

AGENDA

Meeting: Northern Area Planning Committee

Place: Council Chamber - Council Offices, Monkton Park, Chippenham, SN15 1ER

Date: Wednesday 14 March 2012

Time: 6.00 pm

Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line (01225) 718504 or email kieran.elliott@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 Peter Colmer
Cllr Christine Crisp
Cllr Peter Davis
Cllr Peter Doyle
Cllr Alan Hill
Cllr Peter Hutton

Cllr Simon Killane
Cllr Howard Marshall
Cllr Mark Packard
Cllr Toby Sturgis
Cllr Anthony Trotman

Substitutes:

Cllr Desna Allen
Cllr Chuck Berry
Cllr Paul Darby

Cllr Bill Douglas
Cllr Mollie Groom
Cllr Bill Roberts

Part I

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

1. **Apologies for Absence**

To receive any apologies for absence.

2. **Minutes** (*Pages 1 - 14*)

To approve and sign as a correct record the minutes of the meeting held on **22 February 2012**.

3. **Declarations of Interest**

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

4. **Chairman's Announcements**

To receive any announcements.

5. **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register in person no later than 5.50pm on the day of the meeting.

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

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than **5pm on Wednesday 7th March 2012**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

6. **Proposed Diversion of Purton Bridleway 104 - Known as Mud Lane** (Pages 15 - 56)

Consider and comment on the representations received to an Order, made under Section 119 of the Highways Act 1980, proposing to divert a section of Purton Bridleway 104.

7. **Planning Appeals** (Pages 57 - 58)

An appeals update report is attached for information.

8. **Planning Applications** (Pages 59 - 60)

To consider and determine planning applications in the attached schedule.

8.a N/11/03790/FUL - Rose Field, Hullavington (Pages 61 - 104)

8.b N/11/03802/DEM and N/11/03798/LDC - Chippenham Railway Station, Cocklebury Road, Chippenham (Pages 105 - 112)

8.c N11/02514/FUL and N/11/03731/LBC - Scarrott's Yard, Adjacent to 6 Old Court, Royal Wootton Bassett (Pages 113 - 120)

8.d N/11/03912/S73A - The Old Dairy, Market Place, Box, Corsham (Pages 121 - 126)

8.e N/11/04105/FUL - Land to the Rear of Jugglers Cottage, Cherhill (Pages 127 - 134)

8.f N/12/00198/S73A - Phelps Parade, Unit 2, 119 The Pippin, Calne (Pages 135 - 140)

9. **Urgent Items**

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

Part II

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

None

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NORTHERN AREA PLANNING COMMITTEE

**DRAFT MINUTES OF THE NORTHERN AREA PLANNING COMMITTEE MEETING
HELD ON 22 FEBRUARY 2012 AT COUNCIL CHAMBER - COUNCIL OFFICES,
MONKTON PARK, CHIPPENHAM, SN15 1ER.**

Present:

Cllr Peter Colmer, Cllr Christine Crisp, Cllr Peter Davis, Cllr Bill Douglas (Substitute),
Cllr Peter Hutton, Cllr Howard Marshall, Cllr Bill Roberts (Substitute),
Cllr Toby Sturgis and Cllr Anthony Trotman (Chairman)

Also Present:

Cllr Dick Tonge

1. **Apologies for Absence**

Apologies were received from Councillors Peter Doyle, Alan Hill and Simon Killane. Councillor Bill Roberts substituted for Councillor Doyle and Councillor Bill Douglas substituted for Councillor Killane.

2. **Minutes**

The minutes of the meeting held on 14 December 2011 were presented.

Resolved:

To approve as a correct record and sign the minutes.

3. **Declarations of Interest**

There were no declarations of interest

4. **Chairman's Announcements**

The Chairman

5. **Public Participation and Councillors' Questions**

The committee noted the rules on public participation.

6. Planning Appeals

The Committee received and noted a report setting out details of:-

- (i) Forthcoming hearings and public inquiries between 8 February 2012 and 31 July 2012
- (ii) Planning appeals received between 11 November 2011 and 8 February 2012

7. Planning Applications

7a N/11/02441/FUL - 36 Gloucester Street, Malmesbury

Public participation:

Ms Francesca Caton spoke in objection to the application

Ms Kim Power spoke in objection to the application

Mr David Pearce spoke in support of the application

Councillor Bill Blake, representing Malmesbury Town Council, spoke in objection to the application.

Councillor Simon Killane, local member, spoke in objection to the application.

The Planning Officer introduced the report, which was recommended for approval, and highlighted the two key issues which were the fact that this was in a secondary frontage area and that it had been marketed for almost two years without success. A debate followed during which the loss of retail capacity was considered.

Following the debate it was

RESOLVED

To refuse the application for the following reason:

The proposed development would result in the unacceptable loss of a retail premises within the secondary retail frontage in a prominent location within the centre of Malmesbury. The loss of premises would be to the detriment of the vitality and viability of Malmesbury Town Centre and its future vitality and viability. Insufficient information has been provided to demonstrate that the property has been marketed sufficiently robustly in an attempt to secure a retail use at the premises. The proposal is contrary to Policies C3, R2 and R6 of the adopted North Wiltshire Local Plan 2011 as well as the strategy and objectives of Wiltshire Core Strategy Pre-Submission

Draft February 2012.

7b **N/11/03755/FUL & N/11/03756/LBC - Brook Farm, West Kington, Wiltshire, SN14 7JG**

Public participation:

Mr David Pearce spoke in support of the application
Mrs P Graves spoke in support of the application
Ms Fleur Shanahan spoke in support of the application
Councillor Jean Bush, representing Nettleton Parish Council, spoke in support of the application.
Councillor Toby Sturgis, representing the views of Councillor Jane Scott, local member, spoke in support of the application.

The Planning Officer introduced the report which was recommended for refusal. He explained that there had been objections from the Principal Ecologist and from the Conservation Officer. During the debate issues of visibility from the public footpaths, lighting and surface materials were considered.

It was

RESOLVED

DELEGATE to officers to secure the required ecological surveys and any necessary mitigation measures; and

APPROVE for the following reason:

The proposed development by reason of its scale, and relationship with the existing residential curtilage would be in keeping with the listed building and its setting and would not detract from the character and appearance of the West Kington conservation area or the countryside at this location. The proposal thus complies with Policies C3, HE1, HE4, H8 and NE15 of the adopted North Wiltshire Local Plan 2011.

Subject to the following conditions:

11/3755/FUL

1. Prior to commencement of development an ecological assessment and mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority. All development shall be carried out in complete accordance with the approved ecological mitigation strategy.

REASON: In the interests of the ecological value of the site and its setting

2. No external lighting shall be installed on site without written approval from the Local Planning Authority, by means of a formal application. Plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage must be submitted to and approved in writing by the Local Planning Authority. The lighting approved shall be installed and shall be maintained in accordance with the approved details.

REASON: In the interests of the ecology of the site and the character of the countryside, Conservation Area, AONB and setting of the listed building.

3. No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:
 - (a) indications of all existing trees and hedgerows on the land;
 - (b) details of any to be retained, together with measures for their protection in the course of development;
 - (c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
 - (d) finished levels and contours;
 - (e) retained historic landscape features and proposed restoration, where relevant.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features, the character and appearance of the Conservation Area and AONB and the setting of the listed building.

4. Prior to the commencement of development, manufacturers details in respect of the fencing or other means of enclosure for the tennis court shall have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the development being first brought into use.

REASON: In the interests of visual amenity and the character and appearance of the area, the Conservation Area, AONB and the setting of the listed building.

5. No development shall commence on site until details and samples of the materials to be used for the court surface 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, the Conservation Area, AONB and the setting of the listed building.

11/3756/LBC

1. No works shall commence on site until details of all proposed new walls and terracing associated with the re-profiling of the land at a scale of not less than 1:20 have been submitted to and approved in writing by the Local Planning Authority. Works shall be carried out in accordance with the approved details.

REASON: In the interests of the architectural and historic interest of the listed building and its setting.

2. The natural stone walling for the works hereby permitted shall be constructed to match that of the existing retaining wall in terms of its colour, texture, face bond, size, jointing and pointing.

REASON: In the interests of the architectural and historic interest of the listed building and its setting.

7c **N/11/03905/FUL - Garabrecan, Brinkworth Road, Wootton Bassett, Wiltshire, SN4 8DS**

Public participation:

Mr Vines spoke in support of the application.

The Planning Officer introduced the report which was recommended for refusal, he explained that officers felt it was too large for the grounds of the existing property. A debate ensued during which the issue of the size of the development and the fact that it was outside the framework boundary were discussed.

It was

RESOLVED

That Planning Permission be REFUSED for the following reasons:

1. **The proposed building is too large in terms of its footprint and**

mass and bulk and does not respect the character and appearance of the main house on the site and or the rural character and appearance of the locality by the introduction of a large detached building. Therefore, proposal fails to comply with policies C3 NE15 of the Local Plan 2011 and policy RLT9 of the Wiltshire Structure Plan.

2. The proposal located remote from services employment opportunities and being unlikely to be well served by public transport is contrary to the key aims of Planning Policy Guidance Note 13 which seeks to reduce growth in the length and number of motorised journeys.

7d **N/11/04006/FUL - Peterborough Farm, Dauntsey Lock, Wiltshire, SN15 4HD**

Public participation:

Mr Vines spoke in support of the application

Councillor Ellen Blacker, representing Dauntsey Parish Council, spoke in support of the application

Councillor Toby Sturgis, local member, spoke in support of the application.

The Planning Officer introduced the report, which was recommended for refusal. She explained that the building was considered to be out of keeping with the original.

Following a debate it was

RESOLVED

To APPROVE for the following reason:

The proposed development by reason of its scale and design represents a suitable conversion in keeping with the character of the accordance with Policy BD6 of the adopted North Wiltshire Local Plan 2011.

And 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.No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:

- (a) indications of all existing trees and hedgerows on the land;
- (b) details of any to be retained, together with measures for their protection in the course of development;
- (c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
- (d) finished levels and contours;
- (e) means of enclosure;
- (f) car park layouts; and
- (g) hard surfacing materials.

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

3.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.

4.Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (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.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no garages, sheds, greenhouses and other ancillary domestic outbuildings shall be erected anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

6. The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the local planning authority. Amendments may require the submission of a further application.

- i. 2011-19-1 – Proposed ground floor layout
- ii. 2011-19-2 – Proposed first floor layout
- iii. 2011-19-3 – Proposed south east and north west elevations
- iv. 2011-19-4 – Proposed north east and south west elevations
- v. 2011-19-5 – Block plan
- vi. 2011-19-6 – Site plan
- vii. 2011-19-7 – Approved ground floor layout
- viii. 2011-19-8 – Approved elevations

All date stamped 9th December 2011

REASON: To ensure that the development is implemented as approved.

7e **N/11/03375/FUL - Coach Style, Horsdown, Nettleton, Wiltshire, SN14 7LN**

Public participation:

Mr Harvey spoke in objection to the application

Mr David Pearce spoke in support of the application

Mr Andrew Jones spoke in support of the application

Mr N Puntis spoke in support of the application

Councillor John Wright, on behalf of Nettleton Parish Council, spoke in support of the application.

Councillor Toby Sturgis, representing the views of Councillor Jane Scott, local member, spoke in support of the application.

The Planning Officer introduced the report which was recommended for

approval. During the debate concerns were raised regarding the parking of the vehicles and it was requested that a condition be added to ensure that vehicles were parked in designated parking spaces only.

It was

RESOLVED

That Planning Permission be GRANTED for the following reason:

The proposed development, by virtue of its location, siting, scale and design, will not harm the character or appearance of the site or its setting within an AONB and open countryside. The proposed expansion's association with an established business will enable the retention of a locally important business vital to the economic health of the community. The proposal therefore accords with Policies C3, NE4, NE15 and BD5 of the adopted North Wiltshire Local Plan 2011 and PPS 4 (Planning for Sustainable Economic Growth).

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. 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.

3. The vehicle wash shall only be used between the following times:

- a. Monday to Friday 0800 – 1800
- b. Saturday 0900 – 1300
- c. Sunday and Bank Holidays No Use

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

4. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first brought into use until surface water drainage has been constructed in accordance with the approved scheme.

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

5. Prior to the commencement of construction the applicant shall provide details of the fuel storage and bunding proposed for the site. The applicant must demonstrate that the fuel storage solution complies with Environment Agency Requirements.

6. Any facilities above ground for the storage of oils, fuels or chemicals shall be sited on an impervious base and surrounded by impervious walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. Hydraulically interlinked tanks should be regarded as a single tank. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipe work should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge into the bund. The development shall not be first brought into use until such facilities have been constructed and completed in strict accordance with plans approved by the Local Planning Authority.

REASON: To prevent pollution of the water environment

7. There shall be no discharge of foul or contaminated drainage from the site into either groundwater or any surface waters, whether direct to watercourses, ponds or lakes, or soakaways/ditches.

REASON: To prevent pollution of the water environment

8. The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the local planning authority. Amendments may require the submission of a further application.

Site Plan as Existing
Section AA
Kirton's Vehicle Wash Reclaim System Specification

Received 7 October 2011

Site Plan

Received 21 November 2011

REASON: To ensure that the development is implemented as approved.

9. The parking of coaches shall take place only in the coach parking spaces specifically identified on drawing number LDC/1562/002A (identified by a redline on the plan attached to this decision notice) and in no other location within the site.

REASON: In the interests of the visual amenity of the countryside and AONB at this location and given the nature of the application.

7f **N/11/04098/FUL - The Coach House, Leafy Lane, Box, Wiltshire, SN13 OLE**

Public participation:

Mr Simon Crowther spoke in support of the application
Mr Roger Smith spoke in support of the application
Councillor Tonge, local member, spoke in support of the application, subject to a condition making it always ancillary to the main property.

The Planning Officer introduced the report, which was recommended for refusal, and explained that officers felt that as the proposed site was in a green belt and an AONB it was tantamount to a new dwelling in the countryside.

During the debate issues of the size of the development and its independence from the main dwelling were discussed.

It was

RESOLVED

To APPROVE for the following reason:

The proposed development by reason of its scale, design and siting is not considered to detract from the openness of the Green Belt at this location, or the character and appearance of the AONB and would be in keeping with the host dwelling. The development therefore accords with Policies C3, NE1, NE4 and H8 of the adopted North Wiltshire Local Plan 2011.

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.No development shall commence on site until a sample wall panel, not less than 1 metre square, has been constructed on site, inspected and approved in writing by the Local Planning Authority. The panel shall then be left in position for comparison whilst the development is carried out. Development shall be carried out in accordance with the approved sample.

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

3.No development shall commence on site until a sample of slate proposed to be used has been submitted to and approved in writing by the Local Planning Authority. .

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 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the Green Belt and to enable the Local Planning Authority to consider individually whether planning

permission should be granted for additions, extensions or enlargements.

5.The extension (building) hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as The Coach House

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

6.The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the local planning authority. Amendments may require the submission of a further application.

REASON: To ensure that the development is implemented as approved.

7g **N/11/04112/FUL - The Barn, Sodom Lane, Dauntsey, Wiltshire, SN15 4JA**

Public participation:

Mrs H Eggleton spoke in objection to the application
Mr S Eggleton spoke in objection to the application
Mr Simon Chambers spoke in support of the application

The Planning Officer introduced the report which was recommended for approval. Councillor Sturgis, local member, expressed concern that these premises had already had several extensions and also concerns regarding the parking of large vehicles on the road. During the debate members also raised concerns regarding the noise from reversing fork lift trucks and noise from the generator. There was also some debate regarding the class of use attached to the premises.

It was therefore

RESOLVED

To DEFER for the following reasons:

- 1. To seek the views of highways based on recent information regarding loading and unloading**

2. **The enforcement officer to establish the use of the premises and which use class the building comprises to ascertain whether there would be a material change of use due to this extension as well.**

8. **Urgent Items**

There were no urgent items

(Duration of meeting: 6.00 - 9.05 pm)

The Officer who has produced these minutes is Pam Denton, of Democratic Services, direct line 01225 718371, e-mail pam.denton@wiltshire.gov.uk

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

PROPOSED DIVERSION OF PURTON BRIDLEWAY 104 (PART)
KNOWN AS MUD LANE

Purpose of Report

1. To:
 - (i) Consider and comment on the representations received to an Order, made under Section 119 of the Highways Act 1980, proposing to divert a section of Purton Bridleway 104.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs (DEFRA) for confirmation as made.

A copy of the Order, Schedule and Plan is attached at **Appendix A**.

A location plan showing the surrounding land and path network is attached at **Appendix B**. Photographs of the existing and proposed routes are attached at **Appendix C**.

Background

2. The Council has a power to divert any public path, or part of any public path, under the Highways Act 1980 Section 119 if it is expedient to do so in the interests of the public or of the landowner and if certain legal tests laid out below, in paragraphs 10 and 11, are met.
3. Following a meeting of the Wiltshire County Council Regulatory Committee on 21 May, 2008 Members resolved that a Public Path Diversion Order should be made in respect of the part of Public Footpath 104 at Restrop, Purton, where it passes along an ancient sunken lane, known as Mud Lane, to a new route that would be designated as a Public Bridleway (this original diversion was proposed on the same route as the current diversion).
4. An Order was subsequently made on 9 July 2008 in the interests of the public and the owners of the land crossed by the footpath. The Order attracted 49 representations in support of the diversion and 41 objections. The Order was then sent to the Secretary of State for DEFRA, for a confirmation decision, and Wiltshire Council was advised that the Order was not capable of confirmation until the public footpath to be diverted was upgraded to the same status as the proposed diversion route i.e. public bridleway. There was already a longstanding application backed by historical documentary evidence to upgrade the existing footpath to bridleway status and, after wide public consultation, an Order upgrading the existing footpath to bridleway was duly made and advertised and after receiving no objections was duly confirmed.
5. A new public consultation was undertaken for the diversion of Mud Lane, which now has bridleway status, between 5 May and 17 June 2011, inviting comments concerning the proposed diversion. In total, the consultation received 143 responses with 96 in support and 47 against. A diversion Order was subsequently made by the Corporate Director of Neighbourhood and Planning on 20 September 2011.

6. The Order has attracted 126 responses, comprising 4 neutral responses, 39 against and 83 in support. The Objections and Representations of Support have been put into table format, along with Officer's Comments, and attached as **Appendix D** to this report. There were 4 neutral representations made and these all called for a Public Inquiry. Altogether, twenty of the responses expressed the view that the interests of the public would be best served by holding a local Public Inquiry, a view shared by Officers.
7. The Committee should be aware that two of the letters from principal objectors listed concerns regarding the Order-Making process. These were from Purton Parish Council and 'P's & Q's' (Purton's Qualities, a local community and heritage organisation). The contents of these two letters, along with Officer's Comments on the points raised, are attached to this report as **Appendices E** and **F** respectively. Also, these two objecting organisations wished to see a deeper analysis of the supporter's comments to the pre-Order consultation; these are attached as **Appendix G** to this report.
8. Advantages to the public of the diversion over the old route can be seen from the analysis of views shown in depth through Officer's Comments in **Appendix D**, supporters comments in **Appendix G** and briefly laid out in the section entitled Main Considerations for the Council (paragraphs 11–18 below).

Legal Empowerment

9. Section 119 of the Highways Act 1980 allows:

- (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 for DEFRA, or confirmed as an unopposed order, -*
 - (a) *create, as from such date as may be specified in the order, any such 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.*

10. **The Act requires in Section 119(6) that:**

(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 the 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).

Main Considerations for the Council

11. The Council has received objections to the proposed Order and Members have to decide whether they still wish to support the Order or formally resolve not to proceed with it.

12. The Council must decide if the legal tests for confirmation, as laid out in paragraphs 9 and 10 above, are met, namely:

(i) That it is expedient to make the diversion in the interests of the landowner or of the public.

Officer's Comment: Mrs Moseley (joint landowner) puts a very compelling case showing this diversion to be expedient in the interests of the landowner for reasons of privacy and security, both of which are acceptable reasons, her comments are as follows:

"I continue to support the diversion. As a mother of three young children, security is among my chief concerns. When we first moved to Restrop Farm nine years ago, we frequently had people trespassing through our driveway and farmyard, walking in any direction they wished. It was disconcerting to say the least. With the addition of the permissive path all this has changed. Walkers have felt happy and confident to walk a clearly marked route away from a domestic house... On the rare occasions that people still seek the old, impassable footpath, they walk right by our house and frequently look in the windows. It is a big infringement on our privacy and makes the children feel vulnerable and frightened. Footpath 104 runs right along our garden and if it were to be made passable again, I would feel unable to allow our children to play freely outside. We have had repeated incidents involving questionable characters trespassing on the farm as documented in police reports. With crime levels as high as they

are, it is in our best interests and those of future families that may live here, to keep people a safe distance away from the house”.

It is also considered to be expedient in the interests of the public (see Officer’s Comments in points (ii) and (iii) below).

- (ii) That the path will not be substantially less convenient to the public in consequence of the diversion:

Officer’s Comment: The new path will not be substantially less convenient to the public because the surface of the diversion is level, better drained and not prone to flooding. The width of the proposed diversion has variable useable widths between 3.5 metres and 7.5 metres, similar to that of the existing path which is recorded as having a width varying between 12 feet and 25 feet.

- (iii) That it is expedient to confirm the Order having regard to:

- (a) *the effect which 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.*
- (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.*

Officer’s Comment: The new path makes the route more enjoyable for horse riders, cyclists, and families and less able walkers; this is shown by the testimony of the 96 people who have written in support of the application and already use the route. All users would find the new route more accessible as it has two user-friendly gates whereas the definitive line has two abrupt four foot height changes and would need four gates/stiles for stock-control purposes. There is no other land affected by the diversion. All considerations in Officer’s Comments above have been made as if the existing way was open to use, but without the engineering works that would be necessary for it to meet current standards of acceptability for a public bridleway.

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

- (i) *Eliminating conduct that is prohibited by the Act*
- (ii) *Advancing equality of opportunity between people who have a disability and people who do not.*
- (iii) *Fostering good relations between people who have a disability and people who do not.*

The equality Act applies to a highway authority's provision of public rights of way services (DEFRA Guidance: *Authorising Structures (Gaps, Gates and Stiles) on Rights of Way* - October 2010).

Officer's Comment: The new path is better drained and easier to use being wide, level and having user-friendly gates.

14. In reaching a decision the Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP). The ROWIP recognises the Council's duty to have regard to the Disability Discrimination Act 1995 (now replaced by the Equalities Act 2010) and to consider the least restrictive option. The ROWIP also has as its aims:

- (i) *The promotion and development of the public rights of way network, enabling pedestrians, cyclists and horse riders to avoid heavy or intrusive traffic. (p.46.3).*
- (ii) *To provide a more usable public rights of way network, suitable for changing user demands (p.46.1).*
- (iii) *Increase access to the countryside for buggies, older people, people with mobility problems and other impairments (p.43.1 – 5).*
- (iv) *Increase access to the countryside for people who are blind or partially sighted (p.43.4 and 5).*

Officer's Comment: By having gates that are compliant with the current BS5709 standard which is the Government recommended standard for ease of use, the new route meets the aims of Wiltshire Council's current ROWIP (2008) i.e. making a more useable network and increasing access for buggies, older people, people with mobility problems and other impairments.

15. The Council must also have regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features (C.R.O.W. Act 2000).

Officer's Comment: The diverted route is not considered to adversely affect any flora, fauna or agricultural or forestry use. The existing route is an old sunken hollow-way bounded on each side by ancient hedgerow and as such will still have protection under the Hedgerow Regulations 1997 after public rights of way over the route are removed. The Hedgerow Regulations make it a criminal offence to intentionally or recklessly remove such a hedgerow.

16. Section 40 of the Natural Environment and Rural Communities Act 2006 places a general duty on every public authority in exercising its functions to have regard to the conservation of biodiversity.

Officer's Comment: Some objectors have commented on the fact that conifers have been planted along the diverted route. These were planted in combination with shrubs, such as blackthorn and hawthorn, and were planted to give temporary cover until a deciduous hedgerow is well established and are being systematically thinned year by year until they are gone, a third have already been removed. The ditch and two hedgerows that form the existing path will remain. It is considered that this diversion does not adversely affect biodiversity.

17. The Council should also note that in a recent Highways Act 1980 s.119 confirmation decision (Planning Inspectorate reference number FPS/J1155/4/32) an Inspector appointed by the Secretary of State for DEFRA confirmed a diversion in Devon where to reinstate the definitive lines would have incurred a cost of between £2,000 and £3,000. Whilst the Inspector agreed with the objectors that although:

'...although consideration of the cost of operations to assert and protect the rights of the public does not feature in the 1980 Act, I also concur with the Council that the relative costs of the proposed diversion as opposed to the reinstatement of the definitive lines is a material factor that should be taken into consideration'.

The Inspector goes on to say:

'At a time of increasingly scarce resources within local government I do not consider the expenditure required...would be the best use of those resources which are available to the Council, given that the proposed diversion would result in bridleway 24 following a course above the spring line which land on which no such structures would be required. I take the same view with regard to the clearance of vegetation that would be required to make the definitive route accessible: whilst the Council conceded that such clearance would not be particularly expensive, it nonetheless represents an additional expense that the proposed diversion would avoid. If the proposed diversion has the effect of freeing up resources to be spent elsewhere on the local rights of way network, or removing the liability on the public purse to erect and maintain a stream crossing, I am of the view that the proposed diversions can be said to be in the public interest'.

Officer's Comment: Costs for bringing Mud Lane into suitable condition for a public bridleway have been quoted by approved contractors at £150,000 (although the Ramblers have estimated the costs at £30,000 and Purton Parish Council believing the figure to fall in between these widely differing figures). Officers believe that, in order to provide a safe and fully accessible bridleway for use by walkers, horse-riders and cyclists, the upper figure of £150,000 is realistic (2008 and 2011 quotes from M J Church are attached to this report at **Appendix H**). The entire Rights of Way operational budget for the North of Wiltshire to maintain/improve public paths is set at £49,000 for the year 2011-2012. It is therefore considered to be in the interests of the general public and also, more specifically, Wiltshire taxpayers that the offered bridleway is accepted in favour of the existing route.

18. In the confirmation decision [as was the case in the Order decision] the two routes should be equitably compared by disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. The DEFRA Rights of Way Circular 1/09 states at 5.25:

'Section 119 of the 1980 Act does not specifically entitle an authority to disregard temporary circumstances, including any buildings or structures preventing or diminishing the use of the existing way in considering whether or not to make an order and the consideration is equally not available to the body confirming the order. The Planning Inspectorate Advice Note 9 22 (s28) indicates that in forming an opinion on whether the replacement route is not substantially less convenient to the public, a fair determination can only be made on the assumption that the existing route is available to the public to its full legal extent'.

Officer's Comment: The existing way has been heavily overgrown and impassable since the 1960's, probably mainly due to its tendency to flood. However, temporary obstructions such as this should be ignored when comparing both routes under s.119 for the purpose of a diversion Order. The barrier formed by the abrupt 4-foot height changes half way along the existing route however, is not of such temporary nature and would certainly need considerable engineering works in place to allow free passage and therefore should be considered. The diversion route is level.

Environmental Impact of the Recommendation

19. There are no significant environmental implications arising from the recommendations set out within this report.

Risk Assessment

20. There are no risks associated with the diversion that are over and above the normal risks associated with using any other rural public bridleway. In contrast, there are higher risks associated with opening up the existing route, which has many tree roots and is prone to flooding.

Financial Implications

21. The making of a Public Path Diversion Order is a discretionary duty of the Highway Authority, rather than a statutory duty. Provision has been made within existing budgets for the costs involved in processing this Order.
22. If the Committee decided to refer the Order to the Secretary of State for DEFRA with the request that it should be confirmed, the Secretary of State must decide the most appropriate method of reaching his decision. In cases where there are many objections to an Order it is appropriate to make the decision after a local Public Inquiry. Provision has been made within existing budgets to cover this.
23. If Wiltshire Council decides not to continue with the diversion Order, or the Order is not confirmed, Wiltshire Council will be under a legal duty to open the old route, whereupon the financial costs to the Council are likely to be in the region of £150,000 (see point 7 in the table in section 7).

Options Considered

24. The following options have been considered:
 - (i) Not to continue with the Order.
 - (ii) That the Order be referred to the Secretary of State for DEFRA for determination with the recommendation that it be confirmed as made.

Reasons for Recommendation

25. The diversion Order meets the tests for confirmation contained in Section 119 of the Highways Act 1980 and that it is in the interests of the public that the case is now determined by local Public Inquiry.

Recommendation

26. That the Order be referred to the Secretary of State for DEFRA for determination with the recommendation that it be confirmed as made.

MARK SMITH

Service Director – Neighbourhood Services

Report Author:

Tim Chinnick,

Rights of Way Officer

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

Correspondence with landowners, parish councils, user groups, other interested bodies and members of the public

PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER

HIGHWAYS ACT 1980
WILDLIFE AND COUNTRYSIDE ACT 1981

WILTSHIRE COUNCIL

The Wiltshire Council Parish of Purton, path no. 104 Diversion Order 2011
and
Definitive Map and Statement (SU08NE) Modification Order No. 17 2011

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 public and the owners of the land crossed by the bridleway described in paragraph 1 of this order, it is expedient that the line of the path 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 Cricklade and Wootton Bassett Rural District Council Definitive Map and Statement dated 1952 as modified under the 1981 Act 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.

BY THIS ORDER

1. All public rights over land situate at Mud Lane, Restrop Farm, Purton and shown by a bold continuous line on the map contained in this Order and described in Part I of the Schedule to this Order shall be stopped up 28 days from the date of confirmation of this Order and thereupon the Cricklade and Wootton Bassett Rural District Council Definitive Map and Statement dated 1952 shall be modified by deleting from it that public right of way.
2. Where immediately before the date on which the bridleway is diverted there is apparatus under, in, on or 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.
3. There shall at the end of 28 days from the date of confirmation of this Order be a Public Bridleway over the land situate at Mud Lane, Restrop Farm, Purton described in Part II of the Schedule and shown by a bold broken line with cross bars in the intervals on the map contained in this Order and thereupon the Cricklade and Wootton Bassett Rural District Council Definitive Map dated 1952 shall be modified by adding that way to it.
- 3A The Cricklade and Wootton Bassett Rural District Council Definitive Statement dated 1952 shall be modified as described in Part 4 of the Schedule to this Order.
- 4 The rights conferred on the public under this Order shall be subject to the limitations and conditions set out in Part III of the Schedule.

SCHEDULE

PART I

DESCRIPTION OF SITE OF EXISTING PATH

That length of path No 104, in the parish of Purton, as shown on the attached plan by a bold continuous line leading from point A at OS Grid reference SU 07976 86764 in a generally westerly direction to point B at OS Grid reference SU 07639 86705. Approximate length 380 metres.

PART II

DESCRIPTION OF NEW PATH

That length of path as shown on the attached plan by a bold broken line with cross bars in the intervals leading from point B at OS Grid reference SU 07639 86705 with a width of 7 metres generally in a northerly direction to point C at OS Grid reference SU 07663 86743 then continuing north with a width of 4.2 metres to point D at OS Grid reference SU 07665 86760, then turning generally eastwards with a width of 4 metres to point E at OS Grid reference SU 07987 86823. From point E the path continues generally southwards to point F at OS Grid reference SU 08006 86787 with a width of 4.2 metres. Approximate length: 440 metres

PART III

DESCRIPTION OF LIMITATION AND CONDITIONS

1. Field gate at Point C to current British Standard BS5709
2. Bridleway gate at point F to current British Standard BS5709

PART IV

MODIFICATION OF DEFINITIVE STATEMENT
VARIATION OF PARTICULARS OF PATH OR WAY

BRIDLEWAY. Mud Lane. From its junction with U/C 2057 leading north for approximately 45 metres then continuing eastwards for approximately 325 metres before leading generally southwest for approximately 75 metres to its junction with path Purton103 continuing as a

FOOTPATH. From its junction with path Purton 103 at Ringsbury Camp, thence southwest to the Lydiard Millicent Parish boundary at the spring approximately 130 metres to the north of road U/C 2060 at Green Hill.

Approximate length 1.110 km.

