

AGENDA

Meeting: Western Area Planning Committee
Place: Council Chamber - County Hall, Trowbridge BA14 8JN
Date: Wednesday 18 May 2016
Time: 3.00 pm

Please direct any enquiries on this Agenda to Shirley Agyeman, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718089 or email <mailto:Shirley.Agyeman@wiltshire.gov.uk>

Press enquiries to Communications on direct lines (01225) 713114/713115.

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Membership:

Cllr Christopher Newbury (Chairman)	Cllr Magnus Macdonald
Cllr John Knight (Vice Chairman)	Cllr Pip Ridout
Cllr Trevor Carbin	Cllr Jonathon Seed
Cllr Ernie Clark	Cllr Roy While
Cllr Andrew Davis	Cllr Graham Payne
Cllr Dennis Drewett	

Substitutes:

Cllr Nick Blakemore	Cllr Keith Humphries
Cllr Rosemary Brown	Cllr Gordon King
Cllr Terry Chivers	Cllr Stephen Oldrieve
Cllr Fleur de Rhé-Philippe	Cllr Jerry Wickham
Cllr Russell Hawker	Cllr Philip Whitehead

The membership is subject to confirmation at Annual Council on 10 May 2016 and any changes will be reported at the meeting.

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AGENDA

Part I

Items to be considered when the meeting is open to the public

1 **Apologies for Absence**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 5 - 30*)

To approve and sign as a correct record the minutes of the meeting held on 27 April 2016.

3 **Chairman's Announcements**

To receive any announcements through the Chair.

4 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register in person no later than 2.50pm on the day of the meeting.

The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered. The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda (acting on behalf of the Corporate

Director) no later than 5pm on Wednesday 11 May 2016. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Planning Appeals Update Report** (*Pages 31 - 32*)

To receive details of appeal decisions and appeals pending.

7 **Planning Applications**

To consider and determine the following planning applications:

7a **16/02223/FUL - The Grove Primary School Hazel Grove Trowbridge**
(*Pages 33 - 40*)

7b **16/02681/FUL - 8 Fulmar Close Bowerhill** (*Pages 41 - 48*)

7c **16/02306/FUL - Homefield 19 Bratton Road West Ashton**
(*Pages 49 - 56*)

8 **WILTSHIRE COUNCIL PARISH OF HEYWOOD PATHS 6 (PART), 7 AND 8 (PART) STOPPING UP AND DIVERSION ORDER AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2016** (*Pages 57 - 98*)

9 **Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency.

Part II

Item during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

None

WESTERN AREA PLANNING COMMITTEE

**DRAFT MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING
HELD ON 27 APRIL 2016 IN THE COUNCIL CHAMBER - COUNTY HALL,
TROWBRIDGE BA14 8JN.**

Present:

Cllr Christopher Newbury (Chairman), Cllr John Knight (Vice Chairman),
Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Magnus Macdonald,
Cllr Pip Ridout, Cllr Jonathon Seed, Cllr Roy While, Cllr Terry Chivers (Substitute)
and Cllr Graham Payne

32 Apologies for Absence

Apologies for absence were received from Cllr Dennis Drewitt (substituted by
Cllr Terry Chivers).

33 Minutes of the Previous Meeting

The minutes of the meeting held on 6 April 2016 were presented.

Resolved:

**To approve as a correct record and sign the minutes of the meeting held
on 6 April 2016.**

34 Chairman's Announcements

There were no Chairman's Announcements.

The Chairman gave details of the exits to be used in the event of an
emergency.

35 Declarations of Interest

There were no declarations of any disclosable interests.

36 **Public Participation and Councillors' Questions**

No questions had been received from councillors or members of the public.

The Chairman welcomed all present. He then explained the rules of public participation and the procedure to be followed at the meeting.

37 **Planning Appeals Update Report**

In response to a question asked by Cllr Ridout about the current status of appeals since the circulation of the last report, Mr. Mike Wilmott gave a verbal update noting that three new appeals had been submitted, one appeal was forthcoming and the rest ongoing.

Cllr Clark sought clarification on the officer recommendation on planning application no. 15/01674/FUL that was shown as 'refuse'.

Mr. Wilmott confirmed that the officer recommendation had been to grant permission.

Resolved:

To note the Planning Appeals Update Report between 14/04/2016 and 31/12/2016.

38 **Planning Applications**

The Committee considered the following applications:

15/12454/OUT - Land To The North Of Sandridge Common, Sandridge Road, Melksham, Wiltshire

16/01161/FUL - Blackberries Camping Park, Farleigh Rise, Monkton Farleigh, Wiltshire, BA15 2DY

39 **15/12454/OUT - Land To The North Of Sandridge Common, Sandridge Road, Melksham, Wiltshire**

The Senior Planning Officer outlined the report that recommended that the application be deferred and delegated to the Area Development Manager subject to the prior completion of a legal agreement within the next 6 months, to cover the matters identified and conditions.

Mr. Eric Alder, Mr. Paul Widdicombe, Chairman of residents committee and Matthew White, a resident, spoke in objection to the application; at the discretion of the Chairman, Ms. Angela Hardgreaves, also a resident, spoke in objection to the application.

Cllr Terry Chivers began the debate.

Issues discussed in the course of the presentation and debate included: issues surrounding the application of the 5 year land supply principle, the impact on the character and appearance of the area, impact upon neighbouring amenity, access and highways issues, the primary education contribution and capacity for intake in local schools.

Cllr Jonathan Seed proposed, subsequently seconded by Cllr. Andrew Davis that the Committee should defer the application as per the Officer's recommendations detailed in the report and subject to any additional conditions and amendments identified and agreed.

In questioning the Senior Planning Officer, the Committee sought clarity on the implications of the application of the 5 year land supply rule and the conditions governing the primary education contribution.

In response to the above, the Senior Planning Officer explained that the withdrawal of the request from the Council's Education Team for a contribution towards primary education was because they had received updated projection figures for school age children in the area and had established that at this time in the area of this development there was capacity in the local primary school to accommodate the pupils arising from this development. He emphasised that the provision of evidence of a need was key to justifying any request for educational funding.

On the issue of the implications of the 5 year land supply rule, the Area Development Manager explained that the Core Policy 2 (CP2) sets out the delivery strategy and advises that within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at Market Towns. The Planning Policy Framework (NPPF) seeks to ensure that the Council demonstrates a five year housing supply for the north and west housing market area that includes Melksham.

Resolved

That the application be deferred and delegated to the Area Development Manager to grant planning permission, subject to the prior completion of a legal agreement, within the next 6 months, to cover the matters identified in section 9.10 of the report (save for the primary education contribution), and subject to the conditions set out below.

1. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:
 - (a) The scale of the development;
 - (b) The layout of the development;
 - (c) The external appearance of the development;
 - (d) The landscaping of the site;
 - (e) Means of access.

The development shall be carried out in accordance with the approved details.

REASON: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 5 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

3. An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

4. The development hereby permitted shall be carried out in accordance with the following approved plans:

1578-01 received on 16th December 2015;

302.P.1 received on 16th December 2015;

302.P.3 Rev A received on 16th December 2015; and

302.E.5.3 Rev B received on 16th December 2015.

REASON: For the avoidance of doubt and in the interests of proper planning.

5. No more than 100 dwellings shall be erected on the site.

REASON: To define the terms of the permission.

6. There shall be no development of 3-storeys or greater. To the western boundary development shall be garden to garden.

REASON: In the interests of the character and appearance of the area and residential amenity.

7. No development shall commence on site until a programme of phasing for the development (including off-site highway improvement works) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

REASON: In order to define the terms of the permission.

8. No development above ground level shall commence on site until the details of the materials to be used for the external walls and roofs (including samples) have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission.

9. No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include
- * location and current canopy spread of all existing trees and hedgerows on the land;
 - * full details of any to be retained, together with measures for their protection in the course of development;
 - * a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
 - * finished levels and contours;
 - * means of enclosure and boundary treatments;
 - * car park layouts;
 - * other vehicle and pedestrian access and circulation areas;
 - * all hard and soft surfacing materials;
 - * minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc);
 - * proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines etc indicating lines, manholes, supports etc);
 - * arboricultural method statement;

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the

matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

10. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

11. Before development takes place, a Landscape and Ecology Management Plan shall be prepared and submitted to the local planning authority for approval, including the provision of integral boxes for nesting birds and roosting bats within dwellings adjacent to the eastern and western boundaries, and around the SUDS area. The development site shall be managed and maintained in accordance with the measures set

out in the approved plan in perpetuity unless otherwise agreed in writing with the local planning authority.

REASON: To ensure the appropriate management of priority habitats and mitigation for protected species.

12. No development shall commence on site until details of a foul drainage disposal scheme has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details prior to the occupation of any approved building.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner.

13. No development shall commence on site until details of a storm drainage disposal scheme has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details prior to the occupation of any approved building.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner.

14. No development shall commence on site until details of a surface water management scheme for the site, based on sustainable drainage

principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the local planning authority. The submitted details shall clarify the intended future ownership and maintenance provision for all drainage works serving the site. The scheme shall subsequently be implemented in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to prevent the increased risk of flooding, and ensure future maintenance of the surface water drainage system.

15. No development shall commence on site until a scheme for water efficiency has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the agreed details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner and to prevent the increased risk of flooding, and ensure future maintenance of the surface water drainage system.

16. The dwellings hereby approved shall achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until evidence has been issued and submitted to, and approved in writing by, the local planning authority certifying that this level or equivalent has been achieved.

REASON: To ensure that the objectives of sustainable development equal or equivalent to those set out in Policy CP41 of the Wiltshire Core Strategy are achieved.

17. The Residential Travel Plan dated December 2015 shall be implemented in accordance with the measures set out within the hereby agreed document. The results of the implementation and monitoring shall be made available to the Local Planning Authority on request, together with any changes to the plan arising from those results.

REASON: In the interests of road safety and reducing vehicular traffic to the development.

18. Prior to first occupation of any dwelling hereby permitted the access shall be provided with visibility with nothing to exceed the height of 600mm above carriageway level between the carriageway edge, and a line drawn from a point 2.4 metres back along the centre line of the access from the carriageway edge, to points on the nearside carriageway edge 90 metres to the east and 90 metres to the west.

REASON: In the interests of highway safety.

19. Prior to first occupation 2 metre wide pedestrian footways shall have been provided on the northern side of the A3102 as detailed on plan number 301/E/5/3/B. The footways so provided shall thereafter remain permanently available for use by pedestrians.

REASON: in the interests of pedestrian accessibility.

20. Prior to first occupation the vehicular access to the development including a right turning lane, pedestrian refuge and street lighting on the A3102 shall have been provided.

REASON: In the interests of safe and convenient access to the development.

21. Details of improvements to the existing highway footway link to Lansdowne Close shall be submitted to and approved in writing by the Local Planning Authority. These details shall include a specification for the construction of a tarmacadam footway for the first five metres beyond the western site boundary and resurfacing of the remainder of the footway.

The works, insofar as can be carried out within the extent of the existing public highway, shall be carried out in accordance with the approved details prior to the occupation of the 50th dwelling.

Any application for reserved matters approval shall include a pedestrian link within the development to the offsite link to Lansdowne Close.

REASON: In the interests of pedestrian accessibility.

22. Notwithstanding the details submitted, no development shall commence on each phase of the site until details of the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, including the timetable for provision of such works, have been submitted to and approved by the Local Planning Authority. No part of development shall be first occupied until the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street

furniture that serve that part of the development have all been constructed and laid out in accordance with the approved details, unless an alternative programming arrangement is agreed in the approved details.

REASON: In the interests of highway safety.

23. The roads, including footpaths and turning spaces, shall be constructed so as to ensure that, before it is occupied, each dwelling has been provided with a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

REASON: In the interests of highway safety.

24. Before any development takes place, a Construction Environmental Management Plan (CEMP) shall be submitted to the local planning authority for approval. The Plan shall provide details of the measures that will be implemented during the site clearance and construction phases to prevent any harm or injury to protected species (specifically including badger, hedgehog, reptiles, amphibians and nesting birds), hedgerows and trees. The CEMP shall include details for dust suppression. Development shall be carried out in full accordance with the approved plan.

REASON: To ensure adequate protection and mitigation for protected species, priority species and priority habitats; and in the interests of the amenities of the area.

25. No development shall commence on site until a waste audit regarding the construction of the site (part a-g) of Policy WCS6 of the Waste Core Strategy) has been submitted to and approved in writing by the Local

Planning Authority. The development shall then be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission.

26. The construction of dwellings hereby permitted shall not commence on site until details of the storage of refuse, including details of location, size, means of enclosure and materials have been submitted to and approved in writing by the Local Planning Authority. A dwelling shall not be first occupied until the approved refuse storage for that dwelling has been completed and made available for use in accordance with the approved details and it shall be retained in accordance with the approved details thereafter.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner for the interests of public health and safety

27. No development shall commence on site (other than that required to be carried out as part of a scheme of remediation approved by the Local Planning Authority under this condition), until steps (i) to (iii) below have been fully complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until step (iv) has been complied with in full in relation to that contamination.

Step (i) Site Characterisation:

An investigation and risk assessment must be completed to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings submitted to and approved in writing by the Local Planning Authority. The report of the findings must include:

- A survey of the extent, nature and scale of contamination on site;
- The collection and interpretation of relevant information to form a conceptual model of the site, and a preliminary risk assessment of all the likely pollutant linkages;
- If the preliminary risk assessment identifies any potentially significant pollutant linkages a ground investigation shall be carried out, to provide further information on the location, type and concentration of contaminants in the soil and groundwater and other characteristics that can influence the behaviour of the contaminants;
- An assessment of the potential risks to
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwater and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;

This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.

Step (ii) Submission of Remediation Scheme:

If any unacceptable risks are identified as a result of the investigation and assessment referred to in step (i) above, a detailed remediation scheme to bring the site to a condition suitable for the intended use must be prepared. This should detail the works required to remove any unacceptable risks to human health, buildings and other property and the natural and historical environment, should be submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures.

Step (iii) Implementation of Approved Remediation Scheme:

The approved remediation scheme under step (ii) must be carried out in accordance with its requirements. The Local Planning Authority must be given at least two weeks written notification of commencement of the remediation scheme works.

Step (iv) Reporting of Unexpected Contamination:

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it should be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment should be undertaken in accordance with the requirements of step (i) above and where remediation is necessary, a remediation scheme should be prepared in accordance with the requirements of step (ii) and submitted to and approved in writing by the Local Planning Authority.

Step (v) Verification of remedial works:

Following completion of measures identified in the approved remediation scheme a verification report (referred to in PPS23 as a validation report) must be produced. The report should demonstrate the effectiveness of the remedial works. A statement should also be provided by the

developer which is signed by a person who is competent to confirm that the works detailed in the approved scheme have been carried out (The Local Planning Authority can provide a draft Remediation Certificate when the details of the remediation scheme have been approved at stage (ii) above).

The verification report and signed statement should be submitted to and approved in writing of the Local Planning Authority.

Step (vi) Long Term Monitoring and Maintenance:

If a monitoring and maintenance scheme is required as part of the approved remediation scheme, reports must be prepared and submitted to the Local Planning Authority for approval at the relevant stages in the development process as approved by the Local Planning Authority in the scheme approved pursuant to step (ii) above, until all the remediation objectives in that scheme have been achieved.

All works must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

28. No external lighting shall be installed on the site until plans showing the type of light appliance, the height direction and position of fitting, illumination levels and light spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication "Guidance Notes for the Reduction of Obtrusive Light" (ILE, 2005)" have been submitted to and approved in writing by the Local Planning Authority.

The details shall:

- a) Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb foraging/commuting bats using the boundary hedgerows), including security lighting and lighting of footpaths (if necessary); and
- b) Specify luminaires, heights and positions of fittings, direction and other features, e.g. cowls, louvres or baffles

The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

REASON: In the interests of the amenities of the area, to minimise unnecessary light spillage above and outside the development site and to protect wildlife interests.

29. Demolition or construction works on the site and vehicle deliveries shall not take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:30 hours to 13:00 hours on Saturdays nor at any time on Sundays or Bank Holidays.

