

AGENDA

Meeting: Western Area Planning Committee

Place: Kennet Room - County Hall, Bythesea Road, Trowbridge, BA14 8JN

Date: Wednesday 13 April 2022

Time: 3.00 pm

Please direct any enquiries on this Agenda to Ellen Ghey, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718259 x18259 or email Ellen.ghey@wiltshire.gov.uk

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

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Christopher Newbury (Chairman)	Cllr Stewart Palmen
Cllr Bill Parks (Vice-Chairman)	Cllr Antonio Piazza
Cllr Trevor Carbin	Cllr Pip Ridout
Cllr Ernie Clark	Cllr David Vigar
Cllr Andrew Davis	Cllr Suzanne Wickham
Cllr Edward Kirk	

Substitutes:

Cllr Matthew Dean	Cllr George Jeans
Cllr Jon Hubbard	Cllr Gordon King
Cllr Tony Jackson	Cllr Mike Sankey
Cllr Mel Jacob	Cllr Graham Wright

Covid-19 Safety Precautions for Public Attendees

To ensure COVID-19 public health guidance is adhered to, a capacity limit for public attendance at this meeting will be in place. Please contact the officer named on this agenda no later than 5pm on **Monday 11 April** if you wish to attend this meeting.

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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 7 - 16*)

To approve and sign as a correct record the minutes of the meeting held on 9 March 2022.

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**

Statements

Members of the public who wish to submit a statement in relation to an item on this agenda should submit this in writing to the officer named on this agenda no later than 5pm on **Monday 11 April 2022.**

Submitted statements should:

State whom the statement is from (including if representing another person or organisation);

State clearly whether the statement is in objection to or support of the application;

Be readable aloud in approximately three minutes (for members of the public and statutory consultees) and in four minutes (for Parish Council representatives – 1 per Parish Council).

Up to three objectors and three supporters are normally allowed for each item on the agenda, plus statutory consultees and Parish Councils.

Those submitting statements would be expected to attend the meeting to read the statement themselves, or to provide a representative to read the statement on their behalf.

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 electronically to the officer named on the front of this agenda no later than 5pm on **Wednesday 6 April 2022** 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 8 April 2022.**

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 members prior to the meeting and made available at the meeting and on the Council's website. Questions and answers will normally be taken as read at the meeting.

6 **Planning Appeals and Updates** *(Pages 17 - 18)*

To receive details of completed and pending appeals and other updates as appropriate.

7 **Rights of Way Applications**

To consider and determine the following Rights of Way Applications:

7a **Highways Act 1980 Section 119 - Westbury 29 & Dilton Marsh 20 Diversion and Definitive Map and Statement Modification Order 2021 and Highways Act 1980 Section 118 - Westbury 28 and Dilton Marsh 19 Extinguishment and Definitive Map and Statement Modification Order 2021** *(Pages 19 - 130)*

To consider the 13 representation and 4 objections to The Wiltshire Council Parish of Westbury 29 and Dilton Marsh 20 Definitive Map and Statement Modification Order 2021 and The Wiltshire Council Parish of Westbury 28 and Dilton Marsh 19 Definitive Map and Statement Modification Order 2021.

8 **Planning Applications**

To consider and determine the following planning applications.

8a **18/04656/FUL & 18/05278/LBC - Courtfield House, Polebarn Road, Trowbridge, BA14 7EG** *(Pages 131 - 192)*

Conversion and alteration of former school principal building to 4 No. dwellings, and associated external works; and the erection of 16 No. dwellings and associated works following the demolition of the Polebarn Hall, Pine Hall and external WCs, and partial demolition of the Wool Store; and comprehensive landscaping.

9 **Urgent Items**

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

Western Area Planning Committee

MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 9 MARCH 2022 AT COUNCIL CHAMBER – COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14.

Present:

Cllr Christopher Newbury (Chairman), Cllr Bill Parks (Vice-Chairman), Cllr Trevor Carbin, Cllr Andrew Davis, Cllr Edward Kirk, Cllr Stewart Palmen, Cllr Antonio Piazza, Cllr Pip Ridout, Cllr David Vigar and Cllr Suzanne Wickham

Also Present:

David Cox, Cllr Matthew Dean, Kenny Green, Ben Fielding, Sarah Marshall, Gary Tomsett and Steven Vellance.

21 Apologies

Apologies for absence were received from Cllr Ernie Clark.

22 Minutes of the Previous Meeting

The minutes of the previous meeting of the Western Area Planning Committee held on 16 February 2022 were considered. Cllr Trevor Carbin relayed feedback that he had received after the last meeting regarding the sound quality and requested that Members and officers made extra effort to speak clearly, especially if they were wearing masks.

Following which, it was:

Resolved

The Committee approved the minutes of the previous meeting of the Western Area Planning Committee held on 16 February 2022 as a true and correct record.

23 Declarations of Interest

Cllr Edward Kirk declared a non-pecuniary interest in Agenda Item 7b and stated that he would not participate in the debate or vote.

24 Chairman's Announcements

The Chairman made those in attendance aware of the COVID regulations that were in place for the meeting and asked that all phones were switched off or turned to silent mode to minimise any potential disturbances.

25 **Public Participation**

The Chairman explained the rules of public participation and the procedure to be followed at the meeting.

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

26 **Planning Appeals and Updates**

The Chairman invited Kenny Green, Development Management Team Leader, to update the Committee on any completed and pending appeals as per the appeals report included within the Agenda Pack.

Members were informed that two appeals had been determined, both of which were lost. It was noted that Application 20/11515/OUT, Land South of Sandhole Lane, Westbury, was well publicised and the appeal had gone to public enquiry at the end of 2021. The decision had been defended by the former Development Management Head of Service for Wiltshire Council, but the appeal was allowed with the Planning Inspector applying paragraph 11 of the National Planning Policy Framework (NPPF) and gave significant weight to the current housing land supply deficit. The result of the second appeal (Applications 21/02064/FUL & 21/03603/LBC, Manvers House, Bradford on Avon) was noted and it was explained that the Inspector had not agreed with the arguments citing heritage harm and neighbouring impacts. However, officers highlighted that neither appeal resulted in any costs against the Council.

Members raised concerns residential schemes being allowed at appeal on the basis of a lack of a land supply and questioned whether the issue should be raised to Cabinet. Officers shared the concern and advised members that the appeal decisions were very disappointing. It was further noted that officers were still awaiting the publication of the updated annual five-year land supply statement from the Spatial Planning team. Members expressed disappointment with the situation, and in particular, the Sandhole Lane appeal. The move away from assessing residential schemes against market areas towards assessing housing situations against Wiltshire as a whole was discussed and officers again reiterated that they were still awaiting publication of the updated housing supply statement.

Officers highlighted that a complaint could be submitted to the CEO of the Planning Inspectorate. It was noted that any judicial review would have had to been lodged within 6 weeks of the decision and it would have to demonstrate that the Inspector made an unlawful decision, not just one that Members/the Council disagreed with.

Members heard from Cllrs Gordon King and Matthew Dean who expressed great disappointment in the appeal decision at Sandhole Lane and volunteered

to assist in drafting any complaint letter. Members also heard that regular meetings were being held between the Leader and the Rt Hon Michael Gove MP alongside Andrew Murrison MP with respect to the Government policy on the five years housing land supply, and appeals being allowed against adopted local plans and made neighbourhood plans.

Kenny Green advised members that he had experience in making a complaint to the CEO of the Planning Inspectorate for previous appeal decision making and explained that the Council could send a complaint for the Sandhole appeal and invited Cllr King to submit his concerns in writing to be included within a formal letter of complaint that would carry the name of the service director.

Cllr Stewart Palmen moved that the Council should complain in writing to the CEO of the Planning Inspectorate through the route explained by officers with regard to the appeal decision for Application 20/11515/OUT, which Cllr David Vigar seconded.

Cllr Antonio Piazza suggested an amendment to the motion which included that the Secretary of State and local MP, Andrew Murrison, should be included within all correspondence for their awareness. Cllrs Palmen and Vigar as proposer and seconder agreed to the amendment. After this a vote was taken on the motion following which, it was:

Resolved

The Committee noted the appeals report for the period 4 February 2022 to 25 February 2022.

The Committee resolved that a formal complaint be written by Kenny Green, to the CEO of the Planning Inspectorate with regard to the appeal decision for 20/11515/OUT. It was agreed the letter would be based upon input received from Cllr Matthew Dean and Cllr Gordon King. Additionally, that both the Secretary of State and local MP, Andrew Murrison, be notified and included within the process.

27 **Planning Applications**

The Committee considered the following applications:

28 **20/10440/FUL - Kingdom Avenue, Westbury**

Public Participation

Ms Deanna de Roche, local resident, spoke in objection to the application.

Mr David Holtum, local business owner, spoke in objection to the application.

Mr Francis Morland, local resident, spoke in objection to the application.

Mr Alan Siviter, agent to the applicant, spoke in support of the application.

Cllr Gordon King, on behalf of Westbury Town Council, spoke in objection to the application.

David Cox, Senior Planning Officer, introduced the report which recommended that the Committee delegates authority to the Head of Development Management to grant planning permission, subject to planning conditions and informatives, following the completion of a s106 legal agreement pursuant to the Town and Country Planning Act 1990 to secure a £23,333.31 developer contribution to mitigate against the environmental air quality effects in Westbury.

Reference was made to the presentation slides (Agenda Supplement 1) and officers explained the site area and its location with respect to neighbouring businesses within the trading estate. Officers detailed the make-up of the proposal, namely; five gas engines, electrical substation, exhaust stack, gas kiosk and oil tank. The proposed elevations and plans were then clarified alongside pictures of the site and surrounding areas for further context. The Air Quality Management Area (AQMA) was shown, and officers displayed extracts from the Westbury Air Quality Management Plan (WAQMP), Air Quality Assessment and IQAM Guidance. It was noted that these slides alongside the report, concluded that the percentage change in concentration relative to Air Quality Assessment Level was moderate and at 'Level 2' in the WAQMP. Furthermore, it was explained that Wiltshire Council has sought a Counsel Opinion, a copy of which was included within the Agenda Pack, and officers went on to detail the headline bullet points. Officers highlighted that if Members were minded to approve the application, then the £23.3k developer contribution could be used to fund improvements to the A350 itself to help improve traffic flow through the town and to aid in the Council's commitment to achieve carbon neutrality by 2030.

Key issues highlighted included: principle of development; supporting energy supply; impact on climate change/carbon neutrality; environmental impacts (especially air quality); neighbouring impacts; highways impacts; impact upon the setting of a local Heritage Asset; flood risk; and ecology impacts.

Members of the Committee, the Local Unitary Member, Cllr Matthew Dean, and other Local Member, Cllr Gordon King, as invited by the Chairman, were given the opportunity to ask technical questions to the officer. The main points of focus included: the intention for each facet of the proposal eg: the oil tank; individual contribution of the development to NO₂ levels in AQMA, disparity between the application and Wiltshire Council's climate change pledge; the Counsel Opinion; site safety; a focus on traffic; employment losses; visual intrusion; and the £23.3k contribution.

In response, officers clarified that the individual contribution of the development to the NO₂ levels in the AQMA was predicted to be 0.04 µg/m³ and although this would be exceeding the AQS objective of an annual mean NO₂ set at 40 µg/m³, the increase was minimal and therefore Wiltshire Council Environmental Health Officers had no objections subject to s106 developer financial contributions to assist the Council in improving Air Quality within its Westbury AQMA. The climate change pledge to be "net-zero" by 2030 was discussed and officers noted that the Counsel was referred to the air quality supplementary document which would be subject to public consultation. With regard to site safety and concerns surrounding the storage of oil and gas near residential

areas and offices, officers noted that Dorset & Wiltshire Fire and Rescue Service had not been consulted, however it was highlighted that no objections had been received.

Officers further explained that the application was focused on analysing the impact of the application itself alongside the cumulative impact of the recent developments within the area, specifically applications 19/10947/FUL and 20/06775/WCM and as such, would have considered all point sources such as roads and railways. It was confirmed by officers that 6 jobs would be created by the development, but that they would not be on-site and would instead be remote based jobs. It was further explained that as the site had been used as a car park, this was not generating any jobs and as such should not be used as an argument towards going against officer recommendations as it had no basis in planning policy. Officer then reiterated the proposed elevations and highlighted that the application would be situated inside a trading estate and therefore visual aesthetics had not been considered a priority. Officers went on to explain the Community Infrastructure Levy (CIL) funding process and how it could be used for this application if approved. Finally, officers explained that the air quality impact on neighbouring residences was detailed in the report but highlighted that it was substantially low and as such, officers had not raised any objections.

Members of the public, as detailed above, had the opportunity to address the Committee and speak on the application. In response to points raised during the statements, officers reiterated that Members could only consider what was included within the application. Furthermore, officers noted that Wiltshire's closest gas-powered station was located in Bristol and as such, there was the potential that a local gas-powered station could result in high energy efficiency. Cllr Dean requested that his objection to the Planning Officer's comments was minuted as he felt that there was no basis for his claims with regard to planning policy. Officers further noted that the Queen's Counsel had accepted that the approach proposed was the best method moving forward.

Local Unitary Member, Cllr Matthew Dean, addressed the Committee and detailed his objections to the application, specifically: environmental impacts and the cumulative impact upon air quality within Westbury; the lack of any similar projects within the area and therefore no clear success record of implementing the Air Quality Supplementary Planning Document; the concerns of local businesses in the area alongside employment risks; and no guarantee of further funding on top of the £23.3k developer contribution.

Cllr Suzanne Wickham then moved to refuse the application against officer recommendations on the basis of concerns surrounding air quality and the cumulative effect that the application would have when combined with other recent developments within the area. Cllr David Vigar seconded the motion.

During the debate, officers drew attention to the fact that if Members were minded to refuse the application then officers would need to consider that a specialist may need to be outsourced if the application came to appeal. It was further reiterated that Members would be going against the professional views

of officers and noted that the Council's climate change pledge should not form part of the motion as the decision must be based only on planning policy. Members further discussed air quality concerns in the area with regard to the traffic generated on the A350 and the lack of a clear mitigation plan, and illnesses linked to poor air quality. Members again raised their concerns regarding employment on the area to which officers encouraged Members to not consider within the motion for the reasons explained during technical questions. Officers explained that if Members were minded to refuse then the motion should cite Core Policy 55.

At the conclusion of the debate a vote was taken on the motion to refuse the application against officer recommendations on the basis of the exacerbation of an area of existing poor air quality, therefore failing to protect public health, environmental quality and amenity contrary to Core Policy 55.

Following which, it was:

Resolved

The Committee REEFUSED the application against officer recommendations as the proposal, by reason of its scale and nature in proximity to the Westbury Air Quality Management Area, would exacerbate an area of existing poor air quality. The proposed mitigation measure would not, in practice, offset the nitrogen dioxide emissions effectively and would therefore fail to make a positive contribution to the aims of the Air Quality Management Strategy. The proposal would also, therefore, fail to protect public health, environmental quality and amenity contrary to adopted Wiltshire Core Strategy Core Policy 55.

29 **PL/2021/06752 - 6 Marshmead, Hilperton**

Steven Vellance, Planning Officer, introduced the report which recommended that the Committee approve the application, subject to conditions, for the removal of an existing garage/kitchen extension and erection of a three-bedroom end terrace dwelling.

Reference was made to the presentation slides (Agenda Supplement 1) and officers stated that they were satisfied that both properties would continue to have adequate garden space and that there would be a designated space between the two dwellings to access the garden from the front. It was further explained that the existing access point would be utilised, and off-road parking would be created on the application site to mitigate highways concerns. Proposed elevations and street scenes were then detailed, and it was noted that the proposed dwelling was designed to compliment the existing houses in the area and as such, officers were satisfied that there would be no overbuilding. The sewer pipe route was displayed, and officers explained that Wessex Water were consulted and had no objections to the application. Additionally, it was noted that the applicant was aware of the route and would do on-site water drainage.

Key issues highlighted were: principle of development; the impact on the character of the area; impacts on neighbouring amenity for existing and future occupiers; and highway safety.

Members of the Committee were then given the opportunity to ask technical questions to the officer. The main points of focus included: property valuations and if the development would lead to a loss in the value of neighbouring properties. Officers explained that property valuations were not a sincere planning policy and as such should have no impact on the decision.

Cllr Trevor Carbin moved to approve the application in line with officer recommendations, which was seconded by Cllr Christopher Newbury.

During the debate Members noted that they felt the development would improve the street scene rather than mar it.

At the conclusion of the debate a vote was taken on the motion to approve in line with officer recommendations.

Following which, it was:

Resolved

The Committee unanimously APPROVED 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:

Existing ground floor plan & elevations received on 02.07.2021. Site location plan & block plan, proposed floor plans, proposed elevations received on 17.11.2021. Proposed street scene, proposed block plan with car parking received on 18.01.2022.

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

3. No development shall commence above ground floor slab level until details and samples of the materials to be used for the external walls and roofs 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: In the interests of visual amenity and the character and appearance of the area.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no development within Schedule 2, Part 1, Class A, shall take place on the dwelling house hereby permitted or within their curtilage.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

5. No development shall commence above ground floor slab level until a scheme for the discharge of surface water from the site (including surface water from the access for the new dwelling), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained.

6. The development hereby approved shall not be brought into use until the requisite off-site foul water drainage connections have been secured and is ready for use.

REASON: To define the terms of this planning permission.

7. No development shall commence above ground floor slab level 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 on the land;
- full details of all existing trees 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;
- all means of enclosure;
- all hard and soft surfacing materials;

REASON: 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.

8. 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.

9 No part of the development hereby permitted shall be occupied until the access & parking spaces have been completed in accordance with the details shown on the approved plans. Thereafter, it shall be maintained for those purposes and kept free from obstruction.

REASON: In the interests of highway safety.

10 The development hereby permitted shall not be occupied until the first 5m of the access, measured from the edge of the carriageway has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

INFORMATIVES TO APPLICANT:

1. The applicant is advised that the development hereby approved represents 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 been submitted, it should be submitted now so that the Council can determine the CIL liability.

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:

<https://www.wiltshire.gov.uk/dmcommunityinfrastructurelevy>

2. Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

3. The application may involve the need for a new dropped kerb. The consent hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence will be required from Wiltshire's Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact our Vehicle Crossing Team on: vehicleaccess@wiltshire.gov.uk and/or 01225 713352.

4. The applicant is required to contact Wessex Water and to enter into a 'Sewer Build over Agreement' pursuant to the proposed development and existing underground sewer infrastructure.

30 Urgent Items

There were no urgent items.

(Duration of meeting: 3.00pm – 6.15pm)

The Officer who has produced these minutes is Ellen Ghey of Democratic Services, direct line 01225 718259 x18259, e-mail Ellen.ghey@wiltshire.gov.uk

Press enquiries to Communications, direct line ((01225) 713114 or email communications@wiltshire.gov.uk

Wiltshire Council
Western Area Planning Committee
13th April 2022

There are no Planning Appeals Received between 25/02/2022 and 01/04/2022

Planning Appeals Decided between 25/02/2022 and 01/04/2022

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
19/11575/FUL	Land on the south west side of Black Dog Hill, Chapmanslade, Westbury, BA13 4AD	Chapmanslade	Change of use of land to 2 no. Gypsy pitch and associated works including, 2 no. mobile homes, 2 no. touring caravans, 2 no. dayrooms, and associated works	DEL	Hearing	Refuse	Dismissed	10/03/2022	None

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

13 APRIL 2022

HIGHWAYS ACT 1980 SECTION 119
THE WILTSHIRE COUNCIL WESTBURY 29 AND DILTON MARSH 20
DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2021
HIGHWAYS ACT 1980 SECTION 118
THE WILTSHIRE COUNCIL WESTBURY 28 AND DILTON MARSH 19
EXTINGUISHMENT AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2021

Purpose of Report

1. To:
 - (i) Consider the 13 representations and 4 objections to The Wiltshire Council Parish of Westbury 29 and Dilton Marsh 20 Definitive Map and Statement Modification Order 2021 and The Wiltshire Council Parish of Westbury 28 and Dilton Marsh 19 Definitive Map and Statement Modification Order 2021.
 - (ii) Recommend that the Orders be forwarded to the Secretary of State for Environment, Food and Rural Affairs (**SoSEFRA**) with a recommendation from Wiltshire Council that the Orders be confirmed without modification.

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

APPENDIX 2. The officers' report following the initial consultation on the proposal.

APPENDIX 3. The representations and objections to the made Order in full.

APPENDIX 4. Objections to the Orders and officer responses.

Relevance to the Council's Business Plan

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

Background

3. An application to divert these footpaths away from the proximity of the dwelling was refused in 2018 as it was considered the legal tests for confirming the Order had not been met as the proposed alternatives were not substantially as convenient. Both Westbury Town Council and Dilton Marsh Parish Council had objected to the proposal and the Countryside Access Officer was concerned about the ongoing maintenance of the alternative routes. Officers informed the landowner that they were entitled to apply again with another option if they

wished to. A further application was received on 28 July 2020 from the landowners Robert Taylor and Nicole Lamour of Dilton Vale Farm, Old Dilton, Westbury, Wiltshire, BA13 3RA with a revised proposal diverting the footpaths under Section 119 of the Highways Act 1980. There are five rights of way from all directions culminating in the garden of Dilton Vale Farm passing in close proximity to both sides of the home and through the driveway at front of the house. The proposal is to divert the rights of way towards the eastern and north boundaries of the property away from the dwelling to improve privacy and security of the residence. The current rights of way do not have recorded widths however the proposed alternative rights of way will be recorded as 3 metres. The total length of rights of way to be deleted is approximately 326 metres and adds approximately 380 metres.

4. The five paths in their entirety pass through open countryside and are relatively direct to Dilton Vale farm with minimal deviation. Once at the property they meander around the garden and dwelling and are not well defined. However, the proposed routes, which are available as permissive paths, are clear and obvious tracks and from the representations received this option is already taken by many users of the paths.
5. An initial consultation on the proposal took place between 12 August 2020 and 10 September 2020. The consultation included landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council Member for Westbury East, Council Member for Ethandune, Westbury Town Council and Dilton Marsh Parish Council. There were 18 representations received to the proposal including Dilton Marsh Parish Council and 1 objection was received from Westbury Town Council.
6. A decision report was written and can be seen in full at **Appendix 2** in which the legal tests are discussed in detail. The report concluded that in this case the legal tests for the making of a diversion Order to divert Footpaths Westbury 29 (part) and Dilton Marsh 20 (part) under Section 119 of the Highways Act 1980 were met. And that the legal tests for the making of an extinguishment Order for Footpaths Westbury 28 (part) and Dilton Marsh 19 (part) under Section 118 of the Highways Act 1980 were also met. The proposal is in the interests of the landowners and the routes are not substantially less convenient. There are five rights of way in total culminating in the garden of Dilton Vale Farm passing in close proximity to both sides of the home in touching distance of the windows. It is clear that the paths are intrusive to the landowners as they provide little, if any, opportunity for privacy. It is proposed to divert the rights of way towards the eastern and north boundaries of the property away from the dwelling which would allow an opportunity for increased security for the family home. The new footpaths will have a recorded width of 3 metres, they are well defined tracks and easy to follow. The current paths have no recorded widths, they weave around the property and are significantly narrow in places. The officer believes the public will continue to use the routes in their entirety if these sections were diverted; therefore, the diversion would have minimal impact on the level of public use but would make a considerable difference to the landowners.
7. The proposed diversion also meets other considerations which the Council must take into account such as the provisions of the Rights of Way Improvement Plan, the Equalities Act 2010 and the needs of agriculture, forestry and biodiversity.

The report concluded that at the initial consultation stage the legal tests for the making of the Order appear to be met. However, the report recognised that the evaluation of enjoyment is subjective. The balance of the legal tests may be altered by representations and objections received during the advertisement period for the made Orders meaning that Wiltshire Council must again consider the balance of issues affecting this proposed diversion and extinguishment before forming a view on the merits of confirmation.

8. An initial Order was made on 11 August 2021 under Section 119 of the Highways Act 1980 to divert Footpaths Westbury 29 (part) and Dilton Marsh 20 (part) and extinguish Footpaths Westbury 28 (part) and Dilton Marsh 19 (part), and Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of public rights of way. The consultation ran from 20 August 2021 to 17 September 2021 and included the previous consultees a notice was placed in the Warminster Journal 20 August 2021 and all respondents to the initial consultation were contacted asking if they wished their comments to be taken to the next stage of the process. The consultation received 8 representations and 10 objections. An error was found in this Order so new Orders were drawn up separating the diversions and the extinguishments. The diversions are to be processed using Highways Act 1980 Section 119 and the extinguishments under Highways Act 1980 Section 118. These are the Orders being considered at this committee. The consultation on these Orders ran from 5 November 2021 to 3 December 2021 and included the previous consultees, it was advertised in the Warminster Journal on 26 February 2021. All responders to the previous incorrect Order were contacted explaining that to follow process and regulation they would need to resubmit their response for it to be a duly made representation or objection.
9. In total 13 representations were received in support of the made Orders, including Dilton Marsh Parish Council. There were 4 objections received including Westbury Town Council and 1 objector to the previous Order wished to withdraw their previous objection as they had misunderstood what was being proposed and their issue was further along one of the rights of way and not on land owned by the applicant. All responses to the made Orders can be read in full in **Appendix 3**.
10. Due to the objections received, the Orders must be considered by the Western Area Planning Committee whose Members should consider the legal tests for diversion and the legal tests for extinguishment against the objections received, in order to decide whether Wiltshire Council continues to support the making of these Orders.
11. Where the Authority continues to support its original decision to make these Orders, they should be forwarded to the SoSEFRA for determination, with a recommendation from Wiltshire Council that the Orders be confirmed without modification, or with modification.
12. Where the Authority no longer supports its original decision to make the Orders, it may be withdrawn with reasons given as to why the legal tests for diversion and extinguishment are no longer met. The making of a public path diversion and extinguishment orders are a discretionary duty for the Council, rather than a statutory duty; therefore, the Orders may be withdrawn at any time.

Main Considerations for the Council

13. The legal tests that must be applied by Wiltshire Council in considering whether or not the diversion Order should be confirmed are contained within Section 119 (1) and (2) of the Highways Act 1980. The Council is entitled to further consider the tests for confirmation contained within Section 119(6) at this stage. The legal tests that must be applied by Wiltshire Council in considering whether or not the extinguishment Order are contained in Section 118.

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

“Where it appears to a Council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the Council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order:

- (a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and*
- (b) extinguish, as from such date as may be [specified in the order or determined] in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the Council requisite as aforesaid.*

An order under this section is referred to in this Act as a ‘public path diversion order’.

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

“A public path diversion order shall not alter a point of termination of the path or way:

- (a) if that point is not on a highway; or*
- (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public”.*

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

“The Secretary of State shall not confirm a public path diversion order, and a Council shall not confirm such an Order as an unopposed Order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in Sub-section (1) above and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the Order having regard to the effect which:

- (a) *the diversion would have on public enjoyment of the path or way as a whole;*
- (b) *the coming into operation of the Order would have as respects other land served by the existing public right of way; and*
- (c) *any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it.*

17. **Section 118. Stopping up of footpaths, bridleways and restricted byways**

- (1) *Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.”*

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

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

20. **S.119(1) – The landowner’s interest**

The landowner has proposed this diversion for the following reason: *“There is a confluence of 5 public footpaths within the garden and passing either side of the house. The house, itself, is set in a very rural and isolated location, well away from other public highways. For a very rural property this is far from ideal for any family home, let alone one with young children. ... The paths are highly intrusive for the applicants and their family and expose them to an increased potential threat of antisocial or criminal activity without affording opportunity to provide additional security and privacy to the property ... The proposal retains the integrity of the local footpath network and provides enjoyable paths across the property whilst allowing for them to be less intrusive on family.”* There are five rights of way in total culminating in the garden of Dilton Vale Farm passing in close proximity to both sides of the home in touching distance of the windows. It is clear that the paths are intrusive to the landowners as they provide little if any opportunity for privacy. It is proposed to divert the rights of way to the eastern and north boundaries of the property away from the dwelling which would allow an opportunity for increased security for the family home.

21. Objectors have stated the reasons for applying to divert the rights of way are not for the privacy and security of their family home but because of the interference with business interests such as holiday lets and a wedding venue on the property naming Dilton Vale Farm rural enterprise(s). The applicant/landowner has confirmed that Dilton Vale Farm is a family home and is not run as a business. There is no wedding business on site and the only holiday let is in the building north of point A on the Order plan. The rural enterprise referred to is a charitable venture. However, if there were businesses run from the property this would be irrelevant to the making of an Order, if the applicant had applied to divert the

routes due to business requirements this would still meet with s.119(1) in the interests of the landowner and occupiers.

22. Objectors also state that the landowner would have known about the footpaths prior to the purchase of the property. However, a landowner is legally entitled to apply to divert a right of way if it is in their interests even if they were aware of a right of way at time of purchase. In this case the applicant has lived at the property for 11 years, over time the use of the footpaths has increased due to the growth of the population of Westbury and it has been found that there has been a general increase of use of local networks due to lockdown. The question that must be asked under s.119(1) is whether the diversion is expedient in the interests of the landowner and occupiers.
23. In its objection Westbury Town Council states *“Public footpaths are sacrosanct, and we move them at our peril, creating a precedent for the future”*. However, these Orders would not set a precedent, requirements on land where rights of way are situated can change therefore legislation is in place to divert routes within highway law, Highways Act 1980 and planning law, Town and Country Planning Act 1990. Wiltshire Council policy recognises one of the weaknesses of the rights of way network is that it is historic and may not meet present and future needs. ROWIP Appendix 8 – Strengths, weaknesses, opportunities and threats assessment of the Countryside Access Network, Weaknesses, W1 states: *“The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users”*. The extensive number of rights of way culminating at Dilton Vale Farmhouse travelling from all directions is likely to be because it was formally a significant employer for the area, the property is now a private home. It is therefore demonstrated that the diversions are in the landowner’s interests.

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

The diversion of the footpath must not alter the termination points of the path where these are not on a highway and where they are on a highway they must not be altered, other than to another point on the same highway or a highway connected with it and which is substantially as convenient to the public. The termination points will not be altered by the diversion. Therefore, termination points are substantially as convenient.

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

26. It is important to compare the convenience of the current routes and the proposed routes, the test being that the new ones must not be substantially less convenient to the public than is the existing ones. Convenience of the paths are covered in full in **Appendix 2** paragraph 10.7. In summary:
27. The length of rights of way to be deleted in total equals approximately 326 metres and the proposal adds approximately 380 metres. Depending on which direction you are coming from, and are intending on travelling to, the proposal either lengthens or shortens your journey. However, these rights of way are recreational not utility routes therefore the minimal changes in distances will have no impact on public convenience of the paths. Users will already have chosen to walk significant distances to get to these rights of way at Dilton Vale Farm. Taking each of the five routes in turn from their intersection with highway; Honey Lane UC road to diversion point E approximately 180 metres, from Westbury Leigh to diversion point H approximately 400 metres, from Sand Hole

Lane to diversion point H approximately 730 metres, from St Mary's Church Old Dilton Road to diversion point C approximately 325 metres, from Old Dilton Road north of Dilton Farm to diversion point A approximately 160 metres.

28. The five paths in their entirety pass through open countryside and are relatively direct to Dilton Vale farm with minimal deviation. Once at the property they meander around the garden and dwelling, are not well defined and in places quite narrow. However, the proposed routes are clear and obvious tracks and will have a recorded width of 3 metres. From the representations received this option is already taken by many users of the paths.
29. The surfaces for both the current routes and proposed routes are very similar encompassing grass and gravel tracks. There is not a substantial change in gradient of the current definitive routes and the proposed routes. When walking the entirety of these lengthy paths the conditions are the same. Part of the section of Westbury 28 proposed to be diverted is eroding significantly, as the path continues to wear away it would require expensive works to be undertaken by the highway authority or it will cease to exist entirely. The proposal would mean that this section of path is diverted alleviating these concerns. A section of the proposed route has been repaired with land drainage to prevent the previous boggy condition. New bridges are to be installed by the applicant to Wiltshire Council's specification before the Orders are certified.
30. There is no additional furniture on the proposed routes. There are three bridges on the current rights of way. The proposed route will require two which the landowner will provide to Wiltshire Council's specifications prior to certification.
31. The proposed route is considered to be expedient in terms of section s.119(6) i.e. convenience of the paths.
32. **S.119(6) – Effect on public enjoyment of the path or way as a whole**
Public enjoyment of the path is covered in full in the decision report, **Appendix 2** paragraph 10.8. Although 4 objections have been received to the proposal including Westbury Town Council there have been 13 supporting representations received including Dilton Marsh Parish Council. Many of the supporters' state they are regular users of the routes over a number of years.
33. Dilton Vale Farmhouse is listed as a Grade II building. The existing route leads close to the property offering a close to view of the property. However, the diversions offers a view of the property in full. Representation comments on this point include; *"It is a better route to walk offering better views of the house"*, *"It's actually a better route to walk in my opinion, offering better views of the house but discreetly from a distance"*.
34. Many users of the route may have discomfort in walking at such close proximity to the dwelling, within touching distance from the windows. This discomfort may be more conspicuous due to the properties isolated location. Many of the representations received made such comments and include *"Use of the route feels intrusive"* *"it feels an imposition on the owners"* *"we walk regularly and have done for years ... the footpath takes us directly past their windows and very close to their house which is unnecessary, and a diversion would be far more peaceful for everyone"* and terms used include, *uncomfortable, invasive, awkward*. *"The walk rambles through open countryside so the route passing*

directly past the property seems completely unnecessary". These comments can be viewed in full in **Appendix 3**.

