

WILTSHIRE COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

PROPOSED EXTINGUISHMENT OF PART OF MARLBOROUGH PATH NO. 26
AT BRIDGE GARAGE, MARLBOROUGH

1 Purpose of Report

1 To:

- (i) Consider and comment on an application to extinguish part of Marlborough path no. 26 at Bridge Garage to enable a permitted development to take place.
- (ii) Recommend that an Order be made under s.257 of the Town and Country Planning Act 1990 to extinguish the part of the path affected by the development and to confirm the order if no representations or objections are received.

2 Background

- 2 On the 5th June 2014 Wiltshire Council received an application from Alex Deans of Deans Limited, Bridge Garage, 109 London Road, Marlborough, SN8 1LH to extinguish part of Marlborough 26 under s.257 of the Town and Country Planning Act 1990. The address for correspondence is Bridge Homes and Developments Limited, Bridge Garage, 109 London Road, Marlborough, SN8 1LH.
- 3 The application seeks to extinguish that part of the public right of way that is affected by the permitted development of the garage site. The site is affected by Planning application no. 13/05263/FUL Application for redevelopment of garage to accommodate 6 new dwellings and conversion of grade II listed cottage to accommodate 4 dwellings. Planning permission was granted on the 15th May 2014.
- 4 The planning consent contained the following informative to the applicant:
“Please be advised that nothing in this permission shall authorise the diversion, obstruction, or stopping up of the right of way (ref MARL26) that crosses the site. You are advised to contact the Council’s Senior Rights of Way Officer.”
- 5 The application seeks to extinguish 51.47 metres of the path from the London Road (A.4) leading south to the River Kennet.
- 6 There is no bridge or ford across the river at this point and even though path no. 26 leads across the river and on past the church to the B.3052 users cannot reasonably proceed on path no. 26 without diverting onto the A.4 to cross the river using the bridge.
- 7 Although it is not a consideration for s.257 of the Town and Country Planning Act 1990, this section of path, leading across the garage forecourt has little or no utility owing to the lack of means to cross the river.

