

TOWN AND COUNTRY PLANNING ACT 1990 S.257

THE DIVERSION AND EXTINGUISHMENT OF PARTS OF FOOTPATHS HEYWOOD 6, 7 AND 8 AT HAWKE RIDGE BUSINESS PARK, HEYWOOD, NR WESTBURY

NB Both of the terms *Hawkeridge* and *Hawke Ridge* are used throughout this report as they appear in primary sources. For example the village is called *Hawkeridge* and accordingly the business park is sited at *Hawkeridge*. However, the applicant and landowner is called *Hawke Ridge Business Park Limited* and accordingly they refer to the development as *Hawke Ridge Business Park*. The postal address is therefore likely to be *Hawke Ridge Business Park at Hawkeridge*.

1. Purpose of Report

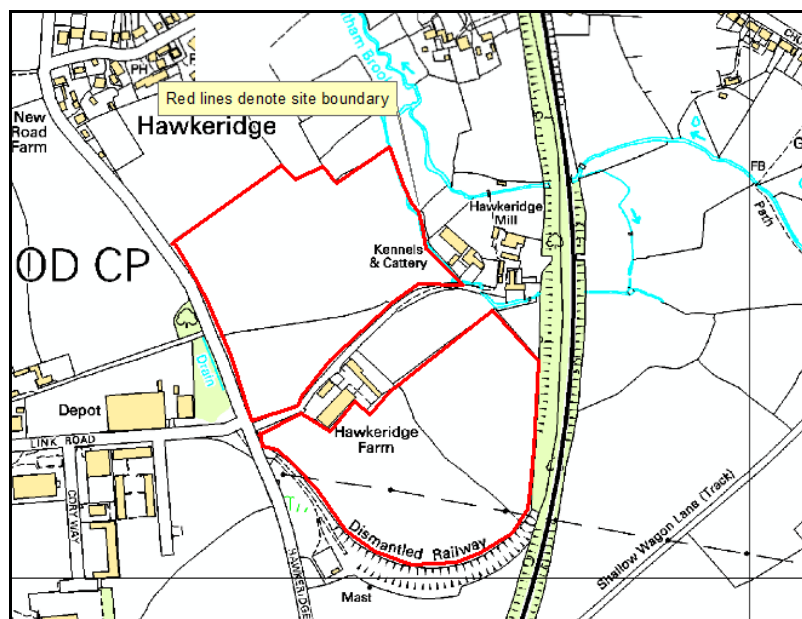
- i) To consider applications made by Hawke Ridge Business Park Limited to divert and extinguish parts of rights of way Heywood 6, 7 and 8.
- ii) Recommend that an Order be made under s.257 of the Town and Country Planning Act 1990 to divert and extinguish those parts of the path affected by the development and to confirm the order if no representations or objections are received.

2. Relevance to Wiltshire Council's Business Plan

- 2.1 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.

