

## **Officers Decision Report**

### **Application to extinguish part of footpath Melksham 103( MELK103)**

### **Section 118 of The Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981**

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#### **1. Purpose of Report**

To determine an application to extinguish part of footpath Melksham 103 (MELK103) at Skylark Road, Melksham, Wiltshire, SN12 7GD.

#### **2. The Application**

Details of the application are as follows:

**Application reference number:** P/2024/004

**Date of Application:** 07/06/2024

**Applicant:** Mr and Mrs Crabtree, 1 Fieldfare Way, Melksham , Wiltshire, SN12 7GD.

**Application for:** An order to extinguish part of footpath Melksham 103 which leads behind their property, linking Skylark Road and Sandridge Road , Melksham, Wiltshire.

**Reasons for application as stated by applicant:** *We currently reside in Fieldfare Way, Melksham and have lived in the property for just over 6 years. In this time part of the ROW (MELK103) which runs behind our property and seven others (No. 1, 3, 5, 7, 9, 11, 15 and 80), is scarcely (if ever) used, overgrown and very poorly maintained. The area is now being used in an antisocial manner, with graffiti to our garden fencing, littering escalating and evidence of drug paraphernalia (Appendix C – June 2024). Fieldfare Way is a cul-de-sac and is in the process of being adopted to public highway. The existing pavements, that connect Skylark Road and Sandridge Road which joins through Fieldfare Way is used daily in lieu of the footpath. The pathways*

*through Fieldfare Way are tarmacked, lit with streetlights and completely accessible for all users including wheelchairs, prams, cyclists and pedestrians (Appendix D). Due to this, the north easterly section MELK103 is now considered to have become redundant and unsuitable for public use. the last section of MELK103 is an undulating ditch, very poorly maintained, heavily overgrown with a number of dead trees which need addressing as a matter of urgency and importantly not accessible for all users (Appendix C). Following the potential extinguishment, we would like to incorporate the additional land as residential curtilage through the appropriate planning control and Land Registry channels, which would in turn provide an amenity benefit to the properties as well as improve the security to the rear of the houses in Fieldfare Way. Residents would then then take over the maintenance of the land, hedges and trees. Please see attached appendices in support of this application. We consider that MELK103 is not required for public use and that access through Fieldfare Way is now the accepted and established route for public use. The application is not located within any conservation or landscape designation nor are there any tree preservation orders allocated to this site.*

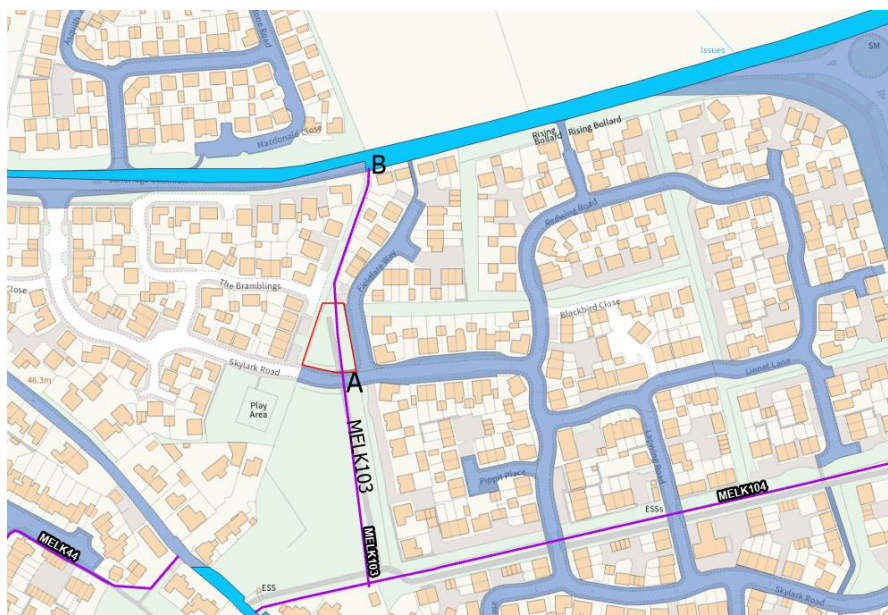
See appendix 1 for the application documents.

### 3. Location

- 3.1 Footpath MELK103, the section subject to the application, links Skylark Road and Sandridge Road in the east of the town of Melksham. The red circle on the map below highlights the area within which the footpath leads.



- 3.2 The below map extract shows the length of path proposed for extinguishment between points A and B. Footpaths recorded in the definitive map and statement are shown by purple lines. The roads and paths shaded blue are recorded as highways maintainable at the public expense within the councils records. The area outlined in red, north of Skylark Road, through which the proposed path to be extinguished leads, is designated as public open space and this designation is not affected by the proposed footpath extinguishment.



3.3 It is proposed to extinguish the whole width and length of the recorded footpath from point A, on the southern boundary of Skylark Road, leading north through the public open space and between the properties on Fieldfare Way and The Bramblings. The initial application applied to only extinguish the length of footpath behind the properties of Fieldfare Way, but it was identified by officers that this proposal would not be proceedable as it would leave a dead end public footpath. As such permission was sought from Green Square Accord who own and manage the public open space over which the public footpath leads, to extinguish this section of path leading south from the path behind the properties to Skylark Road. That permission was granted, and this section of path , from A to B on the plan is the length of path being considered and has been consulted on for extinguishment.

