

# AGENDA

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**Meeting:** Western Area Planning Committee

**Place:** Council Chamber - County Hall, Trowbridge BA14 8JN

**Date:** Wednesday 24 July 2019

**Time:** 3.00 pm

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Please direct any enquiries on this Agenda to Jessica Croman, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718262 or email [jessica.croman@wiltshire.gov.uk](mailto:jessica.croman@wiltshire.gov.uk)

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

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## Membership:

|                                     |                     |
|-------------------------------------|---------------------|
| Cllr Christopher Newbury (Chairman) | Cllr Peter Fuller   |
| Cllr Jonathon Seed (Vice-Chairman)  | Cllr Sarah Gibson   |
| Cllr Darren Henry                   | Cllr Edward Kirk    |
| Cllr Trevor Carbin                  | Cllr Stewart Palmen |
| Cllr Ernie Clark                    | Cllr Pip Ridout     |
| Cllr Andrew Davis                   |                     |

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## Substitutes:

|                     |                       |
|---------------------|-----------------------|
| Cllr David Halik    | Cllr Roy While        |
| Cllr Russell Hawker | Cllr Graham Wright    |
| Cllr George Jeans   | Cllr Toby Sturgis     |
| Cllr Gordon King    | Cllr Philip Whitehead |
| Cllr Jim Lynch      | Cllr Ian Thorn        |
| Cllr Steve Oldrieve |                       |

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## **Public Participation**

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

# AGENDA

## Part I

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

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 5 - 14*)

To approve and sign as a correct record the minutes of the meeting held on 26 June 2019.

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

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 by phone, email or in person no later than 2.50pm on the day of the meeting.

The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice. 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.

Members of the public will have had the opportunity to make representations on the planning applications and to contact and lobby their local member and any other members of the planning committee prior to the meeting. Lobbying once the debate has started at the meeting is not permitted, including the circulation of new information, written or photographic which have not been verified by planning officers.

### 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 no later than **5pm on Tuesday 16 July** in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than **5pm on Friday 19 July**. 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 **The Wiltshire Council Parish of Westbury Path no. 15 (part) Diversion Order and Definitive Map and Statement Modification Order 2019** (Pages 15 - 42)

To consider the The Wiltshire Council Parish of Westbury Path no. 15 (part) Diversion Order and Definitive Map and Statement Modification Order 2019.

- 7 **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***

## **WESTERN AREA PLANNING COMMITTEE**

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### **MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 26 JUNE 2019 AT COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.**

#### **Present:**

Cllr Darren Henry, Cllr Christopher Newbury (Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Peter Fuller, Cllr Sarah Gibson, Cllr Edward Kirk, Cllr Stewart Palmen, Cllr Pip Ridout and Cllr David Halik (Substitute)

#### **Also Present:**

Cllr Pat Aves

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#### **19 Apologies**

Apologies for absence were received from:

Cllr Johnathon Seed who was substituted by Cllr David Halik.

#### **20 Minutes of the Previous Meeting**

The minutes of the meeting held on 3 April 2019 were presented.

It was noted that the printed version of the minutes had been updated to include the names of the substitute members present at the meeting.

#### **Resolved:**

**To approve as a correct record and sign the minutes of the meeting held on 3 April 2019.**

#### **21 Declarations of Interest**

There were no declarations of interest.

#### **22 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.

23 **Public Participation**

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.

24 **Planning Appeals and Updates**

The Planning Appeals Update Report for 22/03/2019 and 14/06/2019 was received.

Kenny Green, Development Management Area Team Leader, summarised the recent appeal decision pursuant to a proposed extension of a commercial premises at the Atworth Business Park. Members were provided with an explanation on the application of Core Policy 34 and it was agreed that a copy of the appeal decision would be circulated to the committee members.

It was noted that the appeal for planning application 18/07773/FUL had been withdrawn.

The decision notice for a recent appeal hearing, for the extension of a commercial premises at the Atworth Business Park, would be circulated to members.

**Resolved:**

**To note the Planning Appeals Update Report for 22/03/2019 and 14/06/2019.**

25 **Planning Appeals**

To consider the following planning applications:

**25a 19-00614-FUL Leekes of Melksham, Beanacre Road, Melksham, SN12 8AG**

**Public Participation**

Christine Deadman spoke in objection to the applications

Christine Wilkinson spoke in objection to the applications

Chris Leek, Applicant, spoke in support of the application

Chris Gill, Architect, spoke in support of the application

Councillor Adrienne Westbrook, Melksham Town Council, spoke in objection to the application

Nick Clark, Senior Planning Officer, introduced the report which was recommended for approval. The planning application was for the erection of a hotel (Class C1) and restaurant (Class A3) including associated works comprising provision of parking spaces, service yard and landscaping

Key issues included; the scale of the development, visual impact on the surrounding area, relationship to adjoining properties, design (bulk, height & general appearance), environmental or highway impact, car parking; and the effect on the quality of life of local residents.

Members of the Committee had the opportunity to ask technical questions of the officer. Details were sought on: the ability to negotiate the reduction of the height of the development; Drainage; Whether a study had taken place to assess the impacts to local businesses; Whether the reduction in parking spaces would have an impact on the increased usage of the car park; and parking and access arrangements for lorries and coaches.

In response it was noted that: the development's height had already been reduced in negotiations at the pre-application stage, the proposed development's height had been lowered as much as feasibly possible. The development was higher than the Leekes store but had a wide separation meaning there would not be any significant impacts; Drainage of surface water would be reduced to greenfield runoff rates in the proposed development, improving the current situation on the site, with no objections from the drainage team; A detailed impact assessment had been carried out assessing the impacts on the local businesses; A parking study had been carried out which the Highways Officer was satisfied with; Lorries and coaches would access the site via the existing access. The internal accesses would be changed to avoid congestion and there would not be any coach parking facilities on site.

Members of the public, as detailed above, had the opportunity to speak on the application.

Local Member, Cllr Pat Aves, noted that she supported objections from residents due to the disappointment that the community or Town Council had not been involved in the pre-planning stages of the development. Cllr Aves explained that she was not against the idea of the development, only with the proposed height and requested that any future development be communicated with the local community.

A motion to defer the application was moved by Councillor Sarah Gibson and seconded by Councillor Trevor Carbin.

Following a debate, which raised the points of height and architectural design, the motion was defeated.

A motion to approve the application in accordance with the officers recommendations, with changes to condition 7 and 15 was moved by Councillor Andrew Davis and seconded by Councillor David Halik.

Following a debate, which raised the points on electric charging points, delivery times and the need for any consent to refer to the most recently submitted Flood Risk Assessment and Drainage Strategy, the motion was;

**RESOLVED**

**To approve planning permission subject to the following conditions:**

**RECOMMENDATION: Approval 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 drawings and details:

Location Plan (AP8 Rev. A); Proposed Site Layout (AP1 Rev. E); Floor Layouts - Ground and First Floor (AP2 Rev. A); Floor Layouts - Second and Third Floors (AP3); Roof Plan (AP4); Proposed Elevations 1 (AP5); Proposed Elevations 2 (AP6 Rev. A); Site Plan as Existing (AP10); Planting Landscape Layout (AP10 Rev. B); Proposed Long Sections (AP11); Service Yard (AK12); Swept Path Analysis (2018/4301/006 Rev. C); Swept Path Analysis (2018/4301/007 Rev. C); Swept Path Analysis (2018/4301/008 Rev. C); Swept Path Analysis (2018/4301/010 Rev. C); Drainage Strategy (15005:SK02B received 25 June 2019); Ecological Appraisal (17/04/2019); Plant Noise Assessment (received 16th April 2019)

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

3. No development shall commence above ground floor slab level until full details of the following have been submitted to and approved in writing by the local planning authority:

- a) external roof and wall materials and finishes,
- b) details of window frame colours, and
- c) detailed sections through window openings showing depth of reveals.

