

AGENDA

Meeting: Northern Area Planning Committee
Place: Council Chamber - Council Offices, Monkton Park, Chippenham
Date: Wednesday 9 March 2016
Time: 3.00 pm

Please direct any enquiries on this Agenda to Natalie Heritage, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718062 or email natalie.heritage@wiltshire.gov.uk

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

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Membership:

Cllr Tony Trotman (Chairman)	Cllr Toby Sturgis
Cllr Peter Hutton (Vice Chairman)	Cllr Chuck Berry
Cllr Christine Crisp	Cllr Terry Chivers
Cllr Mollie Groom	Cllr Howard Greenman
Cllr Mark Packard	Cllr Howard Marshall
Cllr Sheila Parker	

Substitutes:

Cllr Philip Whalley	Cllr Linda Packard
Cllr Desna Allen	Cllr Graham Wright
Cllr Glenis Ansell	Cllr George Jeans
Cllr Mary Champion	Cllr Melody Thompson
Cllr Ernie Clark	Cllr Chris Hurst
Cllr Dennis Drewett	
Cllr Jacqui Lay	

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AGENDA

Part I

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

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 5 - 34*)

To approve and sign as a correct record the minutes of the meeting held on **17 February 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 Chairman.

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register in person **no later than 2:50pm on the day of the meeting**.

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

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this **agenda no later than 5pm on Wednesday 2 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 **Planning Appeals** (*Pages 35 - 36*)

An appeals update report is attached for members to note.

7 **Planning Applications**

To consider and determine planning applications as detailed in the attached schedule.

7a **15/12096/FUL - 3 Witts Lane, Purton, Wiltshire, SN5 4ER** (*Pages 37 - 52*)

8 **Malmesbury St Paul Without 13, 16, 17 and Lea Cleverton 1A: Diversion Order and Definitive Map** (*Pages 53 - 76*)

9 **Urgent Items**

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

NORTHERN AREA PLANNING COMMITTEE

DRAFT MINUTES OF THE NORTHERN AREA PLANNING COMMITTEE MEETING HELD ON 17 FEBRUARY 2016 AT COUNCIL CHAMBER - COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM.

Present:

Cllr Tony Trotman (Chairman), Cllr Peter Hutton (Vice-Chairman), Cllr Christine Crisp, Cllr Chris Hurst, Cllr Mark Packard, Cllr Sheila Parker, Cllr Toby Sturgis, Cllr Chuck Berry, Cllr Howard Greenman, Cllr Howard Marshall, Cllr Philip Whalley (Substitute)

Also Present:

Cllr Alan Hill, Mark Staincliffe (Planning Officer), Mathew Pearson (Planning Officer), Will Oulton (Senior Democratic Services Officer), Natalie Heritage (Democratic Services Officer)

9 Apologies

Apologies were received from Cllr Mollie Groom, who was substituted at the meeting by Cllr Philip Whalley.

Apologies were also received from Cllr Terry Chivers and Cllr Glenis Ansell

10 Minutes of the previous Meeting

The minutes of the meeting held on 27 January 2016 were presented.

Resolved:

To approve as a true and correct record and sign the minutes.

11 Declarations of Interest

Cllr Whalley declared an interest in agenda item no.18, because he sat on the Corsham Town Council. He declared that he would participate in the debate and vote for each item with an open mind.

Cllr Mashall declared an interest in agenda items 16 and 17 because he sat on the Calne Town Council. He declared that he would participate in the debate and vote for each item with an open mind.

12 **Chairman's Announcements**

The Chairman drew the meeting's attention to the following matters: The evacuation procedures; the procedure for public participation; and the policy on recording and broadcasting of meetings.

13 **Public Participation and Councillors' Questions**

The Committee noted the rules on public participation and that there were no questions submitted.

14 **Planning Appeals**

The Committee noted the contents of the appeals update and the Chairman noted that such reports would be provided at each meeting of the Committee.

15 **Planning Applications**

Attention was drawn to the late list of observations provided at the meeting and published online under agenda supplement 1, in respect of applications **Marden Farm, Calne** and **Land at Bradford Road, Corsham** as listed in the agenda pack.

16 **15/10682/FUL Marden Farm, Calne**

Anne Henshaw and Sue Baker spoke against the application.

Andy Cockett spoke in support of the application.

Kate Moorly (Calne Without Parish Council) spoke against the application.

The planning officer, Mark Staincliffe, introduced the report which recommended to delegate authority to the Area Development Manager to grant planning permission, subject to the signing of a Section 106 agreement within 6 months of the date of the resolution of this Committee and the conditions and informatives, as amended by the late observations, outlined in the report. In the event of failure to complete, sign and seal the required section 106 agreement within the defined timeframe, to then delegate authority to the Area Development Manager to REFUSE planning permission for the reasons set out in the report. The application was for the development of 56 residential dwellings, open space, landscaping, sustainable urban drainage, vehicular access and associated infrastructure and engineering works; plans and maps relating to the proposal and the previously permitted application were shown. It was highlighted that an application had been granted for the entirety of the site at appeal.

The officer explained that an 85 bedroom dementia care home had been previously consented, however, the applicant had been unable to secure an

operator and the application now sought permission to construct 56 residential units in lieu of the care home. It was outlined that the parking requirements met the Council's plans and consultations had been favourable subject to the planning application. The officer further stated that the dementia care home had the benefit of full planning permission and could be implemented immediately, subject to discharging any pre-commencement conditions. The principle of built development in this location had therefore been established; furthermore, there were no requirements for the dementia care home to be built within the newly proposed residential area in policy terms or by way of legal agreement.

The officer drew attention to the late observations for the item and highlighted that outside of the red outline on the map, access had already been constructed and granted planning permission and hence, the fact that condition 6 be deleted was noted in the late observation.

The Committee was then invited to ask technical questions, for which there were none.

Members of the public were then invited to speak, as detailed above.

The division member for Calne South, Cllr Hill, was permitted to speak and several raised concerns, such as:

Wiltshire required a dementia care home and thus, this should be delivered; a dementia care home, as opposed to the proposed residential site, would provide additional employment opportunities to the immediate Calne area; the site had only been marketed for 1 year for someone to agree to build the care home and this was not sufficient; the site had been established as intended for business and the Council should safeguard this; the core strategy stated that housing growth must be carefully balanced with job creation; attention and due respect ought to have been given to the later stages of the neighbourhood plan.

Local member, Cllr Crisp, noted that she shared Cllr Hill's concerns and raised further concerns such as: there would be 120 employment opportunities once the care home was built in comparison to 39 construction employment opportunities per year, yet for the construction side, this would only be whilst the proposed site was being erected; the site was situated on a greenfield site; demonstrable harm could occur, due to the increased traffic flow upon those who lived in close proximity to the site.

Following the statements, the planning officer advised that the planning inspector had established the principle of built development for the site and that the applicant had voluntarily sought to locate a new provider for the dementia care home. Indeed, he stressed that it had not been a requirement for the applicant to locate a new provider for the previously proposed care home. The officer then outlined that the 1 year marketing exercise was deemed as

acceptable, as government guidance, such as paragraph 22 of the NPPF, discourages the retention of undeliverable sites & appeal decisions have confirmed that a 6 month marketing exercise is acceptable. He also advised that there were no protection policies for sites, such as the one in question and that the Calne neighbourhood plan was not sufficiently advanced to have been given significant weighting in the decision making process. It was stated that to regard the Calne neighbourhood plan as significantly advanced could lead to an error in law. The officer highlighted that there had been no conclusions of adverse impacts on the surrounding area.

The Chairman raised the issue of separation distances between the proposed site and the current residential dwellings in the area. The officer advised that houses in the Knowle were more likely to be affected than houses in the Fairway, however, it was advised that additional landscaping could not be provided as this could compromise the proposed access road to the Bowood Estate and was not necessary; as the separation distance was adequate to ensure that there would be no significant adverse impact on adjoining properties.

In the debate that followed several issues were raised, such as the following: the harm to the local area would be greater if the proposed residential dwellings were to be built, as opposed to the dementia care home; housing growth ought to be delivered at an appropriate rate as per Core Policy 8; that certain Core Policies were not applicable to this site and thus, it would be prudent for members to only quote and refer to applicable policies in relation to this application; as the council do not currently have a 5 year housing land supply of deliverable housing site, paragraph 49 of the NPPF is engaged and there is no reason to withhold permission and deliver further housing at this site.

Cllr Crisp, seconded by Cllr Marshall, proposed that the application be refused. The motion was put to the vote and failed.

The Committee shared the local community's desire for a new care home, yet noted that Core Policy 46 was not applicable, nor was policy Core Policy 35, as the consented use did not fall into us class B1, B2 or B8.

Cllr Hutton, seconded by Cllr Sturgis, moved the officer's recommendation. The motion was put to the vote and passed.

Resolved:

That authority is delegated to the Area Development Manager to GRANT planning permission, subject to conditions listed below and completion of a S106 legal agreement within six months of the date of the resolution of this Committee.

In the event of failure to complete, sign and seal the required section 106 agreement within the defined timeframe to then delegate authority to the

Area Development Manager to REFUSE planning permission for the following reason:-

The application proposal fails to provide and secure the necessary and required Services and infrastructure supporting the proposed residential development including Affordable Housing; Waste; Public Open Spaces; Air Quality Management and is therefore contrary to Policies CP3 & CP43 of the Wiltshire Core Strategy adopted January 2015 and Paras 7, 14 & 17 of the National Planning Policy Framework March 2012.

CONDITIONS AND INFORMATIVES:

- 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:**

D29 16 P4 Rev A - Tree Protection Plan

Received 11 November 2015

MARD-15-04-01 rev A - Site Location Plan

MARD-15-04-02 rev B - Planning Layout

MARD-15-04-03 rev C - Proposed Materials Layout

MARD-15-04-04 rev B - Enclosures Layout

MARD-15-04-05 rev B - Storey Heights Layout

MARD-15-04-06 rev B - Adoption Layout

394-CH-010 rev D - Drainage Strategy

RED20064-11B Sheet 1 - Landscape Proposals rev B

RED20064-11B Sheet 2 - Landscape Proposals rev B

RED20064-11B Sheet 3 - Landscape Proposals rev B

RED20064-11B Sheet 4 - Landscape Proposals rev B

RED20064-11B Sheet 5 - Landscape Proposals rev B

Received 25 January 2016

House Types Booklet rev C

Received 26 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. 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 buildings 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.

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

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 that the roads are laid out and constructed in a satisfactory manner.

6. No part of the development shall be first occupied, until the visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of 600mm above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

REASON: In the interests of highway safety.

7. 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), the garages hereby permitted shall not be converted to habitable accommodation.

REASON: To secure the retention of adequate parking provision, in the interests of highway safety.

8. No construction works shall take place anywhere on the site outside the hours of 0730 and 1800 on Mondays-Fridays and 0800 and 1300 on Saturdays. Works shall not take place at any time on Sundays and Bank or Public Holidays. No burning of waste or other materials shall take place anywhere on the site at any time.

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

9. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details and information regarding existing ordinary watercourses within the site (as well as pollution protection to the proposed attenuation pond), has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: 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 that the development can be adequately drained.

10. No development shall commence on site until a scheme for the discharge of foul water from the site, including full details of pumping station/finishes/fencing/prevention measure to prevent pollution of proposed adjacent attenuation pond and other SUDS

features, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme.

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 that the proposal is provided with a satisfactory means of drainage and does not increase the risk of flooding or pose a risk to public health or the environment.

11. No development shall commence on site (other than that required to be carried out as part of a scheme of remediation approved by the Local Planning Authority under this condition), until steps (i) to (iii) below have been fully complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until step (iv) has been complied with in full in relation to that contamination. Step (i) Site Characterisation: An investigation and risk assessment must be completed to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings submitted to and approved in writing by the Local Planning Authority. The report of the findings must include: - A survey of the extent, nature and scale of contamination on site; - The collection and interpretation of relevant information to form a conceptual model of the site, and a preliminary risk assessment of all the likely pollutant linkages; - If the preliminary risk assessment identifies any potentially significant pollutant linkages a ground investigation shall be carried out, to provide further information on the location, type and concentration of contaminants in the soil and groundwater and other characteristics that can influence the behaviour of the contaminants; - An assessment of the potential risks to - human health, - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, - adjoining land, - groundwater and surface waters, - ecological systems, - archaeological sites and ancient monuments. This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance. Step (ii) Submission of Remediation Scheme: If any unacceptable risks are identified as a result of the investigation and assessment referred to in step (i) above, a detailed remediation scheme to bring the site to a condition suitable for the intended use must be prepared. This

should detail the works required to remove any unacceptable risks to human health, buildings and other property and the natural and historical environment, should be submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures. Step (iii) Implementation of Approved Remediation Scheme: The approved remediation scheme under step (ii) must be carried out in accordance with its requirements. The Local Planning Authority must be given at least two weeks written notification of commencement of the remediation scheme works. Step (iv) Reporting of Unexpected Contamination: In the event that contamination is found at any time when carrying out the approved development that was not previously identified it should be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment should be undertaken in accordance with the requirements of step (i) above and where remediation is necessary, a remediation scheme should be prepared in accordance with the requirements of step (ii) and submitted to and approved in writing by the Local Planning Authority. Step (v) Verification of remedial works: Following completion of measures identified in the approved remediation scheme a verification report (referred to in PPS23 as a validation report) must be produced. The report should demonstrate the effectiveness of the remedial works. A statement should also be provided by the developer which is signed by a person who is competent to confirm that the works detailed in the approved scheme have been carried out (The Local Planning Authority can provide a draft Remediation Certificate when the details of the remediation scheme have been approved at stage (ii) above). The verification report and signed statement should be submitted to and approved in writing of the Local Planning Authority. Step (vi) Long Term Monitoring and Maintenance: If a monitoring and maintenance scheme is required as part of the approved remediation scheme, reports must be prepared and submitted to the Local Planning Authority for approval at the relevant stages in the development process as approved by the Local Planning Authority in the scheme approved pursuant to step (ii) above, until all the remediation objectives in that scheme have been achieved. All works must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

12. No development shall commence until a Landscape, Ecological and Arboricultural Management Plan (LEAMP) has been submitted to and approved in writing by the Local Planning Authority. The submitted LEAMP shall have particular regard to the measures secured under Condition 21 of the permission N/12/04038/FUL and the addendum to the Ecological Impact Assessment (dated 20th October, 2015) so as to support and enhance the ecological mitigation measures previously agreed. All capital works shall be carried out to the approved timescales and all areas identified in the LEAMP shall be managed in accordance with the approved prescriptions in perpetuity. All monitoring reports shall be submitted in writing to the local planning authority.

