

## AGENDA

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**Meeting:** Western Area Planning Committee  
**Place:** Council Chamber - County Hall, Trowbridge BA14 8JN  
**Date:** Wednesday 17 December 2014  
**Time:** 3.00 pm

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Please direct any enquiries on this Agenda to Will Oulton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713935 or email [william.oulton@wiltshire.gov.uk](mailto:william.oulton@wiltshire.gov.uk)

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

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### Membership:

Cllr Christopher Newbury (Chairman)	Cllr Magnus Macdonald
Cllr John Knight (Vice-Chair)	Cllr Horace Prickett
Cllr Trevor Carbin	Cllr Pip Ridout
Cllr Ernie Clark	Cllr Jonathon Seed
Cllr Andrew Davis	Cllr Roy While
Cllr Dennis Drewett	

### Substitutes:

Cllr Nick Blakemore	Cllr Gordon King
Cllr Rosemary Brown	Cllr Stephen Oldrieve
Cllr Terry Chivers	Cllr Jeff Osborn
Cllr Fleur de Rhé-Philippe	Cllr Graham Payne
Cllr Russell Hawker	Cllr Jerry Wickham
Cllr Keith Humphries	

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# AGENDA

## Part I

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

1 **Apologies for Absence**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 1 - 10*)

To approve and sign as a correct record the minutes of the meeting held on 26 November 2014.

3 **Chairman's Announcements**

To receive any announcements through the Chair.

4 **Declarations of Interest**

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

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register in person no later than 2.50pm on the day of the meeting.

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

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda (acting on behalf of the Corporate

Director) no later than 5pm on Wednesday **10 December 2014**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

**6 Right of Way Applications**

6a **Chapmanslade 12 (Part) Diversion Order and Definitive Map and Statement Modification Order 2014** (Pages 11 - 56)

**7 Planning Applications**

To consider and determine the following planning applications:

7a **14/09500/FUL - Sienna's Valley Farm, Huntenhull Lane, Chapmanslade, BA13 4AS** (Pages 57 - 72)

**8 Planning Appeals Update Report** (Pages 73 - 78)

To provide an update on the outcomes of decisions made by the Planning Inspectorate on appeals in the area covered by the Western Area Planning Committee in 2014.

**9 Urgent Items**

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

**Part II**

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

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## **WESTERN AREA PLANNING COMMITTEE**

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### **DRAFT MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 26 NOVEMBER 2014 IN THE COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.**

#### **Present:**

Cllr Christopher Newbury (Chairman), Cllr John Knight (Vice-Chair), Cllr Ernie Clark, Cllr Andrew Davis, Cllr Dennis Drewett, Cllr Magnus Macdonald, Cllr Horace Prickett, Cllr Pip Ridout, Cllr Jonathon Seed, Cllr Roy While and Cllr Gordon King (Substitute)

#### **Also Present:**

Cllr Jon Hubbard

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#### **128 Apologies for Absence**

Apologies for absence were received from Councillor Trevor Carbin who was replaced by Cllr Gordon King for that meeting only.

#### **129 Minutes of the Previous Meeting**

The minutes of the meeting held on the 5 November 2014 were presented.

#### **Resolved:**

**To approve as a correct record and sign the minutes of the meeting held on 5 November 2014.**

#### **130 Chairman's Announcements**

There were no Chairman's Announcements.

The Chairman gave details of the exits to be used in the event of an emergency.

#### **131 Declarations of Interest**

Councillor Magnus MacDonald stated that he had previously registered a pecuniary interest in item 6 a – 14/04399/FUL, and would not take part in the deliberations of that item.

## 132 **Public Participation and Councillors' Questions**

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

The Chairman welcomed all present. He then explained the rules of public participation and the procedure to be followed at the meeting.

## 133 **Planning Applications**

The Committee considered the following applications:

### 134 **14/04399/FUL - Land off Lewington Close and Longford Road, Melksham, Wiltshire**

Public Participation:

Karen Munroe and David Timbrell spoke in objection to the application.  
Paul Walsh spoke in support of the application.

The Planning Officer outlined the report which recommended the application for approval subject to conditions. Reference was made to the site visit undertaken by the Members of the Committee prior to the meeting. The site description and an overview of the proposed development were also given. The Planning Officer outlined the relevant planning policy, consultation and relevant planning considerations.

Councillor Jon Hubbard, as the local member, spoke in objection the application.

Members of the public were invited to speak on the application as listed above.

Issues discussed including the position of housing units in relation to existing properties, the elevation and size of the proposed housing units, the ecological impacts of the development, the location of the site in relation to service, the siting of the open space area, the access to the main site and the landscaping plans. Members suggested that, to mitigate the impact on neighbouring properties, the landscaping be started once construction work had begun rather than at the point of occupation or completion. At the end of the debate the meeting;

### **Resolved**

- 1. That Planning Permission be granted at a future date in the event of the Development Control Manager being satisfied as to the prior completion a legal Agreement to secure:**

- a) **An index-linked financial contribution towards secondary education infrastructure expansion of 2 places; and**
  - b) **The transfer of ownership of the proposed public open space to the Melksham Town Council and to secure the provision of the play equipment on that site.**
- 2. That Permission be granted subject to the following conditions:**
- I. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

**REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.**

- II. The materials to be utilised within this development shall accord with the schedule of materials as described within the planning application form, registered 16 April 2014 and the revised drawings received on 12 August 2014.**

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

- III. Subject to the further requirements of Condition 4, all soft landscaping comprised in the approved details of landscaping on Plan 3731/01 Rev K shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.**

**REASON:**

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

- IV. Notwithstanding Condition 3, the south eastern boundary treatment between Plots 5 and 12 including fencing and hedge and tree planting comprised in the approved details of landscaping on Plan**

**3731/01 Rev K shall be carried out in the first planting and seeding season following commencement of development. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.**

**REASON:**

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

- V. No development shall commence on site until details of the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, including the timetable for provision of such works, have been submitted to and approved by the Local Planning Authority. The development shall not be occupied until the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture have all been constructed and laid out in accordance with the approved details, unless an alternative timetable is agreed in the approved details.**

**REASON: To ensure that the roads are laid out and constructed in a satisfactory manner.**

- VI. The development hereby permitted shall not be occupied until the first five metres of the access onto Longford Road, measured from the edge of the carriageway, has been widened to 5m (this access width shall include increasing the length of the lowered kerbs and footway crossover) and shall be consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.**

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

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



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

**VIII.** The development hereby approved shall be carried out in strict accordance with the revised 'Bats - Method Statement template to support a licence application' for 17a Longford Road, Melksham (reference WML-A13.2 (03/14)) prepared by Middlemarch Environmental Ltd and received by the local planning authority on 25th September 2014, as modified by any relevant Natural England bat licence relating to this development. The installation of the new bat roost features shall be supervised by a professional ecologist.

**REASON:** To ensure adequate protection and mitigation for European protected species (Common pipistrelle, Brown long-eared and Serotine bats).

**IX.** The cavity wall bat roost and its access point and the bat tubes will be available for bat use before the first occupation of the dwellings associated with the development hereby approved and shall be retained as permanent features for the lifetime of the development, as modified by any Natural England Licence relating to this development.

**REASON:** To protect and maintain the bat roost mitigation.

**X.** No external lighting shall be installed to the south elevation of Plot 6 or the north elevation of Plot 5 unless it is required for health and safety purposes, whereupon lighting shall be controlled by a passive infra-red sensor; all other security /external lighting shall be controlled by passive infra-red sensor and all street lighting installed on site shall be low level and downward directional to minimise light spillage.

**REASON:** To prevent illumination of the alternative cavity wall bat roost provided as mitigation in the southern elevation of Plot 6 and to keep the lighting of the whole site to a minimum for continued foraging/commuting bat usage.

**XI.** Prior to the commencement of works associated with the development hereby approved, a Landscape and Ecology Management Plan shall be prepared and submitted to the local planning authority for approval. The approved plan shall be complied with during and after the completion of the development hereby approved.

**REASON:** To ensure the appropriate management of retained trees, hedgerows and newly planted vegetation, and the maintenance of new bat roosts.

**XII.** The development hereby approved shall be carried out in accordance with the revised Reptile Mitigation Strategy prepared by Middlemarch Environmental Ltd and received by the local planning authority on 19th September 2014. The Strategy shall be implemented in full unless otherwise agreed in writing with the local planning authority.

**REASON:** To ensure adequate protection and mitigation for slow worms.

**XIII.** The development hereby permitted shall be carried out in accordance with the following approved plans:

- 3731/01 Rev K received on 12 August 2014;
- 3731/02 Rev E received on 12 August 2014; and
- 3731/03 Rev E received on 12 August 2014.

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

**INFORMATIVE:** Any noise during the construction phase should be limited to 0730-1800hrs Monday to Friday and 0800-1300 on Saturdays and not at all on Sundays and Public Holidays.

*Admin Note: Cllr MacDonald, having declared an interest in this item, did not participate in the meeting for the duration of the item.*

135 **14/06019/FUL - Copse Farm, Holt, Trowbridge BA14 6FW**

Public Participation:

Paul Oakley spoke in support of the application.  
Cllr Andrew Pearce spoke on behalf of Holt Parish Council.

The Planning Officer outlined the report which recommended the application for approval subject to conditions.

Members of the public were invited to speak on the application as listed above.

The Chair stated that the local Member, Councillor Carbin, had had to tender his apologies as he had been called to other Council business.

Issues discussed included: the position of the proposals, the height of the panels, the access to the site, the intended use of the power generated to support agricultural business, the quality grading of the agricultural land and the impact of existing landscaping. Following the debate the meeting;

**Resolved to approve the application subject to the following conditions:**

- 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

**REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.**

- 2. The development hereby permitted shall be carried out in accordance with the following approved plans:**

- Design and Access Statement – Received 23 June 2014**
- Location Plan – Received 23 June 2014**
- Proposed Photovoltaic's – Received 23 June 2014**
- Solar Panel Details – Received 23 June 2014**
- Email from agent - Received 15 September 2014**
- Site Plan Rev E Barn One – Received 25 September 2014**
- Site Plan Rev E Barn Two – Received 25 September 2014**
- Shading Report Barn One - Received 25 September 2014**
- Shading Report Barn Two - Received 25 September 2014**
- Shading Report Letter - Received 25 September 2014**
- Tree Line Photos - Received 25 September 2014**
- Agricultural Classification Report – Received 17 October 2014**
- Agricultural Land Classification Map – Received 17 October 2014**

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

- 3. The development hereby approved shall be discontinued and the land restored to its former condition on or before 26 November 2039 in accordance with a Decommissioning Plan to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of decommissioning; unless before that date planning permission has been sought and granted for the retention of these structures for an extended period of time.**

**REASON: In the interests of amenity and the circumstances of the use.**

4. In the event that the development ceases to be operational for the generation of energy before the end of the period defined in condition 3 above, then all associated development on, under or above the application site shall be removed from the site and the land returned to its former condition in accordance to a Decommissioning Plan to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of decommissioning, and within six months of the cessation of the generation of energy from the site.

**REASON:** In the interests of amenity and the circumstances of the use.

5. Following the installation of the solar array, no fence enclosures shall be erected on the installation site and there shall be no external lighting/illumination at or on the site unless otherwise approved by the Local Planning Authority following the submission of a separate planning permission.

**REASON:** To ensure the creation/retention of an environment free from intrusive levels of lighting and to protect the open countryside.

6. No development shall commence on site, until a Construction Method Statement, which shall include the following:
  - a) The number of and vehicle type used for delivery of the solar panels.
  - b) Details of any traffic routing or temporary diversions.
  - c) the delivery hours and parking of vehicles of site operatives and visitors;
  - d) loading and unloading of plant and materials;
  - e) storage of plant and materials used in constructing the development;
  - f) wheel washing facilities;
  - g) measures to control the emission of dust and dirt during construction;
  - h) measures for the protection of the natural environment and;
  - i) has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

**REASON:** To minimise detrimental effects to the Highway Network, neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

7. a) No development shall commence on site, and; no equipment, machinery or materials shall be brought onto site for the purpose of development, until a tree and hedge Protection Plan showing the exact position of each tree and hedge and siting of secure protective fencing in accordance with British Standard 5837: 2012: "Trees in Relation to Design, Demolition and Construction - Recommendations"; has been submitted to and approved in writing by the Local Planning Authority, and;
7. b) The protective fencing shall be erected in accordance with the approved details. The protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations.
7. c) No retained tree or hedge shall be cut down, uprooted or destroyed, nor shall any retained tree or hedge be topped or lopped other than in accordance with the approved plans and particulars. Any topping or lopping approval shall be carried out in accordance British Standard 3998: 2010 "Tree Work – Recommendations" or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practise.
7. d) If any retained tree or hedge is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time, that must be agreed in writing with the Local Planning Authority.
7. e) No fires shall be lit within 15 metres of the furthest extent of the canopy of any retained trees or hedgerows or adjoining land and no concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk of any tree or group of trees to be retained on the site or adjoining land.

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

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

**8. Construction work on the site shall only take place between the hours of 08:00 and 18:00 on weekdays and between 08:30 and 13:00 on Saturdays, with no work taking place on Sundays or Bank Holidays.**

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

**136 Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.00 - 4.00 pm)

The Officer who has produced these minutes is Will Oulton, of Democratic Services, direct line 01225 713935, e-mail [william.oulton@wiltshire.gov.uk](mailto:william.oulton@wiltshire.gov.uk)

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

WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

17 DECEMBER 2014

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**HIGHWAYS ACT 1980 AND WILDLIFE AND COUNTRYSIDE ACT 1981**  
**THE WILTSHIRE COUNCIL CHAPMANSLADE 12 (PART) DIVERSION ORDER AND**  
**DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2014**

**Purpose of Report**

1. To:
  - (i) Consider objections received to the making of “The Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014” under Section 119 of the Highways Act 1980 and Section 53 of the Wildlife and Countryside Act 1981.
  - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

**Relevance to Council’s Business Plan**

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

**Background**

3. Wiltshire Council is in receipt of an application dated 9 June 2013, from Mr and Mrs Smith of Dye House Farm, Corsley, to divert Footpath No.12 Chapmanslade (part) under Section 119 of the Highways Act 1980 (please see location plan attached at **Appendix A**). The footpath presently passes alongside Dye House Farm, through the garden to the south of the house and it is proposed to divert the footpath further south into the adjoining meadow, which locates the footpath further away from the house, (as shown on the order plan attached at **Appendix B**).
4. The applicants have given the following reasons for the diversion:
  - To ensure privacy in our own garden.
  - Local people have advised us that they do not use the legal line as they are sensitive to the house owner’s privacy. We have seen only one person using the existing footpath since purchasing the property.

