

Rule 6 Main Party Response to

Appellant's Note on Securing the Duration of Public Access Routes

1. The 'proposed routes' are said to be shown on Concept Restoration Plan (CD15.23 and CD5.11) and are said to be to be shown on the concept restoration scheme required by Condition 46. There are confusing references to different types and status of 'routes'.
2. CD15.23 submitted in July 2024 shows;
 - Existing Public Rights of Way (PROW)
 - Proposed Pocket Parks
 - Proposed PROW (Bridleway) sic
 - Proposed Upgraded PROW from Footpath to Bridleway
 - Proposed Permissive Bridleway
3. The Public Rights of Way (PROW) shown are however only those outside the appeal site boundary and do not include those within the appeal site.
4. The 'Proposed PROW (Bridlway)' is a new route around, and within, the perimeter of the appeal site. This is not a public right of way, it will presumably be a permissive Path.
5. The 'Proposed Upgraded PROW from Footpath to Bridleway' includes,
 - The Arterial Avenue, currently a public footpath and bridleway and access to Lea Castle Equestrian Centre and McDonald's bungalow.
 - The public footpath from the west
 - The public footpath and bridleway to North Lodge
6. The 'Proposed Permissive Bridleway',
 - Links the west footpath to a pocket park
 - Provides a shortcut on the Proposed Permissive Bridleway
7. CD5.11 submitted in July 2021 shows the same;
 - Existing Public Rights of Way (PROW)
 - Proposed Pocket Park
 - Proposed PROW (Bridlway) sic
 - Proposed Upgraded PROW from Footpath to Bridleway
 - Proposed Permissive Bridleway
8. The Appellant's Note states that "*it is proposed that all the proposed routes (i.e. those shown on the Concept Restoration Plan as 'proposed PROW (Bridleway),'*

‘proposed as upgraded PROW from Footpath to Bridleway’ and ‘Proposed Permissive Bridleway’) would be provided and maintained for public use in perpetuity, whether by the Appellant/Owner or by agreement with the Council under section 25 Highways Act 1980.”

9. Other than the proposed permissive paths, the ProW and Bridleways are already public rights of way provided and maintained for public use in perpetuity by the Appellant/Owner. That is the very definition of public rights of way.
10. Permissive paths are by definition permitted by the land owner. They carry no rights for the public, they are not public rights of way. Permissive rights of way are paths across private land permitted by and at the discretion of the landowner. They create no public right over the land and can be withdrawn at any time without any reason or procedure.
11. By contrast PROW are paths that must be kept permanently open to the public for their pass and repass. It is unlawful to obstruct or stop up a PROW without specific authorization and consent. Even PROW passing over private land provide public access across the PROW. Stopping up a PROW, including to create a diversion, requires specific legal consent and justification under a separate regime to the development consent regime. PROW can be created by the dedication of the route to the local highway authority which then becomes highway.
12. Dedication and therefore the creation of PROW can only occur through section 24 of the 1980 Highways Act. Significantly the Supreme Court in *DB Symmetry Ltd and another (Respondents) v Swindon Borough Council (Appellant)* Case ID: 2020/0202, a case in which Mr Partridge appeared as the planner, confirmed earlier court judgements that rights of way cannot be required by condition. In this case Mr Partridge, for the landowner, submitted a CLEUD that estate roads were for private use only, the application was refused, an appeal allowed, which the High Court quashed on application by the LPA, the Court of Appeal reinstated it and ultimately the Supreme Court rejected the LPA challenge.
13. Draft proposed Condition 21 in rID9 states:

“Notwithstanding the submitted details, prior to the commencement of the development hereby approved, a scheme and programme for the proposed public access routes shown as ‘Proposed New Permissive Bridleways’ on drawing: L & R Figure 5A, Ref: KD.LCF.026A titled: ‘Current & Proposed Public Rights of Way’, dated July 2021, shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme and programme for the proposed public access routes shall include details of:

- i. The alignment and width of the proposed public access routes;*
- ii. Surfacing materials;*
- iii. Drainage provision;*
- iv. Details of any gates, fences or barriers;*
- v. Maintenance arrangements; and*
- vi. Timetable for their implementation.*

Thereafter, the public access routes shall be provided and maintained in accordance with the approved details.”

