

18<sup>th</sup> January 2019

Ms A Child - Clerk  
Salisbury City Council  
The Guildhall  
Market Place  
Salisbury  
Wiltshire  
SP1 1JH

Rights of Way & Countryside Team  
Waste and Environment  
County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

RECEIVED  
21 JAN 2019

Your ref:  
Our ref: JG/Dist.8 2018/01

Dear Ms Child,

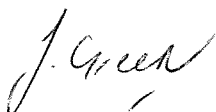
**Wildlife and Countryside Act 1981 – Section 53**  
**Application to Add a Footpath to the City of Salisbury Area Definitive Map and Statement – Stratford-sub-Castle**

Further to the application for a definitive map modification order (DMMO) to add a public footpath to the definitive map and statement of public rights of way, at Stratford-sub-Castle, Salisbury, as shown on the enclosed plan, please find enclosed a copy of the Council's decision report in respect of the application, which has been refused.

The decision report sets out the Council's reasons for this decision in full. The Council has concluded that where a public right of way for the public on foot has been acknowledged and accepted over the claimed route, these rights have been formally extinguished by legal order, "The Wiltshire Council Stratford sub Castle Footpath Linking Salisbury 24 with Salisbury 6 Extinguishment Order 2016", as confirmed by the Inspector appointed on behalf of the Secretary of State on 13<sup>th</sup> February 2018 and therefore the DMMO application is refused.

Where an application has been refused I must make you aware that the applicant does have the right to appeal to the Secretary of State under paragraph 4(1) of Schedule 14 to the Wildlife and Countryside Act 1981. Appeals must be made in writing to the Planning Inspectorate within 28 days of the date of this letter.

Yours sincerely



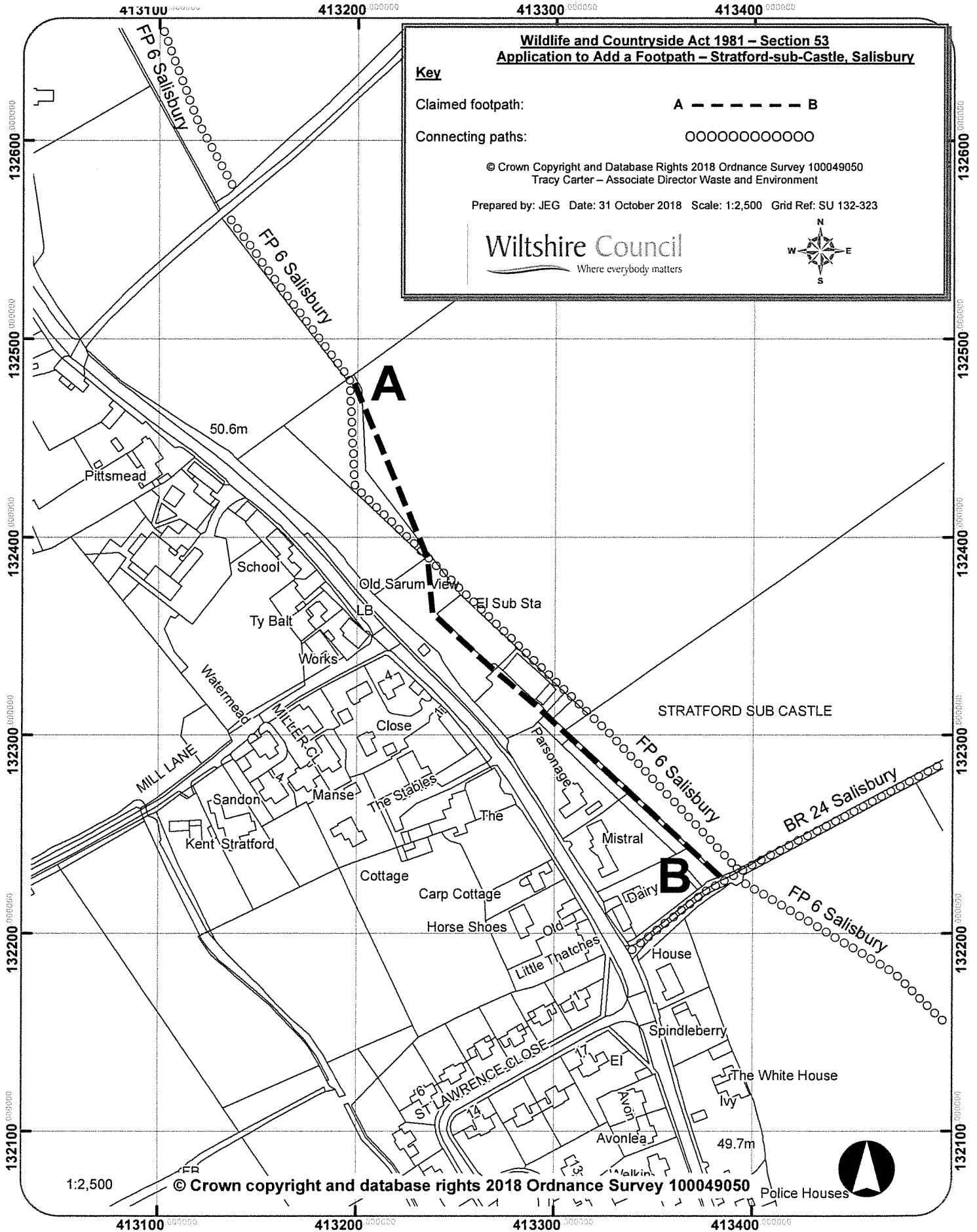
Janice Green  
Rights of Way Officer  
Direct line: 01225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)  
Enc.

*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>*



# Wildlife and Countryside Act 1981 - Section 53 Application to Add a Footpath - Stratford-sub-Castle, Salisbury

**Wiltshire Council**  
Where everybody matters





**COVERING PAGE FOR DECISION REPORT**

**APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY – SALISBURY (STRATFORD-SUB-CASTLE)**

**PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME**

		Signature	Date Signed Off
<b>To:</b>	Sally Madgwick (Definitive Map and Highway Records Team Leader)	[REDACTED]	15/01/19
	Richard Broadhead (Head of Rights of Way & Countryside)	[REDACTED]	16/01/19
<b>From:</b>	Janice Green		
<b>Date of report:</b>	15 <sup>th</sup> January 2019		
<b>Return to:</b>	Janice Green, Rights of Way (Ext. 13345)		

**Nature of Report:**

This is a report from Janice Green (Case Officer) to Richard Broadhead (Officer with the relevant delegated powers).

**Executive Summary:**

Wiltshire Council are in receipt of an application dated 14<sup>th</sup> January 2018, (accepted as a valid application 29<sup>th</sup> January 2018), made under Section 53 of the Wildlife and Countryside Act 1981, to add a Footpath to the Salisbury Area Definitive Map and Statement of public rights of way, dated 1953, at Stratford-sub-astle. The application is based on both user and documentary evidence.

Following an assessment of the evidence, Officers are satisfied that the application should be rejected on the following grounds:

When considering an application to divert Footpath no.6 Salisbury (part) in 2016, Wiltshire Council accepted that a right of way for the public had been acquired over the land in question, through public user of the claimed route for a period of 20 years or more, "as of right" and without interruption, as an alternative to the definitive line of Footpath no.6 Salisbury (part), which was obstructed and not available for public use. An order was therefore made in 2016 to extinguish the unrecorded public rights over the claimed route, which was confirmed by the Secretary of State on 13<sup>th</sup> February 2018. Therefore, where a public right on foot has been acknowledged and accepted by the Council and formally extinguished by legal order, (where the definitive line of Footpath no.6 has been legally diverted, by order, to a third alternative route

which provides a favourable and popular alternative route and use of the claimed route is likely to be minimal), it is not possible to add a right of way for the public on foot and the application must be rejected.

