

EASTERN AREA PLANNING COMMITTEE

13 JUNE 2024

HIGHWAYS ACT 1980 SECTION 119
WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53A

**THE WILTSHIRE COUNCIL PARISH OF RAMSBURY PATH Nos. 5, 6 and 8C AND PARISH
OF LITTLE BEDWYN PATH NO.20 DIVERSION AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2024**

Purpose of Report

1. To:
 - (i) Consider the four objections to The Wiltshire Council Parish of Ramsbury Path Nos. 5, 6 and 8C and Parish of Little Bedwyn Path No.20 Diversion and Definitive Map and Statement Modification Order 2024.
 - (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.

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. Wiltshire Council received an application to divert sections of bridleway Ramsbury 6 (RAMS6), footpaths Ramsbury 5 (RAMS5), Ramsbury 8C (RAMS8C) and Little Bedwyn 20 (LBED20) on 5 August 2022 from the landowner Ramsbury SARL, c/o Ramsbury Estate Ltd, Priory Farm, Axford, Marlborough, Wiltshire, SN8 2HA. The application was made under Section 119 of the Highways Act 1980.
4. The landowner has submitted the following statement in January 2023 to expand on the reasons for their application.
 - 1) *The farming of the land is changing from arable cultivations to parkland and with that the associated livestock grazing and movements. Managing land for livestock grazing requires the installation of new field boundaries and fencing to keep the animals safe and for the proper rotational grazing of the grass sward. Part of the reasons for the proposed diversions were to help reduce the potential conflict*

between grazing livestock (sheep and cattle) and users of the public rights of way. By diverting the paths as proposed it enables new fencing and gates to be installed on the parkland for the control and effective management of the grazing livestock. The proposed diverted public rights of way routes would then be unimpeded by these new boundary structures and the livestock would be kept separate from the public rights of way, reducing the risk of livestock escaping through gates being accidentally left open, and confrontation or injury between livestock and members of the public and their dogs.

- 2) *There is a new residential development at Park farm which will increase the volume of traffic using the driveway leading to Park Farm. The proposed diversions help to reduce conflict between the users of the bridleway and vehicle traffic accessing Park farm by providing an alternative route that will have far fewer vehicle movements along it.*
- 3) *The new residential development at Park farm also increases the need for improved security at the property. The provision of security gates on the driveway close to the development to prevent unauthorised vehicular access to the immediate surroundings and residential properties is important for the security of those properties. The current route of the bridleway makes this impractical. The proposed diversion resolves this issue.*
5. The site is subject to planning application PL/2022/07157 for the “*replacement of existing 2 no. dwellings by new house and gate lodge, together with access drive and associated landscape proposals including new pond (amended scheme to that of permission 14/05721/FUL)*”. This planning application was approved with conditions on 23/08/2023.
6. An initial public consultation exercise was conducted regarding the diversion proposals from 12 September 2022 with an initial closing date of 14 October 2022 which was extended, upon request of The Ramblers and latterly Ramsbury and Axford Parish Council, until 4 November 2022. The consultation included Ramsbury and Axford Parish Council, user groups, the Wiltshire Councillor for the area, statutory undertakers, the neighbouring landowner, and other interested parties. The consultation attracted 23 responses, including 16 objections from local residents in the Ramsbury area, an objection from The Ramblers to the diversion of RAMS6 and 8C but not LBED20/RAMS5 and an objection from the neighbouring landowner, Ramsbury Manor Foundation. The Parish Council did object to a section of the proposal, but that section has since been withdrawn and does not feature in the order made; as such, Ramsbury and Axford Parsh Council raised no objection to the contents of the subsequent order which is under consideration today. Wiltshire Bridleways Association stated they did not object and the British Horse Society made suggestions as to the width and surface of the diverted bridleway but raised no objection.
7. A 55 page decision report was written and can be seen in full at [P/2022/010 - Rights Of Way - Wiltshire Council](#). This can be accessed on the Wiltshire Council website within the rights of way page and the public path order register under application reference P/2022/010. This report sets out the background and considers the legal tests set out in Section 119 of the Highways Act 1980 in detail. It considered that in this case the legal

tests for the making of a diversion Order to divert parts of bridleway RAMS6, footpaths RAMS5, 8C and LBED 20 under Section 119 of the Highways Act 1980 were met. Officers consider the proposal is in the interests of the landowner and the alternative routes are not substantially less convenient to the public or impact negatively on public enjoyment of the paths.

8. The proposed diversion also meets other considerations which the Council must take into account such as the provisions of the Rights of Way Improvement Plan, the Equalities Act 2010, the needs of agriculture, forestry and biodiversity and the effect on land on or adjoining the rights of way. The report concluded that at the initial stage the legal tests for the confirmation of the Order appear to be met. However, the report recognised that this is subject to consideration of responses received to the statutory consultation to the legal order once made.
9. The Order was made on 10 January 2024 under Section 119 of the Highways Act 1980 to divert RAMS5,6,8C and LBED20 and Section 53A of the Wildlife and Countryside Act 1981, to amend the definitive map and statement of public rights. The order consultation ran from 16 January 2024 to 16 February 2024 and included the previous consultees and any respondents to that initial consultation. In addition, it was also advertised on site by notices and in the Wiltshire Gazette and Herald on 18 January 2024.
10. Four objections were received to the Order during the statutory consultation period. Those objections being from The Ramblers, Ramsbury Manor Foundation, Mr Steven Little and Mr and Mrs Sheppard. All responses to the made Order can be read in full in **Appendix 3**.
11. Due to the objections received, the Order now falls to be considered by the Eastern Area Planning Committee whose members should consider the legal tests for diversion against the objections received, to decide whether Wiltshire Council continues to support the making of the Order and its subsequent confirmation.
12. Where the Authority continues to support its original decision to make the Order and its confirmation, it should be forwarded to the SoSEFRA for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or with modification where appropriate.
13. Where the Authority no longer supports its original decision to make or confirm the Order, it may be withdrawn with reasons given as to why the legal tests for diversion are not 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 prior to its submission for determination by the Planning Inspectorate on behalf of the SoSEFRA.

Main Considerations for the Council

14. The legal tests that must be applied by Wiltshire Council in considering whether an Order should be confirmed are contained within Section 119 (1) and (2) of the Highways Act 1980. The Council is entitled to further consider the tests for confirmation contained within Section 119(6) at this stage.