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 adequate protection, mitigation and compensation for protected species, priority species and habitats.

13. No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following: a) the parking of vehicles of site operatives and visitors; b) loading and unloading of plant and materials; c) storage of plant and materials used in constructing the development; d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; e) wheel washing facilities; f) measures to control the emission of dust and dirt during construction; g) a scheme for recycling/disposing of waste resulting from demolition and construction works; h) measures for the protection of the natural environment; and i) hours of construction, including deliveries has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

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

14. INFORMATIVE TO APPLICANT: Any alterations to the approved plans, brought about by compliance with Building Regulations or

any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

15. INFORMATIVE TO APPLICANT:

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

16. INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

17. INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

18. INFORMATIVE TO APPLICANT:

The applicant should note that any works on, over or near (within 8m of top of bank) an ordinary water course will require a separate formal Land Drainage Consent application and approval, as will any new proposed connection.

19. INFORMATIVE TO APPLICANT:

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

20. 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/communityinfrastucturelevy

17 **15/11230/OUT Land East of Oxford Road, Calne**

Anne Henshaw spoke against the application.

The planning officer, Mathew Pearson, introduced the report which recommended that authority be delegated to the Area Development Manager to grant planning permission, subject to the completion of a Section 106 legal agreement within 6 months of the resolution of this Committee and the conditions and informatives listed in the report. In the event of failure to complete, sign and seal the required section 106 agreement within the defined timeframe, to then delegate authority to the Area Development Manager to REFUSE planning permission for the reasons set out in the report. The application was for the construction of 42 homes and associated landscaping; photographs and a map of the site were shown. It was highlighted that the site was on agricultural land; which was outside of the settlement boundary, however, due to the 5 year land supply, Core Policy 2 was not considered up to date and thus, the application would be judged against the NPPF; specifically paragraphs 14-49, which advised that permission should be given unless adverse impacts would significantly and demonstrably outweigh the benefits. The officer noted that national policy regarded housing as a significant benefit and therefore, recommended that the Committee approve the application with regard to the position the Council found itself in, in terms of national policy. The officer outlined that to the North of the proposed application site, an application would be going to a planning appeal for 41 units, as opposed to the proposed 42 units on the proposed application site.

The Committee was then invited to ask technical questions and it was confirmed that there had been an approved planning application for the construction of the supermarket store 'Tesco's' and that this application was still live, it was noted that the proposed 'Tesco's', along with a couple of already established residential dwellings, would be on the opposite side of the road to the proposed development. It was highlighted that the lead time in appeals was 10 months. Concern was raised by members that the proposed land had been allocated for joint industrial and residential use and, therefore, if the erection of the 42 dwellings was to be permitted, there would be a minimal amount of the land left for industrial use. The officer explained that the site to the North of the proposed site was the site allocated for employment and not the site being subjected to permission at the meeting.

Members of the public were then invited to speak, as detailed above.

Cllr Ansell had sent her apologies for her absence at the meeting and thus, as Cllr Hill's ward was adjacent to Cllr Ansell's ward, the Chairman permitted Cllr Hill to speak on Cllr Ansell's behalf.

Cllr Hutton sought clarification on conditions that referred to public protection and archaeology. The officer confirmed that contamination and archaeology conditions were included in the list of conditions.

Cllr Sturgis, seconded by Cllr Hutton, moved the officer's recommendation as outlined in the report. The motion was put to the vote and passed.

Resolved:

That authority is delegated to the Area Development Manager to GRANT planning permission, subject to conditions listed below and completion of a S106 legal agreement within six months of the date of the resolution of this Committee.

In the event of failure to complete, sign and seal the required section 106 agreement within the defined timeframe to then delegate authority to the Area Development Manager to REFUSE planning permission for the following reason:-

The application proposal fails to provide and secure the necessary and required Services and infrastructure supporting the proposed residential development including Affordable Housing; Waste; Public Open Spaces; Air Quality Management and is therefore contrary to Policies CP3 CP43 & CP55 of the Wiltshire Core Strategy Adopted January 2015 and Paras 7, 14 & 17 of the National Planning Policy Framework March 2012.

CONDITIONS AND INFORMATIVES:

1 No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:

- (a) The scale of the development;**
- (b) The layout of the development;**
- (c) The external appearance of the development; and**
- (d) The landscaping of the site.**

The development shall be carried out in accordance with the approved details.

REASON: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 5 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

2 An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

3 The reserved matters to be submitted pursuant to Condition 1 above shall relate to a scheme comprising up to 42no. dwellings and no more, together with associated landscaping including on-site public open space and play provision.

REASON: In order to secure an appropriate quantum of development for the application site.

4 The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan: 01112/02 - Topographical Survey; 1097-F01 - Proposed Site Access Junction Received 13 November 2015

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

5 The development hereby permitted shall not be first occupied until the access to the site has been laid out and properly consolidated as detailed on plan number Drawing 1097-F01 'Proposed Site Access Junction' Rev -, dated July 2015.

REASON: In the interests of safe and convenient access to the development.

6 No dwelling shall be occupied until the access to the development has been provided with visibility splays with nothing to exceed the height of 600mm above carriageway level from a point 2.4 metres back along the centre line of the access to points on the nearside carriageway edge 160 metres to the north, and 160 metres to the south. The visibility so provided shall thereafter be maintained in accordance with drawing 1097-F01 'Proposed junction analysis'. Any vegetation/ hedgeline shall set back at least 1m from the visibility splay and maintained as such thereafter, in perpetuity.

REASON: In the interests of safe and convenient access to the development.

7 No part of the development shall be brought into occupied until a 2m - 2.5m wide footway/shared use path has been provided over the entire site frontage in accordance with details to be first submitted to and approved by the Local Planning Authority. The details to be submitted

shall include for the relocation of the existing lighting columns to the rear of the new footway and proposals for hedgeline / vegetation to the rear of the new footway.

REASON: In the interests of safe and convenient pedestrian access to the development.

8 No part of the development shall be occupied until a 2m - 2.5 metres wide footway/shared use path including new roadside kerbs has been provided on the highway verge on the western side of the C394 road, between the end of the existing footway near 249 Oxford Road and the end of the shared use cycleway just north of the access to New Cottages, in accordance with details to be first submitted to and approved by the Local Planning Authority. The details to be submitted shall include for the relocation of the existing lighting columns and proposals for hedgeline / vegetation to the rear of the new footway.

REASON: in the interests of safe and convenient pedestrian access to the development.

9 No dwelling shall be occupied until a pedestrian crossing / refuge has been provided over the C394 in accordance with details to be first submitted to and approved by the Local Planning Authority.

REASON: In the interests of safe and convenient pedestrian access to the development.

10 No development shall take place until a Residential Travel Plan has been submitted and approved in writing by the Local Planning Authority. The Residential Travel Plan shall be actioned in accordance with details approved by the Local Planning Authority prior to first occupation.

REASON: In the interests of road safety and reducing vehicular traffic to the development.

11 No development shall commence on site until details of refuse and recycling facilities (including location and range of facilities and their means of operation) have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall not be first occupied until the approved recycling facilities have been completed and made available for use in accordance with the approved details. The approved recycling storage shall thereafter be maintained in accordance with the approved details.

REASON: In the interests of public health and safety.

12 No development shall commence on site until a scheme for the discharge of stormwater water from the site, including any required off

site capacity improvements required to receive flows together with a connection point agreed with the sewerage undertaker and timetable, has been submitted to and approved in writing by the Local Planning Authority.

The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme, including any required off site works/improvements within the agreed timetable.

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 that the development can be adequately drained.

13 No development shall commence on site until a scheme for the discharge of foul water from the site, including any required off site capacity improvements required to receive flows together with a connection point agreed with the sewerage undertaker and timetable, has been submitted to and approved in writing by the Local Planning Authority.

The development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme, including any required off site works/improvements within the agreed timetable.

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 that the proposal is provided with a satisfactory means of drainage and does not increase the risk of flooding or pose a risk to public health or the environment.

14 No development shall commence on site (other than that required to be carried out as part of a scheme of remediation approved by the Local Planning Authority under this condition), until steps (i) to (iii) below have been fully complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until step (iv) has been complied with in full in relation to that contamination.

Step (i) Site Characterisation:

An investigation and risk assessment must be completed to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings

submitted to and approved in writing by the Local Planning Authority. The report of the findings must include:

- A survey of the extent, nature and scale of contamination on site;
- The collection and interpretation of relevant information to form a conceptual model of the site, and a preliminary risk assessment of all the likely pollutant linkages;
- If the preliminary risk assessment identifies any potentially significant pollutant linkages a ground investigation shall be carried out, to provide further information on the location, type and concentration of contaminants in the soil and groundwater and other characteristics that can influence the behaviour of the contaminants;
- An assessment of the potential risks to
 - o human health,
 - o property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - o adjoining land,
 - o groundwater and surface waters,
 - o ecological systems,
 - o archaeological sites and ancient monuments;

This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.

Step (ii) Submission of Remediation Scheme:

If any unacceptable risks are identified as a result of the investigation and assessment referred to in step (i) above, a detailed remediation scheme to bring the site to a condition suitable for the intended use must be prepared. This should detail the works required to remove any unacceptable risks to human health, buildings and other property and the natural and historical environment, should be submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures.

Step (iii) Implementation of Approved Remediation Scheme:

The approved remediation scheme under step (ii) must be carried out in accordance with its requirements. The Local Planning Authority must be given at least two weeks written notification of commencement of the remediation scheme works.

Step (iv) Reporting of Unexpected Contamination:

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it should be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment should be undertaken in accordance with the requirements of step (i) above and where remediation is necessary, a remediation scheme should be prepared in accordance with the requirements of step (ii) and submitted to and approved in writing by the Local Planning Authority.

Step (v) Verification of remedial works:

Following completion of measures identified in the approved remediation scheme a verification report (referred to in PPS23 as a validation report)

must be produced. The report should demonstrate the effectiveness of the remedial works.

A statement should also be provided by the developer which is signed by a person who is competent to confirm that the works detailed in the approved scheme have been carried out (The Local Planning Authority can provide a draft Remediation Certificate when the details of the remediation scheme have been approved at stage

(ii) above). The verification report and signed statement should be submitted to and approved in writing of the Local Planning Authority.

Step (vi) Long Term Monitoring and Maintenance:

If a monitoring and maintenance scheme is required as part of the approved remediation scheme, reports must be prepared and submitted to the Local Planning Authority for approval at the relevant stages in the development process as approved by the Local Planning Authority in the scheme approved pursuant to step (ii) above, until all the remediation objectives in that scheme have been achieved. All works must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

15 The mitigation measures detailed in the approved Ecological Assessment (Resource & Environmental Consultants Ltd, April 2014 and October 2015), together with a timetable for implementation and measures to secure sensitive retention of mature and over mature trees within the development layout and a buffer of public open space / landscaping between the residential units and the wetland area to the south of the site, to be first agreed in writing by the Local Planning Authority, shall be carried out in full prior to the first occupation of the development hereby approved.

REASON: To mitigate against the loss of existing biodiversity and nature habitats.

16 No development shall commence on site until:

a) A written programme of archaeological investigation, which should include on- site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and

b) The approved programme of archaeological work has been carried out in accordance with the approved details, the results and recommendations recorded and submitted to and approved in writing by the Local Planning Authority.

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 enable the recording of any matters of archaeological interest.

17 INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

18 INFORMATIVE TO APPLICANT:

The applicant is reminded of the need to obtain separate Land Drainage Consent in respect of any alterations to existing watercourses, or works within 8m of the top of any bank thereto.

19 INFORMATIVE TO APPLICANT:

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

20 INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence. If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

21 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/communityinfrasturcturelevy

18 15/10519/OUT - Land at Bradford Road, Corsham

Paul Turner, David Taylor and Tony Clarke spoke against the application.