The applicant in the DMMO application has made representation that the previous extinguishment order and diversion order relating to Footpath no.6 Salisbury (part), are invalid given errors in the advertisement of the order; the orders being made under the incorrect legislation and without proper consultation. The Inspector fully considered these assertions in her decision letter regarding the diversion of Footpath no.6 Salisbury and concluded that the orders were valid and continued to determine the orders. This matter has already been addressed and it is not necessary for the Council to address this matter in its determination of the DMMO. It is noted that the objector in the public path orders (PPO's), (also the applicant for the DMMO), did not seek to appeal the Inspectors decision in the PPO's.

Salisbury City Council Planning Committee have written to support the DMMO application, but no further details regarding the reasons for their support of the application, have been submitted.

**Officer's Recommendation:**

To reject the application dated 14<sup>th</sup> January 2018, (formally accepted as a valid application 29<sup>th</sup> January 2018), to add a footpath to the City of Salisbury Definitive Map and Statement of public rights of way, dated 1953.

**DECISION REPORT**  
**WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53**  
**APPLICATION TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND**  
**STATEMENT OF PUBLIC RIGHTS OF WAY – SALISBURY (STRATFORD-SUB-**  
**CASTLE)**

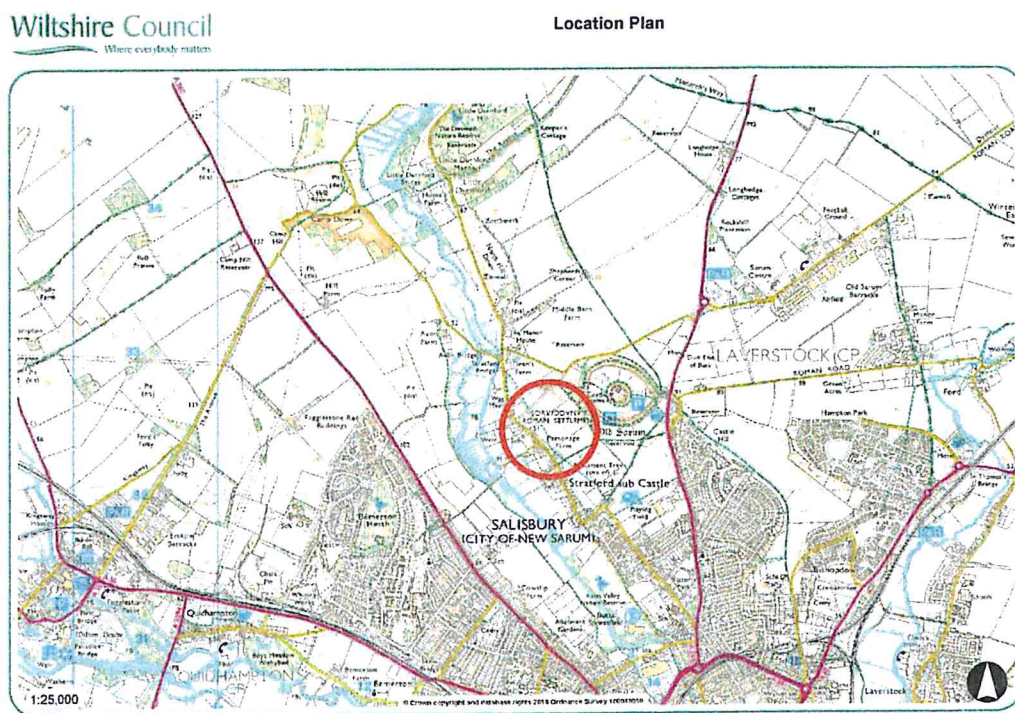
**1. Purpose of Report**

1.1. To determine an application made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the District of Salisbury, Stratford-sub-Castle.

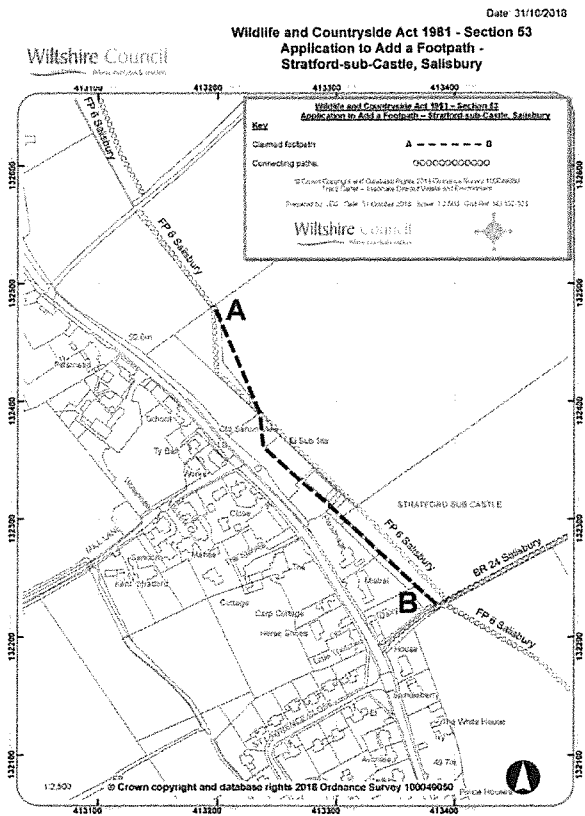
**2. Relevance to the Council's Business Plan**

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

**3. Location Plan**



#### 4. Claimed Path



*Map produced by Wiltshire Council based on information included within the definitive map modification order application.*

4.1. The application is made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the City of Salisbury Area Definitive Map and Statement dated 1953, leading from its junction with Path no.6 Salisbury at point A, in a generally south-easterly direction, to its junction with Path no.6 and Path no.24 Salisbury, at point B.

#### 5. Registered landowners

5.1. Mr and Mrs Harrison



Stratford Road  
Stratford-sub-Castle  
Salisbury  
Wiltshire, SP1 3

Mr and Mrs Griffiths



Stratford Road  
Stratford-sub-Castle  
Salisbury  
Wiltshire, SP1 3



Mr and Mrs Winders

██████████

Stratford Road

Stratford-sub-Castle

Salisbury

Wiltshire, SP1 3████

Ms Steer

████████████████████

Stratford Road

Stratford-sub-Castle

Salisbury

Wiltshire, SP1 3████

Mr Groom

████████████████████

Stratford Road

Stratford-sub-Castle

Salisbury

Wiltshire, SP1 3████

## 6. Background

- 6.1. Wiltshire Council are in receipt of an application made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the district of Salisbury, leading generally south-east for approximately 320 metres, from its junction with Path no.6 Salisbury at OS Grid Reference SU 1319-3247, to its junction with Path no.6 and Path no.24 Salisbury at OS Grid Reference SU 1338-3222. The application is dated 14<sup>th</sup> January 2018, but was not accepted as a validly made application until 29<sup>th</sup> January, following the applicant successfully serving Form 2, "Notice of Application for Modification Order", upon all registered landowners, (the land over which the claimed route passes is in multiple ownership). The application is made by Ms P Fulton on the grounds that a right of way for the public on foot, subsists or can be reasonably alleged to subsist, based on both user and documentary evidence and should be recorded within the definitive map and statement of public rights of way, as such. The application form, (which consists of Forms 1 and 3), is accompanied by an extract from the 1:25,000 OS Explorer map, (enlarged to

a scale of approximately 1:5,000), highlighting the claimed route and the following statement by the applicant:

