

WILTSHIRE COUNCIL

**APPLICATION TO DIVERT PARTS OF ROYAL WOOTTON BASSETT
FOOTPATHS 10 & 111**

TOWN AND COUNTRY PLANNING ACT 1990 s.257

1 Purpose of Report

1.1 To:

- (i) Consider and comment on an application to divert parts of footpaths Royal Wootton Bassett 10 and 111 (WBAS10 and WBAS111) to enable a permitted development to proceed.
- (ii) Recommend that an Order be made to divert the footpaths under s.257 of the Town and Country Planning Act 1990 and to confirm the Order if no representations or objections to the Order are made or have not been withdrawn.

2 Background

2.1 On the 4th August 2017 Wiltshire Council received an application to divert parts of footpaths WBAS10 and WBAS111 at Brynard's Hill, Royal Wootton Bassett. The application was made by:

Wainhomes (South West) Holdings Limited
Owlsfoot Business Centre
Sticklepath
Okehampton
Devon
EX20 2PA

2.2 The application has been made because a permitted development would obstruct two public footpaths, WBAS 10 and WBAS 111 if carried out.

2.3 The permitted development is for the construction of 92 dwellings with associated roads, footways, parking, landscaping and drainage works. Wiltshire Council application reference number 15/10486/FUL.

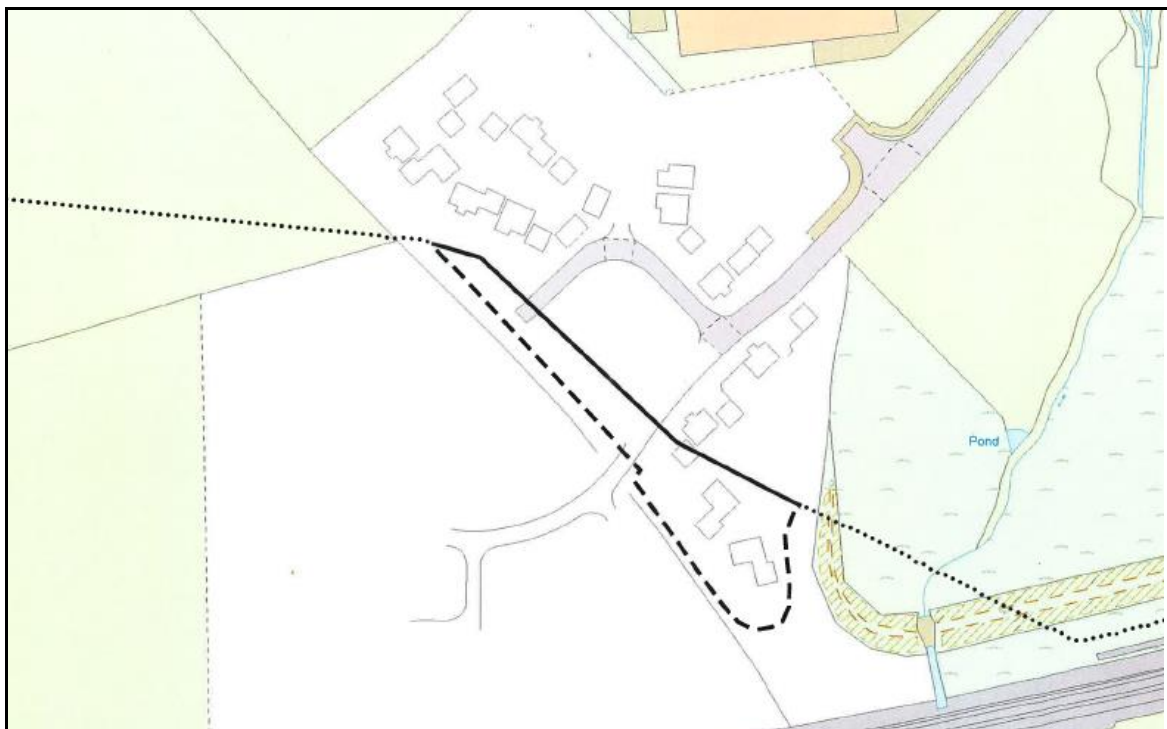
2.4 Drawing 1629/1 was originally submitted with the application for planning permission and was referred to in the application as being relevant for the diversion of the rights of way, however, it lacked sufficient detail. Further to objections from Mr P Gallagher on behalf of The Ramblers and from Wiltshire Council's Rights of Way team, a further drawing numbered 1629/06 was submitted before the planning application was being decided.