REASON: In the interest of protecting the amenity of nearby residential properties.

30. No dwelling hereby approved shall be occupied until a public art scheme for the site and a timetable for installation has been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure the proposal complies with the relevant public art policies.

INFORMATIVE: This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990.

INFORMATIVE: The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy.

INFORMATIVE: The submitted Utilities Statement says at 6.1 that permeable paving will be used within the development. The applicants

should be advised that permeable paving will not be accepted for the adoptable highway areas.

INFORMATIVE: The applicant is advised that the reserved matters application should include low-rise development to reflect the adjacent development to the west and the fringe of town location.

INFORMATIVE: Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

INFORMATIVE: Safeguards should be implemented during the construction phase to minimise the risks of pollution and detrimental effects to the water interests in and around the site. Such safeguards should cover the use of plant and machinery, oils/chemicals and materials; the use and routing of heavy plant and vehicles; the location and form of work and storage areas and compounds and the control and removal of spoil and wastes. We recommend the applicant refer to the Environment Agency's Pollution Prevention Guidelines, which can be found at:

<https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>

INFORMATIVE: The applicant should note that under the terms of the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended) it is an offence to disturb or harm any protected species, or to damage or disturb their habitat or resting place. Please note that this consent does not override the statutory protection afforded to any such species. In the event that your proposals could potentially affect a protected species you should seek the advice of a suitably qualified and experienced ecologist and

consider the need for a licence from Natural England prior to commencing works. Please visit the following websites for more information:

<http://www.wiltshire.gov.uk/planninganddevelopment/biodiversityanddevelopment.htm>

<https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

INFORMATIVE: Bird nesting or bat roosting opportunities in new buildings, such as integral bat bricks (e.g. <http://www.ibstock.com/sustainability-ecozone.asp>), bat tubes (e.g. http://www.nhbs.com/2fr_schwegler_bat_tube_tefno_162812.html) or Habitat (<http://www.habibat.co.uk/>) are integral and can be fitted into the walls of buildings. They do not interfere with the human inhabitants and require no maintenance. Woodcrete products are longer-lived than traditional timber-made boxes, and there are many different products available from a range of suppliers. These types of enhancements can be generic or aimed at specific species. Nest boxes are available from a range of different suppliers; the following is a small selection to demonstrate how these boxes can be incorporated into the fabric of buildings and for more information for the applicant in some cases. Enhancements can also be provided for other species such as amphibians and reptiles, hedgehogs and invertebrates. Further information can be found at:

<http://www.ecosurv.co.uk/product/bird-box-range>

<http://www.habibat.co.uk/bird-boxes/>

<http://www.birdbrickhouses.co.uk/page53.html>

<http://www.nhbs.com/title/188492/habi-sabi-starling-box>

<http://www.nhbs.com/title/184737/starling-box-smooth-brick>

<http://www.nhbs.com/title/184740/starling-box-custom-brick-facing>

http://swift-conservation.org/swift_bricks.htm

<http://www.ibstock.com/sustainability-ecozone.asp>

http://www.ciria.com/buildinggreener/complementary_features.htm
<http://planningguidance.planningportal.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/>

INFORMATIVE: Proposals show intention to form a new outfall and discharge to an ordinary watercourse – this including discharge rates will require a separate Land Drainage Consent application and approval. This is a separate legislation requirement and granting of planning permission does not give automatic LDC – in fact gaining LDC may require alteration of any planning application/approval documentation.

40 **16/01161/FUL - Blackberries Camping Park, Farleigh Rise, Monkton Farleigh, Wiltshire, BA15 2DY**

The Senior Planning Officer outlined the report that recommended that the application be approved with conditions.

Mr. John Veal spoke in objection to the application and Ms. Beryl Orchard spoke in support of the application.

Cllr Trevor Carbin spoke as the local member and noted that having gone through the application he could find no justifiable grounds for refusal

Issues discussed in the course of the presentation and debate included: the impact on neighbouring amenity and the issue of noise pollution; the planning policy on Green Belt and relevant implications; and highways issues.

Cllr Trevor Carbin proposed subsequently seconded by Cllr Pip Ridout that the application be approved subject to an amendment of condition 8.

Resolved

To approve the application subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan received on 5 February 2016; 'Proposed block plan' received on 5 February 2016; 'Proposed reception building' – north and east elevations and floor plan received on 5 February 2016; 'Proposed reception building' – south and west elevations and roof plan received on 5 February 2016; 'Proposed new toilet and shower facility' – south and west elevations received on 5 February 2016; 'Proposed new toilet and shower facility' – north and east elevations received on 5 February 2016; 'Proposed new toilet and shower facility' – floor plan received on 5 February 2016

REASON: For the avoidance of doubt and in the interests of proper planning.

3. In accordance with the details submitted and assessed under this application no more than 15 pitches (either tents or pods or caravans) shall be sited and in use on the land at any time.

REASON: In order to define the terms of this permission, highway safety and to protect the rural scene.

4. Any gates shall be set back 10 metres from the edge of the carriageway, such gates to open inwards only, in perpetuity.

REASON: For the sake of consistency, the avoidance of any doubt and highway safety.

5. The existing visibility splays between the edge of the carriageway and a line extending back to a point 2.4 metres back from the edge of the carriageway, measured along the centre line of the access, to a point on the edge of the carriageway 90 metres towards the east and north-western corner of the site frontage towards the west shall be permanently kept free of obstruction to vision above a height of 900mm above the level of the adjacent carriageway.

REASON: For the sake of consistency, the avoidance of any doubt and highway safety.

6. The approved details of refuse storage and external lighting under planning permission W/13/00050/FUL shall be maintained in accordance with those details in perpetuity. There shall be no additional external lighting.

REASON: For the sake of consistency, the avoidance of any doubt and protecting the rural amenities.

7. All shrubs, trees and hedge planting as approved under planning permission W/13/00050/FUL shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

REASON: For the sake of consistency, the avoidance of any doubt and protecting the rural amenities.

8. There shall be no further use of pitches 11-15 until a management plan for the operation of the site has been submitted to and approved in writing by the local planning authority in consultation with Monkton Farleigh Parish Council. The management plan shall be submitted within 1 month of the planning permission hereby granted. The management plan shall include details such as the reception hours, measures to control noise generation and guest arrival times. The site management shall be carried out in accordance with the approved details thereafter.

REASON: In the interests of the amenities of the area.

1. **INFORMATIVE:** Please note that this consent does not override the statutory protection afforded to any protected species. The applicant should note that under the terms of the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended) it is an offence to disturb or harm any protected species, or to damage or disturb their habitat or resting place. In the event that your proposals could potentially affect a protected species you should seek the advice of a suitably qualified and experienced ecologist and consider the need for a licence from Natural England prior to commencing works. Please visit the following websites for more information:

<http://www.wiltshire.gov.uk/planninganddevelopment/biodiversityanddevelopment.htm>

<https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

2. **INFORMATIVE:** The applicant is advised that all British bat species are protected under The Conservation of Habitats and Species Regulations 2010 (as amended), which implements the EC Directive 92/43/EEC in the United Kingdom, and the Wildlife and

Countryside Act 1981 (as amended). This protection extends to individuals of the species and their roost features, whether occupied or not. Please note that this consent does not override the statutory protection afforded to any such species. If bats or evidence of bats is found at any stage of development, all works should stop immediately and a licensed bat worker should be contacted for advice on any special precautions before continuing (including the need for a derogation licence from Natural England).

3. **INFORMATIVE:** The Protection of Badgers Act 1992 protects badgers from cruel ill-treatment, including damage or destruction of their setts, or disturbance whilst a sett is in occupation. This Act makes it illegal to carry out work that may disturb badgers without a Natural England licence. Particular care should be taken when clearing ground prior to development, and if evidence of badger activity is found, (such as foraging routes, snuffle holes, latrines or established setts), then work must stop immediately while a professional ecologist is contacted for advice. Applicants are advised to pay particular attention to foundation ditches, which can be hazardous to badgers. Sloping boards or steps should be provided to allow badgers to escape from such ditches should they become trapped. Failure to consider this matter, leading to the death of individuals, may leave the developer liable for prosecution. Further information about badgers and licensing can be found at <https://www.gov.uk/badgers-protection-surveys-and-licences>

4. **INFORMATIVE:** All reptiles are legally protected under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and planning permission does not provide a defence against prosecution. In order to minimise the risk of reptiles occurring on the site, the developer is advised to clear the site and vegetation in a sympathetic manner during the autumn (September/October) or spring months (April-May)

and to maintain the vegetation at a short height to make it unsuitable for reptiles until the construction works commence. If these species are found during the works, the applicant is advised to stop work and follow the advice of a professional ecologist to inform necessary mitigation and/or compensation measures.

5. INFORMATIVE: Under the Wildlife and Countryside Act 1981, as amended (Section 1), it is an offence to remove, damage and destroy a nest of any wild bird while that nest is in use or being built. Planning permission for a development does not provide a defence against prosecution under this Act. Trees, scrub and other vegetation, such as dense ivy, are likely to contain nesting birds between 1st March and 31st August. Woodland, hedgerows, scrub and individual trees are present on the application site and should be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

41 **Urgent Items**

There were no urgent items.

(Duration of meeting: 3.00 - 4.41 pm)

The Officer who has produced these minutes is Shirley Agyeman, of Democratic Services, direct line 01225 718089, e-mail <mailto:Shirley.Agyeman@wiltshire.gov.uk>

Press enquiries to Communications, direct line (01225) 713114/713115

Wiltshire Council
Western Area Planning Committee
18th May 2016

Forthcoming Hearings and Public Inquiries between 09/05/2016 and 31/12/2016

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Date	Overturn at Cttee
14/09262/OUT	Land North of Bitham Park Trowbridge Road Westbury Wiltshire	HEYWOOD	Proposed development of up to 300 dwellings; Creation of new roundabout access from Trowbridge Road; Creation of a new emergency/cycle and pedestrian access from Coach Road; Open Space; Drainage Works and ancillary works	COMM	Inquiry	Refuse	14/06/2016	No
14/11919/OUT	Land Off A365 Shurnhold Melksham Wiltshire	MELKSHAM WITHOUT	Outline application with all matters reserved except for access, for demolition of existing structures and construction of up to 263 dwellings with access, open space, landscaping and associated works.	COMM	Inquiry	Refuse	21/06/2016	No
15/10492/FUL	Land At Sunnyside Yarnbrook Road West Ashton Wiltshire	WEST ASHTON	Use of land as private gypsy and traveller caravan site, consisting of 2 no. pitches each with 1 no. mobile home, 1 no. touring caravan, and 1 no. utility dayroom, plus stabling.	DEL	Hearing	Refuse	31/08/2016	No

Planning Appeals Received between 14/04/2016 and 09/05/2016

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
15/08387/OUT	Woolmore Manor Bowerhill, Wiltshire SN12 6QZ	MELKSHAM WITHOUT	Outline application for 8 dwellings and associated access (Outline application to determine layout, scale and access - Resubmission of 14/03607/OUT)	DEL	Written Representations	Refuse	19/04/2016	No

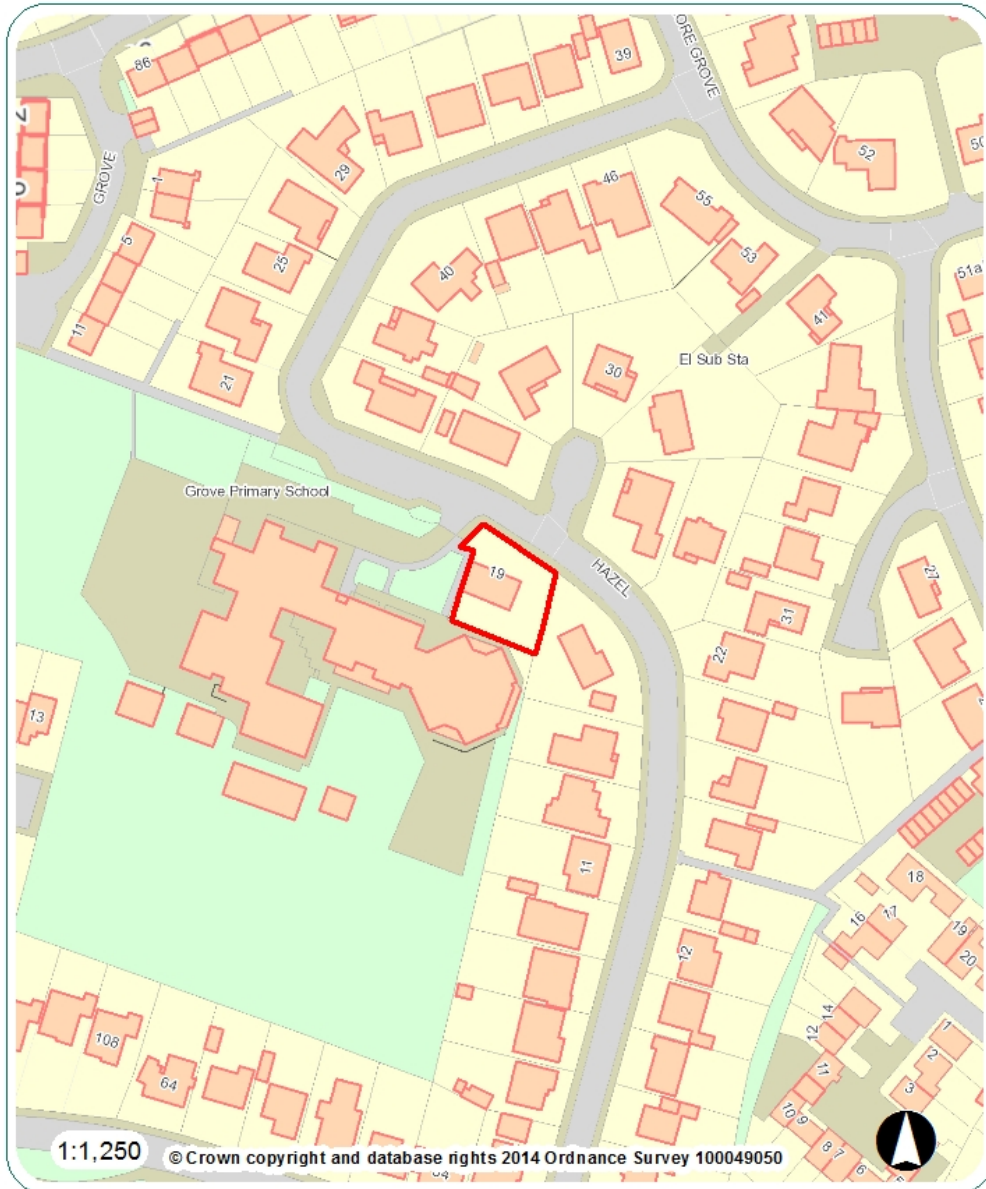
Planning Appeals Decided between 14/04/2016 and 09/05/2016

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded
15/12082/FUL	1 Church Lane Melksham, Wiltshire SN12 7EE	MELKSHAM (TOWN)	Extension to dormer roof extension	DEL	House Holder Appeal	Refuse	Dismissed	29/04/2016	No

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16/02223/FUL
The Grove Primary School
Hazel Grove
Trowbridge
Wilts
BA14 0JG



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Date of Meeting	18 May 2016
Application Number	16/02223/FUL
Site Address	The Grove Primary School Hazel Grove Trowbridge Wiltshire BA14 0JG
Proposal	Change of use to meeting room and after school club.
Applicant	The Grove Primary School
Town/Parish Council	TROWBRIDGE
Electoral Division	TROWBRIDGE GROVE – (Call in by Councillor Payne)
Grid Ref	384871 156405
Type of application	Full Planning
Case Officer	Matthew Perks

Reason for the application being considered by Committee

This application is brought to Committee because it is a Wiltshire Council application to which objections have been received and which has been called in by Councillor Payne for consideration of the impacts on highways and parking.

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved.

2. Report Summary

The application proposal is described in the application form as being for a change of use to allow for a meeting room, breakfast club and after school club. The building is currently used as a meeting room of the ex-caretaker's dwelling (currently lawfully in use as a meeting room). The report assesses this proposal in the light of the site history and neighbouring amenity considerations and recommends that permission is granted.