- There is some evidence that people may be using a route between the existing footpath and the proposed footpath, largely avoiding that part of the garden visible from the house.
  - We have started to mow the grass in the meadow between the proposed bridge and the telegraph pole (adjacent to point C on the order plan attached at **Appendix B**) and have planted a large number of trees to make the area attractive. We plan to move the fence line in the field and do the same with the resulting area between the fence and the stream to make the proposed route of the footpath at least as attractive as the current one. The new fence will include a kissing gate.
  - The current bridge has no side rails and so is unsuitable for young and old people.
  - The new bridge will conform to current safety standards.
5. Wiltshire Council carried out an initial consultation regarding the proposals in March 2014. No objections to the proposed diversion of Footpath No.12 Chapmanslade (part) were received.
  6. Officers of Wiltshire Council then produced a decision report in which they considered the application against the legal tests for diversion under Section 119 of the Highways Act 1980. Officers made a recommendation to Senior Officers that Footpath No.12 Chapmanslade (part) should be diverted under Section 119 of the Highways Act 1980, in the interests of the landowners. Senior Officers approved this recommendation on 27 June 2014.
  7. Wiltshire Council subsequently made a Public Path Diversion Order under Section 119 of the Highways Act 1980 and Section 53 of the Wildlife and Countryside Act 1981, on 15 July 2014.
  8. Following the making of the Order, Wiltshire Council received the following correspondence:
    - (i) E-mail of objection from Mr Francis Morland – 14 August 2014
    - (ii) Letter of support from Mr Peter Eyles – 25 August 2014
    - (iii) E-mail of support from Chapmanslade Parish Council – 12 September 2014
    - (iv) E-mail of objection from Mr Francis Morland – 15 September 2014
  9. Members of the Committee are now required to consider the objections received, against the legal tests for making a Public Path Diversion Order under Section 119 of the Highways Act 1980, in order to determine whether or not Wiltshire Council continues to support the making of the Order.
  10. If it does continue to support the making of the Order it must be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination and the Members of the Committee must decide the Wiltshire Council



recommendation which is attached to the Order when it is forwarded to the Secretary of State, i.e:

- (i) that the Order be confirmed as made, or
- (ii) that the Order be confirmed with modification.

11. Where Wiltshire Council no longer supports the making of the Order, Members of the Committee may determine that the Order is withdrawn.

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

12. The Public Path Diversion Order is made under Section 119 of the Highways Act 1980. The requirements of this section of the Act are set out in full at part 6 (pages 7 – 10) of the decision report attached at **Appendix C**.
13. A Public Path Diversion Order may be made under this legislation, in the interests of the owner or occupier of the land, or of the public. The termination point of the path or way shall not be altered where that point is not located on a highway and where it is located on a highway, it may not be altered unless to another point on the same highway or a highway connected with it and which is substantially as convenient to the public.
14. At the confirmation of a Public Path Diversion Order the Secretary of State or the Council shall not confirm the Order unless they are satisfied that:
  - (i) it is necessary to do so in the interests of the owner/occupier of the land or the public;
  - (ii) the new path or way should not be substantially less convenient to the public as a result of the diversion and
  - (iii) that it is expedient to confirm the Order having regard to the effect which the diversion would have on:
    - public enjoyment of the path or way as a whole and
    - on other land served by the existing public right of way and the land over which the new right of way is created.
15. Mr Morland has made the following objections to the making of the Diversion Order:

E-mail correspondence dated 14 August 2014:

***“The Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014 made 15 July 2014; The Wiltshire Council Chippenham Without 1 (part) Diversion Order and Definitive Map and Statement Modification Order made 17 July 2014; and The Wiltshire Council West Ashton 1 Rights of Way Modification Order 2014 made 29 July 2014 (Ref: BB/2013/17)***

*Please accept this as my duly-made objection to each of the above Orders, advertised in Public Notices on page 56 of the Friday, 1 August, 2014 issue of the Wiltshire Times newspaper.*

*Please advise where I can find the details of these Orders and the relevant entries of the existing Definitive Maps and Statements on the Wiltshire Council website (pursuant to its Publication Scheme)."*

16. Mr Morland followed this up with further detail of his objection in an e-mail sent to Wiltshire Council on 15 September 2014:

***"The Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014 made 15 July 2014 (Your ref: BB/2014)***

*I refer to your letter dated 27 August 2014.*

*Although the drafting of the above Order appears to be adequate to achieve its general purpose, it follows from the terms of [1] and [3] of the Order, which lack any conditionality, that the physical provision of the new length of footpath created by [3] of the Order and described in Part 2 of its Schedule was considered by the Order Making Authority to be complete and in a fit condition for use by the public when the Order was made on 15 July 2014 (or shortly thereafter).*

*That is, I think, confirmed by Brian Micklam's e-mail below sent 06 September 2014 (Footpath Secretary to the West Wilts Ramblers Group), which also helpfully sets out the rather troubled history of this footpath.*

*As he points out, there is at present a bridge over the stream on the existing route, which is of full width and solid masonry construction, and the structure of which, as far as I am aware has not required any significant repairs within living memory.*

*By contrast the new bridge over the stream, referred to in this Order only in Part 3 of the Schedule, is entirely of timber construction and of rather limited width (significantly less than the width of 2 metres referred to in Part 2 of the Schedule), and not at all equivalent to the bridge it is intended to replace.*

*I accept Mr Micklam's assessment that existing constraints elsewhere on the route make it unlikely in the foreseeable future that there will be a demand for the full range of lawful footpath uses on the diverted section.*

*Nevertheless, Wiltshire is currently afflicted with a large number of footpaths (including that at Mill Lane, Hawkeridge) which are impassable because existing bridges on the route have been removed, fallen into disrepair, collapsed or been closed off for safety reasons, and without Court action to compel it, the Local Highway Authority is unwilling or unable to fund their replacement or repair.*

*Due to a similar lack of resources, no Report on the proposed diversion of this footpath is, as far as I am aware, currently in the public domain, so I do not know*

*what period the manufacturers of the new timber bridge state to be its expected working life, but it appears likely that, notwithstanding the third paragraph of the Preamble to the Order, this footpath will again be permanently out-of-use within a decade or so, unless Wiltshire Council is prepared to underwrite/guarantee the future repair or replacement of this structure indefinitely from public funds. Is it prepared to give such an undertaking?"*

17. Mr Morland attached to this e-mail a copy of an e-mail addressed to himself from Brian Micklam, Secretary for the West Wilts Ramblers Group (dated 6 September 2014):

*"I certainly agree that agreed notification procedures should be adhered to.*

*I would not have been advised about Chippenham, which is outside the West Wilts Ramblers group area.*

*However for the other two I did receive the following –*

- *West Ashton*

*Two letters under the heading 'West Ashton footpath 1', Dated 17 June 2014 and 30 July 2014, both Ref BB/2013/17*

- *Chapmanslade*

*Two letters concerning CHAP12-*

- *First letter dated 28/3/14 under Ref JG/PC/48 headed "Highways Act 1980 – Section 119 / Town and Country Planning Act 1990 – Section 257 – Proposed Diversion of Footpath No.12 Chapmanslade (part)'*

*This is the letter which gave the reasons for the deviation, was not entirely correct in that the path was not used for a long time because the previous owners had blocked the entrance to the path from the road.*

*The alternative route was only used because of the difficulty in using the correct route, and in any event a walker was always required to find their own way to the bridge at the back of the property so as to get over the stream. The current Owner has left access open, but it was still difficult to find one's way around the house to the bridge.*

*I did not object, though, because I agreed with the proposal for the new diversion.*

- *The second letter dated 25/7/14 under Ref JG/PC/48 2013/13 confirmed the Diversion Order and Definitive Map and Statement Modification Order and within a few days, our WWR working party, of which I am a member, under the direction of the RoW Dept was installing the bridge and kissing gate involved to activate the diversion. At the time it did seem to have happened rather quickly, but I had no real argument against that.*

*This footpath is not suitable for prams and push chairs. The continuation of the path is rough grassland, terminating in a steep set of steps and a stile. I shall be using it for one of our lead walks in November."*

18. Wiltshire Council also received two representations of support for the making of the Order, as follows:

Mr P Eyles – Correspondence dated 25 August 2014:

*“I would like to give my full support for the proposed footpath diversion. I have been walking the footpaths in the Chapmanslade area for many years and the new route is a huge improvement. The new sign and kissing gate off the lane leading to Dye House makes access much clearer and protects the privacy of the landowner. It improves the possibilities of circular walking routes to the south of the village. Even a diversion around the plot of land would have been a great and acceptable improvement. All parties in this change will gain substantially so I hope that it will be accepted and be made permanent. A ‘dogs on lead’ sign would be courteous to the landowner.”*

19. Mr Phil Jefferson, Chairman – Chapmanslade Parish Council – E-mail dated 12 September 2014:

*“At a meeting of Chapmanslade Parish Council held last night, parish councillors resolved to repeat their support for the proposed diversion of footpath 12 in the vicinity of Dye House Farm.*

*The resolution was passed unanimously, with the exception of one member who declined to participate in the vote.*

*It is our hope that this matter can be resolved quickly as we are quite convinced that the new route is a considerable improvement on the previous arrangement.”*

20. In response to the objections, Officers would make the following comments:

- (i) The new timber bridge has been provided to a standard form which is Wiltshire Council approved and is generally used on rights of way, the structure of which conforms to BS5709 and the expected lifespan of the bridge is 15-20 years. Handrails are provided which are not present on the stone bridge on the definitive line, which makes the new bridge much more suitable for use by all members of the public.
- (ii) The new bridge was provided at an early stage, after the initial consultation as no objections were raised at this time and the landowners requested the bridge as they were aware that members of the public felt uncomfortable using the right of way through the garden. The landowners have agreed to pay all costs of this installation and it was made clear to the landowners at this time that there was no guarantee that the Diversion Order would be successful. Please note that the Diversion Order has not yet been confirmed as suggested by Mr Morland.
- (iii) Any kissing gates added on the proposed new route are not recorded within the Public Path Diversion Order as limitations or conditions, but

may be authorised later if the Diversion Order is successful, for the purposes of stock control.

- (iv) Rights of Way Officers contacted the Wiltshire Council Principal Engineer – Bridges, to seek a view on the old bridge in comparison to the new bridge. The Engineer inspected the bridges and made the following comments:

*“We have had a look at the bridges on the original and the proposed route. The original route has an old brick bridge that appears to have been recently refurbished (we assume by the landowner), it is well built but does not have any parapets. The new bridge is a standard Wiltshire Council approved structure...and is used countywide on rights of way. Of the two the timber bridge is safer because it has handrails fitted.*

*At the moment our liability for the stone bridge is minimal, where rights of way cross private structures such as this the landowner is assumed to be responsible for maintenance and we would contribute up to 5% of any reasonable repair costs incurred. Problems can and do arise when farms are broken up and sold and old ditches and streams are used to form new boundaries, if these are crossed by an old farm bridge then neither new landowner would have any need for the bridge and they can fall into disrepair, the burden then falls on the Council to maintain an old and possibly dilapidated stone bridge.*

*On balance I think the timber footbridge will be less of a liability to the Council and I have no objections to the proposed diversion.”*

- (v) The objector is concerned that the new timber bridge may be an additional maintenance burden for the Council; however, as the Bridge Engineer points out, there can be difficulties for rights of way where private structures, such as the stone bridge on the definitive line, fall into disrepair.
- (vi) The new bridge is not recorded in the Public Path Diversion Order as a limitation as DEFRA guidance suggests that it is not necessary to record a bridge as such. DEFRA Guidance on “Authorising structures (gaps, gates and stiles) on rights of way – Good practice for local authorities on compliance with the Equality Act 2010” (Version 1, October 2010) states:
- “As a bridge is a legal highway structure (not an illegal interference) and an aid to crossing whatever feature is causing the interference with the public’s ease of passage, they cannot be defined as limitations...Where a bridge is narrower than the full width of the way, this should not be expressed as a change in the width of the highway, nor as a limitation. The full width of the highway continues either side of a narrower bridge, just as, at, for example, a gate or stile.”*
- (vii) The Parish Council and one other local user have expressed their support for the making of the Order on the grounds that the proposed diversion route is preferable to the definitive line. On a recent inspection of Footpath No.12 Chapmanslade at Dye House Farm, Rights of Way

Officers noted that there was a clearly defined track on the proposed diversion route and users appear to be already using the proposed diversion route in preference to the legal line. Mr Micklam of the Ramblers Association confirms that he will be using the proposed diversion route for a led walk in November.

- (viii) Regarding the previous obstructions of the right of way, Planning Inspectorate guidance, (“Advice Note 9: General Guidance to Inspectors on Public Rights of Way Matters”), is to consider the definitive line against the proposed diversion, as if it were not obstructed, i.e. it may disregard any temporary circumstances preventing or diminishing the use of the existing route by the public.

### **Safeguarding Considerations**

21. DEFRA’s “Rights of Way Circular (1/09) Guidance for Local Authorities” Version 2, October 2009, states at paragraph 5.5:

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

In making “The Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014”, Officers have followed the procedure set out in Schedule 6 of the 1980 Act and in doing so Wiltshire Council has fulfilled its safeguarding considerations.

### **Public Health Implications**

22. There are no identified public health implications which arise from the proposed diversion of Footpath No.12 Chapmanslade (part).

### **Environmental Impact of the Proposal**

23. The County Ecologist was consulted regarding the diversion proposals and no adverse comments regarding the environmental impact of the diversion were received.

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

24. The Wiltshire Council Rights of Way Improvement Plan 2008-2012 (ROWIP) recognises the Council’s duty to have regard to the Disability Discrimination Act 1995 (now superseded by the Equalities Act 2010) and to consider the least restrictive option for public use. The proposed diversion route places no additional limitations or conditions on public use of the path. The definitive line presently has two gates present on that part proposed to be diverted, whereas it is proposed to add two kissing gates over the proposed diversion route, which may be authorised at a later date for the purposes of stock control. The provision

of kissing gates for public use is a less restrictive option. Additionally, the proposed new route will have a recorded width of 2 metres, open and available for public use, over a defined route, where the definitive line has no width recorded within the definitive statement.