*“Rights of way Evidence*

1. *The Council already fully acknowledge the subject of the application, unanimously by documentation:  
“The path has been used since 1960”: Rights of Way Officer.  
by Sect.31 of the Highways Act 1980:  
“Dedication is presumed after public use for 20 years.*
  2. *The Council has had an obligation under Sect.36(6) of the Highways Act 1980 to register this path as the legal line on the DMS. for the past 57 years. A requirement which remains unfulfilled.*
  3. *The attached map, obtained from “LandRegistry.Gov.UK” and provided by the government site by Ordnance Survey, is further proof that the said path is recognised by all mapping and registration authorities: apart from Wiltshire Council.”*
- 6.2. Wiltshire Council undertook an initial consultation regarding the proposals on 9<sup>th</sup> October 2018. The objections and representations received are included below, (please note that all objections and representations are available to be viewed in full at Rights of Way and Countryside, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN):
- 1) Councillor Mary Douglas, e-mail correspondence – 1<sup>st</sup> November 2018:**  
*“I see no justification for an added footpath in this location as it so closely follows the route of Footpath 6.”*
  - 2) Mr Arnold Harrison, e-mail correspondence – 2<sup>nd</sup> November 2018:**  
*“I refer to your letter of 31<sup>st</sup> October.*

*This matter was exhaustively explored at a public inquiry on 23<sup>rd</sup> and 24<sup>th</sup> January this year. This enquiry concerned our application to divert Footpath Salisbury 6. The Inspector, who presided at the Public Enquiry, confirmed the application to divert and the route marked A-B, in heavy type on your map was duly extinguished and therefore now no longer exists. For the record, the new route has been whole heartedly embraced by the walking population.”*

**3) Rosemary Winson, e-mail correspondence – 5<sup>th</sup> November 2018:**

*“I’m writing to you regarding the application to add a footpath to the Definitive Map, in the area close to my home in Stratford sub Castle, Salisbury. Please consider my comments below when you review the application.*

*The matter of the footpaths in this immediate area was the subject of a Public Inquiry in January 2018 which I attended as an interested party and as a witness. Attached to this e-mail is a copy of a map used throughout the inquiry which shows 3 routes which were referred to as the Green, Red, and Purple routes. It is my understanding that the Red Route is the route shown on this most recent application.*

*The independent Inspector heard evidence over 1.5 days and walked all 3 routes as far as was practical but parts of the Purple Route run through private gardens and had not been accessible since the 1950’s. The Inspector rejected a submission that the Red Route was more suitable for use by walkers than the Green Route which had latterly been used on a Permissive basis.*

*With an extinguishment order made for the Purple Route which at that time appeared on the Definitive Map, and approval given to the Green Route, we have been left with one footpath FP6 Salisbury which I use on a regular basis. It provides more than adequate access to the fields for the purposes of enjoying the countryside and its views and for progressing northwards into the Woodford Valley, or southwards towards Salisbury City Centre. I can see the footpath from my house/garden and the increased numbers of walkers using it has shown how popular the Inspector’s decision has been. I am particularly*

*pleased that there are no longer any stiles in that area which can be slippery in wet weather and difficult to climb over both for older people and for young children in our local community.*

*I do not think there is any need or requirement for an additional path to be established.”*

**4) Mr Richard Griffiths, correspondence - 6<sup>th</sup> November 2018:**

*“I should be surprised, given the one applicant who generated the expense of a public enquiry on 23<sup>rd</sup> and 24<sup>th</sup> January 2018, that you have received this application. The applicant who prompted that public enquiry made a lot of claims, totally unsupported by evidence, so why should it surprise me that this further claim has now been made. I assume you have access to the Inspector’s Report and therefore I will not trouble to repeat the evidence received at that enquiry and the careful manner in which the Inspector dealt with all relevant issues not least the behaviour of the applicant.*

*I hope I am correct in asserting that the decision of the Inspector was to extinguish whatever right of way subsisted between points A and B on your map which appear in heavy type. I do not believe the decision of the Inspector was appealed so it is possible to view this latest application as an attempt to subvert the due processes which led to the Public Enquiry and the Inspector’s decision. Further, it is difficult if not impossible, to see what conceivable public benefit could flow from having two rights of way running alongside each other. The existing right of way is used and enjoyed by all. It is my view that this application is an abuse of process and should be rejected if possible with an order for costs against the applicant.”*

**5) Yvonne Steer, e-mail correspondence - 29<sup>th</sup> November 2018:**

*“I refer to your letter of 31<sup>st</sup> October, ref JG/Dist.8 2018/01. I was very surprised to read that this matter is not considered to be resolved once and for all.*

*The public hearing in January 2018 resulted in the extinguishment of the 'claimed' footpath as shown in your diagram dated 31.10.18 and the establishment of the new route as shown by the line of circles.*

*This hearing cost the public coffers an inordinate amount of money and was only necessary due to the unreasonable actions of one individual.*

*If I have any rights as the owner of the land over which the right of way passes, I would choose not to permit any change to the route as notified by Wiltshire Council on 19<sup>th</sup> February 2018."*

**6) Salisbury City Council Planning Committee, e-mail correspondence - 14<sup>th</sup> December 2018:**

*"The Salisbury City Council Planning Committee support the application to add a footpath to the city of Salisbury (JG/Dist.8 2018.01)."*

**7) Ms P Fulton – Correspondence dated 2<sup>nd</sup> November 2018 (received by Wiltshire Council in e-mail dated 18<sup>th</sup> December 2018:**

*"To clarify a minor detail of your letter 31<sup>st</sup> Oct.2018:*

*"The proposed path leads in a generally north-westerly direction."*

*Should correctly, have said: 'a north-easterly' direction.*

*My application is sent by email: doc.s of proof as listed in the bibliography below are the council's own (produced) documents, so should be easily accessed for verification of their content as here described, as an accurate record; It should not therefore be necessary to provide hard copies of those. I will be posting a copy of an ordnance survey map separately, but at a later date, in case you may require other hard copies of the documents hereby referred to.*

*The list of council's own docs of reference are listed as follows:*

**BIBLIOGRAPHY 1.**

**PROOF OF PATH AS BEING ALREADY A PROW by Sect.31. The Highways Act:**

1. Letter dated 26<sup>th</sup> October 2016, "our ref: SM/2016/06 SALS 6"  
Signed by Sally Madgwick, Rights of Way Officer
2. Wiltshire Council "Decision Report"  
HIGHWAYS ACT 1980 S.119 and S.118 (UNDATED)

**BIBLIOGRAPHY 2.**

1. **Proof that no alleged orders, or alleged confirmation of orders, pertaining to the Path, which is the subject of this application, are legally enforceable:**  
**By reason of having been considered invalidly, PRE-the outcome of this application, which having been submitted before the consideration procedures upon other applications, ought to have been resolved by priority, and because this application fundamentally altered the terms of reference to those matters potentially made obsolete in any case by outcome of this application.**
2. **Proof that no alleged orders, regardless of alleged confirmation, are enforceable: being illegal by reason of form and content.**
3. **Proof that documents the council put into the public domain, fundamentally contradict their counterparts in documents in their actuality, in breach of Gov. Public Consultation Directives. All procedures in consequence of breach of Gov. Directives are invalid, expressly by law.**

*By documents pertaining:*

1. *The representation of two orders as published in the The Salisbury Journal claiming "The above named Order as made on 12<sup>th</sup> Dec 2015." (S.J..22<sup>nd</sup> Dec 2016)*
2. *The actual orders by "COMMON SEAL of WILTSHIRE COUNCIL was hereunto Affixed this 12<sup>th</sup> day of Dec. 2016".*
3. *Notice in the Salisbury Journal dated 22<sup>nd</sup> Dec 2016 ... "The above named **ORDER**".*

***A DIVERSION Order ONLY is described, the EXTINGUISHMENT Order, pertaining to the Path which is the subject of this application is deliberately omitted from public notice requirement, and as such is a manipulative deception on the public by active publicity of disinformation.***

*The documents of proof of case as listed in bibliography 2 above, are self-explanatory and require no further elucidation.*

