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Ms Cecilia Rathe
Senior Solicitor (Planning)
Wirral Council
Business Management
Governance and Assurance
Town Hall, Brighton Street
Wallasey, Wirral
MERSEYSIDE
CH44 8ED

Your ref: CR/38140
Our ref: ROW/3219147

29 January 2019

Dear Ms Rathe

Town and Country Planning Act 1990 – Section 257

Order Making Authority: Wirral Council

Title of Order: Proposed Diversion of Footpath (Part) Off Belmont Avenue, Bromborough Order 2017

I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to the above named Order, which was submitted to him for confirmation on 19 December 2018.

Careful examination and consideration of the Order and its map indicates that the Order has been incorrectly drafted, in that the incorrect notation has been used to depict the footpaths to be stopped up.

Schedule 1, Form 1 of the Town and Country Planning (Public Path Orders) Regulations 1993 (SI 1993 No. 10) require that the route to be stopped up should be shown by a bold black line, and if an alternative highway is to be provided, this should be shown by bold black dashes.

When making the Order your Council appears to have used a hatched block (hatching between two lines) to indicate the route to be stopped up, and a bolder hatched block to indicate the alternative highway to be provided.

In addition to the style of notation itself, I would draw your attention to Defra's letter of 12 February 2007 to all Order Making Authorities in England providing non-statutory guidance on the recording of widths on public path, rail crossing and definitive map modification Orders, which identifies that:

The regulations require that ways affected by orders are shown by specified line styles on the order plan according to both the type of order and the effect on the way. It is normally assumed that the line marks the centre-line of the way only; the width of the line does not represent the width of the way. Care should therefore be taken to ensure, as far as possible, that the line drafted on the order does represent the centre-line of the way, accepting the limitations imposed by the scale of the plan.

A copy of the Defra letter is enclosed here for ease of reference; it is also available from the Gov.uk website at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/434605/rights_of_way_16_extra.pdf.

Our *Advice Note 22 - Use of Correct Notation on Definitive Map Modification Orders and Public Path Orders*, available from the Gov.uk website at <https://www.gov.uk/government/publications/rights-of-way-advice-note-22-use-of-correct-notation-on-definitive-map-modification-orders-and-public-path-orders>

explains that we consider public path Orders to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the Order. We will therefore reject any Order containing incorrect notation.

The Secretary of State takes the view that the issue identified above constitutes a fundamental error which is fatal to the validity of the Order. As he cannot purport to use his power of modification to correct such an error, he has decided not to exercise his power of confirmation. The sealed Orders are returned herewith and a copy of this letter is being sent to the objectors and all other interested parties identified in your Order submission.

Additionally, if your authority were seeking to now remake the Order, in the interests of the best practice identified in the Defra letter mentioned above I would draw your attention to the advice not only in that letter but in our proceeding *Advice Note 16 – Widths on Orders* (available from the Gov.uk website at

<https://www.gov.uk/government/publications/rights-of-way-advice-note-16-widths-on-orders>)

Nonetheless, a minimum or approximate width should not be used in an order. Including a minimum or approximate width in an order can lead to uncertainty regarding the position, area, maintenance and obstruction of a right of way. If Inspectors come across orders where a minimum or approximate width is shown then the Inspector should modify the order and put in an actual width.

I note that the Order features approximate widths in its Schedule. I should explain that in the event that a remade Order received objections and was referred to the Secretary of State, and an Inspector appointed by the Secretary of State ultimately found that that remade Order should be confirmed, if the remade Order featured approximate widths for the route(s) to be stopped up, the Inspector would have to consider modifying that remade Order. Potentially any such modifications might need to be advertised and a further procedural stage then necessary if any further objections were received at that juncture.

Yours sincerely

David Bourton

Rights of Way Section