there remain valid objections to the revised route which have been well expressed in the other objections that you have received.

Subject to any further comments from your self or others, I adhere to my original objection>

Yours

David Willis

P/2023/016 SMAN 13

1-I am a long term resident of Sutton Mandeville and a regular user of the network of footpaths in our area. I wish to object to the proposal that SMAN 13 should be closed in its entirety and be replaced by a totally new footpath.

2-I quite understand the attraction of this proposal to the applicants. However it seems to me to be highly relevant that the extensive works carried out by the applicants to their property have increased the visibility of SMAN 13 so they can be said to be the authors of their own misfortune. If the original hedging had remained in place, they would be much less exposed.

3-I do not think that the proposed new footpath can be said to be in the “wider public interest” (the phrase used in the leading authority Open Spaces Society -v- The Secretary of State for The Environment (2021) EWCA Civ 241) for various reasons

3.1 Coming through the churchyard (a very popular walk) a pedestrian at present crosses the road and only has to walk a very short distance to connect to SMAN 13. The proposal would necessitate a much longer walk along the road (which is narrow and has no pavement) to connect to the access point. There is no speed limit and this road can be quite busy with cars tractors etc.

3.2 The new access point is to be sited near a T-junction adjacent to 2 drain manhole covers. It is not clear to me what type of access would be intended. Ideally this would not be right on the road to minimise risk to pedestrians. I would not think that access at a T-junction is intrinsically as safe as the existing access point.

3.3 I have not walked up the proposed new footpath but I understand that it is quite steep at the top which may necessitate steps being constructed. I would imagine that this might conflict with the Council’s obligations under the Equality Act 2010.

3.4 At the moment 3 footpaths run off the road which are broadly equidistant. The new footpath would be much nearer to SMAN 3 and much further from SMAN 10

3.5 The creation of the new footpath would require removal of a significant chunk of hedgerow thereby potentially affecting wildlife and biodiversity

3.6 The new footpath would be close to the solar array for heating the swimming pool-hardly an attractive feature for walkers

3.7 Preservation of the heritage/history of the footpath network

Finally it seems to me to be highly relevant to look at the enormous volume of highly cogent objections. No-one supports the proposal apart from the applicants! Taking all the above into account, it seems to be that the public

interest far outweighs the interests of the applicants and on that basis it seems to be clear that the application should be refused.

From: [Elisabeth Beeley](#)
To: [Roberts, Ali](#)
Subject: The Homestead Footpath, SP3 5ND
Sent: 18/06/2025 12:19:39

I wish to repeat my objection to the alteration to the course of SMAM13 Sutton Mandeville P/2023/016; the applicants are entirely responsible for their loss of privacy by making major alterations to their property and its setting without consulting, or approval of the near neighbours. The revised route is longer and difficult and involves destruction of much of the original path.

This is a much valued ancient, and extensive, Right of Way and there can be no justification for allowing any alteration. EB

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Application to alter footpath SMAN 13 Sutton Mandeville, SP3 5ND
Sent: 03/03/2025 16:46:45

[You don't often get email from [REDACTED] Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

I I wish to object to the application to move the above footpath for the following reasons:

1. Right to privacy: This was lost by the removal of the mature hedge by the new owners
2. Access: Suggested new footpath difficult to negotiate..steep hill.
3. New pedestrian access extended along narrow lane, no pavement, traffic which would endanger walkers with children and dogs.

I have kept my objections short as all points have been well covered already.

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Revised Proposal for the diversion of Sutton Mandeville 13
Sent: 30/05/2025 14:18:48

Dear Ali

I refer to the recent amendments to the proposal to move SMAN13 and am writing once again to object to the proposed route. Many of my original reasons for objecting remain, with the addition of the following comments and observations.

This new route is, in fact, longer and winds through the proposed vegetable garden. How is this any less intrusive than a route by the house? The proposed path now cuts across part of the valley, away from the tennis court, just below where the hollow way emerges from the wooded area. It unnecessarily diverts the current path from the tennis court, once again taking walkers close to the solar array. This spoils the route and causes a loss of public amenity.

Are the applicants now suggesting that the tennis court requires privacy? The court is supposed to have a hedge planted around it for screening and to make it less intrusive. However, having recently walked the route, this hedge does not appear to have been planted. Perhaps the applicants should first address their outstanding planning conditions. This also raises the question of whether they would actually screen anything effectively.

While the council dismisses the importance of the historic aspect and cites another case of a path running through a garden, however, the loss of privacy in this instance is entirely self-inflicted. This footpath originally passed through a field and has done so for centuries. It served as a road between the Homestead and the paddocks running up the hill. The applicants have incorporated the field into their new garden—yet it absolutely was not a garden until they built and redesigned the landscape to resemble a Surrey mansion. The transformation is entirely out of character, and it is disheartening to see the landscape being so permanently altered. Much of this former farmstead no longer resembles its original state. They could have designed the house and garden to respect the footpath, but they did not. Now, they believe they can simply move it for their own convenience.

The entire proposed route is unnecessary, and any issues of privacy could be resolved by installing screening around the house. Allowing the path to be moved will set a precedent for every footpath in the county that passes by a house with a garden. I maintain that the owners were aware of the footpath when they purchased the property, and others have managed to live here without needing to relocate it.

The issue of privacy loss, as I have said before, is entirely of their own making. They should find a solution that does not involve realigning a footpath enjoyed by walkers. Moving the footpath should not be allowed.

Yours sincerely

Emma Heard

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 08 May 2025 09:56
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Subject: FW: Revised Proposal for the diversion of Sutton Mandeville 13

Highways Act 1980
The Proposed Diversion of Footpath Sutton Mandeville 13

We are currently in the initial consultation phase on the proposed diversion of SMAN13. During this stage, the consultation responses received may raise issues that could potentially be resolved by amending the original diversion proposal applied for. During this phase we 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 has had sight of the objections to their original proposal and following a site meeting with the applicant, myself, and the area Countryside Access Officer in which potential resolutions to these concerns were discussed, a revised diversion plan for SMAN13 has been submitted. The 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 135 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 165 metres with a recorded width of 2 metres. A revised statement of reasons is also attached detailing the applicant's grounds for making and confirming a diversion order.

Issues raised regarding the original proposal and potential resolutions to these concerns.

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.

From: [Helen Havard](#)
To: [Definitive Map](#)
Subject: SMAN13 Footpath
Sent: 19/06/2025 11:59:50

[REDACTED]

I am writing to object to the relocation of the footpath SMAN13, Sutton Mandeville. I only recently became aware of the proposed diversion but, as a local who also has land with footpaths across it, I feel allowing the alterations will set a dangerous precedent for every right of way in the area.

The applicant should not be able to move this longstanding footpath just because of the inconvenience it poses to them during their temporary tenure of the adjacent property. They knowingly built an extension to their house that extends right up against the existing footpath. The footpath has only now become inconvenient to them because they have chosen to make it so. This is not a valid reason to divert it.

I support all the comments made by others who do not support these alterations and take the same view.

Rights of way should not be rerouted because someone extends their house. The footpath should remain.

Helen Havard

[REDACTED]
Sutton Road, SP3 [REDACTED]

Objection to revised application to divert SMAN13 Sutton Mandeville - P/2023/016

The proposed route is over 40% longer than the existing path and involves two right angled bends, as opposed to a more or less straight line. It is therefore substantially less convenient than the existing pathway. (Highways Act 1980 s119 – 1.2.3.(6))

The proposal involves erasure of 70% of the original RoW, by far the majority of its course. It amounts to a considerable loss of amenity and enjoyment of a historic pathway by inhabitants of this village and other local walkers.

The proposed route will be 30 metres nearer the solar array which will make it much more visible from the RoW, when such installations are supposed to be as unobtrusive as possible especially in National Landscapes. Screening by vegetation is unreliable and impossible to enforce. For half the time it is ineffectual in Winter when the trees are not in leaf. Trees die and blow down in storms; replacement is not enforced. The applicant has a history of noncompliance with such provisions because an agreement to screen the modern extension from view from the East was reneged upon with spurious excuses, which is why the visual amenities of the two listed properties in that direction including our own remain compromised by views of its inappropriate Eastern elevation. This applies equally to users of SMAN 3 and Rectory Road.

Statements concerning embarrassment at walking through the property are personal and subjective and should bear no weight since that is a minority opinion and other routes are available for the squeamish. We and most others have no such qualms; they should be ignored.

The route does not meet the legal criteria for diversions (see above) but in addition we are convinced that heritage should remain an important deciding factor. Even if a proposal is decided solely upon on other legal grounds, this particular application should be refused since its purpose gives advantage only the applicants, who are undoubtedly responsible for their own predicament, (possibly deliberately, in the hope of creating a cast iron case for diversion or erasure) at the expense of the whole community whose inhabitants testify to their enjoyment of walking where their predecessors trod. Diversions are intended to be to the advantage of both applicants, and other members of the public. There are no advantages to the community in the proposal.

SMAN13 should not be altered: we object to application.

J A Prince – D T Foston

SMAN13 P/2023/016 - Revised application - OBJECTION

We stand by to our objection to alteration of the footpath, and we submit the further reason that the village's heritage is under threat.

Last year, at a Parish Council meeting held to consider planning application numbers PL/2024/03227 & 03228, the applicant made a statement which included her opinion that she should be allowed to do what she wanted on her own property, an assertion that was tantamount to claiming the right to ignore planning regulations, environmental protection rules, special regulations applying in National Landscapes, and those concerning agricultural land, and rights of way, in favour of her personal objectives, with which we profoundly disagree.

The only beneficiaries of the revised plan would be the owners of the Homestead. Wiltshire Council's decisions are supposed to take account of the opinions and amenities of other members of the public, not just applicants. Given that the applicant has wrought this situation and bought the property in full knowledge of the RoW's existence (well covered already and confirmed by PC & CCNL officer) it is hard to see any scope for compromise over the RoW, especially as a successful application would provide a financial bonus since the property was acquired at a discount owing to its existence. Subsequently, privacy was deliberately impaired, which created conditions that would on a superficial analysis appear to justify the path's removal or diversion, a tactic that should be denied success for the sake of the whole community.

Heritage Rights of Way are of great concern to this village, and Wiltshire Council's policy recognises their importance - Section 7.1 Key Issues "Heritage at Risk". We urge decisive rejection of the application: it is unjustifiable, and would establish the regrettable precedent of people evading the consequences of altering the environmental surroundings of a RoW to present a case to divert or remove one.

J A Prince – D T Foston

From: [John Shakespeare](#)
To: [Roberts, Ali](#)
Subject: Fwd: P2023016 objection
Sent: 17/06/2025 18:08:41

[REDACTED]

Dear Ali Roberts,

Thank you for sending this new application.

After some consideration, I regret that it does not sway me from again registering an objection. Nor does it alter my reasons for doing so – outlined in my original letter (see below). While I appreciate the efforts being made to address these, the change still presents the same navigational challenges for me.

I would like only to add that my objections continue to be shared by almost everyone else in Sutton Mandeville. It is not an exaggeration to point out that most people in the community would be affected – and not in a way that is a positive improvement – by having this footpath rerouted.

Yours sincerely,

John Shakespeare

Dear Ali Roberts,

I am writing to object to the application to divert a public path in Sutton Mandeville (Reference P/2023/016) where I have lived since 1992. I agree with the objections that have been lodged by others in the village, namely that this footpath has been in continuous use for more than 300 years; that the owners when they bought the property would have been fully aware of the location of the path and that it was an historic right of way; and that the proposed new path would be altogether much steeper for pensioners like myself. Certainly, I could no longer walk it, as I used to walk the present path with my late wife (it was the nearest footpath to offer us a complete circuit) and as my four children and seven grandchildren continue to do whenever they stay. It also seems worth reiterating that it was entirely the decision of the applicants to remove the protective hedge which had given privacy to the original home, as was their decision to install new windows that now directly overlook the path. There was no encroachment by the path. For these reasons, I would like to see it remain in situ, undisturbed, as a public right of way.

Yours sincerely,

John Shakespeare

[REDACTED]
Sutton Mandeville [REDACTED]

From: [Kate Barker](#)
To: [Roberts, Ali](#)
Subject: Proposed diversion of footpath SMAN13
Sent: 21/05/2025 19:24:00

Dear Ali,

We wish to register our objection to the revised proposal to divert footpath SMAN13.

Responding specifically to points in the 1980 Highway Act:

- the proposed diversion is substantially **less convenient for the public** being both longer and less direct.

- more importantly, the proposed diversion runs much closer to the proposed new solar array which will be much more visible from the path - this can only have a substantially **negative impact on public enjoyment** of the route.

There are no guarantees that the proposed planting of trees and a new orchard would materialise as such proposals are unenforceable and, in any case, would likely be ineffective in screening the large, incongruous solar panel array. The diversion does, therefore, represent a **lessening of public enjoyment and a loss of public amenity**.

It remains the case that the issue of loss of privacy which the proposal largely hinges on is entirely a result of the owners own actions, and quite possibly a contrivance specifically designed to force through the footpath diversion. It is surely important that individuals are not simply allowed to manipulate the guidance at the expense of the wider public.

Issues of heritage raised in the earlier objections have been largely ignored; nonetheless it is our belief that these ancient footpaths are, as we previously argued, an important part of our history and heritage, and as such are community assets which should not be simply disregarded in favour of individual gain and self interest.

K Barker, B Millington.

I would like to object to the revised plan for the diversion of SMAN13.

From: [liz barrah](#)
To: [Roberts, Ali](#)
Subject: Re: Revised Point B Sutton Mandeville 13
Sent: 17/06/2025 21:30:28

The diversion is confusing and passes areas not yet changed by the residents. The footpath has been politely closed for some time but as all the building work hasn't been completed it seems completely inappropriate to divert an easy straight footpath. The plans show a solar array, an agricultural building, tree planting and a vegetable plot, all next to the new diverted path. In my opinion it is just relocating the perceived 'problem'.

With so many plans for change at this property wouldn't it be better to creatively screen the original historic footpath, as it was before with a hedge. Surely this would be the easiest solution that would benefit everyone.

I would ask the residents of The Homestead to withdraw yet another planning application and leave the footpath where it is, for the sake of other villagers, walkers and our heritage.

Liz Barrah

Sent from my iPhone

On 16 May 2025, at 15:45, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980
The Proposed Diversion of Footpath Sutton Mandeville 13

Good afternoon,

I have been asked to revise Point B on the proposed diversion plan for SMAN13 to show the route on the ground where there is a bend heading west into the sunken lane section of SMAN13, as can be seen in the attached photographs.

<image006.png>

<image007.png>

<image004.png>

<image005.png>

The content of the consultation email below, dated 7 May, remains the same, as does the consultation deadline, which is 5pm on the 18th June as this still provides the required 28 day consultation period.

Kind regards,

Ali

Ali Roberts (Miss)
 Definitive Map Officer
 Definitive Map and Highway Records
 Wiltshire Council
 County Hall
 Trowbridge
 BA14 8JN
 <image001.png>

Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

Report a problem <https://my.wiltshire.gov.uk/>

Follow Wiltshire Council

<image002.png>

From: [Nicholas Shakespeare](#)
To: [Roberts, Ali](#)
Subject: Objection to P/2023/016
Sent: 17/06/2025 11:09:47

Dear Ali Roberts,

I am writing in response to a revised application to alter a long-established footpath in Sutton Mandeville.

<https://apps.wiltshire.gov.uk/RightsOfWay/Path/Detail/aBVi78Bm?row=P2023016>

Having now attempted to walk the proposed new route, I am writing to say that this revised application does not alter any of the reasons listed below for my original objection, which I attach beneath. All of them still stand.

What is not clear is why we are still discussing moving a footpath in a place of outstanding natural beauty against the wishes of the majority of the village (a footpath which was there when the applicants bought the house; and, furthermore, was guarded at that time by a thick and ancient hedge which provided adequate screening for their privacy, before they decided to pull it down). It feels mean-spirited to object to a proposal which has now been re-submitted, but the collective is being asked to compromise for the benefit of the individual. I worry that we are in danger of being worn down by a modified iteration. I remain reluctant to bypass the community's enjoyment for an individual incursion.

Best wishes,

Nicholas Shakespeare

Dear Ali Roberts,

I have lived in Sutton Mandeville since 2001 and I am writing in support of the many in the village who object to the application to divert a public path (Reference P/2023/016).

The current path has existed for generations, providing safe and accessible passage through the countryside. The suggested rerouting, however, is neither practical nor in keeping with the public's enjoyment of the area.

The suggested path climbs a steep, wooded slope, which likely explains why a trail has not been established there before. Even before my knee replacement, I would have found it challenging to walk comfortably up or down this steep incline. It will be inaccessible for individuals with mobility issues, and could be dangerous for many during wet weather.

The original path offers an open, uplifting perspective of the countryside—one of the reasons walkers value it. The change would replace this lovely view with one of the solar panels used to heat a swimming pool.

The proposed alternative does not meet the standard of accessibility or enjoyment that should be required for such a change. Making it safe and usable would require significant destruction of trees and banking, further undermining the area's character.

The historic footpath should not be compromised for the convenience of one household at the expense of the wider community's right to enjoy a safe, beautiful and established route.

Yours sincerely,

Nicholas Shakespeare

██████████
Sutton Mandeville ██████████

From: [Peter Ellis](#)
To: [Roberts, Ali](#)
Subject: SMAN13
Sent: 18/06/2025 12:37:13

Dear Ms Roberts,

I previously lodged an objection to the original application for moving the footpath SMAN13 in Sutton Mandeville and although I am aware that modifications have now been made, I remain of the view that the original footpath should not be changed.