*However the ramifications and implications of those apparent 'mistakes' are serious and numerous evident throughout the record RE: all the integral matters surrounding: Planning Permission; and Footpaths, upon which unlawful 'orders' rely.*

***Proofs of the application, as referenced by bibliography 1.***

***In "1." Letter from Sally Madgwick " ...***

*Quote "...Although part of the path ("unused for approx. 60 years, path 6") will need to be diverted to enable a permitted development to proceed (is already legally diverted by Evidential Event) .....it is clear that where the (unused for approx 60 years 'path 6') passes through properties, the definitive line, (a mark on the DMS, which the Council have failed to amend for 60 years), **IS***

**NOT FOLLOWED BY THE PUBLIC WHO HAVE, SINCE C.1960 used a slightly (actually entirely 'different') different line.**

**The fact of which, obfuscation in yellow; links to the evidence of it's deliberate omission from the Salisbury Journal 'Public Notice' by requirement) on the attached plan".**

*Proof contained in bibliography 1.*

*In "2" Decision Report ...*

*At page 1.*

*At 1.0. Purpose of Report*

**(I) "To consider an application to *DIVERT* part of Salisbury Path no.6 (proof of these paths being entirely different routes by maps are available) and a length of unrecorded path at Stratford Sub Castle, Salisbury".**

*Also at Page 1.*

*At 2.0 Background*

*At 2.7 "It is an agreed point between all parties (including officers of the council) that the unrecorded alternative route "(already a legal diversion of path 6 by Evidential Event)" may, on the balance of probability and based on public use for the past at least 20 years, be a public footpath in addition to the one adjacent to it, S. Path no. 6."*

*These evidences and matters submitted, complete my application, unless other clarifications and evidence are requested or required .....END"*



## 7. Main Considerations for the Council

7.1. Section 56 of the Wildlife and Countryside Act 1981 states that the definitive map and statement of public rights of way shall be conclusive evidence of the particulars contained therein, but this is without prejudice to any question whether the public had at that date any right of way other than that right. Wiltshire Council is the Surveying Authority for the County of Wiltshire, (excluding the borough of Swindon), responsible for the preparation and continuous review of the definitive map and statement of public rights of way.

7.2. The Wildlife and Countryside Act 1981 Section 53(2)(b) applies in the determination of this application:

*“As regards every definitive map and statement the Surveying Authority shall-*

*(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.”*

7.3. The event referred to in subsection 2 (as above), relevant to this case, is:

*“(3) (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –*

*(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”*

- 7.4. Section 53(5) of the Act allows any person to apply for a definitive map modification order under subsection 2 (above), as follows:

*“Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.”*

- 7.5. Schedule 14 of the Wildlife and Countryside Act, states:

*“Form of applications*

1. *An application shall be made in the prescribed form and shall be accompanied by:*

*(a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and*

*(b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.”*

The prescribed scale is included within “The Wildlife and Countryside (Definitive Maps and Statements Regulations) 1993” – Statutory Instruments 1993 No.12, which state that *“A definitive map shall be on a scale of not less than 1/25,000.”*

- 7.6. The application to add a right of way to the definitive map and statement of public rights of way in the District of Salisbury (Stratford-sub-Castle), has been correctly made in the prescribed form, being accompanied by an extract

from the OS 1:25,000 Explorer map, (enlarged to a scale of approximately 1:5,000).

7.7. Section 31 (as amended) of the Highways Act 1980, refers to the dedication of a way as a highway, presumed after public use for 20 years:

*“(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it...*

*(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

*(3) Where the owner of the land over which any such way as aforesaid passes –*

*(a) has erected in such a manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and*

*(b) has maintained the notice after the 1<sup>st</sup> January 1934, or any later date on which it was erected,*

*the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*

- (4) *In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so however, that no injury is done thereby to the business or occupation of the tenant.*
- (5) *Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as highway is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as highway.*
- (6) *An owner of land may at any time deposit with the appropriate council-*
- (a) a map of the land and*
  - (b) a statement indicating what ways (if any) over the land he admits to having been dedicated as highways;*
- and, in any case in which such a deposit has been made, declarations in valid form made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time –*
- (i) within the relevant number of years from the date of the deposit, or*
  - (ii) within the relevant number of years from the date on which any previous declaration was last lodged under this section,*
- to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been*

*dedicated as a highway since the date of the deposit, or since the date of the lodgement of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.*

*(6A) Where the land is in England-*

- (a) a map deposited under subsection (6)(a) and a statement deposited under subsection (6)(b) must be in the prescribed form,*
- (b) a declaration is in valid form for the purposes of subsection (6) if it is in the prescribed form, and*
- (c) the relevant number of years for the purposes of sub-paragraphs (i) and (ii) of subsection (6) is 20 years...*

*(6C) Where, under subsection (6), an owner of land in England deposits a map and statement or lodges a declaration, the appropriate council must take the prescribed steps in relation to the map and statement or (as the case may be) the declaration and do so in the prescribed manner and within the prescribed period (if any).*

*(7) For the purpose of the foregoing provisions of this section, 'owner', in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5), (6), (6C) and (13) above 'the appropriate council' means the council of the county, metropolitan district or London Borough in which the way (in the case of subsection (5)) or the land (in the case of subsection (6), (6C) and (13)) is situated or, where the land is situated in the City, the Common Council.*

*(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an Order making modifications so as to show the right on the definitive map and statement.*

*(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act...*

- 7.8. Section 32 of the Highways Act 1980, states that the authority should consider a range of historical documents and their provenance in relation to the claim:

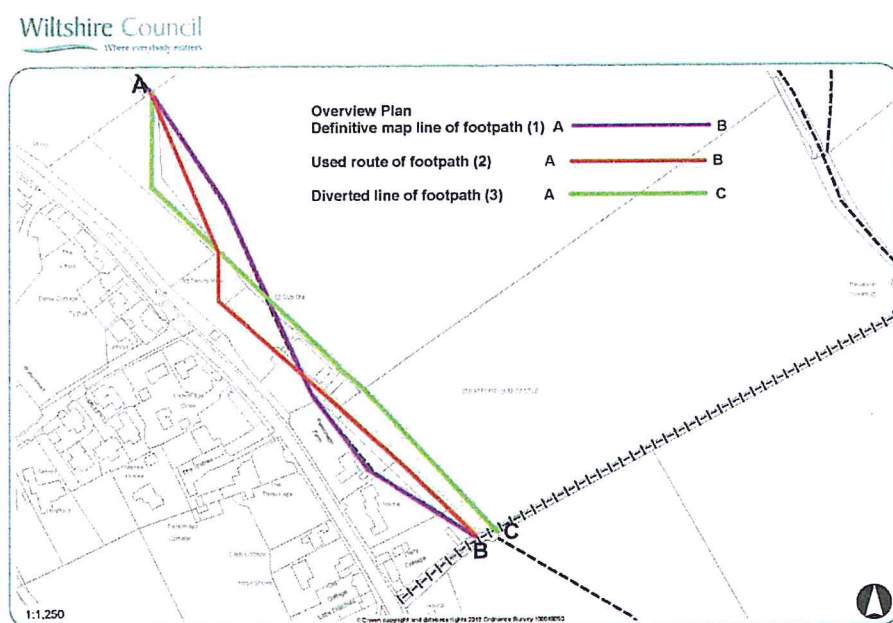
*“Evidence of dedication of a way as highway*

*A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”*

## **8. Diversion of Footpath no.6 Salisbury (part)**

- 8.1. Before considering this application, it is helpful to summarise the public path order process. On 25<sup>th</sup> October 2016 Wiltshire Council received an application to divert Footpath no.6 Salisbury (part), where planning consent had been granted for the replacement of an existing garage, alteration of vehicular access and a new boundary wall at [REDACTED], Stratford-sub-Castle, Salisbury, (16/00743/FUL). The proposed development lay over the line of Footpath no.6 Salisbury (part) and whilst such an application would

normally be dealt with under Section 257 of the Town and Country Planning Act 1990, (which deals with footpaths, bridleways and restricted byways affected by development), matters relating to the rights of way at this site were complicated by obstructions to Footpath no.6 Salisbury, (as shown on the plan below, coloured purple), as a result of which the public were using an alternative route to the definitive line of Footpath no.6, (coloured red on the plan below). The public had been using this route since around 1960, therefore this route was likely to have acquired public rights through a period of public user, “as of right” and without interruption, for a period of 20 years or more:



Purple line = Line of Footpath no.6 Salisbury (part) as recorded within the definitive map and statement.

