



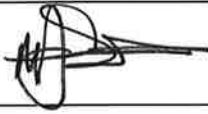


**COVERING PAGE FOR DECISION REPORT ON WHETHER TO MAKE A PUBLIC PATH
DIVERSION ORDER UNDER SECTION 119 OF THE HIGHWAYS ACT 1980 – BRIDLEWAY
NO.21 WEST TISBURY**

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

		Signature	Date Signed Off
To:	Sarah Marshall (Senior Solicitor – Highways)		1/10/12
	Barbara Burke (Definitive Map and Highway Records Team Leader)		26 Sept 2012
	Richard Broadhead (Rights of Way and Countryside Manager)		03/10/12
	Ian Brown (Head of Environment Services)		16.10.12
	Mark Smith (Service Director, Neighbourhood Services)		16/10/12
From:	Janice Green		
Date of report:	5 th September 2012		
Return to:	Janice Green, Rights of Way (Ext. 13345)		

Nature of Report: This is a report from Janice Green (Case Officer) to Mark Smith (Officer with the relevant delegated powers).

Executive Summary:

Wiltshire Council are in receipt of an application, made under Section 119 of the Highways Act 1980 and dated 14th December 2011, to divert Bridleway no.21 West Tisbury, at Quarry House, Tucking Mill, West Tisbury. The application was made by the landowners in order to improve the privacy and security of Quarry House, (the definitive line of the bridleway presently passes directly alongside this property). Additionally the applicants consider that there would be the following public benefits as a result of the diversion:

- (i) Users of the bridleway would feel less invasive;
- (ii) Improved safety for path users from increased traffic using the existing route, i.e. the definitive route of the bridleway is shared with vehicles accessing properties as its northern end. The diversion route is safer as it will not be used by vehicles and
- (iii) Allowing the public to enjoy more open and attractive views, where the old route is more confined.

In 2011 the owners of Quarry House applied for and secured a temporary diversion of the bridleway, to enable works to be carried out alongside the property. At this time the landowners provided a suitable alternative route to the north-west of the definitive line and they have now applied for a permanent diversion of the bridleway onto this temporary diversion route.

Following an initial consultation regarding the diversion proposals, four objections were received, which have not been withdrawn.

Officer's Recommendation: That an order to divert Bridleway no.21 West Tisbury, be made under Section 119 of the Highways Act 1980 and that if no objections or representations are received, the order be confirmed by Wiltshire Council as an unopposed order.

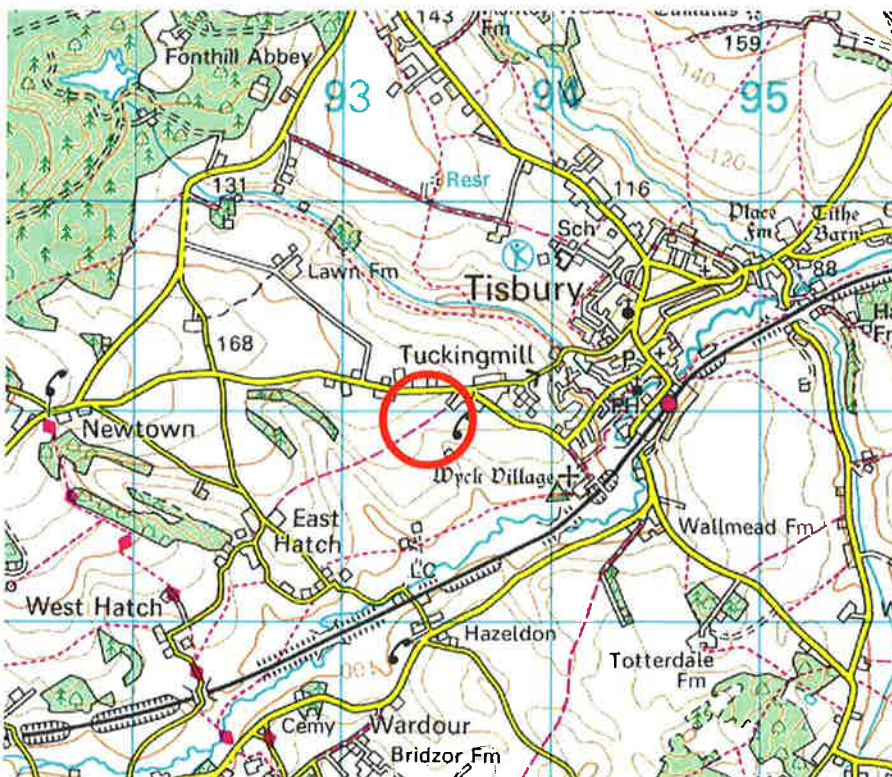
DECISION REPORT
HIGHWAYS ACT 1980 – SECTION 119
THE PROPOSED DIVERSION OF BRIDLEWAY NO.21 WEST TISBURY

1. Purpose of Report

1.1. To consider an application to divert Bridleway no.21 West Tisbury (part) at Quarry House, Tucking Mill, West Tisbury. The application has been made on behalf of the landowners, to improve the privacy and security of Quarry House. The applicants also consider that there would be the following public benefits as a result of the diversion:

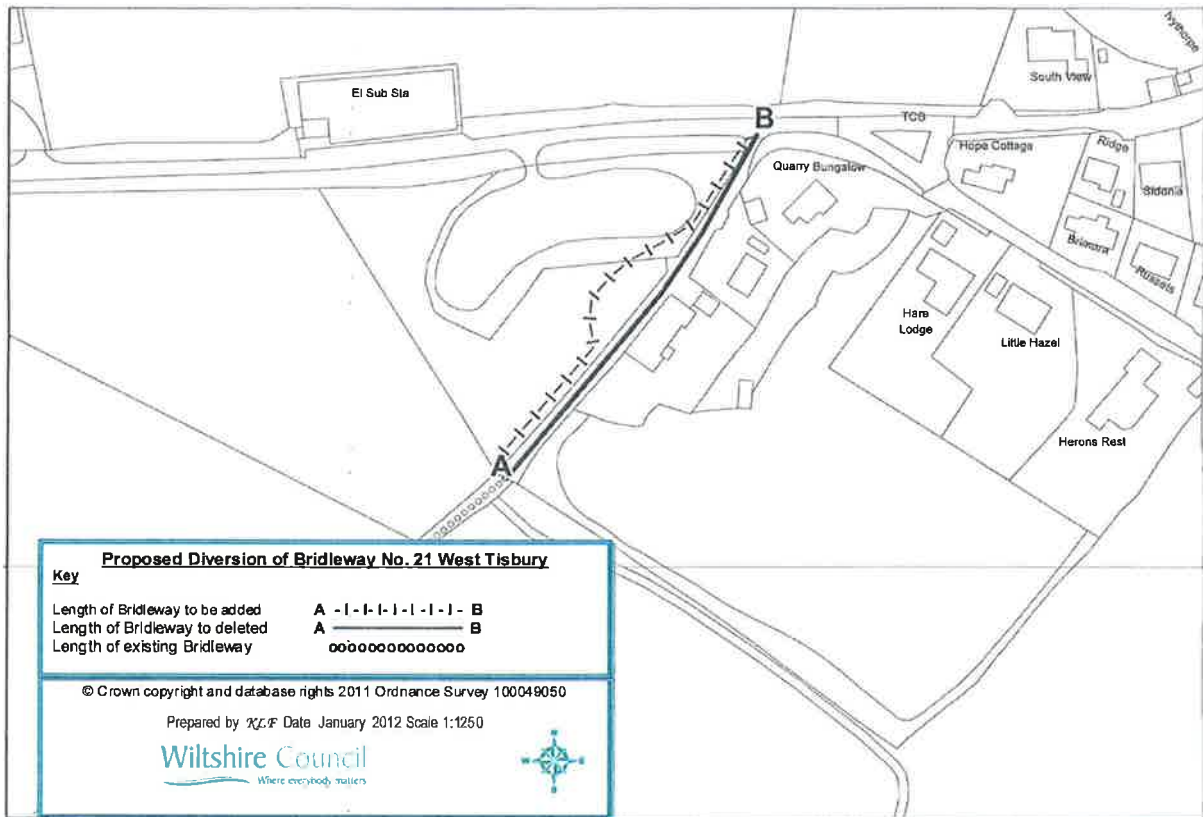
- i) users of the bridleway would feel less invasive;
- ii) improved safety from increased traffic using the definitive route, i.e. two cars at Quarry House, one car at Stoneleigh and recycling and bin lorries, the diversion route is safer as it will not be used by traffic and
- iii) allowing the public to enjoy more open and attractive views, where the old route is more confined.

2. Location Plan



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3. Proposed Diversion Plan



3.1. It is proposed to divert the definitive line of Bridleway no.21 West Tisbury, from a line A-B alongside Quarry House, Tucking Mill, West Tisbury, as shown by a solid black line on the above plan, to a new route leading from A-B to the north-west of the definitive line, as shown by a hatched line on the above plan.

4. Photographs



ST 9356-2912 looking south-west

The definitive line of Bridleway no.21 west Tisbury, at its junction with Hatch Lane, at point B, leading south-west.



ST 9354-2909 looking south-west

The definitive line of the bridleway leads south-west, directly alongside the property Quarry House.



ST 9352-2909 looking south-west

The definitive line of Bridleway no.21 west Tisbury leads south-west alongside Quarry House, at this point enclosed by a hedge on its northern side.



ST 9350-2904 looking south-west

Point A, at which the definitive line and the proposed diversion route converge.



ST 9348-2902 looking south-west

Gate at point A and views over the surrounding countryside.



ST 9356-2912 looking west

The proposed bridleway diversion route at point B, at its junction with Hatch Lane. The staddle stone erected here will be an obstruction if Bridleway no.21 West Tisbury is successfully diverted and must be removed to make the full proposed width of 4 metres available.



ST 9354-2911 looking south-west

The proposed diversion route leading south-west, parallel to the definitive line. The proposed route is not enclosed on its northern side and at present the route has a hard surface, although this has been objected to. The applicants have advised that there is potential to provide a grass surface and additional width if necessary.



ST 9353-2909 looking south-west

The proposed diversion route leading generally south-west, with views of the surrounding countryside.



ST 9351-2907 looking south-west

The proposed diversion route curving to the south, before continuing in a south-westerly direction to the gate at point A.



ST 9349-2904 looking south-west

The proposed diversion route leading south-west to point B. The proposed route is not enclosed on its northern side.

5. Applicant and Registered Landowners

- 5.1. Mr Andrew and Mrs Jean Watson
Quarry House
Tucking Mill
Tisbury
Wiltshire
SP3 6N5

6. Legal Empowerment

- 6.1. A diversion order can be made under Section 119 of the Highways Act 1980, which states:

“119. Diversion of footpaths, bridleways and restricted byways

- (1) *Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,-*
- (a) *create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion; and*

(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a 'public path diversion order'.