#### **4. Photographs of footpath**

4.1 Photos of the route are depicted below. The direction of the footpath shown by the red arrow.



A photo facing north, from Skylark Road, through the land designated as public open space. The recorded public footpath leads north through this open space.

4.2



At the northern extent of the public open space the footpath becomes overgrown with vegetation and trees, it is not physically obvious a public footpath leads further north.

4.3



The footpath leads behind the property , no.1 Fieldfare Way, on the east side of the path. As can be seen it is in an overgrown and partially blocked state by fallen trees.

4.4



The footpath continues north between the back gardens of Fieldfare Way on the east and the hedge on the west side which is in the ownership of properties of The Bramblings. The route of the path is overgrown with nettles and brambles growing from the surface of the footpath and overgrowth and fallen trees from the hedge on the west side. It was not passable to any pedestrian at the time of inspection.

4.5



The footpath from its northern junction with Sandridge Road can be seen above. The path is signed from the road and leads south between the fences and hedges of properties either side.

4.6



The path continues south, enclosed on both sides. The path becomes impassable from this direction due to vegetation, it is also apparent that fly tipping of garden waste and cuttings of the hedge on the west side has been dumped on the path.

## 5. Photographs of Alternative Route

If the footpath were to be extinguished the most likely alternative route for pedestrians is along Fieldfare Way and its adopted footway. This route is already available to the public as a publicly maintained highway.

- 5.1 The map extract below shows the nearest alternative route along Fieldfare Way, shown by the solid black line.



5.2 The below are photographs of that alternative route.



Facing north along Fieldfare Way and its junction with Skylark Road. A surfaced footway leads along the eastern side of the road and a green verge is available on the west.

5.3



Once around the bend in the road, there are footways either side of the carriageway. The footway on the eastern side being wider.

5.4



As the footways approach the northern end of the cul-de-sac road, they lead to a pedestrian link to Sandridge road.

5.5



The footway link is lighted and leads to the footway along Sandridge Road.

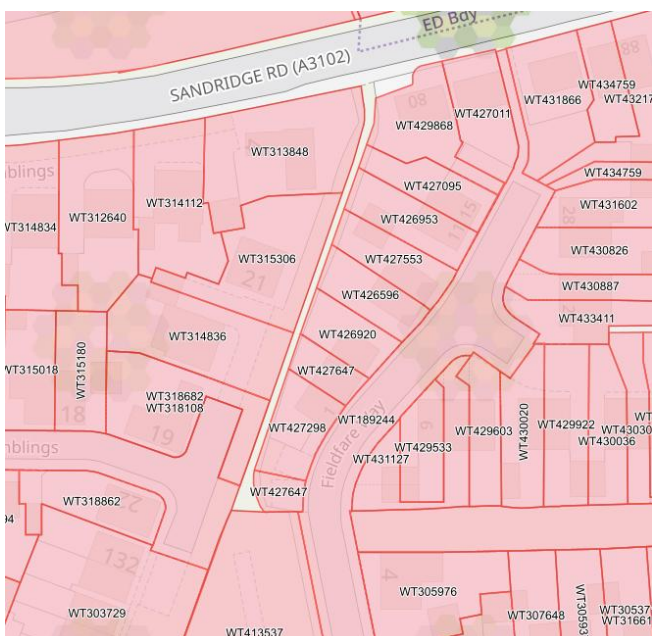
5.6



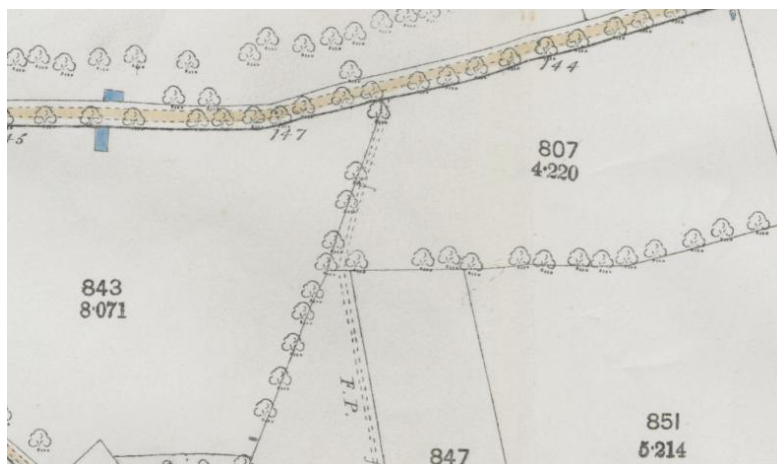
A view from Sandridge Road, looking south along the footway link to Fieldfare Way.

## 6. Landownership

- 6.1 The land over which the public footpath leads is partly in the ownership of Green Square Accord where it crosses the public open space and is partly unregistered land where it leads behind properties. See extract of Land Registry map with title numbers. The length of the footpath north of the public open space is unregistered land.