Dan Washington spoke in support of the application.

Peter Pearson (Corsham Town Council) spoke against the application.

The planning officer, Mark Staincliffe, introduced the report which recommended to delegate authority to the Area Development Manager to grant planning permission subject to the signing of a Section 106 agreement within 6 months of the date of the resolution of this Committee and the conditions and informatives, as amended by the late observations, outlined in the report. In the event of failure to complete, sign and seal the required section 106 agreement within the defined timeframe, to then delegate authority to the Area Development Manager to REFUSE planning permission for the reasons set out in the report. The application was for the development of 170 dwellings, including a medical centre/community hall; photographs and a map were shown. It was highlighted that the proposed application was a resubmission of application 14/04179/OUT, that had been dismissed at a planning appeal. The officer explained that 2 days prior to the item being heard previously, serious concern had been raised by ecologists and Natural England that surveys on bats had not been undertaken and thus, the reason for refusal of the application had been based on ecological grounds. It was confirmed that this was then appealed and that the planning inspector had purely refused the application on ecological grounds and had not cited any additional reasons for refusal, for which he had been at liberty to do.

The officer then drew the meeting's attention to the late items included in the agenda supplement and stated that Natural England had not raised any objections to the granting of planning permission to the proposed site. It was confirmed that both ecologists and Natural England were satisfied that work could be carried out, without endangering any protected species.

The officer explained that Core Policy 2 was no longer engaged, as there was no ability to demonstrate a 5 year land housing supply. It was noted that central government outlined that planning should be granted, where there was not a 5 year housing supply, unless any adverse impacts significantly and demonstrably outweighed the benefits.

The Committee was then invited to ask technical questions and it was confirmed that the maintenance of the public open spaces in the proposed application would be controlled by a management company, of which the owners of the proposed properties would pay for. Also, that to develop on the area marked within the blue line on the map would require additional planning permission. Further, that conditions 17 and 18 listed in the report denoted that there would be 2 refuge points on either side of the road; that pedestrians would be able to cross the road from the proposed site and that the additional noted 4 cars on the road related to the number of additional queuing vehicles on the road; which is how the Local Authority determined additional road users. It was then confirmed that the proposed site layout was only an indicative map and that there was likely to be onsite flood mitigation features to ensure that the

development would not contribute to an increase in flooding, but this would be resolved by way of planning condition and further information. The officer remarked that there was a mistake in the report and that there had been no objection from any drainage comments.

The officer also confirmed that education contributions would be made if the proposed application was to be accepted and that the Corsham schools would be expanded to provide additional pupil places, as a result of the proposed development. Indeed, there was an excess of £1 million to ensure there would be sufficient capacity at the Corsham schools.

Members of the public were then invited to speak, as detailed above.

Cllr Trotman raised objections on behalf of the local member, Cllr Tonge.

Following the statements, concern was raised by members over the lack of a 5 year housing supply and thus, how it was a greater challenge for them to exercise their decision making powers. Concern was also raised about how Corsham had surpassed the Core Strategy target for 2026 and it was expressed that such a development could endanger the quality of life in Corsham and could be deemed as environmentally unsustainable for the area. The officer advised that an environmental statement would require months of work and that, as it had been stated that one was not needed when a screening opinion was carried out, it was unlikely that the applicants would submit one given. It would be likely that the applicants would appeal for non-determination of the application if committee deferred on this basis. An environmental statement was not submitted or requested when considering the previous application or appeal.

Cllr Whalley, seconded by Cllr Greenman, moved to defer the application until the cumulative impact on Corsham through a full environmental impact assessment had been conducted. The motion was put to the vote and failed.

Cllr Trotman, seconded by Cllr Hutton, moved the officer's recommendation to grant planning permission, subject to the late representations and that heads of terms of agreement were to be replaced by conditions. The motion was put to the vote and passed.

Resolved:

That authority is delegated to the Area Development Manager to GRANT planning permission, subject to conditions listed below and completion of a S106 legal agreement within six months of the date of the resolution of this Committee.

In the event of failure to complete, sign and seal the required section 106 agreement within the defined timeframe to then delegate authority to the

Area Development Manager to REFUSE planning permission for the following reason:-

The application proposal fails to provide and secure the necessary and required Services and infrastructure supporting the proposed residential development including Affordable Housing; Waste; Public Open Spaces; Air Quality Management and is therefore contrary to Policies CP3 CP43 & CP55 of the Wiltshire Core Strategy Adopted January 2015 and Paras 7, 14 & 17 of the National Planning Policy Framework March 2012.

1 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2 No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority: (a) The scale of the development; (b) The layout of the development; (c) The external appearance of the development; (d) The landscaping of the site. The development shall be carried out in accordance with the approved details.

REASON: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 5 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

3 An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

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 buildings 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.

5 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

REASON: To protect controlled waters from pollution.

6 No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following: a) the parking of vehicles of site operatives and visitors; b) loading and unloading of plant and materials; c) storage of plant and materials used in constructing the development; d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate; e) wheel washing facilities; f) measures to control the emission of dust and dirt during construction; g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and h) measures for the protection of the natural environment; i) hours of construction, including deliveries; has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

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

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

3657/203

12731-500-001 Sheet 1,2 & 3

FIGURE 4.1

FIGURE 4.2

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

8 No more than 170 dwellings shall be developed on the application site edged red on the submitted Site Plan.

REASON: For the avoidance and in the interest of proper planning

9 The development hereby approved shall not commence until a foul water drainage strategy is submitted and approved in writing by the local Planning Authority in consultation with Wessex Water acting as the sewerage undertaker.

A drainage scheme shall include appropriate arrangements for the agreed points of connection and the capacity improvements required to serve the proposed development phasing. The drainage scheme shall be completed in accordance with the approved details and to a timetable agreed with the local planning authority.

REASON: There is limited capacity within the downstream sewerage system to accommodate the predicted foul flow from the proposed development. Network modelling of the foul sewerage system is required to ascertain the nature and extent of capacity improvements. The condition will ensure that proper provision is made for sewerage of the site and that the development does not increase the risk of sewer flooding to downstream properties.

10 Details submitted as part of any reserved matters application for the site shall be in accordance with the mitigation measures set out in the submitted document 'Land at Bradford Road, Corsham: Summary of Results and Proposed Mitigation' (Engain, 2015) and the Council's appropriate assessment for this application (dated 27/12/15).

REASON: To mitigate against the loss of existing biodiversity and nature habitats.

11 Prior to the commencement of development, an Ecological Management and Monitoring Plan shall be submitted to and approved in writing by the Local Planning Authority. The Ecological Management and Monitoring Plan shall be in general accordance with the measures set out in the submitted 'Land at Bradford Road, Corsham: Summary of Results and Proposed Mitigation' document, and provide full details for the establishment and long-term management of semi-natural features within the site, including:

- " Translocation of sections of the existing hedgerow along Bradford Road "
- " Establishment of all new areas of planting / landscaping
- " Establishment of wildflower grassland
- " Establishment of wetland habitats within the SUDs

" Long-term management of all hedgerows, woodland, grassland and wetland habitat features

" A schedule for monitoring of the condition of newly established habitat features, and post-development bat activity at the site.

The site shall be maintained in accordance with the long-term management measures set out in the Ecological Management and Monitoring Plan unless otherwise agreed in writing by the Local Planning Authority. Results of ecological monitoring shall be submitted to the Local Planning Authority in accordance with the monitoring schedule.

REASON: To mitigate against the loss of existing biodiversity and nature habitats.

12 Any reserved matters application shall be accompanied by a lighting scheme for that part of the site, including a lux plot clearly demonstrating that dark corridors (<1 lux) will be retained in accordance with the submitted 'Land at Bradford Road, Corsham: Summary of Results and Proposed Mitigation' document, and the Council's appropriate assessment of this application (dated 27/12/15).

REASON: To ensure that the proposed lighting doesn't have a detrimental impact on protected species..

13 No part of the development hereby approved shall be commenced until details of refuse and recycling facilities (including location and range of facilities and their means of operation) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained.

REASON: In the interest of the visual amenity of the area and in the interests of public safety.

14 No development shall commence on site until a scheme for the discharge of stormwater water from the site, including any required on site or off site capacity improvements required to receive flows together with a connection point agreed with the sewerage undertaker and timetable, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme, including any required off site works/improvements within the agreed timetable.

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 that the development can be adequately drained.

15 No development shall commence until a foul and surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The scheme shall include details of how the scheme shall be maintained and managed after completion. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

REASON: To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of the surface water drainage system.

16 Prior to the first occupation of any dwelling the pedestrian visibility splays and the footway alterations on drawing Transport Assessment Figure 4.4 SK03 shall be provided and thereafter permanently retained.

REASON: In the interest of highway and pedestrian safety.

17 Prior to the first occupation of any dwelling the pedestrian refuge, visibility splays and bus layby on drawing Transport Assessment Figure 4.5 SK05 shall be provided and thereafter permanently retained

REASON: In the interest of highway and pedestrian safety.

18 Prior to the first occupation of any dwelling the pedestrian refuge and visibility splays on drawing Transport Assessment Figure 4.6 SK06 shall be provided and thereafter permanently retained.

REASON: In the interest of highway and pedestrian safety.

19 Prior to the first occupation of any dwelling the visibility splays at the Park Lane access of 2.4 x 120 metres in each direction at a height not exceeding 600mm above carriageway level shall be provided and thereafter permanently retained.

REASON: In the interest of highway and pedestrian safety.

20 Prior to the first occupation of any dwelling the visibility splays at the Bradford Road access of 2.4 x 160 metres in each direction at a height

not exceeding 600mm above carriageway level shall be provided and thereafter permanently retained.

REASON: In the interest of highway and pedestrian safety.

21 Prior to the first occupation of any dwelling the pedestrian refuge and visibility splays on drawing Transport Assessment Figure 4.7 SK07 shall be provided and thereafter permanently retained.

REASON: In the interest of highway and pedestrian safety.

22. Prior to the occupation of the 50th dwelling on site full details of the improvement scheme at A4 / B3109 shall have been submitted to and approved in writing by the local planning authority and implemented as approved and permanently maintained in operation thereafter unless the roundabout secured at appeal under application 13/05188/OUT is implemented first. Should the roundabout secured under application 13/05188/OUT be implemented after the works approved and implemented by this condition there will be no requirement for the works approved by this condition to be permanently maintained.

23. No building hereby approved shall be occupied before a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be implemented as approved and permanently maintained in operation thereafter

24. No building hereby approved shall be occupied before a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be implemented as approved and permanently maintained in operation thereafter.

25. No building hereby approved shall be occupied before a scheme for the right turning lane at the access from Bradford Road including resurfacing and visibility splays has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.

26. No building hereby approved shall be occupied before a scheme for the right turning lane at the access from Park Lane including resurfacing and visibility splays has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.

27. No building hereby approved shall be occupied before a scheme for street lighting improvements over the Park Lane frontage of the site and a scheme for street lighting improvements of Bradford Road over the site frontage and as far as Toghill Crescent has been implemented

in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.

28. No building hereby approved shall be occupied before a scheme for the Widening and resurfacing of the footway between the Bradford Road site access and the Toghill Crescent area (as shown on TA drawing Figure 4.1) has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the relocation of any lighting columns and electricity or telephone poles within the footway.

29. No building hereby approved shall be occupied before a scheme for the proposed minor highway improvement at the A4 / B3353 mini roundabout and minor highway improvement at the A4 Bath Road / Park Lane mini roundabout has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.

INFORMATIVE TO APPLICANT:

Please be advised that nothing in this permission shall authorise the diversion, obstruction, or stopping up of any right of way that crosses the site. You are advised to contact the PROW officer on [INSERT]

INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence. If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

INFORMATIVE TO APPLICANT:

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

INFORMATIVE TO APPLICANT:

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

19 **Urgent Items**

There were no urgent items.