Neighbourhood Responses: 38 neighbour objection were received.

Trowbridge Town Council: Objects to the proposals.

3. Site Description

The application site is a meeting area which was originally a caretaker's dwelling within the grounds of Grove Primary School. The building is located in the north east corner of the school grounds.

4. Planning History

W/09/03237/FUL Change of use of dwelling house (C3) to form school meeting room (use class D1) and alterations to fenestration : Permission

13/06157/FUL Conversion of existing school bungalow accommodation into a nursery and external covered area, fencing with associated works : Refused

5. The Proposal

The proposal is for the change of use to allow for a meeting room, breakfast club and after school club of a building currently used only as a meeting room.

6. Local Planning Policy

Core Policy 57: Ensuring High Quality Design and Place Shaping
Core Policy 61 Transport and New Development

7. Summary of consultation responses

Trowbridge Town Council

Objected where there are concerns regarding car parking. The Council would like to see the school provide a five year plan outlining improved car parking facilities as this will have an environmental and highway impact on neighbourhood.

Highway Officer

The Officer notes that from the information supplied the proposal is already in place and the building is being used as intended in the proposal already. The proposal is for a use that is ancillary to the school use and as such the children attending will already be pupils of the school, therefore there will not be an increase in pupils attending the school, they will be getting to school and leaving school at different times other than core school hours and therefore will not be causing an increase to the vehicles that already drop and collect the children from the school. No objection.

Environmental Health

The officer has no adverse comments to make.

8. Publicity

38 responses were received to advertising. Objections are:

- The application is misleading where the activities are already occurring. It is retrospective;
- Highway congestion and lack of adherence to traffic laws;
- Hazel Grove is restricted and extensions to the school have led to increasing congestion;
- The application will lead to extra traffic;
- Parking situation will worsen;
- Possibility of additional pupils and staff;
- No need for additional space;
- Not clear what the hours will be;
- No additional space needed for children;
- Previous refusal under 13/06157/FUL due to traffic issues;
- Full traffic assessment required;
- Anti-social behaviour from parents during congestion; and
- Hazards to pedestrian;

9. Planning Considerations

Under Planning Application W/09/03237/FUL permission was granted for the change of use of the caretaker's cottage to a meeting room subject, inter alia, the following condition:

"The site shall be used for a meeting room and for no other purpose (including any other purpose in Class D1 of the Schedule 10 the Town and Country Planning (Use Classes) Order 1987 (as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005,(or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use having regard to the Circumstances of the case."

The current proposals would enable the building to be utilised for the meeting room as well as a breakfast club and after school club.

Following initial enquires, inter-alia from the highway officer, the applicant has confirmed that the use would be restricted exclusively to current pupils. It was also confirmed that the school has used the bungalow for educational purposes during the school day; for a daily breakfast club (7.45 a.m. - 8.30 a.m.) and after school club (3.05 p.m. – 5.30 p.m.) and that the after school club has operated since September 2012. The proposal is therefore partially retrospective albeit that the definition of a "meeting room" is not defined in the condition previously imposed, and is open to interpretation. The application would however properly define and regularise the use in the event that permission is granted.

From the neighbour and Town Council responses it is clear that congestion is of major concern to residents of the area, and this was the reasons for the previous refusal under application 13/06157/FUL. That application was however for an increase in capacity at the school in terms of overall numbers.

Core Policy 57 (Ensuring High Quality Design and Place Shaping) requires that neighbouring amenity is considered in any planning application and that nuisance and highway matters are considered (Core Policy 61 : Transport and New Development)

There are no highway officer objections to the current proposal where no additional pupils are proposed to be accommodated. The proposal does not constitute any new physical development, and the existing lawful use of the building is for a “meeting room” with no constraints in terms of time or nature of the meetings. It is considered that the proposals would allow for a reasonable use ancillary to the school, without giving rise to any additional congestion. It is furthermore considered that the previous conditions can be reasonably amended to include time constraints which better define the activities in the building. Without being dismissive of what is clearly an issue of traffic for neighbours it is considered that there are not valid highway reasons for the refusal of the application provided that the consent is clearly conditioned in terms of the use and hours.

No changes are proposed to the building structure and layout and there are no objections from Environmental Health Officers.

RECOMMENDATION

Permission, subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the building shall be used solely for purposes of a meeting room, breakfast club and/or after-school club within Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)(or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use, other than a use within the same class, having regard to the circumstances of the case.

3. The uses hereby permitted shall not be used at any time other than for purposes ancillary to The Grove Primary School.

REASON: The use of the building for anything other than school needs would have a detrimental impact on neighbouring amenity.

4. The uses hereby permitted shall not take place outside of the hours of 07h45 and 17h30 from Mondays to Fridays only.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and vehicular activity in the interests of the amenity of the area.

5. The development hereby permitted shall be carried out in accordance with the following approved plans:

290455-07 (Location Plan) first registered on 9 November 2009; and
290455-09 Received on 17 March 2016.

REASON: For the avoidance of doubt and in the interests of proper planning.

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16/02681/FUL
8 Fulmar Close
Bowerhill
Melksham
Wilts
SN12 6XU



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Date of Meeting	18 May 2016
Application Number	16/02681/FUL
Site Address	8 Fulmar Close, Bowerhill, Wiltshire SN12 6XU
Proposal	Proposed new roof to detached garage with ancillary accommodation
Applicant	Mr Omar Abdulshakour
Town/Parish Council	MELKSHAM WITHOUT
Electoral Division	MELKSHAM WITHOUT SOUTH – Councillor Roy While
Grid Ref	391735 162252
Type of application	Full Planning
Case Officer	Katie Yeoman

Reason for the application being considered by Committee:

Cllr Roy While requested that this application be called-in for the elected members to determine should officers be minded to grant permission. The expressed key issues identified by Cllr While for members to consider are:

The scale of development
 The visual impact upon the surrounding area
 The relationship to adjoining properties
 The design – bulk, height and general appearance

1. Purpose of Report

The purpose of this report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved.

Melksham Without Town Council response– No objection.

Neighbourhood responses – 6 letters of objection were received which are summarised in section 8.

2. Report Summary

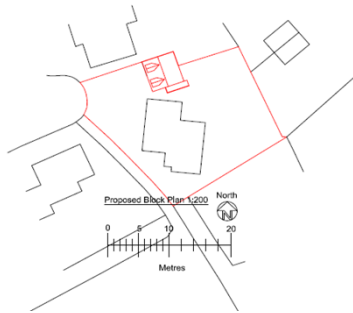
The main issues to consider with this application are:

- The impact on the character and appearance of the host dwelling and wider area.
- The impact on neighbour amenity

3. Site Description

The application site relates to a residential property located at the south eastern end of the Fulmar Close cul-de-sac in Bowerhill. The property comprises a two storey detached dwelling constructed of red brickwork under a concrete profile tiled roof. The detached single storey detached garage which is the subject building for this application is located to

the north of the dwellinghouse and is illustrated in the following block plan and site photograph.



An area of hardstanding is located to the property frontage with the garden to the rear.

4. Planning History

W/93/00156/FUL	Bedroom and lounge extension	Approved with Conditions
W/02/00610/FUL	Extension	Approved with Conditions

5. The Proposal

This application seeks permission for ancillary accommodation to be provided within the roof space of the existing garage. The applicant proposes to increase the roof height by approximately 0.8, install two dormer windows to the front roof slope and one roof light in the rear and construct an external staircase to the south elevation. This would be an ancillary use to the main building.

6. Local Planning Policy

Wiltshire Core Strategy CP15 and CP57

The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG)

7. Summary of Consultation Responses

Melksham Without Parish Council: No objections.

8. Publicity

The public consultation exercise comprised individual letters being sent to neighbours and the display of a site notice. Following the public notification, six letters of objection have been received which in summary raise the following issues:

- Detrimental design and visual impact.
- There is a similar construction currently being built at the start of the same close (no. 3 Fulmar Close) but the high level doorway overlooks the road and not the surrounding gardens and houses.
- The garage at no. 8 Fulmar Close is already higher than other garages in the vicinity and an increase in height would have a significant impact on the residential amenity. In particular, the proposal would adversely impact upon the outlook from these properties, loss of light, overshadowing and loss of privacy.
- Concerns regarding the proposed use of the site and future development that would cause noise and traffic concerns.
- The increase in building mass would have an overbearing impact on no. 7 Fulmar Close.
- The proposal breaches Core Policy 57 of the Wiltshire Core Strategy.

9. Planning Considerations

9.1 Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

The Principle of Development:

9.2 The application site is located within the established limits of development where there is a presumption in favour of sustainable development.

Impact on the character and appearance of the host dwelling and surrounding area:

9.3 The proposed garage would be increased in height by 0.8m whilst retaining the same footprint. In consideration of the modest alterations proposed, the development would continue to represent a subservient addition to the host dwelling that would neither detract from the host dwelling or wider area.

9.4 The proposed front dormers would appear as sympathetic additions to the outbuilding, utilising a satisfactory design and matching materials to the existing dwelling. The proposal would therefore have a limited impact on the character of the host dwelling or cul-de-sac.

9.5 Whilst every application must be assessed on its own merits, members are asked to note that the Council recently approved a similar development at no. 3 Fulmar Close (under application 15/10154/FUL). The proposal submitted under this application would comprise a similar height, scale and design thereby respecting the character and appearance of the cul-de-sac.

9.6 Under application ref 15/10154/FUL, permission was granted to construct a first floor within the existing garage building. The external works included: installing two dormer windows in the roof, erecting an external staircase to the north elevation and increasing the height of the building by 0.2m. The approved outbuilding measures 5.35m (height) x 5.35m (width) x 5.4m (length). Officers concluded that the minor alterations would cause no harm to the character and appearance of the host dwelling or street scene.

9.7 As part of this current application, the development proposal would measure 5.7m (height) x 5.35 (width) x 5.4m (length). The development also proposes installing two dormer windows, erecting an external staircase and increasing the roof height by 0.8m. A roof light would also be inserted into the rear roof slope of the outbuilding. On this basis, officers consider that given the similarities between the approved outbuilding at no.3 and the proposal submitted, the impact on the host dwelling and street scene would also be acceptable.

Impact on neighbour amenity:

9.8 The proposed alterations to the garage would increase the height of the garage by approximately 0.8m and introduce two dormers and a rooflight. Taking into consideration the existing built form of the garage and the current relationship with no. 7 Fulmar Close, the development proposal would not cause a significant overbearing impact upon no. 7 Fulmar Close.

9.9 The proposed dormer windows to the west elevation would not result in harmful overlooking or loss of privacy to the immediate neighbours given the existing arrangement of windows and separation distances between the subject building and neighbouring properties - as illustrated in the site photographed block plan which are reproduced within section 3 of

this report. Furthermore, given their proposed height, scale and positioning on the front roof slope, there would be no significant loss of light and overshadowing to no. 7 Fulmar Close.

9.10 The proposed roof light to the rear roof slope of the building would be positioned 2.1m above the internal floor level therefore any overlooking concerns affecting neighbouring properties would be satisfactorily restricted.

9.11 The proposed upper floor accommodation would be accessed via an external staircase and door positioned on the garage's southern elevation. The proposed staircase would be positioned approximately 10m from the shared boundary with no. 34 and 36 Belvedere Road, with an additional 10-12m to the nearest habitable rooms. This separation broadly meets the standard expected 21m between habitable rooms and on this basis, officers are satisfied that it would not cause unacceptable overlooking or loss of privacy.

9.12 For the reasons above, it is considered that the proposal would cause no significant harm and it is not considered that these impacts are so substantial that permission should be refused.

Other material considerations:

9.13 Concerns have also been raised regarding the future use of the proposed outbuilding and potential adverse impacts created by increased noise and traffic that may arise. The conversion of ancillary accommodation into a separate planning unit would require separate planning consent therefore such works would be adequately controlled by the Planning Authority.

10 Conclusion (The Planning Balance)

For the reasons set out above, the proposal is considered to comply with CP57, having due regard to the visual impact on the host dwelling and wider area and the impact on the amenities of the existing occupants of neighbouring properties.

On the basis of the above it is assessed that planning permission should be granted subject to conditions.

RECOMMENDATION: Approve with conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Existing and Proposed Plans - Drawing No. AH2016/24 sheet (1 of 1) dated 16.03.2016

REASON: For the avoidance of doubt and in the interests of proper planning.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

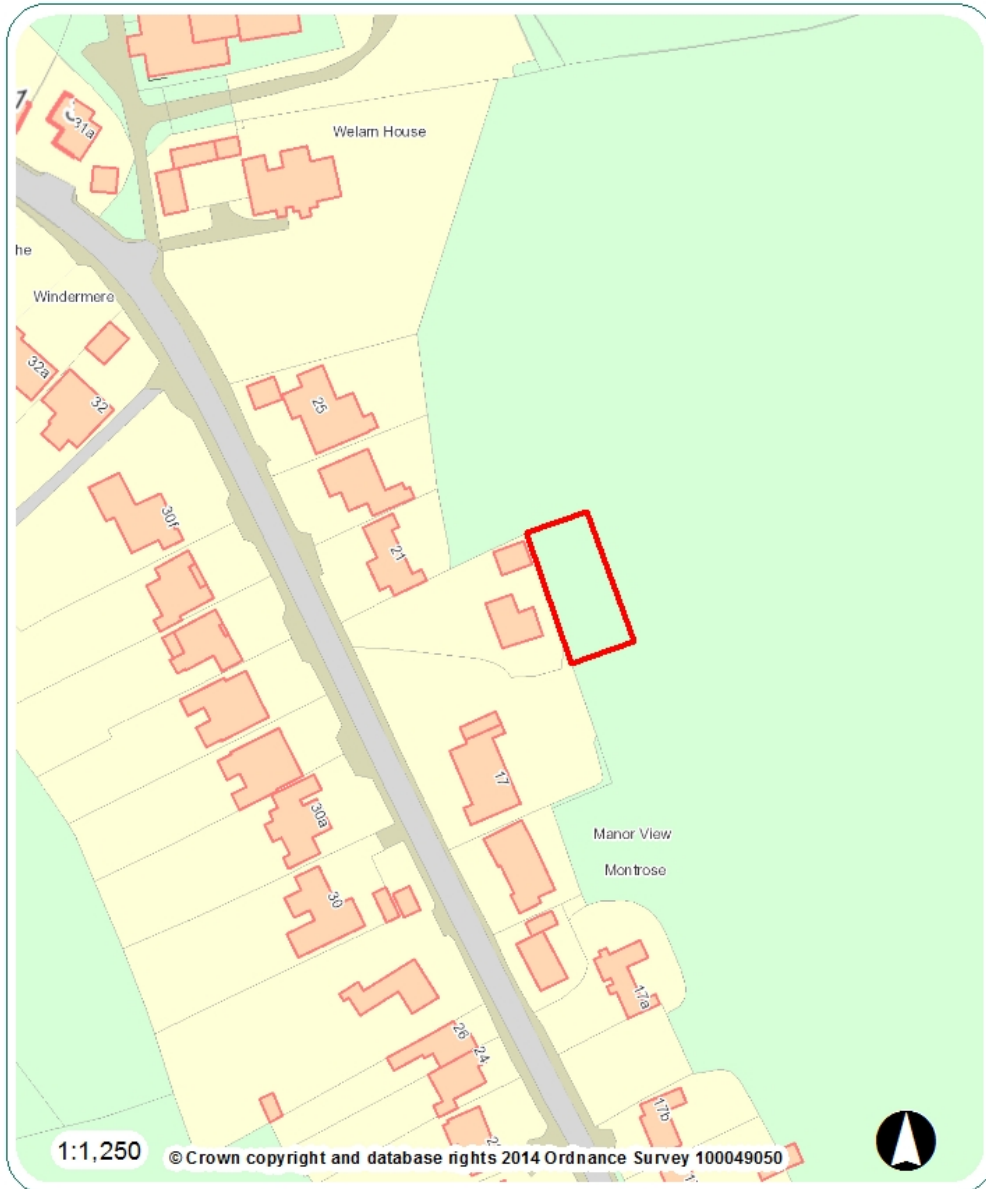
4. The development hereby permitted shall not be used at any time other than for purposes ancillary to the residential use of the main dwelling, known as No. 8 Fulmar Close and it shall remain within the same planning unit as the main dwelling.

