
**TOWN AND COUNTRY PLANNING ACT 1990 SECTIONS 257 AND 261
TEMPORARY DIVERSION OF FOOTPATH COMPTON BASSETT 18 (PART)
AND BRIDLEWAY COMPTON BASSETT 5 (PART) 2023**

Purpose of Report

1. To:
 - (i) Consider the five objections to The Wiltshire Council Parish of Compton Bassett Footpath 18 and Bridleway 5 temporary diversion Order pursuant to Sections 257 and 261 of the Town and Country Planning Act 1990.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (**SoSEFRA**) with a recommendation from Wiltshire Council that the Order be confirmed without modification.

APPENDIX 1. The made Order and Order Plan showing the existing route and proposed changes.

APPENDIX 2. Objections to the made Order and Land and Mineral Management and Officer responses.

APPENDIX 3. Quarry extension plans showing the rights of way directly through the site.

APPENDIX 4. Plan showing phasing of minerals operations overlaid with an approximation of the 70-metre standoff.

APPENDIX 5. Determination of Conditions notice dated 14 March 2022 for Planning application no.16/05464/WCM.

APPENDIX 6 Countryside Access Officer report on installation requirements for the diverted routes and restoration of the routes

Relevance to the Council's Business Plan

2. Working with the local community to provide a rights of way network which is fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. An application to temporarily divert Compton Bassett Footpath 18 (part) (CBAS18) and Bridleway 5 (part) (CBAS5) was made by Land and Minerals Management on behalf of Hills Quarry Products dated 17 March 2017, under Sections 257 and 261 of the Town and Country Planning Act 1990 to enable a proposed development to be carried out *“This diversion application accompanies an application for approval of planning conditions (ROMP) to work Freeth Farm Quarry. The bridleway and footpath currently crosses the area proposed for*

quarry extension and mineral extraction. A temporary diversion is sought for the duration of the mineral workings and will be reinstated along its original route once the extraction area has been restored. Application No.16/05464/WCM.”

Planning permission has now been granted as follows; Planning Permission Ref: 3809/NW dated 5 September 1956 to extract soft sand at site and Planning Permission Ref: 16/05464/WCM dated 14 March 2022 the approval of conditions relating to the extraction of minerals and soft sand at this site.

4. The proposal is to temporarily stop up approximately 283 metres of CBAS18 and provide an alternative route around the boundary of the quarry, a distance of approximately 459 metres, for health and safety reasons and operational control. The proposal would also temporarily stop up approximately 377 metres of CBAS5 and provide an alternative route around the boundary of the quarry, a distance of approximately 305 metres, for health and safety reasons and operational control. The diversion of CBAS18 would increase the distance for users of the network heading north by approximately 160 metres; however, for those heading south their distance would decrease by approximately 70 metres. The diversion of CBAS5 would increase the distance for users of the network heading south by approximately 130 metres; however, those heading north their distance would decrease by approximately 272 metres. These temporary diversions would preserve the connectivity of the rights of way network in the area whilst granted quarry works are undertaken.
5. Previously, it had only been possible to make an Order under Section 257 of the Town and Country Planning Act 1990 where planning permission was already granted under part III of the 1990 Act; however, the amendment of the 1990 Act under the Growth and Infrastructure Act 2013, also allows an Order to be made where an application for planning permission has been made under part III of the 1990 Act and where, if the application is granted, it would be necessary to divert or extinguish the footpaths in order to enable the development to continue. Any such Order cannot be confirmed until full planning permission has been granted. Planning Permission was granted for Ref: 3809/NW dated 5 September 1956 to extract soft sand at site and Ref: 16/05464/WCM dated 14 March 2022.
6. Hills Quarry Products Ltd submitted an appeal against Condition 5 of Permission ref: 16/05464/WCM, see **Appendix 5** which imposes a requirement for the standoff distances to Freeth Farm Cottages to be increased from 16 metres to 70 metres. Until 16/05464/WCM was ‘finally determined’ under Environmental Act 1995 s.1(7) i.e., when proceedings on the application, including appeals to the Secretary of State and the High Court have been determined, and the time period for any further appeal has expired then the TCPA 1990 S.257/261 diversion application was incapable of confirmation. The appeal dismissal decision AP-36535 was dated 27 February 2023 and the 6-week period from that date when the decision can be challenged in the High Court passed on 10 April 2023 meaning the decision is now ‘finally determined’ and therefore the diversion order under TCPA 1990 S.259(1A) is capable of being confirmed.
7. With the decision on the 70 metres standoff it can be seen that the diversions are still required. This removes a section of CBAS5 from the mineral extraction area leaving a spur to the network, see **Appendix 4** which shows the phasing of minerals operations overlayed with an approximation of the 70-metre standoff and how this effects CBAS5 and CBAS18. You can see from this that when

