

Wiltshire Council

Southern Area Planning Committee

18 April 2013

**HIGHWAYS ACT 1980 – SECTION 119 AND WILDLIFE AND
COUNTRYSIDE ACT 1981 – SECTION 53
THE WILTSHIRE COUNCIL (WEST TISBURY NO. 21) PUBLIC PATH DIVERSION
ORDER 2012 AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2012**

Purpose of Report

1. To:
 - (i) Consider objections received to the making of “The Wiltshire Council (West Tisbury No. 21) Public Path Diversion Order 2012 and Definitive Map and Statement Modification Order 2012”, under Section 119 of the Highways Act 1980.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for confirmation.

Description of Route

2. Bridleway No. 21 is located at Tuckingmill, in the parish of West Tisbury, as shown on the location plan attached at **Appendix 1**. The Public Path Diversion Order is attached at **Appendix 2**, with the order map which shows the definitive line of Bridleway No. 21 West Tisbury and the proposed diversion route.
3. The definitive line of the bridleway junctions with Hatch Lane and leads south-west, directly alongside the property Quarry House, to its junction with Bridleway No.15 West Tisbury, at a field gate, having no recorded width.
4. The proposed diversion route commences at the same point off Hatch Lane and leads generally south-west, parallel to the definitive route, through an area formerly part of the Wiltshire Council Highways depot, (now in the ownership of Quarry House), having a recorded width of 4 metres (which will comprise a 2.5 metre wide compacted surface and a 1.5 metre wide grass verge).
5. The proposed diversion extinguishes approximately 122 metres of bridleway and creates approximately 136 metres of bridleway.

Background

6. Wiltshire Council received an application, dated 14 December 2011, from Mr. and Mrs. Watson of Quarry House, Tucking Mill, West Tisbury, to divert Bridleway No. 21 West Tisbury, under Section 119 of the Highways Act 1980.
7. The bridleway presently passes directly alongside the property Quarry House. It is proposed to divert the bridleway in order to improve the privacy and security of the property. The applicants are also concerned that the present route of the bridleway forms the vehicular access to properties at its northern end and is also used by bin lorries, delivery vehicles, etc., to access the properties. The proposed alternative route would remove the bridleway from the track presently used by vehicles. Additionally, the applicants consider that the proposed diversion route would benefit the public as path users would feel less intrusive using a route located further away from Quarry House and by creating a more open and enjoyable route, with improved views of the countryside, where the present route is enclosed by the wall of the house to the south-west and a hedge to the north-east.
8. Prior to the application to permanently divert the bridleway, the owners of Quarry House secured a temporary diversion of Bridleway No. 21 West Tisbury, under Section 14(1) of the Traffic Regulation Act 1984, in order to allow repairs to be carried out to the side of the property. The owners provided a temporary diversion route to the north-west of the existing route, onto which it is proposed to permanently divert the bridleway.
9. Wiltshire Council carried out an initial consultation regarding the Diversion Order proposals on 25 January 2012, with a closing date for all representations and objections to be received, in writing, by 6 March 2012. The consultation included the landowner, statutory undertakers, statutory consultees, users groups and other interested parties, including the Wiltshire Council Member for Tisbury and West Tisbury Parish Council. Eight representations in support of the diversion were received and four objections to the proposals.
10. Officers considered the objections received against the legal tests for making a Public Path Diversion Order, under Section 119 of the Highways Act 1980, in a decision report dated 5 September 2012 (attached at **Appendix 3**). It was considered that despite the objections received, the legal tests for diversion were met and a Public Path Diversion Order to divert Bridleway No. 21 West Tisbury was made on 13 November 2012.
11. Notice of the making of the Order was circulated to all interested parties, posted on site and advertised in a local newspaper. This was followed by a statutory objection period of 28 working days, during which time two comments of support were received and one objection letter was received from R A Hale, as set out below (please see Mr Hale's full correspondence attached at **Appendix 4**):
12. Lady Gingell e-mailed on 17 November 2012, as follows:

*"Thank you for your letter which arrived this morning.
My only comment is "Hooray!" "*

13. Mr. Roger Little e-mailed on 26 November 2012, as follows:

“Thank you for your letter of 14 November 2012.

