

DECISION REPORT
WILTS HIRE COUNCIL

Town and Country Planning Act 1990 –

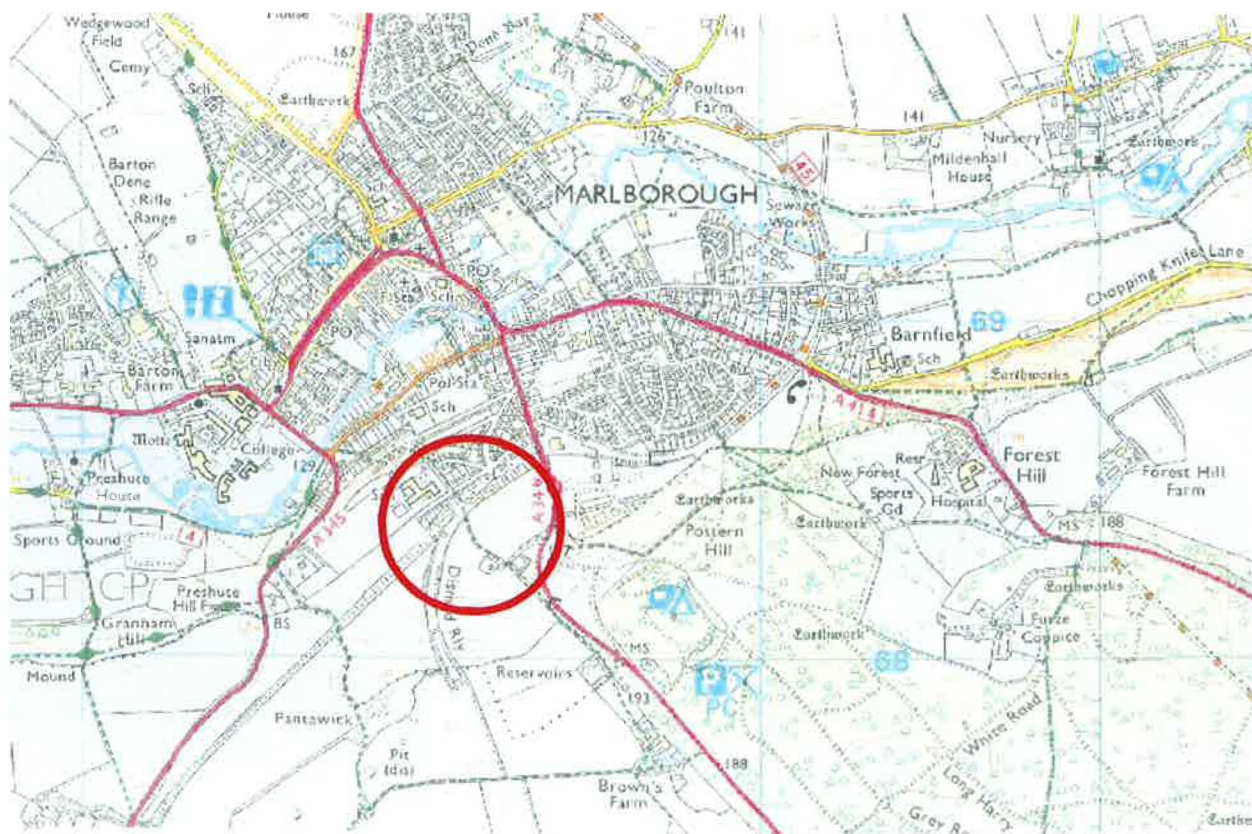
Section 257

The Proposed Diversion of Footpath No. 30 Marlborough

1 Purpose of Report

Consider and comment on an application to divert footpath Marlborough 30. This is in conjunction with planning permission 15/02025/OUT and reserved matters planning permission 17/03219/REM to which relate to an application for construction of 168 new 1,2 3,4 and 5 bedroom dwellings (to include 67 (40%) affordable homes) and associated highways and engineering works, landscaping and open space.

