

0.4 Statement of the OMA's comments on the sole objection

The OMA's letter and email response to the objector (document no.5) contain its actual responses.

However, for the sake of clarity these will be listed and expanded upon within this document.

The objector's reasons for objecting to the diversion proposal are summarised as below with the OMA's comments underneath in italics:

1. The diverted route follows the road whereas the existing route is off-road. Therefore, the diverted route is less safe and less enjoyable.

The OMA do not agree with the causal link drawn by the objector. Although the section of Footpath 36 which is proposed to be diverted is off-road, a significant section of its existing and to be retained route already runs along the private cul-de-sac road known as 'Butts Way'. It is also necessary when progressing to/from the direction cited by the objector (Hylands Park) to utilise a significant length (510m using the current route) of Footpath 35 which shares an alignment with 'Private Road', Chelmsford, which unlike Butts Way is not a cul-de-sac. It would then be necessary to cross the busy A141 dual carriageway on 'Three Mile Hill' to make a connection to Hylands Park. It does not therefore seem reasonable to conclude that the use of Butts Way (a quiet, cul-de-sac private road), which it is already necessary to use as part of Footpath 36, is unsafe. There is no record of any issues held by the OMA, and no evidence presented by the objector to support the claim that use of 'Butts Way' is unsafe.

In respect of enjoyment, this is a subjective assessment and particular to the individual respondent, however, the OMA would point out that [REDACTED] was the sole objector to the proposal. This implies that other consultees and the public, who are using the footpath or the proposed alternative route, do not share his opinion. The susceptibility of the section of Footpath 36 to be diverted to flood, due to its proximity to the River Wid and its location within a Flood Zone 3 area (Appendix 1. EA Flood map), would have an undoubted negative effect on the enjoyment for most users. The OMA also consider that the diversion route, being a surfaced private road, would provide year-round use regardless of weather. The OMA therefore believe that even when putting aside the tendency for the current route to flood, the diversion route by comparison could remain enjoyable to use when conditions underfoot on the current route were passable but muddy, slippery and generally less pleasant. Site visits have identified that the public are already using the diversion route without apparent concern.

2. The diverted route is longer and therefore less convenient to the public.

The proposed diversion route (c.264m) is only marginally longer than the existing one (c.197m) a difference of c.67m. In the view of the OMA the diversion fully meets the test of the legislation in being substantially as convenient, especially when used as part of the longer walk referenced by the objector. The OMA advise that it has seen that the proposed diversion route is already in use by the public, a fact acknowledged by the objector. The diversion proposal was advertised on site and in a local newspaper and so it does not seem unreasonable to assume that as those users have not made representations themselves, that they are happy to use that route and find it convenient to do so.

3. The objector claims that Essex County Council has not complied with its Rights of Way Improvement Plan (ROWIP) for 'better maintenance of rights of way' and that it does not meet Objective 7 of the ROWIP to 'promote safety.'

The current legal route of the public right of way is accessible to walk with the respective landowners adhering to their maintenance responsibilities. It is not clear therefore exactly what maintenance shortcomings the objector is referring to here (see Appendix 2. PROW Inspector's statement). In respect of Safety (as stated above) the OMA do not accept that the diversion route is unsafe, and no evidence to the contrary has been provided by the objector. The OMA consider that the diversion route is potentially safer than the current one due to the aforementioned flooding issue as well as being beneficial to our maintenance efforts as the current route suffers at its eastern end with water damaging the substrate and creating deep channels down the hill. In addition we view that the diversion proposal complies with the aims of the Essex ROWIP as it improves accessibility on the rights of way network, by the provision of an all-weather route.

4. The objector states his belief that the flooding issue would only occur for a few days every year.

The current route of Footpath 36 is in a Flood Zone 3 area. This is defined by the Environment Agency as "land assessed as having a 1 in 100 or greater annual probability of river flooding (>1%), or a 1 in 200 or greater annual probability of flooding from the sea (>0.5%) in any year." (<http://apps.environment-agency.gov.uk/wiyby/cy/151263.aspx>). The applicants have provided photographic evidence (see Appendices 3 and 4) of flooding which took place within a relatively short space of time (November 2020 and January 2021) and which took several days to subside. The geography of the footpath location means that as well as its close proximity to the River Wid it also lies at the bottom of two hills in the river valley, with run-off adding to the amount of water arriving at that location during/after heavy rainfall. The co-applicant, [REDACTED] who has lived in the area in question for 49 years will be providing evidence as to the severity and frequency of the flooding problem. In the view of the OMA the objector's response on this issue is not based on fact when compared to the actual instances of flooding as experienced by those living there and hosting the footpath in their gardens. The objector's dismissal of the flooding issue may instead be based on their own isolated experiences of using a footpath which they also state that they have stopped using, and as a consequence we believe that their objection significantly downplays the flooding problem. While it is acknowledged that the lower-lying part of Footpath 35 (Private Road) also lies within this flood zone it is a surfaced carriageway and can therefore be expected to drain more quickly than the grassed garden areas, which are likely to hold onto water for longer and to sustain surface damage.

5. The objector believes that because the proposed diversion route is in use that the proposal is an extinguishment and not a diversion.

This is incorrect. The current use of the diversion route is not yet 'as of right,' which is something which this order seeks to remedy.

6. The objector claims that the path is overgrown through a lack of maintenance and that before that was the case he enjoyed it more than the proposed diversion route.

The current footpath is accessible and the applicants and the Area Public Rights of Way Inspector will present their own evidence in support of this.