

AGENDA

Meeting: Environment Select Committee
Place: Council Chamber, Monkton Park, Chippenham, SN15 1ER
Date: Thursday 30 August 2012
Time: 10.30 am

Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email kieran.elliott@wiltshire.gov.uk

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

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Membership:

Cllr Chuck Berry	Cllr Jon Hubbard (Chairman)
Cllr Rosemary Brown	Cllr Chris Humphries
Cllr Nigel Carter	Cllr Tom James MBE
Cllr Christopher Cochrane	Cllr Ian McLennan
Cllr Peter Doyle	Cllr Stephen Oldrieve
Cllr Jose Green	Cllr Leo Randall
Cllr Alan Hill (Vice-Chairman)	

Substitutes:

Cllr Jane Burton	Cllr Charles Howard
Cllr Trevor Carbin	Cllr George Jeans
Cllr Brian Dalton	Cllr Julian Johnson
Cllr Bill Douglas	Cllr Jeffrey Ody
Cllr Nick Fogg	Cllr Ricky Rogers
Cllr Russell Hawker	Cllr Anthony Trotman

AGENDA

PART I

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

1 **Apologies**

To receive any apologies for absence or substitutions for the meeting.

2 **Minutes of the Previous Meeting (Pages 1 - 6)**

To approve and sign the minutes of the Environment Select Committee meeting held on **11 June 2012**.

3 **Declarations of Interest**

To receive any declarations of pecuniary and non-pecuniary interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

If you would like to make a statement at this meeting on any item on this agenda, please register to do so **at least 10 minutes prior to the meeting**. Up to 3 speakers are permitted to speak for up to 3 minutes each on any agenda item. Please contact the officer named above for any further clarification.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named above **no later than 5pm on Wednesday 22 August 2012**. Please contact the officer named on the first page of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

6 **Community Infrastructure Levy Update (Pages 7 - 8)**

The Environment Select Committee has expressed sustained interest in the future implementation of the Community Infrastructure Levy (CIL), awaiting the completion of government regulation.

The Service Director (Economy and Regeneration) will present a short update on the Community Infrastructure Levy (CIL). A briefing paper, previously circulated, is attached for reference.

7 **Waste Management: Service Delivery Review (Pages 9 - 16)**

The Overview and Scrutiny Management Committee agreed on 17 July 2012 for the Environment Select Committee to consider future options for the delivery of waste services.

A report by the Service Director (Waste Management Services) is attached on the review of service and strategy and ensuing proposals for countywide waste disposal options ahead of Cabinet on 23 October 2012.

Following consideration of the report the Committee will determine whether any future scrutiny involvement is required and in what form it should take.

8 **Air Quality Update (Pages 17 - 18)**

The Committee and its predecessor has held a longstanding interest in the development of the Council's Air Quality Strategy, considering draft versions in July 2010 and 2011. On 1 November 2011 the previous Environment Select Committee offered general endorsement of and comments regarding the Strategy, and requested an update on the delivery of the Strategy in May 2012. The Strategy was adopted by Cabinet on 13 December 2011.

Following the implementation of the new Overview and Scrutiny Arrangements, the Overview and Scrutiny Management Committee on 17 July resolved to retain the Air Quality Strategy as a legacy item for the Environment Select Committee to consider, and that proposals for future involvement of the Environment Select Committee would be presented at the meeting on 30 August.

Members are to consider a report by the Service Director (Public Protection) commenting on how Overview and Scrutiny can best be involved, and updating on the current position and progress of the strategy and associated issues.

9 **Forward Work Programme (Pages 19 - 22)**

To receive updates on the progress of items on the forward work programme.

Under the revised Overview and Scrutiny (OS) arrangements there is now a

single OS work programme controlled by the OS Management Committee, linked to priorities in the Business Plan.

Therefore it should be noted that, whilst any matters added by Members are welcome, they will be referred to the OS Management Committee for approval before formal inclusion in the work programme for the Environment Select Committee.

An update on scheduled topics and a copy of the OS Forward Work Programme for Environment Select are attached for reference.

10 **Call-in of Delegated Decision: Proposed Application to Stop Up North Bradley Footpath One** *(Pages 23 - 62)*

To consider a call-in request of the Delegated Decision on the proposed application to stop up North Bradley Footpath One.

A report by the Scrutiny Manager (and Designated Scrutiny Officer) is attached.

11 **Date of Next Meeting**

To confirm the date of the next meeting as **Thursday 01 November 2012 at Monkton Park, Chippenham, SN15 1ER.**

12 **Urgent Items**

Any other items of business which the Chairman agrees to consider as a matter of urgency.

PART II

ENVIRONMENT SELECT COMMITTEE

DRAFT MINUTES OF THE ENVIRONMENT SELECT COMMITTEE MEETING HELD ON 11 JUNE 2012 AT COUNCIL CHAMBER - COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM, SN15 1ER.

Present:

Cllr Chuck Berry, Cllr Rosemary Brown, Cllr Christopher Cochrane, Cllr Peter Doyle,
Cllr Jose Green, Cllr Alan Hill (Vice-Chair), Cllr Jon Hubbard (Chairman),
Cllr Chris Humphries, Cllr Stephen Oldrieve and Cllr Leo Randall

Also Present:

Cllr Trevor Carbin, Cllr Chris Caswill, Cllr Richard Gamble, Cllr George Jeans, Cllr Francis
Morland and Cllr Fleur de Rhé-Philippe

1 Election of Chairman

The Committee was tasked to elect its Chairman for the coming year in its first meeting.

It was,

Resolved

To elect Cllr Jon Hubbard as Chairman for the Environment Select Committee for the year 2012-13.

2 Election of Vice-Chairman

The Committee was tasked to appoint its Vice-Chairman for the coming year in its first meeting.

It was,

Resolved:

To elect Cllr Alan Hill as Vice-Chairman of the Environment Select Committee for the year 2012-13.

3 Membership

The Committee noted the membership of the Environment Select Committee as appointed at the full Council meeting on **15 May 2012**, as printed with the agenda.

4 **Apologies**

Apologies were received from Cllrs Nigel Carter and Tom James.

5 **Declarations of Interest**

There were no declarations.

6 **Chairman's Announcements**

There were no announcements.

7 **Public Participation**

The Committee noted the rules on public participation.

8 **Terms of Reference**

The Committee noted the Terms of Reference under the new Overview and Scrutiny arrangements as agreed at full Council on **15 May 2012**.

9 **Legacy Issues and Future Work Programme**

The Committee discussed the Future Work Programme of the predecessor committee under the previous Overview and Scrutiny arrangements, and made several comments regarding how to determine items to recommend for the new Committee's Forward Plan, to be agreed by the Overview and Scrutiny Management Select Committee.

It was,

Resolved:

To delegate authority to the Chair and Vice-Chair to determine legacy items to be recommended to the Overview and Scrutiny Management Select Committee for approval, to be circulated to members after the meeting.

Representatives from all political groups from Environment Select would be invited to assist the Chair and Vice-Chair.

10 **Wiltshire Core Strategy**

Public Participation

Dr Nick Murray spoke regarding the Core Strategy.

Mr Andrew Birch spoke regarding the Core Strategy.

Mrs Jenny Raggett submitted a statement regarding the Core Strategy.

Mr T Boxall, South Wiltshire Association of Council Taxpayers, submitted a statement regarding the Core Strategy.

The Wiltshire Core Strategy has been in development since early 2009, taking forward the work started by the former district councils. It was presented to the Environment Select Committee in January 2012, and then approved for further consultation by Council in February 2012, without receiving endorsement from the Environment Select Committee.

Following the consultation, a number of minor changes are proposed to the Wiltshire Core Strategy Pre-Submission Document (draft Core Strategy). Once approved they will be submitted to the Secretary of State alongside the draft Core Strategy.

The Environment Select Committee was asked to consider and scrutinize the draft Core Strategy, and to make recommendations and comments to Cabinet ahead of Council on 26 June 2012.

The Cabinet Member for Economic Development and Strategic Planning, Cllr de Rhé-Phillipe, was in attendance along with Alistair Cunningham, Service Director (Economy and Regeneration), and Georgina Clampitt-dix, Head of Place Shaping. They presented a report outlining the last consultation, summaries of the extent and type of comments received, and appendices listing examples of comments as well as proposed changes to the draft Core Strategy.

The Committee was then addressed by members of the public as detailed above.

A discussion followed, in which the Committee discussed various aspects of the final consultation and the draft Core Strategy, making comments including the following:

- Clarity on the Community Infrastructure Levy was requested, and it was explained that the Council was awaiting publication of regulations from Central Government.
- Air Quality in particular locations was discussed. Core Policy 55 of the draft Core Strategy refers to the Air Quality Strategy giving it policy status and the need for decisions on development to take this into account., Recognition of the importance of other strategies has been made during the production of the draft Core Strategy.
- The amount of Member involvement was raised, and it was clarified that Members had been involved throughout the process including through signing off the consultation documents, with the last stage approved by Council. In addition, all Area Boards had received presentations on the emerging Core Strategy during the course of its preparation.
- The Committee then raised that in the appendix summarising the consultation document, representations from Members had not all been included, and it was firmly recommended that it would be appropriate and preferred to do so. In response it was stated that more detailed consultation responses were available on line.

- Clarity on renewable energy policies, such as wind farm separation distance, was raised.
- Core Policy 47, 'Meeting the needs of Gypsies and Travellers', was raised as regards public perception of specialized treatment securing sites in the countryside, which was clarified as a governmental direction.
- The use of artificial administrative boundaries such as the Trowbridge Community Area as a basis for planning and development strategies was raised.
- The status of the Regional Spatial Strategies was sought. It was stated that they were still in place until formally revoked, which the government could do at any time, but officers felt they had diminishing weight attached to them ahead of abolishment due to the more up to date evidence on which the Core Strategy is based. Irrespective of revocation, the Core Strategy when adopted would carry greater weight.
- With regards to references to Area of National Beauty (AONB) within the Core Strategy, it was suggested that the draft was not always clear in differentiating which AONB was being referenced.
- The companion Infrastructure strategies referred to within the draft Core Strategy was discussed. It was suggested that the strategies did not provide extensive solutions to potential infrastructure concerns, and that either they should be developed further, or the Core Strategy clarify where solutions were not to be contained within the Infrastructure Strategies. In response, it was stated that the Infrastructure Delivery Plan (IDP) is a live document and would continue to be developed and inform decision making as new evidence is prepared including the detail within Transport Strategies for the Principal Settlements. Officers stated that the infrastructure work underpinning the Core Strategy had shown that there were no showstoppers to development proposed.
- Consistent treatment for potential sites for railway stations was raised with reference to Core Policy 66, and it was suggested each Area Strategy includes reference to aspiration for development or improvement of railway stations, rather than specific reference of only a few within Core Policy 66. It was agreed that where stations are included within Core Policy 66 they should also be referred to in the Community Area Strategies.
- The increase in out-commuting as a result of plans within the draft Core Strategy in locations such as Chippenham was raised. It was stated in response that although the intention is to address out-commuting for the county, it is acknowledged that commuting will still happen although the level can be influenced through the level of jobs and housing provided.