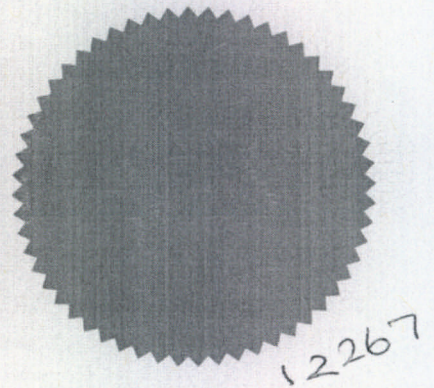
Width 7 metres between O.S. Grid refs SU 07639 86705 - SU 07663 86743.
4.2 metres between O.S. Grid refs SU 07663 86743 - SU 07665 86760.
4 metres between O.S. Grid refs SU 07665 86760 - SU 07987 86823.
4.2 metres between O.S. Grid refs SU 07987 86823 - SU 08006 86787.

[Two trees at O.S. Grid refs SU 07811 86805 and SU 07857 86808 reduce the width of the path to 3.5 metres and 3.2 metres respectively at these points].

LIMITATIONS and CONDITIONS

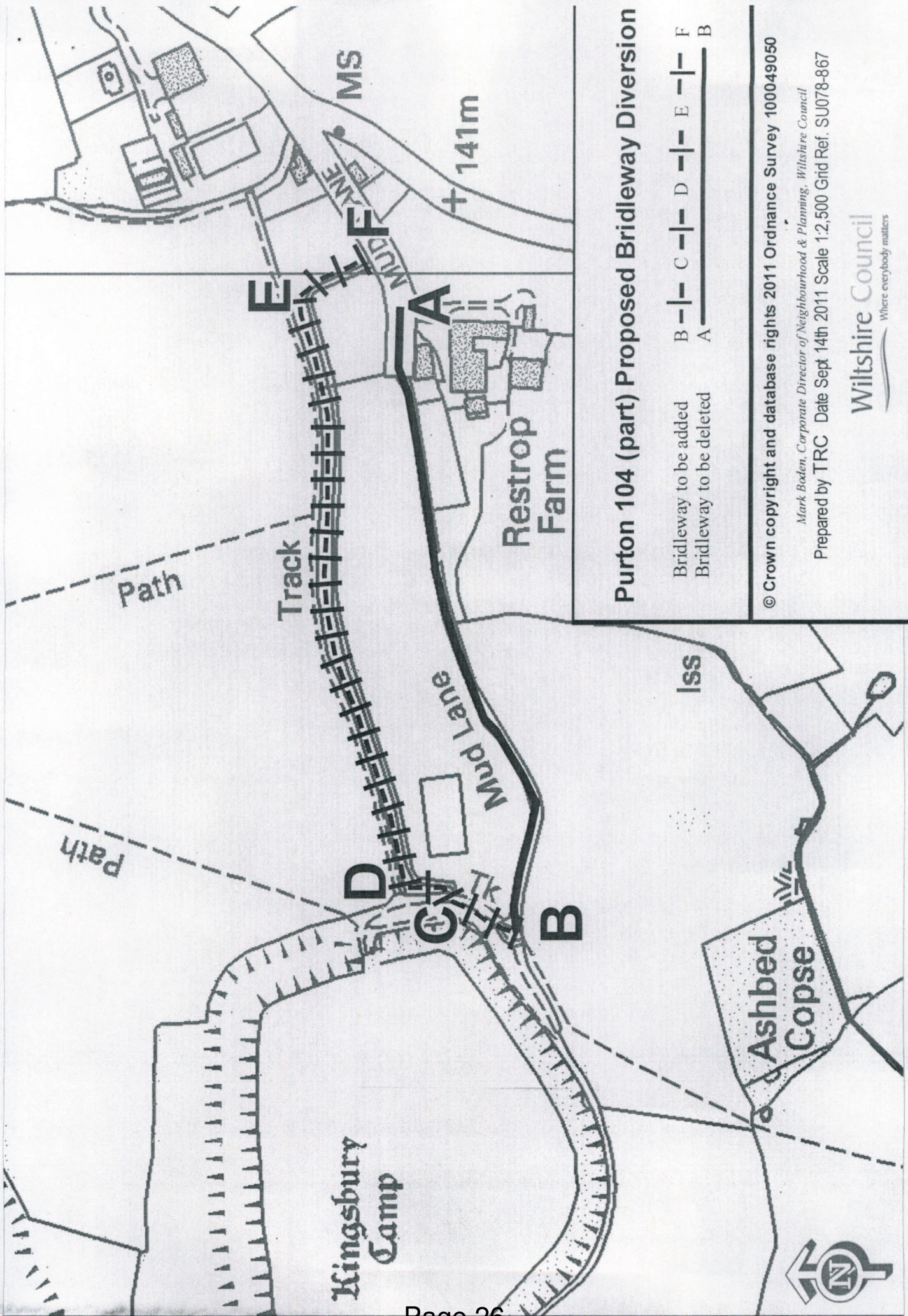
Field gate at O.S. Grid Ref. SU 07663 86743 to current British Standard BS5709
Bridleway gate at O.S. Grid Ref. SU 08006 86787.to current British Standard BS5709

THE COMMON SEAL of)
THE WILTSHIRE COUNCIL)
Was hereunto affixed this)
20th day of September 2011)
In the presence of:)



John Lee

Principal Solicitor



Purton 104 (part) Proposed Bridleway Diversion

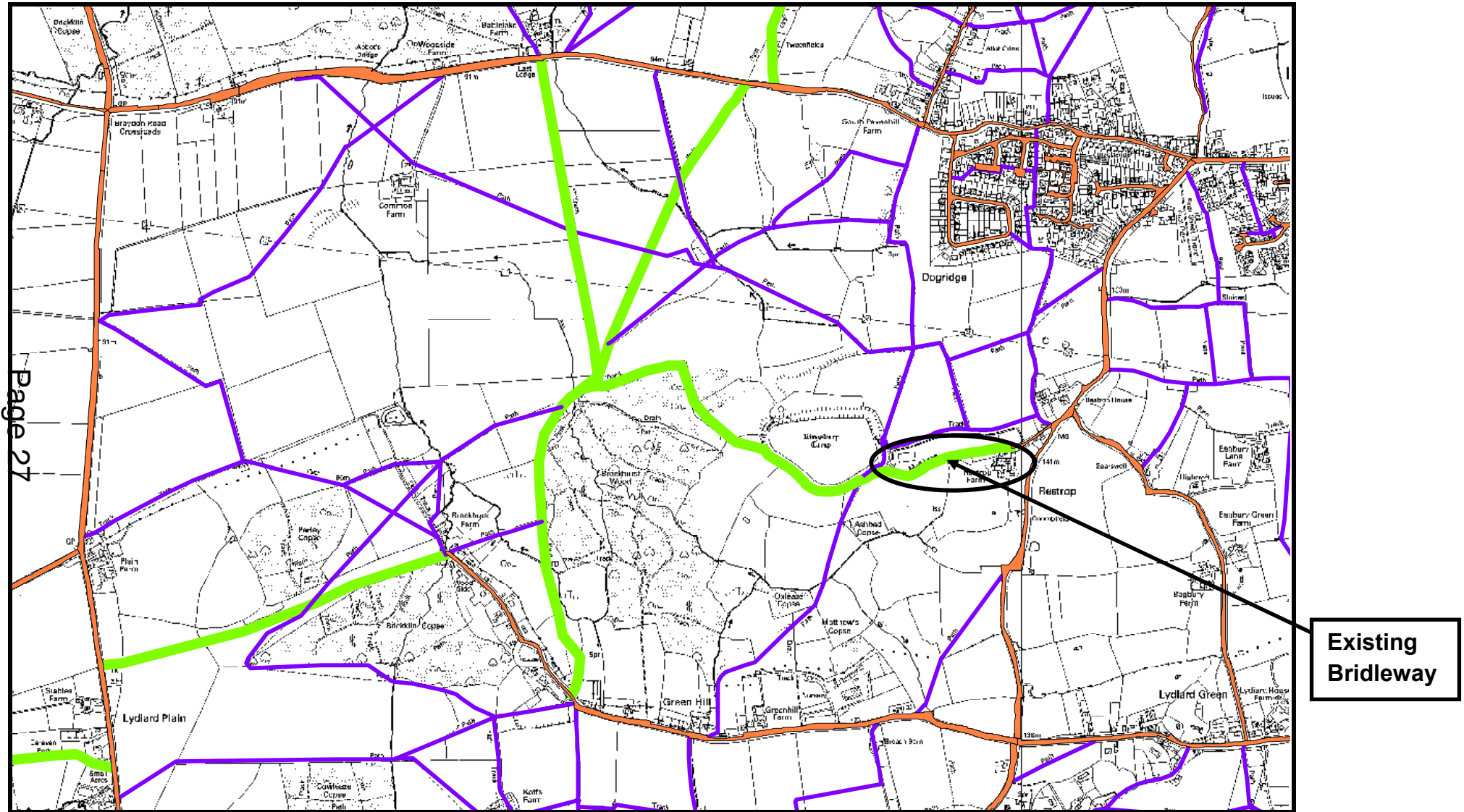
Bridleway to be added B -|- C -|- D -|- E -|- F
 Bridleway to be deleted A ————— B

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Mark Boden, Corporate Director of Neighbourhood & Planning, Wiltshire Council
 Prepared by TRC Date Sept 14th 2011 Scale 1:2,500 Grid Ref. SU078-867

Wiltshire Council
 Where everybody matters

(showing surrounding public path network – bridleways = green, footpaths = purple)



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1. Photographs of the Proposed Route



Proposed Diversion between points C-D



Proposed Diversion between points D-E



Bridle gate on proposed new route Point C



Bridle gate on proposed new route Point D

2. Photographs of the Existing Route



Existing route near point A (2007)



Existing route between points A-B (2007)



Existing route between points A-B (Winter, 2008)



Existing route at points B (2010)

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OBJECTIONS RECEIVED TO THE MAKING OF THE ORDER

REPRESENTATIONS OPPOSING THE PROPOSAL = 39 (including one received post-statutory period)

POINT MADE BY OBJECTORS	BY HOW MANY	OFFICER'S COMMENTS
1. General objections to the diversion.	39	All responses against the diversion Order claim that they would like the existing line of the route opened up. The reasons given for this vary. Some of the main reasons are given in the rest of the table immediately below
2. Historic significance (e.g. Connections to Ringsbury Camp. Part of local heritage. Duty to protect our past/Old Drovers Road/ will set precedent.	25	<p>There is undoubtedly a degree of historical significance attached to the existing route which may be lost to public use but this should be weighed against any possible public advantages gained by having an all-weather route that is easily accessible all year round and open to all users e.g. horse-riders, cyclists and pedestrians including the very young, the elderly and the not so able-bodied.</p> <p>This diversion will not set a precedent. Arguments on this issue have been very common nationally for decades and each case is decided on its own merits and as though the original route was not obstructed.</p>
3. Privacy: The proposed diversion is on the whim of a landowner and nothing to do with 'privacy and security'/ Landowner fully aware when he bought property/ Could set a precedent to encourage landowners to divert paths due to privacy and overgrown routes.	21	<p>The existing route passes in closer proximity to the landowner's dwelling and outbuildings than the diverted route. It is reasonable to assume from this that there is an inference of increased privacy and security. Indeed, draft minutes from Purton Parish Council meeting on 13 June 2011 state the following:</p> <p style="padding-left: 40px;"><i>"the Chairman highlighted that the proposed diversion would improve the security of the Moseley's home considering its rural situation as Mud Lane runs within a few feet of the rear of their house..."</i></p> <p>This is a common and legitimate reason that entitles a landowner to apply for a diversion and, as long as the other legal tests are met so that the public are not unduly compromised; an Order can subsequently be made. If any diversion made on these grounds enhances the value of the property it is simply because future purchasers see that the dwellings on the property are private and secure, this holds no hidden agenda that is detrimental to the public.</p> <p>This diversion will not set a precedent, see Officers final comment in point 2 above.</p>

POINT MADE BY OBJECTORS	BY HOW MANY	OFFICER'S COMMENTS
4. Public Inquiry: A substantial number of objectors have called for a public inquiry stating that this is now in the public interest.	15	Officers agree that this is the best platform to determine the matter considering the degree of public interest it has attracted from both objectors and supporters.
5. Wiltshire Council has not carried out its statutory duties and has allowed the path to become overgrown and impassable. This should not now be an excuse for a diversion.	15	It is not only the state of being overgrown that has to be overcome, there are also other deep-rooted problems with very high associated costs that need to be addressed in order to bring this route into a state fit for public use (see officers comments on point 6 below). The expenditure of that amount of money by the Council is difficult to justify when a perfectly adequate alternative route has been supplied without these problems at the expense of the landowner, especially in the current economic climate. Costs to local authorities (relative to public benefit) have been a material consideration in similar cases determined by the Secretary of State for DEFRA (see officers comments on point 1 above). However, costs are not the only element when considering this diversion and there is very strong local support consisting of 83 written representations in support of the Order from users of the alternative route that is being offered as a public bridleway.
6. Loss of character & tranquillity. Old drove sunken hollow way. Flooding and poor drainage not seen as a problem and can be overcome by using other paths during periods of wetness. Should not be used as an excuse to divert. Many other paths in Purton have similar characteristics.	14	It is acknowledged that the path has specific positive qualities such as being an old sunken and relatively dark hollow way but it is also beset by certain problems/drawbacks such as flooding and problematic changes in height midway along the route and whilst there may be those who do not mind muddy and wet conditions on public paths, there are many others who would prefer not to embrace such conditions. There have been 83 written representations in favour of the diversion Order, one of the most common remarks in these responses have been regarding the superiority of using an easily accessible, dry path all the year round. All public user-groups who have a right to use the way have to be considered. The existing route is a bridleway so horse-riders and cyclists are among those that have a right to use the route and these types of user find flooding and poor drainage particularly difficult. Whilst there are suitable alternative footpaths in close proximity which may be used by walkers when this bridleway is impassable due to flooding, there are no other bridleways nearby. Horse riders and cyclists would not be able to take another route. The objectors are correct to say that many other paths in the area have similar characteristics as regards a tendency to flood and surely for the benefit of the general public this is one more common-sense reason to support the diversion which is dry, level and safe for all users all the year round.

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POINT MADE BY OBJECTORS	BY HOW MANY	OFFICER'S COMMENTS
<p>7. Wiltshire Council has overestimated costs to clear the path and/or shouldn't be wasting public money on pursuing this diversion. Ramblers have volunteered to clear the route.</p>	11	<p>One of the principal objectors, Dr Richard Pagett, representing Ps & Qs (Purton's Qualities), stated in his consultation response that: "... (<i>Wiltshire Council is</i>) pursuing unnecessary spending on this proposed diversion when the emphasis, currently, should be on cuts, savings and investment". Officers totally agree with the objectors That the emphasis, currently, should be on cuts, savings and investment.</p> <p>The sunken nature of Mud Lane with its tendency to flood and the abrupt height changes half way along the route means that the nature of the work needed is beyond the skills of volunteers, however well meaning. A quote from an approved contractor for bringing the existing path into a fit state for its intended use as a public bridleway was in the region of £150,000 (Appendix D). It has been claimed by some objectors that an independent expert assessment of the costs from the Ramblers produced a figure of £30,000. However, officers consider that the consultant appointed by the Ramblers did not fully appreciate the flooding problems or the need to make the route safe and useable all year round as a bridleway to be shared by walkers, horse riders and cyclists. The Wiltshire representative of the British Horse Society supports the proposed diversion in providing a better route for horse riders.</p> <p>Purton Parish Council believes that the actual costs may be somewhere in between the two figures given above. The entire Rights of Way operational budget for the North of Wiltshire to maintain public paths is set at £49,000 for the year 2011-2012.</p> <p>The proposed diversion is already in widespread use as a permissive route after being constructed at the expense of the landowner and the only further costs to the Council in pursuing the diversion Order to have the public rights transferred to this route would be costs for a statutory public inquiry should there be objections if an Order is made. The estimated costs to the Council for a statutory local public inquiry lasting two days are estimated to be in the region of £2,500 which would increase for a longer inquiry. Provision has been made within existing budgets for the routine costs involved in processing the application, including Officer time and costs for advertising the Order and confirmation of the Order. Advertisement costs are estimated to be in the region of £700.</p>

POINT MADE BY OBJECTORS	BY HOW MANY	OFFICER'S COMMENTS
8. It is unfair to compare a temporarily overgrown path with a non-overgrown grass track.	3	In the Order decision, the routes have been equitably compared as advocated in government advice, by disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public. The obstructions to the existing route are not confined to temporary overgrowth but include considerable differences in levels on the old route as well as persistent severe flooding in winter.
9. Alternative route very similar to route of footpath 103 and therefore this just an extinguishment of bridleway 104.	3	Horses and cycles cannot be ridden along Purton 103 due to its status as a public footpath and the Council must take all users into consideration.
10. Purton Parish Council does not support the proposed diversion. The Parish Council are elected members and represent the Parish. Wiltshire Council should respect the wishes of the people of the Parish.	2	<p>In 2008 Purton Parish Council supported the original proposed diversion which was on the same route. The make-up of Parish Councillors has recently changed and when Parish Council Members discussed the current diversion the voting was against supporting the diversion by 6-5. Draft Parish Council Minutes state;</p> <p><i>"...Other councillors said that they could see the benefits to the public if it were to be diverted to the permissive route, given the nature of Mud Lane and its tendency to flood in winter".</i></p> <p>There were no members of the public present at the meeting who spoke in support or against the proposal but there were two letters set before the council against the proposal, one from a member of the Parish Council and one from Dr Padgett, one of the principal objectors.</p> <p>The views of the Parish Council are important as are all other responses, all of which are being fully taken into consideration.</p> <p>125 responses have been received to the making of the Order from user groups and members of the public; with those supporting the diversion outnumbering those against it by a ratio of over two to one (83 in support, 38 against, 4 neutral).</p>
11. The proposed route has more obstructions than the existing route	1	The proposed route has two bridle-gates to current BS5709 standard (as at July 2011) which are 'disabled-friendly' being easy to open for all and can also be opened without a horse-rider having to dismount. Although it is true that there are no gates or stiles listed on the definitive statement for the existing Purton 104, it is not uncommon for Wiltshire Council's definitive statements not to record stiles or gates that were in existence when public rights were first recorded in the early 1950's. There has been a stile on the existing route at point B on the Order map and a

POINT MADE BY OBJECTORS	BY HOW MANY	OFFICER'S COMMENTS
		<p>gate at point A since at least the 1960's and if the existing route were to be re-opened as a public bridleway then there would have to be gates in place not only at these two positions but also one each side of the raised 'field-link' half way along the existing route for the purposes of stock control. Purton Historical Society (Objector) acknowledges this fact and states in their letter of objection</p> <p style="text-align: center;"><i>"To make Mud Lane viable as a walkway, it only requires ... and four stiles or kissing gates at each end of the sections of Mud Lane...."</i></p> <p>The raised field-link is also a difficult obstruction on the existing route which would need two ramps in place to enable horse-riders to pass. Stiles and kissing gates are not acceptable on a public bridleway.</p>
<p>12. Natural landscape compromised by the planting of conifers and non-native plants such as Laurel along the diverted route.</p>	1	<p>The concept of the natural landscape being compromised is arguably misguided as the field landscape that predominates in the vicinity is already a manufactured and controlled landscape. The conifers which are incorrectly referred to as Leylandii by objectors are in fact Lawson Cyprus which is not such a rampant species as Leylandii and are, in any case, only temporary. A third of them have already been removed having served their purpose as an aid to the establishment of more vulnerable slower growing deciduous species. The remainder of the conifers will be thinned out by a third every year until only deciduous species are left. The relevance that this issue has on the legal tests for an Order is how any planting would possibly affect the views (and therefore by inference, the enjoyment of the way as a whole) and any planting should be compared to the existing route which is screened on both sides by high hedgerows consisting of trees and dense shrubs thereby making it difficult to see how the diverted route can be any less enjoyable with regards to the planting issue.</p>
<p>13. Will leave a 'stub' of dead-end highway.</p>	1	<p>The lane which is an unclassified road will remain as it was. It is a cul-de-sac like many other lanes, this is not unusual. In the unlikely event that it proves necessary for any reason to stop up any part of the lane in the future, that issue may be addressed at that time. It is not a relevant factor in a confirmation decision which is made with regard to the legal tests set out in s.119 of the Highways Act 1980.</p>
<p>14. Change of status to Bridleway contrived to allow application for diversion.</p>	1	<p>Wiltshire Council was under a legal duty under S. 53 (2) of the Wildlife and Countryside Act to upgrade the existing route to the status of bridleway because documentary evidence proving the rights was known to be in existence.</p>

POINT MADE BY OBJECTORS	BY HOW MANY	OFFICER'S COMMENTS
<p>15. It may not be in the interests of the landowner if public carriageway rights are found to exist over Mud Lane, because diverting only bridleway rights would leave any carriageway rights intact resulting in two parallel rights of way instead of one.</p>	1	<p>The continuation of Mud Lane immediately to the west of the Order section was upgraded from footpath to only bridleway status at a Public Inquiry in 1975. Mud Lane (called "Shooters Hill" on Old maps) was a connecting road forming a short cut across the corner of two major routes and whereas, on the balance of probability, horse riders and pedestrians would have taken the shortcut, carriages would probably not have attempted it due to the sunken, uneven nature of the route coupled with its tendency to flood. There has been no significant new evidence discovered that would not have been available to the inspector at the time of that inquiry.</p> <p>The objector raising point 15 (shown opposite), is exceptionally well versed in these matters and he himself submitted an application to Wiltshire Council in 1996 to upgrade the Order section of Mud Lane, but only to the status of bridleway and not with carriageway rights. The public, including the objector who makes point 15, also had the opportunity to object to the recent Order which recorded bridleway rights over the Order section if they thought that higher rights existed; no objections were received and the Order was confirmed. See paragraph 13 (i) below, which sets out why the diversion is in the interests of the landowner.</p>
<p>16. Council presenting every aspect of existing route in bad light so as to support the proposal.</p>	1	<p>It is acknowledged that the existing route holds some degree of historic value but it is a matter of fact that the existing route is overgrown, prone to flooding and that it has an obstruction due to differences of ground levels half way along which would require much engineering to resolve. It is also a matter of fact that a very large sum of money would be needed to bring it into a fit state for use as a public bridleway. It is very difficult to explain these points without seemingly putting the existing route in a bad light (the overgrown state will be ignored for the purposes of comparing the route for the legal tests of convenience and enjoyment, but most people see flooded conditions and abrupt changes of level in a bad light). Officers support the diversion because the advantages to the public are seen to outweigh any disadvantages.</p>
<p>17. Two letters have raised concerns regarding the Order-making process, these are quite lengthy and so are dealt with as appendices to this document.</p>		<p>The 28 points of concern from the Footpath and Open Spaces Chairman, Purton Parish Council and Officer's comments on the points are attached to this document as Appendix E.</p> <p>The 4 points of concern from the Chairman of P's and Q's (Purton's Qualities) and Officer's comments on the points are attached to this document as Appendix F.</p>

REPRESENTATIONS RECEIVED IN SUPPORT OF THE ORDER

REPRESENTATIONS SUPPORTING THE PROPOSAL = 39 (including one received post-statutory period)

POINT MADE BY SUPPORTERS	BY HOW MANY	OFFICER'S COMMENTS
1. General support for the diversion	83	All responses in support of the diversion Order claim that it is a better route. The reasons given for it being a better route vary. Some of the main reasons are given immediately below in the rest of this table
2. Superior accessibility for all users (not only for walkers, but also for horse riders and cyclists) / better layout	30	<p>When considering accessibility, the Council must have regard to Section 149 of The Equality Act 2010 (which has now superceded the Disability Discrimination Acts 1995 and 2005). The 2010 Act imposes the <i>'public sector equality duty'</i> (laid out in paragraph 14 of this document) which requires (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that a disabled person is not put at a substantial disadvantage in comparison with a person who is not disabled.</p> <p>The County Access & Bridleways Officer for the BHS and patrons of local livery/stables are among those people who have used the diverted route over the past six years and regard the diversion to have far better accessibility than the existing legal route along Mud Lane. This is due to the diversion being flat, wide, naturally well drained and having an easy-to-open gate at each end. The gates can be opened without the need for a horse-rider to dismount and they comply with the current British Standard 5709, the standard recommended by the Government that is suitable for disability access gates on public rights of way routes.</p>
3. Miscellaneous general benefits/advantages to public	19	As above.
4. Proposed diversion is safer than the existing legal route	14	<p>Public safety is a concern that Wiltshire Council takes very seriously and is a high priority in the current Wiltshire Council Rights of Way Improvement Plan (R.O.W.I.P.), relevant extracts of which are set out in paragraph 15 of this document.</p> <p>Wiltshire Council is under a legal obligation to have regard to the R.O.W.I.P. when making a decision on whether or not to divert a public path under section 119 of the Highways Act 1980. One of the ROWIP's aims is;</p> <p><i>'The promotion and development of the public rights of way network, enabling pedestrians, cyclists and horse riders to avoid heavy or intrusive traffic'.</i></p>

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POINT MADE BY SUPPORTERS	BY HOW MANY	OFFICER'S COMMENTS
		<p>There are no other suitable alternative bridleways that allow all year round passage for horse riders or cyclists to get from Purton or Restrop to the Red Lodge Woods bridleways and the bridleway networks southeast of Purton, without going through Purton and down the dangerous Paven Hill.</p> <p>The diversion is also safer for the public (especially the very young, the elderly, horse riders and cyclists) because it does not have a tendency to flood which can mask treacherous trip hazards such as holes, exposed tree roots or fallen branches, etc.</p>
<p>5. Much appreciated by those that have young families or elderly relatives</p> <p>Page 38</p>	9	<p>The public rights of way network reflects historical patterns of use. Current demands made on our rights of way are different today than when many of our public paths took shape and in some places the network has become inappropriate to modern needs. Government Statutory Guidance to Local Highway Authorities in England states:</p> <p><i>'Rights of way improvement plans are intended to be the prime means by which local highway authorities will identify the changes to be made, in respect of the managements and improvements, to their local rights of way network in order to meet the Government's aim of better provision for walkers, cyclists, equestrians and people with mobility problems'.</i></p> <p>Wiltshire Council R.O.W.I.P (see paragraph 15 of this document) states as two of its specific aims;</p> <ul style="list-style-type: none"> • <i>To provide more usable public rights of way network, suitable for changing user demands.</i> • <i>Increase access to the countryside for buggies, older people, people with mobility problems and other impairments.</i>
<p>6. The diversion is expedient in the interests of the Landowner (the remainder of the points in this table demonstrate it is also expedient in the interests of the public).</p>	7	<p>This is one of the legal tests to be met and one that has been challenge by several objectors who say the diversion is only a cynical attempt to increase the value of the property. The landowners themselves are best placed to justify this test and Mrs Moseley (joint landowner) puts a very compelling case showing this diversion to be expedient in the interests of the landowner for reasons of privacy and security, both of which are acceptable reasons, her comments are as follows:</p> <p><i>"I continue to support the diversion. As a mother of three young children, security is among my chief concerns. When we first moved to Restrop Farm nine years ago, we frequently had people trespassing through our driveway and farmyard, walking in any direction they wished. It was disconcerting to say the least. With the addition of the permissive path all this has changed.</i></p>

POINT MADE BY SUPPORTERS	BY HOW MANY	OFFICER'S COMMENTS
		<p><i>Walkers have felt happy and confident to walk a clearly marked route away from a domestic house... On the rare occasions that people still seek the old, impassable footpath, they walk right by our house and frequently look in the windows. It is a big infringement on our privacy and makes the children feel vulnerable and frightened. Footpath 104 runs right along our garden and if it were to be made passable again, I would feel unable to allow our children to play freely outside. We have had repeated incidents involving questionable characters trespassing on the farm as documented in police reports. With crime levels as high as they are, it is in our best interests and those of future families that may live here, to keep people a safe distance away from the house”.</i></p> <p>Similar views were also expressed by two other local members of the public as well as certain members of Purton Parish Council (see point 10 in the table in paragraph 7).</p>
The diversion doesn't flood.	6	The diversion is on naturally well drained land that is higher and flatter. This therefore has advantages over the legal route with its tendency to flood and affords all year round access for all types of user. Certain members of Purton Parish Council also recognise this advantage to the public (see point 10 in the supporters' table in paragraph 7).
8. The diversion is easy to maintain/ has been well maintained.	6	As well as positive comments regarding the fact that the new route is easy to maintain, being the correct width for a tractor with mowing and hedge trimming attachments, it is also important to note that it actually has been well maintained by the landowner to a high standard since its inception 6 years ago. It should be pointed out that if the route becomes a public bridleway then future maintenance of the surface would be the legal responsibility of Wiltshire Council, whilst responsibility for any encroaching or overhanging vegetation would remain with the landowner.
9. Opening up the existing route would incur unnecessary and very heavy costs to the public purse.	2	It is likely that the opening up of the existing route would take more than the entire maintenance budget for the north of Wiltshire (see point 7 in the supporters' table in paragraph 7). This budget covers not only the rights of way network in Purton, but also in 48 other parishes in the north area which includes 1,600 km of rights of way.

POINT MADE BY SUPPORTERS	BY HOW MANY	OFFICER'S COMMENTS
		<p>Heavy costs to the public purse, especially in this time of national austerity, of opening up Mud Lane compared with diverting the public rights onto an excellent alternative bridleway which benefits all users (horse-riders, cyclists and pedestrians) and which has been laid out by the landowner at no cost to Wiltshire Council is not justifiable in the opinion of the Council's Officers.</p> <p>Although not laid out in the legislation under which an Order confirmation decision is made, in a recent case an Inspector representing the Secretary of State for DEFRA confirmed an Order and concurred with Devon Council that the relative costs of the proposed diversion as opposed to the re-instatement of the definitive lines is a material factor that should be taken into consideration (see paragraph 18 of this document). The decision was not challenged. In that case the sum involved was estimated to be between £2,000 and £3,000. In this case the work involved at Mud Lane, even at the conservative estimate suggested by the Ramblers, is likely to be at least £30,000.</p>

MR HARRIS (Footpath and Open Spaces Chairman) OF PURTON PARISH COUNCIL LISTED THE FOLLOWING CONCERNS REGARDING THE PROCESSING OF THE ORDER

Wiltshire Council Case Officer's comments follow each point made

1. "Mud Lane is an ancient drovers' way and bridleway which is part of the heritage of the local area. The bridleway is capable of being restored to provide the normal benefits of a bridleway for use by the public. It is in the public interest that it should be preserved".

Officer's comment: It is true that Mud Lane is an historic route, but it also has accessibility problems and is prone to severe flooding (**Appendix D**: Objections Received to the Making of the Order; Point 6 in the table). Benefits to the public of the diverted route outweigh the disadvantages of losing the original route (these reasons are laid out in the tables forming **Appendix D** and in the Committee Report paragraphs 12-16). The restoration is also likely to cost Wiltshire Council approximately £150,000 (Committee Report; paragraph 17). This is more than the entire Rights of Way operational budget for the North Area of Wiltshire and so would not be in the public interest.

2. "The process by which the Order of 20 September 2011 was made was flawed and it is in the public interest that a Public Inquiry should be held into the Order for the following reasons".

Officer's comment: The Order process was not flawed for the reasons stated in answer to Mr Harris's questions below.

3. "Wiltshire Council has not stated the delegated powers under which the Order of 20 September 2011 was made or who gave authority for it to be made. If Wiltshire Council relies on the decision of the Regulatory Committee dated 21 May 2008 as the only delegated power for the making of the Order, then the Order lacks validity".

Officer's comment: The Order was duly made on 20 September 2011 under delegated powers conferred on the Corporate Director of Neighbourhood and Planning under the 'Wiltshire Council Constitution Delegation for Officers part 3b'. The required newspaper advertisement giving notice of the Order was placed in the Wiltshire Gazette and Herald and had the Corporate Director's name at the bottom.

4. "The Order was made on misleading information relating to the policy of the Parish Council in respect of the application for the diversion. Potential objectors who may have read the misleading statements in the Decision Report trivialising the policy decision of the Parish Council not to support the proposed diversion may have been deterred from objecting".

Officer's comment: Order decisions are made purely on the legal tests laid out in the Order making legislation (Highways Act 1980 s.119). It is accepted that the Parish Council has historically wanted Wiltshire Council to open the route but this has not been possible due to the same budgetary constraints that are explained in the Committee Report; paragraph 17.

