

AGENDA

Meeting: Western Area Planning Committee
Place: Council Chamber - County Hall, Trowbridge BA14 8JN
Date: Wednesday 16 December 2015
Time: 3.00 pm

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

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

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Membership:

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

Substitutes:

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

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If you have any queries please contact Democratic Services using the contact details above.

AGENDA

1 **Apologies for Absence**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 5 - 22*)

To approve and sign as a correct record the minutes of the meeting held on 25 November 2015.

3 **Chairman's Announcements**

To receive any announcements through the Chair.

4 **Declarations of Interest**

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

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

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

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

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda (acting on behalf of the Corporate Director) no later than 5pm on Wednesday 9 December 2015. 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 Applications

To consider and determine the following planning applications:

6a **14/01659/FUL - Haygrove Farm, Lower Westwood** (*Pages 23 - 54*)

6b **15/09224/FUL - 212 The Common, Holt** (*Pages 55 - 68*)

6c **15/04674/FUL - Station Approach, Bradford-on-Avon** (*Pages 69 - 84*)

7 Norton Bavant Path No.4 (Part) Diversion Order and Definitive Map; and Statement Modification Order 2015 (*Pages 85 - 144*)

8 Urgent Items

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

WESTERN AREA PLANNING COMMITTEE

DRAFT MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 25 NOVEMBER 2015 IN THE COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Christopher Newbury (Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Dennis Drewett, Cllr Magnus Macdonald, Cllr Pip Ridout, Cllr Jonathon Seed, Cllr Roy While and Cllr Jerry Wickham (Substitute)

Also Present:

Cllr Jon Hubbard and Cllr Ian Thorn

98 Apologies for Absence

Apologies for absence were received from Cllr Horace Prickett (replaced only for this meeting by Cllr Jerry Wickham)

99 Minutes of the Previous Meeting

The minutes of the meeting held on 14 October 2015 were presented. The Democratic Services manager drew the committee's attention to the following amendment required to the minutes from those published with the agenda

Minute No. 93 – 15/05079/FUL - Withleigh, Melksham

To insert the following at the start of the resolution which had been inadvertently missed off:

‘Resolved that the Area Development Manager be authorised to grant planning permission, subject to the conditions set out below, on prior completion of a Section 106 legal agreement for bus stops, a pedestrian crossing and off site affordable housing contribution’.

And after discussion the chairman proposed the deletion of the following paragraph::

‘Cllr Jonathon Seed proposed, subsequently seconded by Cllr Pip Ridout, that the Committee should approve the application as per the officer’s recommendation detailed in the report, with the request from the Committee that a signal controlled crossing point between the new development at

Witleigh and the existing Wharf Court on the other side of the road’.

The above mentioned amendment having been moved and seconded, it was

Resolved:

To approve the minutes of the meeting held on 14 October 2015 as a correct record subject to the amendments detailed above.

100 Chairman's Announcements

There were no announcements.

101 Declarations of Interest

Although not a disclosable pecuniary interest, Councillor Jonathon Seed wished it to be known that he knew the applicant’s late husband and therefore knew the applicant by association, in relation to application 6c 15/05656/FUL - Brook Hall Farm, Wood Road, North Bradley, although it was noted that he had not seen the applicant for some 5 years.

102 Public Participation and Councillors' Questions

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

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

Councillor Jon Hubbard explained that for the committee’s consideration of application referenced 15/05079/FUL, at its meeting on 14 October, 2015, he had provided a written submission to Democratic Services for onward circulation to the Committee. He wished to record that he was extremely concerned and disappointed that his request had not been actioned. The Democratic Governance Manager apologised to Councillor Hubbard for this omission.

103 Planning Applications

The Committee considered the following applications:

104 15/05079/FUL - Witleigh, Melksham

The Planning Team Leader outlined the report that recommended that the application be approved with conditions.

Mr. Doug Tuckerman spoke in objection to the application and Mr. David William spoke in support of the application as the agent for the applicant.

Cllr Jon Hubbard spoke as the local member.

Issues discussed in the course of the presentation and debate included: the size and scale of the development with particular reference to the 3 storey building and whether a 2 storey would be more acceptable; the location of walls within the proposed development and their potential impact on neighbours; vehicular access to the site and the provision of parking spaces; the options for traffic calming and layout to have a positive impact on road safety.

Cllr While proposed that planning permission be approved in accordance with the Officer's recommendation subject to an additional requirement for the widening of the central splitter for which an additional financial contribution of £6,000 towards the costs would be required in the section 106 agreement and this was duly seconded by Cllr Pip Ridout.

In questioning the Team Leader, the committee sought clarification on why the application had been brought back to the committee. The Highway Officer was also called in to explain the basis on which the requirement of 50 pedestrians per hour over a peak period of 4 hours was arrived at as a criterion for setting up a pedestrian crossing. He explained in detail how putting a pedestrian crossing in the area under discussion would not be in line with Wiltshire Council policy and was not achievable.

Having been put to the vote, the meeting;

Resolved

That the Area Development Manager be authorised to grant planning permission, subject to the conditions set out below, on prior completion of a Section 106 legal agreement for bus stops and off site affordable housing contribution.

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

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

- 2 No development shall 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.

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.

3

No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with to the satisfaction of the Local Planning Authority:

Step (i) A written report has been submitted to and approved by the Local Planning Authority which shall include details of the previous uses of the site for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site.

Step (ii) If the above report indicates that contamination may be present on or under the site, or if evidence of contamination is found, a more detailed site investigation and risk assessment should be carried out in accordance with DEFRA and Environment Agency's "Model Procedures for the Management of Land Contamination CLR11" and other authoritative guidance and a report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority.

Step (iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details have been submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or in accordance with a timetable that has been agreed in writing by the Local Planning Authority as part of the approved remediation scheme. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

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 land contamination can be dealt with adequately prior to the use of the site hereby approved by the Local Planning

Authority.

- 4** No development shall commence on site until a scheme for the discharge of foul water from the site has been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the drainage details have been constructed 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.
- 5** 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 together with permeability test results to BRE365, has been submitted to and approved in writing by the Local Planning Authority.
Should the submitted storm water drainage system, include a connection to the main sewer, and thus incorporating the use of a pumped system the application will need to include details of the pumping station and storage system, details of ownership, future maintenance liability and maintenance regime and standby power arrangements
The development shall not be occupied until the surface water drainage details have been constructed 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.
- 6** No development shall commence on site until a noise and dust management plan for both the demolition and construction phases has been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.
REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner.
- 7** No development shall commence on site until details of the provision of bat roosting features into the new buildings,

including integral boxes/bricks/tubes and access into parts of the roof space, and bat boxes in trees, including the Ash tree in the south-eastern corner of the site, and nesting opportunities for House martin, House sparrow, Starling and Swift and a plan showing the locations and types of all bat and bird features has been submitted to and approved in writing by the local planning authority. including a plan showing the locations and types of all bat and bird features. The approved details shall be implemented before the building hereby approved is first occupied.

REASON: To provide additional roosting for bats and nesting birds as a biodiversity enhancement, in accordance with paragraph 118 of the National Planning Policy Framework and Section 40 of the Natural Environment and Rural Communities Act 2006.

- 8** 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

- 9** No part of the development hereby approved shall be occupied until details of the obscure glazing used in the windows shown on the approved plans has been submitted to and approved in writing by the Local Planning Authority, and; the obscure glazing has been installed in accordance with the approved details. The obscure glazing shall be maintained in accordance with the approved details in perpetuity.

REASON: In the interests of residential amenity and privacy.

- 10** Unit 2 shall not be occupied until the side windows serving the living room and bedroom 1 have been glazed with obscure glass to the level agreed in condition 9. The windows shall be maintained with obscure glazing in perpetuity.

REASON: In the interests of residential amenity and privacy.

- 11** The windows serving the refuse room shown on drawing annotated as proposed ground floor plan shall be fixed shut and shall remain as such in perpetuity.

REASON: In the interest of neighbouring amenity.

- 12 No part of the development hereby approved shall be occupied until details of external lighting within the site have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.**

REASON: In the interest of amenity and neighbouring amenity.

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

REASON: In the interests of highway safety.

- 14 No dwelling shall be occupied, until details of the privacy screen walls detailed on the approved plans and for units 14, 17, 19, 22, 24, 25 & 30 have been submitted to and approved in writing by the Local Planning Authority, and; the privacy screen walls in respect of each dwelling have been erected in accordance approved details. The approved screen walls shall be retained and maintained as such at all times thereafter.**

REASON: To prevent overlooking & loss of privacy to neighbouring property

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

All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

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

- 16 Demolition or construction works shall not take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:30 hours to 13:00 hours on Saturdays nor at any time on Sundays or Bank Holidays.**

REASON: In the interest of neighbouring amenity

**17 No burning of waste or other material shall take place on the site
REASON: In the interest of neighbouring amenity**

18 The dwellings hereby permitted shall meet the relevant requirements of energy performance equivalent to Level 4 of the Code for Sustainable Homes. The development shall not be occupied until a final Code Certificate has been issued for it certifying that Code Level 4 or its equivalent has been achieved.

REASON: In the interest of Sustainable Construction

**19 The development hereby permitted shall be carried out in accordance with the following approved plans:
Site Plan, Proposed Roof Plan, Tree Protection Plan, Landscape Strategy Plan, Planning Drainage Strategy, Proposed Elevations 2 of 2, Proposed Ground Floor Plan, Proposed First Floor Plan, Proposed Second Floor Plan, received 26th May 2015
Proposed Elevations 1 of 2 received 26th June 2015
REASON: For the avoidance of doubt and in the interests of proper planning.**

**1 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 TBC**

2 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

**3 INFORMATIVE TO APPLICANT:
Please note that this consent does not override the statutory protection afforded to any protected species. All British bat species are protected under The Conservation of Habitats and Species Regulations 2010 (as amended), which implements the EC Directive 92/43/EEC in the United Kingdom, and the Wildlife and Countryside Act 1981 (as amended). This protection extends to individuals of the species and their roost features, whether occupied or not. If bats are discovered, all works should stop immediately and a licensed bat worker should be contacted for**

- 4 **advice on any special precautions before continuing (including the need for a derogation licence from Natural England). The applicant is also advised works should not take place that will harm nesting birds from March to August inclusive. All British birds (while nesting, building nests and sitting on eggs), their nests and eggs (with certain limited exceptions) are protected by law under Section 1 of the Wildlife and Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000. If birds are nesting on/in or within the vicinity of the proposed development, work should be undertaken outside the breeding season for birds to ensure their protection, i.e. works should only be undertaken between August and February. Further advice on the above can be sought from the Council Ecologists. 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.**

105 **15/09226/FUL - 30 Palaiet Close Bradford-on-Avon**

The Planning Team Leader outlined the report that recommended that the application be approved with conditions.

Mrs. Esther Harris, Mr. Mike Wilson, Mr. John Grose and Cllr Gwen Allison from Bradford on Avon Town Council spoke in objection. Ms. Liz Dawe, the applicant, spoke in support of the application.

Cllr Ian Thorn spoke as the local member.

Issues discussed in the course of the presentation and debate included: The relevance of land covenants to planning applications. The Legal Officer explained that the discharge of private covenants were outside of the planning process.

Cllr Pip Ridout moved that planning permission be granted in accordance with the Officer's recommendation and this was duly seconded by Cllr Ernie Clark.

In questioning the Planning Team Leader, the committee requested that future reports on planning applications include information on whether or not the Council was party to any relevant covenants. Whilst accepting that covenants were outside the planning process, it would enable the Committee to ensure the appropriate Council department was made aware to carry out any necessary follow up action.

The Chairman requested that clarification concerning the covenant attached to the dwelling the subject of this planning application be circulated to all members, substitute members and local member.

Having been put to the vote, the meeting

Resolved to grant permission subject to the following conditions:

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

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

- 2 Pile and beam foundations should be used for the foundations of the proposed wall to prevent future pressure on the wall. Details of which should be submitted to the Local Planning Authority in writing prior to any works commencing on site.**

REASON: To prevent future pressure on the wall

- 3 The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture those used in the existing building.**

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

- 4 No root pruning shall be carried out until a site meeting has been arranged and has arranged by the applicant, their appointed arboricultural consultant and a representative from the Local Planning Authority (LPA) to discuss details of the working procedures and that meeting has taken place with the Local Planning Authority in attendance. Any approved works shall subsequently be carried out under strict supervision by the LPA immediately following that approval.**

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on-site will not be damaged and to ensure that as far as possible the work is carried out in accordance with current best practice

- 5 The applicant should note that the work hereby permitted should be carried out in accordance with good practice as set out in the "British Standard Tree Work - Recommendation for**

Tree Work", BS 3998: 2010 or arboricultural techniques where it can be demonstrated to be in the interests of good arboricultural practice.

- 6 A suitable root barrier should be installed at 0.5 mm from the wall to guide extended root growth away from the wall.**

REASON: To ensure the future stability of the wall.

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

Proposed ground floor plan received 16.09.2015

Existing floor plan received 16.09.2015

Location Plan received 16.09.2015

First Floor Plan received 16.09.2015

Existing elevations received 16.09.2015

Proposed elevations received 16.09.2015

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

106 15/05656/FUL - Brook Hall Farm, Wood Road, North Bradley

The Senior Planning Officer outlined the report that recommended that the application be approved with conditions.

Mr Chris Bale, the applicant spoke in support of the application.

Cllr Francis Morland of Heywood Parish Council and Mr Evans spoke in objection to the application.

Cllr Jerry Wickham spoke as the local member.

Issues discussed in the course of the presentation and debate included: noting that the whole size of the development had been significantly scaled down in response to initial concerns raised; identifying the need to have a written update on solar developments in West Wiltshire and a request for the information to be circulated among members. A query was raised about the use of diesel generators on solar developments and whether this was allowed. A view of the full landscape of the area was discussed with comment on the relevant impact on the surrounding area and how the quality of the soil was very poor to support any feasible agricultural development.

Cllr Jonathon Seed moved that planning permission be granted subject to an amendment to condition 3 to insert the same term as used in condition 2 'the installation hereby approved' and to add to condition 4 the requirement for the

development to be in accordance with paragraph 3.8 of the Design and access statement BHF/RPT/001 and this was duly seconded by Cllr Trevor Carbin.

Reference was made to previously circulated details of solar schemes for which planning permission had been granted. The Chairman requested that an update be circulated to members of the Committee indicating those schemes which had built or proceeded with.

On being put to the vote, it was

Resolved

To grant permission subject to the following conditions:

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

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

- 2 The Local Planning Authority shall be notified in writing within one month of the event that the solar array hereby approved has started to feed electricity to the Grid. The installation hereby approved shall be permanently removed from the site and the land reinstated within 25 years and six months of the date that the solar farm starts feeding electricity into the grid, in accordance with a scheme for the decommissioning and restoration of the development which shall have been submitted to and approved in writing by the Local Planning Authority 6 months prior to decommissioning. The Local Planning Authority shall be notified in writing of that removal within one month of the event.**

REASON: In the interests of amenity and the finite operation of this type of development.

- 3 In the event that the development ceases to be operational for the generation of energy before the end of the period defined in condition 2 then the installation hereby approved shall be removed from the site and the land returned to its former condition in accordance a Decommissioning Plan to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of decommissioning, and within six months of the cessation**

of the generation of energy from the site.

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

- 4** The development hereby permitted as well as all associated development shall be carried out in accordance with the following approved plans:
Plan EDP H3: received on 5 November 2015;
BH00104-00-000 REV R06 received on 1 October 2015
BH00104-15-001 REV R03 received on 1 October 2015
BH00104-16-001 REV R02 received on 25 June 2015 insofar as the plan relates to additional hedge planting only; and
Read in conjunction with details for Mounting Arrangements, Inverter and Transformer Housing, SSE Substation, Cable Trench Arrangements and Security Cameras as contained in the document "Equipment Appearance and Technical Details" and Paragraph 3.8 of the "Design and Access" Statement BHF/RPT/001 received on 9 June 2015.
REASON: For the avoidance of doubt and in the interests of proper planning.
- 5** The development hereby approved shall be carried out in accordance with the Construction and Traffic Management Plan Ref. BHF/RPT/011 dated May 2015 and details of the signage scheme proposed in Paragraph 4.2 of that document shall be submitted for approval to the Local Planning Authority prior to the commencement of development, including the delivery of any materials to the site.
REASON: In the interests of highway safety and amenity.
- 6** No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 0730 - 1800 Monday to Fridays and 0800 - 1300 on Saturdays.
REASON: In the interests of amenity.
- 7** The development hereby approved shall be carried out in accordance with the recommendations made in section 5 of the Ecological Appraisal and Mitigation Strategy report dated April 2015 prepared by AD Ecology Ltd, including the implementation of defined working areas, as already submitted with the planning application and agreed in principle with the local planning authority before determination.
REASON: To ensure adequate protection and mitigation for protected species / priority species / priority habitats

through the implementation of detailed mitigation measures that were prepared and submitted with the application before determination.

- 8** Prior to any site preparation works or the commencement of development, an amended Habitat Management Plan shall be prepared and submitted to the local planning authority for approval to include the location of badger access points through the perimeter security fence and the management of the ecological mitigation area in field F3. The development site shall be managed and maintained in accordance with the measures set out in the approved plan in perpetuity unless otherwise agreed in writing with the local planning authority.
REASON: To ensure the appropriate management of priority habitats and mitigation for protected species.
- 9** Prior to any site preparation works or the commencement of development, a Landscape Strategy shall be prepared and submitted to the local planning authority for approval, including, but not necessarily limited to, the following:
- an extension to the new hedgerow from field F2, around the badger exclusion area to link up with the section of new hedgerow in field F5 (with a gap for the internal access track)
 - a native, locally characteristic species-rich hedgerow planting specification (minimum of 6 woody species)
 - an ecological enhancement plan for field F3 (habitat creation details)
- wildflower seed mix and farmland bird crop mix details
- preparation and establishment methodology for wildflower meadows and farmland bird crop areas
- All newly created habitats shall comprise native species of British origin and local provenance. The approved Landscape Strategy shall be carried out in the first planting and seeding season following the completion of the development. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock (if necessary). Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.
REASON: To ensure the proper implementation of a landscape strategy, in the interests of biodiversity.

- 10 Other than the development and use hereby approved no materials, goods, plant, machinery, equipment, finished or unfinished products/parts of any description, skips, crates, containers, waste or any other item whatsoever shall be placed, stacked, deposited or stored outside any building on the site between the times of completion of development and commencement of decommissioning.
REASON: In the interests of the appearance of the site and the amenities of the area.**
- 11 No external lighting shall be provided or installed within the site other than in accordance with a scheme which has been submitted to and approved in writing by the Local Planning Authority.
REASON: To minimise the effects of light pollution on the surrounding area**
- 12 INFORMATIVES: Drainage: In relation to Council drainage by laws and the Land Drainage Act (LDC) and works on/over/to or within 8m of the top of non-main river watercourses (including outfalls) will require formal LDC consent which is totally separate process to planning. As part of the LDC there will be a requirement of no structure (including panels) to be sited within the 8m margin - this would have an impact on the submitted planning site layout Any works within 8m of Main River will require similar approval from the Environment Agency.
The applicant should note that under the terms of the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended) it is an offence to disturb or harm any protected species, or to damage or disturb their habitat or resting place. Please note that this consent does not override the statutory protection afforded to any such species. In the event that your proposals could potentially affect a protected species you should seek the advice of a suitably qualified and experienced ecologist and consider the need for a licence from Natural England prior to commencing works. Please visit the following websites for more information:
<http://www.wiltshire.gov.uk/planninganddevelopment/biodiversityanddevelopment.htm>
<https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>
The Protection of Badgers Act 1992 protects badgers from**

cruel ill-treatment, including damage or destruction of their setts, or disturbance whilst a sett is in occupation. This Act makes it illegal to carry out work that may disturb badgers without a Natural England licence. Particular care should be taken when clearing ground prior to development, and if evidence of badger activity is found, (such as foraging routes, snuffle holes, latrines or established setts), then work must stop immediately while a professional ecologist is contacted for advice. Applicants are advised to pay particular attention to foundation ditches, which can be hazardous to badgers. Sloping boards or steps should be provided to allow badgers to escape from such ditches should they become trapped. Failure to consider this matter, leading to the death of individuals, may leave the developer liable for prosecution. Further information about badgers and licensing can be found at <https://www.gov.uk/badgers-protection-surveys-and-licences>

Pollution Prevention During Construction: Safeguards should be implemented during the construction phase to minimise the risks of pollution from the development. Such safeguards should cover: - the use of plant and machinery - oils/chemicals and materials - the use and routing of heavy plant and vehicles - the location and form of work and storage areas and compounds - the control and removal of spoil and wastes. The applicant should refer to the Environment Agency's Pollution Prevention Guidelines
The applicant is advised to contact National Grid (plantprotection@nationalgrid.com or +44 (0)800 688588) prior to the commencement of development with regard to protection of infrastructure.

107 **15/09014/FUL - 4 Brampton Court, Bowerhill**

The Senior Planning Officer outlined the report which recommended that the application be approved with conditions.

Mr. Simon Chambers, the applicant's agent, spoke in support of the application.

It was noted that this was a revised application.

Cllr Roy While moved that planning permission be granted as recommended and this was duly seconded by Cllr Trevor Carbin.

On being put to the vote, the meeting;

Resolved

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: 15/103/1 Rev B received on 2 October 2015; 15/103/2 Rev A received on 2 October 2015; 15/103/3 Rev B received on 2 October 2015.

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

3. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture those used in the existing building.

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

4. The internal alterations as detailed by drawing no: 15/103/3 Rev B (in relation to the removal of stud walls and blocking up internal doorways) shall be carried out prior to the first occupation of either dwelling. Thereafter, the resultant layout shall remain in perpetuity.

REASON: In order to define the terms of this permission and to ensure the development satisfies the minimum residential parking standards as set out by policy CP64 of the Wiltshire Core Strategy and Policy PS6 of the LTP3 Car Parking Strategy.

5. The external works as detailed by drawing no: 15/103/1 Rev B (in relation to parking and access to provide 4 car parking spaces) shall be carried out prior to the first occupation of either dwelling. Thereafter, the resultant layout shall remain in perpetuity.

REASON: In order to define the terms of this permission and ensure a development satisfies the minimum residential parking standards as set out under policy CP64 of the Wiltshire Core Strategy and Policy PS6 of the LTP3 Car Parking Strategy.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A-H shall take place to the dwelling houses hereby permitted or within their curtilages.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

PLANNING INFORMATIVES:

1. In accordance with Policy CP41 the applicant is encouraged to incorporate design measures to reduce energy demand within the development initially through energy efficiency enhancement to reduce energy consumption and then the use of renewable technologies.
2. The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. A separate Community Infrastructure Levy Liability Notice will be issued by the Local Planning Authority. Should you require further information with regards to CIL please refer to the Council's Website:

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

108 **Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.00 – 6.20 p.m.)

The Officer who has produced these minutes is Shirley Agyeman, of Democratic Services, direct line 01225 7139358089, e-mail Shirley.Agyeman@wiltshire.gov.uk

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

REPORT FOR THE WESTERN AREA PLANNING COMMITTEE

Report No. 1

Date of Meeting	16 December 2015
Application Number	14/01659/FUL
Site Address	Haygrove Farm, 44 Lower Westwood, Bradford On Avon. BA15 2AR
Proposal	Demolition of existing Dutch barn, stable building and shed. Erection of a new building to contain 2 units of holiday accommodation; access and associated parking
Applicant	Mr I Harding
Town/Parish Council	WESTWOOD
Electoral Division	WINSLEY AND WESTWOOD – Cllr Magnus MacDonald
Grid Ref	380947 159102
Type of application	Full Planning
Case Officer	Kenny Green

Reason for the application being considered by Committee

1.1 This application is being referred back to the Western Area Planning Committee because the resolution Members made on 12 August 2015 cannot be fulfilled. In August, Members reaffirmed the April 2014 resolution to grant permission subject to planning conditions and to the prior completion of a section 106 legal agreement to restrict the occupancy to holiday let accommodation. Since August, every effort has been made by officers to secure this requirement, however with the applicant's mortgage lender adamantly refusing to enter into such an agreement, and there being no agreement to re-mortgage the property and find an alternative lender, Members are now asked to either:-

- a) Approve the application without a legal agreement; or,
- b) Refuse the application (in which case para's 1.6-1.8 should be duly noted)

1.2 As previously reported (and contained within Appendix 1), your officers have consistently recommended that in this particular case, planning permission should be granted subject to a series of conditions, including numbers 4 and 5 which would control the future occupancy of the proposed holiday let accommodation. Members may recall that as part of the case officer's oral presentation made on 12 August, reference was given to a contemporaneous appeal decision (issued in late July) relative to holiday let accommodation at Little Ashley, Bradford on Avon (Appeal Ref: APP/Y3940/W/15/3003800) – which centred on the robustness and necessity of a restrictive occupancy planning condition (similar to condition 4 recommended in this particular case). In addition, another appeal decision dated 18 August 2015 for APP/Y3940/W/15/3003155 at Chute Cadley (near Ludgershall) an appellant tested a condition which sought to prevent unrestricted residential use (similar to condition 5 as recommended here). Both appeals were dismissed.

1.3 Whilst each case requires to be tested on its own individual merits, Members are asked to note that the planning inspectors in each case, recognised the capability of planning conditions to robustly control future holiday let occupancy.

1.4 Since there are no tariff style obligations as part of the committee resolution pursuant to the Lower Westwood case (NB: CiL liabilities are a pre-commencement revenue obligation not a s106 requirement), the robustness or otherwise of planning conditions to restrict the occupancy of the proposed holiday lets is the sole determining planning consideration for Members to debate on 16 December. To assist with making a decision, copies of the Little Ashley and Chute Cadley appeal decisions are contained within Appendix 3 (a) and (b) respectively at the end of this report.

1.5 As far as the legalities are concerned, Section 106 of the Town and Country Planning Act 1990 inter alia, provides a mechanism by which an LPA can restrict a development or the use of land/buildings. However, Regulation 122 of the Community Infrastructure Levy Regulations 2010, Paragraph 204 of the National Planning Policy Framework (NPPF) and Paragraph 001 – 004 of the 2015 updated Planning Practice Guidance (ID 23b-001-20150326) all stress that planning obligations/legal agreements must comply with the following three tests:

- They must be necessary to make the development acceptable in planning terms – the necessity test;
- They must be directly related to the development; and,
- They must be fairly and reasonably related in scale and kind to the development.

1.6 A failure to fully apply the necessity test (as required by Reg. 122) may place the planning authority at risk of misdirection in law and any consequential decision may be vulnerable to a challenge. Your officers do not consider a s106 to be 'necessary' nor 'reasonable' in this case. **If, however, Members maintain an opposition to approving the development without a s106, it would be necessary to precisely define the reasons for refusal clearly setting out the reasons why well-established restrictive planning conditions (which have been tested on appeal) would not be appropriate in this case.**

1.7 It is also necessary to record, since it has been brought to the case officer's attention, that a refusal on the lack of a s106, a lack of precision outlined within any refusal reason and explanation as to why conditions cannot be used, despite the precedents that exist, any such refusal would very likely be tested on appeal alongside an application for costs. Even if the applicant was to decide not to apply for costs, Members should note that planning inspectors have the discretion to grant an award if procedural or substantive unreasonableness is apparent in the decision making process; and/or if unreasonable behaviour has directly caused the applicant/appellant unnecessary or wasted expense.