35. The Court of Appeal upheld the High Court's decision in the case of *The Open Spaces Society v Secretary of State for the Environment, Food and Rural Affairs [2020] EWHC 1085 Admin* as to the correct criteria to be applied when considering applications to divert a footpath, under Section 119 of the Highways Act 1980. The judgment confirms that in carrying out the test of expediency under Section 119(6) of the Act, the decision making is not confined to determining the matter solely on the basis of the criteria under Section 119(6)(a), (b), and (c). The benefit of the diversion to the landowner can be one of the factors taken account when carrying out the expediency test under Section 119(6)(a) to (c) of the Act.

36. The officer believes the public will continue to use the routes in their entirety if these sections are diverted; therefore, the diversion would have minimal impact on the level of public use, but it would make a considerable difference to the landowner.

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

As the applicant owns all the land affected by the proposal it is considered that there is no risk of compensation arising from the extinguishment of the existing route.

38. **S.119(6) – Effect on land served by the new right of way**

As the applicant owns all the land affected by the proposal it is considered that there is no risk of compensation arising from the creation of the new route.

39. **Section 118** – allows the Highway Authority to extinguish a footpath, bridleway or restricted byway, where they consider it expedient to do so on the grounds that the path or way is not needed for public use. It is proposed to extinguish 48 metres of Footpath Westbury 28 and 13 metres of Footpath Dilton Marsh 19 as they would result in an unnecessary spur from the diverted route around Dilton Vale Farm boundary which would no longer be needed for public use. The legislation states that the authority should take into account the effect of the extinguishment on other land served by the path or way and the provisions for compensation. The land subject to a public path extinguishment order is in the ownership of the applicant.

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

Wiltshire Council's rights of way improvement plan is entitled Countryside Access Improvement Plan 2015 – 2025. Within the plan on 4.1 page 16 the Council recognises that considering the needs of those with mobility impairments is a statutory responsibility and Policy number 7 Gaps, Gates and Stiles recognises that the authority must consider the needs of those with mobility impairments when managing rights of way and access and that this requirement particularly applies when authorising structures (e.g. stiles and gates) on rights of way and seeking improvements to existing structures to make access easier.

There is no additional furniture on the proposed routes. The new footpaths will have a recorded width of 3 metres, they are well defined tracks and easy to follow. The current paths have no recorded widths, they weave around the property and are significantly narrow in places.

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

There will be no likely adverse impact on biodiversity, agriculture or forestry.

Overview and Scrutiny Engagement

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

Safeguarding Considerations

43. There are no safeguarding considerations associated with the confirmation of the making of these Orders.

Public Health Implications

44. There are no identified public health implications which arise from the confirmation of the making of these Orders.

Corporate Procurement Implications

45. In the event these Orders are forwarded to the SoSEFRA there are a number of potential requirements for expenditure that may occur, and these are covered in paragraphs 49, 50, 51 of this report.

Environmental and Climate Change Impact of the Proposal

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

Equalities Impact of the Proposal

47. Issues with accessibility have been addressed in the report at paragraph 37.

Risk Assessment

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

Financial Implications

49. The applicant has agreed to pay all of the Council's costs associated with the making of these Orders, with the advertisement of the confirmed Order and with the creation of the new path (works which have been completed). However, Wiltshire Council is not empowered to charge the applicant any costs related to forwarding the application to the SoSEFRA for confirmation by the Planning Inspectorate and accordingly will have to fund these from existing rights of way budgets. Where an application for an Order is refused no costs are payable by the applicant. In this instance, where Orders are made and confirmed the cost to the applicant will be £2,225 plus the cost of any associated works incurred by the Council. The applicant has agreed to this.
50. Where there are outstanding objections to the making of these Orders, the Committee may resolve that Wiltshire Council continues to support the making and confirmation of these Orders. The Orders will then be determined by the Planning Inspectorate by way of written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is negligible; however, where a local hearing is held the costs to the Council are estimated to be around £200 if no legal representation is required and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation.
51. There are no costs associated with the Council resolving to abandon these Orders though the decision may be subject to judicial review and the Council may incur associated costs as a result of that action (see Legal Implications below).

Legal Implications

52. Where the Council does not support confirmation of the making of these Orders and resolves to abandon them, clear reasons for this must be given and must relate to the legal tests contained within Section 119 and 118 of the Highways Act 1980. The applicant may seek judicial review of the Council's decision if the process followed is seen as incorrect. The cost for this may be up to £50,000.

Options Considered

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

Reason for Proposal

54. Unless the objections and representations are withdrawn the Orders must be forwarded to the SoSEFRA for determination.

55. It is considered that in this case the legal tests for the making of a diversion order to divert Footpaths Westbury 29 (part) and Dilton Marsh 20 (part) under Section 119 of the Highways Act 1980 have been met, and the additional legal tests for confirmation contained within Section 119(6) have also been met. The Order is in the interests of the landowner to divert the footpaths away from the proximity of the dwelling towards the boundaries of the property for privacy and security reasons. The proposed route is not substantially less convenient, and the majority of responses received were in support of the diversion detailing a preference of using the proposed routes away from the dwelling. The expediency of the confirmation of an Order may be balanced against the interests of the owner. The officer believes the public will continue to use the route in its entirety if this section was diverted; therefore, the diversion would have minimal impact on use of the route by the public but would make a considerable difference to the landowner.
56. It is considered that in this case the legal tests for the making of an extinguishment order for Footpaths Westbury 28 (part) and Dilton Marsh 19 (part) under Section 118 of the Highways Act 1980 have been met as an unnecessary spur would be left as a result of the diversion.
57. The proposed diversion also meets other considerations which the Council must take into account such as the provisions of the ROWIP, the Equalities Act 2010 and the needs of agriculture, forestry and biodiversity.

Proposal

58. That the Wiltshire Council Parish of Westbury 29 and Dilton Marsh 20 Definitive Map and Statement Modification Order 2021 and The Wiltshire Council Parish of Westbury 28 and Dilton Marsh 19 Definitive Map and Statement Modification Order 2021 be forwarded to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that it be confirmed as made.

Peter Binley

Acting Director of Highways and Transport

Report Author:

Ali Roberts

Definitive Map Officer

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

None

Appendices:

Appendix 1 - Order and Order Plan

Appendix 2 - Decision report for the making of the Order

Appendix 3 - Representations and objections in full

Appendix 4 - Objections to the Orders and officer responses.

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**PUBLIC PATH DIVERSION
AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER
HIGHWAYS ACT 1980 – SECTION 119
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53A (2)**

**THE WILTSHIRE COUNCIL WESTBURY 29 (PART) AND DILTON MARSH 20
(PART), DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2021**

This order is made by Wiltshire Council (“the authority”) under section 119 of the Highways Act 1980 (“the 1980 Act”) because it appears to the authority that in the interests of the owner of the land crossed by the footpaths described in paragraph 1 of this order it is expedient that the lines of the paths should be diverted.

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 and the Warminster and Westbury Rural District Council Area Definitive Map and Statement dated 1953 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 a highway shown or required to be shown in the map and statement.

The applicant has agreed to defray any compensation which becomes payable in consequence of the coming into force of this order and any expenses which are incurred in bringing the new site of the paths into a fit condition for use by the public.

Westbury Town Council and Dilton Marsh Parish Council have been consulted as required by section 120(2) of the 1980 Act.

BY THIS ORDER:

1. The public rights of way over the land situate at Dilton Vale Farm, Old Dilton Road, Old Dilton, Westbury in the parishes of Westbury and Dilton Marsh and shown by bold continuous lines on the plan contained in this order and described in Part 1 of the Schedule to this order shall be stopped up on such date as the authority certifies that the work bringing the new site of the paths into a fit condition for use by the public has been carried out and thereupon the Westbury Urban Council Area Definitive Map and Statement dated 1953 and the Warminster and Westbury Rural District Council Area Definitive Map and Statement dated 1953 shall be modified by deleting from it those public rights of way.

2. There shall at the end of 56 days from the date of confirmation of this order be public footpaths over the land situate at Dilton Vale Farm, Old Dilton Road, Old Dilton, Westbury in the parishes of Westbury and Dilton Marsh described in Part 2 of the Schedule and shown by bold broken lines on the plan contained in this order, and thereupon the Westbury Urban Council Area Definitive Map and Statement dated 1953 and the Warminster and Westbury Rural District Council Area Definitive Map and Statement dated 1953 shall be modified by adding those paths to it.

3. The Westbury Urban Council Area Definitive Map and Statement dated 1953 and the Warminster and Westbury Rural District Council Area Definitive Map and Statement dated 1953 shall be modified as described in Part 3 of the Schedule to this order.

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 }
 25 October 2021 }
 in the presence of:

F. J. Jarrett
 Senior Solicitor



SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

That length of Footpath Westbury 29 leading from point A on the attached plan, at OS Grid Reference ST 8607-4929 in a north north westerly direction for approximately 52 metres to point B at OS Grid Reference ST 8605-4934 and leading from point C at OS Grid Reference ST 8603-4932 in a north easterly direction for approximately 34 metres to point B at OS Grid Reference ST 8605-4934 then heading in a broadly north north westerly direction for approximately 99 metres to point D at OS Grid Reference ST 8601-4942.

That length of Footpath Dilton Marsh 20 leading from point D on the attached plan, at OS Grid Reference ST 8601-4942 in a north westerly direction for approximately 90 metres to point E at OS Grid Reference ST 8596-4949.

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

That length of Footpath Westbury 29 from point C on the attached plan, at OS Grid Reference ST 8603-4932, leading in an east south easterly direction for approximately 51 metres to point A at ST 8607-4929, then heading in a north north easterly direction for approximately 140 metres to point I at OS Grid Reference ST 8614-4941, then heading in a broadly westerly direction for approximately 92 metres to point H at OS Grid reference 8605-4944. Having a width of 3 metres.

That length of Footpath Dilton Marsh 20 from point H on the attached plan, at OS Grid Reference ST 8605-4944, leading in a broadly west north westerly direction for approximately 105 metres to point E at ST 8596-4949. Having a width of 3 metres.

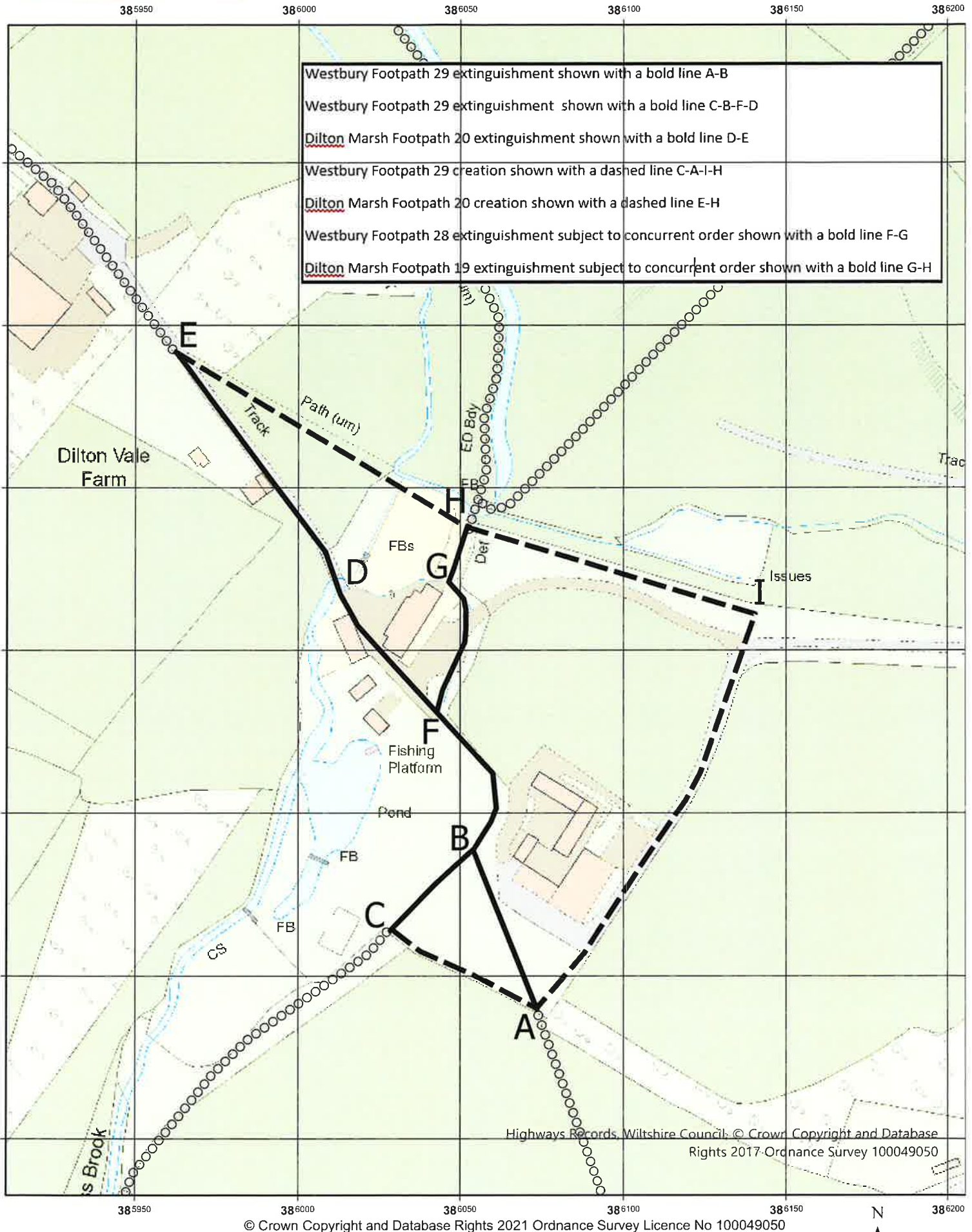
PART 3

MODIFICATION OF DEFINITIVE STATEMENT

Variation of particulars of path or way

<u>Parish</u>	<u>Path No.</u>	<u>Modified Statement to read:-</u>	<u>Modified under Section 53 (3) as specified</u>
Westbury	29	<p><u>FOOTPATH.</u> From Old Dilton Road, 146 m north of Dilton Farm, leading north west to Dilton Vale Farm at OSGR ST 8607-4929 then around the boundary of Dilton Vale Farm heading in a north north easterly direction to OSGR ST 8614-4941, then heading in a broadly westerly direction to Footpath Dilton Marsh 19 at OSGR ST 8605-4944. A branch of Westbury 29 leads from OSGR ST 8607-4929 in a west-north-westerly direction to OSGR ST 8603-4932 and then south west to the Old Dilton Road at the Church on the Dilton Marsh Parish boundary.</p> <p>Approximate length 770 m.</p> <p>Width from OS Grid Reference ST 8607-4929 to ST 8605-4944 and ST 8607-4929 to ST 8603-4932 3 metres</p>	53(3)(a)(i)
Dilton Marsh	20	<p><u>FOOTPATH.</u> From the southern end of road U/C 6188 at Penknapp leading south east to OSGR ST 8596-4949 then in an east south easterly direction to meet Footpath Westbury 29 at OSGR ST 8605-4944.</p> <p>Approximate length 263 metres.</p> <p>Width from OS Grid Reference ST 8596-4949 to ST 8605-4944 3 metres</p>	53(3)(a)(i)

The Wiltshire Council Parish of Westbury Path no.29 (part) and Dilton Marsh Path no.20 (part) diversion and Definitive Map and Statement Modification Order 2021



**PUBLIC PATH EXTINGUISHMENT
AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER
HIGHWAYS ACT 1980 – SECTION 118
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53A (2)**

**THE WILTSHIRE COUNCIL WESTBURY 28 (PART) AND DILTON MARSH 19
(PART) EXTINGUISHMENT AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER 2021**

This order is made by Wiltshire Council (“the authority”) under section 118 of the Highways Act 1980 (“the 1980 Act”) because it appears to the authority that the footpaths described in paragraph 1 of this order are not needed for public use.

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 and the Warminster and Westbury Rural District Council Area Definitive Map and Statement dated 1953 require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the extinguishment (as authorised by this order) of a highway shown or required to be shown in the map and statement.

Westbury Town Council and Dilton Marsh Parish Council have been consulted as required by section 120(2) of the 1980 Act.

BY THIS ORDER:

1. The public rights of way over the land situate at Dilton Vale Farm, Old Dilton Road, Old Dilton, Westbury in the parishes of Westbury and Dilton Marsh and shown by bold continuous lines on the plan contained in this order and described in Part 1 of the Schedule to this order shall be extinguished at the end of 56 days from the date of confirmation of this order and thereupon the Westbury Urban Council Area Definitive Map and Statement dated 1953 and the Warminster and Westbury Rural District Council Area Definitive Map and Statement dated 1953 shall be modified as described in Part 2 of the Schedule to this order.
2. Where immediately before the date on which the paths are extinguished 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.


Senior Solicitor

THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
was hereunto affixed this }
25 October 2021 }
in the presence of:



SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

That length of Footpath Westbury 28 leading from point F on the attached plan, at OS Grid Reference ST 8604-4938 in a broadly northerly direction for approximately 48 metres to point G at OS Grid Reference ST 8605-4943.

That length of Footpath Dilton Marsh 19 leading from point G on the attached plan, at OS Grid Reference ST 8605-4943 in a broadly northerly direction for approximately 13 metres to point H at OS Grid Reference ST 8605-4944

PART 2

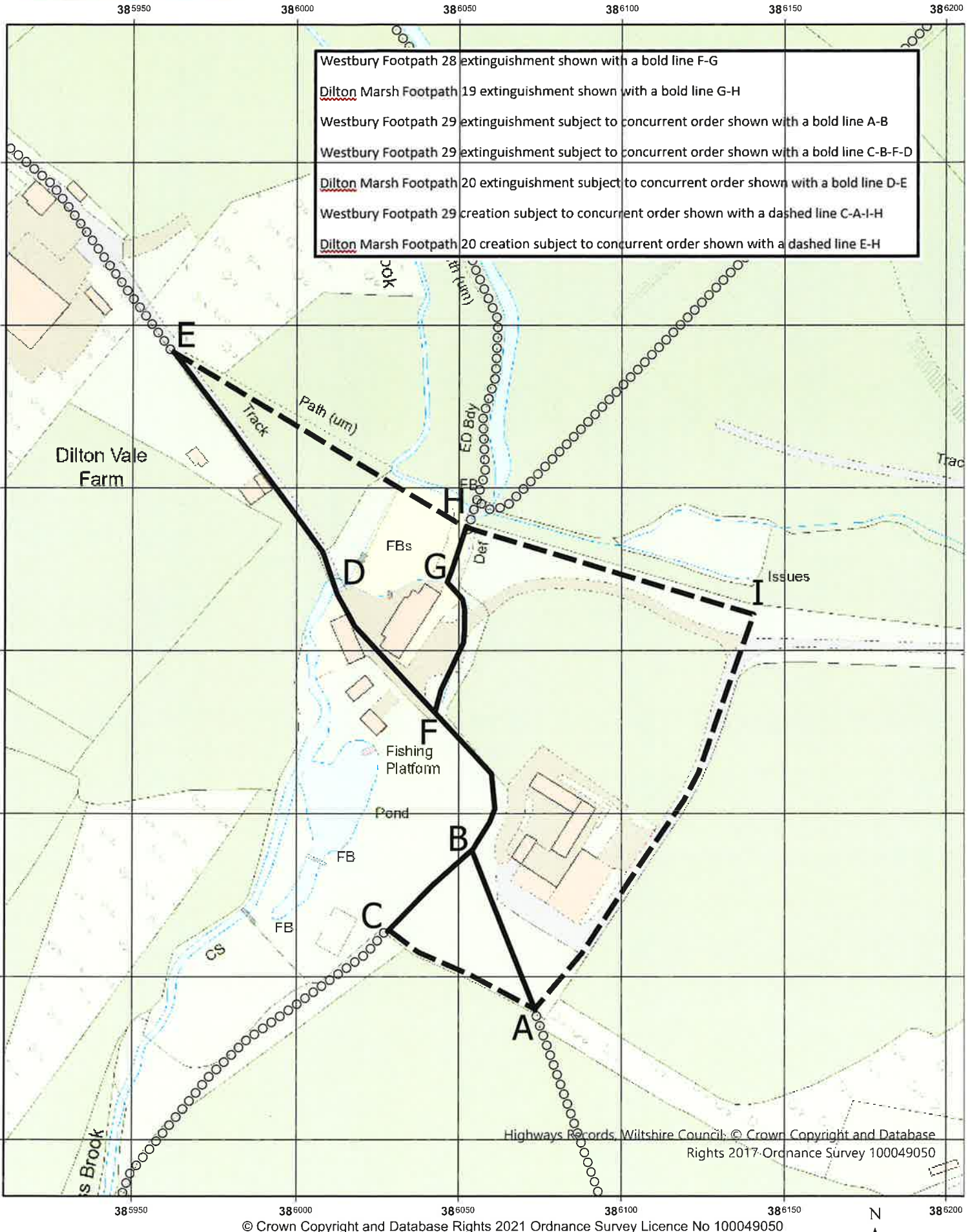
MODIFICATION OF DEFINITIVE STATEMENT

Variation of particulars of path or way

<u>Parish</u>	<u>Path No.</u>	<u>Modified Statement to read:-</u>	<u>Modified under Section 53 (3) as specified</u>
Westbury	28	<u>FOOTPATH.</u> From Leigh Fields Lane leading south-west to its intersection with Footpath Dilton Marsh 19. Approximate length 730 m.	53(3)(a)(i)
Dilton Marsh	19	<u>FOOTPATH.</u> From the Corn Mill at Westbury Leigh leading south alongside Biss Brook to its intersection	53(3)(a)(i)


with Footpaths Dilton Marsh 20 and
Westbury 29.

Approximate length 276 m.



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**COVERING PAGE FOR DECISION REPORT ON HIGHWAYS ACT 1980 – SECTION 119 AND 118
PROPOSED DIVERSION OF FOOTPATHS WESTBURY 29 (PART) DILTON MARSH 20 (PART) AND
EXTINGUISHMENT OF WESTBURY 28 (PART) DILTON MARSH 19 (PART) AND SECTION 53A OF
THE WILDLIFE AND COUNTRYSIDE ACT 1981 – FOOTPATHS WESTBURY 29 (PART) DILTON
MARSH 20 (PART) WESTBURY 28 (PART) DILTON MARSH 19 (PART)**

Name	Signature	Date	Approved Yes/No
Sally Madgwick Definitive Map and Highway Records Manager		09 August 2021	Yes
Natasha Gumbrell Head of Countryside Management	Copy for information only		
From:	Ali Roberts Definitive Map Officer		
Date of Report:	5 August 2021		
Return to:	Ali Roberts		

Nature of Report:

This report by Ali Roberts (Case Officer) is seeking authorisation from the officer with the delegated power to effect the recommendation to consider an application dated 28 July 2021, from Mr Robert Taylor and Nicole Lamour, Dilton Vale Farm, Old Dilton Road, Old Dilton, Westbury, BA13 3RA to divert Footpaths Westbury 29 (part), Dilton Marsh 20 (part) and extinguish Westbury 28 (part) and Dilton Marsh 19 (part) under Section 119 and 118 of the Highways Act 1980. The effect of the application is to divert and extinguish the rights of way out of Dilton Vale Farm garden and away from close proximity to the home to routes to the eastern and northern boundaries of the property having recorded legal widths of 3 metres. Although Westbury Town Council objected to the proposal on the grounds that rights of way are sacrosanct there have been 18 supporting representations received including Dilton Marsh Parish Council. Many of the supporters' state to be regular users of the routes over a number of years and that they find the proposed routes more enjoyable. This proposal is in the interests of the landowner due to privacy and security concerns and the officer believes the proposed routes are not substantially less convenient and there is no detrimental effect on public enjoyment of the routes. Officers therefore consider that at present the legal tests for the confirmation of an order are met and the order would be capable of being confirmed.

Officer's Recommendation:

That an order be made under Section 119 and 118 of the Highways Act 1980 to divert Footpaths Westbury 29 (part), Dilton Marsh 20 (part) and extinguish Westbury 28 (part) and Dilton Marsh 19 (part), and Section 53A of the Wildlife and Countryside Act 1981, to amend the definitive map and statement of public rights of way and to confirm the order if no representations or objections are received.

DECISION REPORT

HIGHWAYS ACT 1980 – SECTION 119 AND 118

PROPOSED DIVERSION OF FOOTPATHS

WESTBURY 29 (PART), DILTON MARSH 20 (PART) AND EXTINGUISHMENT OF FOOTPATHS WESTBURY 28 (PART) AND DILTON MARSH 19 (PART) AND SECTION 53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 – WESTBURY 29 (PART), DILTON MARSH 20 (PART), WESTBURY 28 (PART) AND DILTON MARSH 19 (PART)

1. Application

Application No: 2020/10P
Application Date: 28 July 2020
Applicant: Robert Taylor and Nicole Larmour
Dilton Vale Farm
Old Dilton Road
Old Dilton
Westbury
Wiltshire BA13 3RA

1.1. The landowner has proposed this diversion for the following reason:

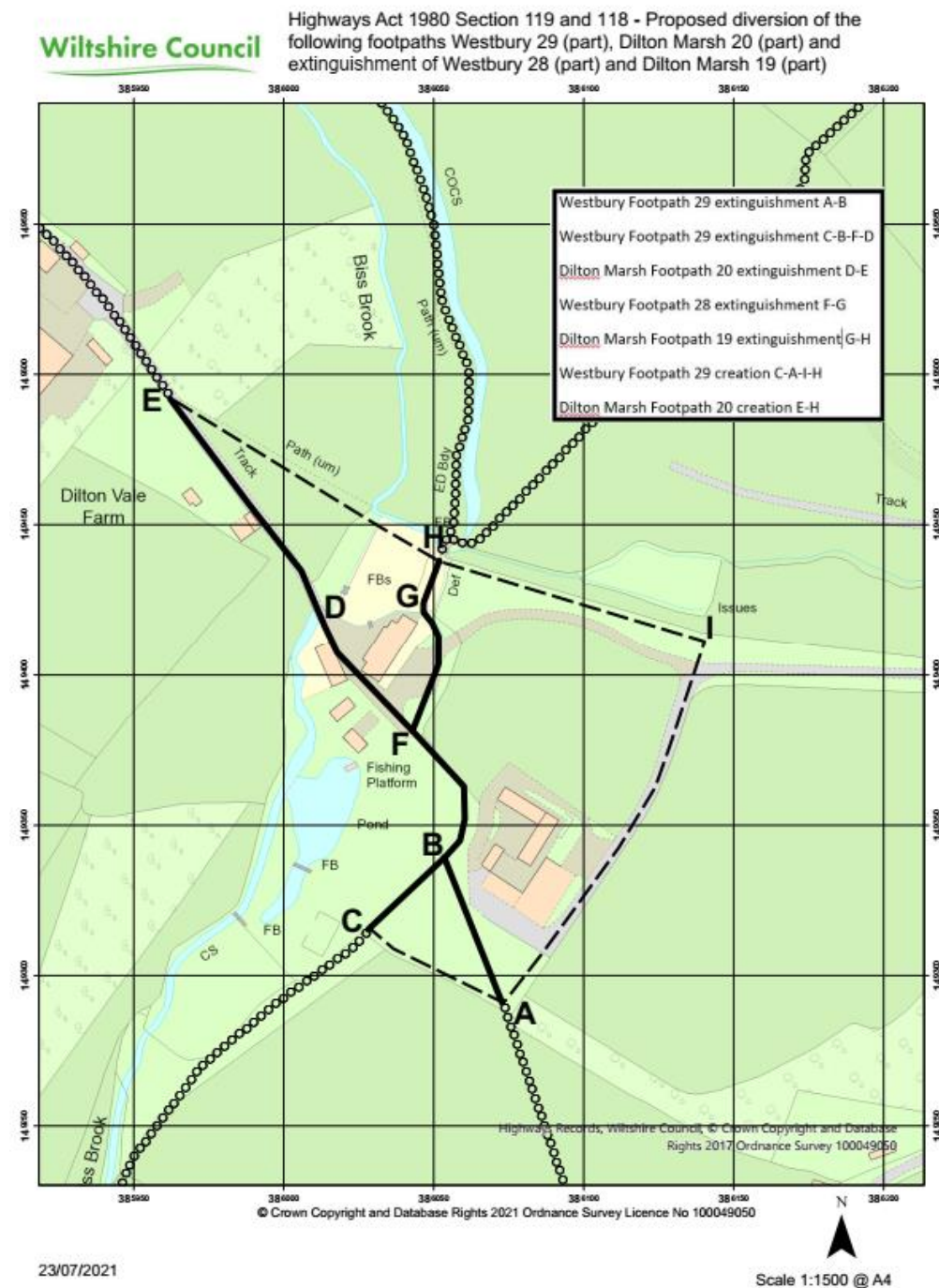
“There is a confluence of 5 public footpaths within the garden and passing either side of the house. The house, itself, is set in a very rural and isolated location, well away from other public highways. For a very rural property this is far from ideal for any family home, let alone one with young children. ... The paths are highly intrusive for the applicants and their family and expose them to an increased potential threat of antisocial or criminal activity without affording opportunity to provide additional security and privacy to the property ... The proposal retains the integrity of the local footpath network and provides



Westbury	29	<p>FOOTPATH. From Old Dilton Road, 146 m north of Dilton Farm, leading north-west to Dilton Vale Farm and path No.20 in the Parish of Dilton Marsh with a branch from Dilton Vale Farm leading south-west to the Old Dilton Road at the Church on the Dilton Marsh Parish boundary.</p> <p>Approximate length 640 m.</p>	<p>relevant date</p> <p>6th October 1992</p>
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Dilton Marsh	20	<p><u>FOOTPATH.</u> From the southern end of road U/C 6188 at Penknapp leading south east to path no.19 on the Westbury Urban District boundary at Dilton Vale Farm.</p> <p>leading south-east to path No.19 on the Westbury Urban District boundary at Dilton Vale Farm.</p> <p>Approximate length 275 metres.</p>	<p>Relevant date 23rd December 1992</p>
Westbury	28	<p><u>FOOTPATH.</u> From Leigh Fields Lane leading south-west to the Dilton Marsh parish boundary at Dilton Vale Farm, where it joins path No.29. Approximate length 823 m.</p>	<p>relevant date 6th October 1992</p>
Dilton Marsh	19	<p><u>FOOTPATH.</u> From the Corn Mill at Westbury Leigh leading south alongside Biss Brook to the Westbury Urban District boundary at Dilton Vale Farm.</p> <p>Approximate length 302 m.</p>	<p>Relevant date 23rd December 1992</p>

4. Proposed Diversion Plan



4.1 It is proposed to divert Footpath Westbury 29 from A-B and C-B-F-D, Dilton Marsh 20 from D-E, and extinguish Westbury 28 from F-G and Dilton Marsh 19 from G-H as shown by a bold continuous line on the plan. Creating new sections of Footpath Westbury 29 from C-A-I-H and Dilton Marsh 20 from E-H as shown by a bold broken line on the plan.

