

AGENDA

Meeting: Northern Area Planning Committee
Place: Council Chamber - Wiltshire Council Offices, Monkton Park,
Chippenham SN15 1ER
Date: Wednesday 27 March 2019
Time: 3.00 pm

Please direct any enquiries on this Agenda to Craig Player, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713191 or email craig.player@wiltshire.gov.uk

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Membership:

Cllr Tony Trotman (Chairman)	Cllr Mollie Groom
Cllr Peter Hutton (Vice-Chairman)	Cllr Chris Hurst
Cllr Chuck Berry	Cllr Toby Sturgis
Cllr Christine Crisp	Cllr Brian Mathew
Cllr Gavin Grant	Cllr Ashley O'Neill
Cllr Howard Greenman	

Substitutes:

Cllr Ben Anderson	Cllr Jacqui Lay
Cllr Bill Douglas	Cllr Melody Thompson
Cllr Ruth Hopkinson	Cllr Nick Murry
Cllr Bob Jones MBE	Cllr Philip Whalley

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Public Participation

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

AGENDA

Part I

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 7 - 30*)

To approve and sign as a correct record the minutes of the meeting held on 6th March 2019.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register by phone, email or in person no later than 2.50pm on the day of the meeting.

The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice. The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered.

Members of the public will have had the opportunity to make representations on the planning applications and to contact and lobby their local member and any other members of the planning committee prior to the meeting. Lobbying once the debate has started at the meeting is not permitted, including the circulation of new information, written or photographic which have not been verified by planning officers.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on 20th March 2019 in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on 22nd March 2019. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Planning Appeals and Updates**

To receive details of completed and pending appeals and other updates as appropriate.

7 **THE WILTSHIRE COUNCIL PARISH OF ROYAL WOOTTON BASSETT No. 10 (PART) AND No. 111 (PART) DIVERSION ORDER AND DEFINITIVE MAP AND STATEMENT ORDER 2018** *(Pages 31 - 84)*

8 **Planning Applications**

To consider and determine the following planning applications.

8a **18/07128/FUL & 18/07246/LBC - Manor Farm, The Street, Grittleton**
(Pages 85 - 102)

8b **18/10662/FUL - Trotting Horse, Bushton, Royal Wootton Bassett**
(Pages 103 - 114)

8c **18/11700/FUL - Land East of Foscoate, Grittleton** *(Pages 115 - 128)*

9 **Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency.

Part II

Items during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

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NORTHERN AREA PLANNING COMMITTEE

MINUTES OF THE NORTHERN AREA PLANNING COMMITTEE MEETING HELD ON 6 MARCH 2019 AT COUNCIL CHAMBER - WILTSHIRE COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM SN15 1ER.

Present:

Cllr Tony Trotman (Chairman), Cllr Peter Hutton (Vice-Chairman), Cllr Christine Crisp, Cllr Gavin Grant, Cllr Howard Greenman, Cllr Mollie Groom, Cllr Chris Hurst, Cllr Toby Sturgis, Cllr Bob Jones MBE (Substitute), Cllr Jacqui Lay (Substitute) and Cllr Philip Whalley (Substitute)

Also Present:

Cllr John Thomson

10 Apologies

Apologies were received from Cllr Chuck Berry, Cllr Brian Matthew and Cllr Ashley O'Neill.

Cllr Chuck Berry was substituted by Cllr Jacqui Lay, Cllr Brian Matthew was substituted by Cllr Bob Jones and Cllr Ashley O'Neill was substituted by Phillip Whalley.

11 Minutes of the Previous Meeting

The minutes of the meeting held on 30th January 2019 were presented.

Resolved:

To approve as a true and correct record and sign the minutes.

12 Declarations of Interest

Cllr Gavin Grant declared an interest in agenda item nos. 7a and 7b (member of Malmesbury Town Team). He declared he would participate in the debate and vote for each item with an open mind.

Cllr Toby Sturgis and Cllr Chris Hurst declared an interest in agenda item no. 7b (both have an account with A.C Nurden Ltd). Both declared they would participate in the debate and vote for each item with an open mind.

13 **Chairman's Announcements**

There were no Chairman's announcements.

14 **Public Participation**

The Committee noted the rules on public participation.

15 **Planning Appeals and Updates**

The Committee noted the contents of the appeals update.

16 **Planning Applications**

Attention was drawn to the late list of observations provided at the meeting and attached to these minutes, in respect of applications 18.02180.FUL and 18.06980.FUL as listed in the agenda pack.

The Committee considered the following applications:

17 **18.02180.FUL - Land East of the A429, Malmesbury Bypass, Malmesbury**

Public participation

Richard Morison, on behalf of the Cooperative Group, spoke in objection to the application.

Nicola Earl, local resident, spoke in objection to the application.

Susan McGill, local resident, spoke in objection to the application.

Glen Stidever, the applicant, spoke in support to the application.

Nigel Roberts, the landowner, spoke in support to the application.

Daniel Wheelwright, the agent, spoke in support to the application.

