

Southern Area Planning Committee

MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING HELD ON 11 JANUARY 2024 AT THE PUMP ROOM - THE OLD FIRE STATION ENTERPRISE CENTRE, 2 SALT LANE, SALISBURY, SP1 1DU.

Present:

Cllr Andrew Oliver (Chairman), Cllr Sven Hocking (Vice-Chairman),
Cllr Richard Budden, Cllr Sam Charleston, Cllr Brian Dalton, Cllr George Jeans,
Cllr Charles McGrath, Cllr Ian McLennan, Cllr Nabil Najjar and Cllr Bridget Wayman

1 **Apologies**

Apologies were received from:

Cllr Rich Rogers

2 **Minutes of the Previous Meeting**

The minutes of the meeting held on Thursday 14 December 2023 were presented.

Resolved:

To approve as a correct record and sign the minutes.

3 **Declarations of Interest**

There were no declarations.

4 **Chairman's Announcements**

The Chairman explained the meeting procedure to the members of the public.

5 **Public Participation**

The committee noted the rules on public participation.

6 **RIGHTS OF WAY - Winterslow Path No. 94 RoW Modification Order 2023**

Public Participation

There were no registered speakers.

The Definitive Map & Highways Records Manager, Sally Madgwick presented the report on the Rights of Way Modification Order, relating to Winterslow path no. 94 (WSLO94) Back Drove.

The Order had been made to record a width in the definitive map and statement for WSLO94 (Back Drove), byway open to all traffic.

WSLO94, Back Drove, was previously recorded in the Salisbury and Wilton Definitive Map and Statement dated 1952 as a bridleway with a recorded width of 10 feet. It was reclassified as a byway open to all traffic (BOAT) at the Second and Special Review in 1972.

Despite supporting a greater width at the inquiry in 1982, Wiltshire Council had not specifically proposed a definitive statement change to the width at the Second and Special Review and the Inspector found against the Council and other objectors on this point. The recording of the status of the route as a BOAT had not been objected to at that time and has not been objected to with this Order.

Recording of WSLO94 Back Drove had been unchanged for the definitive map and statement date 1972 and since 1929 for the highway record.

It was explained that the Inland Revenue's Finance Act 1909/1910 records were considered as new evidence along with additional evidence relating to Sales Particulars from the early 20th century.

The case officer's report considered both new evidence and previously considered evidence for the purpose of deciding whether, on the balance of probability, a public right existed over a width greater than 10 feet.

The Order had generated three objections. It was explained that as the objections had not been withdrawn, the Order must come to the Committee for consideration, before sending to the Secretary of State for Environment, Food and Rural Affairs (DEFRA) through its offices of The Planning Inspectorate (PINS) for determination.

In making the Order plan, officers were entitled by law to use a scale up to 1:25000 but the more detailed scale of 1:2500 was used to reflect the plan used by the Inland Revenue for their Finance Act 1909/1910 process.

It was proposed that The Wiltshire Council Winterslow Path No. 94 Rights of Way Modification Order 2023 was submitted to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that it be confirmed as made.

Members then had the opportunity to ask technical questions of the Officer. It was noted that the objections were not legally substantive and had arisen due

to residents' anxieties around a possible increase in traffic should the council decide to make road improvements at a later date. One of the objectors represented a number of properties which had encroached on to the road with fencing and planting etc. The Officer noted that the council did not plan to carry out any enforcements along the highway at this time, however the benefit of having the Order made would be to control future encroachment or unauthorised development.

There were 2 titles of ownership in the drove, one based on a statutory declaration.

It was clarified that the Order has been brought to Committee to allow any new legal challenges, of which no new evidence had been produced. The Committee was asked to support the Order as Made.

The width of the back drove was variable, with the southern end narrower than the wider northern end, as shown on the Plan, detailed in Appendix A, coloured in brown.

There were no public speakers.

The Divisional Member, Cllr Rich Rogers who was not present at the meeting, had provided a written statement which was read by the Chairman.