My main reason for this is the historical significance of the original path and the fact that it should not have been tampered with in the first place by removing the original surrounding hedges that hid walkers from the land/householders view. History should not be erased for the convenience of people that will live next to it for only a brief moment in it's history.

A further reason is the new compromised route proposed seems a strange one - to walk around a vegetable patch that for a large part of the year will be empty and still offer little more privacy that the owners seek than the original especially especially if they are working in the vegetable patch.

Kind regards
Peter Ellis

Peter Ellis Design
[REDACTED]
Sutton Mndeville
SP3 [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Objection to footpath move
Sent: 05/03/2025 16:04:08

You don't often get email from [REDACTED] [Learn why this is important](#)

Hello Ali

John Prince suggested I email you a copy of my objection letter to the moving of SMAN13. I live [REDACTED] opposite to where the new proposed gate and path position they are hoping to move it to. I have already sent it to the general email on the website.

kind regards
Peter Ellis

OBJECTION to moving SMAN13 Sutton Mandeville

We register a strong objection to the application to move this public RoW for the following reasons.

1. When someone buys a property with a public RoW footpath you know what you are letting yourself in for and have a moral duty to look after and maintain this ancient and historic right of way. This clearly is not something the current owners seems to have taken into account or have held up with the developments and landscaping that have already taken a heavy toll on the footpath. It was their choice to develop and build and make themselves far more public. Sighting privacy and security concerns for both themselves and the general public is therefore a complete irrelevance and should not be taken into consideration.

Apart from public enjoyment the single most important point is maintaining around a thousand years of history and not wiping that off the map for a few peoples convenience during their brief years of ownership of the property and land. If this is aloud it will be seen as a precedent for other people to apply to do similar and set things on a slippery slope. The country side is under enough pressure by developers, population growth and environmental changes and this is one thing that can still be preserved with the correct decision not to allow the requested application.

2. The new proposed location running up besides the planned solar array will not be an attractive walk with that on one side and hedge on the other. It also has a very steep rise up to the top which apart from the very young would be a struggle for the average person. I have personally scrambled up that bank just 20 feet left from the proposed route and had to use trees to pull myself up in parts.

3. The proposed new location would be to close to SMAN 3 making it almost redundant especially as SMAN 3 would be a much easier walk.

4. The gate entrance to this proposed path site is not as safe a location as the original being at the junction of Sutton Hill with Panters Road where cars and lorries are often forced to reverse when trying to turn into the single lane Panters Road if a car or lorry is coming down it. I have often witnessed cars, vans, tractors and lorries pulling out of Panters Road into Sutton Hill at far too fast speeds with little heed for anyone walking, riding or driving along. It is a bit of a blind spot.

5. Installation of the gate will also require tearing out the historic hedgerow and bank and would be sitting next to the attractive old style road direction sign and in front of or besides the drain which is not a particularly acceptable idea.

Peter Ellis and Hamish Davies.

Peter Ellis Design
[REDACTED] Maida Avenue
Little Venice
London W2 [REDACTED]
[REDACTED]

**OBJECTION TO THE PROPOSED REVISED APPLICATION TO RE-ROUTE
SMAN13 FOOTPATH IN SUTTON MANDEVILLE, WILTSHIRE**

From: Sarah Beddington, Sutton Mandeville resident and documentary filmmaker

To: Ali Roberts and the Definitive Map and Highway Records Team of Wiltshire Council

10/06/2025

Dear Ali Roberts and Team,

Having objected to the first application to re-route footpath SMAN13 in Sutton Mandeville, I wish to object again to this second, revised version.

The revised proposal to re-route the original footpath, while now keeping to the holloway through the wood, will still alter the path's direct and meaningful connection between the fields above the escarpment and the centre of the village. The applicants wish walkers to loop away from their newly constructed swimming pool, tennis court and house extension, leading us on a meaningless detour close to unsightly solar panels set up to heat their private pool.

As I stated previously, the owners of the Homestead must have known when they bought the property the positioning of the public footpath, adjacent to their house and garden, yet they inexplicably ripped out the dense and biodiverse hedge that had previously screened them and their new developments from public view. Why is it only now, with their alterations almost complete, that they wish to change the route of the local community's right of way?

The Homestead is a second home and the owners are often absent from the property so why should the multiple permanent residents of the village who use this footpath regularly be forced to alter their ways purely for the benefit of a single household that is often elsewhere?

SMAN13 once linked the cornfields below the downs to Sutton Mandeville Mill on the River Nadder, by way of the deeply worn holloway through the wooded escarpment and then past the Homestead and the church – a route along which cartloads of corn were taken to be milled into flour and the same route which we still use today.

While the historicity of this footpath has been dismissed as irrelevant in planning terms, I would strongly beg to differ – as it seems does Wiltshire Council itself. Together with other participants, including the National Trust, Salisbury Museum and the Wessex Rivers Trust, **Wiltshire Council** is named as a partner in Cranborne Chase National Landscape's [The Chase & Chalke Landscape Partnership Scheme](#) with funding from the National Lottery, Natural England and Historic England and South West Wiltshire Area Board (**Wiltshire Council**), among others.

Their mission statement says:

“There have always been historical, natural and social links between the valley and the Chase downland, and the Chase & Chalke Landscape Partnership explores and reinforces these links...”

This partnership is still involved in improving and alerting the community to:

ANCIENT WAYS

“The Chase & Chalke landscape area is criss-crossed by paths, many of them ancient ways... In centuries past these were the main routes between settlements, the way the rural economy functioned before the coming of the motorcar and the roads we use today.”

And under **KEY ISSUES** in 'Cranborne Chase Landscape Partnership Plan's 2025 - 2030 Future Vision', of which **Wiltshire Council** is also a partner, page 12 of their PDF states:

“Historic and Cultural Heritage

7.1. *The way the land has been used over the centuries has influenced the character of the landscapes we see around us today.*

The remnants and artefacts of working life, together with the layout of settlements, routeways, and buildings, contribute to the historic character of an area.

How does it add up for Wiltshire Council to commit to protecting the “**historic character**” of this Area of Outstanding Natural Beauty and “**the layout of...routeways**” on the one hand, only to dismiss the historicity of an ancient footpath as irrelevant on the other?

And what sort of precedent is set if public routeways can be changed on the whim of a singular and often absent second home owner, unhappy with their self-inflicted situation, in contravention to the wishes of the majority permanent residential community who wish their footpath to stay in its centuries old position?

Yours sincerely,
Sarah Beddington

From: [Anne & Tim Martin](#)
To: [Roberts, Ali](#)
Subject: Re: FW: Revised Proposal for the diversion of Sutton Mandeville 13
Sent: 10/05/2025 16:29:49

Dear Ali

Thank you for your email.

The revised proposal is contrived and demotes the footpath, which has existed for everyone's enjoyment, to something subsidiary to a few, who knew of the paths existence when purchasing/developing their property and wanting now to degrade it for their own self serving purposes. I think the priority of the footpath should be maintained on its current route. Imagine the ridiculous contortions this precedent would set when landowners realise they can get a path threaded round a mere vegetable plot, just to suit their purposes!

Tim Martin

On Thu, 8 May 2025 at 09:56, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980

The Proposed Diversion of Footpath Sutton Mandeville 13

We are currently in the initial consultation phase on the proposed diversion of SMAN13. During this stage, the consultation responses received may raise issues that could potentially be resolved by amending the original diversion proposal applied for. During this phase we 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 has had sight of the objections to their original proposal and following a site meeting with the applicant, myself, and the area Countryside Access Officer in which potential resolutions to these concerns were discussed, a revised diversion plan for SMAN13 has been submitted. The 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 135 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 165 metres with a recorded width of 2 metres. A revised statement of reasons is also attached detailing the applicant's grounds for making and confirming a diversion order.

Issues raised regarding the original proposal and potential resolutions to these concerns.

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 15 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.
 - I would refer to the recent Planning Inspectorate decision regarding a diversion order at Dilton Marsh and Westbury (ROW3301931) which can be seen in full by following the attached link [P/2020/010 - Rights Of Way - Wiltshire Council](#), 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.""

If you would like to make any observations or representations regarding the proposal, I would be very grateful if you could reply to me via email, no later than 5pm on 18 June 2025.

Kindest regards,

Ali

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.

This drawing is the copyright of the architects and may not be reproduced without permission.

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.

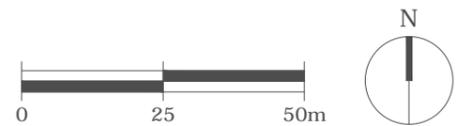
All work and materials to be in accordance with the building regulations and to comply with the relevant codes of practice and British Standards.

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. **GROUNDS 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.

APPENDIX 2

1. Sutton Mandeville Parish Council
2. Claire Morris
3. David Willis
4. Elizabeth Beeley
5. Emma Heard
6. Helen Havard
7. JA Prince and DT Foston
8. John Shakespeare
9. Kate Barker and B Millington
10. Liz Barraha
11. Nicholas Shakespeare
12. Peter Ellis
13. Sarah Beddington
14. Tim Martin

Points raised in the objections shown in bold. Officer's response in normal text.
Quotes shown in italics.

1. Sutton Mandeville Parish Council

1.1. The diversion fails on legal grounds as it is not in the interests of the public.

1.1.a Highways Act 1980 s.119(1) states "*Where it appears to a council as respects a footpath, bridleway or restricted byway in their area 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.*" The legal test to make an order is that the diversion is in the interests of the landowner, there is no requirement under 119(1) for the proposal to be in the public interest to meet this test. Sutton Mandeville Parish Council state in their objection that SMAN13 adjoins the home extension "*it is extension of the house and garden and removal of mature boundary vegetation that has caused the right of way to become proximate*". The Parish Council's statement confirms the applicants reasoning for applying to divert SMAN13 which states, "*It passes close by large windows and so affects the privacy of the property.*"

1.2. This is an ancient route connecting historical settlements, the diversion would damage a feature of the landscape and its heritage and would diminish a walkers sense of place. SMAN13 is a historic lane shown on OS maps, Tithe map and 1807 survey drawing. The path is integral to the historic structure of the village.

1.2.a. 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.

1.2.b In the production of Wiltshire Council's Countryside Access and Improvement Plan dated 2015-2025, a Strengths, Weaknesses, Opportunities and Threats analysis of the countryside access network, was undertaken with user groups who recognised the following

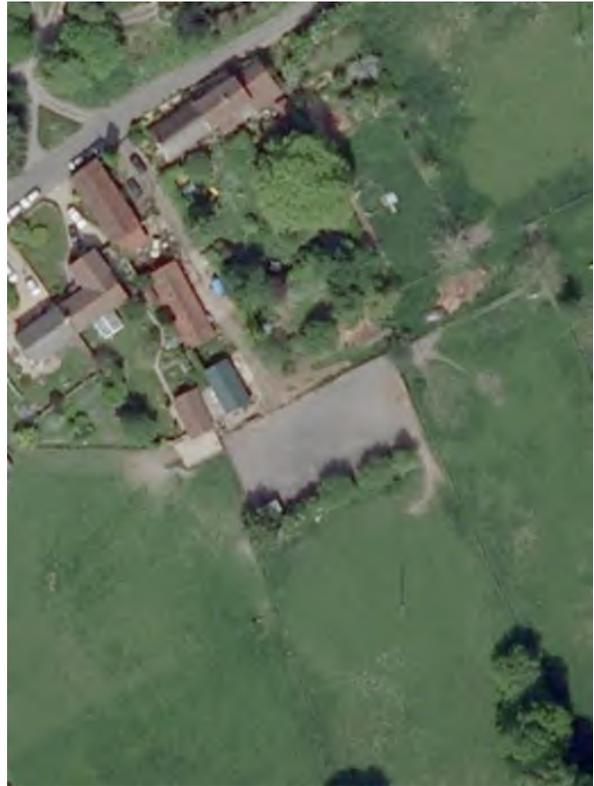
“The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users.”

1.2.c. Defra government guidance on diversion or extinguishment of public rights of way that pass through private dwellings or their curtilages and gardens, dated August 2023, 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 and/or occupier against the benefit that having the right of way through the land brings to the public, taking account of this guidance.”* 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. The guidance continues *“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.”*

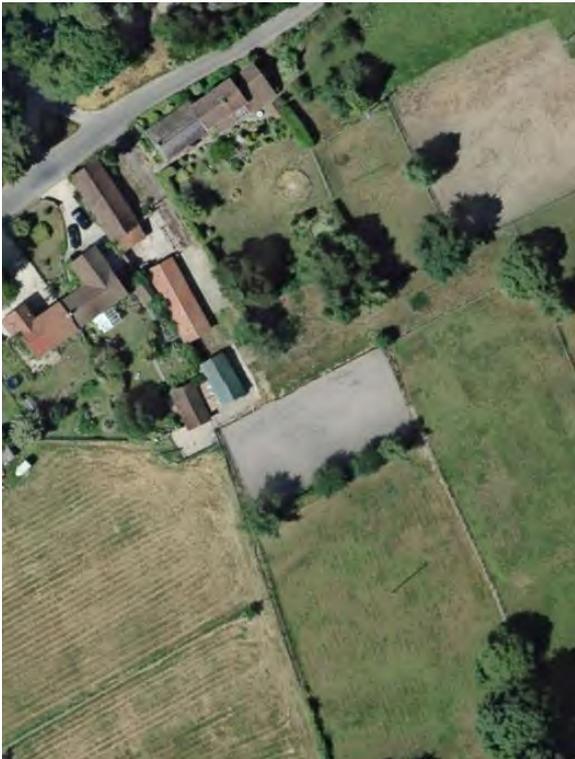
1.2.d The landscape at The Homestead has changed over time, as demonstrated by the historical maps provided in the Parish Council’s objection, which can be viewed in Appendix 1, show the changing land parcels now subsumed into The Homestead. Aerial images taken from records show that in 2002 and 2008, there is a large tree at the location, which, according to the applicants, was a beech tree that was felled due to safety concerns by the previous homeowners. This took place sometime between 2011 and 2013, as the tree can be seen in the Google Street View image dated 2011 but has clearly been removed by 2013 as can be seen at aerial image 2013. The laurel hedge is then removed as it would have been over the footprint of the extension, as can be seen in the aerial image dated 2016. 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. A plan of the diversion of SMAN13 over the planned works for the site illustrate the continued changes to the landscape of The Homestead, which include a vegetable plot and the solar array and agricultural building that have planning permission. The revised route maintains the diverse character of SMAN13 as it retains the section of sunken lane heading south up the hill towards the copse.



2002



2008



2013



2016



Google Maps 2011



Planned works at The Homestead

1.3. The diversion introduces inconvenience by diverting from the northern termination point.

1.3.a 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 purpose and trajectory by heading in a broadly south easterly, southerly direction to the access point of the sunken lane. 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.

1.4 Gates would be required to enable the traverse of the existing paddock, these gates would add an inconvenience to the public

1.4.a The paddock will be fenced away from the line of the path 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.

1.5 There are substantial objections from the public. The National Landscape Officer for Cranborne Chase rescinded support for the revised route in favour of the community opinion. The Ramblers are neutral and only one resident changed their stance to support.

1.5.a During the initial consultation there were 25 objectors, including Cranborne Chase National Landscape (CCNL), 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. 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. This proposal received 14 objections which can be read in full at Appendix 1.

1.5.b 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.

1.5.c 2 responses were received from Cranborne Chase National Landscape. Following a telephone discussion between the case officer and the Principal Landscape and Planning Officer, to confirm the 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.

1.6 Cranborne Chase Management Plan which Wiltshire Council adopted is in place to conserve, protect and enhance a nationally important and protected landscape including 'routeways'

1.6.a As stated at 1.2.b Wiltshire Council's Countryside Access and Development Plan acknowledges the rights of way network is largely historic and may not meet the present needs. Wiltshire Council as the order making authority are also guided by the Defra presumption guidance 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. Requirements on land where rights of way are situated can change therefore there are legal mechanisms in place to divert public rights of way. As previously stated at 1.5.c The Principle Landscape and Planning Officer for CCNL requested that both responses to the consultation on the revised proposal remain as the CCNL response in full.

1.7 Development of The Homestead

1.7.a Highway Act 1980 orders are not subject to planning matters.

1.8 Google Street View 2011, shows the right of way through fields and screened from the house by a laurel hedge.

1.8.a 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 which is immediately adjacent to the porch of the property. The laurel hedge offers no screening for the porch of the property as it is planted past this point.





1.9 Google Earth shows images from 2011 and 2018 the right of way was beyond the property and garden and the extension of the house and garden and removal of mature boundary vegetation has caused the right of way to become proximate.

1.9.a Aerial photographs at 1.2.d, 2002 to 2008 show a large tree, presumably the beech tree that was removed by the previous occupants due to damage. The 2013 photograph shows the laurel hedge planted at the end of the porch. The 2016 photograph demonstrates that the laurel hedge would have obstructed the extension to The Homestead. The close proximity of SMAN13 is the reason given for applying for the diversion.

1.10 Minister for Access, Baroness Hayman said: “These well-trodden routes, many of which have been in place for hundreds of years, are a part of our shared heritage and it is critical that we bring forward these measures to protect their long-term future.” Therefore Defra’s 2023 guidance is equivocal and must be left open to interpretation and used with discretion

1.10.a The quote from Baroness Hayman, ‘Government steps in to save historic rights of way from being lost to the nation’ published 26 December 2024, is discussing the 2031 cut-off date for recording historic rights of way which are not recorded on the definitive map and statement. Baroness Williams, as quoted in the forward of the Defra guidance, is specifically discussing Highway Act 1980 diversion and extinguishment orders, “*The right to apply will be supplemented by guidance that will effectively act as a presumption to divert or extinguish public rights of way*

that pass through the gardens of family homes ... where privacy, safety and security are a problem”.