The details to be submitted of materials and finishes shall include for example, product literature and photographic examples, and, if requested, samples to be made available for inspection on the site.

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

**REASON: The application contained insufficient information of the detailing of the building, materials and finishes to allow these aspects to**



be considered in this decision. The details need to be approved in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area

4. Prior to first use of the development hereby permitted there shall have been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping, the details of which shall include:

- a) a detailed planting specification in-line with the approved drawings and the Ecological Appraisal, showing all plant species, supply and planting sizes and planting densities;
- b) means of enclosure, including any existing fences to be retained;
- c) all surfacing materials, including demarcation of pedestrian routes;
- d) minor artefacts and structures (e.g. low walls, planters, bollards);

All soft landscaping as so-approved shall be carried out no later than the first planting season following the first occupation of the building or the substantial 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 (including those existing and shown to be retained on the approved drawings) 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 be carried out in accordance with the approved details prior to the first occupation of the development or in accordance with a programme first to have been approved in writing by the local planning authority.

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

5. No development shall commence on site until a Construction Method Statement, which shall include details of the following:

- a) the hours of construction, including deliveries (e.g. 07:30-18:00 Mon-Fri & 08:00-13:00 Sat),
- b) the positioning of noise-emitting plant equipment,
- c) a site dust management scheme,
- d) the procedures and processes for dealing with complaints,
- e) construction staff vehicle parking areas within the site,
- f) local road cleaning measures to be deployed, and
- g) the measures to prevent excessive mud and dust being deposited on the public highway and neighbouring properties.

has been submitted to, and approved in writing by, the local planning authority.

The so-approved Statement shall be complied with in full throughout the construction period and the development shall not be carried out otherwise than in accordance with the Statement.

**REASON:** In order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities and the amenities of the area in general, to minimise detriment to the natural environment through the risks of pollution during the construction phase and in the interests of highway safety and convenience.

6. Prior to the development hereby approved being brought into use, the ecological enhancements as set out within section 5.6 of the Ecological Appraisal (dated 17th April 2019) shall be implemented in full. The swift bricks and bat tubes as so-installed shall thereafter be retained and maintained for their respective purpose.

**REASON:** In the interests of delivering biodiversity betterment in accordance with the NPPF.

7. Prior to first occupation of the development hereby approved full details of a minimum of 2 electric vehicle charging points as indicated on the approved drawings shall be submitted to and approved in writing by the local planning authority

The so-approved facilities shall be provided prior to first occupation of the development and shall thereafter be retained and maintained.

**REASON:** To encourage the use of vehicles that do not increase air pollution in the area.

8. Prior to first occupation of the development hereby approved all the car parking spaces and the customer and staff cycle parking facilities shall be provided on site in full accordance with the approved plans.

The said spaces and facilities shall thereafter be so-maintained and used for no other purposes.

**REASON:** In the interests of highway safety, the amenities of the area and to facilitate the use of sustainable means of transport.

9. Refuse and recyclable materials shall not be stored on the site other than in the areas identified on the approved drawings.

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

10. Prior to first occupation of the development hereby approved the internal access road shall be reconfigured and the vehicle parking and

turning areas for the new development shall be provided as detailed on approved site layout plan (drawing AP1 Rev E), with the individual parking spaces clearly demarcated.

The access, parking and turning areas shall thereafter be maintained and kept available for the parking and turning of vehicles, and shall be used for no other purposes.

**REASON:** In the interest of safe and convenient use of the development.

11. Prior to first occupation of the development hereby approved the 3 new points of step-free pedestrian access to the site from the A350 shall be provided in accordance with the approved drawings.

**REASON:** In the interests of pedestrian accessibility and the efficient movement of vehicles into the site to prevent congestion on the A350 in the interests of highway safety and convenience.

12. The restaurant use hereby permitted shall not operate between the hours of midnight and 06:00.

**REASON:** To define the terms of the permission and to ensure an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

13. Prior to first occupation of the development hereby approved the new drainage infrastructure and attenuation tank beneath the car park shall installed and completed in accordance with the approved Drainage Strategy Plan and the submitted Flood Risk Assessment received on 25 June 2019.

**REASON:** In the interests of controlling flood risk.

14. Prior to first occupation of the development hereby approved the noise control measures for associated plant areas 1, 2 and 3 shall be implemented in full accordance with the submitted Plant Noise Assessment (received 16 April 2019). The Control Measures shall thereafter be so-maintained. Moreover, no additional external plant shall be installed on the site unless it is sited, designed and maintained such that its noise output does not exceed 5dB below the existing background level as measured and assessed in accordance with BS4142 2014 at the nearest residential property.

**REASON:** To ensure an environment free of intrusive levels of noise, in the interests of the amenities of the area.

15. No external lighting shall be installed on the site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting

Professions in their publication "Guidance Notes for the Reduction of Obtrusive Light" (sated 2011)", have been submitted to and approved in writing by the local planning authority.

Any such 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 and to minimise unnecessary light spillage above and outside the development site.

**NOTE:** Prior to the above condition being discharged, the submitted lighting details shall be subject to a consultation engagement with Melksham Town Council.

16. Prior to first occupation of the development hereby approved the existing gate across the access from the A350 shall be permanently removed and no gates along the access shall thereafter be installed.

**REASON:** In the interests of highway safety and convenience.

17. Prior to first occupation of the development hereby approved there shall have been an implemented scheme to secure the out of hours closure of the southern part of the Leekes car park, in accordance with details approved in writing by the local planning authority.

The car park shall thereafter be maintained and managed in accordance with the so-approved scheme.

**REASON:** To avoid anti-social use of the Leekes car park when the store is closed, in the interests of the amenities of the area.

18. Prior to first occupation of the development hereby approved the parts of the Travel Plan capable of being implemented prior to the hotel / restaurant use commencing shall be fully implemented. Those parts identified for implementation after the use commencing shall be implemented in accordance with the timetable contained therein, and shall continue to be implemented as long as any part of the development is occupied. The Travel Plan Co-ordinator shall be appointed and carry out the identified duties to implement the Travel Plan in full.

**REASON:** In the interests of reducing the amount of private car movements to and from the development.

19. The development hereby approved shall be serviced (once operational) in accordance with the approved Delivery and Servicing Management Plan received on 18 January 2019.

**REASON:** To define the terms of the permission and to ensure an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

**INFORMATIVE TO APPLICANT:**

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](http://www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy)

26 **Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.00 - 4.40 pm)

The Officer who has produced these minutes is Jessica Croman of Democratic Services, direct line 01225 718262, e-mail [jessica.croman@wiltshire.gov.uk](mailto:jessica.croman@wiltshire.gov.uk)

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

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

24 July 2019

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

**THE WILTSHIRE COUNCIL PARISH OF WESTBURY PATH NO. 15 (PART)  
DIVERSION ORDER AND DEFINITIVE MAP AND  
STATEMENT MODIFICATION ORDER 2019**

**Purpose of Report**

1. To:
  - (i) Consider the objection received to the making of Wiltshire Council Parish of Westbury Path No. 15 (part) Diversion Order and Definitive Map and Statement Order 2019 made under Section 257 of the Town and Country Planning Act 1990 and Section 53 of the Wildlife and Countryside Act 1981. The order is at **APPENDIX A**.
  - (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. On 11 January 2019 Wiltshire Council received an application to divert part of Westbury Footpath No. 15 (WEST15) to enable a permitted development to proceed.
4. WEST15 leads from Oldfield Road, Westbury, across the railway line to head west and south-west towards Penleigh and Dilton Marsh. The land over which the eastern end leads is subject to planning permission to build 300 dwellings with public open space, play areas, teenage facility and associated infrastructure. Planning application numbers 15/12551/OUT, 17/0314/VAR and 17/12194/REM are relevant to the development.
5. WEST15 currently leads across an open field but is affected by the consent to develop the site and will need to be diverted a small amount to follow the paths and footways leading to and alongside the roads on the site.

