

WILTSHIRE COUNCIL

NORTHERN AREA PLANNING COMMITTEE

30 MARCH 2016

**TOWN AND COUNTRY PLANNING ACT 1990 AND
WILDLIFE AND COUNTRYSIDE ACT 1981
THE WILTSHIRE COUNCIL**

**LANGLEY BURRELL 22 (part) STOPPING UP ORDER AND DEFINITIVE MAP
MODIFICATION ORDER 2015**

Purpose of Report

1. To:
 - (i) Consider the objections and representations received to the making of “Langley Burrell 22 (part) Stopping Up Order and Definitive Map Modification Order 2015” made under Section 257 of the Town and Country Planning Act 1990 and Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination.

Relevance to Council’s Business Plan

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

Background

3. On 10 December 2015 Wiltshire Council granted Full Planning Permission for the construction of a car park and storage area at Parsonage Way, Chippenham. This arose from application 15/04763/FUL and is to allow for the expansion of Wavin Plastics at this site.
4. A location plan is attached at **Appendix A**.
5. Part of public footpath Langley Burrell 22 leads across the site and is coincident with the southerly corner of the car park, the new stockyard area and the landscaped bunded area to the north. The line of the path also crosses two permitted security fence lines. As a result, it is necessary to divert or extinguish the footpath to allow the permitted development to proceed. A plan showing the line of the footpath overlaid onto the Site Layout plan is attached at **Appendix B**.

6. On 13 August 2015 Wiltshire Council received an application from Wavin Limited to extinguish the section of footpath leading across the site and affected by the development.
7. Officers carried out an initial consultation from 20 August to 2 October 2015 and an Order extinguishing the section of footpath was made and advertised from 24 December 2015 until 25 January 2016.
8. The Council's decision report is appended at **Appendix C** and a copy of the Order is appended at **Appendix D**.

Main Considerations for the Council

9. The Order attracted four objections:

(i) Mrs J Mannering 08.01.16

"I object to this order.

I use this footpath sometimes, especially as an alternative route from home to Chippenham town. Footpaths, whether urban or rural are an important part of our national heritage. We hold them in trust for future generations. Once they are stopped up, they are lost forever. As the challenge of climate change becomes more pressing, the existence of low carbon transport routes will become more and more important. It does not constitute sustainable development for the present generation to deny low carbon routes to future generations. Footpaths should only be stopped up if it is absolutely necessary. It is not necessary to stop up this path."

(ii) Mr D Mannering 08.01.16

"I object to the order.

Two key reasons for my objection are that stopping up is not necessary and that stopping up contravenes Wiltshire Council's own policies. The full reasons for my objection are stated at length in the following correspondence with Wiltshire Council:

- *3rd September 2015 e.mail to rightsofway@wiltshire.gov.uk titled PPO enquiry 2015/08*
- *25th September 2015 Attachment to email rightofway@wiltshire.gov.uk titled PPO enquiry re 2015/08*
- *26th November 2015 Email to lee.burman@wiltshire.gov.uk title "Wavin"*
- *9th December 2015 Section 7 of the attachment to the e.mail to members of Wiltshire Council North Planning Committee copied to developmanagement@wiltshire.gov.uk, lee.burman@wiltshire.gov.uk and William Oulton@wiltshire.gov.uk titled "Supplementary note for consideration at planning committee 9th December 2015 to consider Wavin phase 2".*

Also Mr D Mannering 22.01.16

"In addition to the objection letter dated 8th January 2016, I wish to record that a third high level reason for objecting to the proposed closure is the loss of amenity to current and prospective users resident both locally and those from further afield that are visiting Wiltshire. The concern regarding the loss of amenity relates to both functional and recreational uses."

(iii) Mrs J Cook 21.01.16

"I am writing to object to the order to stop up part of footpath LBUR22. My husband and I walk regularly around Chippenham. The extensive network of footpaths is one of the great assets of the area, creating a wealth of recreational circuits. Footpaths in Langley Burrell are particularly valued for the access they provide to the setting of the significant number of listed heritage assets including Kilverts Parsonage which is very close to the footpath you propose to close. It is important to retain these footpaths for the use of present and future generations for their amenity value and the pedestrian access they provide from the town direct into the countryside."

(iv) Ms J Hible, Chippenham Ramblers 24.01.16

"Chippenham Ramblers wish to object to these orders. In our opinion development could easily be carried out without the need to lose part of Langley Burrell 22.

The footpath could be fenced on either side as it crosses the car park with kissing gates (or other suitable path furniture) on either side where it crosses the access road to the stock area. This could be covered by CCTV. Presumably as Wavin are so concerned about the security of the car park and stock areas, there will be CCTV on the car park and stock area and this will be monitored by security personnel in an office on site.

We do not believe it is necessary to stop up the path in order that the site can be developed. We also believe that more effort should be made to incorporate the footpath into the plans rather than determining to divert the path in the first instance."

Comments on the objections

10. There can be no doubt that the rural aspect of the route of this section of Langley Burrell 22 will be lost with the development of the site. Although the route currently leads over fields, when developed, the site will be part car park and part stock yard accessed from a service road to the north. It will be bounded by security fencing and will have an earth bund to the north.
11. Hence, even if it were possible to incorporate the footpath into the site it would not only be disadvantageous to the applicant who would need to manage two secure sites rather than one but it would also provide for the public such a diminished experience from the current route that it could not be justified (it is necessary to balance the loss to the public against the loss to the landowner).
12. Any footpath route, as suggested by Ms Hible, would not only have a restricted feel as it would lead between two high security fences but it would also need to cross an access road and lead over a landscaped bund. As there would be access issues associated with footpath users negotiating the bund it would be necessary to create a breach in the bund. Any breach in the bund would negate the purpose of it as a screen.