2.5 Drawing 1629/06 shows the line of WBAS10 obstructed by houses and gardens and leading across two roads and the line of WBAS111 obstructed by houses and gardens.

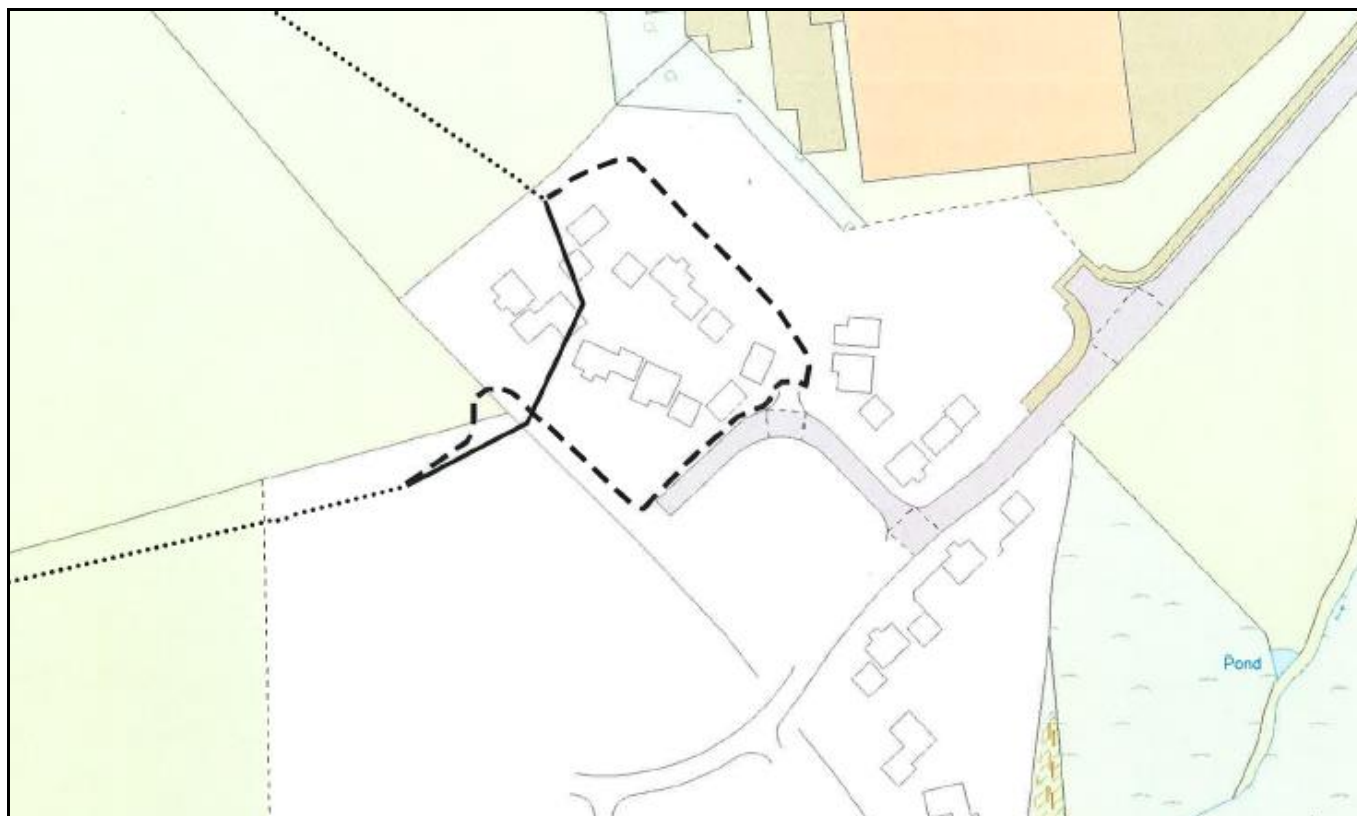
2.6 **Plan 1629/06** Existing rights of way solid line, proposed rights of way pecked lines.



