

AGENDA

Meeting: Eastern Area Planning Committee
Place: Council Chamber - Council Offices, Browfort, Devizes
Date: Thursday 14 October 2010
Time: 6.00 pm

Please direct any enquiries on this Agenda to Chris Marsh, of Democratic and Members' Services, County Hall, Bythesea Road, Trowbridge, direct line (01225 713058) or email chris.marsh@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 Philip Brown	Cllr Charles Howard
Cllr Jane Burton	Cllr Chris Humphries
Cllr Peggy Dow	Cllr Laura Mayes
Cllr Nick Fogg	Cllr Christopher Williams
Cllr Richard Gamble	

Substitutes:

Cllr Nigel Carter	Cllr Jemima Milton
Cllr Peter Colmer	Cllr Francis Morland
Cllr Lionel Grundy OBE	Cllr Christopher Newbury
Cllr George Jeans	Cllr Jeffrey Ody
Cllr Jerry Kunkler	

AGENDA

Part I

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

1. **Apologies for Absence**

To receive any members' apologies for absence.

2. **Minutes of the Previous Meeting** *(Pages 1 - 4)*

To approve and sign as a correct record the minutes of the meeting held on 12 August 2010 (copy herewith).

3. **Declarations of Interest**

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

4. **Chairman's Announcements**

5. **Public Participation**

Members of the public who wish to speak either in favour or against an application 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. 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.

6. **Planning Appeals** *(Pages 5 - 6)*

To receive details of the completed and pending appeals (copy herewith).

7. **Planning Applications**

To consider and determine planning applications in the attached schedule.

- 7a. **E/10/0374/FUL Full planning application for the demolition of existing farmhouse and farmbuildings and the erection of a replacement dwelling and 10 additional houses (4 affordable), together with a new access and associated works at Ropewind Farm, Rivar Road, SHALBOURNE SN8 3PU (Pages 7 - 20)**
- 7b. **E/10/1047/FUL Full planning application for change of use of agricultural land to playing fields at Glebe Field, BURBAGE (Pages 21 - 30)**
- 7c. **E/10/0886/LBC Listed building application for application of textured masonry paint to the exterior of the property at 25, Long Street, DEVIZES SN10 1NN (Pages 31 - 36)**
- 7d. **Proposed Diversion of Part of Baydon Bridleway 11 and Creation of Restricted Byway and Diverted Route (Pages 37 - 58)**

8. **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

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EASTERN AREA PLANNING COMMITTEE

DRAFT MINUTES OF THE EASTERN AREA PLANNING COMMITTEE MEETING HELD ON 12 AUGUST 2010 IN THE COUNCIL CHAMBER, WILTSHIRE COUNCIL OFFICES, BROWFORT, DEVIZES.

Present:

Cllr Philip Brown (Chairman), Cllr Jane Burton, Cllr Peggy Dow, Cllr Nick Fogg,
Cllr Richard Gamble, Cllr Charles Howard, Cllr Jerry Kunkler (Reserve), Cllr Laura Mayes
and Cllr Christopher Williams

76. Apologies for Absence

Apologies were received from Cllr Chris Humphries who was substituted by Cllr Jerry Kunkler.

77. Minutes of the Previous Meeting

The minutes of the last meeting held on 22 July 2010 were presented.

Resolved:

**To approve as a correct record and sign the minutes of the meeting held
on 22 July 2010.**

78. Declarations of Interest

There were no Declarations of Interest.

79. Chairman's Announcements

There were none.

80. Public Participation

The Committee noted the rules on public participation and the manner in which the meeting would proceed.

81. Planning Applications

1.1. Full Planning application for: Replacement of attached barn with new barn (to remain as ancillary to the main pub) At: Barge Inn, Honeystreet, ALTON SN9 5PS

The following people spoke against the proposal

Mr John Lewis, a local resident.
Mr John Dunford, a local resident.
Mr Charles Fletcher, a local resident.

The following person spoke in favour of the proposal

Mr Ian McIvor, the applicant

The Committee received a presentation by the Area Development Manager which set out the main issues in respect of the application. He introduced the report, which recommended approval, and drew the Committee's attention to letters of representation and exchange of emails with Mr Richard Lloyd's solicitor as tabled in the Late List.

Members of the Committee then asked technical questions after which the Committee received statements from the members of the public detailed above, expressing their views regarding this planning application.

After a lengthy discussion of which key points were,

- Amount and speed of traffic on the lane;
- The usage of the barn, which was confirmed as ancillary to the pub;
- Confirmation of the legality of the application being considered;
- Preserving active communities.

It was,

Resolved:

Planning Permission is granted, subject to the conditions set out below, for the following reasons;

- 1 The development hereby permitted shall be begun before the expiration three years of 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 replacement barn hereby permitted shall not be used at any time other than for purposes ancillary to the use of the Barge Inn as a public house.

REASON:
To define the extent of the permission.

- 3 Prior to occupation of the replacement barn hereby permitted, the first floor void (as indicated on Drawing 9055.02) shall be made accessible for use to barn swallows and shall incorporate suitable beams / platforms / cups for swallow nesting.

REASON:

To maintain local biodiversity as barn swallows nest in the existing barn.

- 4 **INFORMATIVE TO THE APPLICANT:**
All site staff should be informed of the possible presence of bats at the site and remain vigilant while stripping any materials. Should bats be discovered, staff should stop work immediately and contact the Bat Helpline for advice (0845 1300 228).

- 5 This decision relates to documents/plans submitted with the application listed below. No variation from the approved documents should be made without the prior approval of this Council. Amendments may require the submission of a further application. Failure to comply with this advice may lead to enforcement action which may require alterations and/or demolition of any unauthorised buildings or structures and may also lead to prosecution.

Plans Ref. Existing Elevations 1:100, Ground Floor survey plan 1:50, First Floor survey plan 1:50, 9055.01, 9055.02 and 9055.03 all received 28 March 2010

Reasons for granting planning permission;

The proposed development will have no adverse impact on the setting of the main listed building of the Barge Inn and will help to facilitate a continuing viable future for the building as a public house and community asset. The design is in keeping with the building and the local planning authority is satisfied that the access and parking arrangements are adequate to cater for it. Accordingly, the Council considers that the proposal is in accordance with policies PD1 and NR7 of the Kennet Local Plan and with national planning guidance.

Appendices:

Background Documents Used in the Preparation of this Report:

None

Planning application file and associated files

1.2. Full planning application for: Erection of 6.6 metre freestanding tower supporting wind turbine At: Harding Severalls, Newtown, SHALBOURNE SN8 3PR

The following person spoke in favour of the proposal

Mr Adrian Wiltshire, the applicant.

The Committee received a presentation by the Area Development Manager which set out the main issues in respect of the application. He introduced the report, which recommended approval, and drew the Committee's attention to further comments received from Shalbourne Parish Council and the division member as tabled in the Late List.

Members of the Committee then asked technical questions after which the Committee received statements from the members of the public detailed above, expressing their views regarding this planning application.

After a lengthy discussion of which key points were,

- the benefits of providing environmentally friendly energy;
- the impact on the Area of Outstanding Natural Beauty.

It was,

Resolved

Planning permission be refused for the following reason(s):

The site is located in an elevated position within the North Wessex Downs Area of Outstanding Natural Beauty (AONB). The proposed wind turbine, due to its height and position, would have an adverse impact on the character and appearance of the landscape, which would be contrary to the statutory aims of conserving and enhancing the natural beauty of the AONB and would conflict with policies NR6, NR7 and NR19a of the Kennet Local Plan.

82. **Urgent items**

There were no urgent items.

(Duration of meeting: 6.00 - 6.55 pm)

The Officer who has produced these minutes is Anna Thurman, of Democratic Services, direct line (01225) 718379, e-mail anna.thurman@wiltshire.gov.uk

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

Appeals Determined 01/04/2010 – 30/09/2010

Reference	Parish	Location	Description	Committee/ Delegated	Decision
E/09/111/S73	Ogbourne St George	Lower Upham Airfield	Removal of conditions	Committee	Dismissed
K/59723/F	Great Bedwyn	Fortlands, Forest Hill	Erection of 8 dwellings	Committee	Allowed
K/59725/CAC	Great Bedwyn	Fortlands, Forest Hill	Demolition of existing house	Committee	Allowed
E/10/0113/FUL	Pewsey	31, Wilcot Road	Retention of fence	Delegated	Dismissed
E/09/1109/OUT	Grafton	1, Armines, Marten	Single dwelling	Delegated	Dismissed
E/09/1501/FUL	Chute Forest	Redhouse Farn, Clanville	Single dwelling	Delegated	Dismissed
E/10/0528/FUL	Great Cheverell	5, The Green	Two storey extension	Delegated	Allowed
E/09/1580/FUL	Devizes	Dunkirk Hill Farm	Conversion of building to holiday let	Delegated	Dismissed

Notes:

There were no cost awards in any of these appeals, either in favour of or against the Council.

Copies of the Inspector's decision letters are automatically sent to the relevant Division Member by the Council's Planning Administration Team and are published on the Council's public web site. Copies are available for any other Councillor on request.

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REPORT TO THE EAST AREA PLANNING COMMITTEE

Date of Meeting	14 October 2010
Application Number	E/10/0374/FUL
Site Address	Ropewind Farm, Rivar Road, Shalbourne, Marlborough, Wiltshire SN8 3PU
Proposal	The demolition of the existing farmhouse and farm buildings, and the erection of a replacement dwelling and 10 additional houses (4 affordable), together with a new access and associated works.
Applicant	Mr H Marriott
Town/Parish Council	SHALBOURNE
Grid Ref	431564 162653
Type of application	Full Planning
Case Officer	Peter Horton

Reason for the application being considered by Committee

This application has been called to committee at the request of the ward member, Cllr Wheeler.

1. Purpose of Report

To consider the recommendation that the application be approved subject to a Section 106 agreement and conditions.

2. Report Summary

The main planning issues to consider are: The principle of residential development; design / impact on the character and appearance of the conservation area; residential amenity; loss of woodland; affordable housing; highway safety; drainage; children's play.

3. Site Description

This 1.2 ha site lies on the north-west side of Rivar Road, within the Shalbourne limits of Development and the Shalbourne Conservation Area. The site is largely open land, but does contain a 20th Century farmhouse, some contemporary farm buildings and an area of woodland at its northern end.

To the north west of the site is a public footpath with low density residential development beyond. To the south west side are two barns granted consent in 2006 to be converted into a single dwelling (now under construction), and a detached cottage, Wellgarth. To the south east is Little Mead, an estate of 8 detached bungalows. To the north east side is open countryside.

4. Planning History

K/58668/F – Resolved to be approved in August 2008 but S106 agreement not completed to date and therefore planning permission not yet granted.

The demolition of the existing farmhouse and farm buildings, and the erection of a replacement dwelling and 7 additional houses (3 affordable), together with a new access and associated works.