measuring a 70-metre stand-off distance from the cottages, only a short section of the CBAS5 falling within Phase 6 would be excluded from the permitted extraction area leaving an unnecessary spur. The remainder of CBAS5 through Phases 7, 3 and 4 would still fall within the permitted extraction area, as would the CBAS18 across Phases 1, 2, 7 and part of 6. However, the 70-metre condition is essentially a mitigation measure aimed at reducing noise, dust and visual impacts on the cottages; it does not alter the boundary of the permitted mineral working. The boundary of the permission area is the site in its entirety, not the individual extraction areas. The Quarries Regulations also deem the surface surrounding or adjacent to the excavation to form part of a quarry.

8. Because of the particular risks that can arise in quarries there are specific quarry regulations which complement the general health and safety legislation. The Health and Safety Executive's Health and safety at quarries. The Quarries Regulations 1999. Approved Code of Practice, Guidance 6, Paragraph 39 *"Members of the public in a quarry are likely to be exposed to significant risks. From a health and safety point of view, it is normally better if public rights of way are diverted around the quarries."* And continues Regulation 16 *"The Operator shall ensure that, where appropriate, a barrier suitable for the purpose of discouraging trespass is placed around the boundary of the quarry and is properly maintained."* Therefore, the temporary diversions around the boundary of the quarry site would preserve the connectivity of the rights of way network and will be fenced for the health and safety of the public.
9. It is therefore clearly necessary for the paths to be diverted to allow the proposed temporary development to be carried out.
10. Section 261 of the Town and Country Planning Act 1990 states that a competent authority must be satisfied that the temporary stopping up is required for minerals to be worked and that the rights of way can be restored (after the minerals have been worked) to a condition not substantially less convenient to the public. Condition 31 of 16/05464/WCM states *"The site shall be restored in accordance with the Plan Nos 639-01-21 and 639-01-22 within 12 months following the permanent cessation of mineral extraction. REASON: To ensure that the site is reclaimed in a condition capable of beneficial afteruse."* Condition 32 of the mineral permission requires Hills to submit for approval, before commencement of Phase 2, a restoration scheme that includes *"(g) Details showing how the unworked land will marry with the lower restored areas to accommodate the reinstated bridleway and footpath"*, **see Appendix 5**. When the rights of way return to their original line, they will be required to be certified by Wiltshire Council so they must be in a suitable condition stipulated by the Countryside Access Officer.

The legal test for temporarily stopping up, as set out under Section 261 of the Town and Country Planning Act 1990, has been met.

11. A public consultation exercise was carried out on 17 May 2017, regarding the temporary diversion proposal outlined within the application, with a closing date for all representations and objections to be received in writing, not later than 5:00pm on 16 June 2017. The consultation included the landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including Wiltshire Council's Member for Calne Rural, Compton Bassett Parish

Council and Calne Without Parish Council. There were 28 objections received including Wiltshire Council Member for Calne Rural, Compton Bassett Parish Council, the Campaign to Protect Rural England and the British Horse Society. Three more objections were received to the status of CBAS5 as although it is recorded as a Bridleway it is a brown track so there may be a higher level of public rights that exist therefore any diversion would need to recognise this.

