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The Head of Planning,
Wokingham Borough Council,
Council Offices,
Shute End, Wokingham RG40 1WR.

Our Ref: CL/25/188
22nd December 2025

Dear Sir,

Permissive footpath, Hurst Village Halls to St Nicholas Church RG10 0DR

I act for Friends of St Nicholas (FOSN) who in conjunction with various parties have agreed a Permissive Footpath as is shown by drawings MLP/01 and 02. This application, under s.192, seeks confirmation that there is no development involved in this process and as such, planning permission is not required.

s.55 of the Act (as amended) defines development as:

Meaning of “development” and “new development”.

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(1A) For the purposes of this Act “ building operations ” includes—

(a) demolition of buildings;

(b) rebuilding;

(c) structural alterations of or additions to buildings; and

(d) other operations normally undertaken by a person carrying on business as a builder.

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building,

In considering this matter it is important to understand the nature of a “permissive path”. It is:

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A specified (and often signed) route over private land. The landowner(s) have determined to allow the public to use the identified route. However, it is not a legal public right of way, meaning the owner can close it or set conditions at any time. As such, it is a way to grant access for recreation without creating a permanent legal commitment, often found in countryside areas.

Key Characteristics:

- It is wholly the Landowner's choice and access is granted by the landowner's permission but not by law.
- There is no guaranteed right to use it the path and the owner can withdraw permission at any time.
- There may be conditions such as no horses or cycles and this can be imposed and enforced.
- The paths are often indicated by specific signs to show it is not a definitive public right of way.
- Unlike public footpaths, they are not permanently recorded on official rights-of-way maps.
- Permissive paths allow community access so as to provide shortcuts or access to amenities away from traffic.

In this case, the permissive path is at the behest of the following landowners:

- The Philip Martineau Trust – whose trustees manage the Village Halls area.
- Mrs Maggie Sanderson – owner of The Old School House
- Mr Chris and Mrs Angela James – owners of Orchard Nursery
- The Church of England through the diocese of Oxford – owners of the graveyards on either side of Church Hill

The aim of the project is to create a safe pedestrian footpath from the Village Hall car park up Church Hill to the Church and public house and bowling green.

The issues for consideration having regard to s.55 and the subordinate legislation are as follows:

1. Is there a material change of use?
2. Is there an engineering operation(s)?
3. Are there and other forms of development which would require planning permission?
4. Are there any special planning designations?

Change of use

s.55(1) states, inter alia, development may involve “*the making of any material change in the use of any buildings or other land*”.

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In this case the permissive footpath traverses through the village halls car park, a residential garden, an agricultural field and church land. The key matter is that the right of passage does not confer a legal right and manifestly does not involve a material change of use. That is to say the land use will remain and the occasional passage by members of the public does not in any way alter the primary use as described above. As such and as is the case in many areas of private land where permissive rights are conferred, there is no requirement for planning permission as no change of use has taken place. Thus, for example, a permissive path in urban or more usually rural areas, does not require permission. None is sought or obtained.

Engineering operations

s.55(1) defines development as, inter alia “*the carrying out of building, engineering, mining or other operations in, on, over or under land*”.

Whilst a matter of fact and degree, there will be no significant works in the creation of the permissive path. Much will simply involve walking over the identified land although, where the ground is likely to become poached there will be the laying down of a mesh as shown below. This will be a no dig construction and simply placed on the ground. The upper photograph shows that within the graveyard will be affixed, where necessary, with metal stakes as well as being filled with fine aggregate. The lower photograph is a lighter mesh which will be placed on the ground and filled with fine aggregate. Both will allow use by those wheeling pushchairs and similar, to save walking on the public highway.



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The footpath will be 1.5m to 2.0m wide depending on topography and the need to avoid obstacles. The mesh will not be laid along the length of the footpath and will be utilised only where the reasonable needs of ready access are required.

The access of the permissive path through the graveyard will be determinative of the precise location of graves and headstones. This is unknown and there is no definitive plan, at this time. As such an assessment of this will be made on site and appropriate measures will be employed to avoid insensitive passage by users.

On the balance of these considerations, it is not considered that the works would constitute engineering operations which would form “development” requiring planning permission.

Other development

We are mindful that in order to prevent incursion away from the permissive path, or where there is a safety issue, there will be a need to be fencing. This is shown on drawing MLP/02 and takes two forms:

1. Timber rail fencing
2. Green steel mesh fencing
3. Swing gates at either end of the pathway

The key is that none of the fencing, gates or other means of enclosure will exceed 2.0m in height and constitutes permitted development by reason of Part 2 Class A Minor Operations. Where the “gate, fence, wall or other means of enclosure” is adjacent to a highway it would not exceed the height limitations of 1.0m. As such the structures described herein and on drawing MLP/02 would fall within the limitations set out in the Consolidated Order and constitute permitted development by reason of Part 2, Class A.

The fence details are as follows:



Field side as shown

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Timber rail typical detail

Whilst the Church and bowling green are within the conservation area and there are listed buildings in this location, there will be no fencing and Part 2 of the Consolidated Order is not implicated. There will be no mesh laid on the ground in these positions. An extract from the DCMS Register is shown below for ease of reference.



On this basis the Permissive Footpath does not constitute development as defined in the Act and planning permission is not required. Where fencing is proposed, this falls within the limitations of Part 2 Minor Operations as set out in the Order.

We trust that a Certificate will be issued and please let me know if there is any other information on which I can assist.

Yours faithfully,

Mark Leedale

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