15. **Section 119(1)** of the Highways Act 1980 states that:

“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’.

16. **Section 119(2)** of the Highways Act 1980 states:

“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”.*

17. **Section 119(6)** of the Highways Act 1980 states:

“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 Sub-section (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.*

18. The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP) - the current plan is entitled Wiltshire Countryside Access Improvement Plan 2015 – 2025 – Rights of Way Improvement Plan 2.

19. The Council must also have regard to the needs of agriculture, forestry, and the conservation of biodiversity.

20. The tests are considered in turn.

S.119(1) – The landowner’s interest

The application and order were made in the interests of the landowner. The current position of footpath RAMS8C and bridleway RAMS6 run near to the property and house which is under construction. As part of the development the land to the south of the property will be converted to parkland with grazing animals, including land over which the current route of RAMS6 runs. The diversion of RAMS6 will reduce any conflict between the public and grazing animals in the parkland and increase the privacy of the property where the bridleway leads up the current driveway to the property. The

diversion of the bridleway will also decrease vehicle interactions with users of the bridleway where it takes the public rights away from a section of the drive leading to the property. The diversion of footpath RAMS8C will be required if the bridleway is diverted to provide a connecting rights of way network. Its diversion will also increase the privacy of the property where its current route will be in close proximity to the garden and house. The diversion of footpath RAMS5/LBED20 will take the route from an overgrown route through woodland to the used constructed track, permitting the landowner to manage the woodland in a more efficient manner.

21. S.119(2) – Location and convenience of termination points

The diversion of the footpaths and bridleway must not alter the termination points of the paths where these are not on a highway and where they are 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. The current and proposed starting points and termination points of the diverted paths remain on the same highways and are as substantially convenient to the public.

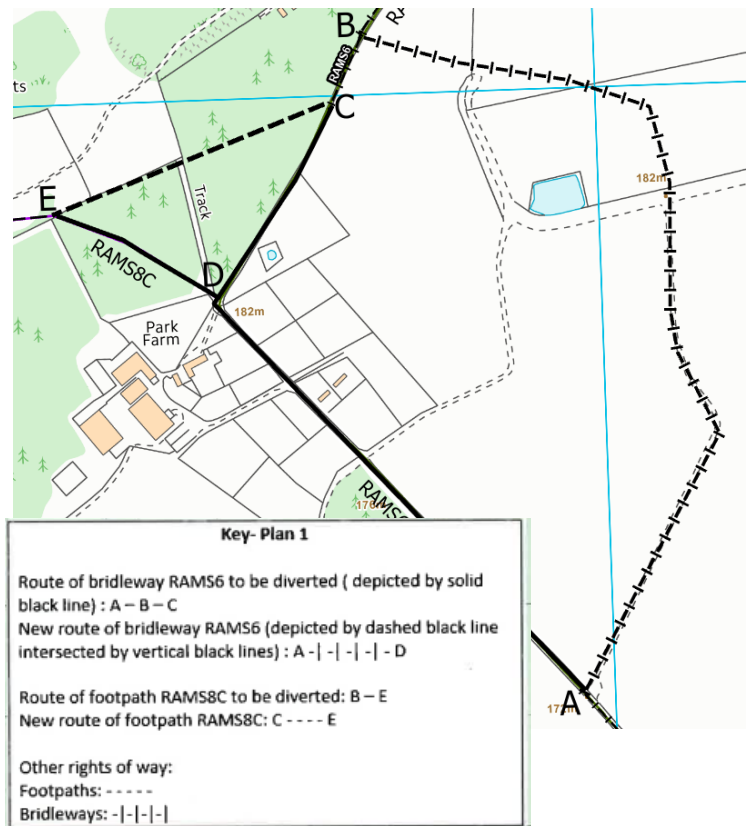
22. S.119(6) – Convenience of the new path

In assessing the relative convenience of the present and proposed routes, consideration has been given to various factors including length, width, surface, and gradient. Each path is taken in turn.

23. The proposed diversion of RAMS5/LBED20 at the southern end of Hens Wood extinguishes approximately 390 metres of footpath and creates approximately 250 metres of footpath. The proposed route is a more direct and natural continuation of the broadly north/ south route of the continuation of the path. The current route of LBED20 has no recorded width and RAMS5 has a recorded width of 1.8 metres, the diversion route will have a recorded width of two metres. The surface of the current route is through an overgrown section of woodland, no clear walked route is visible, the proposed route will have a hard track surface. A kissing gate is proposed on the route to accommodate access where the full width of the track will be obstructed by a field gate installed by the landowner for access management. The diversion of LBED20/RAMS5 is not substantially less convenient to the public. No specific points have been raised in objection to this section of the proposed diversions in relation to its convenience.

