

AGENDA

Meeting: Eastern Area Planning Committee

Place: Wessex Room - The Corn Exchange, Market Place, Devizes, SN10 1HS

Date: Thursday 10 March 2016

Time: 6.00 pm

Please direct any enquiries on this Agenda to Roger Bishton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713035 or email roger.bishton@wiltshire.gov.uk

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

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

Membership:

Cllr Charles Howard (Chairman)	Cllr Nick Fogg MBE
Cllr Mark Connolly (Vice Chairman)	Cllr Richard Gamble
Cllr Stewart Dobson	Cllr Jerry Kunkler
Cllr Peter Evans	Cllr Paul Oatway

Substitutes:

Cllr Terry Chivers	Cllr Jeff Osborn
Cllr Ernie Clark	Cllr James Sheppard
Cllr Anna Cuthbert	Cllr Philip Whitehead
Cllr Dennis Drewett	Cllr Christopher Williams

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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 7 - 14*)

To approve and sign as a correct record the minutes of the meeting held on 28 January 2016.

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

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

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

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Thursday 3 March 2016**. 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 **Rights of Way - Highways Act 1980 and Wildlife and Countryside Act 1981 - The Wiltshire Council Baydon 2 (Part) and 11 (Part) Diversion Order and Definitive Map and Statement Modification Order 2015 (Pages 15 - 60)**

A report by the Case Officer is attached.

7 **Planning Appeals (Pages 61 - 62)**

To receive details of the completed and pending appeals.

8 **Planning Applications**

To consider and determine the following planning applications.

8a **15/12705/FUL - Land at West View House, St Johns Court, Devizes, Wiltshire, SN10 1BU - Proposed new dwelling (new design to replace previously approved) (Pages 63 - 78)**

A report by the Case Officer is attached.

8b **15/12362/FUL - The Drummer Boy, Church Street, Market Lavington, Wiltshire, SN10 4DU - Change of use and conversion of existing Public House to two 3 bed dwellings, and erection of 1 two bed dwelling to rear of site, with associated amenity space and parking (Pages 79 - 96)**

A report by the Case Officer is attached.

8c **15/12652/FUL - Woodlands Farm, Witcha, Ramsbury, Wiltshire, SN8 2HQ - Demolition of existing bungalow, and erection of replacement dwelling with associated garaging, turning, landscaping, private amenity space, and creation of a new vehicular access point. (Pages 97 - 112)**

A report by the Case Officer is attached.

9 **Urgent items**

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

Part II

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

None

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EASTERN AREA PLANNING COMMITTEE

DRAFT MINUTES OF THE EASTERN AREA PLANNING COMMITTEE MEETING HELD ON 28 JANUARY 2016 IN THE WESSEX ROOM - THE CORN EXCHANGE, MARKET PLACE, DEVIZES, SN10 1HS.

Present:

Cllr Charles Howard (Chairman), Cllr Mark Connolly (Vice Chairman), Cllr Stewart Dobson, Cllr Peter Evans, Cllr Richard Gamble, Cllr Jerry Kunkler and Cllr Paul Oatway

1. Apologies for Absence

An apology for absence was received from Cllr Nick Fogg MBE.

2. Minutes of the Previous Meeting

Resolved:

To approve and sign as a correct record the minutes of the previous meeting held on 10 December 2015.

3. Declarations of Interest

Cllr Stewart Dobson declared a non-pecuniary interest in Application No 15/10410/FUL in Minute No 6.2 below as he held a £1.00 share in Aster Communities, the applicant. He would take part in the debate but would not vote.

4. Chairman's Announcements

It was announced that the following applications had been withdrawn by the applicant:-

- **15/11631/VAR - Brail Vista, 163 Crofton Road, Great Bedwyn, Wiltshire, SN8 3LX - Removal of condition 2 of planning permission K/44735 to allow full time independent residential occupation of the holiday let**
- **15/11632/VAR - Brail Vista, 163 Crofton Road, Great Bedwyn,**

Wiltshire, SN8 3LX - Removal of condition 2 of planning permission E/2012/0670/FUL to allow full time independent residential occupation of the holiday let

5. Public Participation and Councillors' Questions

There were no questions received from members of the Council.

Members of the public addressed the Committee as set out in Minute Nos. 6.1 and 6.2 below.

6. Planning Applications

6.1 15/11169/FUL - Land to the South of Ramsbury Primary School, Back Lane, Ramsbury, Wiltshire, SN8 2QH - Erection of new pre-school building, with outdoor play areas and associated landscaping

The following person spoke against the application

Mr Ron Young, a local resident

The following people spoke in support of the application

Mrs Emma Green, Headteacher of the Pre-School
Mr Mark Pettitt, the agent

The Committee received a presentation from the Area Development Manager which set out the main issues in respect of the application, with a recommendation that planning permission be granted, subject to conditions.

Members had the opportunity to ask technical questions after which the Committee received statements from members of the public as detailed above, expressing their views regarding the planning application.

After discussion,

Resolved:

To grant planning permission, 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 and documents:

Application Form received 9th November 2015

Location Plan - 150111-01 received 9th November 2015

Fence and Gate Detail - 150111-03 received 9th November 2015

Arboricultural Impact Assessment by SJ Stephens Associates received 9th November 2015

Design Scheme - 150111-02 Rev A received 7th January 2016

Ramsbury Pre-School Travel Plan received 7th January 2016

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

3. No development shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

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

- a) location and current canopy spread of all existing trees and hedgerows on the land;**
- b) full details of any to be retained, together with measures for their protection in the
 - a. course of development;****
- c) a detailed planting specification showing all plant species, supply and planting sizes**
- d) and planting densities;**
- e) finished levels and contours;**
- f) means of enclosure;**
- g) car park layouts;**
- h) other vehicle and pedestrian access and circulation areas;**
- i) all hard and soft surfacing materials;**
- j) minor artefacts and structures (e.g. furniture, play equipment, refuse and other**
- k) storage units, signs, lighting etc);**

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before

development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

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

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

6.2 15/10410/FUL - Land at the junction of Kennet Road and Chestnut Avenue, Tidworth - Erection of a two storey dwelling

The following person spoke in support of the application

Mr Richard Cosker, the agent

The Committee received a presentation from the Area Development Manager which set out the main issues in respect of the application, with a recommendation that planning permission be granted, subject to conditions.

Members had the opportunity to ask technical questions after which the Committee received a statement from Mr Richard Cosker as listed above, expressing his views regarding the planning application.

Members then heard the views of Cllr Mark Connolly, as local Member, who read a statement received from a neighbour and objected to the proposal on account of:

- The visual impact upon the surrounding area
- The relationship to adjoining properties
- The design – bulk, height and general appearance
- The property would be two storey when all properties in Chestnut Avenue and Hawthorn Road were bungalows. The property would look over 2 Hawthorn Road whereas if it were a bungalow there would be no issue.

- The footpath from Kennet Road to the bottom of Hawthorn Road should be joined.

During discussion, some Members who had visited the site considered that the design fitted into the surrounding area and could be screened from the neighbour. They noted that there existed a substantial hedge to help screen the building and also a certain amount of green space retained.

Resolved:

To grant planning permission, subject to the following conditions:-

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

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

2. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

REASON: To secure a harmonious form of development.

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

- Full details of any trees and landscaping to be retained, together with measures for their protection in the course of development;
- A detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- Finished levels and contours;
- Means of enclosure;

REASON: The matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

4. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building; 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, including the erection of the boundary fence, shall also be carried out in accordance with the approved details prior to the occupation of any part of the development.

REASON: To ensure the provision of adequate landscaping, to assimilate the development into its local context, and to protect the amenity of the nearby dwelling.

5. No part of the development hereby approved shall be occupied until a scheme for a safe pedestrian pavement route between Hawthorn Road and Kennet Road has been submitted to and approved in writing by the Local Planning Authority. The pavement shall be provided in accordance with the approved details prior to the first occupation of the dwelling.

REASON: To secure the provision of safe pedestrian access.

6. The development hereby permitted shall not be first occupied until the parking spaces hereby approved have been consolidated and surfaced (not loose stone or gravel) and sustainable drainage has been installed to prevent surface-water runoff onto the highway. The parking spaces shall be kept free of obstruction at all times thereafter.

REASON: In the interests of highway safety.

7. The development shall be constructed in accordance with the submitted drawings:

Location Plan 1537 Plan 1; P1 1537; P2 1537; BDS 10-03-15.

REASON: For the avoidance of doubt.

INFORMATIVE:

Many wildlife species are legally protected. The applicant should be aware that if it becomes apparent that the site is being used or has previously been used by protected species (such as slowworms, badgers, barn owls or bats), work should STOP immediately and Natural England should be contacted at their Devizes office 01380 725344 for advice on how to proceed.

INFORMATIVE:

The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. A separate Community Infrastructure Levy Liability Notice will be issued by the Local Planning Authority. Should you require further information with regards to CIL please refer to the Council's Website www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy

6.3 15/11631/VAR - Brail Vista, 163 Crofton Road, Great Bedwyn, Wiltshire, SN8 3LX - Removal of condition 2 of planning permission K/44735 to allow full time independent residential occupation of the holiday let

It was noted that the applicant had withdrawn the application.

6.4 15/11632/VAR - Brail Vista, 163 Crofton Road, Great Bedwyn, Wiltshire, SN8 3LX - Removal of condition 2 of planning permission E/2012/0670/FUL to allow full time independent residential occupation of the holiday let

It was noted that the applicant had withdrawn the application.

7. Urgent items

There were no urgent items of business.

(Duration of meeting: 6.00 - 6.55 pm)

The Officer who has produced these minutes is Roger Bishton, of Democratic Services, direct line 01225 713035, e-mail roger.bishton@wiltshire.gov.uk

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

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WILTSHIRE COUNCIL

EASTERN AREA PLANNING COMMITTEE

10 MARCH 2016

HIGHWAYS ACT 1980 AND WILDLIFE AND COUNTRYSIDE ACT 1981 THE WILTSHIRE COUNCIL BAYDON 2 (PART) AND 11 (PART) DIVERSION ORDER AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2015

Purpose of Report

1. To:
 - (i) Consider the objections and representations received to the making of “The Wiltshire Council Baydon 2 (Part) and 11 (Part) Diversion Order and Definitive Map and Statement Modification Order 2015” 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.

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. On 11 May 2015 Mrs S Johnson of Baydon House Farm, Baydon applied to Wiltshire Council to divert sections of bridleways 2 and 11 under Section 119 of the Highways Act 1980. Please see a location plan attached at **Appendix A** and the proposed diversion on the plan attached to the Order at **Appendix B**.
4. Considerable changes to the layout and operation of both Baydon House Farm and the rights of way network therein have occurred since 2010. Public rights of way have recently been diverted by legal order on the north side of the farm to allow a development to proceed.
5. Unlike those changes, there is no permitted development affecting the paths in this Order, the applicant instead seeks to divert them to improve privacy and security for the farm and cottages.
6. The existing route is unavailable for use and is obstructed by garden fencing and hedging. The route has been largely obstructed for many years but must be considered as if it were available for the purposes of this Order and the legal tests within Section 119 of the Highways Act 1980.

7. Wiltshire Council has a duty to make this way available for the public but is mindful that a diverted route could provide a better walk and ride for people than the existing, while also meeting the applicant's desire to improve privacy and security. As a result, the Council has delayed enforcing the existing route until the application to divert has been fully determined.
8. In 2011 Mrs Johnson applied to Wiltshire Council to extinguish the section of Baydon 11 that would be diverted by this Order. An initial consultation conducted by the Council revealed a significant level of local opinion that the path should remain and the application was subsequently turned down.
9. In 2013 and again in 2015 Wiltshire Council carried out an initial consultation regarding the proposal to divert the paths and this received a mixed response from consultees. However, it was considered that the diverted route met the requirements of the Act for making an Order and was likely to meet the further tests for confirmation if no objections or representations to it were received.
10. The case Officer produced a Decision report, attached at **Appendix C**, in which they considered the application against the legal tests for diversion under Section 119 of the Highways Act 1980. The report made a recommendation to Senior Officers that the paths should be diverted under Section 119 of the Highways Act 1980 in the interests of the landowner. This recommendation was approved on 10 August 2015.
11. The Order was subsequently made and notice duly served and posted.
12. Following the making of the Order, Wiltshire Council received four objections and two representations in support. The text of these is attached at **Appendix D**. Although received too late to be considered to be a formal representation, Baydon Parish Council considered the matter of the diversion at its meeting held on 26 October 2015 and on 5 November 2015 wrote to Wiltshire Council stating that 5 voting councillors had unanimously voted in favour of the diversion.
13. Members of the Committee are now required to consider the objections received, against the legal tests for making and confirming a Public Path Diversion Order under Section 119 of the Highways Act 1980, in order to determine whether or not the Council continues to support the making of the Order.
14. 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.
15. Where Wiltshire Council no longer supports the making of the Order, Members of the Committee may determine that the Order is withdrawn.

16. This Order is made in the landowner's interest and where members consider that the legal tests for confirmation are made it can recommend that the Order be forwarded to the Secretary of State for determination. However, given budgetary constraints at this time, no legal representation or support can be given to the Order in the event of a public hearing or inquiry.

Main Considerations for the Council

17. 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 in paragraph 6.0 of the decision report attached at **Appendix C**.

18. The Planning Inspectorate's Advice Note 9 on 'General guidance on public rights of way matters' states:

"27. Section 119(6) was considered in R (on the application of Young) v Secretary of State for the Environment Food and Rural Affairs [2002] EWHC 844 and the views taken that subsection (6) has 3 separate tests to it:

- (1) Firstly, that the Order is expedient in terms of section 119(1), i.e. that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path be diverted but not so as to alter the point of termination if not on to a highway or to a point on the same highway not substantially as convenient to the public.*
- (2) Secondly, that the diverted path will not be substantially less convenient to the public in terms of, for example, features which readily fall within the natural and ordinary meaning of the word 'convenient' such as the length of the diverted path, the difficulty of walking it and its purpose.*
- (3) Thirdly, that it is expedient to confirm the order having regard to the effect:*
 - (a) The diversion would have on the public enjoyment of the path or way as a whole;*
 - (b) Of the order on other land served by the existing public right of way; and*
 - (c) Of the new path or way on the land over which it is to be created and any land held with it.*

There may nevertheless be other relevant factors to do with expediency in the individual circumstances of an order.

28. *It is possible that a proposed diversion may be as convenient as the existing path but less enjoyable, perhaps because it was less scenic. In this event, the view in 'Young' was that the decision-maker would have to balance the interests of the applicant for the order against those of the public to determine whether it was expedient to confirm the order.*

29. *Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way, for example). In such circumstances, the diversion order cannot be confirmed under section 119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion.”*
19. It is noted that the objectors consider that their use and enjoyment of the existing route is compromised by the proposed diversion. It is, however, further noted that those supporting the Order do not. Enjoyment of a route is by its very nature subjective but the comments relating to views and the value of a circular route were put to the applicant along with a proposed alternative route suggested by all four objectors and shown here at **Appendix E**.
20. The applicant responded to the Council on 10 October 2015 explaining why the alternative proposal of a diversion south of Baydon House Farm joining Baydon 2 south west of the farm was unacceptable.
21. Not only are the landowners unwilling to offer the proposed new route, they also consider it would fail the legal tests relating to the convenience of the termination point (there is an additional gradient and distance) and convenience to the public overall. The proposal also has a negative effect on the privacy of Baydon House Farm meaning that the Order could not be made in the interests of the landowner.
22. For Wiltshire Council to pursue the proposed diversion the Order would need to be made in the interests of the public, funded by public funds and the Council would also be liable to pay compensation to the landowners in the event of a diminution in value of the property.
23. While officers appreciate the appeal of the proposed route in linking Baydon 8 with Baydon 2 to avoid Baydon House Farm, or to provide a short circular walk or ride, it is not considered to be an option unless the landowners were prepared to create the way. In this instance the landowners have been very clear in indicating that they are not prepared to do this.

Safeguarding Implications

24. 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 Baydon 2 (part) and 11 (part) Diversion Order and Definitive Map and Statement Modification Order 2015” 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

25. There are no identified public health implications which arise from the proposed diversion of parts of Baydon paths 2 and 11.

Procurement Implications

26. There are no procurement implications associated with the withdrawal of this Order.
27. In the event this Order is forwarded to the Secretary of State there are a number of opportunities for expenditure that may occur and these are covered in paragraphs 31 and 32 of this report.

Equalities Impact of the Proposal

28. The Wiltshire Council Rights of Way Improvement Plan 2015-2025 recognises the Council's duty to have regard to the Equalities Act 2010 and to consider the least restrictive option for public use. The proposed diversion provides a more accessible path than the present definitive line. Additionally, the proposed new route will have a recorded width of 4 metres, open and available for public use, over a defined route, where the current definitive line has no width recorded within the definitive statement. It is imperative, however, that the full width of 4 metres is provided to minimise reduction of the available width owing to seasonal growth and ground conditions. The proposed route will be fenced, meaning that there will be no scope for the public to deviate round obstructions or difficult sections.

Environmental and Climate Change Considerations

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

Risk Assessment

30. There are no identified risks which arise from the proposed diversion of parts of Baydon paths 2 and 11. The financial and legal risks to the Council are outlined in the "Financial Implications" and "Legal Implications" sections below.

Financial Implications

31. 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 for any materials provided in bringing the new path into a fit condition for use by the public.

32. Where there is an outstanding objection 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 £200 to £300; however, where a local hearing is held the costs to the Council are estimated at £300 to £500 and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation (£300 to £500 without). There is no mechanism by which these costs may be passed to the applicant and any costs must be borne by Wiltshire Council. It is therefore considered appropriate where an Order is made under the Council's powers to do so in the landowners' interest that the Council does not provide any legal support for the Order at a hearing or inquiry thus minimising the expenditure of public funds even though it considers that the legal tests have been met.
33. 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

34. If the Council resolves that it does not support 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.
35. Where the Council supports 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

36. Members may resolve that:
- (i) That the Order should be forwarded to the Secretary of State for determination as follows:
 - (a) The Order be confirmed without modification, or
 - (b) The Order be confirmed with modification.
 - (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 fails to meet the legal tests.

Reason for Proposal

37. Despite the objections received it is considered, for the reasons given in paragraph 7.0 of the Decision report (please see **Appendix C**), “The Wiltshire Council Baydon 2 (part) and 11 (part) Diversion Order and Definitive Map and Statement Modification Order 2015” continues to meet the legal tests for the making of a Diversion Order under Section 119 of the Highways Act 1980.
38. 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

39. That “The Wiltshire Council Baydon 2 (part) and 11 (part) Diversion Order and Definitive Map and Statement Modification Order 2015”, 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 with a modification to the statement for Baydon 11 to replace text missing in Part 3. After “...at its junction with Baydon 30” add “where BRIDLEWAY leading south for approximately 60 metres to its junction with Baydon path no. 2.”

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Sally Madgwick

Rights of Way Officer – Definitive Map

Tel: 01225 713392

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

None

Appendices:

Appendix A – Location Plan

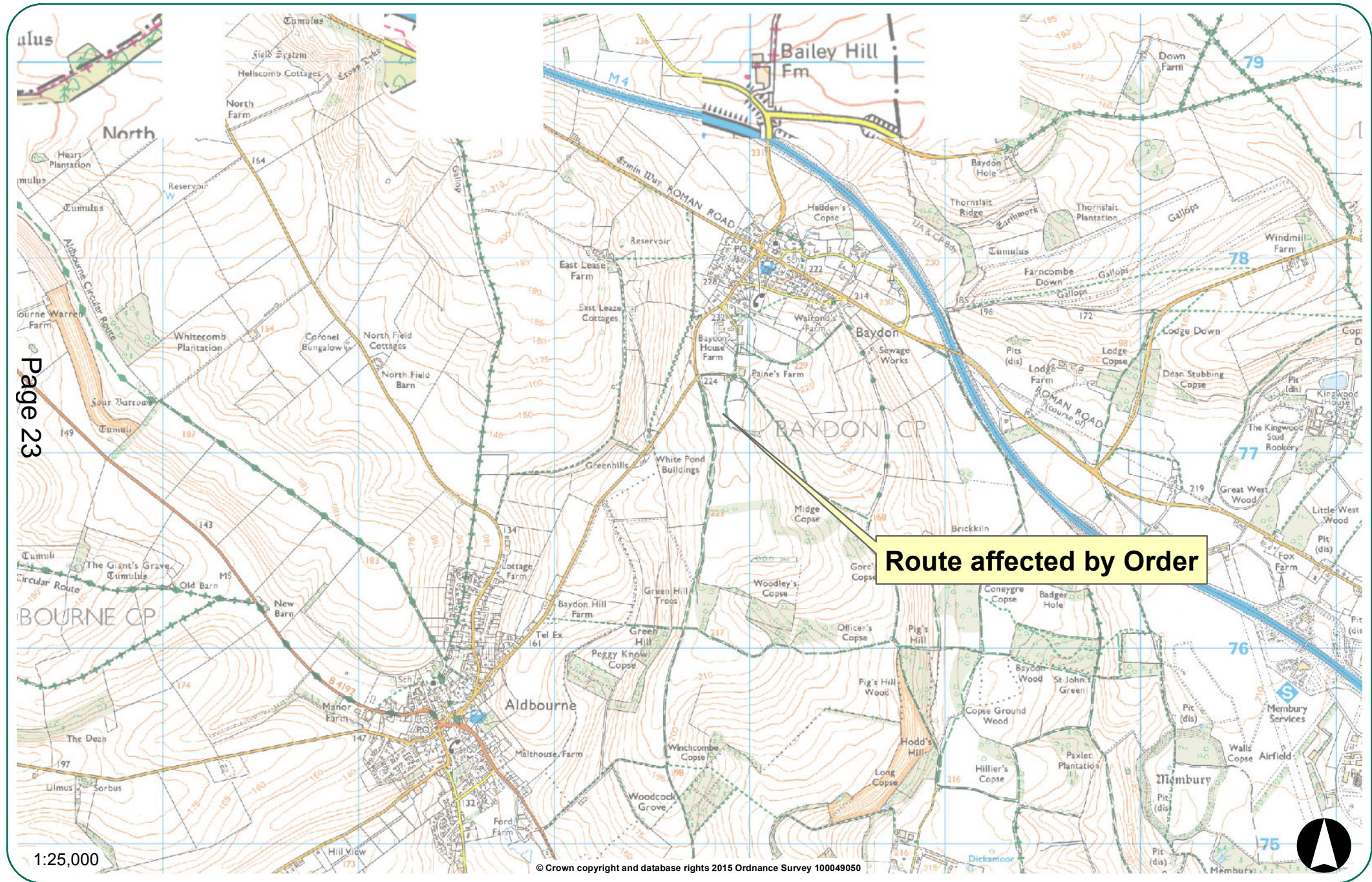
Appendix B – Public Path Diversion Order and Plan

Appendix C – Decision Report

Appendix D – Objections and Representations

Appendix E – Proposed alternative route

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**PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT
MODIFICATION ORDER**

HIGHWAYS ACT 1980

WILDLIFE AND COUNTRYSIDE ACT 1981

WILTSHIRE COUNCIL

**THE WILTSHIRE COUNCIL BAYDON 2 (PART) AND 11 (PART) DIVERSION
ORDER AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2015**

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 restricted byway and bridleway described in paragraph 1 of this order it is expedient that the line of the path should be diverted.