(Duration of meeting: 15:00-18:02)

The Officer who has produced these minutes is Natalie Heritage, of Democratic Services, direct line 01225 718062, e-mail natalie.heritage@wiltshire.gov.uk

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

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Wiltshire Council
Northern Area Planning Committee
9th March 2016

Forthcoming Hearings and Public Inquiries between 26/02/2016 and 31/08/2016

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Date	Overturn at Cttee
14/07602/OUT	Land at Oxford Road Calne Wiltshire	CALNE	Erection Of Up To 41 Dwellings (Outline)	DEL	Inquiry	Refuse	17/05/2016	No
14/11179/OUT	Land at Prince Charles Drive Calne Wiltshire SN11 8NX	CALNE WITHOUT	Residential Development of up to 130 Dwellings, Infrastructure, Ancillary Facilities, Open Space, Landscaping & Construction of New Vehicular Access Off Prince Charles Drive	DEL	Inquiry	Refuse	10/05/2016	No
14/11978/OUT	Wheatleys Farm High Road Ashton Keynes Swindon SN6 6NX	ASHTON KEYNES	Demolition Of Existing Farm Buildings & Erection Of 18 Dwellings (Outline, All Matters Reserved Except Access)	DEL	Hearing	Refuse	18/03/2016	No

Planning Appeals Received between 04/02/2016 and 26/02/2016

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
15/09258/FUL	Copse Cottage Oaksey Malmesbury Wiltshire SN16 9TJ	OAKSEY	Extension & Alterations to Existing Outbuilding to Create New Dwelling	DEL	Written Representations	Refuse	08/02/2016	No
15/07286/ADV	Nos 18 And 20 High Street Malmesbury Wiltshire SN16 9AU	MALMESBURY	Proposed One Illuminated Hanging Sign to the Front of the Property at First Floor Level & Fascia Sign on Rear Arch Doorway Wall. (Retrospective)	DEL	Householder Appeal	Refuse	10/02/2016	No
15/09037/OUT	Car Park to Former Scout Hut Heddington Calne Wiltshire SN11 0PF	HEDDINGTON	Proposed Retirement Bungalow in Former Car Park.	DEL	Written Representations	Refuse	22/02/2016	No
15/09171/FUL	1a Burlands Road Chippenham Wiltshire SN15 3DF	CHIPPENHAM	Erection of Two Storey One Bedroom Town House.	DEL	Written Representations	Refuse	09/02/2016	No
15/11147/FUL	Home Orchard Ashley Box SN13 8AN	BOX	Siting of Garden Cabin for Tourist Use and Associated Works (Retrospective)	DEL	Written Representations	Refuse	22/02/2016	No

Agenda Item 6

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded ?
15/01330/VAR	Erin Trade Centre Bumpers Way Bumpers Farm Chippenham SN14 6NQ	CHIPPENHAM	Removal of Conditions 4 & 5 of 14/04909/FUL In Relation to Hours/Days of Usage & Details of Operation	COMM	Written Reps	Approve with Conditions	DISMISSED	19/02/2016	No
15/03704/FUL	Orchard House Prospect Kingsdown Wiltshire SN13 8AY	BOX	Erection of New Garage and Store	DEL	House Holder Appeal	Refuse	DISMISSED	13/02/2016	No
15/05757/FUL	Garages at Croft Cottages Lower Kingsdown Road Kingsdown Wiltshire SN13 8BQ	BOX	Redevelopment of Existing Residential Garages to Ancillary Residential Accommodation.	DEL	House Holder Appeal	Refuse	DISMISSED	13/02/2016	No
15/05901/FUL	Warwick Farm Ballards Ash Royal Wootton Bassett Wiltshire SN4 8DX	LYDIARD TREGOZ	Proposed Change of Use of Land from Agriculture to Garden.	DEL	Written Reps	Refuse	DISMISSED	20/02/2016	No
15/06223/FUL	London Road Box Wiltshire SN13 8LR	BOX	Retrospective Application For The Construction of a Menage to Replace & Extend Existing Menage, Amendment to Existing Access and Retention of Access Track.	DEL	Written Reps	Approve with Conditions	ALLOWED	05/02/2016	

REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Date of Meeting	9th March 2016
Application Number	15/12096/FUL
Site Address	3 Witts Lane Purton Wiltshire SN5 4ER
Proposal	Proposed Demolition of Existing Dwelling & Erection of Four Dwellings (Amendments to Previously Approved Application 15/03295/FUL).
Applicant	Chris James Homes
Town/Parish Council	PURTON
Electoral Division	PURTON – Councillor Jacqui Lay
Grid Ref	409248 188055
Type of application	Full Planning
Case Officer	Richard Sewell

Reason for the application being considered by Committee

The application is being presented to Committee at the request of Councillor Jacqui Lay to consider the scale of development, the visual impact on the surrounding area, drainage issues, highway safety, parking and the impact on the residential amenity of the neighbouring properties.

1. Purpose of Report

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

2. Report Summary

The Town Council object to the scheme proposals. 32 Letters of objection received from neighbouring residents.

The main issues when considering this application are :

- The height and scale of the proposed dwellings and the visual impact on the street scene
- Impact of proposed development on local drainage system
- Potential impact on residential amenity
- Impact on highway safety and parking

3. Site Description

The proposal site is a corner plot situated within the settlement boundary of Purton and sits at the junction of Witts Lane and Peartree Close. Following the granting of permission 15/03295/FUL the thatched cottage that was previously located on the plot has been removed and the site has been cleared leaving broken ground with a large mound of earth at the north west corner of the site. The submitted topographical survey shows the site to be slightly above the level of the road and pavement and to gently slope from east to west with the south west corner of the site being the lowest point.

This residential area of Purton features a variety of house types and sizes with no prevailing local vernacular or distinctive character features. Properties situated along Witts Lane to the south of the proposal site all face the highway and are predominantly one and half storey chalet bungalows with 2 No. two storey pitched roof dwellings sitting either side of the Waite Meads Close junction. To the west of the site are 2 No red brick bungalows behind which are a terrace of dwellings that are accessed via Smith Court. To the immediate north of the proposal site are two detached dwellings that were permitted in 2013

4. Planning History

14/02935/FUL- Demolition of existing dwelling and erect 9 dwellings WITHDRAWN

14/07635/FUL- Demolition of existing dwelling and erect 7 dwellings (Resubmission of 14/02935/FUL) WITHDRAWN

15/03295/FUL- Demolition of existing dwelling and erection of four dwellings PERMITTED

5. The Proposal

The application proposes the erection of four dwellings with front and rear amenity space, hard standing and associated parking. The proposals are a revision to the design of 4 No. dwellings permitted on the site in 2015 under reference 15/03295/FUL. The revisions include an increase of 1.3m in the overall roof height, the inclusion of dormer windows to the rear elevations and erection of car ports instead of the previously approved attached garages. The dwellings will comprise a mix of facing materials with brick and stone elevations, slate tiles roofs and timber cladding on the side elevations and car ports with the proposed palette of materials reflecting the previously approved scheme except with the previously approved cream coloured render being replaced with Bradstone Rough Dressed cast stone.

6. Planning Policy

NPPF 2012: paragraphs 14 + 17 and Section 7

Wiltshire Core Strategy 2015: CP1, CP2, CP19, CP41, CP45, CP57, CP60 and CP61

7. Consultations

Purton Town Council- OBJECTION.

Design:

The amended application as under 15/12096/FUL seeks to significantly increase the height and bulk of the approved dwellings by the introduction of further habitable rooms on ground and second floor levels combined with a loss of integrated garage space to which we are of the opinion that such a proposal will be out of context with that as approved.

Parking:

We note that as detailed within the access statement in relation to the parking of vehicles however we are of the opinion that the loss of garage space and condition 8 as under app 15/03295/FUL will give rise to potential on-street parking at a location close to the junction of Pear Tree Close and Witts Lane which potentially will give rise to highway issues.

Drainage:

Whilst we accept that there may be similar volumes of water ultimately discharging into the storm water drainage system as sited within the highway, there is concern in relation to the siting of one large facility within Plot 1 which is proposed to serve all dwellings situated upon the site. The effect that water permeating from the storage facility will have on the dwelling sited on Plot 1 and the existing neighbouring dwelling, the previous application detailed smaller individual storage facilities giving the potential to distribute water over a larger area within the site as a whole. There is also the question of future maintenance, upon who does the remit fall. Should a condition be implemented in respect of this as part of any approval.

Pavements:

We are pleased to see that under the planning approval in relation to app 15/03295/FUL conditions have been implemented in relation to the retention of pavements however it remains unclear if such pavement works extend to Plot 4 in order to negate the need for those attending/leaving the property on foot to enter out on to the highway. Should there not be provision then once again we would request that in the interest of pedestrian safety that such an extension to the pavement system be implemented.

Ground surface levels:

The existing derelict cottage has now been demolished and as a result there is an indication that the ground level has been raised to which in respect of this there is concern as to the datum levels of any new development, that it will be higher than the immediate adjacent dwellings sited within Pear Tree Close. We therefore request that prior to any development such levels are determined so they are compatible with that of the immediate adjacent dwellings thus bringing any new development in context with that as existing.

Highways- NO OBJECTION. I note that the principle of the development has been established under

consent 15/03295. However, I am aware that some details have been altered. The proposal now includes store rooms / car ports instead of garages and properties have increased in size. The proposal includes car parking / turning space to enable reversing on highway for at least 3 vehicles per dwelling and this satisfies the council minimum car parking standards for residential developments. A highway objection on car parking grounds will not withstand appeal. I note from previous files that a 2m footway is required across plots 1, 2 and 3. The footway will need to be widened to 2m in some places and resurfaced. This will require a slight amendment to the drawings and highway dedication agreement. This will provide facility for pedestrians and provide visibility for the cars reversing. In addition I consider that a lowered kerb is required adjacent to Plot 3.

Following revised plans being received on 18.02.16, the Highways officer is now satisfied that a 2m footpath is demonstrated and offers no objection to the proposal providing conditions relating to parking, visibility splays, footpaths and alterations to car ports are added to any permission granted.

Drainage- NO OBJECTION. Application form states foul drainage disposal to main sewer. The Thames Water response indicated that a discharge to sewer will be allowed subject to formal S106 WIA 1991 application – proposals shown on application drawings. Application form states storm water drainage disposal to main sewer. Thames Water response indicated that a controlled discharge to sewer (with on-site storage) will be allowed subject to formal S106 WIA 1991 application – proposals shown on application drawings. No conditions are recommended by the Council Drainage Team as the proposed details are considered to be acceptable.

Thames Water:

With regard to sewerage infrastructure capacity, we would not have any objection to the above planning application. On the basis of information provided, Thames Water would advise that with regard to water infrastructure capacity, we would not have any objection to the above planning application. Thames Water recommend the following informative be attached to this planning permission. Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.

Urban Design- NO OBJECTION. The current planning application is a revision to that approved under 15/03295/FUL to accommodate an attic storey with rear dormers, and home office in each proposed house by raising the roof pitch and ridge height, (the footprint, roof eaves line and positioning of each house remaining essentially as previously approved). The four proposed houses with extant approved 15/03295/FUL inevitably represent an appreciable change in the character and scale from the previous building and large garden on the site, in the setting with neighbouring bungalows, chalet bungalows, and the shallower roof pitch and gable end of two storey houses opposite the site along Pear Tree Close and Witts Lane. The houses are of a similar depth to those now built adjacent between plot 1 and number 11 Pear Tree Close under N/13/00983/FUL. The

additional volume accommodating bedrooms within the roofspace now proposed would not result in such an increase in the scale (height and massing) or change in appearance of the houses from that approved under 15/03295/FUL that the current revised proposals would then become visually overbearing in this setting as the proposed houses would be suitably distanced from the existing smaller dwellings opposite along both Pear Tree Close and Witts Lane (which are set back from the road with verge, garden and driveways), and house 4 would be set suitably back on the site from the cottage adjacent. The revised proposals would still be consistent with the appreciable existing mix of building heights, massing and building form across the wider setting of the site.

Environmental Health – NO OBJECTION. It should be conditioned that construction activities may only take place between 0730hrs and 1800 hrs Monday to Friday, 0730hrs to 1400hrs Saturdays and no working on Sundays or Bank Holidays. There should be no burning of any waste on site. This too should be conditioned if possible.

Affordable Housing- NO OBJECTION. Please note that in line with CP43 of Wiltshire's Core Strategy we do not seek an affordable housing contribution on sites with less than 5 dwellings.

Ecology: NO COMMENT

POS: NO COMMENT

County Education: NO COMMENT

8. Publicity

32 letters of Objection received. Issues with proposal include

- Increase in proposed height of dwellings not in character with street scene
- Overdevelopment of plot
- Inadequate parking provision and impact on highway safety
- Impact on residential amenity of nearby properties
- Surface water drainage and flood risk

- Increase in ground levels
- Development on site already commenced
- Impact on local ecology and habitats
- Development not in accordance with Purton Parish Plan or emerging Neighbourhood Plan

9. Planning Considerations

Principle of development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determinations must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan policy context for this development and the surrounding area is provided by

the Core Policies contained within the Wiltshire Core Strategy 2015 and the Saved Policies of the North Wiltshire Local Plan 2011.

Local residents have stated that the proposed 4 No. 5 bedroom dwellings do not meet local housing need and are not in accordance with the Purton Parish Plan or emerging Neighbourhood Plan. Residents have commented that dwellings of a similar size within Purton have remained unsold which demonstrates that there is no need for housing of this size in the village. Whilst the Parish Plan is material a consideration, the emerging Neighbourhood Plan is at an early stage of development and so cannot be afforded weight in the determination of this application. However, it is a material consideration of significant weight that there is an extant permission for 4 No. detached, 4 bedroom dwellings on the site and it is noted that this extant permission received no objections from the Parish Council, local residents or Ward Member. The additional fifth bedroom proposed for each dwelling in this current application is not considered to significantly alter the acceptability in principle of residential development within this location. As such, the development is considered to meet the requirements set out below in the following Wiltshire Core Strategy 2015 Policies.

CP19 classifies Purton as being a Large Village where in accordance with CP1 development will predominantly take the form of small housing developments involving less than 10 dwellings. The proposal site is located within the Purton Framework Boundary and therefore in accordance with CP1 the principle of residential development in this location is considered to be acceptable. In accordance with CP41 the agent has confirmed in writing that all dwellings will be constructed to Code Level 4 of the Code for Sustainable Homes. CP57 requires a high standard of design in all new developments through proposals responding positively to the existing townscape in terms of building layouts, built form, height, mass, scale, building line, plot size, elevation design, materials and rooflines. CP60 and 61 seek all new development to be located in accessible location and to provide safe access to the highway.