REASON: The additional accommodation is sited in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit a wholly separate dwelling.

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16/02306/FUL
Homefield
19 Bratton Road
West Ashton
Wilts
BA14 6AZ



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Date of Meeting	18 May 2016
Application Number	16/02306/FUL
Site Address	Homefield 19 Bratton Road West Ashton Wiltshire BA14 6AZ
Proposal	Change of use of part of agricultural paddock to private garden
Applicant	Mr Paul Pursey
Town/Parish Council	WEST ASHTON
Electoral Division	SOUTHWICK – Councillor Prickett
Grid Ref	387997 155595
Type of application	Full Planning
Case Officer	Matthew Perks

Reason for the application being considered by Committee

This application is brought to Committee at the request of Councillor Prickett for consideration of the scale of development, the visual impact upon the surrounding area, and relationship to adjoining properties.

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to recommend that the application be refused.

2. Report Summary

The proposal for a change of use of part of agricultural paddock to private garden space is considered in terms of the Wiltshire Core Strategy. The key policies are Core Policy 1 (Settlement Strategy) and Core Policy 51 Landscape read in conjunction with a Core Planning Principle of the NPPF (Paragraph 17 – Core Planning Principles) which recognises the intrinsic character and beauty of the countryside.

Consultee response and a neighbour objection are considered with the recommendation for refusal based on the conclusion that the change of use constitutes the domestication of the countryside without any exceptional justification.

Neighbourhood Responses: 1 neighbour objection was received.

West Ashton Parish Council: supports the proposal.

3. Site Description

The application site is on land to the rear of 19 Bratton Road, West Ashton. The area of agricultural land is rectangular in shape and is approximately 700m² in extent.

4. Planning History

W/88/01810/FUL Double garage : Approved

W/06/03179/FUL Two storey extension and conservatory : Approved

W/08/01981/FUL Revised scheme for extension previously approved 06/03179/FUL :
Approved

5. The Proposal

This is a full planning application for the change of use of land from agricultural to residential garden land.

6. Local Planning Policy

Wiltshire Core Strategy

CP 1 Settlement Strategy

CP 51 Landscape

NPPF

Paragraph 17 : Core Planning Principles

7. Summary of consultation responses

West Ashton Parish Council

The Parish highlights the planning history to the site and surrounds in particular the granting, on Appeal, of permission for the dwelling on the adjacent property to the south, following Committee refusals in 2014. The refusals were based on the anticipated impact of the new dwelling on the street scene and on neighbouring amenity due to the siting, size, height and design of the new dwelling. The Committee decisions were consistent with the Parish recommendations at the time. The Parish is of the view that the Inspector failed to take into account the loss of amenity and the general impact on Homefield (the applications site, No.19) and, to a lesser degree, Beechwood (No.17). The resultant situation with the dwelling now being built has led to this application which is supported by the Parish Council, for a change of use application from agricultural paddock to private garden. The Parish also noted

the granting of permission some 20 years ago of similar changes of use on the opposite side of Bratton road.

Archaeologist

No objections

8. Publicity

One neighbour response was received. Objections include:

- The application is retrospective;
- Works have been carried out far further than indicated on plans;
- The field is not laid out in paddocks as described;
- There is misleading information in form regarding the previous use;
- The overshadowing in the garden is mainly by trees and applicant's own dwelling;
- The recent refusal on adjacent site is not mentioned in application;
- The red lined application site comprises a smaller portion of land than the entire 1.37ha which has been used;
- Historically there has been encroachment into the countryside, but Policy applies and CP1 defines West Ashton as a small village which is of relevance as there is a presumption against development within the open countryside because the proposal would urbanise agricultural land. Similarly CP51 is of relevance as it seeks to maintain and promote the landscape character of the open countryside by not allowing inappropriate development.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

The dwelling at 19 Bratton Road is set in a fairly generous curtilage of approximately 1000m² which includes a triangular-shaped front garden area of some 33m in depth, measured from the front of the dwelling, to the road boundary. The width of the curtilage at the front of the dwelling is some 22.4m, narrowing to a street frontage width of approximately 7.4m. The driveway access runs along the southern boundary around to the rear of the dwelling where there is parking and the garage access.

The supporting documentation presents a case stating that the applicants have been content to use the front garden as the sole private garden area but that the completion and occupation of the infill residential plot adjacent to the front garden would result in overshadowing and loss of privacy through overlooking. This would reduce the usability of the garden which is the only private garden area since the rear of the curtilage is occupied by a driveway/parking area. The proposal therefore is to change the agricultural use of a 700m² area of agricultural land to the rear of the dwelling. The applicants are willing to accept a condition restricting development of the area, and the eastern extent of domestic curtilage is proposed to be demarcated by constructing inset stone setts flush with the ground.

West Ashton is classified as a “Small Village” under the Wiltshire Core Strategy where previous development limits under the old West Wiltshire District Plan have been removed, and there is “...a general presumption against development outside the defined limits of development...” which now exist for settlements higher up in the settlement hierarchy. CP 1 further states that: “Development at Large and Small Villages will be limited to that needed to help meet the housing needs of settlements and to improve employment opportunities, services and facilities.”

The principle of extending the residential use and domestication into the open countryside would therefore be contrary to Policy.

The supporting documentation nevertheless argues that there are particular circumstances that justify the extension of the curtilage where the new dwelling allowed under Appeal on the adjacent site has resulted in overshadowing and loss of privacy on the existing garden area to the front of the dwelling. The new dwelling is indeed set forward of No 19 relative to the street frontage, approximately in alignment with the established building line of the majority of other properties on this side of the road. At nearest, one corner of the new dwelling is some 3m from the common boundary but this distance widens towards the street frontage to 7m, with a driveway in the intervening space. There is a distance of approximately 14.3m between the new dwelling and the applicant’s dwelling.

In assessing the Appeals on the adjacent property, the Inspector confirmed that a key issue was the living conditions of neighbouring residents in respect of privacy and sunlight. He stated that:

“No 19’s plot has a correspondingly narrow road frontage, widening out to accommodate the house at the eastern end such that its garden area is solely at the front. Its driveway runs close to the appeal site boundary serving a parking area to the southern side of the house and a garage to the rear.

The proposed dwelling would have a fairly modest footprint compared to others in the vicinity and would be sited with its front elevation approximately aligned with that of No 17, thereby respecting the general building line. Although it would partially obscure No 19 when viewed at an angle, that property does not feature as strongly in the wider street scene due to its significant set back. Nevertheless the proposed dwelling would not be directly in front of it and there would be a good degree of separation between the two buildings. It would also be set away from the mutual boundary with a good degree of space around it, including garden, parking and driveway areas. The dwelling would therefore not appear cramped on the site nor in terms of the relationship between it and No 19.

And specifically in relation to overshadowing and privacy issues stated that:

“The dwelling would cause some degree of overshadowing of No 19’s garden. However, it is a large garden area, which is also separated from the site by No 19’s driveway, and so it would be unlikely that the overall level of sunlight to the garden as a whole would be reduced to an unacceptable degree. Any proposed planting could cause a small degree of overshadowing, but again unlikely to be to a significant degree and, if anything, would still allow filtered sunlight through. The proposed boundary screen fence would not be high enough to cause substantial shadowing, especially with No 19’s driveway separating it from the main garden.

....

In terms of privacy, No 19 has habitable room windows facing the road, and on its southern elevation, and relies upon its front garden as the sole outdoor garden area. The proposed garden and ground floor windows would be prevented from causing direct overlooking of No 19 due to boundary screen fencing. The degree of overlooking of upper floor rooms from these spaces would be significantly restricted by the upward, and from the house, oblique, angle of view.

.....

The only first floor windows facing towards No 19 would be high level rooflights that would be at least 1.7 metres above floor level and so would be unlikely to cause any overlooking.”

The new dwelling is largely complete (at the time of writing) and the use of obscure glazed windows to the skylights referred to by the Inspector confirms the situation that no unacceptable overlooking onto No.19 arises. With regard to overshadowing the existing trees within the garden itself are a significant factor in terms of shading, and the garden area closest to the dwelling and set away from the driveway would, as anticipated in the Inspector not be unacceptably impacted.

Thus, whilst noting the Parish comments on the Appeal and the opinion on the loss of amenity it is considered that the presence of the dwelling does not give rise to a degree of loss of privacy or overshadowing to the garden that would provide exceptional circumstances justifying an extension of the residential use into the open countryside to the rear of the dwelling.

A further consideration on the principle of the use is the extent to which it would protrude into the open countryside land. The observations of the Parish Council on the 1996 approvals of a series of changes of use to provide gardens to the rear of dwellings on the opposite site of Bratton Road are noted. However, in those instances a consistent approach of providing for a regular alignment of rear boundaries and a relatively well aligned edge to the village was taken.

There have been a number of subsequent applications on both sides of the road which have been refused where the result would have been an extension beyond the regular alignment to the village edge and/or a significant encroachment into agricultural land. The most recent example is to the south of the application site (rear of No.17) where an application for a change of use of 500m² of agricultural land (15/01390/FUL) was refused. That proposal would similarly have led to an intrusion beyond what a fairly well-established alignment of rear garden boundaries facing onto the countryside. Instances where permission has been granted in the vicinity have again been justified on grounds of infill where the land boundary would coincide with this alignment.

In the current application the 700m² portion of land would encroach over 22m into agricultural land beyond the existing alignment of the village edge over a width of +/- 31m. This is considered to constitute a domestication of the countryside contrary to Policy. Further, whilst precedent may not be a key consideration, approval in this instance would not be consistent and would make it difficult to resist ad-hoc applications for similar changes of use. In this regard Core Policy 51 to the WCS requires that proposals need to demonstrate that the separate identity of settlements and the transition between man-made and natural landscapes at the fringe of development have been considered. In this instance, whilst it is acknowledged that change of use of the site in isolation is unlikely to have a major impact on the character of the village fringe, the likely outcome of approval (given that there has already been an adjacent application) would be Council's inability to resist further applications with the consequent further erosion of the agricultural use. It is noted that mowing and new fencing into smaller units has already altered the subdivision and appearance of fields in the vicinity.

In view of the above it is recommended that the application be refused.

RECOMMENDATION

Refusal for the following reason:

1. The proposal would constitute the encroachment of a residential use and domestication onto a 700m² portion of agricultural land which lies outside of any defined development limits without any exceptional justification, with the consequent erosion of the separate identity of the countryside in an area where there is a general presumption against development. The proposal is therefore contrary to Core Policies 1 and 51 of the Wiltshire Core Strategy and Paragraph 17 of the National Planning Policy Framework.

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

18 MAY 2016

TOWN AND COUNTRY PLANNING ACT 1990 AND
WILDLIFE AND COUNTRYSIDE ACT 1981
THE WILTSHIRE COUNCIL

WILTSHIRE COUNCIL PARISH OF HEYWOOD PATHS 6 (PART), 7 AND 8 (PART)
STOPPING UP AND DIVERSION ORDER AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2016

Purpose of Report

1. To:
 - (i) Consider the objections and representations received to the making of Wiltshire Council Parish of Heywood Paths 6 (part), 7 and 8 (part) Stopping Up and Diversion Order and Definitive Map and Statement Modification Order 2016 made under Section 257 of the Town and Country Planning Act 1990 and Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination.

Relevance to Council's Business Plan

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

Background

3. Wiltshire Council has granted Planning Permission for the formation of a new business park, access and associated works over land at Hawkeridge, known as Hawke Ridge Business Park. The permission allows for the development to be implemented on a phased basis.
4. A location plan is attached at **Appendix A**.
5. Footpaths Heywood 6, 7 and 8 lead across the site and the Notification of Outline Planning contains the following informative:

"There are public rights of way crossing the site, intended to be diverted; the appropriate legal procedures for diversion, both temporary and permanent shall be followed."

The removal of the rights of way from the site is also a component of Condition 29 (see paragraph 24 this report).

6. On 18 November 2015 Wiltshire Council received an application from Hawke Ridge Business Park Limited to divert the footpaths leading across the land affected by the development.
7. Officers carried out an initial consultation from 9 December 2015 to 31 January 2016 and further to a decision to make an Order diverting and stopping up the rights of way an Order was made and advertised between 19 February and 18 March 2016.
8. The Council's decision report is appended at **Appendix B** and a copy of the Order is appended at **Appendix C**.
9. The Order attracted two objections, one from Daniel McGinn and the other from Francis Morland.
10. Wiltshire Council may not now confirm the Order which can either be abandoned or forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination.

Main Considerations for the Council

11. The Order attracted two objections:

(i) Mr Daniel McGinn, Hawkeridge Farm

"I would like to express my objection to the diversion of the respective footpaths; Heywood 6, 7 and 8 for the following reasons:

1) The proposed diversion leads walkers through an area that continually floods; making the ground completely saturated with the slightest rainfall and practically impassable.

2) I am not convinced that the drainage systems that will be installed will improve the situation. As informed by HPH at a recent Heywood Parish Council meeting, the saturation level would be no worse off. Which indicates that it won't be any better.

3) The desktop flood zone report said that this area is only subject to flooding 1 in a 100 years. Looking at the photographs attached I dread to think how badly the area would flood should the 100 year level be met.

4) The order plan does not show the continuation of all highways affected by the order and this is unacceptable.

5) On the decision report point 8.4

It had only been possible to make an order under Section 257 of the Town and Country Planning Act 1990 where planning permission had already been 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.

Therefore if this type of order can only be granted when a FULL PLANNING PERMISSION has been granted, then why is it being pushed through at an OUTLINE permission stage? Surely once Full planning permission has been granted can you then decide where the footpath needs to be diverted through. Thus at this point the process making the stopping up order.

I reserve my to add further reasons as I so wish should any other observations come to light.”

N.B. A copy of Mr McGinn’s objection including the photographs is appended at **Appendix D.**

(ii) Mr Francis Morland

“I refer to the above Order made on 09 February 2016 and to the Public Notice of it on page 2 of the Friday, 19th February 2016 issue of The Warminster Journal.

Please accept this e-mail as my duly-made objection to the Order.

My principal grounds are that the Order is in error in stating that it is necessary to stop up and divert the footpaths to which it relates in order to enable development to be carried out in accordance with planning permission granted under part III of the Town and Country Planning Act 1990, because the only planning permissions granted and in force are in Outline only and do not permit any actual development to take place within the application site which would obstruct the existing routes of the footpaths in question, or otherwise make it necessary to stop up and divert them. Thus, the Order is outside the powers given by section 257 of the Town and Country Planning Act 1990.

Furthermore, the scale of the stopping up proposed is not reasonable and not in accordance with the Wiltshire Countryside Access Improvement Plan - it is contrary to policy to sweep the whole of an application site free of all public rights of way, however large it is, and replace them solely with routes following its perimeter. That simply creates endless dog legs in the existing network.

The full length of the public rights of way lost should be replaced by creating new public rights of way elsewhere in the vicinity.

The proposals create routes which are unduly circuitous and not adequate or appropriate to replace those to be stopped up.

It would make the position better if the Developers were willing to fund the replacement of the missing footbridge over the stream on the route of Heywood 8 just beyond the boundary of the application site.

I reserve the right to add to or amend these grounds in due course.”