- 6.2 Green Square Accord have granted consent for the proposed footpath extinguishment over their land. They have also confirmed they recognise this land as public open space and have no plans to physically change the land in any manner as a consequence of any footpath extinguishment. Access would remain to the public to this section of land.
- 6.3 Where the path leads over unregistered land efforts have been made to identify a landowner but have not been successful. The strip of land over which the footpath leads was not sold to the developer for the construction of the estate , this strip of land is excluded from the title. It is deemed likely the owner of the land has been lost over time where evidence shows the path once led up the western edge of the field (over which development has subsequently occurred) in the late 1800s and early 1900s and was over time fenced off from that field and likely lost in later transactions relating to the sale of that field. This western boundary of the field remains in the same location and still forms the western boundary of the footpath.
- 6.4 Evidence of this can be seen below in County Series Ordnance Survey maps, 1:2500 scale, from the late 19<sup>th</sup> century into the early 20<sup>th</sup> century.



1886 map

The section of the path which has no registered landowner can be seen in this OS map of the area published in 1886, leading along the edge of the field , unfenced from the rest of the field. The path is depicted by two dashed lines which indicate a change in vegetation on the ground but no solid wall , fence, or hedge. This remains the same in OS maps published in 1900 and 1924. The

situation changes on the OS map published in 1937, by this date the path has been fenced off from the rest of the field. This can be seen by the solid black line along the east side of the now enclosed path. The brace linking this enclosed path to the field to the east indicates it is part of that land holding.



1937 map

6.5 From this mapping evidence the path ( the currently unregistered section) became a fenced enclosed route at sometime between 1924 and 1937. It is deemed likely that when this field was latterly sold and developed this now fenced off footpath was excluded from the sale, therefore any landowner may still be whomever owned the land in circa 1920s-30s and fenced off the path. This was a time before land was required to be registered with Land Registry and the owner is likely now deceased. This may not be the case but from the available evidence is deemed the most likely scenario.

6.6 It is possible that a landowner may come forward and claim compensation for an order affecting their land they did not consent to. This compensation would be payable by the applicant as per the application form they have signed. It is deemed the risk of a compensation claim from any owner of that land is low given the evidence of the likely history of ownership of the land.

## 7. Legal Empowerment

7.1. The application applies for an order to extinguish part of footpath MELK103 under Section 118 of the Highways Act 1980. This applies where a footpath, bridleway or restricted byway, or part of that highway, is not needed for public use.

7.2. Section 118 of the Highways Act 1980 states:

*“118. Stopping up of footpaths, bridleways and restricted byways.*

*(1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.*

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

*(2) The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient 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 as to compensation contained in section 28 above as applied by section 121(2) below.*

*(3) A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain*

*a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.*

*(4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.*

*(5) Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering-*

*(a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use, or*

*(b) under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public, the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order would provide an alternative path or way.*

*(6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.*

*(6A) The considerations to which-*

*(a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and*

*(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,*

*include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.”*

- 7.3. Section 51 and paragraph 2 of Schedule 5 to the Countryside and Rights of Way Act 2000 inserted a new section 53A into the Wildlife and Countryside Act 1981. Previously where the Highway Authority, which was also the Surveying Authority, made an order which changed the network of public rights of way, e.g. a public path extinguishment order under Section 118 of the Highways Act 1980, they were subsequently required to make a further order under Section 53 of the Wildlife and Countryside Act 1981 to record the change to the network on the definitive map and statement. The addition of Section 53A enables the Authority to include in public path orders satisfying the criteria in Section 53A(1), provisions to modify the definitive map and statement, thereby avoiding the need for a separate modification order. Officers propose that where a public path order is made under Section 118 of the Highways Act 1980, extinguishing footpath MELK103, provisions are included within the same order to modify the definitive map and statement of public rights of way simultaneously. Section 53A of the Wildlife and Countryside Act 1981 states:

***“53A Power to include modifications in other orders.***

- (1) *This section applies to any order-*
  - (a) *which is of a description prescribed by regulation made by the Secretary of State,*
  - (b) *whose coming into operation would, as regards any definitive map and statement, be an event within section 53(3)(a).*
  - (c) *which is made by the surveying authority, and*
    - (d) *which does not affect land outside the authority’s area.*
- (2) *The authority may include in the order such provision as it would be required to make under section 53(2)(b) in consequence of the coming into operation of the other provisions of the order.*
- (3) *An authority which has included any provision in an order by virtue of subsection (2)-*
  - (a) *may at any time before the order comes into operation, and*

- (b) *shall, if the order becomes subject to special parliamentary procedure, withdraw the order and substitute for it an order otherwise identical but omitting any provision so included.*
- (4) *Anything done for the purposes of any enactment in relation to the order withdrawn under subsection (3) shall be treated for those purposes as done in relation to the substituted order.*
- (5) *No requirement for the confirmation of an order applies to provisions included in the order by virtue of subsection (2), but any power to modify an order includes power to make consequential modifications to any provision so included.*
- (6) *Provisions included in an order by virtue of subsection (2) shall take effect on the date specified under section 56(3A) as the relevant date.*
- (7) *Where any enactment provides for questioning the validity of an order on any grounds, the validity of any provision included by virtue of subsection (2) may be questioned in the same way on the grounds –*
  - (a) *that it is not within the powers of this Part, or*
  - (b) *that any requirement of this Part or of regulations made under it has not been complied with.*
- (8) *Subject to subsections (5) to (7), the Secretary of State may by regulations provide that any procedural requirement as to the making or coming into operation of an order to which this section applies shall not apply with modifications prescribed by the regulations, to so much of the order as contains provision included by virtue of subsection (2).*
- (9) *Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”*