1.8 As it currently stands, not only are officers concerned about the necessity and reasonableness of a s016 imposition, substantive concern would exist if there is any inherent or direct expectation placed on the applicant to find an alternative mortgage provider; incurring additional charges in the process; and there is a risk of procedural unreasonableness potentially being found through the unnecessary duplication in the resolution tying a development to both conditions and a s106.

Appendix 1

Background - Elected Members may well recall this case which was debated at area committee back in 30 April 2014. At that meeting, members resolved **to grant permission for the above development subject to planning conditions and to the prior completion of a Section 106 legal agreement to restrict the occupancy of the accommodation to holiday accommodation only.**

Since the above resolution was made, the applicant's solicitor has liaised with the Council's legal team to draft up a s106 as the planning committee required. However, the legal process has somewhat stalled. The reason the s106 remains incomplete is summarised below; and since officers have no delegated authority in this particular case, the application remains one for Members to determine.

The applicant wishes the planning committee to consider varying the above resolution removing the s106 tie on the basis of the additional information:

Additional Information – In a letter dated 25 November 2014, the applicant's mortgage provider (Santander) informed the applicant that they would not agree to any such s106 tie on the property on the basis that such requests fail to satisfy their lending policies; and consequently, Santander have advised the applicant to seek "a more specialist lender". [A copy of the Santander letter is included within Appendix 1(a) contained at the end of this report].

Following receipt of the Santander's letter, the applicant approached alternative lenders and found only one willing to mortgage the property with a s106 tie. The lender however advised that the interest rate would be 4.68% (over the BofE base rate), equating to 4.18% more than what the applicant currently pays. Within a separate letter, which is also included within the appendix, the applicant's financial advisor has advised that this would not only "*seriously increase the monthly mortgage repayments; [it] would make this proposal significantly less viable commercially*".

The applicant's planning agent asks members to re-consider the legal "belt and braces" approach to controlling the occupancy of the holiday accommodation, as currently resolved, in recognition that two conditions which members previously approved (namely no's 4 & 5) would impose occupancy controls on the commercial property, should it be built.

The applicant is keen to stress as having no intention whatsoever using the accommodation other than for holiday rental purposes; and is agreeable to the cited conditions which are listed towards the end of this report.

Members are reminded that when the case was reported to committee, officers considered the imposition of occupancy planning conditions sufficiently robust to restrict the future use of the proposed holiday let units; and this remains the opinion of your officers. Whilst each application should be considered on its own merits, it is worthwhile recording that during the course of 2014, twelve detailed applications for holiday let accommodation were permitted across rural Wiltshire, some within the green belt (i.e. Woolley Park Barn, Woolley Green 14/04543/FUL), others in the AONB (i.e. 14/06051/FUL and 14/00330/FUL at Elcombe Farm and West Farm Barns) and 14/03613/FUL which affected a Grade 1 listed building in the open countryside at Priory Farm, Edington; and, none of the permissions were subject to a legal tie restricting occupancy. So far in 2015, seventeen holiday let applications have been approved in rural locations without a s106. A tabulated summary of the 2014-2015 applications is captured within Appendix 2. It is therefore considered a reasonable request to question the planning need for imposing a legal tie on the proposed holiday lets at Haygrove Farm, Lower Westwood.

Members will however, need to be convinced to vary the extant resolution.

Members are also asked to note that the applicant has also been made aware that Wiltshire Council is now a CiL charging authority and that this proposed development would be liable to CiL taxation. A summary of the CiL liabilities is produced towards the end of section 9 under the heading: Developer Contributions.

What follows next, is the case officer's report which was originally considered by Members in April 2014 and amends sections 6 and 9 in recognition that we now have an adopted Wiltshire Core Strategy and CiL.

For completeness sake, the original committee call-in request by Cllr Magnus MacDonald was exercised to enable Members to determine the impact of the development on the Green Belt and highway safety interests. These matters were debated previously before the resolution to grant permission was reached. **Your officers respectfully recommend that Members limit their deliberations solely to the merits of the s106 tie given the extant nature of the resolution.**

1. Purpose of Report

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

Westwood Parish Council Response – Objects for the reasons cited in section 7.

Neighbourhood Responses – 21 letters of support received and 13 letters of opposition - which are summarised in section 8.

2. Report Summary

The main issues to consider are: The Principle of Development; The Impact on the Green Belt/ Open Countryside; The Impact on the Conservation Area; The Impact on Highway Safety and PROW Interests; The Impact on Neighbours; The Impact on Ecology and Nature Conservation; The Impact on Archaeology; and Developer Contributions

3. Site Description

This application relates to a 0.9 acre irregular shaped parcel of land located outside of the defined Westwood village settlement, accessed off the south side of the Lower Westwood Road (which is a minor 'C' classified public carriageway) located behind two residential properties numbered 43 and 44 Westwood Road – the latter of which is within the control and ownership of the applicant. The character of the properties along the southern side of the road (within the sites' immediate environs) is rather mixed characterised by various house types and designs.

The site subject to this application, forms part of an agricultural holding and is considered brownfield land located on the outer periphery of the village which has been used in the past for agricultural/equestrian use(s). The structures on the site comprise a rather imposing 7 metre high open-sided tin clad Dutch Barn (measuring 9 metres long x 6.5 metres wide); as well as a 2.5 metre high timber shed and concrete block stable block of a similar height and nearly 15 metres in length. All three structures are used to varying degrees for storage purposes. The site is located within the Western Wiltshire Green Belt and Conservation Area, but it is not, as some representors allege, located within the AONB. A Public Right of Way (WWOO14) runs to the west and south of the application site, but it would not be compromised by this planning proposal. Today, the site is found in various stages of dereliction, although the established agricultural use of the land remains extant. The majority of the contiguous land adjoining the defined site is either residential (to the

north and east) or used for agricultural / equestrian purposes (further to the east, south and west), beyond which, the rural landscape is characterised by agricultural field systems divided by well-established blocks of hedgerow and trees.

4. Planning History

The application site (or a part thereof) has been subjected to several applications through the years. Although not exhaustive, the following record is considered to be the most relevant:

74/01200/HIS – Residential development – Refused 12.05.1975

77/00294/HIS – Outline application for 32 houses – Refused 08.07.1977

83/01224/OUT – Outline application for a single dwelling – Refused 03.01.1984

85/00228/OUT – Outline application for 9 dwellings – Refused 01.05.1985

91/01413/FUL – Demolition of farm buildings and erection of two dwellings – Refused 03.03.1992 and subsequent Appeal Dismissal 20.10.1992

98/01669/FUL – Change of use of land to residential and erection of a travel lodge – Withdrawn 07.01.1999

02/01908/FUL – Construction of 4 dwellings – Withdrawn 01.09.2003

13/02810/FUL – Demolition of existing Dutch barn, stable building and shed to be replaced by erection of new 3 holiday let accommodation units, access and associated parking – Withdrawn 01.10.2013

15/08873/FUL – Demolition of existing stable building, erection of new stable building and horse walker; re-grading land previously used as sand school and the provision of a new sand school, access and parking associated with private equestrian use – Permission 09.11.2015 [Note this application relates to land to the south east of the application site, but within the same land ownership of the applicant].

5. The Proposal

This application seeks permission to erect a contemporary designed timber clad single-storey structure to accommodate two 2-bed holiday lets comprising circa 490 m³ to replace three structures (namely a 330m³ Dutch barn, a timber shed measuring 17.7 m³ and a stable block amounting to about 160 m³) which cumulatively total approximately 507 m³.

The holiday let accommodation has been designed following negotiations held with Council officials and Visit Wiltshire. The concept of the design is based on officer advice to reflect an agricultural vernacular – with similar proportions to an agricultural byre or cart shed. The proposed holiday accommodation has been designed to follow the site contours, utilise the footprints of the three structures on the site; and introduce internal maximum flexibility to satisfy the demands of individuals, couples and families.

The development constitutes as redevelopment of previously developed agricultural land, introducing a new building with a lower profile compared to the rather imposing Dutch barn as part of a scheme which the applicant asserts would be *“far more subtle than the existing buildings*

...and [promote] a design that allows it to assimilate into its setting” (page 18 of the Design and Access Statement).

The new build structure is based on a simple rectangular plan form with an asymmetric roof. Vertical timber cladding would be used to support an agrarian styled built form which would be supplemented by louvered timber over the fenestration. The north facing roof plan would also be timber clad, giving the building a rustic but contemporary aesthetic. The timber would be left to weather and soften naturally. The southern elevation would be more ‘modern’ although there would still be timber slatting in front of bedroom windows. Dark non-reflective solar PV panels are planned for the south facing roof plane to maximise solar gain and utilise renewable energy potential. Two modest (600mm) stove flues would nominally project above the ridgeline.

The applicant proposes to utilise the existing shared access arrangements off Lower Westwood Road and has submitted a plan showing on-site parking for 4 motor vehicles for the 2 holiday let units. The applicant is however keen to have the premises available to people arriving by public transport (with a bus stop located close by), bicycle and foot, and emphasises the proposed level access to the front door to suit most visitors, some of whom may have mobility limitations.

Public sewer and water connections are proposed with a dedicated on-site surface water drainage treatment (which would also deal with roof water).

To support the application, the applicant has produced a heritage assessment as part of the submitted Design and Access Statement as well as providing outlining a policy and contextual analysis. Moreover, appended to the D&A, four letters of support from Visit Wiltshire and a selection of local businesses have been submitted (separate to the public notification and advertisement process).

6. Planning Policy

The 2015 adopted Wiltshire Core Strategy (WCS):

The following Strategic Objectives of the Council are relevant to this application:

Delivering a Thriving Economy; To Address Climate Change; Helping to Build Resilient Communities; Protecting and Enhancing the Natural, Historic and Built Environment; and Ensuring that Essential Infrastructure is in Place to Support our Communities.

The relevant Core Policies are – CP2 – Delivery Strategy; CP3 – Infrastructure Requirements CP7 – Bradford on Avon Community Area; CP34 – Additional Employment Land; CP39 – Tourist Development; CP40 – Hotels, Bed and Breakfasts, Guest Houses and Conference Facilities; CP41 – Sustainable Construction and Low-Carbon Energy; CP42 – Standalone Renewable Energy Installations; CP48 – Supporting Rural Life; CP49 – Protection of Services and Community Facilities; CP50 – Biodiversity and Geodiversity; CP51 – Landscape; CP52 – Green Infrastructure; CP57 – Ensuring High Quality Design and Place Shaping; CP58 – Ensuring Conservation of the Historic Environment; CP60 – Sustainable Transport; CP61 – Transport and Development; CP63 – Transport Strategies; CP64 – Demand Management; CP67 – Flood Risk.

In addition to these adopted policies, it is important to note that the adopted WCS recognises Westwood as a large village which retains its settlement boundary. In addition, within Appendix D of the WCS, the following former West Wiltshire District Plan – 1st Alteration Policy remains saved: U1a – Foul Water Disposal.

The Wiltshire Local Transport Plan 2011-2026 – Car Parking Strategy.

Following the Council's adoption of CiL, the following documents are relevant to this case:

Wiltshire Community Infrastructure Levy Charging Schedule; Wiltshire Community Infrastructure Levy Planning Obligations SPD; Wiltshire Community Infrastructure Levy Regulation 123 List; and Wiltshire Community Infrastructure Levy Instalments Policy (all dated May 2015)

Government Guidance:

The National Planning Policy Framework (NPPF); Planning Practice Guidance (PPG); and, the Noise Policy Statement for England (NPSE)

7. Consultations

Westwood Parish Council – Objects and recommends refusal on the following grounds:

1. The proposal represents 'de facto' residential development in the Green Belt, Conservation Area, and on the edge of the AONB and Cotswolds Conservation Area.
2. The proposal is contrary to Green Belt policy as detailed in the NPPF and the Emerging Wiltshire Core Strategy;
3. The proposal does not address the Government's objectives for providing social affordable housing;
4. The current agricultural land use would be significantly changed; and
5. The access onto the Lower Westwood Road (a minor C class highway) is not appropriate for further development/traffic generation. There is a significant road safety hazard in the form of a narrow blind bend in the carriageway; and the proposed access to the development will exacerbate that danger to an unacceptable level. Recent statistics provided by the Community Speed Watch team (dated Feb 2014) showed that the danger along this carriageway is increasing with over 2000 vehicles observed at the pinch point near the site during a 9-hour period whereas a decade ago, the count compromised 1700 vehicles during a full day.

The Parish Council further resolved that should the Planning Committee be minded to permit the development, there should be a condition preventing the proposed holiday accommodation from being changed into a separate permanent residence or used for unrestricted residential purposes.

The Highways Authority – No objections are raised, subject to a condition. A detailed summary of the highway position is covered in section 9 of this report.

The Council's Conservation Officer – No objections are raised. This is a site within the Conservation Area at a rural edge. As such, the site forms a transition from the village to the countryside. There is a degree of visibility through the site as the form and scale of the existing buildings allow this. It is further appreciated that the site is highly visible from all sides as there are footpaths to the south and this raises its importance as a village/rural transition site.

The scheme has been revised through negotiations held with conservation and planning officials which has led to a smaller replacement building being proposed compared with earlier schemes. The proposed developed now submitted, is more sympathetic to the compensatory scale of the

existing buildings and crucially, it would retain the sense of visibility through the site from the village to the countryside and back again. The revised building has also been moved further into the site, away from the footpath – which is located to the west and south of the application site. The general form of the building and the design of the north, east and west elevations are agricultural in style; and this is welcomed. The south elevation has been amended through negotiations to reduce a central projecting wall and canopy, which is to the benefit of the scheme visually.

The use of solar panels, if suitable units are chosen for a non-reflective appearance, would be acceptable providing they are removed if they ever fall out of use or are otherwise no longer needed.

The Council's Ecologist – Recommends that an informative be added (upon any permission) to protect breeding birds from any risk of harm.

The Council's Archaeologist – The Wiltshire and Swindon Historic Environment Record indicates that there is a low potential for heritage assets with archaeological interest to be impacted by the proposed development. No conditions are therefore recommended.

Wessex Water – No objections are raised subject to informatives covering water and waste water connections as well as surface water drainage.

Wiltshire Fire & Rescue Service – Wiltshire Fire & Rescue Service report that it does not receive funding to mitigate the risk generated by new growth in Wiltshire, and the burden of related infrastructure costs should be passed onto the developers through a Section 106 Legal Agreement/CIL. In this particular case, a financial obligation is sought for the sum of £63.36 and the applicant/developer should be responsible for the cost of hydrants and water supplies for firefighting. Furthermore, domestic/ residential sprinklers are recommended by way of a planning informative.

8. Publicity

The application was subject to individual neighbour notifications, a site notice (which was displayed opposite the site on 3 March) and a press advertisement.

21* letters of support were received citing the following:

{*includes one late letter of support received after the publication of the 12 August agenda}

Access / Highway safety

- The carriageway adjacent to the site is not problematic. There have been no known / recorded accidents along the Lower Westwood Road in over 20 years. The addition of two holiday lets replacing an agricultural use would not pose substantive harm to highway safety interests.
- Future holidaymakers would be aware of any highway constraint. This would be no different to normal driver awareness. Any risks are mitigated for by the traffic system and signage in place to alert all road users to be cautious.
- Any holiday let booking literature should include access details to forewarn any visitor.

- One supporter argues that visitors would be more inclined to respect the 20mph restriction than locals.

Policy Conflicts

- Supportive representations have been received from Visit Wiltshire, Wick Farm Farleigh Hungerford Conference/Wedding Centre, Little Court Avoncliff and Eastbrook Cottage B&B, Southwick as well as from the owner of Westwood's shop/post office. The proposal would enhance this derelict Green Belt site and would bring about significant improvements to both the site and surroundings. It is compliant with WWDP Policy and the NPPF.
- The self-catering accommodation would be a great benefit to have in the village and would strengthen its economic vibrancy.
- Redeveloping the site from agricultural use would eliminate potential conflict with residential amenities.
- The objections from the Parish Council/third parties are contradictory. How can they argue against redeveloping this site, but say they want affordable housing? Any perceived lack of affordable housing provision is irrelevant to this case. The application is for a new business.
- This is an excellent proposal. Little regard has been given by the objectors to the fact that the site is brownfield previously developed land. Do we really want more bland suburban development?

Need for Holiday Lets/Viability

- It is misguided to say Westwood is not a holiday destination, without local attractions. Nearby we have, Bath, Bradford on Avon, the Cotswolds, Longleat, Stonehenge, the Kennet and Avon Canal and Iford Manor to name just a few.
- The business should be supported as it would generate local economic development and would support existing local businesses (e.g. the shop/post office, pub and Westwood Social Club).
- The letter of support from Visit Wiltshire is noted. Visit Wiltshire report that the UK tourism is predicted to grow at 5% to 2020 with local tourism revenue in the UK for 2012 reaching £134bn. Visit Wiltshire report that the site proposals 'fit well with current trends and with good marketing this development would help contribute to the continued growth of Wiltshire's visitor economy'.
- Surely this venture would benefit the village overall. One supporter asserts to be more persuaded by the views of the CEO of Visit Wiltshire based on facts associated to tourism and business owners – whose livelihoods depend on considered judgement, than personal opinions raised by the objectors passing doubt over the future popularity of this business venture.

Impact on Neighbours/Surroundings

- Contrary to what the objectors claim, the application has local resident support including some immediate neighbours. Contrary to what some objectors claim, a couple letters of support have been received from immediate neighbours' (including a resident since 1971 and another of over 20 years) and assert that the applicant has sympathetically restored his house and land, and this development appears of a similar high standard which would further enhance the surroundings.

- It is alarming that some objectors wish to deny some people their democratic right to voice their support just because they rent a property, live elsewhere in the village or even outside it. Surely everyone's views count?
- There would be no substantive noise complaints. BBQs form part of everyone's right to enjoy their private amenity garden ground. Why should this be objectionable?
- No animals are kept on the site. No pigs have ever been kept on the site. Is this what objectors want?

Precedence

- If approved, the development would likely be restricted in terms of its use; and thus any future proposal seeking to change its use or extend it would require to future planning permission. The same would apply to any proposed housing development on adjoining land. When such applications are submitted, that would be the time to object, not now.

Planning History

- The scheme has been negotiated with Council planning, highways and conservation officials for over a year. The scheme is one that should be supported.

Other Matters

- Some doubts have been cast about the Parish Council position representing the feelings of the village. One letter writer asks whether the chairman of the Parish Council declared an interest in any vote, since he lives close by.
- It is further alleged that a small number of people have tried to influence other residents to oppose this development by circulating petty objection letters including matters totally irrelevant to what is being proposed and against democratic planning principles.

13 letters of objection were received citing the following concerns:

Access / Highway safety

- The access to the site is dangerous with limited visibility located close to a pinch-point in the carriageway. An increase in traffic generation along such a narrow road would make matters worse.
- The applicant suggests that his target market shall be older people – who would be less likely to react quickly to traffic incidents.
- Holidaymakers would be unaware of the risks.
- A recent Community Speed Watch Survey recorded that 83% of over 2000 vehicles movements travelling through the village (over 9 hour periods during 4 days between 3-10 Feb 2014) were not Westwood residents.
- Concerns are raised over the impact upon the PRow. Any diversion/obstruction would be unacceptable.

- Will the Council/planners take full responsibility / accountability for any accident if this application is approved?

Policy Conflicts

- The disturbing proposal is contrary to local and emerging plan policy, the NPPF and the 2011 Localism Act.
- Opposition is recorded to converting the agricultural land to residential. This proposal is for 'defacto' residential use, and adds to Government concerns about second homes.
- The proposal does not satisfy the Government's objectives for providing affordable housing.
- The proposal is inappropriate development in the Green Belt and AONB.
- The modern design would not be in keeping with the village where there are no similar wooden properties; they are instead mainly made of stone.
- The solar PV installation on the southern roof plane would be inappropriate in such a protected rural landscape and would have an extraordinary visual impact on neighbouring properties, at odds with the conservation area.

Need for Holiday Lets/Viability

- Lower Westwood is not a holiday destination. There are no facilities or services for tourists in the village. The village does not need holiday homes. Holidaymakers would go to Bradford on Avon, Bath and Somerset. The support from Visit Wiltshire should be disregarded – they exist to promote holiday destinations.
- The failed holiday let business at Atworth (Fairfield Barn) should be cautionary example of what happens when holiday businesses are set up away from prime tourist locations.
- Concern is raised about what happens if this business fails. The property would be converted into unrestricted residential use and would gradually be further extended.
- When not in use, the vacant premises would realise no benefit to the village/community.
- There is no guarantee that the applicant would continue his proposed objective or be successful. What happens if the property is sold on?
- The applicant has never been interested in holiday lets before, it's not his business and he has no such experience.

Impact on Neighbours/Surroundings

- The 2 holiday lets could accommodate up to 10 adults and children within such a small area. Holidaymakers have no regard for permanent residential occupants and would disturb the tranquillity of the area and impinge upon the peace of neighbouring properties. Holiday use is inevitably linked to boisterous fun, noise and BBQs.
- Concern is raised over the relationship the holiday lets would have upon the nearby cemetery and the path used by funeral processions.

Impact on Ecology

- The immediate open fields to the south of the site are the hunting ground for barn owls. Extreme care must be taken to ensure that no protected species or habitat is affected/harmed by this proposal.

Loss of Agricultural Land/Buildings

- The derelict buildings and the site should be retained for agricultural purposes. If the proposal was to replace the existing structures with new working agricultural buildings, that would be a different matter.

Precedence

- Concerns are raised over a precedent being set should this application be approved. One local landowner is recorded as saying that she shall apply to build houses on nearby green belt land should this proposal succeed, as a financial legacy for her grandchildren.

Planning History

- The site has been subject to a series of applications through the years, including one proposal for 32 houses. There is some concern that the applicant is seeking to realise residential development on the site by stealth.

Other Concerns

- The site has been subject to heavy water logging in recent years.
- The applicant has failed to discuss his plans with all neighbours.
- The proposal constitutes a significant change of use from agricultural.
- An alleged breach of planning control has been raised with respect to a games room being used for residential purposes.
- The applicant has allegedly broadcast views around the village saying that the application shall be approved, despite minimal local support. It is further alleged that the applicant has said that if the application is not approved, he shall use the site for keeping horses. Horses are not agricultural animals and in any case, the stabling block on the site is too small, and may have been used as piggeries.
- Some objectors argue that some of the letters of support should be disregarded. A letter of support from a nearby tenant should be ignored. Other support comes from individuals and businesses outside the village and most of the support from Westwood residents don't live near or adjacent to the site, and would not be directly affected. The support received from the local public house proprietor should be ignored since he has a business interest in supporting this scheme and has no environmental impact interest.
- Should permission be granted, there should be conditions imposed preventing unrestricted residential occupation and further expansion.
- The application should be determined by the elected members to consider all the material considerations and hear both the objectors and supporters.

9. Planning Considerations

Key Issues: The Principle of Development; The Impact on the Green Belt/ Open Countryside; The Impact on the Conservation Area; The Impact on Highway Safety and PROW Interests; The Impact on Neighbours; The Impact on Ecology and Nature Conservation; The Impact on Archaeology; and Developer Contributions

The Principle of Development - Officers fully appreciate the site's planning constraints and the site's planning history which is documented above and has been referenced by some local objectors. Members will be aware that each application must be considered on its own merits, although, planning history can be a material consideration. In this particular case, officers submit that there are substantial differences between what was previously applied for and refused compared to what is presented under this application. It is also necessary to be mindful that national and local plan policy has evolved significantly since 1974. This scheme seeks permission to erect holiday lets – which although captured under a 'C3' planning class use, a holiday let use is quite distinct from a standard dwelling. Holiday lets in rural locations and where planning authorities consider it appropriate, are usually subject to occupancy restrictions, to prevent them being used as permanent letting or a sole residence.

The Haygrove Farm site is brownfield land located within both the Green Belt and Conservation Area, but the site nevertheless has potential for redevelopment. It is important to be clear that the national and local policy does not prevent new development taking place in such sensitive locations, although it is crucial that any new development is appropriate. This transition site located on the outer edge of the village, sited immediately behind residential properties (which are also defined as being outside the parameters of Westwood's development limits) has been identified by the applicant for holiday let accommodation purposes following extensive discussions with Council officials.

The proposals accord with established policy. Members accepted this in April 2014 [and again in August 2015], and since the resolution to grant permission was made, the previous emerging policies have become adopted development plan policy, enshrined within the Wiltshire Core Strategy. In summary form, Core Policy 48 seeks to support and strengthen our rural communities whilst Core Policy 51 directs new development to "protect, conserve and where possible enhance landscape character". Core Policy 57 seeks a high standard of design to create a strong sense of place, encouraging development that responds positively to landscape and conservation interests as well as maximising sustainable construction techniques and renewable energy sources. Tourism is important to Wiltshire's economy and is worth £779million a year; and the provision of holiday accommodation would very likely contribute to the local economy in terms of new business generated locally in pubs, local visitor attractions, shops and the like. It is also appropriate to recognise that Core Policy 39 imposes importance upon scale, design and use of a proposed facility and for it to be "compatible with its wider landscape setting".

Through the adoption of its Core Strategy, the Council replaced WWDP policies C1 (Countryside Protection) and T03 (Self Catering Accommodation) although it is necessary to reflect that elements of these policies are enshrined within CP50 (biodiversity and geodiversity), CP51 (landscape), CP52 (green infrastructure), CP2 (delivery strategy), CP34 (additional employment land), CP39 (tourist development) and CP48 (supporting rural life).

Officers find no substantive policy conflict with the development plan or its core planning objectives. The development would contribute towards delivering a thriving economy and help build a resilient community. Moreover, officers assert that whilst the site is located outside of the defined settlement limits of Westwood, the site cannot reasonably be described as ‘isolated’ and the proposal would not be an unsustainable form of development. The site is considered to be no less sustainable than anywhere inside the village, by virtue of it being serviced by the same road network and having good access to local amenities and infrastructure. The proposal would not demonstrably harm the open countryside by virtue of what exists on the site at present. Officers argue that the three agricultural buildings on the site have little or no architectural merit and the planned redevelopment has through negotiation, been planned sensitively to bring about a change of use and introduce some economic development to help support the village’s vitality and widen the County’s tourism accommodation offer.

Any doubt cast about the business succeeding is not a material planning consideration. Although, a degree of comfort can perhaps be gleaned from the views passed by the CEO of Visit Wiltshire – in asserting that “*there is significant consumer demand for high quality accommodation, offering flexibility for guest[s] in Wiltshire*”; and having reviewed the plans and visited the site in person, the official tourist board for Wiltshire is on record as stating that the “*proposed development fits well with current trends and providing [it] is marketed well will help contribute to the continued growth of Wiltshire’s visitor economy*”.

At a national level, the NPPF places significant weight upon sustainable economic growth, to support proposals which contribute towards “*building a strong, responsive and competitive economy*” – which marries well with the Council’s Core Strategy objectives; and, in paragraph 17 of the NPPF, a clear marker is laid through emphasising that the core planning principles should “not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives”. Within paragraph 19, the Framework records that “*The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system*” [emphasis added].

For completeness sake, it is worth recording that this policy context set the principle backdrop for the discussions held with the applicant and his appointed agents, and through extensive negotiations, officers pressed not only for having a replacement building that was commensurate to the existing range of structures, a single-storey ‘limit’ was set for the new build having a much lower profile than the Dutch barn; and, it had to be sited overlapping the existing footings of the three structures to retain views and glimpses of the open countryside beyond the site and back towards the village from the PRow to the south and east of the site.