Scale, design and layout of proposed dwellings

The proposed dwellings will be situated in a similar formation to the previously permitted scheme with no significant increase in the footprints of each dwelling being proposed. This will allow an adequate amount of outdoor amenity space for each of the proposed 5 bedroom dwellings, with the proposed rear gardens being of a similar size to those of the surrounding properties. There will be an increase in the height of the dwellings to allow additional living space within the roof structure and also the addition of dormers on the rear roof slope elevations. This amendment to the design of the dwellings contained within extant permission results in the approximate ridgeline height of the proposed dwellings being 9.3m which is an increase of 1.3m per dwelling to those permitted in 2015. Whilst it is acknowledged that the proposed increase in height of approx 1.3m will result in buildings that are taller than the surrounding properties (specifically the chalets and bungalows on the other sides of the highway to the proposal site), the overall scale is not considered by the Council's Design Officer to be detrimental to the overall character of the street scene which features a variety of house styles and

sizes. The design of the dwellings is in keeping with the local vernacular (particularly 7 and 9 Peartree Close), with the proposed materials being similar to those used on the surrounding properties and across the wider Purton area. Therefore, the proposed dwellings would still be consistent with the appreciable existing mix of building heights, massing and building form across the wider setting of the site and this part of Purton.

Surface water drainage

Local residents and the Ward Councillor have raised a number of concerns with the proposed surface water drainage of the site and the capability and capacity of the local drainage system in dealing with surface and ground water runoff. In addition to the standard consultation response there has been extensive correspondence between the Ward Member, Council Drainage Engineers and Case Officer. In an email dated the 20.01.16 the Council's Drainage Engineer has confirmed that:

- The application includes the provision of an onsite storage and control device to the level required by Thames Water and the proposed disposal of surface water via the connection to the existing Thames Water sewer in Peartree Close and that is an acceptable arrangement. In addition, the proposed surface water attenuation tank located in under the front garden of Plot 1 is considered adequate to store the 1:100 and + 30% flow.
- Thames Water are happy to accept a limited storm water flow rate from the proposal site into their storm sewer with onsite storage. This means that Thames Water will have carried out the necessary assessment to ensure that their system can take this level of flow. It is noted from Thames Water records that the public sewer does discharge into an area with flood history, however the outlet of the public sewer is set at a particular size which in turn means a set discharge rate.
- The restricted flow from this site would not result in an increase in peak flow from the sewer into the watercourse (the peak would be longer) and if pipe could not discharge flow it would be stored in the public sewer until it could be released

Concerns have been raised with the clearance of the land, removal of the trees and the increased ground levels of the site resulting in the potential for additional surface water runoff to the adjacent properties 4 Witts Land and 7 Peartee Close. The Council's Drainage Engineers have visited the site on numerous occasions to assess this situation and have also taken into consideration the submitted topographical survey 16625-200-01T and the Purton Flooding Report and Management Plan 2013 which was provided by the Ward Councillor. When compared against the previous topographical survey (drawing No.Y14-111-1) submitted under 15/03295/FUL, the current survey shows that the overall site levels have been reduced following the clearance of the site. The current survey also

demonstrates that the northern and western site boundaries adjacent to 4 Witts Lane and 7 Peartree Close have been lowered. Soft landscaping and tree planting is proposed so with the addition of the proposed drainage system, it is considered that there are adequate measures in place to limit the potential of flood risk to the adjacent properties and highways network.

It is considered that the current proposal does not result in any additional flood risk to the surrounding properties to those dwellings permitted under the extant permission on site. It is noted that the previous application raised no objections or concerns relating to drainage from local residents or the Ward Member despite no drainage details being provided as part of the application. This current proposal provides all of the required drainage information that was requested in conditions 9 and 10 of 15/03295/FUL. The Council's Drainage Engineers and Thames Water have confirmed that the proposed drainage arrangements are acceptable in order to deal with surface water runoff from gutters and hard surfacing and are satisfied that no further conditions relating to drainage details are required. It is therefore considered that the ground levels shown in the topographical survey and the proposed soft landscaping and tree planting will limit flood risk across the site and surrounding highways network and that the Council has done all that is reasonably necessary to negate the potential for flood risk at this location.

Ground levels of site

Local residents have raised concerns with the ground level of the site being increased following the demolition of the previous dwelling and clearance on the site. This is considered to be a particular issue as it is felt that the elevated ground levels will further raise the height of the proposed dwellings within the street scene also increase the potential for flood risk to the surrounding properties and highways network.

As discussed in the section above, a topographical survey has been submitted and has been assessed against the previous survey submitted as part of 15/03295/FUL which showed the levels of the site before the previous dwelling was demolished and the site cleared. The current survey clearly demonstrates that the overall level of the site has been lowered meaning the visual impact of the increased roof height will not be significantly detrimental to the wider street scene and that the potential for additional ground water flood risk has been reduced.

Impact on residential amenity

The submitted plans show the proposed dwellings to be set back from the highway and to be situated a significant distance from the surrounding properties. The dwellings most affected by the proposed dwellings are 4 Witts lane to the west of the site and 7 Peartree Close to the north. The proposed dwelling shown as being Plot 4 is approx 6m to the east of the side elevation of 4 Witts lane and set back so that the proposed front elevation will be roughly in line with the rear elevation of 4 Witts lane. The proposed orientation and position of the dwelling and the degree of separation with the neighbouring building is not considered to result in any significant overbearing impact or loss of

sunlight to 4 Witts Lane as a result of allowing a dwelling of the size proposed to be erected in this location. No side windows are proposed in the western elevation of the dwelling and so there will be no significant loss of privacy as a result of direct overlooking into the rear garden or into the habitable windows of 4 Witts Lane

Similarly the relationship between the proposed dwellings located in Plot 1 and 7 Peartree Close is also not considered to be an un-neighbourly form of development as the distance between the properties and the lack of direct overlooking means that there will be no overbearing impact or additional loss of privacy to 7 Peartree Close. A 1.8m fence is located between the adjacent rear gardens, so despite the higher ground level of Plot 1, the fence is considered to be an adequate means of restricting views between the neighbouring outdoor rear amenity spaces.

The orientation of the proposed 4 No. dwellings and their position within the proposal site means that at the closest point the dwellings to the south of the site on Witts Lane will be approximately 18m away and to the east the dwellings on Peartree Close will be approximately 22m away. This degree of separation is an entirely acceptable arrangement in a built up residential area such as this part of Purton. In comparison to the extant permission, the 1.3m increase in roof height and the additional dormer windows on the rear roof slopes are not considered to result in any significant additional impact on the level of residential amenity currently awarded to the surrounding properties.

It is a key material consideration that there is an extant permission on the proposal site for 4 No. dwellings in the same configuration as that is now proposed. The alterations to the approved scheme do not result in a significant additional level of impact on existing residential amenity such that consent ought to be refused.

Local residents have also raised concerns about the clearance of the site resulting the loss of habitats for local wildlife. The Council's Ecologist was consulted on this matter during the previous application and was satisfied that the submitted Phase 1 Bat Survey demonstrated that there was negligible potential for the former cottage to support roosting bats. Taking this into consideration with the current proposal the Council's Ecologist has raised no concerns with the demolition of the cottage, clearance of the site and overall development.

Parking and Highway Safety

The Council's Highway's Engineer has confirmed that following the submission of a revised parking plan on 06.01.16, the development provides the required number of parking spaces being 3 per 5 bedroom dwelling as specified in the Wiltshire Local Transport Plan 2011-2016. Local residents have raised concerns that the proposed size of the dwellings and the potential for future internal alterations to create additional bedrooms will result in further on street parking in this location where there is already pressure on the public highway for parking due to Smith Court only having allocation of one parking place per property. In addition, the Ward Member has raised the issue of the junction being used as a turning point for local bus services which also contributes to the existing pressure on the

highways network.

However, the Council's parking standards are clear that dwellings of 4 or more bedrooms require a minimum of 3 parking spaces regardless of the size of the dwelling. Therefore, the proposed parking arrangements are acceptable and in accordance with Council Highways Policy. Applications must be determined on the submitted details and current material circumstances and considerations and not speculation as to possible future events and actions.

The Highways Engineer did request a revised plan showing a 2m wide footpath be shown along the eastern site boundary along Plots 1-3. This was provided by the agent on the 18.02.16 and has subsequently been considered acceptable. Visibility splays for the vehicle access of Plot 4 have not been demonstrated within the application but it is considered that they are achievable and so the Highways Engineer is satisfied that this can be dealt with by condition. Each dwelling is shown as being provided with a double bin store being located approximately no more than 10m from the highway which is within the 25m limit as detailed within the Draft Wiltshire Council Waste Collection Guidance for New Developments 2015.

10. Conclusion

Following extensive consultations with the Council's Drainage Engineers, Highways Engineer and Landscape and Design Officer, it is considered that the proposed application is an acceptable form of residential development within the Purton Settlement Framework. Whilst it is acknowledged that the proposed dwellings are of an increased height to those other properties in the local vicinity, the proposed scale, design, materials and site layout would not be visually overbearing in this setting and would be consistent with the appreciable existing mix of building heights, massing and building form across the wider setting of the site. The proposed surface and foul water drainage provision for the proposed dwellings is considered to be acceptable by both the Council's Drainage Engineers and Thames Water. The positioning of the dwellings and the proximity to the neighbouring properties means that there will be no significant impact on residential amenity in terms of overbearing impact, loss of privacy or overlooking, loss of sunlight or additional noise disturbance. The proposed parking and vehicle access are in accordance with local policy and are not considered to result in any detrimental impact on highway safety. It has been confirmed in writing that all dwellings will be constructed to Code Level 4 of the Code for Sustainable Homes. It is important to note that an extant permission exists at this stage for 4 No. dwellings. The revised proposals are not significantly different and this is a material consideration of significant weight. The proposal is considered to comply with Wiltshire Core Policies CP1, CP2, CP19, CP41, CP57, CP60 and CP61 and under the terms of the NPPF paragraph 14 should be granted permission without delay.

RECOMMENDATION

That planning permission be granted 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:

Revised Site Plan 15/39:01 Rev B received 18.02.16

Plot 1 Floor Plans 15/39:02 and Elevations 15/39:03 received 04.12.15

Plot 2 Floor Plans 15/39:04 and Elevations 15/39:05 received 04.12.15

Plot 3 Floor Plans 15/39:06 and Elevations 15/39:07 received 04.12.15

Plot 4 Floor Plans 15/39:08 and Elevations 15/39:09 received 04.12.15

Location & Site Plan 15/39:00 received 04.12.15

Drainage Foul 15/39:14 received 04.12.15

Drainage Storm 15/39:15 received 04.12.15

Landscaping Plan 15/39:20 received 04.12.15

Bin Store 15/39:21 received 04.12.15

Finishes Schedule 15/39:10 received 04.12.15

Fences 15/39:22 received 04.12.15

Topographical Survey 16625-200-01T received 15.02.16

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

- 3 No part of the development hereby permitted shall be first occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans and has been consolidated and surfaced (not loose stone or gravel). The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

- 4 With regard to Plot 4, No development shall commence on site until visibility splays have been provided between the edge of the carriageway and a line extending from a point 2m metres back from the edge of the carriageway, measured along the centre line of the access, to the points on the edge of the carriageway 33metres to the east and 20metres to the west from the

centre of the access in accordance with the approved plans. Such splays shall thereafter be permanently maintained free from obstruction to vision above a height of 0.6m above the level of the adjacent carriageway.

REASON: In the interests of highway safety.

- 5 No part of the development hereby permitted shall be first brought into use until the 2m wide footway across the frontage of Plots 1, 2, and 3 has been provided and resurfaced in accordance with the details shown on the approved plans and a lowered kerb provided adjacent to Plot 3 (to cross Witts Lane). Full details shall have been submitted to and approved in writing by the Local Planning Authority prior to the works taking place.

REASON: In the interests of highway safety.

- 6 With regard to Plots 1 and 2 no external alterations (including doors) shall be made to the car ports approved here in without formal approval of the Local Planning Authority via a planning application.

REASON: To ensure car ports remain open and available for car parking

- 7 No construction activities shall be carried out within the curtilage of the site before 0730hrs in the morning on Mondays to Saturdays, nor after 1800hrs in the evening on Mondays to Fridays and 1400hrs in the afternoon on Saturdays, nor at any time on Sundays and Bank or Public Holidays. In addition there shall be no burning of waste on site at any time

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

- 8 No development shall commence on site until the proposed ground floor slab levels of the development hereby permitted have been submitted to and agreed in writing by the Local Planning Authority prior to the works taking place.

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.

- 9 The dwellings hereby approved shall achieve Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate for it has been issued and submitted to, and approved in writing by, the local planning authority certifying that Code Level 4 has been achieved.

Reason: To ensure that the objectives of sustainable development set out Policy CP41 of the Wiltshire Core Strategy are achieved.