## 8. Current Records

- 8.1 Footpath Melksham 103 is recorded in the Bradford and Melksham Rural District Council Area Definitive Map and Statement dated 1952 as a result of the National Parks and Access to the Countryside Act 1949.
- 8.2 The path was originally claimed by Melksham Without Parish Council as part of the definitive map process and was recorded in the definitive map and statement as footpath Melksham Without footpath no.28 . In preceding years, the Melksham Town boundary has extended, and the path now lies within the parish of Melksham and has been reassigned as path reference Melksham 103. The route of the path , subject to the application, has not been amended since its recording in the definitive map and statement in 1952.
- 8.3 See below extract of the original definitive map . This extract is not to the original scale which is 1:25,000 and for legal purposes should only be viewed at that scale, however a larger scale extract is provided below for visual aid.



The path recorded then as Melksham Without 28 can be seen depicted by a purple line between Sandridge Road to the north and Snarlton Lane to the south ( via what is now footpath MELK104 running east-west).

- 8.4 Each path recorded in the definitive map is accompanied by a definitive statement. The definitive statement for the path reads as follows:

*Melksham 103 : FOOTPATH From the Melksham – Calne road, A3102, leading south-west and south to path No.27, about 91 metres east of Snarlton Lane, U/C 6036.*

*Approximate length 229 metres*

- 8.5 There is an error within the statement where the path now meets footpath Melksham 104, not path no.27 as stated. This is due to the statement not being changed during a parish boundary change , where it did link to footpath Melksham Without 27 , but due to the modern parish boundary change this section of what was Melksham Without 27 is now reassigned as Melksham path no.104. The path is in the same position but has a different reference following the parish boundary change in. Now that this anomaly has been noted it will be amended in due course.

## **9. Public Consultation**

- 9.1. Following the application being assigned to an officer for processing in November 2025, an initial consultation letter was sent to affected and adjoining landowners and residents, user groups , Melksham Town Council , Melksham Without Parish Council ( as an adjoining authority) and other interested parties regarding the proposal. Notices were additionally placed on site at either end of the affected path to ensure any users of the path were aware of its proposed extinguishment. The consultation had an end date of 5<sup>th</sup> January 2026 , but this was extended to mid-January to allow Melksham Town Council to consider the matter at their January meeting.
- 9.2. Ten responses were received during the consultation process , or before, in the case of the West Wiltshire Ramblers, who have confirmed they wish their comments to be considered as made prior to the consultation. The following is a brief summary of the consultation replies received; all consultation responses

are available to be viewed in full online in our register of Public Path Order applications under reference P/2024/004 and are included at appendix 2 to this report. The applicant has also written a response to the consultation responses, which is also included at appendix 2 and online.

9.3 The following is a summary of the responses received , grouped into objectors, supporters and informative replies. The name of the respondents and a very brief summary of their response is given. Full responses can be read at appendix 2.

**Objectors:**

- Sue Lohan – Resident of Fieldfare Way – Ecology concerns.
- Claire and Daniel Jeske – Residents of The Bramblings – Privacy and Ecology concerns.
- Melksham Without Parish Council – Ecology concerns.
- West Wiltshire Ramblers – Loss of green route and continuity of rights of way network.

**Supporters or no objection:**

- John Edwards- Resident of Fieldfare Way- concerns regarding public open space land which have been alleviated.
- Vicky and Peter Murton – Resident of Fieldfare Way – Privacy and security would be improved if path extinguished.
- Melksham Town Council – Path no longer serves a purpose, safer alternative. Ask that future ownership concerns are considered.
- Ben Braine and Vicky Roscoe - Wiltshire Councils Countryside Access Officers ( responsible for the rights of way network maintenance and enforcement in the Melksham area). Path not required for public use, alternative is preferable.

### **Informative Replies:**

- Paul Millard - Wiltshire Councils Countryside Access Development Officer ( responsible for planning related rights of way comments and improvements to the network). Details of s.106 money potential for improvements for MELK103, can be used elsewhere if path extinguished.
- Jenna Buss - Wiltshire Council Ecology Officer- Hedge forms a green corridor, seek further advice on management.

9.4 Searches have been made on statutory undertakers' assets. Open Reach assets were found to be recorded within the proposed extinguished path. As per section 121 (4) of the Highways Act 1980; *a council shall not confirm such an order as an unopposed order, if the order extinguishes a right of way over land under, in, upon, over, along or across which there is any apparatus belonging to or used by any statutory undertakers for the purpose of their undertaking unless the undertakers have consented to the making or, as the case may be, confirmation of the order.* As such the council may make an order but not confirm the order unless consent is granted by Open Reach where their apparatus has been identified on the route. Consent will be sought from Open Reach and a clause inserted into any made order if requested by Open Reach, so any statutory undertakers maintain access to their equipment as required.