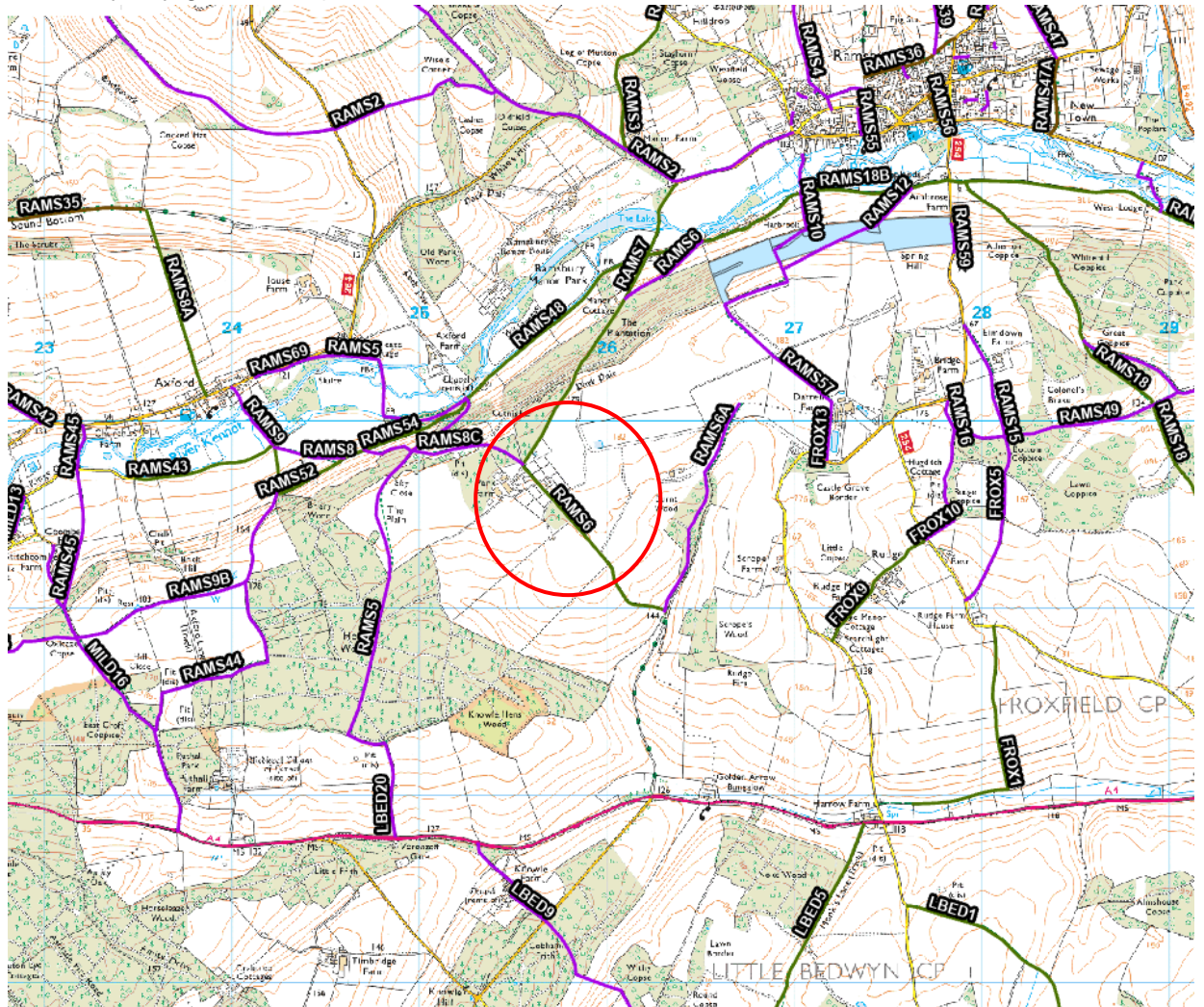
24. The proposed diversion of bridleway RAMS6 applies to extinguish approximately 960 metres of bridleway and create approximately 1,075 metres of bridleway. The diversion would increase the ride of any cyclist or horse rider by approximately 115 metres between point A and B. Due to the lack of any bridleways offering a circular route option any cyclist or horse rider is likely to be on a ride of at least a moderate distance of a number of kilometres to reach this point. An increase in 115 metres is not substantially less convenient and has not been raised as an objection point by any user group specific to bridleway use.

25. The convenience in terms of length of the proposed diversion of footpath RAMS8C and use on foot of bridleway RAMS6 has been raised in objection to the Order. The diversion of RAMS8C can only be considered in conjunction with RAMS6 as they impact upon each other as seen on the below plan and key.