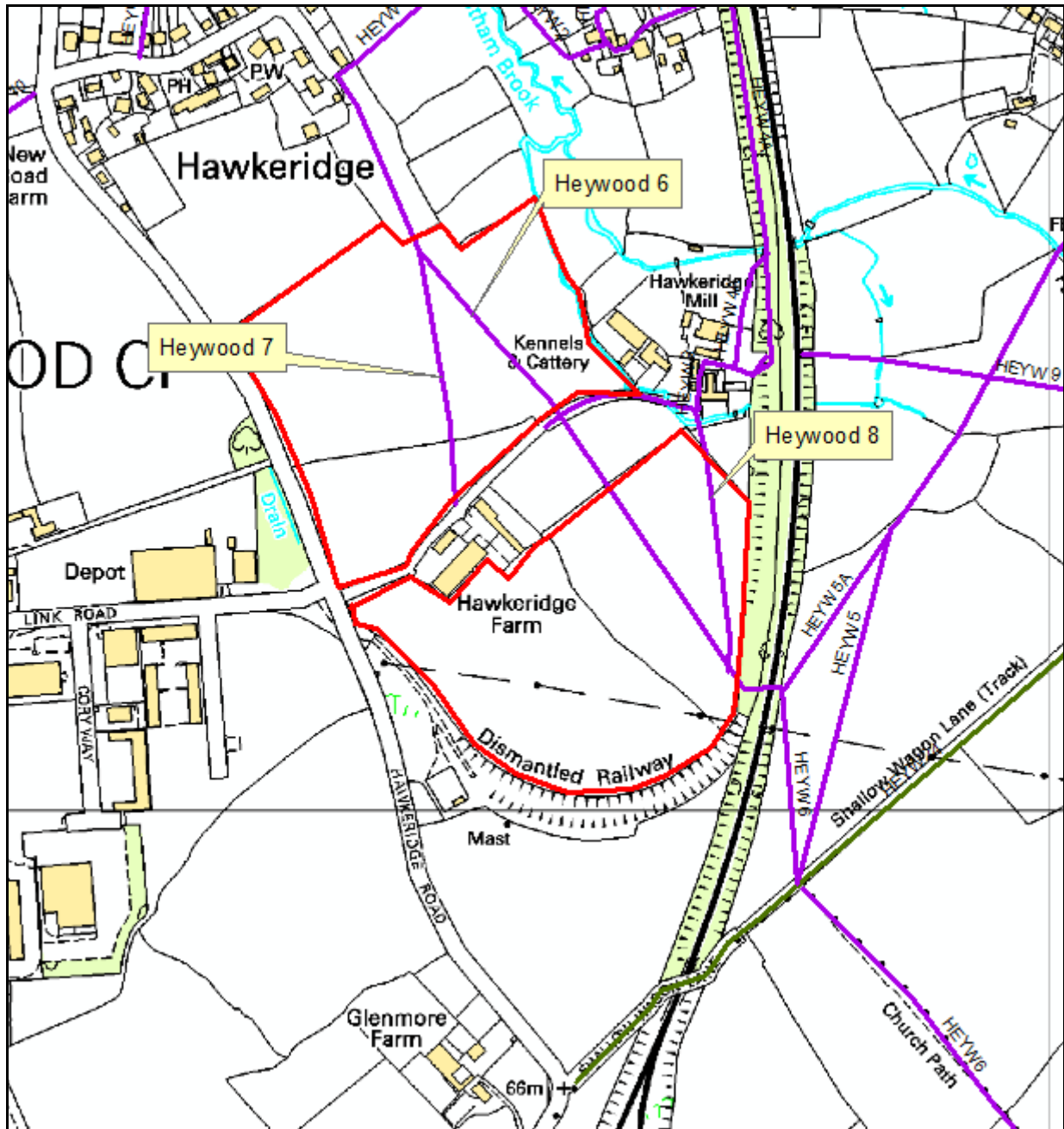
3. Location Plan

- 3.1 Hawke Ridge Business Park is located to the east of Hawkeridge Road (C.7) opposite the entrance to West Wilts Trading Estate. The site is bisected by Mill Lane (u/c 6125) and bordered on the east by the railway line and Bitham Brook and to the south by the dismantled railway.



4. Current Records

4.1 Parts of footpaths Heywood 6, 7 and 8 lead across the site. Below is an extract from working copy of the definitive map (purple lines = footpaths red line = site boundary):



4.2 The definitive statement reads:

Heywood 6 FOOTPATH From the southern end of road u/c 6127 at Hawkeridge leading south east across the junction of road u/c 6125 with path No. 9 near Hawkeridge Mill, and continuing south east across the Railway then south to a junction with Westbury path No. 6.

Approximate length 823 m

Heywood 7 FOOTPATH From path No. 6 about 229 m south of road u/c 6127 at its junction with path No. 1 at Hawkeridge, leading south to road u/c 6125 opposite Hawkeridge Farm.

