

WILDLIFE AND COUNTRYSIDE ACT 1981

THE TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257

**THE WILTSHIRE COUNCIL MARLBOROUGH 30 DIVERSION AND DEFINITIVE
MAP AND STATEMENT MODIFICATION ORDER 2018**

Purpose of Report

1. To:
 - (i) Consider six objections to The Wiltshire Council Marlborough 30 Diversion and Definitive Map and Statement Modification Order 2018 made under The Town and County Planning Act 1990 and Section 53 of the Wildlife and Countryside 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Relevance to the 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. Wiltshire Council received an application dated 18 April 2018 from David Burton of Redrow Homes, for an Order to divert public footpath 30 over land at Salisbury Road, Marlborough. The footpath requires diverting in conjunction with planning application 15/02026/OUT and 17/03219/REM. Wiltshire Council's planning officers approved these applications with conditions on 29 July 2016 and 20 September 2017 respectively.
4. The application will divert 65 metres of path to a new route with an approximate length of 75 metres. The new route will be laid to tarmac and hoggin (compressed clay, gravel and sand). A copy of the order route can be seen at **Appendix 2A**.
5. Wiltshire Council conducted an initial consultation on the application dated 3 May 2018 with an end date of 1 June 2018. This initial consultation was sent to Marlborough Town Council, the local Wiltshire Councillor, statutory undertakers The Ramblers and other user groups. No responses were received.

6. All of the relevant tests were duly considered in the council's Decision Report appended here at **Appendix 1**. Applying the legal test contained within Section 257 of the Town and Country Planning Act 1990 (see **Appendix 1 paragraph 9**), the application meets the requirements as planning permission has been granted by Wiltshire Council which makes it necessary to divert public footpath MARL30 to enable the permitted development to proceed. An Order was made to divert the path as per the order plan at **Appendix 2A** and for the diversion to be recorded in the definitive map and statement.
7. The Order was duly advertised on site and in the Wiltshire Gazette and Herald and attracted seven objections (one now withdrawn).
8. Where objections are received to an Order and are not withdrawn Wiltshire Council may not confirm or abandon the Order and must forward it to the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA) for determination. However, it must first consider the representations and objections to the Order and make a recommendation to SoSEFRA regarding the determination of the Order.
9. It is important that only the legislative tests are considered and it should be noted that the footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council.

Main Considerations for the Council

10. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way under continuous review.
11. The Order is made under Section 53(3)(a) of the Wildlife and Countryside Act 1981 with regard to Section 257(1) of The Town and County Planning Act 1990:

Section 53 of the Wildlife and Countryside Act 1981

“-the coming into operation of any enactment or instrument, or any other event, whereby-“

- (i) *“a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;”*

Section 257 of the Town and Country Planning Act 1990

- (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.*

12. **Objections:**

Seven objections were received from the following to the making of the Order:

- (1) Mr Alan Daw
- (2) Ms Sara Daw
- (3) Mr Duncan Ardley
- (4) Ms Amanda Barrett
- (5) VJ and MK Bilton
- (6) Ms Caroline Heath
- (7) Marlborough Town Council (now withdrawn).

These objections and the withdrawal of Marlborough Town Council's objection can be seen in full at **Appendix 3**.

13. **Comments on the Objections**

13.1. **Mr Alan Daw [Appendix 3(i)]**

"I feel that this change is not necessary. This is an ancient path and should be kept. The developer knew of this path and should accommodate its plan accordingly. If you let this through then it's a part of our history lost, no matter how small"

Wiltshire Council has granted planning permission which affects the line of the footpath; therefore, it is necessary to divert the footpath.

13.2. **Ms Sara Daw [Appendix 3(ii)]**

"Whilst a diversion may seem necessary by a developer, to locals it is a serious infringement of social history and as such should be considered highly detrimental. Up until recently, it also bordered thick hedgerow, now grubbed out under questionable activity by Redrow, these hedgerows were not only filled with birds but also part of an ancient route used to gather sloes and walk onwards to Cadley and beyond. I object most strongly to this deviation"

A diversion is necessary as planning permission has been granted. Any environmental concerns will have been addressed at the planning stage in the planning officer's report and work carried out in accordance with the planning consent will be within the conditions set. This is not an issue which can be addressed in accordance with the footpath diversion. The footpath can still be used to walk from Marlborough to Cadley, via the 75 metre diverted section and the unaffected continuation.