1.11 Enjoyment of the historic landscape far outweigh the interests of the owner.

1.11.a As stated at 1.1.a The legal test to make an order is that the diversion can be in the interests of the landowners, it does not need to be in the public interest to meet the legal test. Officers believe that if a walker was using SMAN13, the minor diversion will have no material effect on its use. As stated at 1.2.d the diversion itself will have no impact on the historic landscape at The Homestead but is in consequence of the changes already made over time and planned to be undertaken.

1.12 No parishioners or walkers feel discomfort and embarrassment walking past the house.

1.12.a 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 is an established view discussed at length in the Defra guidance stating *“Members of the public may not be comfortable following a path through a contained space ... because it feels like infringing on the privacy of a house owner. The degree of proximity can also make a big difference ... the more a route brings people into close proximity with the associated house the less likely they are to feel comfortable using it”*. The guidance continues that a landowner should have *“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.”* 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.”*

2. Claire Morris

2.1 Rights of way are ancient routes, used for hundreds of years which should only be diverted for a very good reason

2.1.a See paragraph 1.2 a-d

2.2 The applicants knew of SMAN13 before they bought it.

2.2.a 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 s119(1) is whether the diversion is expedient in the interests of the landowner and occupiers. Mr Justice Ouseley at paragraph 33 [2012] EWHC 3333 (Admin) *“The question that has to be asked under section 119(1) is whether the diversion is expedient in the interests of the land owner. I cannot see that the question of whether the land owner 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. I cannot see either that the question of whether the*

order which set a disadvantageous precedent has anything to do with the expediency of the order in his interests, nor historical integrity. Those issues only arise when it comes to the consideration of section 119(6), the second question.”

2.3 The applicants have made significant alterations including removing hedges that screened the footpath.

2.3.a As can be seen from the Google Streetview 2011 photograph at 1.8.a and the aerial view 2013, the laurel hedge did not screen the porch of the property from the right of way as it was planted at the end of the porch. The laurel hedge provided very limited screening for the garden due to its approximate 12 metres in length.



Aerial view 2013

The images from Rightmove sales particulars dated 2013 show that although the footpath was delineated from the garden by a post and rail fence it provides no screening for the garden and patio area of The Homestead as the neighbouring paddock is clearly in view. The image taken from the paddock towards The Homestead shows a clear view of the garden through the post and rail fence and that the laurel hedge provides little screening . These photographs pre date the applicant's purchase of the property and demonstrates the right of way afforded limited privacy of the property before any works were undertaken by the applicant.



Rightmove sales particulars dated 2013

3 David Willis

3.1 Is the case officer an impartial decision maker or facilitator of the application

3.1.a 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 the case officer will 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 and to clarify the legal tests that must be met. Once representations from all sides have been gathered the case

officer will make a recommendation on the application based on the legislative tests, government guidance and consultation responses.

3.2 The applicants created the issue themselves and should not be rewarded with a diversion.

3.2.a See paragraph 2.2.and 2.3.a

3.3 The diversion would set a dangerous precedent

3.3.a This diversion would not set a precedent, requirements on land where rights of way are situated can change therefore legislation is in place to divert routes within highway law, Highways Act 1980 and planning law, Town and Country Planning Act 1990. For example, there are 35 paths recorded in the parish of Sutton Mandeville, 20 of those paths have been subject to definitive map modification orders, including diversions, extinguishments, creations, additions and status reclassification since the Mere and Tisbury Rural District Council Area Definitive Map and Statement dated 1952 was drawn up. The latest public path diversion order for paths in the parish of Sutton Mandeville being 2021 where no responses were received to the consultation. As discussed at 1.2.c, the order making authority (Wiltshire Council) and confirming authority (the Planning Inspectorate) are guided 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.

3.4 The original objection is maintained, including safety of access point, visibility and topography of a steeper route.

3.4.a The proposal is a minimal diversion adding approximately 30 metres to the path, which runs through the same ground, along the same inclination, 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 termination points are the same as the current route. This comment is clearly referencing the original proposal which was revised.

4. Elizabeth Beeley

4.1 The applicants are responsible for their own privacy loss due to unauthorised alterations.

4.1.a As demonstrated at paragraph 2.3.a there was limited privacy for The Homestead garden prior to the applicant's purchase. Paragraph 2.2.a confirms that the question that must be asked under s119(1) is whether the diversion is expedient in the interests of the landowner and occupiers.

4.2 The revised route is 35m longer

4.2.a 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, is not regarded as substantially less convenient.

4.3 There is no justification to alter an ancient right of way

4.3.a See paragraph 1.2.a-d

4.4 The original objection is maintained, including safety of access point, visibility and topography of a steeper route

4.4.a See paragraph 3.4.a

5. Emma Heard

5.1 How is the diversion route less obtrusive?

5.1.a The route will not be in close proximity to the home with a view through the windows. It will be the other side of the vegetable plot.

5.2 Why is the route diverted away from the tennis court

5.2.a The purpose of the diversion at point A is to direct the user away from the home to provide the privacy and security for the property. Once past the vegetable plot the path trajectory will be towards the sunken lane. To divert the route back towards the current path would add an unnecessary direction change for the user.

5.3 The path now cuts across the valley near the solar array, reducing the scenic and recreational value of the walk.

5.3.a The minimal diversion of the SMAN13 will be through the same landscape, with the same scenic views already available to the user. The diversion will have no direct impact on the landscape at The Homestead but is in consequence of the changes already made over time and planned to be undertaken.

5.4 The historic significance has been ignored.

5.4.a See response 1.2.a-d

5.5 The applicants privacy issues are self inflicted.

5.5.a See paragraphs 2.2.a and 2.3.a

5.6 Allowing the path to be moved will set a precedent for every footpath in the county that passes by a house with a garden.

5.6.a See response 3.3.a.

6. Helen Havard

6.1 Sets a dangerous precedent

6.1.a See response 3.3.a

6.2 The footpath should not be moved simply because it has become inconvenient due to the applicants own actions

6.2.a See paragraphs 1.2.a, 2.2.a and 3.3.a

7. JA Prince and DT Foston

7.1 The proposed route is over 40% longer and has 2 right angled bends making it substantially less convenient.

7.1.a Footpath Sutton Mandeville 13 in its entirety is 203 metres. Therefore, the additional 30 metres the proposed route would add to the right of way is approximately 15% longer, a very minimal increase making no material difference to the recreational route. 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. See paragraph 1.3a.

7.2 The proposal involves the erasure of 70% of the original right of way making it a considerable loss of amenity and enjoyment of the historic pathway.

7.2.a See paragraph 1.2.d and 5.3.a.

7.3 The proposed route will be 30 metres nearer the solar array which will make it much more visible from the RoW, and the proposed visual screening will be ineffectual in the winter

7.3.a The diversion is situated approximately 20 metres closer to the solar array, however it runs between established trees and the solar array has been screened.

7.4 Statements concerning embarrassment are subjective.

7.4.a See paragraph 1.12.a

7.5 This proposal gives advantage only to the applicants who are responsible for their own predicament. Diversions are intended to be to the advantage of both applicants and the public.

7.5.a See paragraph 2.2.and 2.3.a. See paragraph 1.1a.

7.6 Heritage should remain an important deciding factor.

7.6.a See paragraph 1.2 a-d

7.7 The proposal will establish a regrettable precedent

7.7.a See paragraph 3.3a

8. John Shakespeare

8.1 Almost everyone in Sutton Mandeville object to this diversion

8.1.a See response 1.5.a-c

8.2 The revised route still presents the same navigational challenges.

8.2.a See paragraph 3.4.a.

9. Kate Barker and B Millington

9.1 The route is less convenient and longer

9.1.a See paragraph 3.4.a

9.2 The diversion is closer to the solar array.

9.2.a See paragraph 7.3.a.

9.3 The privacy concerns are self-inflicted

9.3.a See paragraphs 2.2.a and 2.3.a

9.4 Preserving ancient footpaths should not be sacrificed for individual gain.

9.4.a See paragraph 1.2 a-d

10 Liz Barrah

10.1 The diversion is confusing and passes through areas not changed.

10.1.a If the diversion is confirmed, the Countryside Access Officers for the area, will be required to certify the route before the definitive map and statement is changed. The path will be installed and waymarked to Wiltshire Council's specifications.

10.2 The more practical solution would be to screen the original historic footpath

10.2.a The public right of way is now directly adjacent to the extension; there is no room to screen the property.

11. Nicholas Shakespeare

11.1 The revised route does not alter any of the reasons listed in previous objection; steep incline, original footpath opens uplifting perspective of the countryside, making it safe would require significant destruction of trees and banking

11.1.a See paragraph 3.4.a.

11.2 A thick ancient hedge was removed

11.2.a There was a beech tree that was removed by the previous occupants due to damage and the laurel hedge was over the footprint of the extension.

11.3 The community is being asked to compromise for the benefit of one household

11.3.a See paragraph 1.1.a

12 Peter Ellis

12.1 The current route has historical significance and should not be erased

12.1.a See paragraph 1.2.a

12.2 The original route should not tampered with in the first place.

12.2.a See paragraph 1.1a and 2.2a

12.3 The vegetable plot will not provide privacy.

12.3.a See paragraph 5.1.a

13 Sarah Beddington

13.1 The revised route is a meaningless detour

13.1.a See paragraph 1.3a and 5.2a

13.2 The applicants have removed a dense biodiversity hedge.

13.2.a See paragraph 11.2.a

13.3 The applicants knew about the right of way when they bought the property.

13.3.a See paragraph 2.2.a

13.5 This is historic landscape

13.5.a See paragraphs 1.2 a-d

13.6 Wiltshire Council is named as a partner of Cranborne Chase whose Landscape and Partnership Scheme promotes the preservation of historic routeways.

13.6 See paragraph 1.6.a

13.7 What sort of precedent will be set if public routes can be changed on the whim of a singular and often second home owner

13.7.a The applicant states this is not their second home, however even if it were the landowner would be entitled to apply to divert the right of way under Highways Act 1980, see paragraph 2.2a. Regarding setting a precedent see paragraph 3.3.a

14 Tim Martin

14.2 The footpath existed long before the current owners purchased the property.

14.2.a See paragraph 2.2.a

14.2 This diversion will set a dangerous precedent

14.2.a See paragraph 3.3a



Department
for Environment
Food & Rural Affairs

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

Date: August 2023

Version: 1.0

Please note

1. Sections 118ZA and 119ZA of the Highways Act 1980 and section 54B of the Wildlife and Countryside Act 1981 have not yet been commenced and are not in force.
2. Therefore, this guidance currently applies only where local authorities choose to consider diverting or extinguishing a right of way under s119 and s118 respectively of the Highways Act 1980.
3. Defra will inform local authorities in good time prior to commencing 118ZA and 119ZA of the Highways Act 1980 and section 54B of the Wildlife and Countryside Act 1981.

We are the Department for Environment, Food and Rural Affairs. We are responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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Extracts from Hansard 23 March 2016

As a Government Minister, Baroness Williams of Trafford made the following statements:

“The right to apply will be supplemented by guidance that will effectively act as a presumption to divert or extinguish public rights of way that pass through the gardens of family homes, working farmyards or commercial premises where privacy, safety or security are a problem.

The guidance will give authorities more scope to confirm orders made in the interests of the landowner in circumstances where a right of way may cause hardship because it goes through the garden of a family home, a working farmyard or other commercial premises.

I am happy to reaffirm the commitment made by the previous Government that we will review, within two years of implementation of the reforms package, how effective the right-to-apply provisions and the accompanying guidance have proved to be. The review will send a message to authorities that the Government are determined that the new policy should work and that if guidance does not bring about sufficient changes, we will consider the introduction of further measures.”

Introduction

1. This guidance sets out Government policy on changes to public rights of way through gardens and curtilages of private dwellings, working farmyards and other commercial premises. It sets out how local authorities should respond when considering diverting or extinguishing public rights of way under s119ZA and s118ZA of the Highways Act 1980, or when considering making a ‘modification consent order’ under section 54B of the Wildlife and Countryside Act 1981. It also applies where local authorities choose to consider diverting or extinguishing a right of way under s119 and s118 respectively of the Highways Act 1980. It should be read in conjunction with all other relevant guidance, including rights of way Circular 1/09 (or as revised) and sections 118, 119, 118ZA and 119ZA of the Highways Act 1980 and Section 54B of the Wildlife and Countryside Act 1981; the relevant web links are appended to this guidance.

Context

2. The majority of public rights of way cross privately owned land. In general, members of the public and farmers/landowners are used to the concept and see no inherent inconsistency between the fact that land may be privately owned and the presence of public routes across it for both passage from A to B, and enjoyment of the countryside and the natural environment.

3. However, the general view of both groups can change markedly in situations where public rights of way pass through contained spaces such as private gardens, farmyards or commercial premises.
4. 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.
5. The less contained such a space is, the fewer the public's concerns tend to be. 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 big difference. Few people are troubled by using public paths across privately owned land around a house or farm, so long as they feel they can keep a reasonable distance from it. But the more that a route over privately owned land brings people into close proximity with the associated house or operational farm buildings, the less likely they are to feel comfortable using it.
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:
 - a. 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;
 - b. Greater concerns today than in previous eras about the security of children or property in such situations;
 - c. An increased use of public rights of way for general leisure and recreational use rather than local people using them to get around the locality, particularly where rights of way are promoted by local authorities.
 - d. A concern that having a public path close to the house has a negative impact on the value of the property;
 - e. Farmyards or commercial operations putting the public potentially at risk, or being regularly disturbed, because of the limited space within which a route passes.

Guiding principles

7. This guidance applies where a public right of way passes through:
 - a. A garden or curtilage of a residential dwelling
 - b. a farmyard or
 - c. other commercial or industrial premises
8. It does not apply to gardens, dwellings or commercial premises which do not have the necessary permission for the current use of the land (most land and property will have an authorised use, either by way of existence of that use prior to the Town and Country Planning Act 1947 or, post 1947, either by way of an implemented planning permission or an authorised use as a consequence of a relevant period of use).
9. In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier 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 and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given. In relevant circumstances, the duty on authorities to prevent crime and anti-social behaviour under section 17 of the Crime and Disorder Act 1998 may be a consideration.
10. 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. There are different tests for extinguishment and diversion; these are set out in s.118 and s.119 (respectively) of the Highways Act 1980. The relevant web links are appended to this guidance.
11. In such circumstances, it is in the public interest that any change to remove or reduce the impacts on the property owner or occupier of the existing public right of way should, wherever possible, involve diversion or replacement of the way rather than extinguishment alone. Before making an order, authorities should consider all the options available to them and/or to the landowner, and should be open to using the combination of powers, agreements and management arrangements that best suit the circumstances, whether mentioned below or not.
12. These options include:
 - a. Diversion of the right of way onto land already owned/occupied by the owner/occupier.
 - b. Diversion of the right of way onto other land –
 - i. either by agreement with that landowner, or

- ii. where agreement is not forthcoming, using powers under s119 (5) to require the owner or occupier to underwrite compensation payable to a third party.
- c. Concurrent extinguishment of the right of way and creation of an alternative route under s118 and s25 and/or s26 Highways Act 1980 –
 - i. on land already owned/occupied by the owner/occupier, or
 - ii. on other land by agreement with that owner/occupier, or
 - iii. using the power under s26 to create a route across other land, bearing in mind the provisions of s28 of the Act.
- d. Extinguishment of the right of way where other existing rights of way (including carriageways) would meet the need of the public for access
- e. Extinguishment of the right of way where an existing path is not needed for public use. (For the purposes of section 118, in order to be not needed for public use, a public right of way does not necessarily have to be unused. In assessing non-use, authorities should disregard any temporary circumstances that prevent or diminish the use of the way, such as obstructions).

13. Authorities should also consider:

- a. The potential for improving a path so diverted or replaced (for example, by replacing stiles with gates).
- b. Where a route is to be extinguished, the scope for the owner/occupier to defray the cost of improving an existing alternative route or of creating an alternative route

Conclusion

14. In determining an application to which this guidance applies, it is for the authority to consider the case on all its merits taking into account all the statutory requirements and available guidance. 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.