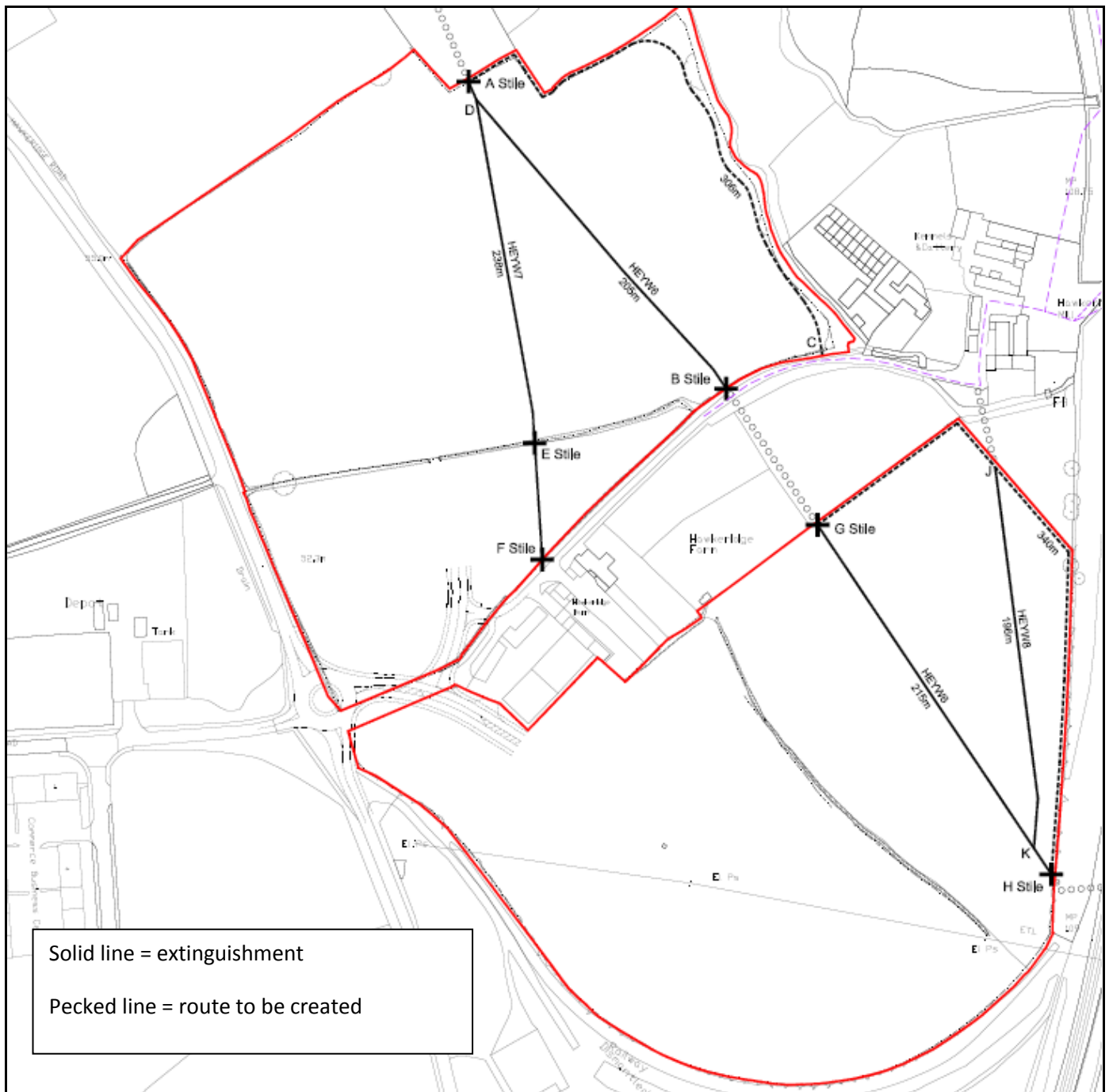
Approximate length 274 m

Heywood 8 FOOTPATH From path No. 9 at Hawkeridge Mill leading south south east to join path No. 6.

Approximate length 247 m

5. Application and Proposed Changes

- 5.1 3 applications have been received from Hawke Ridge Business Park Limited, one to divert part of Heywood path No. 6, one to extinguish Heywood path No. 7 and one to extinguish part of Heywood path No. 8. They are related and considered here concurrently.
- 5.2 It is proposed that Heywood 6 is diverted to a field edge path leading through landscaped areas outside of the business park development site (though within the overall landholding) and that the remaining two sections of footpaths within the developed site are extinguished.



6. Aerial Photographs

6.1 2001



6.2 2006





7. Landowner

- 7.1 The land is registered under title numbers WT235429 and WT 102827 with title absolute held by Hawke Ridge Business Park Limited, 6 Kingsmead Square, Bath, BA1 2AB
- 7.2 There are no tenants or occupiers.

8. Legal Empowerment

- 8.1. The applications have been made under Section 257 of the Town and Country Planning Act 1990, where the footpaths are affected by a permitted development:

“257. Footpaths and bridleways affected by development: orders by other authorities

- (1) *Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out-*

(a) in accordance with planning permission granted under Part III, or

(b) by a government department.

- (2) *An order under this section may, if the competent authority are satisfied that it should do so, provide-*
- (a) *for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;*
 - (b) *for authorising or requiring works to be carried out in relation to any footpath, bridleway or restricted byway for whose stopping up or diversion, creation or improvement provision is made by the order;*
 - (c) *for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath, bridleway or restricted byway;*
 - (d) *for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.*
- (3) *An order may be made under this section authorising the stopping up or diversion of a footpath, bridleway or restricted byway which is temporarily stopped up or diverted under any other enactment.*
- (4) *In this section “competent authority” means-*
- (a) *in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the Secretary of State, who would have had power to grant it; and*
 - (b) *in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.”*

8.2. Section 259 of the Act states:

“259. Confirmation of orders made by other authorities

- (1) *An order made under section 257 or 258 shall not take effect unless confirmed by the Secretary of State, or unless confirmed, as an unopposed order, by the authority who made it.*
- (2) *The Secretary of State shall not confirm any such order unless satisfied as to every matter of which the authority making the order are required under section 257 or, as the case may be, section 258 to be satisfied.*
- (3) *The time specified-*
 - (a) *in an order under section 257 as the time from which a footpath, bridleway or restricted byway is to be stopped up or diverted; or*
 - (b) *in an order under section 258 as the time from which a right of way is to be extinguished,*

shall not be earlier than confirmation of the order.
- (4) *Schedule 14 shall have effect with respect to the confirmation of orders under section 257 or 258 and the publicity for such orders after they are confirmed.”*

8.3. Section 12 of the Growth and Infrastructure Act 2013 amends Part 10 of the Town and Country Planning Act 1990 (highways), as follows:

“12. Stopping up and diversion of public paths

- (1) *Part 10 of the Town and Country Planning Act 1990 (highways) is amended as follows.*
- (2) *In section 257 (footpaths, bridleways and restricted byways affected by other development: orders by other authorities), after subsection (1) insert-*

“(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that-

- (a) *an application for planning permission in respect of development has been made under Part 3, and*
 - (b) *if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.”*
- (3) *In that section, in subsection (4)-*
- (a) *omit the “and” following paragraph (a), and*
 - (b) *after paragraph (b) insert-*
- “(c) in the case of development in respect of which an application for planning permission has been made under Part 3, the local planning authority to whom the application has been made or, in the case of an application made to the Secretary of State under section 62A, the local planning authority to whom the application would otherwise have been made.”*
- (4) *In section 259 (confirmation of orders made by other authorities), after subsection (1) insert-*
- “(1A) An order under section 257(1A) may not be confirmed unless the Secretary of State (or the case may be) the authority is satisfied-*
- (a) *that planning permission in respect of the development has been granted, and*
 - (b) *it is necessary to authorise the stopping up or diversion in order to enable the development to be carried out in accordance with the permission.”*
- (5) *In that section, in subsection (2), for “any such order” substitute “any order under section 257(1) or 258”.*

8.4. Previously it had only been possible to make an order under Section 257 of the Town and Country Planning Act 1990 where planning permission was already granted under part III of the 1990 Act, however the amendment of the 1990 Act under the Growth and Infrastructure Act 2013, also allows an order to be made where an application for planning permission has been made under part III of the 1990 Act and where, if the application is granted, it would

be necessary to divert or extinguish the footpaths in order to enable the development to continue. Any such order can not be confirmed until full planning permission has been granted.