- In response to queries, it was stated that officers consider that predicted levels of transport increase should be able to be absorbed within those areas, but some Committee members expressed scepticism at this.
- In response to queries, the Cabinet Member stated that the Core Strategy would encourage developers to bring site allocations forward for particular uses and would hope that developers would not sit on sites for years.
- The identification of sites at Chippenham which have raised local objection, as against alternative local sites, was discussed. The Cabinet Member and Service Director stated it would be very difficult to reconsider other sites at such a late stage when the judgement of officers is that the sites identified are still the most appropriate. All sites for development had been considered, and that concerns/objections were presented for all sites. Specific discussion of the Hunters Moon site in Chippenham as an alternative to Rawlings Green took place. The Cabinet Member promised to inform the Committee of the details of objections to the Hunters Moon site at the earliest opportunity.
- The designation of Principal Employment Areas (PEA) within the Strategy was questioned, specifically in respect of Mere, where the local member felt a recent major development merited note, and also regarding provision of one bedroom homes for Mere. It was clarified that the site in question in Mere did not meet the technical definition for a PEA, but that other encouragement within the place would support the retention of employment at the settlement.
- The impact of the consultation and response to views of the public was raised.
- Concerns were raised about the development of former and current agricultural buildings within the draft Core Strategy, and it was agreed that the title of Core Policy 48, 'Supporting Rural Life', was not reflective of its policy objective and that Core Policy 2 also provided for development to take place within villages in the rural area supporting rural communities and could be revised.
- Comments were made about inconsistent classifications of settlements as single urban entities or separate communities. Specific reference was made to the need to put in protection for the land between Wilton and Salisbury to maintain separation, and querying of the status of Seend and Seend Cleeve as separate entities, but Melksham and Bowerhill as a single urban area.
- Concerns were raised regarding the vulnerability of communities when the Core Strategy was approved before neighbourhood plans were in place, resulting in lack of protection from unwanted development. It was stated that it was hoped neighbourhood plans would be commenced in place the market towns (where strategic sites are not allocated) and local service centres within the calendar year. Officers acknowledged that funding of

neighbourhood planning within communities is an issue and that provision is also made for the Council to prepare a site allocations develop plan document if necessary to help manage growth appropriately.

- The definition of Brownfield sites within the draft Core Strategy was queried. It was clarified the definition as contained in the National Planning Policy Framework had been utilized and would be distributed to Members.
- The Committee referenced the recent presentation of a long term climate change projection report and potential impacts for the county, and raised whether the Core Strategy should make reference to the predictions as they impacted on strategic plans. It was noted that there remained scepticism regarding the long term climate change predictions by some members and officers stated the Core Strategy responds to the issue of climate change.

At the conclusion of the discussion, it was debated whether the recommendation to Cabinet should include mention of specific sites and community areas as raised, or a more generalized noting of concerns and issues raised.

It was,

Resolved:

To offer general endorsement of the Wiltshire Core Strategy Pre-Submission Document (draft Core Strategy), while asking Cabinet to take into account and consider the reservations and suggestions, as contained in these minutes, ahead of submission to Council.

(Cllr Jon Hubbard and Cllr Stephen Oldrieve requested their votes in objection be recorded)

11 **Urgent Items**

There were no urgent items.

12 **Date of Next Meeting**

The date of the next meeting was confirmed as **30 August 2012**.

(Duration of meeting: 10.30 am - 1.30 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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

Community Infrastructure Levy Briefing Paper

1. What is the Community Infrastructure Levy (CIL)?

The CIL is a new charge that local authorities in England and Wales can choose to impose on development in their area. The money generated through the Levy will contribute to the funding of infrastructure to support growth.

CIL will contribute towards bridging the 'funding gap' between the total cost of infrastructure necessary to deliver new development and the amount of funding available from other sources.

2. Why has Wiltshire decided to implement the Levy?

Wiltshire Council wants to move forward to use this system locally because of upcoming changes, brought through the new national planning legislation, to the current way developer contributions are collected. From April 2014 Section 106 obligations will be strictly restricted to site specific infrastructure. The current system allows numerous S106 obligations to be pooled to pay for a particular infrastructure project. From April 2014 Section 106 will only be able to pool the monies from a maximum of 5 Section 106 obligations towards an infrastructure project. This is because CIL is expected to take over this commuted sums element of Section 106 and provide funding for offsite infrastructure requirements across Wiltshire while Section 106 will be focused on delivering site specific infrastructure.

The government believe that the tariff based approach of CIL provides the best framework to fund new infrastructure as CIL is considered to be fairer, faster, and more transparent than the current developer charging system of S106 agreements. The charging of CIL will benefit developers by providing certainty over the costs for development, and give the Council and communities more choice and flexibility into how infrastructure is funded.

3. What development will be liable to pay CIL?

CIL is to be charged per square metre on the net additional increase in floor-space of any new development of 100m² or more, or any additional dwelling. The amount of CIL a development site is liable to pay is based on its size, type and location. CIL is chargeable on most buildings that people normally go into. So this excludes things like wind turbines and water pumping stations

The rate(s) of CIL are to be set locally by the Charging Authority (Wiltshire Council) and will be published in what is known as a 'Charging Schedule'. The Levy is usually payable by the developer on commencement of development, although the Council has the option of introducing a time based instalments policy.

Relief and exemption from CIL is made to charity landowners on the part of their development that will be used for charitable purposes. In addition the council can also choose to offer 'exceptional circumstances' relief as part of CIL (exceptional circumstances require case by case detailed examination and are related to whether CIL liability has had an unacceptable impact on a development's viability).

4. What will CIL be spent on?

Developer contributions are currently collected through negotiable 'Section 106' planning obligations. Planning regulations state that there should be no double charging for infrastructure through CIL and Section 106. Therefore, after a CIL charging schedule is adopted planning obligations will be used only to deliver site-specific mitigation requirements and affordable housing whereas CIL money will be pooled from multiple developments to fund infrastructure priorities across Wiltshire.

Informed by the Infrastructure Delivery Plan (IDP), a 'Regulation 123' list will identify which infrastructure projects will be eligible to receive money from the CIL. Amendments to the CIL Regulations in 2012 state that the Council must allocate a share of the Levy raised in a neighbourhood to deliver infrastructure that neighbourhoods want, although this 'meaningful proportion' is yet to be set by the government. In addition a proportion will also be allocated for admin costs associated with processing the CIL, this proportion is also still to be decided.

5. What are the proposed rates for Wiltshire?

A Charging Schedule will set out the rate(s) of CIL to be charged across a local authority area. The rate(s) should be informed by an up to date development plan, infrastructure planning evidence base and viability assessment. CIL must strike an appropriate balance between contributing to funding infrastructure and not putting overall development across the local authority area at risk.

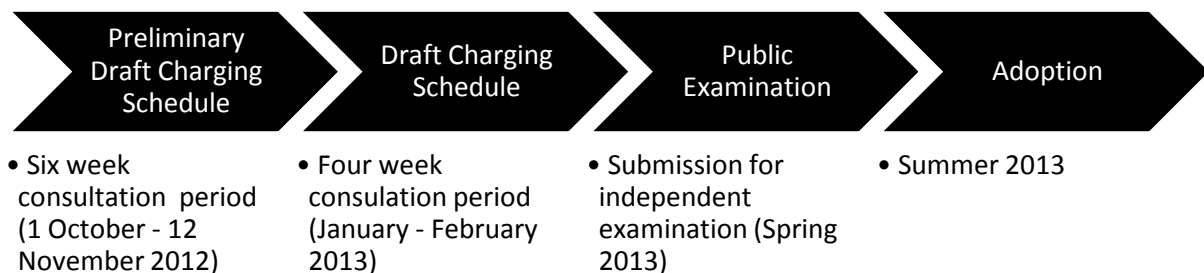
Consultants BNP Paribas were appointed by the Council to prepare the economic viability report to support the development of a CIL charging schedule for Wiltshire.

Cabinet will be considering the proposed rate of CIL for Wiltshire on the 10th September 2012. The proposed CIL rates for Wiltshire will be made available in the Cabinet paper.

6. What is the timetable for adopting CIL in Wiltshire?

Subject to the approval of the proposed CIL rates at the Councils Cabinet on 10th September 2012 the Council will produce a Preliminary Draft Charging Schedule for Wiltshire. A consultation will then take place and is scheduled for a period of 6 weeks between 1st October and 12th November 2012. The charging schedule will then be revised in light of comments received and undergo a further stage of public consultation, followed by a public examination in 2013. The Council will then look to adopt the charging schedule next summer.

The proposed process towards adoption is set out below:



WILTSHIRE COUNCIL

ENVIRONMENT SELECT COMMITTEE

30 AUGUST 2012

**Waste Management
Service Delivery Review**

Executive Summary

The report sets out a number of options for delivery of the waste and recycling collection services and the associated waste management services.

Proposal

That the Committee members:

- (i) Provide comments on the options for service delivery outlined in the attached report;
- (ii) Nominate a member of the Committee or of the Overview and Scrutiny Management Committee to work with the project team to deliver future waste and recycling services.

Reason for Proposal

To ensure Overview and Scrutiny Management engagement in the development of future service delivery models for waste and recycling services.

TRACY CARTER

Service Director, Waste Management

ENVIRONMENT SELECT COMMITTEE

30 AUGUST 2012

**Waste Management
Service Delivery Review**

Purpose of Report

1. To:
 - (i) Seek the views of Environment Select Committee on options for service delivery for waste and recycling collection and management.
 - (ii) Propose how Overview and Scrutiny Management Committee remain involved with, and add value to, the project.

Background

2. In 1996 Wiltshire County Council commenced delivery of waste management services through a contract with Hills Waste Solutions. This contract covers landfill, waste transfer station and materials recovery facility operations, kerbside collection of dry recycling, composting facilities, household recycling centres and bring sites. This contract ends in 2016 and there is no option for a contract extension.
3. In 2004 Wiltshire County Council commenced a procurement process for the diversion of residual (non-recycled) waste from landfill. This resulted in the award of two contracts. The first was awarded to Hills Waste Solutions for the delivery of 50,000 tonnes per year of residual waste to the Lakeside Energy from Waste facility at Colnbrook, Slough. The Council delivers residual waste for this contract to waste transfer stations at Thorny Down, Winterslow and Lower Compton. Waste is then bulked and hauled to Lakeside by Hills Waste Solutions. The contract commenced on 1 February 2009 and runs for 25 years.
4. A second 25 year diversion contract with Hills Waste Solutions was signed in April 2011 for the treatment of 60,000 tonnes of residual waste per year in Wiltshire's first mechanical biological treatment (MBT) plant. The facility is currently under construction at Northacre Park, Westbury in preparation for full operations to commence in September 2013. It is expected that the majority of the residual waste to be treated at this plant will be delivered directly by refuse collection vehicles operating in the west Wiltshire area, with any balance coming from waste transfer stations.

5. On 1 April 2009 Wiltshire Council inherited four different waste collection services from the former district councils. Since 1 April 2012 a harmonised waste collection service has been in operation across the county. This comprises fortnightly collection of:
 - (i) residual waste
 - (ii) plastic bottles and cardboard (co-mingled in a wheeled bin)
 - (iii) paper, glass, cans, foil and textiles (kerbside sort in a black box)
 - (iv) garden waste (opt-in, non-chargeable service).
6. Collection services are provided through a combination of in-house and contracted out service delivery. Hills Waste Solutions deliver the black box service countywide, under the contract described in paragraph 2 above. In the east, north and south of the county the residual waste, plastic bottles and cardboard and garden waste collection services are delivered by the Wiltshire Council in-house service.
7. In the west of the county residual waste, plastic bottles and cardboard and garden waste are collected by FCC Environment (formerly Focsa) under a collection contract which runs until 2014, with the option of extending by up to seven years.
8. The in-house service collects residual waste from commercial waste producers across the county. Over 4,000 customers use the service at the current time. There is an ongoing review of this service which resulted in an increase in fees and charges for the current financial year. This is to ensure that council tax payers are not subsidising delivery of this service. There are limited trials of commercial recycling in parts of the county which are being operated as pilot schemes. The service review will continue throughout the current financial year.
9. The Council also provides the following collection services:
 - (i) a free of charge collection of clinical waste from domestic households, including sharps boxes and sacks of clinical waste
 - (ii) a charged bulky waste collection of items from domestic households.
10. Wiltshire Council's recycling rate achieved in 2011/12 is 42.83%. Measures to improve this figure are being implemented in 2012/13, including the continuation of the rollout of communal recycling facilities to flats and further phases in our rollout of non-chargeable garden waste bins. The full effects of major changes to waste and recycling collections completed during 2011/12, including the move to fortnightly collections of waste and recycling across Wiltshire, will increase the recycling rate during 2012/13 and the following year.