2.7 Plan submitted with application to divert the paths (2017/14) – WBAS 10

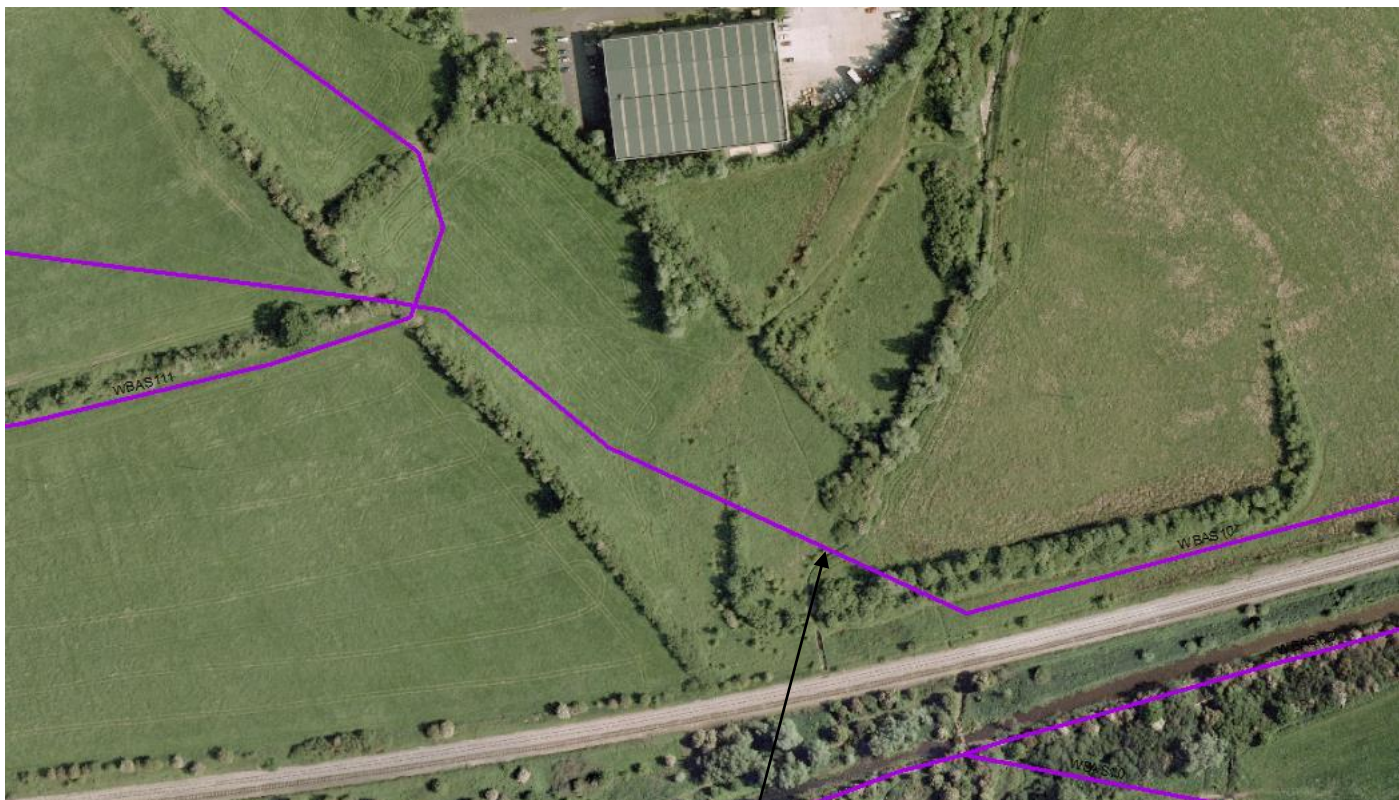


2.8 Plan submitted with application to divert the paths (2017/14) – WBAS 111



- 2.8 Works commenced on site before the application for a public path order was made and before a temporary closure was applied for. The area is popular with walkers and accordingly Wiltshire Council received complaints about WBAS 10 being obstructed. Around this time, and for reasons related to planning, the development was halted allowing a Traffic Regulation Order to be placed on the route. This order ran from 24/04/2017 to 26/06/2017 and extended from 22/06/2017 for six months.
- 2.9 Wiltshire Council received complaints in 23/5/2017 and 30/6/2017 that WBAS 111 was obstructed. Notice under s.130A of The Highways Act 1980 was served on Wiltshire Council on 21/06/2017. Wiltshire Council proceeded to serve notice under s.143 of The Highways Act 1980 on Wainhomes on 07/07/2017. The notice is currently outstanding (25/09/2017).
- 2.10 These events led Wainhomes to make the application to divert the paths that is the subject of this report. It is regrettable that the application was not made sooner.

