

SOROW

SAVE OUR RIGHTS of WAY

Mr Chris Jennings
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20th April 2021

Secretary of State
c/o The Planning Inspectorate
3G Hawk Wing
2 The Square
Bristol
BS1 6PN

For the attention of Ms Helen Sparks

Dear Sir, Madam

Your Ref: ROW/3262945

Statement of Reasons

**TOWN & COUNTRY PLANNING ACT 1990 – SECTION 257
ORDER MAKING AUTHORITY: BIRMINGHAM CITY COUNCIL
TITLE ORDER:**

- PUBLIC FOOTPATH (ID:2086) (PART ADJOINING WISHAW LANE) PUBLIC PATH STOPPING UP ORDER 2020. OBJECTION to this ORDER. WITHOUT AN ASSOCIATED CREATION ORDER.**

We understand that your remit is likely to be for the above PRow ID: 2086 only and will not encompass the second footpath crossing the development land, although it is relevant in this, our objection to the Public Path Stopping Order. For this reason, we ask that this is taken into consideration the big picture and not just the ID:2086 in isolation.

- By Stealth. PUBLIC FOOTPATH (ID:SC19) information taken from [*Warwickshire County Council, Survey of Public Path under National Parks and Access to the Countryside Act, 1949 Statement Accompanying the Definitive Map for Sutton Coldfield Borough*] (PART ADJOINING WISHAW LANE). PUBLIC PATH STOPPING UP ORDER 2020. OBJECTION to this ORDER.**

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1. SOROW (Introduction)

To explain, 'Sorow' (Save Our Rights of Way) is a small but expanding group of local people who are enthusiastic about saving and maintaining the Public Rights of Ways in the Sutton Coldfield and North Warwickshire area. The group formed in 2013, when it became apparent that the inactions of the Local Council and Landowners and indeed their overzealous actions were denying the Public, access to the countryside. Access, which is a Right, not a privilege. We are lay people and have no previous experience in saving rights of way's, but we do our best.

Some issues recently tackled: -

- Removal of electric gates 'Stopping' access to a PROW
- Removal of Electric fencing across PROW
- Removal of non-compliant gates and stiles in favour of 'Gaps'
- Installation of new signage
- Liaison with Councilor's, Highways England and Open Spaces Society.

Our Interest in regard to Peddimore, is in preserving the Network of footpaths that link Sutton Coldfield, Peddimore, Minworth, Wishaw, Wiggins Hill and beyond into North Warwickshire. These interconnected Right are known by BCC as: - 1130, 1131, 1132, 1133, 2086, 3107 and 3108.

To make it quite clear, access to the countryside for all, and maintaining access, is our main objective as a group. We do not, nor have we ever objected to the development and understand the need for the order. But there is also a need to maintain the network of Rights of way's.

2. PATHS & PLANNING

Town & Country Planning Act 1990 Section 257, Stopping Up and Diversion of Highways (footpaths, Bridleways and Restricted Byways Affected by Developments)

Since the planning permission has been granted, the Developer cannot interfere with a Public Right of Way until a confirmed path order has altered or closed the route. Such an Order will normally be made by the planning authority under section 257 of the Town & Country Planning Act.

In this instance the creation / extension / diversion must take effect when the new route has been satisfactorily created and a certificate has been issued to this effect. This is because the new route may not be ready should the development be delayed or postponed in which case the new route will not be required.

In this instance, there is no creation order to replace the Stopping Up Order.

3. Meeting with IMP 20/10/2020

We met with two Representatives of IM Properties at Wiggins Hill Lane to openly discuss what could be put in place for the withdrawal of our Objection or so we thought. We had two main objectives both seeking suitable benefit for the community's loss of part 'Wishaw Lane', part PRow ID 2086 and the full loss of PRow ID 'SC19' and the 'link' between the county of West Midlands and North Warwickshire. The two main topics of discussion were.