11. The percentage of municipal solid waste (MSW) sent to landfill in 2011/12 was 36.65%. When the MBT plant in Westbury is operational, and the full effects upon recycling performance of recent changes to collection services are experienced, our performance will improve further with waste to landfill forecast to reduce to about 20% per year. At the very least, by 2014 we expect our MSW to landfill to reduce to 25% because the Council is committed to this target in its corporate plan.
12. The Council's future service must enable us to meet both national and local targets. Any model of service delivery will be evaluated against how it will contribute to achieving the targets set out below:

Target	Source
Reducing waste to landfill to 25% of the total collected by 2014	Wiltshire Council corporate plan
Increase recycling to 50% by 2014	Wiltshire Council business plan (modifying the target in the Waste Framework Directive and JMWMS)
Reduce biodegradable municipal waste to landfill to 35% of 1995 levels by 2020	EU Landfill Directive
Maintain separate collections of at least the following materials from the household waste stream: paper, metal, plastic and glass	Revised Waste Framework Directive and DEFRA draft regulations February 2012 (currently achieved)

Main Considerations for the Committee

13. Information gathered to date suggests that having a single provider of waste and recycling collection services enables the delivery of an efficient and cost effective service. The service could be delivered in-house by Wiltshire Council staff. Alternatively provision could be procured from a private sector service provider.
14. Regardless of whether the service is delivered in-house or by a private sector organisation there are a number of options to consider for the approach to collection of each of the main waste streams.
15. Wiltshire Council currently collects paper, glass, cans, foil and textiles from the kerbside. The materials are separated by residents and stored in a black box. Upon collection they are sorted at the kerbside and the materials are placed in separate compartments of the collection vehicle before transported to the materials recovery facility (MRF). This system produces high quality recyclable materials with the reject rate from the MRF being less than 1%.

16. The Council also collects plastic bottles and cardboard, co-mingled, in a wheeled bin. The materials are collected in a standard refuse collection vehicle and taken to a different MRF which has more sophisticated equipment that enables the separation of the materials. The service has not yet been operating for a full year so it is not possible to report a reject rate. However, information to date suggests that the reject rate is relatively low, although higher than for the black box, kerbside sort service.
17. The Council could continue with the existing system or could consider changing it to collect more materials on a co-mingled basis. For example, cardboard and paper could be collected together from one container, with glass, cans and plastic bottles co-mingled in another container. Alternatively, the wheeled bin currently used for the collection of plastic bottles and cardboard could be used for all the materials currently collected in the black box as well. Such a system would require a far more complex MRF to separate the materials and there is a risk that the resulting recyclables are not of such a high quality as those collected using a kerbside sort service. However, reject rates for such a MRF have improved in recent years and figures of 5% can be achieved. There is evidence that residents recycle more when they do not have to sort the materials. However, there is a risk that such a co-mingled system would not enable the Council to comply with the requirements of the Revised Waste Framework Directive, as set out in paragraph 12 above.
18. The opt-in free of charge garden waste service has been operating across the county since April 2012. A second roll out of garden waste bins has recently been completed and a third phase is planned for the autumn. The Council could continue to provide the service in this way. Some authorities (including three of the four Wiltshire district councils historically) charge for the delivery of this service. While there is a risk that some of the garden waste (which is 100% biodegradable) enters the residual waste stream, there is evidence that this could reduce waste tonnages overall as people revert to home composting. Given the financial pressures that the Council is facing, introducing a charge for the service would reduce the costs of service delivery and generate an income. Consideration could also be given to restricting operation of the garden waste service to the busiest months of the year, with the crews working annualised hours, longer in the summer and shorter in the less busy months.
19. Wiltshire Council's approach to food waste has been to focus on information campaigns about food waste minimisation and to promote home composting using subsidised food waste digesters. This is clearly the most sustainable approach to managing food waste and has wider environmental benefits than residual waste reduction alone. However, an increasing number of councils are introducing food waste collections. This would require a waste management facility to treat the food waste but a new contract would provide the opportunity to procure such capacity. In addition, there would be an opportunity to procure new collection vehicles with a separate compartment for the collection of the food waste.

20. A commercial residual waste collection service is currently provided by the in-house service. Pilot schemes are in operation for the collection of commercial recycling. The Council could continue to provide the service in-house. Decisions on delivering commercial recycling services countywide will be based on the outcome of the pilot schemes. Another option would be to outsource this service, either as part of a wider outsourcing of the collection service or on a stand-alone basis.
21. In addition to the type of collection service the Council wants to deliver, consideration should also be given to the working patterns to support service delivery. These could include working 37 hours over four days per week from Tuesday to Friday, rather than five. This would save the payment of overtime for working on at least four bank holiday Mondays each year and would provide time for vehicle maintenance and repair without having to pay overtime for the provision of these services. Another option would be double shifting where vehicles would be used for two shifts per day rather than one, subject to ongoing compliance with planning permissions and environmental permits for depots and waste management facilities. Some concerns have been expressed about the health and safety implications of working more hours in darkness and also about the residents' acceptance of services being delivered earlier in the morning and later at night. A greater number of smaller vehicles may be required to enable access to streets where a higher number of cars are parked outside the normal working day.
22. A project is currently underway to reduce the number of bring sites (local recycling facilities) across the county, following the introduction of the new kerbside collection services. Future options could be to remove more or all of these sites or to change them to co-mingled bring sites to reflect a possible move to co-mingled kerbside collection of recyclables, enabling them to be serviced using the same vehicles. There is also a greater risk of contamination at bring sites, where there is no supervision and no ability to identify the waste source.
23. The household recycling centres (HRCs) are currently operated by Hills for use by residents of Wiltshire. The Council does not currently charge for any of the services delivered through HRCs and does not permit trade waste to be delivered to HRCs. Consideration could be given to allowing access for commercial waste on a charged basis. Alternatively, the Council could seek to reduce its costs by introducing enforcement at HRCs to minimise trade waste abuse. Consideration could also be given to introducing charges for certain waste streams to generate an income from HRC operation.
24. If the decision is taken to deliver the complete collection service in-house (for all waste streams including commercial waste) consideration could be given to extending the range of services delivered directly by the Council. This could include management and servicing of the bring sites and the HRCs. In addition, the Council could procure the construction of waste transfer stations, a MRF and a composting pad and operate these through the in-house service. This would enable the Council to take the full benefit of any income raised from the sale of recyclables but would also mean that the Council carries the risks of finding sustainable markets for those materials, the risks of procuring the required facilities, including site purchase, planning and environmental licensing, and operational risks.

25. Further consideration could be given to the way in which the waste management service works with the voluntary and community sector (VCS). The Council has considerable experience of working with the Wiltshire Wildlife Trust to deliver education on reducing, reusing and recycling waste. With the new National Waste Prevention Strategy due to be introduced during 2013, this work is likely to be increasingly important. Added to that, the best way to reduce the costs of the waste management service is to reduce the amount of waste to be collected by working closely with community-based groups.
26. There may be other opportunities for working with the VCS to deliver elements of the service. The Council is currently in discussion with furniture refurbishment organisations based in Wiltshire to see if we can develop a business case for one of them to trial delivery of the bulky household waste collection service. We already recommend their use through the Council's website and this would be a step towards a more formal arrangement. Another area which could be considered is the operation of HRCs. There are examples of this where high levels of re-use are achieved through diversion of particular items through charity shops and increased recycling levels.
27. One of the key factors in deciding whether the service should be delivered in-house or through outsourcing is the Council's ability to finance any capital investment (e.g. investment in the provision of depots, waste management sites and vehicles for waste collection) through the additional revenue costs of borrowing. If the Council cannot afford the level of capital investment required to invest in these assets, consideration has to be given to procuring services in order that the private sector will finance provision of fleet and sites. This would influence the way in which services are procured and the length of contract or contracts for service delivery. The contract period would have to be sufficient to enable a contractor to recover the investment at a rate which would be affordable for the Council, bearing in mind the additional costs this would put on the revenue budget.
28. Consideration also has to be given to the procurement route to be used for any such contracts. If the Council is clearly able to specify the services it wants and the way in which it wants those services to be delivered, the restricted procedure is a more cost-effective and shorter process. If, however, the Council is only able to specify the outcomes it wants to achieve (this could be the case if complex financing arrangements are required) then the competitive dialogue process might be more appropriate which is generally a more expensive process and requires a longer time period for completion.

Environmental and Climate Change Considerations

29. There are no environmental and climate change considerations arising directly from this report.

Equality and Diversity Impact of the Proposal

30. There is no equality and diversity impact of the proposal.

Financial Implications

31. There are no immediate financial implications arising directly from this report; however, as per paragraph 27, consideration will need to be given to any future implications for both capital and revenue regarding the options for Waste Service delivery.

Legal Implications

32. There are no legal implications arising directly from this report.

Conclusion

33. The above paragraphs set out a number of options for future delivery of waste management services which members of the Environment Select Committee are invited to comment on. In addition, the waste management service would welcome the nomination of a member of the Committee or of the Overview and Scrutiny Management Committee to receive regular briefings on progress with this project to work with the service on the further development of the options above and to act as the link between the project team and the Committee.

TRACY CARTER

Service Director, Waste Management

Report Author:

Tracy Carter

Service Director, Waste Management

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

None

Appendices:

None

WILTSHIRE COUNCIL

ENVIRONMENT SELECT COMMITTEE

30 AUGUST 2012

Subject: Air Quality

Cabinet Member: Councillor Keith Humphries – Public Health and Public Protection

Key Decision: No

Purpose of the report

1. To present to the Overview and Scrutiny Management Committee suggestions on how best Overview and Scrutiny can be involved with the issue of air quality generally but specifically to ensure corporate buy-in to the Air Quality Strategy, its strategic objectives and action plan.

Background

2. Air quality in Wiltshire is predominantly good with the majority of the County enjoying clean, unpolluted air. There are however a small number of locations where the combination of traffic, road layout and geography has resulted in exceedences of air quality standards, specifically nitrogen dioxide and fine particulates.
3. In response, Wiltshire Council adopted its Air Quality Strategy in December 2011. The Strategy is a document that provides high level guidance to inform policy and direction across a range of council services with the aim of improving air quality. It recognises that improving areas of poor air quality can only be achieved by working collaboratively across departments and with local communities.
4. The Strategy contains a number of strategic objectives and strategic action plan, the implementation of which will work towards improving air quality in the few areas where this is currently a problem and maintaining the good air quality across the rest of Wiltshire.
5. The Environment Select Committee has held a longstanding interest in the development of the Council's Air Quality Strategy and considered drafts in the run up to its adoption in July 2010 and 2011 and November 2011. At the meeting of the Committee in November 2011 there was endorsement that in order to deliver the aims of the strategy a more holistic involvement from council teams, local groups and the community was required. It resolved that the aims and objectives of the strategy are integrated into relevant service delivery plans and that an update on the delivery of the Strategy would be received in May 2012.
6. At its meeting on the 17th July 2012, following the review of O&S functions, it was agreed by the O&S Management Committee that air quality should be picked up

in its forward work programme as a legacy issue and priority for Members. It was agreed that proposals as to how this could be achieved would be presented at its next meeting on 30th August 2012.

7. This short report presents options as to how this can move forward.

Moving Forward

8. As outlined above one of the main strands of the Air Quality Strategy is to ensure that Council services work together holistically ensuring that respective service contributions are embedded within service delivery plans. It is envisaged therefore that the role of O&S going forward would be monitor this action.
9. Another role of O&S would be to keep an overview on the realisation of the strategic objectives within the strategy and the implementation of the action plan of which the paragraph above forms part.
10. Realistically there are two options to achieve this. Firstly through a report to the Environment Select Committee so that all members of the Committee can undertake this role or through the establishment of a small task and finish group of the ES Committee which would allow a more focused approach to the issue.
11. Members may also wish to consider which select committee this task and finish group sits under, the Environment Select Committee or the Health Select Committee as the overarching purpose of the strategy is to secure better health outcomes for individuals and communities in Wiltshire.