2 Location



- 2.1 Definitive footpath MARL30 leads from Marlborough High Street in a south easterly direction leading to the parish boundary with Savernake.

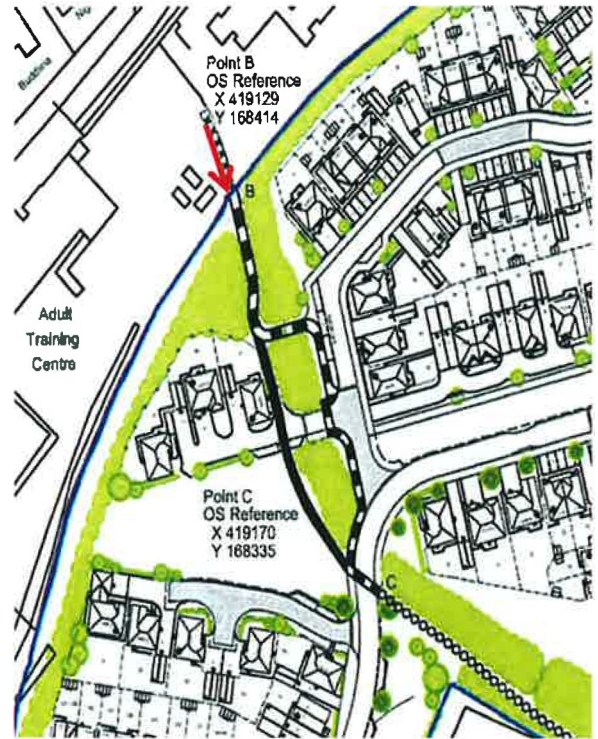
3 Background

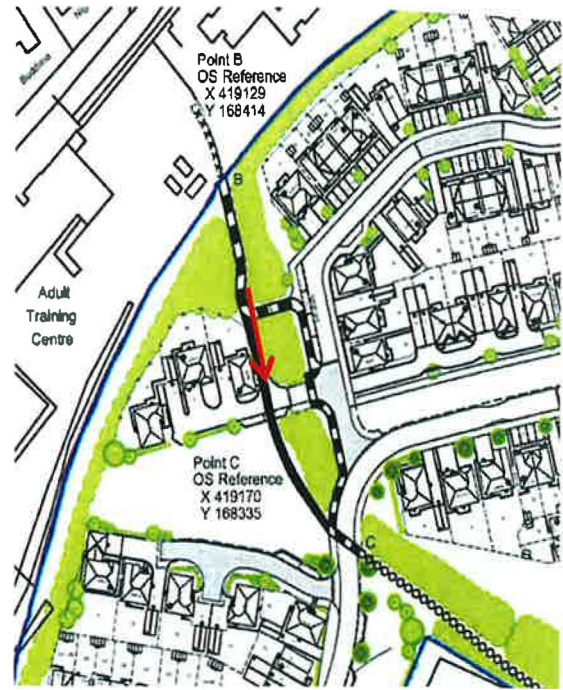
- 3.1 On 30 April 2018 Wiltshire Council acknowledged an application to divert footpath MARL30 to the west of Salisbury Road, Marlborough. The application was made by David Burton of Redrow Homes South West who proposes the diversion of the footpath to allow construction of 168 new 1, 2 3,4 and 5 bedroom dwellings (to include 67 (40%) affordable homes) and associated highways and engineering works, landscaping and open space under planning permission 15/02025/OUT and reserved matters applications, 17/03219/REM.
- 3.2 Outline permission for application 15/02025/OUT was approved with conditions on 29 July 2016 and the reserved matters application was approved with conditions on 20 September 2017.
- 3.3 A reduced plan at the original scale of 1:2000 of the proposed diversion is attached below. The new proposed route can be seen annotated as a dashed black line and the current route to be diverted as a solid black line.