Cllr John Gundry, Malmesbury Town Council, spoke in objection to the application.

Cllr Roger Budgen, Chairman of St Paul Without Parish, spoke in objection to the application.

The Planning Officer, Lee Burman, introduced a report which recommended refusal of planning permission, for Erection of a New Lidl Store and Associated Works Including Car Parking and Landscaping on Land East of the A429, Malmesbury, Wiltshire.

Key issues highlighted included: principle of development; retail impact and the sequential test; impact on the character, appearance and visual amenity of the

locality including trees; impact to heritage assets including the conservation area for the town and archaeology; highways impact and parking; drainage & flood risk; impact on ecology; noise and S106 matters.

Members of the Committee then had the opportunity to ask technical questions of the officer which focused on: Highways access, improvements to cycle and pedestrian access and the lack of a light control system for pedestrian crossing.

Members of the public then had the opportunity to address the Committee, as detailed above. The representations of St Paul Malmesbury Without Parish and Malmesbury Town Councils, as detailed in the report, were also noted.

Cllr John Thomson, Division Member for Sherston, spoke regarding the application with the main points focusing on the development of greenfield sites; the location of the proposal; the desire for a discount retail store; the landscaping of the site; highways issues and the need to preserve the countryside.

Cllr Gavin Grant, Division Member for Malmesbury, spoke regarding the application with the main points focusing on the historical importance of the Malmesbury area; the unique character of the locality; the public concern for the proposal; the risk of taking urban development into the open countryside and the location of the proposal.

The Planning Officer addressed some of the issues raised by the public and local members with the main points focusing on: noise harm; heritage assets; that the application must not be considered in isolation and that planning policy has undergone significant change since similar applications were previously brought to Committee for determination in 2012 and that other material circumstances and considerations have changed significantly in the intervening period including major residential development toward the north of the town.

At the start of the debate the Chairman moved the officer's recommendation, seconded by Cllr Peter Hutton, to refuse planning permission as detailed in the report.

During the debate the main points raised were: the character and history of the locality; the importance of maintaining the functionality of the bypass; breaching the physical boundary between town and agricultural land; the Neighbourhood Plan; highways concerns and the location of the proposal.

Resolved

That planning permission is refused in accordance with the Officer Recommendation and as set out below.

1. The proposed development in the location identified would conflict with the development strategy of the development plan as defined by policies CP1, CP2 and CP13 of the Wiltshire Core Strategy (Jan 2015) and thereby conflict with paragraphs 2, 12 and 47 of the NPPF (Feb 2019).

2. The proposed development would result in harm to the character, appearance and visual amenity of the locality through the urbanisation of the landscape contrary to Wiltshire Core Strategy Policies CP51 and CP57 (i, ii, & iv);. Policy 13 as informed by aims and objectives tasks 8.1, 8.4 & 8.5 and Vol II (Design Guide) Malmesbury Neighbourhood Plan (Made Feb 2015); and NPPF para 170(b) (Feb 2019), while the proposed location of development precludes future viable agricultural use/s for adjoining farmland to the west and south, which would not represent an efficient use of land contrary to WCS, CP57 (vi).

3. The proposed development would result in less than substantial harm to a designated heritage asset (Setting of the Malmesbury Conservation Area) which is not outweighed by the public benefits of development. The proposals thereby conflict with Wiltshire Core Strategy CP57 (i & iv) and CP58; Malmesbury Neighbourhood Plan Policy 13 as informed by aims and objectives tasks 6.1, 8.1, 8.4 & 8.5 and Vol II (Design Guide); 192, 193, 196, 197 and 200 in the NPPF (Feb 2019), Historic England's The Setting of Heritage Assets Good Practice Advice in Planning: Note 3 (2nd Ed Dec 2017) and the BS7913.

18 **18.06980.FUL - Land At Malmesbury Garden Centre, Crudwell Road, Malmesbury**

Public participation

Richard Morison, on behalf of the Cooperative Group, spoke in objection to the application.

Daniel Wheelwright, the agent for 18.02180.FUL, spoke in objection to the application.

Barbara Bowman, local resident, spoke in support to the application.

Simon Glover, the applicant, spoke in support to the application.

Barry Lingard, local resident, spoke in support to the application.

Dan Templeton, the agent, spoke in support to the application.

Cllr Roger Budgen, Chairman of St Paul Without Parish Council, spoke in objection to the application.

Cllr John Gundry, Malmesbury Town Council, spoke in objection to the the application.

The Planning Officer, Lee Burman, introduced a report which recommended granting planning permission, subject to conditions and the completion of a section 106 planning obligation within 6 months of the date of the meeting, for Full Approval for the Demolition of Existing Buildings and the Erection of a

Class A1 Foodstore (1,782 sq m Gross Internal Floor Area) with Associated Access, Car Parking and Landscaping; and Outline Approval for a Replacement Garden Centre and/or Class B1/B2/B8 Employment Uses. Conditions as revised in late items.