E/10/0376/CAC – Approved May 2010 –Conservation Area consent for the demolition of the existing farmhouse and farm buildings



Site Location & Aerial view

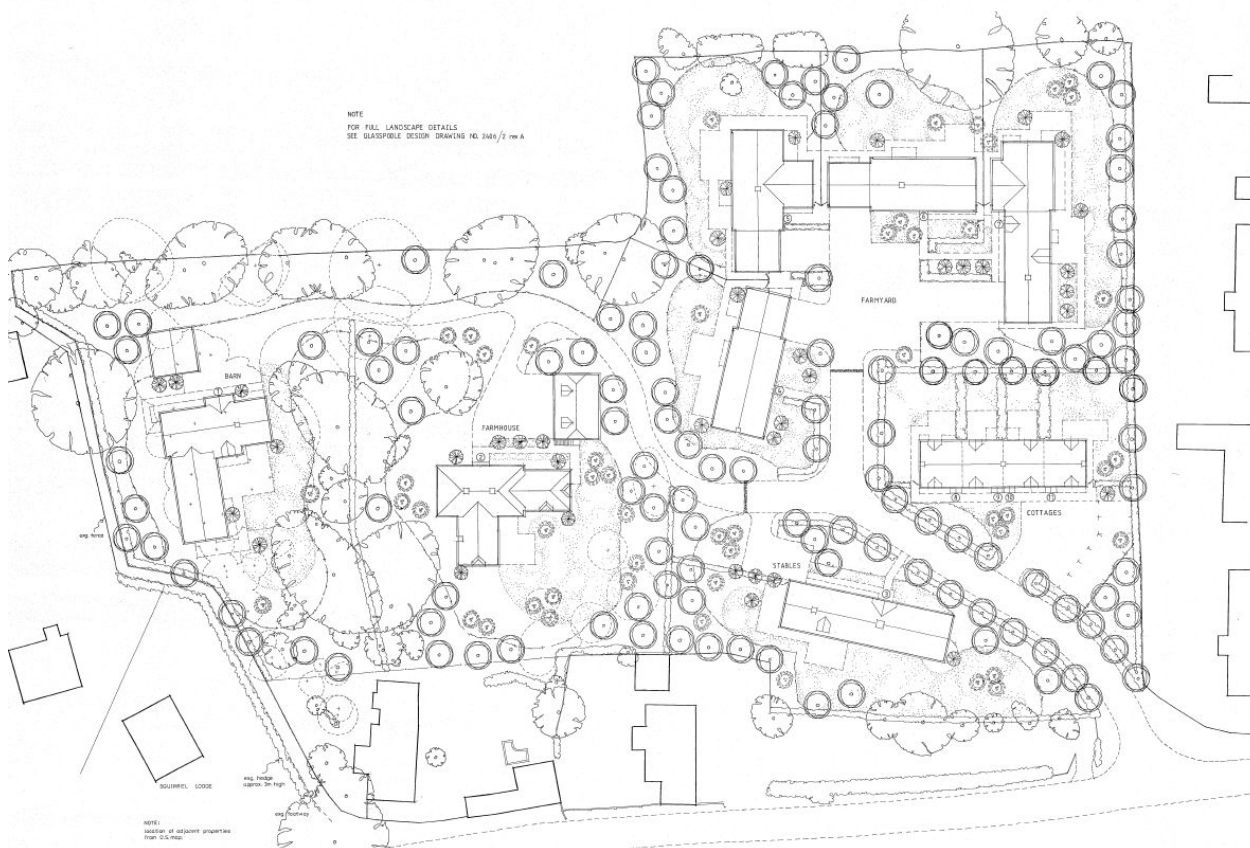


5. Proposal

The proposal involves the erection of 11 dwellings, one being to replace the existing farmhouse, leaving a net gain of 10 dwellings. Of these ten, four would be affordable and six would be open market units. A new estate road would be provided to serve the dwellings, utilising the existing farm access from Rivar Road.

The buildings have been designed with a rural theme. Plots 1 to 3 would comprise detached dwellings which attempt to imitate a 'barn', 'farmhouse' and 'stables' respectively. Plot 1 would be on the site of the woodland at the northern end of the site. Plots 4 to 7 would be laid out in a U-shape as a 'farmyard'. Plots 8 to 11 would be a terrace of 'cottages', these to be affordable units. These would be situated near the entrance to the site and would be orientated at 90 degrees to Little Mead.

Conservation Area Consent has already been granted for demolition of the existing buildings on the site.



Proposed Site Layout

6. Planning Policy

Kennet Local Plan: policies PD1, HC22, HC28, HC32, HC35 and NR4

The site lies within the Limits of Development for Shalbourne set out in the Kennet Local Plan and within the boundaries of the Shalbourne Conservation Area, described in the Shalbourne conservation Area Statement of 2003. The whole of the village lies within the North Wessex Down Area of Outstanding Natural Beauty.

Central Government planning policy: PPS1, PPS3, PPS5, PPS7 and PPS9

7. Consultations

Shalbourne Parish Council: Supports the proposal. However makes the following comments: (a) there should be variation in the roof covering, with some use of slate; (b) the affordable units should be three-bedrooms rather than two-bedroom;

Considers that the changes shown in the amended plans (re-orientation of plots 8-11, removal of a first floor window on plot 1, moving plot 3 further from River Rd and the use of a mixture of roof materials are an improvement on the previous proposals).

North Wessex Downs AONB officer: Objects to the loss of the woodland. To allow the proposal would harm the nature conservation value of the site.

Wiltshire Council Drainage Engineer: No objection. There is a history of flooding in Rivar Road in the vicinity of The Lynch. The outfall from this area is limited and cannot cope with any additional loads. A drainage condition will therefore be required to ensure that an sustainable drainage system would work.

Wiltshire Council Highways Officer: No objection subject to conditions.

Wiltshire Council Housing Officer: The proposal is for a net gain of 10 houses. Policy HC32 requires 50% of these to be affordable. Only 4 are proposed - a shortfall of 1. There is sufficient local need to justify the 50% affordable housing contribution. The previous scheme included 3 out of a net increase of 7 new dwellings – a total of 43% as the practice has been to round down the number where there are an odd number of houses proposed.

Wiltshire Council Adoptions and Inspections Officer: The development generates a need for £23,780 in off site open space contributions to be used to enhance existing or create new play facilities in the village.

Wiltshire Council Conservation Officer: Considers that the proposal does not preserve or enhance the conservation area because of the loss of the woodland area and the open space previously shown on what is now the site of plot 3. Critical of the 'farmyard pastiche' of plots 4 to 7. Concerned at the frontage car parking to plots 8 – 11.

Wiltshire Council Landscape Consultant: The woodland has considerable visual importance and should be retained. Its loss is unacceptable and plot 1 should be deleted. The woodland is over-mature and requires a phased replanting in order to improve the woodland composition and increase the proportion of native species.

Wiltshire Council Ecologist: The farmhouse has a bat roost. The proposed mitigation strategy, if conditioned, is acceptable.

Whilst the woodland contains no rare species, its loss would be ecologically harmful. It provides opportunities for a range of fauna and forms a significant node within the village's network of hedgerows/tree belts. The loss of the woodland would be contrary to PPS9, which promotes the protection of biodiversity and the retention of habitat networks. The proposed substantial tree planting will take 20-30 years to provide ecological interest. The retention of the woodland in the previous planning application shows that the loss of the woodland is not essential. Recommends refusal.

Wiltshire Wildlife Trust: Objects, endorsing the concerns of the Principal Ecologist regarding the loss of the woodland.

8. Publicity

One letter of support has been received.

Objections have been received from 9 local residents. Their main concerns can be summarised as follows:

- Overdevelopment: too many houses at too high a density. Plot 3 is too close to the terrace at plots 8-11 and is visually obtrusive. Plot 3 should be re-designed to be single storey or be omitted and the land given over to open space;
- Plots 8 – 11 are visually dominant at the entrance to the site;
- Lack of parking, particularly for plots 8 – 11;
- Loss of amenity to existing adjoining properties e.g. Squirrel Lodge and Little Mead. The height of plot 7 would dominate and overlook Little Mead;
- The 'farmyard' at plots 4 – 7 is out of character with the village's predominantly linear pattern of development;
- Plot 1 shares an access with plot 2 and may cause noise and disturbance to the latter. This tandem relationship is at odds with the linear pattern of other properties in the area;
- The loss of the woodland to accommodate plot 1. This is a significant landscape feature and a valuable wildlife habitat. The woodland should remain as a properly managed woodland, perhaps in the ownership of plot 2. The proposed replacement trees will not create a comparable replacement habitat;
- The scheme fails to satisfy policy HC32: one too few affordable homes is proposed;
- Only two-bedroomed affordable units are being proposed, but these are too small for families: the village has a need for three-bedroomed units;
- The previously undertaken housing need survey is out of date; the affordable units should only be allocated to those with a genuine local connection;
- The affordable units are at too high a density and will harm the amenities of Little Mead;
- Potential light pollution;
- Concern about surface water drainage given that Little Mead is prone to flooding;
- The site entrance is inadequate for a large number of extra vehicles joining Rivar Road.

9. Planning Considerations

The Principle of Residential Development

The application site lies within the limits of development (LOD) of Shalbourne as defined in the Kennet Local Plan. Within the LOD policy HC22 allows 'small groups of houses' provided they are in harmony with the village in terms of their scale and character. Small groups of houses are interpreted as being less than 10 houses on green field sites within villages and/or redevelopment sites within villages.

As the application proposes a net increase of ten dwellings, the proposal is in accordance with the numbers permitted under HC22.

Regarding density, central government policy in PPS3 indicates that the national indicative minimum should be around 30 dwellings per hectare. The density of the proposed development is well below this figure at 9 dwellings per hectare, but the lower figure proposed here is considered appropriate having regard to the low density character of established surrounding development. The proposed density strikes the right balance by maintaining the character of the area whilst ensuring reasonably efficient use of the land. This is in accordance with PPS3 and policy HC22.

Furthermore, the principle of residential development on the site has already been accepted in principle by an earlier committee resolution to grant approval for eight dwellings on the site (seven new plus one replacement) when considering planning application K/58668/F in 2008. The S106 agreement required to deliver the required affordable housing and commuted sum for children's play space has not been signed so the application has not been determined, but the principle of residential redevelopment has been accepted. As long ago as the Shalbourne Conservation Area Statement in 2003, the site was seen as a potential development opportunity.

Design

The site lies within the Shalbourne Conservation Area and the North Wessex Downs AONB. In these areas central government planning policy set out in PPS5 and PPS7 require new development to preserve or

enhance the designation.

The application site is occupied by an architecturally undistinguished modern farmhouse and by a few residual neglected farm buildings. These have been granted conservation area consent to be demolished (ref. E/10/0376/CAC). Once these are demolished, the site will be devoid of buildings. The proposed development seeks to recreate the former farmyard theme in the siting and design of the dwellings. Plots 4 to 7 seek to create a 'farmyard', whilst plots 1 to 3 propose themed individual dwellings: a 'barn', a 'farmhouse' and a 'stables'. Plots 8 to 11 aim to read as a terrace of farm workers' cottages. Whilst the designs could be seen as 'farmyard pastiche', on balance they are considered to be of good quality, providing variety and interest throughout the site and proposing the use of traditional materials.

Although the proposed buildings are larger than the utilitarian buildings that have occupied part of the site in the past, they are visually more appealing and their landscape impact will be mitigated by significant new tree planting. As such, they would enhance both the conservation area and AONB designations in accordance with policy.

Residential Amenity

The application site presently has limited impact on neighbouring properties which enjoy high levels of privacy. Although the *outlook* from some neighbouring properties would change, it is not considered that there would be any unacceptable detrimental impact on the *amenity* that they enjoy, in view of the careful siting and design of the proposed buildings. There would be no un-neighbourly relationships.

Turning to specific objections, plot 1 would be around 23m from Squirrel Lodge and plot 7 would be around 27m from nos. 5 and 6 Little Mead. Such distances are well above the point at which material harm to the living conditions of the occupiers of these properties can be said likely to occur, as identified in the council's supplementary guidance on amenity space in residential areas. In addition, the application proposes considerable additional planting along the relevant boundaries.

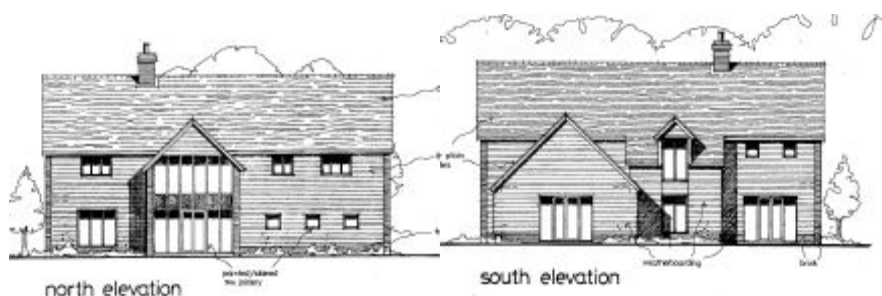
Since it was first submitted, amended plans have been submitted turning the row of cottages round by 90 degrees such that they would be sideways-on to Little Mead. No first floor side windows are proposed, and at 13.5m distance from no. 7 Little Mead, plot 11 would not have an unacceptable impact on the living conditions of that property.

Overall, the proposed development is considered to have a satisfactory relationship with neighbouring properties, in accordance with policy PD1.

The Woodland

There is a woodland at the northern end of the site which is shown to contain some significant trees in the Shalbourne Conservation Area Statement. In the plans submitted by the previous applicant, this part of the site was proposed to be retained and was to be the subject of a landscape management plan required by condition. This was agreeable to the previous applicant, although the retention of the woodland was not something the local planning authority specifically sought during negotiations – the applicant never proposed to develop it.

The current proposal differs from that previously considered in that it includes the siting of an additional dwelling (plot 1) in this wooded area which would require the felling of many of the trees within it and a consequent change in character. It is this part of the current scheme that has received the most concerted opposition on the grounds of the perceived harm to the character and appearance of the area and to its ecology. This proposal, which has come forward at the volition of the current applicant, needs to be assessed on its planning merits.



