



APPENDIX C – Decision Report (20 June 2014)

COVERING PAGE FOR DECISION REPORT

HIGHWAYS ACT 1980 – SECTION 119

PROPOSED DIVERSION OF FOOTPATH NO.12 CHAPMANSLADE (PART)

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

		Signature	Date Signed Off
To:	Barbara Burke (Definitive Map and Highway Records Team Leader)		23.6.14
	Richard Broadhead (Rights of Way and Countryside Manager)		27/6/14
	Ian Brown (Head of Environment Services)	Copy for info only	-
	Tracy Carter (Associate Director – Waste and Environment)	N/A	
From:	Janice Green		
Date of report:	20 th June 2014		
Return to:	Janice Green, Rights of Way (Ext. 13345)		

Nature of Report:

This is a report from Janice Green (Case Officer) to Richard Broadhead (Officer with the relevant delegated powers).

Executive Summary:

Wiltshire Council are in receipt of an application dated 9th June 2013, to divert Footpath no.12 Chapmanslade (part), under Section 119 of the Highways Act 1980. The application is made by Mr and Mrs Smith of Dye House Farm, Corsley (the landowners), to remove the right of way from the garden of this property and ensure the privacy of their garden.

It was noted that following the application to divert Footpath no.12 Chapmanslade (part), the landowners applied for planning permission to add a covered swimming pool, new roadside walling and an ancillary building for use as carer's accommodation (planning application no. 14/01613/FUL). Part of this proposed development lies directly over the eastern extremity of the existing route of the footpath. It would therefore be possible to consider the diversion of the footpath under Section 257 of the Town and Country Planning Act 1990, which deals with the diversion and stopping up of footpaths, bridleways and restricted byways affected by development. It was found that the development affected only the eastern extremity of the

definitive line of the path and the proposed diversion is over a much larger area than that required to enable the development to continue.

Officers have therefore concluded that the larger diversion of the footpath cannot be justified under Section 257 of the Town and Country Planning Act 1990, but it can be justified under Section 119 of the Highways Act 1980, in the interests of the landowner, to remove the right of way from the private garden of Dye House Farm and this is the appropriate legislation under which to consider the footpath diversion application.

No adverse comments regarding the diversion proposals were received following an initial consultation and the Council may make a public path diversion order where they consider it expedient to do so in the interests of the owner, lessee or occupier of the land crossed by the path or way, or in the interests of the public. Officers are satisfied that it appears expedient to divert Footpath no.12 Chapmanslade in the interests of the landowners

Additionally, before the confirmation of an order, the Council must also be satisfied 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 the diversion would have on public enjoyment of the path or way as a whole and loss which may be caused as a result of the diversion, taking into account provision for compensation.

Officers are satisfied that the application to divert Footpath no.12 Chapmanslade (part), meets the legal tests as set out under Section 119 of the Highways Act 1980.

Officer's Recommendation:

That an order to divert Footpath no.12 Chapmanslade (part) 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
PROPOSED DIVERSION OF FOOTPATH NO.12 CHAPMANSLADE (PART)