6. Plans showing the permitted road and path network are contained within application 17/12194/REM and one is included at **APPENDIX B**. The definitive map line for WEST15 has been overdrawn and shows the conflict with properties on the site.
7. Wiltshire Council made a decision to make an Order in March 2019 and the Order was duly made and advertised between 12 April and 14 May 2019. The decision report relating to this is included at **APPENDIX C**.
8. One objection has been received to the Order and accordingly the Order may not be confirmed by Wiltshire Council. Wiltshire Council has the power to either abandon the Order or to send it to the Secretary of State for Environment, Food and Rural Affairs for determination.
9. This Committee is therefore asked to consider all of the evidence available to it and to decide on the Council's course of action.

### **Main Considerations for the Council**

10. The Order attracted one objection:

#### **Mr F Morland 14 May 2019**

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

*I outlined my grounds in an e-mail I sent to you on Mon 25/02/2019 14:45 (see below). May I add:-*

*By Core Policy 32 of the Wiltshire Core Strategy adopted January 2015, a new strategic housing allocation of land at Station Road for 250 dwellings was made, to be brought forward through a master planning process agreed between the community, local planning authority and the developer and to be delivered in accordance with the Development templates for strategic allocations set out in Appendix A - Land at Station Road, Westbury (at pages 263 to 266).*

*The 4 bullet points on Transport set out in the Development template were and are vital to the acceptance of the strategic allocation and are reflected in the master plan for the site which specifically protected the existing route of Westbury No. 15 public footpath from obstruction by any of the proposed development.*

*We were assured that the increase in the number of dwellings by 50 above the allocation figure did not undermine that requirement, and the master plan demonstrating that was incorporated into the first Outline Planning Permission granted to Square Bay (Westbury) LLP (15/12551/OUT permitted 21 December 2016).*

*The Variation Planning Permission subsequently granted to Square Bay did not alter the position (17/01314/VAR permitted 8 June 2017).*

*The application quoted in your e-mail sent Tue 26/02/2019 11:27 (see below) and in the Order itself and in the Notice of making the Order is merely a Reserved Matters Application (17/12194/REM approved 8 June 2018) and not a*



*Planning Application, and cannot override the Outline Planning Permission (see above).*

*So I dispute that the diversion is required to enable development to be carried out in accordance with any planning permission granted under the Town and Country Planning Act 1990.*

*In any case, the encroachments over the existing public footpath route by any of the proposed house plots are impossible to identify on the plan you sent me and are trivial (if they exist at all). This Order appears to be more about making the existing public footpath as difficult for users to continue using as possible by the present developers (Linden Homes Western, not Square Bay, who were granted the Planning Permissions), than about enabling any of the permitted development. I dispute that an Order is necessary or appropriate merely to follow the footways and road crossing points shown on the Developer's Plans. A much better approach would be for Linden Homes Western to bring forward the dedication of the additional highway land required by the Planning Permissions.*

*I reserve the right to amend or add to these grounds as and when additional information becomes available.*

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**From:** Madgwick, Sally <[Sally.Madgwick@wiltshire.gov.uk](mailto:Sally.Madgwick@wiltshire.gov.uk)>

**Sent:** 26 February 2019 11:27

**To:** F M

**Subject:** RE: Application to divert part of Westbury footpath No. 15 at Oldfield Road - Your ref: SM/2019/01 WEST 15

Dear Mr Morland

*Thank you for your e.mail. Please find attached a plan which forms part of application **17/12194/REM**. The plan clearly shows the retention of an access route north to the station within the development. The alignment of Westbury 15 only requires slight alteration to follow footways and road crossing points, the definitive line lies to the south of the proposed road but appears to 'clip' parts of a number of properties. I have sketched this on in pink.*

Best regards

Sally

Sally Madgwick Team Leader Definitive Map and Highway Records  
Rights of Way and Countryside Waste and Environment Wiltshire Council  
County Hall Bythesea Road Trowbridge Wiltshire BA14 8JN  
Tel. 01225 713392 [sally.madgwick@wiltshire.gov.uk](mailto:sally.madgwick@wiltshire.gov.uk)

**From:** F M

**Sent:** 25 February 2019 14:46

**To:** Madgwick, Sally

**Cc:** rightsofway; Hawker, Russell

**Subject:** Application to divert part of Westbury footpath No. 15 at Oldfield Road - Your ref: SM/2019/01 WEST 15

*Hi Team Leader Rights of Way and Highway Records,*

*I believe that this right of way (the cinder path) was specifically protected when the site was allocated in the Wiltshire Core Strategy, so I am unhappy if the process by which Square Bay undermined the terms of that allocation has also affected this route, and I am surprised that Westbury Town Council allowed it to occur. Indeed, I thought that at the outline planning permission stage Square Bay had agreed that the width of this route would be enlarged so that the promised enhanced vehicular access to Westbury station for buses could be achieved off the extension to the distributor road north of the Westbury avoiding line at some time in the future.*

*If this has not been reflected in subsequent variations and reserved matters approvals, then clearly something has gone badly wrong and will need further investigation to put right.*

*Do you have the drawings showing what the features are of the permitted development which the proposed footpath diversion is now said to be required to enable to proceed - viz. why has the existing route not been safeguarded and enhanced as envisaged?*

*In particular, I am baffled by the suggestion that the existing route "crosses a number of housing plots and needs to be re-aligned"!*

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**From:** F M

**Sent:** 16 February 2019 15:21

**To:** [enquiries@lindenhomes.co.uk](mailto:enquiries@lindenhomes.co.uk); [customerservices@lindenhomes.co.uk](mailto:customerservices@lindenhomes.co.uk); [website@lindenhomes.co.uk](mailto:website@lindenhomes.co.uk)

**Cc:** [bristol@tpa.uk.com](mailto:bristol@tpa.uk.com)

**Subject:** Project: Station Road, Westbury, Wiltshire

*Hi Linden Homes,*

*I understand that an application has been made/is to be made on your behalf to Wiltshire Council to divert public rights of way to enable the development.*

*I must draw your attention to Section 53 of the Great Western Railway (Additional Powers) Act 1905 creating/diverting public rights of way which may also affect this project.*

*Unfortunately, repeated requests to Network Rail to elucidate the position have been fruitless and, as you are no doubt already aware, an appeal is currently in progress (Ref: FPS/Y3940/14A/11)."*

### **Comments on the objections**

11. Members of the Committee are now required to consider the objection received.

12. 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.
13. 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.
14. 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 though it remains open for the applicant to do so.
15. 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 9.0 (Legal Empowerment) of the decision report attached at **Appendix C**.
16. The objector refers to Appendix A – Land at Station Road, Westbury as being in the Wiltshire Council Core Strategy at pages 263 to 266. This appears to be an error and it is actually at pages 366 to 370.
17. The objector refers to the four bullet points on Transport as set out in the development template and these are:
  - *Improved access to Westbury railway station.*
  - *Provision of a link road connecting Station Road and Mane Way, via a new railway bridge crossing, part of the cost of which is already held in a bond.*
  - *Access for buses through the development from the railway station access road and from either Oldfield Road (across the railway line) or Station Road. Extension of existing town bus service through the development.*
  - *Improvements must be made to public transport connectivity and pedestrian cycling linkages to the station and town centre.*
18. Officers can see nothing in this that would lead to the specific protection of the existing route of WEST15 (as claimed by the objector) or indeed a requirement for any specific protection of this route in any document.
19. The objector is incorrect to say that the Council must rely upon the outline planning permission 15/12551/OUT. It is rare for outline consents to contain sufficient detail to enable the diversion of a right of way to proceed and this is the case here.