Plot 1: 'The Barn'

The woodland is a mixture of introduced conifers and self-sown and planted broadleaf species. It is, by the admission of the Council's Landscape Consultant, over-mature and if retained, would require a phased re-planting in order to improve it and to increase the proportion of native species.

The Council's Landscape Consultant, Conservation Officer and Ecologist all advocate the retention of the woodland. The latter considers that it forms a significant node within the village's network of hedgerows and tree belts and that its loss would be ecologically harmful.

However the Council's planning officers consider that the visual and ecological importance of the woodland has been overstated. The woodland contains a high proportion of non-native species and of specimens nearing the end of their natural life. It has been professionally surveyed by an arboriculturalist who described it as *'a shelter belt at the north end of the site, (it) is deteriorating. The crowns of the spruce are now too high to be providing significant shelter and these trees can be expected to continue to die back over the next 5-15 years. There are a number of mature Sycamore, but none of good form or structure. Although trees will be lost, the development provides the opportunity to renovate part of the shelter belt and to plant areas of woodland elsewhere on the site. In total, 52 trees are recommended for removal, of which 48 are low quality and value, including moribund fruit trees and large shrubs. As shown in the landscape proposals, extensive native tree planting is proposed throughout the remainder of the site. Specifically 215 trees will be planted, consisting of 65 oak, 65 beech, 22 ash, 21 field maple, 22 birch and 20 cherry. None of the trees will be less than 3.5 metres in height. In time this will produce a much more wooded site than at present, containing a higher proportion of oak, beech, ash and cherry, which will prosper well on the site.'*

Although the current area of woodland provides a pleasant backdrop and outlook from some of the neighbouring properties, the public view is more limited by its location away from the Rivar Road frontage. The main public views are from the nearby public footpaths. The tree belt along the north-eastern boundary with the adjacent fields will largely be retained, filtering views of the new house from the north. The main short term impact will be from the public footpath alongside the north-western boundary, where it will take longer for the new trees proposed to filter the views of the new house that will replace the mainly poor quality trees being removed here.

On balance, it is considered that the woodland here is not of such critical importance that it should be preserved as it stands. The plans put forward provide for a means of securing a future for the best trees and for providing a long term landscape setting for this part of the village that will preserve and enhance it. Although there may be an initial loss of ecological interest, in the longer term, the planting of the new native trees should help redress the balance.

Plot 3 – the 'stables'

Plot 3 is proposed to be located on a site proposed as open space by the previous application. Just as in the case of the woodland, the previous applicant proposed to manage it via a landscape management plan. However the current applicant seeks to develop this part of the site.



Plot 3: 'The Stables'

As with the woodland, the Council never negotiated its retention during consideration of the previous application – the previous applicant was prepared for it to remain undeveloped. However it is not considered unreasonable to seek to develop this land and the result is still a very low density scheme. The design of the 'stables' building is considered acceptable and it would contribute towards an attractive entrance to the

site.

Highway Safety

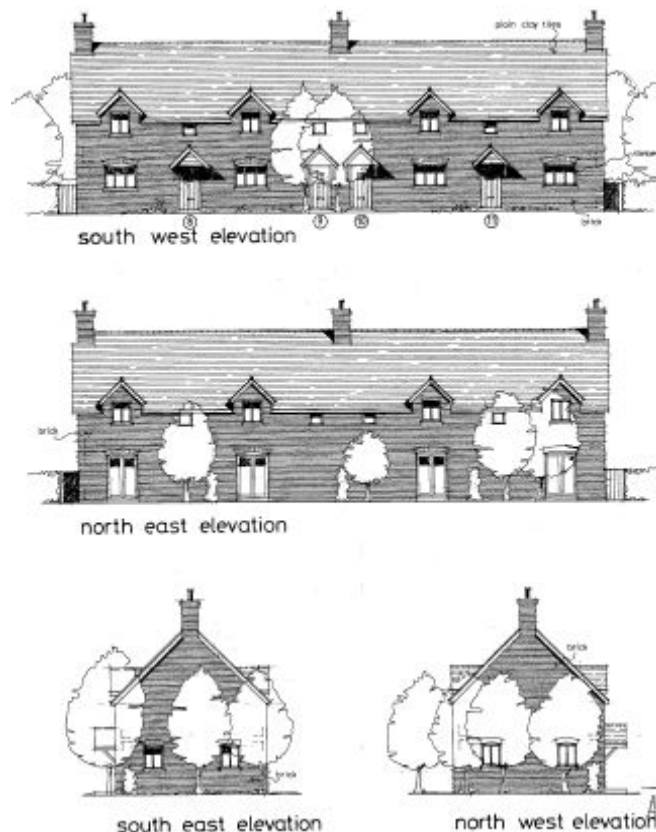
The highway authority is satisfied that the development complies with all highway safety requirements. There is adequate parking for all of the plots. The open market units have two or three parking spaces each. The affordable units have six spaces between four small households. It is neither considered that the development should lead to on-road parking in Rivar Road nor that the parking facilities will be visually dominant within the site.

The highway authority has requested that a pavement should be provided either side of the new access. However, as there are no pavements in Rivar Road immediately either side of the access, this is considered inappropriate and likely to detract from the otherwise un-engineered character of this part of the conservation area. It is not considered that highway safety would be seriously prejudiced as a consequence of this, particularly in view of the likely low levels of traffic using the estate road.

Affordable Housing

The application proposes a net increase of ten dwellings on the site. Four of these would be affordable units, namely the terrace of cottages at plots 8 – 11. Policy HC32 requires a 50% provision of affordable units, such that the proposal should be providing five affordable units rather than four. However, given the previous acceptance of a 43% affordable contribution, the current reduction to 40% is considered acceptable. Furthermore, the site layout lends itself to a terrace of four rather than five.

Policy HC32 does not stipulate the numbers of bedrooms to be provided in affordable units. Whilst it is appreciated that there is demand for three bedroom units and that these would be more suited to families, there is also demand for two bedroom units. Only two bedroom units are being proposed and this is not considered to constitute a valid planning reason to refuse the application.



Plots 8 -11: the affordable units

Drainage

There is a record of flooding in Rivar Road adjacent The Lynch. The outfall from this area is limited and cannot cope with any additional loads. A condition is required for all drainage details of the scheme to be agreed prior to construction and that attenuation is completed on the initial stage of construction.

Children's Play

Policy HC35 requires the provision of children's recreational facilities on small housing sites of between 5-19 dwellings. No such facilities have been incorporated into the site layout. However it would be acceptable for the applicant to pay the suggested commuted sum, in lieu of on-site facilities, to contribute towards provision of alternative facilities within the local area.

Other Matters

A S106 agreement is necessary to facilitate the affordable housing and financial contributions to local recreation facilities. Conditions are recommended covering the siting of domestic fuel tanks, external lighting and bat boxes.

RECOMMENDATION

That planning permission be granted subject to the applicant entering into a S106 agreement to deliver the affordable housing and to make a financial contribution towards children's play space in the village.

- 1 The development hereby permitted shall be begun before the expiration of three years of 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 take place until details of the materials to be used for the external walls and roofs (including samples) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

REASON: To secure harmonious architectural treatment.

- 3 All soft landscaping comprised in the submitted landscaping scheme hereby approved shall be carried out no later than the first planting and seeding season following the occupation of The Barn (plot 1) or the completion of the development, whichever is the sooner; any trees or plants which, within a period of 5 years, die, are removed, or become seriously damaged or diseased shall be replaced 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.

- 4 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) below shall have effect until the expiration of three years from the first occupation or the completion of the development, whichever is the earlier.

(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 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) All retained trees shall before any equipment, machinery or materials are brought on to the site for the purpose of the development, be enclosed in accordance with British Standard 5837 (2005) Trees in Relation to Construction at the outer edge of the overhang of their branches by a chestnut paling fence (or other type of fencing agreed in writing by the local planning authority). The exact position of this fencing shall be in accordance with the submitted tree protection plan 161/001A. 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 written consent of the local planning authority. "No dig construction" shall be carried out in the areas indicated on the submitted tree protection plan 161/001A.

REASON: To enable the local planning authority to ensure the retention of trees on the site in the interests of visual amenity.

- 5 Notwithstanding the details shown on the drawings, all rooflights shall be traditional conservation style with a single vertical glazing bar and flush flashing and maintained as such thereafter.

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

- 6 Details of the location and design of any domestic oil or gas tanks required as part of the development hereby approved shall be submitted to, and approved in writing by, the local planning authority prior to development commencing. The development shall be carried out in accordance with the approved details.

REASON: To safeguard local amenities.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking and re-enacting or amending that Order with or without modification), no additions to, or extensions or enlargements of, the buildings hereby approved shall be erected.

REASON: To enable the local planning authority to retain control over the enlargement of the buildings in the interests of the proper planning and amenity of the area.

- 8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking and re-enacting or amending that Order with or without modification), no first floor windows or other openings shall be inserted in the southern gable elevation of plot 1 or on the end gable of plot 11.

REASON: In the interests of the privacy of the neighbouring properties.

- 9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any other Order revoking and re-enacting or amending that Order with or without modification), no fences, gates or walls or other means of enclosure shall be erected, or placed within the curtilage of any dwelling forward of any wall of that dwelling which fronts on to any road or driveway.

REASON: In the interests of visual amenity.

- 10 Details of any floodlighting/external lighting proposed to illuminate the development shall be submitted to and approved in writing by the local planning authority before the use hereby permitted first commences or the buildings are first occupied whichever is the earliest date. Development shall be carried out in accordance with the approved details.

REASON: To safeguard local amenities.

11 The dwellings hereby permitted shall achieve level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

REASON: In order to minimise the impact of the development on climate change.

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 road, driveways and roofs), 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.

13 There shall be no, direct or indirect, discharge of surface water to the public foul sewer.

REASON: To safeguard the public sewerage system and reduce the risk of surcharge flooding.

14 Within three months of the date when the first new dwelling hereby approved is first occupied, all existing buildings on the site shall be demolished and the resulting materials removed from the site.

REASON: The retention of both the new and existing buildings on the site would not be in the interests of the proper planning of the area.

15 The development hereby permitted shall be carried out strictly in accordance with the bat mitigation strategy outlined in the Biodiversity Assessment carried out by Lindsay Carrington Ecological Services Ltd dated July 2010.

REASON: To safeguard protected wildlife species.

16 No development shall commence on site until details of an appropriate maintenance arrangement for the estate road have been submitted to and approved by the Local Planning Authority in writing, the maintenance arrangement to be in place prior to the occupation of the first of the dwellings hereby permitted.

REASON: To ensure that the road is laid out and constructed in a satisfactory manner.

17 No part of the development hereby permitted shall be first occupied until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

18 No development shall commence on site until visibility splays have been provided between the edge of the carriageway and a line extending from a point 2.4 metres back from the edge of the carriageway, measured along the centre line of the access, to the points on the edge of the carriageway 55 metres in both directions in accordance with the approved plans drawing titled Site Plan and numbered 090502-27C. Such splays shall thereafter be permanently maintained free from obstruction to vision above a height of 0.9 metres above the level of the adjacent carriageway.

REASON: In the interests of highway safety.

19 No part of the development hereby approved shall be first occupied until the parking areas shown on the approved plans have been consolidated, surfaced and laid out in accordance with the approved details. These areas shall be maintained and remain available for this use at all times thereafter.

REASON:

To ensure that adequate provision is made for parking within the site in the interests of highway safety.

20 No development other than the formation of a new access shall commence until the existing vehicular access to the garage, indicated on the drawing titled Site Plan and numbered 090502-27C, has been stopped up, its use permanently abandoned and the verge crossing reinstated in accordance with details which shall have been submitted to and approved in writing by the local planning authority. Such works shall be completed concurrently with the provision of the new access road hereby approved being first brought into use.

REASON:

In the interests of highway safety to avoid the visibility splay being obstructed.

21 **INFORMATIVE TO THE APPLICANT:**

There shall be no release of any Advance Payment Code payment or related bonds until the Highway Authority is satisfied that the road within the development has been suitably constructed and that an adequate Management Company has been secured for the maintenance of the road in perpetuity.

22 **INFORMATIVE TO THE APPLICANT:**

This planning permission does not derogate the legal implications of demolishing the bat roost in the existing farmhouse. Demolition of the building is still likely to result in the destruction of a roost and could result in the disturbance of individual bats if not timed to avoid the summer period; this could constitute a breach of the Regulation 41 in the absence of a derogation licence. It is the developer's own responsibility to ensure that work is carried out within the law.