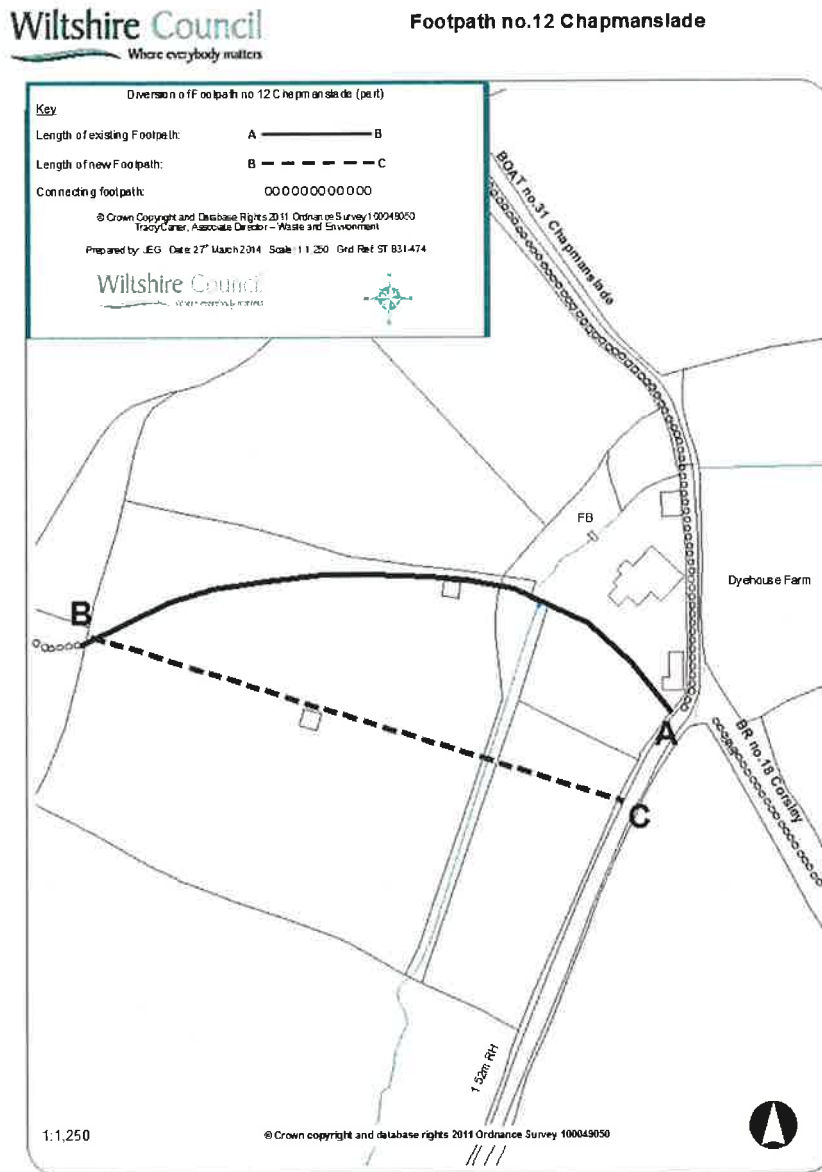
1. Purpose of Report

- 1.1. To consider an application to divert Footpath no.12 Chapmanslade (part), under Section 119 of the Highways Act 1980. The application is made in the interests of the landowners to ensure the privacy of their garden. In addition to this the landowners have applied for planning permission to add a covered swimming pool, new roadside walling and an ancillary building for use as carers accommodation. Part of this development lies directly over the definitive line of the footpath, at its eastern extremity.

2. Location Plan

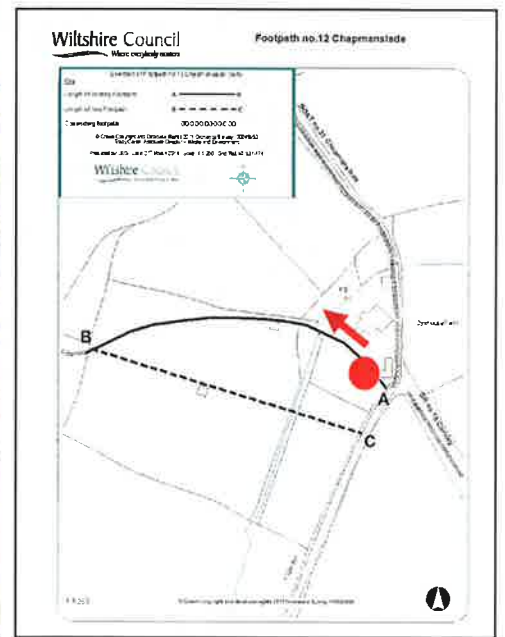
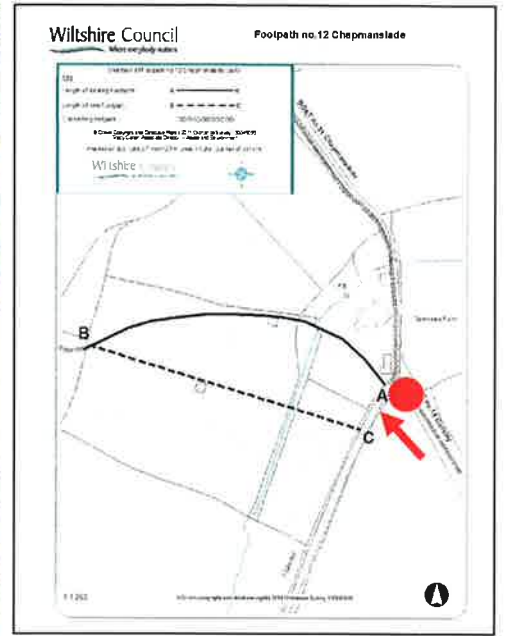