- (2) A public path diversion order shall not alter a point of termination of the path or way-*
- (a) if that point is not on a highway; or*
- (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.*
- (3) Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall-*
- (a) specify a date under subsection (1)(a) above, and*
- (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.*
- (4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.*
- (5) Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-*
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below; or*

(b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public; or

(c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.

(6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which-

(a) the diversion would have on public enjoyment of the path or way as a whole;

(b) the coming into operation of the order would have as respects other land served by the existing public right of way; and

(c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it;

so, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into account the provisions as to compensation referred to in subsection 5(a) above.

(6A) The considerations to which-

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and

(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way."

7. Background

- 7.1. Wiltshire Council are in receipt of an application dated 14th December 2011, from Mr and Mrs Watson of Quarry House, Tucking Mill, West Tisbury, to divert Bridleway no.21 West Tisbury, under Section 119 of the Highways Act 1980.
- 7.2. The Bridleway presently passes directly alongside the property Quarry House, to the north-west. It is proposed to divert the bridleway in order to improve the privacy and security of Quarry House. The applicants are also concerned that the present route of the bridleway forms the vehicular access to properties at its northern end and is used by bin lorries, delivery vehicles etc. The proposed alternative route would remove the bridleway from the track presently used by vehicles. Additionally the applicants consider that the proposed diversion route would benefit the public as path users would feel less intrusive using a route which does not pass directly alongside Quarry House and by creating a more open and enjoyable route, with improved views of the countryside, where the present route is on a track enclosed between the wall of the property on its southern side and a hedge on its northern side. The proposed diversion route would have a recorded width of 4 metres including a grass verge, the remainder of the path having a compacted surface.
- 7.3. Prior to the application to permanently divert the bridleway, the owners of Quarry House secured a temporary diversion of the bridleway, in order to allow repairs to the side of the property. The owners provided a temporary diversion route to the north-west of the existing route, onto which they have now applied to permanently divert the bridleway.

8. Public Consultation

- 8.1. A public consultation exercise was carried out on 25th January 2012, with a closing date for all representations and objections to be received, in writing, by 6th March 2012.
- 8.2. The consultation included the landowner, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council Member for Tisbury and West Tisbury Parish Council.
- 8.3. The following consultation replies were received and are summarised below:

Supporting Comments:

Mr William and Mrs Audrey Lacey – Correspondence dated 28th January 2012:

In full agreement with the diversion, the new owner is making a considerable improvement to the area for all users of the path. Also they might be spared the dog mess which is left on the bridleway outside their back gate, by some dog owners.

Mrs S W Drake – Correspondence dated 15th February 2012:

As a local resident and keen walker, my husband and I applaud the diversion of the path as:

- 1) The new path is easier to walk in terms of a more stable base. The previous pathway was rutted with badger holes and was very uneven at the end.
- 2) It is safer to walk without vehicular access – when walking with children and dogs one had to be aware of cars reversing into the lane and the coming and going of traffic.
- 3) Not invading the privacy of Quarry House. As a walker, I often feel the footpath is “too close for comfort”.
- 4) Aesthetically, the open vista at the start of the walk is more enjoyable compared with walking past houses.
- 5) The new pathway is easier for potential walkers to see and adopt.
- 6) It improves the overall look of this area of Tuckingmill.

National Grid Plant Enquiry Response – Correspondence dated 21st February 2012:

National Grid’s records show no apparatus in the vicinity of your enquiry.

Lady Gingell – Correspondence dated 23rd February 2012:

As a Tisbury resident and user of the route as part of a recreational walking route from Tisbury to Tucking Mill and back, I support the application. From a walkers point of view the diversion is an improvement, it makes a pleasant walk with agreeable views and removes the slight deterrent of passing directly in front of someones front door. Aged 86 the separation of the path from the vehicular access route is beneficial as I am no longer concerned with failing to hear vehicles.

I have discussed this matter with fellow walkers and they are in agreement.

As the former occupier of Quarry House, I support the diversion on the grounds of security. Whilst resident here we experienced two burglaries and the proximity of the

bridleway allows easy access for “casing the joint” by potential burglars. The proposed route reduces this risk without reducing the legitimate users pleasure.

David Cousin – Correspondence dated 28th February 2012:

As a resident at Stonelea, on the existing bridleway/track which forms part of the entrance to the property, my work requires me to travel to and from work twice a day and it is nice to have reduced foot traffic. It is reassuring to know that the property is more private and thus secure.

The layout and look of the diversion is very in-keeping with the surroundings and makes good use of the beautiful views.

Mr Roger Little – Correspondence dated 2nd March 2012:

Me and my family use this bridleway on an almost daily basis and fully support the application.

The current route takes walkers along the access lane used by vehicles, including large vehicles used to collect from and deliver to residences alongside the bridleway, particularly during darker months it can be quite dangerous.

The temporary diversion has proved beyond doubt the value of separating walkers and horses from the traffic. It is much less muddy and in no way detracts from the views offered to bridleway users. It is in every respect an improvement.

Mr Roger Little – Further Correspondence dated 3rd April 2012 (although received outside the initial consultation period, Officers have used their discretion to take these comments into account):

Temporary Diversion:

The temporary closure was made to enable work to the front of Quarry House, to be carried out safely. In order to do this it was essential for the new route to be clearly delineated and safe, which necessitated earthmoving plant to clear and level the ground and then a base of the old fill material that had been left in the former council yard, very sensibly spread to make a decent walking surface. If this had not been done there would have been complaints about the surface condition.