## **Risk Assessment**

25. There are no identified risks which arise from the proposed diversion of Footpath No.12 Chapmanslade (part). The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.

## **Financial Implications**

26. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permits authorities to charge applicants costs in relation to the making of public path orders, including those made under Section 119 of the Highways Act 1980. The applicant has agreed in writing to meet the actual costs to the Council in processing the diversion order. The applicant has also agreed in writing to pay any expenses which may be incurred by the Council and any materials provided in bringing the new footpath into a fit condition for use by the public.
27. Where there are outstanding objections to the making of the Order, the Committee may resolve that Wiltshire Council continues to support the making of the Order, in which case it should be forwarded to the Secretary of State for decision. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is negligible; however, where a local hearing is held the costs to the Council are estimated at £300 – £500 and £1,000 - £3,000 where the case is determined by local public inquiry. There is no mechanism by which these costs may be passed to the applicant and these costs must be borne by Wiltshire Council.
28. Where the Council no longer supports the making of the Order, it may resolve that the Order be withdrawn and there are no further costs to the Council. The making of a Public Path Order is a discretionary power for the Council rather than a statutory duty; therefore, a made Order may be withdrawn up until the point of confirmation, if the Council no longer supports it, for example, where it is considered that the proposals no longer meet the legal tests set out under Section 119 of the Highways Act 1980.

## **Legal Implications**

29. If the Council resolves that it no longer supports the making of the Order, it may be withdrawn. There is no right of appeal for the applicant; however, clear reasons for the withdrawal must be given as the Council’s decision may be open to judicial review.
30. Where the Council continues to support the making of the Order, it must be sent to the Secretary of State for determination, which may lead to the Order being determined by written representations, local hearing or local public inquiry. The Inspector’s decision is open to challenge in the High Court.



## **Options Considered**

31. Members may resolve that:

(i) Wiltshire Council continues to support the making of the Order, in which case the Order should be forwarded to the Secretary of State with a recommendation from Wiltshire Council that:

(a) The Order be confirmed without modification, or

(b) The Order be confirmed with modification.

Or that:

(ii) Wiltshire Council no longer supports the making of the Order, in which case the Order should be withdrawn, with clear reasons given as to why Wiltshire Council no longer supports the making of the Order, i.e. why the Order no longer meets the legal tests.

## **Reason for Proposal**

32. Despite the objections received it is considered, for the reasons given at part 18 of the decision report (please see **Appendix C**), that “The Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014” continues to meet the legal tests for the making of a Diversion Order under Section 119 of the Highways Act 1980.

33. Additionally, the legal tests for the confirmation of a Public Path Diversion Order, as set out under Section 119 of the Highways Act 1980, appear capable of being satisfied and no new evidence has been submitted during the formal objection period which would lead Wiltshire Council to no longer support the making of the Order.

## **Proposal**

34. That “The Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014”, be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

## **Tracy Carter**

Associate Director – Waste and Environment

Report Author:

**Janice Green**

Rights of Way Officer

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

None

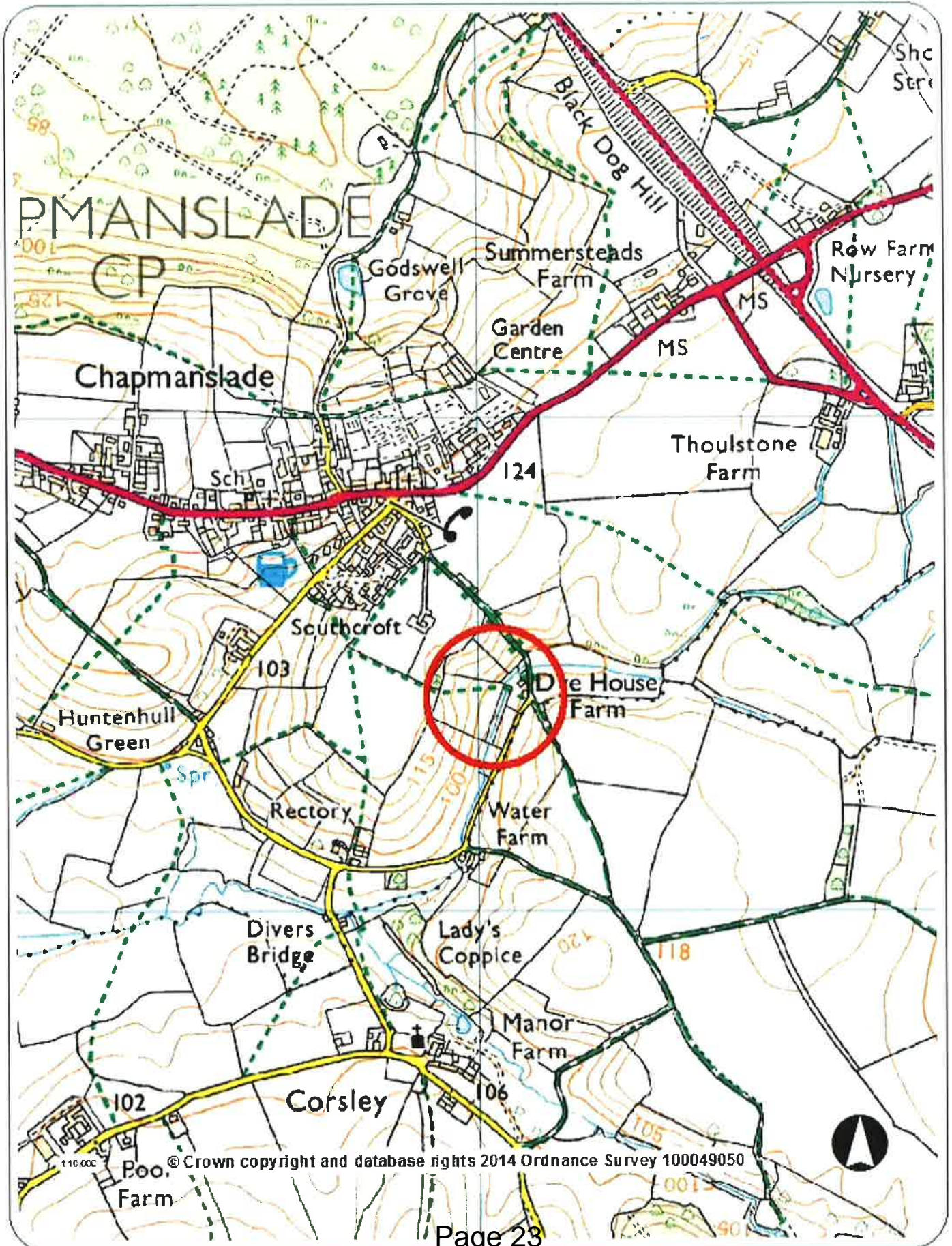
**Appendices:**

Appendix A – Footpath Location Plan

Appendix B – Public Path Diversion Order

Appendix C – Decision report (20 June 2014)

APPENDIX A – Footpath Location Plan



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## **APPENDIX B – Public Path Diversion Order**

### **PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER HIGHWAYS ACT 1980 WILDLIFE AND COUNTRYSIDE ACT 1981 THE WILTSHIRE COUNCIL CHAPMANSLADE 12 (PART) DIVERSION ORDER AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2014**

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

This order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the Warminster and Westbury Rural District Council area definitive map and statement dated 1953 require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the diversion (as authorised by this order) of a highway shown or required to be shown in the map and statement.

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

Chapmanslade Parish Council have been consulted as required by section 120(2) of the 1980 Act.

#### **BY THIS ORDER:**

1. The public right of way over land situate at Dye House Farm, in the parish of Chapmanslade and shown by a bold continuous line on the map contained in this order and described in Part 1 of the Schedule to this order shall be stopped up after 56 days from the date of confirmation of this order, and thereupon the Warminster and Westbury Rural District Council area definitive map shall be modified by deleting from it that public right of way.
2. Notwithstanding the order Openreach BT shall have the following rights over the land referred to in paragraph 1 namely:-  
Where immediately before the date on which the footpath is diverted there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

3. There shall at the end of 56 days from the date of confirmation of this order be a public footpath over the land situate at Dye House Farm, in the parish of Chapmanslade described in Part 2 of the Schedule and shown by a bold broken line on the map contained in this order, and thereupon the Warminster and Westbury Rural District Council area definitive map dated 1953 shall be modified by adding that path to it.
  
- 3A. The Warminster and Westbury Rural District Council area definitive statement dated 1953 shall be modified as described in Part 3 of the Schedule to this order.

## **SCHEDULE**

### **PART 1**

#### **DESCRIPTION OF SITE OF EXISTING PATH OR WAY**

That length of footpath leading from point A at OS Grid Reference ST 8309-4742, at its junction with the U/C 9002 road, in a north-westerly direction for approximately 35 metres, then leading west-north-west for approximately 24 metres, then leading west-south-west for approximately 56 metres and then generally south-west for approximately 75 metres to point B at OS Grid Reference ST 8292-4744.

### **PART 2**

#### **DESCRIPTION OF SITE OF NEW PATH OR WAY**

That length of footpath leading from point C at OS Grid Reference ST 8308-4739, at its junction with the U/C 9002 road, in a west-north-westerly direction for approximately 165 metres to point B at OS Grid Reference ST 8292-4744, having a width of 2 metres.

**PART 3**

Modification of Definitive Statement

Variation of particulars of path or way

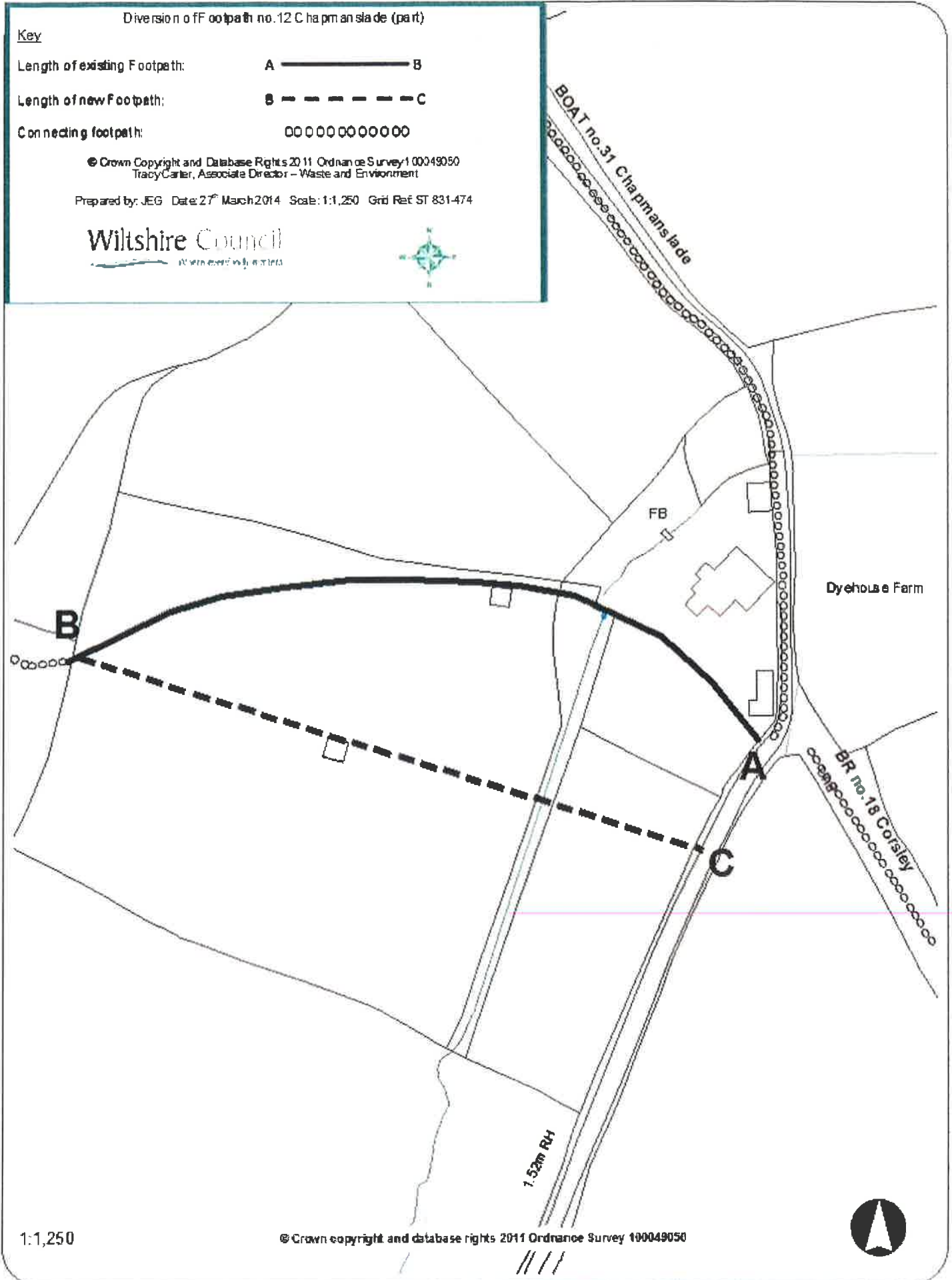
<u>Parish</u>	<u>Path No.</u>	<u>Modified Statement to read:-</u>	<u>Modified under Section 53(3) as specified</u>
Chapmanslade	12	<p><u>FOOTPATH.</u> From path no.10, south-west of Southcroft, leading south-east and then east-south-east, across the footbridge, to road U/C 9002 on the Corsley Parish boundary.</p> <p>Approximate length: 375 metres</p> <p>Width: 2 metres on that section between OS Grid Reference ST 8292-4744 and OS Grid Reference ST 8308-4739.</p>	53(3)(a)(i)

THE COMMON SEAL OF }  
THE WILTSHIRE COUNCIL }  
was hereunto affixed this }  
15<sup>th</sup> day of July 2014 }  
in the presence of:

*20888*  
Principal Solicitor



79908







## APPENDIX C – Decision Report (20 June 2014)

### COVERING PAGE FOR DECISION REPORT

### HIGHWAYS ACT 1980 – SECTION 119

### PROPOSED DIVERSION OF FOOTPATH NO.12 CHAPMANSLADE (PART)

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

		Signature	Date Signed Off
<b>To:</b>	Barbara Burke (Definitive Map and Highway Records Team Leader)		23.6.14
	Richard Broadhead (Rights of Way and Countryside Manager)		27/6/14
	Ian Brown (Head of Environment Services)	Copy for info only	—
	Tracy Carter (Associate Director – Waste and Environment)	N/A	
<b>From:</b>	Janice Green		
<b>Date of report:</b>	20 <sup>th</sup> June 2014		
<b>Return to:</b>	Janice Green, Rights of Way (Ext. 13345)		

#### **Nature of Report:**

This is a report from Janice Green (Case Officer) to Richard Broadhead (Officer with the relevant delegated powers).