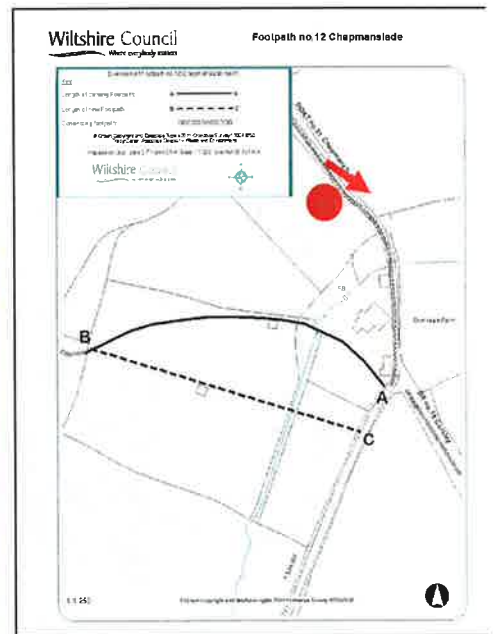
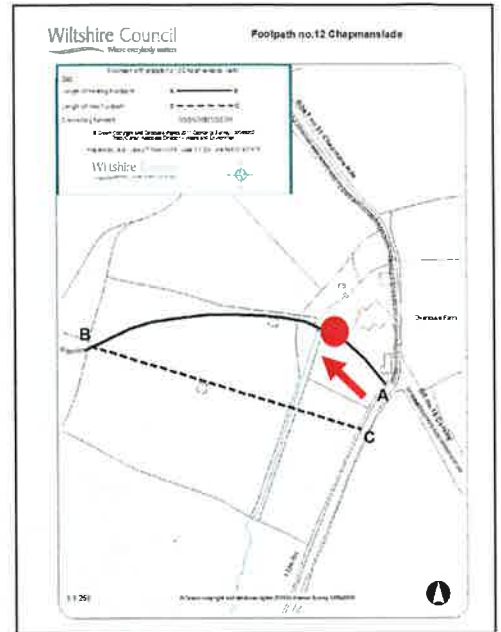
3. Proposed Diversion Plan