I fail to see why this should have been taken as presenting the users with a fait accompli. It was a commonsense measure to give users a clear, level, stable and mud free walking surface. There is a rumour that the new owners brought this land to build on it, which really would have destroyed the ambience of the area and would have been a far worse outcome.

Permanent Diversion:

As dog owners my wife and I have used the path for the last 8 years. Of the people who attended the site meeting I have only ever seen two use the route. Talking to others who use the bridleway, there is a consensus that the temporary diversion route was a perfectly acceptable alternative and one which they seem still to prefer and use.

Apart from the privacy issue, it would appear that not all dog owners are assiduous about clearing up after their pets and I suspect that none of us would wish to have to look at where we walk the moment we step outside our front door, nor should we put up with it.

Not convinced on the ancient right of way argument. I understood that the ancient right of way was through the ground that is now the site of the disused quarry and was re-routed when the stone extraction commenced there. Sceptical over the use of the path being for many generations, if a minimum of 75 years can this really be true. I have only seen riders on this section of path about twice although I have seen evidence that the local hunt uses it, but not more than once a year if that.

“Health and Safety” issues are not irrelevant, the mix of motor vehicles, walkers, cyclists, riders, all those entitled to use the present route, invites trouble. Many users are forced to use the route during twilight and even dark hours during winter months and dodging vehicles on a narrow route is potentially dangerous. Also imposing a greater physical separation between the house and the route will surely prove a disincentive for the casual thief.

The walking surface and width of any diversion must meet the required standard. The bridleway beyond the field gate towards Hatch is very damaged and the current bridleway is far from easy walking, with a badger sett and often slippery and uneven surface. I question whether the definitive route is as wide as the temporary diversion, i.e. certainly not 4 metres.

The points about the vista are not to be dismissed and if the landowners were to plant trees at the far end of the diversion then the users view would be blocked until it opened up at the reaching the gate at the end of the diversion, as it does now. After all it is the vista across the Nadder Valley towards the Donheads and Win Green beyond that provides the “wow factor”, not the fields to the right of the bridleway. I see no reason not to support the application as making the route safer and easier to use, I find the dark tunnel quite intimidating at night, would be in the interests of users and a chance to greatly improve the amenity of this area. The alternative offered is a minimum change in route and would improve the utility for riders and measures to preserve the view and seems to offer a commonsense solution.

Odette Lynch – Correspondence dated 5th March 2012:

As long-term visitors to the area, we support and fully agree the diversion and fully support the efforts the new owners are making.

Reverend Andrew Staley – Correspondence dated 9th April 2012 (although received outside the initial consultation period, Officers have used their discretion to take these comments into account):

In favour of the request. Even though I knew Prue Gingell well, I always felt a little nervous walking by her door to walk in the field beyond. On walking the temporary diversion put in whilst the Watsons were working on the house, the new path detracted nothing from the walk and added a greater sense of avoiding intruding on the privacy of their house.

Objections:

Wiltshire Bridleways Association – Correspondence dated 16th February 2012:

Supports this action but objects to the proposed width of 4 metres. This is insufficient and we would also ask why there is a need for a compacted surface on a bridleway.

We would prefer to see the diversion to be grass only.

Also we would like confirmation that there would be no gates on the diversion.

West Tisbury Parish Council – Correspondence dated 16th February 2012:

West Tisbury Councillors met on 2nd February and discussed the proposals to divert this path. After some debate, they resolved to object to the proposals for a permanent diversion on the following grounds:

- 1) This is a long established ancient right of way which is much used and enjoyed by riders and walkers. The ancient route has a “magical” feel which is not replicated by the diverted path.
- 2) The rationale in favour of diverting the path is insufficiently robust and not in the interests of the general public. Rather Councillors took the view that it is a proposal to suit the interests of the new owners of Quarry House.
- 3) There are strong objections in principle from local neighbours who have known and used the path for many generations and see no merit in diversion.

There is no objection to a temporary diversion whilst building works are carried out at Quarry House.

Peter Thompson – Correspondence dated 20th March 2012 (although received outside the initial consultation period, Officers have used their discretion to take these comments into account):

Concern over the way in which the owners of Quarry House are behaving in regard to the bridleway. They are in the process of trying to move permanently this bridleway to the temporary position which was supposed to be set up to enable them to work on their house for a 6 month period.

The temporary diversion route is not the same size as the existing bridleway and there is a large stone pillar at the entrance to the footpath which obstructs any larger access other than pedestrians, which is not what a bridleway should provide. It is obvious that the owners are trying to prevent any other access as they had already put up staddle stones on the current bridleway to prevent the full width of the bridleway being used.

Having lived in Tuckingmill for 40 years and regularly using this bridleway, this is the first time that any obstruction has occurred. The bridleway should stay in its original position and the temporary closure should lapse.

Roger Walker, Chairman, Tisbury Football Club – Correspondence dated 3rd April 2012 (although received outside the initial consultation period, Officers have used their discretion to take these comments into account):

Three issues to be considered here:

- 1) Temporary diversion – correctly applied for and information concerning the temporary diversion was available at both ends of the path. The work for which the diversion was applied for has now been completed and the path should be realigned to its definitive route whilst the permanent diversion is considered. Concern amongst football club members and neighbours in Tucking Mill that the temporary diversion appears to have become permanent without any public notice being displayed at either end of the path or any public consultation.
- 2) Application for permanent diversion – essential that appropriate notices outlining the diversion are displayed at both ends of the proposed diversion in order that local path users are given opportunity to submit their observations. At my last visit there were no such notices and any consultation period should commence at the date when such notices were displayed.
- 3) Should the application be accepted or rejected – With about 80 club members there is no single opinion on this. Those living locally in Tucking Mill area, or use the path regularly may strongly oppose the diversion of this ancient right of way, whilst others who live in other areas of Tisbury and West Tisbury, who maybe do

not use the path, do not have a view, or see no reason to object. Therefore those who do use the path should be fully informed of the application through publicly displayed notices.