Comments on the objections

12. Members of the Committee are now required to consider the objections received.
13. If the Committee does continue to support the making of the Order it must be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination and the Members of the Committee must decide the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State, i.e.:
 - (i) that the Order be confirmed as made, or
 - (ii) that the Order be confirmed with modification.
14. Where Wiltshire Council no longer supports the making of the Order, Members of the Committee may determine that the Order is abandoned. Where this occurs Members must give clear reasons for the decision.
15. This Order is made on the landowner's application and where members consider that the legal tests for confirmation are made it can recommend that the Order be forwarded to the Secretary of State for determination. However, given budgetary constraints at this time, no legal representation can be given to the Order in the event of a public hearing or inquiry.
16. The Public Path Diversion Order is made under Section 257 of the Town and Country Planning Act 1990. The requirements of this section of the Act are set out in full in paragraph 8.0 (Legal Empowerment) of the decision report attached at **Appendix B**.
17. The following matters have been raised by the two objectors:
 - (i) Risk of flooding
 - (ii) Order plan fails to show continuation of all highways affected by the order
 - (iii) That the Order does not satisfy the legal test for s.257 of the Town and Country Planning Act 1990
 - (iv) Inadequate provision of new routes
 - (v) Issues relating to the footbridge for Heywood 8

(i) Risk of flooding
18. Officers have walked the existing paths and the proposed new paths and have found that in very wet periods considerable lengths of the existing paths are more difficult to use than the proposed new routes. There is an area of clay to the east of Hawkeridge Farm which currently retains water making the existing paths muddy and poorly drained. The flooding shown in the images is not caused as a result of the flood plain from the nearby Bitham Brook. The proposed new paths will be constructed to the Council's specification and will provide a more accessible surface at all times of the year. The required construction will be a geotextile membrane with 150 mm of compacted type 1 gravel topped with 50 mm of Cerney gravel, Mendip dust or equivalent.
19. The Site Specific flood risk assessment (IMA 13-054 Rev C dated 25 February 2014) that accompanied the original planning application demonstrates that the whole area is above the approved Environment Agency contour of 47.51 AOD

and lies inside the so called Zone 1 flood plain on which the commercial development is permitted. In fact, once the buildings, hard standings and landscaping are in place a comprehensive drainage strategy will ensure that existing areas of pooled water will be attenuated via a SUDS (Sustainable Urban Drainage System) which will ensure that water no longer pools on the site. The development of the business park will therefore bring a net benefit to the area of concern for Mr McGinn as all rainwater will be managed and any risks associated with the flooding of the footpath will be significantly reduced.

(ii) Order plan

20. It is agreed that the continuation of Mill Lane which is Heywood Footpath 9 is not shown as an unaffected path on the plan. However, this section of Footpath 9 has the same character and appearance as the unclassified road, Mill Lane. Anyone viewing a map or visiting the site would be likely to assume that the road Mill Lane extended for the entire length as this is how it is shown on the underlying mapping, regardless of the footpath rights recorded over it. Accordingly, it is considered that no disadvantage or confusion is, or has been, caused by this omission.
21. Of further note is that the Order, being a combined Order which may alter the definitive statement, makes it clear that there is a short linking section of footpath in Mill Lane (Part III of the Schedule to the Order).

(iii) Applicability of S.257 Town and Country Planning Act 1990

22. S.257 enables an authority to stop up or divert a public path if they are satisfied that it is necessary to do so in order to enable development to be carried out. The development must be in accordance with planning permission granted under Part III of the 1990 Act.
23. There are three extant planning permissions affecting this site (14/03118/OUT, 14/10780/VAR and 15/04092/VAR) granted under Part III of the 1990 Act.
24. The removal of the rights of way from the site is a requirement of Condition 29 (the development being permitted in accordance with specific plans):

“The development hereby permitted shall be carried out in accordance with the following approved plans submitted on application reference number 14/03118/OUT approved by the Local Planning Authority on 26/09/14:

.....

Parameters Plan Rev C received on 23rd June 2014

REASON: For the avoidance of doubt and in the interests of proper planning.”

Parameters Plan Rev C can be found at **Appendix E**.

25. The plan clearly shows the rights of way diverted in the same way as the Order plan.

26. It is argued that it is not necessary to remove the rights of way from the site and that the statutory test is therefore not met. The Concise Oxford Dictionary gives that the word necessary means inevitable or required to be done. It is considered that without removing the rights of way from the site it is not possible to satisfy the Conditions of the planning permission. It is required by Condition 29 as it is shown on the plan. Additionally, it is not reasonable even if it were possible to make applications to divert or stop up sections of path every time any part of the phased development was implemented. Significant alterations to the rights of way network are inevitable to develop the site in the approved manner.
27. It is further suggested by Mr Morland that the approach of the Council in making this Order “simply creates endless doglegs” but this is far from the case. The Order in front of this Committee creates a continuous route with purpose and preserves and protects the rural aspect of the footpaths that will be lost if they were to lead through the developed site. Any approach that involved diverting and stopping up sections of footpaths everytime a unit was applied for would inevitably lead to a fragmented path network with little sense of purpose and it is suggested that this approach would be far more likely to lead to “endless doglegs” the main purpose of which is to avoid buildings or busy areas.

(iv) Inadequate provision of new routes

28. Mr Morland considers that the proposed new routes are “unduly circuitous” and “not adequate or appropriate replacements”. He also considers that the full length should be replaced with an equal length.
29. S.257 of the 1990 Act permits the diversion or the stopping up of public paths. There is no requirement to substitute equal length and nor would it be sensible to do so. Once the environment through which a path leads changes and once the use of that path changes it is a far more sensible approach to create a new network that meets modern needs. Use of the paths in this area is likely to be recreational and the provision of pleasant field and stream edge walks offers far greater recreational facility than retaining paths through a built environment.
30. It is noted that Heywood Parish Council, representing people living locally, has no objection to the proposed diversions.
31. Considerations relating to the disadvantage or loss likely to arise as a result of the development and the provision of the alternative routes are discussed in **Appendix B** paragraphs 12.7 to 12.21. These are important considerations for the Council but officers consider that the alternatives proposed by the Order do not disadvantage the public to any degree and weighed against the benefit to the landowner (who needs to divert the paths to implement the permission granted), the Order routes are preferred. In any event, the approach of considering all of the rights of way affected by the business park development initially appears to be beneficial for all parties assisting in the efficient delivery of not just the changes to the rights of way network but also the development of the business park and the employment and economic advantages that that will bring.
32. It is noted that the Order contains the provision that it will only come into effect when the new ways have been created to the satisfaction of Wiltshire Council.

There is therefore no risk that the public will be left with an unusable or incomplete network.

33. A further benefit to the diversion as proposed in the Order is that in addition to the diverted footpath the business park will be provided with a number of roads and footways accessed off the new roundabout that is currently being constructed on Hawkeridge Road. These routes are proposed for adoption and it is therefore very likely that the ultimate road layout will result in an aggregate length of public rights of way on the land which will exceed the current 854 metres that currently cross the land.

(v) Issues relating to the footbridge at Heywood 8

34. Mr Morland considers that the position would be better if the developers were willing to fund the bridge over the stream on Heywood 8. This is a short section of footpath that is currently unavailable linking Heywood 9 (Mill Lane) with the Order route at point J (see Order plan at **Appendix C**). It is an irrelevant consideration for the purposes of this Order.
35. Although matters relating to temporary obstructions to rights of way must be disregarded for the purposes of considering an Order, Wiltshire Council has a duty to make this route available to the public. There have been discussions with the owner of the mill about removing the wall obstructing the definitive line and with the developer about funding for a new bridge. The developer has confirmed that they are willing to fund this. Further to recent discussions between Wiltshire Council, the developer and the landowner for the obstructed section it is proposed that the reopening will be implemented by the end of May 2016.
36. There are additional opportunities to improve the network of paths in this area, perhaps by diverting the linking section of Heywood 8 past Hawkeridge Farm to emerge opposite Heywood 6 at Bitham Brook rather than involving a section of Mill Lane. However, different legislation would need to be used to achieve any additional changes and in any event, they could not be pursued until such time as matters relating to the rights of way related to the planning consent are resolved.

Safeguarding Considerations

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

Public Health Implications

38. There are no identified public health implications which arise from this Order.

Procurement Implications

39. There are no procurement implications associated with the withdrawal of this Order.

40. In the event this Order is forwarded to the Secretary of State there are a number of opportunities for expenditure that may occur and these are covered in paragraph 47 of this report.

Environmental and Climate Change Considerations

41. There are no environmental or climate change considerations associated with this Order.

Equalities Impact of the Proposal

42. The proposed new routes will be more accessible to anyone with mobility or visual impairments.

Risk Assessment

43. There are no identified risks which arise from this Order. The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.
44. The proposed diversion was fully consulted on at the planning stage as plans submitted with the application clearly showed the proposed changes. No risks were identified at this stage.

Financial Implications

45. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permits authorities to recover costs from the applicant in relation to the making of public path orders, including those made under Section 257 of the Town and Country Planning Act 1990. The applicant has agreed in writing to meet the actual costs to the Council in processing this Order though the Council’s costs relating to the Order being determined by the Planning Inspectorate may not be reclaimed from the applicant.
46. Where there is an outstanding objection to the making of the Order, the Committee may resolve that Wiltshire Council continues to support the making of the Order, in which case it should be forwarded to the Secretary of State for decision. The outcome of the Order will then be determined by 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 £200 to £300; however, where a local hearing is held the costs to the Council are estimated at £300 to £500 and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation (£300 to £500 without). There is no mechanism by which these costs may be passed to the applicant and any costs must be borne by Wiltshire Council. It is therefore considered appropriate where an Order is made under the Council’s powers to do so in the landowners’ interest that the Council does not provide any legal support for the Order at a hearing or inquiry thus minimising the

expenditure of public funds even though it considers that the legal tests have been met.

47. Where the Council no longer supports the making of the Order, it may resolve that the Order be withdrawn and there are no further costs to the Council. The making of a Public Path Order is a discretionary power for the Council rather than a statutory duty; therefore, a made Order may be withdrawn up until the point of confirmation if the Council no longer supports it. However, where there is a pre-existing grant of planning permission the Council must make very clear its reasons for not proceeding with the Order.

Legal Implications

48. If the Council resolves that it does not support the Order, it may be abandoned. There is no right of appeal for the applicant; however, clear reasons for the abandonment or withdrawal must be given as the Council's decision may be open to judicial review. This could be more likely where a grant of planning permission has already been made.
49. Where the Council supports the making of the Order, because it has outstanding objections, it must be sent to the Secretary of State for determination, which may lead to the Order being determined by written representations, local hearing or local public inquiry. The Inspector's decision is open to challenge in the High Court.

Options Considered

50. Members may resolve that:
- (i) The Order should be forwarded to the Secretary of State for determination as follows:
 - (a) The Order be confirmed without modification, or
 - (b) The Order be confirmed with modification.
 - (ii) Wiltshire Council no longer supports the making of the Order, in which case the Order should be abandoned, with clear reasons given as to why Wiltshire Council no longer supports the making of the Order, i.e. why the Order fails to meet the legal tests.

Reason for Proposal

51. Notwithstanding the effect of Planning Condition 29, it is considered that the loss of footpaths through the site to the public is outweighed by the inconvenience of having to accommodate a footpath through the site. Such a path would not only disadvantage the operation of the site, and potentially its security, but would provide the public with such a diminished walking experience that there would be a significant loss to them even if the paths were retained. In the event that members consider the paths should be retained through the site the developer

will need to apply for individual orders associated with each reserved matters application submitted. This would, in officers' opinion, render the outline permission granted undeliverable as Conditions relating to the final location of the rights of way could not be met.

52. An adequate alternative route will be created for the public which is more pleasant to use.

Proposal

53. That "Wiltshire Council Parish of Heywood Paths 6 (part), 7 and 8 (part) Stopping Up and Diversion Order and Definitive Map and Statement Modification Order 2016" is forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination with the recommendation that it is confirmed without modification.

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Sally Madgwick

Rights of Way Officer – Definitive Map

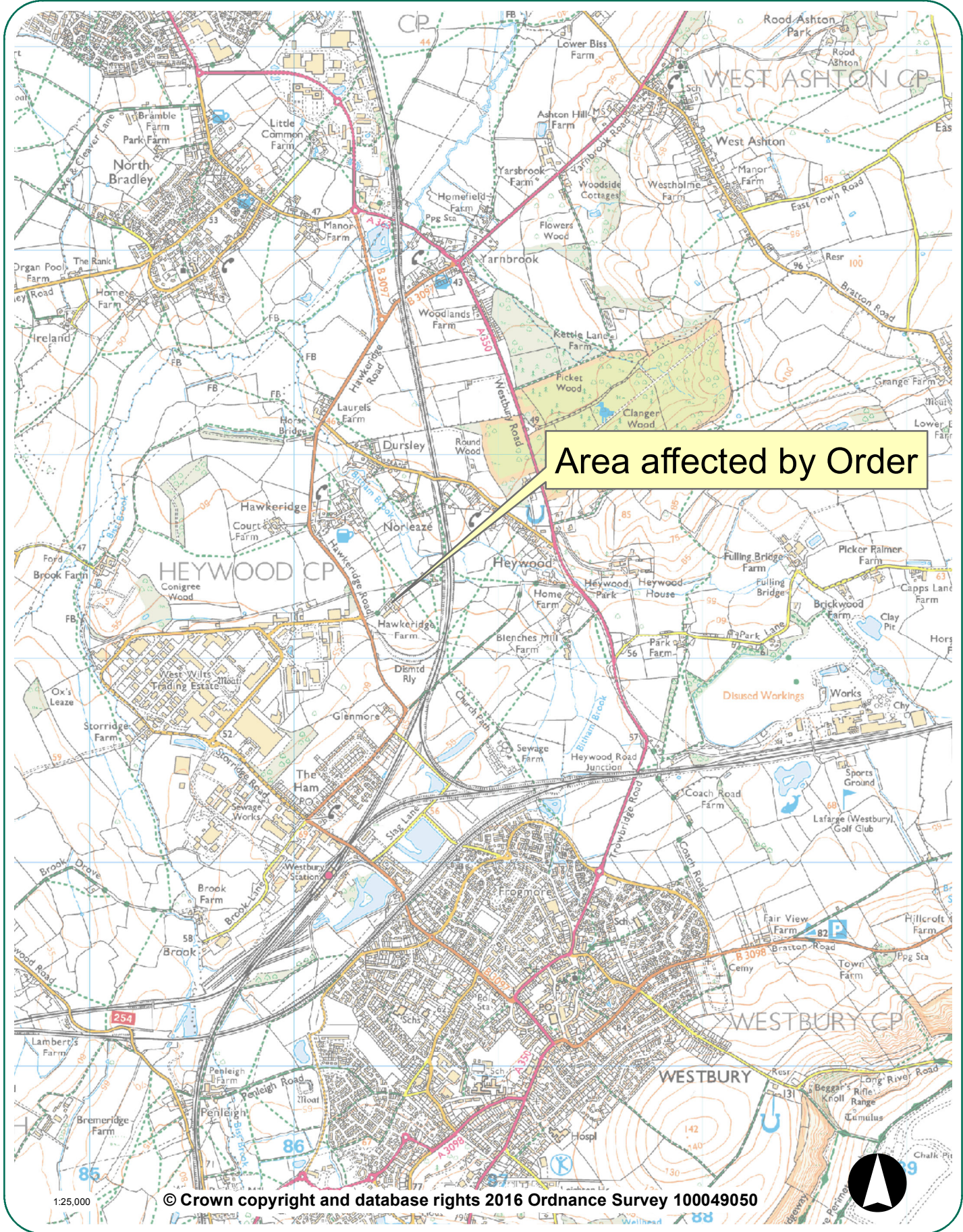
The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices:

Appendix A –Location Plan
Appendix B – Decision Report
Appendix C – Order
Appendix D – Objection from Mr D McGinn
Appendix E – Parameters Plan Revision C

Hawkeridge Business Park Heywood footpaths
6, 7 and 8 Location Plan



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TOWN AND COUNTRY PLANNING ACT 1990 S.257

THE DIVERSION AND EXTINGUISHMENT OF PARTS OF FOOTPATHS HEYWOOD 6, 7 AND 8 AT HAWKE RIDGE BUSINESS PARK, HEYWOOD, NR WESTBURY

NB Both of the terms *Hawkeridge* and *Hawke Ridge* are used throughout this report as they appear in primary sources. For example the village is called *Hawkeridge* and accordingly the business park is sited at *Hawkeridge*. However, the applicant and landowner is called *Hawke Ridge Business Park Limited* and accordingly they refer to the development as *Hawke Ridge Business Park*. The postal address is therefore likely to be *Hawke Ridge Business Park at Hawkeridge*.