Appendix

Links to legislation referred to in the guidance

Highways Act 1980

Section 25: <https://www.legislation.gov.uk/ukpga/1980/66/section/25>

Section 26: <https://www.legislation.gov.uk/ukpga/1980/66/section/26>

Section28: <https://www.legislation.gov.uk/ukpga/1980/66/section/28>

Section118: <https://www.legislation.gov.uk/ukpga/1980/66/section/118>

Section 118ZA: [not yet commenced]

<https://www.legislation.gov.uk/ukpga/1980/66/section/118ZA>

Section 119: <https://www.legislation.gov.uk/ukpga/1980/66/section/119>

Section 119ZA: [not yet commenced]

<https://www.legislation.gov.uk/ukpga/1980/66/section/119ZA>

Wildlife and Countryside Act 1981

Section 54B: [not yet commenced, see Schedule 7 of the Deregulation Act 2015]

<https://www.legislation.gov.uk/ukpga/2015/20/schedule/7/enacted>

Town and Country Planning Act 1947

<https://www.legislation.gov.uk/ukpga/1947/51/enacted>

Crime and Disorder Act 1998

Section 17: <https://www.legislation.gov.uk/ukpga/1998/37/section/17>

Order Decision

Hearing opened 9 April 2025

by Nigel Farthing LLB

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

Decision date: 29 April 2025

Order Ref: ROW/3301931 (The First Order)

- This Order is made under Section 119 of the Highways Act 1980 ('the 1980 Act') and Section 53(2)(a) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Wiltshire Council Westbury 29 (part) and Dilton Marsh 20 (part), Diversion and Definitive Map and Statement Modification Order 2021.
- The Order is dated 25 October 2021 and proposes to divert the public rights of way as shown on the Order Map and described in the Order Schedule.
- There were four objections outstanding when Wiltshire Council ('the Council') submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of decision: The Order is confirmed

Order Ref: ROW/3301934 (The Second Order)

- This Order is made under Section 118 of the 1980 Act and Section 53(2)(a) of the 1981 Act and is known as the Wiltshire Council Westbury 28 (part) and Dilton Marsh 19 (part), Extinguishment and Definitive Map and Statement Modification Order 2021.
- The Order is dated 25 October 1921 and proposes to extinguish the public rights of way as shown on the Order Map and described in the Order Schedule.
- There were four objections outstanding when the Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of decision: The Order is confirmed

Procedural Matters

1. I undertook an unaccompanied site inspection during the morning of Tuesday 8 April 2025.
 2. I held a hearing at the offices of the Council on 9 April 2025.
 3. In writing this decision I have found it convenient to refer to the points A to I marked on the Order Map. I therefore attach a copy of this map.
 4. The First Order was made by the Council under section 119 of the 1980 Act. It proposes to stop up the sections of Westbury footpath 29 between points A and B and points C to D. It also proposes to stop up the section of Dilton Marsh 20 between points D and E. I shall refer to these sections of footpath proposed to be
-

stopped up as ‘the Definitive map and Statement (‘DMS’) routes’. The Order also proposes to create a public footpath as part of Westbury footpath 29 between the points C, A, I and H and a public footpath as part of Dilton Marsh footpath 20 between points E and H, as both routes are shown by a broken line on the Order Map. I shall refer to these as ‘the proposed routes’.

5. The Second Order was made by the Council under section 118 of the 1981 Act and proposes to extinguish that part of Dilton Marsh footpath 19 between points H and G and that part of Westbury footpath 28 between points F and G. I shall refer to these as ‘the extinguished routes’.

The Legal Framework

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

Test 1: whether it is expedient in the interests of the landowner, occupier, or the public for the paths to be diverted. This is subject to any altered point of termination of the paths being substantially as convenient to the public.

Test 2: whether the proposed diversion is substantially less convenient to the public.

Test 3: whether it is expedient to confirm the Order having regard to the effect which; (a) the diversion would have on public enjoyment of the paths as a whole, (b) the coming into operation of the Order would have as respects other land served by the existing public rights of way, and (c) any new public rights of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

7. In determining whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to the enjoyment of the land affected by the new paths must be taken into account, where applicable. Other relevant factors are not excluded from consideration and could include those pointing in favour of confirmation.
8. Section 118 of the 1980 Act makes provision for the stopping up of a public right of way and involves different tests to be applied at the Order making stage and at the confirmation stage.
9. At the Order making stage the test is ‘that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use.’ At the confirmation stage the test is ‘that it is expedient to do so 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 for compensation’.

Main Issues

10. To confirm the First Order, I must be satisfied that it meets the criteria set out in the legal framework above, specifically.

-
- That in the interests of the landowner it is expedient for the Order to be confirmed.
 - That the termination points are on the same, or a connected highway, and are substantially as convenient to the public.
 - That the diverted route is not substantially less convenient to the public.
 - That having regard to the issues detailed above, and all other matters, it is expedient to confirm the Order.
11. To assist in the interpretation of these criteria, I have had regard to the judgement in the case of *R (Young) v Secretary of State for Environment, Food and Rural Affairs* (QBD) [2002] EWHC 119 (Admin) ('*Young*') and *The Open Spaces Society v SSEFRA* [2021] EWCA Civ 241.
 12. To confirm the Second Order, I must be satisfied that the routes to be stopped up are not needed for public use having regard to the extent to which the paths would be used if not stopped up and the effect of stopping up the paths on the land they serve.

Site visit

13. The Orders concern five footpaths which converge on a property known as Dilton Vale Farm ('the Farm'). The Farm was historically part of a fulling mill and spinning factory and was a significant employer in the area. It is suggested that the various footpaths arose to accommodate those working at or visiting these premises. Any such commercial use of the premises ceased long ago, and current use of the footpath network is mainly recreational.
14. The Farm straddles the parishes of Westbury and Dilton Marsh. A stream, Biss Brook, runs through the property which is situated in a bowl with the ground rising on all sides. The parish boundary is the centre line of Biss Brook.
15. I approached the Farm from Old Dilton church by way of footpath Westbury 29. This footpath runs alongside the brook and thus provides a relatively level means of accessing the Farm. At point C there is a kissing gate and from here the range of buildings comprising the Farm come into view. There was a sign encouraging users to take the permissive path (which is the proposed route) leading in a south-easterly direction to point A.
16. From point C the DMS route is not clearly defined but winds through rough grass interspersed with trees to point B where the surface changes to gravel. At this point the range of outbuildings are a few yards away. From point B the route continues to point F from where a view is available of the eastern elevation of the farmhouse.
17. From point F the route continues over gravel in a north westerly direction passing very close to the corner of the farmhouse and the outbuilding on the western side. At this point, which I will describe as at the rear of the farmhouse, there is a patio accessed by French doors from the dwelling. 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.

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18. Point D is located on the parish boundary. The gravel gives way to rough grass with a semi-defined track passing between some newly planted trees. Beyond point E there is a metal gate which I understand to be on the property boundary. Footpath Dilton Marsh 20 continues beyond.
 19. From point E I walked the proposed route to point H which is adjacent to a bridge over the brook. Walking from points E to H, good views of the rear elevation of the farmhouse are available. Between the proposed route and the dwelling is a vegetable garden with raised beds but the distance from the dwelling is sufficient to avoid any significant sense of intrusion. The surface and character of the DMS route D to E and the proposed route E to H are very similar, both being semi-defined tracks over rough grass only a short distance from each other and with similar views over the wider landscape. At point H footpath Dilton Marsh 19 joins from the north (carrying also traffic joining from footpath Westbury 28 which intersects with it only a few yards to the north).
 20. At point H the DMS route for Dilton Marsh 29 continues in a broadly southerly direction along a narrow strip of land between a fence to the west and the brook to the east. This route continues almost to the corner of the farmhouse before crossing the brook and veering across the drive and parking area in front of the farmhouse to point F.
 21. From point H the proposed route continues in a broadly westerly direction uphill and over rough grass between some young trees to point I. A short stretch of this route was a little soft, but straw had been laid so that the surface was perfectly adequate.
 22. At point I the proposed route is within the vehicular drive from the west. The drive continues to the front of the farmhouse. The proposed route turns to a broadly southerly direction along an improved vehicular track to point A where it meets Westbury 29 joining from the south-west. The route between points I and A passes close to a range of outbuildings, the most proximate of which is an open barn which appeared to be used for storage. I understand that part of these outbuildings is used as a dwelling, but this was not visibly apparent from the proposed route. Along this section of the proposed route views were available of the front elevation of the farmhouse, which is seen in context, nestled at the bottom of the bowl in the landscape.
 23. Point A is on the property boundary and there is an existing stile to accommodate FP Westbury 29. The proposed route lies within the Farm property, so it was not necessary to cross the stile before walking along the grassy hedge-side path back to point C to complete my visit.
 24. At relevant points signs were displayed inviting the public to use the proposed routes on a permissive basis. The clear evidence of use would suggest that the public have adopted the proposed routes in preference to the DMS routes.

Reasons

Test 1. Whether it is expedient in the interests of the landowner that the path or way be diverted

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25. The Order was requested by the landowner because of concerns about security and privacy. The Objector who attended the hearing did not dispute that the proposed diversions would be in the interests of the landowner.
26. The Farm has the sense of being in a rural and isolated setting. It is an attractive range of buildings, apparently with an interesting history, which would enhance the appeal of the routes for recreational walking. The proximity of the DMS routes to the dwelling gives rise to the sense of intrusion that I referred to in the description of my site visit. The advantages to the landowner of the diversion are that it would remove the public footpaths from the immediate curtilage of the house and thus allay the landowners concerns over privacy and security.
27. Government guidance on the diversion of public rights of way that pass through private dwellings, their curtilage and gardens, published in August 2023 (“the Guidance”), emphasises that a home owner is entitled to ‘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’ and that such an expectation is relevant no matter that the public right of way has existed for centuries.
28. The courts have made clear that in considering this first test the issue is confined to whether the diversion is expedient in the interests of the landowner. In *Ramblers Association v SSEFRA, Oxfordshire County Council, Weston et al* [2012] 3333 (Admin), 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.”*
29. I accept the Applicant’s evidence as to the reasons why the diversion will benefit him and following the guidance of Ousley J set out above, I have no difficulty in concluding that the proposed diversion is expedient in the interests of the landowner.

Whether the altered termination points of the highway will be substantially as convenient to the public.

30. The proposals encompassed within the Orders are confined to the parcel of land belonging to the applicant. The parcel of land is effectively the hub for the confluence of 5 public footpaths and the proposed changes to the network are confined to that hub. The termination points are A, C, E and H. These will remain the points at which the proposed routes will connect to the existing network. Accordingly, the convenience of the network to the public will be unaffected.

Test 2. Whether the path will be substantially less convenient to the public as a consequence of the diversion

31. Guided by the judgement in *Young* I need to consider whether, in terms of convenience, matters such as the length of the diverted path, the difficulty of walking it and its purpose will render the path substantially less convenient to the public.

Length

32. The proposed diversions will impact on various combinations of route: -
- A to C. The DMS route necessitates walking from A to B to C. The proposed route would take the walker directly to point C, using one side of a triangle rather than two and is thus shorter.
 - C to E. The DMS route is from C to B and thence to E via B, F and D. The proposed route would require the walker to travel to E via I and H. The DMS route is approximately 223 metres whilst the proposed route is approximately 388 metres, an increase of approximately 165 metres, equivalent to approximately 74%.
 - A to E. The impact on this permutation will be similar to C to E, but the difference will be less because the section A to B is avoided.
 - H to E. The proposed route is a direct line between these points and thus shorter than the two sides of the triangle required by the DMS route via G, F and D.
 - H to C. This incorporates a significant part of the variation C to E and will involve a similar increase in length.
33. The net result is that some variations of route will be slightly shorter and some modestly longer.
34. In this case, as I have set out earlier, the existing route is now mainly used for recreational purposes. Although in some cases an increase in length of 74% might be significant, in this case the greatest additional length arising from the proposed diversion is 165 metres, equivalent to 2 or 3 minutes' walk. In the context of a recreational route, I would consider this a very modest increase in distance, falling well short of the threshold of being substantially less convenient to the public.

Topography

35. The DMS routes and the proposed routes are very similar in their topography with no obvious detriment arising from the scheme. Part of the section of FP Westbury 28 which is proposed to be diverted, has eroded significantly resulting in considerable narrowing.

Width

36. No width is recorded for the DMS routes which, in some places are narrow, meandering and not easy to follow. In a situation where the width is not recorded in the Definitive Statement, the legal width will be that which has been ordinarily used by the public. When I visited there was little evidence of actual use by the public and it was generally difficult to assess what would be the appropriate width. The route D to E is an established track over grass with a width which I would estimate to be less than 3 metres.
37. The proposed routes will have a defined width of 3 metres throughout save where they pass over footbridges.

-
38. The Objectors have not expressed any concerns about the width of the proposed path, and I consider the stated widths of 3 metres to be appropriate in the context of this location and to represent a significant improvement upon the DMS routes.

Surface

39. In describing my site visit I have recorded the surface conditions of both the DMS and proposed routes. For the most part they are very similar. The proposed routes are currently available for use by the public on a permissive basis and it is evident on the ground that at least some members of the public have chosen to use these in preference to the existing definitive routes. The Objector who attended the hearing did not take issue with the surface of the proposed routes.

Limitations

40. The existing routes have a stile at point A, a kissing gate at point C and a gate north of point E. These structures lie outside the proposed diversions and will be unaffected thereby. There are 3 bridges on the DMS routes, two of which will not be on the highway network if the Order is confirmed. There will be one additional bridge which has been provided by the applicant on the proposed routes and which is in use on a permissive basis.
41. Overall, on the question of whether the diversion would be substantially less convenient to the public, I conclude that it will not. The difference in distance is not in context or absolute terms, material. The topography and surface are largely similar. The proposed route will benefit from having a defined and adequate width.

Whether it is expedient to confirm the Order having regard to the effect which:

a. the diversion would have on public enjoyment of the path as a whole

42. Four objections were submitted to confirmation of the orders, one from Westbury Town Council and the remaining three from individuals. One objector attended and participated in the hearing.
43. The principal and common element of the objections is concern that the Orders, if confirmed, will alter the alignment and context of historic routes. One objection states "*my concerns centre on the historic importance of the location of Dilton Vale Farm, at the junction of no less than five public footpaths.*" The objection from Westbury Town Council includes the sentence "*Public footpaths are sacrosanct, and we move them at our peril, creating precedent for the future*". The objection also states that the application is inappropriate as the applicant purchased the property in the knowledge of the existence and location of the routes which are proposed to be diverted. Similar sentiments are expressed by the other objectors.
44. The Town Council comment that whilst the applicant stated in his application that the property is a family home, it was being run as a business and wedding venue. The Applicant has clarified that one building on the site is used as a holiday let but subject thereto, there no business is operated from there.
45. Thirteen representations supporting the Orders were received, each referring to the intrusive nature of the existing routes and the discomfort the users felt as a result. Each supporter endorsed the merits of the proposed routes which have been

-
- available for use by the public on a permissive basis and which they had each adopted.
46. The Objectors express their concern in terms of the historic importance of the location but do not articulate how the proposed diversions will adversely impact this. I have taken the objection to relate to the historic buildings at the Farm and the proximity to these which is afforded by the DMS routes. I recognise the importance of heritage and the value of historic buildings to the interest of the landscape. However, I have been provided with no evidence to suggest, other than the buildings, any features of the industrial heritage of the site remain, and I saw none on my site visit.
 47. I have considered whether the proposed diversions could be said to adversely impact the view that is available of the historic buildings. From the DMS routes, an oblique view of the front elevation of the main farmhouse is available as one approaches from point B. A much closer view is available from the route F to G, but at no point can the front elevation be seen in the context of its location within the 'bowl'.
 48. Between points F and D the DMS route passes within touching distance of the farmhouse and outbuilding. I have referred to the profound sense of intrusion this may cause users. Between points D and E, particularly when walking this section from point E, good views are available of the rear elevation of the farmhouse, but these are largely replicated using the proposed route E to H.
 49. The DMS route H to G is along a narrow strip of land between a 6' wooden fence to the west and the brook to the east. No meaningful views are available from this section of path.
 50. The proposed route H to I and I to A affords excellent views of the farmhouse and the complete assemblage of buildings, seen within their true setting and context. These views add to the enjoyment of the walk and, in my view, more than compensate for any perceived detriment from loss of proximity.
 51. Having regard to the foregoing, I conclude that public enjoyment of the path as a whole will not be adversely impacted by reason of the available views of the historic buildings and setting.
 52. I have considered whether any other factors arising from the proposed diversion may have an impact on public enjoyment of the path. 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 Act and the Guidance which specifically provide a regime for diversion of public rights of way. The 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.*"
 53. I recognise that at the date of making the Order the Guidance had not been issued and at that time the stance taken by the Objectors may have had greater foundation than it has now with the Guidance in place.

b. the effect of the coming into operation of the Order on land served by the existing public rights of way

54. The Order would have no effect on land served by the existing right of way.

c. the effect of the new public right of way on the land over which it is created (or land held with it)

55. No issues have been identified in respect of the affected land, in terms of either the existing or the proposed routes, which I need to consider.

The expediency of confirming the Order

56. In considering the expediency of confirming the Order I am required to take into account the mandatory considerations a. to c. above. I am also entitled to take account of my conclusions in respect of Test 1. I am then required to balance these considerations, taking account of the Guidance, in order to determine whether it is expedient for the Order to be confirmed.

57. I have concluded, and the objectors would seem to accept, that it is in the interest of the landowner for the Order to be made.

58. The only issue potentially in contention is the effect of the diversion on the ability of the public to enjoy the proximity Dilton Vale Farmhouse. I have concluded that the Objector's concerns are overstated or without foundation and that the Orders, if confirmed will bring benefits in terms of improved views from some aspects and removal of the discomfort felt by many users as a result of the intrusive proximity of the DMS routes to the dwelling.

59. In considering the overall expediency of confirming the Order I am entitled to take into account the value to the landowner of the proposed diversion. I must also have regard to the terms of the Guidance.

60. The preface to the Guidance quotes from Hansard in relation to the effect of the Guidance that it will "*act as a presumption to divert or extinguish public rights of way that may cause hardship because it goes through the garden of a family home.....*". It concludes that "*in making a decision as to whether the existing path should be diverted or extinguished, an authority should consider in particular the impact 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*".

61. I have found that in addition to benefits in terms of security, the diversion would also afford the landowner the level of privacy which guidance and authority indicates they are entitled to. I recognise the value placed by the Objectors on the historic context of the route but, for the reasons given, I consider that the proposed diversions will significantly mitigate those concerns, and I do not find that these, or any other considerations are sufficient to rebut the presumption in favour of confirmation which arises from the Guidance.