Recommendations

12. It is recommended that a Task and Finish group be convened to consider and monitor the progress of the Air Quality Strategy, realisation of strategic objectives and action plan.

Mandy Bradley
Service Director, Public Protection

ENVIRONMENT SELECT COMMITTEE

WILTSHIRE COUNCIL

30 AUGUST 2012

Forward Work Programme Updates

1) Energy Efficient Homes

Following discussions with the Service Director, attention has been focused on the guidance being created for developers on the implementation of Core Policy 41 in respect of sustainable construction. As a result, the Chair and Vice Chair wish to recommend that a Task Group is appointed to review the draft guidelines and the evidence on which they are based.

2) Street Light Savings

The Committee has been asked by the executive to look at the proposals on street light savings, following the consultation which is due to end on 30 September. A report for the Committee is due on 15 October. The Chair and Vice Chair wish to recommend that a rapid scrutiny exercise is conducted on receipt of the report and the findings be presented to the Committee on 1 November as a supplementary item.

3) Bus Service Review (Marlborough – Bedwyn – Hungerford)

The Chair and Vice Chair are concerned that this issue relates to a specific service and not the strategic overview which is the role of the Committee. Therefore they recommend that this item is referred back to the O & S Management Committee to reconsider its inclusion on the work programme of the Environment Select Committee.

4) Development Services Transformation Programme (task group)

The Task Group has been working on various aspects of the Transformation Programme's activities. As the Transformation Programme Roadmap is approaching its end, the Chair and Vice Chair recommend that the Task Group presents a final report to the committee on 1 November. It is suggested that the report includes future recommendations for where scrutiny can ensure that the expected savings and efficiencies have been delivered.

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**OVERVIEW AND SCRUTINY
FORWARD WORK PROGRAMME**

Subject	Select Committee	Date when proposed	Approved by Management Committee	Scrutiny Role (scrutiny/overview)	When to be considered	Review Date	Background	Rationale for inclusion	Cabinet Member/Portfolio Holder/key officer	Scrutiny/ DSO
Scrutiny Representation on Project Boards	Management/ Environment	Legacy 25/06/12	17/07/12	Overview			To receive updates from the following Project Board representatives: Cllr Ricky Rogers (Staffing Management Executive Board) Cllr George Jeans (Wiltshire Online Project Board) Cllr Jose Green (Gypsy & Traveller Project Board)			PK/SS
Development Services Transformation Programme (Task Group)	Environment	Legacy 09/07/12	17/07/12		Established 10 July 2012		The Committee received an update on the planning services peer review at its meeting on 10 January 2012 where it was agreed that a Task Group would be formed to monitor delivery of any action plan to emerge from the peer review. The Group held its first scoping meeting on 23 March and agreed its terms of reference at its second meeting held on 25 May 2012. The next meeting is scheduled to take place on 20 July where the Group is expected to consider: Outcomes from the Staff Survey New Processes Enforcement and Building Control. See current agenda item.		Cllr Toby Sturgis Brad Fleet	RB
Community Infrastructure Levy (CIL)	Environment	Legacy 09/07/12	17/07/12	Overview - policy development			To consider following Cabinet and member briefing sessions but before final decision by Council. The Committee to test out the proposals and how CIL fits in with wider Council objectives.	Important corporate issue supported by national regulation.	Cllr Fleur de Rhe-Philippe Alistair Cunningham	MM/KE
Low Carbon and Renewable Energy Plans	Environment	Legacy 09/07/12	17/07/12	Scrutiny	Nov-12		Chair and Vice Chair to meet with Service Director and Cabinet Member and report to Committee 1 November.	Council responsibility	Cllr Toby Sturgis Ariane Crampton	MM/KE
Street Lighting Savings	Environment	09/07/12	17/07/12	Scrutiny	Aug-12		Budget decision - Executive request. See current agenda item.	To consider proposals following public consultation towards end of the year	Cllr Peter Binley	MM/KE
Highways and Amenities Contract Update	Environment	Legacy 09/07/12	17/07/12	Scrutiny	Aug-12		Report to be presented to Committee on 1 November	To establish the value that OS can add to the contract process - Meeting being arranged to clarify any future engagement	Cllr Dick Tonge Peter Binley	MM/KE
Waste - Future Service Delivery Project	Environment	Legacy 09/07/12	17/07/12	Overview - policy development	Aug-12		To consider the review of service and strategy and ensuing proposals for countywide waste disposal options. Following consideration of the report the Committee will make a decision on whether any future scrutiny involvement is required.	Important service review and spend for the Council	Cllr Toby Sturgis Tracy Carter	MM/KE
Energy Efficient Homes	Environment	Full Council 26/06/12	17/07/12	Overview - policy development	Aug-12		Brief report to be considered by Committee to establish a rapid scrutiny exercise to review the issue and report back in November. Cllr Richard Clewer will be invited to join the exercise. See current agenda item.	Requested by full Council on 26 June during debate on the Core Strategy	Cllr Toby Sturgis Alistair Cunningham	MM/KE

Subject	Select Committee	Date when proposed	Approved by Management Committee	Scrutiny Role (scrutiny/overview)	When to be considered	Review Date	Background	Rationale for inclusion	Cabinet Member/Portfolio Holder/key officer	Scrutiny/ DSO
ECO Team Development	Environment	Legacy 09/07/12	17/07/12	?	?		New officer appointed will be drawing up guidance for developers on the implementation of Core Policy 41 re sustainable construction.	This will not be included unless representation made by the <u>Cabinet Member</u> to request otherwise.	Cllr Toby Sturgis Ariane Crampton	MM/KE

CLT/Cabinet Liaison examples of high level priorities

Community Infrastructure Levy (CIL)										
Housing allocations										
Welfare reform										
Job creation and economic development										
Shaping the future council										
Highway repairs and maintenance										
Transformation and campuses										
Safeguarding (inc. Ofsted)										

WILTSHIRE COUNCIL

ENVIRONMENT SELECT COMMITTEE

30 AUGUST 2012

Call-in of Delegated Decision by Cabinet Member - Proposed Application to Stop Up North Bradley Footpath One

Purpose

1. To consider a call-in request of the Delegated Decision on the proposed application to stop up North Bradley Footpath One.

Background

2. Cllr Dick Tonge, Cabinet Member for Highways and Transport, on 10 August 2012, published a Delegated Decision (HT-039-12) regarding the proposed application to stop up this footpath.
3. In accordance with normal procedure an intention to make a decision was published earlier during which the local member, Cllr Francis Morland, responded with comments.
4. The report document and appendices containing details, representations and responses to the decision, can be found at [Appendix A](#).

Call-In

5. The provision for a call-in of an executive decision is set out in the Overview and Scrutiny Procedure Rules in the Council's Constitution. It is designed to be used in exceptional circumstances where members of the relevant scrutiny committee have evidence which suggests that the Executive did not take the decision in accordance with the principles of decision making as set out in the Constitution.
6. Formal notice was given within the prescribed period by Cllr Jon Hubbard, Chairman of the Environment Select Committee, to call-in the decision following representation by Cllr Morland. The reasons given were that in this instance the Cabinet Member had not acted in a way:
 - To ensure open, fair and honest administration (*para 14.2 – Part 2 – Article 14 – Decision Making*).

Full details of the Call-in request can be found under [Appendix B](#).

7. A Call-in has to be considered by the relevant scrutiny committee within 5 working days. Arrangements were made, in consultation with the Chairman, to hold the meeting within the required timescale. However, due to the fact that a scheduled meeting of the Environment Select Committee was already in place shortly after the deadline, the Solicitor for the Council agreed, on the basis of the

efficient transaction of Council business but without setting a precedent, to allow the call-in to feature on the agenda of the scheduled meeting.

8. The revised Overview and Scrutiny arrangement agreed by Council in May 2012 gives overall responsibility for call-ins to the new Overview and Scrutiny Management Committee. The Chairman and Vice-Chairman of the Management Committee have been consulted over this call-in request and have agreed that the matter be dealt with by the Environment Select Committee.
9. At the meeting itself Cllr Hubbard, who called in the decision, will first be given the opportunity to explain the concerns he has. The Cabinet Member will then be invited to respond. Other members can then ask questions and debate the merits of the call-in.
10. The meeting is open to the public and therefore the provision for public participation applies. However questions and comment must relate to the particular issue of the call-in.

Matter for Decision

11. The Environment Select Committee, after hearing the concerns, evidence and response, has to decide either:
 - (1) that it is satisfied by the response, takes no further action and informs the decision-maker (Cabinet Member) accordingly. The decision will then be implemented immediately;
 - or
 - (2) if it remains concerned, to refer the matter back to the decision-maker setting out in writing the nature of its concerns. The decision-maker is then required to reconsider the matter within 5 working days, amending the decision or not, before adopting a final decision.

Paul Kelly
Scrutiny Manager (and Designated Scrutiny Officer)

Report Author: Kieran Elliott, Democratic Services Officer

Appendices

- Appendix A – Delegated Decision and associated appendices (Page 25)
 - App A0 – Decision Report (Page 27)
 - App A1 – Floor Plan (Page 33)
 - App A2 – Consent of North Bradley Parish Council (Page 35)
 - App A3 – Photograph of the site (Page 37)
 - App A4 – Consultation and responses (Page 39)
 - App A5 – Objection to the Proposal (Page 51)
 - App A6 – Email from Mr Francis Morland (Page 53)
 - App A7 – Map showing location of Boundatry Walk (Page 55)
 - App A8 – Representation from Mr Morland and Response (Page 57)
- Appendix B – Call-in Request (Page 61)

CABINET MEMBER FOR HIGHWAYS AND TRANSPORT - CLLR R TONGE

**APPENDIX
A**

LAW AND GOVERNANCE

OFFICER CONTACT: Kevin Gale 01225 718023 email kevin.gale@wiltshire.gov.uk

REFERENCE: HT-039-12 APPROVED

**HT-039-12 - PROPOSED APPLICATION TO STOP UP NORTH
BRADLEY FOOTPATH 1**

Purpose of Report

To ask the Cabinet Member for Highways and Transport to consider whether the Council should apply to the magistrates' court for an order stopping North Bradley Footpath 1 on the ground that it is unnecessary for public use.

Consultation

North Bradley Parish Council has consented to the application being made and a consent form dated 11 June 2012 is shown at **Appendix 2**.

The local member, Mr. Francis Morland, has been consulted and his views are referred to in paragraphs 7 and 8. Further comments were received during the decision-making process. These and the response of the Solicitor to the Council are shown at Appendix 8.

Options Considered

The Cabinet Member for Highways and Transport may resolve to:

- (i) Give consent to the application.
- (ii) Refuse to give consent to the application in which event, reasons should be given for doing so.

Reason for Decision

Officers consider that the highway concerned can be stopped up on the ground that it is unnecessary for public use and the Council should accordingly apply to the court for an Order.

DECISION MADE

Following consultation with officers and consideration of any representations made, I confirm that I have resolved to :

In accordance with paragraph 19 (ii) of the report, consent to the application

This decision was published on the 10th August and will take effect from the 20th August, 2012.

The following supporting documents are attached:

- HT-039-12 - Report
- HT-039-12 - Appendix 1 Floor Plan
- HT-039-12 - Appendix 2 Consent of North Bradley Parish Council
- HT-039-12 - Appendix 3 Photograph of the site
- HT-039-12 - Appendix 4 Consultation and responses
- HT-039-12 - Appendix 5 Objection to the Proposal
- HT-039-12 - Appendix 6 Email from Mr Francis Morland
- HT-039-12 - Appendix 7 Map showing location of Boundary Walk
- HT-039-12 - Appendix 8 - Representation from Mr Morland and Response

Date: ...9th August, 2012.....