12. A decision report was written and can be seen in full on Wiltshire Council website, public path orders register, P/2017/010 [P/2017/010 - Rights Of Way - Wiltshire Council](#) in which the legal tests are discussed in detail. The report concluded that in this case the legal tests for the making of a Temporary Diversion Order to divert the Footpath CBAS18 and Bridleway CBAS58 as a restricted byway under Sections 257 and 261 of the Town and Country Planning Act 1990 were met. The proposed development lies directly over the legal line of the rights of way, see **Appendix 3**, therefore the development cannot continue without the successful diversion of the routes. The legal test for diversion, as set out under Section 257 of the Town and Country Planning Act 1990, has been met.
13. An Order was made on 4 June 2018 to temporarily divert CBAS18 and CBAS5. The Order consultation ran from 14 June 2018 to 12 July 2018 and included the previous consultees, notices were placed on site and a notice advertised in the Wiltshire Gazette and Herald dated 14 June 2018 and all respondents to the initial consultation were contacted asking if they wished their comments to be taken to the next stage of the process. In total, 29 objections were received including Compton Bassett Parish Council, Calne Without Parish Council and Campaign to Protect Rural England.
14. An error was found in the Temporary Diversion Order dated 4 June 2018; therefore, a new Temporary Diversion Order was drawn up correcting the details regarding the planning permission that enables the temporary diversion of the above rights of way. Wiltshire Council made the corrected Order on 31 May 2023, this is the Order being considered at this committee, **see Appendix 1**. The consultation on this Order ran from 8 June 2023 to 6 July 2023 and included the previous consultees, it was advertised in the Gazette and Herald 8 June 2023. All responders to the previous incorrect Order were contacted explaining that to follow process and regulation they would need to resubmit their response for it to be a duly made representation or objection. In total four objections were resubmitted with one additional objection received. The objections and responses from the Officer and the agent for Hills Land and Mineral Management can be found at **Appendix 2**.
15. Due to the objections received, the Order must be considered by the Northern Area Planning Committee, whose members should consider the legal tests for temporary diversion against the objections received, in order to decide whether Wiltshire Council continues to support the making of this Order.
16. Where the Authority continues to support its original decision to make this Order, they should be forwarded to the SoSEFRA for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or with modification.

17. Where the Authority no longer supports its original decision to make the Order, it may be withdrawn with reasons given as to why the legal tests for temporary diversion are no longer met. The making of a public path temporary diversion order is a discretionary duty for the Council, rather than a statutory duty; therefore, the Order may be withdrawn at any time.

Main Considerations for the Council

18. The application to divert CBAS18 and CBAS5, is made under Section 257 and Section 261 of the Town and Country Planning Act 1990, which states:

“257. Footpaths and bridleways affected by development: orders by other authorities

- (1) *Subject to Section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out-*
- (a) *in accordance with planning permission granted under Part III, or*
 - (b) *by a government department.*
- (2) *An order under this section may, if the competent authority is satisfied that it should do so, provide-*
- (a) *for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;*
 - (b) *for authorising or requiring works to be carried out in relation to any footpath, bridleway or restricted byway for whose stopping up or diversion, creation or improvement provision is made by the order;*
 - (c) *for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath, bridleway or restricted byway;*
 - (d) *for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.*
- (3) *An order may be made under this section authorising the stopping up or diversion of a footpath, bridleway or restricted byway which is temporarily stopped up or diverted under any other enactment.*
- (4) *In this section “competent authority” means-*

- (a) *in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the Secretary of State, who would have had power to grant it; and*
- (b) *in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.”*

19. Section 259 of the Act states:

“259. Confirmation of orders made by other authorities

- (1) *An order made under section 257 or 258 shall not take effect unless confirmed by the Secretary of State, or unless confirmed, as an unopposed order, by the authority who made it.*
- (2) *The Secretary of State shall not confirm any such order unless satisfied as to every matter of which the authority making the order are required under section 257 or, as the case may be, section 258 to be satisfied.*
- (3) *The time specified-*
 - (a) *in an order under section 257 as the time from which a footpath, bridleway or restricted byway is to be stopped up or diverted; or*
 - (b) *in an order under section 258 as the time from which a right of way is to be extinguished,**shall not be earlier than confirmation of the order.*
- (4) *Schedule 14 shall have effect with respect to the confirmation of orders under section 257 or 258 and the publicity for such orders after they are confirmed.”*

20. Section 12 of the Growth and Infrastructure Act 2013 amends Part 10 of the Town and Country Planning Act 1990 (highways), as follows:

“12. Stopping up and diversion of public paths

- (1) *Part 10 of the Town and Country Planning Act 1990 (highways) is amended as follows.*
- (2) *In section 257 (footpaths, bridleways and restricted byways affected by other development: orders by other authorities), after subsection (1) insert-*

“(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that-

- (a) an application for planning permission in respect of development has been made under Part 3, and*
- (b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.”*

(3) In that section, in subsection (4)-

- (a) omit the “and” following paragraph (a), and*
- (b) after paragraph (b) insert-*

“(c) in the case of development in respect of which an application for planning permission has been made under Part 3, the local planning authority to whom the application has been made or, in the case of an application made to the Secretary of State under section 62A, the local planning authority to whom the application would otherwise have been made.”

