

**WILTSHIRE COUNCIL**

**NORTHERN AREA PLANNING COMMITTEE**

**11 MARCH 2015**

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**WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53**  
**THE WILTSHIRE COUNCIL (PARISH OF PURTON) PATH NO.161 DEFINITIVE MAP AND**  
**STATEMENT MODIFICATION ORDER 2014**

**Purpose of Report**

1. To:
  - (i) Consider objections received to the making of “The Wiltshire Council (Parish of Purton) Path No.161 Definitive Map and Statement Modification Order 2014”, under Section 53 of the Wildlife and Countryside Act 1981.
  - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

**Relevance to Council’s Business Plan**

2. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

**Background**

3. Wiltshire Council is in receipt of an application, made under Section 53 of the Wildlife and Countryside Act 1981, to add a footpath to the definitive map and statement of public rights of way in the parish of Purton, between Hoggs Lane and Footpath No’s 110 and 112 Purton. The application is dated 1 August 2002 and made by Mrs Patricia Vincent of Pavenhill, Purton on the grounds that public footpath rights can be reasonably alleged to subsist over the claimed route, on the balance of probabilities, based on user evidence, and should be recorded on the definitive map and statement of public rights of way, as such.
4. The application is made in the correct form (as set out within Schedule 14 of the Wildlife and Countryside Act 1981) and is accompanied by 14 user evidence forms with maps attached and a petition signed by 62 people who claim to have walked the route for the number of years stated. A further eight witness evidence forms, with maps, were submitted after the making of the application.
5. The claimed footpath is located in the parish of Purton, through a field lying to the west of Hoggs Lane and to the north of Pavenhill, which is presently used for the grazing of horses (please see **Appendix A**). The route commences at the south-east corner of this field (the Hoggs Lane entrance) and leads in a north-westerly direction for a distance of approximately 372 metres, before continuing north-north-west alongside the field boundary for approximately 42 metres, to its junction with Footpath No’s 110 and 112 Purton, at Francomes Hill (please see Order map attached at **Appendix B**).

6. The land is presently owned by Mr and Mrs Graham Fletcher of Sherford Road, Swindon who have owned the land since 2001. Prior to the ownership of Mrs and Mrs Fletcher, the late Mr David Akers owned and tenanted the land (25 years ownership and 10 years tenanted, no dates supplied).
7. Wiltshire Council undertook an initial consultation regarding the proposals in May 2010 requesting further evidence/information regarding the use of the claimed route. As a result of this consultation a further eight completed witness user evidence forms were returned to Wiltshire Council, giving a total number of 22 user evidence forms, (please note that this total includes a duplicated evidence form from Miss Moira Hayward) and the present owners and the son of the previous owner completed landowner evidence forms.
8. Following its investigation of all the available evidence, officers of Wiltshire Council produced a decision report in which they made a recommendation to senior officers that the claimed path should be added to the definitive map and statement of public rights of way, on the grounds that a right for the public on foot could be reasonably alleged to subsist, on the balance of probabilities (please see decision report at **Appendix C**). Senior officers approved this recommendation on 27 March 2014.
9. Wiltshire Council subsequently made a Definitive Map Modification Order to add the claimed path to the definitive map and statement of public rights of way, as path No.161 in the parish of Purton, on 24 April 2014.
10. Following the making of the Order Wiltshire Council received the following correspondence (full copies of this correspondence are attached at **Appendix D**):
  - (i) Letter of objection from Mr G Fletcher (the landowner) - 3 June 2014.
  - (ii) Letter of support from Mr F J and Mrs E A Sheppard (neighbouring property) – 6 June 2014.
  - (iii) Letter of objection from Mrs R A Clifford and Mr P J Akers (parties with an interest in the land) – 14 July 2014.
  - (iv) E-mail of support from Mrs Hazel Woodbridge – (neighbouring property) – 15 July 2014.
  - (v) Letter of objection from Margaret Entwistle – (tenant of the land in question) – 16 July 2014.
  - (vi) Letter of objection from Mrs Pauline Cameron (party with an interest in the land) – 17 July 2014.
  - (vii) E-mail of support from Dr Richard Pagett – 23 July 2014 (outside formal consultation period).
  - (viii) Further e-mail of support from Mrs Hazel Woodbridge – 23 July 2014.
  - (ix) Further e-mail of clarification in support from Dr Richard Pagett – 25 July 2014.
11. Due to the outstanding objections, the Order now falls to be determined by the Secretary of State for the Environment, Food and Rural Affairs. Members of the Committee are therefore respectfully requested to consider the objections received, against the legal tests for making a Definitive Map Modification Order, under Section 53 of the Wildlife and Countryside Act 1981, in order to determine the Wiltshire Council recommendation to be attached to the Order when it is forwarded to the Secretary of State, for determination. Officer's comments on the objections are included at **Appendix E**.

## **Main Considerations for the Council**

12. Section 53(2) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the definitive map and statement of public rights of way under continuous review. The requirements of this section of the Act are outlined at part 7 (pages 6 – 10) of the decision report attached at **Appendix C**.
13. The Order is made under Section 53 (3) (c) of the Wildlife and Countryside Act 1981, based on:  
  
*“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –*  
  
*(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to section 54A, a byway open to all traffic.”*
14. Evidence is the key and therefore any objections to the making of the Order, must challenge the evidence available to the Surveying Authority. The authority is not able to take into account any other objections such as the suitability of the way for use by the public and environmental impacts.