Cllr Dick Tonge
Cabinet Member for Highways and Transport

COUNCILLOR: MR. RICHARD TONGE

APPENDIX A 0

CABINET MEMBER FOR HIGHWAYS AND TRANSPORT

NEIGHBOURHOOD SERVICES

CONTACT: Kevin Gale, Law & Governance. Tel. 01225 71(8023)

E-mail: kevin.gale@wiltshire.gov.uk

REFERENCE: HT- 039-12

PROPOSED APPLICATION TO STOP UP NORTH BRADLEY FOOTPATH 1

Purpose of Report

1. To ask the Cabinet Member for Highways and Transport to consider whether to consent to a proposal by officers to apply to the magistrates' court for an order stopping up North Bradley Footpath 1 on the ground that it is unnecessary for public use.

Background

2. The plan at **Appendix 1** shows the location of the highway concerned, running from A-B. The proposal seeks to stop up highway rights, essentially the legal right of the public to pass and repass on this route. The path runs from its junction with Axe and Cleaver Lane, about 87 metres west of its junction with Woodmarsh, leading in a north easterly direction for approximately 121 metres to its junction with Woodmarsh. The Definitive Map and Statement of rights of way does not specify a minimum width. A representation of an aerial view of the site is shown at **Appendix 3**, with the footpath marked in purple.

3. Under Section 116 of the Highways Act 1980 ("the Act") , Magistrates' Courts have a power to authorise the stopping up or diversion of highway, as follows:

(1) Subject to the provisions of this section, if it appears to a magistrates' court, after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the [highway] authority have made an application under this section—

(a) is unnecessary, or

(b) can be diverted so as to make it nearer or more commodious to the public,

the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.

[sub-section 2 has been repealed]

(3) If an authority propose to make an application under this section for an order relating to any highway (other than a classified road) they shall give notice of the proposal to—

(a) if the highway is in a non-metropolitan district, the council of that district; and

(aa) if the highway is in Wales, the Welsh council for the area in which it is situated if they are not the highway authority for it; and

(b) if the highway is in England, the council of the parish (if any) in which the highway is situated or, if the parish does not have a separate parish council, to the chairman of the parish meeting; and

(c) if the highway is in Wales, the council (if any) of the community in which the highway is situated;

and the application shall not be made if within 2 months from the date of service of the notice by the authority notice is given to the authority by the district council [or Welsh council] or by the parish or community council or, as the case may be, by the chairman of the parish meeting that the council or meeting have refused to consent to the making of the application.

4. The land over which Footpath 1 runs is owned by Doric Developments, which has leased it to Trowbridge Town Council. In turn the town council leases it to Trowbridge Town Football Club. The club, which is run on a not-for-profit basis, has asked Wiltshire Council to make an application to stop up the footpath. Throughout 2011 and since, the club's premises have been affected by numerous incidents of crime and anti-social behaviour including vandalism to buildings, dugouts and stands. This has cost the club in excess of £4,000 in repair or replacement costs and is threatening its viability. Dog walkers using the site often fail to clean up after their pets. Although the club tries to keep the pitch clean, there have been unpleasant incidents of young football players sliding through excrement which has been left behind. Consequently, the club is concerned at the risk to its players, visitors and staff of infection (*Toxocariasis*) which can lead to blindness in some cases.
5. Under section 17 of the Crime and Disorder Act 1998, the Council has a duty to "exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area". Officers consider that making this application would be consistent with that duty and accordingly it is supported by the Council's Safer Communities Team.
6. In April and May 2012, the Council published details of the proposed application on its website and invited the public to express their views. A copy of the document and the responses are shown at **Appendix 4**. Of the 78 responses, there were two objections. One was anonymous and the other has come from a Mr Oliver of 3 Woodmarsh, North Bradley.
7. An email of 16 April 2012 from the local member, Mr Francis Morland, is shown at **Appendix 6**. Mr Morland states that he is not opposed to the stopping up of this length of footpath. However, he would prefer the Council to achieve the same result by using an alternative statutory power so that objections were referred to the

Secretary of State and considered at a public inquiry rather than by a magistrates' court. He also proposes that the application should be conditional on the formal dedication of and addition to the relevant Definitive Map and Statement as a footpath of at least 2 metres in width of the existing way directly linking Boundary Walk to Bradley Road. These locations are shown on the plan at **Appendix 7**.

8. In response, officers would point out that the Council has the discretion to make an application under section 116 of the Highways Act 1980 and consider it appropriate to do so in this case. If the application were made, anyone objecting would have the opportunity to make representations to the magistrates either in person or in writing. As regards the proposal for a link between Boundary Walk and Bradley Road, it is understood that this is now available for use.

Main Considerations for the Council

9. Case law has clarified that in deciding whether to make an application, the Highway Authority has to consider all the factors which would be relevant to the consideration by a Magistrates' Court of whether an order should be made. As well as whether the highway is needed for passing and repassing, issues such as safety, e.g. for visibility splays or potential development access, should also be considered.
10. The central questions to be addressed are: what is the highway function being performed by that part of the highway which is the subject of the requested application and whether it is unnecessary for that function to be performed by that part or whole of the highway. If the answer is that it is unnecessary for that function to be performed, the other question is: are there any other highway reasons why a stopping up application should not be made?

Objections to the application

11. As can be seen from the consultation responses at **Appendix 4**, one comment submitted by an anonymous respondent, states that "this footpath has existed for many years and we should not close it simply because a modern day hobby has been superimposed on it".
12. The other objection is from a Mr Peter Oliver of 3 Woodmarsh, North Bradley. It is the last of the responses shown and states that "*I would like to record the fact I am against the closure of the path across woodmarsh playing field. The footballers have closed access across most of the field . .the footpath is the only path left.*" An email from Mr Oliver is shown at **Appendix 5**. In it he states that :

" Yes I do wish to object to the footpath closure,my wife and I regularly use the foot path reason 1 to keep the path open 2 it is the only footpath left because the footballers wish to exclude all North Bradley residents from crossing the field using the excuses dogs fouling the field, broken glass, graffiti and so it goes on. Not so long ago there were six pathways across the field the footballers claim the footpaths

were not a right of way as the land was and is privately owned. My wife and I have lived in North Bradley for more than 28 years the land has always been privately owned, but we have never been challenged or told to get off the land children have used the playing field crossing to go to school or collage even this has been stopped that is unless we all pay a fee to cross the land how mean is that yes I do object to the fencing off of the field, and proposed flood lights and the parking on the main through fare of North Bradley owned ”

13. In response, officers note that Mr Oliver refers to six pathways but provides no evidence to clarify or support this. Some members of the public roam freely across the pitch and do not keep to the footpath. However, Footpath 1 is the only legal route, recorded in the Definitive Map and Statement of rights of way, which crosses the area of the pitch. Officers do not consider that anyone needs to use the footpath, including anyone going to school or college.

14. If the footpath were stopped up, anyone wishing to go from points A to B would have to walk approximately 60 metres further than at present. However, both points would remain accessible and the alternative route along Axe and Cleaver Lane and Woodmarsh has a firmer surface. Officers consider that highway rights over the area concerned are not necessary for the public to pass and repass or for visibility, health and safety, access by a third party or any other highway-related reason.

Environmental Impact of the Proposal

15. None

Equalities Impact of the Proposal

16. None

Risk Assessment

17. None

Financial Implications

18. The legal and advertising costs incurred in making an application to stop up the highway have been borne by the Council's Department of Health and Public Wellbeing. If the Cabinet Member gives consent, the department would continue to fund the application. In the event of an adjournment of the hearing or an appeal against an order made by the court, Trowbridge Town Football Club would be asked

to contribute towards the costs. This is consistent with the Council's power to charge for such costs under section 117 of the Highways Act 1980.

Options Considered

19. The Cabinet Member for Highways and Transport may resolve to:

- (i) Refuse to give consent to the application in which event, reasons should be given for doing so.
- (ii) Consent to the application.

Proposal

20. It is proposed that the Cabinet Member adopt the option at 19 (ii) above.

Reasons for Proposal

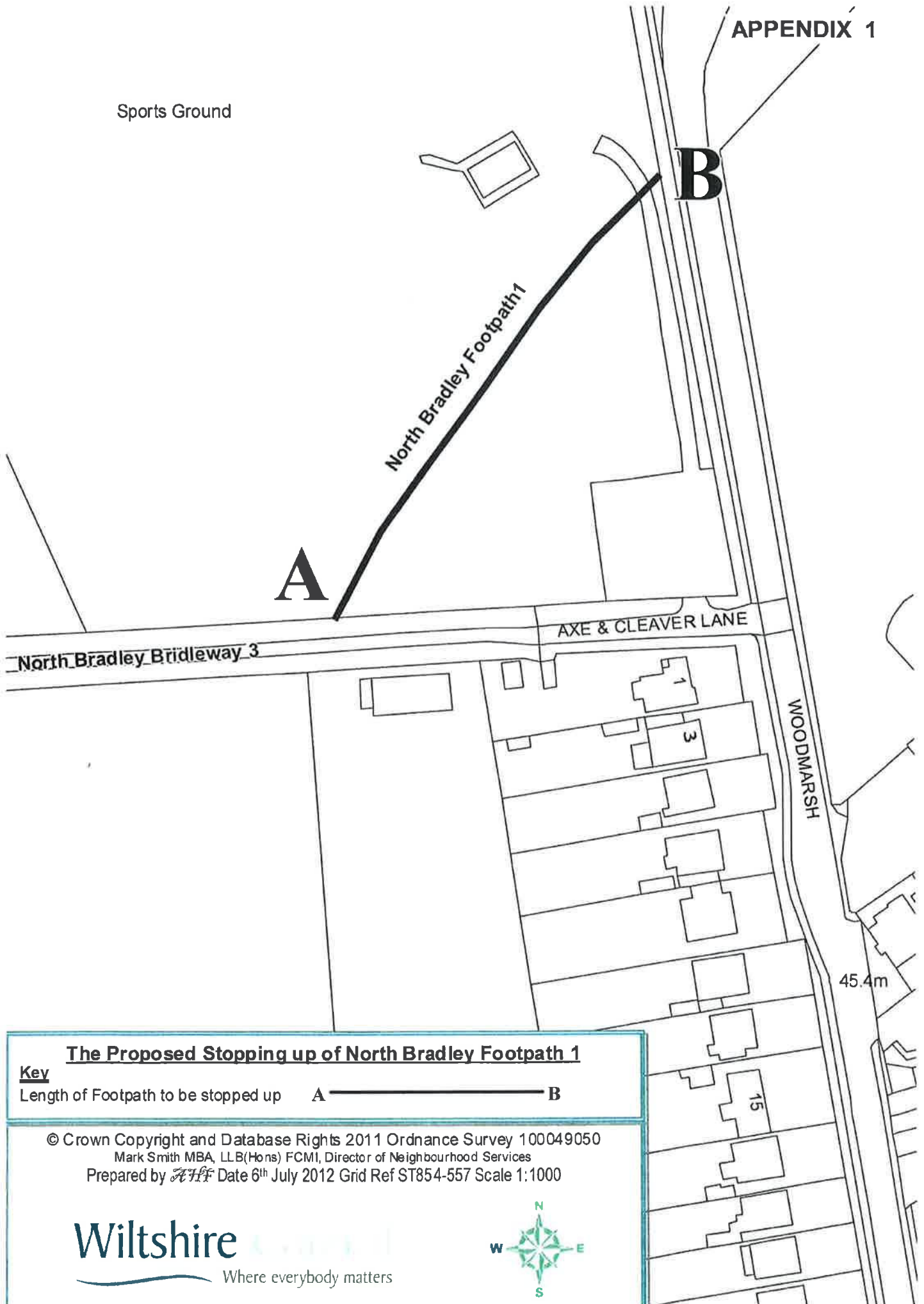
21. Officers are satisfied that the section of highway is unnecessary and in the circumstances it would be appropriate for the Council to apply to stop it up.