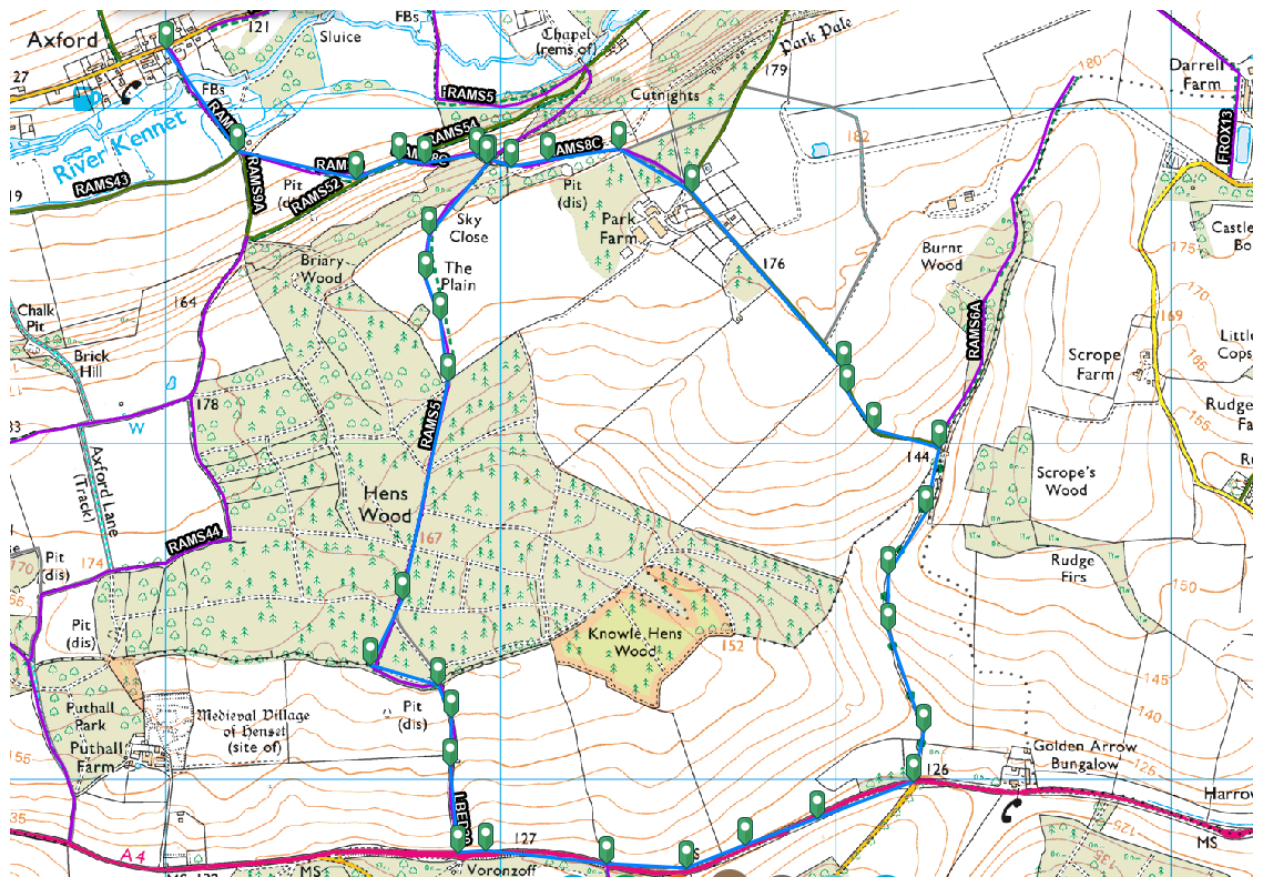


26. A walker arriving at point E, on path RAMS8C, walking south to D and onto point A, would post diversion, need to walk from point E-C-B-A. or in the opposite direction. The current distance between E-D-A is approximately 830 metres. The distance between E-C-B-A is approximately 1,485 metres. The increase in distance for a walker is approximately 655 metres pre and post diversion and has been raised in objection by The Ramblers and Ramsbury Manor. This increase in distance should be taken into consideration with the context of the whole path and surrounding network.

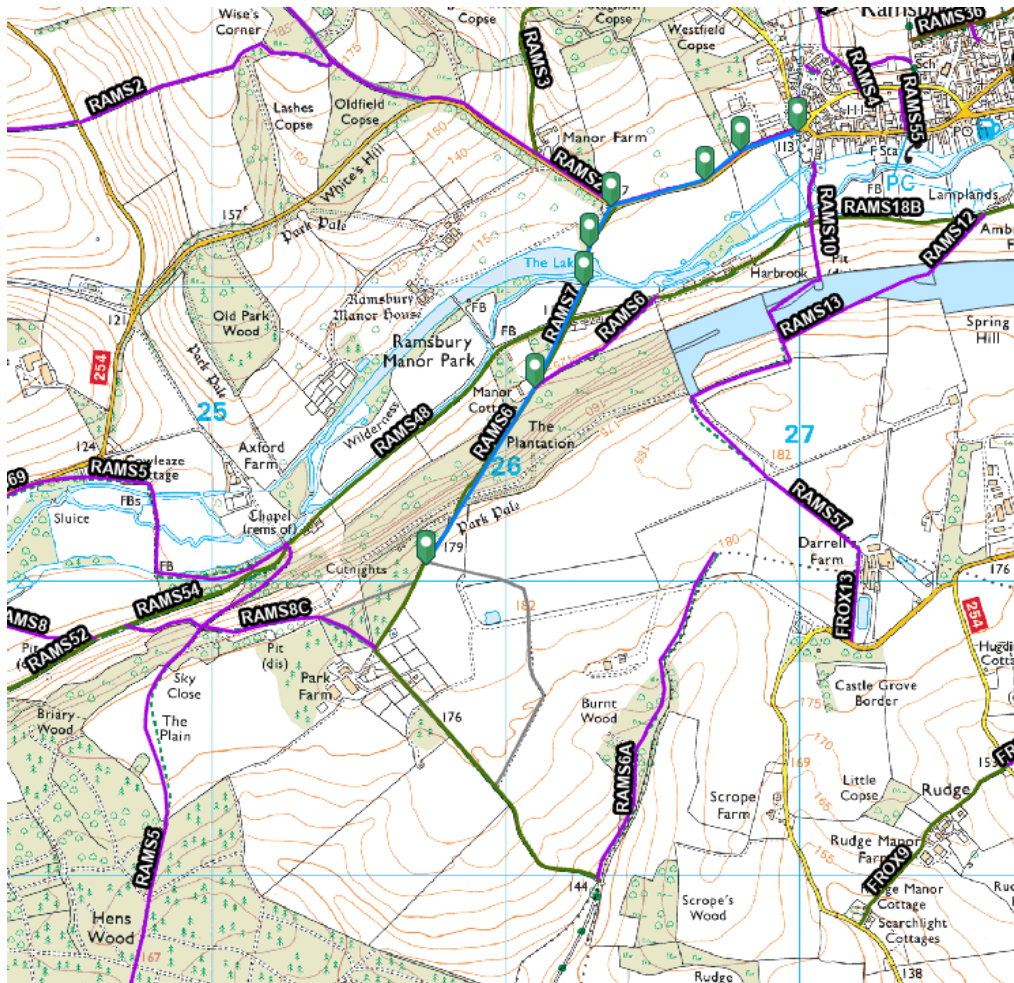
27. The below OS map extract depicts the wider area of the site and the area affected by the diversions of RAMS6 and 8C within the red circle. (footpaths marked by purple lines and bridleways by green lines).



28. To get to point E (on the map at 25 of this report) a walker approaching from the west is likely to have come from, at the closest, Axford, a small population centre to the west of Ramsbury. The most direct route from the village of Axford to point E is using footpaths RAMS9, 8, 8B and 8C, an approximate distance of 1565 metres, which includes a steep gradient. Once reaching point E the start of the diversion route, if the walker desired to continue south to point A, (the point and route raised in objection) currently that is another 830 metres, taking the walk up to that point approx. 2.4 kilometres. Once at point A, to form a circular walk back to Axford, there are no options other than to continue south to the A4 and then west along the verge of the A4 and return north along LBED20 / RAMS5 and back down into Axford. This route is not evidenced by any objector however it would be the shortest possible circular walk to and from Axford using points E and A, subject to the diversion. This circular walk adds another approximately 6.5 kilometres to the total distance walked. In total the shortest possible circular walk to and from Axford using the diversion route, including points A and E is approximately 8.9 kilometres. The diversion would add approximately 655 metres over a 9km walk which includes walking along the 60 mph A4 and a steep gradient. This may be shortened if a walker desired to turn around at point A and retraced their steps. The route described is shown below by green markers.



29. A similar walk from Ramsbury which uses the diversion route can also be considered. The shortest route to point B (the closest point of the diversion when approaching from the north/east) is likely accessed via RAMS2, 7 and onto RAMS6, a distance of approximately 2 km. See below map showing shortest route from Ramsbury to point B (as per plan at 25). To continue west from point B the distance for a walker is reduced by the diversion of RAMS8C, i.e. from point B-E (by approximately 130 metres). If from point B a user desired to continue south to point A the route is approximately 1,070 metres on the diversion route and 960 metres on its current route. A small increase given the distance already walked. The diversion will not be substantially less convenient in terms of length by any user walking from Ramsbury using public rights of way.