According to the Council’s database, the agricultural land designation for the site is graded as land of moderate quality, which is not used for food/crop production although officers would submit that the agricultural potential for the area amounting to less than 1 acre is probably best left limited to storage purposes given the close proximity of several residential properties. Although, as was conceded during the public debate back in April 2014, the established and lawful use of the site is for agriculture, and it was recognised that alternative agricultural fall back uses could generate far greater nuisance and disruption than what exists at present in terms of smells, noise, and traffic generation. The parcel of land is not considered to be prime versatile agricultural land with much of

it formed as hard standing, consequently, officers argue that in this case, there is no reasoned or justified planning objection to the 'loss' of such agricultural land.

The mixed level of support and objection from the local community remains duly recorded, and it is submitted that the key planning issues requiring detailed analysis concern: the impact on the green belt/ open countryside; the impact on the conservation area; the impact on highway safety and PRow interests; and, the impact on neighbours. These are assessed in turn below.

The Impact on the Green Belt/ Open Countryside – The proposed redevelopment of the site would not have a materially greater impact than the agricultural buildings on the openness of the Western Wiltshire Green Belt. The proposed replacement building would be smaller both volumetrically and in profile compared to the three structures and the visually dominant Dutch barn. Furthermore, officers maintain that the three structures do not positively contribute towards the landscape/ Green Belt setting or the transitional character of this edge of village site. Following extensive pre-application discussions and negotiations, the applicant proposes constructing a new building based on a simple rectangular form of a lower single-storey profile, set out encompassing the footings of the existing buildings to ensure that the essential character of the area is not harmed. The openness of the Green Belt – its most important element, would therefore not be compromised. Officers recognise that the site at present is rather unkempt with buildings in various stages of dereliction, but it is important to record that the site/ buildings can still be used for agricultural purposes with its own associated access and parking element – which could be intensified without requiring any Council approval. It is considered important to stress that the holiday let use and the type of vehicles using the shared access for such an enterprise would be more respectful to the immediate residential land use, than more intensive farming operations including tractor and other machinery use, silage storage or even animal housing which does merit some consideration as a potential fall back should this development not succeed.

Whilst the application site planning history is documented in section 4, which does include some historic refusal decisions, it is important to be clear that this application must be assessed on its own merits as a commercial venture and tested against up-to-date planning policy.

As referenced within the conservation officer's consultation commentary, officers welcome the applicant's revised proposal which follows much of the advice and guidance offered and crucially, it would allow for a sense of visibility through the site which satisfies the aims of the Green Belt in terms of preserving a sense of its openness as well as preserving important views into and out of the Conservation Area.

Having negotiated this scheme for over a year, planning and conservation officers find the design, scale, massing and use of materials to be acceptable; and if approved and implemented, would make a positive impact locally without harming the Green Belt or compromise the policies in place enshrined to protect it.

Impact on the Conservation Area - Section 66 & 72 of the Planning (Listed Building and Conservation Area) Act 1990 stipulates that the Local Planning Authority has a duty to pay special attention to the desirability of preserving and enhancing the setting of a building or buildings of special architectural or historic importance and the character or appearance of the Conservation Area. Furthermore, the NPPF identifies the need to conserve heritage assets in a manner appropriate to their significance.

In this particular case, officers duly assert that the three old farm structures do not contribute positively to the character and appearance of the Conservation Area. Moreover, officers submit that the type and condition of the buildings upon it, to a certain degree, devalues the character and appearance of the heritage asset. The functional use of the old stabling has now lapsed and the appropriateness of the domestic scaled timber shed on the site appears incongruous. The Dutch barn cast a visually striking impact in the landscape appearing somewhat discordant within such close proximity to several residential properties; and there is certainly no architectural merit to any of the structures to justify their retention in heritage terms. Officers therefore report no objection to the proposed demolition of the stabling, the shed and Dutch barn.

As far as the proposed new building is concerned, it is considered important to stress that the development has evolved in terms of its design, scale, massing and detailed elements through pre-application discussions which involved the Council's Conservation officer. Through negotiation, the holiday let building has been re-sited so that it relates to the footings of the three existing structures which would be removed. The size and number of the holiday lets have been reduced, which in combination with the re-siting element, would allow for a degree of public visibility across and through the site to the wider countryside to the south and up towards the village when viewed from the PRoW to the west, south and east of the site.

It is fully acknowledged that neighbouring properties are of a more traditional vernacular comprising natural materials with dressed or random stone walls under clay tiled roofs. However, in recognition of the mixed materials used on the three structures on the site at present and having due cognisance of the site's agricultural land use, officers adopted a positive approach (as encouraged by the NPPF) through discussing the principle and finer details of redeveloping this site with the applicant and his appointed agents which date back to 2012. Officers firstly emphasised the importance placed upon ensuring that any replacement building should be commensurate to the scale/volumetric size of the existing buildings; and secondly, it was considered appropriate to promote the concept of a single-storey agrarian styled timber structure which could integrate with its surroundings without causing harm or conflict. Following a series of discussions and modifications, officers are fully satisfied that from a heritage viewpoint, the proposed building would be compliant with the relevant conservation/heritage based policies and that it would make a welcome contribution to the conservation area.

Impact on Highway Safety and PROW Interests - Whilst some local residents have raised concerns about highway safety implications associated to this site and proposal, it is necessary to stress that the NPPF expressly asserts in paragraph 32 that "development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe". Officers duly assert that there would be no such "severe" highway impacts to justify a refusal in this particular case.

The highways team recognise that the site access is shared by No. 43 and No. 44 located within a 20mph speed limit and close to a narrowing in the road which aids the slowing of traffic speeds. The highway authority duly acknowledges the concerns raised by some local residents and the parish council, but it has to be recorded that there has been no recorded accidents at this point in the last 10 years. Furthermore, the submitted plans show 2.4m x 20m visibility to the centre line of the road at the narrowest point and 2.4m by 29m to the west. Given the nature of the road as reported above, no highway objection is raised.

All the highway based objections have been fully reviewed, including the referenced Community Speed Watch findings. Following a review of the submitted data, the highways team advise that the number of vehicles passing along the public carriageway within a 9 hour period (as referenced by the Parish Council), is not considered a large traffic flow and is certainly not a substantive highway safety constraint to justify a refusal in this case.

Impact on Neighbours - Officers acknowledge the fact that the three agricultural buildings and the use of the land in such close proximity to several residential properties could potentially led to some land use / amenity conflict if the site/ buildings were to be used more intensively for farming purposes away from storage. If approved and implemented, this application would result in the removal of the agricultural land use; and thus, erode any such future agricultural/residential conflict. As recorded above, the Council has received a mixed response from residents of Westwood with some registering full support and others raising concerns. For those opposing the application on amenity grounds, after visiting the site and carefully assessing the proposals, officers assert that the separation distances and relationships between the proposed new holiday let accommodation - with its main amenity space located to the rear; and the closest neighbouring residential properties, are acceptable and that it should not substantively disturb, interfere, conflict with or overlook adjoining dwellings.

The two proposed self-contained holiday lets would each have 2 bedrooms, a kitchen/dining room and wc/bathroom as well as some dedicated outdoor space. Whilst the proposal would constitute a change the use of the land, it is considered that a holiday let use would be much more sympathetic to the prevailing residential use of all the adjoining neighbouring properties; and moreover, the level of visitor comings and goings should not have an undue negative impact on the amenities of neighbouring residential occupiers.

For the avoidance of any doubt, the use of the holiday lets can be controlled by planning conditions to restrict the occupation and impose a reasonable guest book management requirement so that the Council can properly monitor its future use. This is considered both necessary and entirely reasonable and consequently, planning conditions are so recommended.

The Impact on Ecology and Nature Conservation - As reported above, the Council's ecologist reports no objection to the development proposal on ecological/nature conservation grounds. Should permission be granted, an informative is recommended to advise the applicant/developer to ensure that when demolishing the three structures or disturbing any land, due consideration should be given to bats and breeding birds and to avoid the bird nesting season (March to August); and that even outside such a period, care should be taken.

The Impact on Archaeology - The Council's archaeologist reports no concerns and is on record advising that "based on information in [the] Wiltshire Historic Environment Record...no concerns [are raised] regarding any archaeological impact by the proposed development". This advice is also enshrined within page 19 of the submitted Design and Access Statement.

Developer Contributions – In April 2014, a financial request from the Wiltshire Fire & Rescue Service amounting to £63:36 was reported to the committee; and it was agreed at the time, that prior to the adoption of CiL, the associated legal costs of negotiating and entering a s106 (in addition to the officer time resource) for such a limited amount of money was not considered proportionate or proper use of Council resources. However, now that Wiltshire Council is a CiL charging authority, this type of development which is CiL liable, would be subject to development

taxation prior to the commencement of work on site. Although the tax collection process is separate to the planning process, members may be interested in knowing that the proposed holiday let development falls within the Council's CiL Charging Zone 1 which levies a tax of £85 per sq.m on CiL liable development – and in this particular case, it generates a CiL liability of approximately £10,183.

10. **Conclusion** This development has been debated at committee level and obtained member support for the principle of development. The only aspect of the application which is reasonably open for re-evaluation refers to whether or not Members would be satisfied that permission could be granted without a s106. In the interests of consistency, the original case officer recommendation remains unchanged arguing that the holiday let occupancy can be controlled robustly by planning conditions, which as an approach, is consistent with all the other detailed applications that were approved by the Council in 2014 and so far in 2015 (please refer to Appendix 2). It is nevertheless duly acknowledged that Members were not sufficiently convinced in April 2014 or in August 2015. This report has been updated to reflect and report the material changes since April 2014 and August 2015; and Members are respectfully invited to consider this case on its merits.

As previously advised, this application has been subject to extensive pre-application discussions. Through these discussions, the applicant reduced the scale of the holiday let accommodation from 3 to 2 units and reduced the size of the building so that it is more commensurate with the existing range of buildings on a compensatory replacement basis. The applicant agreed to re-site the new building so that it would overlap the footprints of the three farm structures – which belittle the character and appearance of the Conservation Area. Following the proposed demolition, the applicant seeks to erect a building having a simple agrarian form with a smaller cumulative volume than the three structures with a single-storey profile which would not have a materially greater impact upon the openness of the Green Belt and Conservation Area; but would, through the loss of the agricultural buildings and changing the planning land use of the site, delete the future potential risks of residential neighbouring conflicts with such immediate agricultural operations.

Officers maintain that this development fits with the Central Government's emphasis placed upon stimulating economic growth, creating and supporting rural businesses and diversity, and job growth – enshrined under the banner of promoting economic, social and environmental sustainability. Officers are satisfied that the application accords with the key elements of the NPPF; as well as the Council's Policies, and consequently, this application is recommended for permission subject to conditions.

RECOMMENDATION: To approve subject to the following conditions:

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

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

2 No development shall take place until samples/details of the materials to be used in the construction of all the external surfaces of the development hereby permitted (including the exact type and colour and manufacturer of the solar PV panels) have been made available to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

REASON: To ensure that the development harmonises with its historic setting and protected surroundings.

3 No building works pursuant to the construction of the holiday let accommodation shall commence until all three existing structures identified for demolition on the site have been permanently demolished and all the debris has been removed from the site/landholding.

REASON: In order to define the terms of this permission and to ensure the site is redeveloped in an appropriate manner respectful to the protected surroundings and neighbours.

4 No person/s shall occupy the holiday accommodation for a continuous period of more than 1 month in any calendar year and it shall not be re-occupied by the same person/s within 28 days following the end of that period.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

5 Notwithstanding Class C3 of the Schedule to the Town and Country (Use Classes) Order 1987 (as amended) (or any order which revokes and re-enacts that Order with or without modification), the accommodation hereby permitted shall be used to provide holiday accommodation only, which shall not be occupied as permanent, unrestricted accommodation or as a primary place of residence. In addition, an up to date register of names and main home addresses of all occupiers shall be maintained and shall be made available at all reasonable times to the Local Planning Authority.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

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

REASON: In the interests of highway safety.

7 All demolition/construction operations on site shall be restricted to the following hours:

Monday-Friday 08:00-18:00, Saturdays 08:00-13:00 and not at all on Sundays and/or bank Holidays.

REASON: In the interests of safeguarding local and residential amenity.

8 Should the solar PV panels become obsolete, they shall be removed from the property within 3 months from the date they cease to be used or function for the purposes of providing renewable energy; and that the roof shall be clad in material to match the northern roof plan hereby approved.

REASON: In order to define the terms of this permission.

INFORMATIVES TO APPLICANT:

1. The applicant/developer is advised to duly note that bats and their roosts are protected at all times by the Conservation of Habitats and Species Regulations 2010. Planning permission for any development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. If bats or evidence of bats is found during the works, the applicant is advised to stop work and follow advice from an independent ecologist or to contact Natural England's Bat line on 0845 1300 228
2. The adults, young, eggs and nests of all species of birds are protected by the Wildlife and Countryside Act 1981 (as amended) while they are breeding. The applicant is advised to check any structure or vegetation capable of supporting breeding birds and delay removing or altering such features until after young birds have fledged. Damage to extensive areas that could contain nests/breeding birds should be undertaken outside the breeding season. The season is usually taken to be the period between 1st March and 31st August but some species are known to breed outside these limits.
3. The applicant/developer is encouraged to contact Wessex Water to agree connections to the water supply and mains sewer infrastructure.
4. The applicant/developer is advised to contact the Wiltshire Fire & Rescue Service and to consider the installation / provision of residential sprinklers inside the new property. More information can be obtained from the Fire Authority through contacting them on tel. no: 01225 756500 or via email: planning@wiltsfire.gov.uk
5. The applicant is encouraged to arrange for appropriate literature to be provided to all future visitors to the holiday let accommodation to advise upon the directions to the site and also to raise awareness of the localised highway constraints and limited visibility.
6. The applicant is advised that the development hereby approved is 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

Appendix 2 – Record of Approved / Refused Applications for Holiday Lets in Rural Wiltshire without a s106 – an updated record

2014 Holiday Lets Approved by the Council without s106

14/00330/FUL	West Farm Barns, Fovant	C/U to shooting lodge/ Holiday lets	AONB
14/01332/FUL	Honeywood Stables, Easterton	C/U to 2 holiday lets	Open Countryside
14/01335/FUL	Barford St Martin, Salisbury	Erection of holiday let	AONB/Nearby Heritage Asset
14/02189/FUL	Horsecroft Farm, Heywood	C/U to 3 holiday lets	Open Countryside
14/02659/FUL	Woolley Barn Farm, Woolley Green	C/U to holiday let	Green Belt
14/03613/FUL	Priory Farm, Edington	C/U to holiday lets	Nearby Heritage Asset
14/04543/FUL	Woolley Park Barn, Woolley Green	C/U to holiday let	Green Belt
14/06051/FUL	Elcombe Farm, Alvediston, Salisbury	Erection of 6 holiday lets	AONB
14/06549/FUL	Honeywood Stables, Easterton	C/U to 2 holiday lets	Open Countryside
14/07993/FUL	Cart Shed Barn, Sutton Mandeville	C/U to holiday let	AONB
14/08318/FUL	Bays Farm, Pinkney Green	C/U to holiday let	AONB/Green Belt
14/12006/FUL	Bankside, Bishopstone, Salisbury	C/U to holiday let	AONB/Nearby Heritage Asset

2014 Holiday Let Apps Refused by the Council

14/07878/VAR	The Carhouse, Chute Cadley	Removal of restrictive Occupancy condition	AONB/Open Countryside
14/09946/VAR	190 Ashley Green, Little Ashley	Removal of restrictive Occupancy condition	Green Belt/Open Countryside/ Nearby Heritage Asset

2015 Holiday Lets Approved by the Council without s106

15/03212/FUL	Church Farm, Upper South Wraxall	C/U to 2-bed holiday let	Green Belt/Conservation Area
15/01191/FUL	Long Knoll Barns, Kilmington	C/U to holiday lets	AONB/ Open Countryside/nearby Heritage Assets
15/01220/FUL	Church Farm, Kington Langley	C/U to holiday let	Open Countryside
15/01250/FUL	The Holdings, Ashton Common	C/U to holiday let	AONB/Nearby Heritage Assets
15/01595/FUL	West View, Yatton Keynell	C/U to holiday let	AONB
15/04143/FUL	Factory Lane, Barford St Martin	Erection of holiday let	AONB
15/04544/FUL	West Wick Farm, Pewsey	C/U to holiday let	AONB
15/05049/FUL	Clay Street, Crockerton	C/U to holiday let	AONB
15/05097/FUL	Foxham Farm, Chippenham	C/U to 2 holiday lets	Open Countryside/Nearby Heritage Asset
15/05696/FUL	Easton Farm, Berwick St John	C/U to holiday let/annex	AONB/Open Countryside/Nearby Heritage Asset
15/07165/FUL	Piggery Shed, West Wick	C/U to holiday let	AONB/Open Countryside
15/07345/FUL	Littleton Lodge, Littleton Panell	C/U to holiday let	Nearby Heritage Asset
15/07756/FUL	Lower Waite Farm, Dauntsey	C/U to holiday let	Open Countryside
15/07912/FUL	South Farm, Erelstoke	C/U to either ancillary Acc. or holiday let	Open Countryside
15/08186/FUL	Barnbridge, East Tytherton	C/U to holiday let	Heritage Asset
15/08703/FUL	The Brenndon, Corston	mixed dev with C/U to holiday let	Open Countryside
15/08840/FUL	The Coppice, Shalbourne	C/U to holiday let	AONB/Open Countryside/Nearby Heritage Asset

2015 Holiday Let Apps Refused by the Council

15/02736/FUL	Beacon Hill Farm, Hilmarton	erect shooting lodge / holiday let	Open Countryside
15/02843/VAR	Church Farm, Tytherton	removal of restrictive occupancy conditions	AONB/ Heritage Asset/ Open Countryside
15/06372/FUL	Shepherd's Cottage, Bishopstrow	retrospective holiday let	Open Countryside
15/09177/FUL	Freeth Farm, Compton Bassett	retrospective holiday let	Open Countryside

Appendix 3a – Appeal Decision at 190 Ashley Green, Little Ashley – dated 28 July 2015



Appeal Decision

Site visit made on 2 July 2015

by B J Sims BSc(Hons) CEng MICE MRTPI

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

Decision date: 28 July 2015

Appeal Ref: APP/Y3940/W/15/3003800

190 Ashley Green, Little Ashley, Bradford-on-Avon, BS15 2PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr John Banks against the decision of Wiltshire Council.
 - The application Ref 14/09946/VAR, dated 21 October 2014, was refused by notice dated 15 December 2014.
 - The application sought planning permission for the conversion of existing garages into holiday let without complying with a condition attached to planning permission Ref 07/02817/FUL, dated 30 October 2007.
 - The condition in dispute is No 4 which states that: The dwelling shall only be used as holiday accommodation and not as permanent residential accommodation, and it shall not be occupied during the month of February.
 - The reason given for the condition is: The site is in an area where residential development would not normally be permitted.
-

Decision

1. *The appeal is dismissed.*

Planning Issues

2. *The main issue is whether the disputed condition is reasonable and necessary to prevent permanent residential occupation of the appeal building with reference to adopted local planning policy regarding the conversion and re-use of rural buildings.*

3. *It is also necessary to consider the degree to which permanent residential use of the building would amount to sustainable development with particular regard to road access, highway safety and the availability of local services, compared with its currently permitted use as a holiday let.*

Reasons

4. *The appeal building has been nicely converted into a modest, two-bedroom dwelling standing within its own garden area behind No 189 Ashley Green, with which it shares its vehicle access. No 189 is the home of the Appellant who has operated the building as a holiday let following the completion of its conversion in 2011.*

5. *The building is situated in the Bristol Green Belt where, in the strict terms of Green Belt policy, its conversion and re-use is not regarded as 'inappropriate'. Therefore, the*

Green Belt test of whether there are 'very special circumstances' to justify the permanent residential use now proposed does not have to be applied.

6. *Be that as it may, the use of the building must still comply with relevant provisions of the statutory development plan unless material circumstances indicate otherwise. These include Core Policy 48 (CP48) of the adopted Wiltshire Core Strategy 2015 (WCS). This policy is essentially consistent with the National Planning Policy Framework (NPPF) in requiring clear evidence that the current holiday, or tourism, use is not a practical proposition, before permanent residential development may be regarded as appropriate. Even then, the development must not detract from the character or appearance of the landscape and must be served by adequate access and local services.*

7. *The Appellant asserts that most visitors prefer to stay in Bradford-on-Avon itself and that the "Saddle Stone Cottage" website and advertisement via the Bradford-on-Avon Information Centre have failed to attract a significant number of bookings in the years since the conversion was completed. The Appellant provides a schedule of comparable weekly rental charges for other holiday lets in the area as an indication that the asking price has been reasonable. However, the Appellant admits to rejecting a contract with a commercial letting company, claiming that the level of commission would render the holiday let unviable.*

8. *Without any other documented financial records or correspondence, the information available does not amount to the requisite clear evidence that the holiday let is not a practical proposition in terms of CP48. This objection alone warrants dismissal of the appeal, even though it is accepted that the development is low-key in nature and not commercially speculative.*

9. *Moreover, notwithstanding that the holiday let is an attractive dwelling, it lacks outbuildings of its own, such that permanent occupiers would be likely to require. The regular use of the garden and a potentially greater level of domestic activity and paraphernalia within the open countryside would detract from the character and appearance of the landscape. This consideration adds to the degree of conflict with CP48 and its criterion (ii) in particular.*

10. *The route along the rural lanes leading to the appeal property is of poor quality with a risk of conflict between vehicles and pedestrians contrary to the interests of road safety. Moreover, the relatively long distance from local shops and other community services would require regular reliance on the private car for access. In these two respects, the proposed permanent residential use of the appeal building would fail to accord with the principles of sustainability and be in some further conflict with CP48, criteria (iii-iv), as well with the principles of sustainable transport set down in CP60 of the WCS. However, it must be taken into account that, in its permitted holiday use, there is nothing to prevent the dwelling from becoming frequently occupied, other than during the month of February. This could also give rise a substantial number of car trips. As a result, neither the consideration of poor access nor the long distance from available community facilities are determining factors in this case.*

11. *This appeal is considered in the light of every matter raised in the representations, including reference to a previous permission for a holiday let at Haugh (Potticks Stable) not far from Little Ashley, cited by both District and Parish Councils as evidence of local demand for tourist accommodation; but each case is decided on individual merit and it is the lack of*

documentary evidence in the present appeal which is the main deciding issue. It is also noted that that the appeal dwelling could contribute a small permanent addition to the local housing supply. However, this socio-economic benefit is clearly outweighed by the potential environmental harm to the rural landscape and the conflict with adopted policy.

12. No other point raised is of sufficient importance to affect the overall conclusion that, for the reasons explained above, the appeal should fail.

13. For the reasons given, the appeal fails.

B J Sims
Inspector



Appeal Decision

Site visit made on 27 June 2015

by Jennifer Tempest BA(Hons) MA PGDip PGCert Cert HE MRTPI IHBC

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

Decision date: 18 August 2015

Appeal Ref: APP/Y3940/W/15/3003155

The Carhouse, 6 New Buildings, Chute Cadley, SP11 9ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs S Falla against the decision of Wiltshire Council.
 - The application Ref 14/07878/VAR, dated 15 August 2014, was refused by notice dated 15 October 2014.
 - The application sought planning permission for conversion of carhouse to holiday accommodation without complying with a condition attached to planning permission Ref K/59494/F, dated 19 February 2009 as varied by planning permission granted under Ref E/10/0865/S73 dated 18 August 2010.
 - The condition in dispute is No 3 as varied which states that: Notwithstanding Class C3 of the Schedule of the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) the accommodation hereby permitted shall be used to provide holiday accommodation only, which shall not be occupied as permanent, unrestricted accommodation or as primary place of residence. An up-to-date register of names and main home addresses of all occupiers shall be maintained by the owner and made available at all reasonable times to the Local Planning Authority.
 - The reason given for the condition is: In order to ensure that the accommodation is not occupied on a long term basis because the site is in an area where the Local Planning Authority would not normally permit new dwellings.
-

Decision

1. *The appeal is dismissed.*

Procedural Matters

2. *Since the planning application was determined by the Council, the Wiltshire Core Strategy1 (WCS) has been adopted. Policies HC24, HC26, ED12 and ED13 of the Kennet District Local Plan2 (KDLP) are referred to in the Council's decision notice. The emerging Core Strategy policies were also referred to in the decision notice. Whilst some policies of the KDLP are retained in the WCS, this does not apply to those related to this appeal and the KDLP policies are therefore superseded. The evidence of the Council and the appellants addresses the adopted WCS and therefore neither party is prejudiced by this change. I have determined the appeal having regard to the adopted WCS policies.*

Main Issues

3. *The main issue is whether or not the appeal premises are suitable for use as permanent residential accommodation having regard to local and national policies.*

Reasons

4. The proposal seeks the removal of the disputed condition so that The Carthouse can be used as a permanent residential dwelling. The Carthouse lies at the north eastern end of a short row of dwellings on the east side of a lane leading from Chute Cadley. The group of dwellings known as New Buildings are separated from other areas of Chute Cadley by an area of undeveloped land. Chute Cadley is in the North Wessex Downs Area of Outstanding Natural Beauty (AONB).

5. The relevant development plan for the appeal site is the adopted Wiltshire Core Strategy. Core Policy 1 of the WCS sets out the settlement strategy for Wiltshire, identifying four tiers of settlements of which Large and Small Villages are the fourth tier. Development at Large and Small Villages will be limited to that needed to help meet the housing needs of the settlement and to improve employment opportunities, services and facilities. Section 5 of the WCS, which sets out the strategies for various community areas, confirms the settlements which make up The Chutes to be a Small Village and from which any settlement boundary has been removed. Paragraph 4.16 of the WCS explains that some very modest development may be appropriate at Small Villages, to respond to local needs and to contribute to the vitality of rural communities.

6. Core Policy 2 of the WCS states that development is to be delivered in the most sustainable manner with homes developed in sustainable locations and as set out in Community Area Strategies. Development will not be permitted outside the limits of development as defined on the policies map which may only be altered through subsequent Site Allocations DPDs and neighbourhood plans. At Small Villages, development will be limited to infill within the existing built area. Proposals for development at the Small Villages will be supported where they seek to meet housing needs of settlements or provide employment, services and facilities provided that the development i) respects the existing character and form of the settlement, ii) does not elongate the village or impose development in sensitive landscape areas, and iii) does not consolidate an existing sporadic loose knit area of development related to the settlement.

7. Core Policy 2 therefore allows infill development where it seeks to meet housing needs of the settlement. The first element of Core Policy 2, which limits development to infill within the built area, relates to what follows and therefore to development which meets the needs of the settlement. The appeal proposal is not designed to meet the housing needs of the settlement. Whilst some development may have been permitted in Chute Cadley against the background of earlier policies, Core Policy 2 is now the relevant policy.

8. The appeal proposal, as a dwelling with unrestricted occupancy, would not therefore comply with Core Policy 2. Nor can the proposal rely on Core Policy 26 which relates to the Tidworth Community Area as this confirms development is to be considered on the basis of Core Policy 1. Consequently, the appellants' view that Chute Cadley is a sustainable location for new housing development is not borne out by the WCS.

9. The supporting text to Core Policy 2 at paragraph 4.25 points to the 'exception policies' in the core strategy which seek to respond to local circumstance and national policies. Those of relevance to the appeal proposal are Core Policies 39 (related to tourism) and 48 (supporting rural life).

10. Core Policy 39 sets out tourist development policy. Within Principal Settlements and Market Towns, proposals for tourist development of an appropriate scale, including attractions and tourist accommodation, will be supported. Tourist and visitor facilities are to be located in or close to (amongst other locations) Small Villages and where practicable be located in existing or replacement buildings. I consider that Core Policy 39 as a whole could be taken to support holiday accommodation, however, this does not amount to seeking its retention.