Key issues highlighted included: principle of development; retail impact and the sequential test; impact on the character, appearance and visual amenity of the locality including trees; impact on heritage assets including archaeology; highways impact and parking; drainage & flood risk; impact on ecology; noise & residential amenity and section 106 matters.

Members of the Committee then had the opportunity to ask technical questions of the officer which focused on: landscaping improvements; roadside screening and tree planting.

Members of the public then had the opportunity to address the Committee, as detailed above. The representations of St Paul Malmesbury Without Parish and Malmesbury Town Councils, as detailed in the report, were also noted.

Cllr John Thomson, Division Member for Sherston, spoke regarding the application with the main points focusing possible employment opportunities; the desire to develop the site in question; the low level of objections to the proposal; the development of brownfield sites and highways and traffic issues.

Cllr Gavin Grant, Division Member, spoke regarding the application with the main points focusing on the desire for a discount retail store; the need to ensure a garden centre will remain on the site; possible employment opportunities; highways issues; the desire for the proposal to enhance the retail experience across the Malmesbury area and the need for the applicant to take local needs into consideration and engage with those that live in the vicinity.

The Planning Officer addressed some of the issues raised by the public and local members with the main points focusing on: the robustness and appropriateness of the assessments undertaken; that there is scope for voluntary contribution to S106 from the applicant; pedestrian access; highways issues and the impact to residential amenity.

At the start of the debate the Chairman moved the recommendation of the officers, seconded by Cllr Howard Greenman, to grant planning permission as detailed in the report.

During the debate the main points raised were: possible employment opportunities; the potential for voluntary contribution to S106 from the applicant; a possible speed limit reduction; the traffic flow arrangements; possible adverse effects of noise; drainage issues and concerns over the vitality of Malmesbury town centre.

Resolved

That planning permission is approved in accordance with the Officer Recommendation subject to the conditions as amended in the late items and set out below; and delegation of authority to the Corporate Director Growth, Investment, & Places in consultation with the Chairman to consider submissions from the Malmesbury Town Team, to be made within two months of the date of the Committee meeting, setting out the need and basis for S106 financial contributions toward enhancing town centre vitality and viability. Submissions to include projects toward which funds would be dedicated. The case officer to prepare a report to the Committee Chairman and the Corporate Director as to the adequacy of submissions and compliance with relevant regulations, policies and guidance.

Outline

1. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:

- (a) The scale of the development;**
- (b) The layout of the development;**
- (c) The external appearance of the development;**
- (d) The landscaping of the site;**

The development shall be carried out in accordance with the approved details.

REASON: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 5 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

3. An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

4. No part of the development shall be first brought into use until all the existing buildings on site have been permanently demolished and all of the demolition materials and debris resulting there from has been removed from the site.

REASON: In the interests of the character and appearance of the area [and neighbouring amenities].

5. No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:-

- location and current canopy spread of all existing trees and hedgerows on the land;
- full details of any to be retained, together with measures for their protection in the course of development;
- a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- finished levels and contours;
- means of enclosure;
- car park layouts;
- other vehicle and pedestrian access and circulation areas;
- all hard and soft surfacing materials;
- minor artefacts and structures (e.g. refuse and other storage units, signs, lighting etc);
- tree(s), of a size and species and in a location to be agreed in writing with the Local Planning Authority, shall be planted in accordance with BS3936 (Parts 1 and 4), BS4043 and BS4428

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

6. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance

with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

7. No development shall commence on site until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas (other than small, privately owned, domestic gardens) has been submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure the proper management of the landscaped areas in the interests of visual amenity.

8. No development above damp course level shall commence on site until details of the works for the disposal of sewerage including the point of connection to the existing public sewer have been submitted to and approved in writing by the Local Planning Authority.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the proposal is provided with a satisfactory means of drainage and does not increase the risk of flooding or pose a risk to public health or the environment.

9. No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication "Guidance Notes for the Reduction of Obtrusive Light" (ILE, 2005)", have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

REASON: In the interests of the amenities of the area and to minimise unnecessary light spillage above and outside the development site.

10. The permitted replacement Garden Centre shall be on a like for like basis involving the same total of indoor floorspace as referenced on the

application form (84.2 sq m), Polytunnels as permitted (254.6 m sq m) and outdoor retail floorspace as existing; with any cafe/restaurant also limited to the floorspace identified in the application form (97 sq m); and with the same mix and range of goods sold at present.

REASON: In the interests of the vitality and viability of the Town Centre.

FULL

10. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

11. The development hereby permitted shall not, at any time, be subdivided into a larger number of units and the net sales area shall be limited to 1,315sq m with no less than 80% of the sales area being used for convenience goods sales; and No more than 20% of the sales area being used for comparison goods sales.

REASON: To enable the Local Planning Authority to consider individually whether planning permission should be granted for additional units on the site and in the interests of the vitality and viability of the town centre.

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the site shall be used solely for purposes within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)(or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use, other than a use within the same class(es), having regard to the circumstances of the case.