20. In both applications 15/12551/OUT and 17/01314/VAR Condition 13 prohibits development until details of estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, etc. are agreed with Wiltshire Council. The reason for this is given as:
- “REASON: the application contained insufficient information to enable this matter to be considered prior to granting planning permission...”*
21. It was only the reserved matters application 17/12194/REM that contained sufficient detail of the development to enable the effect on the rights of way to be considered.
22. In the Department for Environment, Food and Rural Affairs Rights of Way Circular (1/09) Guidance for Local Authorities, at paragraph 7.3:
- “7.3 Most outline planning applications do not contain sufficient information to enable the effect on any right of way to be assessed (and are not required to do so) and consequently such matters are usually dealt with during consideration of the matters reserved under the planning permission for subsequent approval.”*
23. Plan 0638-107-3 Adoption Plan contained within 17/01314/VAR also shows that the extent of the proposed highway maintainable at public expense network creates a conflict with the line of the right of way.
24. The effect of the diversion is relatively minor but it is clear, not least from the developer’s application itself, that the right of way will need to be moved a small amount to follow the lines of the proposed paths and roads.
25. The objector dismisses the alteration as trivial and suggests that the new road and footways could be dedicated in advance of the development. Even in the event that this happened it would not resolve the situation where the footpath passes over land that will ultimately form part of the residential estate. Not only would it be unlawful for the developer to obstruct this right of way but it would also present problems for anyone wishing to buy or sell affected houses in the future as the definitive map line of the path would appear through their properties on any local authority searches they were carried out.

### **Safeguarding Considerations**

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

### **Public Health Implications**

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

### **Procurement Implications**

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

29. 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 35 of this report.

### **Environmental and Climate Change Considerations**

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

### **Equalities Impact of the Proposal**

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

### **Risk Assessment**

32. 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.
33. The proposed road network and site layout was 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**

34. 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.
35. 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.

36. 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**

37. 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.
38. Where the Council supports the making of the Order, because it has an outstanding objection, 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**

39. 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**

40. In order for the development to proceed the public footpath must be diverted. The resultant changes are likely to be advantageous to the applicant and to the public.

### **Proposal**

41. That "the Wiltshire Council Parish of Westbury Path No. 15 (part) Diversion Order and Definitive Map and Statement Modification Order" is forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination with the recommendation that it is confirmed without modification.

**David Redfern**  
**Director Communities and Neighbourhood Services (Acting)**

Report Author:  
**Sally Madgwick**  
Definitive Map and Highway Records Manager

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

None

**Appendices:**

**Appendix A** Order

**Appendix B** Plan from 17/01314/VAR showing extent of road and path network and plan for housing layout

**Appendix C** Decision report to make the Order

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**PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT  
MODIFICATION ORDER**

**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257**

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

**WILTSHIRE COUNCIL PARISH OF WESTBURY PATH No. 15 (PART)  
DIVERSION ORDER AND DEFINITIVE MAP AND STATEMENT MODIFICATION  
ORDER 2019**

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 divert the footpath 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 erection of 300 dwellings and public open space, play areas, teenage facility and associated infrastructure in accordance with application number 17/12194/REM.

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 Westbury Urban 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 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 footpath 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 Westbury Urban 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 an alternative highway for use as a replacement for the said footpath as provided in Part 2 of the Schedule and shown by bold black dashes on the attached map.
3. The diversion of the footpath shall have effect on the date on which Wiltshire Council certify that the terms of paragraph 2 of this order have been complied with and upon the occurrence of that diversion the Westbury Urban 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 footpath is diverted there is apparatus under, in, on, over, along or across it 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.

THE COMMON SEAL OF }

THE WILTSHIRE COUNCIL }

Was hereunto affixed this }

2nd day of April 2019 }

Team Leader (Legal)

*elay*



*89147.*

In the presence of: -

## SCHEDULE

### PART 1

#### Description of site of existing paths or ways

That length of footpath Westbury no. 15 leading from point A on the northern side of the level crossing at Oldfield Road in a broadly north westerly direction for 155 metres to Point B as shown on the plan attached hereto as a solid black line. Approximate length 155 metres

### PART 2

#### Description of site of alternative highway

That length of footpath as shown on the attached plan by a broken black line leading from point A on the northern side of the level crossing at Oldfield Road following built and surfaced paths and footways in a broadly north westerly direction for 160 metres to Point B. Width 2 metres. Approximate length 160 metres

### PART 3

#### Modification of Definitive Statement

#### Variation of particulars of path or way

| Parish   | Path No | Description   | Modified under WCA 81 Section |
|----------|---------|---|-------------------------------|
| Westbury | 15      | FOOTPATH from the western end of Oldfield Road leading south west along and then north west over the Railway Loop line following path and footway to the former B.R. Engine sheds to the Main Line. | 53(3)(a)(i)                   |

