

OBJECTION TO PLANNING APPLICATION APP/23/00076

The Final Management Statement submitted on behalf of the applicant by HMPC Ltd on 19 June 2023 (published on the portal 08 August 2023), contains worrying statements similar to those submitted in the Analysis of Transport Note dated 31 October 2022, prior to the December 2022 Planning Committee. I commented on these issues in my submission to Havant Borough Council on 4 November 2022, but it is now necessary to raise them again.

In Paragraph 11 of the Final Management Statement dated 19/06/2023 the applicant claims:

“It is settled law that there are a number of Ancillary rights to the Right of Way which would enable the applicants lawfully to make up (as they have done previously and with the current, existing Right of Way) and significantly to improve the surface of the Right of Way or, indeed, to do other works to accommodate vehicular / pedestrian user safety.”

Whilst there is no question that in English law the Dominant Tenement has ancillary rights to undertake repairs and basic resurfacing to make the way safe, if it has become unsafe over the course of time, there are NO RIGHTS to SIGNIFICANTLY IMPROVE the surface of the Right of Way over and above the condition of the Right of Way that existed at the time of the grant. Whatever the “other works” are is ambiguous as they are not spelt out in detail, but whatever they are, it does not necessarily follow that they are all automatically lawful. In the Analysis of Transport Note an even more extreme claim was made that the applicant was “legally and lawfully fully entitled to improve the road surface by tarmacking or concreting it.”

Not only do such rights of improvement not exist, there is also no right in English law to distort and re-interpret settled law for any personal or business purpose. Many of those reading these claims will not have the time, inclination or reason to doubt whether such statements are entirely valid. The law on rights of way for easements is perfectly clear. The Dominant Tenement is not the owner of the land over which the Right of Way runs, and as such has no right to develop that land, or to improve it. That right belongs to the Servient Tenement alone.

It is my sincere hope that both HBC and the owners of Tournurbury Farm will remain forever vigilant and mindful of these issues going ahead into the future, once, and if, planning permission for the above is finally granted.