9.5 In summary the consultations attracted 10 separate responses. With 4 in support for the proposal for extinguishment and 4 in objection. The contents of the responses will be considered in more detail later in this report.

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

10.1. Section 118 (1) of the Highways Act 1980 requires the order making authority to be satisfied that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use.

10.2. Officers have taken into consideration the public utility of the route of the path proposed for extinguishment. It links Skylark Road to the south and Sandridge Road to the north , via public open space and a narrow fenced in pathway

between a hedge and garden fences. This route , linking the two roads, is duplicated by the footway along Fieldfare Way as seen at 5. of this report. The entrances to both MELK103 and the footway along Fieldfare way both north and south entrances are circa 20 metres apart. i.e. a minimal distance for any user. The total distance to walk along MELK103 , the section proposed for extinguishment is approx. 130 metres, and in comparison, the same route along the footway of Fieldfare Way is approximately 150 metres. The different entrance or exit point on Sandridge Road ( circa 20 metres apart) would appear to be as convenient to the public, depending on their destination.

10.3. The alternative route is hard surfaced, has street lighting and appears to be used in preference to the route of MELK103. This is apparent where , north of the public open space land, MELK103 is significantly overgrown , has fallen trees blocking access, and garden waste fly tipping along its length, it is impassable currently and appears to have been so for some time. Surface vegetation is the responsibility of Wiltshire Council as the highway authority and overhanging vegetation from the hedge is the responsibility of the hedge owner. As per Planning Inspectorate guidance temporary circumstances should not be considered in this matter ( diversion or extinguishment orders). The vegetation blocking the route is a temporary circumstance and its utility is judged as if the route were freely available to the public. However, the state of the path , and lack of complaints regarding its impassable nature to Wiltshire Council, reflects that there is no demand from the public to be able to use this footpath.

10.4. If the path were to be cleared of vegetation, both surface growth by Wiltshire Council and overgrowing vegetation from the adjoining hedge owner, it is deemed the path is unlikely to be used to any significant degree where a clear, surfaced, lit alternative exists along Fieldfare Way. The path , if cleared, will remain a narrow route between garden fences and a hedgerow.

10.5. The path sits within a modern housing estate, where connecting routes are open, surfaced paths. The continuation of MELK103 south is a tarmac route located within public open space. The section of path proposed for extinguishment is a narrow fenced in route behind residential gardens and the

nature of this will not be changed even if potential surfacing works are undertaken ( reliant upon planning permission on adjoining land to the north).

10.6. The public consultation exercise , which was advertised on site to ensure any users of the path would be aware of the proposal, attracted 4 objections. However, three of the four objectors do not state they use the path or wish to use the path. Mr and Mrs Jeske state “ *we agree the land is rarely used as it is overgrown*”. Ms Lohan notes that the path is scarcely if ever used. Melksham Without Parish Council “ *support the extinguishment in principle*” except for ecology concerns.

10.7. West Wiltshire Ramblers wish to retain the path as green space and due to its continuity as a historic path between Bowerhill and Sandridge Common. The historic link between Bowerhill and Sandridge common referred to would have been achieved via a number of separated footpaths linking , at the time of the definitive map in the 1950s, various farms at Bowerhill ( before any significant housing) , Snarlton Lane and Sandridge Road. These linking footpaths have variously been severed by development in the preceding 70+ years, but a route still exists for walkers broadly along the same route available in the 1950s albeit now via mostly estate or surfaced paths and not the fields of the past. The removal of this section of MELK103 would not sever a pedestrian link to Sandridge Road, it will be available via the surfaced, lit footway of Fieldfare Way, which is similar in nature to the continuation of MELK103 south and its linking route south towards Bowerhill, via Snarlton Lane, and footpath MELK106. Therefore, continuity of a pedestrian route would remain.

10.8. The vast majority of comments in objection to the proposal relate to the path forming a green corridor or nature corridor and this should not be lost. The appearance of this route as a ‘ green corridor’ is false in its current condition. The surface vegetation is a temporary circumstance, it should be cleared , its primary function and designation is that of a public highway, in this case a public footpath which should be open and unobstructed. The hedge which forms the western boundary of the highway does not form part of the footpath, if it did it would be an obstruction to the highway. It has been clarified in their

response to the consultation this hedge is in the ownership of residents of The Bramblings to the west of the path. The hedge should be trimmed by the owners to ensure it does not interfere with the public highway. It is clear maintenance of this path has not been proactively undertaken either by Wiltshire Council or the hedge owner; this is likely where there is little to no demand from the public to use the path and where a preferred alternative is in use.