11. Core Policy 48 relates to supporting rural life. It provides for residential development to meet the needs of rural workers who need to live near their place of work. Proposals to convert and re-use rural buildings for employment, tourism, cultural and community uses will be supported subject to

compliance with five criteria related to the condition of the building, effect on character and appearance and living conditions, adequacy of access, reasonable access to local services or securing the long term viability of a heritage asset. This policy would therefore support the use of the appeal building for holiday accommodation but not for unrestricted residential use. However, Core Policy 48 also states that where there is clear evidence that the supported uses for re-using rural buildings are not practical propositions, residential development may be appropriate where it meets the other listed criteria. In isolated locations, the re-use of redundant or disused buildings for residential purposes may be permitted where justified by special circumstances, in line with national policy.

12. Core Policy 48 is therefore a key development plan policy against which to assess the proposal. The supporting text at paragraph 6.61 of the WCS sets out that the policy is based on a number of objectives including supporting the sensitive reuse of built assets to help meet local needs. Paragraph 6.63 confirms that proposals to convert or re-use buildings for residential uses will need to fulfil the requirements of Core Policy 48. The appellant points to Core Policy 48 being more onerous in its requirements than those set out in paragraph 55 of the National Planning Policy Framework (Framework). The latter refers to the need to avoid isolated new homes in the countryside unless there are special circumstances, one example of which is the re-use of redundant or disused buildings and where development would lead to an enhancement to the immediate setting.

13. I am not in a position to comment on the building's condition or that of its setting prior to conversion. However, I do not dispute the quality of the extant, converted building. The WCS was adopted in January 2015 and is therefore up to date. The Framework reiterates the provisions of the 1990 Act that proposals must be determined in accordance with the development plan unless material considerations indicate otherwise.

14. WCS Core Policy 48 requires consideration of whether the tourism related use of holiday accommodation is a practical proposition. The property has been in use for holiday letting since 2011. The evidence confirms that the appellants undertook the conversion works on this basis. The disputed condition requires an up-to-date register to be kept and made available to the local planning authority when requested. This register has not been put forward with the evidence to the appeal although some occupancy figures form part of the financial evidence. I have no reason to doubt the appellants' statement that the property has been marketed through a reputable and experienced holiday lettings web site and is accessible through Tripadvisor.

15. I have considered the financial evidence which has been provided. This indicates a financial loss for the year 2011/12 and a small loss for 2012/2013 with a modest profit predicted for the three following years however overall anticipated average profit for five years of trading is negligible. I am provided with only two years of figures. The business categories for the expenses and allowances are not directly comparable between the two years.

16. The appellants' statement indicates that the business is supported by a large mortgage and that variable and running costs are much higher than anticipated such that the predicated average profit for five years of trading is negligible. I note that the number of nights the property was occupied increased from 120 in 2011/12 to 157 in 2012/13 as well as the average nightly cost to guests.

17. I appreciate that securing holiday bookings is a competitive market and that guest expectations are high. However, the evidence before me is not sufficient to demonstrate that the holiday lettings have been pursued to the point where it has been shown that running the property for holiday lettings is not practical. In particular, I note that the appellants consider one of the drawbacks of the site is its distance from major tourist attractions. However, it is not clear that there have been attempts to market the accommodation through more than one agency, or through agencies which specialise in rural locations. Although the property has been advertised on the village website, it is not clear how that would be likely to significantly increase coverage to potential guests.

18. Paragraph 55 of the Framework seeks to avoid new isolated homes in the countryside. It is acknowledged that the Framework would allow for the provision of new homes in rural areas in special circumstances such as where the development would re-use redundant or disused buildings and lead to an enhancement of the building's immediate setting. This would not be the case here as the building cannot be considered as redundant or disused. Core Policy 48 deals specifically with re-use of rural buildings and is consistent with national planning policy. Therefore, having given the proposals careful consideration, I conclude that the proposal to remove the condition would not comply with up to date development plan policy and the evidence is not sufficient to confirm that holiday accommodation is not practical.

19. Whilst Core Policy 40 is not directly applicable to the appeal proposal as the policy specifically refers to bed spaces provided in hotels, public houses or conference facilities, the aim of the policy is to retain bed spaces as tourist accommodation. However, I do not agree with Council's contention that the proposal would have the consequence of altering the character of the area given that The Carhouse is already a form of residential development.

20. The proposal would provide a single dwelling and the appellant suggests there may be doubt about the five year land supply. However, the contribution to housing land supply from one dwelling would be very limited. I have also noted the comments regarding permitted development rights for the change of use of agricultural buildings but, as the appellants note, these are not relevant to this site in the AONB.

21. Accordingly, the appeal proposal does not comply with WCS Core Policy Strategies 1, 2, and 48 and, on the basis of the evidence, this is not outweighed by other considerations.

Conclusions

22. For the reasons given above and having taken into account all matters raised, I conclude that the appeal should be dismissed.

Jennifer Tempest
INSPECTOR

Item 1 - 14/01659/FUL – Haygrove Farm, Lower Westwood



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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Report No. 2

Date of Meeting	16 December 2015
Application Number	15/09224/FUL
Site Address	212 The Common, Holt, Trowbridge BA14 6QN
Proposal	Two storey rear extension
Applicant	Mr N Tully
Town/Parish Council	HOLT
Electoral Division	HOLT AND STAVERTON – Councillor Trevor Carbin
Grid Ref	386681 162310
Type of application	Full Planning
Case Officer	Jennifer Allen / Jonathan James

Reason for the application being considered by Committee

Cllr Trevor Carbin has requested that this application be reported to the area committee (should officers be minded to support it) to allow members to determine the following matters:

The scale of development, the design - bulk, height and general appearance, the visual impact on surrounding area, and the relationship to adjoining neighbours.

1. Purpose of Report

The purpose of this report is to outline and discuss the application for planning committee to come to a recommendation.

2. Report Summary

The report outlines the officer's recommendation for permission whilst addressing the concerns raised by third parties.

3. Site Description

The site is located within the Limits of Development (LoD) of Holt, which is a designated large village as defined within the Wiltshire Core Strategy (2015). The site is accessed off the B3107, the main road through the village, and is located on the north-west side of the road leading to Melksham.

The area surrounding the site is predominantly defined by two storey detached Victorian design dwellings set back from the road side with some elevated above the road level. There is a mix of styles and types of properties along The Common ranging from bungalows to detached two storey dwellings and these are also finished in a variety of materials. Properties are primarily constructed from bath stone although there are some examples of render and brick in the vicinity. Whilst the roof of the host property is finished in slate, there are examples of pan-tiled and concrete tiled roofs nearby.

To the rear of the properties there are various extensions some finished in bath stone, reconstituted (imitation) bath stone and others in render. The properties to the north-west side have typically long rear gardens; however the gardens do not run in a conventional format resulting in some gardens being located behind other/neighbouring properties.

The application site property is elevated above road level with the driveway running along the side of the property leading to a double garage located to the rear. The garage is single storey and finished in render. The dwelling is a detached two storey unit, with an asymmetrical roof design that creates a two storey facade to the front elevation and a one and half storey facade to the rear. The property has been extended in the past by a single storey lean-to located to the rear of the property.

The host dwelling is set at a slight angle to the road and has a long rear garden which replicates the width of the dwelling and driveway combined and runs in a northerly direction away from the dwelling, which results in the garden running behind the neighbours' property (No. 213). Within the garden there are a number of trees, the majority of which are located at the end of the garden. However there are three trees located along the north-east boundary of the site close to the host dwelling. The boundaries of the site are defined by fences approximately 2 metres in height with a hedge along the rear boundary with trees beyond.

4. Planning History

- W/82/00638/HIS Alteration, improvements and erection of double garage – Approved with conditions;
- W/97/00240/OUT Three houses and garages at 211-212 The Common Holt – Application withdrawn;
- W/97/01210/OUT Erection of two detached houses with two single garages plus one single and one double garage together with associated access drive on land to the rear of 211/212 The Common, Holt – Application refused.

5. The Proposal

The application seeks planning permission for the erection of a two storey rear extension. The extension would replace the existing single storey lean-to and extend it by approximately a further 500mm beyond the existing footprint. Off the northeast corner of the dwelling it is proposed to create a two storey element that extends approximately 2.8 metres creating an infill to this corner and an overall extension that runs the width of the property. The extension would have two gables perpendicular to the main roofline; one with a ridge height that matches the main roof and one slightly lower. The extension would be finished using bath stone at ground floor level and oak cladding around the first floor with slate roof tiles. The first floor windows would be large with “Juliet” balcony’s serving the enlarged bedrooms to the rear. The proposal would not increase the number of bedrooms.

6. Planning Policy

National Planning Policy Framework 2012 namely: Section 7 Requiring Good Design; and Section 11 Conserving and enhancing the natural environment

Wiltshire Core Strategy 2015: Core Policy 1 - Settlement Strategy; Core Policy 2 - Delivery Strategy; Core Policy 7 - Spatial Strategy: Bradford on Avon Community Area; Core Policy 50 -

Biodiversity and Geodiversity; and Core Policy 57 - Ensuring high quality design and place shaping

7. Summary of Consultation Responses

Holt Parish Council - No representations received to date of recommendation.

Ecology - No objection subject to a planning informative.

Tree and Landscape Officer – No objection. Provided a verbal response after visiting the site confirming that the trees are not worthy of Tree Preservation Order as do not meet the criteria for protection. The applicant has however confirmed having no intention to remove the trees.

8. Publicity

The application was advertised by site notice/neighbour notification. Expiry date: 19 October 2015. The following is a summary of the points raised:

5 letters of objection have been received. The comments and concerns relate to:

- Proximity of extension
- Loss of privacy to gardens and amenity areas
- Loss of natural daylight into dining room, kitchen and garden room
- Loss of light to gardens
- Greater sense of enclosure and the feeling of hemmed in.
- Roof height causing overbearing
- Unacceptable visual impact on surrounding neighbours
- Materials out of keeping with Victorian property
- Reference to the draft Holt Neighbourhood Plan Policies H3.1 and P20 & 21 in H2.1(a) – Backland development/un-neighbourly development
- Impact on trees
- Impact on ecology
- Impact on highway safety
- Reference to neighbouring site 221 Melksham Road planning application 15/01668/FUL committee decision
- Overbearing
- Plans not sure a true representation of the situation on the ground.
- Request Planning committee site visit

9. Planning Considerations

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

Policies CP1 and CP2 are strategic policies in delivering required development in sustainable locations. This proposal is considered a minor application for a two storey extension to an existing dwelling. Core Policy 7 clarifies that Holt is a large village and that the site falls within the Limits of Development of this village.

Core Policy 57 of the Wiltshire Core Strategy states that “*A high standard of design is required in all new developments, including extensions, alterations, and changes of use of existing buildings. Development is expected to create a strong sense of place through drawing on the local context and being complementary to the locality.*” The policy outlines a number of criteria to address. Officers submit that this is the main policy which this development should be assessed against.

Core Policy 50 relating to biodiversity also merits some consideration given the potential ecological impacts.

Design and Visual Amenity - The proposed extension has been designed to be a modern addition to what is a modest Victorian detached property. The proposal utilises the existing two storey layout and would enhance the living space of the two first floor rear bedrooms to make them more usable and allow views across the large garden. Officers submit that the development would not represent a disproportionate addition to the dwelling as it would have only a slightly larger footprint than the existing built form.

The ground floor would be finished in bath stone/reconstituted stone, as per its existing form. The enlarged second storey extension would be finished in natural oak cladding and the roof finished in slate. Both the slate and stone are recognised materials used generally within the area and are acceptable. The natural oak cladding is not a recognised material predominantly used within the village/immediate surroundings; however, it does offer a more sustainable option and would create an interesting contrast to the typical traditional materials used within the area. Bath stone tends to have a warm honey colouring; however through weathering this can lose its natural hue. The oak, if allowed to weather naturally, would in time develop a silvery colouring that would soften the development against the natural stonework of the host dwelling.

The second storey element would create a modern but acceptable contrast to the existing dwelling that would respectfully demonstrate its evolution as a dwelling but maintain the predominant Victorian character to the front elevation.

The proposed development is a subservient rear extension offering only fleeting glimpses from the road, as such, it is considered that the timber cladding would reduce the impact of the proposal over time and consequently would not harm the character of the area. A planning condition is recommended to cover the exact materials to be approved prior to work commencing to control the finished look of the development including the finish to the timber cladding.

Residential Amenity - Concerns have been raised by local residents at the potential impact on their properties and their amenity space from the proposed development. Objections have been raised from the owner/occupiers of 209, 210, 211 and 213. The concerns raised are that there would be direct overlooking of their gardens and an overbearing impact on their properties to a point that would lead to a loss of light to certain openings.

The two properties located directly either side of the proposed extension are numbers 211 and 213. Property 210 forms a semidetached unit to 211 and lies to the southwest of this dwelling. Property 209 lies again to the southwest of No. 210. As described above, the layout of the gardens along this street mean that the gardens start to run behind that of the neighbouring

properties, for example the garden of No. 209 runs behind 210, the garden to 210 runs behind 211 and so on (reference site location plans below).



OS Plan down load from SAMS



Extract from applicants Site Location Plan

The proposed extension extends off the rear of No. 212 and would enhance the size of the existing bedrooms that face the rear garden at present. Directly behind the host dwelling is an existing large single storey double garage which would provide a degree of screening from any potential overlooking from the rear elevation of No. 212 over any neighbouring properties gardens. No. 209 is displaced from the application site by two dwellings and No. 210 is displaced by one dwelling. As such, the potential for any degree of impact is minimal; equally so with the rear amenity space of 210, it is therefore considered that the concerns raised about loss of privacy to these two properties amenity space, would be inconsequential and it would not substantiate a robust reason for refusal.

Following a direct line of sight from the rear elevation of the proposed extension to the boundary of No. 211, there would be a distance of approximately 15.5 metres. Bearing in mind that there is a large double garage directly in between the rear elevation and site boundary it is again considered that there would not be a significant detrimental impact on the privacy of the neighbouring garden to justify a refusal. With regards to garden space of No. 213, this area of land angles away from the proposed extension and there would be no direct overlooking from the proposed development into the amenity area of that property.

No. 212 has three windows facing out over the applicants garden serving two bedrooms and a bathroom. With this existing arrangement in mind, officers submit that the proposed development would not result in a situation substantially different to what exists at present. It is therefore concluded that overlooking from the rear elevation is not grounds for refusal.

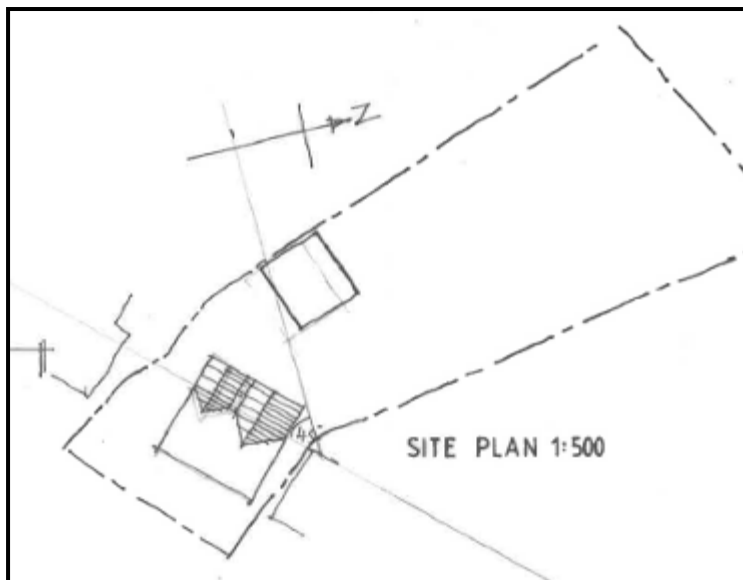
Turning to the side elevations, the proposal would create a new window in either side elevation for two bathrooms. Both of these windows are recommended to be obscured glazed. The window to the north-east elevation, facing No. 213, would be directly opposite the one and half storey element to the rear of No. 213 and would not create any overlooking of the

neighbouring property or its amenity area. Turning to the elevation facing No. 211, there is existing first floor bedroom window. Also there are existing windows and openings facing towards the application property including at first floor level overlooking into the amenity area of the applicants dwelling.



No. 211 to the rear of the photo

Officers duly submit that the proposed extension would not create any greater level of harm than what exists at present. Overbearing concerns have also been raised by neighbours. Officers have considered the separation distances between the host property/proposed extension and neighbouring properties (No's 209 and No 210) and submit that there would be no significant impact to warrant a refusal.



Plan showing the 45 degree rule

The proposed two-storey extension adjacent to No. 213 would create the biggest change to the built form. Planning guidance offers a general rule of thumb in determining potential impacts on neighbouring properties in these circumstances. With reference to the above plan a line has been

taken from a point representing the location of the windows within the neighbouring property at an angle of 45 degrees to the elevation of the dwelling. The general rule of thumb is that if it intersects with a development proposal, then there is the potential for harm. It would then require further assessment on the degree of harm. On reviewing the case it can be seen that the proposed extension accords with the 45 degree test. On balance it is considered that any potential for harm would not be significant to justify a reason for refusal in this instance.

With regards to the potential for impact on No. 211, whilst the owner's outlook would be altered by having a larger structure facing the side door, the outlook would be through the door and not through a window opening. There is no right to a view across third party land and officers would respectfully ask the committee to recognise that within urban locations such as towns and villages, some properties are located close to neighbours and to a certain extent an individual's private outlook may pick up on neighbouring extensions when looking outwards. However, it is important to record that the primary openings of the dwelling at No. 211 are found to the front and rear elevations and would remain unaffected by the proposed development.

In summary, having regard to overshadowing, the orientation of the dwelling and the neighbouring properties, there exists at present a degree of overshadowing of the amenities of the neighbours and site. The two storey extension would result in a minimal increased overshadowing for a certain part of the day. It would not however be significant and not would it adversely harm the enjoyment of the amenities or facilities of the surrounding properties to justify a refusal. Due regard has been given to garden orientation and the separation distances between the proposed extension and the site boundaries (whilst acknowledging the slope of the roofs project away from the boundaries); and officers duly submit that the proposed extension would not result in an oppressive form of development and nor would it cause adverse overbearing impacts on the occupiers of the neighbouring dwellings.

Officers acknowledge that reference has been made to another case along this street. It should be remembered that all planning applications should be dealt with on their own merits. However, since it has been referenced, the planning application at 221 Melksham Road was for a single storey rear extension which was refused by the planning committee. The application was taken to appeal and the decision was overturned by the planning inspectorate under reference APP/Y3940/D/15/3097738 on 28 September 2015. The main issue discussed was the impact of the proposal on the amenity of the neighbours. The inspector found that the proposal would not result in an undue loss of outlook or loss of privacy as a result of the boundary treatments and the separation distances involved. As such reference to this case does not warrant a reasonable reason for refusal in this instance.

Trees - The site contains three field maples along the eastern boundary of the site and additional trees are located the end of the garden. The three field maples would be close to the proposed extension due to the extension extending half a metre beyond the existing footprint. The Council's tree and landscape officer has been out on site to assess these trees and has determined that although the trees have a certain localised amenity value, they are not worthy of protection as they do not meet the TPO criteria. The applicant has expressed an intention to retain the trees in any case and there is no reason to suggest otherwise.



As can be seen in the image above the branch of the nearest Maple is to the left, the proposed extension would extend beyond the rear elevation by approximately half a metre, this would still leave the rest of the existing patio area stretching into the garden. With due regard to the position of the existing patio area and the nearest tree, it is unlikely that the tree root system would be impacted by the proposed development. It is therefore considered that the additional footprint would not adversely impact on the trees.

Ecology - Concerns have been raised by local residents that there may be bats in and around the site and that the proposed development could impact on them. Consequently the Council's ecology team were consulted, who after reviewing the case, raised no objections. They have identified that there is no specific mention of a bat roost within the property and that the presence of foraging bats in the garden around the trees is not necessarily indicative of a roost within the property itself.

The Council's Ecologist considers there to be a low risk of roosting bats. The slate roof appears to be well-maintained and there are few slipped or raised tiles for bats to potentially gain access into the roof void. It is considered unlikely that the rarer bat species (horseshoe bat) would occur at the site due to the characteristics of the property. The proposed extension would be on the north-facing side of the property where there is less likelihood of a significant bat roost being located due to a lack of sunlight and lower temperatures.

Whilst there may be small numbers of common species of bats such as Pipistrelle, Brown long-eared or Serotine bats, present within the area, provision for these species as mitigation could be relatively easily accommodated into the design or through alternative methods, for example by providing a bat box (that does not require planning consent). As identified above there is every intention that the trees would remain undamaged and would continue to provide natural vegetation for any species within the area.

With due regard to the scale of the development proposed, a minor two storey domestic extension, officers submit that it would be unreasonable to require the applicant to submit a bat survey prior to the determination of the application as this would be disproportionate. It is

considered that an informative could be attached to any grant of approval. On balance, the proposed development would be acceptable and would accord with the relevant criteria of Core Policy 50 of the WCS (2015) and the NPPF.

Other Considerations - During the consultation process, a number of representations were received most of which have been dealt with above. Reference has been made to the emerging Holt Neighbourhood Plan. This document has just finished the consultation process with local residents; however, until the plan has gone through a referendum it will remain un-adopted for planning purposes and does not have full weight in terms of outlining and considering the material planning considerations.

The policies that have been quoted from the draft “Neighbourhood Plan” (H3.1 and H2.1) refer to “new housing” development within the village, which this application is not. The proposal is for an extension to an existing residential property within the village. It is considered that the extension would respect the character of the area and the use of materials would contribute to the character of the dwelling without being pastiche. There does not appear to be any reference within the Neighbourhood Plan restricting minor householder development.

Highways – Highway safety concerns have been raised from the construction traffic that the development may likely generate. The proposal would not create any further additional bedrooms and it would remain a four bedroom property. Also the proposed development would not impact on the existing parking and turning areas associated with the proposed development. It is therefore considered that there would be no impact on highways safety from the proposed development. Whilst it is acknowledged that there would be an increase in traffic movements to and from the site during the course of constructing the extension, this would be only for a temporary period and would not result in a significant impact on highways safety; and it is not grounds for refusal.

Conclusion - Whilst the extension would be of a different character and appearance from the existing dwelling and the surrounding area, there are no planning policies that require a traditional design approach. It is considered that an acceptable contemporary solution to the issue of achieving additional accommodation whilst minimising the impacts on the surrounding area would be acceptable.

A judgement must be made whether a proposed extension would result in a significant reduction in the level of amenity that an occupier of an adjoining property could reasonably expect to enjoy in a particular neighbourhood. Following a detailed appraisal of the potential impacts, officers submit that the extension would not result in an adverse loss of privacy or create a significant overbearing impact to warrant a reason for refusal.

Considering the proposal and policies contained within the Core Strategy, it is considered that the proposed development complies with the criteria of CP57 and CP50 of the Wiltshire Core Strategy; and planning permission is therefore recommended subject to conditions.

RECOMMENDATION: Approve subject to conditions

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

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

- 2 No development shall 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

- 3 No paint or stain finish shall be applied to the external timber cladding unless otherwise agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details and maintained as such in perpetuity.

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

- 4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or roof light, other than those shown on the approved plans, shall be inserted in the side elevations and roof slope(s) of the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

- 5 The window(s) in the side elevation(s) serving en-suite bathrooms shall be glazed with obscure glass only to an obscurity level of no less than level 4 and fixed with a ventilation stay restricting the opening of the window prior to the first occupation of the development hereby permitted and shall be permanently maintained as such in perpetuity.

REASON: In the interests of residential amenity and privacy.

- 6 The development hereby permitted shall be carried out in accordance with the application form and the following approved plans/drawings: Existing site plan, elevations and floor plans and Proposed site plan, elevations and floor plans all received on 16 September 2015

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

Planning Informatives:

1. There is a risk that bats may be present at the development site. The Council considers it would be unreasonable to require the applicant to submit a bat survey because this could be considered disproportionate to the scale of development. Furthermore, given the particular proposals for the site, the Council considers that if bats were found, mitigation would probably not require further planning permission and a Natural England Licence

would be forthcoming. Nevertheless, anyone undertaking this development should be aware that bats and their roosting places are protected at all times by the Conservation of Habitats and Species Regulations 2010. Planning permission for development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. Consideration should be given to obtaining a survey from a professional ecologist before commencing work (e.g. a building assessment to search for evidence of roosting bats internally and externally, which can be carried out any time of year, and inform the need for further bat emergence / re-entry activity surveys). If bats or evidence of bats is found at any stage of development, the applicant is advised to follow the advice of a professional ecologist or to contact the UK Bat Helpline on 0345 1300 228 (homeowners and churches) or visit http://www.bats.org.uk/pages/natural_england_roost_visits.html for more information

2. 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.

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Item 2 - 15/09224/FUL - 212 The Common, Holt



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REPORT FOR THE WESTERN AREA PLANNING COMMITTEE

Report No. 3

Date of Meeting	16 December 2015
Application Number	15/04674/FUL
Site Address	Station Approach, St Margaret's Street, Bradford on Avon, BA15 1DF
Proposal	Erection of 4 x 2 bed terraced houses
Applicant	Sires Property
Town/Parish Council	BRADFORD ON AVON
Electoral Division	BRADFORD-ON-AVON SOUTH – Cllr Ian Thorn
Grid Ref	382538 160693
Type of application	Full Planning
Case Officer	David Cox

Reason for the application being considered by Committee

Councillor Ian Thorn has requested that this application be determined by Members in the interests of public debate and to allow members to discuss whether the three previous reasons for refusing application 14/07704/FUL (under delegated powers) have been satisfactorily overcome.

1. Purpose of Report

To consider the above application and to recommend that planning permission be approved, subject to the planning conditions

2. Report Summary

The main planning issues to consider are:

The Principle of Development; Standards of Amenity for Future Residents; Car Parking and Impact on Highway Safety; Design and Impacts on Heritage Assets; Impact on Neighbouring Amenity; Land Drainage; Community Infrastructure Levy Contributions and Sustainable Construction

3. Site Description

The application site is an irregular shaped piece of land that is accessed via Station Approach in Bradford on Avon. It is located to the north of the railway line and the station building and to the west of Frome Road. The site is currently occupied by a taxi office with associated parking. The site is at a lower level than the neighbouring properties on Frome Road and a grassed embankment separates the area currently used by taxis and the rear boundary of those neighbouring Frome Road properties. The site is within the Bradford on Avon Conservation Area and near to the Grade II listed railway station / platform buildings and the Three Horseshoes Public House which shares a rear boundary with the site.

4. Planning History

W/04/00845/FUL – Two-storey fitness centre of offices, Class D2 or B1 - Approved April 2005.

W/08/00988/FUL – Two-storey building for use as fitness centre, Class D2 offices, Class B1 or health clinic (class D1) with ancillary A1 retail use strictly for health associated products – Approved December 2008.