3 Aerial Photograph 2006 Footpaths = purple lines

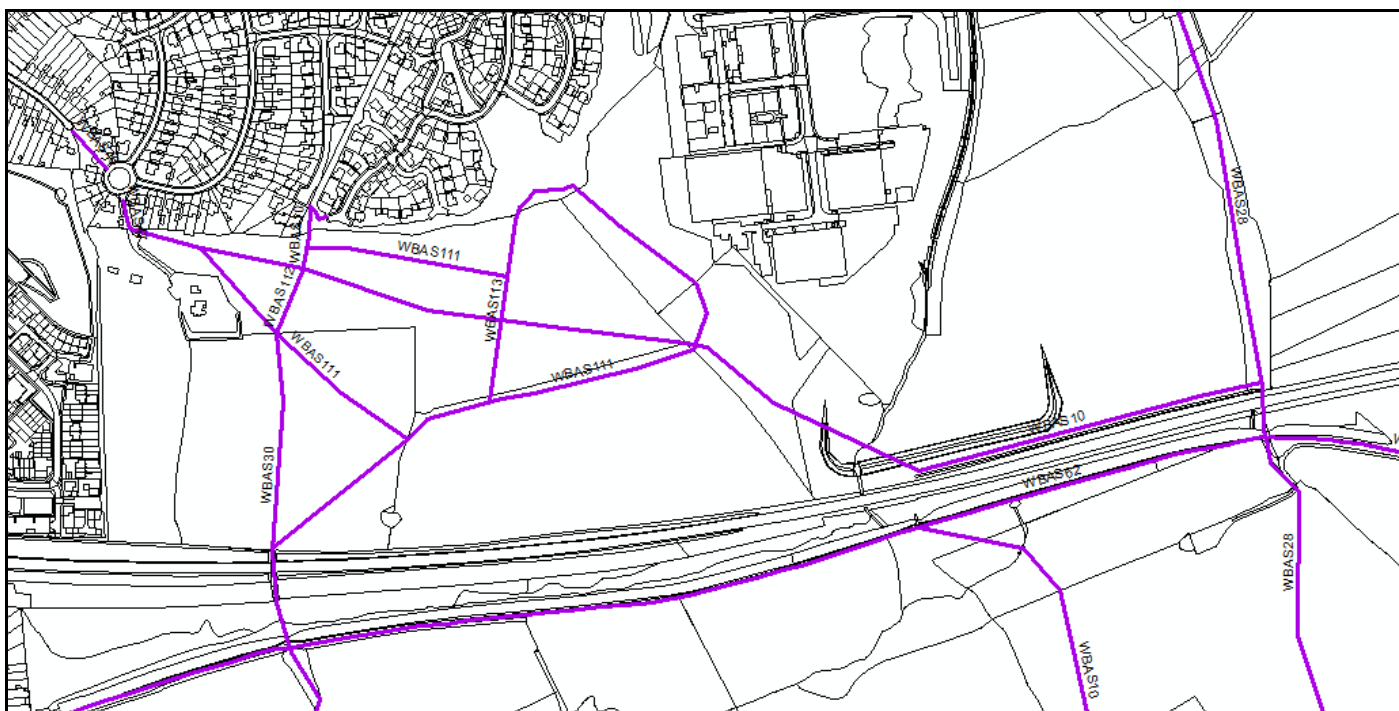
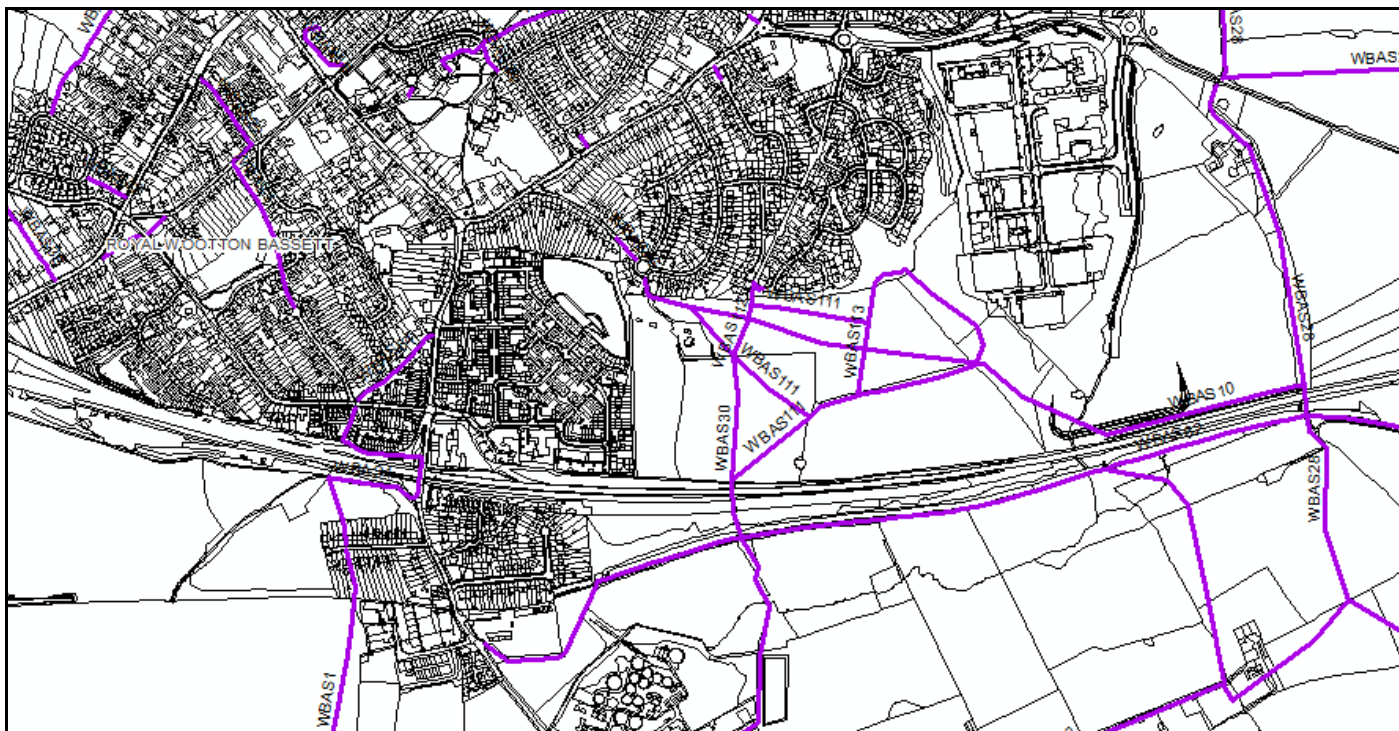


The aerial photograph shows WBAS 10 leading alongside the railway line before turning north west up the hill. The bridge over the watercourse/drain is currently broken and the used route continues along the line of the railway and over a stone drain before turning north west up the road.