- 10.9. If the footpath were to be extinguished the applicant has acknowledged the concerns of the residents of The Bramblings and their ownership of the hedge. This hedge will remain, unless removed by the owner of the hedge, which they have stated they do not desire. If any green corridor of any description exists it is this hedgerow which does not form part of the footpath and will remain. The land over which the footpath leads has no known landowner and if any residents wish to take this land into their curtilages following any extinguishment of the public rights this would be the responsibility of those individuals to follow appropriate legal avenues to achieve this.
- 10.10. It has been identified that if planning permission to the north of Sandridge road ( Planning reference PL/2024/10345) is granted money has been set aside via the section 106 agreement for the improvements and surfacing of MELK103. The consequence of this would be to remove the unsurfaced (green) nature of this path, making it similar but still inferior to the alternate route along Fieldfare Way, where its enclosed narrow nature cannot be improved.
- 10.11. It is noted that objectors, Sue Lohan and Melksham Without Parish Council , request that conditions are put in place regarding hedgerow protection, root protection and to stop the land being taken into residential curtilages if the extinguishment proceeds. This is not within the powers of an extinguishment order made under the Highways Act 1980. It is not similar to planning permission where reserved matters or conditions can be placed or introduced when consent is granted. If the public footpath is extinguished the land will remain in private ownership and as stated, the owner of the hedge has no

desire to remove the hedge, they can maintain the hedge for wildlife and their own privacy.

10.12. Comments regarding Wiltshire's Green and Blue Infrastructure strategy have been raised. MELK103 is not identified as a Green Infrastructure corridor within the Joint Melksham Neighbourhood Plan 2. The hedgerow, as stated, does not form part of the public highway, it is in private ownership and will remain so. Any green vegetation growing from the surface of the path is a temporary obstruction to the highway and the path is identified for surfacing improvements if it is not extinguished (subject to planning consent to the north). The removal of the path may facilitate the private land over which the path leads being taken into private residences and may cease the land over which the path leads being a physical corridor, albeit currently overgrown with nettles, brambles, green waste fly tipping and fallen trees. If these actions do take place, i.e. the land is taken into private curtilages of the gardens, they should be undertaken with the relevant permissions at that time. This is not a matter for Wiltshire Council if the path is extinguished.

10.13. Another matter raised in objection is the reduction in privacy, if the path is extinguished, of the properties of The Bramblings. Conversely residents of Fieldfare Way have stated the path's extinguishment will increase their privacy and security. If the properties of Fieldfare Way were to extend their gardens up to the hedgerow, which is owned by residents of The Bramblings, it will have limited impact on privacy where the hedge will remain and there is a strip of land between the hedge and gardens of properties of The Bramblings. The houses of Fieldfare Way would have no better view into these properties than currently available. Currently the path, if used, would have a similar impact on privacy to any properties. If any outbuildings were to be constructed on any additional land taken into curtilages, which could be perceived to impact on privacy, these would be subject to the relevant planning permissions at that time. The act of extinguishment of the footpath is not deemed to impact on privacy.

10.14. Anti-social behaviour has been raised during the consultation. Whilst there is conflicting opinion on whether this occurs, it is apparent it does occur to some degree at the southern end of the path where there is litter and graffiti on the residential fence. The extinguishment of the path may reduce this, but it is not a significant consideration in extinguishing this public highway. Unless there is a major concern and a history of issues and other methods ( police action) have been undertaken extinguishment of a public highway is not a first resort to resolve these issues.

10.15. Consideration of support for the proposal is also noted along with the objections. Those supporters include; residents of Fieldfare Way, Melksham Town Council and the Countryside Access Officers for the area who are responsible for the maintenance and enforcement of public rights of way. This support is significant coming from local residents, who may use the path, the Town Council whose area the path is situated and the professional officers whose job it is to protect the rights of way network. These parties deem the path no longer serves as a public utility as there is a suitable alternative.

10.16. What is also significant is the absence of responses to the consultation, by any local inhabitants using or wishing to use the path, in objection, given it was advertised on site, and directly to all surrounding residents. If residents who lived in the area or were walking in the area wished to retain this path, they have had the opportunity to communicate that desire. The responses that were received in objection do not relate to any desire to use the path.

10.17. Officers are satisfied that section 118(1) is satisfied, i.e. that it is expedient to extinguish footpath MELK103 as it is not needed for public use. There is no indication from the local population of a desire to use the path and there is a clear alternative route which is used and from the physical evidence preferred.

10.18. As per section 118(2) of the Highways Act 1980 an order shall not be confirmed unless the authority or the Secretary of State are satisfied that it is expedient to do so, having regard to the extent (if any) to which it appears that

the path or way would, apart from the order be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation.

10.19. The Planning Inspectorate document entitled Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders, appendix K, general guidance on public rights of way matters, from para 23.1.15 discusses extinguishment orders. Para 23.1.17 states *“At the confirmation stage, the decision-maker does not have to be satisfied that the way is not being used in order to conclude that it is not needed for public use. An Inspector could confirm an order even if he/she thought the way was likely to be used to a limited degree but was not actually needed.”* The section of path to be extinguished may be used occasionally, if the vegetation was cleared, or/and if the path is surfaced in future but it is deemed it is not needed. It is and will be inferior to the alternative route given the locality the path is situated, i.e. within a housing estate. The path will in all circumstances remain a narrow fenced in route between garden fenced and a hedgerow.

10.20. Section 118(2) also states *“and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2).”* The land over which the path leads is in unknown private ownership, this does not include the hedgerow to the west. If any landowner or person with an interest in the affected land comes forward, they may claim compensation as per section 28 and 121 of the Highways Act 1980. The Public Path Orders Regulations 1993 state any compensation claim should be made within six months from the coming into force of the order in respect of which the claim is made and that claim should be made to the authority ( Wiltshire Council). The applicant will be liable for any compensation claim made as per the application form. Any decision on the validity and value of compensation would be made by an independent land tribunal.

