

SOUTHERN AREA PLANNING COMMITTEE

6 April 2017

HIGHWAYS ACT 1980 and WILDLIFE AND COUNTRYSIDE ACT 1981

**THE WILTSHIRE COUNCIL CITY OF SALISBURY (STRATFORD SUB CASTLE)
SALISBURY FOOTPATH NO. 6 DIVERSION ORDER 2016 AND DEFINITIVE MAP
AND STATEMENT MODIFICATION ORDER 2016**

**THE WILTSHIRE COUNCIL STRATFORD SUB CASTLE FOOTPATH LINKING
SALISBURY 24 WITH SALISBURY 6 EXTINGUISHMENT ORDER 2016**

Purpose of Report

1. To:
 - (i) Consider the eighteen representations and one objection received to the making of The Wiltshire Council City of Salisbury (Stratford sub Castle) Salisbury Footpath No. 6 Diversion Order 2016 and Definitive Map Modification Order 2016 and The Wiltshire Council Stratford sub Castle Footpath Linking Salisbury 24 with Salisbury 6 Extinguishment Order 2016
 - (ii) Recommend that the Orders be forwarded to the Secretary of State for Environment, Food and Rural Affairs with the notification that Wiltshire Council supports the confirmation of both Orders as made.

The Orders have been made concurrently and must be considered together.
The Orders are appended at **Appendix A**.

Relevance to Council's Business Plan

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

Background

3. On 25 October 2016 Wiltshire Council received an application to divert part of footpath Salisbury 6 at Stratford sub Castle.
4. Part of footpath Salisbury 6 is affected by planning permission that has been granted (16/00743/FUL) for the replacement of a garage, alteration of vehicular access and a new boundary wall at Parsonage Farm House and the footpath would need to be diverted to enable the consented development to proceed.

5. However, the recorded route of footpath Salisbury 6 in this area has been obstructed since 1960 (it now passes through two buildings and the gardens of three properties) and since that time the public have used an alternative path which passes broadly parallel to the recorded line but further to the north. The Council has no record of any complaints relating to this situation.
6. This used path passes through the curtilage of a number of properties and a barn area and has two stiles and one gate along its route.
7. The applicant has obtained the agreement of four other landowners affected by both routes to provide just one alternative route which leads north of all the property gardens and along the edge of an adjoining field.
8. The new alternative route has been provided and is in daily use by the public who, almost exclusively, appear to prefer the new route to the old routes (either the definitive line or the unrecorded used route).
9. To protect the landowners from this third route acquiring public rights before the other routes are extinguished the route has been signed as a permissive route. This has the effect of preventing a dedication by statute or at common law.
10. If the Orders are confirmed the route would be re-signed as a public footpath and would no longer be subject to a revocable permission. Copies of the Orders and Order plans are appended here at **Appendix A**.
11. Two Orders were duly advertised, one to divert Salisbury 6 onto the new route and the other to extinguish the unrecorded route. They have attracted one objection that has not been withdrawn. Eighteen representations in support have also been received.
12. A copy of the decision to make the Orders is appended at **Appendix B**.
13. Wiltshire Council may not confirm any Orders that have been objected to and must now consider whether it supports the Orders or not. As the making of Orders under Sections 118 and 119 are a power of the Council and not a duty, if the Council no longer supports the Orders the Orders may be abandoned.

Main Considerations for the Council

14. The law relating to these Orders is fully laid out in Section 6.0 of **Appendix B**. The legal tests contained within Sections 118 and 119 of the Highways Act 1980 must now be re-considered with regard to the representations and objection received.

15. Representations

(1) Mr and Mrs R Winson, Stratford sub Castle

"We are writing to you in connection with an application to divert a local footpath that is currently being considered by Wiltshire Council.

We have lived at Stratford sub Castle for 3 years and being keen walkers have explored all of the local footpaths. Last year we noted that an application had

been submitted to divert the nearest footpath to our home, the one that runs from behind Dairy Cottage towards St Lawrence Church. The landowners have opened up a permissive path on the line of the proposed route so it very easy to see what an improvement over the old route it would be.

In our opinion the main benefits will be:

- *The proposed path will be more open than the old narrower path that gave one a sense of being 'hemmed in' between fences, houses, a barn and stabling;*
- *an improved walking surface on a higher elevation that will be better drained than the old path that was frequently muddy/water logged;*
- *improved views across the fields to Old Sarum Iron Age Fort and towards St Lawrence Church;*
- *there will not be any stiles on the proposed route, which our young grandson finds difficult to climb;*
- *the footpath will be further away from Stratford Road and any resulting traffic noise.*

We therefore fully support the current proposal to divert the footpath."