Decision Report
 Highways Act 1980 (Section 119 and 118) – Proposed Diversion of Footpaths Westbury 29 (part)
 Dilton Marsh 20 (part) and extinguishment of Footpaths Westbury 28 (part) Dilton Marsh 19 (part)

5. Photograph of site



5.1 Current Westbury 29 A-B



5.2 Current Westbury 29 C-B-F-D



Decision Report

Highways Act 1980 (Section 119 and 118) – Proposed Diversion of Footpaths Westbury 29 (part)
Dilton Marsh 20 (part) and extinguishment of Footpaths Westbury 28 (part) Dilton Marsh 19 (part)



5.3 Current Dilton Marsh 20 D-E



5.4 Current Westbury 28 F-G



5.5 Current Dilton Marsh 19 G-H



Decision Report

Highways Act 1980 (Section 119 and 118) – Proposed Diversion of Footpaths Westbury 29 (part) Dilton Marsh 20 (part) and extinguishment of Footpaths Westbury 28 (part) Dilton Marsh 19 (part)

5.6 Proposed Westbury 29 C-A-I-H



Decision Report

Highways Act 1980 (Section 119 and 118) – Proposed Diversion of Footpaths Westbury 29 (part)
Dilton Marsh 20 (part) and extinguishment of Footpaths Westbury 28 (part) Dilton Marsh 19 (part)



5.7 Proposed Dilton Marsh 20 E-H



6. Applicant and Registered Landowner

6.1. Landowner

Robert Taylor and Nicole Larmour
Dilton Vale Farm
Old Dilton road

Decision Report

Highways Act 1980 (Section 119 and 118) – Proposed Diversion of Footpaths Westbury 29 (part)
Dilton Marsh 20 (part) and extinguishment of Footpaths Westbury 28 (part) Dilton Marsh 19 (part)

Old Dilton
Westbury
Wiltshire B13 3RA

7. **Legal Empowerment**

7.1. The application to divert footpaths Westbury 29(part), Dilton Marsh 20 (part), Westbury 28 (part) and Dilton Marsh 19 (part) is made under Section 119 of the Highways Act 1980 and states:

“119. Diversion of footpaths, bridleways and restricted byways

(1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,-

(a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion; and

(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a ‘public path diversion order’.

- (2) *A public path diversion order shall not alter a point of termination of the path or way-*
- (a) *if that point is not on a highway; or*
 - (b) *(where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.*
- (3) *Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall-*
- (a) *specify a date under subsection (1)(a) above, and*
 - (b) *provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.*
- (4) *A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.*
- (5) *Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-*
- (a) *any compensation which may become payable under section 28 above as applied by section 121(2) below; or*

(b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public; or

(c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.

(6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which-

(a) the diversion would have on public enjoyment of the path or way as a whole;

(b) the coming into operation of the order would have as respects other land served by the existing public right of way; and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it;

so, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into account the provisions as to compensation referred to in subsection 5(a) above.

(6A) The considerations to which-

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and

(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.”

7.2 The extinguishment of Footpaths Westbury 28 (part) and Dilton Marsh 19 (part) is made under Section 118 of the Highways Act 1980 and states:

“118. Stopping up of footpaths, bridleways and restricted byways

(1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a ‘public path extinguishment order’.

(2) The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

- (3) *A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.*
- (4) *Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.*
- (5) *Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering –*
- (a) *under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use; or*
- (b) *under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public;*
- the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order would provide an alternative path or way.*
- (6) *For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.*
- (6A) *The considerations to which-*
- (a) *the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and*
- (b) *a council are to have regard in determining whether or not to confirm such an order as an unopposed order,*

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.”

8. Background

8.1. An application to divert these footpaths away from the proximity of the dwelling was refused in 2018 as it was considered the legal tests for confirming the order had not been met as the proposed alternatives were not substantially as convenient. Both Westbury Town Council and Dilton Marsh Parish Council had objected to the proposal and the Countryside Access Officer was concerned about the ongoing maintenance of the alternative routes. Officers informed the landowner that they were entitled to apply again with another option if they wished to. A further application was received on 28 July 2020 from Robert Taylor and Nicole Lamour of Dilton Vale Farm, Old Dilton with a revised proposal diverting the footpaths around the eastern and northern boundary of the property under Section 119 of the Highways Act 1980.

8.2 The landowner proposed this diversion for the following reason:

“There is a confluence of 5 public footpaths within the garden and passing either side of the house. The house, itself, is set in a very rural and isolated location, well away from other public highways. For a very rural property this is far from ideal for any family home, let alone one with young children. ... The paths are highly intrusive for the applicants and their family and expose them to an increased potential threat of antisocial or criminal activity without affording opportunity to provide additional security and privacy to the property ...The proposal retains the integrity of the local footpath network and provides enjoyable paths across the property whilst allowing for them to be less intrusive on family.” The supporting document for the application detailing the

reasons in full can be seen at Appendix A.

- 8.3. There are 5 rights of way from all directions culminating in the garden of Dilton Vale Farm passing in close proximity to both sides of the home and through the driveway at front of the house. It is proposed to divert the rights of way to the eastern and north boundaries of the property away from the dwelling. The current rights of way do not have recorded widths however the proposed alternative rights of way will be recorded as 3 metres. The total length of rights of way to be deleted is approximately 326 metres and adds approximately 380 metres.

9. Public Consultation

- 9.1. A public consultation exercise was carried out on 2 June 2021. A closing date for all representations and objections was given of not later than 5:00pm on Friday 2 July 2021.
- 9.2. The consultation included landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council Members for Westbury East and for Ethandune, Westbury Town Council and Dilton Marsh Parish Council.
- 9.3. As Dilton Marsh Parish Council would not be sitting until Thursday 15 July 2021 an extension on responses was given to Monday 19 July 2021 so that the council would have an opportunity to debate the proposal.
- 9.4. There were 18 supporting responses received including Dilton Marsh Parish Council who had objected to the previous application “*Dilton Marsh PC has resolved to support the proposed diversions*”. Many of the supporters’ state to be regular users of the routes over a number of years. Comments on the proposal included:

- The proposed route is more enjoyable; “The walk rambles through open countryside so the route passing directly past the property seems completely unnecessary”, “I enjoy the lovely views it is a very pleasant walk”, “ It is a better route to walk offering better views of the house”
- This diversion would have no impact walkers but offer the landowners privacy.
- Comments on walking at such close proximity to the property include “*Use of the route feels intrusive*” “*it feels an imposition on the owners*” and terms used include, *uncomfortable, invasive, awkward*
- Footpath use is much heavier now as the population of the area has grown due to the expansion of new housing in Westbury Leigh.

9.5 Westbury Town objected to the proposal.

“At a meeting held on Monday 21st June 2021, Westbury Town Council Highways, Planning and Development Committee considered the proposed diversion on Westbury 29 (part), Dilton Marsh 20 (part), Westbury 29 (part) and Dilton Marsh 19 (part). Westbury Town Council object to the diversion, with the following response: Public footpaths are for the public. It is difficult to see any merit in this application when the occupiers bought the house next to the public footpath and being aware of the footpath. Public footpaths are sacrosanct, and we move them at our peril, creating a precedent for the future.”

9.6 In response to this objection; arguments that when a landowner buys a property in full knowledge of the existence of a right of way and therefore should not be able to alter it were considered in *Ramblers Association v SSEFRA Oxfordshire County Council and Weston EWHC 3333 (Admin) Case No. CO/457/2012*. It confirms that there is no statutory bar to a person making an application in such circumstances. The question that must be asked under s119(1) is whether the diversion is expedient in the interests of the landowner and occupiers.

Mr Justice Ouseley at paragraph 33 [2012] EWHC 3333 (Admin) *“The question that has to be asked under section 119(1) is whether the diversion is expedient in the interests of the landowner. I cannot see that the question of whether the land owner bought knowing the footpath, or bought not knowing of it, or bought taking a chance that he might be able to obtain a diversion order, has got anything to do with whether it is expedient in his interests that the order be made. If it is more convenient, beneficial or advantageous to him, it is expedient in his interests. I cannot see either that the question of whether the order which set a disadvantageous precedent has anything to do with the expediency of the order in his interests, nor historical integrity. Those issues only arise when it comes to the consideration of section 119(6), the second question.”*

Public rights of way are not sacrosanct, requirements on land where rights of way are situated can change therefore legislation is in place to divert routes within highway law, Highways Act 1980 and planning law, Town and Country Planning Act 1990. The extent of rights of way recorded at Dilton Vale Farmhouse travelling from all directions is likely to be because it was formally part of a fulling mill and spinning factory and would have been a significant employer for the area as stated by Historic England *“associated with a former fulling mill and spinning factory, an industry for which this part of Wiltshire is well known”*. The property is now a private home.

- 9.7 All representations and objection on this application can be found in Appendix B.

10. Main Considerations for the Council

- 10.1. The main considerations for the council relate to the legal tests to be satisfied for an order to be made to divert the footpath in the manner the applicant

desires.

**10.2 s.119. Diversion of footpaths, bridleways and restricted byways
(1) Expediency in the interests of the landowner/public**

10.2(a) The landowner has applied to move the footpath as stated in the application
“There is a confluence of 5 public footpaths within the garden and passing either side of the house. The house, itself, is set in a very rural and isolated location, well away from other public highways. For a very rural property this is far from ideal for any family home, let alone one with young children. ... The paths are highly intrusive for the applicants and their family and expose them to an increased potential threat of antisocial or criminal activity without affording opportunity to provide additional security and privacy to the property.”

10.2(b) There are 5 rights of way in total culminating in the garden of Dilton Vale Farm passing in close proximity to both sides of the home in touching distance of the windows, as can be seen in the photographs at 5.2, 5.3 and 5.4. It is clear that the paths are intrusive to the landowner as they provide little if any opportunity for privacy.

10.2 (b) As can be seen by the location plan at 3 the house is in a rural setting isolated away from other settlements therefore the landowners have understandable concern regarding a greater potential risk for antisocial or criminal activity. It is proposed to divert the rights of way to the eastern and north boundaries of the property away from the dwelling which would allow an opportunity for increased security for the family home.

10.2(c) Use of these footpaths has increased as the population has grown due to the expansion of new housing in the local area. Lockdown has also increased the

use of the local rights of way network. As a result the effect on the landowners and their feeling of intrusion has increased.

10.2(c) The officer is therefore satisfied that it is in the interests of the landowner to divert the path

10.3 s.119 Diversion of footpaths, bridleways and restricted byways
(2) Alteration of the termination point

10.3(a) The diversion of the footpath must not alter the termination points of the path where these are not on a highway and where they are on a highway they must not be altered, other than to another point on the same highway or a highway connected with it and which is substantially as convenient to the public. The termination points will not be altered by the diversion.

10.3(b) The officer is satisfied it is expedient in terms of section s.119(2) that the termination points are on the same or connected highways and are substantially as convenient to the public.

10.4 In *Hargrave v Stroud* (2002) EWCA Civ 1281, Lord Justice Schieman stated:

‘On the face of the subsection therefore the authority has discretion as to whether or not to make an order. I do not consider that the mere fact that it is expedient in the interests of the owner that the line of the path should be diverted means that Parliament has imposed on the authority a duty to make such an order once it is satisfied that this condition precedent has been fulfilled.’

10.5 Subsection s.119(6) sets out the factors which are to be taken into account at the confirmation stage. However, it has been held that the Authority is entitled to take these factors into account at the order making stage. In *Hargrave v Stroud* (above), Lord Justice Schieman stated:

‘..the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my judgment entitled to take into account the matters set out in section 119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed.’

- 10.6 The Planning Inspectorate produce a number of Advice Notes to provide some general background information on rights of way matters. Advice Note 9 is a publicly available guide to some of the various types of rights of way Orders which are submitted to the Secretary of State for confirmation. The Note provides a definition of local authorities in the context of the relevant legislation and sets out the primary and secondary legislation and guidance. In relation to Orders made under section 119 of the Highways Act 1980 the Note states:

2.3.4. Section 119(6) requires that before confirming a public path diversion order, the decision-maker must be satisfied that it is expedient in the interests of the owner, lessee or occupier of land crossed by the way or of the public.

2.3.5. In addition, he must be satisfied that the way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which:

- *The diversion would have on the public enjoyment of the way as a whole;*
- *The coming into operation of the order would have upon other land served by the existing way; and*
- *The new way created by the order would have upon the land over which it is created.*

2.3.8. *The decision in Ramblers Association v SSEFRA, Weston and others [2012] EWHC 3333 (Admin) acknowledges that section 119(6) involves three separate tests (as endorsed by the High Court in The Open Spaces Society v Secretary of State for Environment, Food And Rural Affairs [2020] EWHC 1085 (Admin)):*

Test 1: *whether the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public (as set out in section 119(1) and subject to section 119(2) – see paragraphs 21 and 22 above). This was described in R (Hargrave) v Stroud District Council [2001] EWHC Admin 1128, [2002] JPL 1081 as being a low test.*

Test 2: *whether the proposed diversion is ‘substantially less convenient to the public’. In order to meet this test, the path or way must not be substantially less convenient to the public in consequence of the diversion (as per the wording in section 119(6)).*

Both of these tests can be described as gateway tests - unless they are passed the decision-maker does not get to the third test.

Test 3: *whether it is expedient to confirm the Order having regard to the effect: (a) of the diversion on the public enjoyment of the path or way as a whole,*
(b) of the Order on other land served by the existing public right of way; and
(c) of any new public right of way on the land over which it is to be created and any land held with it.

Any material provisions of a rights of way improvement plan must also be taken into account.

2.3.9. *Those specified factors in Test 3 must be taken into account by the decision-maker but the expediency test is not limited to those matters, as confirmed by the Court of Appeal in The Open Spaces Society v SSEFRA [2021] EWCA Civ 241. The decision-maker may have regard to any other relevant matter including, if appropriate, the interests of the owner over which*

the path currently passes, or the wider public interest. Use of the word “expedient” indicates that a broad judgement is to be made and it will be for the decision-maker to weigh the different considerations.

2.3.10. It is possible that a proposed diversion may be as convenient as the existing path but less enjoyable, perhaps because it was less scenic. In that scenario, it is correct for the decision-maker to take account of the degree of benefit to the owner and the extent of loss of public enjoyment together with any other factors both for and against the diversion to arrive at a finding on the expediency of confirming the Order under Test 3.

*2.3.11. Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way, for example). In such circumstances, the diversion order should not be confirmed, since a diversion order cannot be confirmed under section 119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion. The issue of convenience in Test 2 is separate from the question of expediency in Test 3 (see *R (on the application of Young) v SSEFRA [2002] EWHC 844*).*

10.7 s.119(6) Convenience of the path

10.7(a) In assessing the relative convenience of the present and proposed routes, consideration has been given to various factors including length, width, surface, gradient, etc.

10.7(b) Length of path – The length of rights of way to be deleted in total equals approximately 326 metres and the proposal adds approximately 380 metres. These are recreational rather than a utility routes therefore the minimal changes to distance will have no impact on public convenience.

10.7(c) Width and direction of the paths - The new footpaths will have a recorded width of 3 metres, they are well defined tracks and easy to follow as can be seen at 5.6 and 5.7. Currently the paths have no recorded widths, they weave around the property and are significantly narrow in places.

10.7(d) Surface condition and gradient – The surfaces for both the current routes and proposed routes are very similar encompassing grass and gravel tracks. There is not a substantial change in gradient of the current definitive routes and the proposed routes. Part of the section of Westbury 28 proposed to be diverted is eroding significantly as can be seen in the photograph below. As the path continues to wear away it would require expensive works to be undertaken by the highway authority or cease to exist entirely, A Guide to Law and Practice John Riddall and John Trevelyan states: “*Where the line of a right of way ceases physically to exist, as where a path that follows the side of a river is eroded away ... the right of passage ceases to exist also (Rowland v Environment Agency (2002)). No right to deviate exists (Gloucestershire CC v Secretary of State for the Environment, Transport and the Regions and the Ramblers Association (2000)). Once the path has been destroyed it seems that the authority may be relieved of any obligation to reinstate it.*” The proposal would mean that this section of path is diverted alleviating these concerns



10.7(f) Furniture – There is no additional furniture on the proposed routes. There are 3 bridges on the current rights of way; a bridge on Dilton Marsh 20 which also provides private vehicular access; the bridge in the above photograph on an eroding section of Westbury 28 these bridges will no longer be on public rights of way and therefore no longer publicly maintainable; the 3rd bridge is on Dilton Marsh 19 and will remain on the network. A further bridge will be required on the proposed route of Dilton Marsh 20. The landowner will provide 2 new bridges at these locations to Wiltshire Council's specifications prior to certification, this has been agreed by the Countryside Access Officer.

10.7(g) Purpose of paths – The 5 paths in their entirety pass through open countryside and are relatively direct to Dilton Vale farm with minimal deviation. Once at the property they meander around the garden and dwelling and are not well defined. However the proposed routes are clear and obvious tracks and from the representations received this option is already taken by many users of the paths.

10.7(h) The officer is satisfied that it is expedient in terms of section s.119(6), i.e. convenience of the paths.

10.8 Section 119(6)(a) Effect of the diversions on public enjoyment of the path or way as a whole

10.8(a) Consultation responses – The evaluation of enjoyment is subjective, and the balance may be altered by representations and objections received during the consultation period. Although Westbury Town Council objected to the proposal on the grounds that rights of way are sacrosanct there have been 18 supporting representations received including Dilton Marsh Parish Council. Many of the supporters' state to be regular users of the routes over a number of years. Comments include their preference for the proposed routes as they are more enjoyable; *"I enjoy the lovely views it is a very pleasant walk"*,

10.8(b) Historic building and views –Dilton Vale Farmhouse is listed as a Grade II building. The existing route leads close to the property offering a close to view of the property. However walking from I to H and from A to I on the diversion plan a view of the property in full can be appreciated as can be seen at 5.6. Representation comments on this point include; *“It is a better route to walk offering better views of the house”*, *“It’s actually a better route to walk in my opinion, offering better views of the house but discreetly from a distance”*.

10.8(c) Privacy/embarrassment – Many users of the route may have discomfort in walking at such close proximity to the dwelling, within touching distance from the windows as can be seen at 5.2, 5.3 an 5.4. This discomfort may be more conspicuous due to the properties isolated location. Many of the representations received made such comments and include *“Use of the route feels intrusive”* *“ it feels an imposition on the owners”* *“we walk regularly and have done for years ... the footpath takes us directly past their windows and very close to their house which is unnecessary and a diversion would be far more peaceful for everyone”* and terms used include, *uncomfortable, invasive, awkward*. *“The walk rambles through open countryside so the route passing directly past the property seems completely unnecessary”* These comments can be viewed in full in Appendix B.

10.8(d) The officer is satisfied that the public enjoyment of the path would not be affected by the proposed diversion.

10.9 Section 119(6)(b) Effect of the diversion on lands served by the existing right of way

10.9(a) The path has no utility purpose beyond recreational access for the public.

10.9(b) As the applicant owns all the land affected by the proposal there would be no concern about payment of compensation.

10.10 Section 119(6)(c) Effect of the diversion over which new rights of way are proposed

10.10(a) Works on the proposed route must be undertaken to the Countryside Access Officer's satisfaction before the route can be certified.

10.11. Officers consider that at present the legal tests for the confirmation of the order appear to be met and the order appears capable of being confirmed, however this is subject to a further consultation period once the formal order has been made.

10.12 **Section 118** – allows the Highway Authority to extinguish a footpath, bridleway or restricted byway, where they consider it expedient to do so on the grounds that the path or way is not needed for public use.

10.12(a) It is proposed to extinguish 48 metres of Footpath Westbury 28 and 13 metres of Footpath Dilton Marsh 19 as they would result in an unnecessary spur from the diverted route around Dilton Vale Farm boundary which would no longer be needed for public use.

10.12(b) The legislation states that the authority should take into account the effect of the extinguishment on other land served by the path or way and the provisions for compensation. The land subject to a public path extinguishment order is in the ownership of the applicant.

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

Decision Report

Highways Act 1980 (Section 119 and 118) – Proposed Diversion of Footpaths Westbury 29 (part) Dilton Marsh 20 (part) and extinguishment of Footpaths Westbury 28 (part) Dilton Marsh 19 (part)

ROWIP 2 recognises the Council's duty to have regard to the Equality Act 2010 and to consider the least restrictive option:

- At 4.1 page 16 the Council recognises that considering the needs of those with mobility impairments is a statutory responsibility:

"..consider the needs of those with mobility impairments when maintaining the network and authorising structures (e.g. stiles and gates) on the rights of way network and seek improvements to existing structures where it would be beneficial (Equality Act 2010).";

There is no additional furniture on the proposed routes. The new footpaths will have a recorded width of 3 metres, they are well defined tracks and easy to follow. The current paths have no recorded widths, they weave around the property and are significantly narrow in places.

- At 7.4 page 32 the Council recognises the following:

"The requirements for improving accessibility for people with these sorts of disability are generally the same as discussed in conclusion 5."

Conclusion 5 states:

"If older people are to keep active and therefore healthy, they will need a more accessible network as they are more likely to find stiles (and sometimes surfacing and latches) difficult than other people. This highlights the need to replace stiles with gaps or gates on key routes, which can also benefit wheelchair users and parents with buggies and children."

- ROWIP 2 refers to the Council's Gaps, Gates and Stiles Policy. This is Policy number 7 and is appended to ROWIP2

The Policy recognises that the authority must consider the needs of those with mobility impairments when managing rights of way and access and that this requirement particularly applies when authorising structures (e.g. stiles and gates) on rights of way and seeking improvements to existing structures to

make access easier.

There is no additional furniture on the proposed routes.

- ROWIP Appendix 8 – Strengths, weaknesses, opportunities and threats assessment of the Countryside Access Network, Weaknesses, W1 states: *“The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users”*. The extensive number of rights of way culminating at Dilton Vale Farmhouse travelling from all directions is likely to be because it was formally a significant employer for the area, the property is now a private home.

Wiltshire Council relies on DEFRA (2010) Good Practice Guidance for Local Authorities on Compliance with the Equality Act 2010 version 1 and recognises at 7.2.1 that:

A highway authority has a duty, under the Highways Act 1980, to assert and protect the rights of the public to use and enjoy a highway. The Equality Act 2010 adds a further dimension by requiring (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from those functions as others would do or to show that there are good reasons for not doing so.

As previously stated there is no additional furniture on the proposed routes..

10.14 In making diversion orders, Sections 29 and 121(3) of the 1980 Act, require authorities to have due regard to the needs of a) agriculture and forestry and b) the desirability of conserving flora, fauna and geological physiographical features. Section 40 of the Natural Environment and Rural Communities Act 2006 also place a duty on every public authority exercising its functions to have regard to the conservation of biodiversity, so far as is consistent with the proper exercise of those functions. In this section, conserving biodiversity

includes that in relation to a living organism, or type of habitat and restoring or enhancing a population or habitat.

There will be no likely adverse impact on biodiversity, agriculture or forestry.

10.15.(a) The Court of Appeal upheld the High Court's decision in the case of *The Open Spaces Society v Secretary of State for the Environment, Food and Rural Affairs [2020] EWHC 1085 Admin* as to the correct criteria to be applied when considering applications to divert a footpath, under Section 119 of the Highways Act 1980. The judgment confirms that in carrying out the test of expediency under Section 119(6) of the Act, the decision making is not confined to determining the matter solely on the basis of the criteria under Section 119(6)(a), (b), and (c). The benefit of the diversion to the landowner can be one of the factors taken account when carrying out the expediency test under Section 119(6)(a) to (c) of the Act.

10.16 If the effect on the use and enjoyment is not clear, the expediency of the confirmation of an Order may be balanced against the interests of the owner. The proposal is the interests of the landowners offering considerable improvements to privacy and security. The officer believes the proposed new paths are not substantially less convenient to the public and that public enjoyment of the paths would not be affected, in fact from the representations received public enjoyment would increase.

10.17 Officers therefore consider that at present the legal tests for the confirmation of an order are met and the order would be capable of being confirmed. However, once an order is made it is advertised for a period of at least 28 days and during this time any person or body may make representations or objections to the order which will need careful consideration before the order is either supported and forwarded to the Secretary of State for determination

or abandoned by the Council.

11. Safeguarding Considerations

- 11.1. DEFRA's "Rights of Way Circular (1/09) Guidance for Local Authorities" Version 2, October 2009, states at paragraph 5.5:

"The statutory provisions for creating, diverting and extinguishing public rights of way in the 1980 Act have been framed to protect both the public's rights and the interests of the owners and occupiers. They also protect the interests of bodies such as statutory undertakers. The requirements for making, confirming and publicising orders are set out in Schedule 6 to the 1980 Act."

If an order to divert Footpaths Westbury 29 (part), Dilton Marsh 20 (part) and the extinguishment of Footpaths Westbury 28 (part) and Dilton Marsh 19 (part) is made, Wiltshire Council will follow procedures set out in Schedule 6 of the 1980 Act and in doing so Wiltshire Council will fulfil its safeguarding considerations.

12. Public Health Implications

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

13. Risk Assessment

- 13.1. There is a risk to the council in making the orders. If objections were received to it and the council believes the grounds for the confirmation of the orders are still met, notwithstanding the objection, the orders should be sent to the Secretary of State for determination where associated costs must be borne by

Wiltshire Council. To not send the orders to the Secretary of State when the council believes it is capable of being confirmed would be arguably unreasonable and the applicant could seek redress in law against the council decision.

14. Financial Implications

- 14.1. 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), permit authorities to charge applicants costs in relation to the making of orders, including public path diversion orders. Authorities may charge only the actual costs incurred.
- 14.2. The applicant has agreed in writing to meet the actual costs to the Council in processing the order, including advertising the making of the order and should the order be successful, the confirmation of the order and certification that the new route has been provided to a suitable standard for use by the public, in one local newspaper, (i.e. three advertisements).
- 14.3. The applicant has agreed in writing that if diversion made, to pay any compensation which may arise in consequence of the coming into operation of the order.
- 14.4. The applicant has also agreed in writing to pay any expenses which may be incurred in bringing the new footpath into a fit condition for use by the public, as required by the Council.
- 14.5. If an order is made under Section 119 and 118 of the Highways Act 1980 and there are no objections to the making of the orders, Wiltshire Council may itself confirm the order and there are no additional costs to the Council.

- 14.6. If there are outstanding objections to the order which are not withdrawn and the Council continues to support the making of the order, it must be forwarded to the Secretary of State for decision. The outcome of the order would 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 negligible, however where a local hearing is held the costs to the Council are estimated at £200-£500 and £1,000 - £3,000 where the case is determined by local public inquiry. There is no mechanism by which these costs may be passed to the applicant and these costs must be borne by Wiltshire Council.
- 14.7. The making of a diversion and extinguishment 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 continues to support it, for example where it is considered that the proposals no longer meet the legal tests set out under Section 119 and 118 of the Highways Act 1980.

15. Legal Considerations

- 15.1. There is no right of appeal for the applicant where the Highway Authority refuses to make a public path order diversion ; however the Council's decision would potentially be open to judicial review.
- 15.2. If the Council does make a public path diversion order and objections are received, where the Council continues to support the order it may be forwarded to the Secretary of State for decision which may lead to the order being determined by written representations, local hearing or local public inquiry. The Inspector's decision may be subject to challenge in the High Court.

16. Options Considered

- 16.1. (i) To refuse the application, or
- (ii) To make an order to divert Footpaths Westbury 29 (part), Dilton Marsh 20 (part) and extinguish Footpaths Westbury 28 (part) and Dilton Marsh 19 (part), under Section 119 and 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981, to amend the definitive map and statement of public rights of way and to confirm the order if no representations or objections are received.

17. Reasons for Proposal

- 17.1. It is considered that in this case the legal tests for the making of a diversion and extinguishment order to divert Footpaths Westbury 29 (part), Dilton Marsh 20 (part) and extinguish Footpaths Westbury 28 (part) and Dilton Marsh 19 (part) under Section 119 and 118 of the Highways Act 1980 have been met as discussed in paragraph 10. i.e. the order can be made in the interests of the landowner to divert the footpaths away from the proximity of the dwelling to the boundaries of the property and extinguish the unnecessary spur as a result of this diversion.
- 17.3. It is also considered that at this stage the legal tests for the confirmation of the order appear to be met. However, it is recognised that the evaluation of the diminution of use and enjoyment is subjective. The balance of the legal tests may be altered by representations and objections received during the advertisement period meaning that Wiltshire Council must again consider the balance of issues affecting this proposed diversion before forming a view on the merits of confirmation.
- 17.4. The proposed diversion and extinguishment also meets other considerations which the Council must take into account such as the provisions of the

ROWIP, the Equalities Act 2010 and the needs of agriculture, forestry and biodiversity.

18. Proposal

18.1. That an order be made under Section 119 and 118 of the Highways Act 1980 to divert Footpaths Westbury 29 (part), Dilton Marsh 20 (part) and extinguish Footpaths Westbury 28 (part) and Dilton Marsh 19 (part), and Section 53A of the Wildlife and Countryside Act 1981, to amend the definitive map and statement of public rights of way and to confirm the order if no representations or objections are received.

Ali Roberts

Definitive Map Officer

5 August 2021

HIGHWAYS ACT 1980 SECTION 119
THE WILTSHIRE COUNCIL WESTBURY 29 AND DILTON MARSH 20
DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2021
HIGHWAYS ACT 1980 SECTION 118
THE WILTSHIRE COUNCIL WESTBURY 28 AND DILTON MARSH 19
EXTINGUISHMENT AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2021

Representations in support

1. Alexandra Clarke
2. Bill and Kay Dawson
3. Cori Roberts
4. Danny McGrath
5. Dilton Marsh Parish Council
6. Georgia Alford
7. Jordan Russell
8. Julia Mathison
9. Martin Waker
10. Richard Lewis
11. Riff Hutchinson
12. Romany Hamilton
13. Simon Bishop

From: [REDACTED]
Sent: 30 October 2021 12:38
To: [Roberts, Ali](#)
Subject: Fwd: Proposed diversion on westbury 29 (part) dilton marsh 20 (part) westbury 29 (part) dilton Marsh 19 (part)

Dear Miss Roberts,

I received your email yesterday saying there was an error in the previous order. Is it ok for me to just send you our previous correspondence? See below and if you need anything further from me in order to assist get this approved please don't hesitate to contact me.

Kind regards.

Alex

Begin forwarded message:

From: [REDACTED]
Subject: Proposed diversion on westbury 29 (part) dilton marsh 20 (part) westbury 29 (part) dilton Marsh 19 (part)
Date: 6 July 2021 at 21:20:13 GMT+2
To: Ali.Roberts@wiltshire.gov.uk, [REDACTED]

Dear Miss Roberts

I am writing to you to show support for the proposed diversion of the footpath around Dilton Vale Farm. We walk regularly and have done for years... the footpath takes us directly past their windows and very close to their house which is unnecessary and actually the diversion would be best everyone and their dogs, it would also be far more peaceful for all. With the amount of new residents over the years the path closer to the property now feels intrusive.

Thank you.

Alex.

From: [REDACTED]
Sent: 03 November 2021 19:22
To: [Roberts, Ali](#)

The pathway

Dearest Ms ROBERTS

I feel this pathway should be moved as I have spent many days and afternoons walking through Wiltshire and would highly recommend the moving of the footpath that passes so close to Dilton Vale Farm. On many occasions we have disrupted a social occasion at the home of these lovely people. I am in full support of a small diversion which would affect nobody and only make our ambles much more solitary and peaceful. Thank you for your time and patience

Yours sincerely

Alexandra Kerrison Clarke

From: [REDACTED]
Sent: 31 October 2021 16:12
To: [Roberts, Ali](#)
Subject: Fwd: Proposed Diversion of Footpath

Dear Ali

Thank you for your email informing me that you have had to draw up new orders for the proposed diversion of the footpath at Dilton Vale Farm.

I would like to resubmit my original response, which is attached, as I have no further comments I wish to make. I very much hope that the bid for the proposed footpath is successful as it will make the lives of the present and future occupants of Dilton Vale Farm safer and give them more privacy.

Yours sincerely
Bill Dawson

Sent from my iPad

Begin forwarded message:

From: Bill & Kay Dawso [REDACTED]
Date: 7 July 2021 at 18:42:23 BST
To: Ali.Roberts@wiltshire.gov.uk
Cc: [REDACTED]
Subject: Proposed Diversion of Footpath

Subject: proposed diversion on Westbury 29 (part) Dilton Marsh 20 (part) Westbury 29 (part) and Dilton Marsh 19 (part)

Dear Miss Roberts

We have been using the footpaths in the area around Dilton Vale Farm for 27 years and wholeheartedly support the proposed diversion of the original footpath which crosses directly across the garden, close to the property and denies the current owners any privacy.

One thing that we have noticed is that over the years the numbers of dog walkers has increased due to the expansion of the new housing at Westbury Leigh and therefore the current owners now have an even greater intrusion in their lives. We ourselves feel awkward crossing their land so close to the property and feel that a diversion would be a very good solution all round.

Kind regards
Bill Dawson

Sent from my iPad

From: [REDACTED]
Sent: 04 November 2021 11:19
To: [Roberts, Ali](#)
Subject: Fwd: proposed diversion on Westbury 29 (part), Dilton Marsh 20 (part), Westbury 29 (part) and Dilton Marsh 19 (part).

----- Forwarded message -----

From: Cori Roberts [REDACTED]
Date: 15 Jul 2021, 17:58 +0100
To: Ali.Roberts@wiltshire.gov.uk
Subject: proposed diversion on Westbury 29 (part), Dilton Marsh 20 (part), Westbury 29 (part) and Dilton Marsh 19 (part).

Subject:
proposed diversion on Westbury 29 (part), Dilton Marsh 20 (part), Westbury 29 (part) and Dilton Marsh 19 (part).

Dear Miss Roberts,

I'm writing to you in support of the new proposal

We walk there all the time using the footpaths at Dilton Vale Farm

I would actually like to express our support for the proposed diversion of the original path. The existing path passes very close to the owner's property and makes us feel uncomfortable to be honest walking so close to the house.