- a. provision of a suitable safe temporary diversion route, circumnavigating the development and for the duration of the construction between Peddimore PRow ID 1131 and 2086 and network routes beyond and into North Warwickshire.
- b. To seek 'Dedication' (associated Creation Order) of the development's circular footpath in particular the northern section creating an extension of PRow 1131 between Peddimore and the remaining section of Wishaw Lane, Linking to the new proposed Bridle way and back onto PRow 2086.

4. Subsequent Meeting Offer

Subsequent to the above meeting on the 20th of October 2020, we were offered a 'time barred' 'Without Prejudice' contract from IM Properties and BCC to sign in exchange for the Withdrawal of our Objection. This was a prerequisite for Birmingham City Council (BCC) committing only to a Consultation Process on the Dedication of the PRow ID: 1131 extension. An extension [Proposed] from Peddimore Lane Running generally North East and connecting to the remaining northern section of Wishaw Lane.

We were skeptical of this approach which accentuated our position; "to sign a Contract' when in reality there was nothing concrete in return from either BCC or IM Properties, except a consultation process. All we were seeking was an associated 'Creation Order' and a temporary diversion around the initial groundworks program, nothing more.

It is our understanding under the law and guidance practice's that allows the landowner (BCC) and the Developer to enter into an agreement between themselves to dedicate the permissive route without a consultation process. It did not necessitate preparation of a contract. Notwithstanding the above, the New 'Bridleway' is only 'Proposed' and may never be constructed, who knows. It is described as an extension of PRow 2086 albeit it has a different designation and cannot be created in place of the 'stopping' up PRow.

We have not had any direct contact with Birmingham City Council, all dialogue was through IM Properties. The above was a process devised to secure our objection withdrawal, not a negotiation.

5. PRow ID: 1131 (SC23)

The relevant date specified in the Provincial Map and Statement for the Borough is 15th October 1958. SC23 now known as ID: 1131 is described as a Cart Road & Footpath (CRF) and terminates at the junction of Peddimore Lane and Walmley Ash Lane. Walmley Ash Lane, Hurst Green Road and Wishaw Lane form the link to PRow 2086.

It is paramount that the public footpath network connectivity between Sutton Coldfield & North Warwickshire is maintained. This will require a creation order.

If Section 26 of the Highway Act 1980 (Creation Orders) is being used to create the new (Proposed) Bridleway, Then Section 25 of the same Act must be used to dedicate the extension / diversion of PRow ID:1131. This is within the powers of the local authority. i.e. not requiring a prerequisite contract with objectors unless there is an ulterior agenda. The dedication of the permissive path would allow access to the countryside and beyond to North Warwickshire without out fear that it is closed or built at all.

The Peddimore – Merits Test 7.2 b

This suggests that there is an extensive network of high-quality permissive paths within Peddimore site providing enhances accessibility within the site for staff and visitors, and to the surrounding areas for pedestrian, cyclists and horse riders. This is only possible with the landowner's permission. These routes could not be relied upon when planning walks or other activities between Sutton Coldfield, Walmley, Minworth, Over Green and Curdworth.

6. PRow ID: 2086 (SC18) [Diverted, See Appendix K & A1]

The relevant date specified in the Provincial Map and Statement for the Borough is 15th October 1958. SC18 now known as ID: 2086 is described a Footpath (F.P) from Wiggins Hill Road opposite Wiggins Hill Cottages westwards to Wishaw Lane, 600 yards north-east of its junction with Hurst Green Road.

The proposal is to 'Stop Up' this PRow and the remaining section is to terminate at a 'T' junction with the 'Proposed' new Bridleway. If using the remaining section and walking from North Warwickshire towards the new Bridleway, you would be left with two choices; turn left back towards Wiggins Hill Road or turn Right towards Wishaw Lane and Bulls Lane. This would not satisfy the Highway Act 1980 Section 119, as the termination point in either direction is substantially less convenient to the public. Unless the permissive path is 'Dedicated' along the permissive path from the north section of the proposed Bridleway back towards Peddimore.