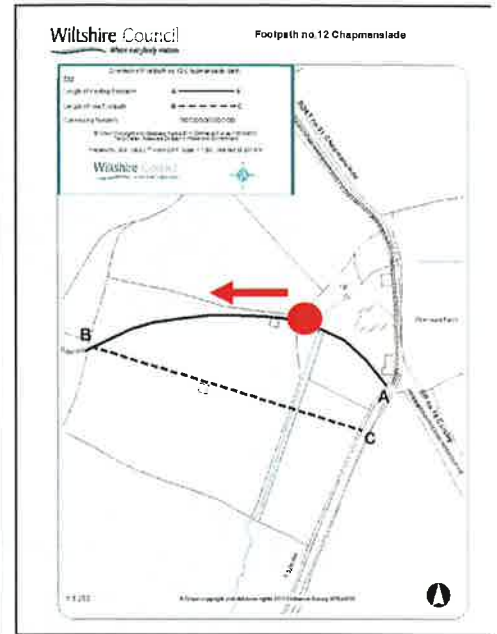


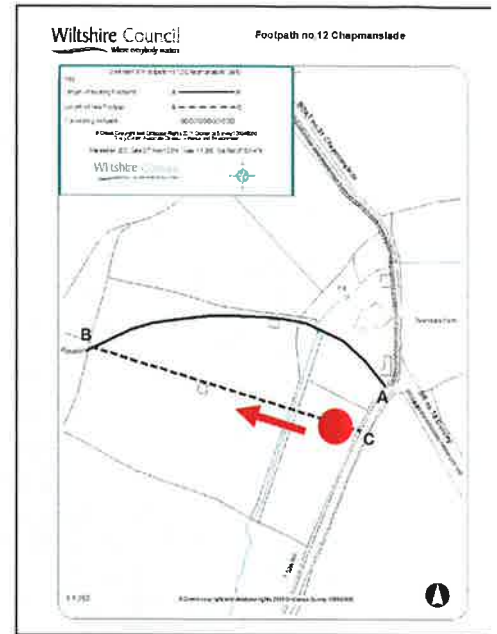
- 3.1. It is proposed to divert Footpath no.12 Chapmanslade (part) from a line A-B through the garden of the property Dye House Farm, to a new line C-B through the adjoining meadow.

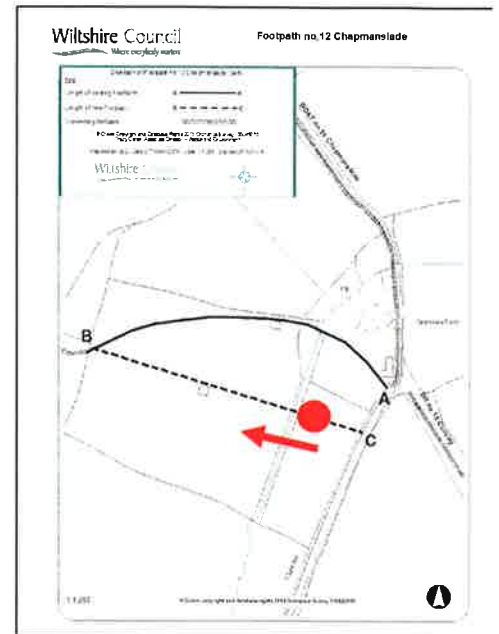
4. Photographs











5. Applicant and Registered Landowner

- 5.1. Phil and Maureen Smith
Dye House Farm
Corsley
Warminster
Wiltshire
BA12 7QD

6. Legal Empowerment

- 6.1. The application to divert Footpath no.12 Chapmanslade (part), has been 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.”

6.2. DEFRA Circular 1/09 which gives advice to authorities on rights of way issues states, at paragraph 5.5. that *“The statutory provisions for creating, diverting and extinguishing public rights of way in the 1980 Act have been framed to protect both the public rights and the interests of the owners and occupiers. They also protect the interests of bodies such as statutory undertakers.”*

7. Background

7.1. Wiltshire Council are in receipt of an application dated 9th June 2013, from Mr and Mrs Smith of Dye House Farm, Corsley, to divert Footpath no.12 Chapmanslade under Section 119 of the Highways Act 1980. With the

application form the applicant gives the following grounds for the diversion of the footpath:

“Of course, our primary motivation is to ensure privacy in our own garden. However, diverting the Footpath will, we believe, improve the situation for the public for the following reasons:-

- Local people that we have spoken to say that they do not like to use the Footpath as they are sensitive to our privacy. In fact, we have seen only one person using the existing Footpath since we bought the property.*
- There is, though, some evidence to suggest that one or two people may be using a route between the existing Footpath and the one we are proposing, largely avoiding the part of our garden that is visible from the house.*
- We have started to mow the grass in the meadow between the proposed bridge and the telegraph pole marked on the attached map and have planted a large number of trees to make the area attractive. We plan to move the line of the fence in the field and do the same with the resulting area between the fence and the stream to make the proposed route of the Footpath at least as attractive as the current one. The new fence will, of course, include one of the proposed kissing gates.*
- The current bridge has no side rails and so is unsuitable for young and old people. Obviously, the new bridge will conform to current safety standards.*

7.2. The application successfully includes the completed application form, a plan based on an Ordnance Survey Map of a scale of not less than 1:2,500, (a map drawn at a scale of 1:1,250 has been provided) and proof of title. The Public Path Order Regulations 1993 Statutory Instrument no.11, state that *“The map required to be contained in an order shall be on a scale of not less than 1:2500, or, if no such map is available, on the largest scale readily available.”*