- 10 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/communityinfrastructurelevy

- 11 INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

- 12 INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

- 13 INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground

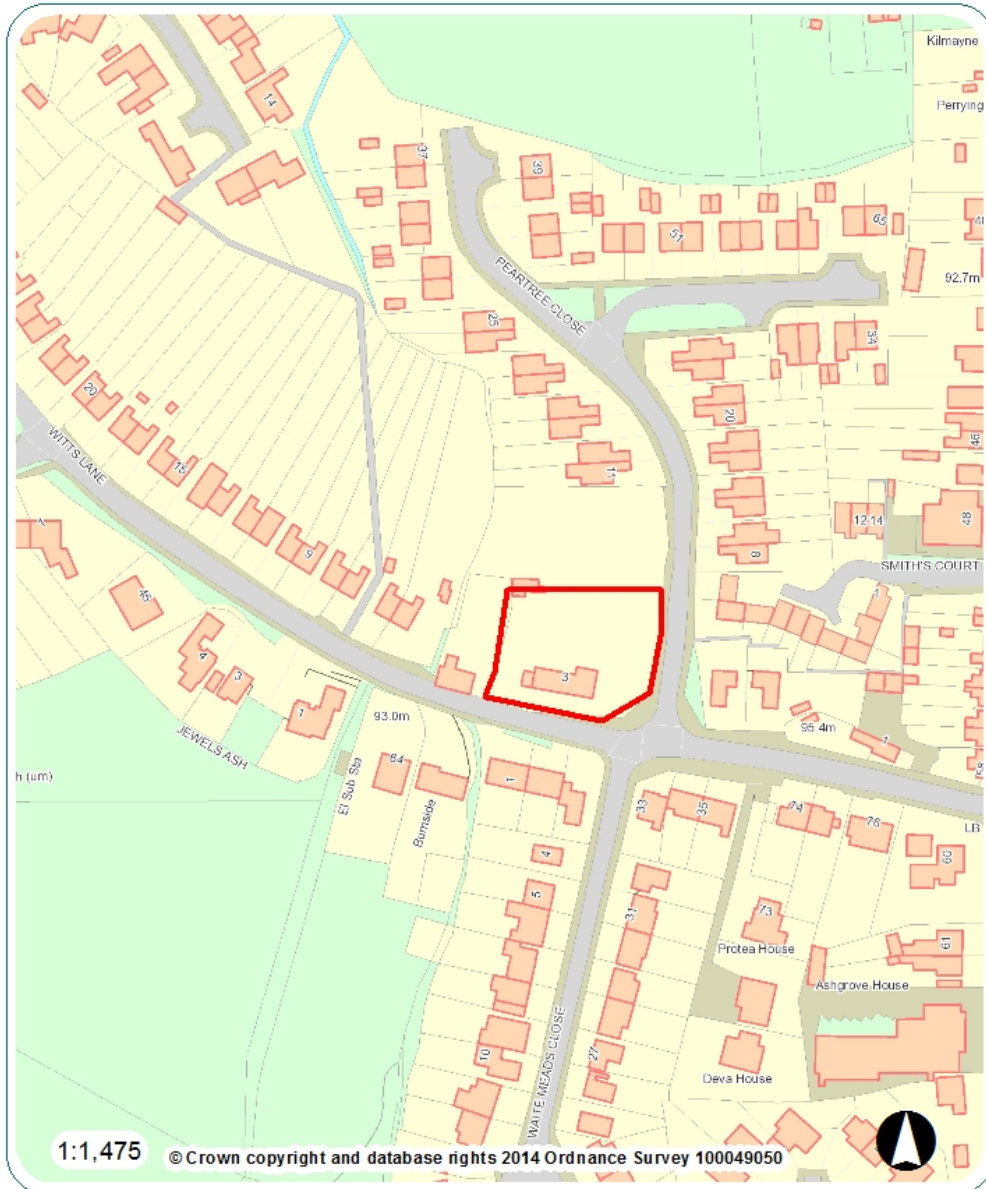
conditions appertaining to the sewer in question.

14 INFORMATIVE TO APPLICANT:

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

15 INFORMATIVE TO APPLICANT:

Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.



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WILTSHIRE COUNCIL

AGENDA ITEM NO.

NORTHERN AREA PLANNING COMMITTEE

9 MARCH 2016

HIGHWAYS ACT 1980 AND WILDLIFE AND COUNTRYSIDE ACT 1981

THE WILTSHIRE COUNCIL MALMESBURY ST PAUL WITHOUT 13 (PART), 16 (PART), 17 (PART) AND LEA AND CLEVERTON 1A (PART) DIVERSION ORDER AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2015

AND

THE WILTSHIRE COUNCIL MALMESBURY WITHOUT 15 EXTINGUISHMENT AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2015

Purpose of Report

1. To:
 - (i) Consider the objections received to the making of two legal orders; the Wiltshire Council Malmesbury St Paul Without 13 (part), 16 (part), 17 (part) and Lea and Cleverton 1A (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; the Wiltshire Council Malmesbury Without 15 extinguishment and definitive map and statement modification order 2015 under Section 118 of the Highways Act 1980 and Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Orders be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination, with a recommendation that they be confirmed without modification.

Relevance to Council's Business Plan

2. The proposals form part of a wider scheme to work with the local community and provide a rights of way network fit for purpose, which should help to encourage people to be more active.

Background

3. A large housing development was recently constructed at Cowbridge, to the east of Malmesbury. As part of the planning permission Wiltshire Council required a contribution towards converting the nearby old railway to a pedestrian and cycle route. The purpose of the route is to provide an attractive, direct link for pedestrians and cyclists from the development into the middle of Malmesbury and vice versa.

4. In order to agree permissive use of the old railway by the public, the landowner requested some alterations to the rights of way network elsewhere on his land. Sustrans, the sustainable transport charity who are promoting the new link, submitted an application for the alterations on the landowner's behalf. The area of interest is shown in **Appendix A**.
5. As shown on the plan in **Appendix B**, the following alterations were proposed.
 - (i) **Diversion** of part of footpath Malmesbury St Paul Without 16, changing it from a cross-field path to one running along the western boundary of the field.
 - (ii) **Diversion** of part of footpath Malmesbury St Paul Without 13 from a cross-field path to the southern edge of the field.
 - (iii) **Diversion** of part of footpaths Malmesbury St Paul Without 17 and Lea and Cleverton 1A to cross the weir bridge. There was an earlier bridge at this location, and the legal lines of the rights of way were defined as running across this bridge. Since then a replacement bridge has been constructed in a different place, but the footpaths were not diverted to run over the new bridge at the time of this change.
 - (iv) **Extinguishment** of footpath Malmesbury St Paul Without 15, which would otherwise become a cul-de-sac following the diversion of Malmesbury St Paul Without 16.
6. The existing legal lines of Malmesbury St Paul Without 13 and Malmesbury St Paul Without 16 pass through the farmer's crops and a clear line has not always been made available on the ground. There is evidence on the ground that walkers are currently using the edges of the field rather than seeking to use the legal lines of these routes. However, for the purpose of these Orders and the legal tests they must meet, the proposals must be considered as if the legal lines were available on the ground.
7. Wiltshire Council has a duty to ensure this route is available for the public but is mindful that the alterations requested by the landowner might provide a similar experience 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 applications have been fully determined.
8. In June 2015 Wiltshire Council carried out an initial informal consultation with statutory undertakers and user groups. No concerns were raised about the proposals. A decision report, which considered the application in accordance with Section 118 and Section 119 of the Highways Act 1980, was produced. This is attached as **Appendix C**. The report made a recommendation to senior officers to make orders to implement the alterations as proposed, a recommendation that was approved.
9. The Orders were subsequently made and notice was duly served and posted. Following the making of the Orders, Wiltshire Council received three objections.

10. To determine whether or not the Council continues to support the making of the Orders, members of the committee are now required to consider the objections. The decision must be made in accordance with the legal tests under Section 118 of the Highways Act 1990 for the Public Path Extinguishment Order and Section 119 of the Highways Act 1990 for the Public Path Diversion Order.
11. If the committee continues to support the making of the Orders they must forward them to the Secretary of State for the Environment, Food and Rural Affairs for determination. The members of the committee must decide the Wiltshire Council recommendation to be attached to the Orders, either:
 - (i) that the Orders be confirmed as made without modification, or
 - (ii) that the Orders be confirmed with modification.
12. If Wiltshire Council no longer supports the making of the Orders, members of the committee may determine that the Orders should be withdrawn.
13. Where members consider that the legal tests for confirmation are met, it can recommend that the Orders are forwarded to the Secretary of State for determination. However, given budgetary constraints at this time, no legal representation or support could be given to supporting confirmation of the Orders in the event of a public hearing or inquiry.

Main Considerations for the Council

14. The Diversion Orders are made under Section 119 of the Highways Act 1980. The requirements of this section of the Act are set out in paragraph 3.2 of the decision report (**Appendix C**).
15. The Public Path Extinguishment Order is made under Section 118 of the Highways Act 1980. The requirements of this section of the Act are set out in paragraph 3.9 of the decision report (**Appendix C**).
16. Three objections were received, the details of which and the officer responses are set out in the paragraphs below.
17. **Objection 1 - Mrs Humpherson, Milbourne, 14/01/2016**

I would like to make a point in respect to the request for to [sic] changes to the footpaths in Southfields, Malmesbury.

The footpaths that have existed for many years and have given a safe track for walkers [sic]. To my knowledge the Countryside Code has been adhered to by the people who have enjoyed and respected the opportunity of walking the paths.

Milbourne, where we live, has no footpaths at the side of the road. When our Grandchildren visit, how pleasant and much more safe are the paths that we have enjoyed across Southfields rather than dodging the traffic in the lanes, whether to get us to Lea or via the sewage park path and then onto Malmesbury.

The only trouble we have found on our walks recently is that the existing stiles are far from safe and do not make it easy to cross. Having said that, I would rather keep the pathways unchanged and continue to enjoy the access.

18. The main concern of the first objector was based on the impression that the alterations would lead to them having to walk on the lanes more, with associated concerns about traffic. The proposals have no effect on any of the points where the footpaths meet the road network, the changes would be within the fields themselves. It would still be possible to leave the road network at the same points as at present so it is felt these concerns are unfounded.

19. **Objector 2 - Mr and Mrs Thomsons, Milbourne, 14/01/2016**

I am writing with reference to the proposed closure of the footpaths from Southfield Farm, Crabb Mill Lea across to the sewage works or over to Milbourne. Having lived in Milbourne for five years now and being avid lovers of nature/countryside, let alone dog walkers I was distressed to read of the proposals, as these are walks that we regularly tread – let alone in our top five around the area.

Technically it is described as a redirection of footpath which I strongly object to. The proposal would take us out of our way and due to the change of terrain [sic] at least 15 minutes more of rutted ground to walk over; not to mention the added concern that in the summer cows graze in these fields. This would influence my decision to walk the path. Thus impeding on my civil liberties let alone “Joie de Vie”.

So it is for the reasons overleaf that myself and my husband strongly object to the proposed “redirection/closure” of the 2 footpaths.

20. The second objection relates to the extinguishment of footpath Malmesbury St Paul Without 15 and diversions of Malmesbury St Paul Without 16 and part of Malmesbury St Paul Without 13. The key issues raised were as follows.

- (i) *Concerns about cows grazing the field in the summer.* The proposed alterations are within the same fields as the existing rights of way; therefore, this potential conflict could occur whether the alterations are made or not.
- (ii) *The proposed diversion would involve walking for 15 minutes longer over rutted ground.* The existing route, from the northern end where the diversion would begin, to where Malmesbury St Paul Without 13 meets Malmesbury St Paul Without 15 is 910 metres. To get to the same point via the proposed diversions of Malmesbury St Paul Without 13 and Malmesbury St Paul Without 16 is 1,110 metres. Given the use of the path is largely for leisure purposes it is felt this is not significantly further and it would not take significantly longer. The diversion would run along the edge of the field, where the landowner would be most likely to drive his vehicle. The surfacing at the time of the site visit in May 2015 did not appear to show that rutting was a regular issue. A 2 metre width would be allocated for the right of way; however, if rutting did occur the edge of the field is very open – assuming this was not fenced in it should be possible to avoid any poor surfacing.

21. **Objector 3 - Mr and Mrs Davies, Malmesbury, 15/01/2016**

Although Mr Davies initially said that he was minded not to object he has since decided to lodge an objection on the grounds set out below.

After speaking with various people including former county councillor Caroline Pym I am currently minded NOT to object to the current proposals, even though I am deeply unhappy about them. I thought as a courtesy I should let you and your colleagues know.

However for me it is a great pity that these footpaths issues were not raised during the consultations about the Cowbridge - Malmesbury cycle path 2-3 years ago. They seem - it now appears - to be indelibly linked. I recall the cycle path consultations clearly but have no recollection that the closure of footpaths was raised as part of the deal.

Even though not formally objecting I am very unhappy about the closure of footpaths SPW 16 and LECL 15 for a number of reasons.

(a) a loss of public amenity as (despite note (b) below) members of the public do walk these paths;

(b) also this pair of footpaths could have been more used if the waymarking had been clearer and the true path not ploughed up or planted over, leaving only the tractor track as the nearest usable approximation;

(c) the proposal seems based on a worrying principle of the main reason for closure is that the landowner / farmer does not like paths / walkers / dog walkers going so close to the farmstead – a principle which could decimate through footpaths across England; and

(d) maybe a slightly selfish point, a significant loss of private amenity as I have much enjoyed the walk across that way to Crab Mill and then returning via SPW 13 or 17.