The decision report stated that '*Purton Parish Council expressed their wish for Wiltshire Council to take no action against the previous landowner when the existing route became overgrown*'. This statement was not meant to mislead or trivialise any policy decision taken by the Parish Council. To clarify the

matter and to be fair to the Parish Council it should be pointed out that this was only due to the Parish Council being compassionate on behalf of the elderly landowner and Wiltshire Council Officers recognise that the long-term aim of the Parish Council was to open Mud Lane for use.

The ratio of people objecting to the Order, compared with those in support, is the same now as it was before the decision report was made, this ratio is slightly better than 2 to 1 in favour of the diversion which suggests that any possible misunderstanding had little or no effect. People tend to object to demonstrate their own views and not to reflect the views of another person or organisation. The point of seeking views is to help determine if the legal tests legal Order-making tests laid out in s.119 of the Highway Act 1980 have been met.

5. "Through correspondence conducted with its Officers, Wiltshire Council is aware that the Parish Council has had a long standing policy to have Mud Lane opened for access to the public. The Parish Council has over many years campaigned to persuade Wiltshire Council to fulfil its statutory duty to cause Mud Lane to be opened to the public".

Officer's comment: Agreed, although this has not been possible due to the reasons and constraints detailed in paragraph 17 of the Committee report.

6. "The Parish Council has always dealt with the matter in a considered way as the following outline of events shows".

Officer's comment: The fact that the Parish Council has dealt with the matter in a considered way is not in dispute, therefore many of the points below are superfluous to the argument and have not been commented on; however, they have been included for completeness. It has already been noted, both in the Decision Report and the Committee Report, that Purton Parish Council does not support the Order.

7. "On 3 March 2003, the Parish Council's Footpath Committee was advised that the Council had".... Received a request from Mr Moseley to close the historic route of Mud Lane and divert it elsewhere". A Working Party of Councillors had considered the request and recommended that Mud Lane should not be closed. The Footpath Committee accepted that recommendation".
8. "At its meeting on 14 February 2005, the Council resolved not to support the diversion of Mud Lane suggested by Mr Moseley".
9. "In 2007, Mr Moseley made a further approach to the Council in relation to his proposal to divert Mud Lane. On 24 September 2007, the Parish Council's Rights of Way and Open Spaces Committee agreed to host a public meeting to discuss the proposal".
10. "The meeting was held on 1 October 2007. An Officer of Wiltshire Council attended the meeting. The meeting discussed a variety of issues relating to the status of Mud Lane".
11. "On 10 December 2007, the Council reviewed the situation including an assessment of the condition of Mud Lane. A résumé of the various options to preserve Mud Lane, including a lease arrangement proposed by Mr Moseley was given by an officer of Wiltshire Council. The Parish Council resolved:

"That the possibility of the Parish Council entering into a lease agreement with Mr Moseley for Mud Lane will be explored and that Mr Moseley will be asked to provide the Parish Council with the terms for the agreement".

12. Correspondence between Mr Moseley and the Council ensued, including emails about the scope and potential status of such an agreement. On 14 January 2008, Mr Moseley withdrew the proposal for a lease and proposed a form of covenant for the preservation of some public rights in Mud Lane.

13. "On 10 March 2008, the Parish Council resolved:

"That a covenant for Mud Lane would be entered into if the permissive route becomes the definitive route. That a Working Party comprising three Councillors and the Clerk would be set up to draft/write the conditions of the covenant which will be designed to maintain access for the public in perpetuity in conjunction with the landowner and that it would be preferable if the access to the site is administered by the Parish Council rather than the landowner as a further safeguard for the access to Mud Lane".

14. "On 12 May 2008, a meeting of the Parish Council considered a draft covenant that was circulated with the Agenda and resolved to approve it subject to the inclusion of some amendments. The wording of the covenant (as amended) was as follows:

"This Covenant applies to that section of Mud Lane running from Restrop Farm House to its juncture with Ringsbury Camp. The historical and structural aspects of Mud Lane will be retained – that is there will be no changes to the fabric of the path or the adjacent flora. Mr Moseley and subsequent landowners will allow access to Mud Lane to interested parties for any historical, academic or archaeological reasons. If the permissive route once adopted as the definitive route is challenged in the future then it should revert to the old route of Mud Lane. Mr Richard Moseley the current owner will use best endeavours to ensure that this covenant will be preserved in perpetuity and passed with any future changes in title to new landowners. Maintenance and upkeep will be provided by the landowner".

The Council further resolved that: The covenant would only be required if the diversion from the current definitive route to the permissive route is formally approved". The Clerk was asked to get an updated on Mud Lane from the County Council."

15. "The report to the Wiltshire Council Regulatory Committee held on 21 May 2008 at paragraph 15 stated:

"It should be noted that the support from the Parish Council has been influenced by an offer from the landowner to enter into a covenant that if the public right of way is moved out of Mud Lane, (he) would allow local people to access the lane to enjoy and study its history. The Council Council will not, and cannot legally be a party to the proposed covenant".

Officer's comment: Points 11-15 above refer to a potential covenant between Purton Parish Council. Wiltshire Council has not, and cannot legally be, involved in this. The hedgerows already have legal protection under the hedgerow regulations under which planning permission is required to alter or remove hedgerows. Further protection cannot be pro-active but any planning application by the present or future landowners involving the hedgerows would trigger a hedgerow inspection by a Planning Officer. It is only at this stage that any necessary added legal protection may be placed upon a particular hedgerow.

16. "On 9 June 2008, The Parish Council meeting was advised that:

"The CC Regulatory Committee had met on 21 May to discuss the application for the diversion of Mud Lane. The Clerk gave an update that she had received from WC which was that the proposal to divert Mud Lane will go out for public consultation".

Officer's comment: A public consultation duly took place in the summer of 2008.

17. "The Order made under the Regulatory Committee decision of 21 May 2008 was subject to objections and foundered at the Public Inquiry opened on 8 September 2010, because it described Mud Lane as a public path whereas it should have been described as a bridleway".

Officer's comment: In the 2008 Order, Mud Lane was actually described as a public footpath which was its legal recorded status at that time. The Planning Inspectorate took the view that a footpath could not be diverted to a path with the status of public bridleway. An outstanding application to upgrade Mud Lane to bridleway status was then determined and an Order to upgrade to bridleway status was made, then subsequently confirmed as there were no objections.

18. "On 13 September 2010, the Parish Council resolved to support the upgrading of Mud Lane to a bridleway from a footpath. Wiltshire Council confirmed the Order to upgrade part of Mud Lane to a bridleway from 3 March 2011".

19. "On 17 May 2011, the Parish Council received a new proposal from Wiltshire Council which said that Wiltshire Council was considering whether or not to divert part of bridleway 104 (known as Mud Lane)".

20. "The proposal, together with a copy of the covenant that the Parish Council had previously approved was considered by the Council at a meeting held on 13 June 2011. Eleven of the twelve Parish Councillors were present. The Councillor who was absent had written a letter that was circulated at the meeting objecting to the proposed diversion. At the meeting, the Council was advised that the Covenant proposed would have little or no legal standing. The proposal that the Council should continue to support the diversion without the Covenant was put to the vote and was lost by six votes to five. A copy of the minute is annexed to this Statement of Objection".

21. "A copy of this minute was sent to the Officers of Wiltshire Council who were aware of its contents before the Decision Report was prepared".

22. "The Decision Report at Section 8.3 paragraphs 3 and 11 fails to present an unbiased view of the Parish Council's decision not to support the diversion. The way in which the Parish Council's decision is presented may have discouraged other potential objectors from objecting. It is fair to say that, over time, conflicting opinions have been expressed by Parish Councillors as to the meeting, effect and enforceability of the proposed covenant but the Council's decision on 13 June was unequivocal".

Officer's comment: The parts of the Decision Report mentioned above merely show that some Parish Council Members expressed some positive views on the diversion, it is fact and it is only fair to show this for completeness. It is accepted that the Parish Council's decision on 13 June was unequivocal and how it reached that decision is an internal matter. With reference to the presentation of the way the Parish Council reached its decision please see the final paragraph in answers to point 4 above and point 23 below.

23. "The Decision Report at Section 8.5 misrepresents the decision of the Council by selecting one comment made by a Parish Councillor and seeks to misrepresent and trivialise the Parish Council's decision by the following statement:

"The Parish Council were originally in support of the diversion and explained the reason for their change in stance was that they have recently had an influx of 4 new Parish Councillors".

The Parish Council has never made any such statement in respect of its decision on 13 June 2011. The Parish Council's decision of 13 June was made on an objective analysis of the facts which led to an unequivocal decision. The trivialisation of the Parish Council's decision in the Decision Report may deter other potential objectors from objecting and shows an element of bias".

Officer's comment: There is no element of bias intended. The following email extract was sent by the official Purton Parish Council representative in a direct answer to the query from the Case Officer as to why the Parish Council changed its stance on supporting the Order.

From: Shirley Bevington [mailto:clerk@purtonpc.eclipse.co.uk]
Sent: 15 June 2011 09:53
To: Chinnick, Tim
Subject: RE:

..... The vote was very close 6 to 5. The reason for the change is that we have lost some Councillors who had supported the diversion and have new members who do not hence the swing in votes. I suppose it is inevitable that with long drawn out disputes such as this people come and go with different ideas it is democracy at work.....

This is a reasonable explanation for the change in voting pattern and in the Officer's opinion it does not trivialise the Parish Council's decision in any way. However, it arrives at a decision, that is an internal matter for the Parish Council and the result of its decision is taken on face value. Every point of consultation and statutory objection made by the Parish Council has been added into the tables set out in the Decision Report and the Committee Report respectively.

24. "Wiltshire Council has not made available to potential objectors information relating to the letter calling for comments and other documents to which they are legally entitled under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004".

Officer's comment: All case documents are held on file in the Rights of Way Section at Old County Hall and are available to any member of the public for viewing on request. This is normal practice and follows advice from the Department of Environment, Food and Rural Affairs. No such request was made by Mr Harris, who decided to submit a Freedom of Information (FOI) Request for hard copies. The response to Mr Harris's FOI request (No.3716) was processed jointly by the Case Officer and Wiltshire Council Freedom of Information Team. All questions were answered fully and over 130 documents were processed and sent to Mr Harris. There was a delay of a few days due to the Case Officer being in hospital and other staffing shortages, this was highly unfortunate, and Mr Harris was notified of these circumstances in advance of the date when the information was due to be received by him.

25. "The Decision Report contained no specification or other information to justify the high cost of £150k for the opening of Mud Lane. The Decision Report also ignored the possibility of voluntary labour to reduce the cost. Through its officers, Wiltshire Council is aware that the footpaths and bridleways in Purton Parish are maintained to a high standard with the input of voluntary labour and that voluntary labour would be available to assist in the works needed to open Mud Lane. The Decision Report ignored that possibility and whoever made the decision to make the Order on the basis of the Decision Report was inadequately informed".

Officer's comment: Justification for the £150,000 costs was given at point 6 in the table within paragraph 7 of the Decision Report, as being due to *"the sunken nature of Mud Lane with its tendency to flood and the abrupt height changes half way along the route"* and paragraph 10.11 states that ... *"in order to provide a safe and fully accessible bridleway for use by walkers, horse-riders and cyclists, the figure of £150,000 is realistic"*. The actual quotes by M J Church Ltd for £148,000 in 2008 and a 2011 revised quote of £151,000 have been submitted to Mr Harris on request and are attached to the committee report as **Appendix H**.

The Decision Report did not ignore the possibility of voluntary labour. It was stated in paragraph 8.3.6 that the work was *"beyond the scope of volunteers"* the reasons given for this were due to the engineering difficulties in addressing the level differences and the tendency for severe flooding. Similar comments were given in paragraph 8.3.8 *"The raised field-link is also a difficult obstruction on the existing route which would need two ramps in place to enable horse-riders to pass"* and in paragraph 10.9 ... *"The barrier formed by the abrupt 4-foot height changes half way along the existing route however, is not of such temporary nature and would certainly need considerable engineering works in place to allow free passage"*.

26. "The comments in the Decision Report contradict previous statements made by WC with regard to the weight that they attached to issues. For example: the WC has previously said that privacy

"is not the main concern of the County Council when considering whether the path should be diverted" (letter 24/2/2008)".

Officer's comment: There is no contradiction. It does not say in the Decision Report that privacy is the main concern. Privacy was not the main concern in 2008 and it is not now. This misconception leads from a misunderstanding of the law, expediency in the interests of the landowner or the public is one of the legal tests and in some cases privacy and/or security can contribute to this particular test.

27. "The letter that Wiltshire Council issued calling for comments did not advise the public that, when making comments, they should be aware that the purposes of deciding whether a right of way should be stopped up, any temporary circumstances preventing or diminishing its uses by the public shall be disregarded. Government guidance states that the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it".

Officer's comment: The Government guidance is intended to be applied by the Order-making authority or the Secretary of State when determining the Order, to help ensure that the legal tests are properly applied. Initial consultation letters are merely to invite comments on the proposals. These comments can be far-ranging and it is up to the individual to raise any point they see fit.

28. "Wiltshire Council has not made available the individual comments which it took into account in deciding to make the Order. The Decision Report contains an extensive analysis of the comments that have been made in objection to the proposed diversion but not of the comments made in support of the diversion, which raises a question about the way in which those comments were obtained. A Public Inquiry should be held so that those individual comments can be objectively analysed".

Officer's comment: Wiltshire Council's entire case documents for all Rights of Way Cases are held at County Hall and are always available to any member of the public on request. An extensive analysis of the comments made in support was actually made into a table but contained so many superlatives concerning the diverted route that it was decided not to include it because it would probably raise a call of bias from the objectors. However, because it has been requested by objectors, it is now included in the Committee Report as **Appendix D**. Officers strongly agree with the objectors that a Public Inquiry should now take place.

DR PADGETT (Chair of p's & q's [purton's qualities]) LISTED THE FOLLOWING CONCERNS**REGARDING THE PROCESSING OF THE ORDER** *(Case Officer's comments follow each point made)*

"We are disappointed that the Wiltshire Council has given notice of making a Public Path Diversion and Definitive Map and Statement Modification Order in respect of Footpath 104, known locally as Mud Lane. We object to this and call for a Public Inquiry on the grounds of this being in the public interest. There are several specific new grounds other than those previously listed during the previous several years:

1. "In 2007 two applications for diversion (Footpaths 103 and 96) very close to Mud Lane were refused by the Wiltshire Council (and we support the Council in this) yet we note that the essential difference is that the two which were refused did not represent any financial gain to the Council, whilst diversion of 104 (Mud Lane) provides a financial benefit to Wiltshire Council. We believe that this (financial) conflict of interest should be the subject of a public inquiry in order to ensure that the public good is upheld;".

Officer's Comments: Each case is weighed up on its individual merits and this diversion meets the legal tests required. It is also shown to have many public benefits as laid out in paragraphs 12-16 of the Committee Report, through Officer's comments in **Appendix D** to the report and in Supporters comments forming **Appendix G** to the Report. Also the punitive costs of bringing the old way into a fit state for a bridleway would not be in the public interest (paragraph 17 of the main report and **Appendix H** of the report). The diversion has attracted a great deal of public support and meets the aims of the Equality Act 2010 and the Rights of Way Improvement Plan to increase access to the countryside for all types of user, including the disabled.

2. "During the previous application for diversion there were substantial errors in the counting of the letters/emails in support of the diversion. On this renewed application we have been denied access to the individual comments (despite that this was allowed the last time) and we fear that errors will have been made again. Consequently, we believe that a Public Inquiry should be held in order that the evidence can be firmly reviewed and tested in the public domain to ensure fairness and natural justice;".

Officer's Comments: On the previous application, there was a minor error in the counting, where 4 names were repeated. The cause of this human error was probably being the large number of responses in written and email format. Access has not been denied to documents involved in this case because, as in every other rights of way case, all case documents are open to viewing by the public, on request, at County Hall. Supplying hard copies of all documents to every objector who requests them at multiple stages as the case progresses causes a logistics problem in an already very busy Rights of Way Section with little or no admin support, due to the large volumes involved. However, hard copies of all responses to the current consultation are now in the hands of the objectors.

When a case progresses to Public Inquiry, all case documents are included in Wiltshire Council's Statement of Case bundle. The Rights of Way Section always ensures that the principal Objector has a complete copy of the bundle to enable them to fully prepare for Inquiry.

Officers wholeheartedly agree with the objector's call for a Public Inquiry, which is the normal platform to argue this type of case.

3. "We note that in the Decision Report, the comments in objection to the diversion are clearly analysed yet the comments in support of the diversion are hardly analysed at all, given that supposedly nearly twice as many comments were in support versus objection. This suggests that many (the majority?) of support letters were in fact form letters or single line statements of support which in turn suggests that these are by individuals or organisations solicited specifically to provide a unit of support. Last time, we noted many form/photocopied statements and several from many different counties which clearly lacked local knowledge of the location. This is in contrast to the letters of objection which universally reflected local knowledge and deep insight into the issue. We believe, therefore, that it is essential that all comments (names can be withheld if required) be examined in public to demonstrate properly the level of local relevance;"

Officer's Comments: The fairest way to demonstrate that this accusation is misguided is to list the actual comments from many of those who made written representations in support of the Order. This has been put into a table format and is attached as **Appendix D** to the Committee report. It shows that much passion, local knowledge and understanding of the issues were eloquently presented by the supporters in their responses to the initial consultation on which the Order decision was based. The supporters outnumbered the objectors in a ratio of 2:1.

4. "The original Wiltshire Council letter calling for comments was biased and highly misleading because it failed to indicate to the public that when making comments they should compare a footpath (Mud Lane 104) that is temporarily overgrown (due to years of neglect by the Council) and a non-overgrown grass track (the proposed Diversion) as if they were equally passable. The Government had issued some relevant guidance related to rights of way, which, the Council failed to make known:

"... Provides that, for the purposes of deciding whether a right of way should be stopped up, any temporary circumstances preventing or diminishing its use by the public shall be disregarded ..."

"...When deciding whether the right of way will be/will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing or diminishing the use of the existing route by the public ..."

"Therefore ... the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it."

Officer's Comments: The Government guidance is intended to be applied by the Order-making authority or the Secretary of State when determining the Order, to help ensure that the legal tests are properly applied. Initial consultation letters are merely to invite comments on the proposals. These comments can be far-ranging and it is up to the individual to raise any point they see fit.

5. "Given the Council errors during the last application, even to the extent that the Public Inquiry had to be halted the day before it was due to commence, due to Wiltshire Council's flawed submission, we believe that it is essential, to regain the public trust, that there is a Public Inquiry, on the grounds of this being in the public interest".

Officer's Comments: It is without doubt that a local Public Inquiry will be in the public interest.

Reply No.	EXAMPLES OF COMMENTS BY SUPPORTERS IN RESPONSE TO PRE-ORDER CONSULTATION
1	<i>"I am in full support of diverting 104, the alternative route is safer for horses and the general public as it is well maintained and provides a good safe passage".</i>
2	<i>"As an active member of the BMC (British Mountaineering Council), qualified mountain leader, member of the BASC (British Association for Shooting and Conservation), lover of the great outdoors and occasional user of this path, I feel the proposed route is far more suitable and safe".</i>
3	<i>"I meet many other walkers and riders along there and they all seem happy with it.</i>
4	<i>The route is horse and rider friendly and much frequented by, not only my own family, but everyone else who keeps their horses at the livery yard I am at in Lydiard Millicent".</i>
5	<i>"...brilliant...One of my favourite hacks where I walk with my dog."</i>
6	<i>"... walk this route most days with my dog. I have to stress that it's so much better than the old route...."</i>
7	<i>"I have often ridden my horse along the permissive bridlepath since it was created some 7 years ago. It has made a large difference to riding in the area since it allows one easily to get from Restrop to across the Paven Hill Road to the Red Lodge Woods (where there is good riding), without going through Purton and down the dangerous Paven Hill. I am very much in favour of you adopting this route as a permanent bridlepath in place of Mud Lane...".</i>
9	<i>"The proposed diversion is an excellent route which we walk regularly."</i>
11	<i>"...the permissive path has proved to be a great and more suitable route over the past 5 years".</i>
14	<i>"Far better than original".</i>
16	<i>"The permissive path is a great benefit to all walkers and riders".</i>
17	<i>"I use this path regularly and think it's a very good idea".</i>
18	<i>"Many advantages. Has proved suitable for 6 years".</i>
19	<i>"...and very much approve of the suggested new route".</i>
23	<i>"Best interests of the public especially for its safety and ample space for horses to pass".</i>
24	<i>"The new proposal B-C-D-E makes total sense over the old Mud Lane".</i>
25	<i>"...level and sound ...went for a walk with my elderly father, at first I was a bit miffed to be diverted, however, the further we walked around the diversion, the more pleasantly surprised I became".</i>
26	<i>"The alternative bridleway offers several advantages to members of the general public".</i>
27	<i>"The reasons you give are entirely sound and exactly correspond to my own view".</i>
28	<i>"Far more suitable and safe".</i>
30	<i>"We love the route and will be walking it with family again next week".</i>
31	<i>"Great improvement on the existing arrangement, and a better layout".</i>
32	<i>"The fact that Mud Lane is in its current condition would indicate that previously it was: a) Not used b) In a condition which did not facilitate use. C) In a location that was unsuitable".</i>
33	<i>"As a horse rider and cyclist I can confirm that this bridle path is the safest and most well maintained in the Swindon and Purton area....Easy to find and access good ... safe to use and it's wide, flat, without holes or ruts...doesn't flood.... obstructions or low branches ...It prevents riders having to use dangerous roads and is wide enough for horses to pass, or riders and other users to pass safely.... available and safe for different uses all year round.... provides better privacy and security for the farmer and his family...already a well tested better alternative set in place with zero cost to the taxpayer".</i>

34	<i>"...offers a number of advantages ...especially being easier to use and walk around and so much better for riders".</i>
35	<i>"...a more viable route and as it is already being used , it would appear to be a waste of money to embark on major drainage and clearance of the original route when there is a suitable alternative".</i>
36	<i>"Seems to benefit all round – the public, the Council and the owner".</i>
37	<i>"Real advantages for the public, the owner and the Council".</i>
39	<i>"We have regularly walked our dog along the current Permissive Path, it allows superior views over the countryside...We meet many horse riders who appreciate the access which allows them to keep off the adjacent narrow roads and also extends their ride routes".</i>
40	<i>"As a mother with young children I feel it is a better, safer path".</i>
42	<i>"I would also add that my daughter and grand-daughter as well as myself use this route regularly and find it has great access is well maintained and a pleasure to walk".</i>
43	<i>"As a keen horse rider and dog walker I use this route regularly and so does my daughter".</i>
45	<i>"We have been using this (diversion) now for several years and it has been great, it has been kept so that people can use it at all times".</i>
46	<i>"Far more suitable and safe".</i>
47	<i>"As a keen walker and father of two young children I'm compelled to write to you with my continued support for the diversion and the proposed bridle path which has proved to be a suitable and safe route and is in the interest of all those that use it, the taxpayer and the landowner".</i>
48	<i>"I am a keen (walker) walking across many counties and a member of walking societies and understand the need for change and this one I welcome".</i>
51	<i>"... provides real advantages for all and the significant width is of benefit to horses".</i>
Page 50	<i>"I continue to support the diversion. As a mother of three young children, security is among my chief concerns. When we first moved to Restrop Farm nine years ago, we frequently had people trespassing through our driveway and farmyard, walking in any direction they wished. It was disconcerting to say the least. With the addition of the permissive path all this has changed. Walkers have felt happy and confident to walk a clearly marked route away from a domestic house... On the rare occasions that people still seek the old, impassable footpath, they walk right by our house and frequently look in the windows. It is a big infringement on our privacy and makes the children feel vulnerable and frightened. Footpath 104 runs right along our garden and if it were to be made passable again, I would feel unable to allow our children to play freely outside. We have had repeated incidents involving questionable characters trespassing on the farm as documented in police reports. With crime levels as high as they are, it is in our best interests and those of future families that may live here, to keep people a safe distance away from the house".</i>
54	<i>"... far safer for both walkers and equestrians, it is much drier and never floods so requires less maintenance".</i>
55	<i>"The path has provided a safe, accessible passage now for all users for over 6 years in all seasons. At no time, even during heavy rain or snow has the path been inaccessible".</i>
57	<i>"I walked with my young children and think the route provides a better, safer alternative and has to be in the interest of the public, taxpayer and landowner".</i>
58	<i>"I have two young children and I feel this route provides a better and safer alternative. It was extremely well maintained, wide enough for us to walk along safely and allowed horses to pass without scaring the children".</i>
59	<i>"Young, old and less agile can walk it safely including families with pushchairs... The path won't get overgrown – it is well maintained for tractors with hedge trimmer or topper".</i>
60	<i>"This much used route is a well defined even grassy track, varying from 4-7 metres in width, well fenced and bounded with conifers and deciduous trees (the conifers being temporary cover, whilst the deciduous trees are becoming established). The gates are to the required standard for all users, making access easy. I believe that the proposed diversion of BR 104 (Mud Lane) would be a great benefit to everyone".</i>

63	<i>"...it offers a far better route for horses and riders. Also it is wider and drier in the winter".</i>
67	<i>"I feel this would cause no disadvantages to the public".</i>
70	<i>"Having worked at Restrop Farm from the 1960's I have had considerable experience of the land surrounding the path over many years. Regular flooding made path 104 unpractical and at times dangerous. It was therefore largely unused and being narrow was hard to maintain. The new route offers a wide safe passage, even in winter and improved access for horses and the less able".</i>
71	<i>"It is so much more practical than the former route and has my full support".</i>
72	<i>"I write to confirm my total support for the proposed diversion of the former footpath 104. The new access to the Ringsbury Camp is a superior access by far for horseriders and walkers like myself".</i>
73	<i>"I have young children and think that the route provides a better, safer alternative and is in the interests of the public. It has such a great wide path and can be accessed with little disruption to anyone..."</i>
74	<i>"...a fabulous walk along the permissive path. I also had a look at the original path and it seems of no benefit to open that path up especially in the current climate of fiscal prudence. My children and I walked the route it is so safe and also beautiful views..."</i>
75	<i>"This path is a pleasure to ride on and has user friendly gates...We are a group who have our horses at livery at Lydiard Millicent and are 12 in number. We also take visiting horses and riders down the route that is currently being used and have had nothing but praise for it".</i>
77	<i>"Having spent some time at Restrop recently, I feel that the new bridle path is a better option over the former path, as it seems to be an all-round better route with regard to flooding and overgrowth".</i>
81	<i>"I am astounded to see how much paperwork and effort this small diversion has caused when it is obvious that the diverted route is far superior to the original route! The cost and effort put in to various parties opposing the diversion must far outweigh the cost of the actual re-routing of the path!...lots of people will get the benefit of the horse-friendly gates, including horse riders and dog walkers alike".</i>
Page 51	<i>"...it is far better than the original route".</i>
	<i>"As a mother, responsible dog owner and keen horse rider, I take great pleasure in the safe enjoyment of the beautiful Wiltshire countryside, and I am grateful for the obvious care and hard work that goes into maintaining the appropriate paths. In this case I feel the diversion is a very good improvement, and I would be pleased to see the diversion approved".</i>
88	<i>"We are writing in support of moving the bridle path, being a near neighbour we believe the proposed diversion will provide a better safer route, especially for horses".</i>
89	<i>"In my original correspondence I stated that in the sixty years I have walked this area no one has been able to walk the original route for two reasons, one you have identified in your photographs and the second that the previous land owner restricted the access to that part of Mud Lane. To my knowledge no one ever queried this. The route now in place is far more user friendly than that deemed the original route".</i>
91	<i>"The new route is perfect for riders, walkers etc and everyone I meet along it seems completely happy with it. The gates are great for riders and horses and the path is well maintained and does not flood in winter".</i>
95	<i>"The proposed route would be far more advantageous for the public and no doubt the owner".</i>
96	<i>"I had my four children with me including a buggy and it was a very easy route, safe for the children and I would highly recommend this footpath to be diverted. I would hate to be looked on so closely by a whole load of walkers if I was in the house next to the current footpath (bridleway) and surely everyone would benefit from this change?."</i>

Officers Views on Supporter's Comments shown above

Mrs Mosely (joint landowner) puts a very compelling case showing this diversion to be expedient in the interests of the landowner for reasons of privacy and security (response 52), a view endorsed by other local people (responses 73,96 and Purton Parish Council).

The new route is widely held to be a safer route than the existing legal route (responses 1,2,23,27,33,40,46,47,52,54,57,59,70,73,74,87,88,96), and particularly appreciated by those that have young families or elderly relatives (responses 30,40,42,43,47,52,57,59,87,96). Public safety is a concern that Wiltshire Council takes very seriously.

Superior ease of access is a point endorsed by many (responses 4,23,33,39,42,43,51,59,60,70,72,73,75,77,89,96) including the County Access & Bridleways Officer for the BHS and patrons of local livery/stables.

Heavy costs to the public purse, especially in this time of national austerity, of opening up Mud Lane compared with diverting onto a bridleway which has been laid out by the landowner at no cost to Wiltshire Council, is also a recurring theme throughout (responses No's. 33,47,57,81) with many pointing out that the diversion would also benefit horse-riders, cyclists, pedestrians as well as the landowner.

There have been numerous positive comments about the fact that the new route is easy to maintain (responses 1,33,87,91) and has been well maintained since its inception 6 years ago and also that it doesn't flood (responses 54,63,91) and so is therefore accessible all year round.

In summary there are shown to be strong benefits to a wide range of users for a variety of reasons. These benefits are amply shown to be not limited to users of the bridleway but also extend to Wiltshire Council, the taxpayer and the landowner.

The total number of responses to the pre-Order public consultation were 96 in favour of the diversion and 47 against it.

Further to the above comments from supporters, below are some comments from the draft minutes of Purton Parish Council's meeting held on the 13th June 2011. Although the Parish Council narrowly returned a vote of 6 to 5 not to support the diversion, they did pass some positive comments on the diversion.

" The Chairman highlighted the proposed diversion would improve the security of the Mosley's home considering its rural situation as Mud Lane runs within a few feet of the rear of their house. Others councillors said that they could see the benefits to the public if it were to be diverted to the permissive route, given the nature of Mud Lane and its tendency to flood in winter".



Tel: 01249 650899
Fax: 01249 659182
www.mjchurch.com

Our ref: SPB/SW/1888/T1091
Your ref:

20th May 2008

Wiltshire Highways Area Partnership
Bath Road Industrial Estate
Chippenham
Wiltshire
SN15 08B

For the attention of Colin Lovelock

Dear Sirs

Re: Upgrading By-Way 104 Mud Lane, Purton

Please find enclosed our budget priced Bill of Quantities for our proposals for the work required to the above By-Way.

Our rates are based on the following:-

1. Rates include for labour, plant, materials and supervision.
2. Rates are nett and exclusive of Vat.
3. We have not allowed for dealing with any contaminated material.
4. We have not allowed for dealing with any services or statutory bodies.
5. We have not allowed for any design.
6. We have allowed for one site visit with continuous and uninterrupted working, we estimate the work will take five weeks to complete.
7. We have not included for any temporary fencing or hoarding etc.
8. Work to be valued on a re-measured basis.
9. Rates are open for acceptance for one month from the above date.

Registered Office: Star Farm, Marshfield, Chippenham, Wilts, SN14 8LH. Registered No. 1856955. M J Church & P J Church

Wiltshire County Council Rights of Way

By-Way 104 Mud Lane, Purton

Bill of Quantities

Item	Description	Qty	Unit	Rate	Total
1	Site clearance - dense shrub n.e. 1.5m high incl approx 50 N ^o trees, girth 300mm max, height 3m approx (roots to remain) and dispose to suitable landfill or recycling facility off site.		sum		
2	Supply and place 75-40mm recycled clean stone drainage blanket 2m deep x 3m wide to bridleway on terram (or similar) geotextile.	2060	m ³		
3	Supply and place 450mm dia perforated twinwall pipe in trench under drainage blanket including bed and surround with single size stone with terram geotextile wrap.	350	m		
4	Supply and place sand bag work headwalls at drainage outfalls	2	N ^o		
5	Supply, place and compact recycled graded 75mm down aggregate 300mm deep on terram geotextile over drainage blanket.	309	m ³		
6	Supply, place and compact recycled type 1 aggregate 200mm deep over 75mm aggregate.	206	m ³		
7	Contractors site offices, stores and welfare.	5	wks		
8	Mobilisation and demobilisation of contractors plant and equipment.		sum		

Total £148,434.17

We trust our quotation is of interest and would welcome further discussion if you so desire.