8.5 In this instance outline planning consent has been granted (14/03118/OUT, 14/10780/VAR and 15/04092/VAR) for the Formation of new business park (Class B1, B2 and B8) access and associated works with a variation of condition 3 to enable the development to be implemented on a phased basis.

8.6 Class B1 relates to business office, research and development or any industrial use, B2 relates to general industrial and B8 to storage or distribution.

9. Background

9.1 The Hawkeridge site was identified in a study commissioned by Wiltshire Council in 2011 (a county wide Workspace and Employment Review) as a site with the ability to meet future requirements for B1/B2 and B8 uses in the Westbury and Trowbridge areas.

9.2 The key principles set out in Wiltshire Council's Core Strategy to take forward its policy of meeting likely demands for space from different employment sectors (while overcoming the challenges of out commuting and encouraging a buoyant and resilient urban economy) are outlined as:

- Providing the most sustainable pattern of development that minimises the need to travel and maximises the potential to use sustainable transport;
- Creating the right environment to deliver economic growth, delivering the jobs Wiltshire's population needs locally, and taking a flexible and responsive approach to employment land delivery;
- Phasing development to ensure that jobs and the right infrastructure are delivered at the right time to ensure that out commuting from Wiltshire is not increased, and development does not have a detrimental impact on infrastructure.

9.3 As a result of the Hawkeridge site being one of the very few sites in Wiltshire that is currently available to meet the needs of large businesses, the Council's inward investment team directs enquiries to the Hawkeridge site. In a letter dated 16th November 2015 supporting the applications Wiltshire Council's Head of Service for Economic Growth and Planning supports the diversion and extinguishment of certain footpaths to accommodate the size of businesses likely to require the site and considers there is a risk of losing investment and a significant number of jobs if the development is not deliverable as a result of the public rights across the site

9.4 The application to divert Heywood 6 also includes Statements of Reasons as follows:

"1. This application is made under s.257 (1) of the Town and Country Planning Act 1990 to divert footpath HEYW6 ("the Path"). It is required to facilitate the implantation of outline planning permission (ref 14/031118/OUT), as varied by subsequent permissions 14/10780/VAR and 15/04092/VAR, for the formation of a new business park (Class B1, B2 and B8), access and associated work ("the Consent")."

2. *The Consent has granted a change of use for the entirety of the area of land over which the Path currently runs to provide a new strategic employment facility. It provides for the main access requirements and infrastructure. It then leaves individual building requirements of prospective occupiers to be addressed through subsequent reserved matters applications.*

3. *It is necessary to divert the Path for the following reasons:*

(a) *The scheme permitted by the Consent is intended to cater for large scale users; but would not be economically feasible to develop due to the effects on layout and lettability were the site to continue to be dissected by the Path.*

(b) *There is no realistic prospect that its current route could be appropriately accommodated within the final layout, including its means of enclosure, without some degree of diversion.*

(c) *Providing for a diverted route at this stage will give greater certainty sooner than during the phased construction of the individual buildings, their associated facilities and means of enclosure.*

(d) *The diverted route, although longer, will when constructed offer a safer, more accessible, enjoyable and convenient facility. It will also provide an all weather surface.*

(e) *The diverted route will also provide benefits to tenants of the scheme in terms of security, highway safety and convenience.*

(f) *Unless resolved the current route would unacceptably interfere with the future control and management of the business park.”*

9.5 A similar statement of reasons is given for the extinguishments except at paragraph 3:

“3. *It is necessary to extinguish the relevant part of the Path for the following reasons:*

(a) *The scheme permitted by the Consent is intended to cater for large scale users; but it would not be economically feasible to develop due to the effects on layout and lettability were the site continue to be dissected by the Path.*