I know that we have corresponded on this topic before but I wanted just to confirm I fully support the Public Path Diversion Order. I look forward to the confirmation of the order in due course”.

14. R A Hale wrote on 20 December 2012, as follows:

“The bridleway for which a diversion order has been applied for was recently temporarily closed for the installation of underground services. During this period a temporary alternative pathway was put in place to enable continued use of the right of way. The diversion application attempts to make this temporary diversion permanent.

The bridleway provides pedestrian and equine access to a path to West Hatch which is heavily used at times.

Objection 1 – The proposed diversion is not equivalent to the existing bridleway

The existing bridleway is used for access to dwellings and agricultural access to fields. As such it is maintained in a usable condition (see Annex 1). The proposed diversion is a temporary construction (as stated in “Background” above) which was not intended as a permanent arrangement and is already becoming overgrown (see Annex 2).

The diversion application makes no provision for the maintenance of the proposed diversion in an equivalent state to the existing bridleway, either in the short term or over time. It will soon degrade into a track over a field.

The bridleway is used by horses and as the existing temporary surface degrades and eventually disappears altogether the route will become unusable to pedestrians. As a local farmer has recently barred alternative permissive access to the West Hatch path increased pedestrian usage will be experienced along the bridleway.

Objection 2 – the diverted route will be blocked by hippies/travellers

As a result of the underground services work the council work/storage area adjacent to the proposed diversion now incorporates the proposed diversion. The council work area has been occupied by hippies/travellers in the past and in order to prevent this, the council placed large concrete blocks behind the gateway from the road to prevent access.

These blocks have now been removed and donated to a property owner to mark out a parking area (see Annex 3) – leaving easy access to the council work area through the gateway again.

A hippy caravan has taken up residence in a lay-by outside the council work area access gate (see Annex 4). More hippies may arrive in the spring to move into the council work area. If travellers move in, their dogs may render the proposed diversion inaccessible.

Objection 3 – the diversion is an opportunistic attempt to raise property values

It is apparent, for the reasons in the previous paragraphs, that the proposed diversion is not a viable alternative to the existing bridleway. The proposed diversion would appear to be an opportunistic attempt to use a temporary diversion as a permanent way to increase property values.

There is no public benefit from this diversion, indeed just the opposite is true, and therefore I consider the diversion request should be refused.”

15. R A Hale wrote further to reinforce the objections on 15 January 2013:

“Objection 1 – the proposed diversion is not equivalent to the existing bridleway

Your letter (10 January 2013) states that the diverted path will be reconstructed to council requirements (which addresses my objection to the existing track), but does not address the issue of future maintenance adequacy.

1. *You state that “The ongoing maintenance of the surface of the bridleway is the responsibility of the Wiltshire Council, working in conjunction with the landowner”. It also refers to the problems at the southern end of the existing bridleway: “uneven surface of the present definitive route” and “damage caused by the presence of a badger sett”. If the maintenance arrangements were adequate there would be no existing issues with the surface of the existing bridleway, therefore they are unlikely to work for the diversion.*
2. *The maintenance of the existing bridleway is primarily the responsibility of its owner and vehicular users while the ongoing maintenance of the proposed diversion is (according to your letter) the responsibility of the Council. This seems to me to be a transfer of cost to the public purse, surely if the diversion is granted it should be conditional on the maintenance of the diverted route by the users/owners of the existing route – as they will not use the diversion they have little interest in maintaining it.*

As a matter of interest, there is no damage to the existing bridleway from the badger sett (which is off the bridleway), just some spoil from the excavations which could easily be removed.

Objection 2 – the diverted route will be blocked by hippies/travellers

Page 5 of the decision report (please see **Appendix 3**) contains a diversion plan which indicates the previously council owner land inside an earth berm. Part of this berm (between the ex-council area and Quarry House) was removed during the works for which the bridleway was temporarily diverted, providing access to additional flat areas which could be used for travellers vehicles – making it an even more attractive site.