This right of way has existed on its present alignment for many generations, Quarry House has existed for many years. Previous owners of Quarry House have seen no reason to divert it, presumably the new owners were aware of the existence of a bridleway from searches on purchasing the property. There does not appear to be any substantive reason to divert the path. I do not see what safety issues are being referred to, the only positive reason is the privacy of the new owners, if this is accepted as a reason for diversion it could set a very dangerous precedent.

- 8.4. As a result of the objections received, Wiltshire Council and West Tisbury Parish Council arranged a meeting with objecting parties to discuss the objections in further detail. Notes from this meeting dated 26th March 2012, prepared by Janet Amos, Clerk of West Tisbury Parish Council, are attached at Appendix A. No objections were withdrawn as a result of this meeting and on 13th April 2012, West Tisbury Parish Council wrote to confirm that following further discussion of the application at the Parish Council meeting following the site meeting, they had no further comments to add to their previous resolution and maintain their objection to the permanent diversion of the bridleway.
- 8.5. Officer's comments on the objections received, are attached at Appendix B.

9. Main Considerations for the Council

- 9.1. Section 119 of the Highways Act 1980 allows the Highway Authority to divert a bridleway where it considers it expedient to do so in the interests of the landowner and/or the public. This particular application has been made in the interests of the landowner to improve the privacy and security of Quarry House.
- 9.2. Additionally the applicants also consider that there would be the following public benefits to the diversion:
- (i) users of the bridleway would feel less invasive;
 - (ii) improved safety from increased traffic using the definitive route, i.e. two cars at Quarry House, one car at Stoneleigh and recycling and bin lorries, the diversion route is safer as it will not be used by traffic and

- (iii) allowing the public to enjoy more open and attractive views, where the old route is more confined.

9.3. A diversion must not alter the termination points of a path where these are not on a highway and where they are located on a highway they must not be altered, other than to another point on the same highway, or a highway connected with it. Points A and B remain unaltered (please see diversion application plan above at 3).

9.4. The proposed diversion satisfies both the above-mentioned legal tests for the making of an order. However, at the confirmation of an order there are a number of additional legal tests to be considered:

- 1) It must be expedient to confirm the order in the interests of the landowner and or the public (as seen above).
- 2) The diverted route must not be substantially less convenient to the public.
- 3) It must be expedient to confirm the order having regard to the effect which:
 - i) The diversion would have on public enjoyment of the path or way as a whole;
 - ii) The coming into operation of the order would have as respects other land served by the existing public right of way;
 - iii) Any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

At ii) and iii) above, the land over which the existing path passes and the land over which it is proposed to place the newly created bridleway, are in the ownership of the applicants, Mr and Mrs Watson, and no compensation claims are anticipated.

9.5. The diversion of the bridleway deletes approximately 122 metres of bridleway and creates approximately 136 metres of bridleway, which is not substantially less convenient to the public.

9.6. Additionally the diverted bridleway will have a recorded width of 4 metres, open and available for public use, where no width is presently recorded within the definitive statement for Bridleway no.21 West Tisbury and the section of diverted bridleway is not enclosed on its northern side.

9.7. There have been consultation responses from the public making comments on the effect of the diversion on public enjoyment of the path, however this is subjective and overall Officers do not consider that the enjoyment of the path or way as a whole will

be detrimentally affected by the diversion. The diversion opens up views of the surrounding countryside and the applicants are proposing to carry out landscaping works to the former Council yard (now in the ownership of the applicants), which will further enhance this area. It is also considered that the diversion will further enhance use of the path by creating a safer bridleway route which is not used by vehicles. There are no additional limitations or conditions on public use of the path as a result of the diversion and the diversion route will have a level and improved surface for use by the public.

- 9.8. Officers consider that, despite the objections received, the legal tests for the confirmation of an order are met at present and the order appears capable of being confirmed, however this is subject to a further consultation period once an order has been made.
- 9.9. Under sub-section 6A of Section 119 of the Highways Act 1980, the Council must also have regard to any material provision of any Rights of Way Improvement Plan - the Wiltshire Council Rights of Way Improvement Plan 2008-2012 (ROWIP). The ROWIP includes the following aims:
- *Increase access to the countryside for buggies, older people, people with mobility problems and other impairments (p.43 Improvements 1, 2 & 3).* The diversion route will have a recorded width of 4 metres open and available for public use, where no width is recorded on the present definitive line. There are no additional limitations or conditions to public use of the path as a result of the diversion and the diversion route will have a level and improved surface, suitable for use with buggies and by older people, people with mobility problems and other impairments.
 - *Increase access to the countryside for people who are blind and partially sighted (p.44 Improvements 4 and 5).* The diversion route will have a recorded width of 4 metres open and available for public use, where no width is recorded on the present definitive line. There are no additional limitations or conditions to public use of the path as a result of the diversion and the diversion route will have a level and improved surface, suitable for use by those who are blind or partially sighted.