Best wishes
Cori Roberts

From: [REDACTED]
Sent: 03 November 2021 14:06
To: [Roberts, Ali](#)
Cc: rob.nic@me.com
Subject: Footpath

Dear Mrs Roberts,

I am writing to you regarding the proposed diversion of the current footpath running close to Dilton Vale Farm. My family and I use this footpath regularly to walk our dogs and enjoy the area. I have absolutely no objection to the diversion taking the path further away from the house, as the current route is awkwardly close to where that family live, and it really is no hardship to follow the new proposed route.

Sincerely

Danny McGrath
First Assistant Director/Producer

[REDACTED]

[REDACTED]

From: [DiltonMarsh Clerk](#)
Sent: 23 November 2021 10:49
To: [Roberts, Ali](#)
Subject: Footpaths Westbury 29 part, Dilton Marsh 20 part and Extinguishment of Footpaths Westbury 28 part and Dilton Marsh 19 part

Dear Ali

I can confirm that the PC has no objection to the proposals.

Kind regards,
Nikki

Nicola Duke B.A (Hons), FSLCC
Parish Clerk
For and on behalf of
Dilton Marsh Parish Council

From: Nicola Duke <diltonmarshpc@aol.co.uk>
Sent: 03 November 2021 12:42
To: DiltonMarsh Clerk <clerk@diltonmarsh-pc.uk>
Subject: Fwd: Footpaths Westbury 29 part, Dilton Marsh 20 part and Extinguishment of Footpaths Westbury 28 part and Dilton Marsh 19 part

-----Original Message-----

From: Roberts, Ali
To: Roberts, Ali
Sent: Fri, 29 Oct 2021 12:07
Subject: Footpaths Westbury 29 part, Dilton Marsh 20 part and Extinguishment of Footpaths Westbury 28 part and Dilton Marsh 19 part

Highways At 1980 section 119 and 118
Diversion of Footpaths Westbury 29 (part), Dilton Marsh 20 (part) and Extinguishment of Footpaths Westbury 28 (part) and Dilton Marsh 19 (part)

I do apologise for any inconvenience this may cause but due to an error in the previous Order I have had to draw up new Orders separating the diversion requirement under Highways Act 1980 Section 119 and the extinguishment requirement under Highways Act 1980 Section 118. Wiltshire Council has made the Orders on 25 October 2021. Please find attached a copy of the Orders, the Order Plans and the Notice of making the Orders. I have also attached the decision report on the making of the Orders.

If you have made a representation to the previous Order to follow process and regulation you will need to resubmit your response to these Orders whether that is to

copy the previous response directly or if you have further comments you would like to make. Please send representations by Friday 3 December 2021.

Please find attached the decision report recommending an Order is made and the associated appendices.

Kindest regards,

Ali

Please note that any responses to this email will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

Wiltshire Council

Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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From: [REDACTED]
Sent: 14 July 2021 13:47
To: [Roberts, Ali](#)
Cc: [REDACTED]
Subject: Proposed Diversion on Westbury & Dilton Marsh

Dear Miss Roberts,

We are getting in touch regards to a regular footpath route through Dilton Vale Farm that we take and would like to strongly express our support for the proposed diversion of the original path.

Being in such close proximity to a private family house makes us feel uncomfortable, so we can only imagine how the owners must feel. The number of residents around the Dilton Marsh and Westbury area has increased significantly since the owners originally bought the property and now over the past couple of years with lockdown restrictions seeing a huge rise in outdoor activities, we only think it just and fair for the diversion to be approved, not only benefitting the walkers but the lovely family who live there who just want a bit of privacy.

Kind regards,

Georgia

From: [REDACTED]
Sent: 29 October 2021 12:33
To: [Roberts, Ali](#)
Subject: Re: Footpaths Westbury 29 part, Dilton Marsh 20 part and Extinguishment of Footpaths Westbury 28 part and Dilton Marsh 19 part

Hi Ali,

Thank you for letting me know. Happy to continue, thank you for your support.

Georgia

Get [Outlook for Android](#)

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: Friday, October 29, 2021 12:07:06 PM
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Subject: Footpaths Westbury 29 part, Dilton Marsh 20 part and Extinguishment of Footpaths Westbury 28 part and Dilton Marsh 19 part

Highways At 1980 section 119 and 118
Diversion of Footpaths Westbury 29 (part), Dilton Marsh 20 (part) and Extinguishment of Footpaths Westbury 28 (part) and Dilton Marsh 19 (part)

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Please find attached the decision report recommending an Order is made and the associated appendices.

Kindest regards,

Ali

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<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)
Definitive Map Officer

Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN



Tel: 01225 756178
Email: ali.roberts@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

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From: [REDACTED]
Sent: 29 October 2021 19:19
To: [Roberts, Ali](#)
Subject: Re: Footpaths Westbury 29 part, Dilton Marsh 20 part and Extinguishment of Footpaths Westbury 28 part and Dilton Marsh 19 part

Dear Miss Roberts,

I regularly walk my dog on the footpaths at Dilton Vale Farm, and I would like to express my support for the proposed diversion of the original footpath. The current path passes very close to the owner's property and makes me feel uncomfortable as I feel like I am intruding on the owners property.

There is a considerably higher number of residents in Westbury and Dilton Marsh now compared to when the owners bought the property due to the expansion of the Leigh Park estate, and the footpath use has now changed and would benefit both walkers and the landowner if the diversion was approved. I honestly feel that not only does it make me feel uncomfortable walking so close to the owners property but probably feels like an invasion of privacy for the land owner.

I would appreciate it if you would consider my opinion when making your decision.

Kind regards,

Jordan Russell

Sent from my iPhone

On 29 Oct 2021, at 12:07, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways At 1980 section 119 and 118
Diversion of Footpaths Westbury 29 (part), Dilton Marsh 20 (part)
and Extinguishment of Footpaths Westbury 28 (part) and Dilton
Marsh 19 (part)

I do apologise for any inconvenience this may cause but due to an error in the previous Order I have had to draw up new Orders separating the diversion requirement under Highways Act 1980 Section 119 and the extinguishment requirement under Highways Act 1980 Section 118. Wiltshire Council has made the Orders on 25 October 2021. Please find attached a copy of the Orders, the Order Plans and the Notice of making the Orders. I have also attached the decision report on the making of the Orders.

If you have made a representation to the previous Order to follow process and regulation you will need to resubmit your response to these Orders whether that is to copy the previous response directly or if you have further comments you would like to make. Please send representations by Friday 3 December 2021.

Please find attached the decision report recommending an Order is made and the associated appendices.

Kindest regards,

Ali

Please note that any responses to this email will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN
<image002.png>

Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

Report a problem <https://my.wiltshire.gov.uk/>

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<119 - WEST29 DMAR20.pdf>

<Order plan WEST29 DMAR20 119.pdf>

<Making an order - WEST29 DMAR20 - 119.docx>

<118 - WEST28 DMAR19.pdf>

<Order plan WEST28 DMAR19 118.pdf>

<Making of order - WEST28 DMAR19 - 118.docx>

<Decision Report - WEST29 DMAR20 WEST28 DMAR19.pdf>

From: [REDACTED]
Sent: 30 October 2021 11:10
To: [Roberts, Ali](#)
Cc: [REDACTED]
Subject: RE: Proposed Diversion on Westbury 29 (part), Dilton Marsh 20 (part), Westbury 29 (part) and Dilton Marsh 19 (part).

IN RESPECT OF:

Proposed diversion on Westbury 29 (part), Dilton Marsh 20 (part), Westbury 29 (part) and Dilton Marsh 19 (part). (**the Diversion**)

Dear Miss Roberts,

It has come to my attention there is a proposed Diversion to the footpaths at Dilton Vale Farm (**DVF**), which I wish to express my unreserved support in favour of.

The original path runs so close to the actual residence of the owner's of DVF, as to make it feel intrusive and uncomfortable for all parties, especially given the influx of walkers compared to years ago.

No doubt, the increase in population in Westbury and Dilton Marsh, as compared to when the owners first bought DVF has had a big impact on the frequency and use of the original footpath.

It seems only appropriate and practical on the merits, for the benefit of both frequent and occasional walkers as well as for the property owners of DVF, that the Diversion be approved without question and proceed accordingly.

Please note this as my formal election, the Diversion be approved.

Kind regards,

J. Mathison

From: [REDACTED]
Sent: 06 November 2021 17:40
To: [Roberts, Ali](#)
Subject: Fw: Proposed division on Westbury 29 (part), DiltonMarsh 20 (part), Westbury 29 (part), Dilton Marsh 19 (part)

Hi Ali,

Here is my support for the proposed diversion of the footpath.

Regards
Mr Waker

From: martin waker
Sent: 06 July 2021 19:15
To: ali.roberts@wiltshire.gov.uk <ali.roberts@wiltshire.gov.uk>
Cc: [REDACTED]
Subject: Proposed division on Westbury 29 (part), DiltonMarsh 20 (part), Westbury 29 (part), Dilton Marsh 19 (part)

Dear Miss Roberts,

As a regular walker in the Westbury area I would like to put forward my support for the proposed division of the original path around Dilton Vale Farm. This is a lovely route to walk but passing so close to the property make me feel very awkward but the division takes you away from the house and feels less intrusive.

Due to the increased numbers of people using local walks compared to when the occupiers bought the property, the division would benefit both the owner and walkers making all feel more comfortable using the path and this lovely area if it is approved.

Kind regards
Martin Waker

From: [REDACTED]
Sent: 29 October 2021 13:38
To: [Roberts, Ali](#)
Subject: Re: Footpaths Westbury 29 part, Dilton Marsh 20 part and Extinguishment of Footpaths Westbury 28 part and Dilton Marsh 19 part

FAO Ms Roberts,

It has come to my attention, that a proposal has been drafted to divert the footpath from Dilton Vale Farm.

I whole heartedly support this proposal.

I'm sure that there are many more walkers in 2021 than there were when the original footpath was conceived. The said footpath could quite easily be diverted, to the benefit of both walkers and the landowner concerned.

With kind regards

Richard Lewis (Mr)

On 29 Oct 2021, at 12:07, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

**Highways At 1980 section 119 and 118
Diversion of Footpaths Westbury 29 (part), Dilton Marsh 20 (part)
and Extinguishment of Footpaths Westbury 28 (part) and Dilton
Marsh 19 (part)**

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Ali

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<Decision Report - WEST29 DMAR20 WEST28 DMAR19.pdf>

From: [REDACTED]
Sent: 09 November 2021 08:45
To: [Roberts, Ali](#)
Subject: Proposed diversion on Westbury 29 (part), Dilton Marsh (part),
Westbury 29 (part), and Dilton Marsh 19 (part)

Dear Miss Roberts,

I walk every week on the Dilton Vale Farm footpaths. I would like to whole heartedly support the proposed diversion of the foot path, it makes perfect sense.

Yours sincerely

Richard Hutchinson

From: [REDACTED]
Sent: 06 November 2021 13:29
To: Roberts, Ali
Cc: Rob TAYLOR
Subject: Proposed diversion on Westbury 29(part) Westbury 29 (part) and Dilton Marsh 19 (part)

Dear Miss Roberts,

In response to the above, I would like to offer my full support for the diversion of the original path. I regularly walk my small dog on this particular route and find it to be particularly intrusive as it passes so incredibly close to the property. Furthermore, the owner's have large dogs that rush to greet my small dog with an over friendliness that I find disconcerting.

There are many resident's in the Dilton Marsh and Westbury area that I have spoken to that feel a change in the diversion would be beneficial to all parties involved. It makes me feel further uncomfortable passing so close to the property whose owner's are so often in residence and working on projects in their garage, or workshop.

Finally, the current route is confusing and needs clarification which the new route provides.

Kind Regards

Romany Hamilton

From: [REDACTED]
Sent: 29 October 2021 13:28
To: Roberts, Ali
Cc: rob taylor
Subject: Dilton vale Farm path

Dear MrRoberts,

I'm writing to you to ask if you could please move the pathway along the edge of Dilton Vale farm House.

I was talking to the owner Mr Taylor recently as he was standing nearby.

There seems to be a huge increase of foot flow along the path since the lockdowns .

Obviously this is impacting on his and his family's life . The noise but be very intrusive to them .

Also as the world has gone mad on buying lockdown dogs he must get a huge amount of dogs barking and not forgetting the smell of dog poo .

I wouldn't normally feel the need to write but I genuinely feel very sorry for the chap and feel as the council should step up in this incidence .

He tells me he's been in talks with the council offering a suitable diversion but to no avail.

Kind regards

Simon Bishop

Sent from my iPhone

HIGHWAYS ACT 1980 SECTION 119
THE WILTSHIRE COUNCIL WESTBURY 29 AND DILTON MARSH 20
DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2021

HIGHWAYS ACT 1980 SECTION 118
THE WILTSHIRE COUNCIL WESTBURY 28 AND DILTON MARSH 19
EXTINGUISHMENT AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2021

Objections

1. Mr and Mrs Davies
2. Mr Morland
3. Mrs Ellis and Mrs Collier
4. Westbury Town Council

From: [REDACTED]
Sent: 26 November 2021 18:22
To: [Roberts, Ali](mailto:ali.roberts@wiltshire.gov.uk)
Subject: Re: PPO enquiry re 2020/10P

Despite our (and many, many other) objections to the planned changes to this footpath it appears that it is going to go through anyway. I know for a fact that quite a few other people have objected to these changes but it seems it was a waste of time. I wonder what would have to have been said for the proposal to have been turned down? Does the landowner have friends on the council? We reiterate our objections set out in our previous e-mail of 22nd August 2021.

Richard and Debra Davies

On Monday, 23 August 2021, 09:11:39 BST, Roberts, Ali <ali.roberts@wiltshire.gov.uk> wrote:

Dear Mr and Mrs Davies,

Thank you for your email. Your comments have been forwarded as formal objection to the made Order. I will keep you fully informed of any further actions on this case.

Kind regards,

Ali

Ali Roberts (Miss)

Definitive Map Officer

Rights of Way and Countryside
Wiltshire Council

County Hall
Trowbridge

BA14 8JN

Wiltshire Council

Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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From: [REDACTED]
Sent: 21 August 2021 10:47
To: rightsofway <rightsofway@wiltshire.gov.uk>
Subject: PPO enquiry re 2020/10P

PPO enquiry re 2020/10P in RoW PPO <http://www.wiltshire.gov.uk/row/ppo/getppo.php?id=6260>

We object most strongly to this application. This footpath has been in existence for decades, if not hundreds of years and should not be changed at the whim of a relatively new owner / occupant who knew about the existence of these footpaths before purchasing the property and were obviously prepared to accept the presence of occasional walkers. The alternative offered becomes waterlogged and slippery during the winter months (and indeed during this wet summer) and I am sure the homeowner would not want to be sued by a person sustaining an injury by slipping on the wet, muddy areas or on one of the two footbridges he has installed. The idea of security is not relevant as anyone using the new route with intent is just as likely to intrude if they are 2 metres or 100 metres away. As for privacy, he knew the situation when he bought the house and the situation is no different to a house on any other street (especially ones that actually front the pavement) and the footfall would be much more than that which he is concerned about. As a landowner he is obligated to maintain the footpaths on his property in a useable condition instead of which he has deliberately allowed them to become overgrown and difficult to use to deter walkers from using them.

Those in the council responsible for footpaths should tell him that he should abide by these rules and correct the current situation. In the past he has also used his dogs as a deterrent to people wishing to use the paths citing the fact that they "are only defending their property". Finally, I and many other walkers believe that the sole reason for applying for this diversion is because he has holiday lets on his property and also a wedding venue business and he doesn't want walkers interfering in his business interests.

Richard and Debra Davies

██████████ Dilton Marsh, BA13 ██████████

(I have sent this e-mail via your Outlook address but am sending this as confirmation just in case the original did not reach you.)

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From: [REDACTED]
Sent: 02 December 2021 16:44
To: [Roberts, Ali](mailto:ali.roberts@wiltshire.gov.uk)
Cc: [rightsofway](mailto:rightsofway@wiltshire.gov.uk); [Wickham, Suzanne](mailto:Wickham,Suzanne@wiltshire.gov.uk)
Subject: The Wiltshire Council Westbury 29 (Part), Dilton Marsh 20 (Part) Diversion and Westbury 28 (Part) and Dilton Marsh 19 (Part) Extinguishment and Definitive Map and Statement Modification Orders 2021, made on 25 October 2021

Attention: Ali Roberts, Rights of Way and Countryside

Dear Definitive Map Officer,

Thank you for your e-mail sent Fri 29/10/2021 11:07 and its attachments.

I wish to maintain (and resubmit) my duly-made representations about and objection to this Scheme, set out in my e-mails below (sent Mon 30/08/2021 22:19 and Wed 01/09/2021 14:53), but now relating to two Orders, the making of which was advertised by further Public Notices in the Friday, 5th November 2021 issue of The Warminster Journal newspaper.

I believe the details of the Scheme are unchanged, so my representations about it and objection to it should in substance remain unchanged too, but I need to complete a full checking exercise before being sure that no further discrepancies/errors have occurred in the drafting the fresh Orders; so, I reserve the right to amend or add to my response in the future.

Please confirm receipt.

Yours sincerely,

Francis Morland

[REDACTED] Chapmanslade Westbury Wilts. BA13 [REDACTED]

From: [REDACTED]
Sent: 01 September 2021 14:53
To: ali.roberts@wiltshire.gov.uk <ali.roberts@wiltshire.gov.uk>
Cc: rightsofway@wiltshire.gov.uk <rightsofway@wiltshire.gov.uk>; [Wickham, Suzanne](mailto:Wickham,Suzanne@wiltshire.gov.uk) <Suzanne.Wickham@wiltshire.gov.uk>
Subject: The Wiltshire Council Westbury 29 (Part), Dilton Marsh 20 (Part) Diversion and Westbury 28 (Part) and Dilton Marsh 19 (Part) Extinguishment and Definitive Map and Statement Modification Order 2021, made on 11 August 2021

Attention: Ali Roberts, Rights of Way and Countryside

Dear Definitive Map Officer,

I regret that there is a typographical error in my e-mail sent Mon 30/08/2021 22:19 ("338 metres" should read "388 metres").

Please find the corrected text below.

Yours sincerely,

Francis Morland

From: [REDACTED]
Sent: 30 August 2021 22:19
To: ali.roberts@wiltshire.gov.uk <ali.roberts@wiltshire.gov.uk>
Cc: rightsofway@wiltshire.gov.uk <rightsofway@wiltshire.gov.uk>; Wickham, Suzanne <Suzanne.Wickham@wiltshire.gov.uk>
Subject: The Wiltshire Council Westbury 29 (Part), Dilton Marsh 20 (Part) Diversion and Westbury 28 (Part) and Dilton Marsh 19 (Part) Extinguishment and Definitive Map and Statement Modification Order 2021, made on 11 August 2021

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I refer to a Public Notice on page 2 of the Friday, 20th August 2021 issue of The Warminster Journal newspaper concerning the making of the above Order.

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

I have reservations about the Decision Report dated 5 August 2021; in particular, its wholesale rejection of Westbury Town Council's objection (see at [9.6]), and the reliance it places on a non-statutory and very restricted public consultation. It is odd and unusual that no responses are shown from any of the stipulated Rights of Way user bodies, but instead, it relies on numerous responses (17), all in support of the proposals, but heavily redacted as being apparently from individual users, the identities of whom have all been hidden, and only one of whom even gives an address. There is nothing to show how many of them live in Westbury, or in Dilton Marsh, or further away, how many of them are from the same family, or any other characteristics linking them, apart from them all clearly having received some sort of circular, leaflet or pro forma template, probably promoted via social media (indicated by the close similarities in the points made and words used by almost all of them).

My concerns centre on the historic importance of the location of Dilton Vale Farm, at the junction of no less than five public footpaths, which I know of no other instances of locally,

and the excessively circuitous nature of the proposed diversion, around the current ownership boundary, which is of an entirely different character from the existing routes, even though the specific privacy and security points made by the applicants could be more than adequately met by a much shorter and more direct diversion from a point north of point B and linking to Footpath Dilton Marsh 19 at point H, but avoiding point G. I see no justification for stopping up the routes along the existing track between points E, D and F, which is the historic continuation of Honey Lane and will in any event, it appears, remain in use as the private vehicular access to the stables/farm buildings complex serving the Dilton Vale Farm rural enterprise(s). The existing fences along the north east side of the track, suitably augmented, would adequately ensure the privacy and security of the listed dwelling itself.

Figures extracted from the Order illustrate how circuitous the proposed diversion is. The existing route C-B-F-D-E totals 223 metres. The proposed route C-A-I-H-E totals 388 metres, an increase of 165 metres or 74%. My own calculations indicate that the Order overstates the length of D-E by about 4 metres, so the extra distance may be even greater.

On the various tests of expediency to the public, convenience, and public enjoyment, I consider the proposals in the Order are deficient and do not reach the appropriate degree to confirm it. I also share the view of Westbury Town Council that it creates an unfortunate precedent for the future (viz. public footpaths which simply zigzag around property boundaries).

I also have a number of concerns about the Order Plan and the Schedule to the Order:-

It appears that point H is not a single point but a composite of locations used inconsistently in the Order. In Part 1 of the Schedule, it is said to be a point on Footpath Dilton Marsh 19 about 13 metres north of its southern end. In Part 2 of the Schedule, it is described as being at the boundary between the Town of Westbury and the Parish of Dilton Marsh - presumably at the mid-stream of the Biss Brook. In Part 3 of the Schedule, the descriptions of Footpaths Westbury 29 and Dilton Marsh 20 locate it similarly.

This appears also to be the cause of the error in the description of Footpath Westbury 29 in Part 3 of the Schedule, where "Footpath Dilton Marsh 19" should read "Footpath Dilton Marsh 20" and should be preceded by the word "meet".

In the description of Footpath Dilton Marsh 20, "at Penknap" is obsolete and uncertain and should be replaced by "at Honey Lane (outside 20 Tower Hill)" or similar. I am uncertain whether "road U/C 6188" is in fact Honey Lane or where its southern end lies.

In the description of Footpath Westbury 28, "Leigh Fields Lane" is obsolete and uncertain and should be replaced by "Sand Hole Lane", "at" should be replaced by "north of", and "joins path No. 29" should be replaced by "connects to Footpath Dilton Marsh 19".

In the description of Footpath Dilton Marsh 19, "From the Corn Mill at Westbury Leigh" is obsolete and uncertain and should be replaced by "From its junction with Footpath Westbury

26 at Millstream House" or similar, and "the Westbury Urban District boundary" should be replaced by "its junction with Footpath Dilton Marsh 20" or similar.

The reasons for reducing the stated lengths of Footpaths Dilton Marsh 20, Westbury 28 and Dilton Marsh 19 by 12 metres, 93 metres and 26 metres respectively are unclear and unexplained. Part 1 and 2 of the Schedule increase the length of Dilton Marsh 20 by 15 metres, and Part 1 of the Schedule stops up only 48 metres of Westbury 28 and 13 metres of Dilton Marsh 19.

I reserve the right to amend or add to these representations and duly made objection in the future.

Please confirm receipt.

Yours sincerely,

Francis Morland

██████████ Chapmanslade Westbury Wilts. BA13 ██████████

From: [REDACTED]
Sent: 06 December 2021 13:58
To: [Roberts, Ali](#)
Cc: [rightsofway](#); [Wickham, Suzanne](#)
Subject: The Wiltshire Council Westbury 29 (Part), Dilton Marsh 20 (Part) Diversion and Westbury 28 (Part) and Dilton Marsh 19 (Part) Extinguishment and Definitive Map and Statement Modification Orders 2021, made on 25 October 2021

Attention: Ali Roberts, Rights of Way and Countryside

Dear Definitive Map Officer,

Thank you for your e-mail below.

For the avoidance of doubt, my duly-made representations and objection are to the proposed extinguishments too (i.e. the Extinguishment Order made 25 October 2021).

Yours sincerely,

Francis Morland

From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 06 December 2021 07:31
To: [REDACTED]
Subject: RE: The Wiltshire Council Westbury 29 (Part), Dilton Marsh 20 (Part) Diversion and Westbury 28 (Part) and Dilton Marsh 19 (Part) Extinguishment and Definitive Map and Statement Modification Orders 2021, made on 25 October 2021

Dear Mr Morland,

Thank you for your email, I acknowledge receipt of your duly made objection to the made Orders dated 25 October 2021. I do apologise that you have needed to respond twice as the Orders were required to be remade.

Your comments have been forwarded as formal objection to the proposed diversion. I will keep you fully informed of any further actions on this case.

Kind regards,

Ali

Ali Roberts (Miss)
Definitive Map Officer Definitive Map and Highway Records
Wiltshire Council County Hall Trowbridge BA14 8JN

Tel: 01225 756178 Email: ali.roberts@wiltshire.gov.uk Web: www.wiltshire.gov.uk

From: [REDACTED]
Sent: 02 December 2021 16:44
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Cc: rightsofway <rightsofway@wiltshire.gov.uk>; Wickham, Suzanne <Suzanne.Wickham@wiltshire.gov.uk>
Subject: The Wiltshire Council Westbury 29 (Part), Dilton Marsh 20 (Part) Diversion and Westbury 28 (Part) and Dilton Marsh 19 (Part) Extinguishment and Definitive Map and Statement Modification Orders 2021, made on 25 October 2021

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Yours sincerely,

Francis Morland

[REDACTED] Chapmanslade Westbury Wilts. BA13 [REDACTED]

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To: ali.roberts@wiltshire.gov.uk <ali.roberts@wiltshire.gov.uk>
Cc: rightsofway@wiltshire.gov.uk <rightsofway@wiltshire.gov.uk>; Wickham, Suzanne <Suzanne.Wickham@wiltshire.gov.uk>
Subject: The Wiltshire Council Westbury 29 (Part), Dilton Marsh 20 (Part) Diversion and Westbury 28

(Part) and Dilton Marsh 19 (Part) Extinguishment and Definitive Map and Statement Modification Order 2021, made on 11 August 2021

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Cc: rightsofway@wiltshire.gov.uk <rightsofway@wiltshire.gov.uk>; Wickham, Suzanne <Suzanne.Wickham@wiltshire.gov.uk>
Subject: The Wiltshire Council Westbury 29 (Part), Dilton Marsh 20 (Part) Diversion and Westbury 28 (Part) and Dilton Marsh 19 (Part) Extinguishment and Definitive Map and Statement Modification Order 2021, made on 11 August 2021

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My concerns centre on the historic importance of the location of Dilton Vale Farm, at the junction of no less than five public footpaths, which I know of no other instances of locally, and the excessively circuitous nature of the proposed diversion, around the current ownership boundary, which is of an entirely different character from the existing routes, even though the specific privacy and security points made by the applicants could be more than adequately met by a much shorter and more direct diversion from a point north of point B and linking to Footpath Dilton Marsh 19 at point H, but avoiding point G. I see no justification for stopping up the routes along the existing track between points E, D and F, which is the historic continuation of Honey Lane and will in any event, it appears, remain in use as the private vehicular access to the stables/farm buildings complex serving the Dilton Vale Farm rural enterprise(s). The existing fences along the north east side of the track, suitably augmented, would adequately ensure the privacy and security of the listed dwelling itself.

Figures extracted from the Order illustrate how circuitous the proposed diversion is. The existing route C-B-F-D-E totals 223 metres. The proposed route C-A-I-H-E totals 388 metres, an increase of 165 metres or 74%. My own calculations indicate that the Order overstates the length of D-E by about 4 metres, so the extra distance may be even greater.

On the various tests of expediency to the public, convenience, and public enjoyment, I consider the proposals in the Order are deficient and do not reach the appropriate degree to confirm it. I also share the view of Westbury Town Council that it creates an unfortunate precedent for the future (viz. public footpaths which simply zigzag around property boundaries).

I also have a number of concerns about the Order Plan and the Schedule to the Order:-

It appears that point H is not a single point but a composite of locations used inconsistently in the Order. In Part 1 of the Schedule, it is said to be a point on Footpath Dilton Marsh 19 about 13 metres north of its southern end. In Part 2 of the Schedule, it is described as being at the boundary between the Town of Westbury and the Parish of Dilton Marsh - presumably at the mid-stream of the Biss Brook. In Part 3 of the Schedule, the descriptions of Footpaths Westbury 29 and Dilton Marsh 20 locate it similarly.

This appears also to be the cause of the error in the description of Footpath Westbury 29 in Part 3 of the Schedule, where "Footpath Dilton Marsh 19" should read "Footpath Dilton Marsh 20" and should be preceded by the word "meet".

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The reasons for reducing the stated lengths of Footpaths Dilton Marsh 20, Westbury 28 and Dilton Marsh 19 by 12 metres, 93 metres and 26 metres respectively are unclear and unexplained. Part 1 and 2 of the Schedule increase the length of Dilton Marsh 20 by 15 metres, and Part 1 of the Schedule stops up only 48 metres of Westbury 28 and 13 metres of Dilton Marsh 19.

I reserve the right to amend or add to these representations and duly made objection in the future.

Please confirm receipt.

Yours sincerely,

Francis Morland

██████████ Chapmanslade Westbury Wilts. BA13 ██████████

From: [REDACTED]
Sent: 29 October 2021 16:50
To: [Roberts, Ali](#)
Subject: Re: Footpaths Westbury 29 part, Dilton Marsh 20 part and Extinguishment of Footpaths Westbury 28 part and Dilton Marsh 19 part

Hi

We would still like it noted that we object to any rerouting of the above footpath as previously stated below -

I would like it noted that I object to the footpath around Dilton Vale farm being diverted. I have walked this way on a number of occasions over the last 50+ years. Every other owner has had no problem with people walking across the path. As far as I am aware there has never been any damage to land or property. This walk way was often used by my grandparents to reach the church at Old Dilton from where they live in Westbury Leigh. I & a number of others have raised complaints regarding the overgrown vegetation from Mill Stream, to which nothing seems to be done. It feels like they are deliberately causing an obstruction, now for the owners of Dilton Vale to want to divert the path just adds to that thought! If you don't want people walking past your door don't buy a home with a right of way/footpath/bridleway or whatever on your doorstep

Mrs Marie Ellis & Mrs Hazel Collier

Sent from my iPad

On 29 Oct 2021, at 12:07, Roberts, Ali <Ali.Roberts@wiltshire.gov.uk> wrote:

Highways At 1980 section 119 and 118
Diversion of Footpaths Westbury 29 (part), Dilton Marsh 20 (part) and Extinguishment of Footpaths Westbury 28 (part) and Dilton Marsh 19 (part)

I do apologise for any inconvenience this may cause but due to an error in the previous Order I have had to draw up new Orders separating the diversion requirement under Highways Act 1980 Section 119 and the extinguishment requirement under Highways Act 1980 Section 118. Wiltshire Council has made the Orders on 25 October 2021. Please find attached a copy of the Orders, the Order Plans and the Notice of making the Orders. I have also attached the decision report on the making of the Orders.

If you have made a representation to the previous Order to follow process and regulation you will need to resubmit your response to these Orders whether that is to copy the previous response directly or

if you have further comments you would like to make. Please send representations by Friday 3 December 2021.

Please find attached the decision report recommending an Order is made and the associated appendices.

Kindest regards,

Ali

Please note that any responses to this email will be available for public inspection in full. Information relating to the way Wiltshire Council will manage your data can be found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN
<image002.png>
Tel: 01225 756178
Email: ali.roberts@wiltshire.gov.uk
Web: www.wiltshire.gov.uk

Report a problem <https://my.wiltshire.gov.uk/>

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<image007.png> <image008.gif>

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<119 - WEST29 DMAR20.pdf>

<Order plan WEST29 DMAR20 119.pdf>

<Making an order - WEST29 DMAR20 - 119.docx>

<118 - WEST28 DMAR19.pdf>

<Order plan WEST28 DMAR19 118.pdf>

<Making of order - WEST28 DMAR19 - 118.docx>

<Decision Report - WEST29 DMAR20 WEST28 DMAR19.pdf>

At a meeting held on Monday 15th November 2021, Westbury Town Council Highways, Planning and Development Committee voted to resubmit their previous objections:

At a meeting held on Monday 20th September 2021, Westbury Town Council Highways, Planning and Development Committee considered the following:

Highways At 1980 section 119 and 118
Proposed diversion of Footpaths Westbury 29 (part), Dilton Marsh 20 (part)
and extinguishment of Footpaths Westbury 28 (part) and Dilton Marsh 19 (part)

Westbury Town Council wish to submit their previous objection below (dated 23.06.2021) to this diversion, as well as the additional points below:

- *Objection 23.06.2021* – public footpaths are for the public. It is difficult to see any merit in this application when the occupiers brought the house next to the public footpath and being aware of the footpath. Public footpaths are sacrosanct, and we move them at our peril, creating a precedent for the future.
- *Additional point* – The owner would have been made aware during the process of purchasing this property, of the location of any public footpaths crossing their land.
- *Additional point* – The town council supports the attached comments from Cllr Morland (see below).
- *Additional point* – The town council would like to comment, and it noted that the application states that it is a family home, however it is being run as a business and marketed as a wedding venue, as well as rental on outlets such as air B&B.