(2) Wiltshire Councillor Mary Douglas

"As the Wiltshire Councillor for this area, I would like to formally put on record my support for the proposed footpath alteration."

(3) Tamsin Gray, Stratford sub Castle

"I am writing in favour of the amended footpath below Old Sarum – footpath Salisbury 6.

We live in Stratford sub castle and often take the kids out walking in the local area, especially up and around Old Sarum. The revised path is so much more pleasant to walk now this runs on the field side of the farm buildings with open views of Old Sarum, instead of down a narrow, muddy path. It is also easier to access with a buggy as there are no gates or stiles.

I hope that the application is approved, as this will benefit all walkers using this path."

(4) Mr B Richardson, Salisbury

"As a recent resident of Stratford sub Castle, I write in support of the above application to confirm the revised pathway. This has been in use for some time and is supported by County officials, the Ramblers Association and residents alike. Situated on the field side of the buildings with clear views of Old Sarum and free from styles or gates, it is in every way more satisfactory than the pathway shown on the map which snakes through private gardens."

(5) Pam Roquette, Co-ordinator Salisbury Walking for Health

“Cllr. John Walsh has asked me to write to you in support of the diversion of footpath SALS6. The reason for my involvement is that I am the Co-ordinator for Salisbury Walking for Health which leads walks in the Salisbury area for groups, with a particular emphasis on keeping people active into older life. Many of them have some mobility difficulties and stiles are a particular problem.

The original route of SALS6 had a number of stiles which had fallen into disrepair and so was no longer suitable for our group of walkers. When I raised the issue with Nick Cowen about the possibility of replacing the stiles with kissing gates he informed me of the planned diversion which I supported as it solved the problem of the stiles and provided a pleasant alternative route with views of Old Sarum.

I understand that the ‘Permissive Path’ designation is purely temporary until such time as the legal process of path diversion has been completed after which it will become the new Right of Way. Is this still the case?

The correspondence with the objector, Ms Penny Fulton, is somewhat confusing but I do have one query which she has raised and concerns the wording used on the Council website relating to this path diversion. It says under ‘Reasons... the definitive line has not been available since 1960, the proposed line has been the used route.’ Where can I read the full advertisement?

I remain fully supportive of this diversion but as this lady is going to challenge it I wanted to be sure that this statement is in fact correct before it goes any further. Perhaps you could explain exactly what is meant. As far as I am aware the definitive path passed on the SW side of the barn not to the NE side which is the line of the new permissive path.”

Officers responded to explain that the Permissive Path signage would only be relevant to the point when the Orders were confirmed and the route certified, that the full advertisement could be found in the Salisbury Journal and on site (and a copy was sent to Ms Roquette) and that the definitive line was a line further south west of the used route but that in any event both routes passed on the SW side of the barn with the ‘new’ route passing on the NE side.

(6) Mr and Mrs B Weatherley

“We write in strong support of the proposed diversion to widen the footpath to benefit the entire village of Stratford sub Castle. It would make it more family friendly, open up the beautiful views and would avoid gates and styles.”

(7) Mr and Mrs B Sammons, Stratford sub Castle

“I am writing to express our support for the changes to the above footpath. As dog walkers we have regularly used the ‘old’ path but find the proposed new one to be much more accessible since it is so much wider and also more easy to navigate because there isn’t a stile; as we get old climbing becomes more hazardous! There is also the added advantage that the widened footpath is more accessible for disabled people.”

(8) Ms M Yeung, Stratford sub Castle

"I would like to say how pleased I am that this footpath has been moved and now continues behind the barn at Stratford sub Castle. The new position allows much easier access as there are no styles, does not suffer from mud as the farmyard does and there is no danger of my dogs running onto the road. It is also better for the people using the barn and stables as they are no longer inconvenienced by walkers and dogs."

(9) Janet Brownlie – walker and tenant of the barn, stables and fields

19 January 2017 "As a regular user of the above footpath I strongly support the proposal to divert it. The new one is a huge improvement on the existing one, being wider, straighter and without the stile (also being wider it affords wheelchair access, and is much better for dog walkers, especially those with numerous pooches!)."

30 January 2017 "Further to my email of 19th January, I would like to augment my reasons for supporting the diversion of the existing footpath to the new one in my capacity as tenant of Mr and Mrs Harrison and Mr Nick Croome.