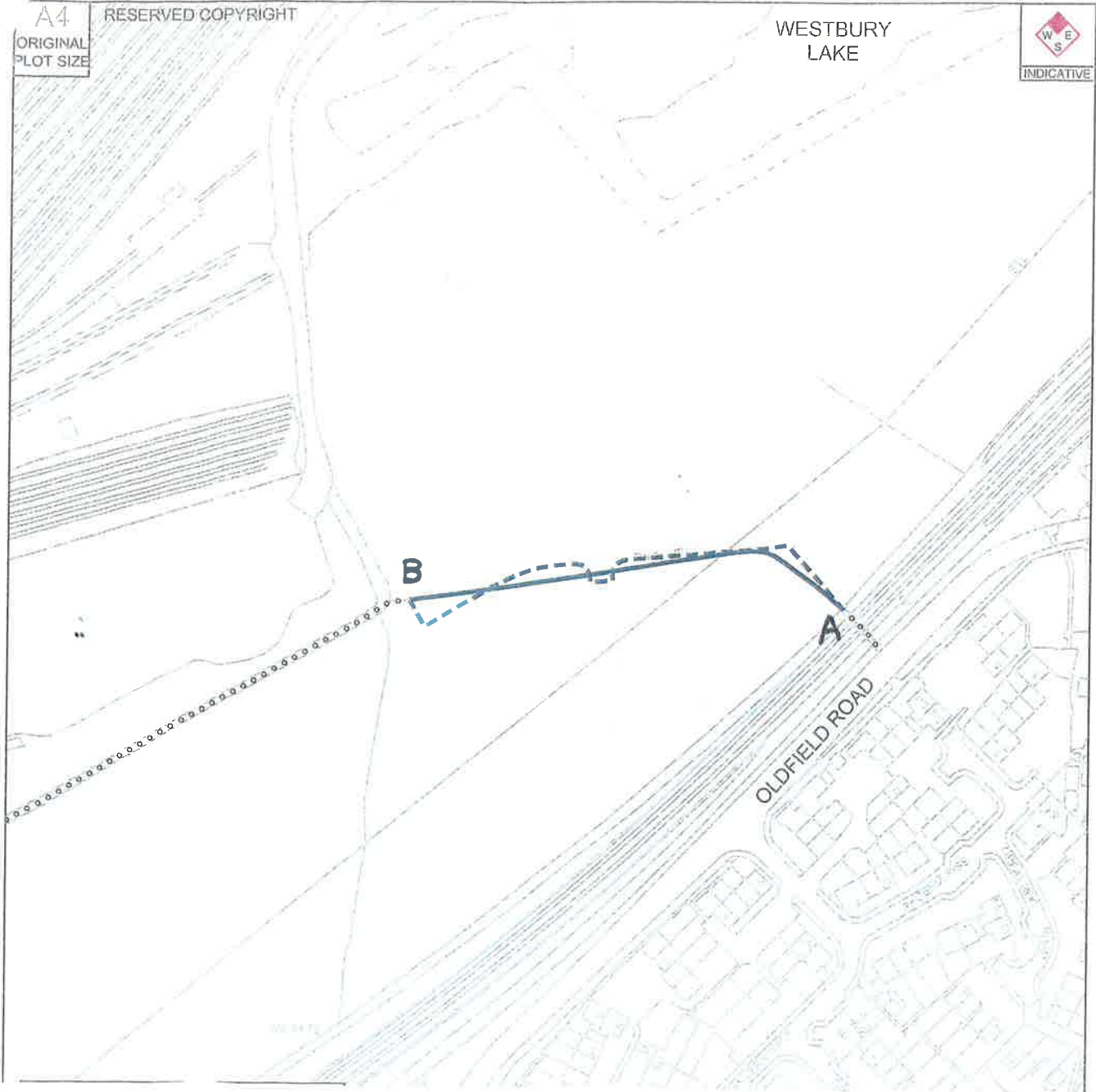
Approximate length 691 metres

Width from OS Grid ref ST 8627 5153 to ST 8613 5153 2 metres

A4  
ORIGINAL  
PLOT SIZE

RESERVED COPYRIGHT

WESTBURY  
LAKE



**The Diversion of Westbury 15 (part)**

**Key**

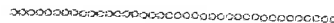
Length of Footpath to be closed



Length of New Footpath



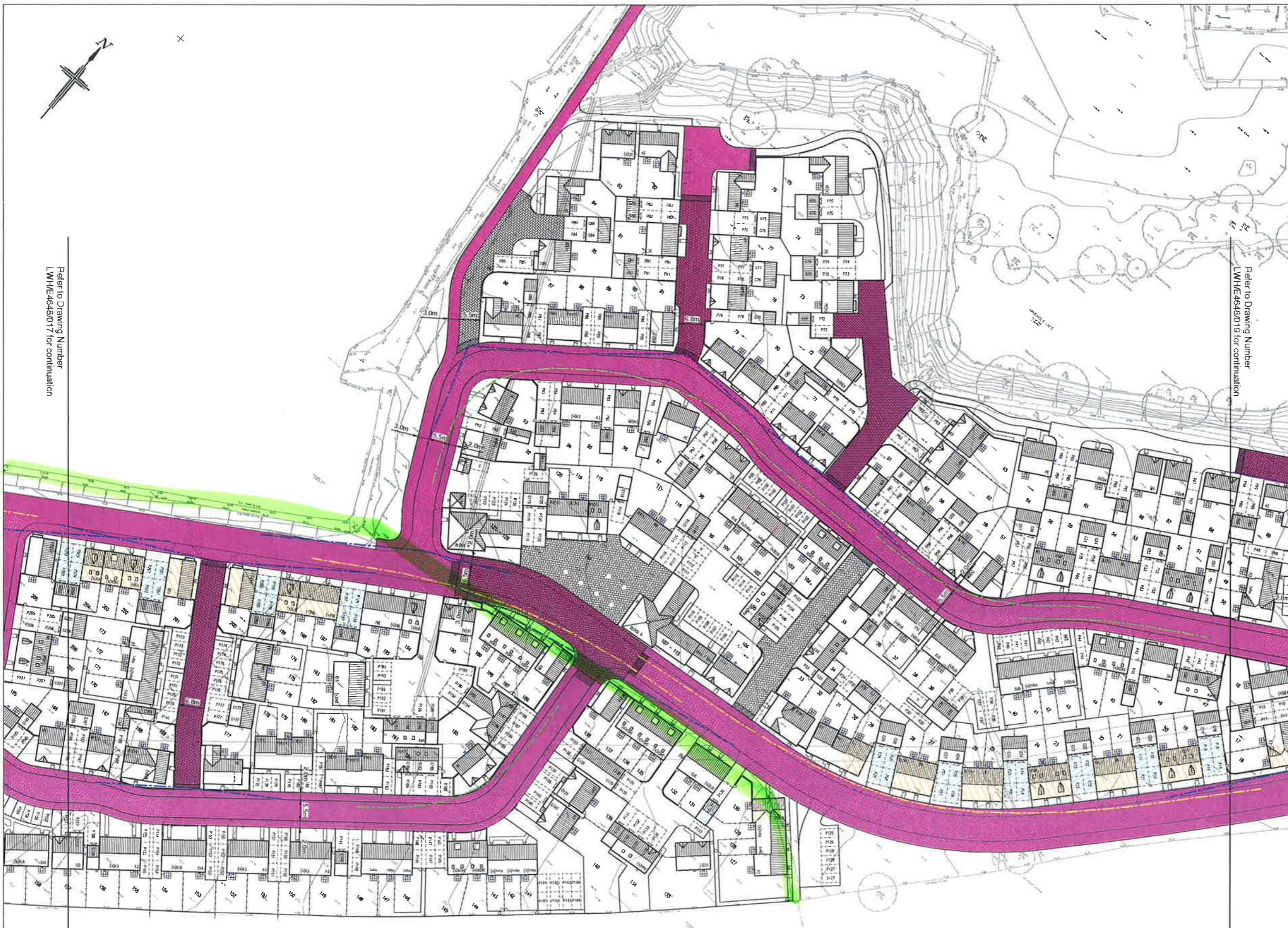
Length of unaffected Footpath



© Crown Copyright and Database Rights 2019 Ordnance Survey 100049050  
Point A OS Grid reference ST 8627 5153 Scale at A4 = 1:2000

**Wiltshire Council**  
Where everybody matters





Refer to Drawing Number  
LHWE4648/017 for continuation

Refer to Drawing Number  
LHWE4648/019 for continuation

Page 29

- NOTES**
- All dimensions are in metres unless stated otherwise.
  - Do not scale from this drawing. Only written dimensions are to be used.
  - This drawing should be read in conjunction with the Architect's design drawings and specification.
  - Site layout based on Focus On Design Drawing Number 0638-102, issued to in .dwg format on 22/03/2018.
  - Topographic Survey as MK Surveys Drawing Number 19935 Revision 2, dated April 2015 as provided by Linden Homes Western on 21/11/2017
  - Layout review is subject to receipt of finalised layout proposal and the final highway layout design will be subject to the outcome of consultation with Wiltshire Council.

- CONSIDERATIONS FOR INTERNAL LAYOUTS**
- Assumed speed limits:
    - Main Spine Road = 30mph
    - Roads Within Development = 20mph
    - Speed Control Bends within Shared Surface Areas = 12mph
  - Junction visibility requirements:
    - For 30mph road = 2.4m x 43m (Manual for Streets).
    - For 20mph road = 2.4m x 25m (Manual for Streets).
  - Forward visibility requirements:
    - 43m for 30mph (Manual for Streets).
    - 25m for 20mph (Manual for Streets).
    - 14m for 12mph (Manual for Streets).
  - Landscaping & any External Works Fencing (i.e. Picket Fencing within property curtilage) should be avoided wherever possible within visibility splays. However if necessary due to planning requirements, such features should be kept below 600mm in height where located within visibility splays.
  - 0.5m adoptable service margins are to be introduced between highway edge and adjacent private parking bays which may require plots to be moved back and garden sizes to be reduced to allow for the margin. Alternatively a 1.0m easement should be provided at the back of the highway edge. Preferred method subject to consultation with Wiltshire Council.
  - 0.5m minimum adoptable service margins required within verges from edge of carriageway. Alternatively a 1.0m easement should be provided at the back of the highway edge. Preferred method subject to consultation with Wiltshire Council.
  - Minimum road widths to be 3.7m to allow for Fire Tender access.
  - A 1.2m - 2.0m footway will be required on the inside corner of speed control bends where used in shared surface areas.