The termination of 2086 is to all intents and purposes a 'Cul de Sac'. The link between Sutton Coldfield & North Warwickshire will be lost as well as the public enjoyment. It appears that the stopping up is in the interest of the Landowner (BCC) and the developer and therefore fails the test, as it is not in the public interest, indeed a substantial loss. The public enjoyment must be taken into consideration. Path changes are seldom made in the public interest, they are generally sought by owners and occupiers to satisfy their interest and the benefit to the public is rarely considered. It would appear to be the case in this instance.

The connection of PRow ID: 2086 (SC18) to the proposed Bridleway would degrade the user's convenience and enjoyment, in the use of links to and from nearby paths or links to destinations served by the path beyond the development.

7. PRow ID: SC19 [Diverted, See Appendix K & A1]

Once a Highway, Always a Highway. HARVEY v Truro Rural District Council 1903.

Whilst no single piece of evidence is conclusive, we believe that taken as a whole, the pieces of evidence demonstrate highway reputation over many years, indicating that the route does indeed have highway status. R v Exall (1866) 4 F & F 922.

The relevant date specified in the Provincial Map and Statement for the Borough is 15th October 1958. SC19 is described as a Footpath (F.P) from Wishaw Lane 400 yards north-east of its junction with Hurst Green Road. Continuing north-eastwards to Wiggins Hill Road at Wiggins Hill Farm. This PRow was subject to an extinguishment order on 13th May 1983. However, we believe it was not 'Confirmed' by BCC. There is evidence other than my use that this right of way has been in continual use, unchallenged without secrecy and without permission since May 1983. There is also evidence that a local school has used this right of way for training its pupils for the Duke of Edinburgh Awards. On this basis the Council has failed the 'test' in Law. Namely that it appears to it that it is expedient to stop up this path on the grounds that it is not needed for public use. We would argue that it is needed and is a direct link to PRow ID 1132 (SC24). We would oppose any confirmation of this extinguishment order which is made with no associated creation. We do not support the extinguishment order made by West Midlands County Council. Currently this route provides an alternative route to ID: 2086 and/or a useful circular route when using SC19 & 2086.

It is our understanding that this route was Not confirmed when we raised the objection. The Principal Rights of Way Officer said to one of our members during a recent chance encounter that they (BCC) could do it at any time.

PRoW: 2086 (SC18)

PRoW: 1131

PRoW: 1132

PRoW: 1134

PRoW: SC19
Un-confirmed Extinguishment Order dated 13th May 1983, but still in use and which we oppose as it met none of the tests for extinguishment.

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8 Extension of PRow ID: 1131 (Permissive)

It was mooted at the initial development concept that the development would be encircled with a perimeter Public Right of Way, not a Permissive route. It has since transpired that these routes are designated, 'Permissive'. These paths are not subject to the restrictions applied to normal highways and can be diverted or closed at any time, or not open at all. But the intention is that they should not become a Public Right of Way. Indeed, we understand that they are for the staff and visitors of the site. We do not have the conviction that these paths will ever be intended for Public use. In which case there will be no link between Sutton Coldfield's North/South PRow and the East/West Routes through to and from North Warwickshire.

It could be that the 'extension' is also a 'diversion' in which case under the Highway Act 1980 Section 119, The Council could make an order under s119 to divert the path whilst extending it, as this would satisfy the regulation and be in the interests of the public and landowner. It could be demonstrated that it would be a positive benefit and meet the council's own policy of access to the countryside.

9. Highway Act 1980 Section 26 and Section 118, Concurrent Orders.

Due to the 'Stopping-Up' / extinguishment of the eastern section of PRow 2086 (SC18), we believe that Section 26 and 118 may be appropriate to create and 'dedicate' in perpetuity the Permissive Extension of PRow ID: 1131.

10

Defra circular 1/09 says the following—

5.54 The extent to which a creation or diversion order (but not a public path creation agreement) or rail crossing diversion order, made in association with an extinguishment order would, if confirmed, provide an alternative way to that proposed for extinguishment may be taken into consideration in determining whether or not to confirm the extinguishment order. Account should be taken of the convenience of the alternative path compared to that which is to be extinguished and if this is significantly less than that enjoyed by users of the existing path, authorities will need to consider whether the criteria set out in section 118(1) of the 1980 Act have been met. Care should also be taken to ensure that full consideration is given to all of the matters set out in both section 26 (or 119 or 119A in the case of diversion orders) and section 118. Where related extinguishment and creation or diversion orders have been made concurrently and representations or objections have been made to one but not the other, authorities are advised to submit both orders to the Secretary of State for confirmation.