This order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") because it appears to the authority that the Marlborough and Ramsbury Rural District Council area definitive map and statement dated 1952 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.

Baydon 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 Baydon House Farm, in the parish of Baydon and shown by a bold continuous line on the map contained in this order and described in Part 1 of the Schedule to this order, after confirmation of the order, shall be stopped up on the date on which Wiltshire Council certify that work has been carried out to bring the site of the new highway described in Part 2 of the Schedule into a fit condition for use by the public and thereupon the Marlborough and Ramsbury Rural District Council definitive map shall be modified by deleting from it those public rights 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 path 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 be at the date of certification of the new highway described in Part 2 of the Schedule a bridleway as described in Part 2 of the Schedule over land at Baydon House Farm, Baydon and as shown by bold broken lines on the map contained in this order, and thereupon the Marlborough and Ramsbury Rural District Council definitive map shall be modified by adding that path to it.
4. The Marlborough and Ramsbury Rural District Council area definitive statement dated 1952 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 restricted byway shown as a bold unbroken line on the plan attached hereto leading from point A at OS Grid Reference SU 2774 7740 leading east for approximately 180 metres to point B at OS Grid Reference SU 2791 7740 and that length of bridleway shown as a bold unbroken line on the plan attached hereto leading from point B at OS Grid Reference SU 2791 7740 in south south west, south and west to point D at OS Grid Reference SU 2781 7714. Approximate length 370 metres Width OS Grid Reference SU 2787 7773 to SU 2794 7751 4 metres.

SCHEDULE Contd

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

That length of bridleway shown as a bold broken line on the plan attached hereto leading from point E at OS Grid Reference SU 2775 7737 leading east to point F at OS Grid Reference SU 2776 7736 where south and south east to point G at OS Grid Reference SU 2785 7714 where west to point H at OS Grid Reference SU 2781 7713. Approximate length 310 metres width 4 metres.

PART 3

MODIFICATION OF DEFINITIVE STATEMENT

VARIATION OF PARTICULARS OF PATH OR WAY

Parish	Path no.	Modified Statement to read: -	Modified under Section as specified
---------------	-----------------	--------------------------------------	--

Baydon	2	<u>Restricted Byway</u> from OS Grid Reference SU2774 7741 leading north and east, east north east, east, south south east, south east and south south west where at OS Grid Reference SU 2804 7730	53(3)(a)(i)
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Bridleway leading south east to road U/C 5018 north of Gores Copse

Width Restricted byway section OS Grid Reference SU2774 7741 to SU2793 7745 4.1 metres, SU2793 7745 to SU2800 7744 5 metres (3 metres at SU2800 7744), SU2800 7744 to SU2801 7740 4.1 metres SU2801 7740 to SU 2802 7739 5 metres, SU2802 7739 to SU2804 7737 2.6 metres and from SU2804 7737 to SU2804 7730 5 metres to SU2800 7744 2.6 metres and from SU2800 7744 to SU2804 7730 4.1 metres.

Approximate length 1.27 kms

PART 3 Contd

MODIFICATION OF DEFINITIVE STATEMENT

VARIATION OF PARTICULARS OF PATH OR WAY

Parish **Path no.** **Modified Statement to read: -** **Modified under**
Section as specified

Baydon 11 Restricted Byway from the U/C 5013 at OS Grid Reference SU 2787 7773 leading south south west, south and south east to OS Grid Reference SU 2794 7751 at its junction with Baydon 30. 53(3)(a)(i)

Width 4 metres OS Grid Reference SU 2787 7773 to OS Grid Reference SU 2794 7751.

Approximate length 350 metres

Baydon 32 Bridleway from its junction with path no. 8 at OS Grid Reference SU 2775 7737 leading east to SU 2776 7736 where south and south east beside tree belt to SU 2785 7714 where west to its junction with path no. 8 at SU 2781 7713. 53(3)(a)(i)

Width 4 metres.

Approximate length 310 metres

THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
was hereunto affixed this }
13th day of August 2015 }
in the presence of:

Pamela T. S.
Senior Solicitor



8 1814

Diversion of Baydon 2 (part) and 11 (part)

Key

Existing path to be extinguished A ——— B ——— C ——— D

New path to be created E - - - - F - - - - G - - - - H

Unaffected rights of way X - X - X - X - X - X - X - X - X - X -

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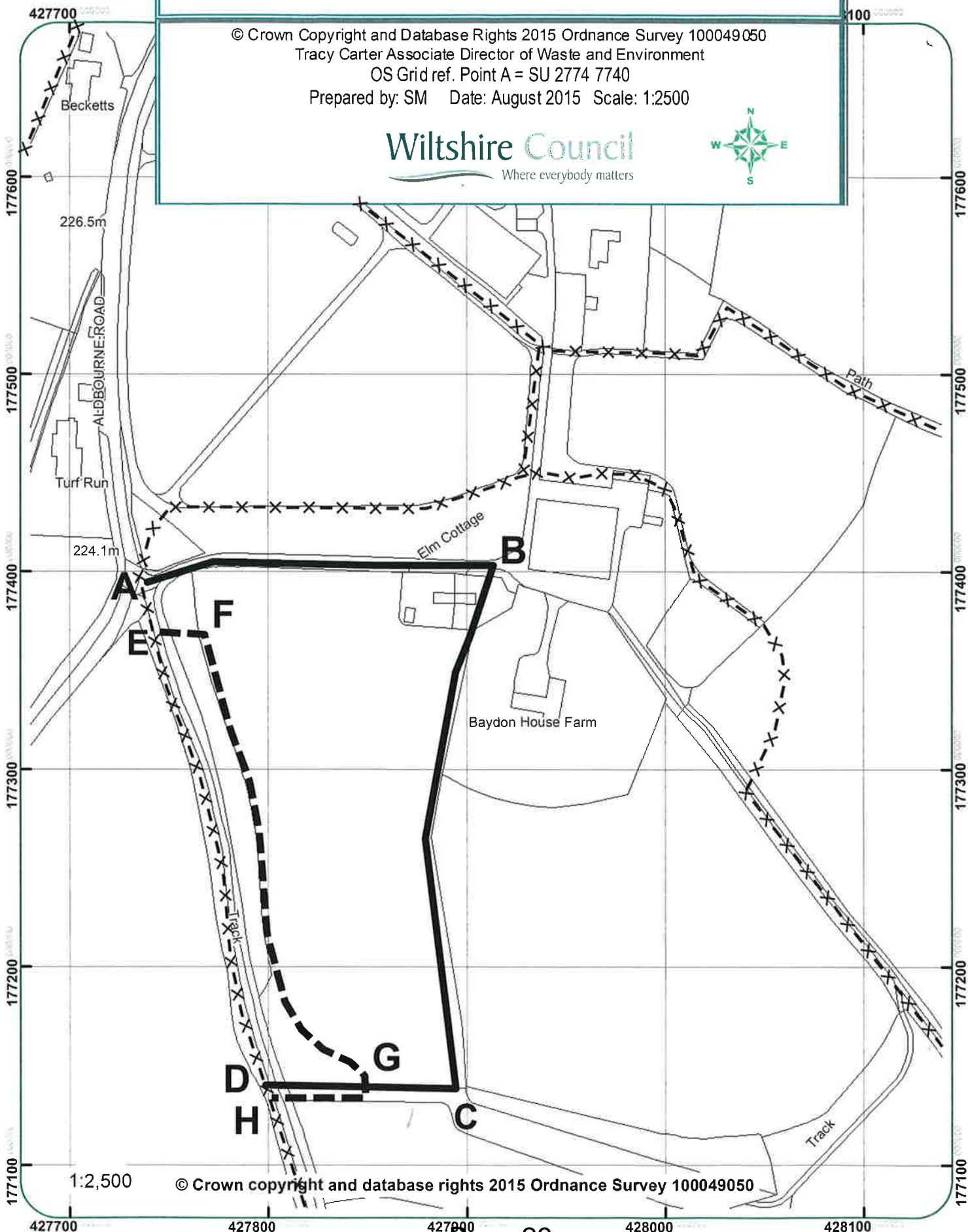
Tracy Carter Associate Director of Waste and Environment

OS Grid ref. Point A = SU 2774 7740

Prepared by: SM Date: August 2015 Scale: 1:2500

Wiltshire Council

Where everybody matters



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DECISION REPORT

HIGHWAYS ACT 1980 S.119

PROPOSED DIVERSION OF BAYDON 2 and 11 AT BAYDON HOUSE FARM, BAYDON

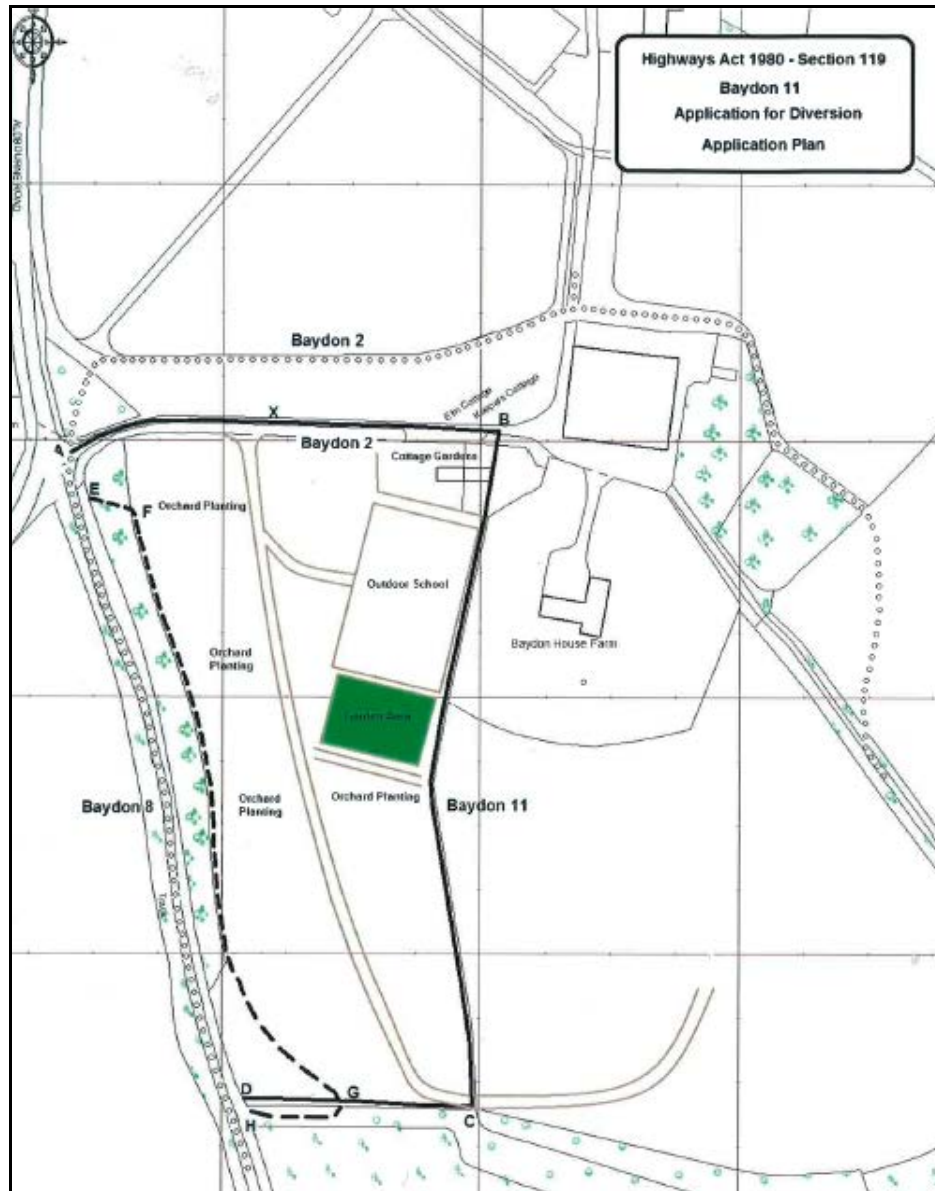
1.0 Purpose of Report

- (i) To consider an application to divert part of bridleways Baydon 2 and 11 at Baydon House Farm, Baydon
- (ii) To recommend that Wiltshire Council makes an order under s.119 of the Highways Act 1980 (HA80) and s.53 of the Wildlife and Countryside Act 1981 (WCA81) to effect this change.

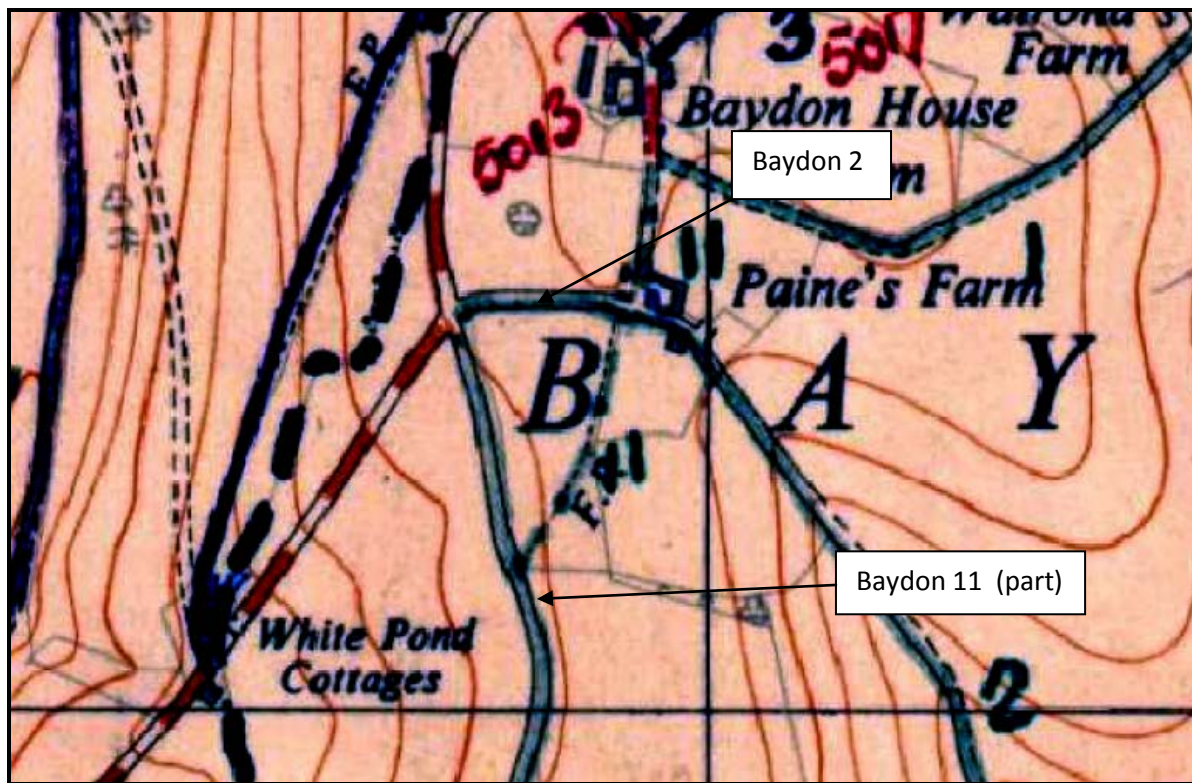
2.0 Background

- 1 On the 12th June 2013 Wiltshire Council received two applications to divert public rights of way at Baydon House Farm, Baydon. The applications affected paths 2 and 11 in the region of the farmyard and associated buildings. The applications were made by the owner of the land Mrs Sally Johnson, Baydon House Farm, Baydon, SN8 2HX and submitted by her agent Michael Wood, ET Landnet Ltd, The Quarry Office, Pen Y Garn, Cefneithin, Llanelli, SA14 7EU.
- 2 One of the applications was made under the Town and Country Planning Act 1990 as planning permission had been granted for the erection of two barns and it was necessary to divert parts of the rights of way to enable the development to proceed.
- 3 The second application was made under the Highways Act 1980 for different parts of the paths and was consulted on at the same time as the Town and Country Planning Act application as the changes to the network needed to be seen together, even though the legal tests for each application were wholly different. Responses showed that some members of the public were far from happy with any of the changes and that objections would be received to the Orders. To give clarity to the changes (for all parties) and to enable the applicant to pursue their permitted development only the Town and Country Planning Act application was proceeded with at that time.
- 4 Further to a public inquiry this application has now been successfully determined and the definitive map and statement amended accordingly.
- 5 The confirmation of the Town and Country Planning Act Order gave clarity to the rights of way network to the north of Baydon House Farm and as a result of this and discussions with Wiltshire Council another application to divert part of bridleways 2 and 11 was made. It is essentially the same as the 2013 application but officers took the view that it would again give clarity to the situation for all sides if this was treated as a fresh application and another consultation carried out.
- 6 Accordingly the second application is the one being considered in this report (application number 2013/16) and has been made under Highways Act 1980 legislation as the sections of Baydon paths 2 and 11 to be diverted are not affected by any permitted development. **Page 31**
- 7 The reasons given for the diversion of the path are appended at APPENDIX 1.

8 A plan showing the proposed diversion was included with the application:



9 Baydon Path number 11 was originally recorded in the Marlborough and Ramsbury Rural District Council Area Definitive Map and Statement dated 1952 as a Road Used as a Public Path (RUPP). The statement records it as a Carriage Road Bridleway (C.R.B.). Baydon Path number 2 was originally recorded as a bridleway and this section remains recorded as one today. However, it is considered that on the balance of probabilities higher rights subsist over this route and as a result any order made extinguishing public rights will address the need to extinguish the unrecorded higher right. The higher right was recognised in the Town and Country Planning Act Order and a restricted byway has been provided to the north. This section of Baydon 2 was left only to facilitate access to the southern part of Baydon 11. See working copy extract at Para. 13.



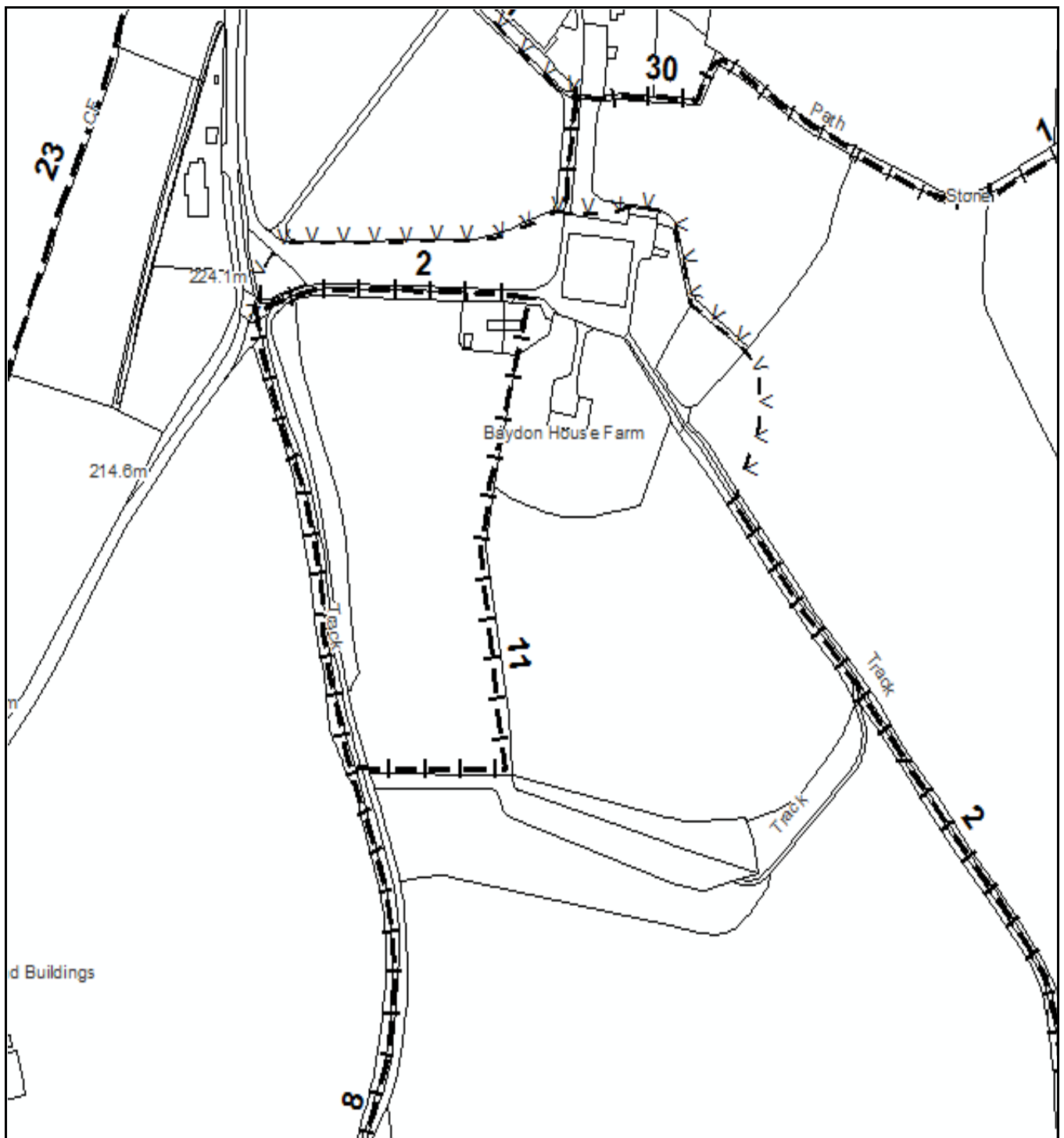
10 The 1952 statement reads:

11 *C.R.B. From the southern end of road u/c 5013 at Baydon House Farm leading south south west past Paine's Farm, across path No. 2 to path No. 8, Green Lane. 550 yards.*

11 Pursuant to the 1968 Countryside Act all RUPPs were reviewed by Wiltshire County Council at the Second and Special Review in the early 1970s. Baydon 11 was reclassified as a bridleway at this time.

12 The line of the bridleway near its junction with path no. 8 was diverted under Section 108 of the Highways Act 1959 by Magistrate's Court Order dated 15th August 1976 and the change in line is reflected in the working copy of the definitive map that the Council uses today.