62. Balancing these factors, I am satisfied that the relevant tests are met and that the First Order should be confirmed.

The Second Order

63. The Second Order would, if confirmed, stop up the southernmost section of FP Dilton Marsh 19 and the northernmost section of FP Westbury 28. The test to be applied is whether the routes are needed, and in applying that test I am required to have regard to the extent to which the paths would be used if not stopped up, and the effect stopping up will have on the land served by the routes. The Guidance recognises that stopping up a route using the provisions of section 118 of the 1980 Act can be an appropriate way of achieving the objects of the Guidance.
64. The Second Order is part of the overall scheme for diversion of existing paths away from Dilton Vale Farmhouse in accordance with the Guidance and there is thus a presumption in favour of confirming the Order. The confirmation test is to be applied contingently upon confirmation of the First Order so that I am required to consider the necessity of the sections proposed to be stopped up on the basis that the diversions proposed by the First Order have been effected.
65. The current purpose of the paths to be stopped up is to enable a user of FPs Westbury 29 and Dilton Marsh 20 to gain access to FPs Westbury 28 and Dilton Marsh 19 and vice-versa. The purpose will be achieved by means of the diversions provided for in the First Order. As outlined in discussion of the convenience of the diverted routes, some permutations will be longer, and some shorter but in all cases the diverted routes will accommodate any route a user might wish to take and, on this basis, I am satisfied that the routes to be stopped up will not be needed and therefore that the test for confirmation is met. I also take account of my earlier finding that the routes to be stopped up are so proximate to the dwelling as to give rise to legitimate concerns about privacy and security.

Rights of Way Improvement Plan (POWIP)

66. I am required to have regard to the Councils ROWIP, the current version of which covers the period 2015 – 2025.
67. The ROWIP requires regard to be had to the provisions of the Equality Act 2010 and to take the least restrictive option. Consideration must be given to the needs of those with mobility impairments.
68. I note that the proposed routes will have a minimum width of 3 metres and be over well-defined tracks with no additional furniture or limitations. This contrasts with the narrow, meandering and poorly defined nature of the existing routes.
69. I am satisfied that the requirements of the ROWIP are met by the terms of the two Orders and that the proposed routes will result in an improvement to the accessibility of the routes in question to those with mobility impairments.

Other matters

70. At the hearing the Objector raised an issue as to the precise location of point H on the Order map. The First Order provides for the creation of a section of footpath within the parish of Dilton Marsh between points E and H. The point made was that the parish boundary is the mid-point of Biss Brook but the creation of the new sections of footpath E to H and H to I appear to assume that point H is on the parish boundary whereas it is, in fact, on dry land immediately to the west of the brook. I recognise that the Objector's point is well-founded, but as both the mid-

point of the brook and point H are encompassed within the tolerance of the same OS grid reference, I do not consider that any confusion will be caused by this.

Conclusions

71. Having regard to these and all other matters I conclude that the Order should be confirmed.

Formal Decision

72. I confirm the Order.

Nigel Farthing

Inspector

APPEARANCES

Order Making Authority

Ali Roberts

Janice Green

Sally Madgwick (virtual)

Paul Millard (virtual)

Supporters

Jonathan Lloyd-James

Alex Clarke

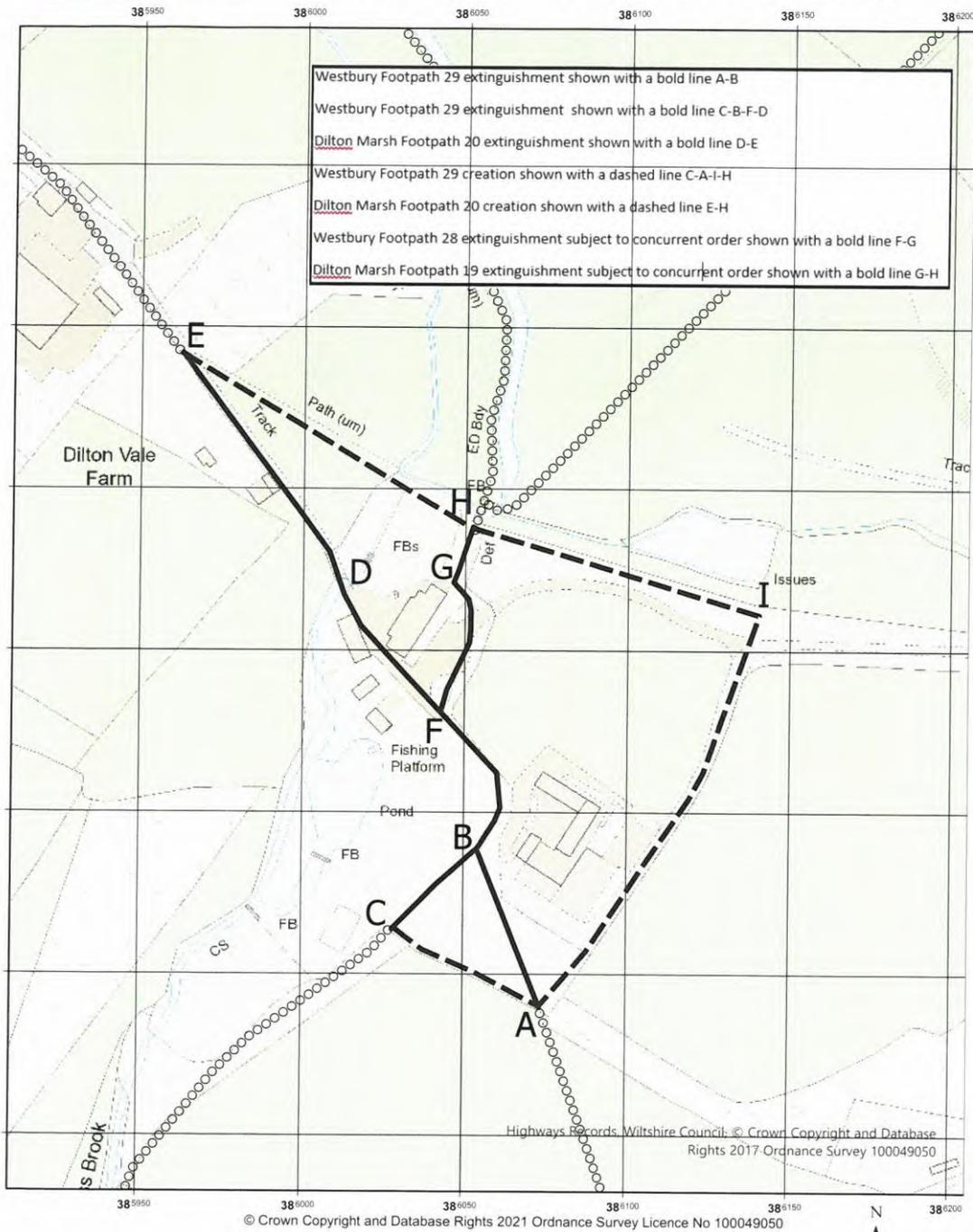
Objector

Francis Morland

ROW/3301931



The Wiltshire Council Parish of Westbury Path no.29 (part) and Dilton Marsh Path no.20 (part) diversion and Definitive Map and Statement Modification Order 2021



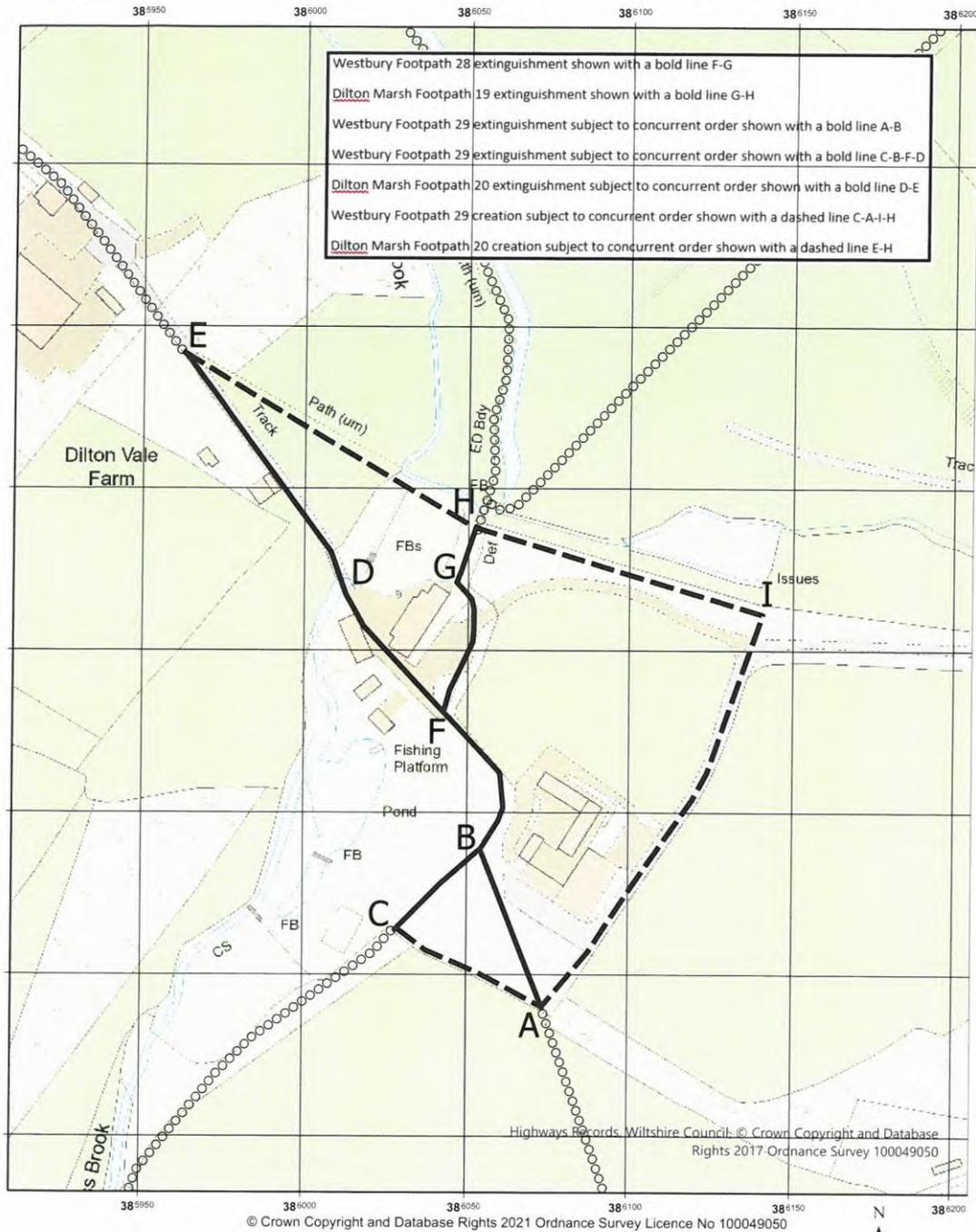
14/10/2021

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ROW/3301934



The Wiltshire Council Parish of Westbury Path no.28 (part) and Dilton Marsh Path no.19 (part) extinguishment and Definitive Map and Statement Modification Order 2021



14/10/2021

N
 Scale 1:1500 @ A4

APPENDIX C**Representations**

1. Andrea Davies
2. Chloe Luxton
3. Simon Davies
4. Anonymous
5. Caroline Vernon – support received after the statutory consultation period

Objections

1. Sutton Mandeville Parish Council
2. David Willis
3. Elizabeth Beeley
4. Helen Havard
5. JA Prince and DT Foston
6. Kate Barker and B Millington
7. Liz Barraha
8. Peter Ellis
9. Sarah Beddington
10. Francis Morland – objection to the drafting of the order

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: The Wiltshire Council parish of Sutton Mandeville path 13 diversion and definitive map and statement modification order 2025
Sent: 11/09/2025 17:15:37

[REDACTED]
Dear Ali,

I am writing in support of the diversion of SMAN13, a path in Sutton Mandeville.

I live a couple of lanes away in Fovant and often walk my dog along the footpaths in Sutton Mandeville. In all the years of walking around there I have never ventured along path 13 for the very reason that I feel uncomfortable walking so close to a family home and effectively through their garden, especially when there are children playing outside.

I appreciate that it is my right to do so, but it still feels like an invasion of privacy, so I think it is a great idea to create this minor diversion. It's not only the homeowners privacy I'm considering, but also my own - I would feel less 'on display' walking around to the side of the plot than coming straight down directly facing the house as it is currently.

If you need anything further in relation to this email of support please don't hesitate to contact me,

Kind regards

Andrea Davies

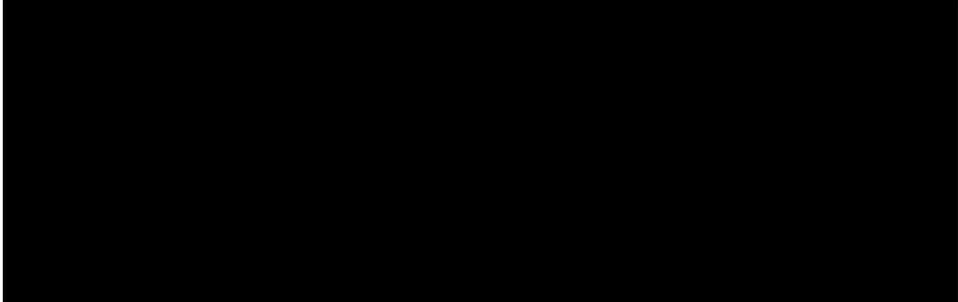
From: [Chloe Luxton](#)
To: [Roberts, Ali](#)
Subject: The Wiltshire Council parish of Sutton Mandeville path 13 diversion and definitive map and statement modification order 2025
Sent: 10/09/2025 19:30:17


Dear Ms Roberts

I am writing to you to give my support for the proposed diversion of the footpath that runs through Sutton Mandeville.

We are a family of 5 living in Fovant and we like to use the footpaths in the area for walks at the weekend. We have avoided this particular footpath because it literally passes in front of a family home, and we feel like we're invading their privacy. We therefore fully support the proposed diversion because it will mean we can use the footpath without feeling like we're walking in their family garden.

Best wishes
Chloë



From: [REDACTED]
To: [Roberts, Ali](#)
Subject: The Wiltshire Council parish of Sutton Mandeville path 13 diversion and definitive map and statement modification order 2025
Sent: 12/09/2025 09:15:39

[REDACTED]
Dear Ms Roberts,

I write with reference to the above path diversion.

We live in Fovant and I often either run or walk in this area with our dog, either on my way to the Stalls café, or as part of regular exercise in the area: just to clarify that would be 3-6 times per week, so am familiar with the area.

I fully support this application to divert the path away from the Lodge's property for a number of reasons, including so that I don't feel like I am walking through their demise. There are many paths in this area and the diversion of this path will in no way affect my enjoyment of the area nor will it detrimentally impact the area, in my opinion.

'Sympathetic' updates, amendments and changes into small rural communities are an important part of ensuring investment in the local area for future generations.

Regards,

Simon Davies

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: The Wiltshire Council parish of Sutton Mandeville path 13 diversion and definitive map and statement modification order 2025
Sent: 11/09/2025 18:10:10

[REDACTED]

Dear Ali

I am a resident of Sutton Mandeville and use the footpath past The Homestead several times a year.

I see no reason to object to diverting the footpath a short distance away from the Lodge's property: it will add seconds to the walk and make the path less intrusive for walkers and dwellers alike.

[REDACTED]

Yours sincerely,

[REDACTED]
[REDACTED]

Sent from my iPhone

From: [Caroline Vernon](#)
To: [Roberts, Ali](#)
Subject: "The Wiltshire Council parish of Sutton Mandeville path 13 diversion and definitive map and statement modification order 2025"
Sent: 24/09/2025 10:02:37

[REDACTED]

Dear Ms Roberts,

This will be my third attempt to send this email to you! Apologies for its lateness.

I am writing to you in connection with the aforementioned modification order 2025.

I strongly support the diversion of the footpath. The alignment of the current path cuts through a private garden and I certainly have felt uncomfortable using it, preferring not to intrude on the private lives of those living in The Homestead. Regretfully, that feeling of intrusion has discouraged me from using the path, forcing me to take more circuitous routes around the area. The diversion offers the advantage of not only giving better privacy to those living in The Homestead, but it also upholds the connection into the network of the paths in the immediate vicinity and as a result a marked improvement for local walkers. I would ask you to consider the modification order for the re-alignment of the path favourably.

Yours Sincerely,

Caroline Vernon

From: [HUGH COLLINS](#)
To: [Roberts, Ali](#)
Subject: Re: Highways Act 1980 S.119 - proposed diversion of Sutton Mandeville 13
Sent: 11/09/2025 14:54:24

Dear Ali

Please note that Sutton Mandeville Parish Council objects to the made order and would like to take this to the Southern Area Planning Committee.

I have written to Cllr Nabil Najjar and will be meeting with him to discuss the issues later this month.

Please let me know if I should give details of the grounds for objecting to the made order at this stage.

Kind regards Hugh

----- Original Message -----

From: Ali.Roberts@wiltshire.gov.uk

To: Ali.Roberts@wiltshire.gov.uk

Sent: Wednesday, August 13th 2025, 15:07

Subject: Highways Act 1980 S.119 - proposed diversion of Sutton Mandeville 13

Highways Act 1980

The Proposed Diversion of Footpath Sutton Mandeville 13

-

Wiltshire Council made the above Order on 4 August 2025. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

Notice of the made order will be advertised in the Wiltshire Times on 15 August 2025 and on site.