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

None

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Sports Ground



The Proposed Stopping up of North Bradley Footpath 1

Key

Length of Footpath to be stopped up A ————— B

© Crown Copyright and Database Rights 2011 Ordnance Survey 100049050
Mark Smith MBA, LLB(Hons) FCMI, Director of Neighbourhood Services
Prepared by *SHF* Date 6th July 2012 Grid Ref ST854-557 Scale 1:1000

Wiltshire *County Council*
Where everybody matters



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WILTSHIRE COUNCIL
HIGHWAYS ACT 1980
SECTION 116 APPLICATION

North Bradley Footpath 1

North Bradley Parish Council hereby consents to Wiltshire Council making an application to the Magistrates for an Order under Section 116 of the **Highways Act 1980** providing for the stopping-up of the highway known as Footpath 1, shown A-B on the plan on the reverse of this form, on the ground that it is unnecessary for public use.

Signed .....

Please print name..... R. E. EVANS.....

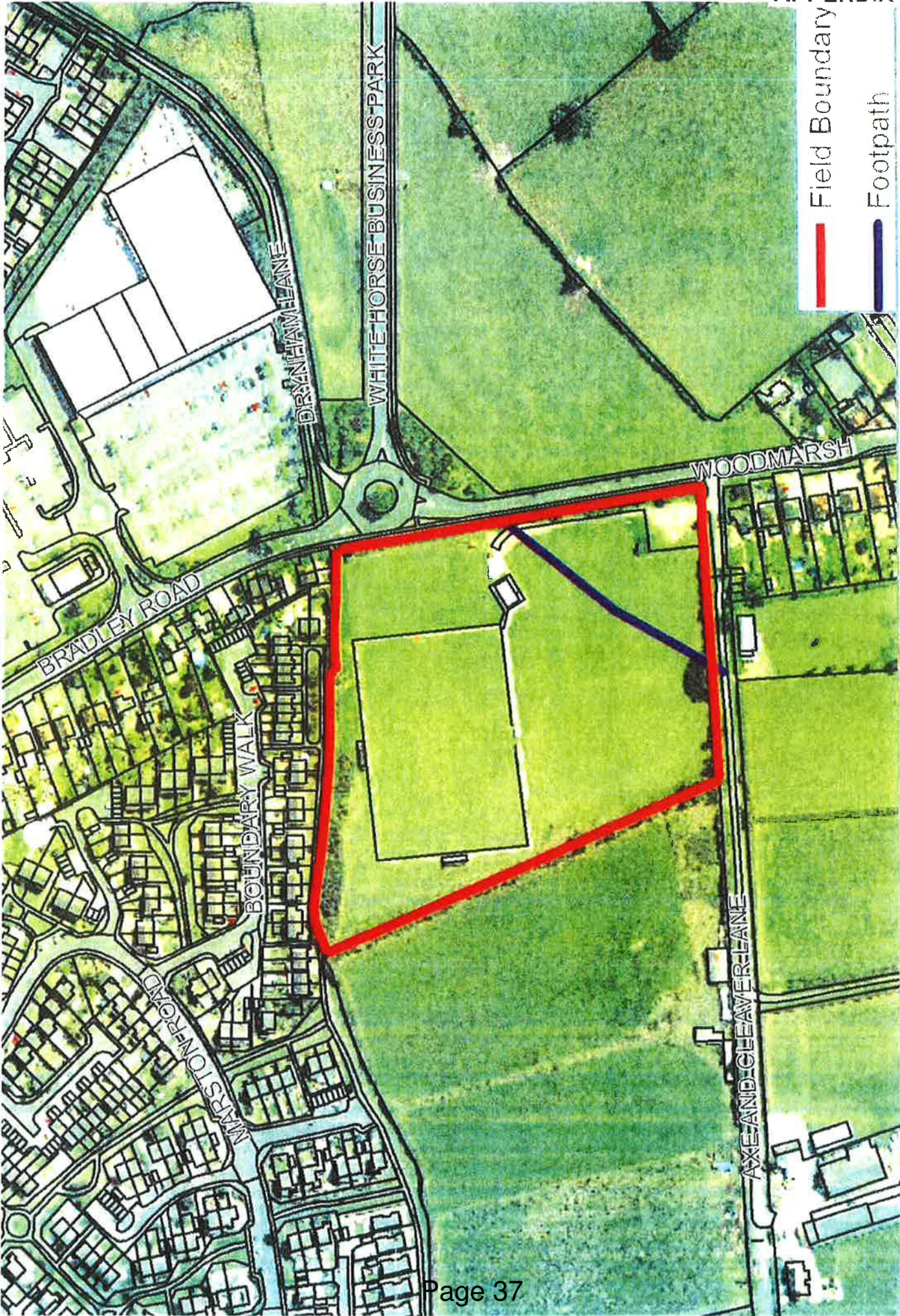
Post held..... P.C. CHAIRMAN.....

Date 11 June 12.....

Please return this form to:-

Solicitor to the Council
Legal Unit
(Ref: **WCS 17061**),
County Hall,
Trowbridge,
Wiltshire BA14 8JN

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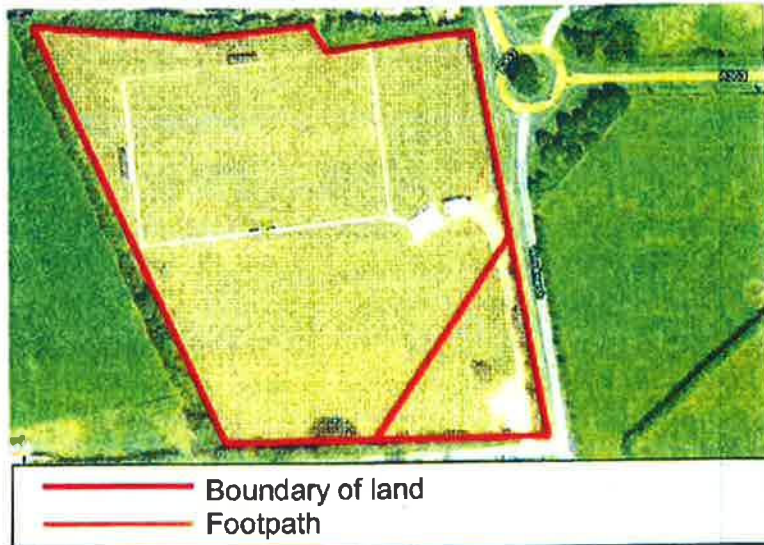


Field Boundary
Footpath

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S116 Highways Act 1980 – stopping up

Community Consultation - Woodmarsh, Trowbridge



Wiltshire Council is considering the 'stopping up' of the right of way across Woodmarsh Road Football Club site. Your views will help to shape the council's decision in pursuing such an order.

The site is privately owned and the only permitted public use of the land is the right of way as marked in orange in the above map. The reasoning for the considered closure is due the issues that the right of way has caused.

Over the last x months x number of incidents of anti social behaviour have been recorded. This includes incidents of:

- Dog foul on pitches, on occasions this has resulted in young players sliding through dog faeces.
- Build up of litter, requiring daily cleansing.
- Damage to buildings and signs on the site.
- Graffiti on stadia and buildings.
- Chemical damage to main pitch.
- Damage to current unsecured land boundaries

Risks

The risks of the land *not being secured* have been identified as:

- Continued damage to the Football Clubs Buildings. Further vandalism and theft may result in the damage being un-repairable and the club with have to fold, leaving almost 400 local children with no football.
- Continuing damage to signs, dug outs, railings, paths and also to the pitches – including the digging of holes and weed killer being put on the pitches which risks serious injury to youth players.

- Continuing littering of the site, causing environmental nuisance and danger of injury to any site users through broken glass.
- Continued dog walking across the pitches resulting in dog faeces on playing pitches. This poses a health risks to all site users, in particular young players (Toxicara Virus)
- Trowbridge could lose a well used football pitch in a town where sports provision is at a premium.

Risks of the land being secured via a footpath annulment are identified as:

- Use of the land which has been used historically by the public being restricted to the football club and associates, causing local upset and objection.
- Closure of a public footpath could be controversial (although it should be noted that the ground is located with other fields and rights of way in very close proximity).

Consultation Questions

1. In what capacity are you responding to this consultation?
North Bradley Resident
Trowbridge Resident
Local Councillor
Representing agency or body, please state:
2. Please state your postcode.
3. Are you a user of the right of way as highlighted?
Yes
No
4. Do you object to the proposed closing of the right of way?
Yes
No
5. If you objected please explain your reasons.
6. Are there any further comments you wish to make regarding the proposed 'stopping up' of the right of way?

Woodmarsh Consultation Results

Email Address	Capacity	Agency/ Body	Postcode	User?	Object Adjustment	Reasons	Comments
notreply@wiltshire.gov.uk	SF XO		BA14 7TW	No	Yes	No	Please close it and allow all of the young footballers to play in safer conditions
[REDACTED]	10	Under 11's Mgr TTYFC	BA133UW	No	Yes	No	I would like the right of way closed as it stands at the moment. This would enable the football club to make the ground a safer and cleaner place for the many children that use it. As a member of the club and a parent it is always a worry sending young players out onto the pitches not knowing if they will run/fall in dogs mess or fall onto broken glass. As there is a useable path around the outside of the ground I would like to think for the sake of the children the users would be prepared to walk a little further.
[REDACTED]	10		BA14 0TH	Yes	No	No	I have children who use this area regularly and we have to, for the safety of ALL the children, not only my own, check the field for dog poo before each visit. This is unacceptable and can be stopped. Dog fouling is not only unpleasant but is a big threat to public health especially to children, as they play they can put their hands in their mouths. The eggs from the faeces can remain in soil and sand for up to 24 months. This right of way has to be stopped. There are MANY other rights of way so close to this one that no dog walker should lose out on being able to walk their dogs. The safety of the children for whom use this field should be put about the people who leave their dogs excrement on this ground. I have witnessed owners and their dogs use this area and leave their mess and sometimes not even clear this up!!! I feel this must be stopped, especially on private land. Come on council...please see sense!!!!

705 21 5 2
NO 55 72 AS
Back 1 0 0

	TTYFC	BA14 9QP	No	No	No	IT WILL MAKE IT SAFER FOR ME TO PLAY FOOTBALL MATCHES
noreply@wiltshire.gov.uk	Trowbridge Resident	BA14 0EZ	No	No	No	I know alot of children play in this field and i myself played in it when i was child and i think think the closure of the right of way will cause a bit of a problem with local people even though there are other places for children to play.
noreply@wiltshire.gov.uk	Trowbridge Resident	BA14 0JP	No	No	No	stopping of the right of way will enable the football ground to remain secure for the use by the teams especially the young youth teams who need to play on a secure and safe pitch
[REDACTED]	Trowbridge Resident	BA14 9SD	No	No	No	
[REDACTED]	Trowbridge Resident	BA14 8SG	No	No	No	
[REDACTED]	Trowbridge Resident	BA14 7PD	No	No	No	
noreply@wiltshire.gov.uk	Trowbridge Resident	BA14 8UJ	No	No	No	
[REDACTED]	Trowbridge Resident	BA14 0LD	No	No	No	I wholeheartedly agree with the stopping of this right of way. The Football Club carries out a valuable community service supporting local children to play sport. Why should children be forced to play amongst dog excrement and vandalised and damaged facilities where other local towns clubs enjoy better facilities. How can Trowbridge ever compete with other towns in terms of facilities when a few dog walkers and antisocial people are so selfish that they spoil things for the many. There are plenty of local fields with rights of way, and also Southwick country park - why don't dog owners make use of these. Local residents need to understand that this is private land and the football club spend a lot of money trying to make it suitable for our kids to play in - for Health and safety reason and for our childrens protection this right of way should be closed.