13 Extract from working copy of definitive map:



14 Current definitive statements:

Baydon 2 BRIDLEWAY. Paynes Lane. From the Aldbourne road C.189, at its junction with path No.8, leading east for approximately 180 metres to its junction with Baydon path no. 11.

RESTRICTED BYWAY from OS grid reference SU2774 7741 leading north and east, east north east, east, south south east, south east and south south west where at OS grid reference SU 2804 7730

BRIDLEWAY leading south east to road U/C 5018 north of Gores Copse

WIDTH Restricted byway section OS grid reference SU2774 7741 to SU2793 7745 4.1 metres, SU2793 7745 to SU2800 7744 5 metres (3metres at SU2800 7744), SU2800 7744 to SU2801 7740 4.1 metres, SU2801 7740 to SU2801 7739 5 metres, SU2802 7739 to SU2804 7737 2.6 metres and from SU2804 7737 to SU2804 7730 5 metres to

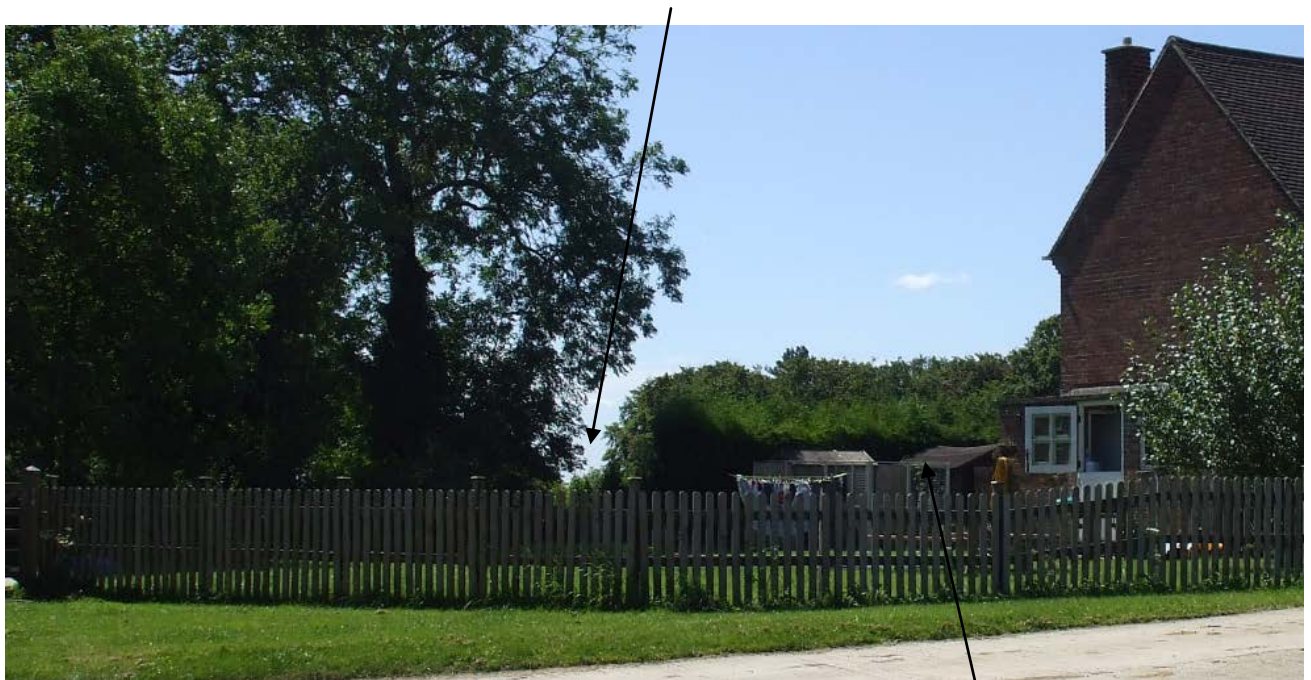
SU2800 7744 2.6 metres and from SU2800 7744 to SU2804 7730 4.1 metres

Approximate length 1.45kms

- Baydon 11 RESTRICTED BYWAY from the u/c 5013 at OS Grid Ref SU 2787 7773 leading south south west, south and south east to OS Grid Ref SU 2794 7751 at its junction with Baydon 30 where BRIDLEWAY leading south for approximately 60 metres to its junction with Baydon path no.2. Continuing as BRIDLEWAY from its junction with Baydon path no 2 at Keepers Cottage leading south for approximately 270m then in a westerly direction to path No.8.
- Width 4 metres OS Grid Ref SU 2787 7773 to OS Grid Ref SU 2794 7751. Approx. length 450 metres

- 15 The route of Baydon path 11 affected by this application has been obstructed for a long time. Officers were able to use the route in 2007 though a small deviation was required at the north end (by Keepers Cottage) as shown overleaf:

Access south possible here



Definitive line

- 16 Aerial photography from May 2006 with definitive line (working copy) overlaid:



17 Although the obstruction of path no. 11 is a long standing issue it is not a consideration for the Council when applying s.119 of the Highways Act 1980. The Council must consider the proposed diversion as if the existing definitive line were available and unobstructed.

3.0 Consultation

18 The following letter was circulated on the 27th May 2015:

Highways act 1980 s.118/119 and Wildlife and Countryside Act 1981 s.53

Application to divert part of Baydon Paths no. 2 and 11 at Baydon House Farm

Wiltshire Council has received an application to alter parts of bridleways 2 and 11 at Baydon House Farm. Please find enclosed a location plan, a detailed plan showing the proposal and some explanatory notes provided by the applicant.

The proposed new route is currently in use by the public on a permissive basis though in the event that it were to be recorded as a public bridleway the width would be increased to 4 metres for its length. The route does not have any gates. Although it is not apparent from the map the proposed new route is not merely a duplication of Baydon 8 and offers different views, aspect and surface. Your comments are invited on the suitability of this route as an alternative for the current route along the drive, past the cottage and outdoor school and around the field edges.

Any comments you may have on the proposal are welcome and I would be grateful to receive them by Friday 3rd July 2015.

19 The letter, copy of the plan at paragraph 8 and the applicant's reasons for the diversion (Appendix 1) were circulated widely to statutory consultees, user groups and other interested individuals who had responded fully to earlier consultations:

- The Auto Cycle Union
- Commons, Open Spaces and Footpaths Association
- Wiltshire Bridleways Association
- Wiltshire Cycling Touring Club
- British Horse Society

Baydon Parish Council
Wiltshire Councillor James Sheppard
Wiltshire British Horse Society
Byways and Bridleways Trust
British Driving Society
Wiltshire Council Rights of Way Senior Warden
Wiltshire Council Ecology Consultations
Wiltshire Ramblers P Gallagher
Mr B Riley
Mr and Mrs Johnson (applicant)
Mr M Wood (agent)
Mr B Gribble
Mr C Philips
Mr B Potter
Ms B Furber
Ms P Bishop
Mrs J Rees
Mrs A Smith
A and P Dobson
Mrs E Johnson
Mr W McCleery
Mrs A Newman
Mrs D Newman
Mr K Smith
Ms N Archer
Mr M Rowse
Mr and Mrs D Jukes
Mr D Tilbury
Mr A Kind
Thames Water
Scottish and Southern Electric plc
Wales and West Utilities
Southern gas Networks
BT Openreach
LinesearchbeforeUdig
Digdat

4.0 Consultation Responses

20 Virgin Media 26.05.15

No apparatus affected.

21 LinesearchbeforeUdig 26.05.15

No apparatus affected.

22 Openreach BT 26.05.15

Underground plant and joint boxes located on Baydon 2.

23 Case Officer's Comment

The rights for Openreach BT to have and access equipment at highway locations will be protected in the Order.

24 **Thames Water 26.05.15**

No apparatus affected.

25 **Ms B Furber 04.06.15**

"I am personally very happy with the new diversion, and walk it fairly regularly. I have never been able to access Baydon 11 (B to C) in the 38 years that I have been in Baydon, however I have ridden down Baydon 2 regularly.

The new route is attractive and easier on the feet, I use it to avoid some of Baydon 8 (which can be very muddy most of the year) to walk down towards Aldbourne. I also use it as a loop (back along Baydon 8) if I need a very short walk with the dogs.

The new route is certainly not less convenient but more pleasing to the eye.

I hope that when the new route is widened to 4 metres as requested by Wiltshire Council, that the tarmac surface is not increased. Grass is far more in keeping with the countryside and reflects the original footpath BAYD 11. There is certainly no need to duplicate BAYD 2's surface!."

26 **Mr B Gribble 05.06.15**

"I thank you for your letter and I wish I could give you some encouragement.

These paths around Baydon House Farm have been a real pain and I suspect from the tone of your letter that it is a last chance attempt to get rid of a 'running sore' in your department.

This letter will not help in that respect because I find the proposed alternative route for paths 2 and 11 totally unacceptable. It is ludicrous having two paths running within a few meters of each other and to pretend that they constitute a circular route. You might as well merge paths 2 and 11 into path 8 and extinguish path 11 because it is as certain as night follows day that your alternative route will not be used. If you are to achieve an alternate route for paths 2 and 11 that is of similar length and offer equal public enjoyment it must be moved east of Baydon House Farm and then link up with point C on your drawing. If you cannot do this then both paths 2 and 11 should remain where they are and the landowner forced to re-open them for public use.

I also take issue with your misleading statement that path 11 had been obstructed for 30 years. It may have been neglected for 30 years but it has always been passable and available for public use until 6 years ago when the current landowner moved in. Path 11 passes through a field that was, up to 6 years ago, used for agriculture, mainly cattle grazing. It was easy to walk through although few people did so the route was not well trodden. This is quite common for footpaths through agricultural land. However all changed when the current landowner arrived. The land was taken out of agricultural use and an equestrian school built across path 11. A large wall was erected on the path and various obstructions installed to make passage by the public very difficult. So path 11 is impassable at the moment because the current landowner chooses it so. It was not like that for the previous owners (within my 35 years in Baydon).

As you know a landowner has a legal obligation to keep rights of way on their land open for public use at all times and the current landowner of Baydon House Farm has been in breach of this obligation almost from the day he moved. It is hypocritical of your department, the Council and the Parish council who are all aware of this obligation have made no visible effort to force the landowner to re-open path 11. And yet at the same time we see plenty of activity, including your recent letter, to do all you can to promote the landowner's further interests. Your letter is heavily biased in favour of the landowner and your arguments are aimed at persuading the public to accept what is essentially a bad deal. If your proposal goes ahead routes ABCD and EFGH will disappear and Baydon will have lost about 550 metres of 'prime' footpath during the last 6 years (I use the word prime for paths that are so close to the village centre that they are easily accessible by all residents). This 550 metres of path is a significant proportion of the total 'prime' paths in our village. This is bad news for the walking fraternity in Baydon.

So I am asking you again to show a bit more sympathy to footpath users, fight a bit harder for their rights and for our children and not kowtow to the wealthy landowners around us."

27 **Case Officer's Comment**

Although it is clear that this section of Baydon 11 is currently obstructed at both ends it is agreed that it was possible to walk the definitive line, or a route very close to it in 2007 when I tried it. It is also agreed that the route should be available for the public and that the Council has a duty to ensure that it is so. However, whether or not it is currently obstructed is not a matter for s.119 and the Council must consider the merits of the diversion as if the way were fully available. Obstruction is therefore not a relevant point.

28 Mr Gribble considers that the proposed new route will not be used and will become overgrown and impassable resulting in the loss of 550 metres of path. Acting on an application the Council consulted on the extinguishment of this section of Baydon 11 in 2012. Consultation responses firmly showed a desire for local people to retain the path as they liked the short circular walk option it gave them. As a result the Council turned down the application.

29 Although this response highlighted the need to resolve the issue of the availability of Baydon 11 south of Baydon House Farm significant changes to the rights of way, land use and development of the farm have occurred since that time.

30 Even if Baydon 11 were to be made available again it would pass directly through a garden, very close to the porch and door of a cottage, very close to a manege, across an access drive to the main house and through a gate. Access to the path would be along Baydon 2 which is also the main entrance to the farm which is gated.

31 Officers therefore consider that if a more accessible and well provided route were offered, then, given the previously stated desire for a path, it would be likely to be well used.

32 It is therefore agreed that the proposal would lead to a loss of 200 metres of right of way but not 550 metres as suggested by Mr Gribble.

33 Although it is agreed that a better circular route would be achieved via a route south and east of the house linking to Baydon 2 this route has not been proposed by

the applicant. The Council does have powers of creation though these are unlikely to be exercised at this time.

34 **Mrs J Rees 06.06.15**

"I am writng to say I have no objection to the part closure of bridleway from B – C – D. It used to go from B – D until it was diverted round the headland in the late seventies. I feel it should have been deleted then. I also do not object to the closure for bridleway 2 from A – B. I do think that the new sign post on green lane bridleway 8 is not in the correct position. Section 27 of the Countryside Act 1968 states that signs should be placed where the path leaves a metalled road. This sign is misleading as to where bridleway 2 is."

35 **Officer's Comment**

The matter of the signpost has been raised with the rights of way warden for the area. Photographic evidence from 2007 does show the sign correctly placed at the roadside and not in its current position. It has clearly moved.

36 **Mrs A Smith 09.06.15**

"I am deeply saddened and feel quite let down by the system.

This application is exactly what we had feared would happen when Mr and Mrs Johnson were applying for both planning permission and subsequently permission to move the footpaths, supposedly in order to facilitate the building of machinery stores- which to date have not been commenced beyond groundworks- despite more than six months having elapsed since it was clear they had the footpaths moved.

Whilst I object most strongly about this change to the footpaths for many of the reasons given in the previous case; the footpaths were there when the property was bought and should have been taken into consideration of their plans; it takes away historic routes; it doesn't allow for what may occur in the future and it doesn't go any way to compensate the public now or in the future for the loss of access: it is unlikely that it will make any difference because the grounds on which it is possible to object have been diminished by the previous application- for example distance travelled as being acceptable, this new application reduces the travel distance since you can no longer go through the yard!

I still believe this is not an acceptable alternative route as it more or less duplicates the route already in place and a better alternative would be to continue along the line DC projected through the rough woodland to meet the existing track (seen bottom right of the plan supplied) and progress down onto meet Baydon 2 (I think) south east of the new route. Please note: I am NOT suggesting the route marked on your map close to the house, which would end close to the start of the new route but more to the south. The grounds for this are to compensate the public for the loss of a good circular route by the provision of an alternative circular route.

The applicant suggests they are keen to work with the local community- I would suggest they are keen to work to achieve their ends. They are certainly less keen to work with people who do not share their opinion. I suggested this route to Mrs Johnson but she made it clear this would not be something she wished to discuss.

What really saddens me is that it seems that this could easily have been foreseen and should have been taken into consideration at the last hearing. I believe most of

this development has been to reduce the public access close to their house. Access which has been in place for generations and the public/ private land owners have got along fine despite the area being much more realistically a farmyard, whereas now it is substantially only horses for pleasure for folk in the 'big house'. My belief is that if they wanted that level of privacy, they should not have bought this property.

Rights of way are extremely costly as was found in Bucklebury when the Hartley Russells won their case to charge local houses for the right of way to reach the road. It should therefore follow that in the case of the removal of the right of way the landowner should compensate each and every one who has that right, annually for perpetuity. Maybe that sort of decision would deter land owners from attempting to extinguish/move rights of way."

37 Officer's Comment

Mrs Smith also suggests an alternative route south of the house, however this has not been put forward by the applicant and is unlikely at this time to be the subject of any creation order promoted by the Council.

38 Mr P Gallagher, The Ramblers 18.06.15

"I am responding to your letter dated 27 May, setting out the applicant's latest diversion proposals and the reasoning behind them.

We do not consider the proposed diversion route to be acceptable. As you know, it is almost identical to that which the applicant proposed in 2013. We advised then that we did not think it satisfactory and we understand that other respondents were of the same view.

We believe that the proposed route would make the way as a whole less enjoyable to users than the existing obstructed route. We accept that E-F-G has a different aspect to the parallel Baydon 8 but we think it adds little to the overall walking experience. To the west, you see the other side of the hedgerow which you can see from Baydon 8. To the east, because the ground rises, you have near views of grassland and trees with nothing of particular interest and no long-distance views. It is not possible to see horses being exercised in the Outdoor School, which would have added interest, because the applicant (for perfectly legitimate reasons) has chosen to screen it off with trees. By contrast, the existing route B-C is on the crest of the hill and offers much more extensive views to the east.

When we responded to the 2013 consultation we proposed an alternative diversion whereby B-C would be replaced with a new route from C to a point on Baydon 2 south-east of the farm. C-D would be retained. We understand that the applicant is unwilling to support this option and we understand their concerns about safety and security. However, we would still like to find a solution which would provide a circular walk from the village including the newly diverted section of Baydon 2. We believe that many local people would welcome this.

We therefore wish to put forward a slight variant to our previous proposal which we hope the applicants would be prepared to consider. From Baydon 8, the path would either follow the existing D-C or an alignment close to it, perhaps passing through the existing field gate immediately to the south of H. It would then continue in a roughly easterly direction to join Baydon 2 at SU 281772, where there

is another existing field gate. This alignment would take the junction with Baydon 2 further away from the farm than our previous proposal and should, from my observations on a recent site visit, not have any adverse impact on the equestrian activities.

Finally, I should make clear that if the Council decides to make an order to allow the diversion which the applicant has proposed I would anticipate that Ramblers will wish to object.”

39 Officer’s Comments

Mr Gallagher is the third respondent to suggest a better alternative route being to the south and east of the farm, however, this has not been proposed by the applicant and is not likely at this time to be the subject of any creation order promoted by the Council.

40 Mr Gallagher raises the valid observation that the view to the east is diminished along the proposed diversion route. It is agreed that it is though some of these views may be enjoyed from other parts of the network (Baydon 2). However, it is considered that although many rights of way in Baydon offer remarkable panoramic views, this part of Baydon 11 is not one of them.

41 Wiltshire Bridleways Association 09.07.15

“Following a recent site visit by myself, this was one of the items dealt with at our meeting last night...the decision made was that WBA will not be submitting any objection.”

42 British Horse Society 03.08.15

“I have not visited the site of Baydon 11 and I cannot seem to get hold of a BHS volunteer covering the area, but having studied the maps and information it seems to be a sensible solution that will be supported by the BHS. If I get a chance to visit the site soon I will.”

6.0 Considerations for the Council

43 Wiltshire Council has the power to make orders for the diversion of public paths under s.119 of the Highways Act 1980.

44 Section 119(1) of the Highways Act 1980 states that:

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

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

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

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

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

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

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

46 Although the Council is only required to consider s.119(1) and (2) to make an order it is clear that it is appropriate for it to also consider s.119(6) at the order making stage.

47 In *Hargrave v Stroud DC* [2002] EWCA Civ 1281, Schieman L.J. stated that:

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

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

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

49 After making an order the Council should also again consider the second test under Section 119(6) which must be met at the Order confirmation stage.

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

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

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

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

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

51 These three matters are:

- Eliminating conduct that is prohibited by the Act
- Advancing equality of opportunity between people who have a disability and people who do not; and
- Fostering good relations between people who have a disability and people who do not.

52 The Equality Act applies to a highway authority’s provision of public rights of way services. (DEFRA Guidance *Authorising structures (gaps, gates and stiles) on rights of way* Oct 2010)

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

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

54 The Council should also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP) - the current plan is entitled Wiltshire Countryside Access Improvement Plan 2015 – 2025 – Rights of Way Improvement Plan 2. ROWIP 2 recognises the Council’s duty to have regard to the Equality Act 2010 and to consider the least restrictive option.

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

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

56 At 7.4 page 32 the Council recognises the following:

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

Conclusion 5 states:

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

- 57 At 2-5 page 38 the Council recognises opportunities for improving access:
- Make routes more accessible, undertake surface improvements and improve maintenance
 - Work within the framework of Wiltshire Council’s Gaps, Gates and Stiles Policy
 - Encourage landowners to follow best practice for furniture design as set out in the above mentioned policy
 - Work in partnership to promote and create accessible trails
 - Improve surfacing to byways open to all traffic where there is a demand for those with mobility impairments to be able to access remote locations

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

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

- 59 ROWIP 2 (page 37 2-2) also recognises opportunities to create a more cohesive network and to create and promote circular route opportunities.

- 60 To ensure accessibility where a route is being diverted Wiltshire Council will specify a level of accommodation works that must be met before the new route is accepted by the Council and any Order made comes into force.

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

- 62 The Council is also empowered to make a ‘combined order’ under s.53(2)A of the Wildlife and Countryside Act 1981. The effect of this means that on the confirmation of the order the definitive map and statement may be changed without the further need to make an order under s.53(3)(a)(i) of the 1981 Act (also known as a ‘legal event order’ or an ‘unadvertised order’).

7.0 Comments on the Considerations

- 63 **S.119(1) HA80** says that Council may make an order to divert a path if it is satisfied it is in the interest of the landowner and/or the public to do so. The landowner’s

interest is demonstrated by the making of the application itself and there are clear benefits for the landowner in having the definitive line removed from their access road, through the garden and past the front door of one of their cottages. The removal of the public from these routes will enable them seek greater security measures should they wish to do so. The applicant highlights the benefit of improved privacy and security in their Reasons for the Application (Appendix 1) and I do not see how it can be argued against. **S.119(1) is therefore satisfied.**

- 64 **S.119(2) HA80** says that the Council shall not alter the termination point to one that is not on a highway or to one that is not on a connecting highway and is not substantially as convenient to the public. The termination points of the one route now recorded as Baydon 2 (part) and Baydon 11 (part) are altered by the proposed diversion. Both new terminal points are on a connecting highway (Baydon 8); the western end of Baydon 2 joins Baydon 8 approximately 15 metres south of its existing junction and the southern end of Baydon 11 joins Baydon 8 approximately 8 metres south of its existing junction.
- 65 The change in the southerly terminus is very close to the existing and is considered as convenient.
- 66 The change in the northerly terminus leads over a similar rise in the ground but does not have a tarmac surface. The rise in the ground has been graded to reduce the fall but no surface improvements are envisaged as the proposed new route has a green surface throughout. There are advantages and disadvantages that need to be weighed when comparing a tarmac surface with a natural surface. Although both surfaces will drain well (being on a low slope) the tarmac one will be more slippery for shod horses (especially in dry conditions) whereas the natural surface will be more slippery for walkers in wet conditions (in dry conditions there is no difference).
- 67 In considering the convenience of both terminal points it is considered that they are substantially as convenient as the existing (each is only a few strides away). **S.119(2) is therefore satisfied**
- 68 The Council could therefore proceed to make an order under S.119 to divert the highway. However, as detailed at paras 46 to 48 it is also appropriate to consider S.119(6) at this stage.
- 69 S.119(6) says that the new path must not be substantially less convenient to the public. The new path is shorter than the existing (existing route 550 metres, proposed new route 350 metres) and has no limitations or conditions attached to it (nor will there be any need for the authorisation of gates for stock control). The new route is easily followed (it is a 4 metre wide fenced route) and has a sense of purpose which, as a result of the recent Town and Country Planning Act diversions, the current route does not have. **The new path is not substantially less convenient to the public.**
- 70 The Council must also have regard to the effect on the public enjoyment of the path as a whole. The existing route (if available) would lead along a tarmac drive that is in part a house and farm access road. There is an authorised gate along the route before it heads south across a garden, past a cottage, past an outdoor school (manege), recrossing the access drive before leaving the land through a gate.
- 71 While some walkers will undoubtedly enjoy seeing this busy environment it is highly unlikely that any horse rider or cyclist would enjoy it. Additionally it is quite possible

that some horse riders would not feel safe using such a feature filled route while out for a rural ride. This is reflected in the consultation responses where walkers are divided in their opinion but horse riders support the proposed change.