(4) In section 259 (confirmation of orders made by other authorities), after subsection (1) insert-

- “(1A) An order under section 257(1A) may not be confirmed unless the Secretary of State or (as the case may be) the authority is satisfied-*
- (a) that planning permission in respect of the development has been granted, and*
 - (b) it is necessary to authorise the stopping up or diversion in order to enable the development to be carried out in accordance with the permission.”*

(5) In that section, in subsection (2), for “any such order” substitute “any order under section 257(1) or 258”.

21. Section 261 of the Town and Country Planning Act states:

“261. Temporary stopping up of highways for mineral workings

(2) Where a competent authority within the meaning of section 257 is satisfied –

- (a) that an order made by them under that section for the stopping up or diversion of a footpath, bridleway or restricted byway is required for the purpose of enabling minerals to be worked by surface working and*

(b) that the footpath, bridleway or restricted byway can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public.

the order may provide for the stopping up or diversion of the footpath, bridleway or restricted byway during such period as may be prescribed by or under the order, and for its restoration at the expiration of that period.

(3) Without prejudice to the provisions of section 247 or 257, any such order as is authorised by subsection (1) or (2) may contain such provisions as appear to the Secretary of State, or as the case may be, the competent authority, to be expedient –

(b) for the stopping up at the expiry of that period of any highway so provided and for the reconstruction and maintenance of the original highway”

22. Section 257 of the Town and Country Planning Act 1990 requires the order making authority to be satisfied that the diversion of any footpath, bridleway or restricted byway is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part III of the 1990 Act. In this instance planning application Ref: 3809/NW was granted 5 September 1956 and 16/05464/WCM was granted with conditions on 14 March 2022. The granted quarry lies directly over the rights of way, with the boundary of the site to be fenced for the health and safety of the public. The requirement for a 70-metre standoff from the cottages removes a section of CBAS5 from the Phase 6 of the mineral extraction which would leave an unnecessary spur to the path. However, the condition is a mitigation measure and does not alter the boundary of the permitted quarry. The Health and Safety Executive’s Health and safety at quarries. The Quarries Regulations 1999. Approved Code of Practice, Guidance 6, Paragraph 39 *“Members of the public in a quarry are likely to be exposed to significant risks. From a health and safety point of view, it is normally better if public rights of way are diverted around the quarries.”* Temporarily diverting the rights of way that are situated through the site around the boundary would preserve the connectivity of the rights of way network in the area whilst the granted quarry works are undertaken. The Quarries Regulations 1999, Regulation 16 *“The Operator shall ensure that, where appropriate, a barrier suitable for the purpose of discouraging trespass is placed around the boundary of the quarry and is properly maintained.”* Therefore, the boundary of the permission area will be fenced for the health and safety of the public. It is therefore clearly necessary for the paths to be temporarily diverted to allow the proposed development to be carried out.
23. The Order is to temporarily stop up approximately 283 metres of CBAS18 and provide an alternative route to UC road 2078, a distance of approximately 459 metres. When looking at the connectivity of the rights of way network the diversion of CBAS18 would increase the distance for users of the network heading north by approximately 160 metres; however, those heading south their distance would decrease by approximately 70 metres. There will be a footbridge over the conveyor as a result of the diversion. The proposed route will be

situated around the boundary of the quarry for health and safety reasons and operational control.