1. Purpose of Report

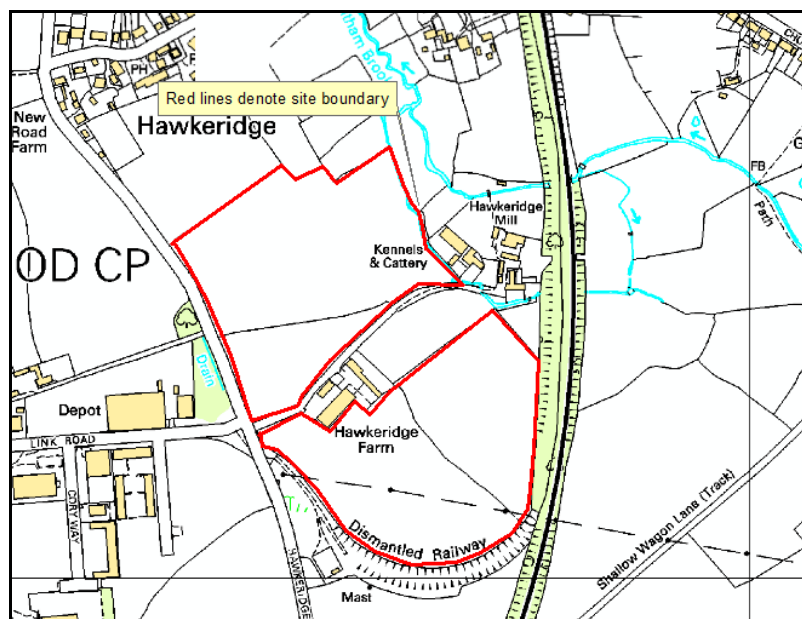
- i) To consider applications made by Hawke Ridge Business Park Limited to divert and extinguish parts of rights of way Heywood 6, 7 and 8.
- ii) Recommend that an Order be made under s.257 of the Town and Country Planning Act 1990 to divert and extinguish those parts of the path affected by the development and to confirm the order if no representations or objections are received.

2. Relevance to Wiltshire Council's Business Plan

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

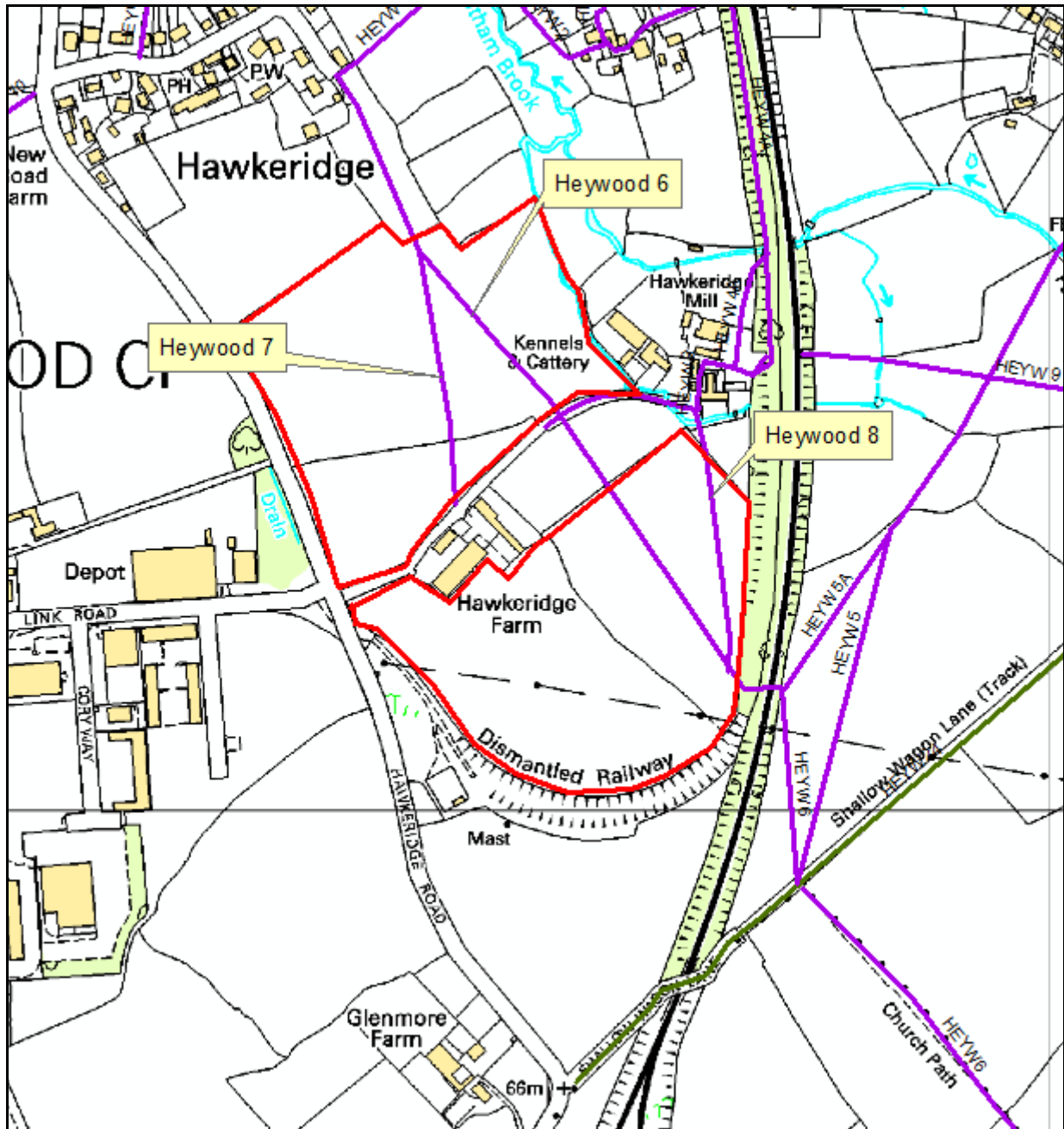
3. Location Plan

- 3.1 Hawke Ridge Business Park is located to the east of Hawkeridge Road (C.7) opposite the entrance to West Wilts Trading Estate. The site is bisected by Mill Lane (u/c 6125) and bordered on the east by the railway line and Bitham Brook and to the south by the dismantled railway.



4. Current Records

4.1 Parts of footpaths Heywood 6, 7 and 8 lead across the site. Below is an extract from working copy of the definitive map (purple lines = footpaths red line = site boundary):



4.2 The definitive statement reads:

Heywood 6 FOOTPATH From the southern end of road u/c 6127 at Hawkeridge leading south east across the junction of road u/c 6125 with path No. 9 near Hawkeridge Mill, and continuing south east across the Railway then south to a junction with Westbury path No. 6.

Approximate length 823 m

Heywood 7 FOOTPATH From path No. 6 about 229 m south of road u/c 6127 at its junction with path No. 1 at Hawkeridge, leading south to road u/c 6125 opposite Hawkeridge Farm.

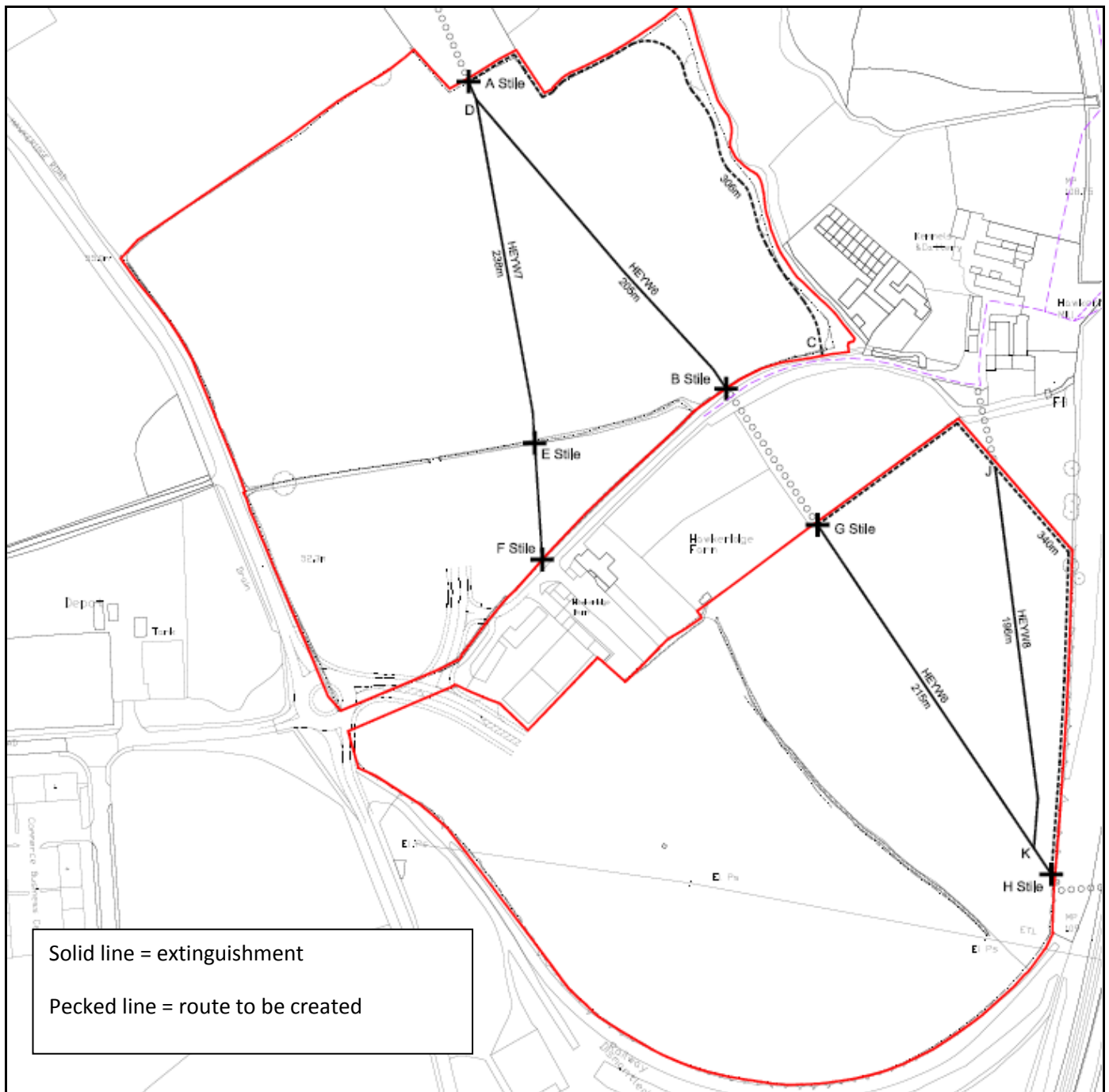
Approximate length 274 m

Heywood 8 FOOTPATH From path No. 9 at Hawkeridge Mill leading south south east to join path No. 6.

Approximate length 247 m

5. Application and Proposed Changes

- 5.1 3 applications have been received from Hawke Ridge Business Park Limited, one to divert part of Heywood path No. 6, one to extinguish Heywood path No. 7 and one to extinguish part of Heywood path No. 8. They are related and considered here concurrently.
- 5.2 It is proposed that Heywood 6 is diverted to a field edge path leading through landscaped areas outside of the business park development site (though within the overall landholding) and that the remaining two sections of footpaths within the developed site are extinguished.



6. Aerial Photographs

6.1 2001



6.2 2006





7. Landowner

- 7.1 The land is registered under title numbers WT235429 and WT 102827 with title absolute held by Hawke Ridge Business Park Limited, 6 Kingsmead Square, Bath, BA1 2AB
- 7.2 There are no tenants or occupiers.

8. Legal Empowerment

- 8.1. The applications have been made under Section 257 of the Town and Country Planning Act 1990, where the footpaths are affected by a permitted development:

“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 are 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.”*

8.2. 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.”*

8.3. 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 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”.*

8.4. 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 can not be confirmed until full planning permission has been granted.

8.5 In this instance outline planning consent has been granted (14/03118/OUT,14/10780/VAR and 15/04092/VAR) for the Formation of new business park (Class B1, B2 and B8) access and associated works with a variation of condition 3 to enable the development to be implemented on a phased basis.

8.6 Class B1 relates to business office, research and development or any industrial use, B2 relates to general industrial and B8 to storage or distribution.

9. Background

9.1 The Hawkeridge site was identified in a study commissioned by Wiltshire Council in 2011 (a county wide Workspace and Employment Review) as a site with the ability to meet future requirements for B1/B2 and B8 uses in the Westbury and Trowbridge areas.

9.2 The key principles set out in Wiltshire Council's Core Strategy to take forward its policy of meeting likely demands for space from different employment sectors (while overcoming the challenges of out commuting and encouraging a buoyant and resilient urban economy) are outlined as:

- Providing the most sustainable pattern of development that minimises the need to travel and maximises the potential to use sustainable transport;
- Creating the right environment to deliver economic growth, delivering the jobs Wiltshire's population needs locally, and taking a flexible and responsive approach to employment land delivery;
- Phasing development to ensure that jobs and the right infrastructure are delivered at the right time to ensure that out commuting from Wiltshire is not increased, and development does not have a detrimental impact on infrastructure.

9.3 As a result of the Hawkeridge site being one of the very few sites in Wiltshire that is currently available to meet the needs of large businesses, the Council's inward investment team directs enquiries to the Hawkeridge site. In a letter dated 16th November 2015 supporting the applications Wiltshire Council's Head of Service for Economic Growth and Planning supports the diversion and extinguishment of certain footpaths to accommodate the size of businesses likely to require the site and considers there is a risk of losing investment and a significant number of jobs if the development is not deliverable as a result of the public rights across the site

9.4 The application to divert Heywood 6 also includes Statements of Reasons as follows:

"1. This application is made under s.257 (1) of the Town and Country Planning Act 1990 to divert footpath HEYW6 ("the Path"). It is required to facilitate the implantation of outline planning permission (ref 14/031118/OUT), as varied by subsequent permissions 14/10780/VAR and 15/04092/VAR, for the formation of a new business park (Class B1, B2 and B8), access and associated work ("the Consent").