Comments from Cllr Morland

From: Francis Morland **Sent:** 18 September 2021 16:59

To: Westbury Town Council

Subject: The Wiltshire Council Westbury 29 (Part), Dilton Marsh 20 (Part) Diversion and Westbury 28 (Part) and Dilton Marsh 19 (Part) Extinguishment and Definitive Map and Statement Modification Order 2021, made on 11 August 2021

Dear Town Clerk,

Re: Agenda Item 12, HP&D - 20th September 2021

Please find below a copy of my duly made representations about and objection to the Order.

A point that has only come to my attention since making them is that the AECOM Westbury Neighbourhood Plan Site Options and Assessment Report (February 2021) includes a large site at Dilton Vale Farm BA13 3RA (WNP8), submitted in response to the Steering Group's Call for Sites, which is adjacent/close to the Order site, and which appears to cast doubt on some of the public benefits said to arise from the Order scheme.

Yours sincerely,
Francis Morland

From: Francis Morland **Sent:** 01 September 2021 14:53

To: Ali Roberts **Cc:** Rights of Way, Suzanne Wickham

Subject: The Wiltshire Council Westbury 29 (Part), Dilton Marsh 20 (Part) Diversion and Westbury 28 (Part) and Dilton Marsh 19 (Part) Extinguishment and Definitive Map and Statement Modification Order 2021, made on 11 August 2021

Attention: Ali Roberts, Rights of Way and Countryside

Dear Definitive Map Officer,

I regret that there is a typographical error in my e-mail sent Mon 30/08/2021 22:19 ("338 metres" should read "388 metres").

Please find the corrected text below.

Yours sincerely,
Francis Morland

From: Francis Morland **Sent:** 30 August 2021 22:19

To: Ali Roberts **Cc:** Rights of Way, Suzanne Wickham

Subject: The Wiltshire Council Westbury 29 (Part), Dilton Marsh 20 (Part) Diversion

and Westbury 28 (Part) and Dilton Marsh 19 (Part) Extinguishment and Definitive Map and Statement Modification Order 2021, made on 11 August 2021

Attention: Ali Roberts, Rights of Way and Countryside

Dear Definitive Map Officer,

I refer to a Public Notice on page 2 of the Friday, 20th August 2021 issue of The Warminster Journal newspaper concerning the making of the above Order.

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

I have reservations about the Decision Report dated 5 August 2021; in particular, its wholesale rejection of Westbury Town Council's objection (see at [9.6]), and the reliance it places on a non-statutory and very restricted public consultation. It is odd and unusual that no responses are shown from any of the stipulated Rights of Way user bodies, but instead, it relies on numerous responses (17), all in support of the proposals, but heavily redacted as being apparently from individual users, the identities of whom have all been hidden, and only one of whom even gives an address. There is nothing to show how many of them live in Westbury, or in Dilton Marsh, or further away, how many of them are from the same family, or any other characteristics linking them, apart from them all clearly having received some sort of circular, leaflet or pro forma template, probably promoted via social media (indicated by the close similarities in the points made and words used by almost all of them).

My concerns centre on the historic importance of the location of Dilton Vale Farm, at the junction of no less than five public footpaths, which I know of no other instances of locally, and the excessively circuitous nature of the proposed diversion, around the current ownership boundary, which is of an entirely different character from the existing routes, even though the specific privacy and security points made by the applicants could be more than adequately met by a much shorter and more direct diversion from a point north of point B and linking to Footpath Dilton Marsh 19 at point H, but avoiding point G. I see no justification for stopping up the routes along the existing track between points E, D and F, which is the historic continuation of Honey Lane and will in any event, it appears, remain in use as the private vehicular access to the stables/farm buildings complex serving the Dilton Vale Farm rural enterprise(s). The existing fences along the north east side of the track, suitably augmented, would adequately ensure the privacy and security of the listed dwelling itself.

Figures extracted from the Order illustrate how circuitous the proposed diversion is. The existing route C-B-F-D-E totals 223 metres. The proposed route C-A-I-H-E totals 388 metres, an increase of 165 metres or 74%. My own calculations indicate that the Order overstates the length of D-E by about 4 metres, so the extra distance may be even greater.

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an unfortunate precedent for the future (viz. public footpaths which simply zigzag around property boundaries).

I also have a number of concerns about the Order Plan and the Schedule to the Order:-

It appears that point H is not a single point but a composite of locations used inconsistently in the Order. In Part 1 of the Schedule, it is said to be a point on Footpath Dilton Marsh 19 about 13 metres north of its southern end. In Part 2 of the Schedule, it is described as being at the boundary between the Town of Westbury and the Parish of Dilton Marsh - presumably at the mid-stream of the Biss Brook. In Part 3 of the Schedule, the descriptions of Footpaths Westbury 29 and Dilton Marsh 20 locate it similarly.

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I reserve the right to amend or add to these representations and duly made objection in the future.

Please confirm receipt.
Yours sincerely,
Francis Morland

From: [Sarah Harris](#)
Sent: 17 November 2021 14:01
To: [Roberts, Ali](#)
Subject: RE: Footpaths Westbury 29 part, Dilton Marsh 20 part and Extinguishment of Footpaths Westbury 28 part and Dilton Marsh 19 part
Attachments: WTC Footpath Westbury Dilton Marsh 29-20-28-19 - HPD 15.11.2021.docx

Dear Ali,

Following your email below, Westbury Town Council Highways, Planning and Development Committee met on Monday 15th November 2021 and agreed that they would resubmit their previous objection comments. Please see attached.

Please let me know if you need anything.

Many Thanks

Kind Regards
Sarah



Sarah Harris
Committee & Communications Officer
sarah.harris@westburytowncouncil.gov.uk
01373 822232 | DD 01373 480918
The Laverton, Bratton Road, Westbury
Wiltshire, BA13 3EN
www.westburytowncouncil.gov.uk



From: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Sent: 29 October 2021 12:07
To: Roberts, Ali <Ali.Roberts@wiltshire.gov.uk>
Subject: Footpaths Westbury 29 part, Dilton Marsh 20 part and Extinguishment of Footpaths Westbury 28 part and Dilton Marsh 19 part

Highways At 1980 section 119 and 118
Diversion of Footpaths Westbury 29 (part), Dilton Marsh 20 (part) and
Extinguishment of Footpaths Westbury 28 (part) and Dilton Marsh 19 (part)

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the Orders on 25 October 2021. Please find attached a copy of the Orders, the Order Plans and the Notice of making the Orders. I have also attached the decision report on the making of the Orders.

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Please find attached the decision report recommending an Order is made and the associated appendices.

Kindest regards,

Ali

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<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Ali Roberts (Miss)
Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

Wiltshire Council

Tel: 01225 756178

Email: ali.roberts@wiltshire.gov.uk

Web: www.wiltshire.gov.uk

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HIGHWAYS ACT 1980 SECTION 119
THE WILTSHIRE COUNCIL WESTBURY 29 AND DILTON MARSH 20
DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2021

HIGHWAYS ACT 1980 SECTION 118
THE WILTSHIRE COUNCIL WESTBURY 28 AND DILTON MARSH 19
EXTINGUISHMENT AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2021

Objections and officer responses

Westbury Town Council (WTC)

Comment: *“At a meeting held on Monday 21st June 2021, Westbury Town Council Highways, Planning and Development Committee considered the proposed diversion on Westbury 29 (part), Dilton Marsh 20 (part), Westbury 29 (part) and Dilton Marsh 19 (part). Westbury Town Council object to the diversion, with the following response: Public footpaths are for the public. It is difficult to see any merit in this application when the occupiers bought the house next to the public footpath and being aware of the footpath. Public footpaths are sacrosanct, and we move them at our peril, creating a precedent for the future.”*

Officer response: Westbury Town Council stated that rights of way are sacrosanct, this is legally incorrect, requirements on land where rights of way are situated can change therefore legislation is in place to divert routes within highway law, Highways Act 1980 and planning law, Town and Country Planning Act 1990. Wiltshire Council policy recognises one of the weaknesses of the rights of way network is that it is historic and may not meet present and future needs. ROWIP Appendix 8 – Strengths, weaknesses, opportunities and threats assessment of the Countryside Access Network, Weaknesses, W1 states: *“The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users”*. The extensive number of rights of way culminating at Dilton Vale Farmhouse travelling from all directions is likely to be because it was formally a significant employer for the area, the property is now a private home.

Comment: *“The owner would have been made aware during the process of purchasing this property, of the location of any public footpaths crossing their land.”*

Officer response: A landowner can apply to divert a right of way if it is in their interests even if they were aware of a right of way at time of purchase. In this case the applicant has lived at the property for 11 years, over time the use of the footpaths has increased due to the growth of the population of Westbury and it has been found that there has been a general increase of use of local networks due to lockdown.

Comment: *“The town council would like to comment, and it noted that the application states that it is a family home, however it is being run as a business and marketed as a wedding venue, as well as rental on outlets such as air B&B.”*

Officer response: The applicant/landowner has confirmed that Dilton Vale Farm is a family home and is not run as a business. There is no wedding business on site and the only holiday let is in the building north of point A. If there were businesses run from the property this would not be a reason not to make an Order. However, if the applicant had applied to divert the routes due to business requirements this would still meet with s.119(1) in the interests of the landowner.

Mr Morland

Comment: *“I have reservations about the Decision Report dated 5 August 2021; in particular, its wholesale rejection of Westbury Town Council's objection (see at [9.6]), and the reliance it places on a non-statutory and very restricted public consultation. It is odd and unusual that no responses are shown from any of the stipulated Rights of Way user bodies, but instead, it relies on numerous responses (17), all in support of the proposals, but heavily redacted as being apparently from individual users, the identities of whom have all been hidden, and only one of whom even gives an address. There is nothing to show how many of them live in Westbury, or in Dilton Marsh, or further away, how many of them are from the same family, or any other characteristics linking them, apart from them all clearly having received some sort of circular, leaflet or pro forma template, probably promoted via social media (indicated by the close similarities in the points made and words used by almost all of them).”*

Officer response: The initial consultation on the proposal was distributed to landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council Members for Westbury East and for Ethandune, Westbury Town Council and Dilton Marsh Parish Council. Westbury Town Council in response to the initial consultation on the proposal was addressed in full in the decision report. The 18 supporting responses, including the supporting response from Dilton Marsh Parish Council, and the objection received from Westbury Town Council, were the only responses received during the initial consultation. No responses were received to the initial consultation from user bodies and no responses were received to the made Order from user bodies. The responses are not heavily redacted, they have had their email addresses removed in line with data protection.

Comment: *“My concerns centre on the historic importance of the location of Dilton Vale Farm, at the junction of no less than five public footpaths, which I know of no other instances of locally, and the excessively circuitous nature of the proposed diversion, around the current ownership boundary, which is of an entirely different character from the existing routes, even though the specific privacy and security points made by the applicants could be more than adequately met by a much shorter and more direct diversion from a point north of point B and linking to Footpath Dilton Marsh 19 at point H, but avoiding point G. I see no justification for stopping up the*

routes along the existing track between points E, D and F, which is the historic continuation of Honey Lane and will in any event, it appears, remain in use as the private vehicular access to the stables/farm buildings complex serving the Dilton Vale Farm rural enterprise(s). The existing fences along the north east side of the track, suitably augmented, would adequately ensure the privacy and security of the listed dwelling itself."

Officer response: Wiltshire Council policy recognises one of the weaknesses of the rights of way network is that it is historic and may not meet present and future needs. ROWIP Appendix 8 – Strengths, weaknesses, opportunities and threats assesment of the Countryside Access Network, Weaknesses, W1 states: *"The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users"*. The extensive number of rights of way culminating at Dilton Vale Farmhouse travelling from all directions is likely to be because it was formally a significant employer for the area, the property is now a private home.

E-D-F runs within touching distance of the windows in the exact same manner the section at point G does. The character of the routes are very similar, grass and gravel tracks and are in keeping with the paths in their entirety.

The applicant has stated that Dilton Vale Farm Rural Enterprise(s) is a charitable venture.

Comment: *"Figures extracted from the Order illustrate how circuitous the proposed diversion is. The existing route C-B-F-D-E totals 223 metres. The proposed route C-A-I-H-E totals 388 metres, an increase of 165 metres or 74%. My own calculations indicate that the Order overstates the length of D-E by about 4 metres, so the extra distance may be even greater."*

Officer response: It could be argued that from point E at Honey Lane to point H heading towards Sand Hole Lane is shortened by the proposal. However these rights of way are recreational not utility routes therefore the minimal increase in distance will have no impact on public convenience of the paths. Users will already have chosen to walk significant distances to get to these rights of way at Dilton Vale Farm. I will take each of the 5 routes in turn, the distances are approximation; from Honey Lane UC road to diversion point E 180m, from Westbury Leigh to diversion point H 400m, from Sand Hole Lane to diversion point H 730m, from St Mary's Church Old Dilton Road to diversion point C 325m, from Old Dilton Road north of Dilton Farm to diversion point A 160m.

Comment: *"On the various tests of expediency to the public, convenience, and public enjoyment, I consider the proposals in the Order are deficient and do not reach the appropriate degree to confirm it. I also share the view of Westbury Town Council that it creates an unfortunate precedent for the future (viz. public footpaths which simply zigzag around property boundaries)."*

Officer response: This Order does not set a precedent. Highways Act 1980 section 119(1) paths can be diverted in the interests of the landowner. The new footpaths will have a recorded width of 3 metres, they are well defined tracks and easy to

follow. Currently the paths have no recorded widths, they weave around the property and are significantly narrow in places

Comments: *“It appears that point H is not a single point but a composite of locations used inconsistently in the Order. In Part 1 of the Schedule, it is said to be a point on Footpath Dilton Marsh 19 about 13 metres north of its southern end. In Part 2 of the Schedule, it is described as being at the boundary between the Town of Westbury and the Parish of Dilton Marsh - presumably at the mid-stream of the Biss Brook. In Part 3 of the Schedule, the descriptions of Footpaths Westbury 29 and Dilton Marsh 20 locate it similarly.*

This appears also to be the cause of the error in the description of Footpath Westbury 29 in Part 3 of the Schedule, where "Footpath Dilton Marsh 19" should read "Footpath Dilton Marsh 20" and should be preceded by the word "meet".”

Officer response: Point G where Westbury 29 and Dilton Marsh 19 meet, point H is 13 metres from its southern section. The green line is the boundary between Westbury and Dilton Marsh, point H is on this boundary. Point H is also grid referenced.



Comment: *“In the description of Footpath Dilton Marsh 20, "at Penknapp" is obsolete and uncertain and should be replaced by "at Honey Lane (outside 20 Tower Hill)" or similar. I am uncertain whether "road U/C 6188" is in fact Honey Lane or where its southern end lies.*

In the description of Footpath Westbury 28, "Leigh Fields Lane" is obsolete and uncertain and should be replaced by "Sand Hole Lane", "at" should be replaced by "north of", and "joins path No. 29" should be replaced by "connects to Footpath Dilton Marsh 19".

In the description of Footpath Dilton Marsh 19, "From the Corn Mill at Westbury Leigh" is obsolete and uncertain and should be replaced by "From its junction with Footpath Westbury 26 at Millstream House" or similar, and "the Westbury Urban District boundary" should be replaced by "its junction with Footpath Dilton Marsh 20" or similar.”

Officer response: The officer can only legally amend the section of the definitive statements in reference to the section to be diverted. These terms are used in the section not to be diverted so remain the same.

Comment: *“The reasons for reducing the stated lengths of Footpaths Dilton Marsh 20, Westbury 28 and Dilton Marsh 19 by 12 metres, 93 metres and 26 metres respectively are unclear and unexplained. Part 1 and 2 of the Schedule increase the length of Dilton Marsh 20 by 15 metres, and Part 1 of the Schedule stops up only 48 metres of Westbury 28 and 13 metres of Dilton Marsh 19.”*

Officer comment: This was an opportunity to correct the length of right of way as ArcGIS mapping is now more accurate

Mr and Mrs Davies:

Comment: *We object most strongly to this application. This footpath has been in existence for decades, if not hundreds of years and should not be changed at the whim of a relatively new owner / occupant who knew about the existence of these footpaths before purchasing the property and were obviously prepared to accept the presence of occasional walkers.*

Officer response: Legislation is in place to divert routes within highway law, Highways Act 1980 and planning law, Town and Country Planning Act 1990. Wiltshire Council policy recognises one of the weaknesses of the rights of way network is that it is historic and may not meet present and future needs. The extensive number of rights of way culminating at Dilton Vale Farmhouse travelling from all directions is likely to be because it was formally a significant employer for the area, the property is now a private home.

A landowner can apply to divert a right of way if it is in their interests even if they were aware of a right of way at time of purchase. In this case the applicant has lived at the property for 11 years, over time the use of the footpaths has increased due to the growth of the population of Westbury and it has been found that there has been a general increase of use of local networks due to lockdown.

Comment: *“The alternative offered becomes waterlogged and slippery during the winter months (and indeed during this wet summer) and I am sure the homeowner would not want to be sued by a person sustaining an injury by slipping on the wet, muddy areas or on one of the two footbridges he has installed.*

Officer response: The surfaces for both the current routes and proposed routes are very similar encompassing grass and gravel tracks. When walking the entirety of the paths the conditions are the same. Part of the section of Westbury 28 proposed to be diverted is eroding significantly, as the path continues to wear away it would require expensive works to be undertaken by the highway authority or cease to exist entirely. The proposal would mean that this section of path is diverted alleviating

these concerns. A section of the proposed route has been repaired with land drainage to prevent the previous boggy condition. New bridges are to be installed by the applicant to Wiltshire Council's specification before the Orders are certified.

Comment: *"The idea of security is not relevant as anyone using the new route with intent is just as likely to intrude if they are 2 metres or 100 metres away. As for privacy, he knew the situation when he bought the house and the situation is no different to a house on any other street (especially ones that actually front the pavement) and the footfall would be much more than that which he is concerned about."*

Officer response: There are 5 rights of way in total culminating in the garden of Dilton Vale Farm passing in close proximity to both sides of the home in touching distance of the windows. It is clear that the paths are intrusive to the landowner as they provide little if any opportunity for privacy. The house is in a rural setting isolated away from other settlements therefore the landowners have understandable concern regarding a greater potential risk for antisocial or criminal activity. Use of these footpaths has increased as the population has grown due to the expansion of new housing in the local area. Lockdown has also increased the use of local rights of way networks. As a result the effect on the landowners and their feeling of intrusion has increased.

Comment: *"As a landowner he is obligated to maintain the footpaths on his property in a useable condition instead of which he has deliberately allowed them to become overgrown and difficult to use to deter walkers from using them. Those in the council responsible for footpaths should tell him that he should abide by these rules and correct the current situation."*

Officer response: Wiltshire Council as highway authority are responsible for the undergrowth and surface condition of the paths.

Comment: *In the past he has also used his dogs as a deterrent to people wishing to use the paths citing the fact that they "are only defending their property".*

Officer response: The applicant disputes this point. This is the only comment received about the dogs, by diverting the rights of way away from the dwelling the concerns this particular objector has regarding dogs would be eliminated.

Comment: *Finally, I and many other walkers believe that the sole reason for applying for this diversion is because he has holiday lets on his property and also a wedding venue business and he doesn't want walkers interfering in his business interests.*

Officer response: The applicant/landowner has confirmed that Dilton Vale Farm is a family home and is not run as a business. There is no wedding business on site and the only holiday let is in the building north of point A. If there were businesses run from the property this would not be a reason not to make an Order. However, if the

applicant had applied to divert the routes due to business requirements this would still meet with s.119(1) in the interests of the landowner.

Mrs Ellis and Mrs Collier

Comment: *“I would like it noted that I object to the footpath around Dilton Vale farm being diverted. I have walked this way on a number of occasions over the last 50+ years. Every other owner has had no problem with people walking across the path. As far as I am aware there has never been any damage to land or property. This walk way was often used by my grandparents to reach the church at Old Dilton from where they live in Westbury Leigh.”*

Officer response: Wiltshire Council policy recognises one of the weaknesses of the rights of way network is that it is historic and may not meet present and future needs. ROWIP Appendix 8 – Strengths, weaknesses, opportunities and threats assesment of the Countryside Access Network, Weaknesses, W1 states: *“The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users”*. The extensive number of rights of way culminating at Dilton Vale Farmhouse travelling from all directions is likely to be because it was formally a significant employer for the area, the property is now a private home.

Comment: *“I & a number of others have raised complaints regarding the overgrown vegetation from Mill Stream, to which nothing seems to be done. It feels like they are deliberately causing an obstruction, now for the owners of Dilton Vale to want to divert the path just adds to that thought!”*

Officer response: Wiltshire Council as highway authority are responsible for the undergrowth and surface condition of the paths. The applicant has confirmed that Mill Stream is not on their land.

Comment: *“If you don’t want people walking past your door don’t buy a home with a right of way/footpath/bridleway or whatever on your doorstep”*

Officer response: A landowner can apply to divert a right of way if it is in their interests even if they were aware of a right of way at time of purchase. In this case the applicant has lived at the property for 11 years, over time the use of the footpaths has increased due to the growth of the population of Westbury and it has been found that there has been a general increase of use of local networks due to lockdown.

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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Report No.

Date of Meeting	13 April 2022
Application Number	18/04656/FUL and 18/05278/LBC
Site Address	Courtfield House, Polebarn Road Trowbridge BA14 7EG
Proposal	Conversion and alteration of former school principal building to 4 No. dwellings, and associated external works; and the erection of 16 No. dwellings and associated works following the demolition of the Polebarn Hall, Pine Hall and external WCs, and partial demolition of the Wool Store; and comprehensive landscaping.
Applicant	Doric Developments (Bath) Ltd
Town/Parish Council	TROWBRIDGE
Electoral Division	Trowbridge Central. Cllr Stewart Palmen
Grid Ref	385975 - 157832
Type of application	Full Planning and Listed Building Consent
Case Officer	Steven Sims

When this application was submitted it in 2018, the site fell within the unitary ward of Trowbridge Park, which prior to the May 2021 election was held by former unitary Cllr Peter Fuller. In June 2018, the former unitary Cllr requested that the applications be called-in for the elected members of the Western Area Planning Committee to determine, should officers be supportive of the submission.

The key issues identified by Peter Fuller for members to consider were listed as follows:

- The scale of development
- The relationship to adjoining properties
- The environmental or highway impacts
- Car parking
- The proposal (at the time of the call-in) was identified as failing to fully satisfy adopted Wiltshire Core Strategy Core Policies 57, 58 & 61.
- The loss of the current car park would result in unsafe traffic movements and potential conflict with the pedestrian and vehicular traffic already experiencing problems in this very restricted area, which, in places, is unlikely to allow for two-way traffic.
- The loss of much of the historic apple orchard should be resisted.
- A reduction in the number and density of dwellings and car parking could produce safer access/egress and allow for more of the trees in the orchard to be kept.

It should be noted that following the May 2021 local election and the boundary changes, Cllr Stewart Palmen was elected as the ward member for Trowbridge Central and in January 2022, he confirmed that he wished to maintain the committee call-in to primarily open the applications to public debate and allow concerned members of the public to attend and participate.

1. Purpose of Report

This is a joint report that considers the relevant planning considerations of the above listed development proposal, and considers the consultation and public responses alongside local and national planning policy and guidance. The report identifies various planning constraints and opportunities; and crucially recognises that the subject listed

property is listed on the 'heritage at risk' register (details of which can be found here: [Courtfield House, Polebarn Road, Trowbridge - Wiltshire \(UA\) | Historic England](#))

Following significant officer/developer negotiations that culminated in revisions being submitted firstly in May 2020, then through the autumn months of 2021, and again in January 2022 (which were subject to re-consultation and public notification), this report sets out the reasons why officers are supportive of the application and recommends that the applications be approved subject to conditions, and require the applicant/landowner to enter into a Section 106 (S106) legal agreement.

2. Report Summary

The key issues for consideration are:

- The principle of development
- Impact on the character of the listed building/Conservation Area
- Ecology issues/impacts on Orchard/UK BAP Priority Habitat
- Highway safety issues
- Impact on the amenity of neighbouring residents/future residents
- Drainage issues
- Archaeology issues
- Other issues
- S106 obligations
- Conclusion (The Planning Balance)

3. Site Description

The application site extends to about 0.67 hectares and is located to the immediate east of and adjacent to Trowbridge Town Park within central Trowbridge and the site parameters is illustrated below using the Council's aerial imagery which dates from circa 2015.



Access to the site is via Polebarn Road to the south.

The site falls within the Trowbridge Conservation Area and as mentioned above, the subject property at Courtfield House is a grade II* listed building, which is a two-storey dates back to circa 1754 and was previously used a preparatory school before it closed in 2012; and in the subsequent years, fell into very serious decline and in 2018, was designated as a 'heritage asset at risk', which was around the time the following site photo was taken.



Since 2018, and following the successful purchase of the site by the applicant, the property, the location of which, is illustrated below, has had scaffolding erected to help stabilise the ever-deteriorating structure, which has now been vacant for a decade and has been subject to vandalism and arson in recent years.

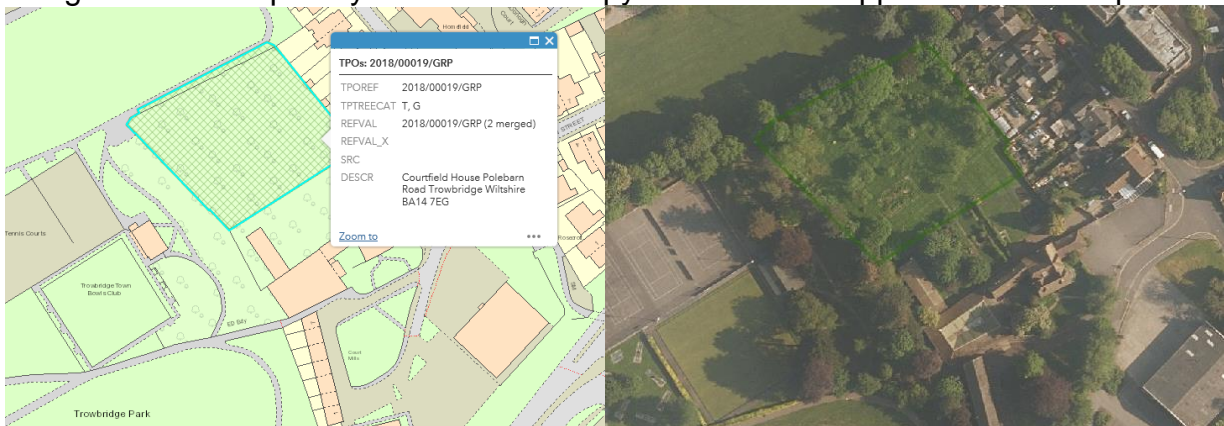


As shown above, the Trowbridge Town Park abuts the site to the west and north with neighbouring residential properties fronting Polebarn Road, located to the east. The majority of the neighbouring and nearby Polebarn properties are grade II listed buildings (refer to previous plan insert above). The semi-detached properties shown above at No's 16 and 17 Polebarn Road are not listed with No.17 being a designated nursery/creche.

The rectangular building located to south-west of Courtfield House is known as Court Mills was subject to its own planning approvals for a residential conversion in 2018 to create 7 dwellings. The irregular shaped building located to the south of Court Mills is the Roundstone GP surgery.

The square building located to the south-east of the Courtfield House site is used as commercial warehousing, which is also accessed via Polebarn Road.

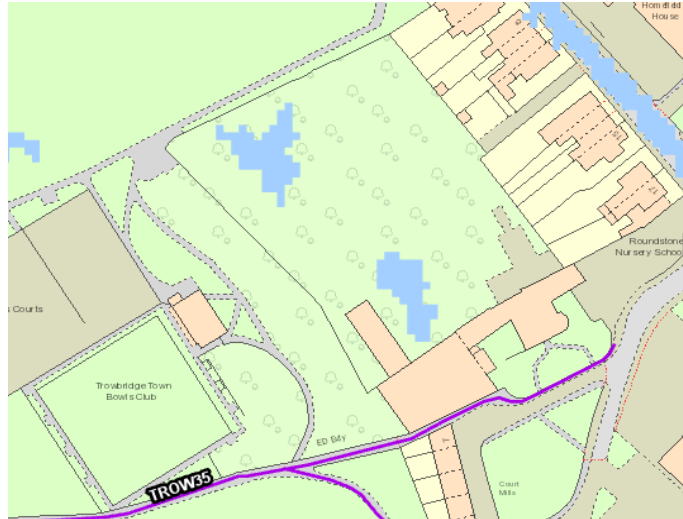
The application site is enclosed by various walls and fencing and topographically, is generally level. As the below inserts reveal, trees within the old orchard to the rear and north of Courtfield House are subject to a group Tree Preservation Order (TPO) and are designated a BAP priority habitat. A full copy of the TPO is appended to this report



Public footpath TROW35 is located directly south of the site connecting Trowbridge Park with Polebarn Road, along with there being a connection with another footpath (TROW037) as shown below.



Parts of the application site and to the rear of Courtfield House is subject to surface water flooding risk as shown below.



In terms of the Trowbridge Bat Mitigation Strategy (TBMS) the site is considered to lie in area of medium risk for increased recreational pressures.

Courtfield House is a grade II* listed building of predominantly 18th and 19th century build which occupies the southern part of the site. A 19th century extension attached to the eastern elevation of Courtfield House, known as Polebarn Hall, is thought to be a former coach house and stables. Other structures within the Site include an 18th century Workshop (or Dye-House), which adjoins the western elevation of Courtfield House and is a Grade II listed building. An associated lead water pump is also included in this list entry. Extending to the west of the Workshop, and occupying the south-eastern corner of the site, is the Wool House (or Wool Store), which was built in the 19th century. Pine Hall, a modest single storey structure situated immediately north of the Wool House, was built in 1975 as a dance studio. A small toilet block was also added as an extension to the eastern elevation of the Wool House. The southern boundary of the site is bounded by a garden wall with gate piers which are also Grade II listed.

Courtfield House was in use as a school until its closer in 2011. Part of the site continued to be occupied by a dance school until 2017. The buildings are currently vacant. Following changes to the Use Classes Order in 2020 the lawful use class for the Courtfield House vacant property is considered F1(a) 'Provision of education'.



Aerial view of Courtfield House and rear grounds with the properties fronting Polebarn Road to the east.

4. Planning History

W/10/02467/LBC: Courtfield House – Rebuilding to front boundary wall and structural repairs to loggia – Approved

W/96/00780/FUL - The Old Wool Store – Change of use of wool store to gymnasium and dry play area – Approved

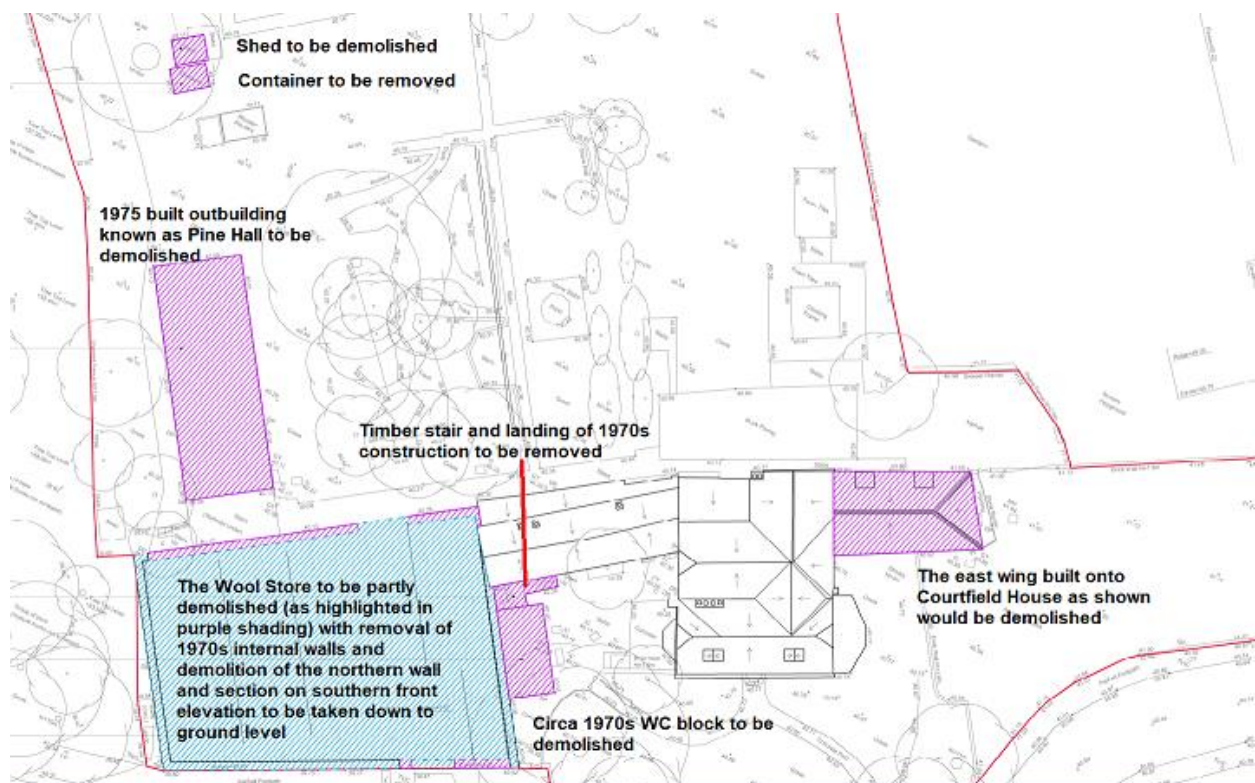
W/91/00847/FUL – The Old Wool Store - Change of use and alterations to form children’s play centre – Approved

W75/00401/HIS: Pine Hall - Construction of Dance Studio – Approved

5. The Proposal

Following extensive officer/developer negotiations the revised full planning and listed building consent applications are summarised below with the aid of several illustrations.