I have rented the 9 acre field from them since 2005 for grazing my ponies, but have kept ponies at Parsonage Farm for over 60 years (intermittently). This field is bordered by two footpaths, one leading to Old Sarum and the other which has currently been in use for many years and is now being proposed for diversion.

The proposed diversion has my full support and will be of benefit to me in several ways. Firstly, the creation of the proposed footpath has resulted in the splitting of the field into a smaller lower paddock and a larger field. This will be invaluable in controlling the weight of the ponies, especially in the summer when too much grass can cause laminitis, which is a painful condition of the feet.

Secondly, my ponies are stabled at night which entails turning them out in the morning and bringing them in at night. To access the fields from the stables I use the unnumbered footpath, and although this is of the correct width it is certainly not wide enough for a pony, their handler and a walker, especially if they have dogs with them, as many do. (All concerned become understandably nervous in this situation) Also with so many users of this rather narrow path it becomes very muddy, poached up and uneven, leading to justifiable complaints. It is far better for walkers to use the new proposed route. Mr and Mrs Harrison do not intend to close off to me the part of the unnumbered footpath affected by the poaching and this access to the stabling will continue to be available to me.

Thirdly, there is a certain amount of vehicular traffic in the farmyard which is currently crossed by the unnumbered footpath. This traffic is associated with my ponies, other farm use and by the joint owners of the farm, so consequently it would be much safer if walkers were kept away from this area and used the proposed route.

Finally, although a minor point, I have occasionally suffered from theft of equipment from the barn adjoining the footpath and use of the proposed route is likely to lessen this in that visual access to the barn is restricted.

I hope these points will be taken into consideration."

(10) Mr S Brown, Stratford sub Castle

"I write to support the re-routing of the footpath Sal 6 in Stratford sub Castle to the new alignment as currently fenced. We have lived in Stratford sub Castle since 1985 and regularly use the path."

(11) Dr and Mrs K O'Connor, Stratford sub Castle

"We have lived across the road from this footpath for 30 years and fully support the wish of the landowners to make the footpath that is actually used the officially recognised route."

(12) Mr and Mrs N James, Stratford sub Castle

Originally submitted an objection but withdrew it as follows:

"We (Noel and I) are now very happy to say "we withdraw our objections to this change as we see the change is in fact exactly what we wanted for the people of Salisbury going forward, the permissive way to become a permanent and much nicer right of way."

(13) Ms S Peto Bostick, Dorset (parents live in Stratford sub Castle)

"I write in strong support of the proposed diversion that is planned to widen the footpath. This is an excellent plan that would benefit the entire village of Stratford sub Castle making it more family friendly, avoiding gates and stiles and encouraging the use and appreciation of the Wiltshire Countryside."

(14) Mr and Mrs J Hobson, Salisbury

"I am writing in support of the revised footpath 6 Stratford sub Castle. My husband and I are regular walkers on this path and find this route a great improvement. There are no stiles or gates to negotiate which makes the path a much more relaxed proposition for us. We are both in our mid to late sixties and walking is our main exercise and this route currently is a pleasure. Please bring these comments to the relevant authority."

(15) Ms L Pender, Stratford sub Castle

"I am writing to support the diversion of footpath Sal 1 (sic). As well as being an improvement on the present footpath it is also very wheelchair and disability friendly as there are no stiles or gates."

(16) Mr and Mrs D Pullen, Stratford sub Castle

"We are writing to support the application to amend the route of this footpath through Stratford sub Castle. As residents of Stratford, my wife and I have used this footpath on a daily basis for decades. The revised route gives many benefits to users. It is straighter and more logical and avoids the unnecessary dog-leg around a barn, giving uninterrupted views of Old Sarum. The path is much wider as its most narrow part and therefore far less muddy at this time of

year. It also removes 2 stiles from the path which will be welcomed by elderly walkers and those using buggies.

With these benefits in mind, we hope the new route will be accepted without too much delay.”

(17) Ms C Weatherley

“I write in strong support of the proposed diversion to widen the footpath to benefit the entire village of Stratford sub Castle. It would make it more family friendly, open up the beautiful vista and would avoid gates and stiles.”

(18) Mr and Mrs. Potter, Stratford sub Castle

“I am writing to say I am very happy with the deviation to this footpath. Indeed it is actually safer as there is no stile to get over!”

“The new route for Footpath Sal 6 is a great improvement as the route is now more accessible”.

16. Objections

Two objections were duly made but subsequently withdrawn. These were from Mr and Mrs N James (who subsequently made a representation in support) and Dr A Baxter who wrote on 31 January 2017:

“Having read the decision report in detail, I can see that the issues raised in my original email have either been addressed or will be addressed shortly. As such, I am withdrawing my objection to the removal of footpath No. 6 Stratford sub Castle.”