- 3.4 The proposed diversion will divert a 65 metre section of path and create 75 metres of path. The new route will be laid to tarmac and hoggin (a compactable groundcover that is composed of a mixture of clay, gravel, and sand or granite dust that produces a buff-coloured bound surface). The sections of footpath MARL30 that are within the development site, but do not need to be diverted, will also be improved with a surface of hoggin and a width of 2 metres will be provided.

4 Photos





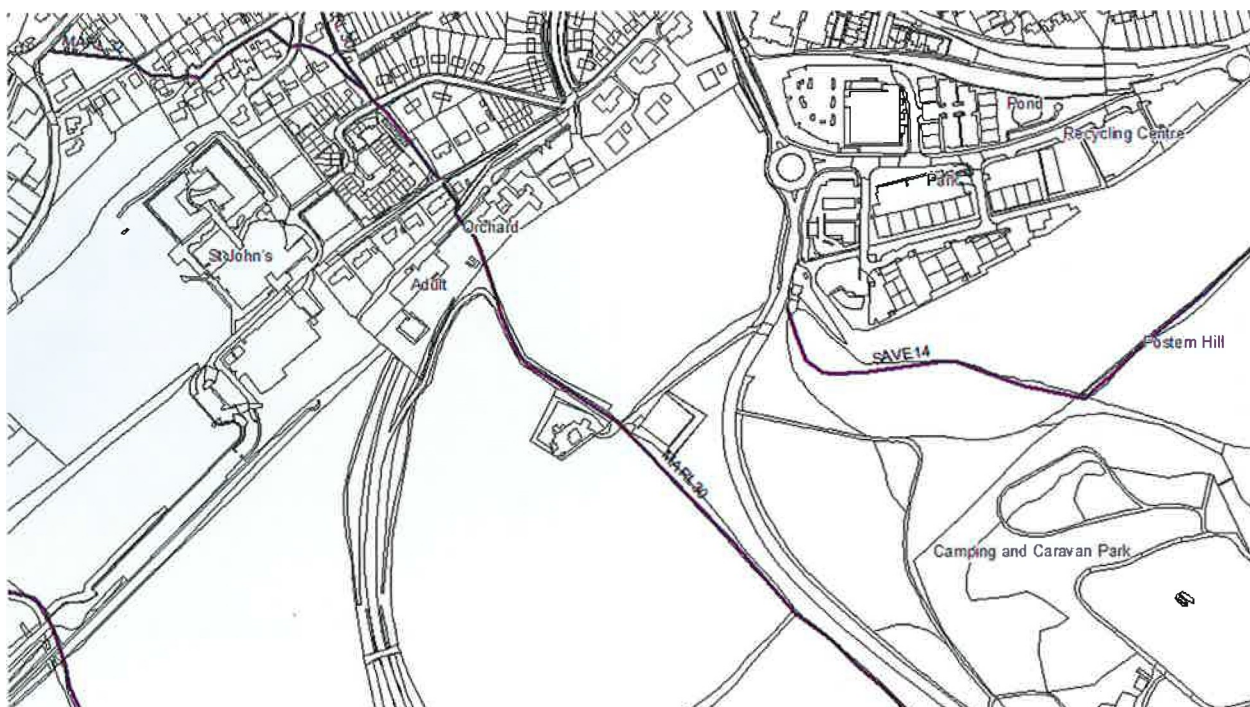
The photographs show the current footpath which has been fenced off from the construction site where the new route will be constructed.

5 Current Records

5.1 The definitive statement records the ways as follows:

Marlborough 30	<u>FOOTPATH.</u> From the London - Bristol Trunk Road, A.4, between Nos.38 and 40 High (Figgins Lane), leading south-east across the River by an iron bridge, across George B.3052, (Isbury Lane) across [upper Church Fields] past the Pumping Station to the boundary at Forest Avenue (Long Harry). Approximate length 1550 metres.	relevant date 27 August 1991 Part subject to ploughing
----------------	--	---

5.2 The working copy of the definitive map records the ways as follows:



6 Land Ownership

The land in question is owned by Redrow Homes Limited of Redrow House, St. Davids Park, Ewloe, Deeside, CHS 3RX.