2. *The Consent has granted a change of use for the entirety of the area of land over which the Path currently runs to provide a new strategic employment facility. It provides for the main access requirements and infrastructure. It then leaves individual building requirements of prospective occupiers to be addressed through subsequent reserved matters applications.*

3. *It is necessary to divert the Path for the following reasons:*

(a) *The scheme permitted by the Consent is intended to cater for large scale users; but would not be economically feasible to develop due to the effects on layout and lettability were the site to continue to be dissected by the Path.*

(b) *There is no realistic prospect that its current route could be appropriately accommodated within the final layout, including its means of enclosure, without some degree of diversion.*

(c) *Providing for a diverted route at this stage will give greater certainty sooner than during the phased construction of the individual buildings, their associated facilities and means of enclosure.*

(d) *The diverted route, although longer, will when constructed offer a safer, more accessible, enjoyable and convenient facility. It will also provide an all weather surface.*

(e) *The diverted route will also provide benefits to tenants of the scheme in terms of security, highway safety and convenience.*

(f) *Unless resolved the current route would unacceptably interfere with the future control and management of the business park.”*

9.5 A similar statement of reasons is given for the extinguishments except at paragraph 3:

“3. *It is necessary to extinguish the relevant part of the Path for the following reasons:*

(a) *The scheme permitted by the Consent is intended to cater for large scale users; but it would not be economically feasible to develop due to the effects on layout and lettability were the site continue to be dissected by the Path.*

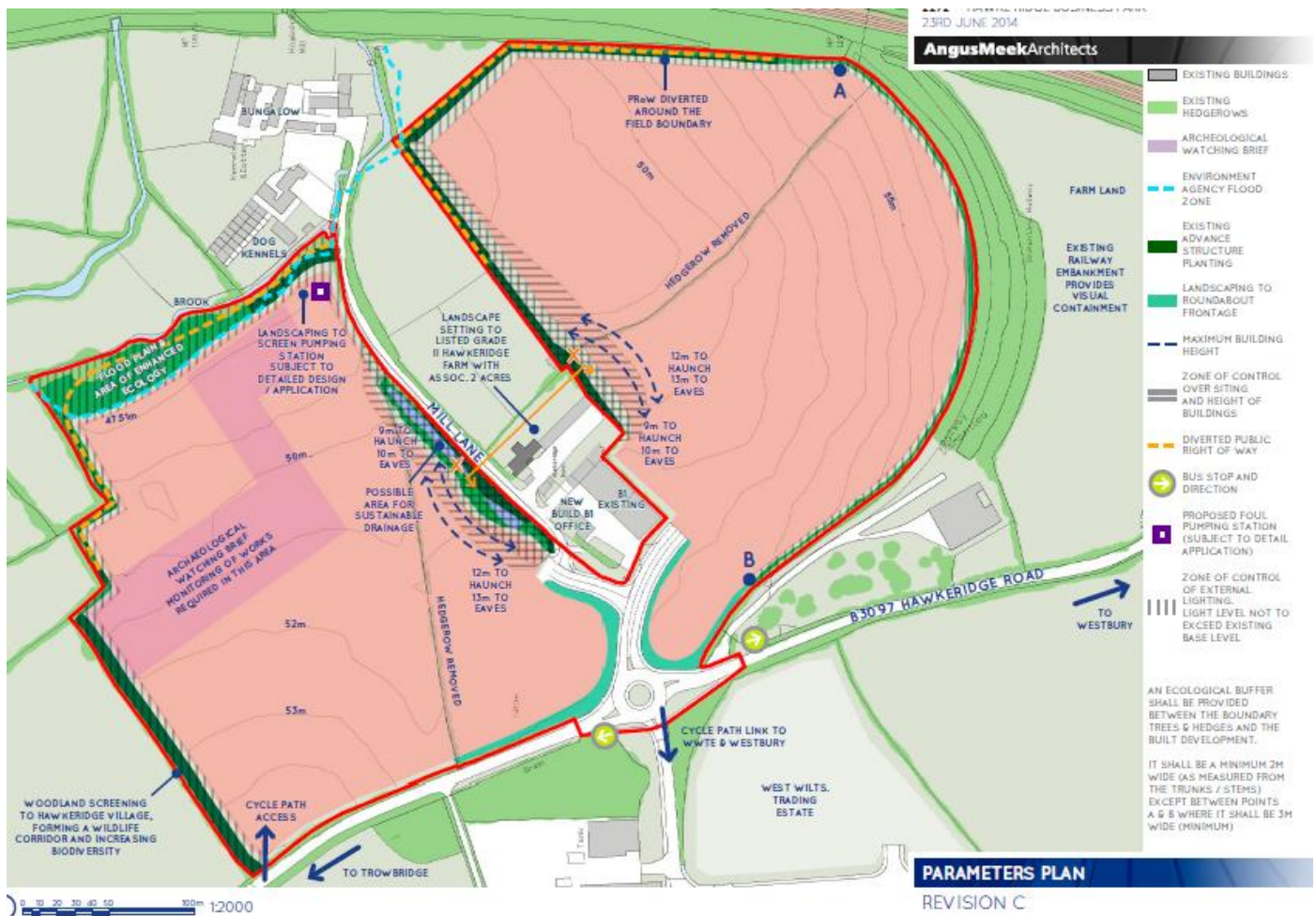
(b) *There is no realistic prospect that the current route of the Path could be appropriately accommodated within the final layout, including its overall means of enclosure, as a result of the phased construction of the individual buildings, their associated facilities and means of enclosure.*

(c) *The diverted route for HEYW6, although longer, will offer a safer, more accessible, enjoyable and convenient facility for future users. It will also provide an all weather surface.*

(d) *Unless resolved the current route would unacceptably interfere with the future control and management of the business park.”*

9.6 During the planning stage proposals relating to public rights of way at this site were clearly shown on a number of documents and plans that form part of the three applications (14/03118/OUT, 14/10780/VAR and 15/04092/VAR) in particular on Parameters plan revision C. Soft and hard landscaping associated with the areas through which the proposed diverted paths lead are the subject of Condition 6.

9.7 Parameters plan Revision C – diverted public rights of way shown by yellow pecked line



9.8 The Landscape Design Principles document (a document to guide subsequent reserved matters applications) refers (at page 2, 3 and 4) to planting schemes around the new diverted footpath and the Design and Access statement dated March 2014 makes reference at pages 4, 5, 8 and 12 to the proposed diversion.

9.9 Accordingly the proposal to make alterations to the public footpaths at this site have been in the public domain for a period of at least 18 months.

9.10 This is in accordance with the advice contained within the Department for Environment Food and Rural affairs Rights of Way Circular 1/09 which advises the following:

“7. Planning Permission and public rights of way

7.5it is likely to be to the benefit of the planning authority, highway authority and the developer to be aware of the impact of a development scheme on the local rights of way network as early as possible in the process.

7.6 Any potential disadvantages to the public arising from alternative arrangements proposed for an affected right of way can be minimised by means of early liaison between the developer, planning and highway authorities, local amenity groups, prescribed organisations and affected individuals. This course of action will produce an acceptable scheme in many circumstances and enable the eventual proposals to gain a wide measure of public acceptance. Further, the approach should minimise uncertainty, costs in revising design schemes and delays. The most significant delay risked if the approach is not

followed is due to the fact that the highway authority does not have the power to confirm an opposed public path order proposing to revise an affected right of way. An order made to divert or extinguish a right of way, made as the result of the granting of planning permission, that is opposed will have to be submitted to the Secretary of State for a decision on whether or not it should be confirmed and this will impose significant, unavoidable delays to the scheme.

7.7 The early and effective consultation described in paragraph 7.6 should ensure that all matters of concern are raised without delay and dealt with, and if agreement can be reached, any statutory procedures associated with the making and confirmation of the necessary order can be initiated without delay once the details have been approved.

7.8 In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.”

10. Consultation

10.1 In response to the applications for public path orders affecting the rights of way at Hawkeridge Business Park an initial consultation was carried out. The following letter was circulated:

***“Town and Country Planning Act 1990
Applications to divert and extinguish public footpaths at Hawkeridge***

Wiltshire Council has received applications to divert part of footpath Heywood 6 and to extinguish footpath Heywood 7 and part of footpath Heywood 8 to facilitate the implementation of outline planning permission (ref. 14/031118/OUT) as varied by subsequent permissions (ref. 14/10780/VAR and 15/04092/VAR), for the formation of a new business park, access and associated work.

Please find enclosed a plan showing the proposed changes to the network and the statements of reasons provided by the applicant. Please note that part of footpath Heywood 6 between points B and G is not affected by the planning consent and therefore not included in these applications.

The Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09 at 7.8 states:

“In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.”

The proposed new paths will lead through landscaped and open areas and plans showing these areas are also included.

I would be grateful to receive any comments or observations on the applications by the end of January 2016.”

10.2 A copy of the plan at 5.2 was also circulated along with Statements of Reasons (9.4 and 9.5) and the following plan showing the position of the proposed diversions in relation to the planting:

10.4 The following were consulted:

The Auto Cycle Union
Commons Open Spaces & Footpaths
Wiltshire Bridleways Association
Cycling Touring Club
British Horse Society
Heywood Parish Council
Wiltshire Councillor Jerry Wickham
British Horse Society Wiltshire
Byways and Bridleways Trust
British Driving Society
Wiltshire Council Senior Rights of Way Warden
Ramblers Association Wiltshire
Ramblers Association West Wiltshire
Wiltshire Council County Ecologist
Open Spaces Society Wiltshire
Wales and West Utilities
Scottish and Southern Energy
Wessex Water
Chris Wordsworth, Hawkeridge Business Park Ltd
Tracey Merrett, Merrett & Co
The Owner/occupier Hawkeridge Barn
The Owner/occupier Hawkeridge Farm
The Owner/occupier Hawkeridge Mill
The Owner/occupier Annexe Hawkeridge Mill
The Owner/occupier 3 Hawkeridge Mill Cottage
The Owner/occupier 4 Hawkeridge Mill Cottage
The Owner/occupier Hawkeridge Mill Farm
The Owner/occupier Phoenix Boarding Kennels and Cattery
Rigg Construction Southern Ltd Mill Lane
National Grid gas and electric
Openreach (BT)
Digdat.co.uk
LinesearchbeforeUdig.co.uk

11. Consultation Responses

11.1 Statutory Undertakers

No apparatus was identified as being affected by the following:

Virgin Media
BT Openreach
Scottish and Southern Energy
Wessex Water
Wales and West Utilities
Southern Gas Networks

National Grid

LinsearchbeforeUdig (covers a wide range of cable and pipeline supplies)

A number of services utilise Mill Lane and Heywood 9 but not the footpaths affected by these applications.

11.2 Heywood Parish Council 29.01.16

“As requested, here is the response from Heywood Parish Council regarding the rerouting of foot paths following its meeting on 11 January.

Heywood Parish Council has reservations about the route of the footpath which is causing flooding this winter at point J (document 32-RPD003 RevA).

They should not be financially responsible for any maintenance of the business park.

They do not wish there to be picnic tables in the breakout area.”

11.3 Case Officer's Comment

Heywood Parish Council will not be financially responsible for any aspect of maintenance relating to the rights of way. The procedure prescribed by the Town and Country Planning Act 1990 and the Town and Country Planning (Public Path Orders) Regulations 1993 SI NO 10 requires the new paths to be constructed to a standard that is acceptable to Wiltshire Council. Only when these paths are certified as being acceptable to the Council (and that acceptance advertised by way of public notice) does the Order come into force and any path become a publicly maintainable highway for which Wiltshire Council, as the highway authority, is responsible for.

- 11.4 Acceptance of the new paths would be subject to adequate drainage provision. Additionally the new paths will have a porous all weather surface that drains well, ensuring easier and cleaner all year round access than is currently possible.
- 11.5 Picnic tables would not be acceptable on the right of way (as they would be an obstruction) but may be placed at the side by the landowner. Any representations regarding these should be made to the developer who is quite likely to be content not to provide them.

12. Main Considerations for the Council

i) Whether it is necessary to stop up or divert the footpaths in order to enable development to be carried out

- 12.1 The planning permission allows the change in use from agricultural land to a business park. The permission also allows the development to be implemented on a phased basis.
- 12.2 Any buildings to be constructed within the business park will be considered as Reserved Matters and may be of any number. For example the site may be developed for the benefit of one occupier or it may be developed for the needs of multiple occupiers carrying out diverse activities.
- 12.3 The phased nature of the development means it is impracticable to consider the diversion and extinguishment of the rights of way in a similarly phased manner. The site is bisected by public footpaths on both sides of Mill Lane and unless they are considered

simultaneously it is considered that it would be impossible for the development to proceed in a reasonable manner and timescale.

- 12.4 There is a fundamental incompatibility with the existence of public footpaths within a secure site and given the change in use from agricultural land to a use that will involve buildings, car parking, vehicle movements, heavy goods vehicle deliveries and activities associated with industry (for example fork lift movements) it is considered advantageous to the public to consider the diversion of the routes as a whole. Even if the developer were able to sequentially design a site that included the rights of way it is inevitable that the resultant routes would have a significant number of 'dog legs', a loss of purpose and present a considerable nuisance and danger at road crossings and pavements for both the user of the path and the users of the business park.
- 12.5 Additionally Defra's Guidance contained in Rights of Way Circular 1/09 at 7.8 expressly states that the Council should "avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic"
- 12.6 Whilst it is clear that Section 257 of the Town and Country Planning Act does not permit the wholesale removal of rights of way from areas unaffected by planning permission, in this instance it is considered that the grant of permission for a phased development is unproceedable until the rights of way are moved from the area included in the permission. Hence it is necessary to allow the development to proceed.

ii) The disadvantages or loss likely to arise as a result of the development

- 12.7 The development of this green field site is a complete loss to anyone wishing to walk in the countryside at this site. The surrounding environment will change from a tranquil agricultural landscape to a built one with large buildings, vehicle movements, lighting and at times, increased noise. The rights of way through the site are currently likely to be used for recreational use and officers consider that this use is unlikely to change to any great degree. The footpaths form parts of links to residential developments at Westbury with the village of Hawkeridge (which has a village pub) and those at Yarnbrook, North Bradley and Trowbridge. Incorporation of the paths in a longer walk, taking in perhaps the village pub is certainly possible but the main use is likely to be from regular walkers (especially dog walkers) from Hawkeridge or the outskirts of Westbury.
- 12.8 A number of respondents during the planning application process highlighted that Heywood 6 is a historic path called North House Drove and that its historic line should be preserved as it is a medieval route. Officers have examined a number of historic documents relating to the route as the name North House Drove is suggestive of a higher public right than footpath and this would need to be addressed in any legal order made.
- 12.9 The footpath that is Heywood path no 6 was awarded as a public footway in the Westbury Inclosure Award of 1808. The footway was awarded within a private carriage road and driftway called North House Road, No XXXVIII on the plan. No evidence was found that supported it being a medieval route though it is accepted that this is possible.
- 12.10 Although the wide route that was North House Road persisted in part (though not over the land affected by this development) as a feature on maps into the 20th century no evidence

of any higher public rights than footpath have been found. It is therefore considered safe to proceed with the extinguishment and creation of footpath rights only.

- 12.11 The historic character of the route across the land to be developed was lost some time ago, certainly by 1884 the wide road within which the footpath ran had been included in a larger field, the footpath just becoming a route across it. The historic character of the route is preserved north west of the development site (leading towards Hawkeridge) but not across the development site. Additionally extensive views of the Grade II listed Farmhouse can be had from that part of the route not affected by this application as it leads across the land immediately to the east of the house on its historic course.
- 12.12 As a result of the existing loss of character of the route through the site it is considered that the retention of the historic line where it crosses the development site is not a substantive consideration and one that would impose an unnecessary constraint on the design of the development and hence its ability to proceed.
- 12.13 It is considered that the advantages of the diversion for the applicant outweigh the advantage of retaining a historic line through a heavily developed site.

iii) Alternative routes

- 12.13 The development will be accessed by road (utilising the Mill Lane entrance) and a new road junction is to be provided. There will be provision for cycle access at this junction.
- 12.14 The proposed new footpath routes over the planted and landscaped edges of the site form the alternative routes for users of footpaths 6, 7 and 8.
- 12.15 A number of aerial photographs (2001, 2006 and 2014) have been viewed and are included in this report at paragraph 6. The lack of evidence of tracks on the ground arising from use supports that these routes are lightly used. It is also likely that when faced with walking across the ploughed and/or cropped fields the public have walked the field edges anyway. These routes were certainly the preferred options when officers viewed the site in the spring of 2015. The applicant claims that Heywood 7 was obstructed until recently cleared.
- 12.16 It is noted that connecting footpath Heywood 8 is obstructed at Hawkeridge Mill. Wiltshire Council has received complaints from the public relating to this obstruction and as a result action is being taken to make the path available. With this path available the proposed diversion will be advantageous for the public as it will enable them to link the footpaths without having to walk along parts of Mill Lane as they currently now have to do.
- 12.17 In any event, in considering the merits of the diversion the Council should consider the route as being free from temporary obstructions. Although it is only s.118 of the Highways Act 1980 that specifies that for the purposes of the section any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded it is widely held that this approach should be used for other public path orders.
- 12.18 Accordingly the alternative routes leading along the north eastern boundary of the site offer a surfaced route within a green corridor linking the village of Hawkeridge with the settlement at Hawkeridge Mill, the railway line and the wider network beyond. Additionally the proposed route will retain and enhance the rural nature of the existing route allowing users to avoid the busy built environment of the business park.