**KEY**

- 14m Forward Visibility Splays
- 25m Forward Visibility Splays
- 43m Forward Visibility Splays
- Junction Visibility Splays
- Potential Adoptable Highways  
(Subject to consultation with Wiltshire Council)
- Temporary Turning Facility  
(Subject to future development and consultation with Wiltshire Council)
- Parking Bays Required to Reverse onto Spine Road
- Plots with Parking Bays Required to Reverse onto Spine Road

**CDM NOTES**

- EXISTING SERVICES:** Depth of existing services must be determined prior to works commencing. The contractor is responsible for establishing underground services in accordance with HSE Guidance note H5 (G) 47. Any services which would be within the proposed construction layers must be lowered to below the sub-base.



| Rev | Date     | Details   | By | Chk'd | App'd |
|-----|----------|---|----|-------|-------|
| 0   | 22.09.18 | Updated Site Layout, annotation revised to suit.                | NW | AC    | TRS   |
| 1   | 19.03.19 | Updated Site Layout, potential adoptable areas revised to suit. | NW | AC    | TRS   |
| 2   | 19.01.19 | Adoption limits revised following DTAL                          | NW | AC    | TRS   |
| A   | 12.01.17 | Updated to suit revised site layout.                            | NW | AC    | TRS   |

Client:

Site: Westbury Sailing Club  
Drawing Title: HIGHWAY LAYOUT REVIEW  
SHEET 2 OF 3

Date: November 2017  
Drawn: NW  
Checked: AC  
Approved: TRS

Drawing No. LHWE4648/018 D

FOR INFORMATION ONLY

RCP Rogers Cory Partnership  
ARCHITECTURE & CIVIL ENGINEERING

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**WILTSHIRE COUNCIL**

**TOWN AND COUNTRY PLANNING ACT 1990**

**PROPOSED DIVERSION OF PART OF WESTBURY FOOTPATH No. 15**

**1 Purpose of Report**

To:

- (i) Consider and comment on an application to divert part of footpath Westbury no. 15 to enable a permitted development to proceed.
- (ii) Recommend that an Order be made under s.257 of the Town and Country Planning Act 1990 to extinguish that part of the path affected by the development and to create an alternative route.

**2 Application**

**Number:** 2019/01

**Date of application:** 11 January 2019

**Applicant:** Richard Clare  
Linden Homes Western  
Linden House  
The Jacobs Building  
Clifton  
Bristol  
BS8 1EH

**Applicant's Agent:** Robert Roughan  
Transport Planning Associates  
25 King Street  
Bristol  
BS1 4PB

**Planning Application:** 17/12194/REM Approval of Reserved Matters pursuant of Outline Permission 15/12551/OUT and Variation of Condition permission 17/0314/VAR for erection of 300 no. dwellings with public open space, play areas, teenage facility and associated infrastructure. Land at Westbury Sailing Lake, Station Road, Westbury

**Path affected:** Footpath Westbury no. 15

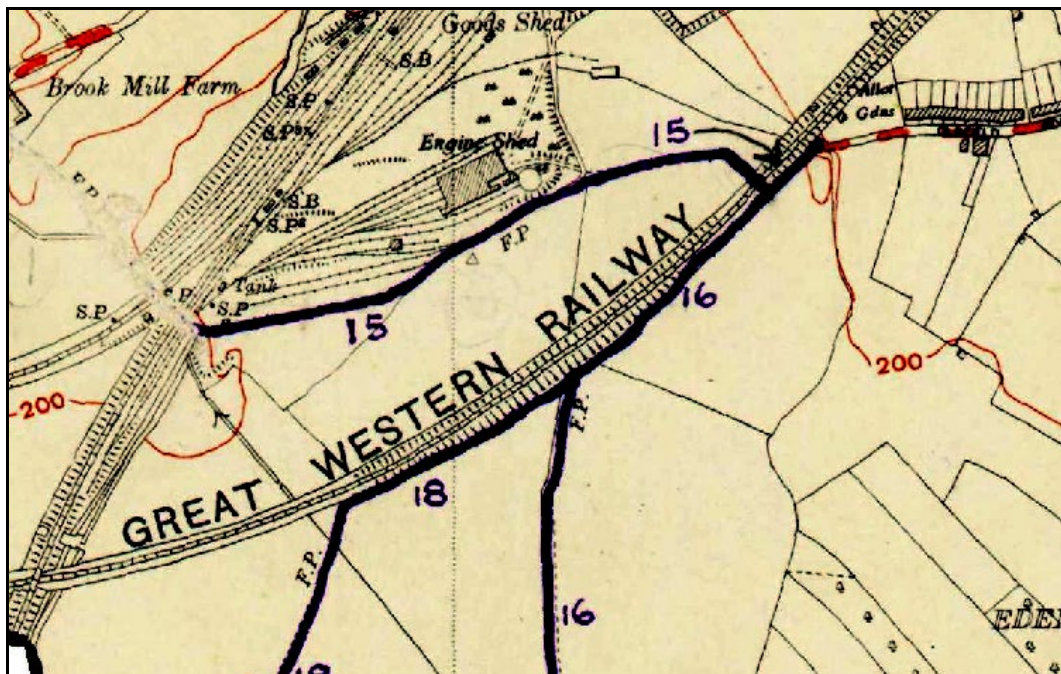
**Reason for application:** Part of Westbury 15 crosses the site and must be diverted to allow for the erection of 14 dwellings and associated infrastructure.

### 3 Land Ownership

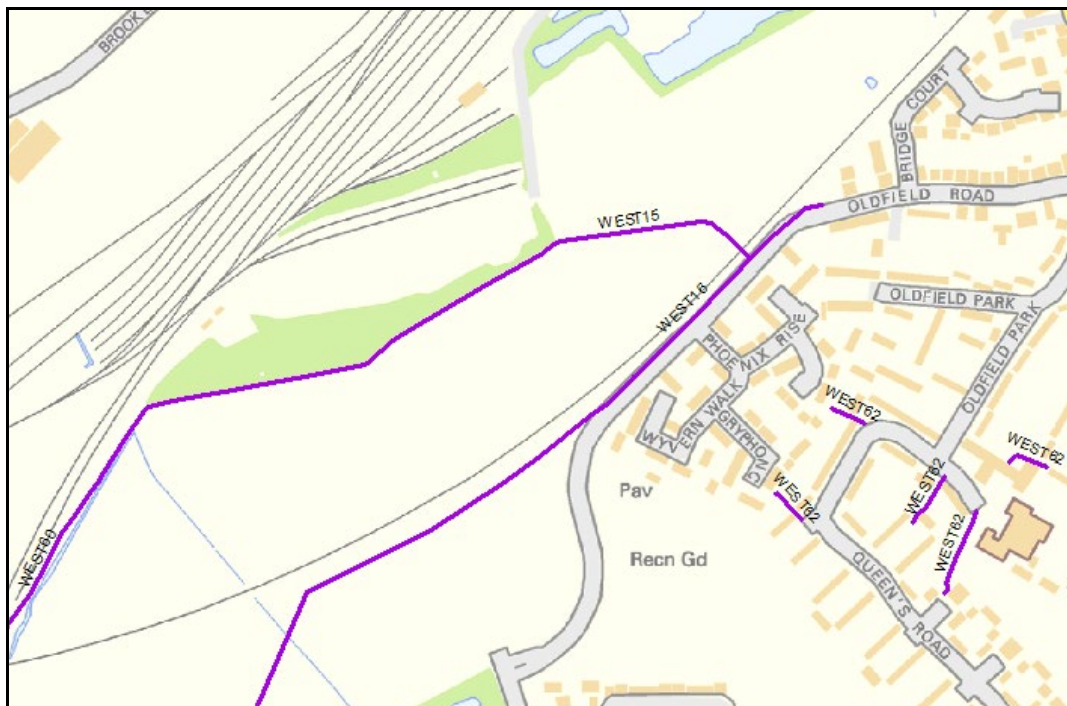
The land affected by the application is owned by Linden Wates (Westbury) Limited.