We look forward to hearing from you in the near future.

Yours faithfully
For and on behalf of
M J Church Plant Ltd

Handwritten signature

Steve Blower
Commercial Director

Email: sblower@mjchruch.com

Enc



Contracting Division
25B Market Place
Chippenham
Wiltshire
SN15 3HP

Tel: 01249 650899
Fax: 01249 659182
www.mjchurch.com

Our ref: SPB/SW/2639/T1091
Your ref:

25th May 2010

The Rights of Way Officer
Wilts County Council
County Hall
Bythesea Road
Trowbridge
BA14 85N

For the attention of Tim Chinnick

Dear Sir

Re: Upgrading By-Way 104 Mud Lane, Purton

Please find enclosed our updated budget price for our proposals for the work required to the above By-Way in the sum of £152,160.72.

Our rates are based on the following:-

1. Rates include for labour, plant, materials and supervision.
2. Rates are net and exclusive of Vat.
3. We have not allowed for dealing with any contaminated material.
4. We have not allowed for dealing with any services or statutory bodies.
5. We have not allowed for any design.
6. We have allowed for one site visit with continuous and uninterrupted working, we estimate the work will take five weeks to complete.
7. We have not included for any temporary fencing or hoarding etc.
8. Work to be valued on a re-measured basis.
9. Rates are open for open for acceptance for one month from the above date.

10. Please note that our quotation has been prepared using the current rate of 0.52 per litre for gas oil. Given the current volatility of the world oil market we are unable to guarantee that there will be no further price fluctuations and therefore reserve the right to discuss this aspect of our quotation prior to entering into a formal contract.

We trust our quotation is of interest and would welcome further discussion if you so desire.

We look forward to hearing from you in the near future.

Yours faithfully
For and on behalf of
M J Church

vp s.w.c

Steve Blower
Commercial Director

Email: sblower@mjchurch.com

Enc

**Wiltshire Council
Northern Area Planning Committee
14th March 2012**

Forthcoming Hearings and Public Inquiries between 01/03/2012 and 31/08/2012

Application No	Location	Parish	Proposal	Appeal Type	Date
10/04575/OUT	Ridgeway Farm, Common Platt, Purton, Swindon, Wiltshire SN5 9JT	Purton	Residential Development (Up to 700 Dwellings), 10.6 Hectares of Green Infrastructure Including Public Open Space, Associated Works, Up to 560 Square Metres of D1 (Non-Residential) Floorspace, Primary School and Demolition of Existing Buildings.	Public Inquiry	09/05/2012
11/01852/FUL	Land of B4040 at Stonehill, Charlton, Malmesbury, Wiltshire, SN16 9DY	Charlton	Use of Land for Stationing of a Mobile Home for Essential Workers for 3 Years	Informal Hearing	17/04/2012
11/01853/FUL	Land of B4040 at Stonehill, Charlton, Malmesbury, Wiltshire, SN16 9DY	Charlton	Change of Use of Agricultural Building to Mixed Use Agricultural and Equine Dentistry and Veterinary Facility, Construction of Menage, Horsewalker and Change of Use of Land to Mixed Use Agricultural and Equestrian.	Informal Hearing	17/04/2012
11/02574/OUT	Land at Widham Farm/Widham Grove, Station Road, Purton, SN5	Purton	Outline Planning Application for up to 50 Dwellings, Access and Associated Works Following Demolition of Two Dwellings	Public Inquiry	11/04/2012

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There have been no Planning Appeals Received between 09/02/2012 and 01/03/2012

Planning Appeals Decided between 09/02/2012 and 01/03/2012

Application No	Location	Parish	Proposal	DEL or COMM	Appeal Decision	Officer Recommendation	Appeal Type
11/02209/FUL	4 Pool Gastons Road, Malmesbury, Wiltshire, SN16 0NG	Malmesbury	Demolish 4 Pool Gastons Road and Erect 3 Dwellings	DEL	Allowed with Conditions	Permission	Written Representations
11/02979/FUL	Cleeves Wood, Lower Kingsdown Road, Kingsdown, Wiltshire, SN13 8BA	Box	First Floor and Ground Floor Extension and Alterations to Dwelling (Resubmission of 10/04679/FUL)	COMM	Allowed with Conditions	Refusal	Written Representations
11/03336/FUL	10 North End, Calne, Wiltshire, SN11 9DQ	Calne	Two Storey Extension and Porch	DEL	Appeal Dismissed	Refusal	Written Representations
11/02280/FUL	Pooks Corner Farm, Heddington, SN11 0PF	Heddington	Change of Use of Workshop to Live/Work Unit.	DEL	Appeal Dismissed	Non-Determination	Written Representations

Agenda Item 7

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Agenda Item 8

INDEX OF APPLICATIONS ON 14/03/2012

	APPLICATION NO.	SITE LOCATION	DEVELOPMENT	RECOMMENDATION
8(a)	11/03790/FUL	Rose Field, Hullavington, Wilts. SN16 0HW	Change of Use to a Caravan Site for Occupation by Six Gypsy and Traveller Families with Associated Works.	Permission
8(b)	11/03802/DEM and 11/03798/LBC	Chippenham Railway Station, Cocklebury Road, Chippenham, Wiltshire, SN15 3QE	Prior Approval for Demolition of Existing Footbridge and Erection of a Replacement & Associated Works	Permission
8(c)	11/02514/FUL and 11/03731/LBC	Scarrott's Yard, Adjacent to 6 Old Court, Wootton Bassett, Wiltshire SN4 8QY	Erection of Three Terraced Dwellings Including Garage Accommodation and Associated Works Removal of Existing Single Storey Dwelling, Retaining Walls, Security Fencing and Single Storey Outbuilding. (Resubmission of 11/01514/FUL).	Refusal
8(d)	11/03912/S73A	The Old Dairy, Market Place, Box, Corsham, SN13 8PA	Variation of Condition 04 to Planning Permission 10/01437/FUL to Allow for Other Complimentary Uses. Variation of Condition 05 to Planning Permission 10/01437/FUL to Allow those Complimentary Uses to Take Place Outside Permitted Hours of Operation.	Permission
8(e)	11/04105/FUL	Land to the Rear of Jugglers Cottage, Cherhill, Wiltshire, SN11 8XP	3 Bed Dwelling	Delegated to Implementation Team Leader
8(f)	12/00198/S73A	Phelps Parade, Unit 2, 119 The Pippin, Calne, SN11 8JQ	Change of Use to A5, Erection of New Shop Front and Extract/Ventilation & Air Compressors to Rear (Variation of Condition 2 of 11/02734/FUL - Change of Trading Hours)	Permission

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REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Report No.

Date of Meeting	14th March 2012		
Application Number	11/03790FUL		
Site Address	Rose Field, Hullavington		
Proposal	Change of use to a caravan site for occupation by six Gypsy and Traveller Families with associated works		
Applicant	Mr Tomney		
Town/Parish Council	Hullavington/St Paul Without		
Electoral Division	ByBrook	Unitary Member	Jane Scott
Grid Ref	391039 182452		
Type of application	FULL		
Case Officer	Tracy Smith	01249 706642	tracy.smith@wiltshire.gov.uk

Reason for the application being considered by Committee

The Area Development Manager considers it appropriate, given the scale of the site, in light of other current Gypsy and Traveller applications in the north eastern part of the county, the implications for the growth proposed in the context of the emerging Core Strategy and site allocations DPD and consistent with other recent Gypsy and Traveller applications, for the decision to be made by the Committee.

1. Purpose of Report

To consider the above application and to recommend that temporary planning permission is GRANTED subject to conditions.

Hullavington Parish Council strongly request that planning permission is refused for reasons outlined below in this report.

Malmesbury and St Paul Without Parish Council comment that approval or otherwise of the scheme turns on the suitability of the revised ingress/access arrangements for the site. The Parish Council does not consider itself to be qualified to judge and leave the appropriateness of the new proposal to the experts.

8 letters of objection have been received.

2. Main Issues

The proposal needs to be assessed against Policies C3, NE15 and H9 of the North Wiltshire Local Plan 2011, Policy DP15 of the Wiltshire and Swindon Structure Plan 2016 and government guidance in Circular 01/2006 "Planning for Gypsy and Traveller Caravan Sites".

Core Policy 47 of Wiltshire Core Strategy Pre Submission Document (February 2012), the emerging Gypsy and Traveller DPD as well as the recently published Planning Policy Statement Planning for Traveller Sites (the public consultation on which ended in early August) are material considerations.

DCLG *Designing Gypsy and Traveller Sites – Good Practice Guide* (May 2008) should also be considered in assessing the suitability of this site for Gypsy and Traveller Accommodation.

The key issues in the determination of this application are:

- Status of the development plan and policies therein
- Need
- Prematurity
- Basic Utilities
- Impact of the character and appearance of the area
- Sustainability/highways
- Drainage/flooding
- Human Rights Act
- Material considerations

3. Site Description

The application site lies in the open countryside approx. 1.2 mile north east of Hullavington. The site is relatively well screened via existing vegetation however, views of the site are afforded from the main A429 to Malmesbury and on the road from which the site takes its access. The appeal site is not within any designated areas i.e. AONB, Green Belt or Conservation Area.

The site is accessed off a road known as the C1 which has a junction with the A429 to the north and C33 (which also links onto the A429).

4. Relevant Planning History		
Application Number	Proposal	Decision
09/01934/FUL	Gypsy site for Irish families comprising six mobile homes and six touring caravans (partially retrospective). A copy of the appeal decision is contained in Appendix I. The appeal was dismissed solely on highway safety grounds.	Refused and dismissed at Appeal
09/00681/FUL	Gypsy site for Irish families comprising six mobile homes and six touring caravans. Refused for the following reason: <i>“1. The C1n access road by reason of its restricted width, poor alignment and sub-standard junctions with the A429 and C1 is considered unsuitable to service as a means of access to the proposed development.</i>	Refused
05/0784/FUL	New dwelling. <i>“1. The proposal if approved would constitute isolated and sporadic development within the countryside which would be detrimental to the character of the area and the rural</i>	Refused

	<p><i>amenity of the locality thereby being contrary to policy RH11 of the adopted Local Plan 2001.</i></p> <p><i>2. The proposal located remote from services and being unlikely to be well served by public transport, is contrary to the key aims of Planning Policy Guidance Note 13 which seeks to reduce growth in the length and number of motorised journeys.</i></p> <p><i>3. The C1 access lane road by reason of its restricted width, poor alignment and sub-standard junction with the A429 and the C33 is considered unsuitable to serve as a means of access to the proposed development.”</i></p>	
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5. Proposal

Planning permission is sought for the change of use of land to a caravan site for occupation by six Gypsy and Traveller Families with associated works. The associated works in this instance comprise the provision of three day/utility rooms on the three plots (at this stage) along the southern part of the site, hardstanding, erection of fencing and the installation of a Klargestor Biodisc sewage treatment plant.

Works commenced on the site in 2009 in the form of hardstanding with fences and walls together with one utility block. Touring caravans are intermittently present on the site. To this extent the change of use and some of the works are retrospective.

Since the application was submitted there have been revisions to the proposed access arrangements, including an elevated grass verge following discussions with highways officers.

The proposal will provide a site for an extended family who travel as one to provide support for one another and comprise both elderly relatives and children

6. Consultations

Hullavington Parish Council –re-emphasises its concerns the same as with previous application and strongly request the planners to refuse the application and refute the suggestion that the road is the only cause for concern, for the following reasons:

- Development was previously refused for a single dwelling
- Sporadic and remote development, outside the red line, would create unwelcome precedent
- Area susceptible to flooding, with water pooling both on the road and within the site, with implications for contamination from septic tanks, despite what is stated on the revised application
- Dangerous access to C31
- No pavement to C31
- Electricity connections – noise and contamination objections if generator is used
- Contamination of land – Wiltshire Council has reported contamination of land – particularly asbestos

Senior Highways Engineer – *“It is generally assumed that the highway boundary extends to the centreline of the hedge and this is reflected in our highway records. At the site entrance I consider that the highway boundary is 2.4m from the edge of carriageway. The carriageway width is 4.3m. Any new gate will need to be set back behind the highway boundary. The existing brick pillars are located on the highway and would need to be removed.*

This means that a total distance of 6.6m will exist between the gates and the far side of the carriageway, easily sufficient space for a vehicle to make the undesired turn, even with the suggested mounding of the opposing verge. To prevent this, high kerbs (eg Marshalls Titan) will need to be installed along the exit line between the gate and the carriageway edge, together with suitable end treatments, and the verge built up behind the kerb. In my opinion this, together with the submitted mounding of the opposing verge, would be sufficient to prevent the right turn out of the site.

As a suitable solution is available a Grampian condition would be reasonable. I would suggest 2 months for submission of details and completion within 2 months of approval of those details. A legal agreement would not be required as we have a simple licensing arrangement for minor works of this nature. However any contractor would need to have the necessary roadworks certification together with adequate third party liability insurance and the license would not be issued without proof of these.”

Spatial Planning – detailed comments are on the file and website. Comments are incorporated within this report.

The conclusions state: In conclusion, permitting 6 pitches at Rose Field would be consistent with adopted policies in the North Wiltshire Local Plan and Wiltshire and Swindon Structure Plan. In relation to Circular 01/06 there are questions outstanding about the site in relation to safe pedestrian and vehicular access and the availability of GP or other health services. These same outstanding issues arise in relation to the emerging core strategy policy. **If safe pedestrian and vehicular access cannot be achieved the site would be contrary to national guidance and emerging core strategy policy and should be refused.** If safe and convenient pedestrian and vehicular access can be achieved occupants of the site do not have access to GP or other health services in Hullavington.

Circular 01/06 also brings in the question of the existing level of provision and need for sites in the area. In relation to the proposed changes to the South West Regional Spatial strategy need in the north Wiltshire area has been met for the period 2006 to 2011. In relation to the emerging policy in the Wiltshire Core Strategy there is an outstanding need for 9 pitches in the west HMA. This site could contribute to this outstanding need if it is in the right location. However, there remains uncertainty as to whether the right range of services and facilities are available to the occupants within an acceptable distance of the site. This will only become clear as the detailed methodology for the selection of sites is developed through the Gypsies and Travellers site allocations DPD. **If, therefore, issues in relation to safe pedestrian and vehicular access to the site can be resolved, it is recommended that a temporary permission for 3 years is granted. In this way the site could be assessed as part of the emerging development plan process.**

These comments have not considered the question of over development on the site in relation to DCLG *Designing Gypsy and Traveller Sites – Good Practice Guide* (May 2008)

It should be noted that these comments were made prior to the receipt of an appeal decision allowing 3 pitches (8 caravans) at Littleton, Semington (adjacent to the West Wiltshire Crematorium). An addendum to the comments was requested in light of the above appeal decision and this is also on the file and website and confirms that the recommendation is not altered. The Semington appeal and costs decisions are contained in Appendix II to this report.

Environmental Health Officer – no comments from a public health or health protection perspective. I note that the proposal needs to be connected to the water supply and that it proposes to use a septic tank. The use of a septic tank would be subject to the Environment Agency approval and I would raise no objections subject to their agreement. There is no record of contaminated land but as it has been raised by local residents, this matter should be conditioned.

Land Drainage Engineer – new surface water flood risk mapping confirms part of the site is susceptible to shallow flooding and relates to 1:30 year events and 1 in 200 year events both shallow and deep. Soakaways must be designed properly in accordance with DB 365 Soak Away Design and I would recommend that the caravans are elevated. The 1:200 year shows most of the area affected by shallow flooding to be located within the adjacent roads.

Wessex Water – Have confirmed that the site is in a non-sewered area and that a connection to the water mains is required. Discussions with Wessex Water have confirmed that the applicant is in discussions with regards a connection to the system some 1000 metres distance but no further discussions, actions have taken place to establish the costs of the connection and its viability.

Environment Agency – no objections.

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

8 letters of objection have been received on the following grounds:

- Isolated development in the open countryside
- Flooding/drainage
- Highway safety and practicalities of access arrangements
- Area not scheduled for development
- Photographs of the site not how the site is now
- Application same as previous refusal
- Previous refusals shouldn't even be considered
- If approved it should be subject to a S106 agreement like all other developments
- Approval would set a precedent
- Contamination on the land
- Electricity connection or use of generators
- Function/features of day/utility rooms
- Inaccuracies in the design and access statement
- No indication of the number of people on the site
- Clarification of a mix of fencing on the site
- Provision for 24 cars on the site is excessive

8. Policy Context

Current Policy and Advice:

- PPS3 Housing June 2011
- Circular 01/06 Planning for Gypsy and Travellers
- Wiltshire and Swindon Structure Plan 2016 – saved Policy DP15
- North Wiltshire Local Plan 2011 – saved Policy H9

Emerging Policy – material considerations:

- PPS Planning For Traveller Sites Consultation Draft – Summer 2011
- National Planning Policy Framework Consultation Draft – Summer 2011

- Gypsy and Traveller Site Allocations DPD – Spring 2010 (A revised timetable for its production in the Wiltshire Local Development Scheme 2011-2014 approved by Cabinet on 15 November 2011. Anticipated adoption is now anticipated early 2014.)
- Wiltshire Core Strategy Pre-Submission Draft– Policy 47

9. Planning Considerations

Status of the Development Plan and relevant policies therein

In accordance with S38(6) of the Planning Act, applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan which covers the site comprises the “saved” Policies C3, NE15 and H9 of the North Wiltshire Local Plan 2011 and the “saved” Policy DP15 of the Wiltshire and Swindon Structure Plan 2016. There can be no denying that the application does not accord with these policies as this case has been presented as part of the previous appeal for this site.

Since the 2009 appeal for this site together with the more recent applications permitted at Calcutt Park and Purdy’s Farm (November 2011), the Wiltshire Core Strategy has advanced with a Pre-Submission Draft currently the subject of public consultation which ends 2 April 2011. In terms of evidence base for ascertaining housing and pitch numbers, this is considered to be the most up to date evidence with Topic Paper 16 providing further background in respect of the evidence base and justification for the pitch numbers.

As the Core Strategy is in the form it will be when submitted to the Secretary of State and has been the subject of considerable consultation already, it is considered that considerable weight should be attached to it not only as an evidence base but in policy terms given it reflect the direction of travel of current Government thinking which include the presumption in favour of sustainable development, plan-led development and the calculation of locally derived housing and pitch numbers. The weight to be attached to the Core Strategy is being advanced for major housing proposals the subject of appeals in the north of Wiltshire at this time. A consistent approach should be applied to Gypsy and Traveller pitches also.

Core Policy 47 “Meeting the needs of Gypsies and Travellers” identifies pitch provision across the Housing Market Areas for the period 2011-2021 (in phases i.e. 2011-2016 etc). In addition the policy confirms that planning permission for Gypsy and Traveller pitches will only be granted where there is no conflict with other planning policies and where no barrier to development exists. New development should be located in sustainable locations, with preference generally given to a number of criteria identified as:

i. no significant barriers to development exist in terms of flooding, poor drainage, poor ground stability or proximity to other hazardous land or installation where conventional housing would not be suitable

ii. it is served by a safe and convenient vehicular and pedestrian access. The proposal should not result in significant hazard to other road users

iii. the site can be properly serviced and is supplied with essential services, such as water, power, sewerage and drainage, and waste disposal. The site must also be large enough to provide adequate vehicle parking, including circulation space, along with residential amenity and play areas

iv. it is located in or near to existing settlements within reasonable distance of a range of local services and community facilities, in particular schools and essential health services. This will be defined in detail in the methodology outlined in the Site Allocations DPD, and

v. it will not have an unacceptable impact on the character and appearance of the landscape and the amenity of neighbouring properties, and is sensitively designed to mitigate any impact on its surroundings.”

The criteria are broadly considered in the remainder of this report below.

Need

The identified need for Gypsy and Traveller pitches in Wiltshire was outlined in the draft Regional Spatial Strategy for the South West for the period to 2011 only. The number of pitches for Wiltshire was increased by 40 to 85 with 48 to be provided in the north and 14 in the west.

The Gypsy and Traveller Topic Paper 16 forms the evidence base to Core Policy 47.

Need for the period 2006 – 2011 has been met for north Wiltshire. Existing Structure and Local Plan policies provide no specific numbers of pitches to be provided.

The emerging Core Strategy in Core Policy 47 and the associated supporting text confirms the need for the West Housing Market Area ((HMA), in which both north Wiltshire as well as the application site falls), as being 9 pitches for the period 2011-2016.

The Gypsy and Traveller Topic Paper 16 sets out the reasoning and justification for the number of pitches which have been calculated taking into account all permissions to the end of November 2011.

The recent decision at Semington, referred to above, leaves two applications (including this one) currently pending which amount to a total number of 7 pitches for an outstanding need of 5 pitches in the total HMA area to 2016.

The other Gypsy site currently pending is at Frampton Farm for 2 pitches for extended family proposed as an extension to a single pitch site allowed at appeal (09/01033S73A relates). At the time of preparing this report, there is an in principle approval for two additional pitches at this location (which accords with emerging site selection criteria in the DPD as well as being an expansion site rather than a new site) subject to amendments to the proposed combined day room as it is considered to be excessive at this stage. Based on this “in principle” support for pitches at a location which accorded with emerging DPD site search criteria, the number of pitches for the HMA is reduced to five.

It is accepted that at this juncture, there is no 5 year supply of as required in the draft PPS for Gypsy and Travellers (which refers to PPS3 Housing) however the Gypsy and Travellers Site Allocation DPD is the appropriate mechanism to provide for this and can deliver that supply albeit towards the end of that 5 year period. The DPD will be prepared to add policy detail to the interpretation and implementation of Core Policy 47. However, it should be noted that a site at Chelworth Lodge benefits from an extant permission for 10 pitches allowed at appeal subject to conditions being discharged.

The timetable for adoption is not until 2014. The time period for adoption is of significance since the recent Semington appeal decision for 3 permanent Gypsy pitches in west Wiltshire confirms at paragraph 44 that the DPD is *“at an early stage of preparation. Delays for various reasons mean that the Council does not anticipate adoption until 2014. There is then likely to be a further delay until sites are provided. I consider the appellants estimate of sites not coming forward until 2015 not to be unreasonable, especially as further slippage could easily occur in the preparation of the DPD”*.

However, it is considered pertinent to note that this decision was against a backdrop of considerable unmet historical need to 2011 but also to 2016 (10-14 pitches referred to in the decision).

It cannot be argued that the DPD carries the same weight as the Core Strategy due to lack of progression. However, it is considered to be an important material consideration in the appropriate plan-led delivery of pitch numbers which has a bearing on matters covered below since it is consistent with the plan-led approach strongly advocated in the draft National Planning Policy Framework.

Notwithstanding that limited weight can be attached to the DPD based on the Semington appeal decision, the need is not now considered to be so significant and immediate so as to dismiss the materiality of the DPD in the decision making process.

Prematurity

The Core Strategy and its supporting documents, in this case the emerging Gypsy and Travellers Site Allocation Document provides the only appropriate policy mechanism in terms of the allocation of Gypsy and Traveller Pitches which accord with site selection criteria.

The comments of the Inspector for the Semington appeal in respect of prematurity were as follows:

“49. The Council says that granting permission could prejudice the emerging Gypsy and Traveller Site Allocations Development Plan Document (DPD) by contradicting the criteria that the Council is putting forward for considering such sites and thus undermining the credibility of the emerging Policy.

50. I have dealt above with my concerns on refusing permission in circumstances where there is a need for development of this kind and the DPD is unlikely to result in the provision of sites for another 3 years.

51. Moreover, Government Guidance in The Planning System: General Principles is that refusal of planning permission on grounds of prematurity will not usually be justified. Justification for such a decision would only exist where the proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the DPD.

52. In this case the proposed development is small scale and the Council has not clearly demonstrated how the cumulative effect of such development would be sufficient to prejudice the outcome of the DPD process.

53. Nor has the Council provided substantial justification for its view that granting permission would undermine the credibility of the emerging DPD. Giving limited weight to this document does not undermine its credibility. It is merely a function of the relatively early stage it has reached in the plan preparation process.

54. It is therefore concluded that the Council's concerns on prematurity are not well founded.”

It is considered that there are differences between the Semington proposal and the current application. First, the need to 2016 is now only 5 pitches and secondly, the site being 6 pitches and if approved, the development would both satisfy and exceed the need to 2016 in a location not fully compliant with the emerging site search criteria not least given its location 1.2 miles outside of Hullavington. At present this distance would preclude it from further consideration as part of the DPD process.

Thus, in this instance it is considered that a refusal on prematurity grounds could be justified in accordance with guidance contained in “The Planning System: General Principles” since in the context of outstanding need, the proposed development is so substantial that it would exceed the need to 2016 to the exclusion of all other sites which may be more appropriate located.

However, as will be evidenced below, given the proposal is compliant with the current development plan and Government guidance (as with the Semington appeal), it would be unreasonable to refuse the application solely for this reason. Accordingly, for reasons below it is recommended to grant a temporary permission

Draining and flooding

Neither the EA nor the Council's Drainage Engineer raises objections to the proposed development. A permit or exemption is required from the EA in respect of the proposed septic tank and building regulations approval is required for installation. However, further discussion with the Council's drainage engineer confirms that a septic tank would not function on this site and that a cess pit is required for foul disposal, details of which should be conditions.

In terms of surface water disposal, it is considered having regard to soil types in this location and the possibility of very limited surface water flooding (Surface water mapping produced in July 2009 shows that the in a 1:30 year event the two pitches in the north west corner together with the septic tank could be prone to shallow flooding (200-300mm on the road)) details of foul drainage should be conditioned in the event of an approval.

The Engineer recommends that caravans are elevated marginally in the event of such flooding, this can be achieved through the provision of hardstandings on which the caravans would be sited in any event.

Soakaways need to be specifically designed given the soil type in this location and a condition is recommended to secure these details, if possible prior to formal occupation, or if not fully occupied before further occupation. The final alternative being within a specific time period from the date of any permission.

It should be noted that satisfactory foul and surface water drainage would need to be provided for the applicants to obtain a Caravan Site License for occupation of the site.

Pedestrian and highway safety

The comments of the Core Strategy Manager stating that if safe pedestrian access and vehicular access cannot be achieved the site would be contrary to national guidance and emerging core strategy policy and should be refused are noted.

However, in terms of pedestrian safety, this was not a concern presented as part of the Council's case for the previous appeal nor was it a concern of the Inspector who could have taken it into account given third party objections raised in this respect. There has been no material change in respect of pedestrian access at the site and routes to the village.

Whilst the use of the land would comply with the locational principles of Circular 01/2006 (as discussed in more detail below), pedestrian safety is a proposed criteria to be scored as part of the site selection criteria of the emerging DPD. The site would not receive a favourable score in respect of safe pedestrian access but would not be prohibited from selection either.

Notwithstanding the DPD, the proposal would clearly conflict with criteria ii) of Core Policy 47.

Having regard to the Semington appeal, there is no evidence to substantiate any pedestrian safety objection in respect of this proposal.

In relation to highway safety, the Senior Highways Engineer is satisfied that with appropriate conditions, highways concerns could be overcome.

Highway safety was the sole reason for refusal of the previous appeal and as a solution is available via condition, no objection is now raised on highway safety grounds.

Services and site amenity

The site is not currently connected to either water or electricity however, these are being investigated by the applicant. Discussions directly with Wessex Water do not suggest that this is not feasible but off-site connection on third party land is needed. It is not known whether the costs of connection are prohibitive for this development and requests for this information from the applicant have been sought to no avail at the time of writing this report. However, based upon site search criteria this would not prohibit further consideration, just that no score would be attributable to this issue.

The site is adequate to provide onsite parking and circulation space with each pitch having its own amenity space.

The site layout accords with good practice guidance.

Various aspects of site amenity are also covered by the Caravan Site License in terms of water supply and spacing between pitches.

Sustainability/Location of development

It is well established that there can be no objection in principle to gypsy and traveller sites in the countryside, it follows that such sites will not always be located in the most sustainable of locations. Paragraph 54 of Circular 01/2006 states: "*in assessing the suitability of such sites, local authorities should be realistic about the availability, or likely availability, of alternatives to the car in accessing local services.*" (Officer emphasis).

Policy H9 of the Local Plan requires such sites to have "*reasonable access to local community facilities and services...*" (Officer emphasis).

Paragraph 64 of the Circular stresses that whilst sustainability is important, it is not to be solely considered in terms of transport mode and distances from services. Other considerations are integration within the community; wider benefits of easier access to GP and other health services, children attending school on a regular basis and the provision of a settled base to reduce the need for long distance travelling.

This paragraph has been consistently applied in terms of all appeal decisions within the former North Wiltshire District Council area over the past 5 years including the most recent appeal decision at Bridge Paddocks. Further sites have been approved at Committee as well as under delegated powers given compliance with the Circular in this respect.

The recent appeal decision at Semington gives considerable weight to compliance with the Circular with no regard to the site selection criteria contained within the emerging DPD and notwithstanding need or otherwise.

No objection was raised to the previous application on this ground and as nothing has changed, it would be unreasonable to do so at this juncture, the proposal thus cannot be considered to be contrary to criteria iv) since reasonable distance is to be defined by the emerging DPD and that proposed within the DPD at present has been the subject of concern and objection.

Character and Appearance of the Area/Residential Amenity

As mentioned above and well documented in recent appeal decisions, there can be no objection in principle to a Gypsy site in the countryside based on Circular 01/06.

The previous proposal was considered acceptable in landscape terms by both the Council and the Inspector at appeal.

It is not considered that the elevation of the caravans would significantly alter this and in any event the principle of elevating caravans in the open countryside has been established at Chelworth Lodge as part of flood mitigation measures.

No residents are within immediate proximity of the site and no objection has or can be raised in this respect.

Other matters

The Council's Public Protection Department has no evidence of contamination. It is thought that reference to potential contamination when officers were unsure as to what material had been used to infill the site. This reference was not based on any evidence, but merely raised as a potential issue. For the avoidance of doubt, the Environmental Health Officer has suggested condition to address this matter.

The Gypsy status of the applicants is not contested and it is accepted that the family travelling as a whole provides the necessary support for one another as was the case with the previous appeal. There are health care issues with elderly relatives and young children some of whom are understood to be in attendance at the nearby school. Moving children from their current primary education as a consequence of a refusal would be disruptive to their education, a fact confirmed by the Head Teacher for the last appeal.

Human Rights

In determining this application the Committee is required to have regards to the Human Rights Act 1998, in particular Article 8 and Article 1 of the First Protocol, which confer rights of respect for a person's private life, home and possessions. Any interference in those rights by a public authority must be lawful and proportionate. This involves balancing the interests of all parties involved and taking into account the public interest in the proper application of planning policies.

A refusal of permission would be likely to result in their eviction from the site thus interfering with their homes and private and family life. In particular, and as with the last appeal, it could result in the loss of their homes with no satisfactory alternative.

Having regard to the matters above, and given that the sole reason for refusal for the last application and reason for dismissal at appeal in relation to highway safety can be overcome via condition, a refusal which would have no substance and in the absence of any other alternative sites, would have disproportionate effect on the appellant and other site occupants. A temporary permission given that outstanding need within the northern area of the west HMA, as well as the west HMA overall, is not so significant to 2016, would be proportionate and justified to allow the Council through the plan-led DPD mechanism to consider other potential sites. This it is not considered that there would be a violation of Human Rights.

9. Conclusion

There are numerous material considerations in the determination of this application which comprise previous appeal decisions, Government advice, as well as the emerging Wiltshire Core Strategy.

Based on compliance of the site with the current development plan and Government guidance and in light of various appeal decisions, it would be wholly unreasonable to refuse planning permission. These adopted documents must take precedence at this time over the unadopted Core Strategy and thus precludes a reason for refusal based solely on prematurity at this time.

Since and including the approval Semington appeal, further pitches have and are to be granted permanent permissions reducing the need significantly in the west HMA to 2016 to 5 pitches. The application site would meet the outstanding need with little or no opportunity for other sites to be

considered either as part of the DPD process or which may come forward outside of this process but more appropriately located.