The decision report and associated paperwork is available to view by following the attached link to the public register for this case [P/2023/016 - Rights Of Way - Wiltshire Council](#)

Kindest regards,

Ali

Please note that any responses to this letter will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)

Definitive Map Officer

Definitive Map and Highway Records
Wiltshire Council

County Hall
Trowbridge

Sutton Mandeville Parish Council response to revised proposed diversion of SMAN 13 (P/2023/016) received 6th May 2025

The Homestead, Sutton Mandeville

SMPC objects to the revised proposal on the following grounds:

1. It fails the legal tests for a Highways Act 1980 S.119 application
2. A significant number of respondents, including many residents of the parish, object to the proposed diversion.
3. The existing route of SMAN 13 is an important historical feature of the village, which is itself a heritage asset within the Cranborne Chase National Landscape.
4. Prior to planning application 14/02330/FUL, SMAN13 was not adjacent to the house, which abutted the highway. The path was in a field separated from the garden by a hedge.
5. The Defra Presumptions Guidance of 1st August 2023 is neither applicable nor valid in this case.

The Legal Test

Diversion of SMAN 13 is not in the interests of the public because it disrupts an ancient route connecting historical settlements and fields to the south with All Saints Sutton Mandeville and the River Nadder beyond. It would diminish walkers' sense of place and damage a feature of the landscape, as well as being inconvenient to diverge away from the north termination point. Furthermore, where the proposed route traverses an existing paddock, gates may be required, inhibiting accessibility, and giving rise to further inconvenience to walkers and future land users.

Objections from the Public

The initial consultation for extinguishment and rerouting of SMAN13 prompted some 25 letters of objection from the public. The revised proposal submitted following this outcry gave rise to fewer objections, but the majority remain resolute in their opposition. The Ramblers Association's response registers satisfaction that previous key points have been addressed and is therefore neutral rather than supportive. Only one resident individual altered their submission to support. The National landscape officer altered his initial response to the effect that he rescinded his support in favour of the opinions of the majority of the community. The message from this public consultation is, "don't interfere with or alter this right of way", and that *any* changes to SMAN 13 would be contrary to the wishes of many, and SMPC acknowledges these objections.

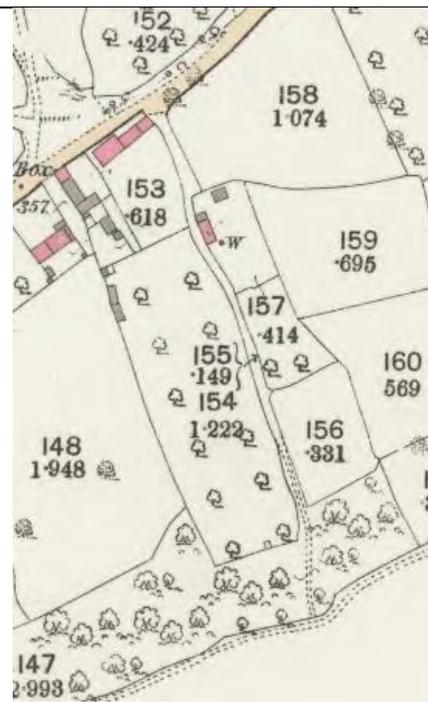
Heritage and the National Landscape

Historic maps

The OS Six-inch map (top left) shows that the right of way was, historically, the most prominent route between the centre of the village and the network of paths to the south of the village, forming a distinctive lane. The OS 25-inch map (top right) shows similar, in more detail. Its depiction as a lane continues on maps to the 1960s (maps from National Library of Scotland).



Six-inch. Wiltshire Sheet LXV. Surveyed: 1886, Published: 1890



25-inch. Wiltshire LXV.13. Surveyed: 1886, Published: 1887



25-inch. Wiltshire LXV.13. Revised: 1939, Published: 1947



1:10,560. ST92NE – A. Surveyed / Revised: Pre-1930 to 1961, Published: 1961

SMAN13 is clearly shown as a lane in the Tithe map of 1839 (map from Know Your Place, Wiltshire):



Although harder to make out, the OS Survey Drawing of 1807 also shows that the right of way was a prominent lane, central to the form and structure of the village. This map also underlines the connection between routes south out of the village to the network connecting to Manor Farm (map from Old Maps Online – British Library):



Wiltshire Council has recently endorsed and adopted the Cranborne Chase management plan, which is in place to conserve, protect and enhance a nationally important and protected landscape ([Wiltshire Council News and Communications 10th June 2025](#))

From Section 7. Historic and Cultural Heritage:

“The remnants [...] of working life, together with the layout of settlements, routeways and buildings, contribute to the historic character of the area.”

The Ambition of the management plan states that, “The historical and cultural environment of the National Landscape [should be] conserved and enhanced [so that] everyone understands, values and enjoys its cultural and heritage assets.”

Key Issues 3. Heritage at Risk – The National Landscape has heritage assets that Historic England considers to be vulnerable or ‘at risk’. There is a need for partners to take practical action to conserve and enhance these assets.

SMAN 13 is evidently a heritage asset which must be actively conserved, and its proposed diversion should therefore be refused by Wiltshire Council as a partner which has endorsed the vision of the National Landscape plan.

Development at The Homestead

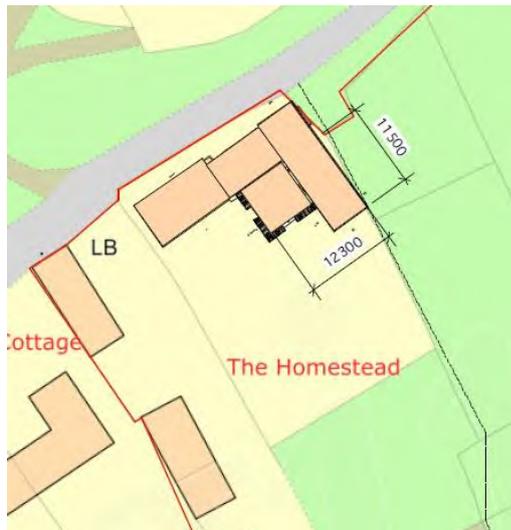
Owner’s planning application, 2014

14/02330/FUL (<https://development.wiltshire.gov.uk/pr/s/planning-application/a0i3z000014eIY6AAM/1402330ful>)

The Location Plan shows the east end of the house bordering the boundary of the property at the indent for the right of way. The right of way is only adjacent to the house on the public highway:



The Block Plans show the extension running back along the boundary, adjacent to the right of way: the right of way is only adjacent to the house because the house has been built up to it:



Both documents show that the right of way was on the other side of the field boundary to the garden, shown in yellow. The right of way only came into the garden as a result of the residents' alteration following planning consent in 2014 and is not shown in the documents accompanying that application.

The Officer Report noted that 'The proposed extension would be approximately 7.4m in height with 3m of the extension screened from view by existing boundary treatments. This will ensure that there will be no overlooking, loss of privacy or overshadowing to a detrimental degree.'; and 'The proposal would be of an acceptable scale and partially screened from view at the rear of the property'. The Officer Report does not raise any concern about privacy or disturbance in connection with the right of way. Notably, the Officer did not impose a condition of retention of the screening. Such a condition is in place for an approved solar array application PL/2024/03227.

Google Street View, from 2011

Google Street view shows on an image captured in June 2011 that the right of way ran through fields and was screened from the house and garden by a high laurel hedge:



The actions of the current owners in building an extension, expanding the garden over former fields and removing hedges has given rise to the perceived loss of privacy. It is analogous to removing window blinds from a house in a public place and then complaining that passers-by can see in.

Google Earth

Comparison of Google Earth satellite images from 2011 and 2018 shows that the right of way was formerly beyond the property and its garden, and that it is extension of the house and garden and removal of mature boundary vegetation that has caused the right of way to become proximate.



The Defra Presumptions Guidance

Defra recently articulated its policy towards access to the countryside and historic rights of way as follows:

A healthy and thriving natural environment which everyone can access is a critical part of delivering long-term sustainable change across the country. Boosting access to nature will also help drive economic growth in rural communities, as part of the government's Plan for Change.

Minister for Access, Baroness Hayman said:

These well-trodden routes, many of which have been in place for hundreds of years, are a part of our shared heritage and it is critical that we bring forward these measures to protect their long-term future.

26 Dec 2024: <https://www.gov.uk/government/news/government-steps-in-to-save-historic-rights-of-way-from-being-lost-to-the-nation>

Considering these policy statements, Defra's 2023 guidance is equivocal and must be left open to interpretation and used with discretion. It could be drawn upon, for example, in instances of malicious trespass or regular nuisance where the interests of the landowner are demonstrably of paramount importance. There is no evidence in this case that the interests of the owners of The Homestead outweigh those of users of the public right of way, nor that its current route is 'problematic' (para 6.).

Para 7. Of the guidance says it only applies where a public right of way passes through a garden or curtilage of a residential dwelling. In fact, the owners have encroached upon SMAN13: this guidance would not apply to SMAN13 except because of the actions of the owners, representing a perverse incentive contrary to intended policy. Misapplication of this Defra guidance in these circumstances could be challenged and there should be greater clarity on the status of RoWs in a National Landscape.

In weighing the interests of the owner against the overall impact of the proposal on the public (para. 9), the authority should reflect on both the actions of the owners in creating the current situation.

A more appropriate balance between the interests of the owners and the impact on the public could be obtained if the owners reversed their previous actions by screening their house and garden from SMAN13 rather than diverting the right of way. The perceived impact on privacy and security that has arisen from the owners' actions could be remedied directly by themselves without impacting the public. Verbal consultation with parishioners and walkers confirms that none feel discomfort and embarrassment walking past the house and that this will not deter them from so doing. Most people will mind their own business and concentrate on the path itself, even if no change is made.

Conclusion

SMAN 13 should remain unaltered for present and future generations in the interests of heritage, sense of place and enjoyment of the historic landscape. These interests far outweigh those of the current owners of The Homestead, and Sutton Mandeville Parish Council object to this proposal. The Homestead is a cherished centrepiece of Sutton Mandeville, despite extensive developments to the property, and SMAN 13 should remain untouched.

Thanks Ms Roberts for your helpful explanation. I am absolutely astonished that previous objections are ignored in the next stage unless the objector says otherwise. This seems highly undemocratic and I would ask that my and all other earlier objections are taken into account. I would also reserve the right to make further comments in due course. As I understand the existence of any objection prevents the Council from making the order which is reassuring.

From: [David Willis](#)
To: [Roberts, Ali](#)
Subject: Re: Highways Act 1980 S.119 - proposed diversion of Sutton Mandeville 13
Sent: 28/08/2025 15:09:53

Yrs
David Willis

On 28 Aug 2025, at 07:54, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Dear Mr Willis,

Representations and objections received during the initial consultation process will not automatically be forwarded to the made order consultation. To follow due process and regulation you will need to confirm if you wish your objection to be carried forward. To make a duly made objection to the made order you can simply request all previous comments are forwarded and reserve the right to add or amend your representation as the process progresses or you may wish to write a new representation. This is a 28 day statutory consultation, consultees include Sutton Mandeville Parish Council, the Wiltshire Councillor for Fovant and Chalke Valley, user groups, Cranborne Chase National Landscape and everyone that responded to the revised consultation, notices have been placed on site and advertised in The Wiltshire Times.

As objections are likely to be received to the order Wiltshire Council would not be able to confirm the order. The order would go before Wiltshire Council's Southern Area Planning Committee to determine whether the order is referred to the Secretary of State, who would appoint an inspector from The Planning Inspectorate to determine the order. At the Planning Committee stage there will be an opportunity for objectors to address the committee and present their case. If the decision is for the order to be sent to the Secretary of State they will decide whether to determine the order via written representations, a public hearing or a public inquiry, there will be a further opportunity for objectors to present their case either in person and or in written form.

I have attached a flowchart of the PPO process for your information.

Kind regards,

Ali

Ali Roberts (Miss)
Definitive Map Officer
Definitive Map and Highway Records
Wiltshire Council
County Hall
Trowbridge
BA14 8JN
<image001.png>
Tel: 01225 756178
Email: ali.roberts@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

Report a problem <https://my.wiltshire.gov.uk/>

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<image002.png> <image003.gif>

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Information relating to how Wiltshire Council will manage your data can be found at: <http://www.wiltshire.gov.uk/recreation-rights-of-way>

From: David Willis [REDACTED]
Sent: 27 August 2025 17:55
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Subject: Re: Highways Act 1980 S.119 - proposed diversion of Sutton Mandeville 13

Thanks for your email. As you may remember I was an objector to the first and second scheme. I am unclear whether my and other objections are automatically taken into account in the final decision or whether another objection needs to be lodged. Please advise
Yrs

Sent from my iPhone

On 13 Aug 2025, at 15:07, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980
The Proposed Diversion of Footpath Sutton Mandeville 13

Wiltshire Council made the above Order on 4 August 2025. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

From: [David Willis](#)
To: [Roberts, Ali](#)
Subject: SMAN13
Sent: 05/06/2025 15:26:14

Dear Ms Roberts,

I previously lodged an objection to the original application and although I am conscious that modifications have now been made, I remain of the view that the original footpath should stay in place.

In order that I can give further thought to the matter, I would be interested to hear how you see your role in this matter. Are you an impartial arbiter, hearing both sides and then coming to a recommendation or is your role to facilitate the application?

You seem to ignore the fact that the applicants have brought about this problem for them so it would be very wrong, in my view, for their reward to be a revision to a historic footpath. This would create a terrible precedent and I think that future generations will deem the destruction of an historic right of way to be a great tragedy.

You seem to dismiss historic significance but even if you are right (which I do not accept) there remain valid objections to the revised route which have been well expressed in the other objections that you have received.

Subject to any further comments from your self or others, I adhere to my original objection>

Yours

David Willis

P/2023/016 SMAN 13

1-I am a long term resident of Sutton Mandeville and a regular user of the network of footpaths in our area. I wish to object to the proposal that SMAN 13 should be closed in its entirety and be replaced by a totally new footpath.

2-I quite understand the attraction of this proposal to the applicants. However it seems to me to be highly relevant that the extensive works carried out by the applicants to their property have increased the visibility of SMAN 13 so they can be said to be the authors of their own misfortune. If the original hedging had remained in place, they would be much less exposed.

3-I do not think that the proposed new footpath can be said to be in the “wider public interest” (the phrase used in the leading authority Open Spaces Society -v- The Secretary of State for The Environment (2021) EWCA Civ 241) for various reasons

3.1 Coming through the churchyard (a very popular walk) a pedestrian at present crosses the road and only has to walk a very short distance to connect to SMAN 13. The proposal would necessitate a much longer walk along the road (which is narrow and has no pavement) to connect to the access point. There is no speed limit and this road can be quite busy with cars tractors etc.

3.2 The new access point is to be sited near a T-junction adjacent to 2 drain manhole covers. It is not clear to me what type of access would be intended. Ideally this would not be right on the road to minimise risk to pedestrians. I would not think that access at a T-junction is intrinsically as safe as the existing access point.

3.3 I have not walked up the proposed new footpath but I understand that it is quite steep at the top which may necessitate steps being constructed. I would imagine that this might conflict with the Council’s obligations under the Equality Act 2010.

3.4 At the moment 3 footpaths run off the road which are broadly equidistant. The new footpath would be much nearer to SMAN 3 and much further from SMAN 10

3.5 The creation of the new footpath would require removal of a significant chunk of hedgerow thereby potentially affecting wildlife and biodiversity

3.6 The new footpath would be close to the solar array for heating the swimming pool-hardly an attractive feature for walkers

3.7 Preservation of the heritage/history of the footpath network

Finally it seems to me to be highly relevant to look at the enormous volume of highly cogent objections. No-one supports the proposal apart from the applicants! Taking all the above into account, it seems to be that the public

interest far outweighs the interests of the applicants and on that basis it seems to be clear that the application should be refused.

From: [Elisabeth Beeley](#)
To: [Roberts, Ali](#)
Subject: Sutton Mandeville path 13 diversion
Sent: 05/09/2025 12:35:45

I object to the made order for reasons already given in my objection to the application, and will give further reasons for appealing against it as the process evolves. Beeley

From: [Elisabeth Beeley](#)
To: [Roberts, Ali](#)
Subject: The Homestead Footpath, SP3 5ND
Sent: 18/06/2025 12:19:39

I wish to repeat my objection to the alteration to the course of SMAM13 Sutton Mandeville P/2023/016; the applicants are entirely responsible for their loss of privacy by making major alterations to their property and its setting without consulting, or approval of the near neighbours. The revised route is longer and difficult and involves destruction of much of the original path.

This is a much valued ancient, and extensive, Right of Way and there can be no justification for allowing any alteration. EB

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Application to alter footpath SMAN 13 Sutton Mandeville, SP3 5ND
Sent: 03/03/2025 16:46:45

[You don't often get email from [REDACTED] Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

I I wish to object to the application to move the above footpath for the following reasons:

1. Right to privacy: This was lost by the removal of the mature hedge by the new owners
2. Access: Suggested new footpath difficult to negotiate..steep hill.
3. New pedestrian access extended along narrow lane, no pavement, traffic which would endanger walkers with children and dogs.

I have kept my objections short as all points have been well covered already.