A creation Order must be considered first (the permissive route), on its own and on its merits against the tests for creation orders in Section 26 without reference to any concurrent extinguishment / stopping-up (i.e. it cannot be argued that the creation or diversion is justified because it will provide an alternative to the path proposed for stopping-up / extinguished): and

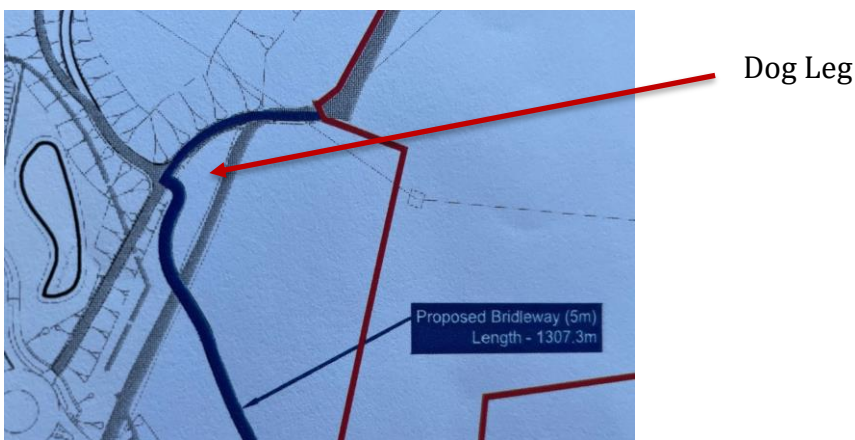
The adequacy of the alternative which would be provided by the creation order if confirmed may be taken into account when considering the stopping-up or extinguishment order.

It is therefore necessary that; 'The Planning Inspectorate' and/or The Secretary of State should first look at the Network as it exists and then decide whether the permissive path should be A dedicated path for the public in perpetuity over the OMA designating it a 'Permissive route' which in all likelihood will never constructed for the public use. See permissive paths heading below.

11 New Bridleway (Proposed)

The new bridleway to the east of the new development is 'proposed'. There is no indication that this will be constructed. Besides which the bridleway if constructed and dedicated could not be accessed from Peddimore without the 'Dedication' in perpetuity of the extension and/or diversion of PRow ID: 1131. In essence the Bridleway has little or no benefit to pedestrians. Presuming it is constructed, the route does not pass the test for being a route between two places. We have previously stated that this is a 'diverted' Wishaw Lane' terminating at Wiggins Hill Lane rather than the present termination at Minworth. The proposed connection of the Bridleway to Wishaw Lane introduces a 'Dog Legged' and 'wiggle' bend. This would reduce the public enjoyment and may/will be a hazard if horse riders, cyclists and pedestrians all meet simultaneously at this point.

We will object to this design proposal 'Dog-Leg' as the segregation proposals would fall short of the minimum segregation recommendations in the Department for Transport LTN 2/04, Adjacent and Shared Use of Facilities for Pedestrians and Cyclists here. Similarly, this would also be the case where the PRow 2086 meets the bridleway at the 'T' Junction.



If Section 26 of the Highway Act 1980 (Creation Orders) has or is being used to create the new (Proposed) Bridleway, Then Section 25 of the same Act, should be used to create the extension and/or diversion of 1131.

The new Proposed Bridleway does not replace what is being lost from the Stopping up order of PRow ID 2086, SC19 and Wishaw Lane; and is substantially less convenient.

12 The Cottage, Walmley Ash Lane

Land Registry indicates that this is privately owned. The BWB plan however indicates this is within the 'Birmingham Development Plan Allocation Boundary (Policy GA6). Is the plan incorrect? And to the untrained 'eye', is there anything else substantially wrong with the plan?