- 12.19 The parish council raised concerns over the drainage of the proposed new route. The Environment Agency had no objections subject to conditions and informative related to flooding. These can be found at Condition 28 (15/04092/VAR) and Informative 3, 4 and 5. The area to the north of Mill Lane (towards Hawkeridge) is described as “flood plain and area of enhanced ecology”.
- 12.20 Wiltshire Council’s rights of way warden has visited the site and considers it suitable for a footpath route subject to it being built to his specified standard. Only after the route is built and approved would any order come into effect and the route become a highway maintainable at public expense.
- 12.21 The proposed diverted route is longer than the existing. If walking from one end of the development site (Hawkeridge end to the railway line) a walker would walk an additional 240 metres. The route is more accessible than the existing (fewer stiles) and does not involve any additional gradient. Since the existing routes are unlikely to have been used for direct and immediate access to anywhere any increase in the distance is only likely to be beneficial for those who use the routes for exercise, either for themselves or perhaps their dog.

iv) Environmental impact on the recommendation

- 12.22 The environmental impact of the proposed diversion was considered at the time of the planning application by Wiltshire Council, the Environment Agency and Natural England and any concerns raised have been addressed as part of the planning consent.

v) Risk assessment

- 12.23 Use of the proposed new routes is likely to present a significantly lower risk to the public than use of any route leading through the business park. By moving the public footpath crossing point of Mill Lane to the boundary of the site there is also a reduced risk associated with crossing Mill Lane (as traffic is likely to be lighter at this point than at the end of Heywood 7).
- 12.24 The proposed diversion leads around a turning area provided for refuse collections from Hawkeridge Mill properties, however, these movements are likely to be only once or twice a week, conducted at slow speed by vehicles with cameras and will be very audible and visible for people on the ground. The risk of any incident arising is considered minimal.

vi) Legal considerations and financial considerations

- 12.25 Although the making of public path diversion orders is a power of the Council and not a duty, in places where the Council is a unitary authority the duty is implied where a development affecting rights of way has been permitted. Defra’s Rights of Way Circular 1/09 states at 7.15:

“...Having granted planning permission for development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm and order.....”

- 12.26 The Council is required to consider the advantages and disadvantages of the proposal to both the landowner and the public.

- 12.27 If the Council refuses to make an Order without good reasons it is liable to judicial review and may suffer costs in the region of £50,000.
- 12.28 If the Council makes an Order but refuses to confirm it without good reasons it is liable to judicial review and may suffer costs in the region of £50,000.
- 12.29 If the Council makes an Order which attracts objections it will not be able to confirm the order but may decide to abandon it (in which case it may be liable to judicial review) or to forward it to the Secretary of State for determination.
- 12.30 The Order may then be determined by written representations (which is likely to have no or negligible additional cost), at a public hearing (at a small cost to the Council – between £50 and £300) or at a public inquiry where if the Council instructs Counsel the cost is likely to be around £3000.
- 12.31 The applicant will pay a fixed fee for the Council's services related to making and advertising the order or orders but cannot be charged for any additional costs associated with the order or orders being determined by the Secretary of State.

vii) Equality impact

- 12.32 The Council is under a duty to provide the least restrictive access possible for the public. The current routes on the site all require the negotiation of a number of stiles and walking over agricultural land. Stiles form the most restrictive form of access for a path and accordingly officers have requested that any new routes provided are free from limitation or restriction.
- 12.33 This is possible where the path crosses the applicant's land and there will be no stiles or gates associated with the new path (i.e. at the northern crossing point of Mill Lane). However, a number of structures along the current route are outside of the control of the applicant as they are on boundary fences and form part of the route unaffected by this order.
- 12.34 It is therefore not possible to remove all stiles from the route other than where affected by the Order. However, the applicant has indicated that subject to the agreement of adjoining landowners they would be happy to have kissing gates at land boundaries to improve public access.

viii) Safeguarding implications

- 12.35 There are no implications for safeguarding arising from this proposal.

ix) Public health implications

- 12.36 There are no implications for public health arising from this proposal.

13. Options to Consider

- 12.37 Wiltshire Council may decide to refuse the applications.
- 12.38 Wiltshire Council may make an Order under s.257 of the Town and Country Act 1990 to extinguish and divert the paths as applied for.

14. Reasons for Recommendation

- 12.39 Defra guidance is that having granted planning permission the Council must have good reason not to make an order to divert the paths to enable the permitted development to proceed.
- 12.40 The planning permission is for a phased development and it is not considered reasonably practicable to implement this permission within the constraints of having to repeatedly divert public rights of way around buildings, compounds, car parks and estate roads every time an occupier is identified for a bespoke unit.
- 12.41 Even if it were considered possible to do this, the timescales to do it would unreasonably restrict the development making it virtually an unimplementable permission. What is more, the resulting rights of way network would inevitably involve a number of dog legs, crossings of busy areas and use of estate road footways; something Defra guidance says to avoid.
- 12.42 The historic feel of the route of Heywood 6 at the site is already lost in respect of the wide road it once followed (North House Road) and even if it could keep its original course the environment through which it would lead would be one of tall industrial buildings, vehicles, and light and noise intrusion exceeding the existing. Any distant views of Hawkeridge Farm house would also be obscured by the development.
- 12.43 The proposed new route leads around the perimeter of the site through a planted and landscaped area alongside Bitham Brook and will be quieter and more enjoyable to use.
- 12.44 Although it is agreed that it is regrettable that the historic context would be lost, it is apparent that the approved development of the land as a business park leads to an inevitable loss of this anyway and that the best option for the retention of a pleasant walking route would be away from the site.

15. Recommendation

That Wiltshire Council makes a combined Order under s.257 of the Town and Country Planning Act 1990 and s.53 of the Wildlife and Countryside Act 1981 s.53A(2) to extinguish Heywood path no. 7, part of Heywood path no. 8 and to divert part of Heywood path no. 6. If there are no representations or objections the Order should be confirmed.

Sally Madgwick

Rights of Way officer – definitive map

02 February 2016

**PUBLIC PATH STOPPING UP AND DIVERSION AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER** **APPENDIX C**

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53(A)(2)

**WILTSHIRE COUNCIL PARISH OF HEYWOOD PATHS 6 (part), 7 and 8 (part) STOPPING UP
AND DIVERSION ORDER AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER
2016**

This order is made by Wiltshire Council under section 257 of the Town and Country Planning Act 1990 because it is satisfied that it is necessary to stop up and divert the footpaths to which this order relates in order to enable development to be carried out in accordance with planning permission granted under part III of the Town and Country Planning Act 1990 namely the formation of a new business park (Class B1, B2 and B8) access and associated works to be implemented on a phased basis.

This order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") because it appears to the authority that the Warminster and Westbury Rural District Council Area Definitive Map and Statement dated 1953 as modified under the Wildlife and Countryside Act 1981 require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the stopping up and diversion (as authorised by this Order) of highways hitherto shown or required to be shown in the map and statement.

BY THIS ORDER:

1. The footpaths over the land shown by a bold black line on the attached map and described in Part 1 of the Schedule to this order ("the schedule") shall be diverted and the Warminster and Westbury Rural District Council Area Definitive Map and Statement dated 1953 and as modified by the Wildlife and Countryside Act 1981 shall be modified as provided below.
2. There shall be created to the reasonable satisfaction of Wiltshire Council alternative highways for use as replacements for the said footpaths as provided in Part 2 of the Schedule and shown by bold black dashes on the attached map.
3. The diversion and stopping up of the footpaths shall have effect on the date on which Wiltshire Council certify that the terms of Article 2 have been complied with and upon the occurrence of that diversion and stopping up the Warminster and Westbury Rural District Council Area Definitive Map and Statement dated 1953 as modified under the Wildlife and Countryside Act 1981 shall be modified by deleting from it those paths or ways referred to in paragraph 1 of this order and the paths or ways referred to in paragraph 2 of this order shall be added to it, and the definitive statement shall be modified as described in part 3 of the Schedule.
4. Where immediately before the date on which the footpaths are stopped up and diverted there is apparatus under, in, on, over, along or across them belonging to statutory undertakers for the purpose of carrying on their undertaking the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

SCHEDULE

PART 1

Description of site of existing paths or ways

That length of Heywood no. 6 leading from point A at Grid Ref ST 8642 5353 to point B at Grid Ref ST 8655 5337 as shown on the attached map by a solid black line. Approximate length 210 metres.

That length of Heywood no. 6 leading from point G at Grid Ref ST 8660 5330 to point H at Grid Ref ST 8672 5312 as shown on the attached map by a solid black line. Approximate length 225 metres.

That length of Heywood no. 7 leading from point D at Grid Ref ST 8642 5351 to point F at Grid Ref ST 8646 5328 as shown on the attached map by a solid black line. Approximate length 235 metres.

That length of Heywood no. 8 leading from point J at Grid Ref ST 8668 5333 to point K at Grid Ref ST 8670 5313 as shown on the attached map by a solid black line. Approximate length 205 metres.

PART 2

Description of site of alternative highway

That length of footpath as shown on the attached map by a broken black line leading from point A at Grid Ref ST 8642 5353 to point C at Grid Ref ST 8660 5339. Width 2 metres. Approximate length 335 metres.

That length of footpath as shown on the attached map by a broken black line leading from point G at Grid Ref ST 8660 5330 to point H at Grid Ref ST 8672 5312 via point J at Grid Ref ST 8668 5333. Width 2 metres. Approximate length 350 metres.

PART 3

Modification of Definitive Statement

Variation of particulars of path or way

Parish	Path No	Description	Modified under WCA 81 Section
Heywood	6	<u>FOOTPATH</u> From the southern end of road u/c 6127 at Hawkeridge leading south east to Grid Ref ST 8642 5353 where east north east, south south east, east north east and broadly south south east following the line of the brook to its junction with Heywood path No. 9 at Grid Ref ST 8660 5339. Continuing from Heywood path No. 9 at Grid Ref ST 8655 5336 where south east for approx. 75 metres to the perimeter of the Business Park where north east for	53(3)(a)(i)

PART 3 Continued

Modification of Definitive Statement

Variation of particulars of path or way

Parish	Path No	Description	Modified under WCA 81 Section
Heywood	6	contd approximately 93 metres where south east to its junction with Heywood path No. 8. From there continuing south east and then south to Grid Ref ST 8672 5312 where east across the Railway then south to Shallow Wagon Lane (Heywood path No. 24) where south east to its junction with Westbury Path No. 6. Width from ST 8642 5353 to ST 8660 5339 = 2 metres Width from ST 8660 5330 to ST 8668 5333 = 2 metres Width from ST 8668 5333 to ST 8672 5312 = 2 metres Approximate length = 1215 metres	
Heywood	7	Delete entire statement	53(3)(a)(i)
Heywood	8	<u>FOOTPATH</u> From Heywood path No. 9 at Hawkeridge Mill leading south south east to Grid Ref ST 8668 5333. Approximate length 40 metres	

THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
Was hereunto affixed this }
9th day of February 2016 }

In the presence of: -



Senior Solicitor



82788

Ms. Madgwick,

I would like to express my objection to the diversion of respective footpaths; Heywood 6,7 and 8 for the following reasons:

1) The proposed diversion leads walkers through an area that continually floods; making the ground completely saturated with the slightest rainfall and practically impassable.

2) I am not convinced that the drainage systems that will be installed will improve the situation. As informed by HPH at a recent Heywood parish council meeting, the saturation level would be no worse off. Which indicates that it won't be any better.

3) The desktop flood zone report said that this area is only subject to flooding 1 in a 100 years. Looking at the photographs attached I dread to think how badly the area would flood should the 100 year level be met.

Pictures taken around and looking at the proposed diversion of Heywood 6.





4) The order plan does not show the continuation of all highways affected by the order and this is unacceptable.

5) On the decision report point 8.4:

" 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 of 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 can not be confirmed until full planning permission has been granted."

Therefore if this type of order can only be granted when a FULL PLANNING PERMISSION has been granted, then why is it being pushed through at an OUTLINE Permission stage?

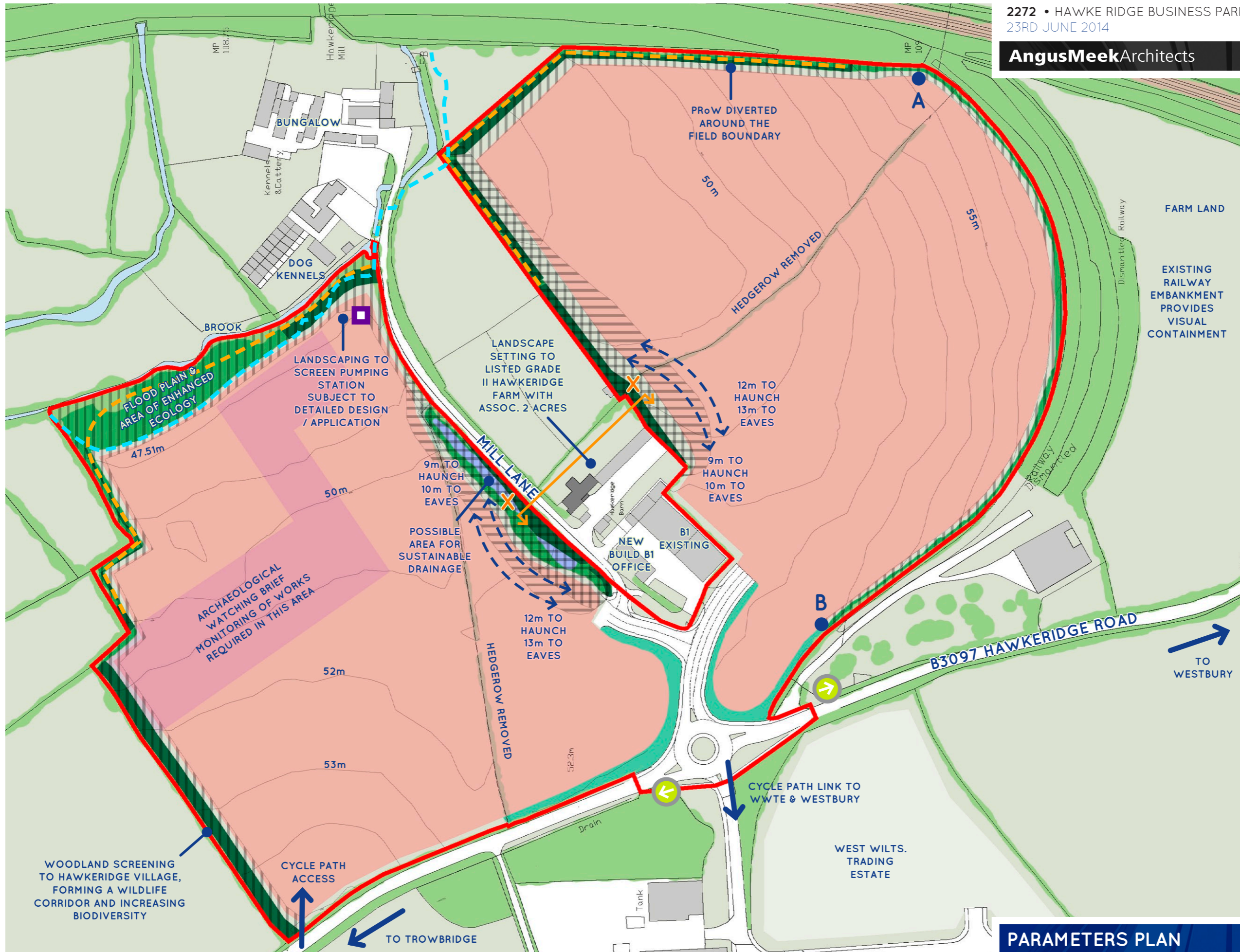
Surely once Full planning permission has been granted can you then decide where the footpath needs to be diverted through. Thus at this point in the process making the stopping up order.

I reserve my to add further reasons as I so wish should any other observations come to light.

Yours sincerely,

Daniel McGinn

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- EXISTING BUILDINGS
- EXISTING HEDGEROWS
- ARCHEOLOGICAL WATCHING BRIEF
- ENVIRONMENT AGENCY FLOOD ZONE
- EXISTING ADVANCE STRUCTURE PLANTING
- LANDSCAPING TO ROUNDABOUT FRONTAGE
- MAXIMUM BUILDING HEIGHT
- ZONE OF CONTROL OVER SITING AND HEIGHT OF BUILDINGS
- DIVERTED PUBLIC RIGHT OF WAY
- BUS STOP AND DIRECTION
- PROPOSED FOUL PUMPING STATION (SUBJECT TO DETAIL APPLICATION)
- ZONE OF CONTROL OF EXTERNAL LIGHTING. LIGHT LEVEL NOT TO EXCEED EXISTING BASE LEVEL

AN ECOLOGICAL BUFFER SHALL BE PROVIDED BETWEEN THE BOUNDARY TREES & HEDGES AND THE BUILT DEVELOPMENT.

IT SHALL BE A MINIMUM 2M WIDE (AS MEASURED FROM THE TRUNKS / STEMS) EXCEPT BETWEEN POINTS A & B WHERE IT SHALL BE 3M WIDE (MINIMUM)



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