13. No development above ground floor slab level shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before

development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

14. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details for the detailed part of submission for the Aldi store including the storm system being sized to take flows from the outline part of the application with assigned discharges for each of the future sites limiting total flow from whole site to 29.3 l/s, has been submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that the development site as a whole can be adequately drained

15. The Aldi store part of development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained

16. The development hereby permitted shall not be brought into use until details of the storage of refuse, including details of location, size, means of enclosure and materials, have been submitted to and approved in writing by the Local Planning Authority, and; the approved refuse storage has been completed and made available for use in accordance with the approved details. The approved refuse storage shall thereafter be maintained in accordance with the approved details.

REASON: In the interests of public health and safety.

17. The development hereby permitted shall not be brought into use until details of recycling facilities (including location and range of facilities) have been submitted to and approved in writing by the Local Planning Authority, and; the approved recycling facilities have been completed and made available for use in accordance with the approved details. The approved recycling storage shall thereafter be maintained in accordance with the approved details.

REASON: In the interests of public health and safety.

18. There shall be no customers/members of the public on the site outside the hours of (22:00pm) and (08:00am) from Mondays to Saturdays nor (17:00pm) to (10:00am) Sundays and Bank Holidays.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

19. No materials, goods, plant, machinery, equipment, finished or unfinished products/parts of any description, skips, crates, containers, waste or any other item whatsoever shall be placed, stacked, deposited or stored outside any building on the site.

REASON: In the interests of the appearance of the site and the amenities of the area.

20. The development hereby approved shall not be brought into first operation until the Draft Travel Plan Entiran 27 July 2018 has been submitted in Final form to and approved in writing by the Local Planning Authority. The Travel Plan shall include full details of implementation and monitoring and shall be implemented in accordance with these agreed details. The results of the implementation and monitoring shall be made available to the Local Planning Authority on request, together with any changes to the plan arising from those results.

REASON: In the interests of road safety and reducing vehicular traffic to the development.

21. The development hereby permitted shall not be brought into use until a scheme to restrict shopping trolleys leaving the site has been submitted to and approved by the Local Planning Authority and; the approved scheme has been brought into operation. The approved scheme shall thereafter be maintained in operation in accordance with the approved details.

REASON: In the interests of the character, appearance and amenities of the area.

22. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 7, Classes (a) (c) & (d) shall take place on the building or within the curtilage of the building subject of this permission.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

OUTLINE AND FULL

23. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

**Design and Access Statements Rev E
160389 1501 P5
160389-1500-P4
SK202 REV A**

SK203 REVA
Received 01/02/2019

10632-0050 REV D
Drainage Strategy Craddy's
Received 08/02/2019

160389 1601 P1
160389 1403 P7
Topographical Survey
SK203 Swept Path analysis
160389 1400 P6
Tree Protection Plan
Archaeological Evaluation
Landscape Addendum
Ecological Addendum
11593/PO9
11593/PO8
Received 21/12/2018

160389 1402 P2
160389 1401 P3
B2340-MJA-P105-4756-B
160389 - 1100 P4
Received 27/07/2018

REASON: For the avoidance of doubt and in the interests of proper planning.

24. No part of the development shall be first brought into use until all the existing buildings on site have been permanently demolished and all of the demolition materials and debris resulting there from has been removed from the site.

REASON: In the interests of the character and appearance of the area [and neighbouring amenities].

25. No intrusive groundworks shall commence within the site area indicated as Areas ABCD on plan ref 160389 1403 P7 until:

a. A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and

b. The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

26. The development hereby permitted shall not be first brought into use until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

27. No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- a) the parking of vehicles of site operatives and visitors;**
- b) loading and unloading of plant and materials;**
- c) storage of plant and materials used in constructing the development;**
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;**
- e) wheel washing facilities;**
- f) measures to control the emission of dust and dirt during construction;**
- g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and**
- i) hours of construction, including deliveries;**

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

28. Prior to the commencement of any works on site, including site clearance, vegetation clearance, ground works, demolition and boundary treatment works, an Ecological Mitigation and Enhancement Strategy (EMES) shall be submitted to the local planning authority for approval in writing. This shall include the results of further survey of any boundary trees identified as having moderate or high suitability for roosting bats within and/or bordering both the full and outline areas of the application site. It shall also include, and be informed by, the results of a dedicated reptile survey of the whole hybrid application site and an updated badger survey; the results of the latter may need to be submitted to the LPA as an addendum if the EMES has already been submitted and approved by the

LPA prior to the badger survey being undertaken. The surveys must be conducted by suitably experienced and qualified professional ecological consultants. Any mitigation and compensation necessary as a result of the findings of the aforementioned further surveys must also be presented in the EMES and/or addendum. Specific details of all ecological avoidance, mitigation and compensation measures as well as ecological enhancements shall be clearly detailed within the EMES as well as being shown on a corresponding site plan. In addition to the wildflower, hedgerow and tree planting, ecological enhancement shall also include but not be limited to, the provision of nesting features for birds and roosting features for bats which should be installed on buildings and/or suitable trees. The development shall be carried out in strict accordance with the approved strategy.