#### **Executive Summary:**

Wiltshire Council are in receipt of an application dated 9<sup>th</sup> June 2013, to divert Footpath no.12 Chapmanslade (part), under Section 119 of the Highways Act 1980. The application is made by Mr and Mrs Smith of Dye House Farm, Corsley (the landowners), to remove the right of way from the garden of this property and ensure the privacy of their garden.

It was noted that following the application to divert Footpath no.12 Chapmanslade (part), the landowners applied for planning permission to add a covered swimming pool, new roadside walling and an ancillary building for use as carer's accommodation (planning application no. 14/01613/FUL). Part of this proposed development lies directly over the eastern extremity of the existing route of the footpath. It would therefore be possible to consider the diversion of the footpath under Section 257 of the Town and Country Planning Act 1990, which deals with the diversion and stopping up of footpaths, bridleways and restricted byways affected by development. It was found that the development affected only the eastern extremity of the

definitive line of the path and the proposed diversion is over a much larger area than that required to enable the development to continue.

Officers have therefore concluded that the larger diversion of the footpath cannot be justified under Section 257 of the Town and Country Planning Act 1990, but it can be justified under Section 119 of the Highways Act 1980, in the interests of the landowner, to remove the right of way from the private garden of Dye House Farm and this is the appropriate legislation under which to consider the footpath diversion application.

No adverse comments regarding the diversion proposals were received following an initial consultation and the Council may make a public path diversion order where they consider it expedient to do so in the interests of the owner, lessee or occupier of the land crossed by the path or way, or in the interests of the public. Officers are satisfied that it appears expedient to divert Footpath no.12 Chapmanslade in the interests of the landowners

Additionally, before the confirmation of an order, the Council must also be satisfied that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which the diversion would have on public enjoyment of the path or way as a whole and loss which may be caused as a result of the diversion, taking into account provision for compensation.

Officers are satisfied that the application to divert Footpath no.12 Chapmanslade (part), meets the legal tests as set out under Section 119 of the Highways Act 1980.

**Officer's Recommendation:**

That an order to divert Footpath no.12 Chapmanslade (part) be made under Section 119 of the Highways Act 1980 and that if no objections or representations are received, the order be confirmed by Wiltshire Council as an unopposed order.

**DECISION REPORT**  
**HIGHWAYS ACT 1980 – SECTION 119**  
**PROPOSED DIVERSION OF FOOTPATH NO.12 CHAPMANSLADE (PART)**

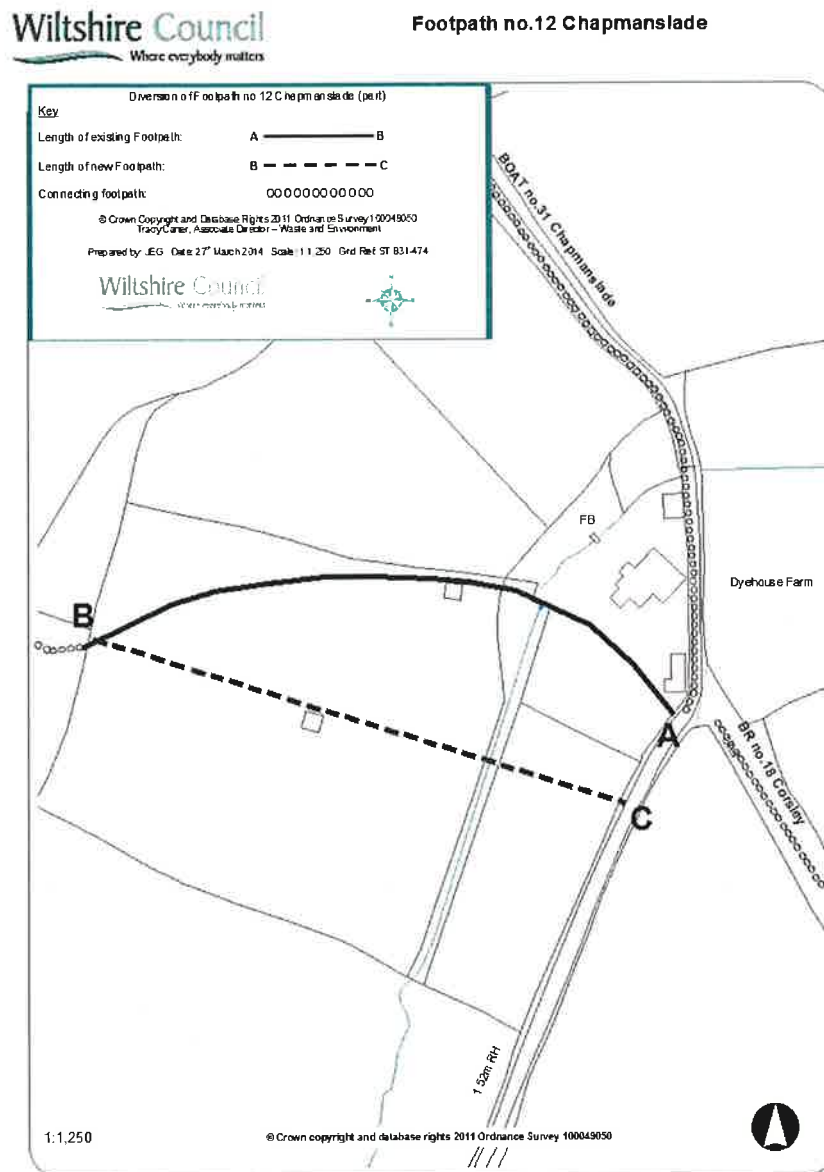
**1. Purpose of Report**

- 1.1. To consider an application to divert Footpath no.12 Chapmanslade (part), under Section 119 of the Highways Act 1980. The application is made in the interests of the landowners to ensure the privacy of their garden. In addition to this the landowners have applied for planning permission to add a covered swimming pool, new roadside walling and an ancillary building for use as carers accommodation. Part of this development lies directly over the definitive line of the footpath, at its eastern extremity.

**2. Location Plan**



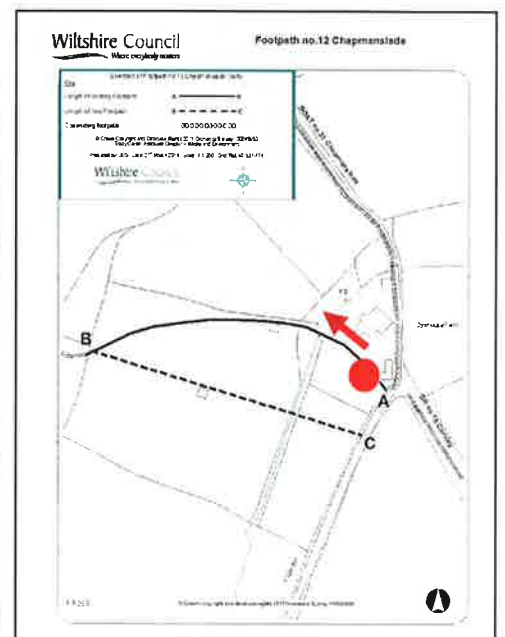
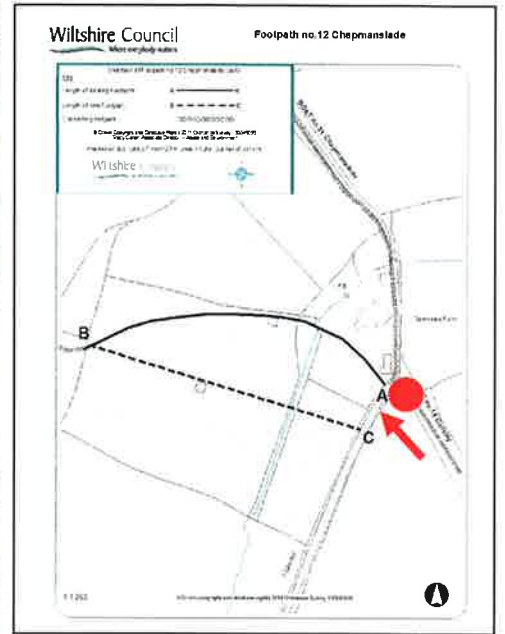
### 3. Proposed Diversion Plan

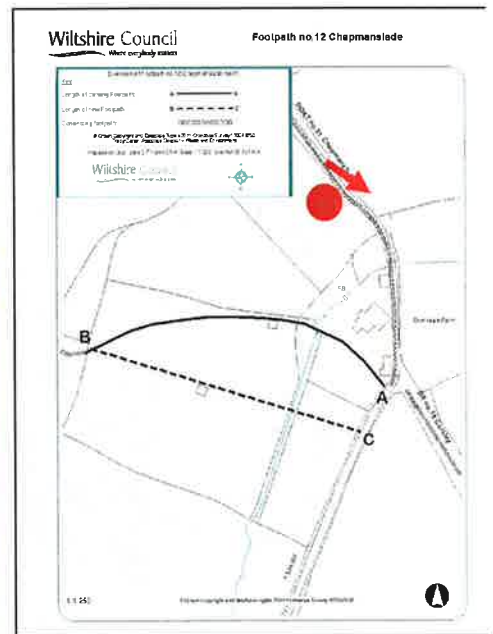


3.1. It is proposed to divert Footpath no.12 Chapmanslade (part) from a line A-B through the garden of the property Dye House Farm, to a new line C-B through the adjoining meadow.

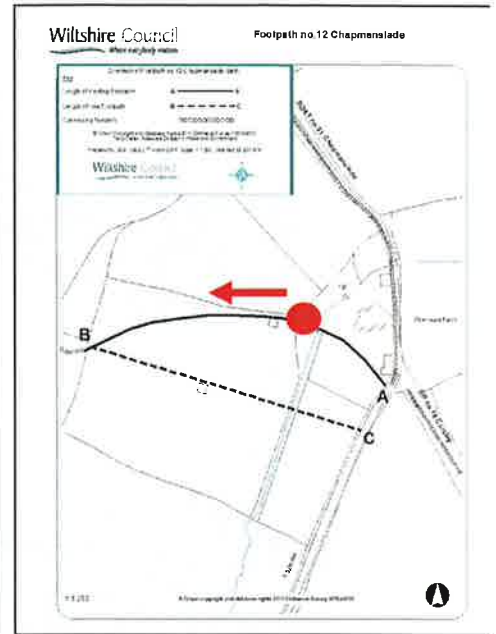


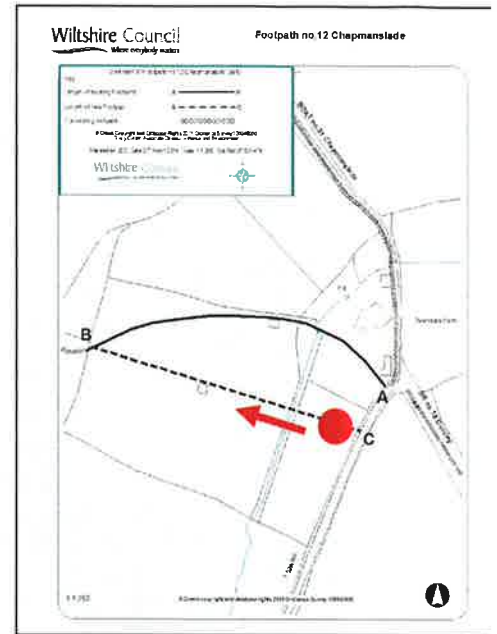
#### 4. Photographs



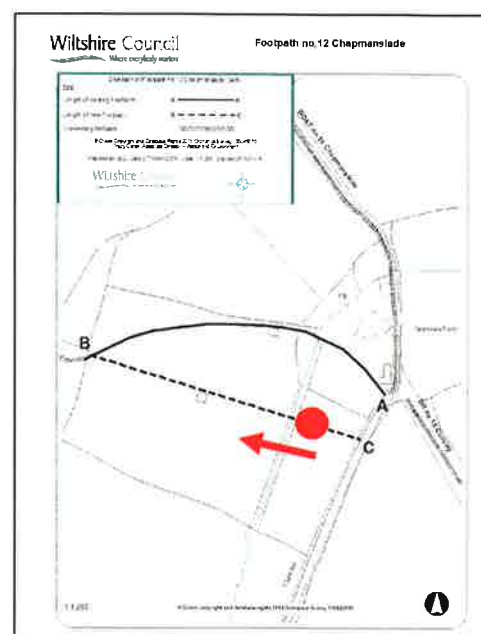












## 5. Applicant and Registered Landowner

- 5.1. Phil and Maureen Smith  
Dye House Farm  
Corsley  
Warminster  
Wiltshire  
BA12 7QD

## 6. Legal Empowerment

- 6.1. The application to divert Footpath no.12 Chapmanslade (part), has been made under Section 119 of the Highways Act 1980, which states:

***“119. Diversion of footpaths, bridleways and restricted byways***

- (1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the*

*line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,-*

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

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

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

*(2) A public path diversion order shall not alter a point of termination of the path or way-*

*(a) if that point is not on a highway; or*

*(b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.*

*(3) Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall-*

*(a) specify a date under subsection (1)(a) above, and*

*(b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.*

- (4) *A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.*
- (5) *Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-*
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below; or*
- (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public; or*
- (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.*
- (6) *The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which-*
- (a) the diversion would have on public enjoyment of the path or way as a whole;*