13.3. **Mr Duncan Ardley [Appendix 3(iii)]**

"I wish to object to this in the strongest possible way,... all this ancient right of way is being shifted for is for some extra ground for the posh big house they are building on an Adder basking ground. Here's an idea, move the house, that path is an ancient extension to Figgins Lane, part of which still exists within Marlborough Town"

Wiltshire Council has granted planning permission which requires the footpath to be diverted, any environmental concerns will have been

addressed at the planning stage and any breach of that permission is an issue for planning enforcement. The diversion of the footpath is a separate process.

13.4. **Ms Amanda Barrett [Appendix 3(iv)]**

“I wish to object to the permanent diversion of this footpath which is continually in use by local people and their dogs. Please take Our objections seriously.”

The footpath diversion is necessary as planning permission has been granted which affects the line of the footpath. The diversion route will provide access for people to walk with their dogs and continue walking the route north and south of the diverted section.

13.5. **VJ and MK Bilton [Appendix 3(v)]**

“To whom it may concern.

We strongly object to the proposal by Redrow to divert the Footpath30 on the grounds it is an old Established Footpath which goes over the old Roman Road. This Footpath is many Centuries old which is proposed to be destroyed for the Profits of Developers.”

Wiltshire Council has granted planning permission over the line of the footpath, a diversion of the footpath is necessary. The majority of the length of the path through the site has been left on its original route with 65 metres being diverted.

13.6. **Ms Caroline Heath [Appendix 3(vi)]**

“This is an ancient footpath that leads directly to Savernake Forest. It is also home to a wide variety of wildlife, such as Dormice (Protected Species) grass snakes, Adders, field mice, Nesting for Wrens, Robins, Dunnocks, Blackbirds, Finches to name but a few. As well as homes to remaining slowworms already destroyed and relocated. The Modification to the Path is to provide part of a turning/parking area for cars. As Redrow have continually modified their plans to “squeeze” in a few more houses and thus dessimated copses and trees and hedging at will - and without planning consent - it is obvious they can redraw this part of the acreage and allow the path to remain untouched, and for Marlborough to retain some of its ancient history.”

Planning permission has been granted which affects the line of the footpath which requires it to be diverted. The public will still be able to walk to and from Savernake Forest using the diverted section of footpath and the unaffected continuation. Any environmental concerns will have been addressed as part of the planning process.

13.7. **Marlborough Town Council [Appendix 3(vii)]**

“RESOLVED: that Marlborough Town Council should object to this diversion on the grounds of destruction of wildlife habitat and lack of clarity in the original plans”

This objection has now been withdrawn- see **Appendix 3(viii)**

13.8. The applicant, David Burton of Redrow Homes, has submitted the following response to the objections received.

1. *The footpath route to be closed is 65m and the new footpath route is 75m.*
2. *If left in place the existing footpath passes directly in front of plot 67 giving no defensible space to the frontage of the property and consequent loss of privacy through passers by looking into the property. Leaving the footpath on the existing route will also mean footpath users will have to cross over visitor parking spaces and the shared private drive and turning head for plots 67-69. Cars may be parked in the visitor spaces which will block the route. The existing path passes directly through a vehicle turning head for the cars and delivery vehicles for plots 67-69 which presents safety issues for mixing pedestrians and vehicles. As it is a turning head some vehicles will be reversing which by its nature offers reduced visibility so increases the risk of injury to pedestrians on the existing path. As this is a shared private drive there will be legal implications for the conveyance of plots 67-69. There will also be the risk of practical day to day problems arising between homeowners and members of the public crossing their property. This could result in future legal issues and applications to stop up or divert the footpath in the future.*
3. *The short proposed diversion path offers a safer route on a newly constructed adopted footpath which navigates around the private drive for plots 67-69 which has been granted planning permission. It will also remove the risk of day to day problems arising between homeowners and the public and the need for any future legal matters.*

13.9. The following email was sent to all objectors (except Marlborough Town Council who rang to discuss the process).

I acknowledge your objection to the footpath diversion of MARL30.