7.3. Footpath no.12 Chapmanslade presently passes through the garden of the property Dye House Farm, Corsley, from its junction with the U/C 9002 road, leading north-west through the garden before crossing a bridge and leading into a meadow to the rear of the property (also owned by Mr and Mrs Smith). The path then leads generally south-west to the field boundary before continuing in a west-north-westerly direction in the next field. It is proposed to divert the path to a new line C – B, maintaining its junction with the U/C 9002 Road, but further south by approximately 30 metres, leading in a west-north-westerly direction through the meadow to point B and its continuation into the next field (please see proposed diversion plan at 3 and photographs at 4). The proposed diversion will have a recorded width of 2 metres and a surface laid to grass. A new bridge is to be provided over the stream.

8. **Public Consultation**

8.1. A public consultation exercise regarding the diversion proposals, was carried out on 28th March 2014, with a closing date for all representations and objections to be received in writing, by 14th May 2014 as follows:

“Wiltshire Council are in receipt of an application dated 9th June 2013, to divert footpath no.12 Chapmanslade (part).

It is proposed to divert the footpath from a line A-B to a new line B-C, as shown on the enclosed plan. The proposed diversion route will have a recorded width of 2 metres and a surface laid to grass.

The application has been made by the landowners, under Section 119 of the Highways Act 1980, to ensure the privacy of their garden. The landowners have also included the following comments in support of their application:

- *Local people have advised that they do not like to use the footpath as they are sensitive to the landowners privacy. The landowners have seen only one person using the existing footpath since purchasing the property.*

- *There is some evidence that one or two people may already be using an alternative route in order to avoid the part of the garden which is visible from the house.*
- *The landowners are proposing to make the new footpath at least as pleasant as the existing route, including tree planting to make the area more attractive.*
- *A new bridge to be erected over the stream on the proposed diversion route will conform to current safety standards.*

Since the application was made, the landowners have submitted a planning application to Wiltshire Council to add a covered swimming pool, new roadside walling and an ancillary building for use as carers accommodation (planning application no.14/01613/FUL). Part of the development lies directly over the definitive line of the footpath at its eastern extremity, therefore Wiltshire Council will also need to consider the diversion application against the legal tests for the diversion of a footpath under Section 257 of the Town and Country Planning Act 1990, in order to establish the correct legislation under which to determine the application.

If you would like to make any comments or representations regarding the diversion proposals, I would be very grateful if you could forward them to me in writing at the above address, not later than 5:00pm on Wednesday 14th May 2014.”

- 8.2. The consultation included the landowner, statutory undertakers, statutory consultees, user groups and other interested parties, such as the Chapmanslade Parish Council, and the Local Member for Warminster Without.
- 8.3. The following consultation replies were received (all consultation replies are available to be viewed in full with the Rights of Way and Countryside Team, Waste and Environment, Unit 9, Ascot Court, Aintree Avenue, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA):

National Grid – Correspondence dated 15th April 2014:

“National Grid has identified that it has no record of apparatus in the immediate vicinity of your enquiry.”

LinesearchbeforeUdig – Online utilities search undertaken 20th June 2014:

“No LinesearchbeforeUdig Asset Owners within the Zone of interest.”

Openreach BT – Online utilities search undertaken 20th June 2014:

Overhead plant and poles within zone of interest.

Digdat – Online utilities search undertaken 20th June 2014:

No Virgin Media apparatus within zone of interest.

- 8.4. Where there is plant located within the vicinity of the diversion proposals, the diversion order regulations make provision for statutory undertakers to maintain access to their apparatus.

9. Main Considerations for the Council

- 9.1. It was noted that following the application to divert Footpath no.12 Chapmanslade (part), the landowners applied to Wiltshire Council for planning permission to add a covered swimming pool, new roadside walling and an ancillary building for use as carer's accommodation (planning application no.14/01613/FUL). Part of this proposed development lies directly over the existing route of Footpath no.12 Chapmanslade and it would therefore be possible to consider the diversion of the footpath under Section 257 of the Town and Country Planning Act 1990, which deals with the diversion and stopping up of footpaths, bridleways and restricted byways affected by development. It was found that this development affected only the eastern extremity of the definitive line of the path and the proposed diversion is over a

much larger area than that required to divert the path in order to enable the development to continue.