13/02870/FUL – Demolition of existing taxi kiosk and erection of a mixed use building to be used as a fitness centre, Class D2 offices, Class B1 or health clinic class D1 with ancillary associated A1 use – Approved October 2013. **Note: This permission expires on 25 October 2016.**

14/07704/FUL – Erection of 4 x 3-bed terraced houses. This was refused in February 2015 for the following three reasons;

- 1 The proposal fails to provide adequate standards of amenity for its future occupiers contrary to Core Policy 57 of the adopted Wiltshire Core Strategy and Paragraph 17 of the NPPF.
- 2 The proposal fails to provide adequate parking provision for the size and number of residential units proposed which would result in unacceptable parking pressure on the surrounding streets contrary to Core Policy 64 of the Wiltshire Core Strategy.
- 3 The proposed design/detailing fails to respect the established architectural character of the Bradford-on-Avon Conservation Area, and the setting of the GWR railway station contrary to Core Policy 57 and 58 of adopted Wiltshire Core Strategy and paragraph 132 of the NPPF.

5. The Proposal

This application proposes the erection of 4 x 2-bed two storey terraced houses with accommodation provided in the roof space. The rear of the properties would be built into the embankment and would appear single storey when viewed from Frome Road. The front elevation of the building would be positioned at an acute angle to the railway line and station platform building.

The two end dwellings would have their own private amenity space screened by soft landscaping. The two central units would have an irregular shaped communal amenity area. The proposed building would have vertical timber cladding under a slate roof and would be of a similar mass and bulk to the proposed building granted planning permission in 2013.

Revised plans were received following receipt of the Town Council's objections. Changes have been made to the design of the building, fenestration treatment and the applicant has re-introduced the continuous velux window/glazing on the northern rear roof elevation.

6. Planning Policy

Government Guidance - The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG). The National Planning Policy Framework (NPPF) acts as a principal material consideration in the determination of planning applications. It introduces the presumption in favour of sustainable development at paragraph 14 as a 'golden thread' running through plan making and decision taking

The Adopted Wiltshire Core Strategy (Jan 2015) - Strategic Objective 1 - Delivering a Thriving Economy; Strategic Objective 4 - Helping Build Resilient Communities; and Strategic Objective 5 - Protect and Enhance Natural, Built and Historic Environment. The following Core Policies are also relevant to this case:

CP1 – Settlement Strategy; CP2 – Delivery Strategy; CP7– Bradford on Avon Community Area; CP41 – Sustainable Construction and Low Carbon Energy; CP51 – Landscape; CP57 – Ensuring High Quality Design and Place Shaping; CP58 – Ensuring the Conservation of the Historic Environment; CP64 – Demand Management; CP67 – Flood Risk.

The adopted WCS also includes a number of policies carried over from the West Wiltshire District Plan 1st Alteration 2004 (as documented within Appendix D) – U1A Foul Water Disposal.

In May 2015, Wiltshire Council became a CiL charging authority and the following documents are relevant: Wiltshire's Community Infrastructure Levy – Planning Obligations Supplementary Planning Document (Planning Obligations SPD); Wiltshire's Community Infrastructure Levy - Charging Schedule (Charging Schedule) and Wiltshire's Community Infrastructure Levy - Regulation 123 List

7. Summary of consultation responses

Bradford on Avon Town Council – Objects for the following reasons:

- Not a high standard of design, contrary to NPPF and Core Strategy.
- Siting, layout and design are not in keeping with the character of the surrounding area.
- The size, location and form of the site is unsuitable for housing development.
- The dwellings would be subject to excessive levels of noise and disturbance.
- Lack of parking for residents or taxis will add congestion to an already congested area.
- Not enough amenity space for residents.
- Large windows and extensive use of timber cladding fails to preserve or enhance the character of the conservation area.
- Concern over the loss of employment space.
- The proposal repeats all the deficiencies of the previous proposal.
- The relationship between the proposal and the Grade II listed Brunel Station is poor.

Historic England – No objection.

Council's Conservation Officer – No objection.

Council's Highways Officer – No objection.

Council's Environmental Health Officer – No objection.

Council's Tree and Landscape Officer – No objection.

Wessex Water – No objection. If permission is granted, the applicant/developer would need to reach an agreement with Wessex Water regarding foul water and surface water drainage flows to the appropriate separate public networks as detailed in the report undertaken by IMA, dated November 2015.

Environment Agency – No objection subject to conditions.

Council's Drainage Officer/Lead Local Flood Authority – No objection.

Council's Estates Officer – No objection.

Network Rail – No objection but requires 24/7 access to railway infrastructure for maintenance. It is important that there is no obstruction of the access during construction works.

Wiltshire Fire and Rescue – Recommends a sprinkler system is installed to help reduce fire risk.

8. Publicity

The application was advertised by site notice/neighbour notification. Expiry date: 25 June 2015. The following is a summary of the points raised:

2 letters of objection were received raising the following concerns:

- Overdevelopment of the site in a very busy area and far too close to an iconic listed building - the IK Brunel station building, with no garden, no parking and loss of a valuable local taxi business.

Bradford on Avon Preservation Trust – Objects for the following reasons:

- Overdevelopment of the site.
- The height, design and materials would be out of scale and harmony with surrounding buildings to the detriment of the character and setting of the important Grade II Listed Brunel Station and Conservation Area.

9. Planning Considerations

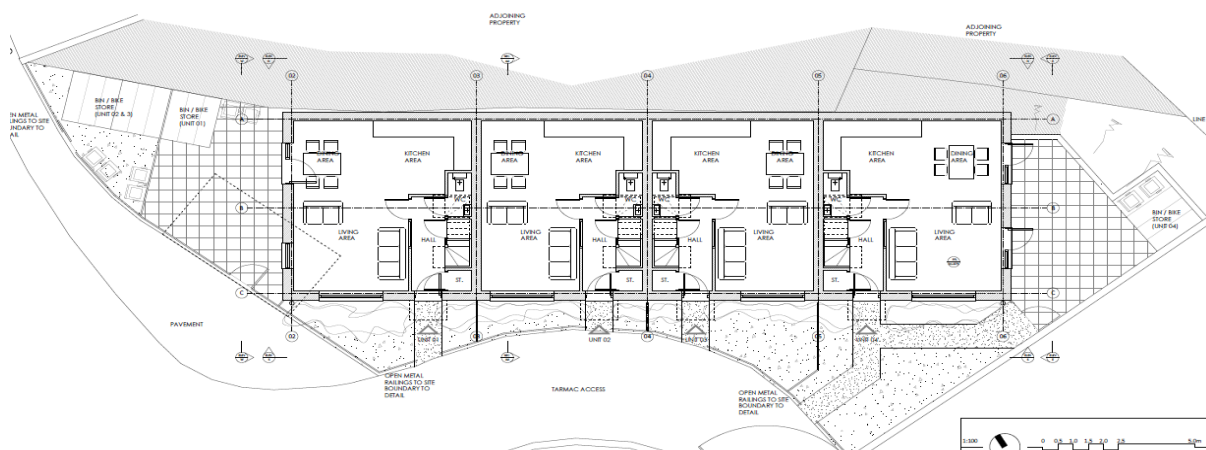
Principle of Development - The application site is within the limits of development for Bradford on Avon and therefore the principle of residential development is supported. The proposal includes the demolition of the existing taxi kiosk without a replacement which has drawn objections from the Town Council and from the neighbour notification. Whilst the loss of the taxi kiosk (as a service to the public) would be regrettable, there is no specific policy to support its retention. The applicant owns the site and rents the kiosk and could make a commercial decision to end any lease arrangement and remove the structure from the site.

Standards of Amenity for Future Residents – Mindful of the first reason for refusing application 14/07704/FUL, the first issue to acknowledge is that the size and position of the proposed building has not changed. However the application has changed from 4 x 3-bed units to 4 x 2-bed units and in addition to the two areas of garden being allocated at each end of the building, the applicant has introduced a communal area for the two central units.

Whilst it is accepted that 2-bed homes are still capable of being occupied by a family, officers recognise that within the housing market, there are people who do not wish to have a large garden and are content sharing external amenity space. In this case, both of the end units would have their own private amenity space but the two mid terrace units would share the immediate outdoor space. Whilst this may not be sufficient space for a family to play, it is at least a basic space sufficient for the purposes of sitting outside and having a nominal amount of garden. As illustrated in the plan below, the two end units would each have outdoor space of at least 15m². The communal area would measure approximately 12m² to be shared between the two central units.

Members are also advised that near to the site there is a development under construction opposite the train station on St Margaret's Street for the a mixed use redevelopment to include 13 flats (approved under ref. W/08/00196/FUL), which includes a communal garden measuring approximately 158m². This represents approximately 12m² per flat. There is, therefore some local precedent regarding shared communal space. Officers would also argue that two properties sharing a smaller outdoor space located immediately in front of the terraced block would very likely afford more of a sense of ownership than the 13 flat outdoor space would.

14/07704/FUL – Refused Layout



is located within a highly sustainable location positioned adjacent to a railway station and several bus stops – which offer a range of public transport service options future occupants could use.

Should future residents have their motor vehicles, officers appreciate that the nearby public car park could be used either for short term parking needs or there could be the option for applying for resident permits. In accordance with NPPF para 32, the applicant and officers have considered the sustainability of the site, “*the opportunities for [accessing] sustainable transport modes*”, and it is duly submitted, the proposed development would not result in having severe residual cumulative harm.

Should members be concerned about future changes made to the site to accommodate on-site parking (which would diminish the amount of external amenity space), the applicant has expressed a willingness to draft up a private covenants to prevent future residents creating vehicular access(es) / parking spaces on the site. Officers appreciate that there would be difficulties creating such accesses/parking space allied to the restrictions imposed by Network Rail regarding a parcel of land near to the railway line. Should members be supportive of this application, a planning informative could be imposed to encourage the applicant to set up legally binding covenants.

Following the withdrawal of the objection from the highways authority and having due regard to the above commentary, officers no longer wish to maintain an objection based on the lack of on-site parking provision.

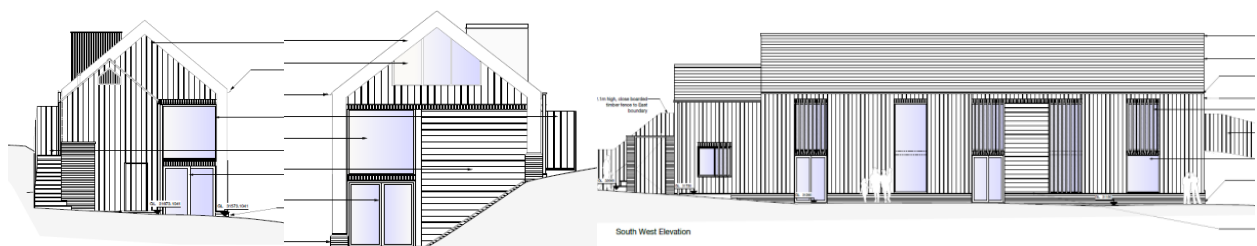
Design and Impact on Heritage Assets – Above the various tiers of planning policy and guidance is the over-arching statutory requirement under the Planning (Listed Buildings and Conservation Areas) Act 1990 to give special regard to the “*desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*” (S16 and 66). In addition Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires the Council to pay special attention to the desirability of preserving or enhancing the character or appearance of designated Conservation Areas.

Paragraph 132 of the NPPF furthermore states that “*when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. Significance can be harmed or lost through development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.*”

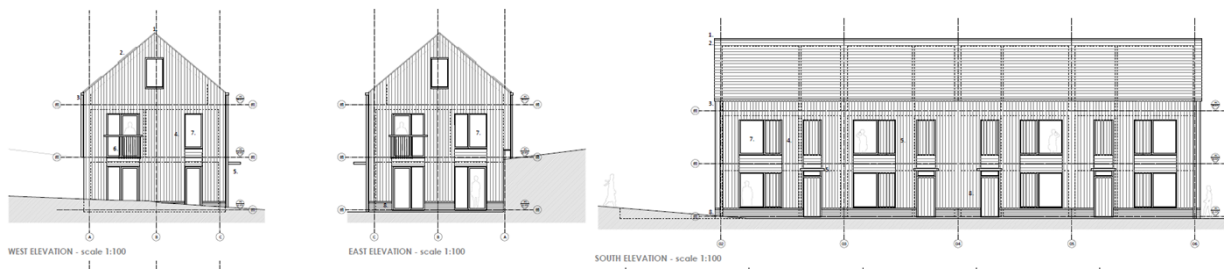
Core Policy 58 of the Wiltshire Core Strategy echoes the above national policy in seeking the protection, conservation and, where possible, enhancement of heritage assets.

To fully assess the impacts, it is important to be appreciative of the site’s planning history to allow for a comparison between the approved and refused applications and to record the difference between the superseded and revised plans submitted for in this live application; and assess the heritage impacts.

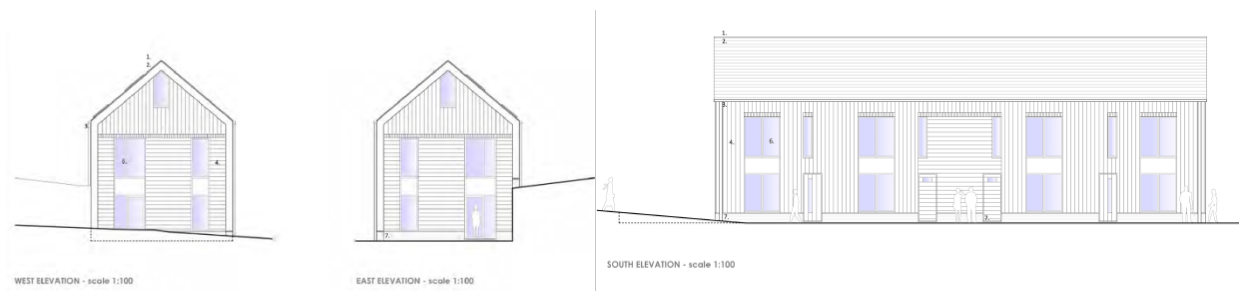
Approved Application 13/02870/FUL (Plan 1)



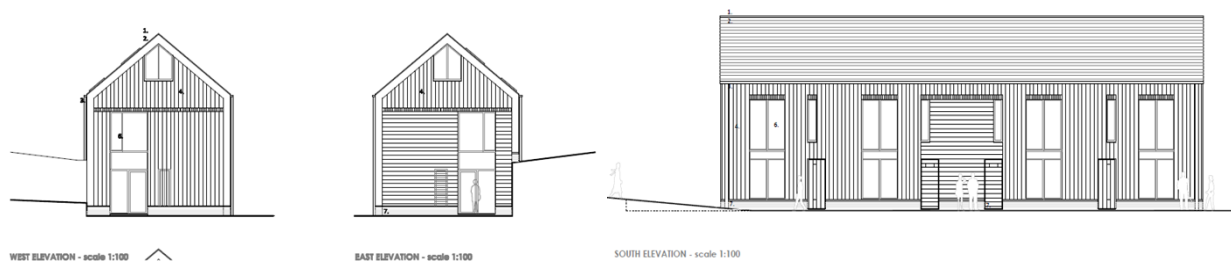
Refused Application 14/07704/FUL (Plan 2)



Live Application 15/04674/FUL – Superseded Plans (Plan 3)



Live Application 15/04674/FUL – Revised Plans (Plan 4)



The typical architectural character of a railway goods building characterised by ground-eaves vertically emphasised glazing and cladding, avoidance of uniform or domestic sized window openings and securing a high quality palette of materials (as illustrated in Plan 1) was central to the design concept of approved application 13/02870/FUL. Indeed, it should be noted that the modern interpretation was fully supported by both the Conservation officer and Historic England (previously known as English Heritage). Moving forward, officers voiced concern and recorded grounds for refusal about the proposed changes made under 14/07704/FUL (Plan 2) which would have introduced a building with inappropriate fenestration, and removed the vertical emphasis leaving a building with little or no obvious link with railway architecture; and, officers concluded that it would “fail to respect the established architectural character of the Bradford-on-Avon Conservation Area, and the setting of the GWR railway station contrary to Core Policy 57 and 58 of adopted Wiltshire Core Strategy and paragraph 132 of the NPPF”.

Railway goods buildings traditionally have openings to the side of the end elevations, to allow for a train line in and out of the building, to then allow for maintenance works to be carried out inside. Under application 13/02870/FUL such openings were expressed in a modern way, but there was a clear design treatment which appeared respectful. Under application 14/07704/FUL the design

approach was abandoned with a traditional residential fenestration design introduced – which officers could not support.

As far as the live application is concerned, the superseded plans (Plan 3) introduced a uniform domesticated fenestration treatment similar to the details enshrined within refused application 14/07704/FUL. Following concerns expressed by officers, the applicant produced revised plans (Plan 4) promoting ground-ceiling glazing for both gables. On the front elevation, the space between the ground and first floor windows was reduced to enhance (and re-impose) the vertical emphasis to the elevation. The use of the narrow vertical windows (to serve the landings) also helps promote the sense of vertical alignment.

On the rear elevation, the revised plans re-introduced a continuous roof light row across the roof slope, which was approved by application 13/02870/FUL, and is considered to be an appropriate roof feature in keeping with the industrial appearance of a railway goods building. The revised plans have kept a few higher level roof lights, which would be domestic in appearance, but it is not considered that these few roof lights would cause sufficient harm or detract significantly from the 'railways goods building' or character or appearance of the Conservation Area/nearby listed buildings.

Officers are more supportive of the design treatment as expressed in Plan 4 which is more consistent with what was approved under 13/02870/FUL – a permission which remains extant.

The Council must however still assess the significance of the heritage assets (the conservation area and adjacent listed buildings) and identify any consequential level of harm. In liaison with the Council's conservation officer, the following commentary represents an officer's view on heritage matters.

The north and south platform buildings of the train station are both grade II listed buildings. They are impressive stone built structures under slate roofs, although they are both quite small buildings in comparison with the overall size of the platform. The setting of the south platform is characterised by the residential development behind it and won't be adversely affected by the proposal. The setting of the north platform building (which would be very close to the proposed development) is characterised by the railway line itself and the car parking and road circulation space in front. It is acknowledged that the proposed development would be close to the north platform building and would have an impact on its setting. However, the design has been carefully considered so it now resembles more of a railway goods building rather than a domestic terrace. The use of vertical timber cladding and slate roof would also not visually 'compete' with the appearance and character of the stone station building. The site is in an awkward position set below the A363 and the public house but due to the proposed orientation, it would mean that upon entering the railway car park and approaching the station, the listed buildings would remain the main focus of the area. The proposed building would face the station at an angle and would have its end elevation with the mock train opening facing the car park. This would help retain the key focal point of the adjacent listed buildings.

It is also important to stress that the existing taxi rank is a timber building which detracts from the setting of the listed building. Its loss in heritage terms, would bring about a positive change.

The revised plans have satisfactorily addressed the previously raised heritage concerns. The scheme would result in less than substantial harm to the Conservation Area and the settings of nearby listed buildings and any minor harm would be mitigated by bringing this unsightly site into a viable use. The design is very similar to that of the 2013 approval for this site (13/02870/FUL) which remains extant. Consequently it is considered that the current proposal is acceptable in terms of the impacts it would have on the setting and significance of the special character and appearance of the Conservation Area; and officers therefore no longer wish to raise a heritage based objection.

Impact on Neighbouring Amenity - The site does not have any immediate residential neighbours to overlook. However, there is an Ironmongery/blacksmith business adjacent to the public house which would be overlooked by the second floor bedroom windows of the mid terrace units. However, this would not cause adverse harm to warrant the refusal of the application.

Drainage – The drainage of foul and surface water from the site has been the subject of very detailed discussions between the Council, Wessex Water and the applicant's consultants (IMA); and it has been the reason this application has taken so long to reach this stage in the determination process. Initially the application failed to explain how foul and surface water connections were to be made, which raised an objection from the lead local flood authority.

After much discussion and detailed consultation discussing a range of options available to the applicant, connections are proposed to Wessex Water infrastructure to deal with foul and surface water drainage. The surface water would have a gravity connection to a storm pipe in the car park. The foul sewer connection would require a below ground pump accessed via a manhole, which would connect to a foul sewer under St Margaret Street on the A363.

Wessex Water has confirmed that in principle, these connections are acceptable and are achievable. Wessex Water have not requested conditions to this effect; however given the importance of having the surface and foul water drainage connections formally agreed it is considered necessary to recommend pre-commencement planning conditions so that the Council agrees to any detailed means of connection.

The Council's drainage engineer within the flood authority has been central to extensive discussions and is satisfied with the proposals. The Council's Estates management team have been party to the proposed drainage connections in recognition that Wessex Water assets are located underneath Council land; and have also raised no in principle opposition. However, in line with the recommendation to have planning conditions, should permission be granted, the applicant/developer would need to agree with the Council's legal/assets team should Council land be affected by the proposed drainage works.

Community Infrastructure Levy - The Council adopted CIL on 18 May 2015 and since this application seeks to deliver four additional dwellings for the open market, the proposal is CIL liable and a planning informative is necessary.

Sustainable Construction – WCS Core Policy CP41 requires all new dwellings to achieve Code 4 for Sustainable Homes. Should members be minded to approve the application, a planning condition is required to secure energy standards.

10. Conclusion (The Planning Balance)

The previous reasons for refusal have been satisfactory overcome by reducing the number of bedrooms from 3 to 2 and by introducing a communal amenity area. The highway concerns and lack of parking have been thoroughly evaluated and as reported, no objection is now raised to the lack of on-site parking. The design treatment has been significantly negotiated reverting back to the design principles set out in the approved and still extant permission of 13/02870/FUL. Officers are now supportive of the application and recommend permission.

RECOMMENDATION: Approve subject to 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:

Existing Survey Plan – Received 13 May 2015
Transport Assessment - Received 13 May 2015
Analysis Report - Received 13 May 2015
Noise Report - Received 11 June 2015
Revised Design and Access Statement - Received 11 June 2015
Revised Location Plan and Block/Roof Plan – Received 12 October 2015
Revised Front and Rear Elevations Plan - Received 12 October 2015
Revised Side End Elevations Plan - Received 12 October 2015
Revised Ground Floor and Layout Plan (169 P103 Rev N) - Received 01 December 2015
Revised Proposed First and Second Floor Plan - Received 12 October 2015
IMA-15-061- Drainage Strategy – Received 30 November 2015
Sewerage Pump Details – Received 01 December 2015

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

3. No development shall commence on site until details and samples of the materials to be used for the external walls (including confirmation of the width/size of the timber wall cladding and its finish) and the roof slates to be used on the development 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 contains 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 conservation area and adjacent listed buildings.

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

- * location and current canopy spread of all existing trees and hedgerows on the land;
- * full details of any to be retained, together with measures for their protection in the course of development;
- * a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- * means of enclosure;
- * all hard and soft surfacing materials;

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

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

be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

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

6. No development shall commence on site until a scheme for the discharge of surface water from the site, incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: 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.

7. The development hereby permitted shall not be occupied until the sewage drainage connections have been completed in accordance with the approved details.

REASON: To ensure that the development is provided with a satisfactory means of drainage.

8. No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with to the satisfaction of the Local Planning Authority:

Step (i) A written report has been submitted to and approved by the Local Planning Authority which shall include details of the previous uses of the site for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site.

Step (ii) If the above report indicates that contamination may be present on or under the site, or if evidence of contamination is found, a more detailed site investigation and risk assessment has been carried out in accordance with DEFRA and Environment Agency's "Model Procedures for the Management of Land Contamination CLR11" and other authoritative guidance and a report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority.

Step (iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details have been submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or in accordance with a timetable that has been agreed in writing by the Local Planning Authority as part of the approved remediation scheme. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

REASON: The application contains 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.

9. 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 application contains 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 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.

10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or roof light, other than those shown on the approved plans, shall be inserted in any roof slope(s) of the development hereby permitted.

REASON: In the interests of residential amenity and privacy and the character, appearance and setting of the conservation area and adjacent listed buildings.

11. 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), there shall be no additions/extensions or external alterations made to the hereby approved building, unless otherwise approved under a separate future application.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans, unless otherwise approved under a separate future application.

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

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

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

14. No works shall commence on site until details of all new rainwater goods (which shall be of cast metal construction and finished in black) and their means of fixing to the building have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

REASON: The application contains 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 preserving the character and appearance of the listed building and its setting.

15. No development shall commence on site until a scheme of acoustic insulation and noise control have been submitted to and approved in writing by the Local Planning Authority. The scheme should specify the acoustic insulation and other measures to be put in place to prevent and control the emission of noise from the development including noise from The railway and entertainment noise from the Three Horseshoes Pub. The approved scheme shall be implemented in full before the development is occupied/use commences appropriate and maintained at all times thereafter

REASON: To ensure a satisfactory standard of living environment for incoming occupiers.

16. No pedestrian access shall be created from the site onto the Frome Road.

REASON: In the interests of highway safety so as not to encourage vehicles to stop on Frome Road.

Planning Informative(s):

1. 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

2 The development should include water efficient systems and fittings. These should include dual-flush toilets, water butts, water-saving taps, showers and baths, and appliances with the highest water efficiency rating (as a minimum). Greywater recycling and rainwater harvesting should be considered. An appropriate submitted scheme to discharge the condition will include a water usage calculator showing how the development will not exceed a total usage level of 110 litres per person per day.

3. Safeguards should be implemented during the construction phase to minimise the risks of pollution from the development. Such safeguards should cover:

- the use of plant and machinery
- oils/chemicals and materials
- the use and routing of heavy plant and vehicles
- the location and form of work and storage areas and compounds
- the control and removal of spoil and wastes.

The applicant should refer to the Environment Agency's Pollution Prevention Guidelines at: <https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>

4. The applicant/developer is encouraged to adopt a site waste management plan (SWMP) for all new construction projects worth in excess of £300,000. The level of detail that any SWMP should contain depends on the estimate build cost (excluding VAT). The applicant/developer has a duty of care for waste since all waste movements require to be recorded in one document. Having a detailed SWMP shall assist with legal obligations. Further information can be found at <http://www.netregs.co.uk>

5. The applicant is strongly advised to ensure that the development proposal does not conflict with any existing legal covenant affecting the land. Also, the applicant should ensure that the construction method statement as required by condition (no. 9) and any commencement of works thereafter do not compromise Network Rail's ability to access their land and infrastructure at all times.

6. The applicant is advised that any future approvals from Wessex Water will be dependent upon further consultation to agree suitable discharge rates for both the foul water and storm/surface water based upon the current adequacy of the receiving public systems at the detailed design stage as not to seek to increase the risk of surface or sewerage flooding or pollution occurring within the downstream catchment. All proposed and intended new connections to the existing public networks are to be further appraised and consented by Wessex Water under the Section 106 WIA 91. Furthermore, the developer is fully responsible for obtaining consent from Wiltshire Council to the additional volume of SW flows that will seek to be discharged to the River Avon from the site via the existing 900mm diameter SWS and public outfall to the West of the proposed development.

7. The applicant/developer is encouraged to consider setting up a private covenant to ensure that no future occupier can accommodate on-site parking or create an access onto the site.

8. The applicant/developer is encouraged to contact the Council's asset management team to appreciate the implications and potential financial obligations and agreements that would be required, should the drainage works interfere with Council owned land. the Council's Assets management team can be contacted as follows: The Assets Portfolio Manager (Estates) Strategic Asset & Facilities Management, People & Business, Wiltshire Council, County Hall, Trowbridge BA14 8JN. Telephone 01225 713237.

Item 3 - 15/04674/FUL – Station Approach, St Margaret's Street, Bradford on Avon



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WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

16 DECEMBER 2015

HIGHWAYS ACT 1980 AND WILDLIFE AND COUNTRYSIDE ACT 1981
THE WILTSHIRE COUNCIL PARISH OF NORTON BAVANT PATH NO.4 (PART)
DIVERSION ORDER AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2015

Purpose of Report

1. To:
 - (i) Consider the objection and representations received to the making of “The Wiltshire Council Parish of Norton Bavant Path No. 4 (part) Diversion Order and Definitive Map and Statement Modification Order 2015” under Section 119 of the Highways Act 1980 and Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed with a small modification to the definitive statement.