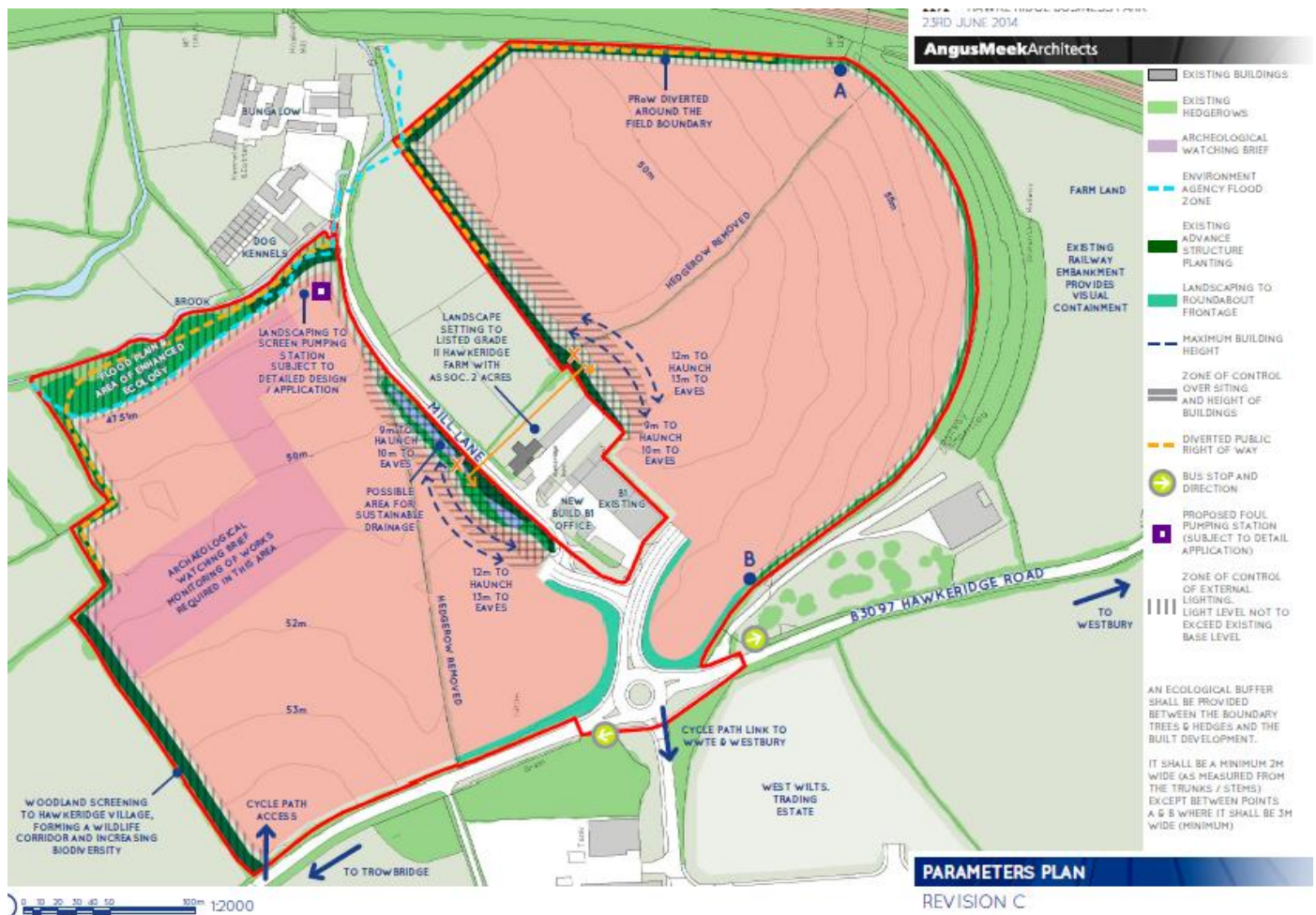
(b) *There is no realistic prospect that the current route of the Path could be appropriately accommodated within the final layout, including its overall means of enclosure, as a result of the phased construction of the individual buildings, their associated facilities and means of enclosure.*

(c) *The diverted route for HEYW6, although longer, will offer a safer, more accessible, enjoyable and convenient facility for future users. It will also provide an all weather surface.*

(d) *Unless resolved the current route would unacceptably interfere with the future control and management of the business park.”*

9.6 During the planning stage proposals relating to public rights of way at this site were clearly shown on a number of documents and plans that form part of the three applications (14/03118/OUT, 14/10780/VAR and 15/04092/VAR) in particular on Parameters plan revision C. Soft and hard landscaping associated with the areas through which the proposed diverted paths lead are the subject of Condition 6.

9.7 Parameters plan Revision C – diverted public rights of way shown by yellow pecked line



9.8 The Landscape Design Principles document (a document to guide subsequent reserved matters applications) refers (at page 2, 3 and 4) to planting schemes around the new diverted footpath and the Design and Access statement dated March 2014 makes reference at pages 4, 5, 8 and 12 to the proposed diversion.

9.9 Accordingly the proposal to make alterations to the public footpaths at this site have been in the public domain for a period of at least 18 months.

9.10 This is in accordance with the advice contained within the Department for Environment Food and Rural affairs Rights of Way Circular 1/09 which advises the following:

“7. Planning Permission and public rights of way

7.5it is likely to be to the benefit of the planning authority, highway authority and the developer to be aware of the impact of a development scheme on the local rights of way network as early as possible in the process.

7.6 Any potential disadvantages to the public arising from alternative arrangements proposed for an affected right of way can be minimised by means of early liaison between the developer, planning and highway authorities, local amenity groups, prescribed organisations and affected individuals. This course of action will produce an acceptable scheme in many circumstances and enable the eventual proposals to gain a wide measure of public acceptance. Further, the approach should minimise uncertainty, costs in revising design schemes and delays. The most significant delay risked if the approach is not

followed is due to the fact that the highway authority does not have the power to confirm an opposed public path order proposing to revise an affected right of way. An order made to divert or extinguish a right of way, made as the result of the granting of planning permission, that is opposed will have to be submitted to the Secretary of State for a decision on whether or not it should be confirmed and this will impose significant, unavoidable delays to the scheme.

7.7 The early and effective consultation described in paragraph 7.6 should ensure that all matters of concern are raised without delay and dealt with, and if agreement can be reached, any statutory procedures associated with the making and confirmation of the necessary order can be initiated without delay once the details have been approved.