72 Officers consider that on balance the new path enhances the public enjoyment of the path as a whole and that balancing the interests of the landowner it is expedient to divert the path. **S.119(6) is therefore satisfied and any Order so made is capable of confirmation.**

73 The Council must also consider the effect on the land served by the existing path. The land is owned by the applicant who will benefit from the removal of the path from its current location. Access and equipment rights will be retained for Openreach BT.

74 The Council must also consider the effect on the land served by the new route. The landowner has lost an area of grazed land to this path, however, since the landowner is also the applicant it must be considered that this effect has been offset for them by the removal of the existing path.

75 The Council must also consider the effect on agriculture, forestry and diversity of fauna and flora. There are no adverse effects associated with this diversion.

8.0 Environmental Impact of the Recommendation

76 There is no environmental impact associated with the recommendation.

9.0 Risk Assessment of the Recommendation

77 Risks to the Council are covered at 10.0 Legal and Financial Implications. Risks to the public associated with the recommendation are considered to be nil, in fact the new route is likely to be present a lower risk to users.

10.0 Legal and Financial Implications

78 Actual costs associated with making an order will be paid by the applicant.

79 If significant objection is received the Council may abandon the Order at no further cost to either the applicant or the Council.

80 If the Council refuses to make the order the applicant may seek judicial review against the Council's decision and may succeed if the Council has been unreasonable. Costs can be high for this (c.£50000).

81 If the Council makes the order and objections or representations are made the Council will consider the matter at a meeting of the Area Planning Committee. That Committee may decide to abandon the order or may decide to support its confirmation. If the Council supports the Order it will be forwarded to the Secretary of State to determine and the Council will pay costs relating to this. This may be negligible if the case is determined by written representations (a few hours of officer time), around £200 to £500 if determined at a local hearing or between £1000 and £2500 if determined at a public inquiry.

11.0 Equality Impact

82 The new route is more accessible than the definitive line.

12.0 Relevance to Council's Business Plan

83 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.

13.0 Safeguarding Considerations

84 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."

85 If an order to divert parts of Baydon 2 and 11 is made, Wiltshire Council will follow procedures set out in Schedule 6 of the 1980 Act and in doing so the Council will fulfil its safeguarding responsibilities.

14.0 Public Health Implications

86 No public health implications have been identified in the diversion of parts of Baydon 2 and 11.

15.0 Options to Consider

- 87
- i) To refuse the application
 - ii) To allow the application and make an order under s.119 HA80 and s.53A(2) WCA81.

16.0 Reasons for Recommendation

88 S.119(1) and (2) are met by the application and an order may be made.

89 S.119(6) is also met if no objections or representations are received and the order may be confirmed by Wiltshire Council if this is the case.

90 There is no cost to the Council associated with paras 88 and 89.

91 The receipt of objections or representations that are not withdrawn will cause Wiltshire Council to reconsider the Order at a meeting of the Area Planning Committee giving a second chance for the consideration of Section 119(6).

17.0 Recommendation

- 92 **That an Order under S.119 of the Highways Act 1980 and S.53A(2) of the Wildlife and Countryside Act 1981 is made in accordance with the application and duly advertised. If no representations or objections are made (or any made are subsequently withdrawn) the Order should be confirmed and the definitive map and statement altered accordingly.**

Sally Madgwick
Rights of Way Officer
06 August 2015

APPENDIX 1 to this report follows:

APPENDIX 1 to Decision Report

**Highways Act 1980 Section 119
Application for the Diversion of Public Bridleways Nos 2 and 11
Baydon House Farm, Parish of Baydon**

The Applicant

Mrs Sally Johnson, Baydon House Farm, Baydon, Wiltshire SN8 2HX

The property is registered at HM Land Registry under Title No. WT129431

The Property

Baydon House Farm, purchased by the current owners in 2010, comprises the main house and cottages which have been completely remodelled, and farm buildings that are now part of a significant equestrian operation used by international equestrians for training. The change to the farm's operation to equestrian requires the retention on the farm of the hay that is cut together with buying in additional hay. With the lack of storage facilities and insufficient space to accommodate horses, together with tractors and mechanical handlers / plant needing to be housed under cover, planning permission has been granted that will shortly see the existing barns extended to provide the additional storage and accommodation needed.

A sand school has also been constructed. The grassland is used to take a hay crop for fodder for the horses and there is some grazing by sheep. Horses are turned out into paddocks.

The farm has four public rights of way: -

- Restricted Byway No 2, which was recently diverted to the north to facilitate the development of the farm buildings for which the planning permission was sought.
- Bridleway No 8, which runs along the western boundary.
- Bridleway No 2, which runs along part of the access road to the farm, and

- Bridleway No 11, which runs across the main drive to the house and immediately adjacent to the outdoor school. It is then partially obstructed where it passes through one of the two cottages.

The latter two paths are the subject of this application.

Description of Existing Paths, 2 and 11

The proposal is as shown on the plan attached.

Bridleway No 2, between points A and 8 on the plan, runs part way along the formal driveway to the farm yard area. It is the residue of the path that was otherwise diverted recently under the Town and Country Planning Act 1990 in order that development of the farm buildings could take place. Midway between the two points there is a field gate across the path.

Bridleway No 11 runs from Bridleway No 2 at Point B to points C and D to join with Bridleway No 8. The route is obstructed and has been for more than 30 years, long pre-dating the current owner's involvement with the land.

The Diversion Sought

The applicant has been anxious to work with the local community in order to resolve the longstanding problem with regard to the obstruction of Bridleway No 11 and to try to provide a new and better facility for use by the public whilst allowing the land to be used effectively and more securely for a major equestrian facility. A section of Bridleway No 2 was retained, following the diversion of the remainder of the path by recent Order and now this serves for no other reason than to allow a legal connection to Bridleway No 11.

The proposal is to formally divert the path **A-B-C-D** to the route **E-F-G-H**. The new route is available on the ground and is now in use by the public on a permissive basis, although it will be widened to achieve a 4 metre width throughout to meet Wiltshire Council's requirements.

The advantages of the proposal are: -

1. It overcomes a longstanding problem with the path's obstruction to provide a usable facility for use by the public.
2. It provides a wide, grass surfaced alternative to a section of Bridleway No 8.
3. It provides a – much-requested – local circular walk for path users within the village.
4. There is no specific need to utilise Bridleway No 11, which only returns to Bridleway No 8 in any event.
5. It improves the privacy and security of the property for the benefit, not only of the owners of Baydon House farm, but also the occupants of the two cottages along the route of Bridleway No2 and to the large numbers of the owner's clients that make use the equestrian facilities.

Diversion Order Confirmation Tests- Section 119(6)

For a Diversion Order to be confirmed, the diverted path must not be substantially less convenient to the public. This takes account of matters such as the length of the diversion, the width, the gradient, and the surface. It must also be expedient having regard to public enjoyment of the way as a whole.

• "Not substantially less convenient"

Length – the length of the path to be diverted (A – B – C – D) is approximately 523 metres. The length of the diversion E – F – G – H is approximately 310 metres. The diverted path is therefore approximately 210 metres shorter. Whilst this is quite unusual, it is more 'convenient' in the sense of being shorter. There is nothing to be gained in terms of 'accessing the countryside' using the existing route- notwithstanding its obstruction- which only returns to Bridleway No 8.

Width – the existing route of Bridleway No 11 has no recorded width, the southern section having been diverted to its present position by Magistrates in 1975, and Bridleway No 2 is around the 5 metre width of the formal driveway. The diverted path will be 4 metres wide throughout in order to meet Wiltshire Council's requirements for a bridleway width.

Gradient – There are no gradient issues, and these are comparable on both existing and proposed routes.

Surface – The existing Bridleway No 2 has a tarmac surface, being the formal driveway to the farm and is not a surface that would normally be in keeping with

use as a public bridleway. The existing Bridleway No 11 is, primarily, grass. The proposed route has a predominantly grassed / earth surface.

Public enjoyment of the way as a whole – The applicant is seeking to provide an outlet for a path that has long-since been unavailable for use by the public and, without some serious enforcement on the part of Wiltshire Council cannot be made available on its 1975 alignment. The proposed route is a pleasant walk / ride within a wide corridor and gives views towards the farm, as well as a different outlook to that obtained from Bridleway No 8. There is little scope to provide a route anywhere else without severely impacting on and compromising the working of the equestrian business and the security and privacy to allow the owners to properly enjoy their property.

The applicant believes that public enjoyment of the way as a whole is not adversely affected by the diversion and that it is expedient to divert the path when balancing the interests of the landowner against the effect on public enjoyment of the way as a whole.

Many users may also feel an element of intrusion into the business area of the farm and, being so close to residences, are likely to prefer the option of being away from areas they might otherwise find intimidating or experience uncertainty in their use of the path. The feel of the proposed route, alongside woodland, provides users with a safe route free from direct interaction with the Baydon House Farm operations.

**Objections and Representations to The Wiltshire Council Baydon 2 (Part)
Diversion Order and Definitive Map and Statement Modification Order 2015**

1) Mr B Gribble, Baydon 05.09.15

"In response to your letter of 14 August I am writing to you again as I am now aware of the reasons why the landowners wishes again to change Baydon 2 and 11.

These reasons form the basis of the above application which Wiltshire Council has chosen to endorse and I wish to make the following comments:

- 1. This application to change Baydon 11, the landowner states, is to 'overcome a long standing problem with the paths' obstruction to provide a useable facility for use by the public' He also states elsewhere that it has been obstructed for more than 30 years.*

This 'long standing problem' only goes back the six years which was when the current landowner took up residence in Baydon House Farm. I have been resident in Baydon for over 35 years and have had no problem walking Baydon 11 until the current landowner came to the village. This problem is entirely his own doing and could be rectified overnight if only he would undertake his legal responsibility and clear the path of all obstructions.

This reason must therefore be discounted.

- 2. 'It provides a well grassed surface alternative to a section of Bridleway 8'*

Baydon 8 is a major right of way about 2 miles long and this alternative route amounts to a very small proportion of its total length. There is no demand for a well grassed alternative to part of Baydon 8 and also the current surface of Baydon 11 is well grassed.

This reason must also be discounted.

- 3. 'It provides a much requested local circular route for path users within the village.'*

As a frequent walker I would not describe the proposed diversion as an acceptable circular route because it consists essentially of two parallel paths, a few metres apart, with one leg clearly visible from the other. This route would provide very little satisfaction and enjoyment compared to the current one. In addition the proposed route is 40% shorter than the current route which the landowner cynically claims is more convenient for 'accessing the countryside'. (If any walker wants to access the countryside they would be well advised to stay on Baydon 8.) The main point is that the current combination of Bridleways 2, 8 and 11 form a sensible and enjoyable circular route and the proposed alternative does not. In fact this application is in conflict with ROWIP2 which is intended to encourage the creation and promotion of circular routes and I cannot see how this proposal meets this requirement.

This reason must also be discounted.

4. *There is no specific need to utilize Bridleway 11 which only returns to Bridleway 8 in any event.*

This is a statement by the landowner who believes there is no need for Baydon 11 in its current position or even his proposed alternative location. (This was also his attitude several years earlier when he made an application to extinguish this part of Baydon 11 which was clearly rejected by Wiltshire Council and the many residents of Baydon who wrote opposing the application). Footpaths are not solely used as a means of going from A to B by the shortest or most convenient manner, they are used for recreational walking, for exercise or to get some fresh air and enjoy the environment outside people's homes, points that the landowner has failed to understand. In addition, Baydon 11 is particularly important to the residents of Baydon because it is so close to the village centre and is easily accessible by all so any alternative route must be equivalent in all aspects.

To illustrate this last point I attach an article from the Times newspaper of 31st August 2015 which reports the recent findings that taking a 25 minute brisk walk each day would lead on average to 7 years of extra life. Many of us are not taking this daily exercise. The circular route comprising of Bridleways 2, 11 and 8 will take about 25 minutes to walk from the centre of Baydon but if we implement the changes proposed in this application the route will shorten, its appeal and satisfaction diminished and it will be even harder to persuade Baydon residents to take more exercise. There is a credible public health issue associated with this application.

5. *It improves the privacy and security of the property...etc*

This is the only reason which the landowner has presented which contains some significance. However the need for extra privacy is diminished because Baydon House Farm is surrounded by a high wall that no user of Baydon 11 path would be visible from the house or from within its garden.

6. *'Many users may prefer the option of being away from areas that they might find intimidating or experience uncertainty in their use of the path'*

Frequent walkers in the country are often uncertain whether they are on the correct path or not. This path is only 500 metres long, if there is any doubt as to where it is, a signpost will eliminate any confusion.

I do not understand why the landowner thinks that the current path of Baydon 11 which has a tall wall on one side and an equestrian field on the other is intimidating. I am sure most users would find it extremely interesting to watch the equestrian activities as they walk by.

This reason must also be discounted.

Of the six reasons mentioned above only one has any significance – the wish to improve the landowners privacy and security. And to do this he is requesting that changes are made to Baydon 2 & 11 which are part of our historical network of public rights of way. It is very unlikely that Baydon 11 is several hundreds

of years old (its direction is from Aldbourne to Baydon church) and numerous previous generations will have used this path. It is not unreasonable for the public to expect to continue using the path for many more generations to come. If we whittle away at these paths by allowing unfair alterations that progressively diminish their appeal and enjoyment we will eventually be left with an amenity that is quite unlike what our forefathers enjoyed.

These paths are our heritage which can play an important role in maintaining the health of our community and if a landowner wants to enjoy greater privacy and security by altering any of these routes he must offer an alternative route with attributes that equal or exceed those of the old route. The alternative path in this application does not meet this requirement.

There is a simple solution – the alternative route should be re-sited east of Baydon House Farm from a point down Baydon 2 connecting to point C where a more equivalent route could be found. By doing this the walking public will be kept further from the landowners house than with the present proposal thus enhancing his privacy and security even further.

2) Mr C Phillips, Baydon 15.09.15

I feel that the proposed path E – F – G – H is no compensation for footpath A – B – C – H. I propose that a good alternative would be to go from H – C to I, the track coming up from Shepherds bottom as marked on the map.

The Ramblers Association recommend this route in a previous letter to the council. Let's try and improve our heritage for a change? Instead of the Council losing it.

3) Mr P Gallagher, The Ramblers 02.09.15

I refer to your letter dated 14 August, advising me that Wiltshire Council has made a Public Path Diversion Order relating to these paths.

I have to inform you that Ramblers objects to this order on the grounds that the diversion will have a negative impact on public enjoyment of the paths as a whole and it is therefore not expedient for the order to be confirmed.

Treating the section of Baydon 11 marked as B-C on the order map as if it were unobstructed, path users benefit from its position on the crest of the hill. It offers attractive views in an easterly direction across the valley to the hillside opposite, which at most times of year will include fields put to a variety of uses and some animals grazing. By contrast, because the land rises to the east of section F-G of the diversion route, views from here are limited to the foreground only and include no features of particular interest.

Additionally, because of the proximity of the diversion route to the existing bridleway Baydon 8, users of Baydon 8 wishing to vary their return route will find E-H of less interest than A-D and therefore less attractive as part of a circuit.

I have a separate query on the order which does not form part of our objection. In Part 3 of the Schedule, the modified statement for Baydon 11 does not include the short length of bridleway which links Baydon 30 with Baydon 2, which is unaffected by

the diversion order. Is this an error in the Schedule or is it intended to re-number this section of path to form part of Baydon 30?

Officer's comment: A short linking length of Baydon 11 has been omitted from this Order. This Order cannot change that part of the statement and so the original statement would remain unchanged. However, it is tidier to add it into the full statement in the order and a request to modify the Order with this will be made to the Planning Inspectorate if the Order is forwarded for determination.

4) Mrs A Dobson, Baydon 30.09.15

Green Lane (Path A) currently has mud for a surface following The Johnson's attempt to mitigate the huge and impassable puddles and thus the new proposed footpath from point A simply replaces Green Lane.

The Johnson's clearly wish not to have the right of way up their drive from A to C and retain their privacy albeit they knew these right of ways were in place when they purchased the property.

In order for ramblers and walkers to enjoy a circular walk I suggest that just below point D (on your map dated 23 April 2015) and just higher than the tree trunk the Johnson's have placed in the lane, walkers are once again allowed to walk up the field opening on the right, up along the field edge meeting at the other end of B (between Baydon House Farm and the workers' cottages) at the end of the avenue of trees. Namely, walking at the lower side of their house. This will join up with the alternative to Green Lane.

5) Mr A Prior, Baydon 24.09.15

I write as a Councillor of Baydon Parish Council and as a resident. Due to dates of meetings and communications about the application being out of sync., a collective PC opinion has not been possible.

I support approval of the application for the following reasons: -

- 1. Opening of the blocked route would not allow the privacy and security reasonably expected by Mr and Mrs Johnson and residents in Keepers Cottage to be achieved. By its proposed location those standards can be met.*
- 2. The diversion does provide a circular route through the field onto BAYD 8.*
- 3. The length is quite adequate when compared with the blocked route. If anyone wishes a longer route for pure exercise they could walk the circular route twice!*
- 4. The 4 metre width enables free movement when walkers and horse riders meet.*

6) Mr A Knowles, Baydon 01.10.15

As Chairman of the Parish Council for Baydon, Wiltshire and a resident of over 10 years, I write to you with regards to the above notice as an official public meeting was not possible to co-ordinate, though now will be on our next agenda. I have however asked all Councillors to pass on individual views so that informed opinions can be drawn.

With specific regards to the proposed diversion application, I support approval of the application for the reasons listed below and hope these are taken into consideration. These are formed from my own opinion and by means of talking to villagers.

- 1. The planned diversion takes into account the wishes of the villagers to be able to continue on a circular route.*
- 2. The unused part of BAYD11 has never been raised as an issue in my time on the Parish Council, only coming into discussion once plans were raised. The majority not wishing to walk through a residence private property.*
- 3. Mr and Mrs Johnson, when purchasing BHF- BAYD11 was never in use and hadn't been for many years, creating a precedence of historical non-usage.*
- 4. Establishing new and accessible footpaths, is a benefit to the village and gives more walkable routes.*
- 5. The added length of the diversion gives back the lost length from where the unused BAYD11 was.*
- 6. The width given provides substantial opportunity for 'all' user types.*
- 7. The needs of the business being operated at BHF should be considered and people have a right to safeguard their business interests.*
- 8. Security and privacy needs to be taken into consideration for both the house and workers based at Keepers Cottage.*

I hope you find the information provided useful and will take note and consideration of the above facts.