24. The Order also temporarily stops up approximately 377 metres of CBAS5 and provides an alternative route to CBAS4, a distance of approximately 305 metres. When looking at the connectivity of the rights of way network the diversion of CBAS5 would increase the distance for users of the network heading south by approximately 130 metres; however, for those heading north their distance would decrease by approximately 272 metres. There are no additional limitations and conditions on public use of the path as a result of the diversion. The proposed route will be situated around the boundary of the quarry for health and safety reasons and operational control.
25. CBAS5 is recorded as a brown track so although the route is recorded as a bridleway a higher level of public rights may exist therefore the Order recognises this and will be temporarily diverted as a restricted byway.
26. 261. Temporary stopping up of highways for mineral workings requires that an order making authority are satisfied that section for the stopping up or diversion of a footpath, bridleway or restricted byway is required for the purpose of enabling minerals to be worked by surface working. As stated in the temporary diversion application; *“This diversion application accompanies an application for approval of planning conditions (ROMP) to work Freeth Farm Quarry. The bridleway and footpath currently cross the area proposed for quarry extension and mineral extraction. A temporary diversion is sought for the duration of the mineral workings and will be reinstated along its original route once the extraction area has been restored. Application No. 16/05464/WCM.”*
27. 261. Temporary stopping up of highways for mineral workings requires that the footpath, bridleway or restricted byway can be restored after the minerals have been worked to a condition not substantially less convenient to the public. Condition 31 of 16/05464/WCM states *“The site shall be restored in accordance with the Plan Nos 639-01-21 and 639-01-22 within 12 months following the permanent cessation of mineral extraction. REASON: To ensure that the site is reclaimed in a condition capable of beneficial afteruse.* Condition 32 of the mineral permission requires Hills to submit for approval, before commencement of Phase 2, a restoration scheme that includes (g) *Details showing how the unworked land will marry with the lower restored areas to accommodate the reinstated bridleway and footpath”,* see **Appendix 5**. When the rights of way return to their original line, they will be required to be certified by Wiltshire Council so they must be in a suitable condition as stipulated by the Countryside Access Officer. The legal test for temporarily stopping up, as set out under Section 261 of the Town and Country Planning Act 1990, has been met.
28. The temporary diversion of the footpath and bridleway shall have effect on the date on which Wiltshire Council certifies that the alternative highways for use as temporary replacements are provided. As stated by Land and Mineral Management *“The diversions will need to be in place prior to construction of the conveyor (or at least in the area that is required) and also prior to commencement of stripping and extraction. The path and bridleway wouldn’t be diverted unnecessarily early ... Only prior to when they are required”* As per

condition 1 of 16/05464/WCM, the extraction will cease within six years of the notified date of commencement and within 12 months of the permanent cessation of mineral extraction, as per condition 31, the existing footpath and bridleway shall be restored to the reasonable satisfaction of Wiltshire Council.

29. Additionally, paragraph 7.15 of Circular 1/09 (Rights of Way Circular – Guidance for Local Authorities – DEFRA), advises that the disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally or to persons whose properties adjoin or are near the existing highway, should be weighed against the advantages of the Order.
30. When granting the planning application 16/05464/WCM conditions were determined to minimise the impact of the development upon neighbouring properties and the local environment and that the site can be restored to an acceptable standard. The conditions can be seen in full at **Appendix 5**.

Overview and Scrutiny Engagement

31. Overview and scrutiny engagement is not required in this case.

Safeguarding Considerations

32. If an Order to divert CBAS18 and CBAS5 is made, Wiltshire Council will follow procedures set out in Schedule 14 of the 1990 Act and in doing so Wiltshire Council will fulfil its safeguarding considerations.

Public Health Implications

33. There are no identified public health implications which arise from the confirmation of the making of this Order.

Corporate Procurement Implications

34. In the event these Orders are forwarded to the SoSEFRA there are a number of potential requirements for expenditure that may occur, and these are covered in paragraphs 40, 41, 42 of this report.

Environmental and Climate Change Impact of the Proposal

35. Condition 32 of the mineral permission requires Hills to submit for approval, before commencement of Phase 2, a restoration scheme that includes “(g) *Details showing how the unworked land will marry with the lower restored areas to accommodate the reinstated bridleway and footpath*”, see **Appendix 5**
36. Section 261 (3) “*Without prejudice to the provisions of section 247 or 257 any such order as is authorised by subsection (1) or (2) may contain such provisions as appear to ... the competent authority, to be expedient (b) for the stopping up at the expiry of that period of any highway so provided and for the reconstruction and maintenance of the original highway*”
When the rights of way return to their original line they will be required to be certified by Wiltshire Council so they must be in a suitable condition.

37. Condition 27 of the permission “A detailed planting scheme shall be submitted to ensure the provision, establishment and maintenance of an appropriate standard landscape”. Condition 30 state “A detail Landscape Ecological Management Plan shall be submitted detailing protection, replacement and aftercare of all habitats so that their function for biodiversity is not reduced from current levels”. Condition 35 “All restored areas of the site shall undergo aftercare management for a 5-year period. To ensure the site is restored to an acceptable standard”.
See Appendix 5.