7.8 In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.”

10. Consultation

10.1 In response to the applications for public path orders affecting the rights of way at Hawkeridge Business Park an initial consultation was carried out. The following letter was circulated:

***“Town and Country Planning Act 1990
Applications to divert and extinguish public footpaths at Hawkeridge***

Wiltshire Council has received applications to divert part of footpath Heywood 6 and to extinguish footpath Heywood 7 and part of footpath Heywood 8 to facilitate the implementation of outline planning permission (ref. 14/031118/OUT) as varied by subsequent permissions (ref. 14/10780/VAR and 15/04092/VAR), for the formation of a new business park, access and associated work.

Please find enclosed a plan showing the proposed changes to the network and the statements of reasons provided by the applicant. Please note that part of footpath Heywood 6 between points B and G is not affected by the planning consent and therefore not included in these applications.

The Department for Environment, Food and Rural Affairs Rights of Way Circular 1/09 at 7.8 states:

“In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.”

The proposed new paths will lead through landscaped and open areas and plans showing these areas are also included.

I would be grateful to receive any comments or observations on the applications by the end of January 2016.”

10.2 A copy of the plan at 5.2 was also circulated along with Statements of Reasons (9.4 and 9.5) and the following plan showing the position of the proposed diversions in relation to the planting:

10.4 The following were consulted:

The Auto Cycle Union
Commons Open Spaces & Footpaths
Wiltshire Bridleways Association
Cycling Touring Club
British Horse Society
Heywood Parish Council
Wiltshire Councillor Jerry Wickham
British Horse Society Wiltshire
Byways and Bridleways Trust
British Driving Society
Wiltshire Council Senior Rights of Way Warden
Ramblers Association Wiltshire
Ramblers Association West Wiltshire
Wiltshire Council County Ecologist
Open Spaces Society Wiltshire
Wales and West Utilities
Scottish and Southern Energy
Wessex Water
Chris Wordsworth, Hawkeridge Business Park Ltd
Tracey Merrett, Merrett & Co
The Owner/occupier Hawkeridge Barn
The Owner/occupier Hawkeridge Farm
The Owner/occupier Hawkeridge Mill
The Owner/occupier Annexe Hawkeridge Mill
The Owner/occupier 3 Hawkeridge Mill Cottage
The Owner/occupier 4 Hawkeridge Mill Cottage
The Owner/occupier Hawkeridge Mill Farm
The Owner/occupier Phoenix Boarding Kennels and Cattery
Rigg Construction Southern Ltd Mill Lane
National Grid gas and electric
Openreach (BT)
Digdat.co.uk
LinesearchbeforeUdig.co.uk

11. Consultation Responses

11.1 Statutory Undertakers

No apparatus was identified as being affected by the following:

Virgin Media
BT Openreach
Scottish and Southern Energy
Wessex Water
Wales and West Utilities
Southern Gas Networks

National Grid

LinsearchbeforeUdig (covers a wide range of cable and pipeline supplies)

A number of services utilise Mill Lane and Heywood 9 but not the footpaths affected by these applications.

11.2 Heywood Parish Council 29.01.16

“As requested, here is the response from Heywood Parish Council regarding the rerouting of foot paths following its meeting on 11 January.

Heywood Parish Council has reservations about the route of the footpath which is causing flooding this winter at point J (document 32-RPD003 RevA).

They should not be financially responsible for any maintenance of the business park.

They do not wish there to be picnic tables in the breakout area.”

11.3 Case Officer's Comment

Heywood Parish Council will not be financially responsible for any aspect of maintenance relating to the rights of way. The procedure prescribed by the Town and Country Planning Act 1990 and the Town and Country Planning (Public Path Orders) Regulations 1993 SI NO 10 requires the new paths to be constructed to a standard that is acceptable to Wiltshire Council. Only when these paths are certified as being acceptable to the Council (and that acceptance advertised by way of public notice) does the Order come into force and any path become a publicly maintainable highway for which Wiltshire Council, as the highway authority, is responsible for.

- 11.4 Acceptance of the new paths would be subject to adequate drainage provision. Additionally the new paths will have a porous all weather surface that drains well, ensuring easier and cleaner all year round access than is currently possible.
- 11.5 Picnic tables would not be acceptable on the right of way (as they would be an obstruction) but may be placed at the side by the landowner. Any representations regarding these should be made to the developer who is quite likely to be content not to provide them.

12. Main Considerations for the Council

i) Whether it is necessary to stop up or divert the footpaths in order to enable development to be carried out

- 12.1 The planning permission allows the change in use from agricultural land to a business park. The permission also allows the development to be implemented on a phased basis.
- 12.2 Any buildings to be constructed within the business park will be considered as Reserved Matters and may be of any number. For example the site may be developed for the benefit of one occupier or it may be developed for the needs of multiple occupiers carrying out diverse activities.
- 12.3 The phased nature of the development means it is impracticable to consider the diversion and extinguishment of the rights of way in a similarly phased manner. The site is bisected by public footpaths on both sides of Mill Lane and unless they are considered

simultaneously it is considered that it would be impossible for the development to proceed in a reasonable manner and timescale.