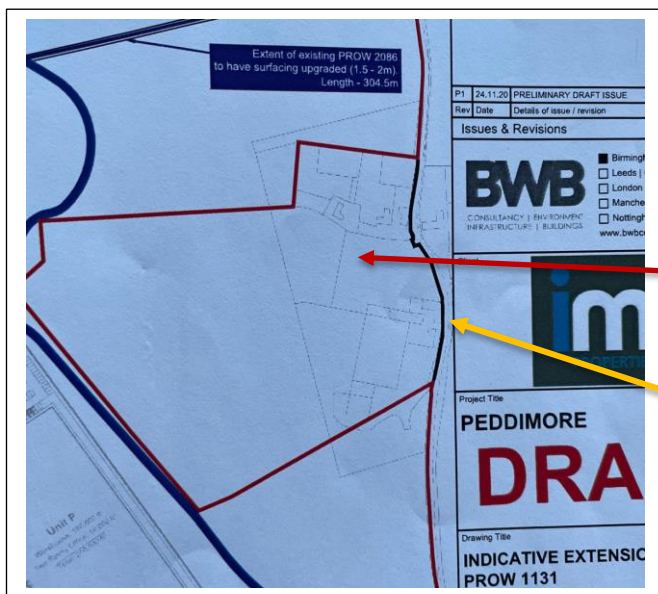
Private Land

Birmingham Development Plan Allocation Boundary (Policy GA6)

13 Wiggins Hill Farm

Land Registry indicates that this is privately owned. The BWB plan however indicates this is within the 'Birmingham Development Plan Allocation Boundary (Policy GA6) Is the plan incorrect? And to the untrained 'eye', is there anything else substantially wrong with the plan?

There is a Planning Application applied for Ref No: 2020/10193/PA. We have asked for the PRoW SC19, to be taken into consideration. See Appendix M, Prior Approval Matters.



Private Land

Birmingham Development Plan Allocation Boundary (Policy GA6)

14 PERMISSIVE PATHS

To replace Wishaw Lane, PRoW SC19 and PRoW ID: 2086 with a proposed permissive path and a proposed Bridleway would not be in the public interest and can only be seen as a positive advantage to the Landowner (BCC) and the Developer.

Permissive paths are much less acceptable than public rights of way's, the rationale being: -

- (a) They have no status or protection in law.
- (b) They can be withdrawn at any time.
- (c) They are rarely shown on Ordnance Survey maps.

What is a permissive path?

A permissive path is one which is used by permission of the landowner and not by right. Permission can be removed or suspended and the route or level of permitted use (i.e. whether on foot, horse or vehicle) may be changed at the wish of the landowner.

Permissive paths may add valued links to the rights of way network but are more difficult to take into account when route planning, particularly for visitors, as they may be known only to local people, may change or be seasonal and are temporary in nature, even if long-term. Some long-term permissive paths are shown on Ordnance Survey maps.

Some permissive paths arise from public funding through environmental management schemes or other grants. There is no legal protection to users of a permissive path and no requirement on the landowner to maintain it.

This multi-hundred-million-pound development should not come at the expense of eliminating the positive advantage that the current network of footpaths provides for public access, well-being and mental health. These routes provide a joined-up network of paths to and from various locations, Sutton Coldfield, Minworth, Castle Vale, Curdworth, Coleshill, Tamworth, Warwickshire, Staffordshire and many more.

The development is being constructed on the part of the last remaining Green Belt in Birmingham Councils armory. Birmingham falls into DEFRA Region 7. BCC openly encourages and promotes access to the countryside. It has boundaries with nine (9) other authorities and Defra guidance states that there is a duty for consultation between 'each highway authority whose area adjoins their area' to ensure a joined-up network of rights of way developed and maintained to a consistently high standard and accessible to ALL members of the public.

The permissive designation is a challenge to the public's use of that route as of right. If public money is being paid in the way of grants, it should be that all new access should be by definitive rights of way and right-to-roam access rather than permissive paths or access.

