

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257
THE WILTSHIRE COUNCIL HILPERTON 54
DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2022

Objections (in italics) and officer responses (in bold)

Cllr Clark:

“My first objection is that the proposed new path is less convenient to users than the existing path as it is considerably longer in length.”

The diversion deletes approximately 315 metres of path which is situated straight through people’s future homes and adds approximately 369 metres, a minimal increase of approximately 54 metres which is not considered to be substantially less convenient to the public. The current route of Footpath Hilpertont 54 (HILP54) is a narrow and unsurfaced, the diversion route will have a recorded width of 2 metres, open and available to the public, with an all-weather hoggin surface therefore improving the access for all; including the less able bodied, families with prams etc, for members of the general public and for the residents of the homes of the granted development.

“My second objection is due to the fact that the proposed new path will be less amenable to users as it will run alongside the busy B3105 (Elizabeth Way) thus exposing users to noise and odours/exhaust gases from passing vehicles.”

The diversion route is less than 45 metres closer to Elizabeth Way than the current definitive line and will be buffered by open space. The current route of HILP54 leads across an open field but with planning consent granted is to have homes built directly over the top of it.

“I would point out that if the applicant re-designed their proposed housing plan for the site, the existing path, which is arrow-straight, could remain in place. Perhaps the hedge too could then be retained.”

Wiltshire Council as planning authority has determined the planning application and granted this application on 30 June 2022, it now falls on Wiltshire Council as surveying authority to determine the diversion application based on the legal test. TCPA S.257 (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.*” The granted development lies directly over the legal line of HILP54, therefore the development cannot continue without the successful diversion of the footpath.

The footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council.

Mr Linham

“The application takes no account of the huge environmental damage that will be done on the removal of approx 315 Meters of mature hedgerow.

The removal of this shelter & food source for the remaining local wild bird, bat & insect population, will adversely affect the local eco system.

This directly contravenes the current Government’s emphasis on protecting and enhancing biodiversity.

I insist there is full replanting of a new hedgerow to surround any rerouted foot path well in advance of any removal of existing mature hedgerows.

Early adoption of this mitigation action may help sustain our local biodiversity to survive in an area which is about to be devastated by over redevelopment”

This application is made under Section 257 of the Town and Country Planning Act 1990 (TCPA s.257) and requires the order making authority to be satisfied that the diversion of the footpath is necessary to enable development to be carried out, in accordance with planning permission granted under part III of the 1990 Act. The proposed development lies directly over the legal line of HILP54, therefore the development cannot continue without the successful diversion of the footpath. The legal test for diversion, as set out under TCPA s.257, has been met by this application.

Environmental concerns including the hedgerow issue is something that would have been considered when determining the planning application which has now been granted but is not relevant to the legal test for a TCPA s.257.

It is important that only the legislative test is considered. The footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council.

Mrs Linham

“As a Hilperton resident and a regular user of Footpath 54 I would like to object to the diversion of the said footpath. The position of the footpath at present is situated in a rural area with a feeling of little traffic pollution and relative peacefulness. The repositioning of the footpath parallel to the main road of Elizabeth Way is unacceptable. The whole purpose of these footpaths is for people to enjoy the peace and quiet of the countryside. Repositioning this footpath next to a busy main road defeats the whole purpose. The footpath needs to remain where it is now along with the existing hedgerow housing many birds, insects and wildlife. Replacing it with tarmac pavements is unacceptable. Any building company/planners with any care for the environment should take into consideration existing wildlife and bird life

habitats by working around them instead of destroying them and covering them with tarmac and concrete.”

Environmental concerns are considered when determining the planning application which has now been granted but is not relevant to the legal test for a TCPA s.257. The loss of the rural area is regrettable, but the development will be urbanising what had previously been an open field so there is already an effect on the character of the right of way. The development provides a surfaced path through open space to the northeast of the estate and an adopted paved estate road to the south west of the current definitive line of Footpath Hilperton 54. It is important that only the legislative test is considered. The footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council.

Mrs Gwinnell

“I wish to object to the Order proposed by Wiltshire Council to divert the above footpath.

I understand that the Council can make an Order to divert a public right of way under s.257 of the Town & Country Planning Act 1990 if they are satisfied that diversion is necessary to enable development to be carried out. I also understand that full planning permission has been granted for the development of land at Elizabeth Way, Hilperton Trowbridge and that the line of the footpath in its current location passes directly through the development site.

Mrs Gwinnell accepts that the legal test for diversion, as set out under Section 257 of the Town and Country Planning Act 1990, have been met by this application.