30. In terms of the width, gradient and surface RAMS5 has a recorded width of 1.8 metres and LBED20 has no recorded width. The proposed diverted section of these paths would record a width of 2 metres for the path. The current route is unsurfaced and overgrown through woodland. The proposed route, along the surfaced all-weather track would have no discernible change in gradient.
31. The current route of RAMS8C has a recorded width of 1.8 metres. The proposal would record a width of 2 metres. The current surface is a natural grass surface, this would remain the same. The gradient would have no discernible change.
32. The current route of bridleway RAMS6 has a recorded width of 1.5 metres. The proposal will record a 4-metre-wide bridleway. The surface of the new bridleway would be a stone and finings bound surface, for all weather use by all users. The Countryside Access Officer for the area has agreed to this surface and will sign off any works as acceptable to Wiltshire Council. It is also proposed to install vehicle barriers at the

entrances to the new section of bridleway to stop unauthorised vehicular access on this route. These bollards will be at a minimum spacing of 1.5 metres and will be certified by the countryside access officer. It is noted that the British Horse Society and Wiltshire Bridleways Association have not objected to the Order. The gradient will not discernibly change. The surface and width of the proposed route in comparison to the existing recorded bridleway is not substantially less convenient and has been agreed by the Countryside Access Officer for the area.

33. **S.119(6) – Effect on public enjoyment of the path or way as a whole**

The evaluation of enjoyment is subjective and decision makers can be guided by users of the way in responses to the application and Order. The Order objections raise no specific comments on enjoyment of users when comparing the current route to the proposed routes other than point 4 in Ramsbury Manor Foundations objection. This point raises that the diversion of RAMS8C to its proposed new route will remove the ability of walkers to appreciate the view when approaching point C and the land and view to the north. The following photo show the view approaching point C on its current route looking north as described in the objection.



34. In officers' opinion the view described is restricted by the hedging and trees, not in leaf at the time of the photo in February 2024 (therefore will be restricted even further in warmer periods of the year). Walkers will still reach the stile at point C, post the diversion, and the view offered from the stile albeit approaching from a different direction. There is no clear reduction in enjoyment from a view perspective at this point of the diversion. Views will remain similar in nature from the other parts of the proposed diversions in comparison to the current routes, with views of woodland and countryside. There is no specific vista that will be removed from the public. The new house, gardens and parkland will have an impact on views from the public rights of way but is subject to approved planning permission. The diversion of the public rights of way will have no detrimental effect on views.
35. The Ramblers did raise at the initial consultation phase that *“passing through parkland with grazing animals is likely to be more enjoyable to the public than passing through agricultural land, but the proposed diversion will for the most part deny the public this experience because the planning applications show that views of the parkland will be screened from the diversion route.”* This is a point on which users may disagree upon.

Some users may prefer to walk through livestock to enjoy viewing the animals and some would prefer to avoid fields with livestock to avoid potential conflict, especially users with dogs. The landowners would certainly wish to remove the risk of users interacting with livestock. No other respondents raised specific points on enjoyment of the current routes in comparison to the proposed routes.

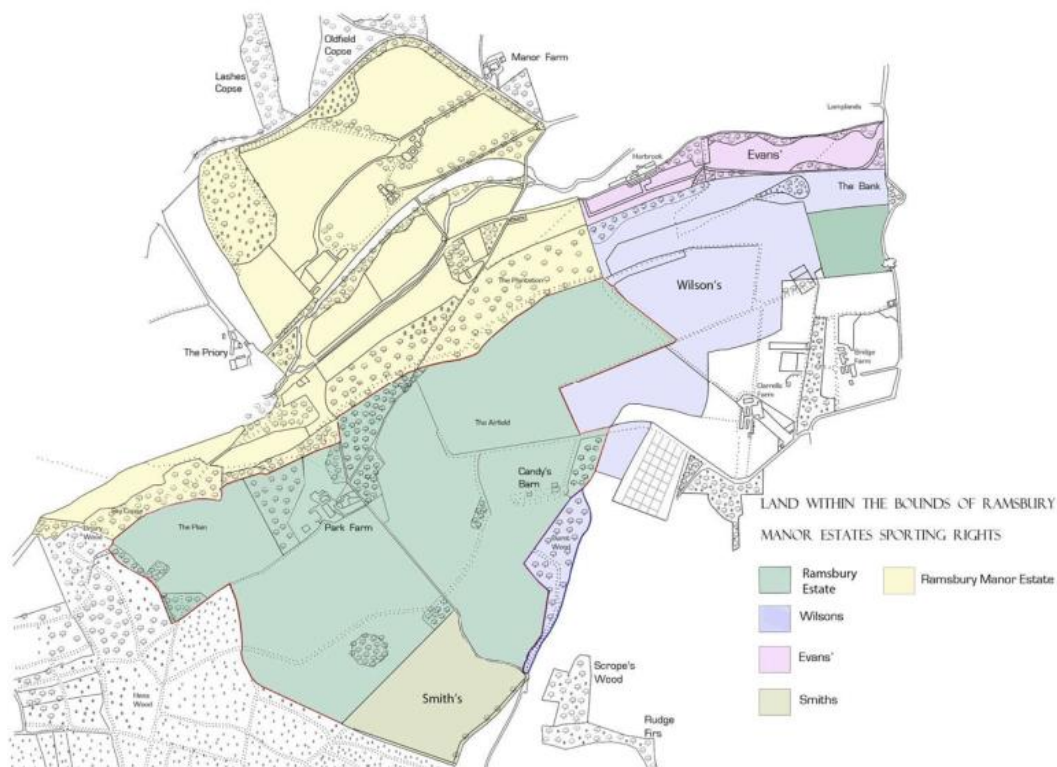
36. Safety and privacy can also be considered under public enjoyment, The safety of the route of RAMS6 for users will be slightly improved where the route would no longer run along the driveway to the property, reducing conflict with vehicles and the previous point of conflict with livestock. From a privacy perspective some users may prefer to be further away from a residential property whilst others may contend this is not an issue for them, no specific points from users have been submitted on this point. It is clear the landowner's privacy would be improved where the public rights would be moved further from the property and removed from the driveway to the house.