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

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

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

*(6A) The considerations to which-*

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

*(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order*

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

6.2. DEFRA Circular 1/09 which gives advice to authorities on rights of way issues states, at paragraph 5.5. that *“The statutory provisions for creating, diverting and extinguishing public rights of way in the 1980 Act have been framed to protect both the public rights and the interests of the owners and occupiers. They also protect the interests of bodies such as statutory undertakers.”*

## **7. Background**

7.1. Wiltshire Council are in receipt of an application dated 9<sup>th</sup> June 2013, from Mr and Mrs Smith of Dye House Farm, Corsley, to divert Footpath no.12 Chapmanslade under Section 119 of the Highways Act 1980. With the

application form the applicant gives the following grounds for the diversion of the footpath:

*“Of course, our primary motivation is to ensure privacy in our own garden. However, diverting the Footpath will, we believe, improve the situation for the public for the following reasons:-*

- *Local people that we have spoken to say that they do not like to use the Footpath as they are sensitive to our privacy. In fact, we have seen only one person using the existing Footpath since we bought the property.*
- *There is, though, some evidence to suggest that one or two people may be using a route between the existing Footpath and the one we are proposing, largely avoiding the part of our garden that is visible from the house.*
- *We have started to mow the grass in the meadow between the proposed bridge and the telegraph pole marked on the attached map and have planted a large number of trees to make the area attractive. We plan to move the line of the fence in the field and do the same with the resulting area between the fence and the stream to make the proposed route of the Footpath at least as attractive as the current one. The new fence will, of course, include one of the proposed kissing gates.*
- *The current bridge has no side rails and so is unsuitable for young and old people. Obviously, the new bridge will conform to current safety standards.*

7.2. The application successfully includes the completed application form, a plan based on an Ordnance Survey Map of a scale of not less than 1:2,500, (a map drawn at a scale of 1:1,250 has been provided) and proof of title. The Public Path Order Regulations 1993 Statutory Instrument no.11, state that *“The map required to be contained in an order shall be on a scale of not less than 1:2500, or, if no such map is available, on the largest scale readily available.”*

7.3. Footpath no.12 Chapmanslade presently passes through the garden of the property Dye House Farm, Corsley, from its junction with the U/C 9002 road, leading north-west through the garden before crossing a bridge and leading into a meadow to the rear of the property (also owned by Mr and Mrs Smith). The path then leads generally south-west to the field boundary before continuing in a west-north-westerly direction in the next field. It is proposed to divert the path to a new line C – B, maintaining its junction with the U/C 9002 Road, but further south by approximately 30 metres, leading in a west-north-westerly direction through the meadow to point B and its continuation into the next field (please see proposed diversion plan at 3 and photographs at 4). The proposed diversion will have a recorded width of 2 metres and a surface laid to grass. A new bridge is to be provided over the stream.

## 8. **Public Consultation**

8.1. A public consultation exercise regarding the diversion proposals, was carried out on 28<sup>th</sup> March 2014, with a closing date for all representations and objections to be received in writing, by 14<sup>th</sup> May 2014 as follows:

*“Wiltshire Council are in receipt of an application dated 9<sup>th</sup> June 2013, to divert footpath no.12 Chapmanslade (part).*

*It is proposed to divert the footpath from a line A-B to a new line B-C, as shown on the enclosed plan. The proposed diversion route will have a recorded width of 2 metres and a surface laid to grass.*

*The application has been made by the landowners, under Section 119 of the Highways Act 1980, to ensure the privacy of their garden. The landowners have also included the following comments in support of their application:*

- *Local people have advised that they do not like to use the footpath as they are sensitive to the landowners privacy. The landowners have seen only one person using the existing footpath since purchasing the property.*



- *There is some evidence that one or two people may already be using an alternative route in order to avoid the part of the garden which is visible from the house.*
- *The landowners are proposing to make the new footpath at least as pleasant as the existing route, including tree planting to make the area more attractive.*
- *A new bridge to be erected over the stream on the proposed diversion route will conform to current safety standards.*

*Since the application was made, the landowners have submitted a planning application to Wiltshire Council to add a covered swimming pool, new roadside walling and an ancillary building for use as carers accommodation (planning application no.14/01613/FUL). Part of the development lies directly over the definitive line of the footpath at its eastern extremity, therefore Wiltshire Council will also need to consider the diversion application against the legal tests for the diversion of a footpath under Section 257 of the Town and Country Planning Act 1990, in order to establish the correct legislation under which to determine the application.*

*If you would like to make any comments or representations regarding the diversion proposals, I would be very grateful if you could forward them to me in writing at the above address, not later than 5:00pm on Wednesday 14<sup>th</sup> May 2014.”*

- 8.2. The consultation included the landowner, statutory undertakers, statutory consultees, user groups and other interested parties, such as the Chapmanslade Parish Council, and the Local Member for Warminster Without.
- 8.3. The following consultation replies were received (all consultation replies are available to be viewed in full with the Rights of Way and Countryside Team, Waste and Environment, Unit 9, Ascot Court, Aintree Avenue, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA):

National Grid – Correspondence dated 15<sup>th</sup> April 2014:

*“National Grid has identified that it has no record of apparatus in the immediate vicinity of your enquiry.”*

LinesearchbeforeUdig – Online utilities search undertaken 20<sup>th</sup> June 2014:

*“No LinesearchbeforeUdig Asset Owners within the Zone of interest.”*

Openreach BT – Online utilities search undertaken 20<sup>th</sup> June 2014:

Overhead plant and poles within zone of interest.

Digdat – Online utilities search undertaken 20<sup>th</sup> June 2014:

No Virgin Media apparatus within zone of interest.

- 8.4. Where there is plant located within the vicinity of the diversion proposals, the diversion order regulations make provision for statutory undertakers to maintain access to their apparatus.

## **9. Main Considerations for the Council**

- 9.1. It was noted that following the application to divert Footpath no.12 Chapmanslade (part), the landowners applied to Wiltshire Council for planning permission to add a covered swimming pool, new roadside walling and an ancillary building for use as carer's accommodation (planning application no.14/01613/FUL). Part of this proposed development lies directly over the existing route of Footpath no.12 Chapmanslade and it would therefore be possible to consider the diversion of the footpath under Section 257 of the Town and Country Planning Act 1990, which deals with the diversion and stopping up of footpaths, bridleways and restricted byways affected by development. It was found that this development affected only the eastern extremity of the definitive line of the path and the proposed diversion is over a



much larger area than that required to divert the path in order to enable the development to continue.

- 9.2. Officers have therefore concluded that the larger diversion of the footpath cannot be justified under Section 257 of the Town and Country Planning Act 1990, but it can be justified under Section 119 of the Highways Act 1980, in the interests of the landowner, to remove the right of way from the private garden of Dye House Farm and this is the appropriate legislation under which to consider the application.
- 9.3. Section 119 of the Highways Act 1980 allows the Highway Authority to divert a footpath where it is considered expedient to do so in the interests of the owner, lessee or occupier of the land, and / or the public. This particular application has been made in the interests of the landowners to ensure privacy in their own garden.
- 9.4. A diversion order must not alter the termination point of a path where that point is not located on a highway and where this point is located on a highway it must not be altered, other than to another point on the same highway or a highway connected with it and which is substantially as convenient to the public. In the Chapmanslade case, Point B at the western boundary of the meadow (please see proposed diversion plan at 3), remains unaltered as a result of the diversion. Point A alongside Dye House Farm on the U/C 9002 Road is moved to point C which is located approximately 30 metres south of point A and maintains its junction with the U/C 9002 Road. It is considered that point C is substantially as convenient to the public.
- 9.5. The proposed diversion satisfies both the above-mentioned legal tests for the making of an order. However, at the confirmation of an order there are a number of additional legal tests to be considered, as outlined at Section 119(6) of the 1980 Act:

- 1) It must be expedient to confirm the order in the interests of the landowner and or the public (as seen above).
- 2) The diverted route must not be substantially less convenient to the public.
- 3) It must be expedient to confirm the order having regard to the effect which:
  - i) The diversion would have on public enjoyment of the path or way as a whole;
  - ii) The coming into operation of the order would have as respects other land served by the existing public right of way;
  - iii) Any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

9.6. At 3 ii) and iii) above, the land over which the existing route passes and the land over which it is proposed to place the newly created footpath, are in the ownership of the applicants, Mr and Mrs Smith, and no compensation claims are anticipated.

9.7. The implications of Section 119(6) of the Highways Act 1980, were considered in the case of *Young R (on the application of) v Secretary of State for the Environment, Food and Rural Affairs and Anor* [2002], EWCH 844. In the opinion of Mr Justice Turner, the Inspector, in their decision letter had incorrectly amalgamated their consideration of the concept of “convenience” with the concept of “expediency”, as contained in this section. Mr Justice Turner commented that *“having regard to the public’s enjoyment of the path – a matter which is, as I have already indicated, absent from the requirement of the consideration of the convenience of the path.”* Expediency and convenience must therefore be considered as two separate tests.

9.8. Mr Justice Turner defined the legal test of a path “not being substantially less convenient to the public”, as follows:

*“In my judgement the expression “substantially less convenient to the public” is eminently capable of finding a satisfactory meaning by reference to consideration of such matters as length, difficulty of walking and the purpose of the path. Those are features which readily fall within the presumed contemplation of the draftsman of this section as falling within the natural and ordinary meaning of the word “convenient”.”*

- 9.9. With regard to the test of “not substantially less convenient to the public”, the diversion of Footpath no.12 Chapmanslade (part), deletes approximately 180 metres of footpath between points A and B and adds approximately 160 metres of footpath between points C and B, a reduction of 20 metres, which is not considered to be substantially less convenient to the public.
- 9.10. Additionally the diverted section of footpath will have a recorded width of 2 metres, open and available for public use, where no width is presently recorded within the definitive map and statement for Footpath no.12 Chapmanslade.
- 9.11. In the Young case, the view was taken that where a proposed diversion is as convenient as the existing path but less enjoyable, perhaps being less scenic, *“the decision maker would have to balance the interests of the applicant against those of the public to determine whether it was expedient to make the diversion order.”* If a diversion is of greater public enjoyment but is substantially less convenient to the public, perhaps being less accessible or longer than the existing route, the order should not be confirmed. Therefore, at confirmation of an order, “convenience” is the stronger test, “followed by another and separate dependent clause”, i.e. expediency which includes the effect of the diversion on public enjoyment of the path or way as a whole. In the case of diverting Footpath no.12 Chapmanslade (part) the diversion is not substantially less convenient to the public and no consultation responses have been received to suggest that the diversion of the footpath would have an

adverse effect upon public enjoyment of the path or way as a whole. The proposed diversion route is equally as pleasant to use as the existing route and views of the surrounding countryside are comparable.

9.12. Additionally, as the landowner points out in his application, the public may feel less invasive using a route located further away from the property Dye House Farm in the adjoining meadow.

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

9.14. Under sub-section 6A of Section 119 of the Highways Act 1980, the Council must also have regard to any material provision of any Rights of Way Improvement Plan – The Wiltshire Council Rights of Way Improvement Plan 2008-2012 (ROWIP). The ROWIP includes the following aims:

- *Increase access to the countryside for buggies, older people, people with mobility problems and other impairments (p.43 Improvements 1,2 & 3).*

The diversion route will have a recorded width of 2 metres open and available for public use, where no width is presently recorded on the definitive line.

- *To provide a more useable public rights of way network, suitable for changing user demands (p.46 Improvement 1).*

From the evidence supplied by the applicant it would appear that users are reluctant to use the present route close to Dye House Farm and leading through the garden of this property, concerned that they may be encroaching on the landowners privacy. Members of the public may find it

preferable to use a route located in the adjoining meadow, further away from the house and its curtilage.

- 9.15. Additionally at page 53 of the ROWIP, "Advice to Applicants" with reference to public path diversion orders, potential applicants are advised that:

*"the diverted path would not be substantially less convenient to the public. The last point means that a diverted path should meet at least the council's minimum standard for width (2m for a footway, 4m for a bridleway), should not be substantially longer, and should, in general, be as pleasant to use as the existing one."*

This information is included within the public path diversion order application pack and in diverting Footpath no.12 Chapmanslade (part) the applicant has included a width of 2 metres for the diverted section of path which meets Wiltshire Council's minimum requirements.

- 9.16. With regard to the Disability Discrimination Act (DDA) 1995, DEFRA circular 1/09 at 5.4. states that *"all aspects of the specification of Public Path Orders (unlike Definitive Map Modification Orders which represent what is believed to have been the route, width and structures existing when a way was dedicated) will be affected by the DDA, particularly in relation to the limitations and conditions to be defined in the statement"*.

- 9.17. The DDA 1995 is now superseded by The Equality Act 2010, which places a duty upon all authorities, as follows:

*"(1) An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."*

- 9.18. The protected characteristics include disability. The Act places a duty on authorities to make reasonable adjustments to avoid disadvantage. Section

149 of the Act details the “public sector equality duty” placed on public authorities to:

*“in the exercise of its functions, have due regard to the need to-*

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”*

9.19. Further, Part 8 of the ROWIP details the Rights of Way Team policies and procedures. At 8.3.7 are included the policies and procedures regarding access for all, which include *“Adopt recognised and achievable standards of provision for disabled people. The Council will take due account of the relevant legislation relating to disability (i.e. the Equality Act 2010) and will follow current best practice in all situations.”*

9.20. In the Chapmanslade case a bridge is required over the stream at the field boundary, between points C and B on the diversion route (please see proposed diversion plan at 3). The applicant has also suggested the addition of a bridge and 3 kissing gates (one kissing gate to replace an existing stile at point B). The addition of these structures can be included as limitations and conditions within the diversion order itself, or authorised at a later date using powers under Section 147 of the Highways Act 1980, for the purposes of stock control of for health and safety reasons.

9.21. It is considered that provision for the bridge should (at the prescribed British Safety Standard) be included within the order itself, whilst kissing gates, if necessary on the new route, may be authorised at a later date. Defra provides guidance on *“Authorising structures (gaps, gates and stiles) on rights of way – Good practice guidance for local authorities on compliance with Equality Act*

2010”, and any new structure on the definitive line or the proposed diversion route would be authorised with reference to this guidance.