8 The application plan is shown below (path to be extinguished shown A to B):



9 The permitted development plan is shown below:

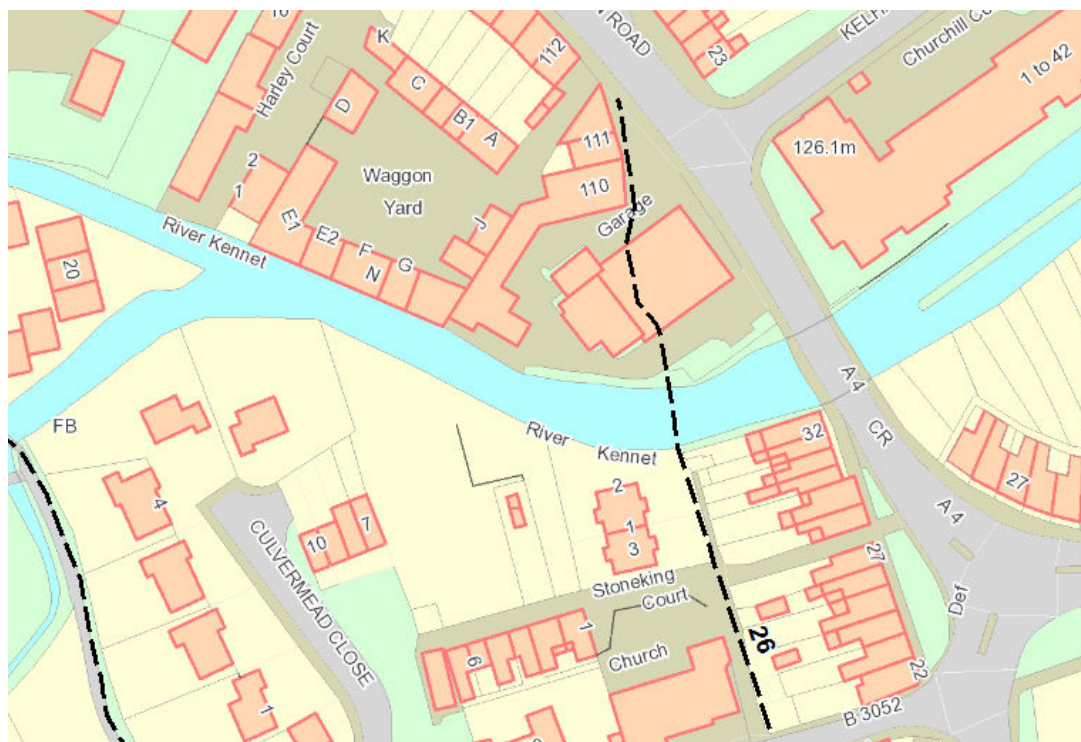


- 10 Footpath no 26 was included in the Borough of Marlborough definitive map and statement 1953 as follows:



F.P. From the London – Bristol trunk road A.4, opposite the Gas Works on the west side of the bridge, leading south to George Lane, B.3052, east of the Roman Catholic Church. 10 feet wide. 130 yds long.

- 11 The route was diverted at the garage site in 1981 by an Order made under s.210 of the Town and Country Planning Act 1971 entitled District Council of Kennet (Marlborough footpath No. 26) Public Path Diversion Order 1981.
- 12 The working copy of the definitive map shows the route as below:



13 The statement reads:

Footpath From the London – Bristol Trunk Road, A.4 opposite the Gas Works on the west side of the Bridge, leading south to George Lane, B.3052, east of the Roman Catholic Church. Approx length 120 m Width 3 metre. Relevant date 27th August 1991

14 Wiltshire Council's Principal Bridge Engineer had the river crossing inspected by a bridge inspector who could find no traces of any historic abutments upstream of Marlborough Town Bridge.

Images of south side:



Image of north side:



- 15 No bridge or ford is recorded on Ordnance Survey maps of 1889, 1922 or 1943. Andrews' and Dury's Map of Wiltshire dated 1773 shows the A.4 leading over the town bridge as it does today.

3 Land Ownership

- 16 The land affected by the application is owned by the applicant; Deans Limited, Bridge Garage, 109 London Road, Marlborough, SN8 1LH.

4 Consultation

- 17 An initial consultation was carried out between 09 June 2014 and 18 July 2014. The following letter was circulated:

Town and Country Planning Act 1990 s.257

Application to extinguish part of Marlborough footpath no. 26 at Bridge Garage, London Road, Marlborough, SN8 1LH

Wiltshire Council has received an application to extinguish part of footpath no. 26 where it crosses the Bridge Garage site at London Road. Planning permission has been granted (application no. 13/05263/FUL) for redevelopment of the garage to accommodate 6 new dwellings and conversion and extension of grade II listed cottage to accommodate 4 dwellings. A public footpath crosses the site and it will be necessary to stop up these public rights to enable the development to proceed.

Please find enclosed a plan showing the route to be extinguished as a solid black line marked A to B. If you have any comments relating to this I would be please to receive them by Friday 18 July 2014.

18 This, and a copy of the plan shown at para. 8 was sent to:

The Auto Cycle Union
Commons, Open Spaces and Footpaths Society
Wiltshire Bridleways Association
Wiltshire Cycling Touring Club
British Horse Society (BHS)
Marlborough Town Council
Wiltshire Councillor Nick Fogg
Mrs D Plummer BHS Wiltshire
Byways and Bridleways Trust
Wiltshire Council Senior Rights of Way Warden Paul Millard
Wiltshire Council County Ecologist
Mr B Riley
British Driving Society
National Grid Electricity and Gas
Scottish and Southern Electric plc
Wales and West Utilities
Easynet BT
Wessex Water
Virgin Media
Alex Deans, Deans Limited
Bridge Homes and Developments Limited
Wiltshire Council Principal Bridge Engineer

4 Consultation responses

19 **LineSearch** 10.06.14

No asset owners within the zone of interest

20 **Virgin Media** 10.06.14

No apparatus affected

21 **Openreach BT** 10.06.14

No apparatus affected

22 **Thames Water** 10.06.14

Foul water sewer crosses and leads along part of path no. 26.