37. **S.119(6) (b) – Effect of the diversion on lands served by the existing right of way**

S.119(6) (c) – Effect of any new public right of way created by the Order with respect the land over which the right is so created, and any land held with it

The current and proposed routes of RAMS8C and RAMS6 are subject to sporting rights held by the neighbouring landowner and objector to the order, The Ramsbury Manor Foundation. Those rights are “*subject to the provisions of the Ground Game Act 1880 and the Ground Game (Amendment) Act 1906 of the exclusive right for him or them with his or their friends servants and others of shooting hunting coursing fowling and sporting over and taking all manner of game woodcocks snipe quails landrails hares rabbits and wild fowl and of trapping vermin upon the property hereby conveyed with power to enter thereon for the purposes aforesaid or for preserving or rearing the said game and wild fowl and to take and carry away for his or their own use the game and wild fowl and other animals of the kinds aforesaid there killed and taken.*”

The below map was provided by Mr Bill Hughes representing The Ramsbury Manor Foundation depicting the land subject to their sporting rights. The diversion of RAMS8C and 6 are over land which has sporting rights for Ramsbury Manor.



38. Section 28 and 121 (2) of the Highways Act 1980 set out that compensation may be claimed for loss caused by a public path order and in particular any sporting right that may be affected.

28 Compensation for loss caused by public path creation order

(1) Subject to the following provisions of this section, if, on a claim made in accordance with this section, it is shown that the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.

(2) A claim for compensation under this section shall be made within such time and in such manner as may be prescribed by regulations made by the Secretary of State and shall be made to the authority by whom the order was made.

(3) For the purposes of the application of this section to an order made by the Secretary of State under section 26(2) above, references in this section to the authority by whom the order was made are to be construed as references to such one of the authorities referred to in that subsection as may be nominated by the Secretary of State for the purposes of this subsection.

(4) Nothing in this section confers on any person, in respect of a footpath or bridleway created by a public path creation order, a right to compensation for depreciation of the value of an interest in the land, or for disturbance in his enjoyment of land, not being in either case land over which the path or way was created or land held therewith, unless the creation of the path or way would have been actionable at his suit if it had been effected otherwise than in the exercise of statutory powers.

(5) In this section " interest", in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights.

121 Supplementary provisions as to public path extinguishment and diversion orders.

(2) Section 28 above (compensation for loss caused by public path creation order) applies in relation to public path extinguishment orders, rail crossing extinguishment orders, special extinguishment orders, public path diversion orders, rail crossing diversion orders, special diversion orders and SSSI diversion orders as it applies in relation to public path creation orders but as if—

39. The Public Path Orders Regulations 1993 state any claim should be made six months from the coming into force of the Order in respect of which the claim is made and that claim should be made to the authority (Wiltshire Council). This six-month period for a compensation claim would begin following the confirmation of the Order. Any claim would be made to Wiltshire Council; however, costs would be covered by the applicant, Ramsbury S.A.R.L as signed for in their application form and further identified by a deed of indemnity signed between Wiltshire Council, Ramsbury S.A.R.L and Carl Stefan Erling Persson (owners of the land subject to the sporting rights held by Ramsbury Manor Foundation).
40. Ramsbury Manor Foundation has objected to the Order in part due to the perceived effect the diversion of the public rights of way would have on their sporting rights. In particular the diversion of RAMS6 which will introduce a new access “ *to an area that forms an important part of the Sporting Rights previously undisturbed by walkers and riders*”. Whilst this can be considered in the decision making process to make or confirm a public path order, sections 28 (5) and 121 of the Highways Act 1980 make the

provision for claiming compensation in relation to the effect on sporting rights subject to loss caused by a public path order. If the Order is confirmed Ramsbury Manor Foundation may make a claim as set out in section 28 (5) and an independent body would settle the amount to be paid in compensation, fairly valuing the actual loss caused to their sporting rights by the diversion order.

41. Ramsbury Manor Foundation has also raised in objection that the diversion of path RAMS8C will place the new route under mature trees in their ownership where they overhang the proposed path on the applicant's land. This may increase their liability in terms of a claim in the event of an accident caused by falling trees.
42. The photo below depicts the trees mentioned in the objection. The new path would lead along the green route seen.



The diversion of RAMS8C will place the path along the border between the two landowners and potentially in an impact zone for falling debris from the mature trees in the ownership of Ramsbury Manor Foundation. Wiltshire Council's Tree and Woodland Officer Jon Price has assessed the potential risk and states within his assessment "*it is unlikely that the diversion would result in a significantly elevated acceptable risk tolerance score*". See full assessment at appendix 3.

43. **Consideration of the Rights of Way Improvement Plan**

Wiltshire Council's rights of way improvement plan (ROWIP) is entitled Countryside Access Improvement Plan 2015 – 2025. ROWIP Appendix 8 – Strengths, weaknesses, opportunities and threats assessment of the Countryside Access Network, Weaknesses, W1 states:

"The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users". objectors have stated the paths should not be moved as they are historic. It is recognised paths have historic value and if a route had specific characteristics or features on its route then this would be taken into consideration. The routes proposed to be diverted do not have any specific

historically significant features that have been raised by objectors or that are obvious to officers. The ROWIP recognises paths can be moved for present needs and Section 119 of the Highways Acts facilitates the diversion of public rights of way.

44. ROWIP 2 recognises the Council's duty to have regard to the Equality Act 2010 and to consider the least restrictive option: At 4.1 page 16 it states "*..consider the needs of those with mobility impairments when maintaining the network and authorising structures (e.g. stiles and gates) on the rights of way network and seek improvements to existing structures where it would be beneficial (Equality Act 2010).*" The considerations above are met in this case. The surface of the proposed routes will improve in comparison with the current routes of LBED20/RAMS5, diverting from a soft woodland surface to a hard all-weather surface. The diversion of RAMS6 will provide a hard all weather surface catering for all users. The diversion of RAMS8C will not be detrimental in terms of surface of the right of way, with a natural surface on the proposed and existing routes. Kissing gates will be installed where possible to improve access, no new stiles will be authorised by any Order subject to this application. The proposed diversions do not have a detrimental effect on any users with mobility issues and in the case of LBED20/RAMS5 the proposals are a clear improvement.