23 **INFORMATIVE TO APPLICANT:**

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

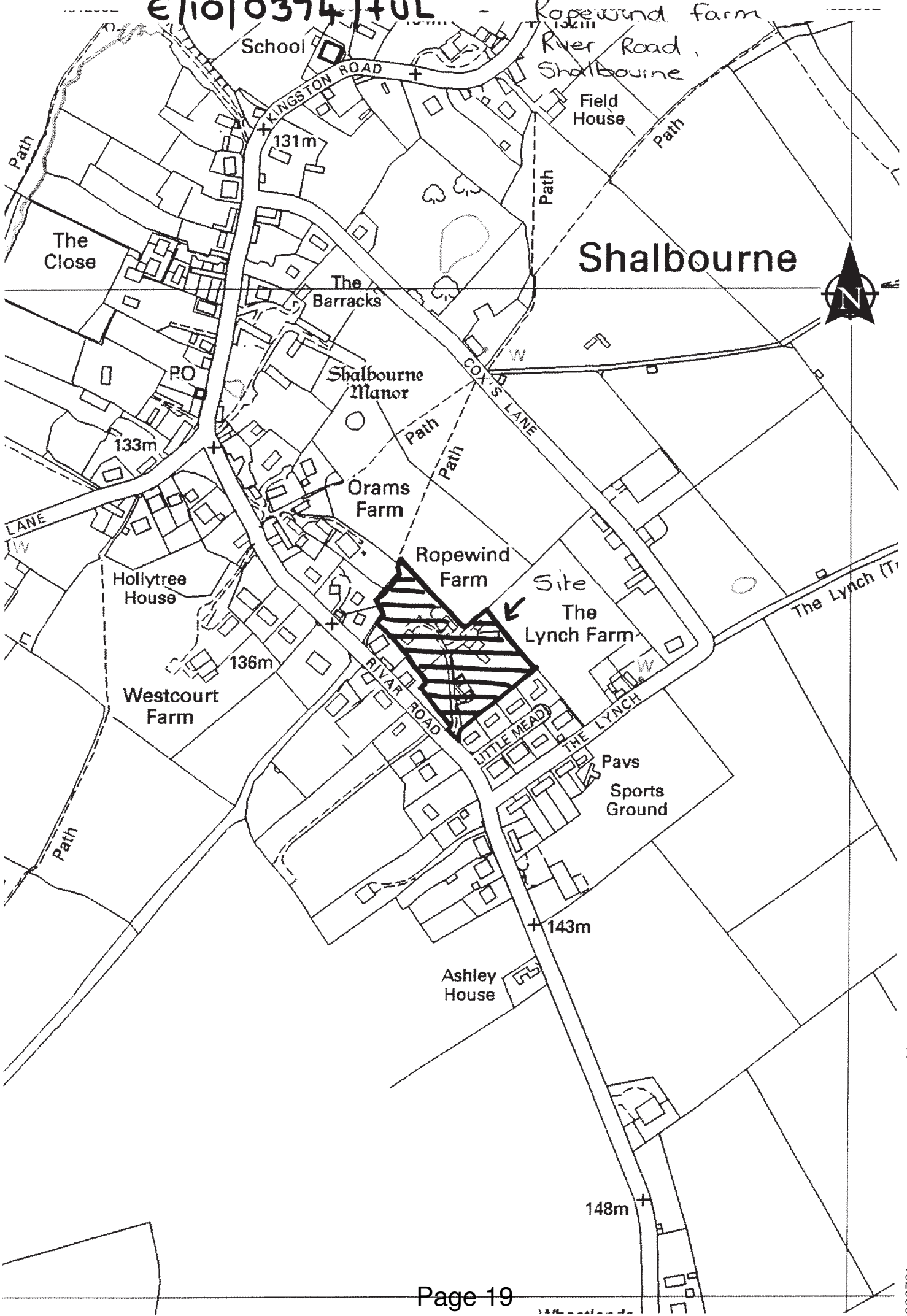
24 This decision relates to documents/plans submitted with the application, listed below. No variation from the approved documents should be made without the prior approval of this Council. Amendments may require the submission of a further application. Failure to comply with this advice may lead to enforcement action which may require alterations and/or demolition of any unauthorised buildings or structures and may also lead to prosecution.

Plans Ref. 090502-13B, 090502-14B, 090502-22A, 090502-23A, 090502-24B, 090502-25B and 161/001A all received 19 March 2010, 090502-26E and 2406/2B received 19 July 2010, 090502-21B received 21 July 2010 and 090502-27C received 9 August 2010.

Appendices: None

Background Documents Used in the Preparation of this Report: Application file and related papers; Policy documents.

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REPORT TO THE EAST AREA PLANNING COMMITTEE

Date of Meeting	14 th October 2010
Application Number	E/10/1047/FUL
Site Address	Glebe Field, Burbage, Wiltshire
Proposal	Change of Use of Existing Agricultural Land to Playing Fields
Applicant	Burbage & Easton Royal Sports Club
Town/Parish Council	BURBAGE
Grid Ref	423537 161261
Type of application	Full Planning Permission
Case Officer	Rachel Yeomans

Reason for the application being considered by Committee

This application has been brought to Committee at the request of Councillor Stuart Wheeler.

1. Purpose of Report

To consider the recommendation that the application be approved.

2. Site Description

The application site is an agricultural field located outside but immediately to the east of the built up area of the village. To the south lies 'Red Lion Field' - the existing cricket field, pavilion building and tennis courts and home of Burbage and Easton Royal Cricket Club. To the east and north lies open countryside. A raised track lies to the northern and eastern edges that appears to be the commonly walked footpath route, though its official route crosses the field which is currently laid to crops. The boundaries of the site benefit from a variety of shrubs and a good number of trees which filter views of the application site from the wider countryside (to the east) and from dwellings beyond to the west and south. The site is relatively flat, with a single large oak tree towards the centre.

The site can be accessed by proceeding from Pewsey or Marlborough (south on the A338) until the Esso Garage on the roundabout. Take the exit after the one signed for Burbage – A338 east towards Shalbourne & East Grafton. Take the first turning left into the village and the first turning right into East Sands. After approx ¼ mile, just after the houses and the builders yard, there is a left turning into Red Lion Field and Glebe Field lies directly to the north. The site can also be accessed on foot via the public footpath which runs east from Eastcourt road.

3. Relevant Planning History

There is no planning history for this site, nor any other planning history considered particularly relevant to the consideration of this application.



.. Location of proposed playing field and aerial photograph of the site and its surroundings



4. The Proposal

The application proposes the change of use of an existing agricultural field for use as a recreation field. This is principally intended as an additional cricket field to accommodate fixtures and practices for the numbers of players the club currently has and also to accommodate its plans for the future, including the fielding of youth and ladies teams. The site also includes an area to the west of the field which may be utilised as an informal football playing area. The applicants have confirmed that despite the presence of the oak tree to the centre, as no 'formal' pitch is required, the tree will remain and they have no intention or desire to harm or remove the tree. An 'indicative' pavilion building is shown to indicate the club's aspirations but does not form part of the current application and cannot be considered at this stage. Any additional parking requirements are proposed to be accommodated on the existing informal parking area on the grassed field adjacent the tennis courts and on road and layby parking nearby. A large layby currently exists on East Sands in front of the Builder's Yard which may also be utilised.

5. Planning Policy

Kennet Local Plan 2011 (KLP) – policies PD1: General Development and Design & NR7: Protection of the Landscape are relevant as are national Planning Policy Guidance Note 17: Planning for open space, sport and recreation, Planning Policy Statement 9: Biodiversity and Geological Conservation and Planning Policy Statement 7: Sustainable Development in Rural Areas, the latter due to the site's location within the North Wessex Downs Area of Outstanding Natural Beauty (AONB). (Policies NR12 and TR21 quoted in some responses have not been 'saved' under policy changes which came into effect in 2007, and are therefore not relevant.)

6. Consultations

Parish Council – Object to the application on the grounds that:

1. The development of this site will increase the traffic onto the site considerably when it is in use. The current access route is already of concern to the (Parish) Council and is often the subject of discussion at (Parish) Council meetings. The current access road is narrow with many residential cars parked on either side of the carriageway. The Parish Council is already concerned about the access for emergency vehicles on this route. The increase in vehicular traffic, and the increased possibility of the need for emergency services created by increasing the use of this land for recreational purposes is now of serious concern.
2. The applicants have been offered the use of an existing football pitch, with attached parking, elsewhere in the village. This has been rejected by the applicant.
3. A survey of the whole village in 2004/2005 soundly rejected the development of this area for recreational purposes.
4. There is currently an agricultural tenancy agreement in place on the land specified. The current lessee (present at the Parish Council meeting) has not been informed of any proposals for changes of use.
5. The tree marked in the middle of the plan as submitted is not marked correctly. The position of the tree is within the boundaries of the proposed football pitch and would have to be removed which is contrary that stated in the application.
6. This is an AONB and bats (a protected species in the UK) are regularly seen flying over these fields in the evening. Their natural habitat should be protected. Although not specified in the application, it is anticipated that if this application were approved a further application for floodlighting would follow and this would affect the bat's habitat and habits.
7. Speaking to individual Councillors in a private capacity does constitute consultation with the whole Council and it is a huge leap and an unfounded claim to state that this is consultation with the Parish Council. The Parish Council have no documentary evidence of

any consultation prior to receiving this application.

8. The Parish Council was presented with documentary evidence that the information provided to the local residents was factually untrue and suggested that houses would be built on the land if the application wasn't granted. The Council has been reliably informed that there is no intention to build on this land.

Wiltshire Council Highways – No objections – parking and access facilities are adequate to accommodate any additional vehicles and the extension of this facility will likely reduce numbers of vehicles commuting out to use alternative facilities in other villages.

Wiltshire Council Rights of Way – In summary: ideally the footpath (Burbage 6) should be diverted to skirt around the edges of the field (as appears to be currently utilised) to avoid conflict between users. However, in view of the fact that the application proposes no operational development which would physically obstruct the public footpath, (meaning that during play, either the game could be stopped until walkers have cleared the area or walkers would likely continue to use the path to the edge of the field), it is not considered reasonable to insist on the diversion of the footpath through the imposition of a condition. An informative is recommended should Members be minded to approve planning permission to remind the applicant that the permission would not authorise the stopping up, diversion or obstruction of any public right of way.

Wiltshire Council Environmental Health – Raise no objections to the proposals but would wish to be consulted on any future proposals for any floodlighting or amplified public address system.

Wiltshire Council Leisure Officer – Support plans for the designation of the land in question to recreation. Have every confidence that the proposal will be successful and will complement Wiltshire Council's vision 'To create stronger and more resilient communities'.

7. Publicity

Neighbours of the development have been notified by letter and the application has been advertised by means of 2 site notices and advertisement in the local press.

At the time of writing, objections had been received from 8 neighbouring residents, some of which amount to very detailed responses, the full versions of which can be viewed on the file. However these objections can be broadly summarised as:

1. Noise and disturbance resulting from the use of the pitches, associated activities and traffic. In particular, some neighbours are concerned about the football pitch which they consider is close to neighbouring properties especially given they can already hear the existing football pitch adjacent the village hall. Contrary to Policy TR21.
2. Loss of privacy and overlooking of neighbouring properties resulting from the use of this land and stray balls.
3. The proposal would adversely impact upon wildlife and biodiversity. Concerns have also been expressed about the impact on the mature oak tree towards the centre of the field.
4. The majority of players come from outside the village and hence the proposal would significantly increase the number of vehicular movements and parking requirements of the club which the site cannot accommodate.
5. The retention of high quality agricultural land is more important to the village than the extension of recreation facilities as food production is important and the land sustains employment use. This is contrary to Policy NR12. The village already has more than its fair share of recreation space (>30% NPFA guidelines) so additional facilities should be accommodated in villages which do not meet the guidelines. In a village survey in 2008 regarding a proposal to use other farmland as recreation, 650 were against and 62 were for.
6. The club has been offered the use of the existing football pitch at Barn Field which is currently under-utilised. Alternatively, their current arrangements with Marden cricket field should be used.