Anyone who reads the papers or listens to the news cannot but be aware of the problems and timescales involved in moving travellers on. Your response to this issue is therefore completely inadequate.

Objection 3 – the diversion is an opportunistic attempt to raise property values

The decision report lists three public benefits to the diversion; these are set out below with my comments:

1. Users of the bridleway would feel less invasive

I have used the bridleway for 20 years and have neither felt invasive or met anybody else who has. There are only 2 or 3 small Quarry House ground level windows adjacent to the existing bridleway.

2. Improved safety for path users from increased traffic using the existing route...

In all the time I have used the Bridleway I have never encountered moving traffic. In any event, vehicles using the bridleway have to go slowly because of the bridleway width.

3. Allowing the public more and attractive views.

Of a field which often has a huge manure pile on it and a few hills on the horizon. The views begin at the Southern junction of the existing and diverted bridleways.

Frankly, I regard the supposed benefits as facetious and remain of the view that this is simply an opportunistic attempt by the new owner, who presumably purchased the property in full knowledge of the bridleway, to increase the value of the property. I think this would set a very bad precedent which would result in a rash of other diversion requests.

Quite simply, there is no public benefit to the diversion.

Additional Comments

Security of Quarry House: I doubt that the burglaries at the property were by casual passers-by as the property is off the road. The proposed diversion would make the property more secluded and therefore an easier target.

Other objections: You state that there are no other objections to the order, there are several pages of objections in the decision report.”

16. Due to the objection received, the Order now falls to be considered by the Southern Area Planning Committee, whose Members should consider the points of objection against the legal tests for diversion as set out under Section 119 of the Highways Act 1980, in order to decide whether or not Wiltshire Council continues to support the making of the Order.
17. Where the Authority no longer supports the making of the Order it may be withdrawn with reasons given as to why the legal tests for diversion are no longer met. The making of a Public Path Diversion Order is a discretionary duty for the Council, rather than a statutory duty; therefore, the Order may be withdrawn at any time.
18. Where the Authority continues to support the making of the Order, it should be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or with modification.
19. Where the Authority does not actively support the Public Path Diversion Order, i.e. where all the legal tests for diversion are met but the Order is only in the interests of the landowner, it may forward the Order to the Secretary of State for determination, but choose to take a neutral stance with regard to the Order.

Main Considerations for the Council

20. The Diversion Order has been made under Section 119 of the Highways Act 1980, which states:

“119. Diversion of footpaths, bridleways and restricted byways

- (1) *Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,-*
 - (a) *create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion; and*
 - (b) *extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.*

An order under this section is referred to in this Act as a ‘public path diversion order’.
- (2) *A public path diversion order shall not alter a point of termination of the path or way-*
 - (a) *if that point is not on a highway; or*

- (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.*
- (3) Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall-*
- (a) specify a date under subsection (1)(a) above, and*
 - (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.*
- (4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.*
- (5) Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-*
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below; or*
 - (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public; or*
 - (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.*
- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which-*
- (a) the diversion would have on public enjoyment of the path or way as a whole;*
 - (b) the coming into operation of the order would have as respects other land served by the existing public right of way; and*
 - (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it;*
- so, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into account the provisions as to compensation referred to in subsection 5(a) above.*

- (6A) *The considerations to which-*
(a) *the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and*
(b) *a council are to have regard in determining whether or not to confirm such an order as an unopposed order include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.”*