13. The alternative route for walkers is not longer (coming from Chippenham 46) 240 metres compared to the existing 248 metres and follows an established footway beside the road. As users would no longer need to walk the 95 metres section of footway beside Parsonage Way the increased distance in footway use is a negligible 25 metres.
14. Given the modern industrial intrusion in a rural landscape that the Wavin site is it cannot reasonably be argued that having to walk through the works is any more advantageous or in historical context as would be walking along the footway beside the road.
15. Members of the Committee are now required to consider the objections received.
16. If the Committee does continue to support the making of the Order it must be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination and the Members of the Committee must decide the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State, i.e.:
 - (i) that the Order be confirmed as made, or
 - (ii) that the Order be confirmed with modification.
17. Where Wiltshire Council no longer supports the making of the Order, Members of the Committee may determine that the Order is withdrawn.
18. This Order is made in the landowner's interest and where members consider that the legal tests for confirmation are made it can recommend that the Order be forwarded to the Secretary of State for determination. However, given budgetary constraints at this time, no legal representation or support can be given to the Order in the event of a public hearing or inquiry.
19. The Public Path Diversion Order is made under Section 257 of the Town and Country Planning Act 1990. The requirements of this section of the Act are set out in full in paragraph 6.0 of the decision report attached at **Appendix C**.

Safeguarding Considerations

20. There are no safeguarding considerations associated with the making of this Order.

Public Health Implications

21. There are no identified public health implications which arise from the proposed extinguishment of part of Langley Burrell 22.

Procurement Implications

22. There are no procurement implications associated with the withdrawal of this Order.

23. In the event this Order is forwarded to the Secretary of State there are a number of opportunities for expenditure that may occur and these are covered in paragraph 32 of this report.

Environmental and Climate Change Considerations

24. There are no environmental or climate change considerations associated with the extinguishment of part of Langley Burrell 22.

Equalities Impact of the Proposal

25. The alternative route available to users of the path is more accessible than the existing as it does not have any stiles (the current route has two) and has a hard surface which remains easy to use at all times of the year.

Risk Assessment

26. There are no identified risks which arise from the proposed extinguishment of part of Langley Burrell 22. The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.
27. Walkers will have to use a section of reserved footway beside the B.4069. However, visibility is good along this section and the distance is relatively short (120 metres) when compared to the length of walk any walker would be doing if walking in this area.

Financial Implications

28. 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 257 of the Town and Country Planning Act 1990. The applicant has agreed in writing to meet the actual costs to the Council in processing the extinguishment order.
29. Where there is an outstanding objection to the making of the Order, the Committee may resolve that Wiltshire Council continues to support the making of the Order, in which case it should be forwarded to the Secretary of State for decision. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is £200 to £300; however, where a local hearing is held the costs to the Council are estimated at £300 to £500 and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation (£300 to £500 without). There is no mechanism by which these costs may be passed to the applicant and any costs must be borne by Wiltshire Council. It is therefore considered appropriate where an Order is made under the Council’s powers to do so in the landowners’ interest that the Council does not provide any legal support for the Order at a hearing or inquiry thus minimising the expenditure of public funds even though it considers that the legal tests have been met.

30. 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. However, where there is a pre-existing grant of planning permission the Council must make very clear its reasons for not proceeding with the Order.

Legal Implications

31. If the Council resolves that it does not support the Order, it may be withdrawn. There is no right of appeal for the applicant; however, clear reasons for the withdrawal must be given as the Council's decision may be open to judicial review. This could be more likely where a grant of planning permission has already been made.
32. Where the Council supports the making of the Order, it must be sent to the Secretary of State for determination, which may lead to the Order being determined by written representations, local hearing or local public inquiry. The Inspector's decision is open to challenge in the High Court.

Options Considered

33. Members may resolve that:
- (i) The Order should be forwarded to the Secretary of State for determination as follows:
 - (a) The Order be confirmed without modification, or
 - (b) The Order be confirmed with modification.
 - (ii) Wiltshire Council no longer supports the making of the Order, in which case the Order should be withdrawn, with clear reasons given as to why Wiltshire Council no longer supports the making of the Order, i.e. why the Order fails to meet the legal tests.

Reason for Proposal

34. It is considered that the loss of this section of Langley Burrell 22 to the public is outweighed by the inconvenience of having to accommodate a footpath through the site. Such a path would not only disadvantage the operation of the site and potentially its security but would provide the public with such a diminished walking experience that there would be a significant loss to them even if the path were retained. In the event that members consider the path should be retained through the site a new planning application would need to be made by Wavin Ltd.
35. An adequate alternative route exists for the public which is easier to use and not any longer.

Proposal

36. That “Langley Burrell 22 (part) Stopping Up Order and Definitive Map Modification Order 2015” is forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination with the recommendation that it is confirmed without modification.

Tracy Carter

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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 – Site Layout Plan

Appendix C – Decision Report

Appendix D – Order and Order Plan