Equalities Impact of the Proposal

38. Officers are satisfied that the proposed temporary diversions of CBAS18 and CBAS5 meet Wiltshire Council’s duties under the equalities Act 2010. The diverted CBAS18 will have a recorded width of two metres, open and available to the public, whereas there is no current recorded width. CBAS5 is recorded as a brown track so although the route is recorded as a bridleway a higher level of public rights may exist therefore the route will be diverted as a restricted byway to the full recorded six metre width. The temporary diversions would preserve the connectivity of the rights of way network in the area whilst the granted quarry works, which lie directly over the routes, are undertaken.

Risk Assessment

39. There are no identified risks which arise from the confirmation of the making of this Order. The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.

Financial Implications

40. The applicant has agreed to pay all the Council’s costs associated with the making of this Order, with the advertisement of the confirmed Order and with the installation of the diverted routes and the reinstatement of the definitive routes once the temporary diversion. However, Wiltshire Council is not empowered to charge the applicant any costs related to forwarding the application to the SoSEFRA for confirmation by the Planning Inspectorate and accordingly will have to fund these from existing rights of way budgets. Where an application for an Order is refused no costs are payable by the applicant. In this instance, where an Order is made and confirmed the cost to the applicant will be £1,875 plus the cost of any associated works incurred by the Council. The applicant has agreed to this.
41. Where there are outstanding objections to the making of this Order, the Committee may resolve that Wiltshire Council continues to support the making and confirmation of the Order. The Order will then be determined by the Planning Inspectorate by way of written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. 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 to be around £200 if no legal representation is required and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation. There is a potential additional cost of approximately £2,500 per day for the provision of blended inquiries and hearings which are requested at the discretion of the SoSEFRA. There is a potential additional cost of approximately £2,500 per

day for the provision of blended inquiries and hearings which are requested at the discretion of the SoSEFRA. There is no mechanism by which these costs may be passed to the applicant and these costs must be borne by Wiltshire Council.

42. There are no costs associated with the Council resolving to abandon this Order though the decision may be subject to judicial review and the Council may incur associated costs as a result of that action (see Legal Implications below).

Legal Implications

43. Where the Council does not support confirmation of the making of this Order and resolves to abandon it, clear reasons for this must be given and must relate to the legal tests contained within Sections 257 and 261 of the Town and Country Planning Act 1990. The applicant may seek judicial review of the Council's decision if the process followed is seen as incorrect. The cost for this may be up to £50,000.

Options Considered

44. Members may resolve that:
- (i) The Order is forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation as made.
 - (ii) The Order is forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation with modifications.
 - (iii) The Order is revoked and abandoned.

Reason for Proposal

45. If Wiltshire Council resolves to support the confirmation of the Order the Order must be forwarded to the SoSEFRA unless the objections and representations are withdrawn.
46. Where an application is refused, Wiltshire Council must demonstrate that the granted development can be carried out without the need to divert the footpath and bridleway. In this particular case the development lies directly over the legal lines of both rights of way therefore the development cannot continue without the successful diversion of the routes. The legal test for diversion, as set out under Section 257 of the Town and Country Planning Act 1990, has been met.
47. Section 261 of the Town and Country Planning Act states that a competent authority must be satisfied that the temporary stopping up is required for minerals to be worked and that footpath can be restored after the minerals have been worked to a condition not substantially less convenient to the public. Condition 32 of the mineral permission requires Hills to submit for approval, before commencement of Phase 2, a restoration scheme that includes the reinstatement of bridleway and footpath, **Appendix 5**. When the rights of way return to their original line, they will be required to be certified by Wiltshire Council so they must be in a suitable condition stipulated by the Countryside Access Officer. The legal test for temporarily stopping up, as set out under Section 261 of the Town and Country Planning Act 1990, has been met.

Proposal

48. That the Wiltshire Council Parish of Compton Bassett Footpath 18 and Bridleway 5 temporary diversion Order 2023 pursuant to Section 257 and 261 of the Town and Country Planning Act 1990 be forwarded to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that it be confirmed as made.

Samantha Howell

Director – Highways and Transport

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

None

Appendices:

APPENDIX 1. The made Order and Order Plan showing the existing route and proposed changes.

APPENDIX 2. Objections to the made Order and Land and Mineral Management and Officer responses.

APPENDIX 3. Quarry extension plans showing the rights of way directly through the site.

APPENDIX 4. Plan showing phasing of minerals operations overlaid with an approximation of the 70m standoff

APPENDIX 5. Determination of Conditions notice dated 14 March 2022 for Planning application no.16/05464/WCM.

APPENDIX 6 Countryside Access Officer report on installation requirements for the diverted routes and restoration of the routes