10.21. At subsection 6A of Section 118 of the 1980 Act, the Secretary of State or the Council in determining whether or not to confirm the order, should have regard to any material provision of a rights of way improvement plan prepared by any local Highway Authority, in this case the Wiltshire Countryside Access Improvement Plan 2015 – 2025 (CAIP) . The CAIP sets out Wiltshire Council policies relating to rights of way including public path order applications.

10.22. The CAIP includes a strengths, weaknesses, opportunities and threats (SWOT) analysis of the rights of way network in Wiltshire, produced in consultation with representatives from user groups. Under weaknesses it is recognised that:

*“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.”*

*“Processing legal orders to change rights of way brings positive changes to the network, e.g., it protects ancient routes and diverts routes to meet modern requirements”,* is recognised as an opportunity for the network.

The rights of way network in Wiltshire is historic, which at times does not meet the needs of users. This is also applicable to landowners, e.g., where land use has changed. The legislation available to amend the rights of way network through extinguishment, diversion and creation, recognises this. This proposed extinguishment will recognise the modern layout of the locality of this path and recognise the path is not needed for public use, with no negative impact on pedestrian connectivity.

10.23. In making extinguishment orders, Sections 29 and 121(3) of the Highways Act 1980 require authorities to have due regard to the needs of a) agriculture and forestry and b) the desirability of conserving flora, fauna and geological and physiographical features. Section 40 of the Natural Environment and Rural

Communities Act 2006 also places a duty on every public authority in exercising its functions, to have regard to the conservation of biodiversity, as 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.

10.24. Officers note the comments during the consultation phase regarding ecological concerns and as such comments were sought from Wiltshire Councils ecology department. The path does not fall under any designation which would trigger a consultation with ecology officers in normal circumstances. The comments received from Ecology officers are noted; however the path is a public highway, and the surface vegetation is an obstruction to the free passage of the highway. The hedgerow which has been identified as the main ecological feature is not part of the footpath, is in private ownership, and will not be affected by the extinguishment of the footpath, thus retaining what is referred to as a green corridor.

10.25. The Countryside Access Officers responsible for the maintenance and enforcement of the public rights of way network support an extinguishment order for this path. Part of their duty is to consider ecological matters relating to public rights of way and how they undertake management of that network.

10.26. It is considered that there would be very limited if any ecological impact as a direct result of an extinguishment order being made for this footpath and subsequently confirmation.

10.27. If an order is made it will be subject to a further statutory consultation period, where the order will be advertised on site and in a local newspaper, bringing the order to the attention of a wider audience than the initial consultation. Representations or objections made during the order consultation will be taken into consideration when considering any confirmation of the order is pursued or undertaken.

## **11. Safeguarding Considerations**

- 11.1. If an order to extinguish MELK103 is made, Wiltshire Council will follow procedures set out at Schedule 6 of the Highways Act 1980, which outline the provisions as to making, confirmation, validity and date of operation of certain orders relating to footpaths, bridleways and restricted byways, including notice of the making and confirmation of the order. In doing so Wiltshire Council will fulfil its safeguarding considerations.

## **12. Environmental and Climate Change Considerations**

- 12.1. There are no identified environmental or climate change considerations associated with the proposals. The Wiltshire Council Ecology database has been consulted, and the land is not under any designation. Ecology officers have been consulted and comments noted, the hedgerow corridor is not part of the path and will be retained as per the owners response. The path is not designated as part of the council green infrastructure in the Melksham Neighbourhood Plan 2. There is no indication if the path is to be extinguished it will be built over by any buildings, and future development would be subject to the relevant permissions.

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

- 13.1. DEFRA Circular 1/09, at 5.4. states that “...*all aspects of Public Path Orders (unlike Definitive Map Modification Orders which represent what is believed to have been the route, width and structures existing when a way was dedicated) will be affected by the DDA (Disability Discrimination Act 1995), particularly in relation to the limitations and conditions to be defined in the statement.*”
- 13.2. The Disability Discrimination Act (DDA) is now superseded by the Equality Act 2010, which places a duty upon all authorities as follows:

*“(1) An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result in socio-economic disadvantage.”*

13.3. The protected characteristics include disability, and the Act places a duty on authorities to make reasonable adjustments to avoid disadvantage. Section 149 of the Act details the “public sector equality duty” placed upon a public authority, to:

*“in exercise of its functions, have due regard to the need to-*

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”*

13.4. The Wiltshire Council “Wiltshire Countryside Access Improvement Plan 2015 – 2025 Rights of Way Improvement Plan 2” (CAIP), also sets out Wiltshire Council’s access for all and gaps, gate and stile policy (policy 7, page 10), stating that *“disabled people should have equal opportunities to use public rights of way and the wider access provision where this is practical”*, and the *“least restrictive option”* principle needs to be applied when a new route is being created.