Officer's comment: A plan showing the alternative route is attached at **Appendix E**

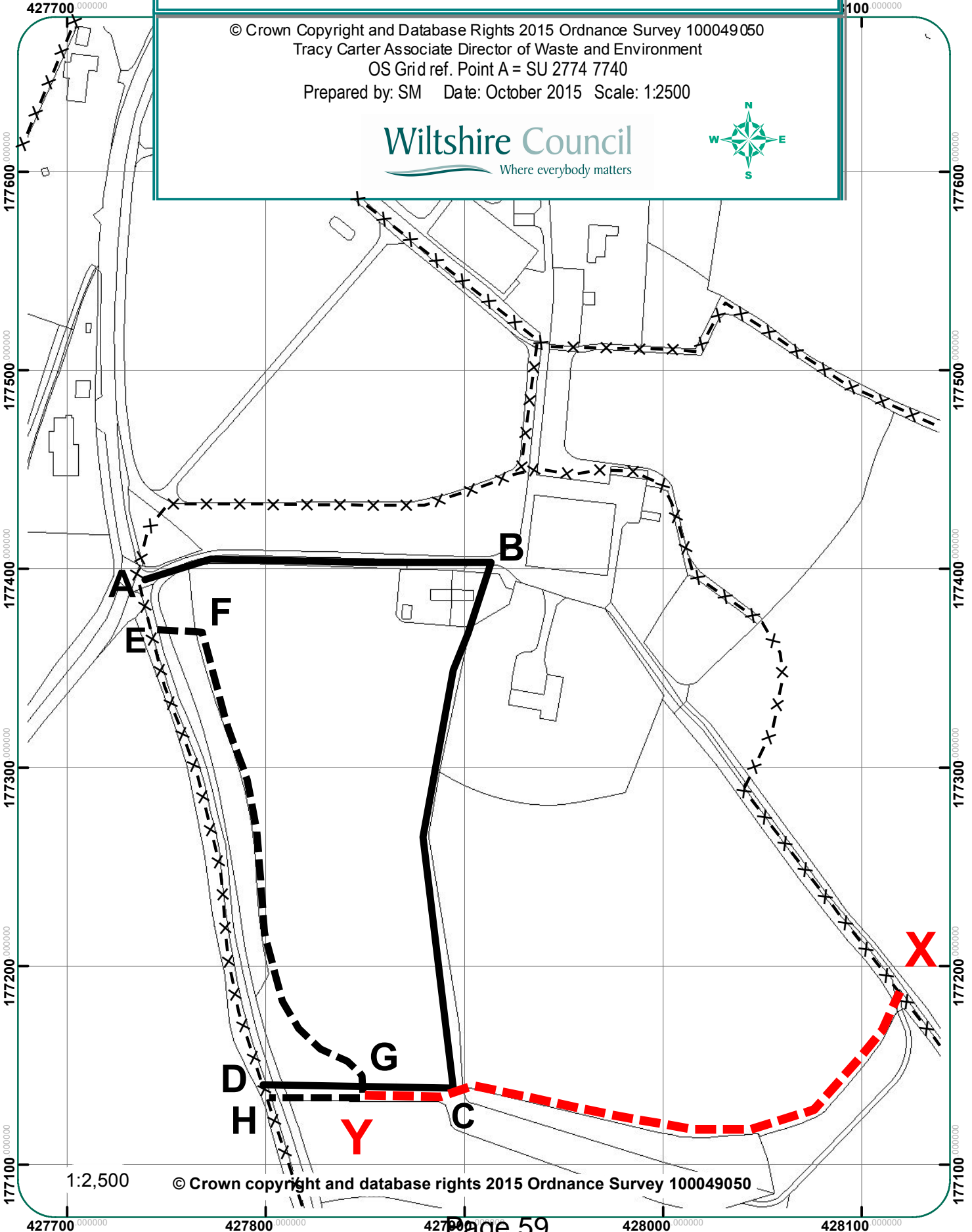
Diversion of Baydon 2 (part) and 11 (part)

Key

- Existing path to be extinguished A B C D
- New path to be created E F G H
- Unaffected rights of way
- Suggested alternative route Y

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 Tracy Carter Associate Director of Waste and Environment
 OS Grid ref. Point A = SU 2774 7740
 Prepared by: SM Date: October 2015 Scale: 1:2500

Wiltshire Council
 Where everybody matters



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**Wiltshire Council
Eastern Area Planning Committee
10th March 2016**

Forthcoming Hearings and Public Inquiries between 29/02/2016 and 31/08/2016

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Date	Overturn at Cttee
E/2013/0083/OUT	Land at Coate Bridge Adjacent to Windsor Drive Devizes Wilts	ROUNDWAY	Outline planning application for residential development of up to 350 dwellings, local centre of up to 700sqm of class A1 retail use, open space, access roads, cycleway, footpaths, landscaping and associated engineering works	COMM	Inquiry	Refuse	05/04/2016	No

Planning Appeals Received between 01/01/2016 and 29/02/2016

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
14/00302/ENF	The Stables Waterhouse Lane Monkton Combe, Wilts	LIMPLEY STOKE	Alleged Unauthorised Building	DEL	Written Reps	-	13/01/2016	No
15/01388/OUT	Land at Quakers Road Devizes	ROUNDWAY	Outline planning application for residential development of up to 123 dwellings together with associated open space, landscaping, parking and access. Access to be taken from existing site access onto Quakers Road	COMM	Inquiry	Approve with Conditions	11/01/2016	No
15/05118/OUT	Land rear of Old School House, Winterbourne Monkton, SN4 9NW	WINTERBOURNE MONKTON	Erection of 3 bed dwelling with all matters reserved except for means of access	DEL	Written Reps	Refuse	07/01/2016	No
15/03513/FUL	Lovelock Cottage Little Salisbury, Pewsey Swindon, Wiltshire SN9 5NB	MILTON LILBOURNE	Conversion and extension of garage to dwelling with revision to entrance	DEL	Written Reps	Refuse	10/02/2016	No
15/06875/LBC	8 The Parade, Marlborough, Wiltshire, SN8 1NE	MARLBOROUGH	Internal alterations, changes to ground floor rear extension and erect new first floor extension over to facilitate change of use from a sandwich shop to a dwelling	DEL	Written Reps	Refuse	06/01/2016	No
15/09328/VAR	8 The Green, Aldbourne Marlborough, Wiltshire SN8 2BW	ALDBOURNE	Removal of Condition 3 of planning permission 15/05628/FUL to allow the development to be used as a separate dwelling and variation of condition 4 of planning permission 15/05628/FUL to allow the demolition of the wall and the creation of 1 off road parking space	DEL	Written Reps	Refuse	02/02/2016	No
15/10175/FUL	The Beeches, Castle Lane, Devizes, Wiltshire, SN10 1HQ	DEVIZES	Proposed basement parking, two storey extension, widening of vehicular access, external insulation, render and associated works to tree (Resubmission of 15/03460/FUL)	DEL	Householder Appeal	Refuse	21/01/2016	No

Planning Appeals Decided between 01/01/2016 and 29/02/2016

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
14/07959/LBC	23 Stokke Common Great Bedwyn Marlborough Wiltshire SN8 3LL	GREAT BEDWYN	Restore and extend existing dwelling	DEL	Hearing	Refuse	Allowed with Conditions	21/01/2016	No
14/07960/FUL	23 Stokke Common Great Bedwyn Marlborough Wiltshire SN8 3LL	GREAT BEDWYN	Demolition of existing dwelling and erection of replacement dwelling	DEL	Hearing	Refuse	Allowed with Conditions	21/01/2016	No
14/08925/FUL	Lane House Lockeridge Marlborough Wiltshire SN8 4EQ	FYFIELD & WEST OVERTON	Erection of 1 no. 5 bedroom dwelling and garage/stable block and associated works	DEL	Written Reps	Refuse	Dismissed	04/01/2016	No
14/12100/OUT	Land adjacent Bell Caravan Park Lydney, Devizes SN10 3PS	URCHFONT	Erection of two dwellings (Outline application to determine access and layout). Resubmission of 14/06079/OUT	COMM	Written Reps	Refuse	Dismissed	11/02/2016	No
15/00219/OUT	Land off Suthmere Drive, Burbage Marlborough Wiltshire	BURBAGE	Erection of detached single storey dwelling (Outline application with all matters reserved)	DEL	Written Reps	Refuse	Allowed with Conditions	29/01/2016	No
15/00409/FUL	South Block The Old Dairy Beeches Farm Whittonditch Ramsbury SN8 2QA	RAMSBURY	Demolition of existing barns, garages and outbuildings and erection of 3 bedroom dwelling and detached double garage and store	DEL	Written Reps	Refuse	Dismissed	19/02/2016	No
15/02107/FUL	14 Marlborough Rd Stibb Green Burbage, Wiltshire SN8 3AU	BURBAGE	Ancillary retirement accommodation linked to the main house for family members	DEL	House Holder Appeal	Approve with Conditions	Dismissed	18/02/2016	No
15/03452/FUL	The Barn Dursden Lane Pewsey Wiltshire SN9 5JN	PEWSEY	Conversion of agricultural barn to live/work accommodation	DEL	Written Reps	Refuse	Dismissed	20/01/2016	No
15/05409/FUL	Land at Baylie Acre Marlborough Wiltshire	MARLBOROUGH	Erection of 2 no. 1 bed flats.	DEL	Written Reps	Refuse	Allowed with Conditions	11/02/2016	No
15/06856/FUL	Hollow Lane Cottage Hollow Lane Wilton, Wiltshire SN8 3SR	GRAFTON	Detached three bay timber garage replacing dilapidated existing garage.	DEL	House Holder Appeal	Refuse	Dismissed	05/02/2016	No

REPORT FOR EASTERN AREA PLANNING COMMITTEE

Date of Meeting	10 th March 2016
Application Number	15/12705/FUL
Site Address	Land at West View House, St Johns Court, Devizes, Wiltshire SN10 1BU
Proposal	Proposed new dwelling (new design to replace previously approved)
Applicant	Mr & Mrs R Jackson
Town/Parish Council	DEVIZES
Electoral Division	DEVIZES NORTH
Grid Ref	400473 161293
Type of application	Full Planning
Case Officer	Jonathan James

Reason for the application being considered by Committee

The application has been called to committee at the request of Cllr. Sue Evans. The key issues for justifying the call in are the impact on the character and setting of the conservation area and the listed buildings and the relationship with the site and the castle and the church.

1. Purpose of Report

To consider the recommendation that the application be refused.

2. Report Summary

The main issues to be considered are the impact of the proposal on heritage assets (the nearby listed buildings, particularly the church and West View House and the Devizes Conservation Area and buried archaeology) and highway safety/parking.

3. Site Description

The site is located in the centre of Devizes. It is situated within the designated conservation area, adjacent to a Grade II listed building (West View House). Running along the southern boundary of the site is a public right of way (DEV11).

The Grade II listed building (Westview House) dominates the north-east boundary of the site, with the topography of the land sloping down from West View to the south-west. The land

changes level significantly up from the existing garden area to the adjacent churchyard to the south/south-east of the site. The site is bounded by a mixture of brick and stone walling. Within the site there is an existing tree which is protected by a Tree Preservation Order (TPO).

To the north of the site is an existing modern cul-de-sac (Castle Court) which shares access to this site via a narrow lane onto the nearby highway adjacent to the town hall.



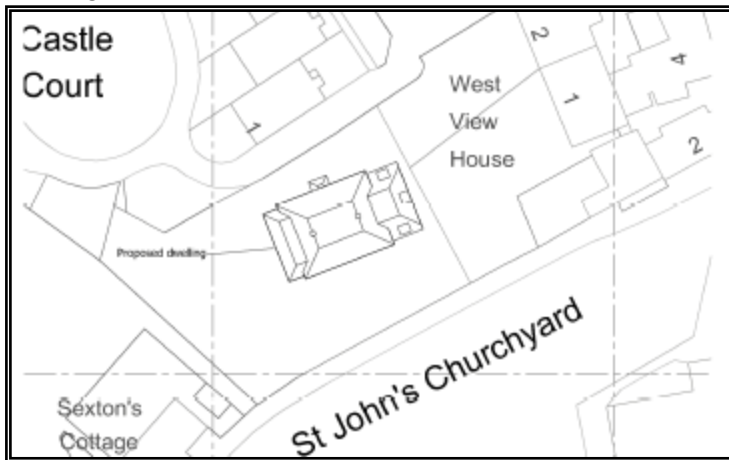
Site Location Plan

4. Planning History

K/39627/L	Removal of 5m section of listed wall, erection of brick pillars and wooden gates.
K/39639	Replacement of section of wall with wooden brick pillars and wooden gates
K/46771/O	Erection of three single storey sheltered bungalows.
K/58395/F	Change of use of former liberal club to 2 no. dwellings and erection of 1 no. new dwelling
E/11/0068/FUL	Proposed new dwelling (amendments to K/58395/F).

5. The Proposal

The application is for the erection of a new dwelling with integral garage and associated parking.



Proposed site plan

The proposed dwelling would measure approximately 17.9m long by 9.9m wide, with an eaves height of approximately 6.0m and a ridge height of approximately 9.0m. The proposed dwelling would be finished in orange-red facing brick to the walls, dark brown plain clay tiles to the roof, traditional sash and flush-casement timber windows and doors, brick and stone walls and paving and brick/cobbles to external hardstanding areas.

6. Local Planning Policy

The Wiltshire Core Strategy (2015) is the determining development plan for the area. It was formally adopted in January 2015 and has been found sound and robust by the Planning Inspectorate. The site is located within the defined Limits of Development (LoD) for Devizes. The following policies are pertinent to the determination of applications at this site:

Kennet Local Plan (2011) saved policy:

- ED19 – Devizes and Marlborough Town Centres

Wiltshire Core strategy (2105):

- Core Policy 1 Settlement Strategy
- Core Policy 2 Delivery Strategy
- Core Policy 12 Spatial Strategy for the Devizes Community Area
- Core Policy 41 Sustainable Construction and Low Carbon Energy
- Core Policy 45 Meeting Wiltshire's Housing Needs
- Core Policy 50 Biodiversity and Geodiversity
- Core Policy 57 Ensuring high quality design and place shaping
- Core Policy 58 Ensuring the conservation of the historic environment
- Core Policy 61 Transport and Development

Neighbourhood Planning:

The Devizes Neighbourhood Plan is now 'made'; it has undergone the necessary procedures to reach this stage and has been found, subject to the modifications recommended in the Inspector's report, to meet the basic conditions as set out in Schedule 4B to the Town and Country Act 1990 (as amended), it does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

National Planning Policy context:

The NPPF describes the presumption in favour of sustainable development as the "golden thread" running through plan-making and decision taking. The following paragraphs are considered pertinent from the National Planning Policy Framework (NPPF) (2012):

- Section 7 Requiring good design
- Section 12 Conserving and enhancing the historic environment

7. Summary of consultation responses

Devizes Town Council: No objections.

Wiltshire Council Ecologist: Supports. All retained trees within the site and immediately adjacent to the site (within a potential zone of influence) should be protected during construction in line with BS:5837:2012 – Trees in relation to construction.

Wiltshire Council Archaeologist: Support subject to conditions ie. a programme of archaeological investigation.

Wiltshire Council Highways: Object as the application fails to demonstrate that adequate parking can be provided on site.

Wiltshire Council Conservation Officer: objects on the grounds that the proposal would have an adverse impact on the setting of nearby listed buildings and the character and appearance of the conservation area.

Historic England: Does not wish to offer any comment on this occasion. Suggests that the application is determined in accordance with national and local policy guidance and on the basis of the Council's own specialist conservation advice.

Wiltshire Fire and Rescue: Standard advice applies. Consideration is to be given to ensure access to the site, for the purpose of fire fighting, is adequate for the size and nature of the development. Consideration should be given to the National Guidance Document on the Provision of Water for Fire Fighting and the specific advice of this Authority on the location of fire hydrants.

8. Publicity

The application has been advertised through site notice, letters to neighbouring properties and through the local press. The following is a summary of the third party comments received.

- The Dore map of 1759 shows the Town Ditch running across the site. The survey for the drainage system in 1988 traced a stone-lined medieval culvert that appears to follow the same line. The applicant should ensure that this is not damaged during any works.

9. Planning Considerations

The principle of development:

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

The Devizes Neighbourhood Plan is 'made' and is therefore a material consideration in the determination of applications within the Devizes area.

Devizes is identified in Core Policy 1 as a market town, the second level within the settlement strategy, which *'have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.'*

The Neighbourhood Plan very specifically seeks to prioritise the development of previously developed land and limits the development of greenfield sites, which is entirely in line with Core Policy 2. In that regard, the neighbourhood plan is in full conformity with Core Policy 2. The proposed development would be within the garden area of West View House in the town centre of Devizes and would therefore constitute sustainable development in terms of location.

Planning permission was granted for a new dwelling on this site under application reference E/11/0068/FUL on 9 March 2011; this consent lasted 3 years and has now expired. However, on 26 June 2008, planning permission and listed building consent were granted (under references K/58395/F and K/58396/LBC) for the change of use of the former Liberal Club (West View House) to two dwellings and the erection of one new dwelling in the vacant plot to the rear of the existing premises (which is the application site). As West View House has been converted to two dwellings these consents remain extant and the principle of a new dwelling on this site is therefore established. However, whilst the development is held to be acceptable in terms of principle, consideration must be given to all material planning matters.

Highway Safety/Parking

Comments received from the Highways Officer note that the principle of a dwelling on this site has been established under historical consent.

It is identified that this application changes the layout of the parking arrangement. It is acknowledged that the parking arrangement for West View House stays the same, as previously approved. However, the parking for the new property has been amended due to its re-siting. The Highways Officer has expressed concern that the required three parking spaces for a property of this size have not been accommodated. The garage, though adequate in width, is not long enough to accommodate two cars end on. Concern is also raised that the position of the garage is not accessible from the angle the car will be entering the parking area. Also, the sloping parking area is narrow and there are concerns regarding how practical it will be to use.

In summary, based on the information provided, the Highways Officer is not satisfied that an adequate parking arrangement can be provided within the site and therefore raises an objection on that basis.

Turning to the plans provided, the concerns raised by the Highways Officer are acknowledged. However, it is considered that the plans could clearly demonstrate the capability to provide for an appropriate level of car parking on site to meet highways standards as there is sufficient space to do so. This could reasonably be resolved through an appropriately worded condition. It is also considered that as this is a town centre location a more pragmatic and flexible approach could be adopted, as there are a several car parks off the town centre that could provide parking opportunities as well. As such, whilst the concerns are acknowledged they would not constitute a robust reason for refusal in this instance.

Impact on Heritage Assets

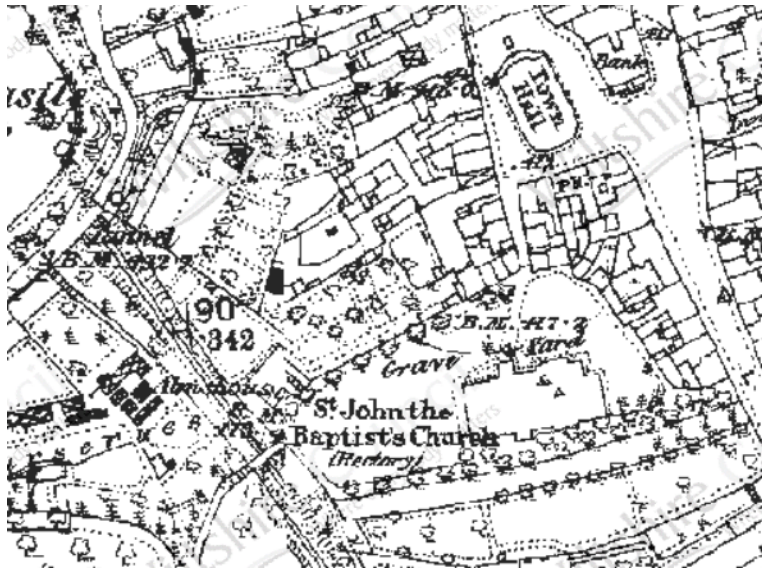
Comments on the application have been received from both the Council's Archaeologist and Conservation Officer. Historic England have also provided comments indicating that the decision should be made in accordance with national and local policy guidance, and on the basis of the Councils specialist conservation advice.

Turning firstly to the potential archaeology on the site, the previous application was approved subject to a condition requiring the undertaking of an archaeological watching brief. A Written Scheme of Investigation (WSI) was approved by the Council in July 2013 and an interim report on the observation of a single foundation trench has been submitted with this new planning application. In line with the Archaeologist's previous response, it is recommended that an archaeological watching brief is maintained during all construction groundwork, including landscaping details. As development plans have changed, a new WSI will need to be agreed by the Council. This could be conditioned in the event that planning permission is granted.

Comments received from the Council's Conservation Officer identify that the application site is located on land to the west of West View House. West View previously formed part of the

Liberal Club, which is a grade II listed building. This section of the property dates from the 19th century however the frontage building onto St John's Court is much older with medieval origins.

The proposal site was originally part of the outer bailey associated with the Norman Castle. It then formed a plot associated with the medieval properties of St John's Court with the Church and Churchyard of St John the Baptist to the south. The first edition OS map of the late 19th century below clearly shows the site as a garden with formal paths and trees.



1st edition OS late 19th century

As mentioned above, West View House is grade II listed and there are a number of other highly graded designated heritage assets in the vicinity. In consideration of the previous scheme for the site, the constraints and sensitivities of the surrounding area were highlighted particularly:

“The churchyard, which constitutes a setting of exceptional historic sensitivity and quality to the Grade I listed St John the Baptist's Church and surrounding listed structure. The views between the church, churchyard and the castle and its earthworks to the north west are highlighted as amongst the most important within Devizes, and it is essential that these be maintained”.

Devizes Castle, its earthworks and walls are all designated as a scheduled monument and a grade I listed building. The list description states that the *rich parklands of the Old Park form with the Castle Mound a fine piece of landscape which should always be preserved.*

In addition, 1 and 2 St John's Churchyard and Sexton's Cottage are other grade II listed buildings adjacent to the site.

The proximity of the site to the castle, church and the medieval core of the town makes the area also sensitive in terms of potential archaeology and this is covered under the archaeologist's comments.

In terms of the historic environment, the primary consideration is the duty placed on the Council under sections 66 of the Planning (Listed Building and Conservation Areas) Act 1990, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

The site is also located within the Devizes Conservation Area and Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 also requires the Council to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

The NPPF outlines government policy towards the historic environment. Section 12 "Conserving and Enhancing the Historic Environment" sets out an overall aspiration for conserving heritage assets. In particular, paragraph 132 which states: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.*

Core Policy CP58 relates to Ensuring the Conservation of the Historic Environment and states that *designated heritage assets and their settings will be conserved*. Core Policy 57 relates to design for new developments.

It is acknowledged that there are two historical planning permissions for a dwelling on this site, one of which is still extant. The 2011 scheme (E/11/0068/FUL) was essentially a revised proposal in order to accommodate a mains drain on the site. This application was also for one dwelling but of considerably greater height, bulk and architectural status than the previously approved scheme.

In commenting on the previous scheme, the conservation officer stated that this is not an obvious development plot. This view is concurred with - as stated above, this area has been open land and in the 19th century was clearly a relatively formal garden. However, the previous permissions have allowed the principle of a dwelling on the site. The key consideration (aside from the highways implications already discussed) is therefore whether the current proposal is acceptable in terms of its impact on the designated heritage assets.

The Design and Access Statement accompanying this application contends that this scheme is of a higher quality and architectural presence than the previously approved scheme. The proposal is for a larger house with a more rectangular plan, two storey instead of single storey with a bedroom in the roof. The proposed house under the current scheme has a much greater height, mass, bulk and architectural status than the previously approved scheme.

In the Design and Access Statement accompanying the approved scheme the following assessment and design justification was given:

"Single storey proposed in order that the dwelling will not interrupt important views into and across the site and will appear very unobtrusive in the context of the churchyard and the general setting of the grade I listed church.

The form of the dwelling will ensure that it is seen as being subordinate to the historic building and will reflect the sense that the new building will appear as if it were ancillary to the main building”.

The Design and Access Statement accompanying this application states the revised scheme is a significant improvement on the approved design in respect of its appropriateness to the setting of the application site and suggests that it has a higher quality of architectural presence.

The application does identify that the visual relationship between the castle and church is highly significant and the fact it cuts across the application site, there is consequently a need to scrutinise the impact of on any development on this view. It also mentions the need to conserve the setting of listed buildings and the conservation area.



Aerial view of the site, showing the visual relationship (yellow arrow), between the Castle and St John's Church.

The comparison photograph with the existing view and the proposed is useful and whilst the view to the actual castle itself is maintained there will be a visual impact on the setting of the church and views to the castle walls and grounds. The churchyard is an important green space within the conservation area and provides a green and peaceful setting to the church. The photograph below also shows that from the churchyard there are wider landscape views to not just the castle but its trees, walls, gate, earthworks and parkland (originally a deer park). It also shows the impact that the roofs of the Castle Court properties have had on the setting, with the intrusion of built form into the view. A new property set closer to the boundary of the churchyard with considerable height and bulk will have a significant visual impact. The rear walls and roof will be highly visible instead of views to the castle grounds in the background.



View towards castle in winter after trees have been pollarded.

This view shows the castle and the castle walls and gateway.



In the photomontage, the ridge height of the new house is shown higher than the terrace of Castle Court in the distance. The views to the castle and vice versa would be significantly reduced through the creation of the proposed dwelling at this site.



View from churchyard of Tower Lee with a view towards the castle walls.

The new house will obscure much of the view of the castle wall and will be highly visible behind the wall. The vistas enjoyed in either direction would be detrimentally obscured by the proposed development, thereby impacting on the sense of place and the quality of the environment.

In a more local view from the road servicing the Castle Court properties, there is a good view of the church. It is considered that the views to the church from this location would be mostly obscured; most of the nave would be obscured from view and this view of the church would be significantly compromised. At present the church tower is seen in conjunction with the body of the church, however, if the new house were to be built the nave of the church would be obscured so the tower would rise above the house and would no longer be seen in association with the rest of the church.