REASON: To ensure compliance with the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 (as amended) and Section 41 of the NERC Act (2006); and to ensure full details of all ecological avoidance, mitigation and compensation measures as well as ecological enhancements, are provided and implemented in accordance with Paragraph 118 of the NPPF, Section 40 of the NERC Act (2006) and CP50 of the Wiltshire Core Strategy (Adopted January 2015) given that insufficient details were submitted prior to determination of the planning application.

29. Prior to the commencement of any works on site, including ground works, demolition, site clearance, vegetation clearance and boundary treatment works, a Landscape and Ecology Management Plan (LEMP) shall be submitted to the local planning authority for approval. The LEMP shall provide details of the proposed maintenance and management of the site; and details and corresponding plans of landscape planting. The development site shall be managed and maintained in accordance with the measures set out in the approved LEMP in perpetuity unless otherwise agreed in writing with the local planning authority.

REASON: To ensure the appropriate maintenance and management of habitats that provides a function for biodiversity.

30. Prior to the commencement of development works on site, a lighting strategy for biodiversity and site lighting plan that has been prepared with input by, and/or has been reviewed and verified by, the commissioned ecological consultancy shall be submitted to the local planning authority for approval in writing. The strategy shall illustrate the location, height and specification of proposed luminaires, together with a lux plot/lighting contour plan and details of mitigating fixtures to be used such as cowls, louvres or baffles. All lighting shall be installed in accordance with the approved lighting strategy and no other external lighting shall be installed without prior written consent from the local planning authority.

REASON: To minimise light spillage onto boundary habitats and features, sensitive areas for protected and priority species and adjacent habitats,

and to maintain dark corridors for wildlife, particularly commuting and foraging bats, and due to insufficient details having been submitted prior to the determination of the planning application as the submitted Proposed External Lighting & Luxplot plan (Drawing no. B2340-MJA-P105-4756-B, 6 July 2018) covers only the Aldi store site (full application area).

31. Prior to the commencement of development works on site, including ground works, demolition, site clearance, vegetation clearance and boundary treatment works, an AIA and Tree Protection Plan for the area of the application site subject to the outline aspect of the application shall be submitted to the local planning authority for approval in writing. Thereafter development shall be carried out in strict accordance with the approved AIA and Tree Protection Plan.

REASON: To ensure appropriate retention and protection of trees at the site, and on account of the information submitted to the Council to date, namely the AIA and Tree Protection Plan (Bosky Trees, 31st October 2018), having only covered the full application area and not the outline application area.

32. The full and outline aspects of the development shall be undertaken in strict accordance with the recommendations and measures stipulated in Section 4 and 5 of the Preliminary Ecological Appraisal (Tyler Grange, 18 May), R03c_Ecology Addendum to Address Consultation Response (Tyler Grange), the Habitat Features Plan (11593/PO8), the Landscape and Ecology Strategy Plan (11593/PO9) and AIA and Tree Protection Plan (Bosky Trees, 31st October 2018). The development shall be carried out with liaison with, and supervision by, a suitably qualified and competent ecological consultant where applicable. The development shall also be carried out in strict accordance with the pending EMES, CEMP, LEMP, lighting strategy for biodiversity and AIA and Tree Protection Plan (the latter is with respect of the outline aspect of the application) once submitted to, and approved in writing by the local planning authority.

REASON: To ensure appropriate and adequate protection and mitigation for ecological receptors including protected and priority species and habitats is implemented in accordance with the NPPF and CP50 of the Wiltshire Core Strategy (Adopted January 2015), and to ensure compliance with the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 (as amended) and Section 41 of the NERC Act (2006).

33. The development hereby approved shall not commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details of the following relevant measures:

a) An introduction consisting of construction phase environmental management plan, definitions and abbreviations and project description and location;

- b) A description of management responsibilities;**
- c) A description of the construction programme;**
- d) Site working hours and a named person for residents to contact;**
- e) Detailed Site logistics arrangements;**
- f) Details regarding parking, deliveries, and storage;**
- g) Details regarding dust mitigation;**
- h). Details of the duration of identified works that may affect amenity and measures to mitigate the impact of construction on the amenity of the area and safety of the highway network; and**
- i) Communication procedures with the LPA and local community regarding key construction issues – newsletters, fliers etc.**
- j) Identification of biodiversity protection zones/buffer zones and tree root protection zones/areas;**
- k) The location and timing of works that need to be scheduled and undertaken in such a way as to avoid/reduce potential harm to ecological receptors;**
- l) Details of the times pre-construction and during construction when specialist ecologists need to be present on site to supervise specific elements of the works and details of the responsibilities of the ecologist/ ecological clerk of works (ECoW);and**
- m) Location and types of protective fences, exclusion barriers and warning signs to be installed for the site clearance and construction periods.**
- n) Pollution prevention measures**

Development shall be carried out in full accordance with the approved CEMP. There shall be no burning on site at any time. Hours of construction shall be limited to 0730 to 1800hrs Monday to Friday, 0730 to 1300hrs Saturdays and no working on Sundays or Bank Holidays; with any ‘one off’ departures from this being agreed with the LPA prior to works commencing.