45. **Regard to the needs of agriculture, forestry, and conservation of biodiversity**

There is no identified likely adverse impact on biodiversity, agriculture, or forestry as a result of the proposed diversion.

Further Comments on Objections

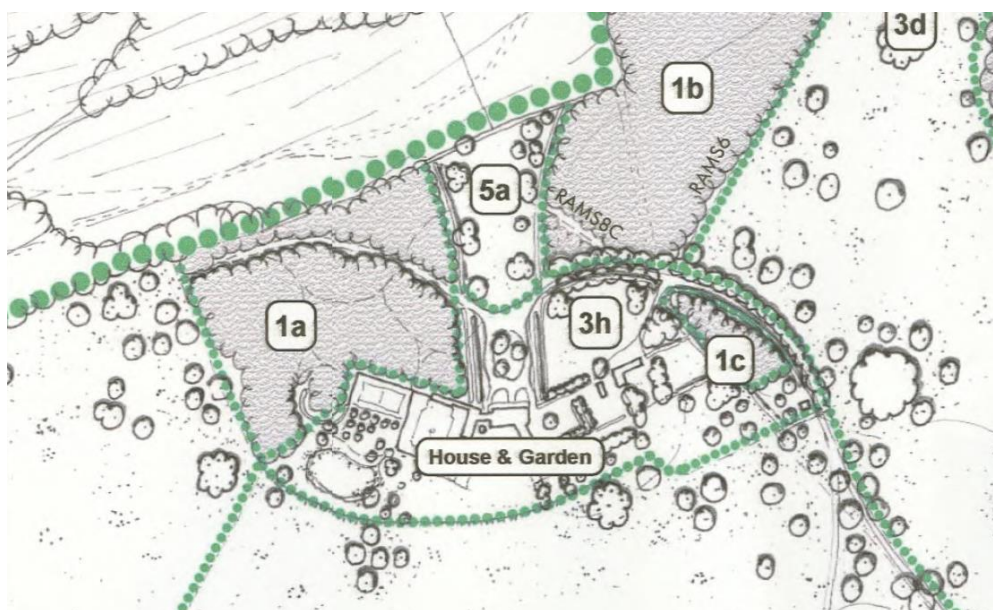
46. All objections can be seen in full at **Appendix 2**.
The objection from David and Carolyn Sheppard states "*the footpaths and bridleways has been here for many years, and we feel strongly that these ancient rights of way should not be relocated for personal gain...*" The legislation under which this Order is made recognises that rights of way can be moved, and a landowner may apply to do so. An Order can be made in the interests of the landowner as this Order is and further tests are applied in relation to public convenience and enjoyment when considering the confirmation of that Order. Mr and Mrs Sheppard do not raise any specific points to consider as to the benefits or otherwise of the proposed routes in comparison to the existing routes. Further comments are made in relation to other paths in the area and lack of maintenance, further details were requested from Mr and Mrs Sheppard to address any specific concerns with other paths, but no response was received.
47. Mr Steven Little, a resident of the Ramsbury area, has objected to the Order. In his objection he raises no specific points as to the benefits or otherwise of the proposed routes in comparison to the current routes. He states that the bridleways and footpath around Park Farm go back in history and are used and enjoyed by locals and visitors and therefore he would like to object to any diversion. Legislation exists for landowners to apply to divert public rights of way and is then subject to the relevant tests set out in legislation. Officers are unaware of any specific historic significance over the current routes proposed to be diverted. Comments in relation to the impact of the new house and grounds will have on the local area are also made. Planning permission for the house and grounds has been granted and this diversion order is a separate matter to consider on its merits or otherwise.
48. Peter Gallagher, in his role as Footpaths and Walking Environment Officer, objected to the Order on behalf of the Ramblers. Part of the objection raised is in relation to the diversion of RAMS8C and RAMS6 not meeting the requirement of s.119(6) that the path or way must not be substantially less convenient to the public in consequence of the diversion. In particular, the increase of distance of over 650 metres to a walker using

RAMS8C and RAMS6 is raised. This is addressed in detail in this report at 24-29 of this report. The objection states the Ramblers *“do not agree that the not substantially less convenient test should be assessed in the context of an assumed total walking distance which will inevitably vary between users.”* Officers concur that total walking distance will vary between users but at this location a very high proportion of users (if not all) who will be impacted by the increase of distance to walkers between points E and A will come from Axford, there is no other centre of population a walker can reach point E from to be impacted. If a user approaches from Ramsbury this increase in length is not a factor to those users wishing to get to point A. There is no other circular walk a user can take, using E-A using public rights of way other than the one indicated at 28 of this report. If a walker is wishing to do a linear route, i.e. return the same way they came then the increase in distance to point A will not negatively affect their walk, unless point A was a point of destination or interest which there is no evidence for. No individual user has objected to the increase in length claiming use of that actual route.

49. Further to the above points regarding the increase in distance, an inspector, C Beeby, appointed by the SoSEFRA to determine The Wiltshire Council Parish of Calne Without Bridleway 89 (part), 89A and 89B Diversion Order and Definitive Map and Statement Modification Order 2019, confirmed that Order on 5 July 2023 (reference ROW/3273510). In the inspector’s decision report on that Order, they considered the matter of an increase in length of the path as a result of the diversion and whether it therefore did not meet the not substantially less convenient test. At paragraph 24 of the decision report C Beeby states *“The length of the proposed path would be greater than twice that of the existing paths, increasing travel time for users. The Order would consequently increase the distance between the existing paths termini by a substantial degree. The additional distance may affect the convenience of the path for users with mobility issues, as referred to by an objector.”* The inspector continues at paragraph 25. *“Nevertheless, as a route connecting lanes serving countryside hamlets, the path as a whole is less likely to be used for errands or for commuting to other locations, and more likely to be used for leisure purposes as part of a longer journey. Therefore, in increasing the travel time between the routes termini, the Order is unlikely to adversely affect the convenience of the majority of users”.*
50. In the case referenced above the inspector, as part of their decision, confirmed a diversion order in Wiltshire in 2023 which as a result of the Order increased the length of the path by greater than twice that of the existing path. Whilst the Calne Without case was dealing with shorter distances than the increase of approximately 655 metres in this case, (for the one route, for walkers from point E - A) the percentage increase is less than the increase in distance accepted by the inspector in the Calne Without case. It is also noted that the inspector’s reasoning for accepting the more than twice increase in length was partly due to the rural nature of the route and the likely use of the route as a leisure walk rather than a utility route. The Calne Without route, in the hamlet of Calstone Wellington, is far closer to properties and potential users than the case under consideration in Ramsbury, which as detailed is approximately 2km from the nearest settlement and users. For the reasons set out, officers believe the increase in length in this Order would not be prohibitive to the Order’s confirmation.
51. The Ramblers also state *“we do not believe that the 2023 “presumption” guidance applies to this case. RAMS6 does not path through a farmyard or garden and is not within the curtilage of any individual property”.* DEFRA released guidance in August 2023 entitled ‘Government guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises’. This guidance sets out a presumption that if a public right of way that is subject to a diversion application goes through private dwellings or their curtilages and gardens that an Order making authority should be predisposed to make an Order and a confirming authority will similarly be predisposed to confirm, should the Order satisfy the relevant legislative tests. This 2023 guidance may apply to