The ridge height of the proposed house is approximately the same height as the eaves of West View.

The design intent for this application has been to copy the high status buildings of the Market Place and refer to the architectural status of Westview house. However, this is a backland site and the development of Devizes is characterised by the high status buildings (in terms of size and architectural style) being located on the principal streets and smaller lower status buildings in the smaller streets and burgage plots. The previous scheme acknowledged that form of development which characterises the Devizes Conservation Area, thus it was kept low in height, mass and architectural pretensions. The previous application appeared more as a lodge type house rather than a large house.

Core Policy 57 of the Wiltshire Core Strategy emphasises that high quality design should:

“Respond positively to the existing townscape and landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials streetscape and rooflines to effectively integrate the building into its setting”.

It is considered that the current scheme due to its height, bulk, rooflines and design is less appropriate than the approved scheme in terms of its impact on the Devizes Conservation Area. It does not follow the established architectural hierarchy of the town. It is further noted that in order to keep the ridge low, the pitch is truncated with flat roofs; on the side wings these appear as an untraditional form. In addition, it will start to compete in terms of height and bulk with West View House whereas it is considered that the new building should be subordinate to the historic building and should reflect the sense that the new building will appear as if it were ancillary to the main building.

In conclusion, the proposed new house due to its height, mass, bulk and design would have an adverse impact on the setting of the listed buildings, particularly the church and West

View House and on the character and appearance of the Devizes Conservation Area. It is considered that this harm would be less than substantial and would not be outweighed by any public benefit. It would therefore be contrary to policies 132, 134 and 137 of the NPPF and Core Policies 57 and 58 of the Wiltshire Core Strategy.

10. Conclusion

Whilst a new dwelling in this location would be acceptable in principle it is considered that the proposal for consideration would have an adverse impact on both the setting of the listed buildings and the conservation area and as such should be refused.

RECOMMENDATION

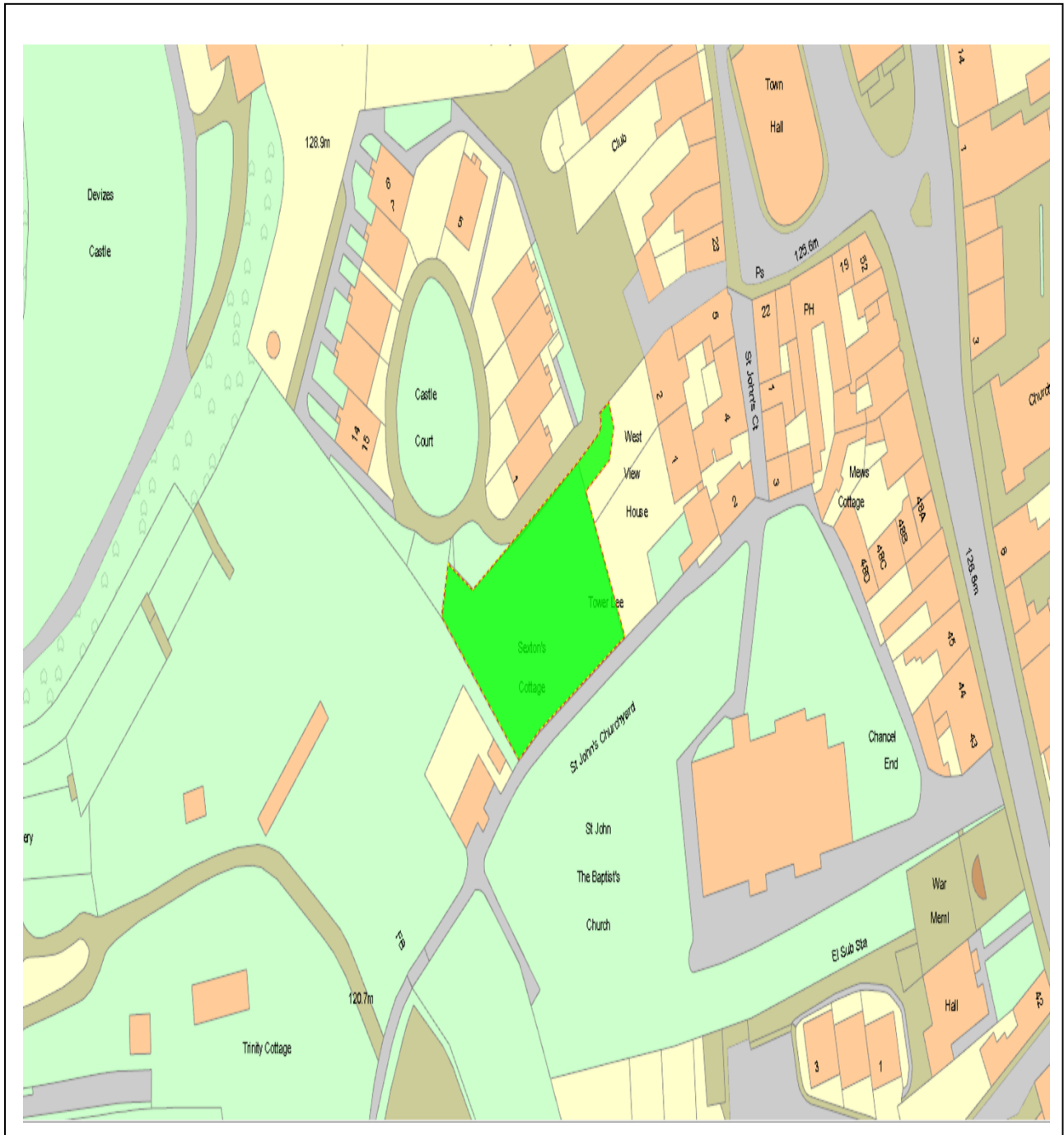
That the application be refused planning permission for the following reason:

- 1) The proposed new house, due to its height, mass, bulk and design, would have an adverse impact on both the setting of nearby listed buildings, in particular the church and West View House, and the character and appearance of the Devizes Conservation Area. There are no public benefits which would outweigh the less than substantial harm caused. The proposal would therefore be contrary to Sections 7 'Requiring Good Design' and 12 'Conserving and Enhancing the Historic Environment' of the NPPF and policies CP57 and CP58 of the Wiltshire Core Strategy.

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REPORT TO THE EASTERN AREA PLANNING COMMITTEE

Application Number	15/12705/FUL
Site Address	Land at West View House, St Johns Court, Devizes, Wiltshire SN10 1BU
Proposal	Proposed new dwelling (new design to replace previously approved)
Case Officer	Jonathan James



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REPORT FOR EASTERN AREA PLANNING COMMITTEE

Date of Meeting	10 th March 2016
Application Number	15/12362/FUL
Site Address	The Drummer Boy, Church Street, Market Lavington, Wiltshire SN10 4DU
Proposal	Change of use and conversion of existing Public House to two 3 bed dwellings, and erection of 1 two bed dwelling to rear of site, with associated amenity space and parking
Applicant	Bentley Slade Ltd
Town/Parish Council	MARKET LAVINGTON
Electoral Division	THE LAVINGTONS AND ERLESTOKE – Cllr Gamble
Grid Ref	401446 154086
Type of application	Full Planning
Case Officer	Ruaridh O'Donoghue

Reason for the application being considered by Committee

This application is brought to committee at the request of Divisional Member, Cllr Gamble.

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be granted planning permission.

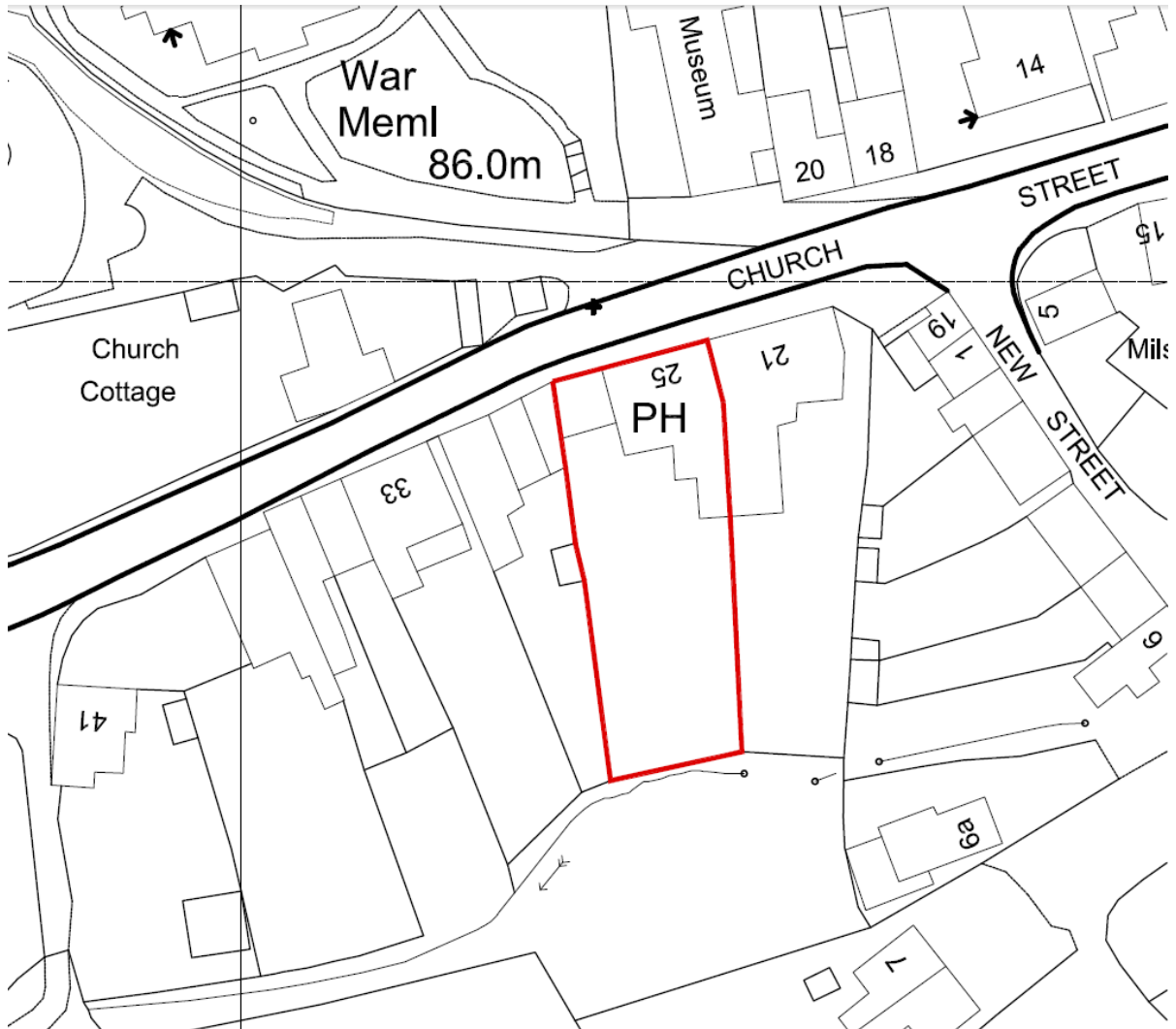
2. Report Summary

The key issues for consideration are the principle of development (whether it is located in a sustainable location supported by national and local planning policy), the design of the building and its impact on the character and appearance of the area, notably, the Market Lavington Conservation Area, the impact on highway safety/parking provision and that of neighbour amenity.

3. Site Description

The site concerns the Public House called Drummer Boy and the land associated with it on Church Street in Market Lavington. The site is surrounded by existing houses to the east and west with some housing beyond a field to the south of the site. To the north lies Church Street, the church and further housing. In planning policy terms the site is within the Limits of Development of the settlement. The site also lies within the Market Lavington Conservation Area. There are no other landscape or heritage designations covering the site.

Below is a map of the location of the site with some photographs.





VIEW FROM FRONT OF SITE



VIEW FROM REAR OF SITE

4. Relevant Planning History

- 15/01222/PREAPP Change of use and conversion to 2 residential dwellings. Erect 2 residential dwellings on land to rear with associated gardens and parking.
- 15/04084/FUL Change of use and conversion of existing public house to two 3 bed dwellings, and erection of two 2 bed dwellings to rear of site, with associated amenity space and parking. Application was refused on 22nd July 2015 due to concerns over the design/layout/conservation impact of the proposal and the lack of private amenity space.

5. The Proposal

The application proposes the change of use and conversion of existing public house to two 3 bed dwellings, and erection of one 2 bed dwelling to the rear of the site, with associated amenity space and parking.

The new dwelling will measure approximately 9.4 metres in length, 4.8 metres in width and 6 metres in height. It is to be constructed out of facing brickwork in a traditional bond and plain clay tiles to match existing local buildings.

Access will be as existing with the proposed development being served by 6 parking spaces (2 per dwelling). No visitor parking has been provided.

During the course of the application, amended plans have been received to revise the boundary treatments to the plots. Whilst some of the close boarded fencing has been retained, the use of brick walling and hedging has been introduced in the revised proposal at the request of officers due to visual amenity concerns.

Below are the proposed elevations of the new dwelling.



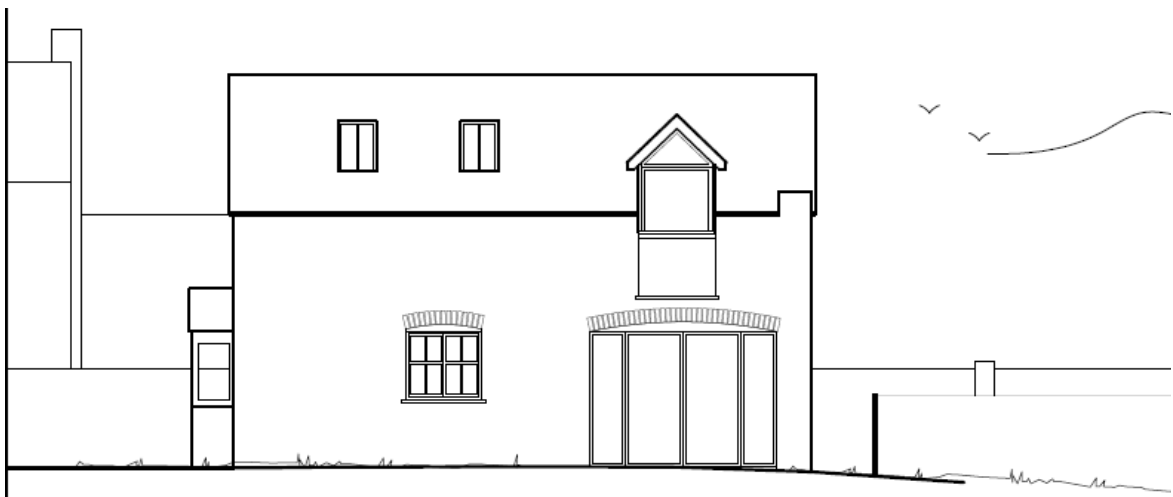
North Elevation



East Elevation



South Elevation



West Elevation

6. Local Planning Policy

Wiltshire Core Strategy 2015 (WCS):

- Core Policy 1 – Settlement Strategy
- Core Policy 2 – Delivery Strategy
- Core3 Policy 12 – Devizes Community Area
- Core Policy 49 – Protection of Rural Services and Community Facilities
- Core Policy 51 – Landscape
- Core Policy 57 – Ensuring High Quality Design and Place Shaping
- Core Policy 58 – Ensuring the Conservation of the Historic Environment
- Core Policy 61 – Transport and New Development
- Core Policy 64 – Demand Management

National Planning Policy Framework 2012

Supplementary Planning Guidance

- Market Lavington Conservation Area Statement (July 2002)
- Local Transport Plan 2011-2016 – Car Parking Strategy

Above the various tiers of planning policy and guidance is the over-arching statutory requirement under The Planning (Listed Buildings and Conservation Areas) Act 1990 to give **special regard** to the desirability of preserving the character and appearance of the conservation area (s.72).

7. Summary of consultation responses

Market Lavington Parish Council

Whilst we accept that it is reasonable to develop the former public house, the Parish Council strongly object to any new development to the rear of the site unless an alternative access can be created.

The Parish Council would like to re-echo its concerns regarding the manifestly dangerous and deeply inadequate access to the rear of the site, which if used, would put users, passing vehicles and pedestrians at considerable risk. The access way is very narrow and does not allow vehicles to pass each other on entry/exit. Visibility on exit is extremely limited. Vehicles exiting the site would have to encroach on the opposite side of the road in order to make the turn to the left. The exit is also at a constricted part of Church Street already subject to congestion, further exacerbating existing traffic issues.

Although reference is made in the planning application to the prior use of the building as a Public House, and the supposed subsequent vehicular movements associated with such an activity, in the Parish Council's experience and knowledge of the area in question, we reiterate the fact that the rear car-park was seldom used by customers due to the points detailed above.

The Parish Council note that the refusal of the previous planning application for this site was not objected to on Highways grounds. From the Case Officer's report it is noted that the Highways Officer based his/her decision on 'the information provided'. However, it is unclear if this decision was based merely on the information received from the applicant, or if an on-site inspection was carried out. The Parish Council respectfully request that before a decision is made regarding highways issues for this planning application, a site inspection is carried out, and full account is taken of local knowledge and historical facts.

Wiltshire Council Conservation Officer

The Conservation Officer is of the view that the proposal will not cause any adverse harm to the character and appearance of the conservation area or the setting of the non-designated heritage asset. If the application is approved they recommend conditions to cover materials and joinery details.

Wiltshire Council Highways Officer

I note that this application proposes to reduce the additional units from 2 to 1.

The highway position remains the same.

I acknowledge that the access is narrow and lacking visibility however there is the fall-back position of a public house and though I note that local information states that the car park was not well used the planning use could at some point be re-opened and attract vehicular movements (for example a pub with restaurant) without any highway comments being sought.

I am minded to adhere to the previous highway request for a Construction Management Statement to be conditioned to ensure that during construction/conversion the adjacent highway is protected as much as possible from hindrance.

I will also require the parking to be conditioned as shown on the submitted plans.

Wiltshire Fire and Rescue Service

Standard advice and guidance.

8. Publicity

The application has been advertised by way of a site notice and consultations with the neighbours.

Letters of representation – Two letters of objection has been received. The following points have been raised:

- Dangerous access
- Height of proposed dwelling
- Visual impact
- Construction traffic concerns given the existing access constraints
- Traffic congestion on main road during construction
- Noise and disturbance from development affecting enjoyment of garden
- Visible from road – harm to conservation area
- Virtually twice the height of neighbouring garage which was reduced to take account of conservation area impact and it will be much more visible
- Loss of privacy as new dwelling is hard up to the boundary
- Visual impact – loss of view to Salisbury Plain from neighbouring garden

1 letters of support has been received. The following points have been raised:

- Parking problems when operating as a pub
- Parking on double yellow lines causing congestion
- Blocking of access to property
- Use of site for housing would have far less traffic impact

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

9.1 Principle of Development

The site is located within the Limits of Development of Market Lavington where under Core Policy 2 of the WCS there is a presumption in favour of sustainable development. The issue of the viability of the pub was reviewed under 15/04084/FUL and its loss was considered acceptable as it accorded with the terms of Core Policy 49. As such, the principle of new residential development and the conversion of the pub to residential use is considered acceptable subject to conformity with other relevant policies in the development plan.

9.2 Design / Impact upon the Character and Appearance of the Conservation Area

S.72 of The Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority to give special regard to the desirability of preserving or enhancing the character and appearance of the conservation area when exercising their functions. In addition, the policies in Chapter 12 of the NPPF and Core Policies 57 and 58 of the Wiltshire Core Strategy are relevant to these proposals, in terms of protection of non-designated heritage assets and the character and appearance of the conservation area. Core Policy 57 is also the design policy and seeks to ensure a high standard of design is met across all new proposals. Since the design of the scheme and its impact on heritage assets is so intrinsically linked, these issues have been considered in the same section.

The historic pattern of development in Market Lavington saw buildings located on the main road through the settlement (High Street and Church Street) with large burgage plots to the rear. Some of these plots have small linear ancillary buildings to the rear which follow the line of the burgage plot. This historic pattern of growth is still evident today in the properties on Church Street surrounding the development. The large green spaces behind the buildings provide an attractive setting for the frontage buildings and offer views out into the countryside. Despite the rear being a car park presently and of low landscape value, it is still an open linear space to the rear of the public house in conformity with the character of the area. In general, the description above is what defines the character and significance of this part of the Market Lavington Conservation Area and its appearance – the test being, whether the proposal will preserve or enhance this character and appearance. In accordance with paragraphs 132-134 of the NPPF any identified harm to this heritage asset will need to be weighed against the public benefits of the scheme.

No external alterations are proposed to the front of the building. As such, no concerns are raised in this regard as the design/impact remains as existing. On page 3 of the Design and Access Statement the following is cited with regards to the rear elevation of the Public House:

“To the rear, where the numerous modern outbuildings will be demolished, historic windows will be replaced to match the existing pattern and materials – this is most obvious to the first floor. Where numerous openings have been knocked through the historic fabric to allow access to a variety of outbuildings, these are combined to create larger openings, again using materials to match the existing.”

From a design point of view, there are no concerns with the proposed treatment of the rear elevation as detailed above. Additionally, the changes to the existing building will not have a harmful impact on the character and appearance of the building or the significance of the non-designated heritage asset. Indeed the removal of the 20th century additions will improve the appearance of the rear façade of the building which can be seen as a conservation benefit.

A previous scheme for two houses at the end of the garden sited across the burgage plot was refused due to the adverse impact this would have on the character and appearance of the conservation area. This revised proposal is for only one new dwelling which is sited closer to the principal building than the previous scheme and runs along the side boundary. The revised location for one house is more akin to the historic pattern of development in the conservation area as it follows the line of the burgage plots rather than cutting across it. Furthermore, the historic map below shows that there were some outbuildings in this area at the beginning of the 20th century.



The proposed new house would be sited some distance from the rear of the front building and beyond the building line of the neighbouring extension/outbuilding. This location is proposed in order to maintain amenity space for the house which forms part of the conversion scheme. Whilst it would be more desirable to site the building closer to the rear of the Drummer Boy, it is considered that this would give rise to other planning issues. This building is higher than a traditional outbuilding but similar to the neighbouring property in terms of height and bulk. The design details of the new house are drawn from other outbuildings in the village and reflect the character and appearance of the locality. In considering the new house in the context of the removal of

the rear additions to the Drummer Boy, the history of buildings on the plot and the size and design of the new build, it is considered on balance that the scheme would not harm the character and appearance of the conservation area or the setting of the heritage asset.