23 **National Grid Electricity and Gas** 10.06.14

No apparatus affected.

5 Considerations for the Council – Legal Empowerment

24 The Town and Country Planning Act of 1990 states (as amended by section 12 of the Growth and Infrastructure Act 2013), 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.

25 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 divert the footpath in question in order to enable development to be carried out in accordance with planning permission granted.

26 Paragraph 7.15 of Circular 1/09 (Rights of Way Circular – Guidance for Local Authorities – Defra) advises that the disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the Order.

27 In consulting on the diversion of the right of way prior to the granting of planning permission Wiltshire Council is adhering to Guidance issued by the Department for Environment, Food and Rural Affairs (Defra) in Rights of Way Circular 1/09 Guidance for Local Authorities Section 7.

28 7.1 states:

“Proposals for the development of land affecting public rights of way give rise to two matters of particular concern: the need for adequate consideration of the rights of way before the decision on the planning application is taken and the need, once planning permission has been granted, for the right of way to be kept open and unobstructed until the statutory procedures authorising closure or diversion have been completed.

29 7.15 states:

“...Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to person whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.”

6 Comments on Considerations

i) Whether it is necessary to divert or extinguish the footpath in order to enable development to be carried out.

30 The permitted development affects the line of the path which must be diverted or extinguished to permit development to proceed.

ii) The disadvantages or loss likely to arise as a result of the extinguishment

31 Owing to the constraints of the proximity of the river, adjoining properties and the A.4 no diversion route could be identified. There does not appear to have been a dry crossing of this river at this point since at least 1773 and it is unlikely that anyone would be able to use the length of footpath 26 continuously with any degree of ease. The highway authority is not obliged to provide a bridge at river crossings and does not consider it appropriate to consider one at this point.

32 If the public were to walk the route to be extinguished and across the river they would travel approximately 93 metres and if they were to detour around the footway beside the A.4 to arrive at the same point on path no 26 they would travel 125 metres.

33 It is considered that loss associated with any additional distance and proximity to the A.4 is outweighed by use of the definitive path which crosses a garage forecourt and a wide river.

iii) Alternative Routes

34 There are no alternative routes. Riverside development precludes any possibility of diversion on the northern bank of the River Kennet at this point.

iv) Environmental Impact of the Recommendation

35 Planning Consent has been granted with full consideration of the environmental impacts of the proposal. The extinguishment of the right of way has no identified environmental impact.

v) Risk Assessment

36 There are no risks to users of the path associated with the extinguishment as the risk of crossing a garage forecourt and a river is considered to outweigh that of walking along a roadside footway.

vi) Legal Considerations and Financial Implications

37 The landowner 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).

38 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.

vii) Equality Impact

39 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.

40 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.

41 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)

42 The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP). 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.

43 The current path has no utility and its loss will have no impact.

8 Options to Consider

- 44
- i) To make an order to extinguish part of Marlborough path no. 26 under s.257 of the Town and Country Planning Act 1990 and s.53 of the Wildlife and Countryside Act 1981.
 - ii) Not to make an order to extinguish part of Marlborough path no. 26 under s.257 of the Town and Country Planning Act 1990 and s.53 of the Wildlife and Countryside Act 1981 .

9 Reasons for Recommendation

45 In order for the development to proceed the public footpath must be diverted or extinguished.

- 46 The northern part of Marlborough 26 has no utility. The southern leg leads to an attractive view of the river and may be retained as a cul-de-sac leading to a place of public resort (i.e. the riverside with views of the water and associated wildlife).
- 47 The need to extinguish or divert the route was considered during the planning consultation process.

10 Recommendation

- 48 **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 extinguish part of Marlborough path no. 26 at Bridge Garage and if after due advertisement no objections or representations are received the Order be confirmed and the definitive map and statement altered accordingly.**

Sally Madgwick
Rights of Way Officer

23 July 2014