- 9.2. Officers have therefore concluded that the larger diversion of the footpath cannot be justified under Section 257 of the Town and Country Planning Act 1990, but it can be justified under Section 119 of the Highways Act 1980, in the interests of the landowner, to remove the right of way from the private garden of Dye House Farm and this is the appropriate legislation under which to consider the application.
- 9.3. Section 119 of the Highways Act 1980 allows the Highway Authority to divert a footpath where it is considered expedient to do so in the interests of the owner, lessee or occupier of the land, and / or the public. This particular application has been made in the interests of the landowners to ensure privacy in their own garden.
- 9.4. A diversion order must not alter the termination point of a path where that point is not located on a highway and where this point is located on a highway it must not be altered, other than to another point on the same highway or a highway connected with it and which is substantially as convenient to the public. In the Chapmanslade case, Point B at the western boundary of the meadow (please see proposed diversion plan at 3), remains unaltered as a result of the diversion. Point A alongside Dye House Farm on the U/C 9002 Road is moved to point C which is located approximately 30 metres south of point A and maintains its junction with the U/C 9002 Road. It is considered that point C is substantially as convenient to the public.
- 9.5. 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, as outlined at Section 119(6) of the 1980 Act:

- 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.

9.6. At 3 ii) and iii) above, the land over which the existing route passes and the land over which it is proposed to place the newly created footpath, are in the ownership of the applicants, Mr and Mrs Smith, and no compensation claims are anticipated.

9.7. The implications of Section 119(6) of the Highways Act 1980, were considered in the case of *Young R (on the application of) v Secretary of State for the Environment, Food and Rural Affairs and Anor* [2002], EWCH 844. In the opinion of Mr Justice Turner, the Inspector, in their decision letter had incorrectly amalgamated their consideration of the concept of “convenience” with the concept of “expediency”, as contained in this section. Mr Justice Turner commented that *“having regard to the public’s enjoyment of the path – a matter which is, as I have already indicated, absent from the requirement of the consideration of the convenience of the path.”* Expediency and convenience must therefore be considered as two separate tests.

9.8. Mr Justice Turner defined the legal test of a path “not being substantially less convenient to the public”, as follows:

“In my judgement the expression “substantially less convenient to the public” is eminently capable of finding a satisfactory meaning by reference to consideration of such matters as length, difficulty of walking and the purpose of the path. Those are features which readily fall within the presumed contemplation of the draftsman of this section as falling within the natural and ordinary meaning of the word “convenient”.”

- 9.9. With regard to the test of “not substantially less convenient to the public”, the diversion of Footpath no.12 Chapmanslade (part), deletes approximately 180 metres of footpath between points A and B and adds approximately 160 metres of footpath between points C and B, a reduction of 20 metres, which is not considered to be substantially less convenient to the public.
- 9.10. Additionally the diverted section of footpath will have a recorded width of 2 metres, open and available for public use, where no width is presently recorded within the definitive map and statement for Footpath no.12 Chapmanslade.
- 9.11. In the Young case, the view was taken that where a proposed diversion is as convenient as the existing path but less enjoyable, perhaps being less scenic, *“the decision maker would have to balance the interests of the applicant against those of the public to determine whether it was expedient to make the diversion order.”* If a diversion is of greater public enjoyment but is substantially less convenient to the public, perhaps being less accessible or longer than the existing route, the order should not be confirmed. Therefore, at confirmation of an order, “convenience” is the stronger test, “followed by another and separate dependent clause”, i.e. expediency which includes the effect of the diversion on public enjoyment of the path or way as a whole. In the case of diverting Footpath no.12 Chapmanslade (part) the diversion is not substantially less convenient to the public and no consultation responses have been received to suggest that the diversion of the footpath would have an

adverse effect upon public enjoyment of the path or way as a whole. The proposed diversion route is equally as pleasant to use as the existing route and views of the surrounding countryside are comparable.