4 Current Records

WBAS10 is a historic path over Brynard's Hill but WBAS 111 was only added to the definitive map and statement in 2010 as the result of an application for an Order based on public use of the way for a period of at least 20 years. The working copy of the definitive map records the network and reflects recent changes as a result of public path orders since the original definitive map was drawn up in 1952: Purple lines = footpaths.



The definitive statement records the following:

Royal Wootton Bassett	10	<p><u>FOOTPATH.</u> From the southern end of Vowley View at Brynard's Hill leading south for approximately 40 m, then east-south-east towards the railway where east north east for 340 metres to join footpath Wootton Bassett number 28.</p> <p>Continuing on southern side of railway line at OS grid reference SU0813 8176 at its junction with footpath number 62 where south east and south to Wootton Meadows where west south west past Lanes Farm to the Marlborough Road B4041: with a spur to the north of Brynards Hill Farm leading west and north west to road u/c 2075.</p> <p>Approximate length 2485 metres</p> <p>Width OS 813 8181 to 0846 8188 2 metres</p>	relevant date 23 rd October 2012.
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Royal Wootton Bassett	111	<p><u>FOOTPATH.</u> From its junction with path no. 10 at Vowley View leading in a south easterly then north easterly direction to its junction with the estate road and from its junction with path no. 10 at OS Grid SU 0754 8202 leading east and east south east to the summit of Brynards Hill and on to its junction with path no. 113 at OS Grid ref. SU 0773 8199. Continuing on from the northern end of the path no. 113 in a north easterly direction then east and south east then leading west south west at OS Grid ref. SU 0792 8191 to its junction with path no. 30 at the railway bridge. A Further spur leading north west from OS Grid ref. SU 0763 8184 to OS Grid ref. SU 0751 8194 and its junction with path no. 30</p> <p>Width 2.0 metres</p> <p>Approximate length 1100 metres</p>	Relevant date 26 th March 2015
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5 Land Ownership

The land is owned by the applicant:

Wainhomes (South West) Holdings Ltd
Owlsfoot Business Centre
Sticklepath
Okehampton
EX20 2PA

6 Consultation

- 6.1 An initial consultation was circulated from the 9th August to the 15th September 2017. The application plans shown here at paragraphs 2.7 and 2.8 were sent along with the following letter:

“Town and Country Planning Act 1990 s.247, Highways Act 1980 s.119 and Wildlife and Countryside Act 1981 s.53 Diversion of parts of footpaths WBAS10 and WBS111 at Brynards Hill, Royal Wootton Bassett, SN4 8FJ

Wiltshire Council has received an application to divert parts of two footpaths at Brynard’s Hill, Royal Wootton Bassett. The line of footpaths WBAS10 and WBAS111 are affected by the permitted development of 92 dwellings with associated roads, footways, parking, landscaping and drainage works. The development arises out of application number 15/10486/FUL which may be viewed at www.wiltshire.gov.uk.

Please find enclosed a plan showing the location of the site and the local network and plans showing the proposed diversions.

If you have any comments on the proposal I would be pleased to receive them by 1700 on 15th September 2017.”

- 6.2 The consultation was sent to the following:

The Auto Cycle Union
Open Spaces and Footpaths Society
British Driving Society
British Horse Society (Wiltshire)
British Horse Society
Byways and Bridleways Trust
Cycling Touring Club
Trail Riders Fellowship
Senior Rights of Way Warden (Wiltshire Council)
Royal Wootton Bassett Town Council
Wiltshire Bridleways Association
The Ramblers (Wiltshire)
The Ramblers (North Wiltshire)
Mr D Mannering (interested party)
Wainhomes (South West)
GTC Pipelines Ltd
UK Power Solutions
Digdat.co.uk
LinesearchbeforeUdig.co.uk
BT Openreach

National Grid (electricity and gas)
Wessex Water
Thames Water
Wiltshire Council Cllr Hurst
Wiltshire Council County Ecologist

7 Consultation responses

7.1 No plant or statutory undertakers were affected.

7.2 The Ramblers 03.08.17

“We have no objection to the proposed diversion of WBAS111.