In light of this limited outstanding need, which principally should be considered in the context of the west Wiltshire area of the west HMA, a temporary permission would be justified. The reasons being to allow the advancement of Core Policy 47 for consideration by the Secretary of State in terms of pitch numbers as well as the criteria contained within the policy as well as to allow the progression of the DPD. The comments of the Inspector are note regarding the delivery of sites not until 2015 after the DPD has been adopted, however, in the event that sites were to come forward compliant with an advanced stage of that document and subject to need at that time, it would be difficult for the Council to not refuse such an application and the actual delivery of that site could be very swift, particularly if it were a private site.

10. Recommendation

Planning Permission be GRANTED for the following reason:

The proposed development is considered to be acceptable based on its scale and nature which will limit impact on the character and amenity of the locality, residential amenities and highway safety in accordance with current National guidance contained in PPS3 "Housing" and Circular 01/2006 together with the "saved" policies DP15 and Policy H9 of the adopted Wiltshire and Swindon Structure Plan 2016 and North Wiltshire Local Plan 2011 respectively. However, there are aspects of the proposal in respect of location and accessibility which do not accord with emerging Core Strategy Policy 47 and the site search criteria contained in the emerging Gypsy and Traveller Site Allocations DPD and in the absence of significant outstanding need for the period to 2016, a temporary permission would be justified to allow full consideration of these documents and the policies and criteria contained therein.

Subject to the following conditions:

1. The use hereby permitted shall be for a limited period being the period 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use shall be removed, and the land restored to its former condition, or such condition as may be authorised by any other extant planning permission.

REASON: Site and site selection criteria are being considered as part of the Core Strategy Pre-Submission Draft February 2012 Core Policy 47 as well as the emerging Gypsy and Traveller Site Allocations DPD. A permanent permission in advance of this process with no significant outstanding need to 2016 would be premature and a temporary permission in this instance would accord with advice contained in Circular 01/2006 "Planning for Gypsy and Traveller Caravan Sites".

2. Notwithstanding the details submitted, within 2 months of this permission, details of the access arrangements in accordance with the Senior Highway Engineer's email of 31 January 2012 shall be submitted to and approved in writing by the Local Planning Authority. The details shall be then implemented and completed within two months of that approval.

REASON: In the interests of highway safety.

3. Within 2 months of this decision the turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

4. The site shall not be permanently occupied by persons other than Gypsies and Travellers as defined in paragraph 15 of ODPM Circular 01/2006.

REASON: Planning permission has only been granted on the basis of a demonstrated unmet need for accommodation for gypsies and travellers and it is therefore necessary to keep the site available to meet that need.

5. Within three months of this permission an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with to the satisfaction of the Local Planning Authority:

Step (i) A written report has been submitted to and approved by the Local Planning Authority which shall include details of the previous uses of the site for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site.

Step (ii) If the above report indicates that contamination may be present on or under the site, or if evidence of contamination is found, a more detailed site investigation and risk assessment has been carried out in accordance with DEFRA and Environment Agency's "Model Procedures for the Management of Land Contamination CLR11" and other authoritative guidance and a report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority.

Step (iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details have been submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or in accordance with a timetable that has been agreed in writing by the Local Planning Authority as part of the approved remediation scheme. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

REASON: To ensure that land contamination can be dealt with adequately prior to the use of the site hereby approved by the Local Planning Authority.

6. Notwithstanding the details submitted, within 3 months of the date of this permission details shall be submitted and approved in respect of surface water and foul sewage disposal . The development shall be undertaken and implemented in accordance with those details within 2 months of their approval.

REASON: In the interests of the amenity of occupants of the site.

7. There shall be no more than six pitches on the site.

REASON: In the interests of visual amenity and the amenity of the occupants on the site.

8. There shall be no more than twelve (12) caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which no more than six (6) shall be a static caravan or mobile home and no more than six (6) shall be a touring caravan, shall be stationed on the site at any time.

REASON: It is important for the local planning authority to retain control over the number of caravans on the site in order to safeguard interests of visual and residential amenity in accordance with policies C3, NE15 and H9 of the North Wiltshire Local Plan 2011.

9. No more than six commercial vehicles shall be kept on the site for use by the occupiers of the caravans hereby permitted and each vehicle shall not exceed 3.5 tonnes in weight.

REASON: In the interests of residential amenity, highway safety and the character of the countryside.

10. Except for the keeping of commercial vehicles as defined in condition 9 above, no commercial activity or use, including the storage of materials and waste, shall be carried out on the site.

REASON: In the interests of residential amenity, highway safety and the character of the countryside.

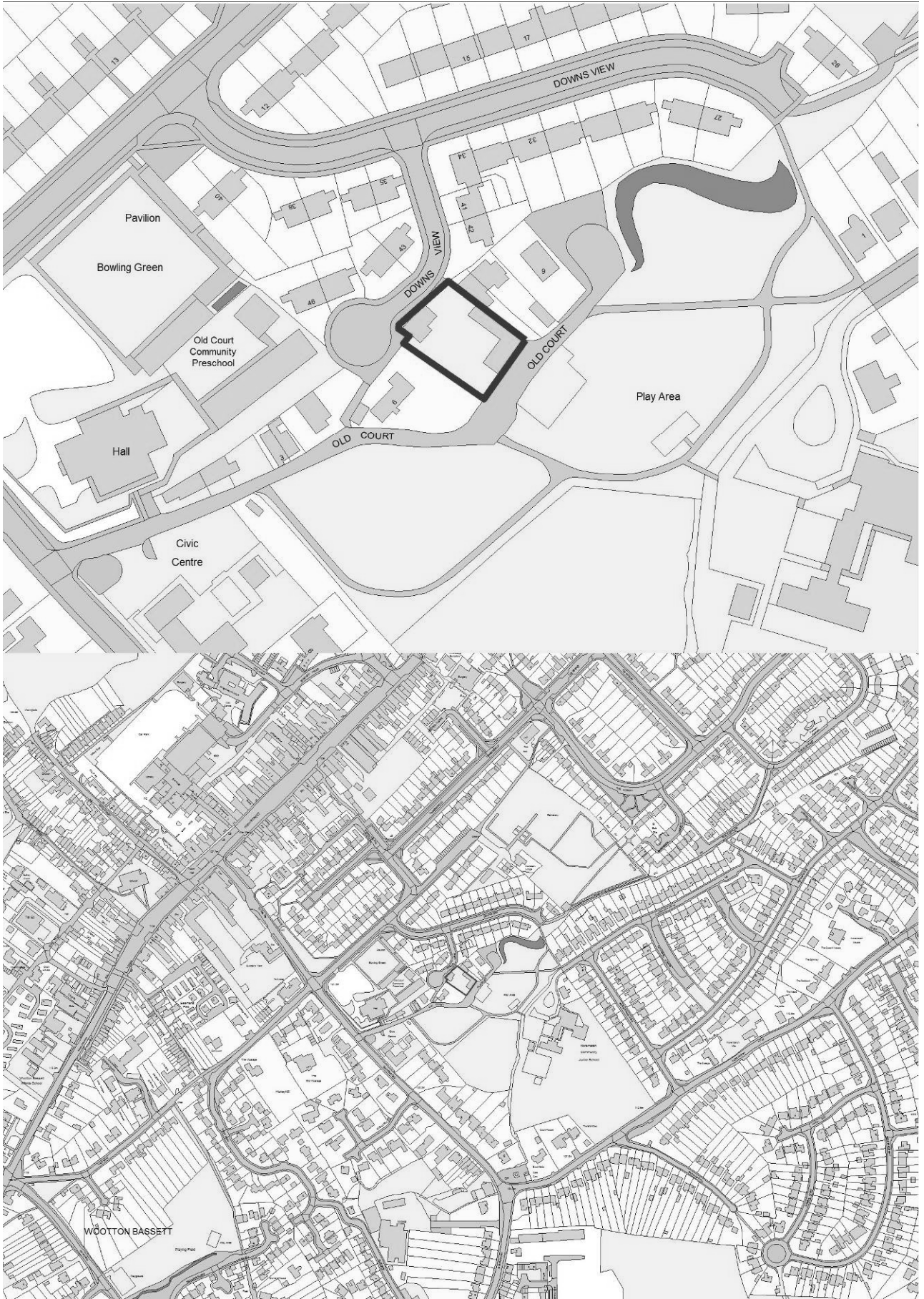
11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site.

REASON: To safeguard the character and appearance of the area.

12. The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the local planning authority. Amendments may require the submission of a further application.

RF01, 02, 03, 04, 05, 06 dated 24 November 2011

REASON: To ensure that the development is implemented as approved.



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Appeal Decisions

Hearing held on 15 June 2010

Site visit made on 15 June 2010

by **Wendy McKay LLB**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
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Temple Quay House
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Bristol BS1 6PN

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Decision date:
23 July 2010

Appeals A, B, C, D, E, F and G Refs:

APP/Y3940/C/10/2123625/6/7/8/9/30 & 2124063

Land at Rose Field, Hullavington, Chippenham, SN16 0HW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr & Mrs T Tomney, Ms A Hanrahan, Mr F Reynolds, Mr P Price, Mr J McCann and Mr P Hanrahan against an enforcement notice issued by Wiltshire Council.
- The Council's reference is 09/091/ENF.
- The notice was issued on 25 January 2010.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land, to a use for the siting and occupation of residential caravans.
- The requirements of the notice are: a) Cease the residential use and remove from the land all caravans and any ancillary buildings and fences; b) Remove from the land, to a depth of at least 500mm, all hardsurfacing material that forms the hardsurface area; c) Remove all debris resulting from the requirements of 5a and 5b of this notice from the land.
- The period for compliance with the requirements is six months.
- The appeal made by Mr T Tomney is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
- The appeals made by the other appellants are proceedings on the ground set out in section (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees for these appeals have not been paid within the specified period, the applications for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal H Ref: APP/A/10/2123624/NWF

Rose Field, Hullavington, Chippenham, SN16 0HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr T Tomney against the decision of Wiltshire Council.
- The application Ref N/09/01934/FUL, dated 25 October 2009, was refused by notice dated 4 December 2009.
- The development proposed is the change of use to a caravan site for occupation by six Gypsy/Traveller families with associated works (eg hardstanding, utility buildings and package treatment plant).

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The appellant points out that the requirements of the notice are for the caravans, hardcore, ancillary buildings and fencing to be removed, but there is no reference to the ancillary buildings or fencing in the alleged breach of planning control set out in paragraph 3 of the notice. Although the ancillary buildings and fencing are not specifically referred to in the alleged breach, S173(5) of the 1990 Act gives power to require the alteration or removal of any buildings or works, or the carrying out of building or other operations, for the purposes of remedying the breach. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, so that the land is restored to its condition before the breach took place. Since the ancillary buildings and fencing represent such facilitating works, it is not necessary for them to be referred to in the allegation. I do not find the notice to be defective or requiring correction in this respect.

Appeals A and H - The appeal on ground (a), the section 78 appeal and the deemed application for planning permission

The Main Issue

2. The main issue is the effect that any increased traffic generated by the development would have on the safety of people using the public highway.

Reasons

3. The Council's sole objection to the development is on highway safety grounds. There is no dispute that the appellants are bona fide Gypsies and that they have health and educational needs. The Council accepts that, apart from the matter of highway safety, the site would accord with the locational requirements set out in Circular 01/2006.
4. The site is accessed off a Class 3 road known as the C1n which has a junction with the A429 to the north and the southern leg of the C1 (the "C1s") to the west which, itself, forms a further link south to the A429. The objection relates to the junctions at both ends of the C1n, particularly that with the A429 which is a National Primary Route. Traffic volumes on the A429 are high with a two-way Annual Average Weekday total of 13350 vehicles (2008). In the vicinity of its junction with the C1n, the A429 has a width of about 7m and has double white line central markings. All the roads in the immediate locality are subject to the national speed limit.

The A429/C1n junction

5. The Council relies upon TD 42/95 for guidance in respect of visibility splays. This advises that for a road speed of 100kph (62mph) a 'y' distance of 215m is required. For the 'x' distance, 9m is required, although this may be relaxed to 4.5m or 2.4m "*in exceptionally difficult circumstances*". The Council accepts that given the proximity of the railway bridge on the A429, the latter relaxation is appropriate at this junction. The guidance in 'Manual for Streets' ("MfS") is that "*an 'x' distance of 2.4m should normally be used, as this represents a reasonable maximum distance between the front of the car and the driver's eye*". It goes on to state in paragraph 7.7.7 that "*a minimum figure of 2m may*

be considered in some very lightly-trafficked and slow-speed situations". It explains that using this value will mean that the front of some vehicles will protrude slightly into the running carriageway of the major arm. I recognise that vehicles approaching the junction from the right (south) should be able to see this overhang from a reasonable distance. However, I consider that the volume and speed of traffic on the A429 are such that the ability of drivers and cyclists to manoeuvre around any overhanging vehicles is likely to be compromised. I do not believe that a 2m 'x' distance should be applied in this situation, even taking into account the proposed 3.5 tonne limit on vehicles kept at the site. In my view, the appropriate visibility standard for this junction would be a splay of 2.4m by 215m in each direction.

6. The parties have agreed the measured visibility splays at the junction. Whereas visibility to the right (south) meets the required standard, the visibility to the left (north) is seriously deficient, with only 2.4m by 11m being available. This is due to the abutment of Kingway Bridge immediately adjacent to the edge of the carriageway. Even if an 'x' distance of 2m had been adopted the 'y' distance would only increase to 16m. These are the measurements when the 'y' distance is taken to a point on the nearer edge of the major road. The advice in MfS paragraph 7.7.5 is that where it is unlikely that vehicles approaching from the left on the main arm will cross the centreline of the main arm, the visibility splay to the left can be measured to the centreline of the main arm. However, MfS focuses on lightly-trafficked residential streets. Whilst many of its key principles may be applicable to other types of streets, for example high streets and lightly-trafficked lanes in rural areas, the A429 is a very busy road subject to the national speed limit at this point. I do not believe that it would be fitting to apply the MfS relaxation in this situation. Furthermore, although there are double white lines on the main road at this point, there is no physical segregation of the opposing flows. In my opinion, it would not be appropriate to rely on vehicles adhering to the road markings and thus measure visibility from the centreline in this particular location.
7. The appellant contends that the junction and users of it are clearly visible to both north and southbound vehicles and urges the adoption of a practical approach to the available visibility. However, it seems to me that the dip in the vertical alignment of the A429 under the railway bridge and the existing accesses onto the road to north of the bridge make it all the more important that the 'y' distance is measured along the road edge. In any event, even if the 'y' distance is measured from the centreline, only 69m is available to the left with an 'x' distance of 2.4m. In my view, visibility to the left at the junction is so reduced that danger is likely to be caused. The forward visibility available to drivers of vehicles approaching the junction on the main road does not dissuade me from this view.
8. The appellant has assessed the likely traffic generation of a Gypsy site comprising 6 pitches by reference to the TRICS database. The daily traffic (two-way) would be some 42 to 60 vehicles per day with peak two-way flows of 4 to 6 vehicles. The appellant indicates that some 90% of the traffic generated by the development would pass through the A429/C1n junction with 70% going north to and from Malmesbury and 30% towards the south and the M4/Chippenham. The appellant has undertaken a traffic count on the C1n past the site access which indicates typical off-peak traffic flows of 21 vehicles two-

way and p.m. peak traffic flows of 34 vehicles. The addition of two to three vehicles per hour at the peak hours would amount to a 6% to 9% impact. The appellant acknowledges that a 5% impact is normally regarded as 'material' but submits that, given the low traffic flows in this case, the increase in traffic would not adversely effect the operation of the C1n. He contends that the traffic increase can only be regarded as modest with no significant impact on the local highway network.

9. The appellant also points out that the site has been used as a Gypsy caravan site since April 2009, and since then there have been no accidents associated with the site access nor any accidents associated with the occupants of the site or their visitors on the local highway network including at the C1n junctions with the A429 and the C1s. Nevertheless, the recorded personal injury accidents for the last 10 years show that a total of 10 accidents in the vicinity have been recorded, with some being related to turning movements at the junction, and others being related to the bridge or other factors. The analysis of those accidents suggests that the forward visibility for southbound traffic on the A429 may well be adversely affected by the dip in the main road alignment as it crosses under the rail line. The accidents in the vicinity of the junction have occurred even though the side road has been lightly trafficked.
10. Whilst I accept that traffic flows along the C1n would remain at a low level in absolute terms, the traffic generated by the development would indeed represent a material increase in the traffic using that road. I also appreciate that of the 90% of vehicles or thereabouts that would be turning right out of the appeal site, the particular concern would only be with those 30% of vehicles which would be turning right onto the A429 towards the south. Nonetheless, given the inherent deficiencies in the road network in the vicinity of the junction, I consider that any increase in traffic using the C1n at this point would be unacceptable in terms of the increased risk to the safety of people using the public highway.

The C1n/C1s Junction

11. The Council considers visibility splays of 2.4m by 120m would be acceptable at this junction. The measured visibility splays show that to the left (south) the splays would be some 2m by 35m and 2.4m by 33m respectively, when measured to the nearside edge of the carriageway.
12. The appellant submits that approaching vehicles would have adequate visibility of the turning intentions of vehicles waiting to turn left out of the junction from some distance away so that safety would not be unduly compromised. The Council contends that, given the bend in the road to the south of the junction, forward visibility for vehicles approaching from the south would not be nearly as generous as the appellant suggests. TD42/95 advises that it is essential that minor road drivers have adequate visibility in each direction to see the oncoming major road traffic in sufficient time to make their manoeuvres safely. It is clear that whilst visibility at the junction to the right (north) for the minor road driver is of an acceptable standard, the visibility to the left (south) is substandard.
13. The appellant indicates that about 10% of the traffic going to and from the appeal site would use this junction. He contends that the additional impact of

some 2 to 3 vehicles a day would not be significant. However, even if an 'x' distance of 2m is taken as being acceptable for these rural lanes, the visibility to the left for vehicles turning out of the junction is seriously deficient. Whilst there have been no personal injury accidents recorded at the junction, the potential for such accidents to occur must exist where there are such inadequacies in the configuration of the junction and the likelihood of such accidents taking place must inevitably increase as more vehicles attempt this manoeuvre. Although the development would only give rise to modest additional daily vehicle movements at this junction, I believe that the impact would be material in highway safety terms and should be avoided.

Other material considerations

14. The adopted North Wiltshire Local Plan 2011 Policy H9 permits the use of land for the stationing of residential caravans occupied by Gypsies provided that it has reasonable access to local community facilities and services; and it would not unreasonably prejudice the amenities of neighbouring residential occupiers and land. The Council's emerging Gypsy and Traveller Site Allocations Development Plan Document is anticipated to be adopted by late 2011/early 2012.
15. In the light of the Development Plan policy background and national guidance, the Council raises no objection, in principle, to the provision of a Gypsy site in this rural location. This part of the countryside is not the subject of any specific designations such as Green Belt, AONB or character type. The site is well-screened by existing vegetation and further planting could be undertaken pursuant to a landscaping condition to mitigate the impact on the character and appearance of the countryside. At the hearing, the Council confirmed that there was a need for additional Gypsy sites within its area, even in the absence of the Regional Strategy. The available evidence indicates that there is a significant unmet need for Gypsy site provision within the district. Those living on the site would be able to enjoy the wider benefits of easier access to GP and other health services, children attending school on a regular basis and the provision of a settled base to reduce the need for long distance travelling. The site would meet the requirements of national guidance in terms of sustainability. The personal needs and circumstances of the site occupants also need to be taken into account. Those living on the site include people with significant health care issues, an expectant mother and young children. There are children living on the site who already attend a local school and their Head Teacher advises that moving any child to a different school during their primary education is not recommended and is known to have a detrimental effect on their education. There are no pitches on any other Gypsy sites in the district which would currently be available and suitable for the appellant and the other site occupants. The families are of limited means and are unable to buy land elsewhere. If the enforcement notice is upheld, and they are evicted from the appeal site, it is likely that they would be living "on the road".

Human Rights

16. The appellant's rights, and those of the other site occupants, under Article 8 of the European Convention on Human Rights must be taken into consideration. The dismissal of the section 78 appeal, and the upholding of the enforcement notice, would be likely to result in their eviction from the site thus interfering

with their homes and private and family life. In particular, it could result in the loss of their homes with no satisfactory alternative.

17. I have taken into account the interference with the rights of the appellant, his family and other site occupants but this must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8. The overall harm to the highway safety which I have identified is a serious objection to the development which could not be overcome by planning conditions and the legitimate aim of restricting development in such circumstances could only be safeguarded by the cessation of the use.
18. There is no site presently suitable and available for occupation by the appellant and other site occupants in the district. The lack of available alternative accommodation makes the interference more serious. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case. I shall consider whether the dismissal of the appeal would have a disproportionate effect on the appellant and other site occupants in my overall conclusions.

Overall Conclusions

19. Circular 01/2006 advises that "...*projected vehicle movements for Gypsy and Traveller sites should be assessed on an individual basis for each site. Proposals should not be rejected if they would only give rise to modest additional daily vehicle movements and/or the impact on minor roads would not be significant*". However, in this case the junctions at either end of the C1n are seriously deficient in terms of visibility. Even with the fairly low levels of traffic proposed, I believe that the adverse impact on highway safety would be material. Indeed, so far as the A429/C1n junction is concerned, there would be unacceptable harm caused to the safety of people using the public highway.
20. The eviction of the appellant and other site occupants from the site would be likely to result in enforced roadside camping. This would have implications not only for this group of Gypsies, but could also result in adverse environmental and other impacts elsewhere. The unmet need for Gypsy sites and the health and educational needs of this group are factors to which I afford substantial weight. However, the harm to highway safety which I have identified could not be satisfactorily overcome by planning conditions. The particular traffic impacts of the development are such that this would not be an appropriate location for a permanent Gypsy site. This factor, on its own, strongly outweighs the other material considerations in support of this appeal. The dismissal of this appeal would not have a disproportionate impact upon the appellant and other site occupants.

Temporary permission

21. The appellant suggests that, if for some reason the site is not found to be suitable as a permanent base, a temporary permission should be granted. Having regard to the expected timetable for the emerging DPD, he proposes that this should be for a period of 3-4 years to enable the group to pursue the grant of planning permission for another site.
22. Circular 01/2006, paragraph 45, draws attention to Circular 11/95 paragraph 110 which advises that a temporary permission may be justified where it is

expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. Circular 01/2006, paragraph 46, explains that such circumstances might arise, for example, in a case where a local planning authority is preparing its site allocations DPD. In such circumstances, local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified.

23. Circular 11/95, paragraph 109, advises that the material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for granting a temporary permission can never be that a time-limit is necessary because of the effect of the development on the amenities of the area. I do not believe that the harm to highway safety could be satisfactorily overcome by the imposition of planning conditions. This harm would be unacceptable and strongly outweighs the other material considerations, including the unmet need for Gypsy sites and the personal needs and circumstances of the appellant and other site occupants, even for the temporary period suggested. Although substantial weight must be given to the unmet need, it seems to me that the expected changes to planning circumstances that are likely to occur over the period of the temporary permission do not significantly alter the overall balance in this case. The identified harm to the safety of people using the public highway is so significant that permission should not be granted even on a temporary basis. In the circumstances, the only course open is to refuse planning permission and this represents a proportionate response.

Appeals A, B, C, D, E, F and G - The appeal on ground (g)

24. On ground (g), the appellants propose that the compliance period should be extended from 6 months to at least 12 to 18 months to give them some time to seek another site.
25. Given the advice set out in PPG18: Enforcing Planning Control, it is necessary to balance the harm caused by the unauthorised development to interests of acknowledged importance against the effect that compliance would have on the appellants' activities taking into account the time realistically needed to undertake the necessary tasks. There is no alternative site presently available to this group of Gypsies. The appellants have drawn attention to the particular difficulties that they would be likely to experience in seeking an alternative location that is suitable, available and affordable. If evicted, it is likely that they would be living "on the road" with all the inherent consequences of a roadside existence. The occupants of the site include adults with health needs, an expectant mother and children with general health and educational needs. However, the interests of this family must be balanced against the highway safety implications of the development. Whilst I have sympathy with the appellants' personal circumstances, given the harm to highway safety which I have identified in this case, I do not believe that any extension of the period for compliance could be justified. Having regard to the various relevant factors, I consider that the time for compliance with the notice is entirely reasonable. In my view, the compliance period set out in the notice represents a proportionate response that strikes a fair balance between the competing interests of the wider public interest and the individuals in this case. There would be no

violation of the rights of the appellants under Article 8 of the European Convention on Human Rights. The appeal fails on ground (g).

Formal Conclusions

Appeal A

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeals B to G

27. For the reasons given above, I consider that the appeal should not succeed.

Appeal H

28. For the reasons given above, I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A, Refs: APP/Y3940/C/10/2123625

29. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals B, C, D, E, F and G Refs: APP/Y3940/C/10/2123626/7/8/9/30 & 2124063

30. I dismiss the appeal and uphold the enforcement notice.

Appeal H Ref: APP/A/10/2123624/NWF

31. I dismiss the appeal.

Wendy McKay

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alison T Heine BSc Msc MRTPI	Planning Consultant
Mr T Tomney	Appellant
Mark Baker BSc CEng MICE FCIT FILT	Director of Mark Baker Consulting Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Tracey Smith	Area Team Leader, Wiltshire Council
Roger Witt BSc CEng MICE	Senior Development Control Engineer, Wiltshire Council

INTERESTED PERSONS:

Cllr Simon Killane	Local Councillor
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DOCUMENTS SUBMITTED AT THE HEARING

- 1 Copy letter sent by the Council notifying local people of the hearing and circulation list
- 2 Count of Gypsy and Traveller Caravans 28 January 2010
- 3 Copy letter dated 14 December 2009 from the Traveller Education Service
- 4 Copy letter dated 11 May 2010 from Wiltshire Community Health Services
- 5 Copy letter dated 6 May 2010 from University Hospitals Bristol
- 6 Bundle of Gypsy and Traveller information in response to PINS letter 4 March 2010



Appeal Decision

Inquiry opened on 1 December 2011

Site visit made on 2 December 2011

by R J Marshall LLB Dip TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 February 2012

Appeal Ref: APP/Y3940/A/11/2156159

Land adjacent West Wiltshire Crematorium, Littleton, Semington, Wiltshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Patrick Ward against the decision of Wiltshire Council.
 - The application Ref W/11/01206/FUL, dated 4 March 2011, was refused by notice dated 15 June 2011.
 - The development proposed was described as "Change of use to small private gypsy and traveller site for 3 pitches for 8 caravans and associated ancillary works and development (including hardstanding, utility blocks, drainage etc.) and associated keeping of horses".
 - The inquiry sat for 3 days on 1 and 2 December 2011 and 5 January 2012.
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Decision

1. The appeal is allowed and planning permission is granted for "Change of use to small private gypsy and traveller site for 3 pitches for 8 caravans and associated ancillary works and development (including hardstanding and drainage)" at Land adjacent West Wiltshire Crematorium, Littleton, Semington, Wiltshire in accordance with the terms of the application, Ref W/11/01206/FUL, dated 4 March 2011, subject to the conditions on the attached list.

Applications for costs

2. At the Hearing applications for costs were made by both parties against each other. They will be the subject of separate Decisions.

Preliminary matters

3. In the bullet points above the application description and site address is taken from the Council's decision notice and the grounds of appeal, rather than the application forms. It was agreed that this generally best reflects what had been applied for and more accurately gives the site location.
4. However, both parties agreed that the reference to the "associated keeping of horses" should be deleted from the application description. This is because it is sought only to graze horses, which does not require planning permission.
5. The appellant also sought to have the reference to utility blocks removed as the submitted plans do not properly show what is intended and details of their elevations have not been provided. Although utility blocks are required a separate application would be made for them in the event of this appeal being allowed.

6. The above changes would not prejudice anyone with an interest in the appeal. I held that I would determine the proposed development as so amended and this is reflected in my decision paragraph above.
7. I have also had regard to discrepancies in the application plans. However, they do not prevent a decision being made on the proposal, especially as matters such as the area for pitches and the siting of caravans may be controlled by condition.
8. At planning application stage the appellant submitted a supporting statement providing details of the health of one of the children on site. This was initially published on the Council's website and was taken into account in its decision. The Council later sought to have this at least in part removed from the public section of the file due to Data Protection Act concerns. However, the child's mother was content for the information to be in the public domain. Given this I held that it should remain publicly available and that I would have regard to it in my decision.

The appeal site and planning background

9. The appeal site is a roughly rectangular shaped area of land. It lies in a rural area to the east of a roundabout junction between the A361 and the A350. The site fronts onto the former road. To the west of the site are the grounds of a large crematorium. To the north, on the opposite side of the A361 and with intervening fields, lies the small village of Semington. The town of Trowbridge is just over 3 miles distant along the A361.
10. The site is currently occupied as a gypsy site by the appellant and his extended family. It was initially occupied unlawfully. However, in July 2008 retrospective planning permission was granted for a development expressed in similar terms to the current proposal. The permission was for a temporary period, with an expiry date of July 2011, and was made personal to the applicant and his family. The reasons given for these limitations being that the development was not appropriate on a permanent basis and that permission was only granted having regard to personal needs. The proposal before me is in effect for the continuation of the site for gypsy occupation, albeit on a permanent and unencumbered basis.

Local Policy and National Guidance on Gypsy sites

11. The proposal is for a gypsy site and undisputed evidence clearly shows the appellant and those who seek to continue occupying the site are gypsies as defined in *Circular 01/2006 Planning for Gypsy and Traveller Caravan sites*. Consequently relevant Policies regarding gypsies and travellers should be applied.
12. Two of the key Policies from the development plan are, therefore, DP15 of the *Wiltshire and Swindon Structure Plan 2016 (2006)* and CF12 of the *West Wiltshire District Plan First Alteration (2004)* which relate to gypsy sites. The Structure Plan acknowledges the need for additional caravan pitches for gypsies and Policy DP15 supports bona fide proposals for such development on suitable sites. The Local Plan seeks to ensure that adequate gypsy caravan site provision is made and Policy CF12 says proposals for such uses will be permitted in appropriate locations subject to a range of criteria being met.

13. The Council has published the *Wiltshire Core Strategy Consultation Document (2011)*. This seeks to ensure that the need for new pitches is met and contains draft Core Policy 31 on meeting the needs of gypsies and travellers. At this early stage, as the Council accepts, only limited weight can be given to this Policy. The Council is also in the process of preparing a *Gypsy and Traveller Site Allocations Development Plan Document (DPD)*. This also is at an early stage towards adoption.
14. Government guidance is contained in *Circular 01/2006*. The Council says that this now needs to be examined critically. This is because of the Secretary of State's announcement that he intends to revoke the Circular, and his recently published consultation document including a draft planning Policy Statement *Planning for traveller sites*. In this it is said that the current planning policy for gypsy sites does not work and that a new approach is needed. The substance of the consultation document gives an indication as to the Government's intentions and is thus a material consideration. However, the current Circular has yet to be revoked and the consultation may prompt amendments to the draft guidance which reduces the weight that may be given to it at this stage. Furthermore, as the Circular remains in place, I am bound still to have regard to it in determining this appeal.

Main issues

15. The main issues in this appeal are:

first, the effect of the proposal on the adjoining crematorium;

second, whether the use of the appeal site as a gypsy site constitutes an encroachment into open countryside and the impact of the proposal on the character and appearance of the surrounding area;

third, whether the site is a sufficiently sustainable location for what is proposed and whether satisfactory living conditions would be provided;

fourth, the effect of the proposal on highway safety and the free flow of traffic;

fifth, the need for the continued use of the site as proposed having regard to site provision and personal circumstances and;

sixth, are the Council's concerns on prematurity well founded.

Main Issues

Effect on adjoining land uses

16. The Council is concerned that the normal activities associated with a gypsy and traveller site, such as barking dogs, would be an unwelcome source of disturbance to mourners at the crematorium. However, although the appeal site adjoins the grounds of the crematorium the main building upon them is well removed from the boundary with the appeal site in a well landscaped setting. A substantial landscaping strip within the crematorium grounds runs alongside the boundary with the appeal site.
17. Furthermore, the current occupation of the appeal site, and the area shown on the application plans for the continued provision of pitches and the siting of caravans, is limited to its eastern end. As such it is well removed from western boundary of the site with the crematorium. The imposition of a planning

condition in the event of the appeal being allowed could ensure that this would remain the case.