7. The proposal would take away direct access to the countryside from neighbouring residents.
8. The area should not be developed because it is in a conservation area.
9. The footpath will be more difficult to maintain with the additional use resulting and it will also need to be fenced off. Large nets would be unsightly and harmful to the area. Stray balls or use of the footpath during play would cause a major health and safety hazard.
10. The applicants have supplied much misleading/ false information regarding 'prior consultation' – this was not carried out with residents or the parish council, and also comments concerning the proposal may prevent future residential development of the site as these plans have already been shelved. The public footpath is not accurately shown on the plans.
11. Both the parish council and the village are universally against the proposal which would prevent more walkers from enjoying the footpath than it would please villagers using the new facilities for only 7 months of the year – the disbenefits would outweigh any benefits.
12. The pitch could not be fenced off to protect it as this would conflict with footpath users. The existing right of way across red lion field is already being obstructed and signs have been erected telling people to keep off the existing footpath.
13. The application includes few details about the proposed football field and its intended use.

Three letters of support have been received at the time of writing which state that;

1. There is a need for recreational opportunities, particularly for the younger people of the community who benefit from the focus and discipline of being part of the club and is an important part of their education and will help prevent anti-social behaviour.
2. The Club have been and are successful in providing such opportunities and should be supported in their plans to develop these facilities. Nothing but positive thoughts towards the proposal.
3. Sporting facilities for residents are a necessary part of community life, often becoming a centre for village functions.
4. We should support and value the many hours of voluntary contributions to this club and the community in running and maintaining the club and its facilities.
5. Barnfield would not represent a suitable alternative as it would necessitate unsightly netting due to the proximity of the road and houses.
6. If agricultural land for food production were so important, why is so much being set aside through European Directives?
7. One criticism that has been made is that many of the cricketers come from outside the village; in reply to this I say are we to become so insular that we restrict all activities within the village to residents only? If so, the village shop, pubs, the church and many other clubs would all close soon. It is quite common for children at a school to encourage friends for a nearby village to come and play cricket at their club.
8. There are many walks around the village which can be used by walkers and dog walkers. If the only reason to keep Glebe field is for a dog roaming area then I think this is not justified.

8. Planning Considerations

The key planning considerations are considered to be; the principle of the development, the impact of the proposed change of use upon visual amenity (including the impact on the AONB), neighbour amenity, the public footpath (Burbage 6) and the impact upon highway safety.

The Principle of the Development & Benefits of Recreation Provision

There are no policies within the Local Plan 2011 which have been saved that are specifically relevant to the provision of recreation space. However national Guidance contained within PPG17 outlines in Paragraph 26, the presumption in favour of the new recreation facilities to meet the needs of the local community where they are located within or adjacent to villages. In addition, Paragraph 20 sets out general guiding principles for all new open space, sports and recreation facilities, many of which are mirrored in Policy PD1 of the adopted Kennet Local Plan 2011. Paragraph 28 sets out that recreational facilities within the AONB should be endorsed

where the proposals are consistent with the primary objective of the conservation of the natural beauty of the landscape. Consequently, the proposal is acceptable in principle subject to the proposal adequately addressing several key issues. The key issues relevant to this site are considered to be; accessibility and highway safety, impact upon neighbour amenity, impact upon visual amenity, the wider AONB landscape and biodiversity, the impact upon health, well-being and social inclusion.

Impact upon Neighbour Amenity

With the exception of the recently built dwelling known as Maple House; the modern dwelling known as number 39A Eastcourt Road; and number 39 Eastcourt Road, the nearest properties are separated from the application site by lengthy gardens (c.54 metres). The boundaries with neighbouring residents benefit from a degree of cover provided by fencing, trees and hedging. In view of these factors and the nature of the activities and likely levels of use of the field, it is not considered that this would result in any significant harm to the amenities of the occupiers of these properties, either in terms of noise and disturbance from accessing the site or its proposed use, or from loss of privacy and overlooking.

Whilst it is true that the most affected neighbour is the recently constructed property, Maple House, which lies approximately 12 metres from the boundary of the field, the existing property currently does not benefit from the same level of privacy and cover. Views of both the property and its garden may currently be afforded from the adjacent public footpath. The garden area between the house and the application site, together with the recently planted hedge would be sufficient to preserve neighbour privacy once this has matured.

With regard to noise and disturbance, it is clear that that the proposed use as a recreation field will give rise to additional noise on a more regular basis than the existing agricultural use of the land. However, it is understood that the 'informal football field' is not intended for intensive, organised use and was simply included as an option for how the land remaining outside the proposed cricket pitch could be best utilised. Furthermore, it is not anticipated that the cricket matches would give rise to significant harm resulting from increased noise levels due to the nature of the game and also the relatively large distance between the proposed pitch and neighbouring properties over and above the existing uses of the nearby Red Lion cricket field and Barn field football pitch. Consequently, the impact of the proposed use with regard to noise and disturbance is not considered significant so as to warrant refusal of planning permission.

Impact Upon Visual Amenity, biodiversity and the AONB Landscape

Visually, whilst the appearance of the field would alter from that of planted crops to a turfed area, the proposal is for change of use only and no operational development such as buildings are proposed at this stage. The openness of the field will thus be maintained and the proposal would not result in any significant harm to the visual amenities of the area. Wider views would be filtered by the existing vegetation at the boundaries of the site and the lie of the land and the proposal would not adversely impact on the wider AONB landscape. The site lies immediately adjacent open countryside and the proposals confirm there is no intention to erect any floodlighting. Consequently, the impact upon biodiversity and protected species is considered minimal compared to the existing agricultural use.

Highway Safety & Accessibility, Impact Upon Public Footpath (Burbage 6)

The highway officer has raised no objection to the proposals and considers that, having regard to the existing parking and access arrangements, any additional parking requirements can be accommodated without being detrimental to highway safety. A detailed response has been provided from the highway officer to one objector who requested this response be altered to an objection. The highways officer has set out that no substantial increase vehicular movements over and above the existing situation is anticipated as

- i) It is unlikely that all three pitches will be in use at the same time
- ii) The fielding of a junior team and other teams in the same place will likely lead to car sharing and opposing teams would be likely to lift share/ arrive by minibus
- iii) Journeys out of the village to play cricket will likely cease or decrease

In addition, 37 of the club's members presently live in the village and could likely walk to the facility.

The facility is also accessible by public transport from neighbouring settlements.

A public footpath (Burbage 6) does run across the application site and the applicant has now submitted an amended plan detailing its route across the field. Whilst it may be preferable from the perspective of both the applicant and users for the footpath for the path to be formally diverted to the edge of the field which already appears to be the commonly walked route, the proposed change of use proposes no buildings or other structures which would obstruct users from walking the public right of way. Consequently, it is not considered reasonable to impose a planning condition requiring this to be formally diverted prior to any change of use being implemented, should Members be minded to grant planning permission. An informative is recommended to remind the applicants that the permission would not authorise the obstruction, stopping up or diversion of the footpath.

Other Issues, including the impact upon health, well-being and social inclusion

Whilst some objectors have raised the concern that Burbage already has sufficient recreation facilities and that the pitch should be accommodated elsewhere as the majority of players do not come from Burbage, it should be noted that some 37 existing members live in the village of Burbage. The vast majority of members come from Burbage and the surrounding settlements. It is therefore considered that the proposed extended facilities would serve the needs of the 'local community' and are not disproportionately large for the local catchment.

The Club have also set out how their proposals provide opportunities for positively impact upon health, well-being and social inclusion and this is formally reflected in the Club's 'Clubmark' accreditation. Such benefits are supported by the Council's Leisure Team who consider that the proposal will assist in delivering the Council's objective for stronger and more resilient communities.

The Club have also now provided information which clearly details why Barn Field is not considered a suitable alternative to their proposals in response to objectors suggestions, pointing out that it is far better to have one conjoined facility for cricket than two separate sites sites, and that the overlap between fixtures would mean that a conflict of use would arise, as well as presenting maintenance difficulties for a cricket pitch on a surface used for football. .

9. Conclusion

It is considered that the proposal would not result in significant harm to the amenities of neighbouring occupiers, visual amenity, the wider AONB landscape, biodiversity nor would it be detrimental to highway safety. The proposed extension of the Club's facilities would likely promote greater use by the wider community (including ladies and youth teams) and is in accordance with the Council's objectives.

RECOMMENDATION

Approve with conditions as follows

- 1 The development hereby permitted shall be begun before the expiration of three years of 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 loudspeakers, public address system, or other amplification equipment shall be used on the site.

REASON:

In order to protect the amenities of nearby residential properties

- 3 No external lighting (including any floodlighting) shall be erected or installed anywhere within the site or anywhere outside of the site for the purposes of lighting any part of the site.

REASON:

In the interests of visual and neighbour amenity.

- 4 This decision relates to documents/plans submitted with the application, listed below. No variation from the approved documents should be made without the prior approval of this Council. Amendments may require the submission of a further application. Failure to comply with this advice may lead to enforcement action which may require alterations and/or demolition of any unauthorised buildings or structures and may also lead to prosecution.

Plan Ref: Site Location Plan received on the 12th August 2010 and the Proposed Use of Glebe Field Block Plan received on the 1st October 2010.

- 5 INFORMATIVE TO APPLICANT:

The applicant is requested to note that public footpath 'Burbage 6' transects Glebe Field and that nothing in this permission shall authorise the diversion, obstruction, or stopping up of any right of way that crosses the site. A separate application under the Town and Country Planning or Highway Acts would be necessary.

BURBAGE CP

E/10/1047/FUL - Glebe field, + Burbage.

Reservoir
(covered)

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WOLF HALL ROAD

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REPORT TO THE EAST AREA PLANNING COMMITTEE

Date of Meeting	14 th October 2010
Application Number	E/10/0886/LBC
Site Address	25 Long Street, Devizes, Wiltshire SN10 1NN
Proposal	Application of textured masonry paint to the exterior of the property.
Applicant	Mr I. Wixon
Town/Parish Council	DEVIZES
Grid Ref	400597E 161151N
Type of application	Listed Building Consent
Case Officer	Pippa Card

Reason for the application being considered by Committee

The application has been brought to committee at the request of Councillor Jeff Ody.

1. Purpose of Report

To consider the recommendation that the application be refused.

2. Report Summary

The main issues to consider are:

- The impact of the proposal on the listed building
- The impact of the proposal on the streetscene and neighbouring properties
- The impact of the proposal on the character and appearance of the conservation area.

3. Site Description

The application relates to No.25 Long Street which is a Grade II listed dwelling located towards the southern edge of the historic town centre. One of a terrace of early 19th century houses with rendered elevations and slate roofs, No.25 is located on the corner with Bridewell Street and the property also incorporates part of the first house within a separate terrace of largely unpainted brick buildings fronting onto Bridewell Street. The corner location and extent of the property mean that it has a considerable length of frontage onto both Long Street and Bridewell Street. The property is located within the Devizes Conservation area and occupies a prominent corner location on a key approach to the town centre.



4. Relevant Planning History

K/59301/LBC – Approve with Conditions 23/09/2008.

Replace lintel (timber) over front door/window with 2. RSJs. Hack off rendering to external walls and replace with lime mortar.

5. The Proposal

To retain the currently unauthorised elevation treatment of textured paint to the Long Street and Bridewell Street elevations of the listed building.

6. Planning Policy

Government guidance contained in PPS5: Planning for the Historic Environment and the accompanying “Historic Environment Planning Practice Guide” are relevant to the consideration of this application for listed building consent. Policy HE9 sets policy principles guiding the consideration of applications for consent relating to designated heritage assets. HE10 refers to the consideration of applications affecting the setting of designated heritage assets.

7. Consultations

Devizes Town Council has raised no objections to the proposal.

8. Publicity

The application has been advertised with a press and site notice.

Three letters of support have been received, which can be summarised as follows:

- The colour improves the general streetscene and contrasts well with the adjacent listed properties although I appreciate colours are subjective.
- There is nothing out of keeping with the street as a whole in a house painted blue and the colour does not detract from the character of the property or the area around it.
- That the above colour is considered to blend in well with the rest of the street’s character.

9. Planning Considerations

Background

Listed building consent was granted in 2008 to the current applicant for various remedial works including the removal and replacement of the then existing cement roughcast render with a lime render and repainting in “cream breathable paint”. These elements of the consent, however, were not implemented. In June 2010 the masonry elevations of the property were painted in a strong blue colour using a standard textured masonry paint. Where a significant change in external colour scheme is proposed, listed building consent is required. However, consent was not sought prior to the works being carried out and the current application represents a retrospective application for consent to retain the paint scheme already implemented.