In total, the proposed development would deliver 20 dwellings, comprising four apartments that would be created by the proposed conversion and alterations to Courtfield House and the erection of 16 dwellings within the grounds, which would be accommodated following the demolition of the colour coded structures in the following insert.



The proposed scheme would include the formation of a new vehicular access off Polebarn Road and the provision of a communal public open space to the rear of Courtfield House that would include the part-retained and accommodate a partly replanted traditional orchard and additional landscaping as well as an area of hardstanding for vehicle parking. Of the 20 proposed dwellings one would be a

Discounted Market Unit and would be an affordable housing unit to be secured by s106 and provided at plot 17 – a 1 bedroom apartment to be offered to the market at 75% open market value. Readers should refer to the appraisal section on site viability and developer obligations to appreciate the planning reasons as to why only one affordable housing unit is considered viable and deliverable for this scheme.



Proposed Site Layout (Dwg No. 020 rev M)

The new build dwellings (Plots No's 1-13) would be positioned to the west and north-west (and the rear of) Courtyard House.

As detailed below, plots 1-5, would comprise five three-storey 4-bedroom terraced dwellings. To minimise the encroachment and extent of hardstanding, five parking spaces are allocated for these plots within the scheme which are illustrated as being located adjacent to the communal open space and the access road. Materials to be used on external surfaces include coursed rubble stone at ground floor level, stretcher bond multi blend brickwork to the upper floors and blue/grey slate roof tiles.



Front Elevation - Plots 1-5
1 : 100



Rear Elevation - Plots 1-5
1 : 100

Front/rear elevations Plots 1-5 (Dwg No. 01 rev D)

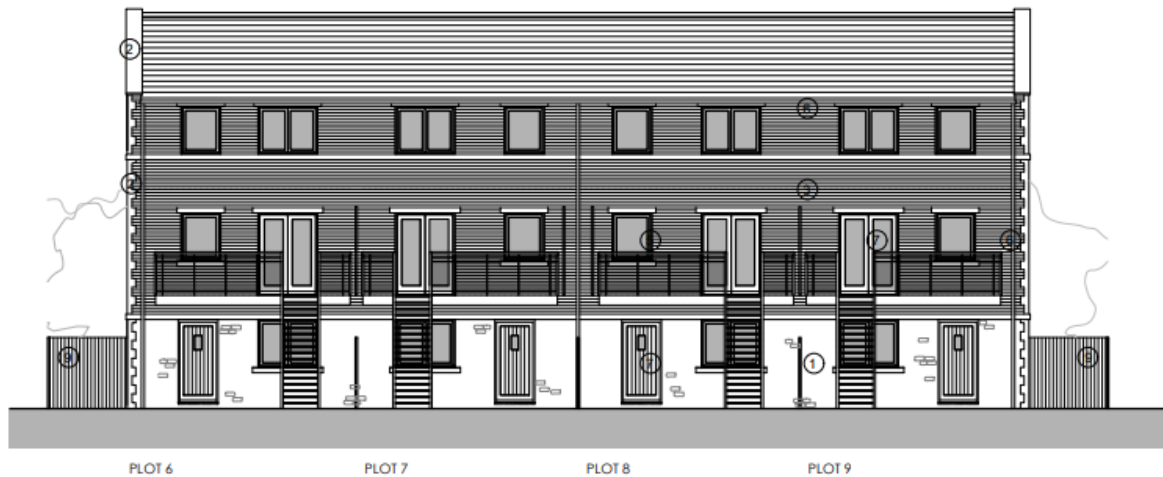


Plots 6-9 would be provided as a terrace that would broadly equate to the building orientation of Pine Hall and under this application, the applicants would deliver four 4 bedroom three-storey terraced properties with integral garaging at the ground floor level, as well as provide one parking space to the front of the garage for each unit (2 car parking spaces per dwelling) along with an amenity area to the rear. These properties include a rear (west facing) screened balconies at first floor level. External materials comprise rubble stone cladding at ground floor level and stretcher bond multi blend brickwork to the upper floors with roofs having blue/grey slates.



Front Elevation - Plots 6 - 9

1 : 100



Rear Elevation - Plots 6 - 9

1 : 100

Front/rear elevations plots 6-9 (Dwg No. 02 rev E)

Plots 10-13 would be accommodated utilising in part, the existing footprint of the Wool Store, and would deliver of four 2-bedroom apartments each with access to an integral garage at the ground floor level. The proposed building would be a split of 2 and 3

storeys with the front elevation overlooking Courtfield House. The external materials would comprise rubble stone at ground floor level, stretcher bond multi blend brickwork to the upper floors and blue/grey roof tiles.



Front Elevation - Plots 10 - 13

1 : 100

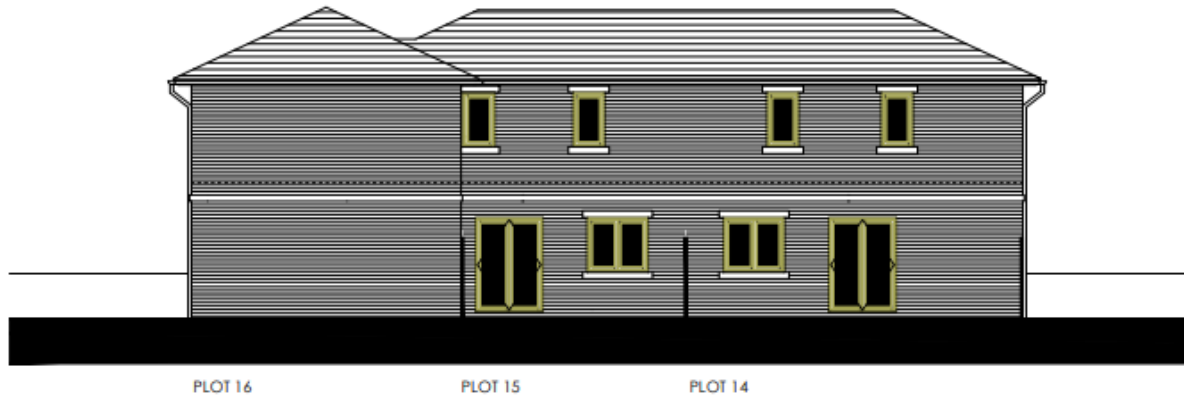


Rear Elevation - Plots 10 - 13

1 : 100

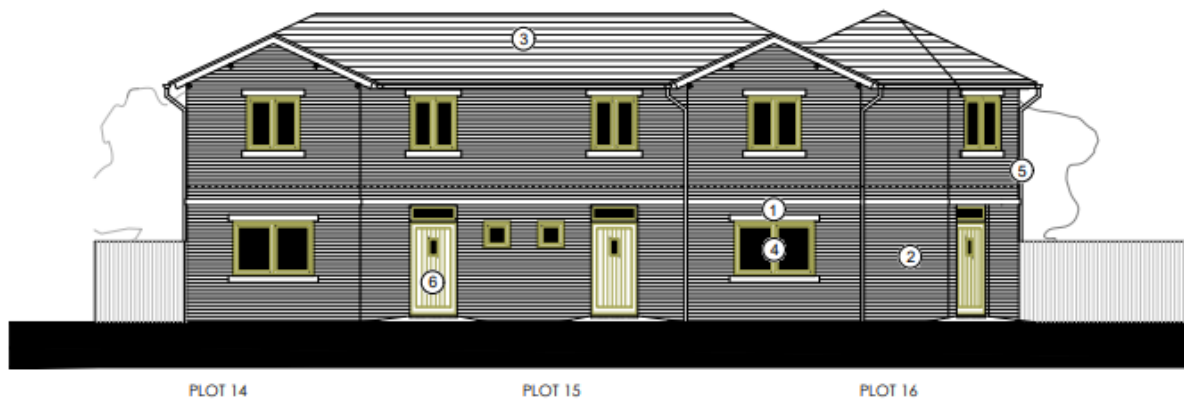
Front/rear elevations plots 10-13 (Dwg No. 03 rev E)

The proposed residential properties at plots 14-16 would be delivered on land to the east of Courtfield House, and directly south of No. 17 Polebarn Road at the junction of Polebarn Road / Ashton Street. This part of the scheme comprises three 2-bedroom terraced dwellings. Each property would have one car parking space provided in the communal parking area to the west as shown on the following page as well as rear and side amenity space. The external materials would consist of stretcher bond multi blend brickwork on all elevations while the roof would be clad with blue/grey slates.



North Elevation - Plots 14 - 16

1 : 100



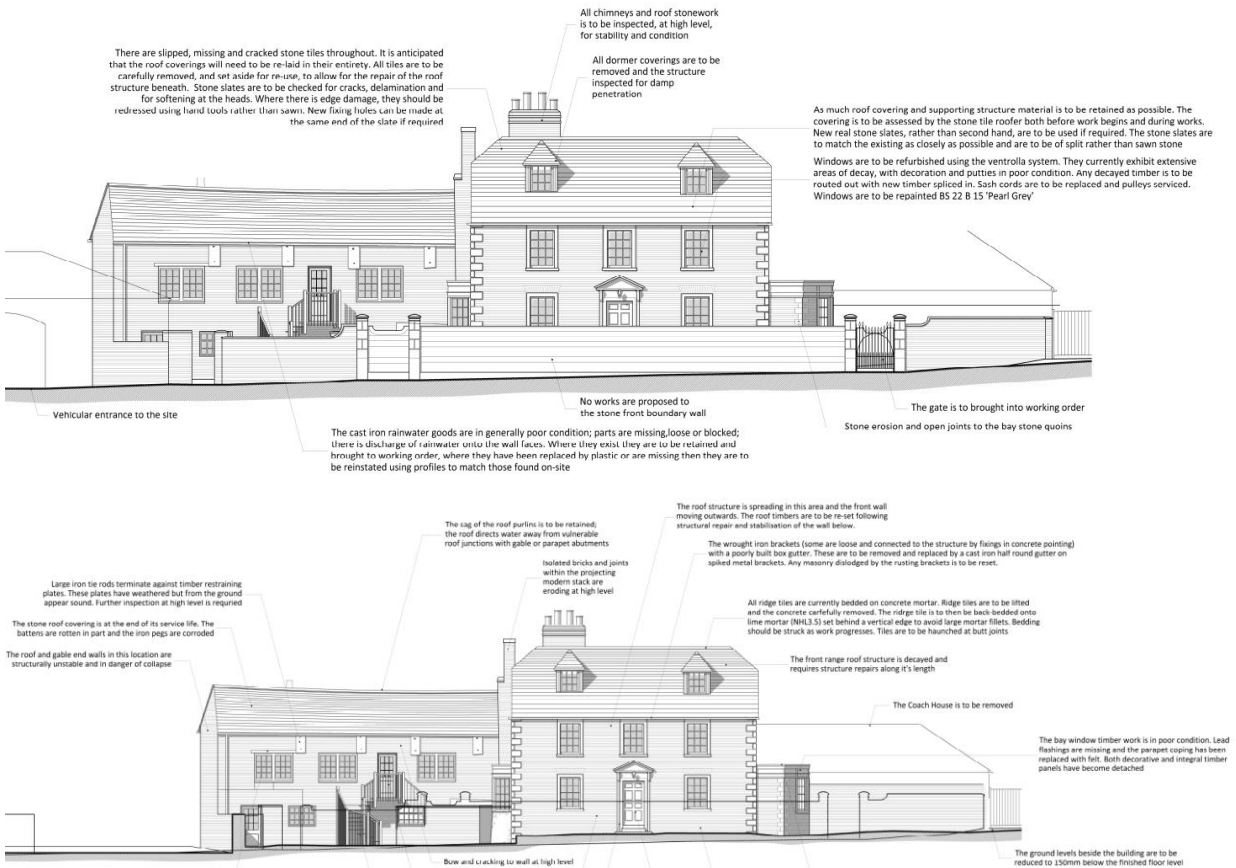
South Elevation - Plots 14 - 16

1 : 100

Front/rear elevations plots 14-16 (Dwg No. 04 rev I)

Courtfield House itself, which is grade II* listed, would be converted into 4 residential units (plots 17-20) comprising two 1-bedroom apartments and two 3-bedroom homes.

These properties would have access to the communal gardens adjacent the building; and each property would also have access to 1 parking space located within the communal parking area to the east.



Courtfield House proposed front elevation (Dwg No. 032 rev E)

In summary, the following sets out the totality of the proposed dwellings across the scheme:

9no. 4-bed dwellings (plots 1-9); 7no. 2-bed apartments/houses (plots 10-13 apartments and plots 14-16 houses); 2no 3-bed apartments (Courtfield House) and 2no 1-bed apartments (Courtfield House).

6. Local Planning Policy

Adopted Wiltshire Core Strategy (WCS) - Relevant policies being: Core Policy 1: Settlement Strategy; Core Policy 2: Delivery Strategy; Core Policy 3: Infrastructure requirements; Core Policy 28: Spatial Strategy – Trowbridge Community Area; Core Policy 41: Sustainable construction and low-carbon energy; Core Policy 43: Providing affordable housing; Core Policy 49: Protection of rural services and community facilities; Core Policy 50: Biodiversity and geodiversity; Core Policy 51: Landscape; Core Policy 52: Green Infrastructure; Core Policy 57: Ensuring high quality design and place shaping; Core Policy 58: Ensuring conservation of the historic environment; Core Policy 61: Transport and Development; Core Policy 62: Development impacts on the transport network; Core Policy 64: Demand management and Core Policy 67: Flood Risk

West Wiltshire District Local Plan (saved policies) - U1a Foul Water Disposal
National Planning Policy Framework 2021 (The Framework or NPPF)
Planning Practice Guidance

Wiltshire Local Transport Plan 2011-2026 Car Parking and Cycling Strategy

The Trowbridge Bat Mitigation Strategy (TBMS) (adopted February 2020)

Sections, 16, 66 and 72 of the Planning (Listed Building and Conservation Area) Act 1990

Wiltshire Council's published Housing Land Supply Statement Dec 2020 (with baseline date of April 2019)

Historic England's Advice Note 2 – Making changes to Heritage Assets

Historic England's 'Heritage at Risk' Register

The Emerging Trowbridge Neighbourhood Plan (area designated June 2018) but no substantive Plan with material weight.

7. Summary of Consultation Responses

Trowbridge Town Council: No objection (confirmed in mid-November 2021) although it should be noted that the Town Council objected to the initial application submission.

Wiltshire Council's Conservation Officer: No objection. The central car parking area has been adjusted to give Courtfield House a better line of sight through the site to the garden and orchard beyond. This helps maintain the connection between the listed building and the wider grounds. This helps to protect the setting of the listed building. The surfacing would need to be subject to a condition to ensure that a visually soft or non-intrusive material is used.

The scale of the new build has not been adjusted following the last iteration, but this has been justified as being the minimum limit of development – and it is accepted that to reduce the new build elements any further would make the whole scheme unviable. This is a scheme where we are actively trying to rescue the Grade II* listed building, and accordingly, the wider scheme must be viable to fund that rescue. Given the level of officer negotiation and involvement of the Council's Conservation team and Historic England, this revised scheme has heritage office support.

The NPPF confirms that when considering the impacts of a proposed development on the significance of a designated heritage asset, **great weight** should be given to the asset's conservation (and the more important the asset, the greater the weight should

be). It makes clear that any harm to a designated heritage asset requires clear and convincing justification.

It is accepted that the proposed development would result in less than substantial harm to the setting of the Grade II* listed Courtfield House due to the new buildings being erected in relatively close proximity to the listed building. However, due to the current condition of the Grade II* listed building – which is in a very poor state of repair with elements already collapsed – it is accepted that some level of harm is justifiable.

The wording of the NPPF and the ‘special regard’ as set within Sections 16 and 66 of the Act, requires that any level harm caused should be taken seriously. NPPF Paragraph 196 allows that a level of harm may be offset by public benefits, which in this particular case extends to safeguarding the heritage asset and delivering conservation benefits through its rescue and re-use.

Here we have a significant conservation benefit that the listed building, Grade II* and currently in a very poor state, would be rescued and restored. The setting harm as identified above, has been negotiated down to a level that minimises the impact to acceptable parameters. The conversion proposals are considered acceptable subject to conditions and a s106 legal agreement should bind the developer to deliver the heritage asset safeguarding at the earliest possible and reasonable opportunity. Consequently, the identified harm is considered to be justified under the provisions of the NPPF.

Wiltshire Council’s Ecologist: No objection subject to conditions. At the end of January 2022, the Councils ecologist confirmed that the ongoing management of the traditional orchard priority habitat is laid out within a Traditional Orchard Management Plan (TOMP) which would be funded by a service charge to be levied against future occupiers of all 20 properties - who would be invited to become members of the Courtfield House Management Company. The legal and funding mechanisms regarding the long-term implementation of the TOMP needs to be secured via a S106 Agreement.

It is acknowledged that the TOMP has been updated to include details of the bat roosting potential of trees within the orchard and a plan with relevant tree numbers have been included. In terms of bats, an EPS licence would be required before any works to Courtfield House are undertaken which would require updated surveys for the building – since day and transitional roosts for common pipistrelle were recorded in previous surveys.

Wiltshire Council’s Highways Team: No objection subject to conditions

Wiltshire Council’s Drainage Team: Supportive subject to conditions

Wiltshire Council’s Arboriculturist: No objections subject to conditions

Wiltshire Council’s Archaeologist: Requested that the site be subject to an archaeological evaluation prior to development commencing (which can be suitably conditioned, should members endorse the officer recommendation).

Wiltshire Council’s Housing Team: Accepted the viability assessment conclusions and agreed to Plot 17 being identified and provided as 1 bed DMU A/H apartment (to be

provided as a 75% discounted market unit) and to be secured by a s106 legal agreement.

Wiltshire Council's Urban Design Officer: No comments received on the amended plans.

Historic England: Supportive of the revised submission and advised as follows:

'The amendments respond to our most recent correspondence on this case (letter dated 21 September 2021) in which we welcomed the principle of the proposed development but highlighted concerns about the proposed car parking arrangements and the design of the proposed housing at plots 14-16. We felt the proposed car parking to the rear of Courtfield House would sever the Grade II listed building from its historic gardens, and we felt the proposed housing at plots 14-16 failed to respond to the character and appearance of the conservation area.*

In response to these concerns, the applicant has amended the car parking proposals to maintain a clear line of sight from the listed building to the end of its former gardens. This addresses our concerns in respect of the car parking.

The design of the proposed properties at plots 14-16 have also been revised. While there is some room for further design improvement, In our opinion the proposed modifications at least ensure that the properties at plots 14-16 will have a recessive character, in the context of the Grade II house alongside and the wider townscape of the conservation area.*

It is important that works to the Grade II listed house, which is included on Historic England's register of Heritage at Risk, proceed without delay. If you are minded recommending approval of the application, we suggest you include a planning condition (or legal agreement) requiring restoration work to the listed property to be completed before occupation of the new-build homes.*

Historic England supports the applications on heritage ground".

The Georgian Group: Objects for the reasons set out below:

'Historic Context: Courtfield House is a Grade II house of c.1762 by John Cokes, a clothier. It is of two storeys with attics and cellars, built of brick on a projecting plinth with moulded stone capping and chamfered stone quoins. To the rear are workshops, including the separately listed Workshop (Grade II) of 1773. The building was later amended in the nineteenth century and was remodelled extensively between c.1860 and 1887. To the rear is an orchard dating from the latter half of the nineteenth century. The Garden Wall and Gate Piers are both separately listed as Grade II.*

Comments: The application originally sought to subdivide Courtfield House into five dwellings, and the erection of 16 dwellings in the rear orchard, the conversion and alteration of the Wool Store Building and comprehensive landscaping. The application was then amended to subdivide Courtfield House into four dwellings with the erection of 17 dwellings. This latest iteration proposes to subdivide the house into four dwellings with the erection of 16 dwellings. We initially objected to the construction of 16

dwelling and continue to do so. Our objections in our letter (dated 15th June 2020) are maintained. We shall not repeat them here, but should this correspondence be unclear we will happily forward them on again.

We maintain our objection and believe that our original comments still apply. We strongly recommend that the application is refused on heritage grounds.'

Wessex Water: No objection subject to a planning informative.

8. Publicity

This application was publicised via press advertisement and the display of site notices as well as individually posted letters that were sent to all neighbouring properties within close proximity of the site. As a result of the publicity, 170 representation letters were received commenting on the application with 7 petitions objecting to the proposal:

Comments received following the revised application re-consultation exercise carried out in Jan-Feb 2022

- There is no plan that would prevent the orchard from becoming an extension of residents gardens
- Poor access to site
- The road serving the site is not suitable to support the increase in vehicular use resulting from the proposed development
- An agreement with the residents of Courtfield Mills has not yet been reached
- Management plan needs to be followed
- Orchard needs to be separated from the development and should be maintained in trust for the town as a community orchard
- Would result in a net loss of biodiversity
- Orchard management plan should be 25 years rather than 10 years
- Lack of clear ownership and responsibility for orchard site upkeep
- Inadequate bat conservation measures
- Alterations to boundary plans
- Encroachment on land at Court Mills.

Comments on previous plan iterations -

Orchard/ecology issues

- Loss of orchard
- Orchard part of heritage of Trowbridge
- Lack of green space
- Loss of habitat
- Adverse impact on ecosystem
- Important habitat/should be preserved
- Site has a Tree Preservation order imposed
- Orchard not a brown field site
- Badger sets and bats have been found onsite
- Orchard should be a community space
- Inspection of historical maps shows that the orchard area has never been built on
- Orchard should be accessible by local community
- Garden should be incorporated into adjacent park

- Orchard is an asset to the town/should be given to local community
- In addition to the submission of a management plan, robust controls are put in place for the orchard's ongoing protection and enhancement
- Lack of a Mitigation Strategy, as well as outstanding information regarding BAP Habitat, bats and trees
- Concerns that the orchard would become a poorly and inappropriately managed extension of resident's gardens
- Loss of protected trees

Listed building Impacts

- Restoration should include green spaces
- Excellent use of a long neglected private site
- To bring a private property which has fallen into such disrepair over a protracted period into public use would require disproportionate public expense
- No objection to school being converted into flats
- Trowbridge has already lost much of its historic heritage already

Housing/Design Concerns

- Housing unnecessary
- Lack of affordable housing
- Trowbridge does not need luxury housing
- Development should be on 'brown field' sites
- Too much building works
- Lack of infrastructure/overstretched Doctors surgery
- Scheme not considered overdevelopment
- Scheme not viable or sustainable
- No impact on housing shortage
- The three storey elements of scheme would dominate street scene to its detriment
- Poor quality housing design inappropriate and unconsidered use of materials
- Plans needed to cover the upkeep and maintenance of the orchard
- Proposed buildings would harm setting of listed building
- Widening of access would involve loss of parking to Court Mills

Highway safety/parking Issues

- Parking issues in area and along Polebarn Road
- Adverse Impact on highway safety/driving along Polebarn Road is very difficult due to parked cars
- Lack of parking
- Increased traffic/pollution
- Poor access to site
- Plenty of parking on site
- Developer does not own access road
- Measures to be taken to protect pedestrians going to both the surgery and the Park
- Access opens onto public footpath/cycle path and is considered unsuitable
- No vehicular access rights afforded to Ashford Homes at frontage with Court Mills
- Highway safety issues for pedestrians and cyclists at access
- Traffic assessment does not take into consideration other development sites in area

- Lack of parking would increase pressure on-street parking on Polebarn Road and the surrounding area
- Garages are now infrequently used for car storage, given that they typically do not comfortably house a modern-sized car
- The proposed access road is a narrow, one-way road providing exclusive access to Court Mills
- Nearby road infrastructure is unsuitable to support the traffic flows from a housing development of the size proposed
- Traffic issue in area exacerbated by other developments in the area such as Court Mills
- Issue of construction vehicles accessing site

Other Issues

- Would lower house prices
- Italian sunken garden and Roman remains need to be saved for the town
- Site of value to the entire Trowbridge community
- Overdevelopment of the site
- Will the developer fund renovation of Courtfield House?
- Increased risk involved with walking our children to and from the park
- Loss of access to 17 Polebarn Road
- Lack of consultation
- Inadequate ecological survey
- Additional bat surveys are required
- Wiltshire Wildlife Trust and The BIG Community Grow (the organising charity for the annual Apple Festival) have independently expressed serious interest in opening up the site to the wider community
- Represents a serious safety and environmental hazard
- Viability balance is swung too far in favour of the developers interests to maximise profits
- Additional noise
- The Council must adequately consult the Woodland Trust, Archaeology UK, English Heritage, DEFRA, Society for Ancient Buildings etc
- Adverse impact on local archaeology
- Development out of keeping
- Adverse visual impact
- The Government should introduce an urban green infrastructure target
- Urban areas may well need all the cooling green spaces they can get as climate changes
- The original ecology report has been shown to be incomplete and biased
- Building and site neglected
- Red line boundary showing ownership is incorrect
- Revised proposals do not address the issues raised in previous representations

9. Planning Considerations

9.1 Principle of development

9.1.1 Use of the site for residential purposes – 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. In this case, the Wiltshire Core Strategy, including those policies of the West Wiltshire District Plan that continue to be saved in the WCS form the relevant development plan for the area.

Trowbridge is defined within Core Policy 1 as a Principal Settlement, based on an assessment of its role and function. Principle Settlements are defined as settlements that have the ability to support sustainable patterns of development through their current levels of facilities, services and employment opportunities, and have the potential for significant development that can improve self-containment.

Core Policy 2 sets out the delivery strategy for growth for the period 2006 to 2026 and aims to distribute development in a sustainable manner. Within the defined limits of development there is a presumption in favour of supporting sustainable windfall housing development. The settlement limits for Trowbridge were comprehensively reviewed through the Wiltshire Housing Site Allocations Plan (WHSAP) examination, which was adopted in February 2020.

In other locations across Wiltshire, certain Neighbourhood Plans have reviewed the settlement limits in accordance with Core Policy 2 of the WCS, however at the time of writing this report, does not apply to the Trowbridge as the emerging Neighbourhood Plan has not yet reached Regulation 14 stage, and as such, little to no weight can be given to it in the planning balance).

The site lies within central Trowbridge and the principle of development for housing at this location is supported by WCS policy and officers. However, it is important to appreciate that in recognition of the aforementioned constraints and impacts, the following sections set out in detail the material considerations and officer conclusions.

9.1.2 Loss of a Community Facility - Courtfield House was last used as a Preparatory School between 1970 and 2011 that catered for up to approximately 120 pupils, but prior to the 1970s, it was a private residence. It is understood that part of the site remained in use as a dancing school until 2017, however since then, it has become more derelict with each passing year and has been exposed to some extreme weather and vandalism.

The Courtfield House property is designated as a heritage asset at risk and as stated earlier within this report, and as set out by the applicant's own submissions, significant discussions have taken place between the developer, their appointed agent, officers of Wiltshire Council and Historic England, and substantive effort and officer time has been dedicated to balancing site viability and delivering a viable future for the heritage asset.

Adopted Wiltshire Core Strategy Core Policy 49 titled 'Protection of rural services and community facilities' states that "*proposals involving the loss of a community service or facility will only be supported where it can be demonstrated that the site/building is no longer economically viable for an alternative community use*".

The policy states that the "*redevelopment for non-community service/facility use will only be permitted as a last resort and where all other options have been exhausted*".

The policy leads on to state that *“in order for such proposals to be supported, a comprehensive marketing plan will need to be undertaken ...[and] only where it can be demonstrated that all preferable options have been exhausted will a change of use to a non-community use be considered”*.

A marketing exercise was submitted in support of the application detailing the marketing of the site from April 2016 to February 2017 when the site was purchased by Doric Developments for £650,000. The property was regularly advertised in the local press and with estates agents. From the review of the robust marketing campaign only 7 viewings were schemed with interested parties. In each instance the Grade II* listing, its poor condition and the costs of refurbishment proved to be the significant determining factors in terms of all of the other interested parties (apart from the applicants) not pursuing any further interest.

Prior to the site marketing, it is noted that the property was offered to Trowbridge Town Council at no cost as a potential site for a museum, but this offer was not taken forward.

Policy CP49 is designed to protect communities against the loss of local facilities and services including local shops, meeting places, sports venues, cultural buildings, public houses and places of worship. The marketing exercise established that there was no substantive commercial or non-residential interest in the building and site.

Given the length of time that this property has been vacant, and its perilous condition and the costs associated to bringing it back into a viable use, officers are satisfied that with the results of the marketing campaign, this development can be supported, and the loss of the former school premises is fully justified.

9.1.3 Viability of the Development - The proposed development seeks permission for a total of 20 dwellings including a mix of apartments and new houses. Following a lengthy viability assessment exercise, it has been confirmed that the proposed development would include one affordable dwelling in the form of one Discounted Market Unit (on plot 17 and would comprise a 1bed apartment to be provided within Courtfield House) which would be offered at 75% of the open market value.

For a 20-house scheme which comprises 16 new builds, one A/H unit would represent as a material under provision when assessed against Core Policy 43. However, the Council must be mindful that in 2014, the Government introduced the ‘vacant building credit’ (VBC) to incentivise developers to redevelop brownfield land and properties and remove *“disproportionate burdens on small scale developers, custom and self-builders”* (quote source ministerial statement dated 28 November 2014). The VBC effectively offers a credit which is based on the extent of vacant building floor space and with respect to affordable housing provision requirements, the Council must issue a credit which is equivalent to the gross floor area of the vacant building(s) that are to be demolished or brought back into lawful use as part of the proposed housing scheme, then deduct from the affordable housing requirement.

The NPPF sets out within paragraph 64:

"Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may

set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount." (Officer, emphasis added).

Moreover, the Government produced planning practice guidance under paragraphs 26-28 (Reference IDs: 23b-026-20190315) advises further, as quoted below:

The inclusion of vacant building credit in the NPPF seeks to incentivise developers to regenerate and build on brownfield sites, and without the vacant building credit, brownfield sites would be overlooked by developers due to the high level of abnormal costs that are associated with developing such land.

This emphasises the importance of reasonable planning decision making that fully considers site viability implications of regenerating constrained sites and demolishing buildings to accommodate new development and growth.

In applying the vacant building credit, there is some discretion given to local planning authorities in terms of when and how it should apply. To assist local planning authorities, the Government advises that consideration should be given to:

- Firstly, whether the building has been made vacant solely for the purpose of re-development, and,
- Secondly, whether the building is covered by an extant or recently expired planning permission for the same (or substantially the same) development.

It is important to appreciate that the VBC applies so long as the property has not been deliberately abandoned and left vacant. In this case, officers are satisfied that the applicants have, since purchasing the property over four years ago, continuously engaged with the Council and Historic England to progress these 2018 lodged applications and that when tested against the following case law, there is no substantive evidence to suggest that the property has been deliberately left vacant or abandoned.

It is important to appreciate that a property and site falling into dereliction is materially different to abandonment. The following passages set out some case law references and its application for planning purposes:

‘Abandonment’, is a legal concept used by the courts to describe the circumstances in which rights to resume a use which has been lawfully carried on in the past, may be lost because of the cessation of that use. It was established in **Panton and Farmer v SSETR & Vale of White Horse DC [1999]**, however, that a use which was merely dormant or inactive could still be ‘existing’ so long as it had already become lawful and had not been extinguished.

To understand what abandonment constitutes, in **Hartley v MHLG [1970]**, Lord Denning found that if a building or land remains “...*unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned, then the Tribunal may hold it to have been abandoned*”.