18. Given the above I consider that the day to day residential occupation of the appeal site by gypsy or traveller families should cause no undue disturbance to those using the crematorium. There is, moreover, no evidence that barking dogs are a particular problem on gypsy sites or that they have been on this site. As recognised in *Circular 01/2006* noise and disturbance can sometimes arise from the movement of vehicles to and from such sites. However, given the limited size of the site, and the background noise of traffic adjoining road, such movements should not impact unduly on those seeking peace and quiet at the crematorium. Allegations by the Council that concerns had been raised in the past concerning anti-social behaviour on the site were not supported by substantial evidence.
19. The Council had initially been concerned about the impact of equestrian uses on the crematorium. However, the reference to such uses has been removed from the proposal. The intended grazing of horses could take place on any agricultural land and would be unlikely to cause unacceptable noise and disturbance.
20. It is concluded the proposal would not have a detrimental effect on the adjoining crematorium. Thus the objective of Local Plan Policy CF12 in seeking to prevent nuisance to adjoining land uses would be met.

Encroachment into countryside and effect on the character and appearance of the surrounding area

21. The appeal site is on land that was previously an undeveloped field. The use of the site as a gypsy site and attendant development is therefore an encroachment into the countryside. Local Plan Policy CF12 says that in considering proposals for gypsy sites regard should be had to such encroachment.
22. However, the area in which the appeal site lies, although reasonably attractive is not subject to any special planning constraints or designations. Government guidance in *Circular 01/2006*, which post-dates the Local Plan, says that such rural settings are acceptable in principle for gypsy sites. Thus there can be no objection to what is proposed solely on the grounds of encroachment into the countryside. Otherwise the effect would be likely to prevent any gypsy sites in rural settings.
23. Such encroachment is, though, only one factor in the Council's reason for refusal on this issue. It is also alleged that there would be an adverse impact on the character and appearance of the area.
24. Roadside bunding has been provided on the site frontage with the A361. In itself I do not find this as intrusive as alleged by some and it provides a reasonably effective screen to the area on which the pitches have been created. From the road frontage and the roundabout to the east only the uppermost parts of the caravans on these pitches are seen even with the limited planting currently on the bunds. The impact of the proposal would be similar. The eventual provision of utility blocks, to be separately applied for, need be no more intrusive if of a scale and type common to most gypsy sites. Moreover, the appeal site is seen from the A361 in conjunction with a substantial roundabout, street lights and well manicured roadside verges.

These features give a slightly urbanised appearance to the area. In this context, and with the level of screening referred to, the continued use that is sought would not be overly intrusive or out of keeping. Nor would it detract from the attractive well landscaped grounds of the adjoining crematorium.

25. Turning to other potential viewpoints, an extensive tree belt effectively screens the site from views from the A350. The lie of the land and intervening screening would prevent the continued use of the site as proposed being noticeable to any substantial degree from high ground to the south of Semington. A public footpath runs along the western boundary of the site. From here the siting of the caravans and the hardstandings appear rather intrusive to the detriment of the site's immediate surroundings. However, sufficient space exists for landscape planting, which could be required by condition, to provide an acceptably effective screen.
26. There are 2 single pitch gypsy sites to the east of the roundabout junction of the A361 and A350. However, these sites are small and do not appear to intrude unduly upon the landscape. Moreover, the substantial visual impact of the A350 and the roundabout ensures that the area in which these other sites are located appears divorced from the appeal site. I thus attach little weight to concerns on cumulative visual impact.
27. The Council objects to the visual impact of a tall building on the appeal site with a pyramidal roof. However, this building, which is taller than most utility blocks found on gypsy sites, was constructed unlawfully and does not comprise part of the development for which planning permission is sought.
28. It is concluded that the use of the appeal site as a gypsy site constitutes an encroachment into open countryside and to that extent its continued use for this purpose would conflict with Local Plan Policy CF12. However, the proposal would not have an unacceptably detrimental impact on the character and appearance of the surrounding area and encroachment into the countryside alone would not conflict with guidance in *Circular 01/2006*.
29. In arriving at this conclusion account has been taken of advice in *Planning for traveller sites* that new development in the countryside should be strictly limited. However, it does not appear to necessarily rule out gypsy site provision in such areas and as already stated the potential for amendment to this guidance reduces the weight that may be given to it at this stage.

Sustainability of site and living conditions

30. Local Plan Policy CF12 requires that in considering proposals for gypsy sites regard must be had to the proximity of local services and facilities. The Council says that this requirement is not met because of the site's rural location.
31. However, *Circular 01/2006* makes it clear that gypsy and traveller sites are acceptable in principle in rural settings. In this case, moreover, the site is in reasonable proximity to Semington, a village that contains a primary school, public house, village hall and church. In winter months in particular the unlit and unmade up nature of the public footpath to the village may result in village facilities being accessed by car. However, *Circular 01/2006* advises that in assessing the suitability of rural sites a realistic view should be taken about the availability of alternatives to the car for accessing local services. Senior schools, healthcare facilities, and a wide range of shops etc. are found in Trowbridge and Melksham. The former town is only just over 3 miles from the

site and Melksham is even closer. The appeal site is well connected by main road to both towns and there is a regular and reasonably frequent bus service past the site to Trowbridge. The bus stop for that service is only a short distance from the appeal site.

32. Having regard to the above I consider that the site is reasonably accessible to facilities. Moreover, *Circular 01/2006* advises that issues of sustainability should not only be considered in terms of transport mode and distance from services. Other matters to take into account include: the wider benefits of easier access to GP and other health services; children attending school on a regular basis; and the provision of a settled base that reduces the need for long distance travelling and the possible environmental damage caused by unauthorised encampments.
33. Given the site's reasonable proximity to local services in Semington, to the wider range of facilities in the 2 nearby towns and to the other advantages of a settled site detailed above, I consider the proposal to be sufficiently sustainable.
34. In arriving at this view I have taken into account the Council's concern that those occupying the site would be cut off from the facilities in Semington by the A361. In particular it was said that it would be unsafe for children to cross this road without supervision.
35. The A361 is a busy road and subject to the national 60mph speed limit. It is part of the Department of Transport's preferred routing for long distance traffic. However, a short distance from the application site, and accessible to it along a highway verge, is a pedestrian refuge on the A361. From what I saw this provides for safe pedestrian access across the road. No highways evidence has been provided to the contrary and nor has the Council explained why it has concerns on pedestrian safety and yet was prepared to grant temporary permission for the use in the past. I accept that parents may be reluctant to allow young children in particular to cross the road unsupervised. However, it is not uncommon for such children to be accompanied in many areas for a variety of reasons. The location of this site would not impose substantially greater constraints upon access to facilities than might exist in many areas.
36. The Parish Council says that the site does not provide a pleasant environment in which to live given its proximity to busy and noisy roads and the "imprisoning" effect of the bunds that screen the site. However, there is no technical noise evidence to show that the site is unsuitable for residential occupation and the on-site environment, even with the existence of the bunds, is not unacceptably constrained.
37. It is concluded that the site is a sufficiently sustainable location for what is proposed and that satisfactory living conditions would be provided. As such there would be compliance with *Circular 01/2006* and with Local Plan Policy CF12 in so far that it seeks to ensure that gypsy sites provide for the needs and safety of future occupants and their children.
38. In arriving at this conclusion I have taken into account guidance in *Circular 01/2006* that one of the considerations in sustainability in cases such as this is the promotion of a peaceful and integrated co-existence between the site and the local community. The Council says that this has been prejudiced by the initial unlawful occupation of the site and that community cohesion would be

harmed by the cumulative impact of this proposal and the 2 sites to the east. However, given the small scale of the development, and its acceptable impact visually, there is no reason why over time it should not, even in conjunction with the other sites, become an accepted part of the community.

Highway safety

39. The Council's concern on this issue relates to the proposed retention of the vehicular access onto the A361 to serve the site. This access was provided in connection with the temporary use of the site. The Council supports its concern with reference to Structure Plan Policy T8 which generally seeks to prevent new accesses directly onto the national primary route network.
40. The Council says that it is unreasonable for drivers travelling on the A361 to need to be alert to vehicles turning into the appeal site so close to the A361/A350 roundabout. However, the access has in fact been sited a substantial distance from the roundabout and in a location agreed by the highway authority as safe. All that I saw supports the view that it is acceptably located from a highway safety viewpoint. I have been given no technical/professional evidence to the contrary. Nor has any such evidence been given to support local concerns on the adequacy of sight lines. Moreover, the explanatory text to Policy T8 appears to show that it has more to do with ensuring the free flow of traffic than highway safety.
41. Turning to this other highway consideration, a restriction on the number of accesses to roads of this type is sometimes imposed to ensure the free flow of traffic. However, in this location with roundabout junctions to the east and west of the site there is already disruption, or potential disruption, to traffic flows in the vicinity of the site. Moreover, it is likely that there would be only limited vehicle movements to and from the site. All this points to the likelihood that the proposed development would not unduly disrupt traffic on the A361 and no substantial evidence has been provided to the contrary.
42. It is concluded that the proposal would not have a harmful effect on highway safety, nor unduly restrict the free flow of traffic. As such there would be no conflict with the objectives of Structure Plan Policy T8 or with Local Plan Policy CF12 in so far that it seeks to ensure that highway safety is not compromised.

Need for the proposal

43. The appellant says that taking the period up to 2016 there is currently a need for 14 gypsy/traveller pitches in this part of Wiltshire. The Council fully accepts that there is an unmet need for pitches in this period, but gives the figure as 10 pitches. Whilst I note the difference between the parties, even on the Council's estimate there is a fairly substantial level of need locally. The concerns of the Parish on the Council's assessment of need are noted. However, there is no substantial evidence that the Council's assessment of need is unduly high.
44. The Council says that it is aiming to meet the need for gypsy sites through the *Gypsy and Traveller Site Allocations Development Plan Document (DPD)*. However, this is at an early stage of preparation. Delays for various reasons mean that the Council does not anticipate adoption until 2014. There is then likely to be a further delay until sites are provided. I consider the appellant's estimate of sites not coming forward until 2015 not to be unreasonable, especially as further slippage could easily occur in the preparation of the *DPD*.

45. There is thus a fairly substantial existing unmet need and it is likely to be around another 3 years before sites become available through the Local Development Framework (LDF) process. This is a matter on which I attach significant weight. The Council has made a bid for a Homes and Communities Agency grant to assist with gypsy site provision. However, it is too early to know whether the bid would succeed and little evidence has been given on how any such funding would assist in providing new sites in this area.
46. Turning to individual need, evidence has been provided on the personal circumstances of the appellant and those living on the site. A significant number of those on site have health issues of various degrees of severity. There are 8 children on the site of school age. These factors do not point to the site being uniquely suitable for its current occupants. Access to health and education services is potentially accessible from many areas. However, it does reinforce the benefits of having a settled base. It is this that enables access to health services and education provision to be most readily obtained. This benefit would most likely be lost if the appellant had to move from this site for there is no evidence of pitches being available on suitable alternative sites. Moreover, the appeal site is beneficial in providing somewhere large enough for the appellant and his extended family to reside. It is clear from the witness statements that considerable mutual support is provided.
47. If this appeal was dismissed it is open to the Council to take enforcement action to secure the removal of the use. Even with a reasonable period of compliance being given this could, on the evidence above, lead to those occupying the site having to resort to unlawful roadside locations. Thus the individual needs of the appellant and his extended family add weight his case.
48. It is concluded that there is a need for the proposed development having regard to site provision. Personal circumstances add weight to the need for a site.

Prematurity

49. The Council says that granting permission could prejudice the emerging *Gypsy and Traveller Site Allocations Development Plan Document (DPD)* by contradicting the criteria that the Council is putting forward for considering such sites and thus undermining the credibility of the emerging Policy.
50. I have dealt above with my concerns on refusing permission in circumstances where there is a need for development of this kind and the *DPD* is unlikely to result in the provision of sites for another 3 years.
51. Moreover, Government Guidance in *The Planning System: General Principles* is that refusal of planning permission on grounds of prematurity will not usually be justified. Justification for such a decision would only exist where the proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the *DPD* by predetermining decisions about the scale, location or phasing of new development which are being addressed in the *DPD*.
52. In this case the proposed development is small scale and the Council has not clearly demonstrated how the cumulative effect of such development would be sufficient to prejudice the outcome of the *DPD* process.

53. Nor has the Council provided substantial justification for its view that granting permission would undermine the credibility of the emerging *DPD*. Giving limited weight to this document does not undermine its credibility. It is merely a function of the relatively early stage it has reached in the plan preparation process.
54. It is therefore concluded that the Council's concerns on prematurity are not well founded.

Final Assessment

55. There remains an ongoing need for gypsy site provision. The Council's *DPD* that seeks to address this is unlikely to lead to the provision of gypsy sites until 2015. I have found the site to be satisfactory in terms of its effect on the adjoining land use and its impact on the character and appearance of the surrounding area. It comprises a sufficiently sustainable location for the proposed development and would provide satisfactory living conditions. There would be no detriment to highway safety and the free flow of traffic. As such there would generally not be the conflict with Local Plan Policy CF12 that the Council alleges. The fact that there would be an encroachment into the countryside should not in itself stand against the proposal given guidance in *Circular 01/2006*. All this points strongly towards allowing the appeal. The Council's concerns on prematurity are not well founded and should not weigh against the proposal especially given my findings on the other issues.
56. The fact that the appellant and his family would benefit from the stable base provided by living on the appeal site, and the lack of other pitches for them to occupy, adds weight to this view. It is, however, not a determinative factor so occupation does not need to be limited.
57. Bearing all the above in mind I consider the proposal to be acceptable subject to conditions as set out below.

Conditions

58. Given the specific Policy justification for the proposal I shall restrict occupation of the site to gypsies and travellers. To protect the character and appearance of the area I shall: limit the size of vehicles that may be stored on the site; prevent commercial activity on the site; require the site to be landscaped; limit the area of the site on which pitches may be formed and caravans sited; and restrict the number of pitches and caravans. To fulfil the same function I shall limit the number of caravans and restrict the number that may be static. However, I see no need to go beyond that and prevent a single pitch being occupied by more than one family, and indeed such a condition would be difficult to enforce. To ensure satisfactory drainage I shall require a foul drainage scheme to be approved and implemented.
59. As the use of the site for the purposes sought has already commenced, with the benefit to the temporary permission, there is no need for the standard time limit for the commencement of development. However, it has made it necessary to re-word the suggested landscaping and drainage conditions referred to above to ensure compliance. I have done so in a way that follows established practice.
60. Given my findings on need, the suitability of the site and the alleged prematurity I shall not make the permission personal to the appellant or make

it temporary. In so doing so account has been taken of the fact that in appeal decision APP/Y3940/A/09/2109292, relating to one of the gypsy pitches to the east of the appeal site, permission was made temporary. However, that case was linked to a complex enforcement appeal and for all the reasons given such a restriction is not appropriate in the case before me. More pertinent, in my view, is the decision on appeal APP/Y3940/A/10/2122592, for a gypsy pitch at Sutton Benger, Wiltshire without compliance with a temporary condition. It was held that this condition was not justified on grounds of prematurity and I have been given no substantial reason to come to a different view in this case.

61. I shall not prevent the burning of materials generally on site as that is too onerous a restriction. I see no need to specifically prohibit the burning of commercial waste given that commercial activity as a whole is to be prevented.

Conclusion

62. For the reasons given above the appeal is allowed.

RJ Marshall

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Kean	Solicitor for the Council
He called	
Cllr J Seed	Wiltshire Councillor
Mr M Wilmott BSc	Area Development Manager
(Hons) DipTP DM MRTPI	
Mrs C Gibson BA (Hons)	Of Wiltshire Council
MRTPI	

FOR THE APPELLANT:

Mr M Green	Advocate and witness – of Green Planning Solutions LLP
He called	
Mr P Ward	Appellant
Mr T Ward	Occupant of appeal site
Mrs M Ward	Occupant of appeal site
Mr D Ward	Occupant of appeal site

INTERESTED PERSONS:

Mr B Smyth	Parish Councillor
Mr F Dobbyn	Parish Councillor
MR E Clark	Former District and County Councillor

DOCUMENTS

- 1 Letter of notification of inquiry and those notified.
- 2 Council list of appearances.
- 3 Draft Statement of Common Ground.
- 4 Signed Statement of Common Ground.
- 5 Copy of appeal decisions APP/Y3940/C/09/2105006, 7 and 9 and APP/Y3940/A/09/2109292.
- 6 E mail from D Hames to J Seed.
- 7 Note from Cllr Clark withdrawing request to speak.
- 8 Council minute on LDF.
- 9 Council agenda item on LDF.
- 10 Various witness statements.
- 11 Secretary of State Direction on saved policies.
- 12 Letter of 1 December 2011 from Education Transport Area Co-ordinator.
- 13 Suggested conditions.
- 14 Closing submissions for Parish Council.
- 15 Closing submissions for Wiltshire Council.
- 16 Closing submissions for Appellant.
- 17 Appellant's skeleton cost claim.
- 18 Council response to cost claim.
- 19 Council cost claim

Conditions

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- 2) No commercial activities shall take place on the land, including the storage of materials.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision schemes for: the means of foul water drainage of the site; landscaping including details of species, plant sizes and proposed numbers and densities; shall have been submitted for the written approval of the local planning authority and the said schemes shall include a timetable for their implementation.
 - ii) within 11 months of the date of this decision the drainage and landscaping schemes shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved schemes shall have been carried out and completed in accordance with the approved timetable.
- 5) Pitches shall not be formed, nor caravans sited, on land other than the eastern part of the site identified for this purpose on the submitted 1.500 scale plan identified and marked as plan B. Other than the access road shown on plan B there shall be no hardstanding other than in the areas identified in plans B and C for the formation of pitches and the siting of caravans.
- 6) No more than 8 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 4 shall be a static caravan) shall be stationed on the site at any time.
- 7) There shall be no more than 3 pitches on the site.



Costs Decision

Inquiry opened on 1 December 2011

Site visit made on 2 December 2011

by R J Marshall LLB Dip TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 February 2012

Costs application in relation to Appeal Ref: APP/Y3940/A/11/2156159 Land adjacent West Wiltshire Crematorium, Littleton, Semington, Wiltshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Patrick Ward for a full, or in the alternative partial, award of costs against Wiltshire Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development described as "Change of use to small private gypsy and traveller site for 3 pitches for 8 caravans and associated ancillary works and development (including hardstanding, utility blocks, drainage etc.) and associated keeping of horses".
 - The inquiry sat for 3 days on 1 and 2 December 2011 and 5 January 2012.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr Patrick Ward

2. The costs application was made in writing with some minor verbal additions and amendments. The essence of the case is set out below.
3. The decision to refuse permission was unreasonable. Any concerns, if valid, could have been dealt with by condition.
4. At appeal the Council failed to provide evidence or sufficient evidence to justify its reasons for refusal, contrary to Officer advice, on the impact of the proposal. Insufficient account was taken of national Guidance in *Circular 01/2006 Planning for gypsy and traveller caravan sites*.
5. The Council's concern on prematurity ignores Government Guidance and recent Inspector's decisions in this area and is not supported by substantial evidence. Contrary to Government Guidance and recent Secretary of State decisions the Council attributed undue weight to emerging Government Guidance on gypsy sites and insufficient weight to existing Guidance.
6. The Council failed at any stage to adequately assess material considerations in favour of the proposal such as the unmet need for sites, the lack of alternative sites and personal circumstances.
7. The above considerations justify a full award of costs. Should unreasonable behaviour leading to unnecessary costs be found on only some of the matters above then a partial award of costs is justified.

The response by Wiltshire Council

8. The response by the Council was made in writing and supplemented verbally. The essence of the response is set out below.
9. In issuing draft Guidance on gypsy and traveller sites a press circular indicated that current Guidance had become outdated. The Council had reasonable expectations that the new Guidance, supporting its stance, would by now have been issued.
10. Material circumstances such as need and personal circumstances were before the Committee and taken into account.
11. Should it be found that permission should not be refused for the reasons given by the Council the progress made with the Council's *Gypsy and Traveller Site Allocations Development Plan Document (DPD)* would justify a temporary permission. This would prejudice neither the appellant nor the Council pending an assessment of what sites are acceptable for permanent provision in the District.
12. It was legitimate for the Council to have regard to encroachment into the Countryside. It is a criterion of Local Plan Policy CF12 on gypsy sites and is consistent with emerging Government Guidance. Guidance on this in *Circular 01/06* on this is out of date and will soon be withdrawn.
13. The Council has provided evidence to support its case with appropriate reference to the Development Plan. The potential for nuisance to an adjoining land use is a legitimate concern and in any event took up little Inquiry time.
14. The appellant has given undue weight to past appeal decisions. All cases are to be treated on their individual merits.
15. If costs are awarded there should be a deduction for the time unnecessarily incurred by the appellant in providing excessive evidence and failing to sign a SOCG in time.

Appellant's final response

16. The reason for refusal indicates a distinction between encroachment into the countryside and impact on character and appearance. Although it may not be the view of Council Officers the Council's principal witness considers the main issue to be encroachment and that was distinct from matters of character and appearance.
17. Evidence on personal circumstances may have been before the Committee. However, this matter is dealt with in only the briefest terms in the Council's evidence and the Council has failed to show that it was taken into account in its decision.
18. As for the time the Council is seeking to have deducted from any costs award the amount of evidence provided on behalf of the appellant is no different from that supplied on other gypsy appeals and was provided to fully cover the reasons for refusal.
19. The appellant's response to the costs claim reinforces the view that undue weight was given to emerging national Guidance and local Policies on gypsy

site provision and insufficient weight on *Circular 06/2006*. The Council's approach has thus been wholly unreasonable and unlawful.

Reasons

20. Circular 03/2009 on costs advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
21. The Costs Circular says that Councils are at risk of an award of costs against them if they delay or prevent development which should clearly be permitted. It also requires that at appeal evidence should be provided to substantiate each reason for refusal. Whilst Councillors are not bound to accept Officers' recommendations reasonable planning grounds should be given for a decision contrary to them. Moreover, where appropriate, Councils are expected to show that they have considered the possibility of imposing conditions.
22. The Council's first reason for refusal is based on conflict with various requirements of Policy CF12 of the *West Wiltshire District Plan First Alteration 2004*.
23. The first 2 grounds of concern under this Policy relate to a) the impact of the proposal on the use of the adjoining crematorium and b) encroachment and the character and appearance of the area. Decisions turning on such matters are unlikely to result in an award of costs if realistic and specific evidence was given in support. However, vague, generalised or inaccurate assertions about the impact of a proposal, which are unsupported by objective analysis, are not sufficient.
24. On the effect on the crematorium no substantial evidence was provided to support an assertion that local concerns had been raised regarding anti-social behaviour on the site. Under cross examination the Council's case on the impact on the crematorium was largely narrowed down to the potential for harm caused by barking dogs. However, no substantial evidence was given to show that this is a problem generally on gypsy sites or that it has been so here. I thus consider this reason for refusal to amount to a generalised assertion unsupported by objective analysis.
25. The Council's evidence on the impact of the proposal on the character and appearance of the area was notably sparse. However, seen in the round it went beyond just a mere assertion of encroachment but to the harm that this was alleged to cause to the character and appearance of the area. In this regard it referred to the nature of development on the site, the character and appearance of the area and from where the site can be seen. Whilst I did not find this persuasive it provided a sufficient evidential basis for the stance taken to constitute realistic and specific evidence in the terms of the Cost Circular.
26. The third and fifth grounds of concern under Policy CF12 relate to pedestrian safety and whether the site is in a sufficiently sustainable location. The 2 concerns are linked in part as the Council claims that residents' worries over the safety of crossing the main road fronting the site will cut them off from facilities in the nearest village. However, concerns on pedestrian safety are unsupported by any analysis of actual traffic speeds and flows past the site. Nor has any professional or technical evidence been provided to contradict the advice of Officers or to indicate why the Council should have taken a different

view on this matter than it did when granting temporary permission for the site in 2008.

27. In sustainability terms more generally the Council's concern is that the site is in a rural location and distant from services and in a location where housing generally would not be permitted. However, the site is in reasonable proximity to a nearby village that contains a primary school and is only a few miles from 2 towns offering a good range of services. Both towns are readily accessible by main roads. Moreover, *Circular 01/2006* advises that sustainability should not only be considered in terms of transport mode and distances from services but to various wider benefits including those provided by a settled base. There is little evidence that the Council took such considerations into account. Had it done so, and had regard to the site's reasonable proximity to services, a more reasonable approach would have been taken on sustainability.
28. In part the Council's approach on the suitability of the site for what is proposed is based on a view that *Circular 01/2006* is outdated and will be replaced. However, as the Circular remains in place regard must still be had to it in determining this proposal. The Government has recently produced a consultation document *Planning for traveller sites*. However, consultation on this may prompt amendments, which reduces the weight that may be given to it at this stage. The Council's case on the weight to be given to the emerging guidance was unclear. However, the Council's statement and its written response to this costs claim, suggests that it acted unreasonably in placing too much weight upon it at this stage.
29. The Council's fourth ground of concern under Policy CF12 relates to the principle of allowing a vehicular access onto the A361 due to its status as part of a Primary Route Network. In so doing it relies on Policy T8 of the *Wiltshire and Swindon Structure Plan* which generally seeks to prevent such accesses. However, whilst that may be so, the highways authority has not recommended that this application should be refused and the Council has failed to provide any substantial evidence by way of contrary professional opinion. Matters likely to be relevant to highway safety and the free flow of traffic such as actual traffic speeds and flows, and accident statistics were not addressed in any substantial way by the Council. As such it has acted unreasonably.
30. The second reason for refusal is based on grounds that permanent permission could prejudice the emerging *Gypsy and Travellers Site Allocations Development Plan Document (DPD)* which is in effect an argument on prematurity. However, Government Guidance in *The Planning System: General Principles* requires reasons for refusal on these grounds to be supported by clear evidence on how the grant of permission would prejudice the outcome of the DPD process. The Council's evidence in support of this ground of refusal is notably sparse and does not specifically address relevant considerations such as the scale of the development and cumulative effect. It amounts to little more, therefore to an assertion that harm would arise. The view that the credibility of the DPD would be undermined by a permission in this case has insufficient regard to the weight that can currently be attached to the emerging DPD.
31. The Council's suggestion that this concern could have been overcome by a temporary permission does not greatly assist its case against the cost claim as there is no evidence that the Council had regard to this in its determination of the application.

32. Turning to other material considerations the need for a gypsy sites generally in an area, and the specific needs of those seeking sites, are important considerations given guidance in *Circular 01/2006*. However, there is scant evidence that the Council took this into account. It is said that Members would have been aware of such matters. However, no substantial evidence was provided to show how those matters were considered and balanced against the factors regarded by the Council to cause harm. Thus the Council acted unreasonably in not having due regard to a material consideration.
33. Drawing together my views the Council provided sufficiently substantial evidence, in the terms of the Costs Circular, to justify only one of its reasons for refusal. Moreover, even on that ground I found overwhelmingly for the appellant. Looking, therefore, at the case as a whole, including my findings on the Council's failure to have proper regard to the other material considerations referred to above, I consider that the Council unreasonably prevented development that should clearly have been permitted. The appellant was thus put to the unnecessary expense of appealing and a full award of costs is justified.
34. I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.
35. In arriving at this conclusion I have had regard to the Council's view that, were I to find for the appellant on costs, there should be a deduction to account for the costs that may have arisen through his unreasonable behaviour. However, that is a matter best addressed, as it was, in the Council's claim against the appellant and is the subject of a separate decision.

Costs Order

36. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wiltshire Council shall pay to Mr Patrick Ward, the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

RJ Marshall

INSPECTOR

REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Report No.

Date of Meeting	14th March 2012		
Application Number	11/03802/DEM and 11/03798/LBC		
Site Address	Chippenham Railway Station, Cocklebury Road, Chippenham, Wilts. SN15 3QE		
Proposal	Prior Approval for Demolition of Existing Footbridge and Erection of a Replacement and Associated Works		
Applicant	Network Rail		
Town/Parish Council	Chippenham		
Electoral Division	Chippenham Monkton	Unitary Member	Cllr Chris Caswill
Grid Ref	392010 173694		
Type of application	Notification and Listed Building Consent		
Case Officer	Brian Taylor	01249706683	brian.taylor@wiltshire .gov.uk

Reason for the application being considered by Committee

The applications have been reported to the Area Planning Committee at the request of Cllr Caswill to consider the appropriateness of the design and materials in this prominent and important location

1. Purpose of report

To consider the above applications and to recommend that Listed Building Consent be GRANTED subject to conditions and that NO OBJECTION is raised to the Demolition Notification.

2. Report summary

The main issues in the consideration of this application are as follows:

- Principle of development
- Impact upon the listed building and the Conservation Area
- Benefits of improved accessibility to the platform at the railway station

The application has generated support from Chippenham Town Council; support from 9 individuals and an objection from the Chippenham Civic Society on grounds of design.

3. Site Description

There is an existing pedestrian footbridge on the site of this proposal. It is of utilitarian design, constructed of steel and supported by brick pillars. It is not contemporaneous to the listed railway platform and buildings, although it is by its proximity and attachment considered to be a listed structure. The current footbridge provides pedestrian access across the railway line, it does not provide access to the platform (which can only be accessed via a footbridge at the opposite end of the railway station) and it is accessed via steps only. The route across the railway line is difficult for those who may be infirm or have pushchairs and prams and impossible for those using wheelchairs. Similarly access to the platform for those users is difficult using the station footbridge – access for wheelchair users is only possible with the assistance of station staff.

Whilst the footbridge is rather utilitarian, the station buildings are low lying and elegant listed structures typical of the Victorian Great Western Railway Architecture. The existing footbridge rises well above the existing buildings (as any replacement will). As the station is located at a high point in Chippenham, the existing structure is visible from vantage points well away from the station, including, for example, from the 'Little George' junction along Old Road to the north and the Monkton Park Offices of Wiltshire Council.

There are a number of grade II listed buildings within the immediate vicinity of the footbridge – the station buildings, platforms and canopies; the former British Rail Office in the car park on the southern side of the station buildings (reputed to have been used by I.K. Brunel) and the weighbridge office (on the Old Road side).

4. Relevant Planning History		
Application Number	Proposal	Decision
No relevant applications		

5. Proposal

It should be noted that two 'applications' are for consideration in this report. Listed building consent has been applied for as the existing and proposed bridge are physically attached the listed structures of the station. The second 'application' is a notification under Part 11 of the Town and Country Planning (General Permitted Development) Order 1995. This part of the Act enables statutory undertakers (in this case Network Rail) to carry out works authorised by another Act of Parliament (in this case the Great Western Railway Act of 1835) without permission. There are certain circumstances where Network Rail have to notify the local authority and seek 'prior approval' (specifically where works to a bridge are proposed). The local authority cannot refuse to give prior approval (or impose conditions) *unless* the development could be reasonably carried out elsewhere or where the design or appearance would 'injure the amenity of the neighbourhood'.

The proposal is to replace the existing footbridge. The replacement bridge will incorporate lifts on the southern side of the railway and on the platform of the station to improve accessibility to the train services. Access will still be possible across the railway line from the southern side (Station Road) to the northern side of the railway (Old Road), but there will be no lift on the northern side.

Network Rail has worked with local accessibility groups for some years to bring forward this scheme. There have been pre-application discussions with Officers of Wiltshire Council. All parties agree that improved accessibility to train services at Chippenham Station is a welcome, indeed essential, development. The main issue of discussion has been the design and appearance of the bridge. Network Rail have made great efforts to provide a design, within the technical constraints, that will compliment the listed building and this prominent location.

The proposal is for a footbridge supported by two lift towers and one support column. The lift towers themselves are 9.5 metres high, clad in stone to up to the bed of the footbridge (approximately 4.5 metres) and the upper part clad in zinc cladding (which will weather to a dull grey). The southern lift tower is 2.6 metres by 3.2 metres in footprint, the central platform tower slightly smaller at 2.0 metres by 3.2 metres. In addition to the two lift shafts there are stairways at the northern and southern ends and to the central platform. Sufficient space has been left at the northern side of the bridge to install a further lift tower at some future date should funds become available.

In comparison the existing bridge is at its highest point around 6.0 metres. The existing station buildings are between 4.0 and 5.0 metres high.

Following consultations the number of support columns has been reduced, the lighting columns simplified, materials have been amended and a number of changes have been made to try and reflect the prominent and protected location.

6. Planning Policy

North Wiltshire Local Plan 2011: Core Policy C3, HE1 and HE4

The site lies within a conservation area and the building is listed (grade II)

Central Government planning policy PPS5

7. Consultations

Chippenham Town Council: No objection to the application and welcomes the improvements, especially the new disabled access. It supports the efforts of Wiltshire Council to ensure the new design is in keeping with the character of the building.