- 9.22. With regard to the requirements of the Equalities Act 2010 and the policies contained within the ROWIP, the proposed diversion places no other additional limitations and conditions on public use of the footpath, i.e. for the purposes of stock control or health and safety reasons and additionally the proposed new route will have a recorded width of 2 metres, open and available for public use.
- 9.23. In making diversion orders, Sections 29 and 121(3) of the 1980 Act, require authorities to have due regard to the needs of a) agriculture and forestry and b) the desirability of conserving flora, fauna and geological and physiographical features. Section 40 of the Natural Environment and Rural Communities Act 2006 also places a duty on every public authority exercising its functions to have regard to the conservation of biodiversity, so far as is consistent with the proper exercise of those functions. In this section, conserving biodiversity includes that in relation to a living organism, or type of habitat and restoring or enhancing a population or habitat.
- 9.23. There are no considerations for agriculture and forestry in the diversion of the Footpath no.12 Chapmanslade. With regard to conserving flora, fauna and geological and physiographical features and biodiversity, the County Ecologist was consulted with regard to the diversion proposals and no adverse comments have been received.

## **10. Safeguarding Considerations**

- 10.1. None.



## **11. Public Health Implications**

11.1. None.

## **12. Environmental Impact of the Proposal**

12.1. The County Ecologist was consulted regarding the diversion proposals and no adverse comments regarding the environmental impact of the diversion were received.

## **13. Equalities Impact of the Proposal**

13.1. The ROWIP recognises the Council's duty to have regard to the Disability Discrimination Act 1995 (now superseded by the Equalities Act 2010) and to consider the least restrictive option for public use. The proposed diversion route places no additional limitations and conditions on public use of the path, for the purposes of stock control or for health and safety reasons. Additionally the proposed new route will have a recorded width of 2 metres, open and available for public use, over a defined route.

## **14. Risk Assessment**

14.1. None.

## **15. Financial Implications**

15.1. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permit authorities to charge applicants costs in relation to the making of orders, including public path diversion orders. Authorities may charge only the actual costs incurred.

15.2. The applicant has agreed in writing to meet the actual costs to the Council in processing the order, including advertising the making of the order and should



the order be successful, the confirmation of the order and certification that the new route has been provided to a suitable standard for use by the public, in one local newspaper, (i.e. three advertisements).

- 15.3. The applicant has agreed in writing that if a diversion order is made, to pay any compensation which may arise in consequence of the coming into operation of the order, (although this is not anticipated as the land over which both the definitive line and the proposed diversion route pass are in the same ownership).
- 15.4. The applicant has also agreed in writing to pay any expenses which may be incurred in bringing the new footpath into a fit condition for use by the public, as required by the Council.
- 15.5. If a diversion order is made under Section 119 of the Highways Act 1980 and there are no objections to the making of the order, Wiltshire Council may itself confirm the order and there are no additional costs to the Council.
- 15.6. If there are outstanding objections to the order which are not withdrawn and the Council continues to support the making of the order, it must be forwarded to the Secretary of State for decision. The outcome of the order would then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations, the cost to the Council is negligible, however where a local hearing is held the costs to the Council are estimated at £200-£500 and £1,000 - £3,000 where the case is determined by local public inquiry. There is no mechanism by which these costs may be passed to the applicant and these costs must be borne by Wiltshire Council.
- 15.7. The making of a diversion order is a discretionary power for the Council rather than a statutory duty, therefore a made order may be withdrawn up until the point of confirmation if the Council no longer continues to support it, for

example where it is considered that the proposals no longer meet the legal tests set out under Section 119 of the Highways Act 1980.

## **16. Legal Considerations**

- 16.1. There is no right of appeal for the applicant where the Highway Authority refuses to make a public path diversion order, however the Council's decision would be open to judicial review.
- 16.2. If the Council does make a public path diversion order and objections are received, where the Council continues to support the order it may be forwarded to the Secretary of State for decision which may lead to the order being dealt with by written representations, local hearing or local public inquiry. The Inspectors decision may be subject to challenge in the High Court.
- 16.3. The making of a public path diversion order is a discretionary power for the Council rather than a statutory duty, therefore an order may be withdrawn up until the point of confirmation, where the Council no longer continues to support the making of the order.

## **17. Options Considered**

- 17.1. (i) To refuse the application, or  
(ii) To make an order to divert footpath no.12 Chapmanslade (part), under Section 119 of the Highways Act 1980.

## **18. Reasons for Proposal**

- 18.1. It is considered that in this case the legal tests for the making of a diversion order to divert Footpath no.12 Chapmanslade (part) under Section 119 of the

Highways Act 1980 have been met, i.e. the order can be made in the interests of the landowners to ensure the privacy of their property.

- 18.2. The diversion will also benefit the public by adding a width of 2 metres, open and available for public use over the new footpath, where no width is presently recorded within the definitive statement. The diversion route is not substantially less convenient to the public, i.e. the length of footpath is reduced by 20 metres, it follows a straighter and more direct route and there are no additional limitations and conditions on public use of the path as a result of the diversion. It is not considered that the diversion would have a detrimental effect upon public enjoyment of the path or way as a whole and there were no comments received from the initial consultation to suggest that there would be a detrimental effect.
- 18.3. It is therefore considered that the legal tests for the confirmation of the diversion order appear to be met, (subject to the formal objection period following the making of the order).
- 18.4. The proposed diversion also meets other considerations which the Council must take into account such as the provisions of the ROWIP, the Equalities Act 2010 and the needs of agriculture, forestry and biodiversity.

## **19. Proposal**

- 19.1. That an order to divert Footpath no.12 Chapmanslade (part) be made under Section 119 of the Highways Act 1980 and that if no objections or representations are received the order be confirmed by Wiltshire Council as an unopposed order.

Janice Green  
Rights of Way Officer  
20<sup>th</sup> June 2014

## REPORT TO THE WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	17 December 2014
<b>Application Number</b>	14/09500/FUL
<b>Site Address</b>	Sienna's Valley Farm Huntenhull Lane Chapmanslade BA13 4AS
<b>Proposal</b>	Siting of a mobile home for use as a rural workers dwelling and alterations to access.
<b>Applicant</b>	Ms Sharon Snook
<b>Town/Parish Council</b>	CHAPMANSLADE
<b>Division</b>	WARMINSTER WITHOUT
<b>Grid Ref</b>	382562 147569
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Jemma Foster

### Reason for the application being considered by Committee

Councillor de Rhe-Philippe has requested that the application be considered by the Planning Committee for the following reasons:

- Visual impact upon the surrounding area
- Relationship to adjoining properties
- Design – bulk, height, general appearance
- Environmental/highway impact

### 1. Purpose of Report

To assess the merits of the planning proposal and to recommend that a temporary planning permission be granted.

### 2. Report Summary

The main issues to consider are:

- Principle of the development
- Impact upon the character and appearance of the area
- Impact upon neighbouring amenity
- Highway Impact

### 3. Site Description

Siennas Valley is located outside of the village of Chapmanslade on Huntenhull Lane. It is outside the limits of development of the village and within an area defined in the Local Plan as a Special Landscape Character Area. A public footpath

runs to the rear of the site.

The site measures approximately 4.7 hectares and the applicant has a further 0.75 hectares of rented land at Frome which is cropped for hay production. It is the applicant's intention to develop a farming enterprise primarily involving alpacas but also pigs and hens. The enterprise will be developed over the years to become a viable and sustainable agricultural business.

The site is surrounded by mature hedgerows which will remain and additional planting has already been undertaken on the land. 19 breeding female alpacas are currently on the land. Over the next three years it is anticipated that the herd will be increased to approximately 30 breeding females with male and female breeding stock being sold. Fleeces will also be processed and wool sold. From year three onwards, a total of 200 hens, 50 quail and 20 ducks are planned and eggs will be sold.

#### **4. Planning History**

14/03770/FUL – Extension to Barn – Refused 11/06/14 for the following reason:

*The proposed extension would exceed the justified need and have an adverse impact upon the special landscape character area contrary to Saved Policies C3 and C4 of the West Wiltshire District Local Plan (Adopted 2004)*

14/00987/FUL – Erection of a Barn – Approved with conditions 31/03/14

13/06809/FUL – Extension to Barn – Withdrawn 29/01/14

12/02185/FUL = Agricultural Barn and retrospective hardstanding – Approved with conditions 24/01/13

W/12/01833/FUL – Erection of an agricultural barn – Refused 06/11/2012 for the following reason:

*The proposed development, by reason of its siting and size in this location would be intrusive and would cause unacceptable harm to the character and appearance of the site in this part of the Special Landscape Area. This would conflict with policies C1, C3 and C4 of the West Wiltshire District Plan 1st Alteration 2004 and advice contained within the Planning Policy Framework.*

W/12/00639/AGD – Erection of a barn – Prior Approval Required 01/05/2012 with the following reason:

*A Prior Approval application will be required to determine the siting, design and appearance of the building as under the conditions of Part 6 Class A of the Town and Country Planning (General Permitted Development) Order 1995.*

W/11/00040/FUL – Erection of an agricultural building and retention of hardstanding 03/08/2011 for the following reasons:

*The proposed development, which is not justified by the agricultural needs of the land, is contrary to policy C1 of the West Wiltshire District Plan 1st Alteration 2004 and the Planning Policy Framework.*

*PPS7 (Sustainable Development in Rural Areas) as amended.*

*The proposed development, by reason of the size, scale, form and siting of the building, would be visually intrusive in the open landscape and harmful to the character and appearance of the surrounding Special Landscape Area, contrary to policy C3 of the West Wiltshire District Plan 1st Alteration 2004 and the principles of PPS7 (Sustainable Development in Rural Areas) as amended.*

## **5. The Proposal**

The application is for the (partially retrospective) siting of a mobile home to be used as a temporary agricultural workers dwelling for three years. It is partially retrospective in that the mobile home is already on site and occupied.

The wall and gate originally included in the application have been removed from the proposal.

## **6. Planning Policy**

West Wiltshire District Local Plan 1<sup>st</sup> Alteration (WWDLP)

C1 Countryside Protection

C3 Special Landscape Area

C31a Design

C38 Nuisance

U4 Ground Source Protection Areas

R11 Footpaths and Rights of Way

Emerging Wiltshire Core Strategy (eWCS) – the Inspectors report has been received by Wiltshire Council who has found the eWCS to be sound, opening the way for the Council to proceed towards its adoption. The publication of this report means that very significant weight can now be given to the policies within this document.

Core Policy 48 - Supporting Rural Life

Core policy 57 – Ensuring High Quality Design and Place Shaping

National Planning Policy Framework 2012

Planning Practice Guidance 2014

## **7. Consultations**

**Chapmanslade Parish Council** – Object due to the following:

- Insufficient evidence to support residential accommodation
- No planning permission has been given for equestrian uses
- Does the site have a long term future?
- The siting of a caravan causes harm to residents living in the immediate vicinity and also to a sensitive and cherished part of the parish's rural heritage

**Wessex Water** – New water and waste water connections will be required

**Wiltshire Council Agricultural Advisor** – Concludes that the proposed business is



likely to generate an essential requirement for a presence on site. The business plan indicates that the proposed business can attain viability. A copy of the report is attached as an appendix to the agenda.

## **8. Publicity**

The application was advertised by a site notice and neighbour notification letters. The deadline for any correspondence was 10<sup>th</sup> November 2014

18 letters of support have been received with the following comments (summarised):

- It is creating jobs in a recession and generates income into the village
- The site was a farm long before the neighbours moved into their converted properties
- The applicant has made better use of a once neglected farm
- You need to have houses in the countryside, the neighbours are living in converted buildings?
- It accords with the NPPF and local and former national local policy (H19)
- You cant see the caravan from the road or the footpath
- I buy my eggs from the applicant and look forward to buying alpaca clothing for my children
- The footpath is much improved and love seeing the alpacas on my walk
- Appeal after appeal supports the functional test that with alpacas you have to live on site
- The applicant is allowed to move a caravan on the site whilst engaging in building the barn, the wall is not over 2 metres so does not require planning permission, no enforcement action has ever been issued against the applicant, the containers were moved a week early in line with planning permission, this is not a retrospective application – if people understood planning law which is complex they would see that the applicant has broken no law or done anything wrong
- Alpacas need round the clock monitoring when birthing as there are often complications
- It is not a permanent feature so not sure what all the fuss is about
- Wiltshire does not have a 5 year housing land supply and Chapmanslade does not have a neighbourhood plan – neither can they demonstrate rural economic growth, provide sufficient employment land, demonstrate a duty to cooperate with others including Mendip District Council as required in the NPPF, have an up to date local transport plan

24 letters of objection have been received with the following comments (summarised):

- The applicant is a Councillor at Mendip on the planning committee and shows a property in Frome as her home address and her partner has written in to support the application. This site is not her only home. She and her partner are also fully aware of the planning regulations
- The way alpacas are being bred is different, alpacas should have as little contact with humans as possible
- Alpacas can be assessed overnight by CCTV and the applicants property is less than a 6 minute drive away
- No landscaping proposals. The landscape impact of this proposal is likely to

- be significant as viewed from nearby public rights of way
- A temporary building in a special landscape area should be of high quality materials and therefore the proposal is contrary to Policy C31a
- The appraisal submitted with the application does not demonstrate special circumstances to allow a dwelling – applicant is not qualified or experienced in farming alpacas, unclear whether her partner is part of the business plan, the applicant did not have to buy so many alpacas from the outset suggesting that the applicant has extended the livestock in order to create the case to live on site, alpacas are more robust than sheep and therefore a farmer does not have to live on site, the applicant has previously kept livestock on the site without any reports of apparent distress, welfare or security issues and is in close proximity to a number of residential properties so it is not remote or isolated in terms of vulnerability from theft, labour requirement has been exaggerated.
- The proposal is deliberately vague and should have been supported with a far more detailed business plan
- Static Caravan arrived in August together with the attendant paraphernalia, childrens climbing frame and a two metre high wall which has caused great harm to the landscape and neighbouring properties with house values being considerably reduced
- The applicant will press ahead with the construction of permanent accommodation whether or not the current application is granted – the applicants have shown scant regard for the planning system in the past
- An independent agricultural report needs to be commissioned
- In the RAC report, the labour requirement does not support the need for a full time worker until the enterprise has reached 60 alpacas. Years 3 and 4 figures are highly optimistic
- Neighbours have been subject to significant increase in noise both from construction and the operation of Siennas Valley and car radios being left on
- Mobile Home has affected our privacy
- The mobile home does not enhance the countryside and sited too close to neighbouring boundaries
- It is now an untidy and unsightly site
- Visible from CHAP34 and CHAP10, CHAP8 and CHAP27
- The increase in traffic raises concerns over highway safety as I cycle along Huntenhall Lane with my children
- Is there a market need for all the things they are going to sell
- Breeze block wall is horrendous in the special landscape area
- Application should be refused because they have not obtained the relevant planning permission
- There are badgers on the site which are known to carry TB
- The design, appearance and layout is not in keeping with the local area
- Increase in traffic on a lane
- Noise and smell will be an issue to neighbouring properties
- Alpacas do not need someone living on site