From: [Helen Havard](#)
To: [Roberts, Ali](#)
Subject: The Wiltshire Council parish of Sutton Mandeville path 13 diversion and definitive map and statement modification order 2025
Sent: 07/09/2025 14:14:27

Dear Ali,

The Wiltshire Council parish of Sutton Mandeville path 13 diversion and definitive map and statement modification order 2025

Thank you for your previous email. At this point I wish to object to the order to divert the footpath SMAN13 for the reasons stated in my previous letter.

I believe allowing this diversion sets an unfortunate precedent for any and every footpath in the county. It gives the appearance that Wiltshire Council places the extravagant whims of a single incoming landowner above the needs of the existing community for a simple and direct right of way that has been used and greatly enjoyed by all for many many generations.

Regards,

Helen Havard.

On 13/08/2025 15:07, Roberts, Ali wrote:

Highways Act 1980
The Proposed Diversion of Footpath Sutton Mandeville 13

Wiltshire Council made the above Order on 4 August 2025. Please find attached a copy of the Order, the Order Plan and the Notice of making the Order.

Notice of the made order will be advertised in the Wiltshire Times on 15 August 2025 and on site.

The decision report and associated paperwork is available to view by following the attached link to the public register for this case [P/2023/016 - Rights Of Way - Wiltshire Council](#)

Kindest regards,

Ali

Please note that any responses to this letter will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be found at: <http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)
Definitive Map Officer
Definitive Map and Highway Records
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

Wiltshire Council

Tel: 01225 756178
Email: ali.roberts@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

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From: [Helen Havard](#)
To: [Definitive Map](#)
Subject: SMAN13 Footpath
Sent: 19/06/2025 11:59:50

[REDACTED]

I am writing to object to the relocation of the footpath SMAN13, Sutton Mandeville. I only recently became aware of the proposed diversion but, as a local who also has land with footpaths across it, I feel allowing the alterations will set a dangerous precedent for every right of way in the area.

The applicant should not be able to move this longstanding footpath just because of the inconvenience it poses to them during their temporary tenure of the adjacent property. They knowingly built an extension to their house that extends right up against the existing footpath. The footpath has only now become inconvenient to them because they have chosen to make it so. This is not a valid reason to divert it.

I support all the comments made by others who do not support these alterations and take the same view.

Rights of way should not be rerouted because someone extends their house. The footpath should remain.

Helen Havard

[REDACTED]
Sutton Road, SP3 [REDACTED]

Dear Ms Roberts,

Re:-“The Wiltshire Council parish of Sutton Mandeville path 13 diversion and definitive map and statement modification order 2025”

The choice of the word expedient used to justify the decision is indeed apposite, as reference to definitions of the word confirms, since in this instance, being governed by self-interest, it is a convenient means of attaining an improper end. Although it has been made to look as if the legal criteria for making the order have been met, this has only been achieved by prior confected manipulation of the property, and an arbitrary judgement about the meaning of ‘convenience’. The statement that the original application was modified because the applicants took cognisance of public opinion is disingenuous. The original plan was abandoned because it was never going to be acceptable to Wiltshire Council’s officers and statutory consultees, and did not fulfil the necessary criteria for diversions of Rights of Way.

The loss of privacy the applicants use to justify diversion of SMAN13 is, as The National Landscape Officer states, the result of their own deliberate actions, namely building the extension with large windows adjacent and parallel to the RoW, and removal of effective vegetation which until two years ago made the house and garden almost entirely unoverlooked. This alone warrants refusal of the order. A simple remedy to prevent pedestrians looking through the extension’s windows can be achieved by applying films internally to the glazing to render it opaque from the outside (and drawing curtains after dark). Some objectors pointed out that the garden’s privacy could easily be restored by planting a hedge along the Eastern boundary of the current course of the RoW from the corner of the extension to the hollow way.

Once the original plan was withdrawn, the applicants were thwarted in their main objective which was to remove the path entirely from its current location through the property. The outcome however is that they have anchored its presence there permanently on a tortuous longer route. To mitigate its effects, they have created a Pyrrhic victory for themselves, because the order will allow walkers to have a much better look around the curtilage, and have enhanced views (save for solar panels) from a higher altitude than if SMAN 13 were to be left untouched. This home goal however cannot be left unchallenged. The order erases 70% of the ancient RoW. Due to the significance of recently enacted legislation, heritage and amenity concerns now have enhanced historical importance. This was endorsed and supported by the decision of WC made on 10th June 2025. They should now take priority over other considerations including the legal criteria used to justify this order.

The applicants claim that the number of objections has fallen by a significant proportion since the original plan, and deduce that this is because some of those who objected were content with the revised version, as a compromise. On the contrary, this does not imply that they support the revision, because they had already stated they were opposed to alteration to the RoW; and did not feel it necessary to object again since the numerical identity of the application, P/2023/016, remained unchanged: it was deemed supererogatory to repeat themselves. Had the original application been withdrawn (as it should have been because it was not in effect for diversion, but total eradication) many more would have objected to a new application identical to the revised version now approved by the order. However, the criteria used to determine the next phase of a ‘public path order procedure’ wrongly ignores the details and numbers of objections to the original plan.

The applicants assert that only a minority of people in the community object to the application. It is axiomatic in a free society that if one does not vote on a matter, one is not counted. Many do not express their opinion for a variety of reasons including not being aware of or interested in it. This is also more likely in a non-nuclear rural community characterised by several small settlements widely separated by agricultural land. What is unarguable is that 27 people objected to the original application and 16 individuals confirmed their objection in writing to the revised plan, and The Parish Council objected on both occasions. No one in the community of over 80 households wrote in support of the original plan, and only one retracted over the revision. Thus, interference with SMAN13 has inspired many objections and negligible support.

For these reasons, though we reserve further comment at this stage of the process, we hereby appeal against the order.

Dr J A Prince - Mr D T Foston

Objection to revised application to divert SMAN13 Sutton Mandeville - P/2023/016

The proposed route is over 40% longer than the existing path and involves two right angled bends, as opposed to a more or less straight line. It is therefore substantially less convenient than the existing pathway. (Highways Act 1980 s119 – 1.2.3.(6))

The proposal involves erasure of 70% of the original RoW, by far the majority of its course. It amounts to a considerable loss of amenity and enjoyment of a historic pathway by inhabitants of this village and other local walkers.

The proposed route will be 30 metres nearer the solar array which will make it much more visible from the RoW, when such installations are supposed to be as unobtrusive as possible especially in National Landscapes. Screening by vegetation is unreliable and impossible to enforce. For half the time it is ineffectual in Winter when the trees are not in leaf. Trees die and blow down in storms; replacement is not enforced. The applicant has a history of noncompliance with such provisions because an agreement to screen the modern extension from view from the East was reneged upon with spurious excuses, which is why the visual amenities of the two listed properties in that direction including our own remain compromised by views of its inappropriate Eastern elevation. This applies equally to users of SMAN 3 and Rectory Road.

Statements concerning embarrassment at walking through the property are personal and subjective and should bear no weight since that is a minority opinion and other routes are available for the squeamish. We and most others have no such qualms; they should be ignored.

The route does not meet the legal criteria for diversions (see above) but in addition we are convinced that heritage should remain an important deciding factor. Even if a proposal is decided solely upon on other legal grounds, this particular application should be refused since its purpose gives advantage only the applicants, who are undoubtedly responsible for their own predicament, (possibly deliberately, in the hope of creating a cast iron case for diversion or erasure) at the expense of the whole community whose inhabitants testify to their enjoyment of walking where their predecessors trod. Diversions are intended to be to the advantage of both applicants, and other members of the public. There are no advantages to the community in the proposal.

SMAN13 should not be altered: we object to application.

J A Prince – D T Foston

SMAN13 P/2023/016 - Revised application - OBJECTION

We stand by to our objection to alteration of the footpath, and we submit the further reason that the village's heritage is under threat.

Last year, at a Parish Council meeting held to consider planning application numbers PL/2024/03227 & 03228, the applicant made a statement which included her opinion that she should be allowed to do what she wanted on her own property, an assertion that was tantamount to claiming the right to ignore planning regulations, environmental protection rules, special regulations applying in National Landscapes, and those concerning agricultural land, and rights of way, in favour of her personal objectives, with which we profoundly disagree.

The only beneficiaries of the revised plan would be the owners of the Homestead. Wiltshire Council's decisions are supposed to take account of the opinions and amenities of other members of the public, not just applicants. Given that the applicant has wrought this situation and bought the property in full knowledge of the RoW's existence (well covered already and confirmed by PC & CCNL officer) it is hard to see any scope for compromise over the RoW, especially as a successful application would provide a financial bonus since the property was acquired at a discount owing to its existence. Subsequently, privacy was deliberately impaired, which created conditions that would on a superficial analysis appear to justify the path's removal or diversion, a tactic that should be denied success for the sake of the whole community.

Heritage Rights of Way are of great concern to this village, and Wiltshire Council's policy recognises their importance - Section 7.1 Key Issues "Heritage at Risk". We urge decisive rejection of the application: it is unjustifiable, and would establish the regrettable precedent of people evading the consequences of altering the environmental surroundings of a RoW to present a case to divert or remove one.

J A Prince – D T Foston

From: [Kate Barker](#)
To: [Roberts, Ali](#)
Subject: The Wiltshire Council parish of Sutton Mandeville path 13 diversion and definitive map and statement modification order 2025
Sent: 31/08/2025 17:53:54

Dear Ali,

With reference to the above, we wish to note our objection within the 28 day consultation period to the order to divert Footpath Sutton Mandeville 13.

The grounds of our objection remain fundamentally as detailed in our earlier objection letters but, as I understand it, we have the right to reserve further comment at this stage, to be detailed as the process proceeds.

Sincerely,

Kate Barker
Babs Millington

From: [Kate Barker](#)
To: [Roberts, Ali](#)
Subject: Proposed diversion of footpath SMAN13
Sent: 21/05/2025 19:24:00

Dear Ali,

We wish to register our objection to the revised proposal to divert footpath SMAN13.

Responding specifically to points in the 1980 Highway Act:

- the proposed diversion is substantially **less convenient for the public** being both longer and less direct.

- more importantly, the proposed diversion runs much closer to the proposed new solar array which will be much more visible from the path - this can only have a substantially **negative impact on public enjoyment** of the route.

There are no guarantees that the proposed planting of trees and a new orchard would materialise as such proposals are unenforceable and, in any case, would likely be ineffective in screening the large, incongruous solar panel array. The diversion does, therefore, represent a **lessening of public enjoyment and a loss of public amenity**.

It remains the case that the issue of loss of privacy which the proposal largely hinges on is entirely a result of the owners own actions, and quite possibly a contrivance specifically designed to force through the footpath diversion. It is surely important that individuals are not simply allowed to manipulate the guidance at the expense of the wider public.

Issues of heritage raised in the earlier objections have been largely ignored; nonetheless it is our belief that these ancient footpaths are, as we previously argued, an important part of our history and heritage, and as such are community assets which should not be simply disregarded in favour of individual gain and self interest.

K Barker, B Millington.

From: [liz barrah](#)
To: [Roberts, Ali](#)
Subject: Objection to appeal diversion of SMAN13
Sent: 11/09/2025 20:26:33

I would like to object again to the diversion of the SMAN13.

The residents claim that privacy and security are at risk. I would suggest that there is a heightened security risk as the path will divert past a solar array, agricultural barn and veg plot that will be out of sight from the main residence.

The planning consent in 2014 was given as there was a mature hedge that screened the modern extension on a beautiful historic cottage. The owners chose to take out this hedge which could still be there to screen walkers. The extensive changes made by the owners, some of which have still not appeared, have made any footpath difficult to maintain on the property.

The comments made by villagers, some of whom have lived here for decades, have not been listened to by the owners and I feel in a small community it is important to do so.

Many of us live with footpaths going through our properties and we have a duty to work around what has been there far longer than any of us.

Sent from my iPhone

I would like to object to the revised plan for the diversion of SMAN13.

From: [liz barrah](#)
To: [Roberts, Ali](#)
Subject: Re: Revised Point B Sutton Mandeville 13
Sent: 17/06/2025 21:30:28

The diversion is confusing and passes areas not yet changed by the residents. The footpath has been politely closed for some time but as all the building work hasn't been completed it seems completely inappropriate to divert an easy straight footpath. The plans show a solar array, an agricultural building, tree planting and a vegetable plot, all next to the new diverted path. In my opinion it is just relocating the perceived 'problem'.

With so many plans for change at this property wouldn't it be better to creatively screen the original historic footpath, as it was before with a hedge. Surely this would be the easiest solution that would benefit everyone.

I would ask the residents of The Homestead to withdraw yet another planning application and leave the footpath where it is, for the sake of other villagers, walkers and our heritage.

Liz Barrah

Sent from my iPhone

On 16 May 2025, at 15:45, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways Act 1980
The Proposed Diversion of Footpath Sutton Mandeville 13

Good afternoon,

I have been asked to revise Point B on the proposed diversion plan for SMAN13 to show the route on the ground where there is a bend heading west into the sunken lane section of SMAN13, as can be seen in the attached photographs.

<image006.png>

<image007.png>

<image004.png>

<image005.png>

The content of the consultation email below, dated 7 May, remains the same, as does the consultation deadline, which is 5pm on the 18th June as this still provides the required 28 day consultation period.

Kind regards,

Ali

Ali Roberts (Miss)
 Definitive Map Officer
 Definitive Map and Highway Records
 Wiltshire Council
 County Hall
 Trowbridge
 BA14 8JN
 <image001.png>

Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

Report a problem <https://my.wiltshire.gov.uk/>

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<image002.png>

Dear Ali

From: [Peter Ellis](#)
To: [Roberts, Ali](#)
Subject: The Wiltshire Council parish of Sutton Mandeville path 13 diversion and definitive map and statement modification order 2025
Sent: 08/09/2025 09:26:52

I have looked again at the proposed new route again and it actually deviates far more than I originally thought and as it was described as going left around the vegetable plot and then back to connect the path but its it does not go back to the original path until the final 5th or so. I therefore object to it for reasons already given and reserve the right to add to them as the process of appeal evolves.

kind regards
Peter Ellis

On 13 Aug 2025, at 15:07, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

From: [Peter Ellis](#)
To: [Roberts, Ali](#)
Subject: SMAN13
Sent: 18/06/2025 12:37:13

Dear Ms Roberts,

I previously lodged an objection to the original application for moving the footpath SMAN13 in Sutton Mandeville and although I am aware that modifications have now been made, I remain of the view that the original footpath should not be changed.

My main reason for this is the historical significance of the original path and the fact that it should not have been tampered with in the first place by removing the original surrounding hedges that hid walkers from the land/householders view. History should not be erased for the convenience of people that will live next to it for only a brief moment in it's history.

A further reason is the new compromised route proposed seems a strange one - to walk around a vegetable patch that for a large part of the year will be empty and still offer little more privacy that the owners seek than the original especially especially if they are working in the vegetable patch.

Kind regards
Peter Ellis

Peter Ellis Design
[REDACTED]
Sutton Mndeville
SP3 [REDACTED]

From: [REDACTED]
To: [Roberts, Ali](#)
Subject: Objection to footpath move
Sent: 05/03/2025 16:04:08

You don't often get email from [REDACTED] [Learn why this is important](#)

Hello Ali

John Prince suggested I email you a copy of my objection letter to the moving of SMAN13. I live [REDACTED] opposite to where the new proposed gate and path position they are hoping to move it to. I have already sent it to the general email on the website.

kind regards
Peter Ellis

OBJECTION to moving SMAN13 Sutton Mandeville

We register a strong objection to the application to move this public RoW for the following reasons.

1. When someone buys a property with a public RoW footpath you know what you are letting yourself in for and have a moral duty to look after and maintain this ancient and historic right of way. This clearly is not something the current owners seems to have taken into account or have held up with the developments and landscaping that have already taken a heavy toll on the footpath. It was their choice to develop and build and make themselves far more public. Sighting privacy and security concerns for both themselves and the general public is therefore a complete irrelevance and should not be taken into consideration.

Apart from public enjoyment the single most important point is maintaining around a thousand years of history and not wiping that off the map for a few peoples convenience during their brief years of ownership of the property and land. If this is aloud it will be seen as a precedent for other people to apply to do similar and set things on a slippery slope. The country side is under enough pressure by developers, population growth and environmental changes and this is one thing that can still be preserved with the correct decision not to allow the requested application.

2. The new proposed location running up besides the planned solar array will not be an attractive walk with that on one side and hedge on the other. It also has a very steep rise up to the top which apart from the very young would be a struggle for the average person. I have personally scrambled up that bank just 20 feet left from the proposed route and had to use trees to pull myself up in parts.

3. The proposed new location would be to close to SMAN 3 making it almost redundant especially as SMAN 3 would be a much easier walk.

4. The gate entrance to this proposed path site is not as safe a location as the original being at the junction of Sutton Hill with Panters Road where cars and lorries are often forced to reverse when trying to turn into the single lane Panters Road if a car or lorry is coming down it. I have often witnessed cars, vans, tractors and lorries pulling out of Panters Road into Sutton Hill at far too fast speeds with little heed for anyone walking, riding or driving along. It is a bit of a blind spot.

5. Installation of the gate will also require tearing out the historic hedgerow and bank and would be sitting next to the attractive old style road direction sign and in front of or besides the drain which is not a particularly acceptable idea.

Peter Ellis and Hamish Davies.

Peter Ellis Design
[REDACTED] Maida Avenue
Little Venice
London W2 [REDACTED]
[REDACTED]

From: [Sarah B](#)
To: [Roberts, Ali](#)
Subject: The Wiltshire Council parish of Sutton Mandeville path 13 diversion and definitive map and statement modification order 2025
Sent: 09/09/2025 09:04:45

Dear Ali,

Once again I am writing to you and once again I continue to object to the order to divert footpath SMAN13 from its original historic route.