Assessment

Government policy contained in PPS5 sets out the presumption to be made in favour of the conservation of designated heritage assets (including listed buildings and conservation areas and requires that any harm to the significance of a heritage asset or its setting should be weighed against the wider public benefits of the proposal (Policies HE9 & 10). The main impacts of the works are upon the historic character and appearance of the listed host building; on the setting of neighbouring listed buildings; and on the wider street scene and conservation area.

Whilst the use of standard textured masonry paint cannot be considered to be ideal, the property has previously been rendered in rough-cast cement render and over-painted in masonry paint and there is no objection to repeating this from the point of view of any impact on the fabric of the building. However, there is no historic precedent within the area for the painting of exterior masonry in vibrant colours such as this. The rendered and stuccoed elevations applied to many earlier buildings within the town during the Georgian period were seen as a cost effective imitation of the fashionable and high status Bath stone facades of the period and were coloured accordingly in creams and beiges to replicate the soft colour of natural limestone. Elsewhere

within the wider area, there is limited evidence of the use of colourwash and the pervading colours of the towns and villages are the broken and off-whites of self-coloured limewash.

In recent years Long Street specifically has seen the introduction of a more varied colour palette and the Devizes Conservation Area Statement notes that “The rendered buildings show an attractive use of colour with an obvious recognition of the effect on the street scene. Colour is often dismissed as simply a matter of taste but in Long Street care has clearly been taken to ensure variety and compatibility”. To date, this compatibility has been ensured by the use of less assertive pastels and dark earthy tones. On a number of occasions where more strident tones have been suggested these have either been toned down during negotiation or, where implemented without consent, enforcement action has been authorised by the Council’s elected members (with actions being upheld at appeal) and the use of more compatible colours secured.

Had an application been submitted for painting in this colour prior to the works being submitted, attempts would have been made to negotiate the use of a less vibrant tone. It is unlikely that an objection would have been made to the use of any less assertive pastel shade - whether blue or another colour – although it should be noted that blue is rarely found as an exterior masonry colour historically, with stronger blues in particular relying on the use of extremely expensive imported pigments such as lapis lazuli and indigo which, where available at all, would have been reserved for use on high status interiors.

It has been suggested that the existing blue paint will “fade” with time – however, it should be noted that, unlike the naturally occurring pigments used in historic paints, those used in modern masonry paints are specifically formulated to be resistant to colour change and there is unlikely to be any significant change during the lifetime of the paint.

10. Conclusion

It is considered that the painting of the dwelling in the chosen colour conflicts with policy HE9 of PPS5. Taking into account the prominent and extensive building frontage involved, which wraps around the corner and incorporates historically separate entities within two streets, it is considered that the use of this vibrant and assertive paint colour which has no historic precedent within the area has had a detrimental impact on the historic character of the protected building. The painted elevations constitute a discordant feature which detracts from the setting of nearby listed buildings and the wider street scene. If approved, the change will create a precedent for the use of vibrant tones elsewhere within the street and town which, cumulatively, have the potential for a significant impact on the character and appearance of the conservation area.

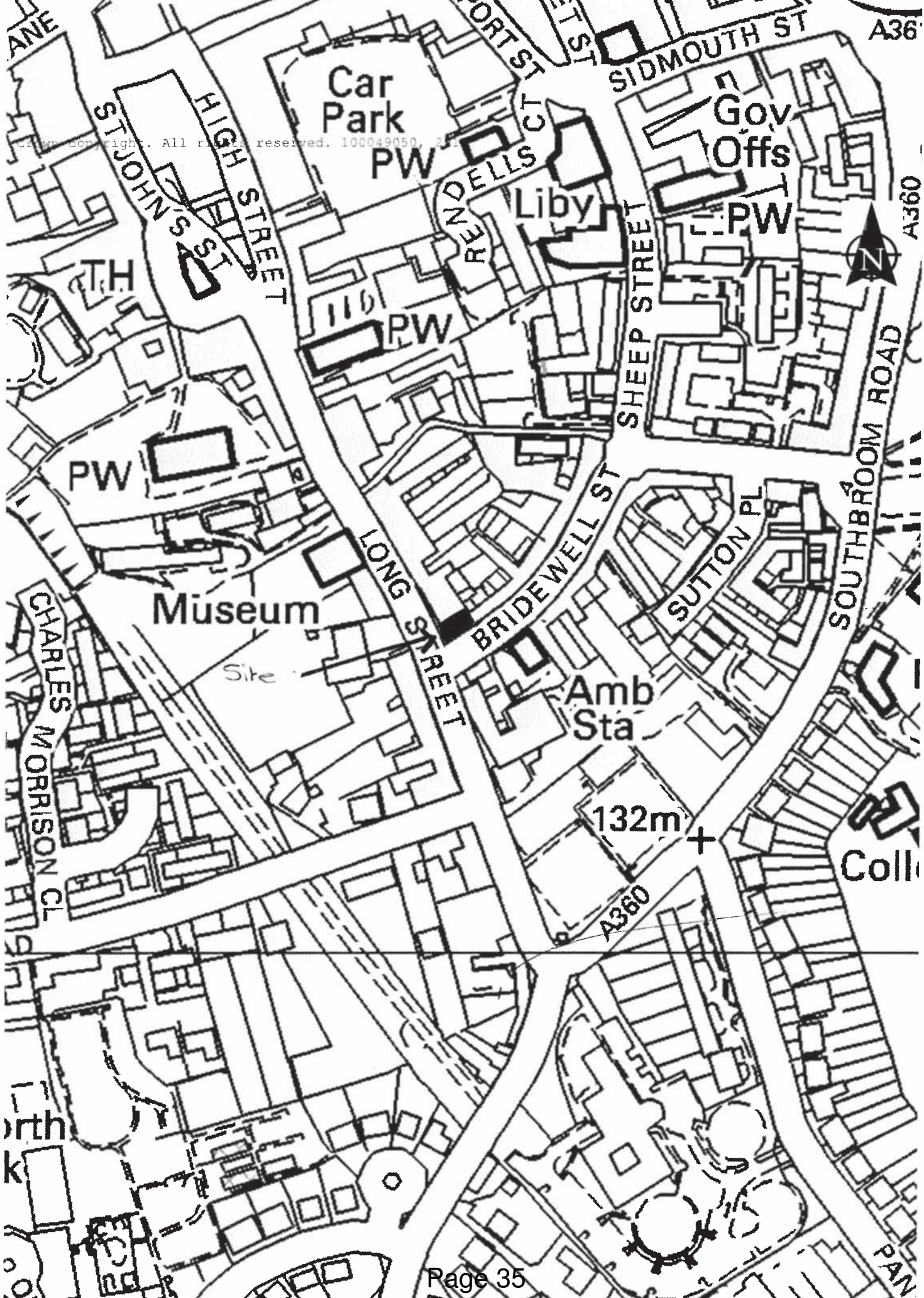
The wider public benefit which results from the continuing maintenance of the property could equally have been achieved in a way which minimised visual impact by the choice of an alternative, more appropriate, colour and cannot be considered to justify the works which have been carried out.

RECOMMENDATION

Refuse listed building consent for the following reasons:

- 1 The unauthorised painting of the external elevations of the dwelling in the vibrant and assertive shade used conflicts with policy HE9 of PPS5 in that it has a detrimental impact on the historic character of the building and creates a discordant element within the setting of neighbouring listed buildings and the conservation area and for which insufficient justification has been provided.

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PW

Liby

Gov Offs

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Museum

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

EASTERN AREA PLANNING COMMITTEE
14 OCTOBER 2010

PROPOSED DIVERSION OF PART OF BAYDON BRIDLEWAY 11 AND CREATION OF RESTRICTED BYWAY ON DIVERTED ROUTE

Purpose of Report

1. To:
 - (i) Consider and comment on objections received to an Order, made under Section 119 of the Highways Act 1980, proposing to divert a section of Baydon Bridleway 11. Also to consider an Order made under Section 26 of the Highways Act 1980 proposing to create a restricted byway on the diverted route.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for confirmation.

The proposed diversion is shown on the Order attached at **Appendix A**.

The proposed creation is shown on the Order attached at **Appendix B**.

An overview plan showing the surrounding roads and rights of way is attached at **Appendix C**.

Photographs of the routes are attached at **Appendix E**.

Background

2. It is a discretionary power of Wiltshire Council to consider applications from landowners to divert, create or extinguish footpaths, bridleways and restricted byways and make Orders under Sections 119, 116, 25, 26 and 118 respectively of the Highways Act 1980.
3. On 2 June 2006 the owner of land at Baydon House, Baydon applied to divert part of a bridleway (Baydon 11). Investigations by officers revealed that a length of the public road, the u/c 5013, was erroneously included and that the route of an adjoining bridleway, Baydon 1, was obstructed.
4. The application was withdrawn on 24 July 2006 but re-submitted on 30 January 2007.
5. During a site visit on 8 August 2007 officers noted that a planning application (K/56971/F) was being considered by Kennet District Council. The effect of the planning application was to build an arch and narrow gate across the junction of the u/c 5013 and Baydon 11. Had this development been approved, the northern section of Bridleway Baydon 11 and part of Baydon 1 would have been diverted under Town and Country Planning Act 1990 powers.
6. The application was refused by Kennet District Council by notice on 27 September 2007. An appeal was made and the Planning Inspectorate held a hearing for the application on 28 May 2008. The Inspector, Richard Merelie, dismissed the appeal.
7. A copy of the appeal decision is attached at **Appendix D**. The main issues addressed were whether the proposed diversion route would be less safe, less convenient or less attractive than the existing route.

8. Although the appeal decision provides useful comment, it must be noted that the legal tests to be applied are different for Town and Country Planning Act 1990 matters and the Highways Act 1980 Orders that are being considered here.
9. Subsequently, ownership of Baydon House changed but the new owner wished to maintain the application submitted to Wiltshire County Council affecting rights of way over his property.
10. In December 2009 Wiltshire Council officers carried out an initial consultation to gauge opinion on the diversions proposed by the owner of Baydon House. Consultees included Baydon Parish Council, Wiltshire Councillor for Aldbourne and Ramsbury, statutory undertakers, user groups and the landowner.
11. Six responses were received. The proposal to divert part of Baydon 11 at Baydon House was supported by the owners of Baydon House (2 responses – one from their agent), Baydon Parish Council, Virgin Media and The Ramblers' Association.
12. An additional respondent objected and pointed out that the definitive map and statement was in error with regard to Baydon 11 and that higher rights subsisted than were recorded. Officers considered this was a reasonable point and that to create a bridleway only on the diverted route could lead to a gap in public rights if the old route of Baydon 11 was eventually recorded as a restricted byway.
13. The landowner agreed that the diverted route could be dedicated to the public as a restricted byway. This would give continuity to the network in the event of the remainder of Baydon 11 being upgraded and the original objector withdrew his objection.
14. There being no objections to the proposed diversion it was considered that the proposal met the legal tests contained within Sections 119 (1) and (2) of the Highways Act 1980 and an Order to divert the route was made. A concurrent Creation Order under Section 26 of the Highways Act 1980 to record the new route as a restricted byway was also made.
15. The Orders were advertised in local press, on site and by circulation to statutory consultees and user groups on 13 May 2010.
16. Two duly made objections and no representations to the Diversion Order were received. No objections or representations were received to the Creation Order for the restricted byway.
17. One objection to the Diversion Order was received from Mr. B. M. Gribble, a resident of Baydon for 32 years. Mr. Gribble stated in a letter dated 27 May 2010:

“This footpath is part of a right of way that has been in existence for hundreds of years and should be seen as a small but important part of the local heritage of our village. For this reason it should be preserved and only sacrificed where there are significant benefits to the community as a whole.

The argument that the proposed alternative route offers better views of the surrounding countryside is of little value because Baydon is blessed with many footpaths of similar or better views that go in almost every direction.

What Baydon is not blessed with however are footpaths going passed (sic) fine country houses like Baydon House and this is why I and many others from our village enjoy walking this route. The house is the most impressive in our village and possibly the oldest and will be excluded from a walkers' itinerary if this path is closed.

It is important to consider who will benefit if this appeal is upheld and who will lose out. I can only think of one household that will benefit from the diversion of this path and yet the losers will be all other householders in Baydon who will no longer have the freedom to walk where their predecessors have done for hundreds of years before.”

18. Another objection to the Diversion Order was received from Mr. R. S. Maycock, a resident of Baydon. Mr. Maycock states in a letter dated 9 June 2010:

“The alternative path is, as its name implies, an alternative route for those who choose to use it. The existing path which leads to the front of Baydon House is an historic path which I use regularly and as such must mean; it must not be lost to the village of Baydon.