17. One objection remains. This is from Ms P Fulton of Salisbury. Ms Fulton has sent a number of e-mails and a postal submission, all of which are attached here at **Appendix C**. Her points of objection are wide ranging and various.

Comments on the representations and objection

18. Members of the Committee are now required to consider the representations and objection received.
19. Members are asked to bear in mind the legal tests associated with s.118 (extinguishment) and s.119 (diversion) of the Highways Act 1980. The tests in s.118 require the Council to consider whether the path is needed or likely to be needed for public use and the effects of any closure of the way on any land served by the right of way. The s.118 Order has been made concurrently with the s.119 Order but the Council must also consider the effects of the extinguishment apart from the diversion. The Council must also consider any provisions in the Rights of Way Improvement Plan.
20. The tests within s.119 (diversion) in relation to the confirmation of the Order require the Council to be satisfied that the diversion is expedient as detailed in s.119(1) and (2) i.e. relating to interest of the landowner and whether any new

termination point is substantially as convenient and whether the new path or way will not be substantially less convenient for the public. Further, that it is expedient to confirm the Order having regard to the effect which the diversion will have on public enjoyment of the path or way, the effect on land affected by the removal of the 'old' path and the effect on land affected by the addition of the 'new' path.

21. In the Council's Decision Report to make the Orders (**Appendix B**) all of these considerations were made and can be found at Section 7.
22. The representations serve to confirm the view of officers in that report, especially with regard to the convenience of the new route and the improved enjoyment of the route as a whole when the 'new' path is used as a part of it.
23. The objection (**Appendix C**) raises almost no matters that are relevant to the confirmation of either Order. Although Ms Fulton prefers the used route (as proposed for extinguishment in the s.118 Order) to the 'new' route it is clear that the majority of respondents prefer the 'new' route for a variety of reasons. The provision of the 'new' route means the public do not need to use either the old used route or the definitive line (both of which suffer from reduced accessibility and less enjoyable views) and accordingly it is considered that the public will not need to use either the used or definitive routes in the future. Although Ms Fulton raises concerns over the tenant's (Ms Brownlie) access to the stables and barn as a result of the 'used' route being extinguished, it is clear from Ms Brownlie's response that she very much approves of the proposals and can see great advantages in them both as a tenant and as a walker.
24. Officers highlighted the irrelevancies of the objections in a letter to Ms Fulton dated 3 February 2017 (see below) and invited her to withdraw her objection, however no response was received.

"Further to the advertisement of the above Orders the Council has received one objection (from yourself) to the Orders and 15 representations in support of the Orders. Unless the objection is withdrawn the Order may only be confirmed by the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA).

It is the usual practice of the Council, in the interests of preserving public funds, where objections to an Order are either irrelevant to the law being applied or are clearly outweighed by other evidence, to seek the withdrawal of the objections and this letter asks you consider withdrawing your objection after consideration of the points outlined below.

*(i) **Costs** The applicant for the Orders pays all associated costs related to the making and confirmation of an Order. Hence there is no expenditure of public funds where the Order receives no objections or any received are withdrawn. Where an objection is received and sustained the Council may not re-charge costs related to the process of determination SoSEFRA. These costs may be as high as £3,000 and must be funded from public funds.*

*(ii) **Planning and Development Concerns** While officers have sympathies with your concerns relating to the spread of development in rural areas these matters are not relevant to these Orders and will not be considered by SoSEFRA. The*

forum for objection to such matters is the public consultation stage of the planning application process and, in the case of the garage at this site, this has passed.

(iii) **Permissive routes** Although the proposed diversion route is currently signed as a permissive path in the event that the Orders are confirmed these signs will be removed and the way will become a public right of way giving the public a right to pass and repass that may only be changed by another legal Order. Had the landowner not put these signs in place while allowing the public to use the route he would have risked another public right of way being formed giving the properties three rights of way all within a few metres of each other.

(iv) **Motivation of the applicant** This matter is irrelevant for the purposes of s.119 and s.118 of the Highways Act 1980 and would be disregarded by SoSEFRA. What is important is whether the legal tests contained in Sections 118 and 119 are met. It is both the officers' view and that of the fifteen people who made representations that they are more than adequately met.

(v) **Duplicity** Two Orders have been made as this is the only way to address the issues at this location. One Order diverts the definitive line to the proposed new path and the other Order extinguishes any rights that may have been acquired over the unrecorded route the public have used in the past. It is appreciated that this may appear confusing but this is the correct approach.