REASON: To protect local; amenity from adverse effects of noise, dust and odour

34. Prior to occupation a lighting scheme must be submitted for the approval of the Local Planning Authority in accordance with the Institute of Lighting Professional’s Guidance notes for the reduction of obstructive light. The scheme must be designed by a suitably qualified person in accordance with the recommendations for environmental zone E2 in the ILP document “Guidance Notes for the Reduction of Obtrusive Light GN01:2011.

35. Before commencement of operation of the approved lighting scheme the applicant shall appoint a suitably qualified member of the institute of lighting professionals (ILP) to validate that the lighting scheme as installed conforms to the recommendations for environmental zone E2 in the ILP document “Guidance Notes for the Reduction of Obtrusive Light GN01:2011

REASON: To protect local amenity from adverse effects of light

36. Prior to the commencement of building works above ground of the relevant part of the development, full details of any internal and external plant equipment and trunking, including building services plant, ventilation and filtration equipment and commercial kitchen exhaust ducting / ventilation, shall be submitted to and approved in writing by the Local Planning Authority. All flues, ducting and other equipment shall be installed in accordance with the approved details prior to the use commencing on site and shall thereafter be maintained in accordance with the manufacturer's instructions.

REASON: To protect local; amenity from adverse effects of noise

37. Prior to first use of the development hereby permitted an assessment of the acoustic impact arising from the operation of all internally and externally located plant shall be undertaken in accordance with BS 4142: 2014 by a suitably qualified person. The assessment shall be submitted to the Local Planning Authority together with a scheme of attenuation measures to ensure the rating level of noise emitted from the proposed plant shall be less than background. The scheme shall be submitted to and approved in writing by the Local Planning Authority. A post installation noise assessment shall be carried out to confirm compliance with the noise criteria and additional steps to mitigate noise shall be taken, as necessary. The details as approved shall be implemented prior to occupation of the development and thereafter be permanently retained.

REASON: To protect local amenity from adverse effects of noise

38. Hours of operation of any store must be limited to 0800 to 2200hrs and deliveries limited to 0700 to 2300 hrs Monday to Friday. Deliveries shall be limited to 0700 to 1300hrs on Saturdays and Sundays/Bank Holidays. Hours of operation on Sundays and Bank Holidays should be no more than 1000 to 1600hrs.

REASON: To protect local; amenity from adverse effects of noise

39. The development shall be carried out as specified in the approved Arboricultural Impact Assessment & Tree Protection Plan prepared by BOSKYTREES Arboricultural Consultancy dated 31st October 2018 and shall be supervised by an arboricultural consultant, if required.

REASON: To prevent trees on site from being damaged during construction works.

40. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the

Local Planning Authority. The remediation strategy shall be implemented as approved.

REASON: To prevent pollution of controlled waters.

INFORMATIVES:

1. The submitted CEMP must include safeguarding measures to deal with the following pollution risks: - the use of plant and machinery - wheel washing and vehicle wash-down and disposal of resultant dirty water - oils/chemicals and materials - the use and routing of heavy plant and vehicles - the location and form of work and storage areas

2. Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

3. The consent hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a license may be required from Wiltshire's Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway.

4. The applicant should note that under the terms of the Wildlife and Countryside Act (1981) and the Habitats Regulations (2010) it is an offence to disturb or harm any protected species, or to damage or disturb their habitat or resting place. Please note that this consent does not override the statutory protection afforded to any such species. In the event that your proposals could potentially affect a protected species you should seek the advice of a suitably qualified and experienced ecologist and consider the need for a licence from Natural England prior to commencing works. Please see Natural England's website for further information on protected species.

5. The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

6. The applicant should note that the costs of carrying out a programme of archaeological investigation will fall to the applicant or their successors in title. The Local Planning Authority cannot be held responsible for any costs incurred.

7. The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be

sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

8. This permission does not permit the display of any advertisements which require consent under the Town and Country Planning (Control of Advertisements) (England) Regulations, 2007 or under any Regulation revoking and re-enacting or amending those Regulations, including any such advertisements shown on the submitted plans.

9. This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the [INSERT].

10. Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

11. The further approval of the Local Planning Authority in respect of those matters reserved by condition(s) [INSERT] of outline planning permission dated [INSERT] is required before development commences.

19 **Urgent Items**

There were no urgent items.

(Duration of meeting: 3.00 - 6.00 pm)

The Officer who has produced these minutes is Craig Player of Democratic Services, direct line 01225 713191, e-mail craig.player@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

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NORTHERN AREA PLANNING COMMITTEE ADDITIONAL INFORMATION

06th March 2019

This is information that has been received since the committee report was written. This could include additional comments or representation, new information relating to the site, changes to plans etc.