## **9. Planning Considerations**

### **9.1 Principle and agricultural need**

The development plan is currently the West Wiltshire District Plan (1st alteration). Policy H19 of the WWDP states: *New dwellings in the open countryside and in*

*settlements without Village Policy Limits will not be permitted unless justified in connection with the essential needs of agriculture or forestry.*

The WWDP will be superseded by the emerging Core Strategy, which now carries very significant weight following the publication of the Core Strategy Inspector's report. Core Policy 48 of the Core Strategy states: *Outside the defined limits of development..... proposals for residential development will only be supported where these meet the accommodation needs required to enable workers to live at or in the immediate vicinity of their place of work in the interests of agriculture or forestry or other employment essential to the countryside. Proposals for accommodation to meet the needs of employment essential to the countryside should be supported by functional and financial evidence.*

When assessing applications of this nature, Paragraph 55 of the NPPF states: *Local planning authorities should avoid isolated new homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside.*

Planning Policy Statement 7 was superseded by the NPPF, however Annexe A of this document still remains a useful guide and has been used by various Appeal Inspectors. Annexe A states: *if a new dwelling is essential to support a new farming activity whether on a newly created agricultural unit or an established one, it should normally be provided by a caravan, a wooden structure which can be easily dismantled or other temporary accommodation and should satisfy the following criteria:*

- *Clear evidence of a firm intention and ability to develop the enterprise concerned*
- *Functional need*
- *Clear evidence that the proposed enterprise has been planned on a sound financial basis*
- *The functional need could not be fulfilled by another existing dwelling on the unit or any other existing accommodation in the area which is suitable and available for occupation by the workers concerned and*
- *Other normal planning requirements e.g on siting and access, are satisfied*

The Agricultural Advisor employed by the Council has stated that It is important to recognise that the majority of day to day tasks associated with good husbandry of the livestock, including alpacas, can be undertaken without a dwelling on site. The important exceptions to this recognition are the care of sick animals and calving. It is accepted that animals which are sick or close to, during or immediately after calving may well require essential care at short notice. It is noted that calving dates are variable, as the animals run with the stud and are not artificially inseminated. Additionally, calving dates can be very variable, with the animal showing few external signs of birthing.

The applicant's agricultural advisor states that with regards to alpacas it is generally accepted that in order to farm alpacas properly – at a commercial scale- it is necessary to live close to the animals to ensure their well-being due to malting,

abortions and still births, birth, rearing, theft, day to day management. Due to the number of alpacas the applicant's agricultural advisor is of the opinion that there must be someone on site at most times to ensure the proper functioning of the enterprise and once up and running will require one full time worker plus a limited amount of casual assistance at peak periods.

When using Annexe A to assess the application it is considered that there is a firm intention and ability to develop the enterprise concerned as the alpacas are already purchased, on site and are being cared for.

When assessing the functional need, the Council's Agricultural Advisor has stated that the Planning Inspectorate has paid close attention to the variability of calving dates and the need for quick intervention at calving and as such has concluded on many occasions that the functional test is met by enterprises of equivalent size such as the application site.

The Council's Agricultural Advisor has also stated that on the basis of the information submitted, he considers that the business has been planned on a sound financial basis and that the submitted business plan, if fully implemented would achieve the costs and returns set out, and will demonstrate a viable business. The advisor also states that Planning Inspectors have also taken into consideration in previous appeal decisions that it would be premature to reach a decision on viability at this early stage of a new business.

The applicant has stated that the functional need cannot be fulfilled by another dwelling in the immediate area due to the nature of the requirement which is that someone needs to be on site.

It is important to note that if planning permission is granted for the erection of a mobile home, permission will be granted for three years. Annexe A states: *permission for a permanent dwelling should not subsequently be given unless the following criteria are met (there is a clearly established existing functional need, the need relates to a full time worker, or one who primarily employed in agriculture and does not relate to a part-time requirement, the unit and the agricultural activity have been established for at least three years and have been profitable for at least one of them, are currently financially sound and have a clear prospect of remaining so, the functional need could not be fulfilled by another existing dwelling, other planning requirements are satisfied). The Local Planning Authority should make clear the period of time for which the temporary permission is granted, the fact that the temporary dwelling will have to be removed, and the requirements that will have to be met if a permanent permission is to be granted. Authorities should not normally grant successive extensions to a temporary permission over a period of more than three years, nor should they normally give temporary permission in locations where they would not permit a permanent dwelling.*

Taking this into consideration, if approved conditions can be attached to ensure that it is for a temporary period of three years, the situation can be reviewed at that time. The Council would be entitled to insist on the removal of the mobile home after the three year period if the applicant fails to meet the required tests within the next three

years. Council Tax records show that the applicant moved onto the site on 3<sup>rd</sup> August 2014 and therefore if approved the three years will run out on 3<sup>rd</sup> August 2017.

## **9.2 Impact upon the character and appearance of the area**

The site lies within the Special Landscape Area where Policy C3 of the WWDP states: *the landscape character of Special Landscape Areas will be conserved and enhanced and development will not be permitted which is considered to be detrimental to the high quality of these landscapes.*

C31a relates to design (which is supported through Core Policy 57) states *that proposals for new development on sensitive sites will be required to comply with the following criteria:*

- *Pay particular attention to proportion, composition, form, massing and scale;*
- *Utilise high quality materials, finishes, and details;*
- *Integrate landscaping into the design as appropriate;*
- *Minimise the visual impact of roads, vehicles and parking areas.*

The design of the mobile home and its associated paraphernalia is not considered to be appropriate to the Special Landscape Area. However, only limited views of the development can be seen from Huntenhull Lane and glimpses of it through existing trees can be seen from the public footpath that runs to the rear of the site. It is important to note that when walking the public footpath to the rear of the site the existing barn does provide a backdrop to the mobile home and as such screens it to some extent. However, Annexe A clearly states that a temporary mobile home should be provided by a caravan or a wooden structure that can be easily dismantled. As this is for a temporary dwelling, the impact upon the wider landscape will be temporary and therefore the mobile home is considered to be appropriate. It is acknowledged that the proposal includes a day room, decking and fencing but all of these elements can be removed and are therefore considered to be temporary.

It is important to note that temporary dwellings do not have permitted development rights and therefore the applicant will not be able to extend the development subject of this proposal.

## **9.3 Impact upon neighbouring amenity**

Policy C38 of the WWDLP (which is supported through Core Policy 57) relates to nuisance and states: *Proposals will not be permitted which would detract from the amenities enjoyed by, or cause nuisance to neighbouring properties and uses. Consideration will be given to such issues as any loss of privacy or overshadowing, levels or types of traffic generation, the storage of hazardous materials, the generation of unpleasant emissions such as odour, fumes, smoke, soot, ash, dust or grit, the extension of existing unneighbourly uses and the creation of an untidy site. Development will not be permitted if the amenities of its occupiers would be affected adversely by the operation of existing or proposed neighbouring uses.*

The mobile home is to the rear of existing residential properties. The mobile home is

single storey and as such would not overshadow or overlook neighbouring dwellings. The levels and type of traffic generation and smells associated with the lawful agricultural use is not considered to be sufficient to warrant a refusal reason. The development subject of this application could be considered as creating an untidy site, but the nature of the development is temporary and there will be a requirement to remove the mobile home within three years. The proposal is therefore considered to comply with Policy C31a.

Concerns have been raised regarding car engines and car radios being left on but neither of these can be controlled through planning legislation and as such are not material planning considerations.

#### **9.4 Highway Impact**

The proposal would not affect any public rights of way and the highway officer has raised no issues.

#### **9.5 Other**

Agricultural workers dwellings are not personal permissions and therefore the occupant of the mobile home is not a material planning consideration. Any person or persons living in the mobile home will have to comply with the planning conditions attached to any approval. Previous planning history is a material planning consideration but the way development has happened on a site is not. It is also not possible to refuse a planning application just because it is retrospective.

#### **10. Conclusion**

The proposal would appear to be justified for a temporary period at this stage, and it is on this basis that a temporary planning permission is recommended.

#### **RECOMMENDATION**

**Grant temporary planning permission, subject to the following conditions.**

- 1 The use of the land for the siting of the mobile home and the day room hereby permitted shall cease and the mobile home, day room and associated decking shall be removed from the site and the land restored to agricultural grassland on or before 3rd August 2017.

REASON: The permission has only been granted for a temporary basis as the agricultural need and case justifying the use of the land for residential purposes has only be made for a temporary period. Removal of the mobile home and associated structures is necessary to protect the character and appearance of the landscape in this isolated location.

- 2 The occupation of the development hereby approved shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

REASON: The site is in an area where residential development for

purposes other than the essential needs of agriculture or forestry is not normally permitted and this permission is only granted on the basis of an essential need for a new dwelling/residential accommodation in this location having been demonstrated.

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing Number 2561/02 received by the Local Planning Authority on 7th October 2014

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

Appendix 1 – Report by Wiltshire Council Agricultural Advisor



## AGRICULTURAL ASSESSMENT OF PLANNING APPLICATION FOR AN AGRICULTURAL DWELLING

<b>1.0</b>	<b>REFERENCE</b>	APA/003/106
1.1	Proposed Development	Stationing of a rural worker's dwelling for a temporary period.
1.2	Planning Authority	Wiltshire Council Development Management West
1.3	Planning Application No.	14/09500/FUL
1.4	Applicant	Ms S.Snook
1.5	Site Address	Sienna's Valley, Huttenhall Lane, Chapmanslade

### **2.0 DESCRIPTION**

#### 2.1 Location

The site lies immediately west of Huttenhall Lane and approximately quarter of a mile south west of Chapmanslade. The site is in a valley, in open countryside.

#### 2.2 Land area and tenure

The applicant's freehold land extends to 4.7 ha (11.6 acres) in a single block at the application site. In addition to the freehold land, the applicant also holds 0.7 ha (1.77 acres) of land near Frome, some five miles distant from the site. I understand the applicant's occupation of the away land is under a Farm Business Tenancy.

### **3.0 FARMING PRACTICE**

#### Proposed

- 3.1 The land is in use as a smallholding; the applicant proposes the development of a herd of breeding alpacas, together with a herd of breeding Kune Kune pigs and egg production from a flock of hens, ducks and quail.
- 3.2 The alpacas will be kept as a breeding herd. I understand that 19 breeding females have been purchased, with the intention to develop the herd to 30 breeding females by year four of the proposed business. Progeny will be reared for sale as breeding stock (females and males) along with halter trained pets. The animals will also be kept for fibre production. The fibre will be processed and wool and garments sold.
- 3.3 Kune Kune is a breed of "micro" pig. There are two sows on site and the applicant's intention is to breed them to produce weaner pigs for sale.
- 3.4 The proposal is to introduce the poultry enterprise at year 3 of the proposed business. At this stage it is proposed to produce and retail eggs from 200 hens, 50 quail and 20 ducks.
- 3.5 The applicant keeps two Clydesdales horses and two Shetland ponies on the unit.
- 3.6 The holding is all in grass. The applicant states that the away land is also in grass. I understand the applicant is to mow and bale her own hay.

## Buildings

3.7 The structures at the holding comprise:

- A three bay shed, constructed with a steel portal frame, profile sheet cladding to the upper elevations with the lower elevations open. The overall dimensions of the building are approximately 9m x 12m with 4.2m eaves.
- Two mobile timber field shelters
- Three lorry containers

## 4.0 EXISTING ACCOMMODATION

Dwellings owned by applicant

4.1 The applicant and her family occupy the temporary dwelling on site. The dwelling is the subject of the planning application.

## 5.0 LABOUR REQUIREMENTS

Existing

5.1 One unit part time

Anticipated if Proposals Undertaken

5.2 From the agricultural statement provided by the applicants the alpaca unit will generate a labour requirement of just over one and a half full time units of labour.

## 6.0 NPPF – ESSENTIAL REQUIREMENT

6.1 The planning application for the dwelling is associated with the proposed alpaca business. The National Planning Policy Framework (NPPF) was introduced in 2012 and replaces all previous Planning Policy Statements (PPS). In the context of the application for the proposed dwelling, paragraph 55 of the NPPF states:

“Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside”

6.2 Under the NPPF it is therefore relevant to consider the requirements of the current enterprise and whether those requirements present an essential need for a worker to live at or near the enterprises.

6.3 It is important to recognise that the majority of day to day tasks associated with good husbandry of the livestock, including alpacas, can be undertaken without a dwelling on site. The important exceptions to this recognition are the care of sick animals and calving. It is accepted that animals which are sick or close to, during or immediately after calving may well require essential care at short notice. It is noted that calving dates are variable, as the animals run with the stud and are not artificially inseminated. Additionally, calving dates can be very variable, with the animal showing few external signs of birthing.

6.4 Cria, when first born are weak and require attention to ensure they receive colostrum, also that their navel is sprayed with antibacterial/antiseptic spray to prevent infection. In this regard they are no different to other domesticated stock.

6.5 It is my experience that in applying the functional test the Planning Inspectorate has paid close attention to the variability of calving dates and the need for quick intervention at calving. Accordingly there are a number of appeal decisions in which Inspectors have formed the view that the functional test is met by enterprises of an equivalent size to that set out by the applicant.