21. Section 119 of the Highways Act 1980 allows the Highway Authority to divert a footpath, bridleway or restricted byway where they consider it expedient to do so in the interests of the owner, lessee or occupier of the land and/or the public. This particular Order has been made in the interests of the landowner to improve the privacy and security of Quarry House.
22. Additionally, the following public benefits of the diversion have been identified:
- (i) Users of the bridleway would feel less invasive;
 - (ii) Improved safety from increased traffic using the definitive route, i.e. two cars at Quarry House, one car at Stoneleigh and also delivery vehicles and recycling and bin lorries, the diversion route is safer as it will not be use by traffic and
 - (iii) Allowing the public to enjoy more open and attractive views, where the definitive route is more confined.
23. Where a Diversion Order is made in the interests of the landowner, it is not necessary to identify public benefits at the stage of making the Order; however, officers consider that there are public benefits to the Diversion Order, where the objector concludes that there are no public benefits to the diversion.
24. A diversion must not alter the termination points of a path where these are not on a highway and where they are located on a highway they must not be altered other than to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public. Points A and B remain unaltered (please see order plan attached at **Appendix 2**) and are therefore as convenient to the public.
25. The diversion satisfies both the above-mentioned legal tests for the making of an Order; however, at the confirmation stage there are a number of additional legal tests to be considered:
- 1) It must be expedient to confirm the Order in the interests of the landowner, and/or the public, (as seen above).
 - 2) The diverted route must not be substantially less convenient to the public.
 - 3) It must be expedient to confirm the Order having regard to the effect which:

- (i) The diversion would have on public enjoyment of the path or way as a whole;
 - (ii) The coming into operation of the Order would have as respects other land served by the existing public right of way;
 - (iii) Any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it.
26. At 3) (ii) and (iii) above, the land over which the existing bridleway passes and the land over which it is proposed to place the newly created bridleway, are in the ownership of the applicants, Mr. and Mrs. Watson, who have given written consent to the diversion proposals and no compensation claims are anticipated.
27. At 2) above, the diversion of the bridleway deletes approximately 122 metres of bridleway and creates approximately 136 metres of bridleway, which is not substantially less convenient to the public. However, the objector is concerned that the ongoing maintenance of the route will not be sufficient for it to be kept to a suitable standard for public use and it will therefore become less convenient for public use than the present definitive line, i.e. the proposed diversion is not equivalent to the existing route.
28. When considering the public enjoyment of the path or way as a whole, the diverted bridleway will have a recorded width of 4 metres, open and available for public use, where no width is presently recorded within the definitive map and statement for Bridleway No. 21 West Tisbury. There are no additional limitations or conditions on use of the path as a result of the diversion and the new section of bridleway is not enclosed on its northern side, which opens up views of the surrounding countryside, where the present definitive line is enclosed by the wall of the house and a hedge. The objector does not agree that views from the proposed diversion route are improved and considers that there is no positive effect on public enjoyment of the path or way as a whole, as a result of the diversion.
29. Under sub-section 6A of Section 119 of the Highways Act 1980, the Council must also have regard to any material provision of any Rights of Way Improvement Plan – the Wiltshire Council Rights of Way Improvement Plan 2008-2012 (ROWIP). The replacement ROWIP, which will cover the period from 2013 – 2018 is currently being prepared. The provisions set out in paragraph 30 below will be carried forward.
30. The ROWIP recognises the Council's duty to have regard to the Disability Discrimination Act 1995 (now replaced by the Equalities Act 2010) and to consider the least restrictive option for public use and includes the following aims:
- *Increase access to the countryside for buggies, older people, people with mobility problems and other impairments (p.43 Improvements 1, 2 & 3) and to*
 - *Increase access to the countryside for people who are blind and partially sighted (p.44 Improvements 4 and 5):*

The proposed diversion route will have a recorded width of 4 metres open and available for public use, where no width is recorded on the present definitive line. There are no additional limitations or conditions to public use of the path as a result of the diversion and the diversion route will have a level surface, suitable for use with buggies, by older people, people with mobility problems and other impairments and the blind and partially sighted.

- *The promotion and development of the public rights of way network, enabling pedestrians, cyclists and horse riders to avoid heavy or intrusive traffic (p.46 improvement 3).*

The present route of the bridleway also forms the vehicular access to two properties and the route is also used by bin lorries and delivery vehicles, etc., to access these properties. The proposed diversion route is not shared with vehicles and officers view this as an improvement as it reduces the risk of conflict between different types of users.

