

**STATEMENT CONTAINING THE ORDER MAKING
AUTHORITY'S COMMENTS ON THE OBJECTIONS & REPRESENTATIONS**

1. Introduction

- 1.1 The Authority received representations and objections which are available at OMA04. The email from Ms Alison Walker (land manager of the field to the north of Skylark Farm, where part of the diversion lies) was regarding use of the Northern Field after the footpath diversion comes into effect and this was therefore not considered an objection to the Order. A number of statutory undertakers stated their plant was not affected.
- 1.2 Five emails/letters were objections relating to the effect the diversion would have on the proposed manège on the adjoining land to the south of the proposed diversion. This had been discussed at length with Mr J Payton, the main objector/landowner and Ms Rebecca Rogers, prospective user of the manège, in a site meeting and email correspondence, before the Order was made. Correspondence with Mr Payton and Ms Rogers continued after the Order was made, until their formal objections were received. This correspondence is available under representations and objections to the Order at OMA04. A further objection was received but withdrawn after clarification of the proposal.

2 Mr J Payton's Proposal/Alternative Route

- 2.1 Before the Order was made, Mr Payton, adjoining landowner, and Ms R Rogers, prospective user of the manège, asked to discuss additional proposals with the intention of including diverting the public footpath(s) on their land along with the original application. Council Officers met with Mr Payton and Ms Rogers to see if it was appropriate to put their suggestion to the Applicant, in order to avoid objections to the Order. Mr Payton and Ms Rogers wished to divert the section of FP BA19/22 from its junction with FP BA19/24 to the start of the proposed diversion, to the south of point A ("the Remaining FP"). Their suggestion was to divert the Remaining FP so that it would run parallel with Gassons (class 4 highway) on the boundary of the grazing field, from BA19/24 to BA19/23, then continue to point C. This was considered by Officers but because this suggestion would have meant that there was no need for the Proposed FP to go from point A to the point near the junction of BA19/23 and Gassons, it was the Officers view that this would have reduced the

length of public footpath available for use by the public, with no compensating public benefit, so that it would not accord with the Authority's Public Path Order Policy. It would also mean that the public would be compelled to walk through a field with horses in, or walk along the class 4 highway, whereas the Remaining FP BA19/22 is currently to the edge but above the height of the manège/grazing field, feasibly giving more space between the public and any grazing horses. Their suggestion was therefore not put to the Applicant.

- 2.2 Objections received included comments regarding this alternative proposal, although they are not objections relating to the Proposed Footpath. These include *"I understand safe options have been put forward for diverting the footpath but have all been rejected by the authority"* (Holly Say) and *"During the consultation stage I voiced grave concerns over the proposed diversion via email and in a meeting with Wendy Robins of BANES council. The new path would remove all privacy from the existing menage / training area that has been in situ since 2004. Having walkers in the direct eye line of young horses being trained created a significant risk to both horse and riders. I have asked to see a risk assessment specific to the use of the menage in relation to this new diversion but none was provided. I believe that this danger should be seriously considered when looking at potential solutions to the diversion. I would not be able to continue with the lease of this facility if the proposal goes ahead as I would not be able to guarantee the safety of myself, my daughter or my animals. I put forward several safer alternative routes that would allow walkers safe and scenic passage through the farm but all were rejected off hand. The officer in charge also failed to recognise that all of the surrounding land would be grazed, that it that one of my suggestions could not be considered as walkers would have to pass through a field of horses, I would like to reiterate that all available grazing will at some time hold horse including the land that the current footpath passed through. The authority has failed to look at all of the options or take into account the risk assessment by John Payton that shows the negative impact of this diversion on the primary use of the riding facility"* (Rebecca Rogers)".
- 2.3 The alternative route had been dismissed by the Authority for the reasons set out in paragraph 2.1 and the concerns regarding the proximity of the manège were given consideration by the Authority before making the Order. The original proposal was moved approximately 18 metres further north of the manège before making the

Order, totalling approximately 24 metres from the manège, to try to accommodate the objectors' concerns.