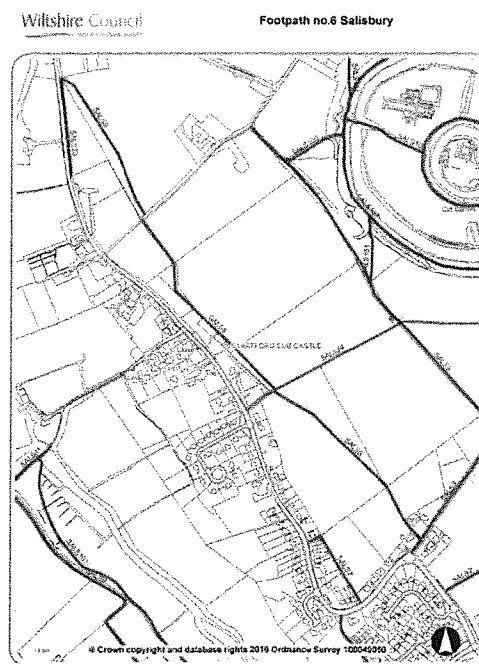
Green line = Proposed diversion route of Footpath no.6 Salisbury (part).

Red line = The unrecorded route, used as an alternative route for Footpath no.6 Salisbury due to obstruction of the definitive line.

- 8.2. It was sensible to rationalise the rights of way network in this area, where there were two rights of way within very close proximity, i.e. the route of Footpath no.6 as recorded on the definitive map, (the purple line), and the

alternative unrecorded route, (the red line). To extinguish the unrecorded route was outside the scope of Section 257 of the Town and Country Planning Act 1990, therefore Wiltshire Council made an order to divert Footpath no.6 (part) under Section 119 of the Highways Act 1980, (detaching it from the planning process) and a separate order under Section 118 of the Highways Act 1980, to extinguish the unrecorded route. These orders received objections and the order was determined by an Inspector appointed on behalf of the Secretary of State, following a local public inquiry held on 23<sup>rd</sup> and 24<sup>th</sup> January 2018. The Inspector confirmed the orders and the legal line of Footpath no.6 is now recorded as follows:

Working copy of definitive map:



Definitive Statement:

*Salisbury 6 FOOTPATH. From the Portway, path no.3, south-west of Portway Cottage, leading north-west past Parsonage Farm and across Grabbage Lane to road C.1, south of*



*Dean's Farm.*

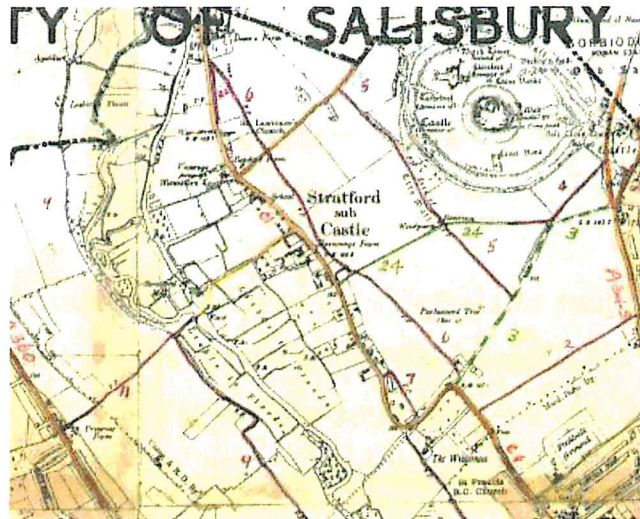
*Approximate length 1194m*

*Width 2 m – 2.14 metres except from OS Grid reference  
SU1320 3248 to SU 1339 3223 where 3 metres.”*

- 8.3. The application to add a footpath to the Definitive Map and Statement for the City of Salisbury, made on 14<sup>th</sup> January 2018, proposes to add the red route as shown on the plan at 8.1., i.e. the unrecorded route which was extinguished by legal order made on 12<sup>th</sup> December 2016, confirmed on 13<sup>th</sup> February 2018.

## **9. The Unrecorded Right of Way**

- 9.1. The National Parks and Access to the Countryside Act 1949, required each authority to prepare a definitive map and statement of public rights of way. In Wiltshire the Parish, Borough and Town and City Councils received copies of 6” OS map sheets covering their particular areas, on which they were required to include ways within their parish or district which they considered to be public. This information was then submitted to the then Wiltshire County Council and formed the basis of the definitive map. The former route of Footpath no.6 Salisbury, (the purple route on the plan at 8.1.), was originally claimed by Salisbury City Council in 1951 and included in the Definitive Map and Statement for the Salisbury Urban District Area in 1953, being formally diverted in part, in 2018, (confirmation of the diversion order).



Salisbury City Council Claim  
Map – Surveyed 1951

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.		PATH No. 6 y.p. (to correspond with No. on map)	
PUBLIC RIGHT OF WAY.		CITY OF SALISBURY	
NAME OR SITUATION AND DESCRIPTION (FOOTWAY, BRIDGEWAY, ETC.)		LENGTH 450 feet	WIDTH 7' 6" wide
Footpath commencing immediately south west of Footway Cottage, The Torsway		to City boundary	
and continuing to Beary Farm.		Fenced on east only.	
NATURE OF SURFACE		Grass	
STILES, GATES, FOOTBRIDGES, STEPPING STONES		Stile at 1st fence line.	
WHETHER DIRECTION POSTS ON WAY (GIVE PARTICULARS)		No.	
OBSERVATIONS: This footpath continues into the park of Stratford sub Castle in the		Parish District of Salisbury and Wilton - surveyed to City boundary only.	
WHETHER FENCED OR OPEN		Fenced on east only.	
APPROXIMATE PERIOD OF UNINTERRUPTED USER		YEARS FROM ... 1951 ... TO ... 1951 ...	
WHETHER REPAIRED BY PARISH, DISTRICT, BOROUGH OR COUNTY COUNCIL		No.	
DATE OF REPAIR		No.	
WHETHER SUBJECT TO PLOUGHING		Yes.	
DATE OF SURVEY		21st February, 1951.	
WHETHER SHOWN ON UNDERMENTIONED MAPS - ORDNANCE 6" SHEET, REF. LXVI - V.IX.		No.	
INCLOSURE AWARD		No.	
LANDOWNER'S MAP (DEPOSITED UNDER SECTION 1 (4) OF THE RIGHTS OF WAY ACT, 1932.)		No.	
OTHER MAPS -		Ordnance Survey	
Scale: - 25ins to 1 mile.			