14. Draft proposed Condition 22 states:

“Notwithstanding the submitted details, prior to the commencement of the development hereby approved, a detailed scheme for the safe crossing by the public over the haul road of any rights of way or permissive bridleways, shall be submitted to and approved in writing by the Mineral Planning Authority. The details shall include the signage to be installed to alert users of the haul road and users of the rights of way or permissive bridleways of the crossing, details of any gates, fences or barriers and surfacing. The crossing shall be implemented in accordance with the approved details and made available prior to the first use of the haul road by any HGVs and thereafter shall be retained until the last Phase has been restored.”

15. In the Appellant’s Note they then rely on the County Council to explain how the public access routes shall be provided and maintained in accordance with the approved details.
16. The explanation does nothing to distinguish between existing PRoW and proposed permissive paths. It does not explain how permissive paths can be secured for public use in perpetuity. The explanation states *“The appellant may never apply to dedicate the rights of way under formal agreement, and the condition allows for this.”* (rID73, p.6 and rID111, p. 1 – 2)
17. This does not explain how new PRoW are to be secured. The law is clear that PRoW can not be secured or required by condition.
18. As such no weight can be given to the permissive paths. They can be extinguished by the appellant/landowner at any time.
19. The existing PRoW and permissive paths are offered as mitigation for the impact on amenity from the proposed development. In this regard only any improvements to

the existing PRoW within the application site are relevant, and these benefits must be balanced against the disbenefits and disadvantages to the public during the operation of the site as have been set out by the Rule 6 Main Party during the inquiry. These include visual, acoustic, dust and general negative impact, all of which make the route substantially less convenient in noise, dust, transport, landscape and amenity terms.

20. Any benefits from the permissive paths while they may be in place must also be balanced by the limiting factors set out in evidence at the Inquiry, again including visual, noise and dust impact, and in the case of bridleways the dangers in crossing access routes, conveyor routes, and proximity to 50mph roads.
21. Not only is the mitigation of the proposed bridleways and footpaths diminished and the favourable weight reduced by their inappropriateness due to visual, acoustic, and dust impact on users and dangers to equestrian users but the inability to secure such permissive rights in the future negates the benefits entirely, similarly pocket parks accessed on permissive paths have limited benefit.
22. The 'Pocket Park' proposed across the arterial avenue does not seem to provide anything not already existing, notwithstanding it is positioned with an access road running through it. The other pocket parks on existing PRoW do not seem to offer anything more than currently exists in terms of publicly accessible small areas of open space on rights of way.
23. Notwithstanding this, the Appellant has not commented on the appropriateness of the "new" PROWs (which are currently indicated to be permissive) at all. Therefore there is no information before the Inspector on the appropriateness of those ways.
24. Finally, notwithstanding the condition (and the fact that it seeks to secure a means by which signage etc can be implemented), that does not overcome the concern of the R6 party about the inappropriateness of the principle of the use of those ways, including the thousands of lorry movement across them on a daily basis during the importation of the inert fill and the minerals working. With respect, signage etc, will not mitigate this impact which clearly presents a danger to all users of the route.

Conclusion

25. Reinstating existing bridleways and footpaths is not a benefit. There is disbenefit due to the disruption and disadvantage during operations. The PRoW post operations are not a benefit.
26. No new PRoW are being provided. There is nothing before the Inquiry to show how other paths will be securely provided in perpetuity.

27. Permissive paths provide no benefit as they can be withdrawn at any time. Whilst they are there their value is diminished due to amenity issues of visual, noise, pollution. Proposed permissive bridleways are not suitable when crossing access roads, conveyor routes or close to 50mph roads.
28. Public Rights of Way can not be required by planning condition.