13.5. The extinguishment proposal removes a narrow , currently uneven , unsurfaced fenced in path. This is unlike the surrounding access any user would use to get to this route, which is surfaced and open in nature. It is likely that any person with mobility problems would prefer to use the alternate way

along the footway as identified in this report. It is deemed the removal of this recorded public footpath does not affect disabled access in the vicinity.

#### **14. Risk Assessment**

- 14.1. No risks to the public are identified in making a public path extinguishment order. The financial risks to the Council are considered at 15.

#### **15. Financial Implications**

- 15.1 The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permit authorities to charge applicants costs in relation to the making of orders, including public path diversion orders. Authorities may charge only the actual costs incurred.
- 15.2. The applicant , has agreed in writing to meet the actual costs to the council in processing the order, including advertising the making of the order and should the order be successful, the confirmation of the order in one local newspaper.
- 15.3. The applicant has agreed in writing to pay any compensation which may arise in consequence of the coming into operation of the order. As there is no identified landowner , if one comes forward within 6 months of the order coming into force they may may seek compensation. Compensation may be claimed under section 28 and 121 (2) of the Highways Act 1980. It is deemed this risk is low given the likely loss of knowledge of ownership of this strip of land as per section 6 of this report. However, if any claim is made the applicant will be liable for any costs.
- 15.4. The applicant has also agreed in writing to pay the costs of any associated site works incurred by the Council on completion of the application. The only works required by the Council if the path is extinguished, will be the removal of the footpath sign at its northern end.

15.5. If an extinguishment order is made under Section 118 of the Highways Act 1980 and there are no objections to the making of the order, Wiltshire Council may confirm the order and there are no additional costs to the Council.

15.6. If there are objections to the making of the order which are not withdrawn and the Council continues to support the making of the order, ( decided by Wiltshire Councils Western Area Planning Committee members) the order will be forwarded to the Secretary of State for decision. The outcome of the order will then be determined by written representations, local hearing, or local public inquiry. 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 at 500 and where the case is determined by local public inquiry costs are estimated at circa £4,000.

## **16. Legal Considerations**

16.1. If the Council makes a public path extinguishment order and objections are received, where the Council continues to support the making of the order, it will be forwarded to the Secretary of State for determination, which may lead to the order being dealt with by written representations, local hearing or local public inquiry. The Inspectors decision may be subject to challenge in the High Court.

16.2. Where the Council refuses the application, there is no right of appeal for the applicant, however, any decision of the Council is open to judicial review. Any decision to make and order or not must be fair and proportionate.

16.3. The making of a public path extinguishment order under the Highways Act 1980 is a discretionary power for the Council rather than a statutory duty. Therefore, a made order may be withdrawn at any time without referral to the Secretary of State, up until the point of confirmation, if the Council no longer continues to support the order. For example, where it is considered that the proposals no longer meet the legal tests for extinguishment as set out under

Section 118 of the 1980 Act. If an order is made , further consultations will be conducted, by letter or emails to interested and statutory parties, by site notices and in a local newspaper, if objections are received during that statutory period, considerations will be given to those responses before any confirmation of the order is pursued.

## **17. Options Considered**

17.1. The options available to the Council at this stage are as follows:

- (i) To refuse to make the order, where it is considered that the legal tests, as set out under Section 118 of the Highways Act 1980, are not met, i.e., the path is needed for public use,
- (ii) To make an order to extinguish footpath Melksham 103 between Skylark Road and Sandridge Road, under Section 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981, on the grounds that the highway proposed to be extinguished is not needed for public use.

## **18. Reasons for Proposal**

18.1. It is proposed to make a public path extinguishment order under Section 118 of the Highways Act 1980, to extinguish footpath Melk103, where it is not needed for public use and meets all other considerations as per the section 118 of the Highways Act 1980.

18.2. The path is not needed for public use, as supported by the public consultation exercise. There is an alternative route which serves the route of the path to be extinguished which is superior and is used by the public. The main ecological concerns raised regarding the hedgerow will not be realised as a result of the extinguishment of the footpath. The hedge does not form part of the path and any other vegetation growing from the surface of the path is a temporary obstruction to the public highway. The proposal has equal support and

objection during the initial consultation phase but is supported by the Town Council whose area the path is situated and professional rights of way officers. The objections from local residents and Melksham Without PC do not relate to use of the path or desire to use the path. The continuity of public pedestrian access will not be severed by this extinguishment. If an order is made it will be advertised on site and in a local newspaper, any responses/ objections to that order consultation will be considered by officers and the planning committee members as to whether the path is needed for public use and any decision on pursuing confirmation of that order. At this stage officers deem the footpath to be extinguished is not needed for public use as is the main consideration as per s.118 of the Highways Act and with consideration of other concerns raised, it is appropriate an order is made and that order would , subject to consideration of any objections to the order, be capable of confirmation. It would be unreasonable to refuse to make an order given the relevant considerations.

## **19. Recommendation**

- 19.1 That an order to extinguish part of footpath Melksham 103 be made under Section 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981, where the path is not needed for public use and if no objections or representations are received, the order be confirmed by Wiltshire Council as an unopposed order, subject to statutory undertaker consent.

Craig Harlow  
Definitive Map Officer  
22<sup>nd</sup> January 2026

Appendices:

Appendix 1: Application documents

Appendix 2: Consultation responses