- 2.4 The comment in paragraph 2.2 stating the Officer had misunderstood that all land would be grazed was actually a misunderstanding by Rebecca Rogers, as the reference to 'ungrazed' land in our correspondence referred to the Proposed Footpath. The Proposed Footpath will run over woodland, not grazing land. The Officers made it clear to John Payton that a separate Public Path Diversion Order application could be considered once this proposal was resolved, if his proposal met with the legislative criteria and the Authority's policy.

3. The Authority's comments on Outstanding Objections

- 3.1 The objections relate to;

- (i) the effect the Proposed FP will have on the prospective manège which is situated on adjoining land to the south, including spooking horses at the manègemanège;
- (ii) invasion of privacy; and
- (iii) whether the Authority's Public Path Order Policy has been met, including safety and human rights.

- 3.2 **The Effect of the Proposed FP and of the Unaffected FPs on the Manège.** Holly Say states: *there will be a serious risk of spooking the horses within the ménage and therefore a risk to life (falls from height). Which fails the risk assessment.*

- 3.3 John Payton states: *the proposed path causing a failure of a risk assessment for the ménage, due to spooks. The result of a risk assessment shows 8 out of 20 for probability and 4 out of 5 for outcome (fall from heights). There for [sic] my ménage is not fit for purpose.*

- 3.4 Photographs showing the layout of the unaffected length of FP BA19/22 ("the Remaining FP") (shown pink), the Proposed FP (shown green), the Existing FP (shown red) and the manège can be found at section 3 of Appendix OMA3A.

- 3.5 The Authority does not accept that Mr Payton's land is affected by the Proposed FP in the way the objectors state. The Authority considers that some of the objectors' comments relate to the effect of the unaffected FPs on the manègemanège, in which

there will be no change. The Proposed FP runs no closer than approximately 24 metres to the north of the manège. The unaffected section of BA19/22 immediately abuts the whole approximately 34 metre length of the western side of the manège. The unaffected FP BA19/23 crosses the middle of the field in which the manège lies and passes within approximately 25 metres of the eastern corner of the manège. These unaffected FPs, which will continue to exist, are therefore closer to the manège than the Proposed FP.

- 3.6 Site meetings and discussions were held between the Authority's PROW Inspector (Sheila Petherbridge) and the Authority's Technical Officer and Case Officer (Wendy Robbins) before making the Order. Sheila Petherbridge statement regarding safety of horses and riders can be found at OMA05A and states the following: *"As a retired horserider and founder member / Trustee of The Trails Trust and a Member of IPROW, having 31 years' experience as a Public Rights of Way Officer, I can confirm that I cannot envisage any conflict between walkers using this footpath on the slope well above the manège whilst there is a potential lesson or schooling session taking place. There are several situations locally that have public access directly beside them and there is no known conflict. Wellow Trekking Centre had a highway along one side and the entrance to the property on the short side with people coming and going at all times. The Centre is now closed but was being used for Riding for the Disabled. The new Yeo Valley multi use trail from Priddy to Charterhouse on Mendip goes directly behind some stables, paddocks and arena. There is an unclassified road the other side. Both road and trail are very well used by equestrians, large groups of cyclists and walkers! The Ubley Warren footpath at Priddy, which is a permissive bridleway, has arenas on both sides of the narrow track. There is no known issue there. Similarly in a small field between the A37 and FP CL9/36 at Hobbs Wall, Farmborough, a competing British Dressage Grand Prix Rider and Trainer, trains both horse and rider. FP CL9/36 is directly beside the manège and there have been no reported problems with walkers 'spooking' the horses whilst being schooled. This footpath runs down the middle of the enterprise dissecting the fields from the schooling area and horse walker."*

- 3.7 The objectors are concerned with the public being in the direct eyeline of young horses which will spook the horses. However, the Authority considers that the Proposed FP is further in distance from the manège than the Remaining FP and the

ground level difference is sufficient that horses will not be affected in the way the objectors state.