Whilst backland development was raised as a concern under the previous scheme for residential development to the rear of the pub, these concerns were more in relation to the number and position of the dwellings. It is accepted that some limited backland development has occurred in Market Lavington but where so, it has primarily reflected the historic development of the burgage plots, as has now been demonstrated with the revised proposal.

It therefore complies with paragraph 134 and 137 of the NPPF and Core Policies 57 and 58 of the Wiltshire Core Strategy. Control over materials, joinery, rooflight design and landscaping details is recommended by way of conditions in the interests of preserving the character and appearance of the conservation area and achieving high quality design.

9.3 Parking and Traffic

Until a planning permission is granted on the land, the use of the site is still classified as a public house. To the rear of the public house is a car park for staff and patrons. In the event the public house was to be re-opened, the fallback position on the site is that the area to the rear of the pub could be used for parking purposes (notwithstanding how the pub chose to utilise the parking spaces to the rear). The Council is duty bound to consider the fallback position if there is a reasonable chance of it being implemented, and that such use or development would be less desirable than that for which planning permission is sought. In this instance the site already has valid permission to be used as a pub. It has also been established under the previous refusal (15/04084/FUL) that the potential use of the access if the site operated as a pub would be greater than if used for residential purposes (calculation based on number of trips for a rural pub vs. number of trips for a dwellinghouse in a given day).

Officers are of the opinion, however, that the access through the archway is unsatisfactory. It does not consider this access to be safe or indeed desirable. Notwithstanding this concern, given the established fallback position, officers do not consider able to cite this as grounds for refusal. This is because the fallback position would have a materially worse impact through its potential to warrant greater use of the access by vehicular traffic. As such, officers are unable to raise the matter as a ground for refusal. Furthermore, the scheme as proposed is for 1 less dwelling than the previous application (15/04084) where a highway safety reason for refusal was not cited. It is the opinion of officers that significant new information has not come to light and therefore, to introduce the point now would be unreasonable.

The Council's Highways Department has recommended a condition in the event the application is approved to ensure parking and turning areas are laid out and maintained in accordance with the approved drawings. They have also requested a condition to ensure the submission of a construction management plan.

9.4 Neighbour Amenity

The scheme would provide for satisfactory amenity space for the new dwellings which accords with the Council's generally accepted rule of 50m² per dwelling. In addition, it has been demonstrated on the submitted plans that reasonable standards of light to the proposed amenity spaces throughout the year can be achieved.

There would be no amenity impacts associated with the conversion of the existing pub to residential. A residential use would be compatible with the adjoining neighbours and the windows would not introduce any possible overlooking concerns above and beyond the existing relationship – the openings being the same as existing.

Windows at first floor in the new dwelling are orientated such that there will be no detrimental loss of privacy to surrounding properties. However, there is a potential through the exercising of permitted development (PD) rights to cause direct overlooking if windows were to be installed in the rear elevation (currently none are proposed). As such, it would be prudent to remove PD rights for new openings above ground floor level in the rear elevation in the interests of preserving No. 21's privacy levels.

The height and scale of the new dwelling is such that it will not cause an adverse loss of light to the neighbouring properties, nor will it have an overbearing impact.

Neighbour comments have been raised regarding the significant visual harm the proposal would cause to their property. The impact arising would be to a private view which is not something the planning system can take account of.

The proposal is therefore considered to be in accordance with the requirements of Core Policy 57 in relation to neighbour amenity.

10. CIL contributions

The development as proposed would be CIL liable in accordance with Table 2.1 of the Wiltshire CIL Charging Schedule May 2015. The CIL informative should be attached to any planning permission granted.

11. Conclusion (The Planning Balance)

The scheme is considered to be of acceptable design having no likely adverse impacts upon the reasonable living conditions of the occupiers of adjoining residential properties. The public benefits of the scheme are considered to outweigh the identified harm to the Market Lavington Conservation Area. No severe harm has been identified through lack of parking or associated traffic impacts given, as highlighted above, the fallback position. The proposal is therefore in general accordance with the criteria of the policies of the WCS and central government policy contained within the NPPF.

Planning law requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise (NPPF para 11). The proposal does accord with the development plan (the WCS) and no other material considerations have been identified. As such, the application is recommended for approval subject to any of the conditions outlined in this report.

RECOMMENDATION
Approve with 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 and documents:

Application Form

Design and Access Statement

Block & Site Location Plans - Drg No. 5

Existing Site & Buildings - Drg No. 6

Proposed Site Plan - Drg No. 10 Rev D

Proposed Floor Plan - Drg No. 11 Rev A

Visuals - Drg No. 12 Rev C

Visuals - Drg No. 13 Rev D

Elevations - Drg No. 14 Rev C

Proposed Pub Elevations - Drg No. 16

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

- 3 No development shall commence on site until the exact details and samples of the materials to be used for the external walls (including any boundary walling) and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

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

- * location and current canopy spread of all existing trees and hedgerows on the land;
- * full details of any to be retained, together with measures for their protection in the course of development;
- * a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- * finished levels and contours;
- * means of enclosure;
- * parking layout;
- * all hard and soft surfacing materials; and
- * minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc).

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

5 No development shall commence on site until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The details should include the hours of construction, the number and type of construction vehicles, the parking arrangements for them and the details of loading/unloading of materials. The development shall then be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner and to ensure that the amenity of the local highway network is adequately protected.

6 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of any part of the development 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.

7 No windows and doors shall be installed on site until details of all new external window and door joinery have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include depth of reveal, details of heads, sills and lintels, elevations at a scale of not less than 1:10 and horizontal/vertical frame sections (including sections through glazing bars) at not less than 1:2. The works shall be carried out in accordance with the approved details.

REASON: To ensure that the development is undertaken in an acceptable manner, in the interests of preserving the character and appearance of the conservation area and its setting.

8 No part of the development hereby permitted shall be brought into use 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.

9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window, rooflight or any other openings, other than those shown on the approved plans, shall be inserted above ground floor level in the eastern (rear) elevation of the new build unit hereby permitted.

REASON: In the interests of residential amenity and privacy.

10 The rooflights hereby approved shall be of the 'conservation' type with a single vertical glazing bar and mounted flush with the roof slope.

REASON: In the interests of preserving the character and appearance of the conservation area.

11 The external flue hereby permitted shall be finished in a matt black colour and maintained as such thereafter.

REASON: In the interests of preserving the character and appearance of the conservation area.

12 The new dwelling hereby approved shall achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until evidence has been issued and submitted to, and approved in writing by, the local planning authority certifying that this level or equivalent has been achieved.

REASON: To ensure that the objectives of sustainable development equal or equivalent to those set out in Policy CP41 of the Wiltshire Core Strategy are achieved.

13 The converted dwellings from the former public house shall achieve the BREEAM's Homes 'Very Good' Standard. No converted dwelling shall be occupied until a post construction stage certificate has been issued for it and submitted to, and approved in writing by, the local planning authority certifying that the 'Very Good' standard has been achieved.

REASON: To ensure that the objectives of sustainable development set out in policy CP41 of the Wiltshire Core Strategy are achieved.

14 INFORMATIVE TO APPLICANT:

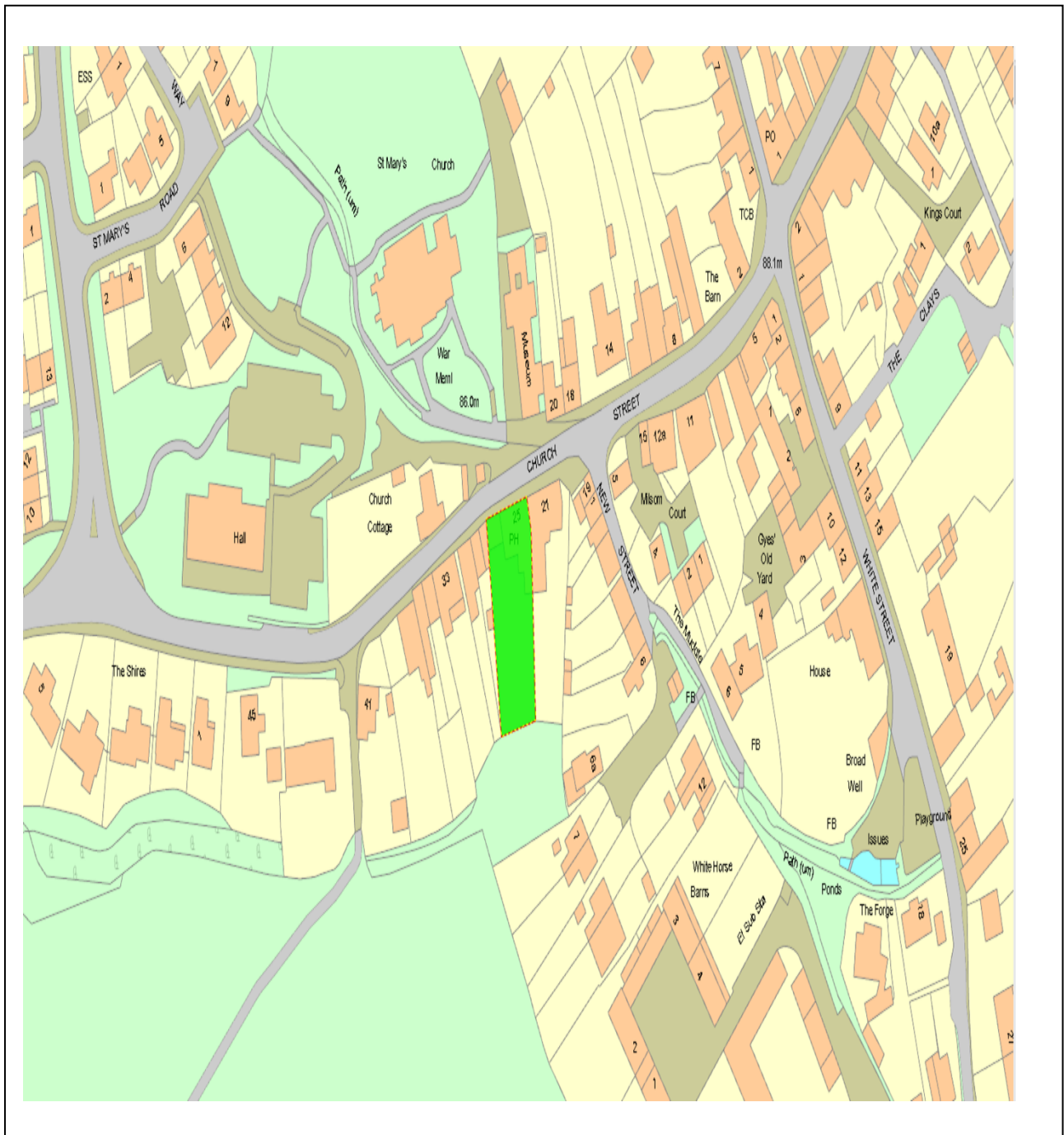
The applicant is advised that the development hereby approved represents chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. A separate Community Infrastructure Levy Liability Notice will be issued by the Local Planning Authority. Should you require further information with regards to CIL please refer to the Council's Website

www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructuralevy

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REPORT TO THE EASTERN AREA PLANNING COMMITTEE

Application Number	15/12362/FUL
Site Address	The Drummer Boy, Church Street, Market Lavington, Wiltshire SN10 4DU
Proposal	Change of use and conversion of existing Public House to two 3 bed dwellings, and erection of 1 two bed dwelling to rear of site, with associated amenity space and parking
Case Officer	Ruaridh O'Donoghue



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REPORT FOR EASTERN AREA PLANNING COMMITTEE

Date of Meeting	10 th March 2016
Application Number	15/12652/FUL
Site Address	Woodlands Farm, Witcha, Ramsbury, Wiltshire SN8 2HQ
Proposal	Demolition of existing bungalow, and erection of replacement dwelling with associated garaging, turning, landscaping, private amenity space, and creation of a new vehicular access point.
Applicant	Mr & Mrs C Crofton-Atkins
Town/Parish Council	RAMSBURY
Electoral Division	ALDBOURNE AND RAMSBURY – Cllr Sheppard
Grid Ref	429525 172894
Type of application	Full Planning
Case Officer	Ruaridh O'Donoghue

Reason for the application being considered by Committee

The application is brought before committee at the request of Councillor Sheppard, for the committee to consider the scale of development, its visual impact upon the surrounding area and its design, bulk, height and general appearance.

1. Purpose of Report

To consider the detail of the application against the policies of the development plan and other material considerations, and the recommendation that the application be refused.

2. Report Summary

The main issues to be considered are the principle of a new dwelling in relation to saved Policy HC25, the size and impact of the dwelling proposed upon the rural character and landscape of the area, notably, the AONB and the ecological impacts of the proposal primarily in relation to the bat roost within the existing dwelling.

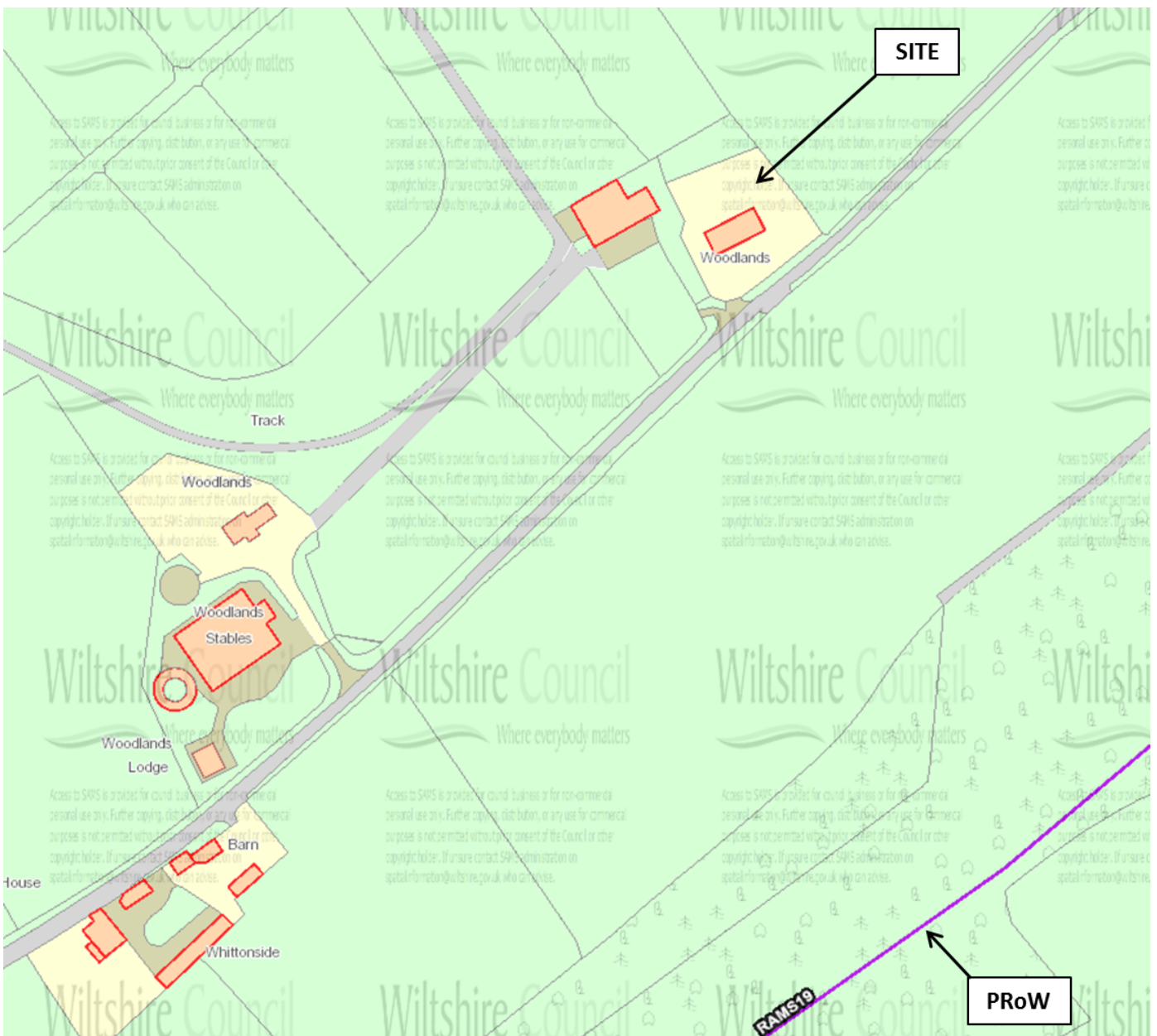
3. Site Description

The application site is approximately 0.26 hectares, the majority of which forms residential curtilage to Woodlands Farm; a modestly sized, detached bungalow with attached garage. The site is located within the open countryside well outside any Limits of Development of nearby settlements. It is surrounded by agricultural land on all sides with a barn located immediately to the north-west of the site.

Vehicular access is onto the Membury Road to the south-east. The site benefits from a good degree of screening on the north-eastern side with the remainder of the site bordered by low hedging/sparsely planted shrubs/bushes.

The site slopes upwards away from the road, thus the existing dwelling sits in an elevated position in relation to Membury Road.

In planning policy terms, the site and its surroundings are located within the North Wessex Downs AONB. A public right of way (RAMS19) lies around 200m to the south-west of the site on the opposite side of the Membury Road, in an elevated position. There are no other landscape or heritage designations covering the site.



4. Planning History

K/13040	Extension to dwelling, demolition of existing garage and rebuild	Approve with Conditions
K/77/0290	Extension to dwelling	Approve with Conditions
E/2012/0434/FUL	Replace existing bungalow with traditional house and garage.	Withdrawn
E/2012/1117/FUL	Demolition of existing bungalow and replacement with two-storey house and detached garage	Approve with Conditions
15/07049/FUL	Demolition of existing bungalow and former agricultural barn, and the erection of a replacement dwelling; with associated garaging, turning, landscaping, private amenity space, and the creation of a new vehicular access point.	Withdrawn

The previous application (15/07049/FUL) was withdrawn due to officers' concerns with regard to the scale of the dwelling in the context of Policy HC25, the position of the garage forward of the dwelling in close proximity to the road and the landscape impact of the proposal as a whole.

5. The Proposal

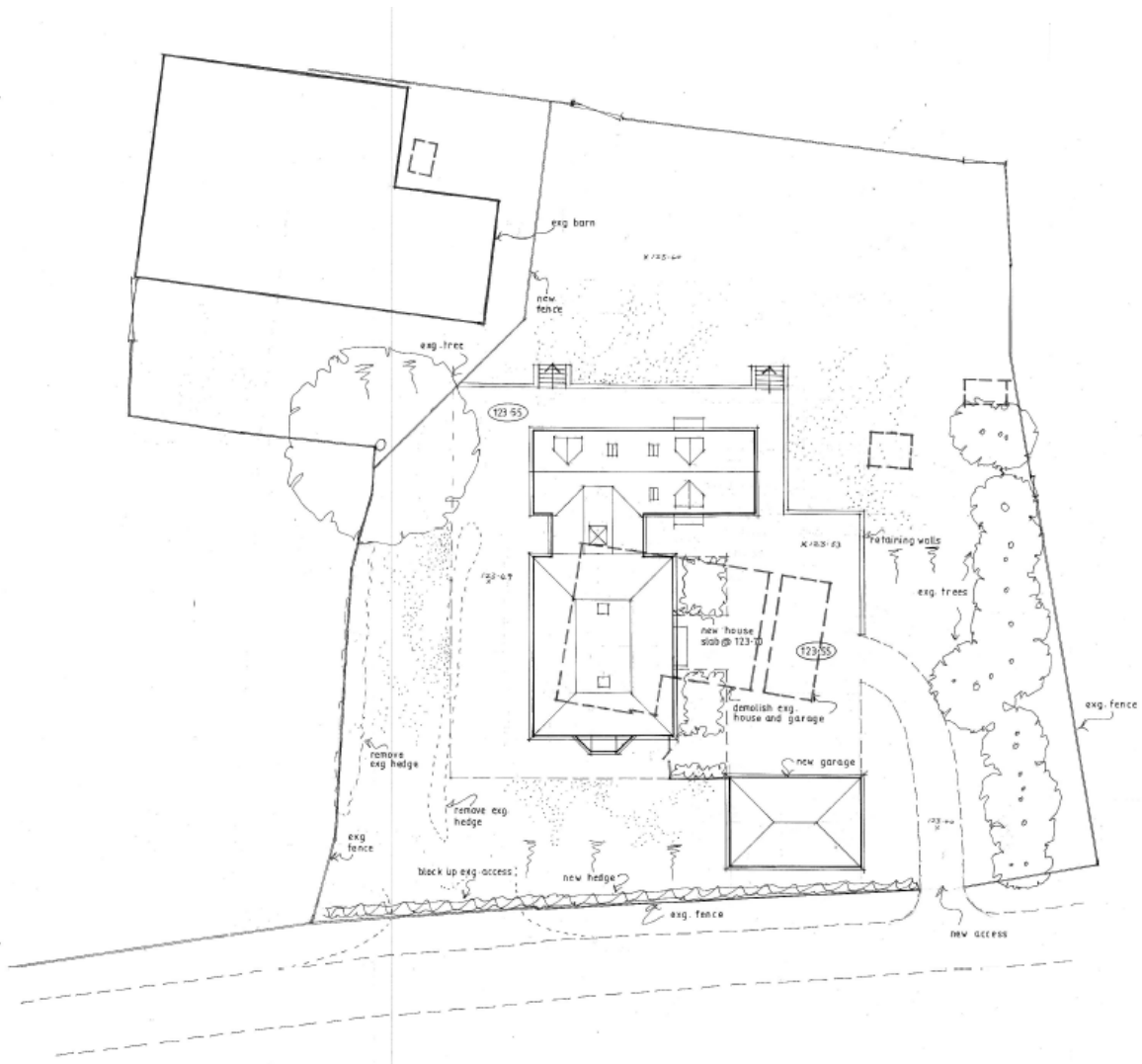
The application proposes the demolition of the existing bungalow and the erection of a replacement six bed dwelling with associated garaging, turning, landscaping, private amenity space; and creation of a new vehicular access point.

The dwelling would occupy a footprint of approximately 227.5m² with a ridge height of 9 metres. It is to be constructed out of facing brick work with plain clay tiles. Windows are to be white uPVC with stone cills.

The table below highlights the size of the proposed development in relation to the existing dwelling on the site and the previously approved scheme from 2012.