I do not see the formal definition of the path C to D as an alternative to SPW 16. The path along C to D is very arguably an extant right of way from Milbourne to Malmesbury, not Milbourne to Lea. There are many people who can attest that it has been used as a right of way over 20-30 years or more, and this could have been designated without the loss of SPW 16. But of course the formal designation is a small gain.

The only real quid pro quo for the extinguishment of SPW 16 and LECL 15 seems to be the permissive path along the railway line. I have been convinced on a very fine balance that there is (or may be in the future) a net public benefit from this, but it is quite fine, and I strongly feel that the quid pro quo closure of the footpaths might have been avoided if it had been publicised at the appropriate time.

Forgive me if I have been somewhat forthright, but if I am not to object I do feel that my - and others' - significant disquiet does need to be expressed. I would be grateful therefore if these concerns could be taken on board. Hopefully if there are any other local footpaths in danger, especially those in poor repair, we can have public discussion of them before draft orders are published.

22. The key issues raised which relate to the legal tests for the third objection are set out below.
- (i) A loss of amenity as members of the public walk the existing paths and the suggestion that the proposed diversion route of MALW16 along the western edge of the field may already be an existing right of way due to previous use, however it has not been formally claimed and recorded. No specific reasons were given as to why it was felt the existing paths would be better than the proposed alterations so it is not possible to judge whether or not amenity would be compromised, other than considering the differences in distance (which are felt to be acceptable).
 - (ii) The proposals are for the benefit of the landowner rather than members of the public. Under the legislation a landowner can seek to alter the rights of way, the process seeks to weigh up potential benefits for them whilst taking into account the impact upon members of the public. The legal tests are set out in paragraph 19 of this report.

Legal tests for diversions under Section 119

23. The Planning Inspectorate's Advice Note 9 on 'General guidance on public rights of way matters' includes the following paragraphs.

"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 is 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.”*
24. (i) Test 1 – the diversion orders have been submitted in the interest of the owner. It is not felt that it would be substantially less convenient for members of the public to access other highways (i.e. footpaths and roads) in the area following the proposed changes.
- (ii) Test 2 – it is not felt the diversion is substantially less convenient, it is only marginally longer and the surface appears to be firm and level.
- (iii) Test 3 – It is not felt that any specific reasons have been put forward as to why the diversions would be less enjoyable than the current routes. Both the existing routes and the diverted routes are within the same landownership so there are no issues relating to this.

Legal test for extinguishments under Section 118

25. The test for extinguishing Malmesbury St Paul Without 15 is that the route is not needed for public use. If the diversion of path Malmesbury St Paul Without 16 were to be confirmed, Malmesbury St Paul Without 15 would become a dead-end spur ending at Southfield Farm. It is felt this would not be needed for public use so would therefore meet the test.

Overview and Scrutiny Engagement

26. None, as not required.

Safeguarding Implications

27. DEFRA’s “Rights of Way Circular (1/09) Guidance for Local Authorities” Version 2, October 2009, includes the following 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.”

28. In making the Orders officers have followed the procedure set out in Schedule 6 of the 1980 Act so Wiltshire Council has fulfilled its safeguarding considerations.

Public Health Implications

29. There are no identified public health implications which arise from the proposed diversions and extinguishment.

Procurement Implications

30. There are no procurement implications associated with the withdrawal of the Order. If the Order is forwarded to the Secretary of State there are a number of potential financial implications, these are discussed further in paragraph 35.

Equalities Impact of the Proposal

31. The Council has a duty to have regard to the Equality Act 2010 and to consider the “least restrictive” option for public use; for example, a stile is very restrictive to some users – a gap should be left instead if possible, or a gate when something is required to control stock. This approach is also supported in the Wiltshire Countryside Access Improvement Plan 2015 – 2025.
32. The current route of Malmesbury St Paul Without 15 and Malmesbury St Paul Without 16 has three stiles. The proposed alternative (Malmesbury St Paul Without 13 and Malmesbury St Paul Without 16) currently has three stiles. The landowner has agreed to the upgrade of one of these stiles to a kissing gate. The surfacing of the diversion route round the edge of the field will not be subject to ploughing and may be more walkable year round. The diversion will also be wider than the current legal line across the field is required to be, if reinstated to the minimum legal width. The stiles would still cause difficulties for some people with mobility problems. Overall, accessibility would be marginally better than the current route so the requirements under the Equality Act would be met.

Environmental and Climate Change Considerations

33. The County Ecologist was consulted regarding the Orders and raised no adverse issues relating to the environmental impact.

Risk Assessment

34. There are no identified risks which arise from the proposed diversions and extinguishment other than financial and legal risks, which are set out elsewhere in the report.

Financial Implications

35. 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 Sections 118 and 119

of the Highways Act 1980. The applicant has agreed in writing to meet the actual costs to the Council in processing the Orders. 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.

36. Where there is an outstanding objection to the making of the Orders, the committee may resolve that Wiltshire Council continues to support the making of the Orders, in which case they should be forwarded to the Secretary of State for decision. The outcome will either 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 that the Council does not provide any legal representation for supporting confirmation of the Orders at a hearing or inquiry, thus minimising the expenditure of public funds.
37. Where the Council no longer supports the making of the Orders, it may resolve that the Orders 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 Sections 118 and 119 of the Highways Act 1980.

Options Considered

38. Members may resolve either that:
- (i) One or both Orders should be forwarded to the Secretary of State for determination with one of the following recommendations:
 - (a) One or both Orders be confirmed without modification, or
 - (b) One or both Orders be confirmed with modification

or

 - (ii) Wiltshire Council no longer supports the making of the Orders, in which case the Orders should be withdrawn.
39. If Members decide that the Orders should be withdrawn, clear reasons must be given, i.e. why the Order fails to meet the legal tests. Although there is no right of appeal for the applicant where the Order is withdrawn, the Council's decision is open to judicial review.

Reason for Proposal

40. Despite the objections received it is considered that the proposed orders continue to meet the legal tests for an Extinguishment Order and Diversion Order as set out in Section 118 and Section 119 of the Highways Act 1980.

Proposal

41. That “The Wiltshire Council Malmesbury St Paul Without 13 (part), 16 (part), 17 (part) and Lea and Cleverton 1A (part) diversion order and definitive map and statement modification order 2015” and “The Wiltshire Council Malmesbury Without 15 Extinguishment and Definitive Map and Statement Modification Order 2015” be forwarded to the Secretary of State for Environment, Food and Rural Affairs with a recommendation from Wiltshire Council that the Orders be confirmed without modification.

Tracy Carter

Associate Director – Waste and Environment

Report Author

Michael Crook

Countryside Access Development Officer

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

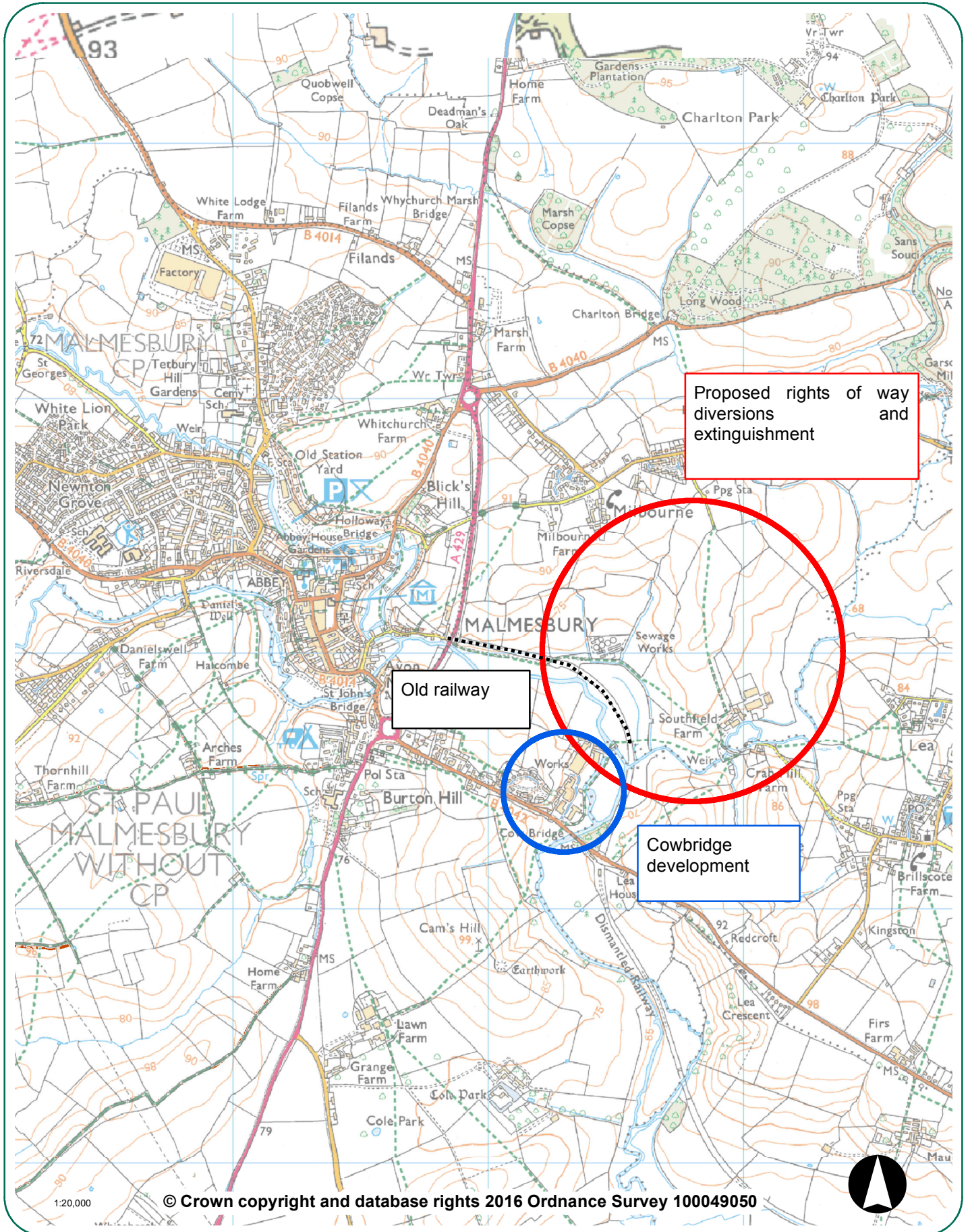
None

Appendices:

Appendix A – Location Plan

Appendix B – Public Path Diversion and Extinguishment Orders and Plans

Appendix C – Decision Report



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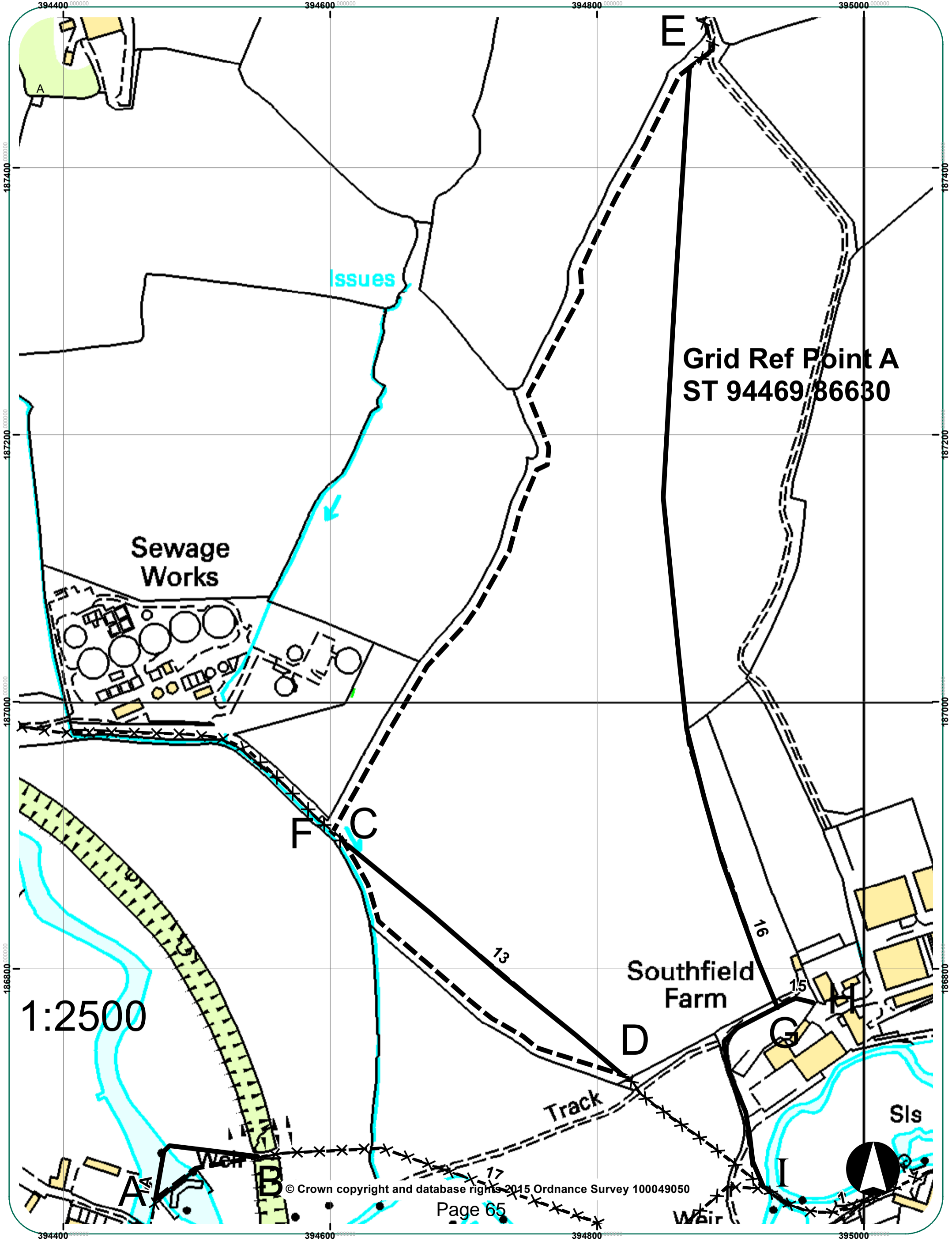
APPENDIX B