In **The Trustees of Castell-y-Mynach Estate v Taff-Ely BC [1985]**, four criteria were established for assessing whether a use had been abandoned. These were: (1) the physical condition of the buildings; (2) the period of non-use; (3) whether there has been any other substantive use; and (4) the owner's intentions.

In **Hughes v SSETR & South Holland DC [2000]** the Court of Appeal held, on the authority of **Hartley**, that the test of the owner's intentions should be objective and not subjective. In this regard the test was the view to be taken by "*a reasonable man with knowledge of all the relevant circumstances*".



In terms of responding to the above 4 'tests', officers acknowledge that the physical condition of Courtfield House in particular, is poor (and in some respects very poor as confirmed by Historic England) as illustrated in part, by the above photos, which has been brought about as a consequence of water ingress, collapsed sections, vandalism and theft and the condition is worsening year on year.

However, given its status as a grade II* listed building and mindful of the costs that would be incurred to bring it back into a safeguarded and viable use, and the need for listed building consent (that itself, requires member approval given the confirmed call-in), the worsening condition of the building is not entirely a failure by the applicants.

In terms of vacancy, the period of non-use in planning terms, is relatively recent with the last use at the site being in 2017, and in officer opinion, this does not correlate with long term vacancy or abandonment. The last known active use at the application site was an ancillary use linked with the former school premises and there has not been any known other lawful use since.

The applicant's intentions are clear and as set out above, there is a strong commitment to save this building at risk, renovate it and bring it back into a viable use with the redevelopment of the site funding the associated costs.

As set out within Core Policy 3 titled 'Infrastructure Requirements' it is recognised that for some sites and properties, the expected infrastructure provision and developer obligations may not be achievable or reasonable, and in such cases, an open book viability assessment is mandatory.

The policy furthermore sets out that when viability is adequately demonstrated and the full range of infrastructure requirements cannot be funded by the developer, the policy allows for the prioritising of particular developer contributions that firstly deliver essential infrastructure above place making infrastructure as well as allowing some flexibility when drafting any required legal agreement to defer certain developer contributions, as appropriate.

Ordinarily, adopted Core Policy 43 titled 'Providing affordable homes' requires 30% (which for a 20-house scheme would equate to 6 A/H net provision) for qualifying new build residential development in areas such as Trowbridge (appreciating that some parts of Wiltshire have a 40% A/H policy requirement).

However, with the vacant building credit applied to this site and property, the residual affordable housing requirement is calculated as being 3 A/H units as the following summary calculation sets out:

Total proposed residential floor space through conversion and new building
(20 No. units) = 2,166 sqm (GIA)*

Average size of unit = **108.3 sqm (GIA)**

Total existing vacant floor space = **994.20 sqm (GIA)**

Difference between proposed/existing floor space = **1171.8 sqm (GIA)**

VBC multiple = $1167.80/2162.00 \times 100 = 54.09\%$

Core Policy 43 compliant Affordable Housing provision (30%) = **6 units**

54.09% of 6.3 units = **3.25 units**

Affordable housing requirement adjusted for VBC rounded to nearest unit = **3 units**

When the application was submitted in 2018, it was supported by a Financial Viability Appraisal (FVA) which claimed that the 20-house scheme could not provide any affordable housing (or any s106 contributions) due to the need to subsidise the listed building conversion works and to provide a Benchmark Land Value (BLV) to the owner/developers.

It is important to appreciate that 'Benchmark Land Value' is the term used within the RICS Guidance "Financial Viability in Planning" to define what level of return a *notional and willing landowner* would expect to bring the land forward for development – the Threshold Land Value as it is also sometimes referred to. This is the threshold that, if exceeded by the land value of the application proposals, the scheme can be considered deliverable, when all other inputs are allowed, as a reasonable landowner would be willing to sell the property.

The BLV does not necessarily correlate with the sum a landowner paid as this case proves, given that the site was purchased for £650k but the applicant quotes the Benchmark Land Value as being £500k in their own viability assessment i.e., less than

what was paid for the site; and it should be noted that the independent assessor opined that the BLV may well be considerably lower than £500k.

The basic tenet of BLV as defined by RICS, is one based on the Market Value of the site with the NPPF stressing that the Benchmark Land Value should be based on the Existing Use Value of the land (EUV), plus a premium for the landowner (EUV+), and the premium “*should provide a reasonable incentive for a landowner to bring forward land for development while allowing a sufficient contribution to comply with policy requirements*”.

It is submitted by officers and as ratified by independent analysis, that the site has no existing value as an educational or public building, and in recognition of the lack of any other market/development interest generated by the aforementioned marketing exercise, residential development and use of the site is considered the prime and only viable option.

The independent viability assessment (which was commissioned by the Council, paid for by the applicant, and carried out by Bruton Knowles in April 2019), triggered a fresh round of officer/developer negotiations which included a review of comparable evidence from the adjacent Court Mills redevelopment, which resulted in a tri-partite agreement on the BLV for this site and with the substantial costs associated to bringing Courtfield House and redeveloping the Wool Store into viable use – and with the corroborated costs exceeding £1.6million, officers have been advised by independent assessors that the developer can only reasonably be burdened to provide one A/H unit (at nil subsidy) and cover the associated costs of providing each dwelling with the respective waste and recycling infrastructure to ensure this development is viable.

The developer has accepted the Council’s outsourced expert calculation of the site’s Benchmark Land Value and agreement on the financial viability, and, from that, the applicant confirmed their commitment to provide one on-site affordable housing unit as well as be burdened by the developer obligations which are set out within section 10 of this report.

As verified by the independent assessors, the proposed 20-unit quantum of housing is the minimum number of open market housing units required to deliver a viable scheme that would cross subsidise the essential repairs, convert and provide a viable future for the grade II* listed Courtfield House which is on the ‘heritage asset at risk’ register.

9.1.4 Poor Condition of Courtfield House – As reported, Courtfield House is listed on Historic England’s ‘heritage asset at risk’ register where it is considered in a ‘poor’ state of repair and in immediate risk of further deterioration if no financial agreement is secured on its future. As reported and confirmed within the consultation section of this report, both Historic England and the Council’s Conservation Officer fully support this development recognising that the revised, negotiated scheme would provide the financial support necessary to restore the listed building and secure its long-term future, and it is accepted that some demolition and adaptations are justified such as the proposed demolition works to the east wing of Courtfield House and for the outbuildings to the west of Courtfield House as illustrated below.



Photos 9, 10 and 11: Views of the curtilage listed C19 Woolstore Building (south, north and west facing elevations taken in February 2018). The Woolstore roof (1970s covering) is proposed for removal along with the upper parts of the external walls and all internal walls. An aperture of circa 5m will be created in the southern and northern elevations to create a principal vehicular access through to the rear garden area. The internal Woolstore area will provide 13 No. parking spaces, recycling and bin storage.



Photos 12 and 13: The Pine Hall constructed in 1975 (Photo taken February 2018). Demolition and landscape is proposed as part of a comprehensive scheme of landscape enhancement.

9.1.5 Wiltshire Council's Five Year Housing Land Supply – As confirmed by two recent planning appeals, pursuant to land at Green Farm, Chippenham Road, Lyneham (appeal ref APP/Y3940/W/20/3253204 and Land to the south of Chilvester Hill, Calne (appeal ref APP/Y3940/W/21/3275477), the Council cannot currently demonstrate a 5-year supply of deliverable housing land – with the north and west housing market area having a demonstrable supply of 4.29 years, which constitutes as a moderate shortfall.

With this recognition, the tilted balance in favour of sustainable windfall housing delivery as set out within paragraph 11d) ii of the National Planning Policy Framework (NPPF) is engaged. Although, footnote 7 on page 6 applies given the sites protected status as a heritage asset which means that as decisionmaker, the Council could, and notwithstanding the housing supply deficit, in applying NPPF paragraph 11, refuse this application if members considered the development would result in material harm to irreplaceable habitats or designated heritage asset.

It is important to appreciate that the housing supply deficit does mean full weight cannot not be applied to the adopted Wiltshire Core Strategy policies that restrict housing delivery, but that does not mean that they carry no weight, since planning law decrees that the adopted development plan remains the starting point for all decision making.

When the tilted balance is engaged, the NPPF indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole.

When LPA's have a housing supply deficit, paragraph 11 of the NPPF sets a presumption in favour of housing delivery unless protected areas or assets of particular

importance would be demonstrably harmed by the development proposal and would provide a robust and clear reason for refusing the application.

Given the expert advice and supporting conclusions provided by Historic England, the Council's Conservation officer for heritage matters and the Council's ecologist and tree officer for natural habitat, officers submit that this 20-unit development would be an appropriate sustainable form of development that is supported by the NPPF and the WCS.

WCS strategic policies CP1 and CP2 cannot be given 'full weight' whilst NPPF para 11 is engaged, but these policies can still be given substantial weight in the planning balance as the strategic policies remain of critical importance in terms of directing appropriate, sustainable development to the right locations in accordance with the Framework. In this case, Trowbridge is a designated a Principal Settlement in policy terms, and the delivery of 20 new dwellings within central Trowbridge would constitute as a sustainable development, and would most crucially delivery the required funds to safeguard Courtfield House.

If this development is not considered acceptable mindful of the rigorous viability appraisal, the future of the grade II* listed building would be very bleak.

The site lies within the settlement limits of Trowbridge where there is a presumption in favour of sustainable development. The proposed development would result in the loss of a former education facility, however, prior to the 1970s, the building was used for residential purposes, and the proposed return to residential use is justified following the robust marketing exercise.

A robust viability assessment has been carried out which was subject to significant officer/external assessor interrogation and from that, a revised viability case was presented by the applicant which culminated in a commitment to cross subsidise the repair and conversion of the grade II* listed Courtfield House while providing one affordable housing unit (to meet local need) within Courtfield house.

The 1 A/H unit represents 30% of the calculated VBC provision requirement but with the viability assessment, officers are satisfied that the provision is the best viable outcome the Council can reasonably secure. As such it is considered that the principle of development for the conversion of Courtfield house to four apartments and the erection of 16 new dwellings within the grounds of the listed building can be supported subject to a s106 legal agreement and planning conditions.

9.2 Impact on the character of the listed building/Conservation Area/public footpath

NPPF paragraph 199 states that "*when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. ... This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*" Paragraph 200 of the NPPF leads on to stress that: "*Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.*" Paragraph 202 of the NPPF moreover asserts that: "*Where a development proposal will*

lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal...”

Core Policy 57 of the Wiltshire Core Strategy requires: “A high standard of design is required in all new developments, including extensions... Development is expected to create a strong sense of place through drawing on the local context and being complementary to the locality. Applications for new development must be accompanied by appropriate information to demonstrate how the proposal will make a positive contribution to the character of Wiltshire through... being sympathetic to and conserving historic buildings”. WCS Core Policy 58 echoes the above national policy in seeking the protection, conservation and, where possible, enhancement of heritage assets.

Courtfield House is a grade II* listed building of predominantly 18th and 19th century build which occupies the southern part of the application site. A 19th century extension attached to the eastern elevation of Courtfield House, known as Polebarn Hall, is thought to be a former coach house and stables and is identified for demolition – which has the support of Historic England and the Council’s Conservation officer.

Other structures within the site include an 18th century Workshop (or Dye-House), which adjoins the western elevation of Courtfield House – which is Grade II listed, and an associated lead water pump is also included in this list entry. Extending to the west of the workshop, and occupying the south-western corner of the site, the outbuilding known as the Wool House (or Wool Store), was built in the 19th century, and is identified for adaptation within this scheme. Further within the rear of the grounds, Pine Hall, is a modest single storey structure erected to the north of the Wool House, and was built in 1975 as a dance studio – which has little architectural merit. The eastern boundary of the site is bounded by a garden wall with gate piers, which are also Grade II listed.

The property was listed in 1950 and the formal List Entry description for Courtfield House reads as follows –

‘Circa 1754 (deeds) in earlier style, with earlier building. 2 storeys, attic and cellars. Brick on projecting plinth with moulded stone capping and chamfered stone quoins. Valley roof with half-hipped gables. Stone tile roof with projecting eaves and wooden gutter on wrought iron brackets. 2 hipped dormers with sashes 3 panes wide. Glazing bar sash windows. 3 on 1st floor with raised stone surrounds, outer edges moulded, inner beaded. 2 similar windows on ground floor and early C19 half glazed door in stone surround of architrave, plain outer framing and stone console brackets supporting cornice and pediment. Two 2-light cellar windows. 3 light bay windows to return fronts. Irregular gabled wing to right hand at back. The rear has a C20 timber framed loggia with brick herring bone nogging which links to the workshop extension (qv). Stone mullion casement windows with stone drips over to gable end. Interior: several features retained; Tudor arch fireplace inserted on ground floor.’

The application is accompanied by a robust Heritage Statement dated May 2020. Following extensive negotiations between the applicants, the Council’s conservation team and Historic England, a revised scheme (as detailed above) was submitted. The main emphasis of the amended scheme was to preserve the views of Courtfield House



Fig 5. Extract from the proposed May 2020 landscape masterplan

The most recent revised site masterplan (as shown below) is considered acceptable, and the 20-house development would deliver the essential funding to safeguard and return Courtfield House into a viable use.



The NPPF confirms that when considering the impact of a proposed development on the significance of a designated heritage asset, **great weight** should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). The NPPF makes it clear that any harm to a designated heritage asset requires clear and convincing justification. In this case the proposals would result in less than substantial harm to the setting of the Grade II* listed Courtfield House – created by the erection of the new dwellings within the grounds of the property. However, due to the

current condition of the Grade II* listed building, which is in a very poor state of repair with some elements having already collapsed, been subject to vandalism and theft, Historic England and the Council's Conservation officer accept that some level of harm is justified to secure a viable future for the 'at risk' building.

The wording of the NPPF and the 'special regard' set out within Sections 16 and 66 of the Act requires that any level harm caused should be taken seriously.

NPPF paragraph 196 allows that a level of harm may be offset by public benefits, which can include conservation benefits. In this case the conservation benefit is clearly the restoration of a grade II* listed building that is currently in a poor state of repair. The harm identified above has been negotiated to acceptable parameters and is considered NPPF/WCS policy compliant.

Policy CP57 vi of the WCS encourages development to make efficient use of land whilst taking account of the characteristics of the site and the local context to deliver an appropriate development which relates effectively to the immediate setting and to the wider character of the area. The Council's conservation officer has raised no objection to the finalised revised scheme in terms of quantum, layout and design.

Plots 1-9 would be suitably set back from Courtfield House although the buildings would be visible from the adjacent public park but would be very well screened from Polebarn Road. The new dwellings on plots 10-13 and 14-16 would be visible from the public realm and adjacent public footpaths, however the revised design of the dwellings is considered acceptable.

The dedicated private gardens would be modest, however given that a communal open space is being provided to the rear of Courtfield House the private amenity space would be suitably compensated for by the additional provision being made available; and with the parkland to the immediate west, future occupiers would have sufficient access to external amenity space near their homes.

As reported, officers along with Historic England sought to reduce the extent of hardstanding and car parking to safeguard the setting of the listed building and as a compromise the scheme provides as adjusted an appropriate quantum of car parking provision within central Trowbridge.

Since 2018, the Council's urban designer requested various alterations which have been introduced including the provision of some external facades and the balcony screening. Issues raised with regards to the position of the buildings on site and design were resolved by officer negotiation; and for other urban design related matters, planning conditions can suitably ensure the delivery of a high-quality development.

Although the scheme would cause 'less than substantial harm' to the setting of the heritage assets, when tested against NPPF paragraph 196, the level of harm would be offset by the public benefits that would be secured through the safeguarding and restoration of the grade II* listed building, and in recognising that the development would not directly harm the use of the public rights of way, the development is considered WCS and NPPF compliant.

9.3 Ecology issues/impact on Orchard/UK BAP Priority habitat

Wiltshire Core Strategy Core Policy 50 'Biodiversity & Geodiversity' requires all development proposals to demonstrate how they protect features of nature conservation and geological value as part of the design rationale. There is an expectation that such features shall be retained, buffered, and managed favourably in order to maintain their ecological value, connectivity and functionality in the long-term. Furthermore, the policy specifies that all development should seek opportunities to enhance biodiversity. Major development in particular, must include measures to deliver biodiversity gains through opportunities to restore, enhance and create valuable habitats, ecological networks and ecosystem services.

The application is supported by an Extended Phase 1 Ecological Survey (dated July 2019) and a Traditional Orchard Assessment (dated October 2018). Further surveys were undertaken and submitted to the Council including additional emergence and re-entry surveys and bat activity/transect surveys. A habitat value calculation was also carried out in October 2021. The Traditional Orchard Assessment concluded the orchard qualifies as a UK Biodiversity Action Plan (BAP) Priority habitat which was supported by an Orchard Management Plan dated January 2022 – all of which were appraised by the Council's ecologist and as reported within the consultation response section of this report, no objections are raised, subject to a s106 legal agreement being sealed and the imposition of planning conditions.

The site is located within the grey hatched area of the Trowbridge Bat Mitigation Strategy (TBMS) and therefore a proportion of CIL money charged to the developer/applicant would contribute towards the Council's adopted scheme for mitigating the associated recreational impacts created by new housing in relation to on the Bechstein's bats.

In terms of safeguarding the orchard, which was a significant ecology concern raised against the initial plan submissions, as the below landscape masterplan now reveals, the majority of the orchard would be retained and safeguarded with a dedicated management burden to be imposed on the developer and consequential owners.



Revised landscape masterplan - Dwg No. 238101 Rev F

The completed bat surveys concluded that the site has day and transitional roosts for a modest number of common pipistrelle bats which were recorded accessing crevices within the roof of Courtfield House. Completed bat transect and static detector surveys recorded high levels of foraging/commuting activity by common and soprano pipistrelle over the site and noctule, serotine, brown long eared and Myotis bats were recorded in lower numbers. A small number of passes were also detected by barbastelle and lesser horseshoe bats. All of which is not that surprising given the proximity of the site to the park and the site's vacancy for a number of years and the construction and deterioration of the subject property.

The ecological report concludes that the site is of County Importance for bats due to the presence of lesser horseshoe and barbastelle bats and lesser horseshoe bats are a qualifying feature of the Bath and Bradford-on-Avon SAC. However, there was no evidence found of bats roosting within the buildings although Courtfield House appears to support day and transitional roosts of low numbers of common pipistrelle bats within the roof. As a consequence, before any works can commence to convert Courtfield House, the applicant/developer would need to apply for and obtain a licence from Natural England.

To mitigate the loss of the common pipistrelle roosts, four bat tubes and three bat boxes would be provided throughout the site. Details of the bat tube / box location would need to be conditioned as part of any approval. The site provides plenty of suitable habitat for a range of bat species to use for commuting and foraging purposes through the wider landscape. As such to avoid disturbance and retain dark corridors for bats and other wildlife no external lighting should be installed along the northern and western site boundaries of the site and where lighting is needed, it would need to be hooded and directional and subject to a compliance planning condition that secures the exact details, specification and illuminance levels.

No badger setts have been recorded within the site boundaries. There are records of great crested newts at locations across Trowbridge but none of these records are for locations within 630m of Courtfield House. Furthermore, all the records are separated from the site by barriers to dispersal for this species (e.g., busy main roads and the town centre).

The habitat on the site is potentially suitable to support common reptile species such as slow worm and there is some suitable habitat within the surrounding area, although busy main roads and the town centre act again as barriers to dispersal.

No reptiles were recorded during the surveying work and therefore the site is not considered to support a population of common reptile species. No evidence of birds nesting in or on the buildings on site was noted at the time surveying, but the trees and scrub all provide suitable habitat for a wide range of bird species. As proposed, the site would be enhanced for a range of bird species through the installation of nest boxes in suitable areas of the site, which requires a suitably worded planning condition.

The arboricultural report produced for the site details all the trees present within the site and lists all those planned for removal. It is proposed to remove eighteen trees in total with 3 from within the traditional orchard. The submitted revised landscape masterplan (Dwg No. 2381 01 Rev F – which is included as an insert on the previous page) details

Construction Environmental Management Plan (CEMP) in order to ensure the long-term management of landscape and ecological features are retained and to ensure adequate protection and mitigation for ecological receptors during the construction periods.

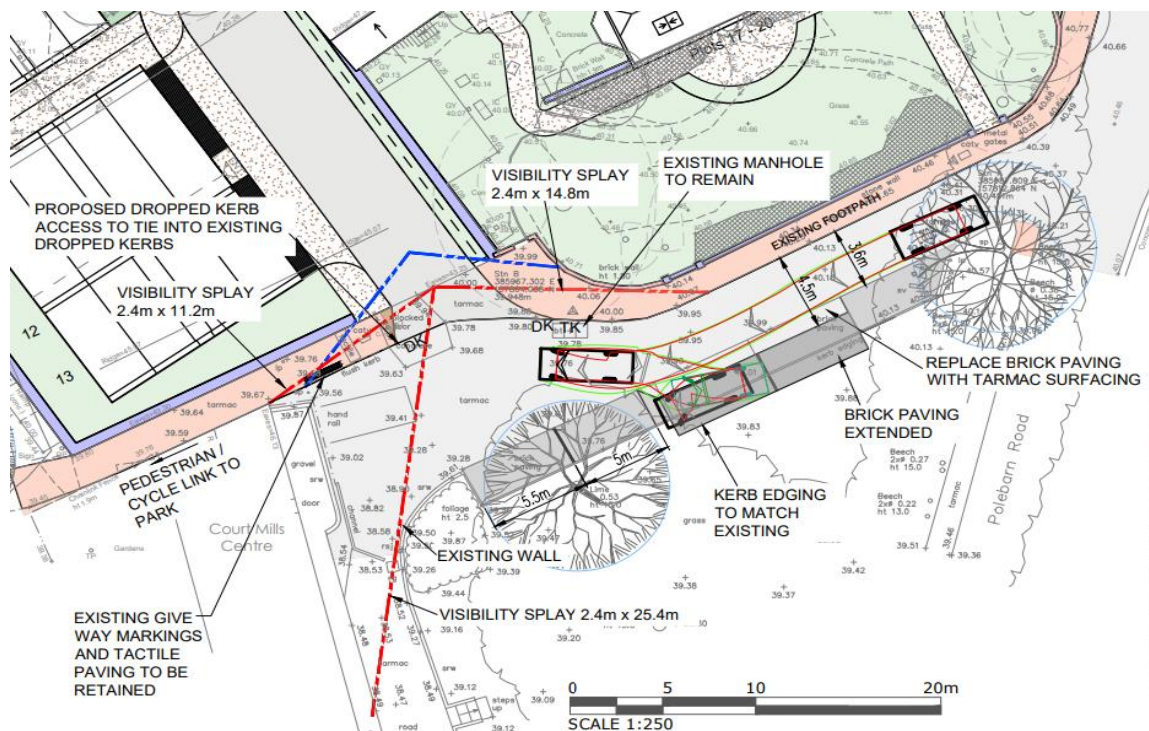
With the negotiated scheme, securing the s106 and imposition of planning conditions with the aforesaid mitigation, and the applicant obtaining a licence from Natural England, the Council's ecologist has concluded that this much revised, significantly negotiated development proposal would not lead to adverse effects to protected species or known habitat.

9.3 Highway Safety Issues

Paragraph 110 of the NPPF states that in assessing specific applications for development, developers should ensure that a safe and suitable access to a site can be achieved for all users. Paragraph 111 furthermore states that “*development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*”.

Core Policy 61 of the adopted WCS seeks to ensure that all new development is capable of being served by a safe access to the highway network and Core Policy 64 sets out to manage the demand for car parking and sets residential parking standards based on minimum parking standards.

The proposed development would result in Courtfield House being converted to four apartments and elsewhere within the grounds, 16 dwellings would be erected. The scheme includes the formation of a new vehicular access onto Polebarn Road to the southeast of Courtfield House.



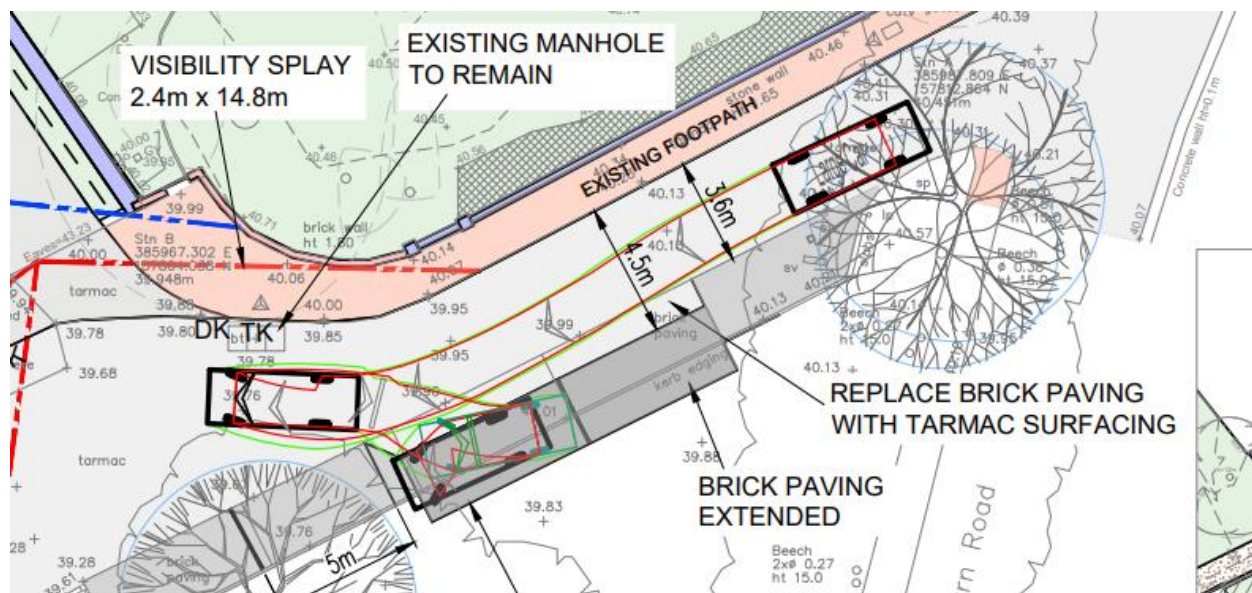
Proposed Access and Passing Arrangements Dwg No. 20032-GA04

It is proposed that the main access to the site would be taken from the unadopted stretch of highway along the southern frontage of the site before to the southwest of Courtfield House and would serve 13 dwellings to the rear of Courtfield House.

As detailed in the plan insert above, visibility splays at the access would be 2.4 metres by 14.8 metres facing east and 2.4 metres by 11.2 metres facing west; and vehicles would cross the existing footway and access the unadopted road. The boundary walls on either side of the access would set back from the carriageway edge to enable footway access to and from the site and to ensure appropriate levels of driver / pedestrian inter-visibility pursuant to a car exiting the site and a pedestrian using the adjacent footway.

This unadopted road currently serves as a one-way system used by residents of Court Mills to access Polebarn Road from the resident's car park. The initial proposal was to make this section of road 2-way to serve the Courtfield House development. However, the section of road was considered too narrow (at approximately 4 metres in width) by the Council's highway team to allow 2-way traffic to pass safely.

Following further negotiations with the applicants, a revised submission was lodged proposing the construction of a passing bay at 4.5 metres in width along a section of the road to allow vehicles to pass safely. In response, the Council's highways officer concluded that with due to the addition of the passing bay, the existing width of the road at 3.6 metres leading to the junction with Polebarn Road would be acceptable in this instance. Due to the low speeds of vehicles traversing the lane and short section of road where this width is applicable (approximately 11.3 metres) and that this arrangement would be acceptable in highway terms. The construction of the passing bay would however require a number of current on street parking spaces belonging to residents of Court Mills being relocated (see passing bay plan below).



Excerpt from Dwg No. 20032-GA04 showing proposed passing bay at the access

The Council highways authority have raised no objection to the revised access proposal subject to imposing a planning condition requiring the road passing bay and site access

as detailed on the access and passing arrangement plan being completed prior to occupation of plots 1-13.

Third parties have raised the issue of whether the applicant has a right to use this unadopted access road however the applicants have submitted evidence that they have legal access rights over this stretch of unadopted highway and should there be any private covenants that affect the land, that would be a civil matter for the respective parties to negotiate outside of the planning regime.

In addition to the above, the existing footway cross-over access to the east of Courtfield House would be retained and adjusted to provide access to a new parking court that would provide seven parking spaces for the occupiers of the proposed conversion of Courtfield House and the new dwellings at plots 14-16. It should be noted that this access point currently operates safely as an access to the existing Courtfield House car park and I recognise that the existing car park has capacity to accommodate up to 15 cars which could well have been used when the property was a school, the proposed new car park for 7 spaces is not cause for highway concern.

Within the site, the access road would be 5 metres wide with a 2-metre-wide footway which would connect with the existing off-site footway to the south of the site that joins Polebarn Road. It is proposed that the on-site roads and parking would not be adopted and that a Private Management Company would be created to maintain all the communal areas of the site including the access road and associated infrastructure.

In terms of car parking provision for the proposed 20 dwellings there would be a shortfall of 25 parking spaces when tested against the Council's expected residential minimum parking standards as set out within the Car Parking Strategy. However, the Strategy allows for flexibility in highly sustainable locations and with the agreement of the local highway authority, car parking standards can be reduced especially for sites on the edge of the town centre such as the Courtfield House site, which has very good access to a wide range of services, employment opportunities and facilities within a short walking or cycling distance. In addition, good public transport (bus and train) options exist, which for heritage safeguarding reasons, led officers and Historic England to support the reduced car parking provision (which itself was an element officers negotiated to secure a better setting relationship for Courtfield House).

The submitted transport assessment concludes that the development would not generate a significant increase in traffic flows over the extant lawful use of the site as a school. Although it is recognised that the development would result in increased daily traffic flows using the unadopted road to the south in order to access the proposed dwellings at plots 1-13, it is considered these vehicle movements would not result in high levels of harm to highway safety, or to pedestrians and cyclists using the public footpath at the front of the site, which would warrant a refusal of planning permission (when tested against NPPF paragraph 111).

There are no objections to the scheme from the Council's highway officer subject to the imposition of planning conditions. It is therefore argued that the development would not result in an unacceptable impact to highway safety and there would be no severe residual cumulative impacts in terms of the use of the road network.

On the basis of the above, the development is considered compliant with core policies CP61 and CP64 of the WCS and in particular, paragraphs 110 and 111 of the Framework.

9.4 Impact on the amenity of neighbouring residents/future residents

WCS Core Policy 57 titled: 'Ensuring High Quality Design and Place Shaping' requires development to have regard to the compatibility of adjoining buildings and uses, the impact achievable within the development itself, including the consideration of privacy, overshadowing, vibration, and pollution (e.g., light intrusion, noise, smoke, fumes, effluent, waste or litter).

The nearest residential properties to the site are located directly to the east fronting Polebarn Road and to the south at Court Mills. Properties fronting Polebarn Road are between 40- 50 metres distant from the proposed dwellings at plots 1-13, and by virtue of such separation distances, the owner/occupiers of these neighbouring dwellings would not be materially affected by the development in terms of loss of light/overbearing or loss of privacy/ overlooking impacts.

The southern elevation of plot 13 would be located approximately 5-6 metres from the northern elevation of Court Mill and separated by the public footpath. Within this building, first floor south facing windows are proposed that would serve an en-suite and bedroom. However, it should be noted that there are also north facing windows at Court Mills at first floor level facing the application site. To avoid any issues of loss of privacy to the occupiers of the Court Mills property, a planning condition is recommended that the en-suite window, which would be directly opposite Court Mills, shall be obscurely glazed. In terms of the window serving the first-floor bedroom this would be located further to the east on the southern elevation of the proposed block of apartments and would overlook the front parking area/access drive of Court Mills, which is considered acceptable in planning terms.

The proposed building comprising plots 10-13 located directly to the north of Court Mills would have no significant impact on the living conditions of residents of Court Mills in terms of loss of light/overshadowing or any overbearing impact.



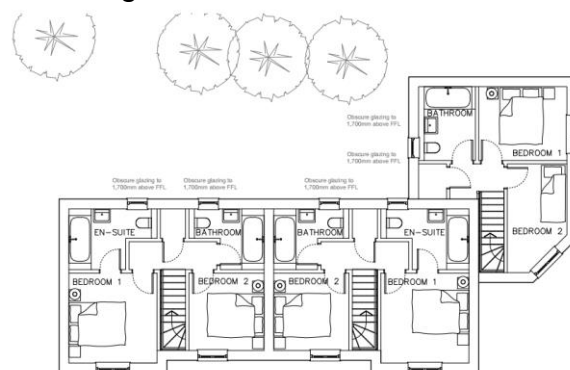
Previous set of photos: showing the northern section and gable of Court Mills and the adjacent existing Wool Store at Courtfield House

In terms of the new building comprising plots 14-16, the northern elevation would be located within a few metres of the boundary with No. 17 Polebarn Road however due to the intervening garage within the curtilage of No. 17 and the separation distance between habitable windows, it is considered the development would not result in overshadowing or loss of light to the residents/users of No.17.