9.12. Additionally, as the landowner points out in his application, the public may feel less invasive using a route located further away from the property Dye House Farm in the adjoining meadow.

9.13. Officers consider that at present the legal tests for the confirmation of an order appear to be met and the order appears capable of being confirmed, however this is subject to a further consultation period once a formal order has been made.

9.14. 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 2 metres open and available for public use, where no width is presently recorded on the definitive line.

- *To provide a more useable public rights of way network, suitable for changing user demands (p.46 Improvement 1).*

From the evidence supplied by the applicant it would appear that users are reluctant to use the present route close to Dye House Farm and leading through the garden of this property, concerned that they may be encroaching on the landowners privacy. Members of the public may find it

preferable to use a route located in the adjoining meadow, further away from the house and its curtilage.

- 9.15. Additionally at page 53 of the ROWIP, "Advice to Applicants" with reference to public path diversion orders, potential applicants are advised that:

"the diverted path would not be substantially less convenient to the public. The last point means that a diverted path should meet at least the council's minimum standard for width (2m for a footway, 4m for a bridleway), should not be substantially longer, and should, in general, be as pleasant to use as the existing one."

This information is included within the public path diversion order application pack and in diverting Footpath no.12 Chapmanslade (part) the applicant has included a width of 2 metres for the diverted section of path which meets Wiltshire Council's minimum requirements.

- 9.16. With regard to the Disability Discrimination Act (DDA) 1995, DEFRA circular 1/09 at 5.4. states that *"all aspects of the specification of Public Path Orders (unlike Definitive Map Modification Orders which represent what is believed to have been the route, width and structures existing when a way was dedicated) will be affected by the DDA, particularly in relation to the limitations and conditions to be defined in the statement"*.

- 9.17. The DDA 1995 is now superseded by The Equality Act 2010, which places a duty upon all authorities, as follows:

"(1) An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

- 9.18. The protected characteristics include disability. The Act places a duty on authorities to make reasonable adjustments to avoid disadvantage. Section

149 of the Act details the “public sector equality duty” placed on public authorities to:

“in the exercise of its functions, have due regard to the need to-

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”*

9.19. Further, Part 8 of the ROWIP details the Rights of Way Team policies and procedures. At 8.3.7 are included the policies and procedures regarding access for all, which include *“Adopt recognised and achievable standards of provision for disabled people. The Council will take due account of the relevant legislation relating to disability (i.e. the Equality Act 2010) and will follow current best practice in all situations.”*

9.20. In the Chapmanslade case a bridge is required over the stream at the field boundary, between points C and B on the diversion route (please see proposed diversion plan at 3). The applicant has also suggested the addition of a bridge and 3 kissing gates (one kissing gate to replace an existing stile at point B). The addition of these structures can be included as limitations and conditions within the diversion order itself, or authorised at a later date using powers under Section 147 of the Highways Act 1980, for the purposes of stock control of for health and safety reasons.

9.21. It is considered that provision for the bridge should (at the prescribed British Safety Standard) be included within the order itself, whilst kissing gates, if necessary on the new route, may be authorised at a later date. Defra provides guidance on *“Authorising structures (gaps, gates and stiles) on rights of way – Good practice guidance for local authorities on compliance with Equality Act*

2010”, and any new structure on the definitive line or the proposed diversion route would be authorised with reference to this guidance.

- 9.22. With regard to the requirements of the Equalities Act 2010 and the policies contained within the ROWIP, the proposed diversion places no other additional limitations and conditions on public use of the footpath, i.e. for the purposes of stock control or health and safety reasons and additionally the proposed new route will have a recorded width of 2 metres, open and available for public use.
- 9.23. In making diversion orders, Sections 29 and 121(3) of the 1980 Act, require authorities to have due regard to the needs of a) agriculture and forestry and b) the desirability of conserving flora, fauna and geological and physiographical features. Section 40 of the Natural Environment and Rural Communities Act 2006 also places a duty on every public authority exercising its functions to have regard to the conservation of biodiversity, so far as is consistent with the proper exercise of those functions. In this section, conserving biodiversity includes that in relation to a living organism, or type of habitat and restoring or enhancing a population or habitat.
- 9.23. There are no considerations for agriculture and forestry in the diversion of the Footpath no.12 Chapmanslade. With regard to conserving flora, fauna and geological and physiographical features and biodiversity, the County Ecologist was consulted with regard to the diversion proposals and no adverse comments have been received.