## 7.0 BUSINESS ASSESSMENT

- 7.1 There is no express reference in the NPPF to an assessment of either an existing or proposed business which will operate in association with the proposed rural dwelling. It is my opinion that such an assessment is critical to forming an opinion on the continuation of the “essential need”. In this case the essential need described and recognised above will only continue through the operation of the business. If the business does not operate on a profitable and viable basis then it will fail and the authority would be left with a dwelling but no “essential need” for its presence.
- 7.2 I have had sight of the applicants’ business plan for the first five years of operation. The plan sets out the projected costs and returns for the business over period. Source data for the plan is largely from published agricultural management data. The identified sale values for the alpaca appear to be in line with the current average prices indicated on the “Alpaca Seller” website.
- 7.3 Overall, it is my view that the proposed plan, if fully implemented and achieving the costs and returns set out, will demonstrate viability. In this context however it is important to note that the business is largely reliant on the sales revenue from alpacas. In recent years reported sale values for female alpacas have fallen by some 35%, however, values appear to have stabilised over the last twelve months. The whole issue of viability for a new alpaca unit was considered by the inspector in his decision letter for land at Ashley, Box (ref APP/Y3940/A/13/2200283). In his decision (20 November 2013) the inspector’s viewpoint was that the proposed business should be given a trial period on the basis that it would be premature to reach a decision on viability (paragraph 20). A copy of the decision letter is attached.

## 8.0 CONCLUSION AND OPINION

The proposed business is likely to generate an essential requirement for a presence on site. The business plan indicates that the proposed business can attain viability.

I trust the above provides you with the information required. If you require any further information, or clarification on the any aspect of the above, please do not hesitate to contact the writer.

A.M Coke BSc (Hons) MRICS, FAAV

**Note:** *This Report has been prepared on information provided by the Applicant and or the Applicant’s Agent.*

APA/001/0106/AMC

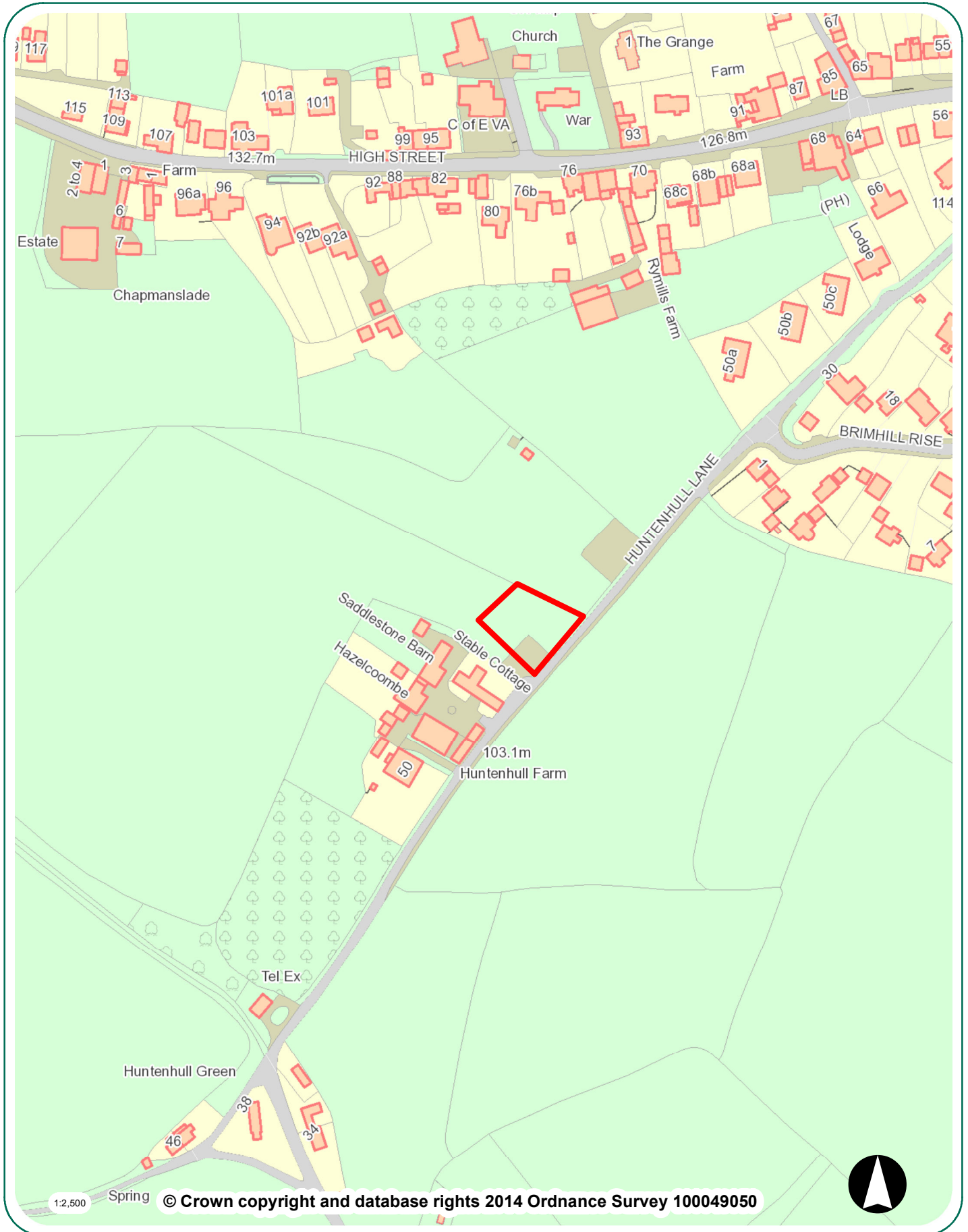
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Date 9<sup>th</sup> November 2014

APA Consultants Ltd  
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Huntenhull Lane  
Chapmanslade



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## **Wiltshire Council**

### **Western Area Planning Committee**

**17<sup>th</sup> December 2014**

#### **Appeal Performance Update 2014**

##### **1. Purpose of Report**

To provide an update on the outcomes of decisions made by the Planning Inspectorate on appeals in the area covered by the Western Area Planning Committee in 2014.

##### **2. Appeal Decisions**

The Western Area Planning Committee has met 12 times in 2014 up until the end of November and considered 36 applications. Thirteen of these have been refused, 11 of them against officer recommendation. Five appeals have to date been lodged against these refusals, and others are still within the time period allowed for submitting an appeal. Two of the 13 refusals have led to resubmissions by applicants, one of which has been approved and the other refused.

Table A overleaf lists the applications refused by committee in 2014 and the current state of play with regard to any appeals against these decisions.

In relation to delegated decisions, 20 appeals have to date been determined in 2014, including four enforcement appeals. 14 of these have been dismissed, and only six allowed. Table B overleaf lists the appeal decisions. In addition to these, five planning appeals and one enforcement appeal remain outstanding, the largest of these being the 15 dwellings in Hilperton where the public inquiry took place in November.

None of the decisions set out in Tables A and B led to an award of costs, with Inspectors dismissing applications for cost awards in three cases.

##### **3. Common Themes**

It is noticeable that none of the appeal decisions on applications determined this year have been for schemes of any significant size. In fact, the only appeal decision on a scheme of a significant size this year related to the redevelopment of the former Bowyers site in Trowbridge, based on an application refused in 2012. The Inspector allowed this appeal in late January, finding that whilst it was likely to have some adverse impact on existing and committed investment in St Stephen's Place, it would be unlikely to have any significant adverse impact on the vitality and viability of the town centre as a whole. Although that decision was made in January, and demolition has almost finished on the site, no application has been made in the ten months since for the discharge of any of the pre-commencement conditions on either the appeal proposal or the scheme granted planning permission 19 months ago, so no redevelopment is imminent.

The largest scheme refused by the committee was for a solar farm at Little Chalfield, a decision that to date has not yet been appealed; the largest residential scheme being 4 dwellings at Westwood, where the outcome of an appeal is awaited. The largest delegated



scheme appealed against was the 15 houses south of Hilperton road, where a decision is also still awaited.

All appeals (one committee and two delegated decisions) that related to traveller sites were allowed, demonstrating the difficulty of resisting proposals of this nature in the absence of an up to date land supply for such sites and an up to date gypsy and traveller accommodation assessment. Work on this is progressing and should be available shortly, although applications for new pitches, including extensions of existing sites for new pitches, are now dealt with by the Strategic Planning Committee.

The changed emphasis on highway concerns was evident in that of three appeals refused on highway grounds, only one was dismissed, the Inspectors in the other two not finding the NPPF test in paragraph 32 to be met ('Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe').

National and local planning policies to prevent unsustainable residential development in the countryside were well supported, with all appeals against refusals in these locations being dismissed. The increasing importance of flooding was also demonstrated with an appeal for a house located in a flood plain being dismissed.

Other appeals turned on more localised impacts, with Inspectors allowing schemes where they found no significant harm, and refusing where they did, including the committee decision at West Ashton, where the Inspector considered the proposed extended dwelling to have inadequate garden space for a three bedroom property.

The Inspector's decision letter on each appeal can be viewed/downloaded from the Council's planning application web pages for that particular application. When an appeal is determined, a copy of the decision letter is sent to the local Division Member and parish/town council.

**Mike Wilmott**

**Area Development Manager**

**Table A - Applications refused by Western Area Planning Committee 2014**

<b>Reference No.</b>	<b>Parish</b>	<b>Location</b>	<b>Description</b>	<b>Appealed</b>
13/05406/FUL	Warminster	2, Downlands	Pool cover and playroom	Yes - Dismissed
<i>Out of character and adverse impact on neighbours from height</i>				
13/06123/FUL	Semington	Landsdowne	4 additional traveller pitches	Yes - allowed
<i>Sustainable development, not harmful to the appearance of the area, unmet need for additional sites</i>				
14/02339/FUL	West Ashton	Bratton road	Single dwelling	No - resubmitted
<i>Revised proposal submitted - see below</i>				
14/08400/FUL	West Ashton	Bratton road	Single dwelling	Appeal D/L - May 2015
<i>Revision of 14/02339/FUL</i>				
14/04344/FUL	Steeple Ashton	Holmleaze	Three bedroom bungalow	Yes - Dismissed
<i>No harm to character or appearance of area, but inadequate amenity space for 3 bedroom dwelling</i>				
14/03407/FUL	Trowbridge	Hilperton Rd	Domestic garage	No - resubmitted
<i>Revised proposal on alternative site approved under delegated powers</i>				
14/02362/FUL	Westwood	Tynings Way	4 dwellings	Yes - decision awaited
14/03465/FUL	Trowbridge	Victoria Road	House Extension	Yes - decision awaited
14/03770/FUL	Chapmanslade	Sienna Valley	Agricultural building	Appeal D/L - Dec 2014
13/06270/FUL	Heytesbury	North of High St	Single dwelling	Appeal D/L - Dec 2014
14/01962/VAR	Broughton Gifford	Norrington	Minor changes to solar farm	Appeal D/L - March 2015
14/05253/FUL	Melksham Without	Little Chalfield	Solar Farm	Appeal D/L - March 2015
14/05120/FUL	Southwick	Goose Street	3 dwellings	Appeal D/L- May 2015

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**Table B - Appeal Decisions received in 2014 on Delegated Applications**

<b>Reference No.</b>	<b>Parish</b>	<b>Location</b>	<b>Description</b>	<b>Appeal Decision</b>
W/12/00832/FUL	Dilton Marsh	Sandpit Lane	2 pitch traveller site	Allowed
<i>Transport impact not severe; meets local plan criteria; unquantified need evident</i>				
W/12/02069/FUL	Hilperton	Whaddon Lane	1 pitch traveller site	Allowed
<i>Sustainable site, no 5 year supply of sites for gypsies and travellers</i>				
W/13/00919/FUL	Melksham Without	Shaw	Conversion of annex to dwelling	Allowed
<i>Transport impact not severe, therefore approval justified</i>				
W/13/01043/FUL	Bradford on Avon	Maplecroft, Leigh Rd	Conversion to dwelling	Dismissed
<i>Adverse impact on setting of listed building; inappropriate use</i>				
13/06137/FUL	Heywood	Hawkeridge Rd	Change of use workshop-dwelling	Allowed
<i>NPPF emphasis on re-use of buildings overcame policy objections in local plan</i>				
13/00907/OUT	Steeple Ashton	Ashton Common	Detached House	Dismissed
<i>Unsustainable location - isolated housing in countryside to be avoided NPPF para 55</i>				
13/05248/FUL	Melksham Without	Lot 1 Oakley Farm	Conversion of poultry unit to dwelling	Dismissed
<i>Adverse impact on character of area and unsustainable location - NPPF para 55</i>				
14/05241/PNCOU	Melksham Without	Unit 2 Oakley Farm	Conversion of poultry unit to dwelling	Dismissed
<i>Unsustainable location - isolated housing in countryside to be avoided NPPF para 55</i>				
14/00671/FUL	Warminster	Deverill Road	Retention of roadside fence	Allowed
<i>Hedge already removed - no significant adverse impact on appearance of area</i>				
13/02007/OUT	Southwick	Wynsome Street	Detached House	Dismissed
<i>Site within floodzone</i>				
13/04994/FUL	Dilton Marsh	Clay Close	Retention of building as beauty salon	Dismissed
<i>Unacceptable highway risks - inadequate parking; poor visibility; no pavement</i>				

13/07224/FUL	Longbridge Deverill	Crockerton - Dry Hill	Holiday Cabin	Dismissed
<i>Unsustainable location and adverse impact on appearance of area</i>				
W/13/00782/FUL	Melksham	Saxifrage Bank	Detached House	Dismissed
<i>Adverse impact on appearance, character of area and privacy of neighbours</i>				
14/02779/FUL	Longbridge Deverill	Crockerton - Clay Street	Conversion of poolhouse to dwelling	Dismissed
<i>Unsustainable location; adverse impact on appearance of area.</i>				
14/04469/FUL	Trowbridge	Clarendon Road	Two houses on former tennis court	Dismissed
<i>Site fulfills an important amenity and recreational function, therefore unsustainable</i>				
Enforcement	Hilperton	Whaddon Lane	Retention of caravan on site	Dismissed
<i>Appellant not accepted as nomadic, and therefore not gypsy or traveller</i>				
Enforcement	Melksham Without	Tan House Farm	Retention of caravan on site	Dismissed
<i>Appellants challenge to grounds of notice failed</i>				
Enforcement	Kingston Deverill	Whitepits	Extension of garden into field	Allowed
<i>No adverse impact on appearance of landscape in this location</i>				
Enforcement	Melksham Without	Lot 1 Oakley Farm	Use of poultry unit as dwelling	Dismissed
<i>Appellants challenge to grounds of notice failed</i>				
Enforcement	Holt	Forewoods common	Retain building - music studio	Dismissed
<i>Inappropriate development in greenbelt (Decision being challenged via Judicial Review)</i>				