These alterations are of no benefit to the village. Indeed, the only people to benefit from the changes would be the occupants of Baydon House who obviously want to restrict the movements of villagers who regularly use the existing right of way, which forms an important access for the village folk.”

Main Considerations for the Council

19. Wiltshire Council has the power to make Orders to divert public paths under Section 119 of the Highways Act 1980. The Order may be made in the interest of the landowner (as this is) and can only be confirmed if the new path or way will not be substantially less convenient to the public, having regard to the effect of the diversion on the public enjoyment of the path or way as a whole.
20. The Council has received objections to the proposed Order and Members have to decide whether they still wish to support the Order, which must then be forwarded to the Secretary of State for determination, or formally resolve not to proceed with it.
21. Section 119(1) of the Highways Act 1980 states that:

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

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

An Order under this Section is referred to in this Act as a “Public Path Diversion Order”.

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

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

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

23. The Committee must now consider the second test under Section 119(6) which must be met at the Order confirmation stage.

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

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

24. The Council has to have regard to The Disabilities Discrimination Act 1995 (DDA95). Section 21 of this Act states:

(1) Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to:

- (a) remove the feature;*
- (b) alter it so that it no longer has that effect;*
- (c) provide a reasonable means of avoiding the feature; or*
- (d) provide a reasonable alternative method of making the service in question available to disabled persons.*

25. The Council has to also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP). The ROWIP recognises the Council’s duty to have regard to DDA95 and to consider the least restrictive option.

26. The ROWIP also has as its aims:
- *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)*
 - *To provide a more usable public rights of way network, suitable for changing user demands. (p.46.1)*
 - *Increase access to the countryside for buggies, older people, people with mobility problems and other impairments. (p.43.1 – 5)*
 - *Increase access to the countryside for people who are blind or partially sighted. (p.43.4 and 5)*
27. The Council must also have regard to the needs of agriculture and forestry.

Comments on the Objections

28. Both objectors point out that the owners or occupiers of Baydon House will benefit if the Diversion Order is confirmed.
29. It is noted that the road that leads past the whole of Baydon House (a Grade II listed building) is an unclassified road unaffected by this Order. If this Order succeeds, the public will still be able to pass and re-pass in front of Baydon House. The area that would be closed to the public is 80 metres of path where it leads past an outdoor riding ménage.
30. Section 119 of the Highways Act 1980 permits an Order to be made in the interests of the landowner if it is considered expedient to do so. Wiltshire Council permits applications from landowners and it is implicit in that application (for which landowners will pay costs) that they consider it convenient and practical to them. Hence, it is a matter of fact that it is expedient in the interests of the landowner to divert the path where they are the applicant; satisfying Section 119 (1).
31. Section 119 (2) must also be satisfied and this addresses whether the point of termination of the path or way “is substantially as convenient to the public”. The termination point is the northern end of the proposed diversion at its junction with the u/c 5013. Users of the new route have to travel approximately 280 metres, whereas the old route to access the same point involves travelling for approximately 260 metres. It is considered that this difference in distance is negligible. There are little differences in gradient and surface and hence it is considered as convenient to use the new route as it is the old route; satisfying Section 119 (2). Users of footpath 3 will have to walk an additional 35 metres north to access the new route before travelling approximately 280 metres to reach point A (**Appendix C**). However, this option does involve less walking on an unclassified road and is not considered substantially less convenient. The Act does not require that the new route is as convenient, just substantially as convenient.
32. Section 119 (6)(a) addresses the effect of the diversion on the public enjoyment of the path or way as a whole. It is this point that the two letters of objections address. Both objectors consider that a significant part of their enjoyment of using the existing route is that they are able to enjoy the historic village street and view Baydon House as part of a walk.
33. The Order will not prevent the public doing any of these activities; it will, however, create a cul-de-sac public right of way and the public would have to re-trace their steps having viewed the street and Baydon House.

34. The objectors consider that the improved views over surrounding countryside offered by the proposed new route, although not disputed, are offered on plenty of other rights of way in Baydon.
35. Officers confirm that this is the case; however, it is unlikely that many of these provide opportunities for the less able in the highly accessible manner that the proposed new route does.
36. The proposed new route has a smooth surface making it accessible to the less able, mobility vehicles and people with small children. Hence, it does provide a significant opportunity to enjoy fine views in a motorised traffic-free environment.
37. The opportunity to view the village street and Baydon House also remains for these groups of people.
38. It is noted that the proposed new route, with a width of 4 metres, offers a surface of both grass and tarmac and leads between two fences. The existing route of Baydon 11 is made of compacted gravel and stone and leads past a high fence on one side and a more open aspect leading to the exercise ménage. The proposed new route would be more accessible for the partially sighted as the route is better defined on both sides.
39. It is noted that the proposed new route was created at least ten years ago and has been in use by the public since then as a permissive route. There is evidence of use of the way (hoof prints, horse dung and officers have observed walkers using it) in recent years.
40. In an e-mail dated 9 July 2010, the owner of Baydon House reported that “the wonderful and fair community spirit has been best evidenced by the fact that since the notification signs went up the foot traffic on the 80 metre length A to B has ceased altogether”. He also states that “In fact there is a gate at point B leading down the 80 metre section that has always been permanently open and we noticed a member of the public closed it well over a month ago and it has since stayed closed without one voice of concern”. The owner also makes it clear that if the Diversion Order is abandoned he would no longer wish to dedicate the new route as a restricted byway.
41. The Senior Rights of Way Warden confirmed that she was not aware of any complaints from the public relating to this obstruction. However, officers note that this second gate was open on 11 May, 2 June and 1 July 2010.
42. It is noted that the route at Baydon 11 may carry higher public rights than bridleway. By dedicating the new route as restrictive byway the landowner not only resolves future issues arising out of any subsequent upgrade where the route crosses his land, he also resolves the issue for Wiltshire council and the public at large, if only in respect of that part of Baydon 11.

Environmental Impact of the Recommendation

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

Risk Assessment

44. There are no known risks associated with the proposals.

Financial Implications

45. The making of a public path Order is a discretionary power, rather than a statutory duty. Applicants pay actual costs relating to the Order but should the Orders be submitted to the Secretary of State, Wiltshire Council must pay additional costs.
46. Additional costs related to submitting the Orders to the Secretary of State could be variable, depending on how the Planning Inspectorate decides to determine the Orders. A determination under the written representations procedure involves officer time of approximately 8 hours; should the Orders be determined at a hearing, costs are likely to not exceed £200 and approximately 16 hours of officer time. Should the Orders be determined at an Inquiry, it is usual for counsel to be appointed and total costs are likely to be approximately £4,000.
47. Officers consider that should the Orders be forwarded to the Secretary of State, it is most likely that the Planning Inspectorate will determine the Orders by either written representations or at a hearing.

Options to Consider

48. The following options have been considered:
 - (i) Not to continue with either Order.
 - (ii) To forward the Orders to the Secretary of State with the recommendation that they be confirmed as made.
 - (iii) To abandon the Section 119 Order and confirm the Section 26 Order.

Reasons for Recommendation

49. The proposed diversion meets the tests contained in Section 119 of The Highways Act 1980.
50. The landowner has made it clear that he will only wish to dedicate the proposed new route to the public as a restricted byway if the Diversion Order is confirmed. This is considered reasonable. Additionally, Wiltshire Council would not wish to expand its rights of way network by having two routes in such close proximity with additional maintenance responsibilities.

Recommendation

51. That the Orders be referred to the Secretary of State for determination with the recommendation that they be confirmed as made.

MARK BODEN
Corporate Director

Report Author
Sally Madgwick
Rights of Way Officer

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

None

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PUBLIC PATH DIVERSION ORDER

HIGHWAYS ACT 1980

WILTSHIRE COUNCIL

THE WILTSHIRE COUNCIL PARISH OF BAYDON PATH NO. 11 (Part) DIVERSION ORDER 2010

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 owners of the land crossed by the public path described in paragraph 1 of this Order it is expedient that the line of the path should be diverted.

BY THIS ORDER:

1. The public right of way over the land situate at Baydon and shown by a bold continuous line on the map contained in this Order and described in part 1 of the Schedule to this Order shall be stopped up after 28 days from the date of confirmation of this Order.

2. 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 Baydon described in Part 2 of the Schedule and shown by a bold broken line on the map contained in this Order.

SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH

Baydon path number 11 (part) shown as a bold black continuous line on the plan attached hereto from point A at OS grid reference SU 2794 7759 leading south to point B at OS grid reference SU 2794 7752.

Approximate length 80 metres

PART 2

DESCRIPTION OF SITE OF NEW PATH



Path shown as a broken black line on the plan attached hereto from point B at OS grid reference SU 2794 7752 leading north-west then north and north-north-east to point C at OS grid reference SU 2787 7773.

Width 4 metres. Approximate length 280 metres

THE COMMON SEAL of	}
WILTSHIRE COUNCIL	}
was hereunto affixed this	}
4 th day of May 2010	}