7 Consultation

- 7.1 The following letter was sent on 3 May 2018 to interested parties, including Marlborough Town Council, the local Councillor, the local Wiltshire Ramblers' representative, user groups' representatives and statutory undertakers.

Town and Country Planning Act 1990
- Section 257

The Proposed Diversion of Footpath No. 30 Marlborough (part) at Salisbury Road Marlborough

Wiltshire Council is in receipt of an application dated 18 April 2018, to divert footpath No. 30 Marlborough (part of).

It is proposed to divert the footpath in conjunction with planning consent to construct 168 dwellings on the land west of Salisbury Road, Marlborough. A reserved matters application has been granted with a detailed site layout (ref-1703219/REM) which can be viewed on the Wiltshire Council website.

The proposed diversion of the footpath will divert a 65 metre section of the existing footpath to a new route shown on the attached map. The surface of the path will be laid to hoggin and tarmac with a width of 2 metres.

If you would like to make any observations or representations regarding the diversion proposal, I would be very grateful if you could forward them to me, in writing, at the above address, or via email not later than 1 June 2018.

A copy of the proposed diversion map was also sent with the consultation letter.

8 Consultation responses

No responses to the consultation were received.

- 9 **The Town and Country Planning Act of 1990** (as amended by Section 12 of the Growth and Infrastructure Act 2013), states in Sections 257 and 259:

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 or bridleway 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.

(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.
- (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 or bridleway 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 or bridleway;
 - (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 or bridleway 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.
 - (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.
 - (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."

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.
- (1A) An order under Section 257(1A) may not be confirmed unless the Secretary of State or (as 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.
- (2) The Secretary of State shall not confirm any such order unless satisfied as to every matter as to 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 or bridleway 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 Sections 257 or 258 and the publicity for such orders after they are confirmed.

9.1 Section 257 of the Town and Country Planning Act 1990 requires that before the order may be confirmed either Wiltshire Council (in the case of an order that has not attracted objections) or the Secretary of State must be satisfied that it is necessary to extinguish or divert the footpath in question in order to enable development to be carried out in accordance with planning permission granted.

9.2 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 Sections 257(1) or 258".*

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

9.4 These three matters are:

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

- 9.5 The Equality Act applies to a highway authority's provision of public rights of way services. (DEFRA Guidance *Authorising structures (gaps, gates and stiles) on rights of way* Oct 2010). In this case the application does not introduce any new structures to the right of way and improves the surface of the footpath.
- 9.6 The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.
- 9.7 The Council is also empowered to make a 'combined order' under Section 53(2)A of the Wildlife and Countryside Act 1981. The effect of this means that on the confirmation of the order the definitive map and statement may be changed without the further need to make an order under Section 53(3)(a)(i) of the 1981 Act (also known as a 'legal event order' or an 'unadvertised order').
- 9.8 An order made under Section 257 of the Town and Country Planning Act 1990 will come into effect only after confirmation.
- 10.** The Council has also taken into consideration the Wiltshire Council Rights of Way Improvement Plan (ROWIP) 2015-2025.
- 10.1 At page 5, Section 1B.1 of the policy document referring to public path orders it states *"The council has discretionary powers to alter the rights of way network The main procedures are set out within the Town and Country Planning Act 1990 and the Highways Act 1980.* As such, this diversion is being processed under those stated powers.
- 10.2 Page 6 of the policy document at Section 18.2 in relation to *Public Path Order Application and their Prioritisation* states *· diverted/newly created path should meet the Council's minimum standards width: Footpath 2 metres"*. This diversion is proposed with a width of 2 metres.
- 10.3 The ROWIP states in regards to use of the countryside access network at page 32 7.3 conclusion 5 *"If older people are to keep active and therefore healthy, they will need a more accessible network as they are more likely to find stiles (and sometimes surfacing and latches) difficult than other people. This highlights the need to replace stiles with gaps or gates"* This proposed diversion offers no new obstructions across the right of way and an improved surface on the section being diverted and the continuation of the footpath.
- 11** Comments on Considerations - Whether it is necessary to divert the routes in question to allow development to be carried out in accordance with the planning permission already given but not substantially completed.
- 11.1 Section 57(1)(a) permits Wiltshire Council to make an order to extinguish or divert a footpath if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part III or where application has been made but not yet granted but where it would be necessary to alter the rights of way if it were granted.
- 11.2 The Particulars of Development given in the Planning Application are as follows:

"Up to 175 dwellings (Use Class C3), hotel (C1), new access from Salisbury Road, open space, landscaping, ecological mitigation, drainage works and ancillary works."
- 11.3 Footpath Marlborough 30 leads through the centre of the application area and will be affected by the construction of a dwelling and roads constructed over them as per the planning application. It is

therefore necessary to divert the footpaths in accordance with Section 257 of the Town and Country Planning Act 1990.

- 11.4 It should be considered the effect that the order would have on those whose rights may be affected if the order comes into effect. It is deemed the diversion order would have a minimal impact on any adjoining residents as the properties will be adjacent to the road in any case and any use of the footpath will be minimal in terms of noise or any adverse effect on privacy.

12 Other considerations

12.1 Environmental Impact of the Recommendation

All considerations were undertaken when planning permission was granted by Wiltshire Council for the site, this included environmental concerns.

The nature of the footpath will clearly be majorly altered by the construction of the dwellings and associated infrastructure where the land before construction work began was agricultural fields, although the footpath was enclosed by fencing at least on one side. With outline and reserved matters applications approved the diversion of the right of way in isolation has no identified environmental impact.

12.2 Risk Assessment

As stated previously the nature of the footpaths will be significantly altered by the development. The footpath will have to cross a newly constructed road which is clearly not ideal but a situation which cannot be altered with permission for the road granted and the necessity to cross it for any walker wishing to continue on the right of way.

12.3 Legal Considerations and Financial Implications

The applicant will meet costs related to the application and will meet all costs related to the confirmation of the order excluding any costs associated with sending the Order to the Secretary of State (SoS) for determination. This occurs if objections are received. The SoS may choose to determine the order by written representations (no additional cost to the Council), a local hearing (approximate cost £200-£300) or a public inquiry (approximate cost £2500).

- 12.4 Although the making of public path orders is a power that Wiltshire Council has and is not a duty, where the planning authority and the highway authority are the same authority, a duty is implied. If Wiltshire Council fails to make an order following the granting of planning permission it is liable to application for judicial review from the developer. This has a potential cost to the Council of up to £50,000.

12.5 Equality Impact

The nature of the proposed diverted path will consist of a hoggin surface and a section of tarmac path which will give a level surface to the path. There will be pedestrian crossing points at the road crossing locations on the proposed route to allow safe crossing of the road. These improvements to the surface and safety measures will result in the equality impact of the diversion of the footpath to be negligible.

12.6 Safeguarding Considerations

The proposed diversion has no effect on matters relating to safeguarding.

13 Options to Consider

- i) To make an Order to divert the ways under Section 257 of the Town and Country Planning Act 1990.
- ii) Not to make an Order.

14 Reasons for Recommendation

- 14.1 The existing route needs to be extinguished or diverted to enable the permitted development to proceed. The proposed diversion of the path has been consulted upon and no concerns have been raised. All associated costs of the diversion will be covered by the applicant.
- 14.2 Statutory undertakers affected by the proposal will retain any rights of access they previously had.

15 Recommendation

That Wiltshire Council makes an Order under Section 257 of the Town and Country Planning Act 1990 and Section 53 of the Wildlife and Countryside Act 1981 to divert footpath Marlborough 30 and if after due advertisement no objections or representations are received that the Order be confirmed and after certification of the new route that the definitive map and statement be altered accordingly.

Craig Harlow
Rights of Way Officer

12 June 2018