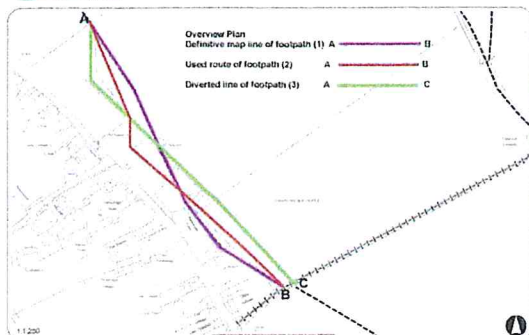
Footpath no.6 Salisbury,  
survey card – 1951

9.2. In objection to the diversion of Footpath no.6 Salisbury (part), the objector Ms P Fulton, argued that the Definitive Map and Statement of public rights of way was wrong and that the unrecorded (red) route had become a right of way through usage over a long period (over 60 years) which automatically meant that the route shown on the definitive map, (the purple line) was no longer a public right of way. Ms Fulton considered that the definitive map and statement was incorrect in showing the purple route as a right of way, and that other maps and plans, particularly the Ordnance Survey and the Land Registry maps, showed the red route as the definitive line. The Council disagreed and contended that the purple line was the legally recorded public

right of way and no legal order had ever been made to divert or extinguish this line and it remained the legal line, whatever had been shown on other maps. The Council also disagreed with Ms Fulton's interpretation of the line on the OS maps and Land Registry maps she had submitted and considered that, given the limitations of scale, these maps showed the line represented by the purple line.

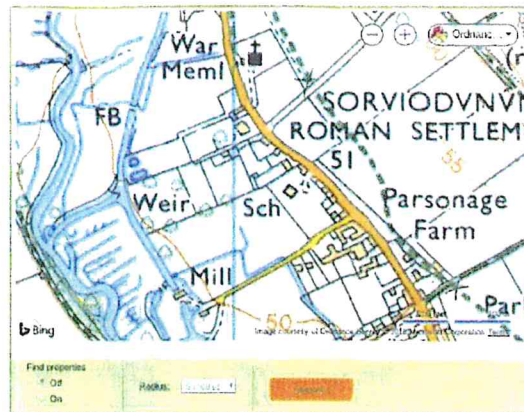
- 9.3. With the definitive map modification order application, Ms Fulton submits an OS Explorer map from the Land Registry website, enlarged to a scale of approximately 1:5000, showing the land in question and a green dashed line representing the claimed route. Officers would agree with the Council's previous view, (at the time of diversion of Footpath no.6), that the green dashed line shown on the OS map corresponds with the former route of Footpath no.6 Salisbury as shown on the definitive map, (the purple route), which was diverted by formal order, as confirmed by the Inspector appointed on behalf of the Secretary of State on 13<sup>th</sup> February 2018, rather than the claimed route, (the red route). Wiltshire Council supplies rights of way information to the OS for inclusion within their maps. Officers are therefore satisfied that the original route of Footpath no.6, (prior to its diversion in 2018), was correctly recorded within the definitive map and statement of public rights of way, as claimed by Salisbury City Council and Officers do not agree with the applicants assertion that *"the said path is recognised by all mapping registration authorities."*



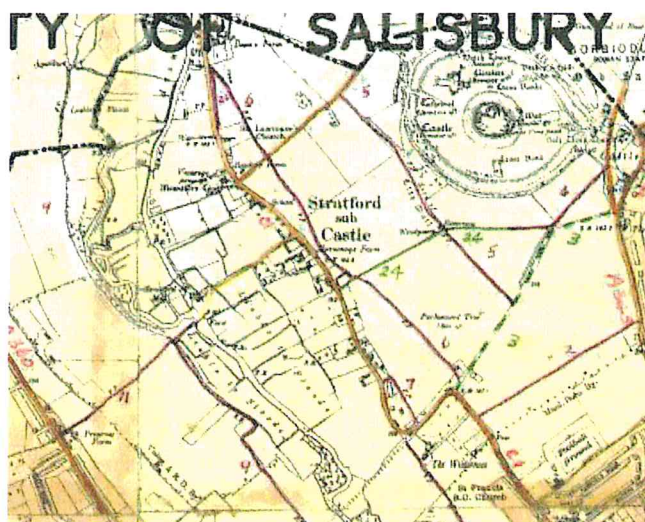


Officers consider that the route identified within the application map (opposite), corresponds with the original definitive line of Footpath no.6 Salisbury, as shown by a purple line on the plan above, rather than the unrecorded route, (coloured red on the plan above).

Aerial land locator  
 Navigates to the area of interest using tools displayed, (double clicking on the map to choose 'find location', or clicking text to bring the map to move in any direction. Adjusts the map and aerial imagery are suitable for selection on the tool bar. Once you have zoomed in sufficiently, you can then turn 'find properties' on and click the map to see a list of properties in that area.



*Plan included with Definitive Map Modification Order application, highlighting the claimed route.*



The claimed route also corresponds with that included within the City of Salisbury claim map, (opposite), following their survey of rights of way carried out in 1951 and which forms the basis of the definitive map, rather than the unrecorded (red) route.

9.4. Additionally, the applicant claims that the application route has been used by the public in excess of 60 years, however, no evidence of this is provided within the application. There are no completed user evidence forms submitted in support of the application which would provide further details regarding dates of user and whether user was with or without permission, which are essential details in establishing that public rights have been acquired under

statute through public user of 20 years, as of right (i.e. without permission, without secrecy and without force), and without interruption.

- 9.5. However, in the decision report dated 5<sup>th</sup> December 2016, regarding the diversion order application, (Footpath no.6 Salisbury (part)), dated 25<sup>th</sup> October 2016, the Council makes the following comments regarding the unrecorded route, accepting that public rights have been acquired over the land:

*“2.7 It is an agreed point between all parties (including officers of the Council) that the unrecorded alternative route may, on the balance of probability and based on public use for at least 20 years, be a public footpath in addition to the one adjacent to it, Salisbury path no.6.”*

*“2.13 The route that the public have used for at least 20 years...has been indicated by signs and provided for. It uses one stile and two gates and leads along the northern boundaries of the residential enclosures that are [REDACTED], [REDACTED] and [REDACTED] before leading south west of field buildings to enter the field and to rejoin the existing route.”*

*“3.1 ...it is clear that where the footpath passes through a number of adjacent properties the definitive line (shown from A to B as a solid black line) is not followed by the public who have, since c.1960, used a slightly different line...”*

- 9.6. The Council supported the extinguishment of the unrecorded route as follows, (Officers report dated 5<sup>th</sup> December 2016):

*“7.12 Clearly there is no need for two public footpaths so close together at this location and in the event that an Order made under s.119 were to be confirmed it is considered that the new route created by that order would be so advantageous to the public that any other route just metres away requiring the use of two gates and one stile would simply never be used.*

*7.13 ...There is no anticipated adverse effect upon the land served by the path and no claims for compensation are expected as a result of the extinguishment.*

*7.14 ...In the Action Plan of the Wiltshire Countryside Access Improvement Plan 2015 – 2025, the opportunity to create a more coherent network to make the network easier for the public to use was identified. The alternative path provides a readily accessible path making it a more useable path for the community in this attractive and popular rural setting.”*

*“16.1. Officers consider that the proposed changes to the network contained within this application have strong advantages for all parties. By extinguishing the unrecorded public rights as well as addressing the definitive line this application seeks to avoid later complications for landowners and for the Council. It is considered that all legal tests are met and that Orders should be made and advertised to effect the changes proposed in the application.”*

- 9.7. Following the making of the public path orders in 2016, (diverting Footpath no.6 Salisbury (part) and extinguishing the unrecorded route), objections were received and the orders were determined by an independent Inspector, appointed on behalf of the Secretary of State, holding a local public inquiry. In the Inspector's consideration of the unrecorded route as part of the public path order process, the report dated 13<sup>th</sup> February 2018, contains the following conclusions:

*“31. Ms Fulton considered that it was perverse to divert a path which was not in use (the Purple Route in Order A), and to extinguish a path which was in public use and which, in her opinion, was needed (the Red Route in Order B).”*

*“66. ...The Red Route has been available and in use for many years (probably since the 1960s) and although not recorded on the Definitive Map and*

*Statement as a public right of way, the Council has accepted that it has been dedicated as such.”*