“My objections to diverting the right of way are as follows:

Alteration to Character

- 1. Diverting it to the new location would vastly alter the character of the right of way and remove the salient features which currently give it that character including the kissing gate at the southeastern end of the path. The existing footpath is characterised by the fact that it is a rural footpath running through a field alongside an established hedgerow. If it was diverted, its rural character would be lost.”*

The loss of the rural area is regrettable, but it is the granted development which will be urbanising what had previously been an open field so there is already an effect on the character of the right of way.

2. *“The new footpath would be widened to a width of 2 meters and given an all-weather gravel surface. The existing footpath is much narrower and has a natural earth surface. Rather than enhancing the footpath, the character of it would be irredeemably altered by these changes”.*

The right of way lies directly over the development site, it is the granted development that is changing the character of the right of way not the diversion.

3. *“The current footpath is historic and part of a network of footpaths which characterise the local area. By closing and diverting this path, its history would be lost.”*

Requirements on land where rights of way are situated can change therefore there are legal mechanisms in place to divert public rights of way within planning law, Town and Country Planning Act 1990 and highway law, Highways Act 1980.

Safety

1. *“The path would be closer to Elizabeth Way, a busy bypass where traffic is limited to 50mph but often exceeds that limit (as a homeowner whose house is on the corner of Horse Road, I can bear witness to this). There are high volumes of traffic noise and pollution from this road which do not have an impact on users of the footpath in its current position. If diverted, the walker would be exposed to the dangers of high levels of pollution and traffic. The sound of birdsong which gives walking along the current footpath part of its appeal, would be lost”.*

The character of the footpath will be altered by the development as it has previously been through an open field with the approval of the planning application the diversion of the right of way in isolation has no additional environmental impact. The Order route is less than 45 metres closer to Elizabeth Way than the current definitive line.

2. *“The surface of the new path and the extended width would not necessarily improve the path. It could have a detrimental effect in that it may attract those riding bicycles or scooters and put dog walkers or ramblers at risk.”*

The Wiltshire Council “Wiltshire Countryside Access Improvement Plan 2015 -2025 Rights of Way Improvement Plan 2” (CAIP), also sets out Wiltshire Council’s access for all and gaps, gate and stile policy (policy 7, page 10), stating that “disabled people should have equal opportunities to use public rights of way and the wider access provision where this is practical” and the “least restrictive option” principle needs to be applied when a new route is being created.” The diverted route will have a recorded width of 2 metres, open and available to the public, with an all-weather hoggin surface therefore improving the access for all; including the less able bodied, families’s with prams etc, for members of the public and for the residents of the homes of the granted

development.

3. *“The Diversion Plan appears to show that the development’s major entrance/exit road from Elizabeth Way would cut through the proposed route of the diverted footpath thus bringing users into contact with a busy traffic route.”*

If HILP54 remained in its current location this would also be the case.

Disadvantages to members of the public and/or occupants of local properties

1. *“The new path would be 54 meters longer than the existing path which would cause substantial inconvenience to the public. These include more elderly or less infirm residents who frequently use the path to walk their dogs or as part of a short cut to Middle Lane and the Victoria Road area beyond.”*

The diversion deletes approximately 315 metres of path and adds approximately 369 metres, a minimal increase of approximately 54 metres which is not considered to be substantially less convenient to the public. The current route of HILP54 is a narrow and unsurfaced, the diversion route will have a recorded width of 2 metres, open and available to the public, with an all-weather hoggin surface therefore improving the access for all; including the less able bodied, families with prams etc, for members of the public and for the residents of the homes of the granted development.

2. *“Diverting the footpath would bring it nearer to my home and could potentially interfere with the views from the upper windows of my house and my privacy. The wide pavement on Elizabeth Way already attracts a large number of runners, cyclists, dog walkers and families out for walks and its creation has in itself, created a recreational area alongside a busy road. The site of the new footpath could, potentially, increase those numbers and may attract anti-social activity particularly after dark”.*

HILP54 is more than 500 metres from the address provided by Mrs Gwinnell. The footpath is likely to provide access to more people as there will be a new estate of 187 households.

3. *“It is not in the overall interest of the local residents and members of the public to divert the footpath.”*

The diversion will result in an all-weather path through public open space and the granted development includes the adopted estate road therefore this proposal will increase the amount of public access to the site. The current route of the footpath runs straight through residential homes and gardens of the granted development.

4. *“Hilperton Parish Council may have no objection to the proposed diversion but their view is not necessarily that reflected by those who live in the area.”*

Hilperton Parish Council is an elected local authority which aim to engage local people and respond to their needs. The Order has been advertised in the local paper and notices of the diversion have been placed on site. There are 4 individual (3 households in total) that have objected to this diversion.