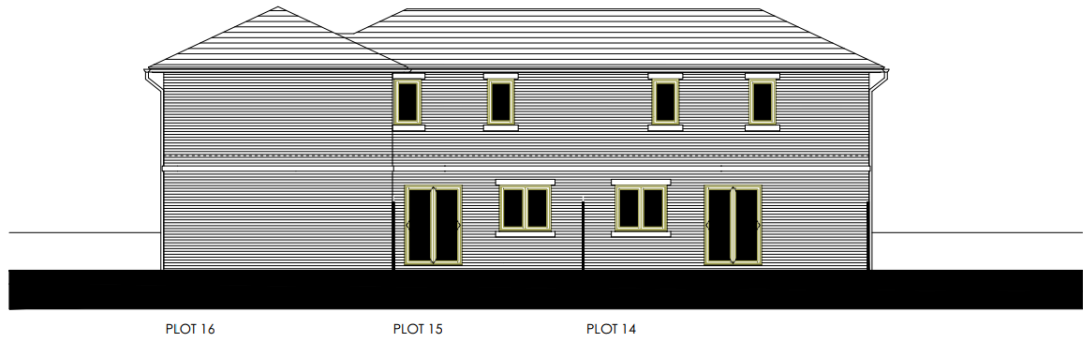


Photo of southern elevation of 17 Polebarn Road from existing car park

Although four windows are proposed within the northern elevation of the building block for plots 14-15 at first floor level all the windows would serve bathrooms and en-suites as shown below and a planning condition could secure these windows to be obscurely glazed. With this compliance condition, officers are satisfied that the development comprising plots 14-15 would result in no harmful overlooking or loss of privacy to the neighbouring residents fronting Polebarn Road and No. 17 Polebarn Road in particular.

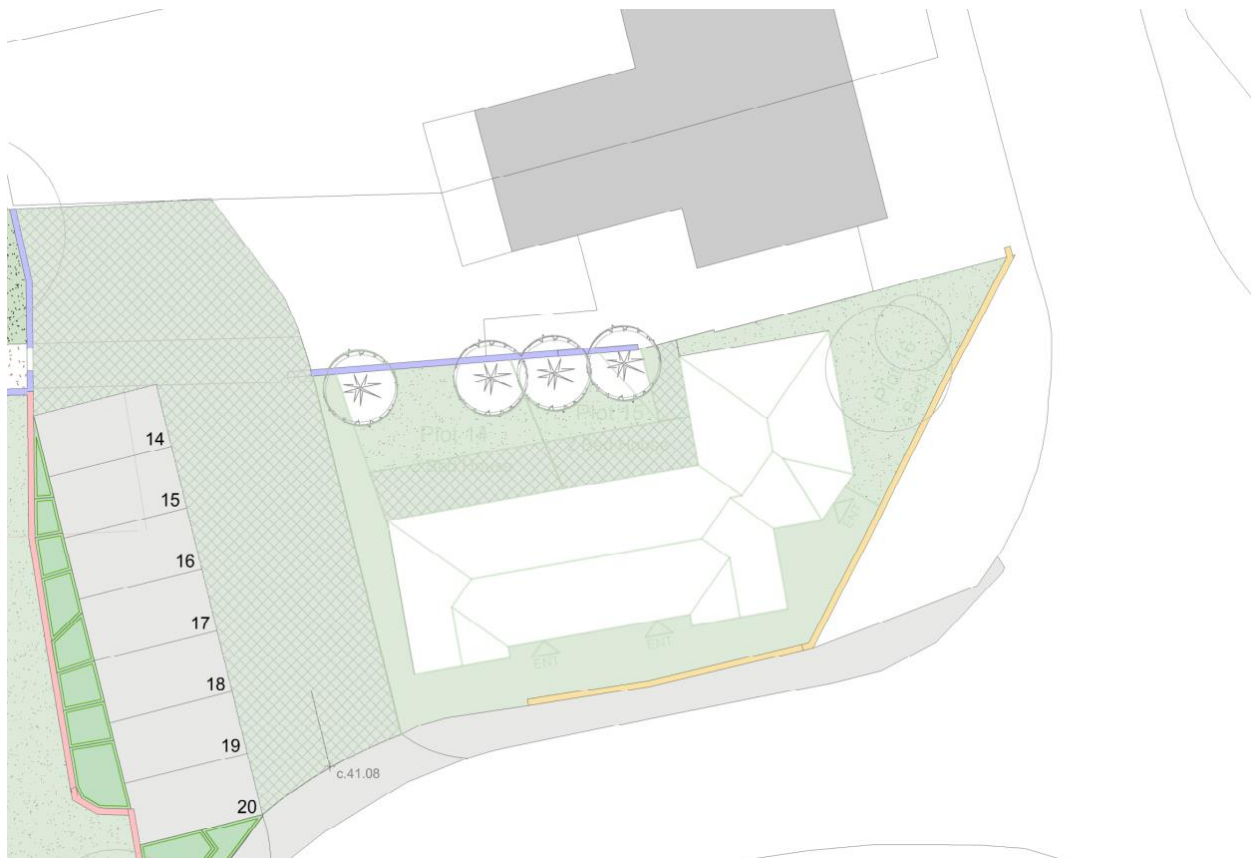


01 First Floor - Plots 14-16



North Elevation - Plots 14 - 16

1 : 100



The proposed residential conversion of Courtfield House would not result in substantive overlooking or loss of privacy that would harm the amenities of residents of the neighbouring properties.

Although it is recognised there would be additional car journeys associated with using the proposed new access road serving plots 1-13 to be accessed off Polebarn Road, additional noise or light pollution that would potentially affect adjacent residents, would not warrant a refusal of planning permission.

Although the site is constrained due to proximity to the protected orchard located to the north of Courtfield House, the revised scheme is not considered an overdevelopment. The outlook from the proposed properties is considered acceptable and as mentioned above, the provision of external amenity space and car parking has been negotiated and is considered appropriate for this site location and proposal.

On the basis of the above, officers are satisfied that the proposed development would not cause adverse impacts on the living conditions of neighbouring residents, and in particular those residents at Polebarn Road and Court Mills, in terms of overlooking, overbearing, loss of privacy or overshadowing, and the much-revised proposal is considered compliant with Core Policy 57 of the WCS and the NPPF.

9.6 Drainage Issues

Wiltshire Core Strategy Policy 67 titled 'Flood Risk' states that all new development shall include measures to reduce the rate of rainwater run-off and improve rainwater infiltration to soil and ground (sustainable urban drainage) unless site or environmental conditions make these measures unsuitable.

The planning application is accompanied by a Foul & Surface Water Drainage Strategy dated April 2018 which identifies the site being located within Flood Zone 1 (land that has the lowest probability and risk of flooding) with the River Biss being located approximately 200m from the site. In terms of surface water drainage, there are no known existing public surface water sewers within the site boundary and Wessex Water's sewer record indicates that there is an existing surface water sewer running beneath Polebarn Road to the east of the site.

As the ground conditions are considered unsuitable for soakaways, all surface water runoff require to be discharged to the public surface water sewer beneath Polebarn Road via a new manhole connection. Attenuation storage volume for storm events up to the 30-year return period would be accommodated within the proposed surface water pipework.

As part of the applicant's drainage strategy, an underground geocellular storage tank shall be provided in order to store surface water runoff arising from storm events greater than the 30- year return period and up to the 100-year return period storm. This tank would be located adjacent to Courtfield House near the south of the site.

Within the parking areas that serve the site, all parking bays would be constructed with proprietary permeable block paving which is considered acceptable. In terms of foul water drainage, Wessex Water have confirmed that there is an existing public foul sewer running beneath Polebarn Road to the east of the site, and subject to a developer/Wessex Water agreement being reached with respect to the finalised connection, the foul water would be conveyed by a network of gravity-fed foul sewers which would discharge to the existing public foul sewer beneath Polebarn Road.

In terms of site servicing and drainage matters, the proposal raises no substantive reason for refusal.

9.7 Archaeology Issues

The application is accompanied by a Heritage Statement which recognises the site being located just outside of the suspected extent of the Saxon and medieval settlement of Trowbridge, and possibly within the town's historic outer edge and open fields, which suggests that the potential for encountering archaeologically significant buried remains from this period, is relatively low.

From researching historic mapping, the site appears to have been outside of the developed extent of the town during the early post-medieval period, and research has identified no conclusive indications that the site was occupied prior to the construction of Courtfield House in the mid-18th century except for the potential occupation by agricultural buildings. This suggests that the potential for encountering significant post-medieval remains in this area of the site is limited.

Evidence suggests that the highest potential for encountering buried remains relates to the mid-19th century occupation of Courtfield House, and activities associated with textile manufacturing.

The Council's archaeologist has reviewed the supporting submissions and is satisfied that this application can be approved subject to the imposition of a planning condition to safeguard archaeological interests.

9.8 Other Issues

Third parties have raised several concerns that officers submit cannot be afforded material weight in the balance. This includes raised concerns that the development would affect local house prices. Other concerns criticise the developer regarding the level of pre-submission public engagement. In response to that criticism, whilst the Council encourages developers to positively engage with local communities prior to a formal planning submission, it cannot be forced upon a developer. Third parties have also criticised the adequacy and accuracy of the submitted plans. In response to that criticism, officers are satisfied that the submitted plans and supporting statements are accurate and are sufficient to illustrate what is being proposed and to enable the Council to reach a fully informed decision.

Concerns raised about health and safety and noise interference are matters that fall outside of the development management remit and instead are dealt with by other legislation, including building regulations, the environment agency for hazardous materials, the health and safety executive for safe working practices and the Council's public protection team for statutory noise nuisance.

10. S106 contributions

The following summary heads of terms for the required s106 for the planning application are as follows:

- The developer shall be required to provide one affordable house in the form of a discounted market unit (DMU) which is identified on plot 17 – as a 1-bedroom apartment offered at 75% open market value;
- The developer shall pay the appropriate financial contribution for Waste and recycling facilities for the proposed development based on £91 per residential unit
- The developer shall be burdened to create a management company and to establish the legal and funding mechanisms regarding the long-term management and implementation of an Orchard Management Plan;
- The developer shall be burdened to provide a communal open space provision within the site extending to 830m² in the area north of Courtfield House but

excluding the orchard grounds for the benefit of the future occupiers of this development; and

- To secure the requisite developer obligation and triggers for the renovation works to safeguard the listed building at Courtfield House (and to remove it from the heritage at risk register)

11. Conclusion (The Planning Balance)

Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

In this case, the proposed site is located within the settlement limits of Trowbridge where there is a presumption in favour of sustainable development, and this merits **significant weight** in the planning balance.

In terms of the positive benefits of the scheme, the development would provide 20 new dwellings of which one would be affordable 1-bed unit that would go towards meeting local need. In recognition of the Council's lack of a 5-year housing land supply this must be given **significant weight** in the planning balance and the delivery of 20 additional houses merits similar weighting.

The restoration of the grade II* Courtfield House property which has in recent years fallen into poor condition and has been listed on the 'heritage asset at risk' register. Through the significant engagement with Historic England and the Council's Conservation officer, the revised negotiated scheme would save a high valued heritage asset and bring it into viable future use, which must be given **significant weight** in the planning balance.

The proposal would bring about the redevelopment of a brownfield site within central Trowbridge and through the s106 developer/landowner obligations, the orchard would be subject to a long-term management, both of which merits **moderate weight** in the planning balance.

There would also be some short-term benefits during the construction phase of the development through direct and indirect job creation which merits **moderate weight**, and the future householders of the properties would pay council tax which can be given **limited weight**.

The development would contribute towards CIL infrastructure funding in the region of £150k, 15% of which would be re-directed to Trowbridge Town Council to go towards funding future projects, which merits **moderate weight** in the planning balance.

In terms of neutral impacts, officers are satisfied that the proposed development would not harm neighbouring residential properties or the amenities of the occupiers and whilst the proposed development comprises some demolition and loss of trees, the delivery of much needed new housing, provision of an affordable unit and the ecological mitigation and the orchard tree planting enhancement plan, would offset any harm created by the proposed on-site development.

Whilst all tree loss is regretted, the orchard has been surveyed as being in poor condition and some of the trees are reaching the end of their lifespan and through the lack of any existing orchard management, the site's nature conservation value can only be realistically secured as part of a consented development and sealed s106 legal agreement. Without that, there would be no planning mechanism to manage let alone enhance nature conservation across the site.

As reported above, the Council's ecologist is satisfied that subject to planning conditions, there would be no net loss of biodiversity, and there are no ecology reasons to refuse planning permission.

The development would be served by a safe access to the highway network and the scheme would not result in severe cumulative harm and the Council's highway authority have confirmed that pedestrian safety would be safeguarded without appropriate visibility splays and road widening. Sufficient parking would be provided for this central town site and suitable drainage connections can be made.

In terms of reported negatives, this development would cause 'less than substantial harm' to the setting of the heritage assets, by virtue of erecting 16 dwellings within the grounds of the listed building. However, when tested against paragraph 196 of the Framework this harm is offset by a public benefit that would be derived by the proposed safeguarding and restoration/conversion of the grade II* listed building as confirmed by Historic England and the Council's Conservation officer.

This summary and the rest of the report summarises a significant amount of work that has been dedicated to these two applications, and readers should appreciate that officers, consultees and the developer and his appointed agents have prioritised a lot of resources (time and money) to progress these applications to this stage which officers recommend members to approve.

It should also be noted that despite these applications being over 4 years in the system, the applicant/developer and his appointed planning agent have engaged very proactively with officers and consultees and there is substantive evidence that Council and public comments have led the applicants to redesign the scheme and that level of cooperation merits public notice.

The development would not be word for word policy compliant. The scheme once the vacant building credit is applied, for viability reasons the scheme cannot deliver the 2 of the 3 A/H units and there would be a shortfall in the car parking provision when tested against the car parking strategy; and some of the units would have relatively small private rear gardens. However, as explained within the above report, officers consider that the scheme should be supported on the basis that the scheme would not result in substantive adverse impacts that would significantly and demonstrably outweigh the benefits that the development would provide. Accordingly, it is recommended that planning permission should be granted, subject to the prior completion of a Section 106 legal agreement and imposition of planning conditions and the listed building consent should be approved subject to conditions.

12. RECOMMENDATIONS:

1. For 18/04656/FUL - That the issuing of planning permission be delegated and deferred to the Head of Development Management, following the sealing of a s106 legal agreement covering the matters set out within section 10 of this report; and subject to planning conditions.
2. For 18/05278/LBC – That the issuing of listed building consent be delegated and deferred to the Head of Development Management, following the sealing of a s106 legal agreement to secure the requisite developer obligation and triggers for the renovation works to safeguard the listed building at Courtfield House as set out within section 10

Recommended Planning Conditions Pursuant to 18/02656/FUL –

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 scale 1:1250 drg no. 021 rev B
Proposed site plan scale 1:250 drg no. 020 rev M
Demolition plan scale 1:250 drg no. 022 rev B
Plots 17-20 Courtfield House ground and first floor plans scale 1:100 drg no. 030 rev B
Plots 17-20 Courtfield House second floor and roof plans scale 1:100 drg no. 031 rev B
Plots 17-20 Courtfield House front elevation scale 1:100 drg no. 032 rev E
Plots 17-20 Courtfield House rear/side elevations scale 1:100 drg no. 033 rev D
House types – plots 1-5 scale 1:100 drg no. 001 rev D
House types – plots 6-9 scale 1:100 drg no. 002 rev E
House types – plots 10-13 scale 1:100 drg no. 003 rev E
House types – plots 14-16 scale 1:100 drg no. 004 rev I
Site section elevations scale 1:100 drg no. 005 rev E
Materials palette drg no. 007 rev B
Landscape masterplan scale 1:500 drg no. 238101 F
Detailed hard landscaping proposals scale 1:200 drg no. 238102 D
Detailed planting proposals scale 1:200 drg no. 238103 G
Landscape specification details drg no. 238104
Proposed access and parking bay scale 1:250 drg no. 20032-GA04
Orchard Management Plan v3 by Johns Associates dated 26 January 2022
Drainage strategy scale 1:250 drg no. D01 rev E
Extended Phase 1 Ecological Survey (Stark Ecology, July 2019)

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 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (England) Order 2020 (or any

Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations and in the interests of the character of adjacent listed buildings and the character and appearance of the Conservation Area.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (England) Order 2020 (or any Order revoking or re-enacting or amending that Order with or without modification), the garage(s) hereby permitted shall not be converted to habitable accommodation.

REASON: To secure the retention of adequate parking provision, in the interests of highway safety.

5. The dwellings hereby approved to be accommodated at plots 13, 14 and 15 shall not be brought into use or occupied until the windows in the southern and northern gable upper floor elevations (plot 13) and northern rear upper floor elevation (plots 14 and 15) that serve en-suite and bathrooms are glazed with obscure glass only [to an obscurity level of no less than level 4] and thereafter, the windows shall be maintained with obscure glazing in perpetuity.

REASON: In the interests of residential amenity and privacy.

6. The dwellings hereby approved to be accommodated at plots 6-9 shall not be brought into use, until the full specification details of the first-floor balcony screens have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved screens shall be erected in accordance with the approved plans and shall be retained, maintained or replaced on a like for like basis in perpetuity.

REASON: In the interests of residential amenity and privacy.

Highway Matters

7. No development shall commence on site (excluding works pursuant to the demolition and site clearance) until full engineering details of the access road, passing bay and site access, as shown generally on plan 20032-GA04, have been submitted to and approved in writing by the Local Planning Authority; and the dwellings hereby approved to be accommodated at plots 1-13 shall not be occupied, until the access road, passing bay and the site access have been completed in accordance with the approved details. Thereafter, the approved arrangements shall be maintained free from other obstructions in perpetuity.

REASON: In the interests of highway safety.

8. The dwellings hereby approved to be accommodated at plots 1-13 shall not be occupied or brought into use, until the visibility splays as shown on the approved plan

20032-GA04 have been provided with no obstruction to visibility at or above a height of 60cm as measured above the nearside carriageway level. Thereafter, the visibility splays shall be maintained free of obstruction in perpetuity.

REASON: In the interests of highway safety.

9. No dwelling hereby approved shall be occupied or brought into use until the associated parking space(s) together with access thereto and as shown on the approved plans, have been completed in accordance with the details shown on the approved plans. The areas shall always be maintained for those purposes thereafter.

REASON: In the interests of highway safety.

10. No dwelling hereby approved shall be occupied or brought into use until a scheme for the future maintenance of the roads and other communal areas has been submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that satisfactory arrangements for the future maintenance of those areas are in place.

NOTE: The s106 shall secure the requisite clauses and developer obligations, but a planning condition is required to secure the maintenance scheme that would require officer review and approval before the condition can be discharged.

11. No development shall commence above ground floor slab level until details of secure covered cycle parking has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the cycling storage provision facilities shall be provided in accordance with the approved details and made available for use prior to the first occupation of any associated dwelling and shall be retained for such use in perpetuity.

REASON: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car.

NOTE: The submitted details shall accord with the dimensions, access, location, design and security principles as set out within Appendix 4 of Wiltshire's Local Transport Plan 2011-2026 Cycling Strategy

Ecology Matters

12. No development hereby approved shall commence on site (including works pursuant to the demolition and site clearance), until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall include long term objectives and targets, management responsibilities and maintenance schedules for each ecological feature, to be shown on a 1:250 scaled plan within the relevant site boundaries, together with a mechanism for monitoring the success of management prescriptions, and incorporating a review and any necessary adaptive management procedures.

The LEMP shall also include details of the legal and funding mechanism(s) by which long-term implementation of the plan will be secured. Thereafter, the approved LEMP shall be implemented in full and shall be a continue to be extant for the lifetime of the development.

REASON: To ensure the long-term management of landscape and ecological features retained and created by the development, for the benefit of visual amenity and biodiversity for the lifetime of the scheme.

13. The development hereby approved shall be carried out in strict accordance with the Extended Phase 1 Ecological Survey (Stark Ecology, July 2019 or as modified by a Natural England European Protected Species Mitigation licence for bats.

REASON: To ensure adequate protection and mitigation for protected species through the implementation of detailed mitigation measures that were prepared and submitted with the application before determination.

14. No development hereby approved shall commence on site (including works pursuant to the demolition and site clearance), until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall provide details of the full suite of on-site mitigation and protective measures to be implemented before and during the construction phase, including but not necessarily limited to, the following:

- a) Identification of ecological protection areas/buffer zones and tree root protection areas shown on a plan along with the details of physical means of protection, e.g. exclusion fencing.
- b) Working method statements for protected/priority species, such as nesting birds and reptiles.
- c) Mitigation strategies already agreed with the local planning authority prior to determination, such as for great crested newts, dormice or bats; this should comprise the preconstruction/construction related elements of strategies only.
- d) Work schedules for activities with specific timing requirements in order to avoid/reduce potential harm to ecological receptors; including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site.
- e) Key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW).
- f) Timeframe for provision of compliance report to the local planning authority; to be completed by the ecologist/ECoW and to include photographic evidence.

Thereafter, the approved development shall be carried out in strict accordance with the approved CEMP.

REASON: To ensure adequate protection and mitigation for ecological receptors prior to and during construction, and that works are undertaken in line with current best practice and industry standards and are supervised by a suitably licensed and competent professional ecological consultant where applicable.

15. No external lighting fixture or fitting shall be installed to any dwelling hereby approved or within the respective and associated domestic curtilages or communal open space unless and until detailed specifications of the lighting, the illuminance

levels, mapped lighting direction and any shrouding to limit light exposure beyond the targeted direction, have been submitted to and approved by the Local Planning Authority in writing. The submitted details shall be required to demonstrate how the proposed lighting would impact on bat habitat compared to the existing pre-development lighting circumstances.

REASON: To define the terms of this consent and to avoid potentially harmful light pollution and causing detriment to bat interests.

16. The development hereby approved shall be carried out in strict accordance with the ecological on-site enhancements as shown on the Detailed Planting Proposals Drawing 2381 03 Rev. G (produced by Liz Lakes Associates, dated April 2020).

REASON: To ensure compliance with Core Policy 50 of the Wiltshire Core Strategy and the Framework (2021) and to ensure the long-term management of the landscape and ecological features to be retained.

17. No dwelling hereby approved shall be occupied or brought into use until details and the location of the bat tubes and bat boxes as detailed within the Extended Phase 1 Ecological Survey (Stark Ecology, July 2019) have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the bat tubes and boxes shall be installed in accordance with the approved details and shall be maintained in perpetuity.

REASON: To ensure adequate protection and mitigation for protected species.

Public Protection Matters

18. No development hereby approved shall commence on site (including works pursuant to the demolition and site clearance), until a Construction Method Statement, has been submitted to and approved in writing by the Local Planning Authority which shall include the following:

- a) the parking of vehicles of site operatives and visitors during the construction period;
- b) the locations for the loading and unloading of plant and materials;
- c) the location for the storage of plant and materials during the construction period
- d) the details of any security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) the on-site wheel washing facilities;
- f) the measures to control the emission of dust and dirt during the construction period;
- g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- h) the measures to be used to protect the natural environment; and
- i) the hours of construction, including deliveries.

Thereafter, the approved Construction Method Statement shall be complied with in full throughout the construction period.

REASON: This 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 minimise detrimental effects to the neighbouring amenities, the amenities of

the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

Landscaping Matters

19. No development hereby approved shall commence beyond ground floor slab level until a detailed 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:-

- full scaled elevation details of any enclosures
- all hard and soft surfacing materials
- minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc)

REASON: 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 and to protect the setting of the conservation area and listed buildings.

20. All the landscape planting hereby approved 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, 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 and to protect the setting of the conservation area and listed buildings.

Archaeology Matter

21. No development hereby approved shall commence on site (excluding works pursuant to the demolition and site clearance) until:

- a) A written programme of archaeological investigation has been submitted to and approved in writing by the Local Planning Authority, which shall include on-site work and off-site work such as the analysis, publishing and archiving of the results; and,
- b) The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: 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 enable the recording of any matters of archaeological interest.

Drainage Matters

22. No development hereby approved shall commence above ground floor slab level until a detailed scheme for the discharge of foul water from the site, has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme.

REASON: In order that the development is undertaken in an acceptable manner and to ensure that the development can be adequately drained.

23. No development hereby approved shall commence above ground floor slab level until a detailed scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details together with permeability test results to BRE365 and including all necessary permits, consents and permissions, has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: In order that the development is undertaken in an acceptable manner and to ensure that the development can be adequately drained.

Informatives to Applicant:

1. 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 <https://www.wiltshire.gov.uk/dmcommunityinfrastructurelevy>.

2. The applicant should note that if the intention is to offer the roads for adoption, the LLFA does not provide for the approval of drainage suitable for adoption by the Highway Authority. Further approval should be ascertained from the Highway Authority. To find out more about the processes required to secure road adoption, contact the Highway Authority at HighwaysDevelopment@wiltshire.gov.uk.

3. The applicant is advised to make contact with Wessex Water to discuss and agree connections for this development and to consider the following Wessex Water advice:

Some public sewers and laterals drains are not on our maps of public sewers because they were originally privately owned and transferred into public ownership under the Water Act (Schemes for Adoption of Private Sewers) Regulations 2011. We are continuously updating our records as new sewer information becomes available. Where

there are sewers crossing into this site from adjoining properties that have subsequently transferred to Wessex Water, statutory easements will apply. Any sewers entering the site from neighbouring properties should be notified to Wessex Water and must be accurately located on site and marked on deposited plans by the developer.

Proposed Sewerage infrastructure - Foul and surface water shall be drained separately from the site.

Foul Drainage - Wessex Water acting as Statutory Undertaker for sewerage can agree a foul connection to the public foul sewer in Polebarn Road to discharge foul flows from this development. The point of connection to the public network is by application and agreement with Wessex Water and subject to satisfactory engineering proposals constructed to current adoptable standards. Redundant drains and laterals should be sealed at the point of connection to the public sewer.

Surface Water Drainage - Surface water flows shall be disposed of in accordance with Suds Hierarchy and NPPF Guidelines. The Surface Water Drainage Strategy (dated April 2018) proposes a connection to the public surface water sewer in Polebarn Road with a rate of discharge that provides betterment over the pre-development situation. This is acceptable in principle, the final discharge rates must be agreed with Wessex Water prior to any connections being made for this development which should provide evidence of how much of the existing site currently drains directly to the public surface water network.

Wessex Water will require details of the existing SW discharge rate to the public SW sewer compared to proposed rate and a 30% betterment achieved through SuDs arrangements shall be required.

The Drainage Strategy acknowledges that the landscaped areas currently drain overland to the adjoining park and only runoff from roofs and drained paved surfaces that connect to our sewer can be included when comparing pre and post development flows into the public SW system. It is also noted that a CCTV survey undertaken by the applicant indicated surface water downpipes connected to the foul drainage system. If there are any existing surface water connections to the existing foul water system these should be redirected upon re-development.

The Drainage Strategy plan 18004-DO1-Rev B shows a blue note on the surface water system stating "DISCHARGE TO EXISTING PUBLIC FOUL SEWER VIA NEW MANHOLE CONNECTION" which is considered to be typographical error and should be changed to read surface water sewer. Surface Water connections to the public foul sewer network will not be permitted. Land drainage run-off shall not be permitted to discharge either directly or indirectly to the public sewerage system.

Elements of the foul and surface water systems can be offered for adoption where they meet current standards. Where it is proposed to run sewers outside of public areas the applicant should be mindful of the requirements for access and layout by providing satisfactory easements widths with clearance from buildings, trees and root protection zones. The developer should contact the local development team development.north@wessexwater.co.uk to agree proposals and submit details for technical review prior to construction. For more information refer to Wessex Water's

guidance notes 'DEV011G – Section 104 Sewer Adoption' and 'DEV016G - Sewer Connections'.

Water Infrastructure A water supply can be made available from the local network in Polebarn Road with new water mains installed under a requisition arrangement. The point of connection will be reviewed upon receipt of a Section 41 Requisition Application. The applicant should consult the Wessex Water website for further information. www.wessexwater.co.uk/Developers/Supply/Supply-connections-and-disconnections. Buildings above two storeys will require pumped storage.

4. The applicant/developer is required to obtain a bat licence from Natural England for this development proposal and the Council would appreciate receipt of a copy following its issuing.
5. Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before the commencement of work.
6. Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to the site and inform the Planning Officer where they are to be found.

Recommended Planning Conditions Pursuant to Listed Building Consent application 18/05278/LBC

1. The works for which Listed Building Consent is hereby granted shall be begun before the expiration of three years from the date of this consent.

REASON: To comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) 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 scale 1:1250 drg no. 021 rev B
Proposed site plan scale 1:250 drg no. 020 rev M
Demolition plan scale 1:250 drg no. 022 rev B
Plots 17-20 Courtfield House ground and first floor plans scale 1:100 drg no. 030 rev B
Plots 17-20 Courtfield House second floor and roof plans scale 1:100 drg no. 031 rev B
Plots 17-20 Courtfield House front elevation scale 1:100 drg no. 032 rev E
Plots 17-20 Courtfield House rear/side elevations scale 1:100 drg no. 033 rev D
Materials palette drg no. 007 rev B
Landscape masterplan scale 1:500 drg no. 238101 F
Detailed hard landscaping proposals scale 1:200 drg no. 238102 D
Detailed planting proposals scale 1:200 drg no. 238103 G
Landscape specification details drg no. 238104
Proposed access and parking bay scale 1:250 drg no. 20032-GA04
Drainage strategy scale 1:250 drg no. D01 rev E

Extended Phase 1 Ecological Survey (Stark Ecology, July 2019)

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

3. No works shall commence pursuant to the conversion of the Courtfield House property until full details of the following matters have been submitted to and approved in writing by the Local Planning Authority:

- Large scale details of all external joinery (1:5 elevation, 1:2 section) including vertical and horizontal cross-sections through openings to show the positions of joinery within openings, depth of reveal, heads, sills and lintels
- Large scale details of all internal joinery (1:5 elevation, 1:2 section)
- Full details of external flues, background and mechanical ventilation, soil/vent pipes and their exits to the open air
- Details of all new or replacement rainwater goods
- A full schedule and specification of repairs including a structural engineer's report setting out the nature of, and suggested remedial work to, structural defects
- A full schedule of internal finishes to walls, ceilings and floors
- Full details and samples of external materials

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

REASON: In order that the development is undertaken in an acceptable manner and in the interests of preserving the character and appearance of the listed building and its setting.

TOWN AND COUNTRY PLANNING ACT 1990

Wiltshire Council – Grounds of Courtfield House, Polebarn Road, Trowbridge, BA14 7EG

Tree Preservation Order 2018/00019/GRP

Wiltshire Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990, as amended in the Town and Country Planning (Tree Preservation)(England) Regulations 2012, make the following Order:

Citation

1. This Order may be cited as **Traditional Orchard Grounds of Courtfield House, Polebarn Road, Trowbridge, BA14 7EG**

Tree Preservation Order: 2018/00019/GRP

Interpretation

2. (1) In this Order “the authority” means the Wiltshire Council.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and County Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provision on the date on which it is made
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall:-
(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
(b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,
any tree specified in the Schedule of this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter ‘C’ being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 26th day of July 2018

Signed on behalf of the Wiltshire Council
Authorised by the Council to sign in that behalf

CONFIRMATION OF ORDER (without modifications)

This Order was confirmed by the Wiltshire Council – without modifications on the
6th Day of September 2018

Authorised by the Council to sign in that behalf

CONFIRMATION OF ORDER (with modifications)

This Order was confirmed by the Wiltshire Council – subject to the modifications indicated by (*state how indicated*),

on theday of

.....
Authorised by the Council to sign in that behalf

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by the Wiltshire Council – on the
..... day of

.....
Authorised by the Council to sign in that behalf

VARIATION OF ORDER

This Order was varied by the Wiltshire Council – on the
..... day of

by a variation order under reference number (*insert reference number to the variation order*) a copy of which is attached

.....
Authorised by the Council to sign in that behalf

REVOCATION OF ORDER

This Order was revoked by the Wiltshire Council – on the

..... day of

.....
Authorised by the Council to sign in that behalf

SCHEDULE

SPECIFICATION OF TREES

**Wiltshire Council – Orchard within grounds of Courtfield House, Polebarn Rd Trowbridge,
BA14 7EG**

Tree Preservation Order 2018/00019/GRP

TREES SPECIFIED INDIVIDUALLY

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation*</i>
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TREES SPECIFIED BY REFERENCE TO AN AREA

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation*</i>
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GROUP OF TREES

(Within a red line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation*</i>
G1	Apple x 23 Pear x 2	As located on Map

WOODLANDS

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation*</i>
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*complete if necessary to specify more precisely the position of the trees.

Tree Preservation Order 2018/00019/GRP



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