7a 18.02180.FUL Land East of the A429 Malmesbury - Lidl

Late Representations

a) 3 further representations from members of the public have been submitted expressing support for the proposals.

b) The Malmesbury Town Team has made a submission identifying that it does not support either of the proposals on the agenda due to the impact to the Town Centre. The Town Team also raises concerns as to the officer report recommendation and conclusions in respect of S106 contributions. Supporting information is provided as to the project work of the Town Team in hand and proposed and the benefits that the Town Team considers these will achieve.

Officer Response

The additional information and covering statement have been reviewed but it is considered that the officer recommendation as is set out in the report including as it relates to S106 matters remains appropriate. The additional information, whilst helpful, indicates that there is no robust methodology for assessing requirements, relating those in scale and kind to the impact of development, project work to be undertaken and the mitigation effects of the actions undertaken. It remains pertinent that no significant harm as result of development is identified by the Council's retail advisors such that consent ought to be refused on this basis and the Town Team also make clear that their work and the projects identified are at least in part aimed at mitigating the impacts to the town centre of changing retail trends being experienced by town centres nationally.

c) The applicant team has made further submissions to the case officer and members of the committee identifying a number of matters within the officer report which they consider are factually incorrect or inaccurate. Additionally a further "rebuttal" statement in respect of the assessed impact to heritage assets is submitted.

Officer Response

The case officer and senior conservation officer have reviewed the submissions and conclude that the recommendation remains appropriate and is unaltered by the submissions. In general terms many of the issues identified and statements made in this further submission are matters of judgement and opinion which differ from that of officers rather than factual inaccuracies or incorrect assessment. Additionally many of the comments contained in the submissions restate previous submissions made by the applicant team, which it is asserted have not been considered or taken into account. Officers can confirm as is set out in the report that all submissions made by the applicant team have been considered in full. It is however acknowledged that the following clarification is required:-

Section 10 para 2. The applicant team assert the reference to the site being the least sequentially preferable is incorrect and contradicts previous elements of the report.

Officer comment – this is a misinterpretation and misreading of the report taking a single sentence out of context. The reference here is to the sequential test in general terms with out of centre locations being the least sequentially preferable. If the paragraph is read as whole this is clear to the reader but for absolute clarity it is confirmed that this particular sentence is a generic comment re: the sequential test and out of centre locations and not a comparative assessment with the Malmesbury garden centre site.

7b 18.06980.FUL Land at Malmesbury Garden Centre – Mixed Use including Aldi

Late Representations

a) 5 further representations from members of the public have been submitted expressing support for the proposals.

b) The Malmesbury Town Team has made a submission identifying that it does not support either of the proposals on the agenda due to the impact to the Town Centre. The Town Team also raises concerns as to the officer report recommendation and conclusions in respect of S106 contributions. Supporting information is provided as to the project work of the Town Team in hand and proposed and the benefits that the Town Team considers these will achieve.

Officer Response

The additional information and covering statement have been reviewed but it is considered that the officer recommendation as is set out in the report including as it relates to S106 matters remains appropriate. The additional information, whilst helpful, indicates that there is no robust methodology for assessing requirements, relating those in scale and kind to the impact of development, project work to be undertaken and the mitigation effects of the actions undertaken. It remains pertinent that no significant harm as result of development is identified by the Council's retail advisors such that consent ought to be refused on this basis and the Town Team also make clear that their work and the projects identified are at least in part aimed at mitigating the impacts to the town centre of changing retail trends being experienced by town centres nationally.

c) The applicant team has made further submissions to officers following publication of the Committee report. A number of comments have been made on points of clarification and corrections including in relation to recommended conditions.

Officer response

Officers have reviewed the submission and do not consider that the recommendation as set out in the report requires amendment or is affected by the submissions made. The following clarifications, corrections and amendments are considered necessary and appropriate:-

Correction:-

Conclusion, Para 2 sentence 3 refers to Aldi and this should refer to Lidl.

Clarification:-

Proposed highways measures will be secured through a S278 Agreement under the Highways Act 1980.

Amendments:-

The recommended conditions should be amended as follows:-

8. No development above damp course level shall commence on site until details of the works for the disposal of sewerage including the point of connection to the existing public sewer have been submitted to and approved in writing by the Local Planning Authority.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the proposal is provided with a satisfactory means of drainage and does not increase the risk of flooding or pose a risk to public health or the environment.

14. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details for the detailed part of submission for the Aldi store including the storm system being sized to take flows from the outline part of the application with assigned discharges for each of the future sites limiting total flow from whole site to 29.3 l/s, has been submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that the development site as a whole can be adequately drained

23. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Design and Access Statements Rev E
160389 1501 P5
160389-1500-P4
SK202 REV A
SK203 REVA
Received 01/02/2019

10632-0050 REV D
Drainage Strategy Craddy's
Received 08/02/2019

160389 1601 P1
160389 1403 P7
Topographical Survey
SK203 Swept Path analysis
160389 1400 P6
Tree Protection Plan
Archaeological Evaluation
Landscape Addendum
Ecological Addendum
11593/PO9
11593/PO8
Received 21/12/2018

160389 1402 P2
160389 1401 P3
B2340-MJA-P105-4756-B
160389 - 1100 P4
Received 27/07/2018

REASON: For the avoidance of doubt and in the interests of proper planning.