- *The promotion and development of the public rights of way network, enabling pedestrians, cyclists and horse riders to avoid heavy or intrusive traffic (p.46 Improvement 3).* The present route of the bridleway also forms the vehicular access to several properties and the route is also used by bin lorries and delivery vehicles etc. The proposed diversion route is not shared with vehicles and Officers view this as an improvement as it reduces the risk of conflict between different types of users.

10. Risk Assessment

10.1. None.

11. Environmental Impact

11.1. None.

12. Legal Considerations

12.1. There is no right of appeal for the applicant where the Surveying Authority refuses to make a public path diversion order, however the Councils decision would be open to judicial review.

12.2. If the Council does make a public path diversion order and objections are received, where the Council continues to support the order it may be forwarded to the Secretary of State for decision which may lead to the order being dealt with by written representations, hearing or local public inquiry. The Inspectors decision may be subject to challenge in the High Court.

12.3. The making of a public path diversion order is a discretionary duty for the Council, rather than a statutory duty, therefore an order may be withdrawn at any time, where the Council no longer continues to support the making of the order.

13. Equality Impact

13.1. The ROWIP recognises the Council's duty to have regard to the Disability Discrimination Act 1995 (now replaced by the Equalities Act 2010) and to consider the least restrictive option for public use. The proposed diversion route places no

additional limitations and conditions on public use of the bridleway, there are no gates required for the purposes of stock control or health and safety reasons. Additionally the proposed new route will have a recorded width of 4 metres, open and available for public use.

13.2. Costs

- 13.3. The applicant has agreed, in writing, to meet the actual costs to the Council in processing the order, including advertising the making of the order in one local newspaper and should the order be confirmed, the actual costs of advertising the notice of confirmation in one local newspaper, (i.e. two advertisements).
- 13.4. The applicant has also agreed, in writing, to pay any expenses which may be incurred in bringing the new bridleway into a fit condition for use by the public, as required by the Council.
- 13.5. If a diversion is made under Section 119 of the Highways Act 1980, and there are no objections to the making of the order, Wiltshire Council may itself confirm the order and there are no costs to the Council.
- 13.6. If there are outstanding objections to the order which are not withdrawn and the Council continues to support the making of the order, it can be forwarded to the Secretary of State for decision. The outcome of the order would then be decided 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 negligible, however where a local hearing is held the costs to the Council are estimated at £200 - £500 and £1,000 - £3,000 where the case is determined by local public inquiry. These costs cannot be passed to the applicant and must be borne by Wiltshire Council.
- 13.7. The making of a diversion order is a discretionary duty for the Council rather than a statutory duty, therefore a made order may be withdrawn at any time if the Council no longer continues to support the order, for example if it no longer meets the legal tests set out under Section 119 of the Highways Act 1980.

14. Options to Consider

- 14.1. (i) To refuse the application, or
(ii) To make an order to divert Bridleway no.21 West Tisbury, under Section 119 of the Highways Act 1980.

15. Reasons for Recommendation

- 15.1. It is considered that the legal tests for the making of a diversion order under Section 119 of the Highways Act 1980, have been met, i.e. the order can be made in the interests of the landowner to improve the privacy and security of Quarry House.

There are additional public benefits to the diversion:

- i) creating a route where users of the bridleway would feel less invasive,
 - ii) improved safety from increased traffic using the definitive route, i.e. two cars at Quarry House, one car at Stoneleigh and recycling and bin lorries, the diversion route is safer as it will not be used by traffic,
 - iii) allowing the public to enjoy more open and attractive views, where the old route is more confined.
- 15.2. The diversion will benefit the public by adding a width of 4 metres, open and available for public use over the new bridleway, where no width is presently recorded within the definitive statement. The diversion route is not substantially less convenient to the public, i.e. the diversion adds approximately 14 metres to the length of the bridleway, with a level and improved surface for use by the public and there are no additional conditions or limitations on the public use of the path as a result of the diversion. Despite the objections received, it is not considered that the diversion will have a detrimental effect upon the public enjoyment of the path or way as a whole. It is therefore considered that the tests for confirmation of an order have also been met.
- 15.3. The proposed diversion also meets other considerations which the Council must take into account, such as the provisions of the ROWIP.

16. Recommendation

- 16.1. That an order to divert Bridleway no.21 West Tisbury, be made under Section 119 of the Highways Act 1980 and that if no objections or representations are received, the order be confirmed by Wiltshire Council as an unopposed order.

Janice Green

Rights of Way Officer, Wiltshire Council

Date of Report: 5th September 2012

**APPENDIX A – MINUTES OF WILTSHIRE COUNCIL SITE MEETING WITH WEST
TISBURY PARISH COUNCIL AND OBJECTORS, DATED 26TH MARCH 2012**

WEST TISBURY PARISH COUNCIL

Notes to summarise points made at a site meeting held on Monday 26 March 2012 at 2.00 pm re proposed diversion of the bridle way from Hatch Lane, Tuckingmill to East Hatch.

Meeting called by: Mrs Janet Amos, Clerk to the Parish Council,
c/o Post Office House, High St, Tisbury SP3 6LD

Present: Cllrs Nigel Noyle and Mrs G Matthews; Ben Short, Savills agent; Mrs J Watson, applicant; Nick Cowen, footpath warden; Janice Green, Footpath Officer; Peter Thompson, neighbour; David Lacey, neighbour; Janet Amos, Clerk to the parish council

The meeting was held so that all parties could express any concerns they may have regarding proposals to divert the existing bridle way at Hatch Lane, Tuckingmill. It is proposed that the new path will be diverted a short distance away from Quarry House, through land which was formerly the old Council storage depot. There would be no change of entry point to the path from Hatch Lane and the path rejoins the existing right of way at the gate at the entrance to the field.