<p>The use of the fields as a safe place for young and old alike to play football is immensely important in this area. A great deal of time and effort has been given by many volunteers in an effort to turn the grounds into a suitable and safe environment for all to utilise and enjoy the game. My son is a member of the Trowbridge Town Football under-six kids club where he is being coached in all things football as well as learning valuable life skills including respect, discipline, and how to be part of a team. In a time of a looming epidemic of obesity it is of vital importance our young are taught the importance of fitness and exercise and without doubt TTFC and its facilities promote this. However, with the current right of way passing through the grounds it is not currently possible to keep the grounds in a clean, hygienic and safe condition. Dogs faeces, litter and mindless vandalism have all occurred at the site, hindering the efforts of those who strive to keep the environment safe for all to use. The right of way hampers attempts to secure the site more comprehensively, and I therefore support this petition to close the right of way.</p>			BA14 OTA	No	No	No	No
<p>I am six years old and I love playing football for Trowbridge Town Football Club. I go to school in North Bradley and play at Woodmarsh on a Sunday morning, and friendly matches other days. My coaches Nathan, Phil and Dave are always having to clean up dog mess before we play and once I slipped in some that had been missed and I was very upset. Mummy cleaned me up and I was very careful afterwards to make sure it didn't happen again, which was hard as I really needed to concentrate on learning new skills, not worrying. I practice sometimes with my friends after school in the Peace Memorial park and I don't worry there as I know dogs aren't allowed, not even my dog Jake.</p> <p>I hope that you will close the right of way that allows people to come into the club grounds whenever they want so that it can be made safer and cleaner for all of us to play our football in. Thank you.</p>			BA14 OUIJ	No	No	No	No

[REDACTED]	Trowbridge Resident						BA14 DUU	No	No	No	As a parent of a child using the football grounds I support the closure of the right of way through the grounds. I am aware of many occasions where dogs have been allowed to foul on the pitches and perimeter, and even when cleaned up by the responsible owners there has been residue left that the youngsters have come into contact with. Other instances have occurred where locks have been superglued, weedkiller used on the grass, and litter strewn everywhere. It is unacceptable that the club is unable to secure the grounds fully to prevent such mindless vandalism and irresponsible behaviour from occurring, especially when there are many places nearby where a dog can be walked and exercised. Vast improvements could be made for the majority by the closure of this right of way, with so few affected in any meaningful way.
[REDACTED]	Trowbridge Resident						BA14 OYA	No	No	No	If people continue to get into the ground and surrounding area small children playing their matches here will be at great risk of serious damage from cut grass and dog mess or worse drug needles etc. Does this have to happen before people really sit up and listen!!!!
[REDACTED]	Trowbridge Resident						BA14 7HX	No	No	No	It's a good thing - need a place for football teams that is secure and maintained.
[REDACTED]	Trowbridge Resident						BA14 9TH	No	No	No	
[REDACTED]	Trowbridge Resident						BA14 8SA	No	No	No	I think it would help the football club hugely
[REDACTED]	Trowbridge Resident						BA14 9DG	Yes	No	No	I Coach a group of 30 6-7 year old footballers from Trowbridge Town FC. Every time we play at Woodmarsh I need to clear dogs mess, rubbish and broken glass from the pitches where those not connected with TTFC have abused the pitches. They clearly show no regard for those that use the pitches. This is hazardous for the children, and without the ROW closure I worry for their safety.
[REDACTED]	Trowbridge Resident						BA14 9SD	Yes	No	No	
[REDACTED]	Trowbridge Resident						BA14 7HR	Yes	No	No	My son plays football at the ground and we regularly find dog faeces on the pitches. We have also found broken glass which is unacceptable for young children to play on. Closing the Right of way is a step in the right direction to securing the ground and making it a safer place for the teams to play on.
[REDACTED]	Trowbridge Resident						BA14 7RF	No	No	No	

noreply@wiltshire.gov.uk	Trowbridge Resident		BA14 0EN	Yes	No	No				My child plays football for TTFC - it is essential that children have a safe, clean environment to play football. Unfortunately, this is not the case at the moment. The sooner this is done for the safety of the young football players the better.
[REDACTED]	Trowbridge Resident	TTFC	BA14 6QE	Yes	No	No				I am concerned about the safety of the young children playing on this field and think the closure should be done as soon as possible.
[REDACTED]	TTFC	TTFC	BA14 6QE	No	No	No				The right of way in this location has clearly been abused in recent years and the site has been subject to vandalism and dog fouling. The primary use of the area is as a childrens sports facility serving the local community at all levels and across all ages. These areas must be preserved if we are to secure a healthy and positive environment for future generations.
[REDACTED]	Trowbridge Resident		BA14 7HY	No	No	No				
[REDACTED]	Trowbridge Resident		BA14 9RB	No	No	No				My son is 6 years old and has started to play for Trowbridge town, his manager and coaches volunteer a lot of time to help our children, and could really do without spending extra time clearing the pitches, and making sure they are safe for the kids to play on. And repairing damaged club property
[REDACTED]	Trowbridge Resident		BA13 7SJ	No	Yes	No				As a parent whose son plays regular football matches at Woodmarsh i feel very strongly that this site should be used only by those who respect it as a football ground. There is often fouling by dogs left on the site, which is not only unhygenic, but also means it needs to be cleared before play or that some areas cannot be used properly. Vandalism has also been a problem recently and is yet again another example of misuse of this site. Let the people of Trowbridge who play for Trowbridge Town and visiting clubs use Woodmarsh for this purpose only - football.
[REDACTED]	Trowbridge Resident		BA14 7TG	No	No	No				I do not believe the proposed closure will greatly impact local residents and will generally benefit all who use the playing fields.
noreply@wiltshire.gov.uk	Trowbridge Resident		BA14 6DR	No	No	No				I strongly support the closure of this right of way. My son is a member of Trowbridge Town Football Club and I am currently very concerned for his safety whilst playing on the pitch due to dogs fouling, glass etc. Closing the right of way is essential for these young players to be kept safe and secure. Football has played an essential part in my son's development and growth and we need to ensure they are provided the safest and cleanest environment.
[REDACTED]	Trowbridge Resident									

noreply@wiltshire.gov.uk	North Bradley Resident		BA14 0SP	No	No	No			Closing the right of way would help to stop the pitches used by children and adults being left in a littered and often disgraceful way. Close the right of way!
noreply@wiltshire.gov.uk	North Bradley Resident		BA14 0SP	No	No	No			Closing the right of way would allow my son to play on a pitch without the risk of broken glass, dog excrement and other litter which users of the right of way leave behind.
[REDACTED]	Trowbridge Resident		BA14 0HG	No	No	No			my sons football coaching time is reduced due to the time the coaches have to spend at the start of each session clearing up litter/dogs excrement etc
[REDACTED]	Trowbridge Resident		BA14 6BL	Yes	No	No			Very concerned about the environment and risk to health of my young son who plays football here.
[REDACTED]	North Bradley Resident		BA14 0SA		Yes	Yes			I would like to record the fact I am against the closure of the path across woodmarsh playing field .the footballers have closed access across most of the field the foot path is the only path left

Gale, Kevin

From: Gale, Kevin
Sent: 03 July 2012 10:53
To: [REDACTED]
Subject: Re: North Bradley Footpath 1

Dear Mr Oliver,

Thank you for your email. I have noted your comments, including the assertion that there were six pathways across the field. On Wiltshire's Definitive Map and Statement of rights of way, there is only one, ie Footpath 1, which is the subject of the request.

The proposed floodlights are outside the scope of the proposed application and a matter for the Council's planning team. For further information, please use the following link:

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

If you believe that parking on the road in North Bradley is a problem, you may wish to raise the issue with the police.

I will let you know whether the Council decides to make the application.

Regards,

Kevin Gale
 Chartered Legal Executive
 Legal Services
 Wiltshire Council
 Tel. 01225 718023
 (Ref. WCS 17061)

Email: kevin.gale@wiltshire.gov.uk
 Web: www.wiltshire.gov.uk

From: [REDACTED]
Sent: 02 July 2012 20:34
To: Gale, Kevin
Subject: Re: North Bradley Footpath 1

Dear Sir

Yes I do wish to object to the footpath closure, my wife and I regularly use the foot path reason 1 to keep the path open 2 it is the only footpath left because the footballers wish to exclude all North Bradley residents from crossing the field using the excuses dogs fouling the field, broken glass, graffiti and so it goes on, Not so long ago there were six pathways across the field the footballers claim the footpaths were not a right of way as the land was and is privately owned

My wife and I have lived in North Bradley for more than 28 years the land has always been privately owned, but we have never been challenged or told to get off the land children have used the playing field crossing to go to school or college even this has been stopped that is unless we all pay a fee to cross the land how mean is that yes I do object to the fencing off of the field, and proposed flood lights and the parking on the main through fare of north Bradley
 Your Sincerely Peter Oliver
 of no 3 Wood Marsh north Bradley

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

From: Gale, Kevin <kevin.gale@wiltshire.gov.uk>

To: goliver0006 <goliver0006@aol.com>
Sent: Mon, 2 Jul 2012 11:51
Subject: Re: North Bradley Footpath 1

Dear Sir / Madam,

I am instructed by the Service Director of Public Protection in relation to a request the Council has received to apply to the magistrates' court for an order stopping up Footpath 1, North Bradley which crosses land used by Trowbridge Town Football Club. I understand that you may wish to object to the proposal.

If this is still correct, please let me know your name and address and give full details of your objection so that any points you make can be considered. If I do not receive these details by 16 July 2012, I will take it that you do not wish to pursue your objection or to be kept informed.

Thank you.

Regards,

Kevin Gale
Chartered Legal Executive
Legal Services
Wiltshire Council
Tel. 01225 718023
(Ref. WCS 17061)

Email: kevin.gale@wiltshire.gov.uk
Web: www.wiltshire.gov.uk



CC: parishcouncil@northbradley.org.uk

Subject: North Bradley Footpath 1 - Proposed application under Section 116, Highways Act 1980 - Your ref: BB/LMW/WCS 15761

Date: Mon, 16 Apr 2012 14:22:55 +0000

Dear Mrs Burke,

As you know, I do not favour the use of the Magistrates' Court's power to stop up highways except where no alternative powers exist for Wiltshire Council itself to make an Order (for example, where there are public vehicular rights over the highway in question). In this particular case, as far as I am aware, the way is not recorded as having any public rights over it other than as a footpath, so these alternative powers are available under Sections 118 and 119 of the Highways Act 1980.

Having heard the views of North Bradley Parish Council, I do not have any other objection to the stopping up of this length of footpath, but I consider that it should be made strictly conditional on the formal dedication of and addition to the relevant Definitive Map and Statement as a footpath of at least 2 metres in width of the existing way directly linking Boundary Walk to Bradley Road, Trowbridge at a point approximately 80 metres north of point A across land in the same ownership as North Bradley Footpath 1.

It seems to me that this will provide the public with a more commodious route on foot from Boundary Walk to Bradley Road than the existing route via NBRA2, NBRA3 and NBRA1 and gives a proper statutory basis for linking the two proposals together (whether formally as a Diversion of NBRA1 or otherwise).