(vi) **The View of the Tenant** The tenant of the land has written to the Council expressing support for the Order which improves the way she may manage the grazing and improves her ability to control access and the security of the barn and stables that she uses.

(vii) **Consultation** The Council can ably demonstrate that it has consulted not only in accordance with the legislation but far wider than is required by law. Any view that a more extensive consultation is required may be valid in the wider context but is not a matter that can be addressed by SoSEFRA who will only work within the existing statutory framework.

If you are minded to withdraw your objection I would be pleased to hear from you within 14 days of the date of this letter. However, if I do not hear from you I will commence the unfunded part of the process and refer the matter to the Southern Area Planning Committee who will consider the Orders at a public meeting. I will of course keep you informed as to the date and venue."

Safeguarding Considerations

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

Public Health Implications

26. There are no identified public health implications which arise from the confirmation of the making of this Order.

Corporate Procurement Implications

27. In the event this Order is forwarded to the Secretary of State there are a number of opportunities for expenditure that may occur and these are covered in paragraphs 31 to 34 of this report.

Environmental and Climate Change Considerations

28. There are no environmental or climate change concerns associated with the confirmation of the making of this Order.

Equalities Impact of the Proposal

29. The new route is more accessible than the definitive line or the route to be extinguished and would therefore be more accessible for walkers with mobility or sight impairments.

Risk Assessment

30. There are no identified risks which arise from the confirmation of the making of these Orders. The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.

Financial Implications

31. The applicant has agreed to pay all of the Council’s costs associated with the making of the Order, with the advertisement of the confirmed Order and with the creation of the new path. However, Wiltshire Council is not empowered to charge the applicant any costs related to forwarding the application to the Secretary of State for confirmation by the Planning Inspectorate and accordingly will have to fund these from existing rights of way budgets.
32. Where there are outstanding objections to the making of Orders, the Committee may resolve that Wiltshire Council continues to support the making and confirmation of the Orders. The Orders will then be determined by the Planning Inspectorate by way of 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 negligible; however, where a local hearing is held the costs to the Council are estimated to be around £200 and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation (£200 without).
33. There are no costs associated with the Council resolving to abandon the Orders though the Council may be liable to Judicial Review and associated costs as a result of that action (see paragraph 34 below).

Legal Implications

34. Where the Council does not support confirmation of the making of the Orders and resolves to abandon them, clear reasons for this must be given and must relate to the legal tests contained within s.118 and s.119 of the Highways Act 1980. The applicant may seek judicial review of the Council’s decision if this is seen as incorrect by them. The cost for this may be up to £50,000.

Options Considered

35. Members may resolve that:
- (i) The Orders are forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation as made.
 - (ii) The Orders are forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation with modifications.
 - (iii) The Orders are revoked and abandoned.

Reason for Proposal

36. Officers consider that the proposal to divert the definitive line to the 'new' route offers the public a greatly improved route that is more accessible for a greater range of people, wider, easier to locate and use and with improved views of Old Sarum. The definitive line has been obstructed for more than fifty years and although the route must be viewed as available when considering the legal tests it is clear that the public had no desire to use it during that time and used an alternative route close by (the 'used' route).
37. The 'used' route, being just a few metres from both the definitive line and the 'new' route is not needed and will not be needed in future. The public have expressed a clear preference for the 'new' route as witnessed by their use of it and the representations of support contained within this report.
38. It is considered that all of the legal tests have been met with regard to the two Orders and that they should be confirmed. It is highly likely that with such a low level of objection the Planning Inspectorate would choose to determine the Orders either by written representations (at no additional cost to the Council) or, if the objector wishes to be heard, at a local public hearing (at a cost of around £200). It is therefore considered that even if expenditure from public funds is incurred the resolution of matters on the ground at this location will greatly enhance both the public's experience and also the Council's ability to assert and protect the rights in the future.

Proposal

39. That The Wiltshire Council City of Salisbury (Stratford sub Castle) Salisbury Footpath No. 6 Diversion Order 2016 and Definitive Map Modification Order 2016 and The Wiltshire Council Stratford sub Castle Footpath Linking Salisbury 24 with Salisbury 6 Extinguishment Order 2016 are forwarded to the Secretary of State for the Environment, Food and Rural affairs with the recommendation that they be confirmed as made.

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Sally 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 - Orders

Appendix B - Decision Report

Appendix C – Objection from Ms Fulton