If any objections are not withdrawn then Wiltshire Council cannot confirm the order and it must be referred to the Secretary of State who will appoint an inspector from The Planning Inspectorate to determine the order. Before sending the order to the Secretary of State it will go before Wiltshire Councils Planning Committee to determine what recommendation is attached to the order when sent to the Secretary of State. At the Planning Committee stage you will have the opportunity to address the committee and present your case. Again if the order is objected to and it reaches the Secretary of State they will decide whether to determine the order via written representations, a public hearing or a public inquiry, you will once again have the opportunity to present your case either in person and or in written form.

The order must be determined by the legal tests set out in section 257 of the Town and Country Planning Act 1990.

If you would like to make any further comments or withdraw your objection this can be done by contacting me using the details below.

No responses were received.

Overview and Scrutiny Engagement

14. Overview and Scrutiny Engagement is not required in this case.

Safeguarding Considerations

15. There are no safeguarding considerations associated with the confirmation of this order.

Public Health Implications

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

Corporate Procurement Implications

17. There are no procurement implications associated with this Order.
18. 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 22 of this report.

Environmental and Climate Change Impact of the Proposal

19. There are no environmental or climate change considerations associated with the confirmation of this Order.

Equalities Impact of the Proposal

20. The proposed new route will be over tarmac footways and a small section of path laid to hoggin (compressed gravel, sand and clay). As part of the development the continuation of footpath 30 not affected by the diversion and within the development boundary will be widened and laid to a hoggin surface.

Risk Assessment

21. There are no identified risks which arise from the confirmation of this Order. The financial and legal risks to the council are outlined in the “Financial Implications” and “Legal Implications” sections below.

Financial Implications

22. 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 recover costs from the applicant 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 this Order though the council’s costs relating to the Order being determined by the Planning Inspectorate on behalf of the Secretary of State may not be reclaimed from the applicant.

23. 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.
24. 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

25. If the council resolves that it does not support the Order, it may be abandoned. There is no right of appeal for the applicant; however, clear reasons for the abandonment or 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.
26. Where the council supports the making of the Order, because it has outstanding objections, 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

27. 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 abandoned, 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

28. Council officers are aware of the local concerns regarding the diversion of a footpath which has been in its current location for many years; however, it is necessary to divert a 65 metre section of the route as planning permission has been granted over the route. Any concerns with the environmental impact of the planning consent have been addressed at that stage. This process is not an opportunity to object to the planning decision which has been made.
29. As described above by the developer, visitor parking bays and a private driveway will be built over the line of the existing footpath which will completely change the nature of the current route of the footpath. It would not be practicable to leave a public footpath going through a parking bay which is highly likely to have a vehicle parked in it the majority of the time. This would result in the footpath being blocked by a vehicle. While it would be possible to have a footpath leading over a private driveway and turning area, it would not be an ideal situation and would inevitably lead to future issues. This is an opportunity to divert the footpath, which is necessary, to a useable route which will be safe, away from vehicle movements of the turning area and uninhibited by obstructions and potential conflict with owners of the private driveway.

Proposal

30. That “The Wiltshire Council Marlborough 30 Diversion and Definitive Map and Statement Modification Order 2018” is forwarded to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that it is confirmed as made.

Tracy Carter

Director – Waste and Environment

Report Author:

Craig Harlow

Acting Rights of Way Officer – Definitive Map

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

None

Appendices:

- | | | |
|-------------|---|---|
| Appendix 1 | - | Decision Report |
| Appendix 2A | - | The Wiltshire Council Marlborough 30 Diversion and Definitive Map Order Plan |
| Appendix 2B | - | “The Wiltshire Council Marlborough 30 Diversion and Definitive Map and Statement Modification Order 2018” |
| Appendix 3 | - | Objections to the Order |