- 12.4 There is a fundamental incompatibility with the existence of public footpaths within a secure site and given the change in use from agricultural land to a use that will involve buildings, car parking, vehicle movements, heavy goods vehicle deliveries and activities associated with industry (for example fork lift movements) it is considered advantageous to the public to consider the diversion of the routes as a whole. Even if the developer were able to sequentially design a site that included the rights of way it is inevitable that the resultant routes would have a significant number of 'dog legs', a loss of purpose and present a considerable nuisance and danger at road crossings and pavements for both the user of the path and the users of the business park.
- 12.5 Additionally Defra's Guidance contained in Rights of Way Circular 1/09 at 7.8 expressly states that the Council should "avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic"
- 12.6 Whilst it is clear that Section 257 of the Town and Country Planning Act does not permit the wholesale removal of rights of way from areas unaffected by planning permission, in this instance it is considered that the grant of permission for a phased development is unproceedable until the rights of way are moved from the area included in the permission. Hence it is necessary to allow the development to proceed.

ii) The disadvantages or loss likely to arise as a result of the development

- 12.7 The development of this green field site is a complete loss to anyone wishing to walk in the countryside at this site. The surrounding environment will change from a tranquil agricultural landscape to a built one with large buildings, vehicle movements, lighting and at times, increased noise. The rights of way through the site are currently likely to be used for recreational use and officers consider that this use is unlikely to change to any great degree. The footpaths form parts of links to residential developments at Westbury with the village of Hawkeridge (which has a village pub) and those at Yarnbrook, North Bradley and Trowbridge. Incorporation of the paths in a longer walk, taking in perhaps the village pub is certainly possible but the main use is likely to be from regular walkers (especially dog walkers) from Hawkeridge or the outskirts of Westbury.
- 12.8 A number of respondents during the planning application process highlighted that Heywood 6 is a historic path called North House Drove and that its historic line should be preserved as it is a medieval route. Officers have examined a number of historic documents relating to the route as the name North House Drove is suggestive of a higher public right than footpath and this would need to be addressed in any legal order made.
- 12.9 The footpath that is Heywood path no 6 was awarded as a public footway in the Westbury Inclosure Award of 1808. The footway was awarded within a private carriage road and driftway called North House Road, No XXXVIII on the plan. No evidence was found that supported it being a medieval route though it is accepted that this is possible.
- 12.10 Although the wide route that was North House Road persisted in part (though not over the land affected by this development) as a feature on maps into the 20th century no evidence

of any higher public rights than footpath have been found. It is therefore considered safe to proceed with the extinguishment and creation of footpath rights only.

- 12.11 The historic character of the route across the land to be developed was lost some time ago, certainly by 1884 the wide road within which the footpath ran had been included in a larger field, the footpath just becoming a route across it. The historic character of the route is preserved north west of the development site (leading towards Hawkeridge) but not across the development site. Additionally extensive views of the Grade II listed Farmhouse can be had from that part of the route not affected by this application as it leads across the land immediately to the east of the house on its historic course.
- 12.12 As a result of the existing loss of character of the route through the site it is considered that the retention of the historic line where it crosses the development site is not a substantive consideration and one that would impose an unnecessary constraint on the design of the development and hence its ability to proceed.
- 12.13 It is considered that the advantages of the diversion for the applicant outweigh the advantage of retaining a historic line through a heavily developed site.

iii) Alternative routes

- 12.13 The development will be accessed by road (utilising the Mill Lane entrance) and a new road junction is to be provided. There will be provision for cycle access at this junction.
- 12.14 The proposed new footpath routes over the planted and landscaped edges of the site form the alternative routes for users of footpaths 6, 7 and 8.
- 12.15 A number of aerial photographs (2001, 2006 and 2014) have been viewed and are included in this report at paragraph 6. The lack of evidence of tracks on the ground arising from use supports that these routes are lightly used. It is also likely that when faced with walking across the ploughed and/or cropped fields the public have walked the field edges anyway. These routes were certainly the preferred options when officers viewed the site in the spring of 2015. The applicant claims that Heywood 7 was obstructed until recently cleared.
- 12.16 It is noted that connecting footpath Heywood 8 is obstructed at Hawkeridge Mill. Wiltshire Council has received complaints from the public relating to this obstruction and as a result action is being taken to make the path available. With this path available the proposed diversion will be advantageous for the public as it will enable them to link the footpaths without having to walk along parts of Mill Lane as they currently now have to do.
- 12.17 In any event, in considering the merits of the diversion the Council should consider the route as being free from temporary obstructions. Although it is only s.118 of the Highways Act 1980 that specifies that for the purposes of the section any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded it is widely held that this approach should be used for other public path orders.
- 12.18 Accordingly the alternative routes leading along the north eastern boundary of the site offer a surfaced route within a green corridor linking the village of Hawkeridge with the settlement at Hawkeridge Mill, the railway line and the wider network beyond. Additionally the proposed route will retain and enhance the rural nature of the existing route allowing users to avoid the busy built environment of the business park.