5. *A compromise could be reached with the developers whereby the existing footpath could remain in its current location with alterations made to the plans for positioning the houses and roads. If a compromise is possible, this should be considered as a viable alternative to diverting the footpath.*

Wiltshire Council as planning authority has determined the planning application and granted this application on 30 June 2022. The diversion will result in an all-weather path through public open space and the granted development includes the adopted estate road therefore this proposal will increase the amount of public access to the site. It is important that only the legislative test is considered. The footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council

Environmental Impact

1. *“It is stated in the report dated 15th August 2022 that the diversion of the right of way in isolation has no identified environmental impact.”*

With the approval of the planning application to build 187 dwellings in a previously open field the diversion of the right of way in isolation has no additional environmental impact.

2. *“I appreciate that this assessment is a result of the considerations undertaken at the time the planning process was undertaken. However, the relocation of the path must, logically, have a significant impact on the environment as the diversion will remove the hedgerows which run alongside the existing footpath. These are crucial habitats for local populations of foxes, badgers, birds and other creatures. It is part of the ecostructure which underpins their survival. Underneath the hedgerows are deep ditches which again are an essential part of this habitat.*
3. *Hedgerows have no legal protection but many in the Hilperton area are hundreds of years old and have been used as boundaries for centuries. Hedgerows provide an essential source of insects and shelter for bats, birds and other mammals. If this extended section was removed, it is bound to reduce the supply of shelter and food for the bat and bird population.*
4. *The Trowbridge Bat Mitigation Strategy, produced by Wiltshire Council, confirms that the landscape around Trowbridge is home to three species of rare bat which are functionally linked to a protected site, namely the Bath & Bradford on Avon Special Area of Conservation.*
5. *In a survey conducted in the neighbouring village of Staverton in 2021, fifteen species of bat were recorded. An unofficial survey undertaken in the Whaddon Lane area in the summer of 2022 recorded the presence of 15 species of bats. Given that there are 18 species in total in the UK (with 17*

known to breed), this is an area of significant and sensitive ecological importance. Bats have a large aerial network of feeding, roosting and breeding routes and to remove a large swathe of established hedgerow in order to divert a footpath is disproportionate to the damage this could cause to their environment.

6. Swifts, now on the red list of conservation concern, return to the area every summer. Again, I can testify to this as I watch them from both my front and back gardens. They rely on insects from trees and hedgerows for food.
7. I appreciate that the development has been granted planning permission but anything that can be done to mitigate the effect of it on the surrounding environment must be considered.
8. The diversion of a footpath may appear a trivial matter but must be considered within the context of the neighbourhood and its rural character and the environment it supports. The removal of an established line of hedgerow may not be considered of vast importance to the developers but if it can be retained it would help to mitigate the impact the overall development is going to have on the local environment.”

Environmental concerns including the hedgerow issue you have raised is something that would have been considered when determining the planning application which has now been granted but is not relevant to the legal test for a TCPA s.257.

9. *Is it necessary to divert the footpath in order for the development to proceed? Has an alternative been considered? If an alternative was available, and surely this must be an option when houses and roads are yet to be built, it would not be necessary to divert the footpath and the development could still proceed. Have the developers been approached and invited to consider an alternative, bearing in mind the particularly ecological sensitivities of the area they will be developing?*

Wiltshire Council, as planning authority, has determined the planning application and granted this application on 30 June 2022, it now falls on Wiltshire Council as surveying authority to determine the diversion application based on the legal test. TCPA S.257 (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*”

It is important that only the legislative test is considered. The footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council.

The officer sent the following email to Mr and Mrs Linham and Mrs Gwinnell and they all responded that they would not be withdrawing their objection

“This application is made under Section 257 of the Town and Country Planning Act 1990 and requires the order making authority to be satisfied that

the diversion of the footpath is necessary to enable development to be carried out, in accordance with planning permission granted under part III of the 1990 Act:

“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,*

Where an application is refused Wiltshire Council must demonstrate that the development, for which a planning application has been granted, can be carried out without the need to divert the footpath. In this particular case the planning application was granted on 30 June 2022 with the proposed development lying directly over the legal line of Footpath Hilperton 54, therefore the development cannot continue without the successful diversion of the footpath. The legal test for diversion, as set out under Section 257 of the Town and Country Planning Act 1990, has been met by this application. I have attached the decision report explaining the reasons a diversion order has been made in full for your information.

Environmental concerns are considered when determining the planning application which has now been granted but is not relevant to the legal test for a TCPA s.257. The loss of the rural area is regrettable, but the development will be urbanising what had previously been an open field so there is already an effect on the character of the right of way. The development provides a surfaced path through open space to the northeast of the estate and an adopted paved estate road to the south west of the current definitive line of Footpath Hilperton 54

I wondered if after consideration of the information provided in this email and the attached decision report you might be minded to withdraw your objection to this order? 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 Western Area 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”.

BDW Trading Ltd, the applicant, response to the objections

“It is BDW Trading Ltd’s position that consent 20/09701/FUL necessitates the diversion of HILP54. The diverted route provided is a suitable alternative.”