Chippenham Civic Society: Object. The Society welcomes the provision of the lifts but are unhappy with the design of the bridge. It gives all the appearance of a cheap brutalist structure that looks more like a prison with watchtowers than a bridge with lifts. Concerns raised about vandalism on the bridge, with what appears to be open access to the lifts which will only encourage vandalism. Would prefer a bridge that was more modern in appearance – there are many examples including a curved bridge at Temple Quay (near Temple Meads, Bristol) and several at Paddington Basin in London. A light airy structure of stainless steel with glass lifts would look much more attractive than the design proposed and would blend in better with the surroundings.

Community Accessibility to Rail Travel (CART) Supports the application. The need for community accessibility has never been more demanding at a time of growing concern of the health and wellbeing of all coupled with the need to be mindful of the carbon footprint. Astonished that concerns have been raised regarding this proposal. Objections to the scheme are threatening the loss of funding for this enhancement.

Wiltshire Centre for Independent Living (CIL) Support the proposal. Whilst the current access via the Barrow Crossing to the trains at Chippenham Station is better than no access at all for those of us who use wheelchairs, it is far from satisfactory and we very much need a passenger lift to take us from one platform to that where the trains are stopping. The Barrow Crossing is very exposed and so very windy, cold and wet particularly in the dark. It is necessary to phone ahead to make arrangements to use the crossing and we are dependent on identifying station staff to accompany us over the crossing which is not always easy now that staffing levels are so low. The journey across the railway track can be quite alarming and there have been incidents of wheelchairs being caught momentarily in the lines. In this day of equality legislation etc, Chippenham Station remains one of the few railway stations not fully accessible to wheelchair users. CIL recognise the importance of historic buildings and their environs, but consider Network Rail have been subject to sufficient representations on this matter for over 2 years and that a satisfactory compromise solution has now been reached to enable approval to be given to this planning application so that work can proceed immediately on providing a safe and equal access to the trains. There is a real danger in these times of austerity that Network Rail will be unable to cling on to the provision of resources for this lift if the application is delayed further.

Salisbury and District Branch of the Multiple Sclerosis Society support the application. The Society are sure that difficulties over listed buildings can be overcome. The important thing is to make life easier for those with disabilities.

8. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

9 letters of letters of support received

Summary of key relevant points raised:

- Improved accessibility for wheelchair users is to be welcomed.
- Existing facilities for wheelchair users is poor, having to make arrangements well in advance of travel, access the platform across the track, relying on station staff to assist.
- Design is business like and appropriate for the task
- Some concerns about potential for vandalism
- Existing structure is very unattractive and has little architectural merit, proposed replacement will be a distinct improvement

9. Planning Considerations

Principal of Development

This proposal is for what is termed operational development and Network Rail would normally be able to carry out such works without consent (subject to a procedure of 'notification'). However in this case because the station is listed and the bridge is located in such close proximity (and the existing bridge is being removed) listed building consent is required in addition to the normal 'notification' procedure. There has been from the outset general consensus that the removal of the existing bridge is not of itself objectionable. It arguably has a certain utilitarian charm, but has no real architectural or historic merit. In general the removal of the existing bridge has been welcomed. There has also been unanimous support for the principal of improved accessibility for the central platform and train services. Many of the letters of support for this proposal explain the difficulties of accessing train services for those who are mobility impaired and those using wheelchairs. The principal of a new bridge is therefore acceptable. The concerns that have been raised throughout the pre-application process and the consultation process on these applications generally relate to the design and appearance of the new bridge.

Design and Impact of the Listed Buildings.

The Councils conservation and urban design officers have been involved in the pre-application discussions with Network Rail, as detailed in the supporting documentation submitted with the application. This documentation records the concerns expressed by officers in relation to the proposals originally submitted. The main thrust of officer's comments was that any replacement bridge needs to be well designed, not draw attention away from the listed buildings on the station and perhaps be of a modern, lightweight design.

In relation to the current proposals the conservation and urban design officers have expressed concern again about the design approach taken – intimating that this is an opportunity lost.

The replacement footbridge will be in the same location as the existing footbridge, which is within a few metres of the listed main station entrance building and former British Rail office on the south side, and a few metres from the listed weighbridge office and Old Road Tavern on the northern side. Any new bridge will inevitably have an impact on the setting of these listed buildings so it is imperative that the new structure is not overbearing and harmful to the setting of the listed buildings.

In pre-application discussions officers provided examples of innovative and exciting designs for footbridges elsewhere on the rail network. There are, for example, modern glass lifts in other railway stations such as Liverpool Lime Street.

From a design perspective the bridge is a little uninspiring, arguably adding little to the site nor reflecting the significance of the heritage assets or their setting. The replacement bridge will be around three metres higher than the existing, and the lift towers are of course more substantial than the existing bridge support piers. It is arguable whether constructing this footbridge at

Chippenham station would preserve or enhance the historic significance of the station and setting of the listed buildings.

Accessibility

However, the concerns expressed about the design and impact on listed buildings must be balanced against the very real and demonstrable benefits the footbridge would bring to users of the station and the wider community. A number of supporters have welcomed the proposal quoting their own personal experiences of accessing the platform at Chippenham Station. From a number of these it is clear that those unable to use the existing station footbridge to access the platforms have to make contact with the station in advance to make arrangements; need the assistance of station staff to access the platform; access the platform by crossing the railway via a 'barrow crossing' (pedestrian level crossing). This is both inconvenient and unnerving experience. The improvement to the accessibility of the station must be taken into account when considering the acceptability or otherwise of the proposals.

Current Government Guidance on Listed Buildings (and other heritage assets, such as conservation areas and unlisted properties with some historic interest) in Planning Policy Statement 5, deals with circumstances where there may be some adverse impact on the asset, but there is some benefit to the wider community. In summary Policy HE9.4 of PPS5 says that where a proposal has a harmful impact on the significance of a heritage asset local planning authorities should weigh the public benefit of the proposal against the harm; and recognise that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss.

The improvement to accessibility will have significant benefits to the local community. The lack of convenient access to the station platforms at Chippenham is a significant barrier for many rail users (and potential rail users)

10. Conclusion

Officers believe that the proposed footbridge in its current form potentially fails the test to enhance the conservation area and it is likely to have a degree of harmful impact upon the listed buildings and their setting – due to the size and bulk of the lift towers and the somewhat utilitarian design of the bed of the footbridge. They have sought to persuade Network Rail to adopt a more contemporary approach, which is less bulky and more elegant. However, it is recognized that there are numerous technical and financial restrictions that constrain Network Rail's ability to address all the concerns raised. On balance, the significant improvements to the local community that the lift access to the rail platforms is likely to bring would on balance justify accepting any harm that the bridge might have.

It is recommended that listed building consent be granted and that no objection is raised to the prior notification.

11. Recommendation

In respect of 11/03802/DEM:

NO OBJECTION for the following reason:

The proposed demolition of the existing footbridge is considered to have a neutral or positive impact upon the setting of the Listed Building and the Chippenham Conservation Area. The replacement footbridge is considered likely to cause some harm to the Conservation Area and setting of listed building. However, the significant benefit to the community and users of the railway station through the creation of an accessible footbridge to the platform and rail services is considered to outweigh any harm that may be caused by the construction of the footbridge. The proposal is considered therefore to comply with the requirements of PPS5, with specific reference to Policy HE9.4. and Policies C3, HE1 and HE4 of the North Wiltshire Local Plan 2011.

Subject to the following condition:

1. No development shall commence on site until details of the stone work and zinc cladding to the lift towers and finish of the footbridge to be used on the development 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.

In respect of Listed Building Consent 11/3798/LBC

Listed Building consent be GRANTED for the following reason:

The proposed demolition of the existing footbridge is considered to have a neutral or positive impact upon the setting of the Listed Building. The replacement footbridge is considered likely to cause some harm to the setting of listed building. However, the significant benefit to the community and users of the railway station through the creation of an accessible footbridge to the platform and rail services is considered to outweigh any harm that may be caused by the construction of the footbridge. The proposal is considered therefore to comply with the requirements of PPS5, with specific reference to Policy HE9.4.

Subject to the following conditions:

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. No development shall commence on site until details of the stone work and zinc cladding to the lift towers and finish of the footbridge to be used on the development have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

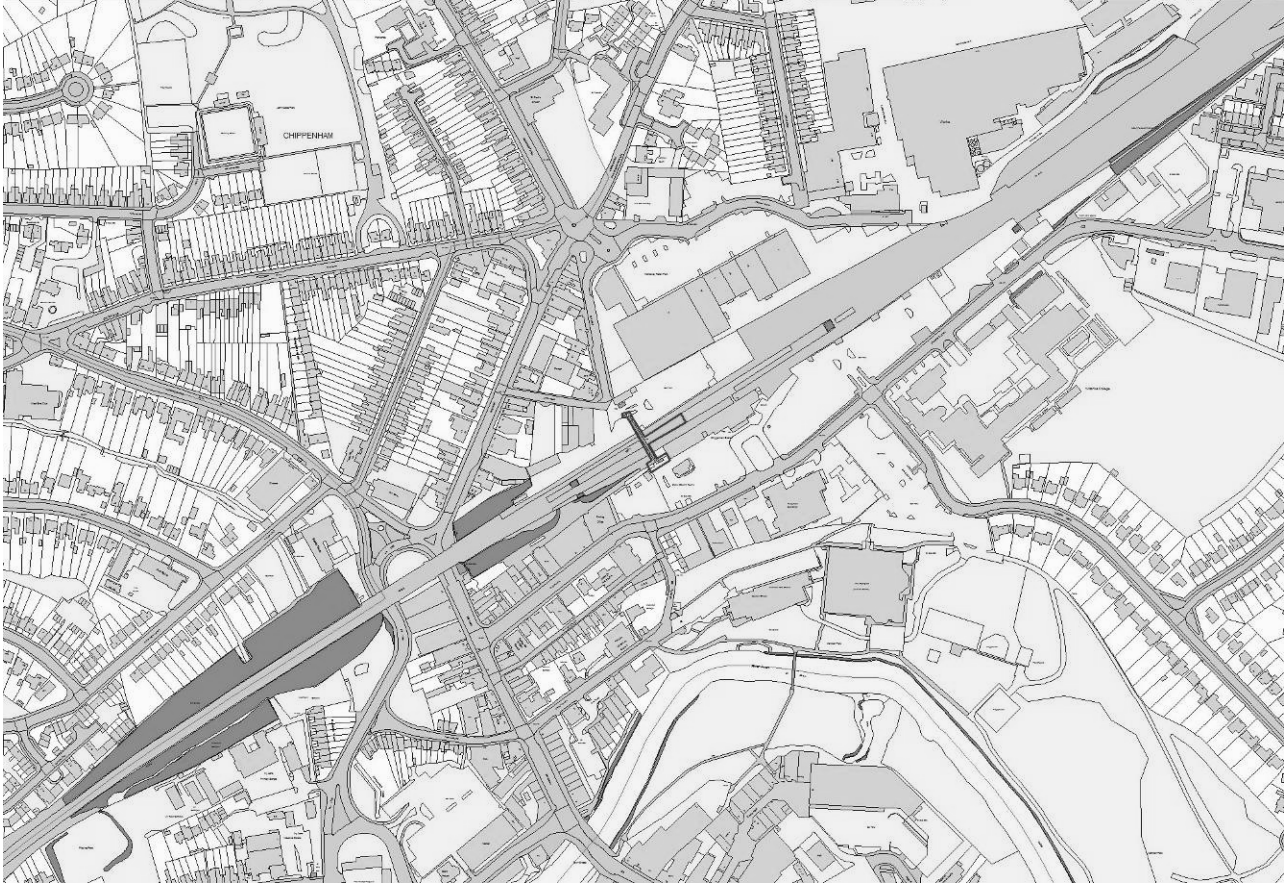
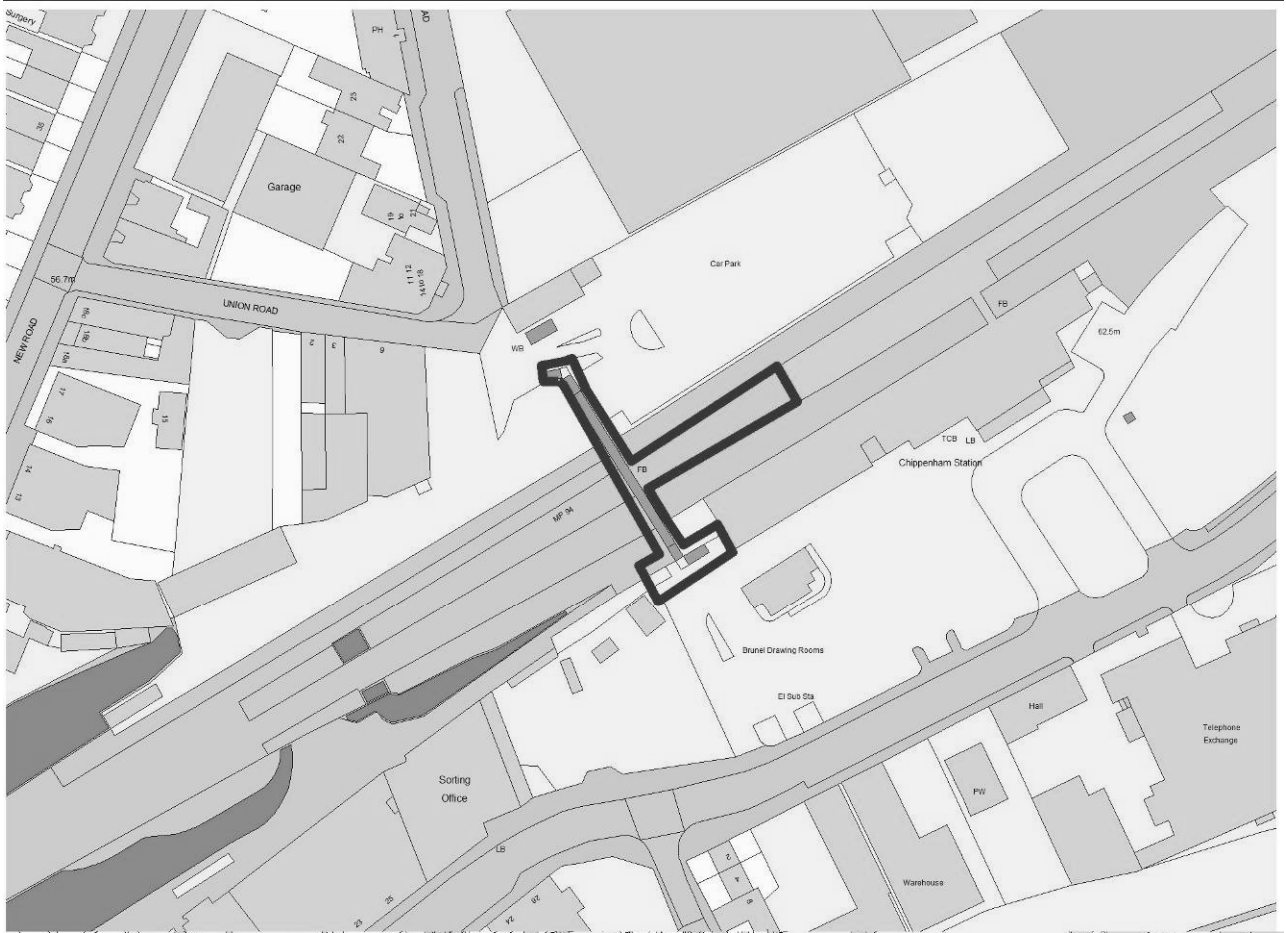
REASON: In the interests of visual amenity and the character and appearance of the area.

3. The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the local planning authority. Amendments may require the submission of a further application.

Site location plan; drawing Numbers 1031314/CHI/EAR/DRG: 001b; 002C; 003E; 004E; 005F; 006E; 008; and 008.1 and Drawing number 1031314/CHI/A/226 Rev F

Planning Statement Incorporating Design and Access Statement and Heritage Statement

REASON: To ensure that the development is implemented as approved.



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REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Report No.

Date of Meeting	14th March 2012		
Application Number	11/02514/FUL and 11/03731/LBC		
Site Address	Scarrott's Yard, adjacent to 6 Old Court, Royal Wootton Bassett		
Proposal	Erection of Three Terraced Dwellings Including Garage Accommodation and Associated Works (Resubmission of 11/01514/FUL)		
Applicant	Mr and Mrs Scarrott		
Town/Parish Council	Royal Wootton Bassett		
Electoral Division	Wootton Bassett South	Unitary Member	Peter Doyle
Grid Ref	406977 182408		
Type of application	Full and Listed Building Consent		
Case Officer	Tracy Smith	01249 706642	tracy.smith@wiltshire.gov.uk

Reason for the application being considered by Committee

These applications have been called to Committee by Cllr Doyle to consider the applications and the impact upon the listed barn in the Conservation Area.

1. Purpose of Report

To consider the above applications and to recommend that Planning Permission and Listed Building Consent be REFUSED.

Royal Wootton Bassett Town Council raise no objection to the application.

No other letters of support or objection have been received.

2. Main Issues

This application seeks permission to erect three new dwellings and garage accommodation on Scarrotts Yard in Royal Wootton Bassett. The site is used for residential alongside a fairground business, registered scrap yard, hauliers yard and fuel depot, car restoration and storage of historic and antique items. The site contained a Listed Building and is located within the Wootton Bassett Conservation Area.

The main issues in considering the application are:

- Principle of development Policies C3, HE1, HE4 and H3 of the adopted North Wiltshire Local Plan 2011
- Impact on the character and appearance of the area and Conservation Area
- Affect on the privacy and amenity of existing neighbours and potential occupants
- Impact upon the Listed Building
- Affect on highway safety
- S106 contributions

3. Site Description

The application site comprises an established mixed use of residential (1 unit on the site) as fairground storage, scrap depot, haulier's yard and fuel depot within a residential area within the framework boundary of Royal Wootton Bassett.

The sites falls within a spur of the designated Conservation Area and contains Grade II Listed Barn which dates back to the 17th-18th Century comprising a timber framed barn with deep elm weatherboarding, on brick sills. It has a quarter-hipped corrugated iron roof and several openings. The barn has been extended and this is very modern in comparison.

The site has two frontages, Downs View and Old Court. The area is mainly post WWII 20th century development.

In terms of the former this part of Downs View is a cul-de-sac off the main Down View road and slopes downwards. The street scene is characterised by single storey bungalows some at street level and some, due to the topography, a slightly elevated position from the road. Due to the significant difference in levels from Down View and the land immediately to the south, all dwellings along that boundary are set down from the road, such that they appear as either single storey or one and a half storey dwellings on the street scene. None have frontage onto Down View and appear subservient or similar to the bungalows surrounding them.

The listed barn dominates the view of the site from Old Court and due to the gates, no views into the site are afforded from the road. However, the roofs of properties in Downs View can be seen stood back in Old Court due to the difference in levels.

When viewed from Downs View it is clear the site contributes little to the character and appearance of the area but it does appear open with the lower level storage largely obscured from view.

4. Relevant Planning History		
Application Number	Proposal	Decision
11/01514FUL	<p>Erection of three terraced dwellings including garage accommodation and associated works.</p> <p>The application was identical to the current application with the exception that it failed to recognise the status of the barn as being listed and the works requiring Listed Building consent.</p> <p>The officer confirmed to the agent that the application was to be refused on grounds of it being out of keeping with the character and appearance of the area, detrimental to residential amenities of existing and proposed residents, highway concerns (on-site parking and turning) and the affect on and setting of, the Listed Building. The application was then withdrawn and no further discussions took place.</p>	Withdrawn

5. Proposal

Planning permission is sought for the erection of three terraced dwellings and associated works to include garage accommodation at Scarrots Yard, Wootton Bassett. The development would enable the whole Scarrott family to reside on the site and continue to operate their business on the site also.

The proposed dwellings would be three storeys in height with garage/car port accommodation in the basement. Due to the differences in levels, the dwellings would appear as two storeys at street level from Downs View.

The proposed dwellings would be sited slightly set back from the pavement.

The dwellings will provide three bedroom accommodation are proposed to be constructed of slate and brick.

The application is silent in plan form to show any specifics and how the garages/storage will be accessed in conjunction with the retained use for the family business together with any amenity land for the occupants such as gardens etc. The design and access statement does however state that the family members will continue their various historic businesses on the site and that there is an opportunity to tidy the site up.

A recent letter from the agent confirms that the site has special circumstances in the way it is used and the Scarrott Family and their workers have, in practice, always used the Yard for work, rest and play. The site has no formal layout and changes on a day to day basis with storage, vehicles, rides, equipment and mobile homes all being moved around to accommodate the activities and needs. For example, in the summer the Yard is largely clear as the Fair travels from event to event. In the autumn and winter the Yard is quite full as everything returns and general maintenance takes place read for the next year along with winter fuel rounds, etc.

This is confirmed to always be the case as the yard will be handed down generations with the traditions continuing.

The informal layout will continue however the agent considers that the basement level of the three proposed dwellings will be available for the parking of family cars, pick up trucks, vans etc which currently park in the yard.

In terms of the listed building the modern extension is proposed to be removed as part of the new development with the boundary wall reinstated and the external fabric of the barn made good with matching materials.

No pre-application discussions have taken place in respect of this application of the previous application to which 11/01514FUL relates.

6. Consultations

Royal Wootton Bassett Town Council – no objections

Highways Development Control Engineer – if a condition can be imposed to secure no gates or doors to the car ports so they remain available to parking then the previous objection in this respect to 11/01514FUL which related to lack of on-site parking can be overcome.

The other highways objection to 11/1514 remains due to the poor access and standard of Old Court Lane.

Senior Conservation Officer – recommends refusal due to the harm to the listed building.

Public Protection Officer EP – no objections subject to conditions regarding contamination.

Principal Ecologist – no objections.

Technical Officer Amenity and Fleet – same comments as per 11/01514 off-site contribution required of £17,400 towards the maintenance of Old Court Play Area and Local Park.

Thames Water – responsible for water supply only. An informative is suggested in respect of water supply and pressure to be provided by Thames Water.

Wessex Water – waste water connections needed from Wessex Water to serve this development and application forms can be provided or are on line and from 1 October 2011 a signed adoption agreement with Wessex Water is required for developments of more than a single dwelling before the connection can be made.

2011 Water Industry Regulations have meant that Wessex Water is now responsible for the ownership and maintenance of formerly private sewers and drains. The applicant is advised to survey and plot these in order to ensure these are not affected by development proposals.

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

No letters of support or objection have been received.

8. Planning Considerations

- Principle of development
- Impact on the character and appearance of the area including Conservation Area
- Affect on the privacy and amenity of existing neighbours and potential occupants
- Impact upon the Listed Building
- Affect on highway safety
- S106 contributions

Principle of development

The site is within the framework boundary and the principle of residential development is not objectionable in principle subject to relevant criteria being satisfied contained in Policy C3 of the North Wiltshire Local Plan 2011.

A key constraint of the site is the Listed Barn within the curtilage of the site as well as the CA designation to which Policies HE1 and HE4 relate.

The use within this residential area might be historic but is not considered to be compatible with its surrounds.

The proposal needs to be considered also in terms of the amenity of the proposed occupants who will retain the business use on the site to which Policy C3 relates.

Character and Appearance of the Area including Conservation Area

The scheme will provide a terrace of three storey dwellings across the northern boundary with a full two storeys fronting the road with limited set back and three storeys visible from Old Court .

The single terrace spanning virtually the full width of the site fronting Downs View will be a prominent feature and will effectively close down the openness of this part of Down View. Other two storey cottages are set down into the road with access from Old Court. When

viewed from Downs View they appear largely as single storey dwellings with the newer bungalows having evolved around them.

It is considered that the development of a terrace across the full frontage/northern boundary at two storeys would be detrimental to the character and appearance of the area. It is appreciated that the site when viewed from the elevated position of Down Views is not best pleasing, it nonetheless retains openness (hence the name Downs View). The scale and massing of the terrace would reduce its openness and result in a domination of the street scene by two storey dwellings.

The three storeys would be visible from Old Court, appearing above the fence and larger in scale than the existing listed bar. The scale and massing of the development when viewed from the south would be out of keeping with the character and appearance of the area.

Accordingly, the proposal is considered to fail to preserve or enhance the character and appearance of the Conservation Area in which it is located.

The proposal is thus contrary to Policies C3 and HE1 of the North Wiltshire Local Plan 2011.

Impact on residential amenity of existing residents and proposed occupants

Full two storey dwellings will be visible on the street scene with habitable rooms looking out onto the road and dwellings opposite.

No's 43 and 44 which fall directly to the north are some 15 metres distance, window to window. These semi-detached bungalows occupy an elevated position from the road and contain habitable windows on their front elevations which are open and visible from the street.

This spur of Downs View does not have the frontages of bungalows looking onto one another as does the main Downs View Road as they are all set at oblique angles to one another. The bungalows are set back some distance from the road within this spur as well as the main road.

It is also noted that no 43 and 44 have developments in close proximity to the rear. Whilst it might be said that these properties have such overlooking already, this was a situation in which residents were aware as that development was comprehensive, it was not imposed on them at a later date as this new development would.

Accordingly, it is considered that the proposed development would result in an unacceptable loss of privacy to both existing and proposed occupants as a consequence of the scale of the development (i.e. the second storey).

Furthermore, due to the two storey street level nature of development so close to the street and by reason of its being a terrace to the south of these properties, it is considered that there would be an overbearing impact on the residential amenity of these properties.

The residential amenity of proposed occupants is equally important as the amenity of existing residents. The development makes no attempt to provide any amenity space for the occupants who are family members. The agent has clarified that existing business activities and informal layout of the site will continue. The proposed block plans simply show a void which will be used to the applicant's requirements.

It is considered that for 3 bedroom houses some level of amenity space is required within the site even if it were to be shared regardless of the expectations and requirements of the intended occupants.

Thus the proposal is considered to be detrimental to the residential amenity of the proposed occupants contrary to Policy C3.

In the event the officer recommendation is not accepted on this occasion, in light of the poor level of amenity on the site, a personal permission would be considered necessary whilst the business use continued on the site.

Impact on the Listed Building

The section drawing submitted with the application shows how the ground will be excavated to accommodate the additional storeys. The new three storey dwellings (when viewed from the Yard and Old Court) by reason of their scale, design and detailing add to the prominence of the new dwellings and will detract from the listed building.

The new buildings have been designed to show the uninspired bulk housing style that has sprung up around the UK for the past 30 years. The proportions and details do not relate to vernacular details in this area of Wiltshire, nor do they reflect elements of the listed barn. The combination of bulk, design, materials and location would be very harmful to the setting of the listed barn and would be contrary to PPS5 as well as Policy HE4 of the adopted North Wiltshire Local Plan 2011.

Highways Impact

The proposed development is and can only be accessed via Old Court. This road is considered to be too narrow, has poor alignment and lacks pedestrian facilities and is thus considered unsuitable to cater from the increased vehicle movements associated with the proposed development, particularly as the business use will continue in operation.

As mentioned above, the business use of the site is to continue with the informal layout currently in operation. Whilst car ports are provided in the absence of any definitive plan which shows that vehicular access can be gained to them for the purposes of parking, it is considered that the scheme continues to fail to provide adequate parking as with the previous application and despite repeated requests for some managed layout.

The highways officer has suggested a condition to ensure no gates or doors are placed on the car ports, but it is considered that such a condition in the absence of any defined internal layout of the site in the context of the continuing business use, adequate on site parking will not be provided and the objection made to the previous application remains relevant.

S106 matters

An off-site open space contribution is required for this development towards old Court Play Area and Local Park. A contribution was sought for £17.4k based on three dwellings, however, this does not factor in the loss of the 2 bedroom dwelling on the site. In the event of the officer recommendation is not supported, this contribution would need to be secured via a legal agreement in advance of permission being granted

9. Conclusion

By reason of the scale, design and appearance of the proposed development alongside the intended continued use of the site for the family business, the proposal is considered detrimental to the character and appearance of the area; would fail to preserve the character and appearance of the Conservation Area, would be detrimental to the residential amenity of existing residents and proposed occupants as well as failing to provide adequate onsite parking. Further to access to the site via Old Court is not considered to be suitable for any intensification of use from this site. The development thus fails to accord with Policies C3, HE1, HE4 and CF3 of the adopted North Wiltshire Local Plan 2011.

10. Recommendation

In respect of Planning Permission 11/02514/FUL:

Planning Permission be REFUSED for the following reasons:

1. The proposed development by reason of its scale, design and detailing would be out of keeping with the character and appearance of the area; would fail to preserve the setting of the Grade II Listed Building contrary to Policies C3, HE1 and HE4 of the adopted North Wiltshire Local Plan 2011 and National Guidance contained in PPS5.
2. Old Court lane by reason of its restricted width, poor alignment and lacking pedestrian facilities is considered unsuitable as a means of access to cater for increased vehicle movements associated with the development.

INFORMATIVE

1. This decision relates to documents/plans submitted with the application, listed below.

Dwg no: 2011-11-1, 2, 3A, 4A, 5 and 6 dated 25 July 2011

In respect of Listed Building Consent 11/03717/LBC

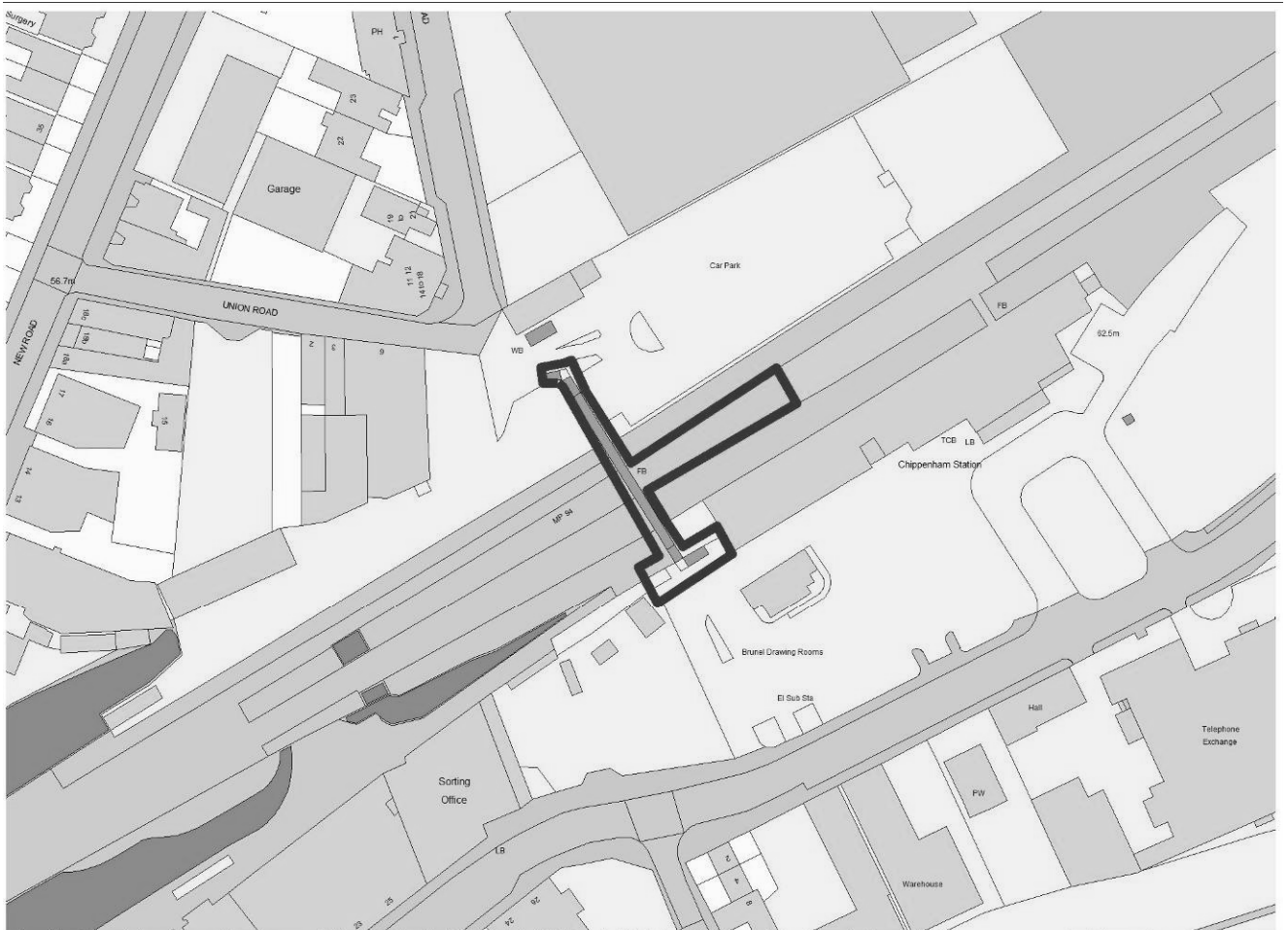
Listed Building Consent be REFUSED for the following reason:

1. The proposed development by reason of its scale, design and detailing would be out of keeping with the character and appearance of the area; would fail to preserve the setting of the Grade II Listed Building contrary to National Guidance contained in PPS5.