Comments on the Objections

The proposed diversion is not equivalent to the existing bridleway:

31. The present bridleway is used as a vehicular access to two properties, Stoneleigh and Quarry House. Further south of Quarry House, the private agricultural vehicular access to the field was removed last year and, as a result, if the bridleway is maintained in its present position, there will be no requirement for the landowner to maintain the surface of the bridleway to a standard suitable for use by vehicles beyond Quarry House. Additionally, the Wiltshire Council ROWIP includes an aim to promote and develop the public rights of way network, enabling pedestrians, cyclists and horse riders to avoid intrusive traffic. The diversion meets this aim as the proposed diversion route is not shared with vehicles.
32. If the Diversion Order is successful, the diverted bridleway will have a 2.5 metre wide compacted surface and a 1.5 metre wide grass verge area, within the recorded width of 4 metres, giving all users, i.e. walkers, horse riders and cyclists, a choice of surface. This has been agreed with Wiltshire Bridleways Association who preferred to see a grass surface on the diversion route, but also addresses comments received from walkers at the initial consultation, who preferred to use the level compacted surface of the new route, in preference to the uneven surface of the present definitive route. The definitive route also has damage caused by the presence of a badger sett at its southern end.
33. The proposed diversion route is not the definitive route until the confirmation of the Public Path Diversion Order. Therefore, at present, there is no obligation upon the landowner to open the route or to maintain the route as such. Indeed, the landowner has confirmed that no maintenance work has been undertaken on the proposed route as they are awaiting the outcome of the Diversion Order, before undertaking works which may prove unnecessary if the Diversion Order is not confirmed. The former Council highway depot area is now in the full ownership of Quarry House and it is the intention of the landowner to tidy up this area, making it a pleasant area for path users.

34. If the Diversion Order is confirmed, the landowner will need to undertake works to provide the correct surface, i.e. a 2.5 metre compacted surface with a 1.5 metre grass verge area. The path cannot be recorded on the definitive map until Wiltshire Council have certified that this work has been carried out and the path is available to a suitable standard for use by walkers, horse riders and cyclists, as a permanent route rather than a temporary route.
35. The ongoing maintenance of the surface of the bridleway is the responsibility of Wiltshire Council, working with the landowner. The definitive line of the bridleway is a public maintenance responsibility, to maintain the surface to a standard suitable for use as a bridleway (not to a standard for use by vehicles) and there is no transfer of maintenance costs to the public purse as a result of the diversion, as suggested by the objector, as the maintenance responsibility remains the same.

The diversion route will be blocked by travellers

36. The whole of the former Council highway depot area is now in the private ownership of Quarry House and the landowners have confirmed that they will be undertaking works to tidy this area, which should prove to be a deterrent to travellers. The landowner acknowledged that there was a previous incident with travellers entering the former highways depot in the past; however, now that the land is in their ownership they would act swiftly to remove travellers from their land. However, they are not anticipating that this will be a problem. Any action by travellers, or any other party, to render the route of the new bridleway inaccessible would be treated as an obstruction of the highway by Wiltshire Council.

The diversion is an opportunistic attempt to raise property values

37. Wiltshire Council was first approached by the landowners regarding the possibility of placing a temporary diversion on Bridleway No. 21 West Tisbury, whilst works were carried out to the west elevation of Quarry House. A temporary diversion was granted by Wiltshire Council in the interests of health and safety whilst works were being carried out and a suitable temporary diversion route was provided for path users. This procedure to temporarily divert the path was carried out correctly according to the legislation under Section 14(1) of the Road Traffic Regulation Act 1984.
38. An application to divert Bridleway No. 21 West Tisbury permanently was submitted to the Wiltshire Council Rights of Way Department in December 2011. This application was correctly made under Section 119 of the Highways Act 1980 and Wiltshire Council continued to consider the application under this legislation. Following the expiry of the temporary diversion, the definitive line of Bridleway No. 21 West Tisbury was made available for use by the public, in addition to the temporary diversion route.
39. The cost of making and advertising a Public Path Diversion Order is met by the landowner/applicant and not from the public purse. Costs to landowners can vary, but are in the region of £2,000 - £3,000. Costs to the Council are only incurred where the Order is forwarded to the Secretary of State for determination, please see Financial Implications below).