*“69. The Green Route has been available for use as an alternative route on a permissive basis for a couple of year[s] or so, and clearly marked to that effect. It would seem that this was done to try to gauge the preferences of users prior to the making of the Order. Ms Fulton was critical of the way in which this was done, alleging that the Red Route has been made unattractive to use and was not signposted, so that anyone wishing to walk in that direction would have been guided towards the permissive route in preference.*

*70. Both Ms Fulton and Ms Stout (who made a late objection to the extinguishment of the Red Route) consider that the Red Route offers much more in the way of variety having, as it does, a hedgerow with [which] provides habitat for birds, butterflies, other insects and wild plants and mammals. They both consider that the path is of historic interest and that its loss will be disadvantageous to the village and its environs...*

*71. Mr Harrison was able to submit the details of an informal survey undertaken by Mrs Brownlie, who owns the ponies that graze the land and occupy the adjoining stables and paddocks. These visitor numbers were gathered during the time she spends on the land (approximately three times a day to feed, muck out and to move the ponies around the grazing areas) during the period 23 November 2017 to 20 January 2018. She compared the number of people using the Green Route with the number using the Red Route. During the relevant period she was able to show that at least 382 people used the Green route compared to 12 using the Red Route.”*

*“73. I accept Ms Fulton’s point that it is evident from the comments that most people thought that what was being done was re-routing the Red Route onto the Green Route, but that simply reinforces the fact that most people prefer*

*the Green Route over the Red Route, and thus would be happy to accept it as an alternative route.”*

*“75. I do not have to be satisfied that no-one would use the red Route if it remained in place. Rather, I must consider the level of likely use against the suitability of the alternative route. I conclude that even though there might be some limited use of the Red Route, on balance most people would be likely to use the Green route as has been demonstrated over the last couple of years.”*

*“77. In considering the expediency of confirming the Order I can take into account other matters not specifically set out in the criteria of Section 118 of the 1980 Act. With regard to the historic nature of the route, alleged by Ms Fulton, it seems that the existence of the Red Route goes back only to around the 1960’s. This may be of some interest but it is not historic in the sense that it has been part of the fabric of the landscape for centuries. I place little weight on arguments based on the long-standing existence of a path.”*

*“79. Despite the views of Ms Fulton and Ms Stout, I find that the likely use of the Red Route would be minimal, and that the Green Route provides a suitable and popular alternative. There are no adverse effects on those others with a right to use the path (e.g. Ms Brownlie) and I therefore consider that it is expedient to confirm the order, subject to a minor modification to the title.”*

*“81. The recent application by Ms Fulton to modify the Definitive Map and Statement by the addition of the Red Route has no bearing on my decision. The Council has already accepted that it is a public right of way, and has chosen to extinguish it by a legal order (Order B). It is a matter for the Council to deal with the application in the appropriate manner.”*

- 9.8. Wiltshire Council accepts that on the balance of probabilities, the claimed route is likely to have acquired a right for the public on foot, due to public user of the route as an alternative to the obstructed legal line of Footpath no.6



Salisbury (part), since the 1960's. Officer's do not agree that this is supported by OS mapping, e.g. the singular map produced with the application, records the legal line of Footpath no.6 Salisbury, prior to its diversion in 2018.

Additionally, the applicant fails to adduce witness evidence to support public user of the claimed route with the application. However, Wiltshire Council had previously accepted, at the making of a public path extinguishment order in 2016, that the claimed route had indeed acquired public rights. Where the Inspector determined to confirm the order diverting Footpath no.6 Salisbury (part), (the purple route), she then continued to confirm the extinguishment order made to extinguish the claimed route, (the red route), as made in 2016, (confirmed 2018), where the diversion route, (the green route), provided a favourable and popular alternative route and use of the claimed route was likely to be minimal. In conclusion, where the Council accepts that the public right on foot has been acquired and those public rights have been formally extinguished through a legal order, it is not possible to add the claimed footpath and the definitive map modification order application must be rejected.

- 9.9. Mr A Harris confirms that the claimed route was closed to the public with fencing, on or around 27<sup>th</sup> February 2018, following the Inspectors decision dated 13<sup>th</sup> February 2018, formal notice of the confirmation of the order being posted on site, advertised and served on all parties on 1<sup>st</sup> March 2018, with certification of the new route of Salisbury 6 (part) on 20<sup>th</sup> February 2018. The applicant provides no evidence that the claimed route was dedicated at common law through, i) an act of the landowner to dedicate the route following its extinguishment on 13<sup>th</sup> February 2018 and before its closure on or around 27<sup>th</sup> February 2018, and ii) acceptance of the route by the public during that period, i.e. through user. Therefore, it is not possible to demonstrate that the route has been dedicated at common law through an act of dedication by the landowner and acceptance of the route by the public, (where both elements must be satisfied in order for dedication at common law), during the short period between the extinguishment of the path and it

physical closure. The objectors have noted that since the new route has been formally recorded, (the green route), it has proved popular amongst walkers.

- 9.10. Additionally, the Inspectors decision regarding the diversion and extinguishment orders, was not appealed by the objector, where they had opportunity to do so.

**10. Comments on Representations made by Ms P Fulton and Salisbury District Council**

- 10.1. Ms Fulton refers to the previous extinguishment order over the claimed route, which was confirmed by the Inspector appointed by the Secretary of State on 13<sup>th</sup> February 2018, being invalid given errors in the advertisement of the public path orders; the orders being made under the incorrect legislation and without proper consultation. The Inspector fully considered these assertions by the Objector in her decision letter regarding the diversion of Footpath no.6 Salisbury and the extinguishment of the unrecorded route, as follows:

***“Legal Issues***

*Date of the Notice for Order A*

10. *During my opening announcement I raised with the Council the matter of the advertisements for the Orders. Ms Fulton had claimed that only one of the Orders (Order A) was advertised, although she later accepted that advertisements relating to both Orders were in fact printed in the local paper.*

11. *Nevertheless, I pointed out to the Council that the advertisement for Order A incorrectly stated that the Order had been made on 12 December 2015. This error was repeated on the copies of the Notice contained in the Council’s Bundle. In explanation Miss Madgwick acknowledged that the error arose due to the practice of ‘cutting and pasting’ when large numbers of similar documents are produced. Mr*

*Ward stated that the Notices were quite clear that they related to the Order made on 12 December 2016 and that no-one else had noticed the error until I raised it at the inquiry. He confirmed that no order had ever been made on 12 December 2015 relating to the paths in question.*

12. *It is regrettable that such an error was made since it could have caused confusion, but I am satisfied that no prejudice has been caused to anyone, including the statutory objector, because no-one else had raised the issue, and everyone present was quite clear which Orders we were considering. The correct dates appear on both Orders and I therefore consider that I am able to continue to determine them.*

#### *Whether or not the Orders are valid*

13. *Ms Fulton claimed that the Orders were not valid because they had been made under the incorrect legislation. She was convinced that the alterations to the paths were being made to permit development of the land (as indicated in the original application by Mr A Harrison) and that orders should therefore have been made under the relevant section of the Town and Country Planning Act 1990 ('the 1990 Act'). She also insisted that she had not seen the original orders.*
14. *Miss Madgwick explained that although the original application had been made on the basis of [a] planning application which was granted consent, it became apparent to the Council during their investigations that there other problems with the footpath network in that vicinity which required addressing. The scope of Section 257 of the 1990 Act was too restrictive as it would only have allowed the diversion or stopping up of that part of the footpath which was directly affected by the development. This would not have dealt with the wider issues and would have left an undesirable outcome. The Council therefore decided to pursue a more comprehensive solution using their powers under the 1980 Act.*