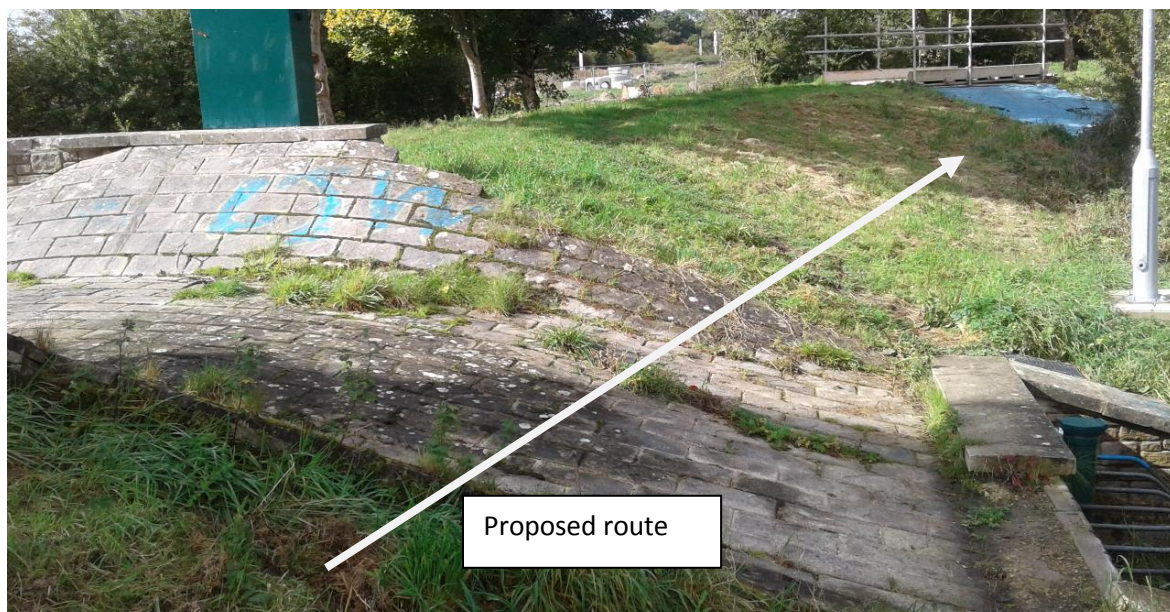
In regard to WBAS10, this is another case where the applicant is now proposing a different alignment to that which they put forward with their planning application. At that time, they proposed the diversion shown on the attached drawing 1629/06; this drawing appears in the list of those on which the consent was based. The fact that the diversion extended beyond the red line gave rise to a question as to land ownership; however, an email from Michael Crook to planning officer Lee Burman dated 4 March 2016 states that, having examined the title plans supplied by Wainhomes, Mike was satisfied that they owned all the land required.

The diversion shown on drawing 1629/06 is much better than that shown on the drawing enclosed with your letter for two reasons:

- *It is more direct;*
- *It avoids the marshy ground inside the Environment Agency bund (I understand this section of path is currently unusable because of a broken footbridge over the stream).*

We consider the diversion route now proposed to be unsatisfactory as it provides an unnecessarily circuitous route; the diversion put forward at the time of planning consent should be implemented instead.”

7.3 Officer’s Comment: The observations received from the Ramblers were forwarded to Wainhomes for comment. They had concerns that the route shown on drawing 1629/06 (see this report para. 2.6) crossed complex drainage features. See below:





8 Considerations for the Council – Legal Empowerment

8.1 **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 section 257 or 258 and the publicity for such orders after they are confirmed.

8.2 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.

8.3 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.

8.4 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.

8.5 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)

8.6 The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP 2 2015 - 2016). The ROWIP recognises the Council’s duty to have regard to DDA95 (replaced by the Equalities Act 2010) and to consider the least restrictive option.

8.7 The ROWIP also has as its aims:

- The creation of a more coherent network (page 37 Opportunity 2)
- Improvement of key access points (page 38 Opportunity 2.4)

8.8 The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.

8.9 The Council is also empowered to make a ‘combined order’ under s.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 s.53(3)(a)(i) of the 1981 Act (also known as a ‘legal event order’ or an ‘unadvertised order’).