40. The temporary route will not be certified by Wiltshire Council as the definitive route until we are satisfied that it has been provided to a suitable standard for use by the public, so there are safeguards in place to ensure that the route is not of a temporary nature, but a permanent nature and it is acknowledged that there are works required on the proposed diversion route to achieve this.

Environmental Impact of the Recommendation

41. The County Ecologist was consulted on the diversion proposals and no comments regarding the environmental impact of the diversion have been received.

Risk Assessment

42. The present definitive route of the bridleway is used by vehicles accessing properties at the northern end of the track. The proposed diversion route is not used by vehicles and removes this potential conflict between different types of user.

Financial Implications

43. The applicants have agreed in writing to meet the actual costs to the Council in processing the Order, which includes staff time and the costs of advertising the making of the Order, the confirmation of the Order and the certification of the route, in one local newspaper.
44. The applicants have also agreed, in writing, to pay any expenses which may be incurred in bringing the new footpath into a fit condition for use by the public, as required by the Council.
45. If the Order is withdrawn by Wiltshire Council, the Order is not confirmed and there are no additional costs to the Council. However, although there is no form of appeal process against the Council's decision to withdraw the Order, the Council's decision is open to Judicial Review and clear reasons must be given for the withdrawal of the Order.
46. If the Order is forwarded to the Secretary of State for decision, the Order will be determined by written representations, local hearing or local Public Inquiry, all of which have a financial implication for the Council as none of these costs can be passed to the applicant. If the case is determined by written representations the cost to the Council is negligible; however, where a local hearing is held, the costs to the Council are estimated at £200 - £500 and £1,000 - £3,000 where the case is determined by local Public Inquiry.
47. Where the Authority takes a neutral stance with regard to the Order, the costs to the Council in participating in a hearing or inquiry are reduced, as legal representation is reduced or may not be required.

Options Considered

48. Having considered the objections received against the legal tests for diversion, as set out under Section 119 of the Highways Act 1980, there are three options available to Members of the Committee:
- (i) Where Members of the Committee no longer support the making of the Order in the light of the objections received, the Order may be withdrawn. The making of a Public Path Diversion Order is a discretionary duty for the Council rather than a statutory duty; therefore, the Order may be withdrawn at any time. Although there is no appeal procedure for the landowner where the Order is withdrawn, the Council's decision is open to judicial review and reasons why the Order no longer meets the legal tests should be clearly stated.
 - (ii) Where Members of the Committee consider that the Order continues to meet the legal tests for the making and confirmation of a Public Path Diversion Order, the Order should be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or confirmed with modification.
 - (iii) Where Members of the Committee do not actively support the making of the Order, i.e. where all the legal tests for diversion are met but the Order is only in the interests of the landowner, it may be forwarded to the Secretary of State for determination, but the Council may choose to take a neutral stance with regard to the Order.

Reasons for Recommendation

49. Despite the objections received it is considered, for the reasons given within the report, that the making of "The Wiltshire Council (West Tisbury No. 21) Public Path Diversion Order 2012, and Definitive Map and Statement Modification Order 2012", continues to meet the legal tests for diversion under Section 119 of the Highways Act 1980. Additionally, the legal tests for confirmation of a Public Path Diversion Order, as set out under Section 119 of the Highways Act 1980, are met.

Recommendation

50. That "The Wiltshire Council (West Tisbury No. 21) Public Path Diversion Order 2012 and Definitive Map and Statement Modification Order 2012", be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the order be confirmed without modification.

MARK SMITH

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Rights of Way Officer

The following unpublished documents have been relied on in the preparation of this Report:

None