15. *I consider that it is a matter for the Order Making Authority, whoever that is, to determine which powers are used to make orders where there appears to be a choice of procedure. I acknowledge that the Council took the opportunity to resolve some other anomalies affecting the right of way network in this location, and that the therefore used other powers under the 1980 Act to effect the desired outcome. Provided the order-making procedures has been followed correctly and the orders have been written in accordance with the regulations I must look only at whether or not the resulting orders meet the relevant criteria. I am satisfied that the Orders I am considering conform to the Regulations and I am therefore satisfied that they are validly made.*
16. *The original Orders were submitted by the Council to the Planning Inspectorate in accordance with the requirements of the Regulations, and I am satisfied that the copies which have been in circulation for information purposes are accurate copies of the originals. Ms Fulton has not been disadvantaged in any way by not having viewed the original sealed Orders.*

#### *Consultation process*

17. *Ms Fulton considered that the Council had not undertaken the proper consultation in connection with the Orders, and had both consulted irrelevant people, bodies or organisation, and not fully consulted with relevant ones.*
18. *Miss Madgwick was able to provide, as required, a full list of consultees in respect of the Orders. Ms Fulton may have been unaware that there is a prescribed list of consultees for Public Path Orders set out in the relevant Regulations and in Schedule 6 of the 1980 Act.*

19. *I am satisfied that extensive informal consultations were carried out with appropriate local representatives, where available, in advance of the making of the Orders, and that the statutory consultations were properly carried [out] at the time the Orders were actually made.*

*Whether the Council has misled people by only referring to 'Order' in the singular and not the plural*

20. *Ms Fulton considers that the Council has, throughout the process of considering the making of these Orders, referred in official documentation to 'Order' in the singular implying that there was only one Order.*

21. *I accept that there are instances of that phraseology being used within the Council's bundle, and that some people might, if they had not read the relevant reports thoroughly enough, have been unaware that there were two Orders. However the two proposals have travelled together throughout the process and the Orders were made and advertised on the same dates respectively. Any confusion which may have been caused initially by the wording used when drafting reports should have been resolved by the final appearance of the two Orders and by the advertising process. For the purposes of my inquiry, the critical issue is whether the Orders, as made were in the correct legal format, made in accordance with the Regulations, and were advertised properly. I have already concluded that they were; and that no prejudice has been caused despite the typographical error contained within the advertisement.*

~~22. *However, the title of Order B makes no reference to the date of the Order or its type, contrary to the way in which the title of Order A is set out. I consider that this is rather unhelpful and may have added to Ms Fulton's confusion. I therefore intend to modify the title of the Order if I*~~

*confirm it, to indicate that it is an extinguishment order and that it was made in 2016.”*

- 10.2. Where the Inspector has determined that the extinguishment order which is relevant to this definitive map modification order application, was valid and continued to determine it, this matter has previously been fully addressed and it is not necessary for the Council to address this matter further as part of its determination of the definitive map modification order application. If the objector did not agree with the Inspectors view on the validity of the order, there was opportunity to challenge the Inspectors decision in the High Court, however, the Objector did not pursue an appeal and the validity of the extinguishment order is no longer in question.
- 10.3. Additionally, Salisbury City Council Planning Committee, have written to support the application, but no further details regarding the reasons for the support of the application, have been submitted.

## **11. Overview and Scrutiny Engagement**

- 11.1. Overview and Scrutiny engagement is not required where the procedures to be followed regarding orders made under Section 53 of the Wildlife and Countryside Act 1981, are set out in Schedules 14 and 15 of the 1981 Act and within “The Wildlife and Countryside (Definitive Maps and Statements Regulations) 1993” – Statutory Instruments 1993 No.12.

## **12. Safeguarding Considerations**

- 12.1. Considerations relating to the safeguarding of anyone affected by the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

### **13. Public Health Implications**

- 13.1. Considerations relating to the public health implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

### **14. Procurement Implications**

- 14.1. The determination of a definitive map modification order application and modifying the definitive map and statement of public rights of way accordingly, are statutory duties for the Council. The financial implications are discussed at 18.

### **15. Environmental Impact of the Proposal**

- 15.1. Considerations relating to the environmental impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

### **16. Equalities Impact of the Proposal**

- 16.1. Considerations relating to the equalities impact of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

### **17. Risk Assessment**

- 17.1. Considerations relating to the health and safety implications of the making and confirmation of an order under Section 53(2) of the Wildlife and Countryside

Act 1981, are not considerations permitted within the Act. Any such order must be made and confirmed based on the relevant evidence alone.

17.2. Wiltshire Council has a duty to keep the Definitive Map and Statement of public rights of way under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council's attention that there is a possible error within the Definitive Map and Statement which ought to be investigated and it would be unreasonable for the Council not to seek to address this fact. Where the Council fails to pursue its duty to determine the application, (within 12 months of the application), the applicant may appeal to the Secretary of State who will impose a deadline upon the authority for determination of the application.

## **18. Financial Implications**

18.1. The determination of definitive map modification order applications and modifying the Definitive Map and Statement of public rights of way accordingly, are statutory duties for the Council, therefore the costs of processing such orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.

18.2. Where no definitive map modification order is made, the costs to the Council in processing the definitive map modification order application are minimal.

18.3. Where a definitive map modification order is made and objections received, which are not withdrawn, the order falls to be determined by the Secretary of State. An independent Inspector appointed on behalf of the Secretary of State will determine the order by written representations, local hearing or local public inquiry, which have a financial implication for the Council. If the case is determined by written representations the financial implication for the Council is negligible, however, where a local hearing is held, the costs to the Council are estimated at £200 - £500. If a local public inquiry is held, the costs are



estimated at £1,500 - £3,000, if Wiltshire Council continues to support the order, (i.e. where legal representation is required by the Council), and £200 - £500 where the Council no longer supports the order, (i.e. where no legal representation is required by the Council as the case is presented by the applicant).

## **19. Legal Considerations**

- 19.1. Where the Surveying Authority determines to refuse to make an order, the applicant may lodge an appeal with the Secretary of State, who will consider the evidence and may direct the Council to make a definitive map modification order.
- 19.2. If an order is made and objections are received, any determination of the order by the Secretary of State is subject to challenge in the High Court.

## **20. Options Considered**

20.1. To:

- (i) Refuse to make a definitive map modification order, under Section 53 of the Wildlife and Countryside Act 1981, where it is considered that there is insufficient evidence that a right of way for the public on foot subsists or is reasonably alleged to subsist, or
- (ii) Where there is sufficient evidence that a right for the public on foot subsists or is reasonably alleged to subsist, the only option available to the authority is to make a definitive map modification order to add a footpath to the definitive map and statement of public rights of way, under Section 53 of the Wildlife and Countryside Act 1981.

## **21. Reasons for Proposal**

21.1. Despite the lack of evidence included with the definitive map modification order application, Wiltshire Council in 2016 accepted that a right for the public on foot had been acquired over the land in question and made an order to extinguish those rights, dated 12<sup>th</sup> December 2016. This order was considered at a public inquiry held on 23<sup>rd</sup> and 24<sup>th</sup> January 2018, which also considered a public path diversion order, also made on 12<sup>th</sup> December 2016, diverting Footpath no.6 Salisbury (part). After hearing evidence in relation to two orders, the Inspector appointed by the Secretary of State to consider the orders, determined in a decision report dated 13<sup>th</sup> February 2018, to confirm the orders. Therefore, where a public right on foot has been accepted by the Council and formally extinguished by legal order, (where the diverted route of Footpath no.6 Salisbury provides a favourable and popular alternative route and use of the claimed route is likely to be minimal), it is not possible to add a right for the public on foot and the application must be rejected.

## **22. Proposal**

22.1. To reject the application dated 14<sup>th</sup> January 2018, (formally accepted as a valid application 29<sup>th</sup> January 2018), to add a footpath to the City of Salisbury Definitive Map and Statement of public rights of way, dated 1953.

Janice Green  
Rights of Way Officer, Wiltshire Council  
Date of Report: 15<sup>th</sup> January 2019