- 3.8 Consideration was given to the effect the Remaining FP has had on the manège in the past. The surface of the manège was cut in at the north end and raised up at the south end, to make it flat. The ground level height and close proximity of the Remaining FP was not considered a safety issue when the manège was designed and built. The manège is not fenced from the Remaining FP by choice of the landowner. It appears that the change in height between the manège and the Remaining FP and the lack of fencing between the manège and the Remaining FP has not affected the manège in the past or in the objector's planning/risk assessment for the proposed forthcoming use of the manège. The Remaining FP will continue to run approximately 2-3 metres from the manège, on the boundary of the grazing field but on the natural ground level which rises up higher than the manège, providing no perceived risk by the objectors.
- 3.9 Consideration was given to the effect the adjacent FP BA19/23 has had on the manège in the past. FP BA19/23 runs diagonally across Mr Payton's field to the southeast of but in close proximity to the manège. Mr Payton advises the manège has been in situ for many years. There are no records of any issues with safety of horses/riders/the public in this location. FP BA19/23 will continue to run diagonally across the grazing field providing no perceived risk by the objectors.
- 3.10 The concerns regarding the proximity of the manège were given consideration by the Authority before making the Order and the original proposal was moved approximately 18 metres further north of the manège before making the Order, totalling approximately 24 metres from the manège, to try to accommodate the objectors' concerns.
- 3.11 The Authority has concluded that the Proposed FP would pose no additional threat to users of the manège.
- 3.12 **Invasion of privacy** Holly Say states: *the invasion of our privacy is of great concern in regards to schooling and unlimited public viewing.*
- 3.13 Sue Rogers states: *The stables were purchased because it already had a ménage in a private and safe location. The proposed footpath is to run across the full width and*

above the ménage. This makes the ménage unfit for the purpose of schooling horses and teaching my families children to ride.

3.14 John Payton states: *The proposed diversion will run across the north of my property close to and overlooking my ménage. This removes all privacy and causes a danger to future horse training/lessons in the ménage.*

3.15 The Authority considers that privacy for users of the manège will not be invaded, as there have been no issues of invasion of privacy reported to the Authority and no issues of concern raised by either landowners or occupiers in the past. There have been no recorded issues with invasion of privacy from the Existing FP, Remaining FP or FP BA19/23. The existing public footpaths have not been fenced from the grazing field and there is no substantial fence between Skylark Farm's land and the grazing field owned by Mr Payton. If Mr Payton or previous landowners were concerned regarding privacy it would have been appropriate for them to fence the manège from the public footpaths. The Proposed FP is approximately 24 metres from the manège, whereas the Remaining FP is approximately 2/3 metres from the manège. The Authority considers that the Proposed FP poses less of a threat to invasion of privacy than the Remaining FP and FP BA19/23, which will both continue to run through Mr Payton's field, close to the manège. The Authority therefore considers there is no risk to invasion of privacy from the Proposed FP.

3.16 Whether the Authority's Public Path Order Policy has been met

3.17 The Authority considered whether the proposal met the Authority's Public Path Order Policy before the Order was made. The Authority set out its views of the Authority's Public Path Order Policy in the report making the decision to make the order and has considered it again in paragraphs 3.30-3.40 of its Statement of Grounds OMA03. The order would not have been made if the Authority considered it did not meet the criteria.

3.18 The Authority considered the legal framework and criteria in the report making the decision to make the order and has considered it again in paragraphs 3.1 –3.29 of its Statement of Grounds OMA03. The Order would not have been made if the Authority considered it did not meet the criteria.