	Existing	E/2012/1117/FUL	15/12652/FUL
Height	5.2m	8m	9m
Floor Area	195.5m ²	227.5 m ²	506.5 m ²
Floor Area with Garage	n/a	274.3 m ²	568.8 m ²
% Increase in Floor Area	n/a	16%	159%
% Increase in Floor Area with Garage	n/a	70%	190%

Overleaf is a copy of the plans and elevations of the proposed scheme.



north east elevation



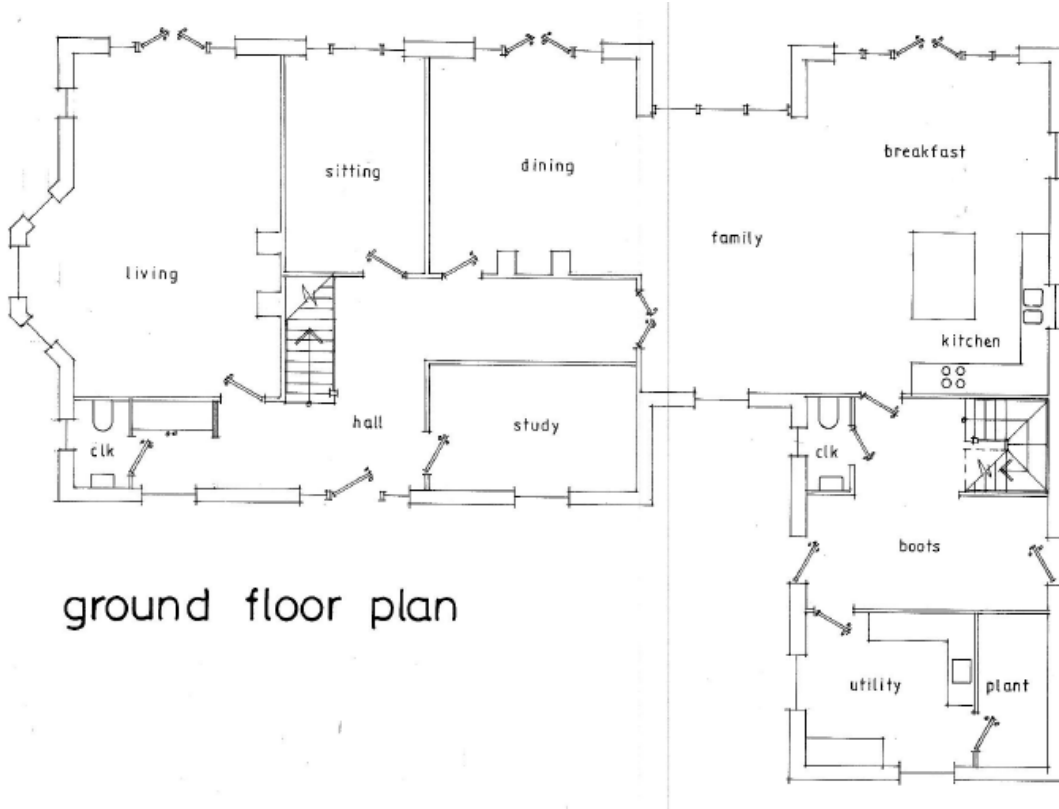
south east elevation



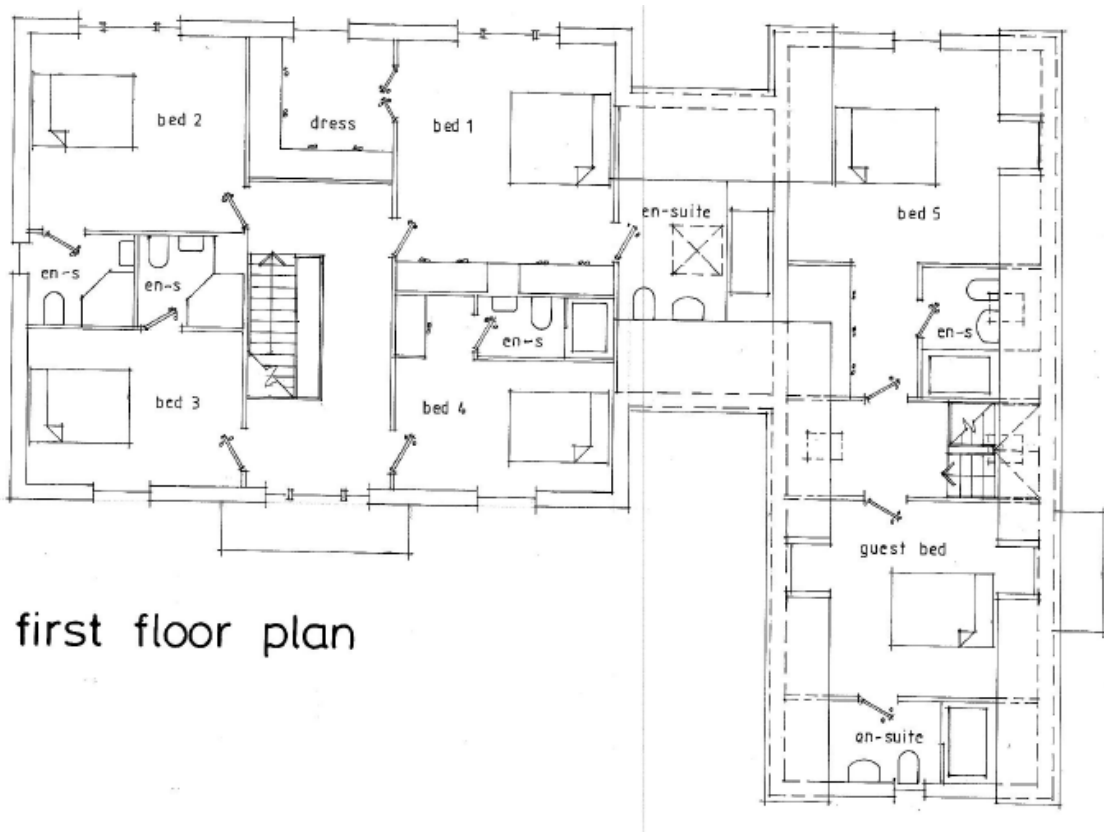
north west elevation



south west elevation



ground floor plan



first floor plan

6. Planning Policy

Wiltshire Core Strategy 2015 (WCS):

- Core Policy 1 – Settlement Strategy
- Core Policy 2 – Delivery Strategy
- Core Policy 14 – Marlborough Community Area Strategy
- Core Policy 50 – Biodiversity and Geodiversity
- Core Policy 51 - Landscape
- Core Policy 57 – Ensuring high quality design and place shaping
- Core Policy 61 – Transport and Development
- Core Policy 64 – Demand Management
- Saved Policy HC25 – Replacement Dwellings – Kennet Local Plan 2011 (Annex D of WCS)

National Planning Policy Framework 2012 (NPPF)

The Planning Practice Guidance provides guidance on the policies contained within the NPPF.

Supplementary Planning Guidance:

- Local Transport Plan 2011-2026 Car Parking Strategy (March 2011) – minimum residential parking standards.
- Wiltshire Landscape Character Assessment (2005)

Material Considerations

- Conservation of Habitats and Species Regulations 2010
- North Wessex Downs AONB Position Statement – Housing (Oct 2012)

7. Summary of consultation responses

Ramsbury and Axford Parish Council

The house design is 'grand' and we would have liked to see something more sympathetic to the countryside. A landscaping scheme should be put in place to ensure the building does not dominate the landscape.

Wiltshire Council Highways Officer

I am minded to adhere to those comments in particular the recommendation to amending the position of the access, however I realise that this will have implications on the proposed site layout and as such I am minded to pursue the request to the applicant to demonstrate the available visibility.

The applicant will need to demonstrate that the visibility at the new access is the same or better than at the current access, unless this can be adequately demonstrated I shall be looking to raise an objection on inadequate visibility at the new access.

Ecology

A license from natural England would be required. However, it is unlikely one would be forthcoming as adequate mitigation and enhancement has not been demonstrated nor

has sufficient information been submitted for the 3 tests to be met. Recommends further work is undertaken and a greater level of information supplied.

CPRE

The proposal is contrary to Core Policies 57 and 48 of the WCS. Dwelling does not reflect the character of the area. There is also confusion in the D&A Statement where there is reference to the demolition of the barn. However, this does not form part of the application.

8. Publicity

The application has been publicised by way of a site notice posted outside the site, with letters sent to neighbouring properties and to statutory and other consultees.

Two letters of objection have been received. A summary of the concerns are listed below:

- Significantly larger than the existing dwelling
- The proposal does not conform to the requirement of the North Wessex Downs AONB Position Statement on Housing
- The removal of the barn would have little relevance to the visual impact of the development
- Large residential building would not meet the requirement of Wiltshire Core Strategy policy CP57 to be "complementary to the locality
- Contrary to CP51 of the WCS.
- Landscaping needs to be robust
- Demolition of barn may lead to an ecological loss for the site.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

9.1 The principle of development

The principle of the proposal needs to be assessed against the replacement of existing dwellings policy of the development plan ie. saved policy HC25 of the Kennet Local Plan. This permits in principle the replacement of an existing dwelling, but subject to the following criteria:

- a) the siting of the new dwelling is closely related to that which it replaces; and
- b) the scale of the replacement dwelling is not significantly larger than the original structure

With reference to the table in section 5 of this report, the proposed dwelling with garage represents a 190% increase in floor area over the existing dwelling on the site. This is far beyond what would normally be considered to be 'not significantly larger.' It is therefore difficult to see how this proposal can be considered to comply with the requirements of saved Policy HC25. This judgement would be consistent with the planning history of the site. The original scheme (E/2012/0434/FUL) was withdrawn due to concerns over scale with the approved scheme

(E/2012/1117/FUL) being a marked reduction in size such that it was considered to be policy compliant. The current proposal is significantly larger in scale than the original structure such that it does not comply with part b of Policy HC25.

9.2 Visual impact

Core Policy CP57 seeks, amongst other things, to ensure that development responds positively to its setting in terms of layout, built form, height, massing and scale and policy CP51 seeks the protection and where possible enhancement of Wiltshire's distinctive landscape. National planning policy recognises the importance of the countryside in its core planning principles where at paragraph 17 it states the planning system should recognise *“the intrinsic character and beauty of the countryside.”* It expands upon this point in Section 11 – Conserving and Enhancing the Natural Environment. It goes on to state at Paragraph 115 that when considering proposals within an AONB *“Great weight should be given to conserving landscape and scenic beauty in...Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty.”*

In addition to this, the North Wessex Downs AONB Position Statement on Housing states at Paragraph .323 xiv that *“Replacement dwellings should be of a scale and location that does not result in the new dwelling being particularly larger or higher or in a different location compared to the existing, unless exceptional justification and other landscape and ecological benefits can be provided. Proposals for replacement dwellings should demonstrate how the quality of the landscape is conserved and enhanced.”*

Whilst the site is currently well-screened to the north-east by mature hedging, it is open and visible from the surrounding countryside and Membury Road itself. The Landscape Character Assessment for the area (taken from the Wiltshire Landscape Character Assessment) identifies the key features of this landscape as being:

- *Open, smoothly rolling downland, dissected by a network of dry valleys and long sinuous steep scarps.*
- *An expansive and simple rural landscape, with strong sweeping skylines with a strong sense of exposure and remoteness.*
- *Very sparsely populated, generally restricted to scattered farms and equestrian establishments contributing to strong sense of isolation.*

The Landscape Character Assessment for the area states that to preserve this landscape one should *“Conserve the sense of remoteness and isolation, with sparse settlement and road network and limited visible development.”*

The existing dwelling, whilst of no particular architectural merit, is single storey and modestly sized; it could therefore be classed as 'limited visible development.' The dwelling proposed is not. It is considered to be neither small-scale or sensitively designed and within the sensitive and exposed open rolling arable landscape setting, would be detrimental to the rural character and landscape of the area. The positioning of a single storey garage forward of the dwelling and in close proximity to the road would

further exacerbate this visual harm. This is consistent with the concerns raised under the withdrawn application 15/07049/FUL with regard to the siting of a garage. Furthermore, significant planting is likely to impact upon the strong sense of exposure and openness that the Marlborough Downs is so characterised by.

No exceptional circumstances have been demonstrated nor have any landscape or ecological benefits been identified that would warrant a departure from this view. The proposal is considered to be contrary to Core Policies 51 and 57 of the WCS as well as central government policy contained within the NPPF (notably Para 116). Furthermore, given that the NPPF attaches great weight to the conservation of the AONB, the respective management plans and the associated documents should form a material consideration in the planning balance. As highlighted above the proposal would be contrary to guidance on housing proposals within the AONB as set out by the North Wessex Downs AONB Organisation.

It should also be highlighted that the approach of simply containing development using additional planting to increase the enclosure is not a responsible approach to the conservation and enhancement of the AONB (in reference to the additional planting proposed by the applicant to be planted in and around the site). Simple screening or hiding of development does not reduce or mitigate harm. The harm has still occurred, the loss of amenity and to the open character of this part of the AONB has still taken place and the character of the AONB as a result has been altered, regardless of whether it can be seen or not. With this in mind, officers do not consider that further planting should be the sole means of mitigating the impact of a development as it does not result in the sensible management of the AONB. If significant additional planting is required in an attempt to mitigate visual harm, then surely then the question must arise as to whether this is appropriate development in the first place.

9.3 Ecology

A bat report was submitted with the application which has identified the presence of bats at the site within the roof void of the existing dwelling. The subsequent report suggests that since a roost will be destroyed the works will require a licence from Natural England. The report also gives some recommendations for bat mitigation designed to remove or significantly reduce adverse impacts to bats as a result of the development.

The application for a development licence from Natural England will need to satisfy the following three tests:

1. The development is in the interests of public health and safety or is required for other imperative reasons of overriding public interest.
2. There is no satisfactory alternative to the development.
3. The development will not be detrimental to the maintenance of the bat populations concerned at a favourable conservation status in their natural range.

Insufficient information has been submitted by the applicants to demonstrate how the proposal would satisfy tests 1 and 2. As the competent authority, the local planning authority should only be granting planning permission for developments that have a reasonable prospect of obtaining a licence from Natural England. It is unclear how a

replacement dwelling proposal is in the interests of public health and safety or that it is required for other imperative reasons of overriding public interest. Officers consider the satisfactory alternative would be to retain the existing dwelling.

The Council's Ecologist raises an objection to the proposal due to the absence of clear mitigation which is required by test 3. The following has been suggested as a more robust enhancement and mitigation strategy:

- An increase from one to **four** bat boxes on trees in various orientations, in order to provide different environmental conditions for bats to use during the demolition/construction period
- Clarification as to whether the barn is in the same ownership as the house and is/will remain available for use by bats both during the demolition/construction process and in the future (for a suitable period of time for the permanent mitigation to become effective)
- The replacement roost within the roof void of the replacement dwelling should be shown on a scaled drawing, showing the internal dimensions and proposed access points

This information has not been illustrated on the submitted drawings and therefore clear mitigation has not been demonstrated. In carrying out its statutory function, the local planning authority must have sufficient information to judge whether the proposal would be likely to result in any adverse impact to protected habitats or species, in line with the requirements of the NPPF and Core Policy 50 of the WCS. The lack of detailed information as discussed above means that this judgement cannot be made, therefore, officers recommend that the application be refused on the basis of lack of information. It must also be highlighted that, whilst mitigation and enhancement may be possible, tests 1 and 2 of the Habitat Regulations still need to be satisfied and it is the opinion of officers that this is unlikely to be demonstrated.

9.4 Access and parking

The dwelling proposes to make use of a new access into the site. The Council's Highways Officer has advised that the new access should achieve a visibility standard of better or equal to the existing access. If this can be satisfactorily demonstrated, then no objection would be raised on highway safety grounds.

A revised plan has been submitted by the agent to demonstrate that a visibility splay of 120m in each direction is achievable within land owned by either the applicant or by the highway authority. If the application was being recommended for approval, a condition to ensure visibility splays are provided in accordance with this drawing could be imposed. With the potential for such a condition available, no highways objection is raised to the new access.

The site is capable of accommodating the required turning space to ensure vehicles can enter and exit in a forward gear. Minimum parking standards can also be achieved within the site.

9.5 Precedent

Whilst applications should be determined based upon their own individual merits, officers have concerns that by allowing this development it would be more difficult to resist further planning applications for similar developments elsewhere, thus exacerbating the likely harm. This would undermine the spatial strategy, spatial objectives and core policies of the WCS and erode the character and quality of the open countryside.

9.6 Other Considerations

Given the relative isolation of the dwelling there would be no neighbour amenity impacts.

10. Community Infrastructure Levy

The development would fall within the scope of the Council's Community Infrastructure Levy Charging Schedule. That said, if the development is a self-build it would be exempted from paying CIL.

11. Conclusion (The Planning Balance)

Officers consider the replacement dwelling and garage to be significantly larger than the existing dwelling on the site (190% increase in floor area). The proposal is therefore not considered to comply with saved Policy HC25 of the Kennet Local Plan 2011.

Furthermore, the dwelling by reason of its height, size and positioning in the open landscape would have a detrimental impact upon the landscape character and scenic quality of the area and the AONB, such that there are no material circumstances sufficient to justify approval and outweigh the conflict with Core Policies 51 and 57 of the WCS and with central government policy contained within the NPPF. The scheme is also considered to conflict with documents produced by the North Wessex Downs AONB Organisation and supplementary planning guidance contained within the Wiltshire Landscape Character Assessment, which are a material consideration.

In addition to the above, officers consider that insufficient information has been submitted to adequately assess the likely impact to bats on site and whether or not this can be adequately mitigated against in respect of the requirements of Section 11 of the NPPF, Core Policy 50 of the WCS and the Conservation of Habitats and Species Regulations 2010. Officers are of the opinion that a licence from natural England would not be forthcoming due to this lack of information.

Officers have reviewed the scheme and conclude that there are no benefits being brought forward by the scheme that would outweigh the significant harm identified in this report and the fact that, as a result, the proposal would manifestly conflict with the development plan.

RECOMMENDATION

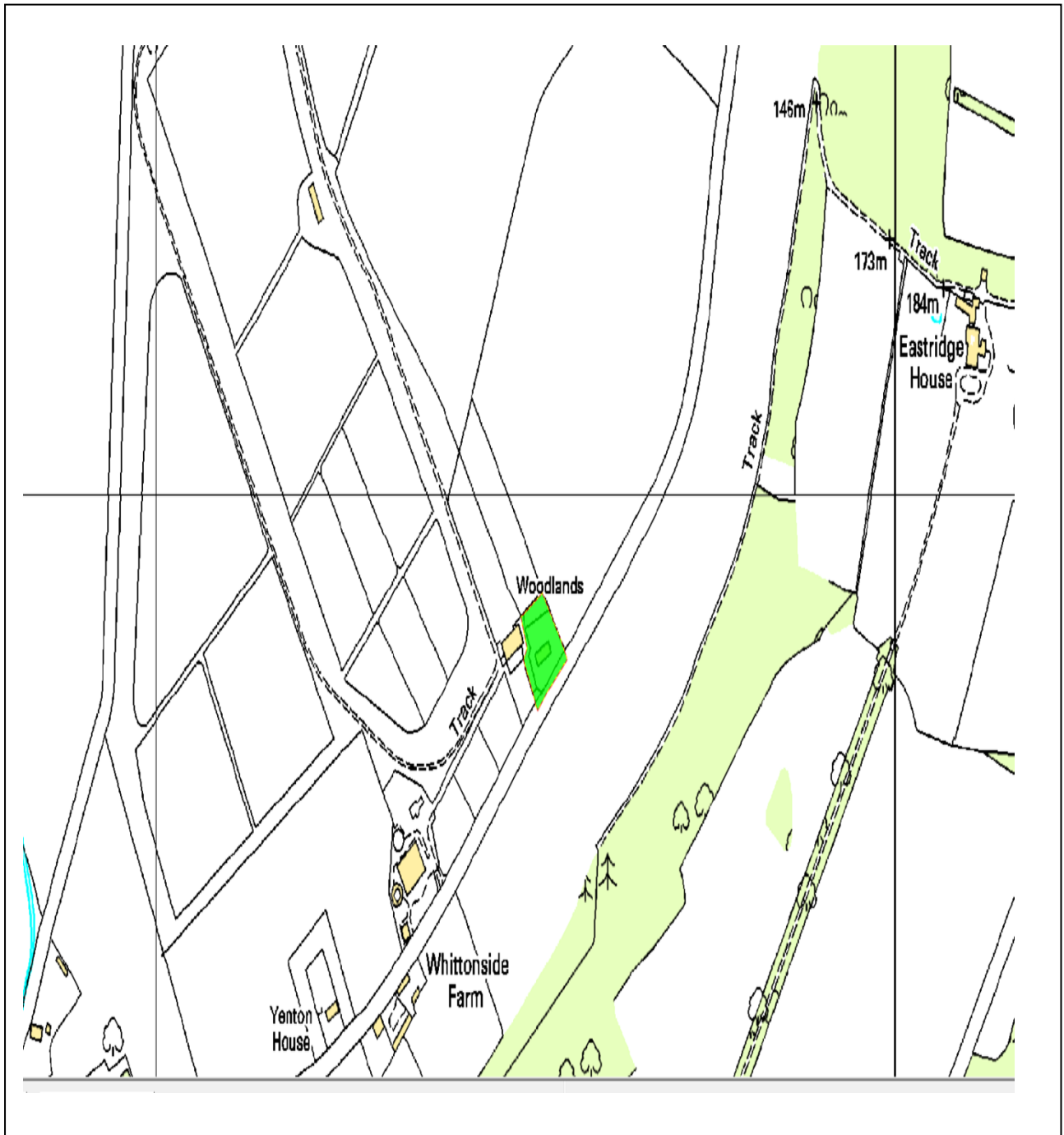
That the application be refused planning permission for the following reasons:

- 1) The scale of the replacement dwelling and garage is significantly larger than the original structure. As such, it does not comply with the terms of saved Policy HC25 of the Kennet Local Plan listed in Annex D of the Wiltshire Core Strategy 2015.
- 2) By reason of its height, size, scale and positioning in the open landscape the proposed dwelling would have a detrimental impact upon the landscape character and scenic quality of the area and the North Wessex Downs AONB. There are no material circumstances sufficient to justify approval and outweigh the conflict with Core Policies 51 and 57 of the Wiltshire Core Strategy 2015, to Supplementary Planning Guidance contained within the Wiltshire Landscape Character Assessment (2005) and with central government policy contained within Section 11 of the NPPF.
- 3) The applicant has submitted insufficient information to adequately assess the impact on bats at the site and whether or not this impact can be adequately mitigated against in line with the requirements of Section 11 of the NPPF, Core Policy 50 of the Wiltshire Core Strategy 2015 and the tests set out in the Conservation of Habitats and Species Regulations 2010.

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REPORT TO THE EASTERN AREA PLANNING COMMITTEE

Application Number	15/12652/FUL
Site Address	Woodlands Farm, Witcha, Ramsbury, Wiltshire SN8 2HQ
Proposal	Demolition of existing bungalow, and erection of replacement dwelling with associated garaging, turning, landscaping, private amenity space, and creation of a new vehicular access point.
Case Officer	Ruaridh O'Donoghue



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