- 12.19 The parish council raised concerns over the drainage of the proposed new route. The Environment Agency had no objections subject to conditions and informative related to flooding. These can be found at Condition 28 (15/04092/VAR) and Informative 3, 4 and 5. The area to the north of Mill Lane (towards Hawkeridge) is described as “flood plain and area of enhanced ecology”.
- 12.20 Wiltshire Council’s rights of way warden has visited the site and considers it suitable for a footpath route subject to it being built to his specified standard. Only after the route is built and approved would any order come into effect and the route become a highway maintainable at public expense.
- 12.21 The proposed diverted route is longer than the existing. If walking from one end of the development site (Hawkeridge end to the railway line) a walker would walk an additional 240 metres. The route is more accessible than the existing (fewer stiles) and does not involve any additional gradient. Since the existing routes are unlikely to have been used for direct and immediate access to anywhere any increase in the distance is only likely to be beneficial for those who use the routes for exercise, either for themselves or perhaps their dog.

iv) Environmental impact on the recommendation

- 12.22 The environmental impact of the proposed diversion was considered at the time of the planning application by Wiltshire Council, the Environment Agency and Natural England and any concerns raised have been addressed as part of the planning consent.

v) Risk assessment

- 12.23 Use of the proposed new routes is likely to present a significantly lower risk to the public than use of any route leading through the business park. By moving the public footpath crossing point of Mill Lane to the boundary of the site there is also a reduced risk associated with crossing Mill Lane (as traffic is likely to be lighter at this point than at the end of Heywood 7).
- 12.24 The proposed diversion leads around a turning area provided for refuse collections from Hawkeridge Mill properties, however, these movements are likely to be only once or twice a week, conducted at slow speed by vehicles with cameras and will be very audible and visible for people on the ground. The risk of any incident arising is considered minimal.

vi) Legal considerations and financial considerations

- 12.25 Although the making of public path diversion orders is a power of the Council and not a duty, in places where the Council is a unitary authority the duty is implied where a development affecting rights of way has been permitted. Defra’s Rights of Way Circular 1/09 states at 7.15:

“...Having granted planning permission for development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm and order.....”

- 12.26 The Council is required to consider the advantages and disadvantages of the proposal to both the landowner and the public.

- 12.27 If the Council refuses to make an Order without good reasons it is liable to judicial review and may suffer costs in the region of £50,000.
- 12.28 If the Council makes an Order but refuses to confirm it without good reasons it is liable to judicial review and may suffer costs in the region of £50,000.
- 12.29 If the Council makes an Order which attracts objections it will not be able to confirm the order but may decide to abandon it (in which case it may be liable to judicial review) or to forward it to the Secretary of State for determination.
- 12.30 The Order may then be determined by written representations (which is likely to have no or negligible additional cost), at a public hearing (at a small cost to the Council – between £50 and £300) or at a public inquiry where if the Council instructs Counsel the cost is likely to be around £3000.
- 12.31 The applicant will pay a fixed fee for the Council's services related to making and advertising the order or orders but cannot be charged for any additional costs associated with the order or orders being determined by the Secretary of State.

vii) Equality impact

- 12.32 The Council is under a duty to provide the least restrictive access possible for the public. The current routes on the site all require the negotiation of a number of stiles and walking over agricultural land. Stiles form the most restrictive form of access for a path and accordingly officers have requested that any new routes provided are free from limitation or restriction.
- 12.33 This is possible where the path crosses the applicant's land and there will be no stiles or gates associated with the new path (i.e. at the northern crossing point of Mill Lane). However, a number of structures along the current route are outside of the control of the applicant as they are on boundary fences and form part of the route unaffected by this order.
- 12.34 It is therefore not possible to remove all stiles from the route other than where affected by the Order. However, the applicant has indicated that subject to the agreement of adjoining landowners they would be happy to have kissing gates at land boundaries to improve public access.

viii) Safeguarding implications

- 12.35 There are no implications for safeguarding arising from this proposal.

ix) Public health implications

- 12.36 There are no implications for public health arising from this proposal.

13. Options to Consider

- 12.37 Wiltshire Council may decide to refuse the applications.
- 12.38 Wiltshire Council may make an Order under s.257 of the Town and Country Act 1990 to extinguish and divert the paths as applied for.

14. Reasons for Recommendation

- 12.39 Defra guidance is that having granted planning permission the Council must have good reason not to make an order to divert the paths to enable the permitted development to proceed.
- 12.40 The planning permission is for a phased development and it is not considered reasonably practicable to implement this permission within the constraints of having to repeatedly divert public rights of way around buildings, compounds, car parks and estate roads every time an occupier is identified for a bespoke unit.
- 12.41 Even if it were considered possible to do this, the timescales to do it would unreasonably restrict the development making it virtually an unimplementable permission. What is more, the resulting rights of way network would inevitably involve a number of dog legs, crossings of busy areas and use of estate road footways; something Defra guidance says to avoid.
- 12.42 The historic feel of the route of Heywood 6 at the site is already lost in respect of the wide road it once followed (North House Road) and even if it could keep its original course the environment through which it would lead would be one of tall industrial buildings, vehicles, and light and noise intrusion exceeding the existing. Any distant views of Hawkeridge Farm house would also be obscured by the development.
- 12.43 The proposed new route leads around the perimeter of the site through a planted and landscaped area alongside Bitham Brook and will be quieter and more enjoyable to use.
- 12.44 Although it is agreed that it is regrettable that the historic context would be lost, it is apparent that the approved development of the land as a business park leads to an inevitable loss of this anyway and that the best option for the retention of a pleasant walking route would be away from the site.

15. Recommendation

That Wiltshire Council makes a combined Order under s.257 of the Town and Country Planning Act 1990 and s.53 of the Wildlife and Countryside Act 1981 s.53A(2) to extinguish Heywood path no. 7, part of Heywood path no. 8 and to divert part of Heywood path no. 6. If there are no representations or objections the Order should be confirmed.

Sally Madgwick

Rights of Way officer – definitive map

02 February 2016