Relevance to Council’s Business Plan

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

Background

3. On 20 May 2015 Defence Infrastructure Organisation, on behalf of the Ministry of Defence, applied to Wiltshire Council to divert part of bridleway Norton Bavant 4 where it leads over Scratchbury Hill, a Scheduled Monument. Please see a location plan attached at **Appendix A** and the proposed diversion in the Order attached at **Appendix B**.
4. The application was made to facilitate better access over the training estate, to improve the accessibility of the Imber Range Perimeter Path, to reduce impact on the historic monument and to reduce conflict between agricultural management and recreation. The proposed diversion also reduces the number of gates on the route of the path from five to two.
5. The landowner also proposes the creation of an additional footpath link and this Order is attached at **Appendix C**. This Order was made concurrently with the diversion order and although it has attracted no objections may only be confirmed if the diversion order is confirmed and comes into effect.

6. Wiltshire Council carried out an initial consultation regarding the proposals. Although at that stage the Ramblers Association objected to losing the ability to walk the path to North Farm and over the northern slope of Scratchbury Hill, they did admit that they had been unable to follow it and have not objected to the Order. Support for the diversion was received from other parties, user groups and Historic England.
7. The case officer produced a Decision report, attached at **Appendix D**, in which they considered the application against the legal tests for diversion under Section 119 of the Highways Act 1980 and creation under s.26 of the same Act. The report made a recommendation to senior officers that the bridleway and a few metres of the adjoining footpath should be diverted under Section 119 of the Highways Act 1980, in the interests of the landowner and of the public and also that a length of footpath should be created on Scratchbury Hill. This recommendation was approved on 21 July 2015.
8. The Orders were subsequently made and notice duly served and posted.
9. Following the making of the Order, Wiltshire Council received one objection (from Mr F Morland) and two representations (from Mr A Wright and Mr J Pritchard). As a result, the Council may not confirm the Order which may be forwarded to the Secretary of State for determination.
10. Members of the Committee are now required to consider the objections received, against the legal tests for making and confirming a Public Path Diversion Order under Section 119 of the Highways Act 1980, in order to determine whether or not the Council continues to support the making of the Order.
11. If the Committee does continue to support the making of the Order, the Order must be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination and the Members of the Committee must decide the Wiltshire Council recommendation which is attached to the Order when it is forwarded i.e.:
 - (i) that the Order be confirmed as made, or
 - (ii) that the Order be confirmed with modification.
12. Where Wiltshire Council no longer supports the making of the Order, Members of the Committee may determine that the Order is withdrawn. Withdrawal of the diversion order would mean that the creation order would also not proceed and the additional footpath would not be created and recorded.

Main Considerations for the Council

13. The Public Path Diversion Order is made under Section 119 of the Highways Act 1980. The requirements of this section of the Act are set out in full in Section 6 (pages 18 – 20) of the decision report attached at **Appendix D**.
14. The Planning Inspectorate's Advice Note 9 on 'General guidance on public rights of way matters' states:

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

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

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

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

29. *Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way, for example). In such circumstances, the diversion order cannot be confirmed under section 119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion.”*

15. Mr. Morland has made the following objections to the making of the Diversion Order:

“I refer to a Public Notice in respect of the above-named Order on page 2 of the Friday, 14th August 2015 issue of The Warminster Journal newspaper, and in accordance with it please accept this e-mail as my duly made representations about and objections to the Order.

I do not regard it as within the power of the Order to stop up a portion of Norton Bavant footpath No. 10 (scaling off at approximately 34 metres on the plan attached to the Order), referred to only in Part 1 of the Schedule to the Order as “Additionally short spur at B”. The title and preamble to the Order refer only to Norton Bavant bridleway No. 4

(part). Furthermore, it is not clear whether the statutory tests in Section 119 of the Highways Act 1980 are met in respect of this portion of Norton Bavant footpath No. 10.

In any event, I consider that public footpath highway rights should be retained over the existing path between point A (shown in Part 1 of the Schedule to the Order and on the plan attached to the Order as at OS grid reference ST 91012 44674) and Point B (at its junction with Norton Bavant footpath No. 10, scaling off the plan as being approximately at OS grid reference ST 91437 44336).

My reasons/grounds are as follows:

1) It maintains all existing footpath accesses to the important Scheduled Monument known as Scratchbury Hill Fort, one in a line of Iron Age earthworks in the vicinity (viz. Roddenbury Hill, Cley Hill, Arn Hill, Cop Heap, Battlesbury Hill, Middleton Middle Hill and Scratchbury Hill). Reducing the number of footpath routes up to this monument will simply increase the footfall, wear and erosion on the routes that are left, which is unsatisfactory and undesirable.

2) It maintains public highway rights over the road (elsewhere erroneously described as a private road) to North Farm Cottages from its junction with the unclassified county road No. 9052.

3) It preserves public access to and use of the extant horse gate on the route.

4) It links to the existing portion of Norton Bavant footpath No. 10 at point B and prevents it from becoming a cul-de-sac.

5) In light of the reasons given by the Ministry of Defence, as landowner, for its application to divert Norton Bavant bridleway No. 4, it is unclear why (as a government department and public body) it could reasonably expect the extinguishment of footpath rights as well.

6) Inadequate consideration has been given to the relevant policies of the Wiltshire Council Rights of Way Improvement Plan (now called the Wiltshire Countryside Access Improvement Plan 2015-2025 Rights of Way Improvement Plan 2).

I wonder also whether the reference to "the footpath" in paragraph 1 of the Order adversely affects the existing rights of the statutory undertaker in question.

I do not understand why the approximate length of the route shown in Part 3 of the Schedule to the Order as 1200 metres omits the length of the unaffected part of bridleway 4 marked on the plan attached to the Order, nor (if that part of bridleway 4 is unaffected by the Order) how its width can be increased from 3.5 metres to 4 metres in the modification shown to the Warminster and Westbury Rural District Council area definitive statement dated 1953 pursuant to paragraph 3A of the Order. There appears to be a similar point of difficulty in the Creation Order made concurrently with this Order and referred to in the Public Notice. At present, no width of Norton Bavant footpath No. 10 is shown in the Definitive Map and Statement, whereas Norton Bavant bridleway No. 4 is shown as of width 3.5 metres. "

16. In response to the objection, officers make the following comments:

- (i) The concurrent creation order adds a length of footpath leading along the top of the ramparts to exit Scratchbury Hill at a wide gateway to the south-east of the monument. This reflects the existing desire line of walkers who clearly choose to walk along the ramparts (which offer superb views)

rather than use the definitive line of bridleway 4. There is no evidence on the ground of use of this path; almost certainly as a result of its inaccessibility. During consultation for this Order, The Ramblers Association responded that they had tried to walk Norton Bavant 4 “some years ago”, had found it “frustrating” and had ended up using the proposed creation route instead (**page 16 Appendix D**).

- (ii) A public highway right as a continuation of the u/c9052 to North Farm is unnecessary. North Farm belongs to the Ministry of Defence and access to it is over land in the same ownership. Any public access to North Farm is therefore by licence and unaffected by this Order. The route is not the historic continuation of the u/c 9052 (Byway Open to All Traffic Norton Bavant 6 is) and in any event it is likely that public rights do not extend beyond the current bridleway status.
- (iii) Access to the “horse gate” on the route is unnecessary as the gate leads onto a steep and inaccessible part of Scratchbury Hill. The gateway leads users into the Scheduled Monument section of the hill necessitating climbing or scrambling up the ramparts and slopes.
- (iv) Norton Bavant 10 will not become a cul-de-sac as a concurrent creation order has been made to create a footpath to link the network.
- (v) The Ministry of Defence seeks to take horse riders away from the Scheduled Monument and to create an additional length of footpath for walkers. This is supported by Historic England.
- (vi) The Rights of Way Improvement Plan is considered fully on **pages 22 to 23 of Appendix D**. The ROWIP seeks to improve access to the countryside and it is considered that the reduction in gates, gradient and improvement of surface in the proposed diversion route adequately meets those aims.
- (vii) The rights of the statutory undertaker affected by the Order are preserved in paragraph 2 of the Order though the paragraph should state ‘bridleway’ and not ‘footpath’. In the event that the Order is forwarded to the Secretary of State this may be easily amended.
- (viii) It is agreed that this diversion order cannot alter the width of the unaffected sections of Norton Bavant 4. The Secretary of State has two options here. Because the Order is a ‘combined order’ she may either confirm only part of the Order leaving the Council to make a separate Order to update the definitive map and statement or she may amend the Order to record the change in width of the bridleway.
- (xi) Officers consider it is acceptable to address the short spur of footpath 10 in this Order. Previous decisions of the Secretary of State have advised that what the Council calls paths is a matter for it; the Order diverts lengths of highways regardless of what they are called. The short linking spur of footpath 10 is unnecessary in the event that the bridleway is diverted and the new footpath created and could be addressed by a separate extinguishment order in the event that the Secretary of State

chose to omit that section of path from the Order. The most important matter here to recognise is that the creation order is concurrent with the diversion to ensure continuity of the routes.

17. A representation was made by Mr A Wright.

“The Reason given for the movement is a supposed conflict between recreational users and agricultural users yet this is not the reason for the change as no one has been able to use this route for the last year since the farmer illegally blocked the route by screwing the gate shut and adding locks to the gates and the Council chose not to do its duty and re open it. There is a complaint from me logged last year about this which was never resolved.

The farmer is creating a shooting estate with additional clay pigeon shooting in the valley and is trying to force all visitors to the area away from their property, despite them having a legal right to use the prescribed rights of way and this being an active military training estate requiring permanent military access across the area.

They have removed the original farm track up the hill from North farm to the Scratchbury Fort entrance which used to allow access to the ploughed field and hill fort safely, deciding instead to place a farm track in the SSSI site running along Cotley hill, so the farmer is driving heavy machines in a SSSI to protect his ploughed field and is trying to force the bridle path into the same enclosure.

The original reason for the tracks being placed where they were was that previous generations respected the ancient monument and the associated SSSI areas and did their best to protect them for future generations to enjoy, which the current farmer is also paid to do. Creating routes that go through protected wildlife sites with vehicles, horses and bikes cycling over the protected grass land will not protect this site but damage it.

The current path has been allocated to its position to allow safe passage of all while at the same time protecting the structure of the ancient monuments of Scratchbury Hill fort and the wildlife designated as rare in the SSSI with its protected species present in the Scratchbury and Cotley hill enclosures mainly being grassland which is being driven on and destroyed.

The gradient of the hill is steep and the path used is grass/chalk so controlled descent cannot be relied upon with the additional hazard of the exit point being compacted chalk which in winter on a steep gradient when wet is extremely slippery.

Once off the hill horse riders are funnelled through the woods to join the main road leading to North Farm. This exit is on a blind bend, within trees so neither the rider or traffic can be seen by the other, the exit point is up a meter high bank meaning if cycling or riding you are at risk of losing balance and ending up in the road. This exit point is also very restricted so a spooked horse has no room to manoeuvre and as this road is used by all the farm vehicles, military and recycling centre trucks it is not a safe route for any animals or people except on foot.

The Salisbury Plain training estate is 38,000 hectares and a large amount of that behind this hill is flat, away from the shoot, has tracks made for accessing ploughed fields, can be re ploughed and reinstated if damaged and does not contain any rare or protected species. There was until two years ago an actively used bridlepath (not legal but used daily and safely by horses) from the byway joining the military road (middle hill byway) along the valley floor exiting by the water works pumping station by west hill farm. All on active current farm track.

So if the military, Wiltshire Council, Natural England and the farmer are all paid to protect SSSI site under their management why are you all actively destroying these sites by adding tracks to them? Especially in dangerous locations, this makes no sense.

So I object to the change in this bridle path as the new route is not appropriate as alternative routes less damaging are available.”

18. In response to Mr Wright’s comments officers make the following points:
- (i) Bridle gates on the legal line of Norton Bavant 4 were removed approximately one year ago when the land was re-fenced. This caused the right of way to be obstructed. Although it is a duty for the Council to make the way available, Wiltshire Council’s operational team gave the matter low priority on account of there only being one complaint and the availability of an alternative route.
 - (ii) The application has been made by the landowner (the Ministry of Defence) and not the tenant farmer. Officers have no knowledge of plans to create a shooting estate but if that were the case, moving the bridleway away from it would be beneficial to the public, as well as the shooting estate.
 - (iii) Part of the current route crosses land that is both SSSI and Scheduled Monument. Part of the proposed diversion crosses land that is SSSI. Accordingly, both Natural England and Historic England have been consulted. Scratchbury Hill is scheduled under the Ancient Monuments and Archaeological Areas Act 1979 as amended as it appears to the Secretary of State to be of national importance. The remains represent one of the few extant archaeological “landscapes” in Britain and are considered to be of special significance because they differ in character from those in other areas. Historic England supports the diversion of the bridleway away from the monument.
 - (iv) The SSSI is listed as Scratchbury and Cotley Hills and is an area of Lowland Calcareous Grassland. Natural England recognises that the area requires active management and that in Area 2 (the SSSI that part of the proposed diversion leads over) the desire is to maintain a species rich sward without the area being dominated by stands of grasses such as Tor-grass. To achieve this grazing is an essential part of the management of the ground which also benefits from light trampling to break down decomposing leaves and other matter and to provide bare patches for some invertebrates and seed germination. A survey of the area in 2013 revealed that there was not enough bare ground. Natural England does not object to the proposed diversion, which in any event uses a path or grass track established by farm vehicles.

- (v) The u/c 9052 is a cul de sac vehicular highway leading to North Farm, North Farm Cottages and a business dealing with recycling waste on part of the farm. The road is little used by farm traffic (as land can be accessed from other routes) and is not generally used for military traffic (the area not forming part of the actively used training estate). Lorries visit the recycling centre infrequently during weekdays and although they are large, do travel slowly on account of the condition of the road. The u/c 9052 is subject to an Inclosure award and has a width far exceeding the tarmac carriageway section (providing an area to one side which in places the public on foot, horseback or cycle may use. It is agreed that the current junction with the u/c 9052 is not of a sufficient standard to be acceptable to the Council. The landowner has agreed to grading and widening works here which will give up to 50 metres visibility in either direction. In the event that the Order is confirmed it will not come into effect until the new route is certified as acceptable by Wiltshire Council.
- (vi) The provision of an alternative route for horse riders and cyclists to the north of Scratchbury Hill has been discussed with the landowner. Any route at this location would take the public nearer to the firing range boundary and would lead to a loss of land in agricultural production. As a result, the landowner is unwilling to agree to any new routes in this area. Officers also consider that the views from such a route would be considerably poorer than those offered by either the current definitive line or the proposed new route.

19. A representation was made by Mr J Pritchard:

“My wife and I regularly walk and ride in this area and are delighted to have the new route avoiding the steep part of Scratchbury Hill. This has always been difficult to use and my wife would only use it one way on her horse and then leading over parts. The old route was difficult to find, infact it was overgrown for a few years though recent scrub clearance did make it possible where it was intended to go. Having a usable route opens up lots more rides and routes and we love the variety of it, I can’t think of any other woodland rides nearby.”

20. A representation was made by the British Horse Society. This was submitted after the advertisement period ended but is included here as an expert view of the diversion (photographs submitted with the representation are appended at **Appendix E**):

“I write, as requested, in response to your email to me of 28.9.2015 where you referred to me (and to my wife Myra) the issues raised by Mr A. Wright in his email of 29.8.2015 as to the suitability of the descent from the ridge adjoining Scratchbury Hill Fort to the road below. Mr Wright has raised concerns regarding the section running from the junction of footpath no 10 with the intended revised bridleway, to point D on the Order Plan.

This response is given by me in my capacity as a BHS Assistant Bridleway Officer and is endorsed by Myra who is also an ABO.

I am familiar with the section described by Mr Wright since I rode it first on 12th July 2015 with Myra and with you. That ride was made by us at the invitation of

both Wiltshire Council and the MOD. We were asked our views as to the way marking of the ride. On that day we rode the southern section of the Imber Path from Tilshead to Warminster.

Following your email, Myra and I revisited the route between points C – D on foot and walked the route to be extinguished. We started at the cottages just to the west of the livery at the farm and then walked to point B. We then walked the line B – C, so far as possible. I say “so far as possible” because part of that route has been wired off and the line B- C is extremely difficult to follow. It also has an extremely difficult cross slope running south of point B, on the route B – C and is very overgrown there. That complete, we walked the route C – D – A and from thence back to the cottages.

My views as to the validity or otherwise of Mr Wright’s concerns are given in the light of my experience as a rider. Accordingly, it is worth setting that experience out briefly.

I first learnt to ride in my late twenties in 1982 and by my late thirties rode to pre-novice eventing standard. Since approximately 1998 I have concentrated not on eventing but on hacking. From approximately 2000, I started to take part in the Pleasure Riding sections of some GB Endurance rides e.g. Barbary Castle, covering distances of 32/34k. In 2008 (when I was granted a sabbatical) Myra and I covered some 450 miles each, over a 3 month period, raising money for charity. I have ridden in both England and Wales as well as in Africa. Throughout my riding life, until my recent retirement, with the exception of holidays and the sabbatical period, I have been a weekend rider. I therefore classify, in riding terms, as a reasonably experienced novice rider who is used to covering reasonable distances across the country. My present horse is a 16.1 fairly heavy Irish Draught.

Accordingly, when I view a slope or exit onto a road I do that, in my view, in much the same way as a reasonable number of other amateur riders do; and I am not in the category of expert rider, who have so much experience and time in the saddle, that concerns that would be material to me, do not cause them any issues at all.

I set out below Mr Wright’s concerns and deal with each in order.

- 1. First he is concerned that the gradient of the hill from point C in the direction of point D, is steep and the path used is grass/chalk so controlled descent cannot be relied on, with the additional hazard of the exit point being compacted chalk which, in winter on a steep gradient when wet, is extremely slippery.*

The gradient issue can be divided into first, the section above the gate shown on the Order Plan and, second, the section below the gate as far as the turn into Norton Plantation.

The gradient of the section above the gate is not, in my view, particularly steep. I attach 6 photographs (sent under separate cover) each taken on the 4th October which confirm this.

Further, this section rode well on the 12th July ride, despite being wet from the rain that had fallen over the preceding weeks. I rode this section on my heavy horse Lottie. I am also 14 stone. So, if there was an issue with gradient, at least in summer, which is when the majority are likely to ride this section, I would have expected to have become aware of it!

Equally, my wife, riding her 15.1 cob experienced no difficulty on the 12th July whatsoever. Further, on the 12th, we both commented that we would infinitely rather ride this than the alternative route shown A – B – on the Order Plan, Myra commenting that hill forts were built to keep people out and had formidable slopes designed to do just that.

Additionally, if you refer to the photographs, you will see that this section is well covered with grass which assists the horses with grip.

By way of comparison, I would not wish to ride the drop off Scratchbury Hill from point B on the Order Plan north to the road leading to the Livery Yard because it is much too steep to be ridden safely. I would also not wish to ride the horrible steep cross slope which lies at/just south of point B. This slope would certainly be dangerous when wet. Equally, none of those riding on the 12th (you, me and Myra) had any difficulty at all with the section that Mr Wright raises concerns over.

- 2. As to the section below the gate, this is part exposed chalk and part grass/scrub. I attach three photographs showing the section under discussion. There is some gradient over this section but not enough, in my view, to cause concern. It was wet and slightly slippery on the 12th July and bone dry on the 4th October.*

Despite being slightly slippery on the 12th, this section rode perfectly adequately for both Myra and I. I accept, of course, that compacted chalk is likely to be slippery when wet and, as such is not ideal underfoot, especially in winter. However, the same can be said for quite a few Wiltshire/Hampshire bridleways (see parts of the Clarendon Way for example). Further, even if the surface complained of were an issue here, it is not difficult to get off the chalk onto the grass/scrub that runs alongside it.

Additionally, the grass/scrub area which adjoins the visible compacted chalk could be simply widened if a working party of riders was to be put together for a morning to clear the wood back, and the landowners consent obtained to the clearance operation. I suspect that in the circumstances of this track, that consent could be obtained since the wood showed clear signs of having already been flailed back.

- 3. As to the “slippery” right turn into the wood this is, I suspect, a matter of taking the turn steadily and is not a material concern.*
- 4. Furthermore, it was perfectly clear from our inspection that this section of the route is ridden. We found hoof marks from several different horses to prove it.*

5. *The same cannot be said for the northern drop off Scratchbury Hill from point B where we looked carefully for any sign of the route having been ridden but found no evidence to suggest that the route had been ridden at all. I also walked the cross slope from point B and, again, could find no sign of it having been ridden.*
6. *Overall, in relation to these elements of his concerns, it was clearly evident from hoof marks in the wood and on the chalk section below the gate, that this route is being ridden and by different horses. Further, the section in question is a descent off the ridge adjoining Scratchbury Fort, so some gradient must be expected; and the ground conditions complained of (grass over chalk/compacted chalk) may very well be quite similar over much of that area and the route provided rode well in many respects.*

What is also very clear is that this route is rideable; and it is rideable by different riders on quite different horses (you on your pony, Myra on a 15.1 cob and me on a heavy 16.1 cob). The same cannot be said for either the cross slope area at point B nor for the current descent from B on the Order plan to the road to the north. Not only was there no evidence that either of these sections were being ridden but also both routes would be very difficult, at best, to ride. Certainly I would not care to ride either section even on a dry day in summer with dry ground underfoot – they are both, in places at least, far too steep.

7. *Mr Wright describes the route through Norton Plantation as being “funnelled” through the woods. For my part, I think this is harsh. I found this section easy to ride. It also has very good going underfoot. I attach a photograph showing the view from the woods towards the eastern entrance into Norton Plantation (sent under separate cover).*
8. *That leaves the issue of the exit at point D. It is fair to say that this exit point is awkward and requires careful negotiation given that the sight lines here are limited both to left and to right. There is also limited room for manoeuvre at the exit itself. I also agree that the drop down onto the road is reasonably steep so that there is a risk of loss of balance. However, that applies to any reasonable drop. It may be that there is room to improve the sight lines here; and if that is possible, then that improvement would be beneficial.*

The MOD has, however, provided a really useful, albeit Permissive, route on the other side of the road. Once down onto the road this is very quickly reached and rides well. It is also sited far enough away from the railway line on the other side of the field to assist hugely with any horse likely to be spooked by passing trains.

9. *Overall, on this aspect, I think the difficulties with the exit point need to be looked at in the context of the overall improvements offered by the varied route. The plain fact of the matter is that the varied route is a vast improvement; and this is shown by the fact that it is being ridden whilst the former route showed no signs of that, most probably due to the real difficulties isolated above. No route is ever perfect over its whole length. The route C – D offered here is both rideable and being ridden. This is in stark contrast to the former route. I very much hope, therefore, that the new route is confirmed. If the site lines at D can be improved by one means or another that would be excellent.”*

21. It is therefore considered that the proposed diversion is not only made in the landowner's interest but also in the interest of the public, who will gain a substantially more accessible route and, for walkers, a route which allows a circular walk in the area.
22. With regard to whether the alternative path is substantially less convenient, it is considered it is more convenient and that it has a positive effect on the use and enjoyment of the path.
23. It is not considered the proposed diversion will have any detrimental effect on any land served by the existing right of way or that there will be any effect on the land served by the proposed right of way.

Safeguarding Implications

24. DEFRA's "Rights of Way Circular (1/09) Guidance for Local Authorities" Version 2, October 2009, states at paragraph 5.5:

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

In making "The Wiltshire Council Corsley 29 (part) Diversion Order and Definitive Map and Statement Modification Order 2015", officers have followed the procedure set out in Schedule 6 of the 1980 Act and in doing so Wiltshire Council has fulfilled its safeguarding considerations.

Public Health Implications

25. There are no identified public health implications which arise from the proposed diversion.

Procurement Implications

26. There are no procurement implications associated with this application as all costs for works and furniture associated with the new route will be met by either the applicant or user groups.

Environmental and Climate Change Considerations

27. Natural England and the County Ecologist were consulted regarding the diversion proposals and no adverse comments regarding the environmental impact of the diversion were received.

Equalities Impact of the Proposal

28. The Wiltshire Council Rights of Way Improvement Plan 2015-2025 (WCAIP) recognises the Council's duty to have regard to the Equalities Act 2010 and to consider the least restrictive option for public use. The proposed diversion provides a more accessible path than the present definitive line. Additionally, the

proposed new route will have a recorded width of 4 metres, open and available for public use, over a defined route, where the definitive line has a lesser width recorded within the definitive statement and has more gates along its length.

Risk Assessment

29. There are no identified risks which arise from the proposed diversion. The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.

Financial Implications

30. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permits authorities to charge applicants costs in relation to the making of public path orders, including those made under Section 119 of the Highways Act 1980. Additionally, the British Horse Society has agreed in principle to pay for a new gate at ST 91303 43775 which would be erected by volunteers.
31. Where there is an outstanding objection to the making of the Order, the Committee may resolve that Wiltshire Council continues to support the making of the Order, in which case it should be forwarded to the Secretary of State for decision. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is minimal; however, where a local hearing is held the costs to the Council are estimated at £300 and between £1000 and £2000 where the case is determined by local public inquiry. There is no mechanism by which these costs may be passed to the applicant and these costs must be borne by Wiltshire Council. Current practice of the Secretary of State is to prefer written representations but to hold a hearing if the objector wishes to be heard. Officers would make recommendation to the Secretary of State to determine the Order by written representations.
32. Where the Council no longer supports the making of the Order, it may resolve that the Order be withdrawn and there are no further costs to the Council. The making of a Public Path Order is a discretionary power for the Council rather than a statutory duty; therefore, a made Order may be withdrawn up until the point of confirmation, if the Council no longer supports it, for example, where it is considered that the proposals no longer meet the legal tests set out under Section 119 of the Highways Act 1980.
33. If the Order is withdrawn Wiltshire Council will have to proceed with actions to make the existing definitive line open and available for use.

Legal Implications

34. If the Council resolves that it no longer supports the making of the Order, it may be withdrawn. There is no right of appeal for the applicant; however, clear reasons for the withdrawal must be given as the Council’s decision may be open to judicial review.

35. Where the Council continues to support the making of the Order, it must be sent to the Secretary of State for determination, which may lead to the Order being determined by written representations, local hearing or local public inquiry. The Inspector's decision is open to challenge in the High Court.

Options Considered

36. Members may resolve that:

- (i) Wiltshire Council continues to support the making of the Order, in which case the Order should be forwarded to the Secretary of State with a recommendation from Wiltshire Council that:
 - (a) The Order be confirmed without modifications, or
 - (b) The Order be confirmed with modifications.

or that:

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

Reason for Proposal

37. Despite the objection received it is considered, for the reasons given in paragraphs 50 to 58 of the Decision report (please see **Appendix D**) that "The Wiltshire Council Parish of Norton Bavant Path No. 4 (part) Diversion Order and Definitive Map and Statement Modification Order 2015" continues to meet the legal tests for the making of a Diversion Order under Section 119 of the Highways Act 1980.
38. Additionally, the legal tests for the confirmation of a Public Path Diversion Order, as set out under Section 119 of the Highways Act 1980, appear capable of being satisfied and no new evidence has been submitted during the formal objection period which would lead Wiltshire Council to no longer support the making of the Order.
39. Minor errors in the Order may be corrected by the Secretary of State as modifications.