It was noted that there are 2 entirely separate issues relating to the diversion:

1. Temporary diversion – the building works at Quarry House which necessitated a temporary diversion of the right of way, have now been completed. The temporary fencing will be removed as soon as possible and the existing right of way will be reinstated, whilst consideration is given to the application for a permanent diversion.
2. Application for a permanent diversion of the right of way – a formal application has now been made. At their meeting in February 2012, the parish council resolved to object to the diversion for the following reasons:
 - this is a long established ancient right of way which is much used and enjoyed by riders and walkers alike. The ancient route has a 'magical' feel which is not replicated by the diverted path.
 - the rationale in favour of diverting the path is insufficiently robust and not in the interests of the general public. Rather, Councillors took the view that it is a proposal to suit the interests of the new owners of Quarry House.
 - there are strong objections in principle from local neighbours who have known and used this path for many generations and see no merit in the diversion.

Wiltshire Council had therefore asked for a site meeting to consider the issues.

On behalf of the applicant, Ben Short summarized the rationale in favour of the diversion:

- idea is to move the bridle path over to improve safety for all users
- improve privacy for owners of Quarry House
- new path closely follows the old line
- there is an improved vista for walkers
- the intention is to turn the old Council depot into a Conservation Area
- the new path has a good surface although the applicant has noted comments from Wiltshire Bridleways Association that the surface is not good for use by horses as the stones are too small. WBA would also prefer a wider path – at least 4m
- Applicants have suggested they may provide a bench at the end of the path overlooking the view of the valley

Comments from the Footpath Warden:

- confirmed that the temporary path was required for Health & Safety purposes whilst building works were carried out
- Asked those present to understand that the legal right of way remains as previously until or unless an order is made to divert the path
- Agrees the new proposed path marginally benefits the owners of Quarry House
- Notes the start and finish points of the diverted path are the same as previously

Comments from Peter Thompson, local resident:

- Concerned at apparent lack of local consultation – new path constructed without a diversion order
- Locals are confused because they hadn't realized the goal-posts had moved and that this is now an application for a permanent diversion
- Concerned at the restricted width – can't take a cart through
- Issue relating to health and safety isn't relevant – H&S has never previously been a concern
- Likes the way the old path opens out at the end to its amazing view point

Comments from the Rights of Way Officer:

- In considering the application, the Council may take account of 'public enjoyment' of the right of way
- Need to ensure that the diversion is not an inconvenience to members of the public
- The new path should have the same highway access points as previously
- Further clarified the point that the initial works had been related to the temporary diversion; this is now a separate application for a permanent diversion
- If approved, the Council will make an order which will be advertised in the local press; the public is invited to comment and/or make representations
- The new path should have a recorded width (eg 4m – if that is agreed)
- The path will be specifically classified as a bridleway – access is permitted for walkers; cyclists and riders but no other vehicles.

Comment from Mrs Watson, applicant

- Clarification – the old vehicular right of way in favour of the Angling Club and others, was relinquished when the site was purchased
- Asked meeting to note that parish council was informed in November 2011 of intention to apply for a permanent diversion

Comments from Mr Lacey, neighbour:

- Expressed surprise at parish council's decision
- Is in favour of the revised route
- Most neighbours have no concerns
- Concerned that the Aspen tree should be felled before it falls down, as it is already dying

Comments from Cllr Noyle

- Was in favour of the temporary diversion but concerned that it was constructed in such a way as to make people believe that the path would become permanent
- Agrees that some neighbours are in favour, but others are very much against
- Small majority of comments Cllr Noyle has received are not in favour of the diversion
- Residents like the old path with its tunnel-like aspect, opening to the view at the end
- Understands the applicant's concerns re dog-fouling but that is a problem everywhere

- Acknowledge there is no change to the start and finish points of the path
- Suggested possibly there is less security for the owners if walkers no longer go past the house – no-one to check from a neighbourhood watch point of view

Comments from Cllr Matthews:

- Concerned at the way in which the diversion works have been carried out so that the community is presented with a fait-accompli, although understand the comments made regarding 2 separate issues

Conclusion:

- JG will wait until after the next parish council meeting in case Councillors wish to make any further comments, before preparing her report
- JA will contact the local footpath club for consultation
- JW will ensure the temporary fencing is removed whilst the application is being considered
- It was noted that the final decision is made by Wiltshire Council management committee. JG will write a status report for consideration.
- All agreed the issue is not yet concluded and there is scope for further comments to be considered.

The meeting closed with no further discussion.

APPENDIX B – WILTSHIRE COUNCIL OFFICER COMMENTS ON THE OBJECTIONS RECEIVED

OBJECTION

WILTSHIRE COUNCIL OFFICER COMMENTS

Wiltshire Bridleways Association

- | | |
|---|--|
| 1) Objects to the proposed width of 4 metres. This is insufficient | 1) The landowner has advised that there is scope to increase the width of the proposed new bridleway. This was put to Wiltshire Bridleways Association who have given no indication of a sufficient width. |
| 2) Why is there a need for a compacted surface on a bridleway, we would prefer to see the diversion to be grass only. | 2) The applicant has agreed that it would be possible to provide a bridleway surface laid to grass. |
| 3) Would like confirmation that there would be no gates on the diversion. | 3) There are no new gates on the proposed diversion route. |

West Tisbury Parish Council

- | | |
|---|--|
| 1) This is a long established ancient right of way which is much used and enjoyed by riders and walkers. The ancient route has a “magical” feel which is not replicated by the diverted path. | 1) Bridleway no.21 West Tisbury, on its present alignment, was added to the definitive map in 1994, previous to that the route existed on a different alignment line to the south and east of Quarry House, over what is now the disused quarry. |
|---|--|

(this line was extinguished by the same definitive map modification order in 1994). Therefore the route on its present alignment is not an ancient right of way.