Cllr Rogers statement noted the statutory requirements and set out several observations, including that in the Salisbury & Wilton Definitive Map and Statement dated 1952 defined WSL094 as a bridleway with a recorded width of 10 feet, supported by the reclassification of WSL094 as a Byway Open to All Traffic (BOAT) which took place in 1972.

The new evidence presented did not appear to provide a 'definitive' statement of highway width and one of the objector's statements noted that OS Mapping from 1901 was available, from which the IR Map was derived, therefore it cast some doubt as to whether the IR could legitimately be considered new evidence.

During the 1972 re-classification, WCC supported the view that the route being recorded as wider than 10 feet at the inquiry, but this was dismissed by the Inspector who did not amend the definitive statement, which maintained the recorded width at 10 feet.

Further evidence described the width of WSL094 as varying across its length, which would seem to be an accurate assessment based on evidence. However, the Act makes it clear the need to maintain a definitive statement.

The earlier mapping evidence did not appear to be accompanied by any definitive statement of width, and therefore could only be 'assumed' to be wider.

Further confusion is created by developments on WSL094; in particular relation to land ownership, and the current buildings at Back Drove.

In summary, the report underscores Wiltshire Council's statutory obligation to review the definitive map and statement. While new evidence, in the form of Inland Revenue records, has been presented, concerns arise regarding if it can truly be considered new evidence. The first definitive statement relates to the 1952 which was upheld by the inspector when challenged by WCC during reclassification in 1972. Whilst from earlier records, it may be reasonable to assume the width is greater than 10ft, can these assumptions be admissible as a 'definitive' record, particularly given the precedent set by the Inspector in 1972.

The Officer responded to points raised by the local member, noting that the Finance Act evidence was a new consideration and carried evidential weight. The Inquiry arising out of the Second and the reconsideration of the case was supported by case law – R v Secretary of State for the Environment ex parte Riley 1989.

The 1901 Ordnance Survey map used by the Inland Revenue acted only as a basemap, the value of the document was within the process being followed by the Inland Revenue in using it and the information they had added to it. The process was pursuant to the 1909/1910 Finance Act and required a survey and valuation of all land and property in England. The process involved landowners returning forms which detailed what they did and didn't own and there were criminal sanctions for submitting incorrect information. The local valuer would then inspect the land and properties and create a 'working copy' map showing who owned what, identifying land and property by hereditament numbers. Land that was held by a rating authority was to be left uncoloured and the whole width of Back Drove was left uncoloured in the same way as the local road network.

This was consistent with 1902 Sales Particulars for the Estate (also new evidence) and the highway record of 1929. A record copy was made and kept by the Inland Revenue for taxation purposes. The record copy had also been viewed and not only was Back Drove uncoloured (as per the working copy) it was emphasised by broken red braces being drawn on making it clear the land had not been valued with adjacent hereditaments.

Although the council supported the greater width at the inquiry the Inspector was unable to take that view into account as in not altering the statement width in the original review (1972) meant that it was their intention to retain 10 feet despite their stance at the inquiry some 13 years later.

The council was entitled to alter the definitive map to show a variable width and to demonstrate it by reliance on a historic map. Maps clearly show a route wider than 10 feet.

Cllr Sven Hocking then moved the motion to support the Order in line with officer recommendation.

This was seconded by Cllr Ian McLennan

The Committee discussed the Order, with the agreement that the new evidence did support an Order to record the greater width.

At the conclusion of debate, the Committee voted on the motion to support the Order in line with the Officer proposal.

It was;

Resolved:

That the Wiltshire Council Winterslow Path No. 94 Rights of Way Modification Order 2023 would be submitted to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that it be confirmed as made.

7 **Urgent Items**

There were no urgent items

(Duration of meeting: 3.00 - 3.40 pm)

The Officer who has produced these minutes is Lisa Alexander of Democratic Services, direct line 01722 434560, e-mail lisa.alexander@wiltshire.gov.uk

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