this application where bridleway RAMS6 leads along the driveway to the residential property and passes in close proximity to the house and gardens, which may form part of the curtilage of that property.

52. Additionally, the construction of the new house and gardens encompasses part of RAMS6 into the extended area considered part of the House and Garden. The below plan is taken from the Section 106 agreement as part of planning permission PL/2022/07157 showing landscape compartments. The route of RAMS6, which leads over the track shown under 1C on the plan is within the boundary marked by green circles and labelled 3h which is “House Hedges” and within the area classified as House and Gardens.



53. The guidance may apply to this case as the route of RAMS6 may be within the garden and curtilage of the property; however, the confirmation of the Order is not reliant on this guidance being applicable.
54. The Ramblers do not object to the diversion of RAMS5/LBED20.
55. The Ramsbury Manor Foundation objected to the Order. They raise five points in their objection. The first of which relates to the impact on their sporting right over the land as a result of the diversion order. This matter is discussed at 37- 40 of this report, where the legislation allows compensation to be claimed specifically for the actual loss to sporting rights as caused by the diversion order, which would be the appropriate mechanism to fairly value the loss to sporting rights as a result of the diversion. The second point regarding the increase in distance for users has been discussed at length in this report at 24- 29 and 48-50. The third point is the installation of bollards on the bridleway which will restrict their staff exercising their sporting rights. The bollards will be lockable by either a key or code , any legal users of the bridleway will be given the key or code to open the bollards, this has been confirmed by the landowner and applicant and the countryside access officer. The fourth point raised regarding the negative affect on the view from point C is discussed at 33-34 of this report, officers do not believe the diversion has a negative affect on views in general and at this specific point as demonstrated by the photo at paragraph 33. The fifth point regarding Ramsbury Manors trees overhanging the new path is discussed at paragraph 42 and **Appendix 3** of this report and officers are guided by the Tree and Woodland officers’ assessment.

Overview and Scrutiny Engagement

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

Safeguarding Considerations

57. There are no safeguarding considerations associated with the confirmation of the making of this Order.

Public Health Implications

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

Corporate Procurement Implications

59. In the event this Order is forwarded to the SoSEFRA there are a number of potential requirements for expenditure that may occur, and these are covered in paragraphs 63-66, of this report.

Environmental and Climate Change Impact of the Proposal

60. There are no environmental or climate change concerns associated with the confirmation of the making of this Order. This is wholly rural and recreational route and is unlikely to form any part of a sustainable transport route now or in the future.

Equalities Impact of the Proposal

61. Issues with accessibility have been addressed in the report at paragraph 44.

Risk Assessment

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

Financial Implications

63. The applicant has agreed to pay all the Council’s costs associated with the making of the Order, with the advertisement of the confirmed Order and with the creation of the new path, including the costs of any works required. 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. Where an Order is made but latterly refused by committee or SoSEFRA the costs incurred by the Council will be charged to the applicant, that being the advertising costs of the Order.
64. Where the land is subject to sporting rights compensation may be claimed if the Order is confirmed. However as described at 37 – 39 of this report any costs associated with this will be met by the applicant.
65. Where there are outstanding objections to the making of the 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. If SoSEFRA requests a public inquiry, additional costs may be incurred

to the Council in hiring an appropriate venue and providing equipment to facilitate virtual attendance where requested.

66. There are no costs associated with the Council resolving to abandon the 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

67. Where the Council does not support confirmation of the making of the Order and resolves to abandon it, clear reasons for this must be given and must relate to the legal tests contained within Section 119 of the Highways Act 1980. 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

68. 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

69. Unless the objections and representations are withdrawn the Order must be forwarded to the SoSEFRA for determination if it is to be confirmed.
70. It is considered that in this case the legal tests for the making of a diversion order to divert paths Ramsbury 5, 6, 8C and Little Bedwyn 20 under Section 119 of the Highways Act 1980 were met, and the additional legal tests for confirmation have also been met.
71. The Order is made in the interests of the landowner for privacy reasons and to reduce the conflict between users, livestock, and vehicle movements. The diversions are not considered to be substantially less convenient to the public or have a negative effect on public enjoyment and have a minimal detrimental impact on land on or adjoining the rights of way. Where the diversion may affect sporting rights held by Ramsbury Manor Foundation, legal instruments are in place for compensation to be claimed in regard to those sporting rights if an Order comes into force. The ROWIP, equalities Act, biodiversity, agricultural and forestry concerns have been considered and are not negatively impacted as a result of the diversions. The diversions benefit the public by adding a recorded width for the paths, of at least two metres for a footpath and four metres for a bridleway, where currently the recorded widths are narrower. The surface and furniture will cater for all users and all weathers.

Proposal

72. That the Wiltshire Council Parish of Ramsbury Path Nos. 5, 6 and 8C and Parish of Little Bedwyn Path No.20 Diversion and Definitive Map and Statement Modification Order 2024 is 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

Report Author:
Craig Harlow
Definitive Map Officer

Appendices:

- Appendix 1 - Order and Order Plan
- Appendix 2 - Objections to the order
- Appendix 3 – Tree and Woodland Officers Technical Note