<p>Birmingham City Council has a number of other plans and strategies to deliver its targets on healthy living, leisure, recreation, sport, tourism and transport as well as its community strategies. There are also a number of redevelopments across the city, creating opportunities for improvements, as well as proposals for local-centre improvements, some of which promote redevelopment and refurbishment of areas.</p> <p>The RoWIP can help deliver these plans and strategies by providing local access for people of all abilities, and by creating and promoting opportunities for walking and cycling.</p>	<p>The desired outcome will be increased activity, improved health and, if incorporated into our daily routine, reduced local congestion and improved air quality.</p> <p>The RoWIP should in turn influence any revisions of these plans and strategies to encourage a co-ordinated and integrated approach to delivering relevant targets.</p> <p>2.3. Other duties and responsibilities</p> <p>The RoWIP will help to ensure continuous improvement, taking into account economy, efficiency and effectiveness of any future plans. In creating the RoWIP, we have consulted the public, as they will benefit from an improved rights of way network.</p>
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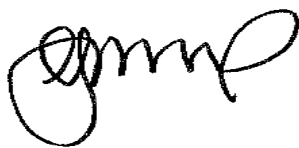
15	TESTS / CONCLUSION	YES / NO
1	Wishaw Lane 'Stopped' (Lost to Public Use)	Yes
2	PRoW 2086/SC18 Proposed Extinguishment Order (Lost to Public Use)	Yes
3	PRoW SC19 – unconfirmed Extinguishment Order (Lost to Public Use)	Yes
4	Associated PRoW Creation Order for PRoW 2086/SC18	No
5	Associated PRoW Creation Order for PRoW SC19	No
6	New Associated PRoW Link between Peddimore & North Warwickshire	No
7	Is the proposed Bridleway more convenient for the loss of two PRoW's	No
8	Is the Public losing out, in favour of the Landowner & Developer	Yes

16 - APPENDIX DOCUMENTS to REFERENCE

APPENDIX REF	DOCUMENT DESCRIPTION
A	<i>Warwickshire County Council, Survey of Public Path under National Parks and Access to the Countryside Act, 1949 Statement Accompanying the Definitive Map for Sutton Coldfield Borough</i>
A1	<i>Amended Statement, Accompanying the Definitive Map for Sutton Coldfield Borough (New Path ID numbers added)</i>
B	<i>Sorow letter dated 21st September 2020 to 'The Rt Hon Andrew Mitchel MP' Titled, 'An unfolding Tragedy. Permissive Paths v Public Rights of Way.</i>
C	<i>Email response 1, from The Rt Hon Andrew Mitchel MP</i>
D	<i>BWB Development Preliminary Draft Plan Dated 11th November 2020 Indicative Extension of PRow 1131 Plan No: PED-BWB-GEN-XX-TR-DR-022/S2/P1</i>
E	<i>H.M. Land Registry Title No: WM173244</i>
F	<i>H.M Land Registry Title No: WK286843</i>
G	<i>Memory Map / OS Map © PRow SC19 from Wishaw Lane to Wiggins Hill Farm</i>
H	<i>Public Path Extinguishment Order (UNCONFIRMED) dated 13th May 1983. City of Birmingham (Wishaw Lane No 2) Known as SC19 in the Statement Accompanying the Definitive Map for Sutton Coldfield.</i>
I	<i>Map accompanying the Statement for the Definitive Map for Sutton Coldfield Borough</i>
J1	<i>Teachers Statement</i>
J2	<i>Teachers Authorization</i>
K	<i>Sutton Coldfield Definitive Map Sheet 8 - June 1960</i>
M	<i>Wiggins Hill Farm Planning Application No 2020/10193/PA</i>
N	<i>2115227_Public_Rights-of-Way_Network</i>
O	<i>Stopping up Order – Wishaw Lane</i>

Thank you for the opportunity to put forward our objection statement and we will accept what ever decision is made.

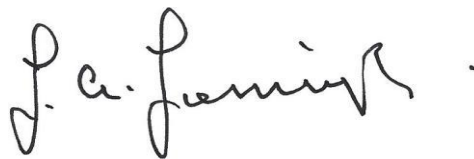
Yours faithfully



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