### 4 Background

4.1 Footpath Westbury no. 15 is recorded in the Westbury Urban District definitive map and statement dated 1953 and its route has remained unchanged since that time.



The working copy shows the route plotted onto a modern base map. It can be seen that Oldfield Road has been extended and residential development now occupies the land to the south east of the railway line:

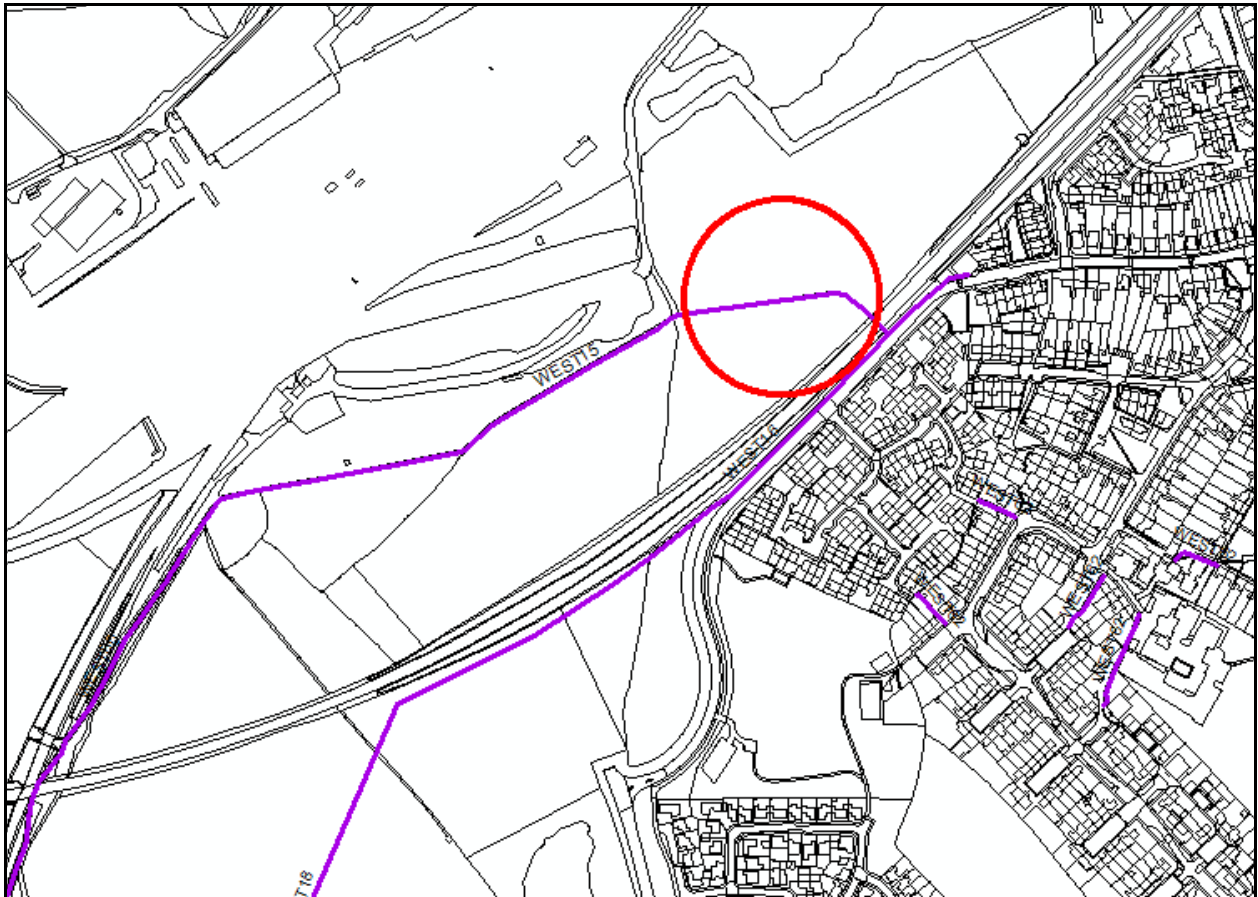




4.2 The definitive statement reads:

Westbury 15 FOOTPATH. From the western end of Oldfield Road leading south-west along and then north-west over the Railway Loop line and south-west past the B.R. Engine Sheds to the Main Line. Approximate length 686 m.

4.3 The section of path affected by this application is circled in red below:



4.4 Although historically leading over agricultural land, the affected section of path is affected by a permitted development. Application 17/12194/REM was approved on the 8<sup>th</sup> June 2018 and is for the erection of 300 dwellings with public open space, play areas, teenage facility and associated infrastructure.

4.5 This development is subject to outline planning permission 15/12551/OUT (approved 21<sup>st</sup> December 2016) and a variation to that 17/01314/VAR (approved 8<sup>th</sup> June 2017).

4.6 Plans show the proposed layout of the dwellings and the road network that is likely to be adopted (subject to a section 38 Highways Act 1980 agreement). The definitive line of Westbury 15 enters the site by the railway level crossing (as it currently does) but its course north westward towards the former engine shed site is obstructed by 14 permitted dwellings. It is therefore necessary to divert the footpath to enable the development to proceed. The plan below is based on Drawing no

LHW/E4648/018 D (17/12194/REM) and shows the course of Westbury 15 across the site in green (green colouration added by case officer).



4.7 The proposed diversion is to move the path between 2 and 8 metres to ensure it misses the residential property plots and coincides with the proposed new highway network.

## 5 Site Visit 21 March 2019



Level crossing is unaltered

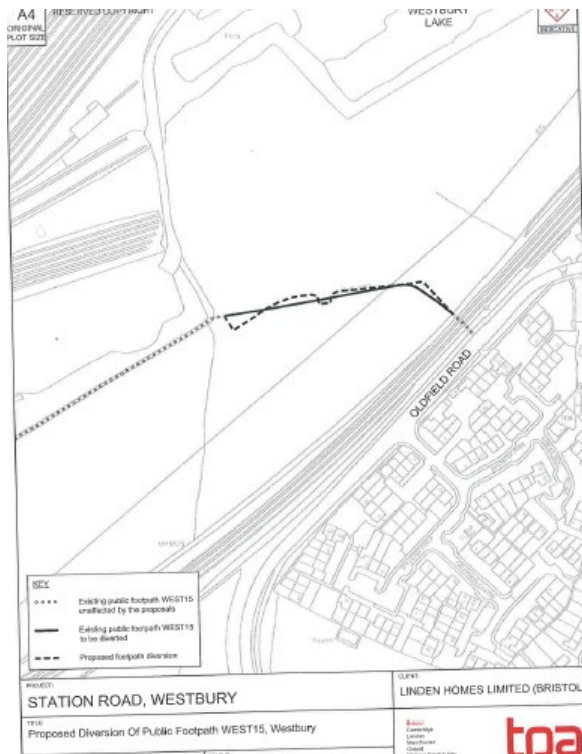


Path follows raised track



Path turns left at tree line

## 6 Application plan



## 7 Consultation

An initial consultation was carried out between 07 February and 22 March 2019. The following letter was circulated:

*“Town and Country Planning Act 1990 s.257  
Application to divert part of Westbury footpath No. 15 at Oldfield Road*

*Wiltshire Council has received an application to divert part of footpath Westbury 15 north west of the railway line to enable a development to proceed. The development is permitted by application numbers 15/12551/OUT, 17/01314/VAR and 17/12194/REM.*

*A short section of the path from the railway line to the western boundary of the site crosses a number of housing plots and needs to be re-aligned. The path will connect to the unaffected length of Westbury path no 15 leading towards the railway line and Dilton Marsh and a new section of path to be created as part of the development and linking to the railway station.*

*Please find enclosed a plan showing the location of the site and a detailed plan showing the effect of the proposed diversion. If you have any comments on the diversion I would be pleased to receive them by 22<sup>nd</sup> March 2019.*

Copies of the plan at 6.0 and a location plan were enclosed.