## **Safeguarding Considerations**

15. Considerations relating to safeguarding anyone affected by the making and confirmation of an Order made under Section 53(2) of the Wildlife and Countryside Act 1981, are not considerations permitted within the Act. Any such Order must be confirmed based on the relevant evidence alone.

## **Public Health Implications**

16. Considerations relating to the public health implications of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

## **Environmental Impact of the Proposal**

17. Considerations relating to the environmental impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

## **Equalities Impact of the Proposal**

18. Considerations relating to the equalities impact of the making and confirmation of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 are not considerations permitted within the Act. Any such Order must be made and confirmed based on the relevant evidence alone.

## **Risk Assessment**

19. Wiltshire Council has a duty to keep the definitive map and statement of public rights of way under continuous review and therefore there is no risk associated with the Council pursuing this duty correctly. Evidence has been brought to the Council’s attention that

there is an error in the definitive map and statement which ought to be investigated; it would be unreasonable for the Council not to seek to address this fact. If the Council fails to pursue this duty, it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to a complaint to the Ombudsman. Ultimately, a request for judicial review could be made.

### **Financial Implications**

20. The determination of Definitive Map Modification Order applications and the modifying of the definitive map and statement of public rights of way accordingly, are statutory duties for the Council; therefore, the costs of processing such Orders are borne by the Council. There is no mechanism by which the Council can re-charge these costs to the applicant.
21. Where objections are made to the making of the Order and not withdrawn, the Order falls to be determined by the Secretary of State and cannot simply be withdrawn. The Order will now be determined by an independent Inspector appointed on behalf of the Secretary of State by written representations, local hearing or local public inquiry, each of which has a financial implication for the Council.
22. Where the case is determined by written representations, the costs to the Council are negligible; however, where a local hearing is held, the costs to the Council are estimated at £300 - £500 and a public inquiry could cost between £1,500 and £3,000 if Wiltshire Council supports the Order (i.e. where legal representation is required by the Council) and around £300 - £500 where Wiltshire Council no longer supports the making of the Order (i.e. where no legal representation is required by the Council as the case is presented by the applicant).
23. Where the Council makes an Order which receives objections, it may potentially be liable to pay subsequent costs if the Planning Inspectorate finds that it has acted in an unreasonable manner at the public inquiry. However, costs awards of this nature are rare, but may be in the region of up to £10,000.

### **Legal Implications**

24. The determination of an Order, which has received objections, is made by the Secretary of State and not Wiltshire Council. Therefore, any challenge to that decision is against the Secretary of State (although the Council would be considered by the Court to be an "interested party" in any such proceedings).

### **Options Considered**

25. Members of the Committee should now consider the evidence received in order to determine whether or not Wiltshire Council continues to support the making of the Order under Section 53(2) of the Wildlife and Countryside Act 1981. The making of the Order has been objected to, therefore the Order must now be submitted to the Secretary of State for determination and members may determine the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State. The options available to members having considered the available evidence and the objections received are as follows (please note that the available evidence now includes all submissions made at the formal objection period (please see **Appendix D**), as well as that considered in the decision report dated 29 November 2013):
  - (i) Members may resolve that Wiltshire Council continues to support the making of the Order, based on its consideration of the available evidence, in which case it should recommend that the Order be confirmed without modification;

- (ii) Members may resolve that Wiltshire Council continues to support the making of the Order with modification based on its consideration of the available evidence, in which case it should recommend that the Order be confirmed with modification;
- (iii) Members may resolve that Wiltshire Council no longer supports the making of the Order, on its consideration of the available evidence, in which case it should recommend that the Order is not confirmed.

### **Reason for Proposal**

- 26. The Order has been made on the grounds that there is sufficient evidence for it to be reasonably alleged that a right of way for the public on foot subsists, on the balance of probabilities.
- 27. Following the making and advertising of the making of the Order, no further evidence has been submitted which would lead officers to change this view, please see comments on objections, as set out in **Appendix E**.
- 28. At the confirmation of an Order there is a more stringent legal test than the “reasonably alleged” test which is sufficient at the making of the Order. The test is whether public rights subsist on the balance of probabilities. Officers consider that since the making of the Order, additional evidence has been provided sufficient to satisfy the more stringent test and therefore the Order appears capable of confirmation.

### **Proposal**

- 29. That “The Wiltshire Council (Parish of Purton) Path No.161 Definitive Map and Statement Modification Order 2014”, be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

### **Tracy Carter**

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Rights of Way Officer

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### **The following unpublished documents have been relied on in the preparation of this Report:**

None

### **Appendices:**

Appendix A – Location Plan

Appendix B – “The Wiltshire Council (Parish of Purton) Path No.161 Definitive Map and Statement Modification Order 2014

Appendix C – Decision Report (29 November 2013)

Appendix D – Correspondence received in the formal objection period

Appendix E – Officers comments on the objections