- 3.19 Mr Payton refers to “compensation not being considered”. The Applicant has been willing to discuss the matter of alleviating the adjoining landowner’s perceived issues and compensation but the objector/landowner has not chosen to engage with this process,
- 3.20 Compensation is only payable under s28 Highways Act 1980 as applied by s121(2) for land over which the right is created and any land held with it. Mr Payton, as adjoining landowner, would therefore not be able to claim compensation under this legislation as he would not be entitled to do so.
- 3.21 Holly Say states: *There should be no discrimination between ‘equestrian safety’ and ‘the safety of footpath users’.*
- 3.22 Sabrina Bird states: *spooky and young horses could become easily scared of the simplest of things such as a movement all of a sudden, someone coming from somewhere they haven’t spotted, a dog running or barking out of sight towards them or even a bag flying passed in the wind. Also, to have a string of walkers with dogs off leads suddenly appearing across the way can spook a young/old/scared horse or pony in training, or to even have people stop and watch becomes a distraction not only for the trainer but the animal too. The ménage [sic] is also used by children aged 8 years right up to 60 years old, to help teach and give people back the confidence to ride safely again with the footpath over looking I fear will become a issue to our training which would come under ‘THE HUMAN RIGHTS ACT SECTION 4 & 10’. One of the main reasons we chose Skylark Farm is because of how rural, peaceful, safe and quiet it’s situated. I feel a ‘public footpath’ Directly overlooking a place of a ménage [sic] is just not going to work, the risk factors of ‘HEALTH AND SAFETY ACT’ to all the risks are too high. I also fear that if any injury was caused to any animal or any passers by due to ‘a short cut across the ménage’ [sic] could be fatal or cause serious injury, which I’m hoping can be prevented by not allowing this footpath to be approved.*
- 3.23 Sue Rogers states: *The stables were purchased because it already had a ménage [sic] in a private and safe location. The proposed footpath is to run across the full width and above the ménage. This makes the ménage unfit for the purpose of schooling horses and teaching my families children to ride. Although it is safe for walkers it is now unsafe for riders due to spooks. The result on the ménage is “fall*

from high" (single fatality) This show's discrimination. The authorities have not given any consideration for safety of horse and rider. The stables were purchased because it already had a manège in a safe location.

- 3.24 John Payton states: *This causes a danger to future horse training/lessons in the manège. With the proposed path causing a failure of a risk assessment for the manège, due to spooks. The result of a risk assessment shows 8 out of 20 for probability and 4 out of 5 for outcome (fall from heights). There for my manège is not fit for purpose.*
- 3.25 Rebecca Rogers states: *this manège has been in situ for many years and the location was chosen to allow for the safety of riders.*
- 3.26 Mr Payton states that his manège will not pass a risk assessment if the Proposed FP becomes a public footpath. However, there are two lengths of public footpath in his own field which are closer to the manège than the Proposed FP. The Proposed FP is being used as a Permissive FP; it is therefore unclear to the Authority how the Proposed FP becoming a public footpath will have any impact on the manège's risk assessment.
- 3.27 Mr Payton states that the 'Equalities impact' criteria has failed. Equalities Impact relates to those people with protected characteristics, being gender, disability, age, race, sexual orientation and religion/beliefs. The assessment concluded that the only characteristic which is affected by the proposal is 'disability', and the result was a positive impact. The impact is neutral on all other characteristics.
- 3.28 The Authority considered the safety criteria in the report making the decision to make the Order and has considered it again in paragraphs 3.17 and 3.36 of its Statement of Grounds OMA03. The Order would not have been made if the Authority considered it did not meet the criteria. The Proposed FP was moved a further 18 metres from its original proposed site to accommodate Mr Payton's and Ms Rogers' concerns. The Authority considers that a separate risk assessment by the Authority of adjoining land is not necessary as any risk assessment should include all effects, not just for the manège.

3.29 Objectors have quoted rights under the Human Rights Act which are confusing. It is unclear what the reference to s4 and s10 relates to (Declaration of incompatibility and Power to take remedial action).

3.30 Mr Payton refers to

a) Article 1 of Part II of The First Protocol, Protection of property, which is as follows;

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

and b) Article 14 of Part 1 of Schedule 1: Prohibition of discrimination - The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

3.31 Mr Payton considers that the Authority has failed to protect his property and quotes Article 1 which provides for entitlement to the peaceful enjoyment of his possessions.

3.32 The Authority does not accept that peaceful enjoyment of his land will be disturbed as no changes are proposed within approximately 18 metres of his land. However, the Article also provides that no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The action of the Authority for diversion of the public footpath is in accordance with the Highways Act 1980 and in accordance with the principle of proportionality having regard to the law and public interest as well as the use of adjoining land.

3.33 The Authority considers that it has carried out its actions without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

4 Conclusion

- 4.1 The Authority has given consideration to all of the issues raised by the objectors throughout the order-making process and concludes that the statutory criteria has been met and that the proposal is in compliance with the Authority's Public Path Order Policy.