DIVERSION OF MALW15, 16, 17 (PARTS), LECL1A (PART) ORDER PLAN

PATHS TO BE EXTINGUISHED: A—B C—D E—G H—I

PATHS TO BE CREATED: A---B D---F E---F

UNAFFECTED PATHS: X-X-X-



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DECISION REPORT

**APPLICATION TO DIVERT PART OF LEA AND CLEVERTON 1A,
PART OF MALMESBURY WITHOUT FOOTPATH 13, PART OF
MALMESBURY WITHOUT FOOTPATH 17, THE FULL EXTENT OF
MALMESBURY WITHOUT FOOTPATH 16 AND EXTINGUISH
MALMESBURY WITHOUT FOOTPATH 15 UNDER SECTIONS 118
AND 119 OF THE HIGHWAYS ACT 1980**

1. Purpose of the Report

- 1.1 To consider and comment on an application by Sustrans to make the above alterations to the rights of way network. These are shown on the plan attached as Appendix A
- 1.2 Mr Millington of Sustrans has explained the reasons for submitting this application as follows. As part of the planning application for the nearby Cowbridge development, Wiltshire Council required a contribution towards converting the nearby old railway to a pedestrian and cycle route. This would provide an attractive, direct link from the development into the centre of Malmesbury and vice versa
- 1.3 In order to agree to this permissive route, the landowner has requested some alterations to the rights of way network elsewhere on his land. Sustrans agreed to submit an application for this on his behalf
- 1.4 As shown on the plan, the following alterations are proposed:
 - Diversion of the full extent of footpath MALW16, changing it from a cross-field path to the western boundary
 - Extinguishment of footpath MALW15, which would otherwise become a cul-de-sac following the diversion of MALW16
 - Diversion of part of footpath MALW13 from a cross-field path to the southern edge of the field
 - Diversion of part of footpaths MALW17 and LECL1A to cross the weir bridge

2. Consultation responses to the application

- 2.1 Consultation took place with the parish council and the relevant non-statutory consultees on the proposed application in June. Responses were sought from statutory consultees in July.
- 2.2 The existing rights of way and proposed diversions all cross land in the ownership of Mr Trevor Baker of Southfield Farm, Lea. A consultation letter was sent to him, with no reply having been received to date.

2.3 Mrs Judy Hible, who represents the Ramblers Association, has previously expressed to Sustrans her support for the proposal. She raised no objections to the proposal in this consultation.

2.4 St Paul Malmesbury Without Parish Council responded to the consultation by letter, as follows:

“The Parish Council has been working with Sustrans for a good number of years to achieve the introduction of a footpath from the residential development at Cowbridge to Malmesbury. The alteration of these footpaths is a critical aspect of the scheme and as such is heartily supported by the Parish Council. We believe the diagram attached to your letter of the 5th June reflects the agreements reached with the landowner and contained in the jointly signed License of the 13th November 2014.”

2.5 There are no issues relating to the location of statutory utilities.

3. Main considerations for the council

3.1 The main considerations relate to the legal tests that must be satisfied for an order to be made. The proposed extinguishment would have to meet the tests under section 118 of the Highways Act 1980 as amended by the Wildlife and Countryside Act 1981. The diversions would be undertaken under section 119 of the Highways Act 1980.

3.2 Section 119 of the Highways Act 1980 says:

119 Diversion of footpaths and bridleways.

(1) Where it appears to a council as **respects** a footpath or bridleway 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 or bridleway as appears to the council requisite for effecting the diversion, and

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

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

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

- (a) if that point is not on a highway, or
 - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- (3) Where it appears to the council that work requires to be done to bring the new site of the footpath or bridleway into a fit condition for use by the public, the council shall—
- (a) specify a date under subsection (1)(a) above, and
 - (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.
- (4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.
- (5) Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below, or
 - (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public, or
 - (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.
- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—
- (a) the diversion would have on public enjoyment of the path or way as a whole,

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

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

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

(6A) The considerations to which—

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

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

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

(7) A public path diversion order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed,—

(a) showing the existing site of so much of the line of the path or way as is to be diverted by the order and the new site to which it is to be diverted,

(b) indicating whether a new right of way is created by the order over the whole of the new site or whether some part of it is already comprised in a footpath or bridleway, and

(c) where some part of the new site is already so comprised, defining that part.

(8) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path diversion orders.

(9) Section 27 above (making up of new footpaths and bridleways) applies to a footpath or bridleway created by a public path diversion order with the substitution, for references to a public path creation order, of references to a public path diversion order and, for references to section 26(2) above, of references to section 120(3) below.

The key tests to be met under section 119 are as follows.

3.3 In the interests of the owner of the land and / or the public

The proposed diversions would achieve the following:

MALW16 – to divert the footpath away from Southfield Farm for the privacy of Mr Trevor Baker and away from the middle of the field to the field edge, which would be easier to maintain. There is evidence that some members of the public are walking around the eastern edge of the field. However, it appears that a greater number of people are walking down the west side of the field where it is proposed to divert the route to and where a wide headland is maintained.

MALW13 – to divert the footpath to follow the edge of the field. This would be easier to maintain. Members of the public are already using the wide headland at the edge of the field.

MALW17 and LECL1A - divert the footpath onto the bridge over the weir, i.e. onto the line that is already walked by members of the public.

3.4 Convenience to the public

Convenience includes a number of factors including length, width, surface, gradient and public enjoyment.

MALW16 and MALW13 – the distance from the northern end to where MALW13 meets MALW15 (which is proposed to be extinguished) is currently 910m. To get to the same point via the proposed diversions of MALW13 and MALW16 is 1110m – not significantly further given that the use of these paths is largely for leisure purposes. The legal line of these routes is not currently available, however, if it was, it is likely it would be narrower than the proposed routes as it runs through the crops. The surface of the proposed diversions appears to be firm and there are no significant gradients.

MALW17 and LECL1A – diverting the route over the bridge is more convenient to the public than the existing legal line through the river.

3.5 Public enjoyment

The public enjoyment of a route needs to be considered as this is a consideration in terms of convenience.

MALW16 - the proposed alternative route is along the field edge. The grass here appears to be kept very short, so it would be much more open than a route cut through the crops on the current line. The view may not be quite as good with the proposed diversion as it would be more difficult to see over the hedges to the west. The proposed alternative requires passing a sewage works, which is just on the other side of the hedge. A width of 2m would be required, as set out in Wiltshire Council's Countryside Access Improvement Plan

MALW13 – the proposed alternative route is much more open than a route cut through the crop on the current line would be. Views would be similar. A width of 2m would be required.

MALW17 and LECL1A – the route over the bridge would be much more acceptable than attempting to use the current legal line straight through the river

While there are a couple of drawbacks to the proposed diversion routes when compared with the existing routes. Diverting them to the wide field edges would be considerably more enjoyable and convenient than the existing legal routes through the crop.

3.6 Impacts the coming into operation of the order would have as respects other land served by the existing public right of way

The proposed alternative is not considered to have any detrimental effect on any other land served by the existing rights of way.

3.7 The effect 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.

The proposed diversions would run through land in the same ownership as the current route, so this would not be an issue.

3.8 The application is also to stop up footpath MALW15. The legislation relating to this is as follows.

3.9 Highways Act 1980, section 118 - Stopping up of footpaths and bridleways.

(1)Where it appears to a council as respects a footpath or bridleway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a “public path extinguishment order”.

(2)The Secretary of State shall not confirm a public path extinguishment 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 it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(3)A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.

(4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.

(5) Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering—

(a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use, or

(b) under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public,

the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order would provide an alternative path or way.

(6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

(6A) The considerations to which—

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

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

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

The legal tests to be met are as follows.

The path is not needed for public use

3.10 MALW15 currently serves two purposes. It provides access to path MALW16 and then continues to Southfield Farm. If footpath MALW16 is diverted as proposed, this would leave MALW15 as a dead end path up to the farm. Access to the farm does not serve a useful purpose for the public so the path would then not be needed for public use.

The effect which the extinguishment of the right of way would have as respects land served by the path or way

3.11 The proposed extinguishment is not considered to have any detrimental effect on any other land served by the existing rights of way.

Extent to which the public path diversion order [for MALM16 and MALW13] would provide an alternative path of way

- 3.12 The proposed diversions of MALW16 and MALW13 would provide the alternative to the existing route of MALW15 (with MALW16). As discussed above, the diversions are felt to be an acceptable alternative to the existing route.

Other considerations

- 3.13 Both Section 118 and 119 of the Highways Act 1980 requires the council to have regard to any material provision of the Rights of Way Improvement Plan (called the Countryside Access Improvement Plan).

While the proposal does not specifically support the actions in the document, it equally does not conflict with any of the actions.

- 3.14 The Equality Act 2010 places a duty on all authorities as follows:

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

The Act places a duty on authorities to make reasonable adjustments to avoid disadvantage. Section 149 of the Act details the ‘public sector equality duty’ placed on a public authority to:

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

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

The current route (MALW15 and MALW16) has three stiles. The proposed alternative (MALW13 and MALW16) currently has three stiles. The landowner has agreed to the upgrade of one of these stiles to a kissing gate. The surfacing of the diversion route round the edge of the field is likely to be better year round and will not be subject to ploughing. It will also be wider than the current legal line across the field is required to be if reinstated to the minimum legal width. The stiles would still cause difficulties to some people with mobility problems. Overall, accessibility would be marginally better than the current route so requirements under the Equality Act would be met.

- 3.15 In making diversion orders, sections 29 and 121(3) of the Highways Act 1980, require authorities to have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological physiographical features. Section 40 of the Natural Environment and Rural Communities Act 2006 also place a duty on every public authority exercising its functions to have regard to the

conservation of biodiversity, so far as it is consistent with the proper exercise of those functions. In this section, conserving biodiversity includes that in relation to a living organism, or type of habitat and restoring or enhancing a population or habitat.

Consultation with the County Ecologists has resulted in their not raising any concerns. The proposed diversions are within land used for agriculture, the needs of the farmer in terms of privacy/security and maintenance have been taken into consideration in this process.

Conclusion

- 3.16 It is concluded that the proposed diversions are in the interest of both the landowner and members of the public.

4. Safeguarding considerations

- 4.1 The proposed diversion would improve the privacy and possibly also the security of the Southfield Farm buildings and occupants while having no adverse effect upon path users.

5. Public Health Implication

- 5.1 There are no expected adverse implications from this proposed diversion.

6. Risk Assessment

- 6.1 No added risks have been identified as a result of this proposed diversion.

7. Financial Implications

- 7.1 DEFRA's Rights of way Circular 1/2009 Guidance for Local Authorities 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 Act.'

It is not considered there are any risks associated with following the recommendation of this report for the council.

- 7.2 The recommendation of the report is to approve the making of an order on the grounds that the legal tests to make and/or confirm the order have been met and the applicant has agreed to pay the council's costs in processing the application. The applicant has also confirmed that he will pay any compensation which may arise in consequence of the coming into operation of the order and any expenses which may be incurred in bringing the new route into a fit condition for use by the public.
- 7.3 If an objection is received to the making of the order and the order is not abandoned by Wiltshire Council, the order will be forwarded to the Planning Inspectorate for

determination by an Inspector appointed by the Secretary of State. The additional costs accrued from the time the order is submitted to the Secretary of State to its determination will fall to Wiltshire Council. If the order were to be determined by written representations these costs would be negligible, a hearing would cost in the region of £200 - £300 and a Public Inquiry may be in the region of £5,000-£6,000.

8. Options considered

- 8.1 i) To refuse the application, or
- ii) To make the order as applied for

9. Reasons for the Recommendation.

It is considered the legal tests for making and confirming the order under section 118 and 119 of the Highways Act 1980 have been met.

10. Recommendation.

- 10.1 To make an order under sections 118 and 119 of the Highways Act 1980 and section 53(2) of the Wildlife and Countryside Act 1981 to divert footpaths MALW13, MALW16, MALW17 and LECL1A and extinguish footpath MALW15 as shown on the plan at Appendix A to this report. Additionally that the order be confirmed if no objections or representations are received to it and the definitive map and statement be modified accordingly.

Michael Crook

Countryside Access Development Officer

08 September 2015