INFORMATIVE

1. This decision relates to documents/plans submitted with the application, listed below.

Dwg no: 2011-11-1, 2, 3A, 4A, 5 dated 25 July 2011
2011-11-6 6 dated 31 October 2011



REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Report No.

Date of Meeting	14 March 2012		
Application Number	N/11/03912/S73A		
Site Address	The Old Dairy, Market Place, Box, SN13 8PA		
Proposal	Variation of Condition 04 to Planning Permission 10/01437/FUL to Allow for Other Complimentary Uses. Variation of Condition 05 to Planning Permission 10/01437/FUL to Allow Those Complimentary Uses to Take Place Outside Permitted Hours of Operation.		
Applicant	Mr Wright		
Town/Parish Council	Box Parish Council		
Electoral Division	Box and Colerne	Unitary Member	Cllr Sheila Parker
Grid Ref	382669 168615		
Type of application	Variation of Condition		
Case Officer	Chris Marsh	01249 706 657	Chris.marsh@wiltshire.gov.uk

Reason for the application being considered by Committee

Cllr Parker has called the application to Committee in order to consider the impact of the proposed variation of condition on the amenity of neighbouring properties.

1. Purpose of Report

To consider the above application and to recommend that planning permission be GRANTED subject to conditions.

2. Main Issues

- Impact on neighbour amenity
- Impact in terms of noise and odour
- Impact on highways
- Impact on the character and appearance of the Conservation Area

The application has generated objections from the Parish Council and 6 neighbours of the site. 42 letters of support have been received.

3. Site Description

The Old Dairy is a substantial Grade II-listed property dating from the 16th century and located at the Northeast end of Market Place, Box. The property is set in substantial grounds that extend across the width of the land between Market Place and the A4 main road to the North, South and West of the building. In 2010, permission was granted for the limited A3 use of the detached former double garage (granted permission in 1994) and associated access from Market Place, located to the South of the property, to enable its operation as a coffee shop. Market Place is characterised by its historic fabric and mixture of uses which includes residential, an engineering works, a butchers, a large public car park and now the coffee shop – 'Toast' – and as such is frequented by visitors from the local area and beyond.

4. Relevant Planning History		
Application Number	Proposal	Decision
N/10/01437/FUL	Proposed Conversion of Existing Garage to Form New Coffee Shop; Including Conversion of Outbuilding to Form W.C.	Permission

5. Proposal

The proposal seeks permission to vary Conditions 4 and 5 of the extant permission N/10/01437/FUL to enable a wider range of uses at the premises and extend opening hours.

Condition 4 stipulates:

The site shall be used for a Coffee shop only and for no other purpose (including any other purpose in Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

The applicant wishes to broaden the individual activities permitted by the addition of the following, to be held on the premises:

- 'Themed' dinner evenings

These are local events based around a certain national culinary theme, involving the preparation of a single meal for attendees at the premises.

- Children's birthday parties

The premises is to be made available for hire as a venue for children's birthday parties, offering sufficient space and refreshment facilities for these.

- Business breakfasts

These are private networking events not dissimilar to the existing operation as a coffee shop, encouraging local businesses to discuss and exchange ideas.

- Cookery classes and craft workshops

These are to be run on a local basis, demonstrating and teaching cooking and craft skills.

Condition 5 stipulates:

The use hereby permitted shall only take place between the hours of 0800 time in the morning and 2000 time in the evening.

Further to the above, the applicant wishes to extend the permitted opening hours so that the premises may remain open until 2330 hrs on any evening.

6. Consultations

Box Parish Council – objects due to the impact upon highway safety and neighbour amenity

Highways – no objection

Environmental Health – no objection, recommends suitable conditions to limit activities and hours of operation

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

42 letters of support received

Summary of key relevant points raised:

- Value of business to the local community

6 letters of objection received

Summary of key relevant points raised:

- Impact on neighbour amenity
- Noise and smell pollution
- Highways implications

1 additional comment regarding the general impact on parking has been received

8. Planning Considerations

The site is in close proximity to five properties, which are likely to be most affected by any increased activity associated with the business. Extant permission 10/01437/FUL makes clear that this setting is not suitable for certain uses that are likely to generate significant levels of noise or other disturbance (for instance; night clubs, late night takeaways, etc). However, the proposed uses and hours of operation are such that no significant disturbance is anticipated, provided any permission is adhered to fully. Likewise, the proposed cooking activities are unlikely to generate unacceptable odour, provided suitable ventilation is available, and the application has not attracted an objection from the Environmental Health Officer on this basis.

It is not envisaged that the proposed variation in activities and opening hours will result in a detrimental increase in traffic generation or put additional pressure on the available parking, owing to the business' local emphasis and probability that users will walk to the site from nearby. Whilst it is accepted that on-street parking is in short supply in this area, daytime availability will remain unaltered under the proposals, and the additional hours of operation are considered unlikely to generate a harmful increase in traffic. As no physical alterations are proposed and given the building's now established use, it is not considered that the proposal will cause any harm to the character or appearance of the Conservation Area.

It is considered that, by applying suitable conditions, any negative repercussions of the proposal can be mitigated against and as such, the proposal is acceptable in planning terms under Policy C3 of the adopted Local Plan. A slightly reduced closing time of 2300hrs has been recommended, as this is used in licensing terms to mark the transition from the evening to the night time economy; the latter being an inappropriate entity in this location. Likewise it is recommended that Condition 4 be amended in such a way as to accommodate the intended uses but enable the Authority to consider any additional uses proposed. It is not considered necessary to explicitly permit business-to-business events, as these would appear to accord with the extant permission or 'private functions' heading.

9. Recommendation

Planning Permission be GRANTED for the following reason:

The proposed variation to conditions, by virtue of the nature of the activities and hours of operation proposed, will not adversely affect the character or appearance of the site or its setting in a Conservation Area, and will not detrimentally affect highway safety or the residential amenity enjoyed by neighbours. The proposal therefore accords with Policies C3, HE1, HE4 and R5 of the adopted North Wiltshire Local Plan 2011.

1. The site shall be used for the following:

- Coffee shop;
- Private dinner or breakfast functions;
- Craft workshops;
- Cookery classes; or
- Children's parties

in connection with the existing business only and for no other purpose (including any other purpose in Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use having regard to the circumstances of the case including the impact upon local residents and the local highway network.

POLICY: C3

2. The use hereby permitted shall only take place between the hours of 0800 hrs in the morning and 2300 hrs in the evening.

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

POLICY: C3

3. The coffee shop business and building shall not be sold, let or rented separate from the dwelling house (known as The Old Dairy).

REASON: In order to minimise traffic generation and preserve the amenities of the occupiers of the dwellinghouse.

POLICY: C3

4. The activities hereby permitted shall not take place outside the building after 2000 hrs, save for access and egress, after which time all South and West-facing windows in the premises are to be kept shut. Activity shall not recommence outside the building before 0800 hrs the following morning.

REASON: In the interests of residential amenity and protection against unacceptable levels of noise and odour.

5. Operation of the premises between the extended hours of 2000-2300 hereby permitted shall be limited to not more than eight evenings per calendar month.

REASON: In the interests of residential amenity and to avoid nuisance.

6. The building shall not be first brought into use for the extended hours and activities hereby permitted until full details (including details of noise attenuation) of ventilation and filtration equipment to suppress and disperse any fumes and/or smell created from the cooking operations on the premises have been submitted to and approved in writing by the Local Planning Authority. The approved activities shall not commence until the approved

equipment has been completed in accordance with the approved details and it shall be subsequently maintained in accordance with the approved details thereafter.

REASON: In order to safeguard the amenities of the area.

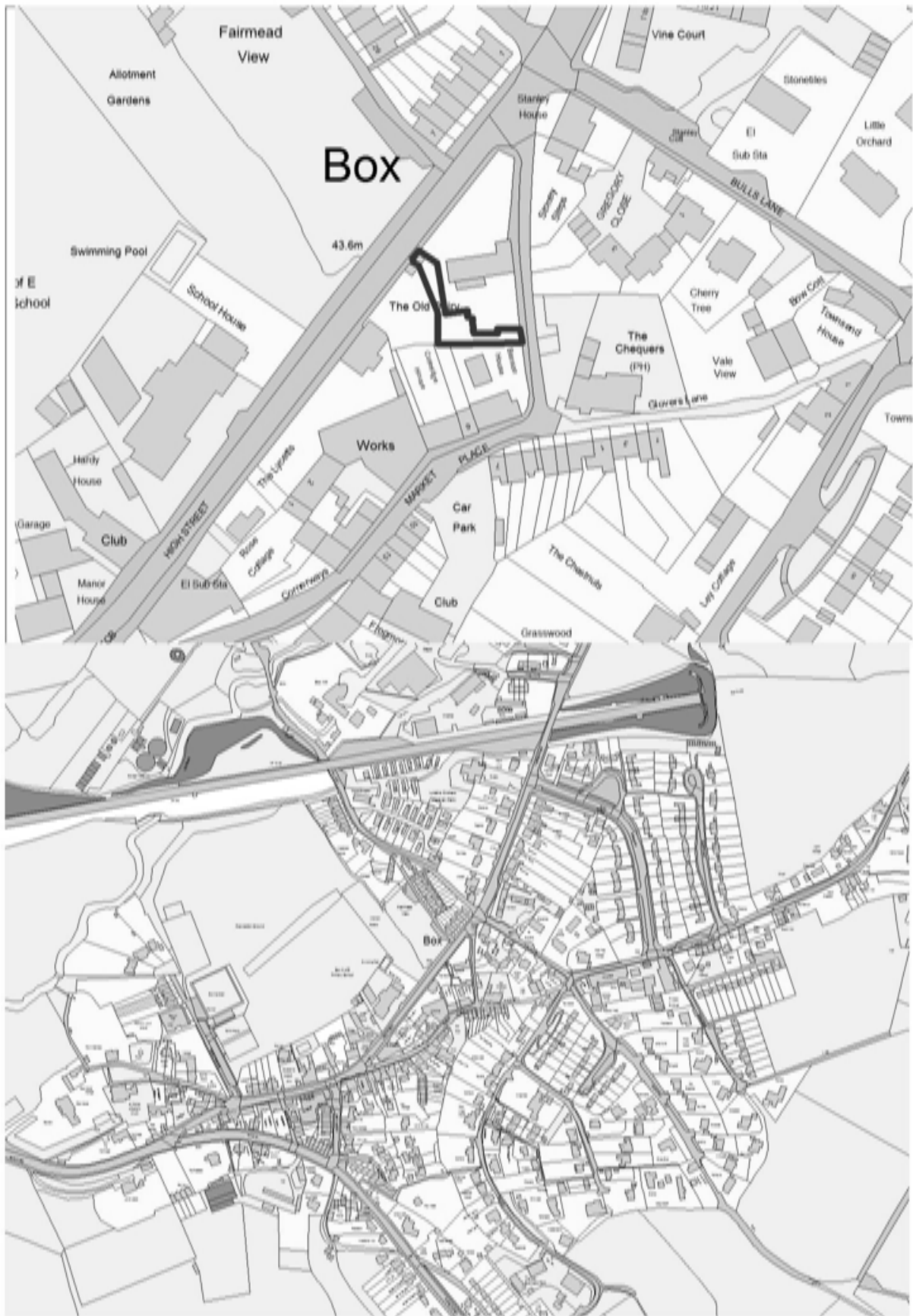
7. The operation of the premises for the additional hours and activities hereby permitted shall apply only to the following persons and their resident dependants:

Mr Simon Wright
Mrs Lucy Wright

REASON: Regard has been paid to the personal circumstances of the applicant which are considered, exceptionally in this case, to be sufficient to justify the decision to grant variation of conditions. The Local Planning Authority shall wish to consider separately any such proposal made by another applicant.

INFORMATIVE

1. It has come to the officer's attention that objections have been made in respect of noise nuisance emanating from beyond the site area as applied for. Whilst this is not a material planning consideration in this instance, it is emphasised that the Planning Permission hereby modified relates solely to the site area as defined, and therefore any use of the surrounding land within the same ownership for any other purpose other than that which is ancillary to the use of the dwellinghouse or suitably licensed is not permitted.



REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Report No.

Date of Meeting	14th March 2012		
Application Number	11/04105/FUL		
Site Address	Land to the rear of Juggler's Cottage, Cherhill, Wiltshire, SN11 8XP		
Proposal	3 Bed Dwelling		
Applicant	Mr Thorne & Ms Mudie		
Town/Parish Council	Cherhill		
Electoral Division	Calne South & Cherhill	Unitary Member	Councillor Alan Hill
Grid Ref	404018 170314		
Type of application	Full		
Case Officer	Charmian Burkey	01249 706667	Charmian.burkey@wiltshire.gov.uk

Reason for the application being considered by Committee

The application has been called to Committee by Cllr Hill on the grounds of scale of the development; visual impact upon the surrounding area; design – bulk, height and general appearance.

1. Purpose of report

To consider the above application and to recommend that the application be DELEGATED to the Area Development Manager to allow the signing of S106 agreements to cover Public Open Space and Affordable Housing.

2. Report summary

The main issues in the consideration of this application are as follows:

- Principle of development
- Impact on the setting of the Grade II listed building, Jugglers Cottage.
- Impact on the Cherhill Conservation Area and Wessex Area of Outstanding Natural Beauty
- Scale, design and general appearance
- Impact on Highways
- Impact upon neighbour amenity

The application has generated objection from Cherhill Parish Council; and 10 letters of objection from the public.

3. Site Description

The site is within the northern garden of the Grade II listed Cottage known as Juggler's Cottage. It also lies within the Cherhill Conservation Area and Wessex Downs AONB. The garden is considerable and slopes down approx 3m in height from south to north. The garden is partially unkempt with some fruit trees and more mature trees on the boundaries. Access would be gained off Park Lane.

4. Relevant Planning History		
Application Number	Proposal	Decision
11/00469/FUL	Dwelling and garage	Withdrawn
11/01422/FUL	Dwelling (re-submission of 11/00469/FUL)	Withdrawn
11/03514/LBC	Replace windows and dormers, open 3 fireplaces	Delegated

5. Proposal

The proposal follows several months of negotiation and submission of amended plans and is for a simple brick 3 bed cottage in the rear garden of a Grade II listed cottage within the Cherhill Conservation Area and Wessex Downs AONB. Parking and turning and a new access will be provided, but no garage. The dwelling will be parallel to the lane similar to the type of development in the very near vicinity.

6. Planning Policy

North Wiltshire Local Plan: Policies C3; HE1; HE4 and NE4

7. Consultations

Cherhill Parish Council acknowledge the applicants' presentation to them where they stated the need to develop the plot to fund repairs to the listed building. However, they object on the grounds that the construction of a new dwelling in the Cherhill Conservation Area which is characterised by large gardens in this part of the village. The Cherhill Parish Plan published in June 2010 'Vision for the future' is specifically against this type of development in Cherhill. The plot was not identified for possible future building.

On the original plans: The design of the house is a design without imagination and the style of house would not 'enhance' the conservation area. There is no reference on the application to any heating or insulation for a sustainable property.

The Parish Councillors raised concerns about the entrance and exit onto the narrow Park Lane and being on a National Cycle Rout NC201.

On the amended plans: Comments are still awaited on the plans before the Committee and will be reported on the "additional information" pages.

Archaeology: In the 1980s 2 Roman skeletons and artefacts were found to the front of the next door property. This indicates a high probability that there are further archaeological remains in the vicinity. They therefore recommend an archaeological condition (WL26)

Housing – Policy H6 of the adopted North Wiltshire Local Plan 2011 states that where a single market unit is proposed an off site contribution of £26k will be sought. There are 21 households seeking an affordable home in Cherhill and the surrounding area.

Highways have no objection subject to conditions.

Amenity and Fleet state that an off site contribution of £5,800 is required for POS to upgrade facilities at Tommy Croker Park.

8. Publicity

The application was advertised by site notice and neighbour consultation.

CPRE Object on the grounds that the site is very close to the transition from built residential village and open rural environment and is well wooded and attractive with little traffic other than farm traffic. This would be an encroachment into the open countryside. The Cherhill Conservation Area Statement describes the following elements:

1. To the north the main part of the village lies tranquillity amongst the small lanes and valleys that have made up the pattern of the village for centuries.
2. Large plots characteristic to Cherhill should be protected from inappropriate infill and backland development.
3. It is important to bear in mind that even small adjustments to the fabric of the area can alter its special nature.
4. The nature of the lanes is beginning to be spoiled by new accesses being formed to infill housing development.
5. Grass banks and verges are key elements contributing to the rural character of the village and should be protected.

CPRE endorse these statements which are applicable to this application and would not want to see this eroded by infilling which would compromise the development of the existing cottage to deliver an attractive family house set in large garden traditional of Cherhill.

The dwelling would be of no benefit to the first time buyer.

10 letters of objection have been received

Summary of key relevant points raised (on original plans):

- Featureless modern home.
- The plot adjoins open country and is within an AONB.
- The conservation area was to protect from inappropriate infill development. Cherhill will always need more housing but the conservation area was to protect against inappropriate development and spoiling the heritage and charm of the village.
- Highway safety and parking problems.
- Overlooking of Upper Farm and 2, The Street.
- Setting a precedent for infilling elsewhere.
- Detrimental effect on listed Juggler's Cottage.
- The Conservation Area Statement says that new buildings...should be designed with respect to the traditional character of the village and goes on to say that traditional Cherhill construction is 1.5 storeys with eaves below the ceiling level on the first floor. The pitch is wrong at 30 degrees making the cottage higher than Juggler's Cottage.
- The applicants' analysis of the houses in Cherhill is full of subjectivity and conjecture and not historical research.
- Object to the new access proposed which removes mature hedging.
- The test is whether the proposed development would fail to preserve or enhance the character of the conservation area or the listed building. This will not be achieved.
- The financial side of updating and repairing Juggler's Cottage is not a planning consideration.

The applicant has agreed to enter into a S106 agreement for payments of monies to POS and Affordable Housing and has also responded to some of the letters of objection. A full copy of the letter and also the response from the applicants' highways engineer is available on the application file and online.

9. Planning Considerations

The application has been revised so that it is now a much more traditionally designed 3 bed cottage with single storey lean-to on the south side and dormers in the roof space. Parking and turning is provided to the north side with access formed off Park Lane. The garden is approx. 13m

deep and the dwelling will be placed perpendicular to Jugglers Cottage which is some 39m away to the south.

The site lies within the Framework boundary of Cherhill and also within its conservation area, the setting of a Grade II listed building and the Wessex Downs AONB.

It is not considered that the development would adversely affect the landscape quality and character and the AONB will therefore not be adversely affected. The CPRE's comments about this being an encroachment into the open countryside are noted, but the site does lie within the framework boundary and project little further than Upper Farmhouse and Upper Farm to the east.

The new dwelling, sited some 39m from the Grade II listed Cottage will be set down from it both in terms of land fall and overall height so that the relationship is sufficiently subservient. The ridge line of the proposed cottage will be 1.89m below that of Juggler's Cottage. Juggler's Cottage benefits from a huge garden (at approx 60m) and will retain a significant garden, even with this plot built. It is considered that sufficient setting for the listed building and amenity space will remain. As access is to be taken from Park Lane this development is not backland development.

With regard to the Cherhill Conservation Area, there is a Cherhill Parish Plan which was published in 2010, but more relevant to development is the Cherhill Conservation Area Statement (adopted 1999). In the section covering Park Lane the key points are:

- Ensure new accesses are detailed sympathetically to maintain the character of Park Lane.
- Encourage new buildings and extensions to be designed with respect to village character.
- Ensure retention of existing hedgerows and mature trees.

Whilst a breakthrough of the hedge and bank will be required to form the access, the majority of the hedging and banked character of this part of Park Lane will be retained and it is not considered that this part of the lane's character will be eroded sufficiently to justify a refusal.

The plans for the dwelling have now been significantly amended so that they reflect a simpler cottage style to be built in good quality brick with a grey slate roof, with traditional proportions and detailing. It is considered that the proposal now will preserve the character of the conservation area whilst allowing a new home and retention of the open character of the area. The proposal is therefore considered to comply with policies C3, H2, HE1 and HE4 of the North Wiltshire Local Plan 2011.

The applicant has agreed to pay the S106 contributions for POS and Affordable Housing and therefore the application is recommended for Delegation to allow this legal agreement to be drawn up.

10. Recommendation

The application is DELEGATED to the Head of Development Control to GRANT Planning Permission for the following reason:

The plans for the dwelling have now been significantly amended so that they reflect a simpler cottage style to be built in good quality brick with a grey slate roof, with traditional proportions and detailing. It is considered that the proposal now will preserve the character of the conservation area whilst allowing a new home and retention of the open character of the area. The proposal is therefore considered to comply with policies C3, H2, HE1 and HE4 of the North Wiltshire Local Plan 2011.

Subject to the signing of a S106 agreement in respect of Public Open Space and Affordable Housing

And 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. No development shall commence on site 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.

POLICY: C3

3. No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:

- (a) indications of all existing trees and hedgerows on the land;
- (b) details of any to be retained, together with measures for their protection in the course of development;
- (c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
- (d) finished levels and contours;
- (e) means of enclosure;
- (f) car park layouts;
- (g) other vehicle and pedestrian access and circulation areas;
- (h) hard surfacing materials;

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

POLICY: C3

4. 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.

POLICY: C3

5. (a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).

- (b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time, as may be specified in writing by the Local Planning Authority.

- (c) No equipment, machinery or materials shall be brought on to the site for the purpose of the development, until a scheme showing the exact position of protective fencing to enclose all retained trees beyond the outer edge of the overhang of their branches in accordance with British Standard 5837 (2005): Trees in Relation to Construction, has been submitted to and approved in writing by the Local Planning Authority, and; the protective fencing has been erected in accordance with the approved details. This fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the Local Planning Authority.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later.

REASON: To enable the Local Planning Authority to ensure the retention of trees on the site in the interests of visual amenity.

POLICY: C3

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (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.

POLICY: C3

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

POLICY: C3

8. No works shall commence on site until details of all new or replacement rainwater goods (which shall be of metal construction and finished in black) and their means of fixing to the building have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

POLICY: C3

9. No works shall commence on site until details of all new external window and door joinery and/or metal framed glazing have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include depth of reveal, details of heads, sills and lintels, elevations at a scale of not less than 1:10 and horizontal/vertical frame sections (including sections

through glazing bars) at not less than 1:2. The works shall be carried out in accordance with the approved details.

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

10. No development shall commence within the area indicated on the location plan outlined in red until:

- a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
- b) The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

POLICY: C3

11. No part of the development hereby permitted shall be first occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

POLICY: C3

12. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), 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.

POLICY: C3

13. The gradient of the access way shall not at any point be steeper than 1 in 15 for a distance of 4.5 metres from its junction with the public highway.

REASON: In the interests of highway safety.

POLICY: C3

14. The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the local planning authority. Amendments may require the submission of a further application.

306/001RevA, A11/SA193/01RevA, 02RevB, 03RevB, 04RevB dated 27th February 2012, Topographical survey 20th Dec 2011

REASON: To ensure that the development is implemented as approved.



REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Report No.

Date of Meeting	14th March 2012		
Application Number	12/00198/S73A		
Site Address	Unit 2, 119 The Pippin, Calne, SN11 8JQ		
Proposal	Change of Use to A5, Erection of New Shopfront and Extract/Ventilation & Air Compressors to Rear (Variation of Condition 2 of 11/02734/FUL – Change of Trading Hours		
Applicant	Dominos Pizza Group Ltd		
Town/Parish Council	Calne		
Electoral Division	Calne Central	Unitary Member	Councillor Howard Marshall
Grid Ref	399815 171215		
Type of application	S73A		
Case Officer	Charmian Burkey	01249 706667	Charmian.burkey@wiltshire.gov.uk

Reason for the application being considered by Committee

The Area Development Manager considers it appropriate that the Committee consider the application as the original restriction on hours of trading was imposed by the Planning Committee on application 11/02734/FUL on 2nd November 2011.

1. Purpose of report

To consider the above application and to recommend that planning permission be GRANTED subject to conditions.

2. Report summary

The main issues in the consideration of this application are as follows:

- Principle of development
- Impact upon neighbour amenity

The application has generated objection from Calne Town Council; and 1 letter of objection from the public.

3. Site Description

The site is a unit recently occupied by Dominos Pizza following the grant of planning permission in November 2011 for an A5 takeaway se with associated works. The adjoining unit is occupied by M&Co clothing and opposite is Sainsbury's. The site lies within the town centre where there are a great diversity of uses.

4. Relevant Planning History		
Application Number	Proposal	Decision
07/03228/FUL	Demolition of existing units and replacement with new retail units with flats above.	Permission
11/02734/FUL	COU of Unit 2 to A5, erection of new shop front & extract/ventilation and air conditioning unit to the rear.	Permission with conditions
11/92983/ADV	Two internally illuminated fascia signs, one illuminated projecting sign and one internally illuminated window sign.	Permission

5. Proposal

Planning application 11/02734/FUL was approved with the following condition attached:

‘The use hereby permitted shall be for the sale of pizzas only and no other hot food takeaway. There shall be no cooking or sale of pizzas outside the hours of 09:00-22:00 on any day.

REASON: To protect the amenity of the area.’

This application seeks to extend the opening hours to 09:00-23:00 on any day.

6. Planning Policy

North Wiltshire Local Plan: policies C3; HE1; NE18

The site lies within the Calne Conservation Area.

7. Consultations

Calne Town Council stated that whilst they consider that the application could have opening hours in line with other businesses in the town, there has not yet been sufficient time to assess the potential impact that longer hours may have – including on those residents who live in nearby properties. Members agreed to turn down the application until the potential impact is more clearly understood.

Environmental Health comment that when the ‘noise’ comments were made on the original application, it was based on the application operation running until midnight. There are therefore no adverse comments relating to the proposal to extend the opening hours from the consented 22:00 hrs to 23:00.

8. Publicity

The application was advertised by site notice and neighbour consultation.

1 letters of letter of objection received

Summary of key relevant points raised:

- The previous restriction, limiting the hours to 22:00 is the correct one. Nothing has changed since that decision was made.
- Since the restaurant has opened there has been an increase in noise and rubbish in the local area and it has been noted that on one occasion an articulated delivery vehicle was outside at 03:00 hours.
- The area is a hotspot for anti social behaviour which has increased since the opening and will increase more in summer.
- Dominos imply that their main trade is in phone orders and delivery and they don't have eat in, but there are table and chairs for approx 20 people, which are frequently filled.

9. Planning Considerations

The principle of the development has been established by permission 11/02734/FUL and the unit is open and trading. This application is purely to extend the trading hours by one hour to allow it to open until 11pm.

Key to this application is the advice of Environmental Health and it is important to note that they neither objected to the original application, which requested opening hours until midnight, nor do they object to this application.

The site lies within the town centre where late night activity is to be expected and indeed there are other outlets which open to at least 11pm.

It is not considered that, given the other nearby uses, a refusal could be justified without objection from Environmental Health.

10. Recommendation

Planning Permission be GRANTED for the following reason:

The proposal, due to its town centre location and limiting conditions, is considered to be compliant with policies C3, HE1 and NE9 of the North Wiltshire Local Plan 2011.

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 use hereby permitted shall be for the sale of pizzas only and no other hot food takeaway. There shall be no cooking or sale of pizzas outside the hours of 09:00-23:00 on any day.

REASON: To protect the amenity of the area.

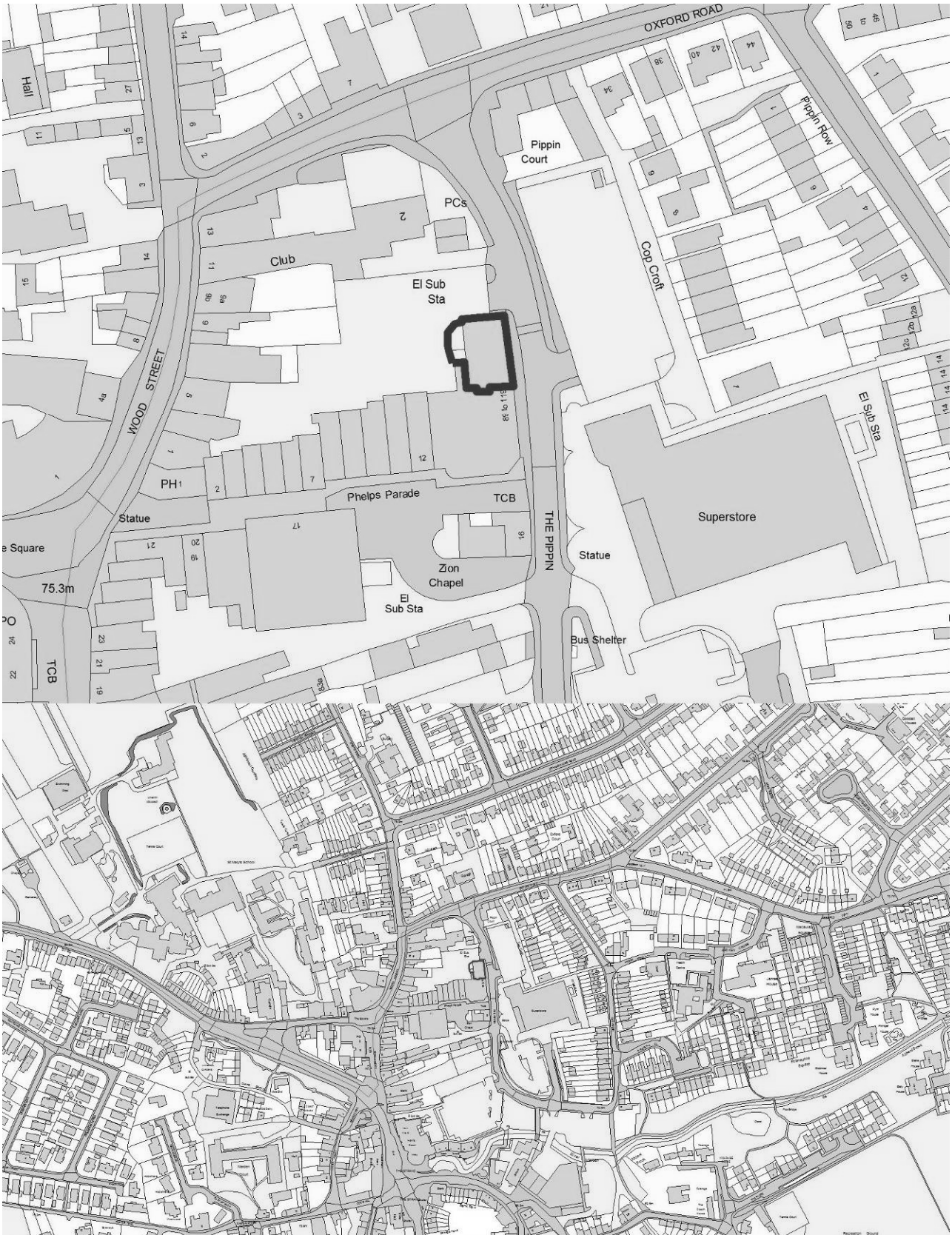
- 3 Any fixed plant associated with the proposed development shall be so sited and designed as to not exceed the following criteria : 45dBLAeq(1hr) and noise rating (NR) curve 40dBA, when measured at 1m from any residential window.

REASON: To protect nearby residential amenity.

- 4 The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the local planning authority. Amendments may require the submission of a further application.

Plans

C4728-A5-03, 02, 01, 04 and 05 dated 11th August 2011.



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