The following were consulted:

The Auto Cycle Union  
Open Spaces Society  
British Driving Society  
British Horse Society (national and Wiltshire)  
Byways and Bridleways Trust  
Wiltshire Cycling Touring Club  
Trail Riders Fellowship  
Wiltshire Council Senior Rights of Way Warden Paul Millard  
Westbury Town Council  
Wiltshire Councillor David Jenkins (Westbury North)  
Wiltshire Councillor Russell Hawker (Westbury West)  
Wiltshire Bridleways Association  
Ramblers (Wiltshire and South Wiltshire)  
Wessex Water  
Scottish and Southern Electric  
Southern Gas Networks  
Wales and West Utilities  
Virgin Media  
Digdat.co.uk  
LinesearchbeforeUdig.co.uk  
Open Reach  
National Grid Electric and Gas  
Wiltshire Council Ecologist

## 8 Consultation responses

### Openreach 07 February 2019

Openreach have equipment crossing the site. Accordingly a paragraph will be inserted in the order to protect their interest.

*“Where immediately before the date on which the footpath is diverted there is apparatus under, in, on, over, along or across it 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.”*

### Westbury Town Council 19 March 2019

*“We object to this proposal and feel that the footpath should be left in its current position. It is a traditional footpath that is well used by the community, has been established for over 50 years and we feel that the housing should be developed around the footpath and not expect the footpath to change to accommodate the development.”*

**Officer’s comment:** It is agreed that it can be regrettable to lose the character and rural aspect of a historic footpath and it is agreed that this is a well used historic path. However, although objection was made by the Town Council to the development at the planning application consultation stage, that objection only extended to the design, style and density of the dwellings and the insufficient contribution to local infrastructure. There was no concern shown for the footpath at this stage and accordingly alternative site designs that would accommodate the footpath were not considered

In practice, the diversion is very slight, in one place the path will move by 8 metres to the south but in all other places the diverted path crosses the definitive map line or leads within 2 or 3 metres of it. The character of the area will be significantly altered by the development and it may be that an all weather path linking Oldfield Road with the station offers a very useful facility for local people, not just from the new estate but from the estates around Oldfield Road. The proposed diversion lacks none of the purpose of the existing definitive line and will offer a clean and weatherproof surface. The proximity of estate traffic is an inevitable consequence of the development itself but the proposed diversion will utilise a crossing point at the edge of block paved ‘village square’ design area which should ensure a safe crossing point.

## 9 Considerations for the Council – Legal Empowerment

The Town and Country Planning Act of 1990 states (as amended by section 12 of the Growth and Infrastructure Act 2013), in sections 257 and 259:

### **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 or bridleway 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.

(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.

(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 or bridleway 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 or bridleway;

(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 or bridleway 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

(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.

(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.”

### **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 that made it.

(1A) An order under section 257(1A) may not be confirmed unless the Secretary of State or (as the case may be) the authority is satisfied –

(a) that planning permission in respect of the development has been granted, and

(b) it is necessary to authorise the stopping up or diversion in order to enable the development to be carried out in accordance with the permission.

(2)The Secretary of State shall not confirm any such order unless satisfied as to every matter as to 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 or bridleway 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.

- 9.1 Section 257 of the Town and Country Planning Act 1990 requires that before the order may be confirmed either Wiltshire Council (in the case of an order that has not attracted objections) or the Secretary of State must be satisfied that it is necessary to divert the footpath in question in order to enable development to be carried out in accordance with planning permission granted.
- 9.2 Paragraph 7.15 of Circular 1/09 (Rights of Way Circular – Guidance for Local Authorities – Defra) advises that the disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the Order.

## **10 Comments on Considerations**

### **i) Whether it is necessary to divert or extinguish the footpath in order to enable development to be carried out.**

It is necessary to divert part of Westbury 15 as a number of houses have been permitted to be built across the way. Only diversion (or extinguishment) of the affected footpath would enable the developer to build these houses.

### **ii) The disadvantages or loss likely to arise as a result of the diversion**

The diversion is slight and involves moving the line of the path to a route leading over paths and footways. The path will undoubtedly lose its rural aspect, a point of objection for Westbury Town Council, but officers consider that since the development itself will inevitably cause the loss of the rural nature of the site, the effect of the difference on the right of way is negligible.

The new route will be 5 metres longer than the existing which is considered insignificant over a route that is 686 metres long.

### **iii) Environmental Impact of the Recommendation**

Planning Consent has been granted with full consideration of the environmental impacts of the proposal. See conditions 18, 19, 20, 21, 22, 23 and 24 15/12551/OUT.

**iv) Risk Assessment**

There are no risks to users of the path associated with the proposed changes to the rights of way.

**v) Legal Considerations and Financial Implications**

The landowner will meet costs related to the application and will meet all costs related to the confirmation of the order excluding any costs associated with sending the Order to the Secretary of State (SoS) for determination. This occurs if objections are received. The SoS may choose to determine the order by written representations (no additional cost to the Council), a local hearing (approximate cost £200-£300) or a public inquiry (approximate cost £2500).

Although the making of public path orders is a power that Wiltshire Council has and is not a duty, where the planning authority and the highway authority are the same authority, a duty is implied. If Wiltshire Council fails to make an order following the granting of planning permission it is liable to application for judicial review from the developer. This has a potential cost to the Council of up to £50000.

**vi) Equality Impact**

The Council has regard to The Equality Act 2010. This act requires (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that a disabled person is not put at a substantial disadvantage in comparison with a person who is not disabled. The Equality Act goes further than just requiring a public authority does not discriminate against a disabled person. Section 149 imposes a duty, known as the “public sector equality duty”, on the public bodies listed in sch. 19 to the Act, to have due regard to three specified matters when exercising their functions.

These three matters are:

- Eliminating conduct that is prohibited by the Act
- Advancing equality of opportunity between people who have a disability and people who do not; and
- Fostering good relations between people who have a disability and people who do not.

The Equality Act applies to a highway authority’s provision of public rights of way services. (DEFRA Guidance *Authorising structures (gaps, gates and stiles) on rights of way* Oct 2010)

The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP). The ROWIP recognises the Council’s duty to have regard to DDA95 (replaced by the Equalities Act 2010) and to consider the least restrictive option.

- 10.1 The proposed new path will be more accessible for all users. It will have an all weather surface and a recorded width of 2 metres.



## **11 Options to Consider**

- i) To make an order to divert part of Westbury footpath no. 15 under s.257 of the Town and Country Planning Act 1990 and to record it under s.53 of the Wildlife and Countryside Act 1981.
- ii) Not to make an order to divert part of Westbury footpath no. 15 under s.257 of the Town and Country Planning Act 1990 and not to record it under s.53 of the Wildlife and Countryside Act 1981.

## **12 Reasons for Recommendation**

In order for the development to proceed the public footpath must be diverted. The resultant changes are likely to be advantageous to the applicant and to the public.

## **13 Recommendation**

**That an order to divert part of footpath Westbury no. 15 is made and duly advertised. If no objections or representations are forthcoming then Wiltshire Council confirms the order.**

Sally Madgwick  
Rights of Way Officer

**25 March 2019**

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