Proposal

40. That The Wiltshire Council Parish of Norton Bavant Path No. 4 (part) Diversion Order and Definitive Map and Statement Modification Order 2015 be forwarded to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that it be confirmed with the following modifications:
- (i) In paragraph 2 where referring to the rights of Scottish and Southern Energy replace the word "footpath" for "bridleway".

- (ii) In Part 3 of the Schedule amend the width to read “4 metres from OS Grid ref. ST 90853 44042 to ST 91694 43539 the remainder to be 3.5 metres”. Amend approximate length to be “1600 metres”.
- (iii) In the event that Order is confirmed, The Wiltshire Council Norton Bavant 10 (part) Creation and Definitive Map and Statement Modification Order, which has attracted no objections or representations, be confirmed.

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Sally A Madgwick

Rights of Way Officer – Definitive Map

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

None

Appendices:

Appendix A – Location Plan

Appendix B - Diversion Order

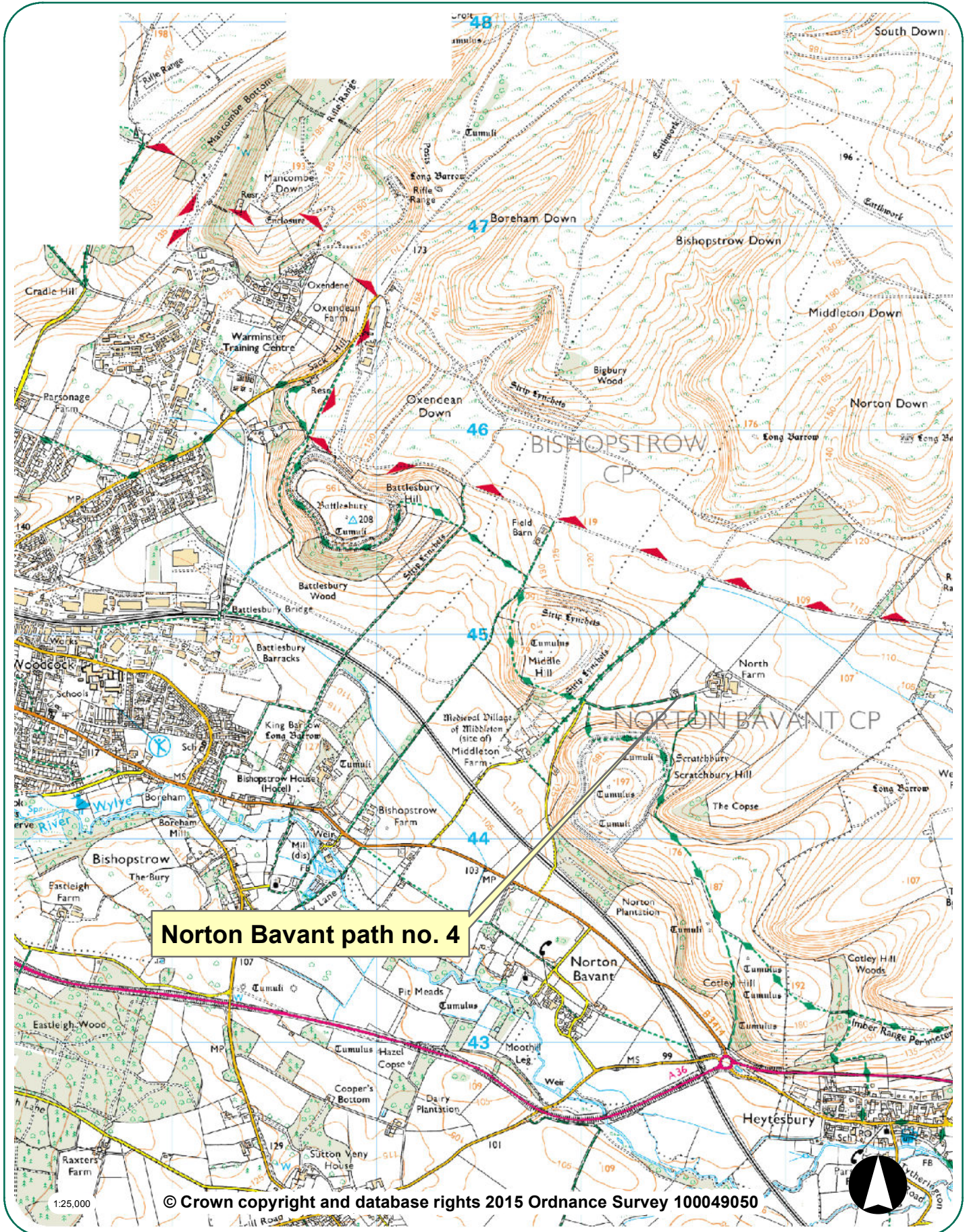
Appendix C – Creation Order

Appendix D - Decision Report

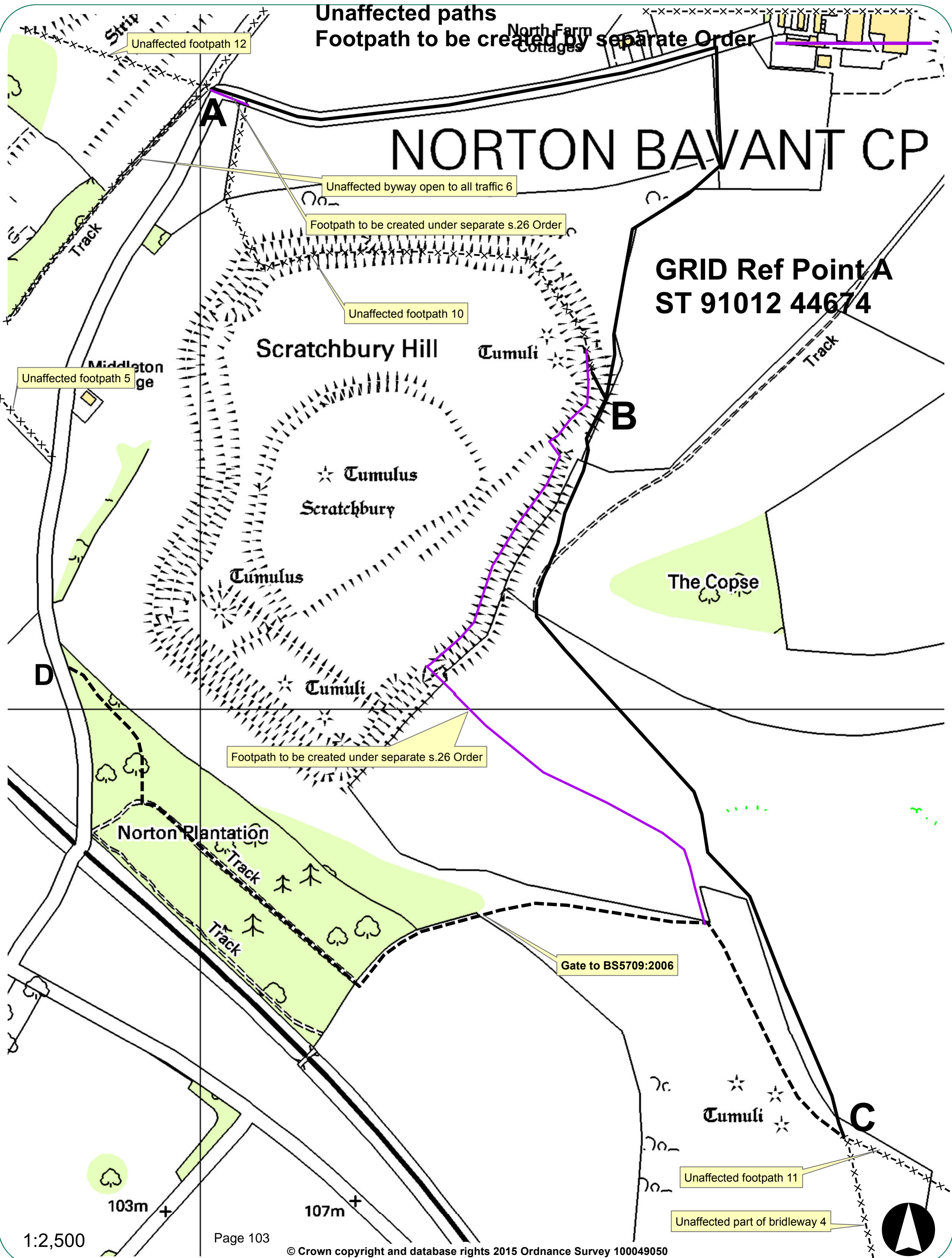
Appendix E - Photographs submitted by the British Horse Society

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Location Plan Norton Bavant Path no 4



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PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER

HIGHWAYS ACT 1980

APPENDIX

WILDLIFE AND COUNTRYSIDE ACT 1981

B

WILTSHIRE COUNCIL

The Wiltshire Council Parish of Norton Bavant Path No. 4 (part) Diversion Order and Definitive Map and Statement Modification Order 2015

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

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

Norton Bavant Parish Meeting has been consulted as required by section 120(2) of the 1980 Act.

BY THIS ORDER

1. The public right of way over the land situated at Scratchbury Hill in the Parish of Norton Bavant and shown by a bold continuous line on the map contained in this order and described in Part 1 of the Schedule to this order, after confirmation of the order, shall be stopped up on the date on which Wiltshire Council certify that work has been carried out to bring the site of the new highway described in Part 2 of the Schedule into a fit condition for use by the public and thereupon the Warminster and Westbury Rural District Council definitive map shall be modified by deleting from it those public rights of way.
2. Notwithstanding this order Scottish and Southern Energy shall have the following rights over the land referred to in paragraph 1 namely: -

Where immediately before the date on which the footpath is diverted there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

3. There shall be at the date of certification of the new highway described in Part 2 of the Schedule a bridleway as described in Part 2 of the Schedule over land south of Scratchbury Hill, Norton Bavant and as shown by a bold broken line on the map contained

in this order, and thereupon the Warminster and Westbury Rural District Council definitive map shall be modified by adding this path to it.

- 3A. The Warminster and Westbury Rural District Council area definitive statement dated 1953 shall be modified as described in part 3 of the Schedule to this Order.
4. The rights conferred on the public under this order shall be subject to the limitations and conditions set out in Part 3 of the Schedule.

SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

Path as shown on the plan attached hereto by a bold black line leading from point A at OS Grid ref ST 91012 44674 east past North Farm Cottages where south over Scratchbury Hill and south east to point C at OS Grid ref ST 91694 43539. Additionally short spur at B. Width 3.5 metres Approx. length 2000 metres

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

Path as shown by a bold broken line on the plan attached hereto leading from point C at OS Grid ref ST 91694 43539 leading north north west, west, south west and north west to point D at OS Grid ref ST 90853 44042. Width 4 metres Approx length 1200 metres

PART 3

LIMITATIONS AND CONDITIONS

Gate to BS5709:2006 at OS Grid ref ST 91303 43775

PART 3

**MODIFICATION OF DEFINITIVE STATEMENT
VARIATION OF PARTICULARS OF PATH OR WAY**

Parish	Number	Details	Section
Norton Bavant	4	<u>Bridleway</u> From the u/c 9052 at OS Grid ref. ST 90853 44042 leading south east through Norton Plantation then north north east following field edge track to gate continuing to its junction with footpath no 10 where south south east to the Southampton – Bath Trunk Road, A. 36 and B.3095 roundabout junction.	53(3)(a)(i)

Limitations and Conditions : Bridle gate to BS 5709:2006 at OS Grid ref. ST 91303 43775

Width 4 metres Approximate length 1200 metres

THE COMMON SEAL of }
WILTSHIRE COUNCIL }
was hereunto affixed this }
6th day of August 2015 }



In the presence of : -

Senior Solicitor

Amadey

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

HIGHWAYS ACT 1980 AND WILDLIFE AND COUNTRYSIDE ACT 1981

WILTSHIRE COUNCIL

**THE WILTSHIRE COUNCIL NORTON BAVANT 10 (PART) CREATION AND
DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2015**

This Order is made by Wiltshire Council ("the authority") under section 26 of the Highways Act 1980 ("the 1980 Act") because it appears to the authority that, having regard to the matters set out in section 26(1), there is a need for a public footpath over the land to which this order relates, and that it is expedient that the path should be created.

This order is also made under Section 53A(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") because it appears to the authority that the Warminster and Westbury Rural District Council Area definitive map and statement dated 1953 require modification in consequence of the occurrence of an event specified in section 53(3)(a)(iii) of the 1981 Act, namely, the creation (as authorised by this order) of a new right of way over land in the area to which this map relates being a right of way such that the land over which the right subsists is a public path.

The Norton Bavant Parish Meeting has been consulted as required by section 26(3) of the 1980 Act.

BY THIS ORDER:

1. There shall be at the end of 1 day from the date of confirmation of this order be a public footpath over the land at Scratchbury Hill, Norton Bavant described in Part 1 of the Schedule to this order and shown by a bold broken line on the map attached to this order, and thereupon the Warminster and Westbury Rural District Council Area definitive map dated 1953 shall be modified by adding that path to it and the definitive statement shall be modified as described in Part 3 of the Schedule to this order.
2. The rights conferred on the public under this order shall be subject to the limitations and conditions set out in Part 2 of the Schedule.

SCHEDULE

PART 1

Description of Land

Those lengths of footpath at Scratchbury Hill, Norton Bavant, as shown on the attached plan by a bold broken line leading from point A at OS Grid ref. ST 91012 44674 east south east for approximately 40 metres to point B at OS Grid ref. ST 91052 44659 width 2 metres and from point C at OS grid reference ST 91424 44357 leading along the top of the ramparts in a south south westerly direction to the gate at OS Grid ref. ST 91261 44027 where east south east and south south east to its junction with Norton Bavant path no 4 at point D at OS Grid ref ST 91543 43769. Length approximately 825 metres width 2 metres.

PART 2

Limitations and Conditions

Gate conforming to BS5709:2006 at ST 91261 44027

Gate conforming to BS5709:2006 at ST 91543 43769

PART 3

Modification of Definitive Statement

Variation of Particulars of Path or Way

Parish	No	Particulars of Path	Modified under
Norton Bavant	10	FOOTPATH From Norton Bavant path number 6 at OS Grid ref. ST 91012 44674 leading east south east for 40 metres then South onto Scratchbury Hill where around Scratchbury Camp before heading south east through the gate at OS Grid ref ST 91261 44027 leading south east and south south east to join Norton Bavant path no. 4 at OS Grid ref ST 91543 43769.	53(3)(a)(iii)

Limitations and Conditions

Gate to BS5709:2006 at OS Grid ref ST 91261 44027
Gate to BS5709:2006 at OS Grid ref ST 91543 43769

Approximate length 1500 metres Width 2 metres

THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
was hereunto affixed this }
6th day of August 2015 }
In the presence of:

Senior Solicitor

Amadeley



81787

HIGHWAYS ACT 1980 S.119 and s.26

**PROPOSED DIVERSION OF NORTON BAVANT 4 (PART) WITH
EXTENSION OF NORTON BAVANT 10 at SCRATCHBURY HILL**

1.0 Purpose of Report

(i) To consider an application to divert part of bridleway Norton Bavant 4 and create an extension to footpath Norton Bavant 10 at Scratchbury Hill.

(ii) To recommend that Wiltshire Council makes orders under s.119 of the Highways Act 1980 (HA80), s.26 of the Highways Act 1980 and s.53 of the Wildlife and Countryside Act 1981 (WCA81) to effect this change.

2.0 Background

- 1 On the 20th May 2015 Wiltshire Council received an application from Defence Infrastructure Organisation (DIO) (acting for the landowner, the Ministry of Defence) to alter the rights of way network at Scratchbury Hill, Norton Bavant.
- 2 The alterations are part of a larger package of alterations which will ultimately lead to the Imber Range Perimeter Path being available for horse riders and cyclists and more accessible for users on foot and with mobility aids. The aim is to provide a 34 mile circular route of at least bridleway status around the Imber Range (from which all public rights have been extinguished).
- 3 The majority of the route is now available for public use, predominantly as byway open to all traffic and bridleway but in some parts as a permissive bridleway. If the diversion that is the subject of this application is achieved the circular route would be complete.
- 4 The applicant gives the following reasons for the application:
 - *The existing definitive line of Norton Bavant bridleway 4 crosses agricultural holdings. The new route utilises field boundary and reduces conflict between agricultural management and recreation.*
 - *The existing definitive line of Norton Bavant bridleway 4 passes steep sections of hillside, one of which is cross camber. This creates a difficult and dangerous riding experience. The proposed route utilises a gentler gradient and forgoes the need to travel cross camber on a steep hillside. The*

proposed diversion is therefore a safer and more user friendly bridleway, likely to be available to more users.

- *The diversion of Norton Bavant bridleway 4 reduces the number of gates a user must pass through from four to one.*
- *The diversion of Norton Bavant bridleway 4 takes it further from sensitive areas of Scratchbury Hill, reducing the potential impacts on the historic monument from horse riding and cycling. Norton Bavant footpath 10 will remain, continuing to provide public access on foot.*
- *The diversion of Norton Bavant footpath 10 is necessary to ensure the public right of way links with the diverted public bridleway.*
- *The diversion of Norton Bavant footpath 10 adopts a natural desire line for those walking across Scratchbury. In addition to providing a more natural means of passing from the hill fort to Cotley, or vice versa, the proposed line of the footpath sits more easily into the agricultural management of the field.*
- *The overall proposal links with wider project to improve the Imber Perimeter Path, making the whole route accessible to horse riders.*

5 The land is farmed by Mr Andy Elliot of North Farm, Warminster who is in agreement with the application and has already performed facilitating works for the proposed new route.

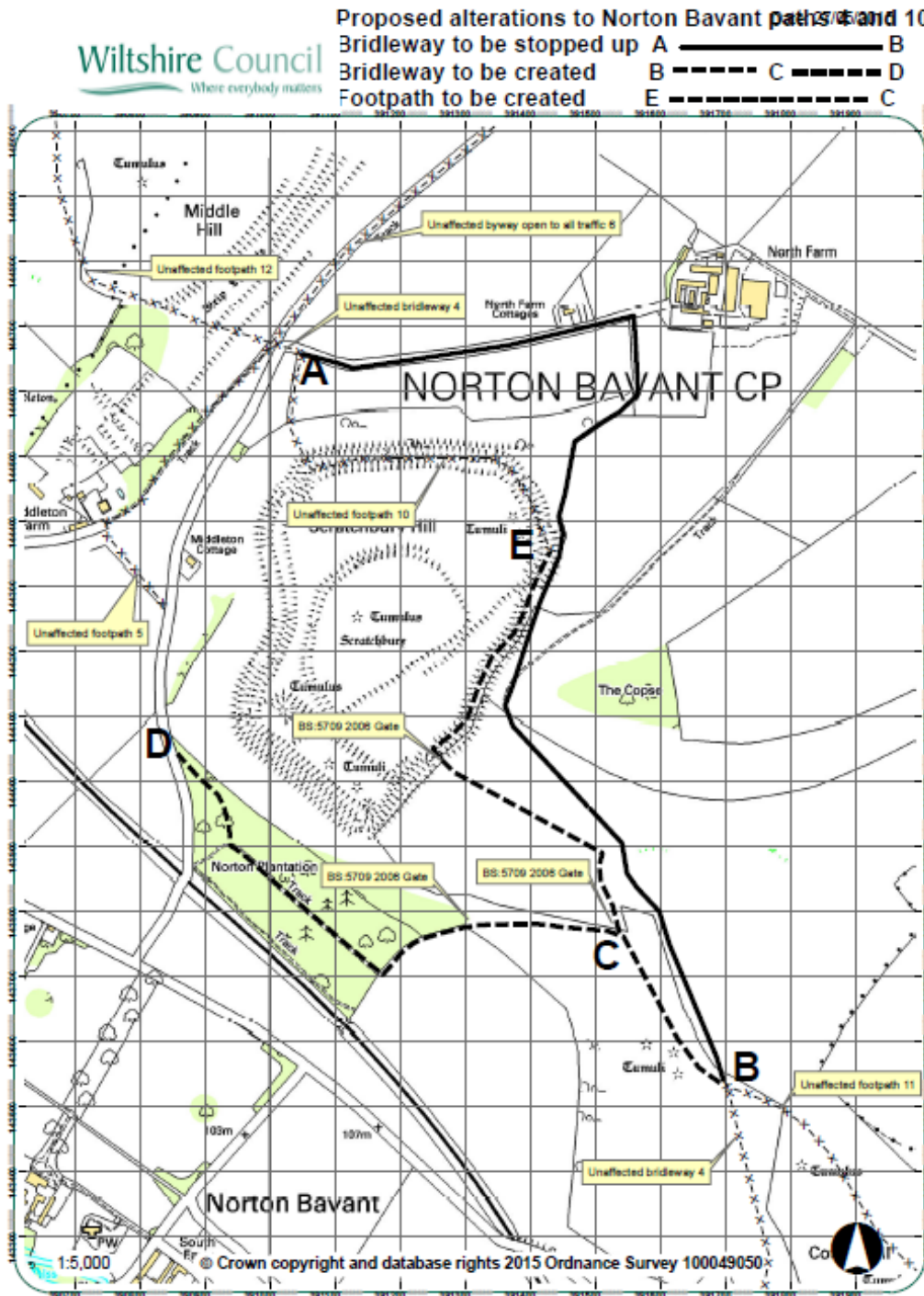
6 The existing bridleway number 4 (starting from point A on the map shown below) follows a tarmacadamed private road (accesses North Farm and a recycling waste storage facility) for approximately 550 metres before turning due south across a field before going through a gate to enter the enclosed area of Scratchbury Hill Fort. The sides of the hill fort are very steep and it is not possible to follow the definitive line next to the fence as the ramparts are very steep at this point, users here tend to traverse the cross fall to climb the ramparts. The route then meets footpath Norton Bavant 10 (which follows a route along the top of the ramparts) at point E where it leads through a gate, across a very steep cross fall to a track where through another gate to cross an arable field. The route then enters another field through a gateway (point B) and descends a wide grass track towards Heytesbury. This wider section towards Heytesbury is unaffected by the application.

7 The proposed new route leaves the tarmacadamed road at a point further south (on a section that is recorded as an unclassified road in the Council's Highway Record) leading along a track through woodland before turning north east along a track besides an arable field. The route then leads through a gate and into the same sheep pasture that Norton Bavant 4 enters on its original line. The proposed new

The Diversion of Norton Bavant 4 and 10 (part)

route then leads over the sheep pasture to join the unaffected section of Norton Bavant 4 at point B. A gate at C facilitates access to the route from the proposed extension of Norton Bavant 10. See plan below:

8



The Diversion of Norton Bavant 4 and 10 (part)