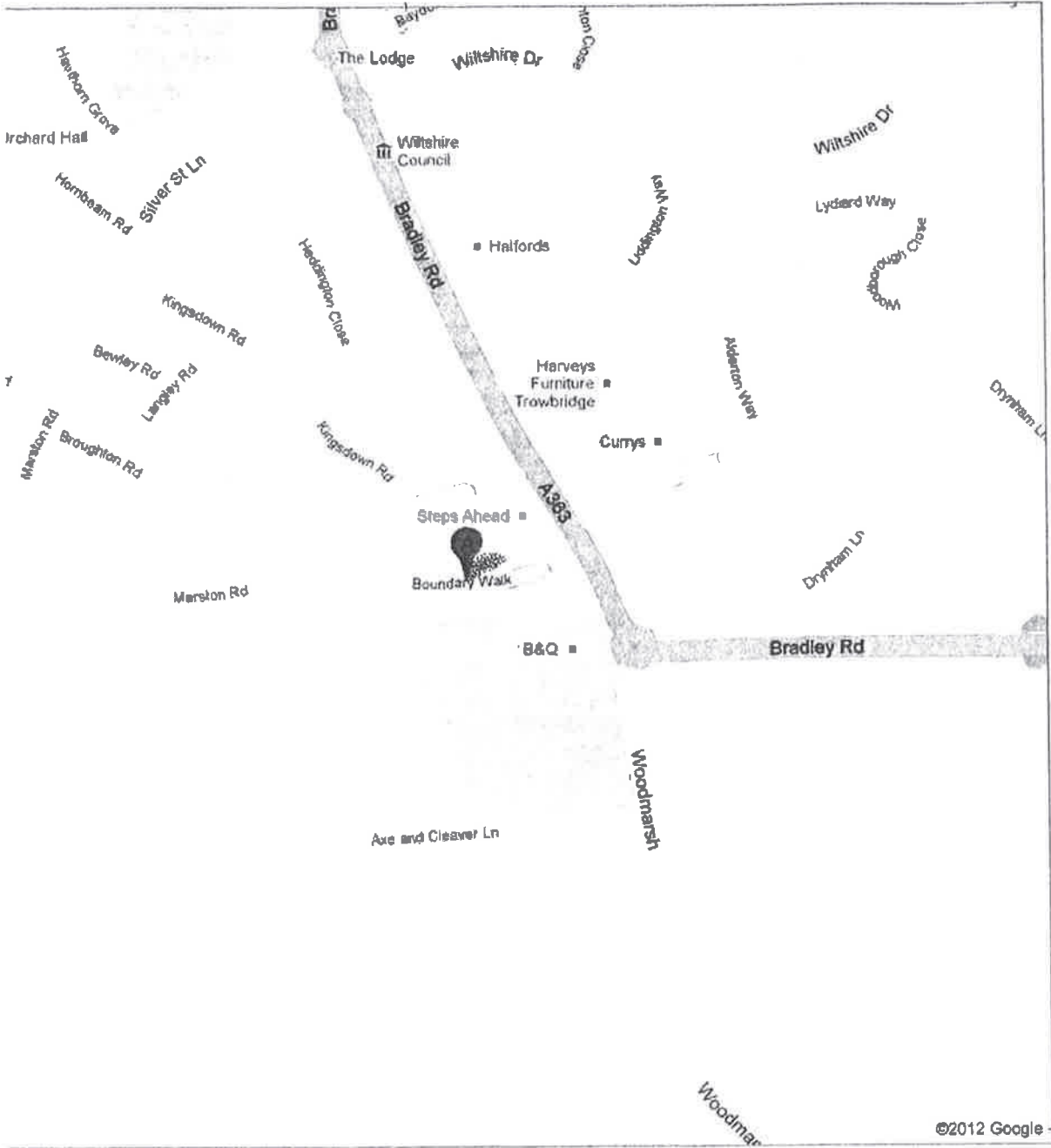
Yours sincerely,

Francis Morland
Wiltshire Councillor
Southwick Division

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For more information please visit <http://www.symanteccloud.com>

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Address **Boundary Walk**
Trowbridge, Wiltshire BA14, UK



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APPENDIX 8

From: F M [<mailto:francismorland@hotmail.com>]
Sent: 08 August 2012 18:40
To: Tonge, Richard; Tonge, Richard
Cc: christophernewbury@gmail.com; Clark, Ernie; Hubbard, Jon; Burke, Barbara; rightsofway; Ward, Tom; Bishton, Roger; Democratic and Member Services
Subject: Newly Published Decision : HT-039-12 Intention - Proposed Application to Stop Up North Bradley Footpath 1

Dear Dick Tonge,

As you invite in your "Intention to make decision" notice, I wish to comment on the displayed Report as follows:-

1. The officers must be well aware that the first paragraph of my e-mail sent 16 April 2012 was intended to draw attention to the longstanding and clear direction by the Secretary of State to Local Highway Authorities that in the circumstances which are applicable in this case they should not use the magistrates' court procedure but should instead make use of the other powers available unless there are good reasons for not doing so (DOE Circular 2/1993: Public Rights of Way [35]; Rights of Way A guide to law and practice 3rd edition (2001) page 639 (text) and pages 189-190 - "An outmoded relic from the past?" - as to the involvement of the magistrates' courts in such matters). Presumably they have failed to draw your attention to this aspect because they do not think that there are any "good reasons" for the procedure they are recommending you to adopt. Their comments at [8] of the displayed Report are a less than transparent attempt to circumvent this issue. In particular, the many shortcomings of the magistrates' court procedure are well documented elsewhere.
2. My wish to link the stopping up of this footpath with the formal adoption and addition to the Definitive Map and Statement of the alternative route nearby is wholly in accordance with good practice and the comment in [8] of the displayed Report that " it is understood that this is now available for use" may be true but it is an inadequate response which, it seems to me, intentionally fails to address the point I raised.
3. The relevant test for stopping-up under the procedure proposed is that the footpath in question is "unnecessary". This is clearly not the reason for stopping it up being advocated in the Community Consultation document displayed in Appendix 4, which I was never sent a copy of and have never previously seen until your "Intention to make decision" notice was drawn to my attention by Councillor Ernie Clark (even that was not sent to me by Wiltshire Council itself, nor any notification of it either). From the displayed responses in support of what is proposed in that document, said to number 76 in [6] of the displayed Report, it is clear that the wish to stop up this footpath has nothing whatever to do with it being unused; quite the contrary - the complaints are that it is being used excessively by dog walkers and/or other members of the public for antisocial purposes, and although, as far as I am aware, its route does not cross any of the pitches (I believe that [13] of the displayed Report is factually incorrect - "which crosses the area of the pitch" - about this) nor interfere with any of the football club's other facilities, the suggestion is made repeatedly that it is nevertheless a health risk to football players on the pitches, particularly to young children. Whatever the merits of these arguments, which appear to me to be wildly exaggerated, they demonstrate beyond doubt that the footpath is in fact rather well used and the wish to stop it up has nothing at all to do with it being "unnecessary". The case law makes clear that the convenience of the landowner (or their tenants) is not a relevant factor under this procedure

(see pages 187-188 of "Rights of Way"), although it would be under the alternative procedures.

4. I have real concerns about the manner in which the displayed Report comments upon the stopping-up proposal, which seems to me to be seriously lacking in balance or objectivity, and includes a number of propositions about the case law on the matter which I am doubtful about.

5. There is uncertainty about the route of North Bradley footpath 2 nearby, which may run over land in the same ownership and tenure as footpath 1, and in respect of which there have been long-running exchanges of e-mails between North Bradley Parish Council and Paul Millard, but no agreement yet on a course of action, so that the footpath in question remains obstructed and unavailable for use pending a resolution to alleged discrepancies between the previous accustomed route and that shown on the Definitive Map. Unhappily, this only adds to the state of mutual distrust and conflict which currently exists between the football club and its very vociferous supporters, and some local residents.

For these and other reasons, I urge you not to go forward with the proposed decision tomorrow, but to carefully reconsider the matter in the light of my comments above and my e-mail sent 16 April 2012.

Yours sincerely,

Francis Morland
Wiltshire Councillor
Southwick Division

Response of Solicitor to the Council to Cllr Morland's email of 8 August 2012

1. Officers do not share Mr Morland's opinion of the magistrates' courts procedure and consider that the use of section 116 of the Highways Act 1980 is an efficient and fair way to proceed in the circumstances. Anyone objecting has the opportunity to make representations to the magistrates. The section remains on the statute book and is available for use by the council. The reference to Rights of Way: A guide to law and practice 3rd edition (2001) stops directly before the publication makes it clear that the advice on section 116 applications is not binding on local authorities. It is also a possibly quicker way to proceed. The Secretary of State may elect to deal with an opposed order by way of written representations but he may well prefer to hold a public inquiry or other public hearing.

2. Mr Morland's wishes are noted but I am instructed that the link between Boundary Walk and Bradley Road is already used by the public but was not needed for Footpath 1 to be considered as unnecessary.

3. It would be quite correct to say that the football club is not asking the council to make an application to stop up Footpath 1 primarily because the club views the footpath as necessary. This is not a requirement and it is hardly unusual for a person or organisation making a request to be motivated by other considerations (eg a request the council has received to apply to stop up highway at Glovers Court, Malmesbury). The requirement in order to make an application is that the *Council* needs to be satisfied that the highway is unnecessary. I am instructed that it is considered to be unnecessary. The presence of the footpath does make part of the use of the ground lawful (even though there is considerable deviation from the legal route of the footpath) and if the footpath were stopped up, the club would be able to take extra security measures. The club wishes to improve security both to alleviate the problem of dog mess and littering but also the vandalism of premises, of which Wiltshire Constabulary is well aware. It is appropriate to include in the report the responses to the public consultation, including some from Mr Morland's constituents.

4. Mr Morland does not substantiate his objections to the case law referred to in the report. The objector's views are given in full. It is submitted that the report has taken the various factors into account and is a fair and reasonable reflection of the view of Rights of Way and the Safer Communities Team towards the club's request for an application to be made.

5. I understand that, in fact, the route of North Bradley Footpath 2 runs over land in separate ownership. The council intends to address the obstruction referred to by Mr Morland but I am instructed that this does not need to be resolved in order to proceed with an application relating to Footpath 1.

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APPENDIX B

From: Hubbard, Jon
Sent: 14 August 2012 17:22
To: Quinton, John; Kelly, Paul; McDonald, Maggie
Cc: francismorland@hotmail.com; Tonge, Richard; Hill, Alan; Gibbons, Ian
Subject: HT-039-12 Intention - Proposed Application to Stop Up North Bradley Footpath 1

John/Paul

Re: HT-039-12 Intention - Proposed Application to Stop Up North Bradley Footpath 1

I have received representation from Cllr Francis Moreland with regard to the above decision which was taken on 10th August.

It is my understanding that Cllr Moreland raised an objection to Cllr Tonge regarding the proposed decision within the deadline and requested a meeting with Cllr Tonge and relevant officers to discuss the matter. In response Cllr Moreland received a reply stating that Cllr Tonge would contact him on his return from holiday.

Subsequent to this the decision was process as having been made subject to call-in, without any such meeting or further discussion taking place.

I am therefore exercising my right as Chair of the Environment Select Committee to call-in this decision on the basis of that the decision breached the council's principles of decision making, namely "to ensure open, fair and honest administration".

I would appreciate if the processing of this call-in could be delayed until the afternoon of 20th August in order to give an opportunity to Cllr Tonge on his return from holiday to address the matter with Cllr Moreland and hopefully resolve the matter.

Additionally, and I have copied this email to Mr Gibbons for advice on this matter, I am aware that we have a full meeting of the Committee on 30th August and I wonder if, with the consent of the cabinet member, we could delay the committee considering the matter until that time to prevent having to call everyone in for a single issue just a few days prior.

With kind regards

Jon Hubbard

Cllr Jon Hubbard

Leader, Wiltshire Council Liberal Democrat Group

Wiltshire Councillor for Melksham South

Melksham Town Councillor for Melksham Spa

Tel: 01225 807969

Fax: 01225 580458

Email: jon.hubbard@wiltshire.gov.uk

Web: www.jonhubbard.org <http://www.workingforwiltshire.org.uk/>

Post: 2 Sweetbriar Road, Melksham SN12 6FR