It appears you are not listening to the community who regularly use the path and for whom it is a village asset, only the singular family who wish it to be moved – despite them having brought this situation entirely upon themselves by removing hedge screening which previously gave them the privacy they now desire.

This has been the central footpath across the village for many centuries and to deviate its trajectory changes the whole dynamic of this ancient path leading from the downs to the church and on to Sutton Mandeville mill.

Please register my objection.
Thank you.

Best wishes,
Sarah

Sarah Beddington [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**OBJECTION TO THE PROPOSED REVISED APPLICATION TO RE-ROUTE
SMAN13 FOOTPATH IN SUTTON MANDEVILLE, WILTSHIRE**

From: Sarah Beddington, Sutton Mandeville resident and documentary filmmaker

To: Ali Roberts and the Definitive Map and Highway Records Team of Wiltshire Council

10/06/2025

Dear Ali Roberts and Team,

Having objected to the first application to re-route footpath SMAN13 in Sutton Mandeville, I wish to object again to this second, revised version.

The revised proposal to re-route the original footpath, while now keeping to the holloway through the wood, will still alter the path's direct and meaningful connection between the fields above the escarpment and the centre of the village. The applicants wish walkers to loop away from their newly constructed swimming pool, tennis court and house extension, leading us on a meaningless detour close to unsightly solar panels set up to heat their private pool.

As I stated previously, the owners of the Homestead must have known when they bought the property the positioning of the public footpath, adjacent to their house and garden, yet they inexplicably ripped out the dense and biodiverse hedge that had previously screened them and their new developments from public view. Why is it only now, with their alterations almost complete, that they wish to change the route of the local community's right of way?

The Homestead is a second home and the owners are often absent from the property so why should the multiple permanent residents of the village who use this footpath regularly be forced to alter their ways purely for the benefit of a single household that is often elsewhere?

SMAN13 once linked the cornfields below the downs to Sutton Mandeville Mill on the River Nadder, by way of the deeply worn holloway through the wooded escarpment and then past the Homestead and the church – a route along which cartloads of corn were taken to be milled into flour and the same route which we still use today.

While the historicity of this footpath has been dismissed as irrelevant in planning terms, I would strongly beg to differ – as it seems does Wiltshire Council itself. Together with other participants, including the National Trust, Salisbury Museum and the Wessex Rivers Trust, **Wiltshire Council** is named as a partner in Cranborne Chase National Landscape's [The Chase & Chalke Landscape Partnership Scheme](#) with funding from the National Lottery, Natural England and Historic England and South West Wiltshire Area Board (**Wiltshire Council**), among others.

Their mission statement says:

“There have always been historical, natural and social links between the valley and the Chase downland, and the Chase & Chalke Landscape Partnership explores and reinforces these links...”

This partnership is still involved in improving and alerting the community to:

ANCIENT WAYS

“The Chase & Chalke landscape area is criss-crossed by paths, many of them ancient ways... In centuries past these were the main routes between settlements, the way the rural economy functioned before the coming of the motorcar and the roads we use today.”

And under **KEY ISSUES** in 'Cranborne Chase Landscape Partnership Plan's 2025 - 2030 Future Vision', of which **Wiltshire Council** is also a partner, page 12 of their PDF states:

“Historic and Cultural Heritage

7.1. *The way the land has been used over the centuries has influenced the character of the landscapes we see around us today.*

The remnants and artefacts of working life, together with the layout of settlements, routeways, and buildings, contribute to the historic character of an area.

How does it add up for Wiltshire Council to commit to protecting the “**historic character**” of this Area of Outstanding Natural Beauty and “**the layout of...routeways**” on the one hand, only to dismiss the historicity of an ancient footpath as irrelevant on the other?

And what sort of precedent is set if public routeways can be changed on the whim of a singular and often absent second home owner, unhappy with their self-inflicted situation, in contravention to the wishes of the majority permanent residential community who wish their footpath to stay in its centuries old position?

Yours sincerely,
Sarah Beddington

From: [F M](#)
To: [Roberts, Ali](#)
Cc: [Definitive Map](#)
Subject: The Wiltshire Council Parish of Sutton Mandeville Path 13 Diversion and Definitive Map and Statement Modification Order 2025
Attachments: [SMAN13 made order.pdf](#)
Sent: 12/09/2025 16:01:45

Dear Definitive Map Officer,

Thank you for your e-mail below (Tue 26/08/2025 14:41).

Please accept this e-mail as my duly-made objection to the Order.

I consider that the reference to Southwick in Part 1 of the Schedule to the Order is erroneous.

I reserve the right to add to or amend these grounds if further information indicates it to be appropriate.

Please confirm receipt of this e-mail.

Yours sincerely,

Francis Morland

██████████ Chapmanslade BA13 ██████████

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 26 August 2025 14:41
To: F M <██████████>
Subject: RE: The Wiltshire Council Parish of Sutton Mandeville Path 13 Diversion and Definitive Map and Statement Modification Order 2025

Good afternoon Mr Morland,

Please find attached made order and order plan for the diversion of Footpath Sutton Mandeville 13 as requested.

Kind regards,

Ali

Ali Roberts (Miss) Definitive Map Officer
 Definitive Map and Highway Records
 Wiltshire Council County Hall Trowbridge BA14 8JN

Wiltshire Council

Tel: 01225 756178 Email: ali.roberts@wiltshire.gov.uk Web: www.wiltshire.gov.uk

From: F M <██████████>
Sent: 26 August 2025 15:04
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Cc: Definitive Map <DefinitiveMap@wiltshire.gov.uk>
Subject: The Wiltshire Council Parish of Sutton Mandeville Path 13 Diversion and Definitive Map and Statement Modification Order 2025

Dear Definitive Map Officer,

I refer to the Notice of making an Order dated 15 August 2025.

Please advise where I can access an electronic copy of the Order and Order Map.

Yours sincerely,

APPENDIX D

Representations

1. Andrea Davies
2. Chloe Luxton
3. Simon Davies
4. Anonymous
5. Caroline Vernon – support received after the statutory consultation period

Objections

1. Sutton Mandeville Parish Council
2. David Willis
3. Elizabeth Beeley
4. Helen Havard
5. JA Prince and DT Foston
6. Kate Barker and B Millington
7. Liz Barraah
8. Peter Ellis
9. Sarah Beddington
10. Francis Morland – objection to the drafting of the order

Representations in support

1. Comments in support of the diversion focus on the discomfort of walking in such close proximity to the family home and a feeling of invading the homeowner's privacy. They continue that this minor diversion will in no way be a detriment to the area or affect enjoyment of the path as it will add seconds to the walker's journey.

Representations in objection and officer response

2. Objection

The applicants knew about the right of way when they bought the property.

3. 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.

4. Objection raised

Aerial photographs, **Photographs at 1 on page 8**, show the right of way was beyond the property and garden and the extension of the house and garden and removal of mature boundary vegetation has caused the right of way to become proximate. The applicants have made significant alterations including removing

hedges that screened the footpath. The original route should not have been tampered with in the first place, the privacy issues are self-inflicted. The applicants are responsible for their own privacy loss due to unauthorised alterations.

5. Officer response

Wiltshire Council has no record of complaints received regarding SMAN13 prior to this diversion application. The photograph from Google Street View **photographs at 2 on page 9** 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 which is immediately adjacent to the porch of the property. Aerial photographs, **photographs at 1 on page 8**, show a large tree in 2002 and 2008, presumably the beech tree that was removed by the previous occupants due to damage. The photograph from Google Street View 2011, **photographs at 2 on page 9**, show that the laurel hedge offers no screening for the porch of the property as it is planted past this point. The aerial photograph dated 2013 shows the laurel hedge provided very limited screening for the garden due to its approximate 12 metres in length.

The images from Rightmove sales particulars dated 2013 **photographs at 3 on page 10** show that although the footpath was delineated from the garden by a post and rail fence it provides no screening for the garden and patio area of The Homestead as the neighbouring paddock is clearly in view. The image taken from the paddock towards The Homestead shows a clear view of the garden through the post and rail fence and that the laurel hedge provides little screening. These photographs pre date the applicant's purchase of the property and demonstrates the right of way afforded limited privacy of the property before any works were undertaken by the applicant.

The close proximity of SMAN13 is the reason given for applying for the diversion and therefore the application meets the legal test that it is in the interests of the landowner.

6. Objection

The diversion fails on legal grounds as it is not in the interests of the public.

7. Officer Response

There is no requirement, under Highways Act 1980 s.119(1), for the diversion to be in the public interest, it can be made solely in the interests of the landowner. Sutton Mandeville Parish Council state in their objection that SMAN13 adjoins the home extension "*it is extension of the house and garden and removal of mature boundary vegetation that has caused the right of way to become proximate*". The Parish Council's statement confirms the applicants reasoning for applying to divert SMAN13 which states, "*It passes close by large windows and so affects the privacy of the property.*" See **photograph at 4 on page 11**, demonstrating the proximity of the path.

8. Objection

The diversion would set a dangerous precedent

9. Officer response

This diversion would not set a precedent, requirements on land where rights of way are situated can change therefore legislation is in place to divert routes within highway law, Highways Act 1980 and planning law, Town and Country Planning Act 1990. For example, there are 35 paths recorded in the parish of Sutton Mandeville, 20 of those paths have been subject to definitive map modification orders, including diversions, extinguishments, creations, additions and status reclassification since the Mere and Tisbury Rural District Council Area Definitive Map and Statement dated 1952 was drawn up. The latest public path diversion order for paths in the parish of Sutton Mandeville was confirmed in 2021 where no responses were received to the consultation. The order making authority (Wiltshire Council) and confirming authority (the Planning Inspectorate) are guided by the Defra government guidance which clearly sets out a presumption to divert a right of way which passes through private dwellings or their curtilages and gardens.

10. Objection

Minister for Access, Baroness Hayman said: "These well-trodden routes, many of which have been in place for hundreds of years, are a part of our shared heritage and it is critical that we bring forward these measures to protect their long-term future." Therefore Defra's 2023 guidance is equivocal and must be left open to interpretation and used with discretion

11. Officer response

The quote from Baroness Hayman, 'Government steps in to save historic rights of way from being lost to the nation' published 26 December 2024, is discussing the 2031 cut-off date for recording historic rights of way which are not recorded on the definitive map and statement. Baroness Williams, as quoted in the forward of the Defra guidance, is specifically discussing Highway Act 1980 diversion and extinguishment orders, "*The right to apply will be supplemented by guidance that will effectively act as a presumption to divert or extinguish public rights of way that pass through the gardens of family homes ... where privacy, safety and security are a problem*".

12. Objection

The proposed route is over 40% longer and has 2 right angled bends making it substantially less convenient.

13. Officer response

SMAN13 in its entirety is 203 metres. Therefore, the additional 30 metres the proposed route would add to the right of way is approximately 15%, a very minimal increase making no material difference. 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. This very minimal diversion will add approximately 25 seconds to the average walker's journey and therefore, is not regarded as substantially less convenient.

14. Objection

The more practical solution would be to screen the original historic footpath.

15. Officer response

The public right of way is now directly adjacent to the extension; there is no room to screen the property.

16. Objection

Gates would be required to enable the traverse of the existing paddock, these gates would add an inconvenience to the public

17. Officer response

The paddock will be fenced away from the line of the path 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. Therefore there will be no additional gates required.

18. Objection

The original objection is maintained, including safety of access point, visibility and topography of a steeper route.

19. Officer response

The termination points of the diversion route are the same as the current route. The proposed route runs through the same terrain and inclination as the current route see **photograph at 6 on page 11**. This comment is clearly referencing the original proposal which was revised.

20. Objection

The diversion is confusing and passes through areas not changed.

21. Officer response

If the diversion is confirmed, the Countryside Access Officers for the area, will be required to certify the route before the definitive map and statement is changed. The path will be installed and waymarked to Wiltshire Council's specifications.

22. Objection

There are substantial objections from the public.

23. Officer response

The initial consultation received 25 objections, including Sutton Mandeville Parish Council, Cranborne Chase National Landscape (CCNL), The Ramblers, Tisbury Footpath Club, the Area Highway Engineer and local residents. The revised proposal received 14 objections. 2 objectors to the original application route had no objection to the revised route. Two responses were received from Cranborne Chase National Landscape (CCNL), one in support of the proposed revised route, the other, following lobbying, as stated within the response, concerned that the applicants had brought the situation on themselves. Following a telephone discussion between the case officer and the Principal Landscape and Planning Officer, to confirm the position CCNL wished to take on this proposed diversion, CCNL requested both their responses remain as comments on this revised route. Following the consultation on the made order, 10 objections were received, 1 of which is on the drafting of the order but not the diversion of SMAN13, and 5 supporting representations were received, 1 of which was anonymous and 1 was received after the statutory

consultation period. The CCNL have not objected to the order.

24. Objection

Cranborne Chase Management Plan which Wiltshire Council adopted is in place to conserve, protect and enhance a nationally important and protected landscape including 'routeways'

25. Officer response

Cranborne Chase National Landscape have not objected to the order.

26. Objection

This is an ancient route connecting historical settlements, the diversion would damage a feature of the landscape and its heritage and would diminish a walkers sense of place. SMAN13 is a historic lane shown on OS maps, Tithe map and 1807 survey drawing. The path is integral to the historic structure of the village. The proposal involves the erasure of 70% of the original right of way making it a considerable loss of amenity and enjoyment of the historic pathway.

27. Officer response

- 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.
- In the production of Wiltshire Council's Countryside Access and Improvement Plan dated 2015-2025, a Strengths, Weaknesses, Opportunities and Threats analysis of the countryside access network, was undertaken with user groups who recognised the following; *"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."*
- Defra government guidance on diversion or extinguishment of public rights of way that pass through private dwellings or their curtilages and gardens, dated August 2023, 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 and/or occupier against the benefit that having the right of way through the land brings to the public, taking account of this guidance."* 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. The guidance continues *"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 landscape at The Homestead has changed over time. 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. A plan of the diversion of SMAN13 over the planned works for the site illustrate the continued changes to the landscape of The Homestead, which include a vegetable plot and the solar array and agricultural building that have planning permission **image at 5 on page 11**. The revised route maintains the diverse character of SMAN13 as it retains the section of sunken lane heading south up the hill towards the copse. **Photograph at 6 on page 11** is taken from the southern termination point exiting the sunken lane. The current route and proposed route can be seen in their entirety in this image.

27. Objection

The proposed route will be 30 metres nearer the solar array which will make it much more visible from the RoW, and the proposed visual screening will be ineffectual in the winter.

28. Officer response

The diversion is situated approximately 20 metres closer to the solar array, however, it runs between established trees and the solar array has been screened. 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 with no additional screening.

29. Objections

No parishioners or walkers feel discomfort and embarrassment walking past the house. Statements concerning embarrassment are subjective. The revised route allows greater visibility into the property, potentially worsening the applicants' concerns

30. Officer response

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 **photograph at 4 on page 11** This is an established view discussed at length in the Defra guidance stating *“Members of the public may not be comfortable following a path through a contained space ... because it feels like infringing on the privacy of a house owner. The degree of proximity can also make a big difference ... the more a route brings people into close proximity with the associated house the less likely they are to feel comfortable using it”*. The guidance continues that a landowner should have *“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.”* 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." The 5 representations in support received from local residents have all raised concern about infringing on the applicant's privacy and their discomfort in infringing on this privacy.

31. Objection

The claim that the number of objections has fallen by a significant proportion since the original plan, and deduce that this is because some of those who objected were content with the revised version, as a compromise. On the contrary, this does not imply that they support the revision, because they had already stated they were opposed to alteration to the RoW; and did not feel it necessary to object again

32. Officer response

As explained in the consultation email to the revised route which was sent to all recipients of the original consultation and to all those who responded, *"We are currently in the initial consultation phase on the proposed diversion of SMAN13. During this stage, the consultation responses received may raise issues that could potentially be resolved by amending the original diversion proposal applied for. During this phase we 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 has had sight of the objections to their original proposal and following a site meeting with the applicant, myself, and the area Countryside Access Officer in which potential resolutions to these concerns were discussed, a revised diversion plan for SMAN13 was then submitted ... If you would like to make any observations or representations regarding the proposal, I would be very grateful if you could reply to me via email."* It is a fact to say there were less objections received to the revised route to the original applied for diversion. It is also a fact to say there are less objections received to the made order and support has been received to the made order.

33. Objection

Is the case officer an impartial decision maker or facilitator of the application

34. Officer response

During the initial consultation the case officer will 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 and to clarify the legal tests that must be met. Once representations from all sides have been gathered the case officer makes a recommendation on the application based on the legislative tests, government guidance and consultation responses.

35. Objection

The reference to Southwick in Part 1 of the Schedule to the Order is erroneous.

36. Officer response

Schedule 1 of the Order does refer to 'Southwick path no. 13, this is an administration error, and it should read Sutton Mandeville 13. This is not fatal to the order as the intent is clear and as all other information is correct. Members of the

Southern Area Planning Committee can resolve to send the order to the Planning Inspectorate with a recommendation to make the minor modification

Photographs and images

1. Aerial photographs of The Homestead over time



2002



2008



2013



2016

2. Google Street View images dated 2011



3. Images from Rightmove Particulars dated 2013 prior to the applicant's purchase of The Homestead



4. Photograph taken from the current route of SMAN13 of the extension to The Homestead.



5. Planning permission granted



6. The current route for SMAN13 and the proposed route