NBAV4 at point A



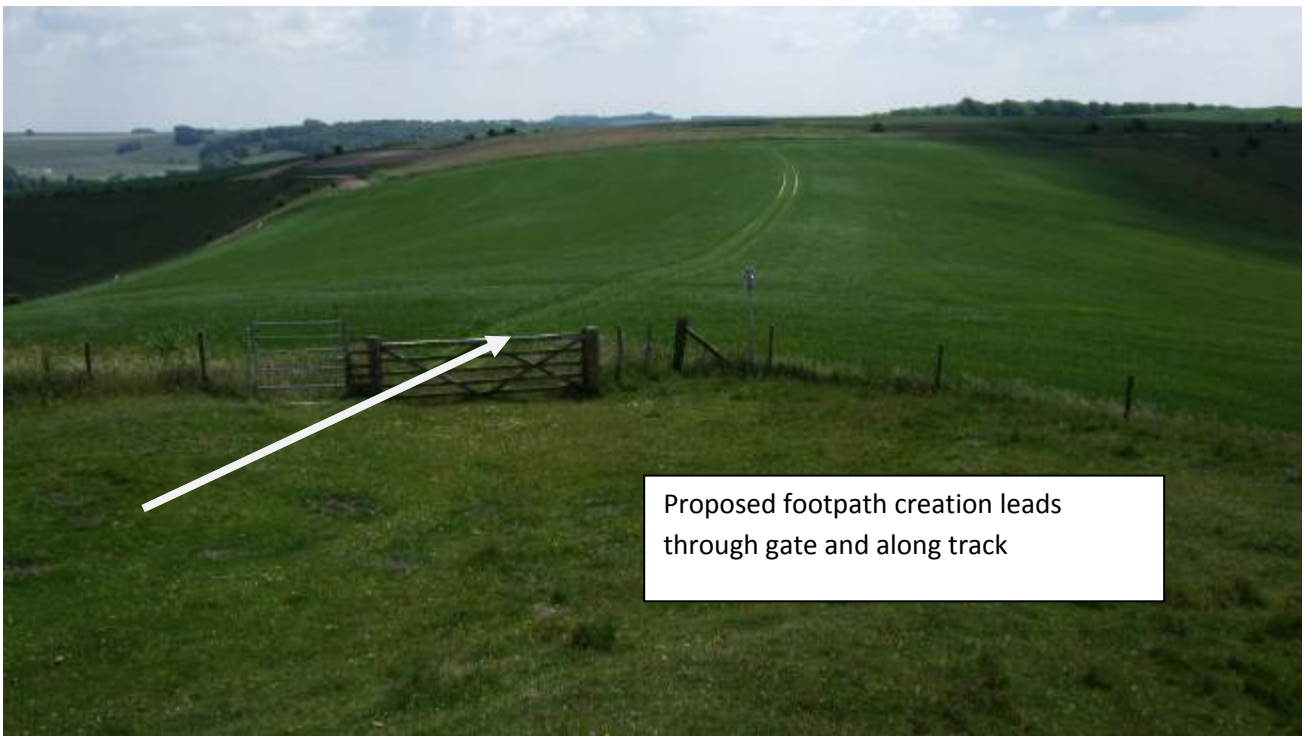
NBAV 4 leads up sides of hill fort

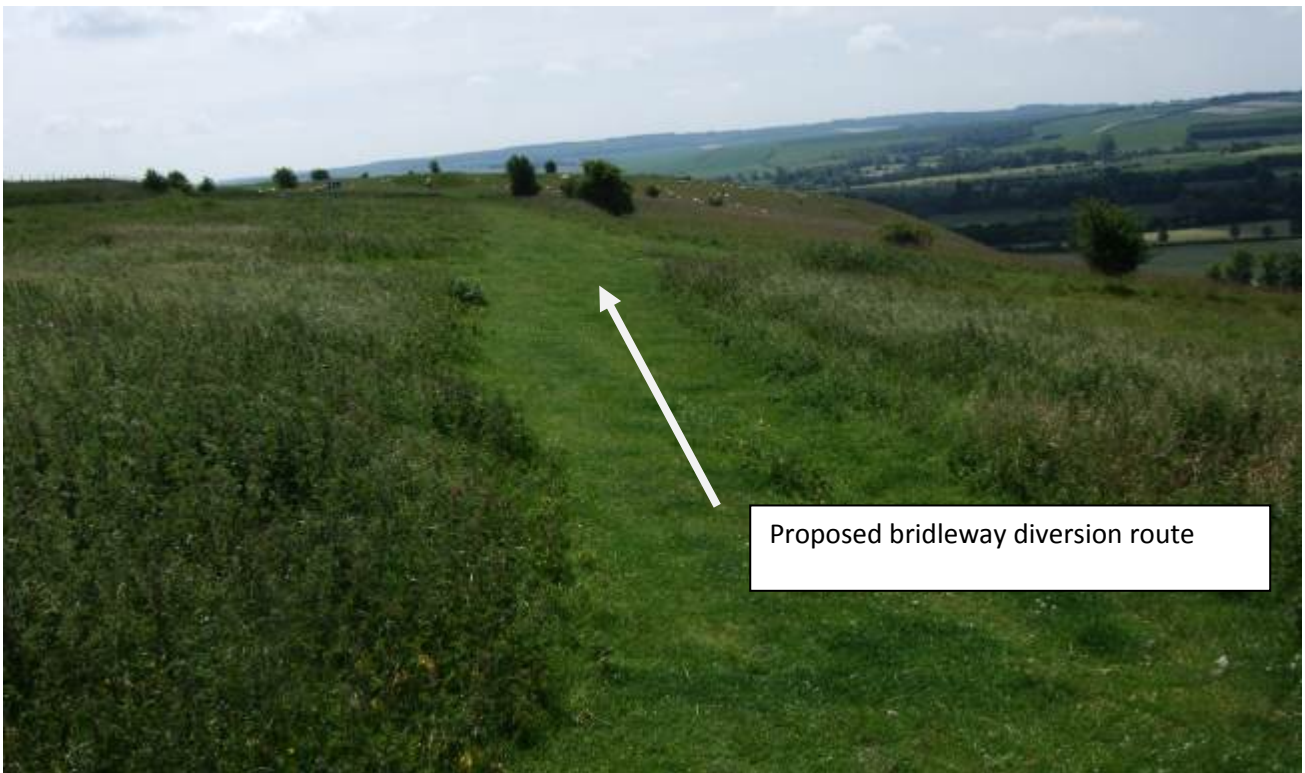


NBAV4 looking north – bridleway follows fence line over drop



NBAV 4 bridleway leads through Wiltshire gate and over drop to gateway beyond







Views from proposed new bridleway



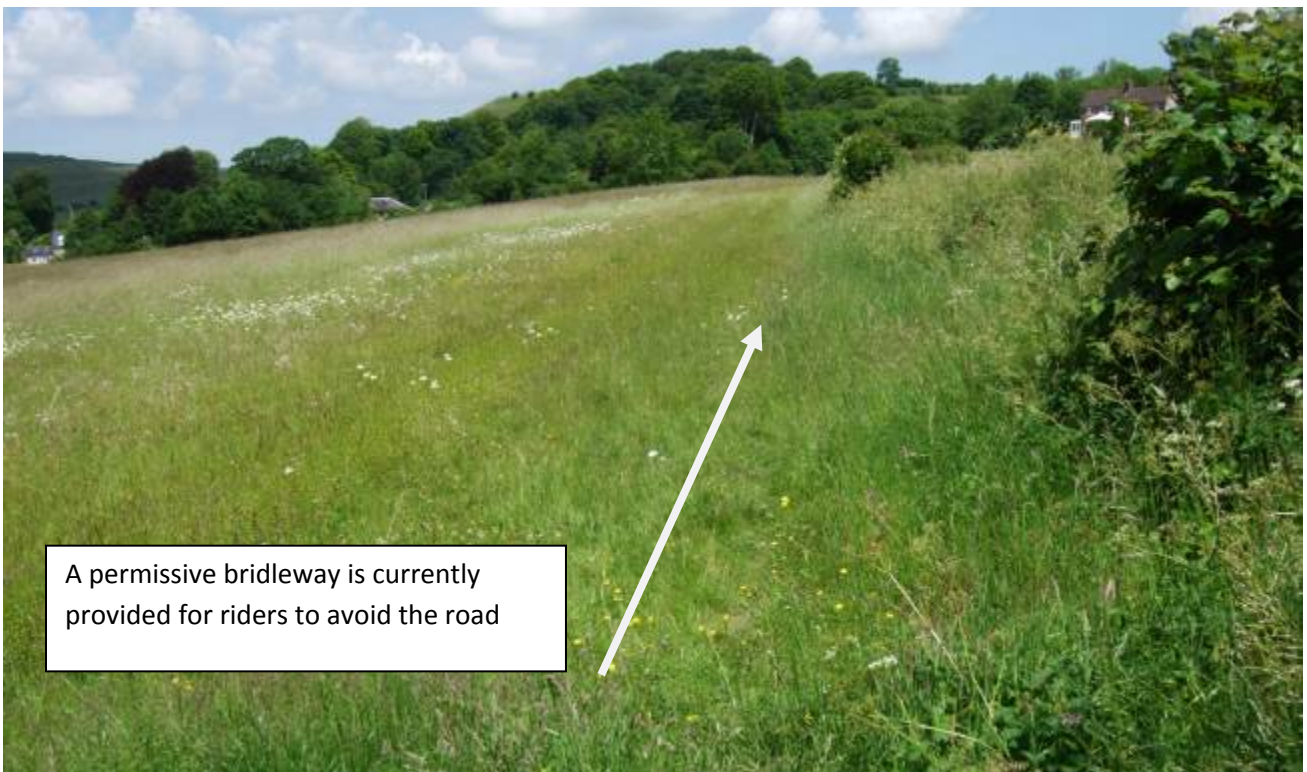
Proposed new bridleway







Junction of proposed bridleway with u/c road (point D). Visibility needs to be improved at this point by cutting vegetation back to give a better visibility splay.



A permissive bridleway is currently provided for riders to avoid the road



3.0 Consultation

10 The following letter was circulated on the 28th May 2015:

Highways Act 1980 s.119 and s.26

Proposed alterations to rights of way at Scratchbury Hill, Norton Bavant

Alterations to the rights of way network at Scratchbury Hill, Norton Bavant, BA12 0EN are proposed and your comments are invited. The proposed changes are shown on the attached map and are detailed as follows. The alterations form part of ongoing improvements to access in this area.

- i) The diversion of part of bridleway Norton Bavant 4 from its route to the north of the iron age hill fort to a route south of the hill. The existing route is almost inaccessible to horse riders being very steep in places and has 4 gates along its length whereas the proposed new route is more accessible to all users and only has 1 gate (BS5709:2006) along its length. The new route between points C and B offers extensive views.*
- ii) The creation of an additional length of footpath to footpath Norton Bavant 10 to reflect the walked route around the hill fort and across the field to the south east. The existing definitive map route between points E and B on the plan involves the use of 4 gates whereas the created route involves the use of 2 gates (BS5709:2006).*

If you have any comments to make please could you ensure that I receive them by Friday 3rd July 2015.

The Diversion of Norton Bavant 4 and 10 (part)

11 The letter and copy of the plan at paragraph 8 were circulated to:

The Auto Cycle Union
Commons, Open Spaces and Footpaths Association
Wiltshire Bridleways Association
Wiltshire Cycling Touring Club
British Horse Society
Norton Bavant Parish Meeting
Wiltshire Councillor Christopher Newbury
Wiltshire British Horse Society
Byways and Bridleways Trust
British Driving Society
Wiltshire Council Rights of Way Senior Warden
Wiltshire Council Ecology Consultations
Wiltshire Ramblers B Micklam
Wiltshire Ramblers T Lewis
Mr B Riley
Natural England
Historic England
Defence Infrastructure Organisation J Nevitt
Defence Infrastructure Organisation K Birnie
Mr A Elliott, North Farm
Wessex Water
Scottish and Southern Electric plc
Wales and West Utilities
Lt Col (retd) N Linge
BT Openreach
LineSearchbeforeUdig
Digdat

4.0 Consultation Responses

12 **Virgin Media 01.05.15**

No apparatus affected.

13 **LineSearchbeforeUdig 01.05.15**

No apparatus affected.

14 **Openreach BT 01.05.15**

The Diversion of Norton Bavant 4 and 10 (part)

No apparatus affected.

15 **Nigel Linge 27.05.15**

“Thank you for your request for comments on the proposed changes to Norton Bavant 4 and 10. I think that this is a splendid improvement to the network and allows riders and cyclists to avoid the Warminster to Heytesbury road and enjoy the stunning views from the new route. This will also allow the whole of the Imber Path to be elevated to a minimum of bridleway.

I am particularly impressed with the quality of way marking and the way the route avoids using the tarmac unclassified road to North Farm for much of its length.

My only observation is that there will be a small “tail” of Norton Bavant 4 that remains a bridleway, linked to a BOAT that is also a tail. My preference would be to reduce it to a footpath as it would only serve to confuse if left a bridleway. This could be achieved by:

- 1. Stopping up Norton Bavant in its entirety and dedicating a new footpath*
- 2. Changing the status of the tail of Norton Bavant 4 when the remainder is stopped up.*

The other option of extending FP 12 would only serve to complicate things.”

16 **Case Officer’s Comments**

Mr Linge is correct in observing that the current signed and ridden route does avoid the unclassified road, however, the field edge route that permits the public to do this is a permissive route and while it may be aspirational to record this in the definitive map and statement this application does not address this.

Norton Bavant 10 is a relatively short footpath that relies on the bridleway Norton Bavant 4 at either end to enable access. The proposal does leave approximately 30 metres of bridleway spur at point A which could be extinguished and an interlinking section of footpath created by s.26 of the Highways Act 1980. Since this application requires the creation of an additional section of Norton Bavant 10 to meet the legal tests (section E to C) it could be achieved on the same s.26 Order made concurrently with the s.119.

17 **Scottish and Southern Energy 03.06.15**

There is a high voltage electricity supply leading beside part of the length of Norton Bavant 4 where it leads from point A to North Farm. Access to this would need to be retained in the Order.

The Diversion of Norton Bavant 4 and 10 (part)

18 **Historic England 17.06.15**

“Thank you for consulting Historic England on these proposed changes. Prior to submitting the proposals we were approached by Defence Infrastructure Organisation about them, and I reiterate here the advice we provided in April 2015.

The diversion of the bridleway running along the side of the Scratchbury Hillfort Scheduled monument will certainly help to relieve the erosion pressures upon the historic earthworks in this part of the monument. If as a result of the changes any works are required within the area of the Scheduled Monument (whether to repair erosion or to install signs, gates, fences etc) then those responsible for undertaking the works will need to obtain prior Scheduled Monument Consent (SMC) before proceeding, under the terms of the Ancient Monuments & Archaeological Area Act 1979.

I hope this simple advice is clear, but please don't hesitate to contact me if you require any further advice in relation to this proposal.”

19 **Brian Micklam, Wiltshire Ramblers 11.07.15**

This is the relevant part of my reply to Nigel this morning that I have also copied to you. It was the last part of that message, but because it was rather long and involved I have re-sent this part of it to you. Since we are further on the consultation procedure with this part of Nigel's project, I thought I would ask you specifically to insert it into the Consultation as an objection.

quote

RoW Dept letter SM/2015/11/NBAV4 & 10 proposed Alterations to RoW at Scratchbury Hill, Norton Bavant dated 28 May 2015

Referring to Sally's letter, unfortunately I have missed her requested 'Reply By' date of 3rd July due to my intervening holidays and, indeed, our morning out with you was only two days before it. I am sending this to her in the hope that it can still catch up with the consultation procedures.

We have no problem with the proposals to designate bridleways and footpaths along B,C, to D, or from C to D, on Sally's Plan. Far from it, these are excellent suggestions.

However, I do query the necessity to stop up Bridleway A to B, the northern section of NBAV4. Maybe this section is of no use to people on horses but probably it can be used by walkers. I haven't inspected it but will walk it within the next couple of weeks. It almost certainly has completely different characteristics to proposed bridleway B to C, and footpath C to D, and would count as a loss to the community. We cannot see the point in stopping it up. That would just reduce the possibilities available to walkers generally. We object to A to B being stopped up.

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Unquote

20 **Brian Micklam, Wiltshire Ramblers 14.07.15**

“I did walk all the proposed bridleways and paths today with a friend, Bob Lewis. I realised that I have walked the line B – C – E – A previously some years ago and the line used at that time was virtually the same as the line proposed by you now. I remember the frustration of trying to find the line B to E via the old bridlepath before we finally ended up using the the new one, B – C – E . I have therefore revised my earlier opinion about NBAV4.

However I still think that the two means of getting from E to A should be retained, i.e. NBAV10 as it is and always has been, and the rest of NBAV4 as it leaves the ramparts, goes down to the hedge, through the horse gate and across the field down to the road between North Farm Cottages and North Farm before it turns left to go along the road to A.”

21 **Case Officer’s Comments**

Mr Micklam revised his opinion of the proposed diversion after walking it and it is not difficult to see why, he admits that it was impossible to find ‘some years ago’ and that he ended up using the proposed new route then. The proposed new route offers a much more accessible route with greater access over the monument than the definitive bridleway line which is steep and merely follows a fence line at the edge of the monument.

Notwithstanding this it is noted that the Ramblers would like to see the right of way retained between A and E. This would create a cul-de-sac bridleway over very difficult terrain and would be of no utility. If the way were to be retained as a footpath it is difficult to see what purpose it would have since it offers lesser views than those from the existing Norton Bavant 10, is very difficult to traverse and takes users past two houses at North Farm Cottages before heading along a tarmacadamed road. Since Mr Micklam had found the route impossible to find ‘some years ago’ it can only be assumed that the route received little or no use, users choosing to use the higher route. Certainly the wear on the ground supports that this is so.

The application does not seek to retain footpath rights and even if they were offered it is unlikely that the Council would wish to retain and accordingly maintain such a difficult route of such limited utility.

22 **Norman Beardsley, Wiltshire Bridleways Association Telephone Conversation**

Mr Beardsley had walked the routes and raised no issues other than to comment on the loss of the view for horse riders (walkers have a better view of the same from Norton Bavant 10) over the western slopes of the Imber Range.

23 **Case Officer's Comments**

It is agreed that horse riders do lose a far reaching view of the edges of the Imber Range beyond North Farm. Although this view may be enjoyed by riders continuing south east along the permissive section of the Imber Range Perimeter Path it is lost to riders using only Norton Bavant 4. The diverted section B to C and part on to D affords expansive views of the area west of Scratchbury Hill and has a sense of purpose and direction in heading for the distant mound of Cley Hill, however, the route is on the wrong side of the hill to see any of the Imber Range.

24 This is an important consideration when weighing up the effect of the diversion on the use and enjoyment of the path as a whole. The far greater accessibility offered by the proposed new route does mean that a much greater number of people will be able to use the route (it is known that local horse riders just don't use the existing route as it so steep and difficult to follow) and when weighed against the loss of the view to the few horse riders and cyclists who may have used the existing route officers consider that the greater enjoyment would be with the proposed new route. Additionally the proposed new route has a sense of direction and purpose about it which the existing route fails to have; it has the feeling of a route accommodated as far from the monument as possible and as close to the fence line as it will go. A factor no doubt that was considered when it was originally recorded.

5.0 **Existing Records : Definitive Map and Statement**

25 The routes are recorded in the Warminster and Westbury Rural District Council Area definitive map and statement dated 1953 as follows:

Norton Bavant 4 BRIDLEWAY. From the northern end of road U/C 9052 at its junction with path No.6 leading east towards North Farm then south past Scratchbury Camp and south-east past The Copse and Tumuli to the Southampton - Bath Trunk Road, A.36, opposite the Heytesbury - Mere road, B.3095. [Extensive roadworks have altered the road junction at this end of the path. There is now a large roundabout at the junction of B.3095 with A.36(T).]

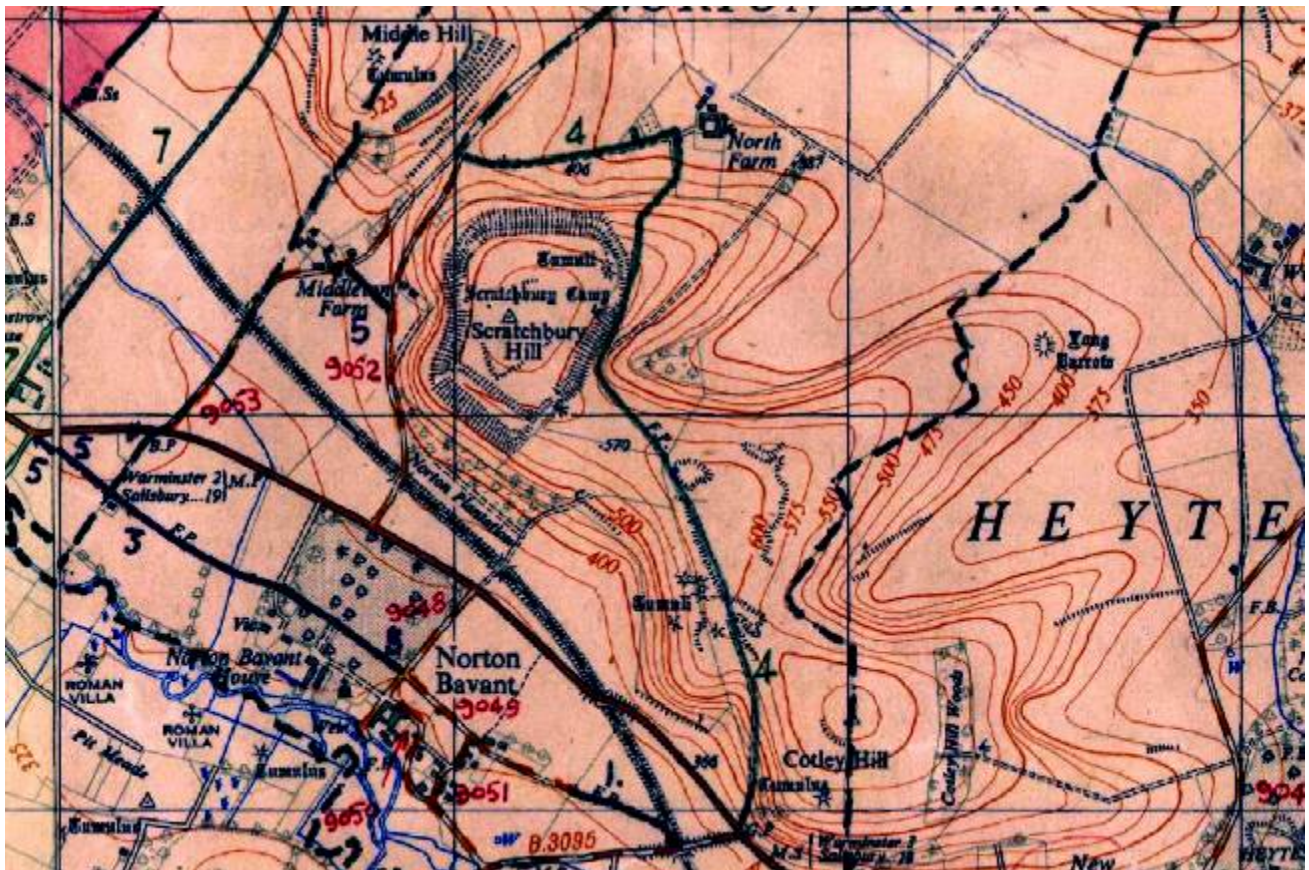
Approximate length 2.4 k.m.

Width 3.5 m.

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FOOTPATH. Part of the Imber Range Perimeter Path. From path No.4 leading south then east and south around Scratchbury Camp, Scratchbury Hill, to its junction with path No.4.

Approximate length 731 m.



The working copy of the definitive map is shown here at paragraph 8.

6.0 Considerations for the Council

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“...the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my judgment...entitled to take into account the matters set out in s.119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery

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necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed.”

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

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

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

- 33 This application requires that a length of footpath is created to allow connectivity between footpath Norton Bavant 10 and Norton Bavant 4 on its new route. This may be achieved by either an agreement made under s.25 of the Highways Act 1980 or an order made under s.26 of the Highways Act 1980.

- 34 There is a need for the s.119 diversion order to be made concurrently with the creation as the two cannot satisfy the legal tests without each other (as independently cul-de-sac highways would be created). This is best achieved by the publication of both a diversion order and a creation order at the same time. In this way the public has certainty that due process is being followed, the process is transparent and can be followed by the public and the maps and Order make better sense. It is a clearer process that will give greater confidence. There is an additional cost associated with making a creation order, this is related to the advertisement of the statutory notices in the Warminster Journal. This is likely to be in the region of an additional £30 per notice giving an overall public notice charge considerably less than any other newspaper charges for just one notice; as a result the cost sits comfortably within the fee charged.

35 **S. 26 Highways Act 1980**

(1) Where it appears to a local authority that there is a need for a footpath, bridleway or restricted byway over land in their area and they are satisfied that, having regard to –

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(a) the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area: and

(b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 below,

It is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath bridleway or restricted byway over the land.

(2) relates to powers of the Secretary of State to make orders

(3) A local authority shall, before exercising any power under this section, consult and other local authority or authorities in whose area the land concerned is situated.

(3A) The considerations to which –

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

(b) a local authority are to have in 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 the land over which the proposed footpath, bridleway or restricted byway would be created.

(4) A right of way created by a public path creation order may be either unconditional or subject to such limitations or conditions as may be specified in the order.

36 **S.28 Highways Act 1980**

(1) Subject to the following provisions of this section if, on a claim made in accordance with this section, it is shown that the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.

37 The creation of the extra length of footpath is contained within the application to alter the rights of way at Scratchbury hill and is therefore approved by the landowner and tenant. There is therefore no risk of compensation being sought.

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

39 These three matters are:

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

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

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

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

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

43 At 7.4 page 32 the Council recognises the following:

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

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Conclusion 5 states:

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

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

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

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

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

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

- 47 Where a route is being diverted Wiltshire Council will specify a level of accommodation works that must be met before the new route is accepted by the Council and any Order made comes into force.
- 48 The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.
- 49 The Council is also empowered to make a 'combined order' under s.53(2)A of the Wildlife and Countryside Act 1981. The effect of this means that on the confirmation of the order the definitive map and statement may be changed without the further need to make an order under s.53(3)(a)(i) of the 1981 Act (also known as a 'legal event order' or an 'unadvertised order').

7.0 Comments on the Considerations

- 50 S.119(1) HA80 says that Council may make an order to divert a path if it is satisfied it is in the interest of the landowner and/or the public to do so. The landowner's interest is demonstrated by the making of the application itself and there are clear benefits to agriculture as a result of the loss of the need to spray out the crop where it leads across arable fields on the line A to B. There are also clear benefits for members of the public as the definitive line is steep in places and has a number of gates along it. Additionally there is a benefit to Historic England (and hence public funds) in that the diversion would reduce the erosion pressures on the monument. S.119 (1) is therefore satisfied.
- 51 S.119(2) HA80 says that the Council shall not alter the termination point to one that is not on a highway or to one that is not substantially as convenient to the public. The proposed new termination point for Norton Bavant 4 is a point on the same highway (the u/c 9052 road) 650 metres further south. This means that any user coming from the south has less of the u/c 9052 to travel along but any user coming from the north has more to travel along. The u/c 9052 is generally a quiet route serving a couple of houses before leading east as a private road to become a dead end at a farm and a recycling storage yard. Additionally the area is criss crossed with other rights of way and the new bridleway NBAV 4 gives walkers using NBAV 5 the opportunity to walk on less of the u/c 9052 than if they chose to use the definitive line. Officers consider that either termination point is as convenient as the other and that S.119(2) is therefore satisfied.
- 52 The Council could therefore proceed to make an order under S.119 to divert the highway. However, as detailed at paras 30 to 32 it is also appropriate to consider S.119(6) at this stage.
- 53 S.119(6) says that the new path must not be substantially less convenient to the public. The new path is much easier to use as the gradients are more gentle and the
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route has less gates along it. It is not considered to be substantially less convenient and is considered to be more convenient. The existing route is 2000 metres long and the proposed diversion is 1200 metres long.

- 54 The Council must also have regard to the effect on the public enjoyment of the path as a whole. The current route of NBAV 4, even if a horse rider or cyclist could find it (the respondent, Mr Micklam, for the Ramblers had failed to find it) is unlikely to be described as enjoyable, even if passable. Traversing the steep slopes of the hill fort with a horse or cycle is not for the feint hearted and it is likely that many people simply don't use the route because of its accessibility problems. As a result it is considered that the diversion offers a much more accessible, safer route. This can only be more enjoyable.
- 55 It is considered that s.119(6) is therefore satisfied and that any order so made would be capable of being confirmed subject to the creation of the linking footpath NBAV10. This route reflects a more usable route that it seems people looking for NBAV 4 end up using anyway.
- 56 The Council must also consider the effect on the land served by the existing path. The tenant farmer has approved the proposed diversion and will benefit from not having to clear crops in arable fields. There is a line of SSE electricity poles to the east of the bridleway where it leads towards North Farm. These poles do not appear to be on the highway (or its wastes) but access to the equipment will be put into the order as a precaution.
- 57 The Council must also consider the effect on the land served by the new route. The tenant farmer and the land owner are in agreement with the diversion.
- 58 The Council must also consider the effect on agriculture, forestry and diversity of fauna and flora. Part of the definitive line leads over ground that is designated SSSI and part of the new route also leads over SSSI designated land. Natural England have been consulted and do not object to the change in route. Additionally Historic England welcome the removal of the right of way from the hill fort (pedestrian access is retained via NBAV10).

8.0 Environmental Impact of the Recommendation

- 59 There is no environmental impact associated with the recommendation.

9.0 Risk Assessment of the Recommendation

- 60 Risks to the Council are covered at 9.0 Legal and Financial Implications. Risks to the public associated with the recommendation are considered to be nil, infact the new route is likely to be present a lower risk to users.

10.0 Legal and Financial Implications

- 61 Actual costs associated with making an order will be paid.
- 62 If significant objection is received the Council may abandon the Order at no further cost to either the applicant to the Council.
- 63 If the Council refuses to make the order the applicant may seek judicial review against the Council's decision and may succeed if the Council has been unreasonable. Costs can be high for this (c.£50000).
- 64 If the Council makes the order and objections or representations are made the Council will consider the matter at a meeting of the Area Planning Committee. That Committee may decide to abandon the order or may decide to support its confirmation. If the Council supports the Order it will be forwarded to the Secretary of State to determine and the Council will pay costs relating to this. This may be negligible if the case is determined by written representations (a few hours of officer time), around £200 to £500 if determined at a local hearing or between £1000 and £2500 if determined at a public inquiry.

11.0 Equality Impact

- 65 The new route is more accessible than the definitive line.

12.0 Relevance to Council's Business Plan

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

13.0 Safeguarding Considerations

- 67 DEFRA's "Rights of Way Circular (1/09) Guidance for Local Authorities" Version 2, October 2009, states at paragraph 5.5:

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

68 If orders to divert and create rights of way at Norton Bavant are made, Wiltshire Council will follow procedures set out in Schedule 6 of the 1980 Act and in doing so the Council will fulfil its safeguarding responsibilities.

14.0 Public Health Implications

69 No public health implications have been identified in the diversion and creation of Norton Bavant paths 4 and 10.

15.0 Options to Consider

- 70 i) To refuse the application
- ii) To allow the application and make orders under s.119 and s.26 HA80 and s.53A(2) WCA81.

16.0 Reasons for Recommendation

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

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

73 It is necessary to make an Order under s.26 to ensure connectivity of the network.

74 There is no cost to the Council associated with paras 67, 68 and 69.

75 The receipt of objections or representations that are not withdrawn will cause Wiltshire Council to reconsider S.119(6) HA80 at a meeting of the Area Planning Committee giving a second chance for the consideration of Section 6.

17.0 Recommendation

76 **That an Order under S.119 of the Highways Act 1980, S.26 of Highways Act 1980 and S.53A(2) of the Wildlife and Countryside Act 1981 is made in accordance with the application and duly advertised. If no representations or objections are made (or any made are subsequently withdrawn) the Orders should be confirmed and the definitive map and statement altered accordingly.**

Sally Madgwick
Rights of Way Officer
21 July 2015

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1 Descent new path



2 Descent/ascent new path



3 New path



4 New path



5 New path



6 New path



7 New path



8 Current path crosses slope



9 Cross slope



10 Current line of path



11 Current line leads over edge



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