In the presence of: -

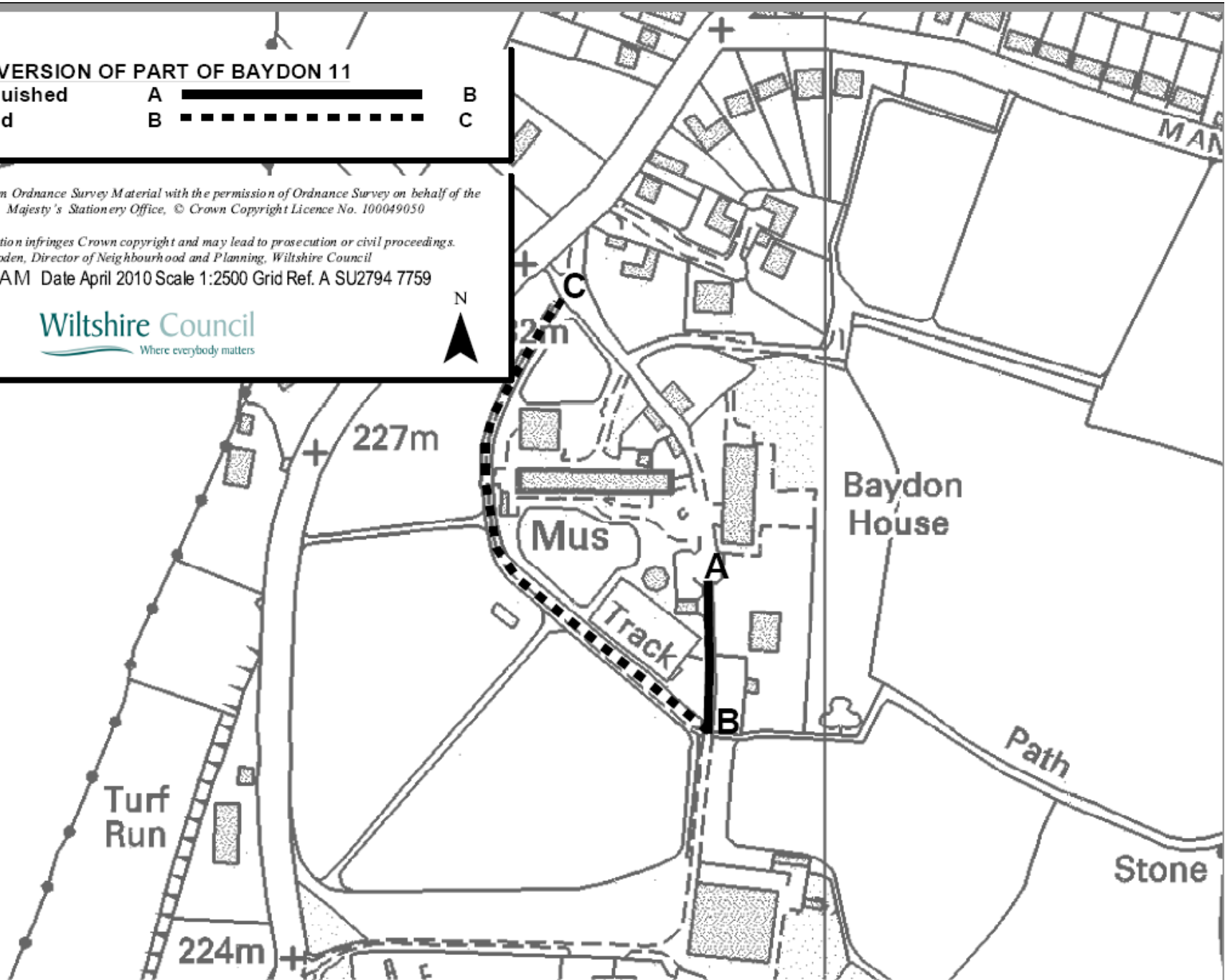
DIVERSION OF PART OF BAYDON 11

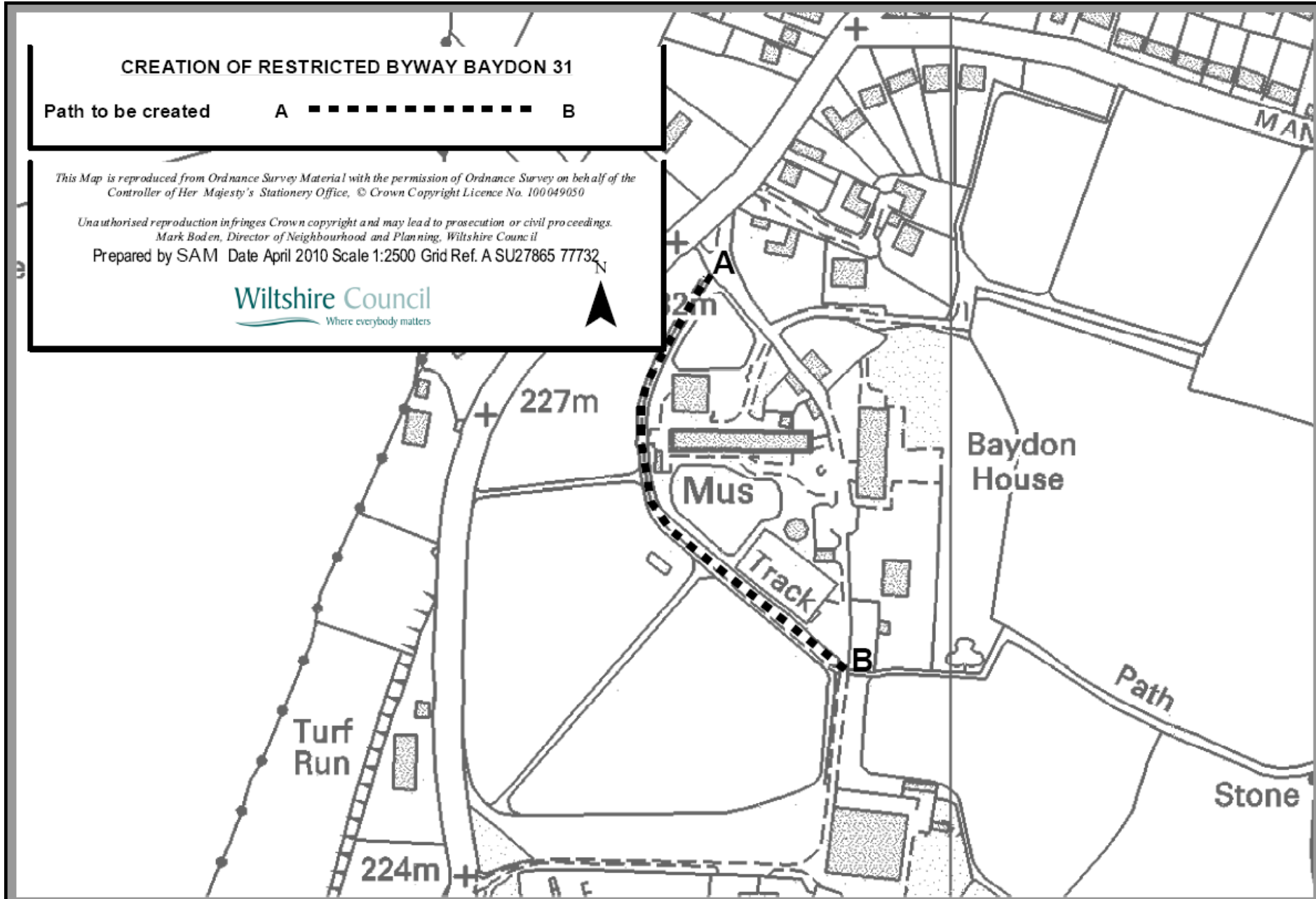
Path to be extinguished A  B
Path to be created B  C

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Mark Boden, Director of Neighbourhood and Planning, Wiltshire Council*

Prepared by SAM Date April 2010 Scale 1:2500 Grid Ref. A SU2794 7759





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Appeal Decision

Hearing held on 28 May 2008

Site visit made on 28 May 2008

by **Richard Merelie** MSc DipTP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
18 June 2008

Appeal Ref: APP/E3905/A/07/2058908

Baydon House, Baydon, Swindon, Wiltshire, SN8 2HZ

- 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 Stephen Crown against the decision of Kennet District Council.
- The application Ref. K/56971/F, dated 14 June 2007, was refused by notice dated 27 September 2007.
- The development proposed is "alterations to existing wall and gateway requiring associated diversion of bridleway 11".

Decision

1. I dismiss the appeal.

Main issues

2. I consider the main issues in this appeal to be whether the proposed route would be less safe, convenient and attractive than the existing route and, if so, whether there are material considerations that would outweigh such objections.

Reasons

Background

3. Subject to the imposition of conditions relating to materials, the Council raises no objection to the design of the proposed works. On that basis there would be no conflict with saved policy PD1 of the Kennet District Local Plan, adopted 2004, which sets out design criteria.
4. Nor does the Council object to the proposed development in terms of its impact on either the North Wessex Downs Area of Outstanding Natural Beauty, within which the appeal site is located, or the setting of Baydon House, a Grade II listed building nearby.
5. Policy AT22 of the Local Plan has not been saved because it is covered by separate legislation. Both principal parties agreed therefore that its provisions were still relevant. Indeed, they are very material and of great weight, albeit that they are no longer part of the Development Plan. They seek to ensure that diverted public rights of way are no less attractive, safe and convenient for public use than existing routes.

6. In this instance, the proposed alternative route already exists physically and is in use. It is part tarmac and part grass.

Proposed bridleway route v existing bridleway route

7. Baydon House is accessed from Albourne Road, to the north, by an unclassified public road that terminates at the existing gateway just south of the property, and thereafter changes to bridleway 11, which runs south and links shortly with bridleway 1. Bridleway 1 as shown on the Definitive Map is obstructed at this point, but there is an on the ground track that functions as part of that route.
8. The Council raises no objection to the width and surfacing of the proposed bridleway route in terms of it being unsafe. In turn, the appellant contends that the proposed route would be safer to use in that it has low level lighting at night. Whether potential users would take advantage of that in an otherwise unlit network of public rights of way is doubtful to my mind. I would add that this has to be balanced against light pollution in a rural area.
9. The appellant also claims that the tarmac surface of the proposed route would be easier to use than the gravelled section of bridleway 11, particularly for people with mobility difficulties. However, this section is reasonably level and firm, and the gravel is fairly small grained and compacted. In my assessment, it would not prohibit wheelchair access, or use of pushchairs for that matter. And for some walkers, the alternative tarmac surface might be felt to be somewhat unforgiving.
10. In his written submission, Mr Houghton, a Chartered Safety Practitioner, comments that the proposed route would have the advantage of separating pedestrians from vehicles, whereas the unclassified road is shared by both. However, there is nothing to confirm that the existing situation has been the source of serious conflict in the past, or to suggest that it is reasonably likely to become so in the foreseeable future.
11. Against that Mr Norman, a former National Hunt jockey, commented at the hearing about the potential problems associated with a closed environment for horses and pedestrians. In this regard, the proposed bridleway route is contained along its whole length by wire and timber fencing on both sides, making it difficult for pedestrians to take refuge from any out of control horses.
12. Overall, I acknowledge that the proposed bridleway route would be unlikely to be materially less safe than the existing route, which is also contained in places. At the same time, however, I do not believe that the proposed route would be significantly safer and easier to use than the existing route.
13. As for convenience, it was agreed that the proposed route would be just over 40m longer than the existing route, which is about 17% longer. For horse riders that is likely to be negligible, but for walkers it would be less insignificant. Moreover, bridleway 11 forms an important link in the network of public rights of way in the locality. Consequently, its diversion would have ramifications for other routes. For example, those using bridleway 11 to link to footpath 3, just north of Wentworth Cottage, would have over 140m extra to cover.

14. Overall, I conclude that the proposed bridleway route would be unreasonably less convenient than the existing route.
15. Regarding the relative amenities and enjoyment of the 2 routes, the existing route passes Wentworth Cottage and the 2 cottages known as Browns 1 and 2, as well as Baydon House itself, which is a particularly attractive farmhouse building dating from 1744. Wentworth Cottage and these 2 other vernacular cottages are themselves of considerable historic and architectural interest.
16. Any users of the proposed route wishing to view these buildings from the unclassified public road would have to make a fairly lengthy detour to do so, thus adding to the inconvenience that would be caused by the proposed diversion of bridleway 11.
17. I recognise that the proposed route would afford views of open countryside to the west though, as the Council pointed out, there are better rural views from other public rights of way in the area, such as No. 23 not far to the north. On the other hand, the proposed route would also afford views of the utilitarian agricultural and equestrian timber buildings located to the east. Moreover, it would afford close up views of the rather oppressive tall conifer hedging that runs along much of the eastern side of the proposed route.
18. In addition, the tarmac surface is bland and the fencing on both sides of the proposed route is of utilitarian appearance. More generally, the proposed route has an engineered and formal character, accentuated by the night lighting attached to the fencing and by the neatly cut hedging.
19. Overall, I conclude that the proposed bridleway route would be substantially less attractive than the existing route.

Material considerations

20. The appellant's main reasons for the proposal are to provide enhanced safety and security for the occupiers of Baydon House, especially children who are resident, and to overcome the nuisance caused by the right of way passing between the property and its front garden to the west.
21. However, no hard evidence was submitted of any safety or security incidents, let alone of any regular or frequent crime related occurrences. Nor were any details given of any children involved, or of how their well being was put at risk. Even if the proposed bridleway route were to be allowed, the unclassified road would continue to provide public vehicular access to the front of Baydon House, albeit that the numbers of walkers and horse riders would no doubt be fewer.
22. The sizeable area of land shown on the submitted plans as the "front garden" of Baydon House is in fact in agricultural use, currently for grazing alpacas. Furthermore, this land is separated from the house by an expansive gravelled vehicular turning area. And, as the Council points out, planning permission would be needed to change the use of the land to residential use. It cannot reasonably be claimed therefore that use of the existing route currently interferes with this land as a garden area associated with the main house. The small vegetable garden nearby is walled and gated, and therefore secure.

23. It may be that horse riders are able to look into some of the ground floor windows of Baydon House as they pass by, resulting in some perceived loss of privacy. But, as the Council argued, that is neither unusual nor unreasonable in rural areas. Also, as the Council pointed out, this existing situation would have been evident at the time the property was purchased by the current owner.
24. Whilst the appellant claimed that people had on occasion deviated from the existing route and encroached onto the adjacent paddock, that is essentially a matter of trespass. In any event, no substantive information was submitted to suggest that this was a regular occurrence or to indicate what harm was caused.
25. It was also claimed by the appellant that the proposed diversion would reduce the nuisance caused by the existing right of way to the occupiers of Wentworth Cottage and Browns 1 & 2. However, this has not been substantiated by the current occupants of these properties.

On balance

26. I note that the Council's officers recommended that the proposal be approved, and that there is some support for the proposal. However, there are also objections from the North East Wiltshire Group of the Ramblers Association, from Baydon Parish Council and from a number of local residents, some of whom have lived here for a long time and regard the existing historic route as part of their village heritage.
27. Having regard to the above, to what I saw during my site visits both before and after the hearing, and to all the other matters raised, including the appellant's comments on how the Planning Committee took its decision, I conclude that there are insufficient material considerations to outweigh the convenience and amenity objections to the proposed new bridleway route.

Richard Merelie

Inspector

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1. Existing route of Baydon 11 looking north (Point B looking towards on point A on Order plan Appendix A).



2. Proposed new route looking north-west



3. Junction of u/c5013 and Baydon 11 looking south



4. u/c 5013 - Looking north from u/c 5013 - Baydon 11 junction past Baydon House and village street. Public vehicular access would remain to gate above; this route would become a cul-de-sac.