8.10 An Order made under s.257 of the Town and Country Planning Act 1990 will come into effect only after confirmation and on the acceptance and certification of the new route by Wiltshire Council.

9 Comments on Considerations

9.1 **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**

9.2 It is clear from the approved plans and drawings that both WBAS 10 and WBAS 111 will need to be diverted to allow for the permitted development to proceed as there are 3 proposed properties on

the course of WBAS 10 and 7 proposed properties on the course of WBAS 111. None of the properties are substantially complete at the time of writing this report.

9.3 The effect that the Order would have on those whose rights would be affected by it or whose properties adjoin or are near the existing path

9.4 The definitive line of Wotton Bassett 10 is not available where it crosses the watercourse and walkers are using a route to the south. This leads along cambered ground and crosses a complex drainage feature. The incorporation of this drainage feature into a right of way would have far reaching implications for maintenance liability (which would fall to Wiltshire Council) and for health and safety considerations, especially during a flood event. The drainage features would undoubtedly be attractive places for children to play with all the risks of associated with doing so. It is not considered advantageous to place a right of way over a feature that is clearly designed for another purpose entirely, is sloped and potentially very hazardous.

9.5 For the purposes of comparison of routes Wiltshire Council must consider the definitive line as if it were available.

9.5 The width of all diversion will be 2 metres and both diversions increase the length of the path. However, these routes are recreational routes and the increase in distance is not significant when considered with the path as a whole. Additional length may be seen as an advantage by some users of the network (i.e. runners or dog walkers).

Path	Length to be extinguished	Length to be created	Additional length	Existing length of path	Percentage increase
WBAS 10	140 metres	195 metres	55 metres	2485 metres	2.2
WBAS 111	110 metres	240 metres	130 metres	1100 metres	11.8

10 Other considerations

10.1 Material provisions of the Rights of Way Improvement Plan

10.2 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.* Accordingly, this diversion is being processed under those stated powers.

10.3 Page 6 of the policy document at section 1B.2 in relation to *Public Path Order Applications and their Prioritisation* states *“A diverted/ newly created path should meet the Council’s minimum standard width: Footpath 2 metres”.* This diversion is proposed with a width of 2 metres and meets the Council’s accepted minimum.

10.4 Environmental Impact of the Recommendation

Planning permission was granted with full consideration of any environmental impact arising from the development. The diversion of the rights of way have no identified environmental impact.

10.5 Risk Assessment

There are no risks to users of the paths associated with the diversion over the route applied for. The route identified by The Ramblers would, in the view of officers, carry additional risks for users. However, there is a risk that if the development continues to being substantially complete the Order will not be capable of confirmation as it will no longer meet the legal tests contained within s.257 of the Town and Country Planning Act 1990 which is a risk for the applicant.

10.6 If this were to happen Wiltshire Council has the power to abandon the Order and the applicant would only pay costs proportional to getting the Order to that stage. It would be open for the applicant to re-apply under Highways Act 1980 legislation if they wished to.

10.7 In the event the Order attracted objections and was sent to the Secretary of State for determination they would refuse to confirm the Order if the development was substantially complete.

10.8 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).

10.9 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 £50000.

10.10 Equality Impact

There is no detrimental impact.

10.11 Safeguarding Considerations

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

11 Options to Consider

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

12 Reasons for Recommendation

12.1 It is considered expedient to make an Order since the development may not lawfully proceed until the rights of way are diverted.

12.2 No statutory undertakers are affected by the proposal.

13 Recommendation

That Wiltshire Council makes an Order under s.257 of the Town and Country Planning Act 1990 and s.53 of the Wildlife and Countryside Act 1981 to divert parts of Royal Wootton Bassett footpaths 10 and 111 and if after due advertisement no objections or representations are received (or are outstanding) be confirmed and after certification of the new route that the definitive map and statement be altered accordingly.

Sally Madgwick
Rights of Way Officer

24/11/2017