2) The rationale in favour of diverting the path is insufficiently robust and not in the interests of the general public. Rather Councillors took the view that it is a proposal to suit the interests of the new owners of Quarry House.

3) There are strong objections in principle from local neighbours who have known and used the path for many generations and see no merit in diversion.

Peter Thompson

1) Concern over the way in which the owners of Quarry House are behaving in regard to the bridleway. They are in the process of trying to move permanently this bridleway to the temporary position which was supposed to be set up to enable them to work on their house for a 6 month period.

2) A public path diversion order may be applied for and made in the interests of the owner/occupier of the land crossed by the path or way.

3) One neighbour and the Chair of Tisbury Football Club have made written objection to Wiltshire Council. Four residents of Tucking Mill and the former owner of Quarry House have written in support of the application.

1) An application to permanently divert the bridleway has been correctly made to Wiltshire Council and following the temporary diversion, Wiltshire Council are satisfied that the definitive line of the bridleway is now open and available to the public whilst the permanent diversion is being considered.

- 2) The temporary diversion route is not the same size as the existing bridleway and there is a large stone pillar at the entrance to the footpath which obstructs any larger access other than pedestrians, which is not what a bridleway should provide. It is obvious that the owners are trying to prevent any other access as they had already put up staddle stones on the current bridleway to prevent the full width of the bridleway being used.
- 2) If the path is successfully diverted as a result of the permanent diversion application, the new route will have the status of bridleway, as the existing, for use by the public on foot, on horseback, leading a horse and with bicycles. Additionally the proposed route will have a recorded width of 4 metres where the definitive route has no recorded width. The large stone pillar at the entrance to the proposed diversion route, presently prevents access on horseback, however if the route is successfully diverted, any obstruction of the width will not be acceptable to the Council and the route must remain accessible to horse riders throughout its route. Wiltshire Council will not certify the new right of way until they are satisfied that it has been provided to a suitable standard for use by horse riders and pedestrians.
- 3) Having lived in Tucking Mill for 40 years and regularly using this bridleway, this is the first time that any obstruction has occurred. The bridleway should stay in its original position and the temporary closure should lapse.
- 3) The public right of way has not been obstructed. When the owners of Quarry House were carrying out works to the side of the property, they correctly applied for and secured a temporary diversion of the bridleway, providing a suitable alternative. The owners of Quarry House have now correctly applied for a permanent diversion to put Bridleway no.21 West Tisbury onto the line of the temporary diversion route. They have followed the correct application procedures and

Wiltshire Council are satisfied that the definitive line of the bridleway is open and available to the public whilst the permanent diversion application is determined.

Roger Walker, Chairman, Tisbury Football Club

- 1) Temporary diversion – correctly applied for and information concerning the temporary diversion was available at both ends of the path. The work for which the diversion was applied for has now been completed and the path should be realigned to its definitive route whilst the permanent diversion is considered. Concern amongst football club members and neighbours in Tucking Mill that the temporary diversion appears to have become permanent without any public notice being displayed at either end of the path or any public consultation.
- 1) The work for which the temporary diversion application was made has now been completed and the original definitive line of the path is now available, in addition to the alternative route which formed the temporary diversion. The temporary diversion has not been made permanent and there has been no modification to the definitive map of public rights of way to affect such a change. Wiltshire Council have received an application for permanent diversion which is now under consideration. Wiltshire Council have only carried out an initial consultation, which is not a statutory procedure and there is no requirement to post notice of the application at either end of the path, or to consult more widely at this early stage. Public notices are only required to be posted at either end of the path if a public path diversion order is made.
- 2) Application for permanent diversion – essential that appropriate notices outlining the diversion are displayed at both ends of the
- 2) As above.

proposed diversion in order that local path users are given opportunity to submit their observations. At my last visit there were no such notices and any consultation period should commence at the date when such notices were displayed.

3) Should the application be accepted or rejected – With about 80 club members there is no single opinion on this. Those living locally in Tucking Mill area, or use the path regularly, may strongly oppose the diversion of this ancient right of way, whilst others who live in other areas of Tisbury and West Tisbury who maybe do not use the path, do not have a view or see no reason to object. Therefore those who do use the path should be fully informed of the application through publicly displayed notices.

4) This right of way has existed on its present alignment for many generations, Quarry House has existed for many years. Previous owners of Quarry House have seen no reason to divert it, presumably the new owners were aware of the existence of a bridleway from searches on purchasing the property. There does not appear to be any substantive reason to divert the path. Do not see what safety issues are being referred to, the only positive reason is the privacy of the new owners, if this is accepted as a reason for diversion it could set a very dangerous

3) As above.

4) Bridleway no.21 West Tisbury, on its present alignment, was added to the definitive map in 1994, previous to that the route existed on a different alignment to the south and east of Quarry House over what is now the disused quarry, (this line was extinguished by the same definitive map modification order in 1994). Therefore the route on its present alignment is not an ancient right of way.

A previous owner of Quarry House has written in support of

precedent.

the application.

A diversion application is considered on its own merits against the legal tests set out under Section 119 of the Highways Act, which allows a diversion order to be made in the interests of the landowner.