10. Safeguarding Considerations

- 10.1. None.

11. Public Health Implications

11.1. None.

12. Environmental Impact of the Proposal

12.1. The County Ecologist was consulted regarding the diversion proposals and no adverse comments regarding the environmental impact of the diversion were received.

13. Equalities Impact of the Proposal

13.1. The ROWIP recognises the Council's duty to have regard to the Disability Discrimination Act 1995 (now superseded 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 path, for the purposes of stock control or for health and safety reasons. Additionally the proposed new route will have a recorded width of 2 metres, open and available for public use, over a defined route.

14. Risk Assessment

14.1. None.

15. Financial Implications

15.1. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permit authorities to charge applicants costs in relation to the making of orders, including public path diversion orders. Authorities may charge only the actual costs incurred.

15.2. 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 and should

the order be successful, the confirmation of the order and certification that the new route has been provided to a suitable standard for use by the public, in one local newspaper, (i.e. three advertisements).

- 15.3. The applicant has agreed in writing that if a diversion order is made, to pay any compensation which may arise in consequence of the coming into operation of the order, (although this is not anticipated as the land over which both the definitive line and the proposed diversion route pass are in the same ownership).
- 15.4. The applicant has also agreed in writing to pay any expenses which may be incurred in bringing the new footpath into a fit condition for use by the public, as required by the Council.
- 15.5. If a diversion order 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 additional costs to the Council.
- 15.6. If there are outstanding objections to the order which are not withdrawn and the Council continues to support the making of the order, it must be forwarded to the Secretary of State for decision. The outcome of the order would then be determined 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. There is no mechanism by which these costs may be passed to the applicant and these costs must be borne by Wiltshire Council.
- 15.7. The making of a diversion order is a discretionary power for the Council rather than a statutory duty, therefore a made order may be withdrawn up until the point of confirmation if the Council no longer continues to support it, for

example where it is considered that the proposals no longer meet the legal tests set out under Section 119 of the Highways Act 1980.

16. Legal Considerations

- 16.1. There is no right of appeal for the applicant where the Highway Authority refuses to make a public path diversion order, however the Council's decision would be open to judicial review.
- 16.2. 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, local hearing or local public inquiry. The Inspectors decision may be subject to challenge in the High Court.
- 16.3. The making of a public path diversion order is a discretionary power for the Council rather than a statutory duty, therefore an order may be withdrawn up until the point of confirmation, where the Council no longer continues to support the making of the order.

17. Options Considered

- 17.1. (i) To refuse the application, or
(ii) To make an order to divert footpath no.12 Chapmanslade (part), under Section 119 of the Highways Act 1980.

18. Reasons for Proposal

- 18.1. It is considered that in this case the legal tests for the making of a diversion order to divert Footpath no.12 Chapmanslade (part) under Section 119 of the

Highways Act 1980 have been met, i.e. the order can be made in the interests of the landowners to ensure the privacy of their property.

- 18.2. The diversion will also benefit the public by adding a width of 2 metres, open and available for public use over the new footpath, where no width is presently recorded within the definitive statement. The diversion route is not substantially less convenient to the public, i.e. the length of footpath is reduced by 20 metres, it follows a straighter and more direct route and there are no additional limitations and conditions on public use of the path as a result of the diversion. It is not considered that the diversion would have a detrimental effect upon public enjoyment of the path or way as a whole and there were no comments received from the initial consultation to suggest that there would be a detrimental effect.
- 18.3. It is therefore considered that the legal tests for the confirmation of the diversion order appear to be met, (subject to the formal objection period following the making of the order).
- 18.4. The proposed diversion also meets other considerations which the Council must take into account such as the provisions of the ROWIP, the Equalities Act 2010 and the needs of agriculture, forestry and biodiversity.

19. Proposal

- 19.1. That an order to divert Footpath no.12 Chapmanslade (part) 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
20th June 2014