37. Prior to first use of the development hereby permitted an assessment of the acoustic impact arising from the operation of all internally and externally located plant shall be undertaken in accordance with BS 4142: 2014 by a suitably qualified person. The assessment shall be submitted to the Local Planning Authority together with a scheme of attenuation measures to ensure the rating level of noise emitted from the proposed plant shall be less than background. The scheme shall be submitted to and approved in writing by the Local Planning Authority. A post installation noise assessment shall be carried out to confirm compliance with the noise criteria and additional steps to mitigate noise shall be taken, as necessary. The details as approved shall be implemented prior to occupation of the development and thereafter be permanently retained.

REASON: To protect local amenity from adverse effects of noise

WILTSHIRE COUNCIL

AGENDA ITEM NO.

NORTHERN AREA PLANNING COMMITTEE

27 MARCH 2019

WILDLIFE AND COUNTRYSIDE ACT 1981

THE TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257

**THE WILTSHIRE COUNCIL PARISH OF ROYAL WOOTTON BASSETT No. 10
(PART) AND No. 111 (PART) DIVERSION ORDER AND DEFINITIVE MAP
AND STATEMENT ORDER 2018**

Purpose of Report

1. To:
 - (i) Consider one objection to the Wiltshire Council Parish of Royal Wootton Bassett No. 10 (part) and No. 111 (part) Diversion Order and Definitive Map and Statement Order 2018.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

Relevance to the Council's Business Plan

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

Background

3. Wiltshire Council has made an Order under Section 119 of the Highways Act 1980 diverting two public footpaths over land at Woodshaw Meadows on the south eastern slopes of Brynard's Hill, Royal Wootton Bassett. The Order was made pursuant to an application made by Wainhomes (South West) Holdings Ltd.
4. One objection has been made to the Order and has not been withdrawn; accordingly, Wiltshire Council cannot confirm the Order and must consider whether to abandon the Order or to submit it to the Secretary of State for Environment, Food and Rural Affairs for determination.
5. The land over which the footpaths lead is affected by planning application 15/10486/FUL (92 dwellings with associated roads, footways, parking, landscaping and drainage works) which was approved by Wiltshire Council in September 2016. The permitted development obstructed the route of the footpaths Wootton Bassett 10 (WBAS10) and Wootton Bassett 111 (WBAS111) with dwellings and associated garden fencing and driveways.

6. Construction started on site before the rights of way had either been temporarily closed or permanently diverted and accordingly Wiltshire Council received complaints from members of the public in May and June 2017 that the paths were blocked and a notice of obstruction was served on the council under Section 130A of the Highways Act 1980 in late June 2017. Wiltshire Council then served notice on the developer (Wainhomes (South West) Holdings Ltd on 7 July 2017 requiring the rights of way to be made open and available to the public. Following this, the paths were temporarily closed for reasons of public safety by a temporary traffic regulation order (TTRO). This has now expired.
7. It is usual for the developer to apply to have the rights of way diverted at the earliest opportunity (which in this case would have been in 2015 when the application for planning permission was made) but the council did not receive an application to divert the paths until August 2017, after development had started.
8. After due consultation, on 30 November 2017, an Order to divert the paths was made under Section 257 of the Town and Country Planning Act 1990 and one objection was received. Section 257 enables the diversion of paths which are affected by development but the Order cannot be confirmed if the development is substantially complete. Officers visited the site in February 2018 and found the development to be substantially complete with regard to the properties built over the rights of way. Accordingly, that Order is incapable of being confirmed and is unproceedable.
9. Officers considered alternative ways of diverting the rights of way and after due consultation an Order under Section 119 of the Highways Act 1980 was made on 21 May 2018 and duly advertised. This is the Order being considered here (see **Copy of Order Appendix A**).
10. Section 119 requires the council to have regard to different legal tests to those contained within the planning legislation used for the Order referred to at paragraph 8.

Main Considerations for the Council

11. The legal tests that must be applied by Wiltshire Council in considering whether or not the Order should be confirmed are contained within Section 119 of the Highways Act 1980.
12. **Section 119(1)** of the Highways Act 1980 states that:

“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.’

13. **Section 119(2)** of the Highways Act 1980 states:

“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.”*

Section 119(3) of the Highways Act 1980 states:

“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.”*

14. Although the council is only required to consider Section 119(1) and (2) to make an Order it is clear that it must consider Section 119(6) at the Order confirmation stage.

15. **Section 119(6)** of the Highways Act 1980 states:

“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 Sub-section (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.”*
16. The council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP) - the current plan is entitled Wiltshire Countryside Access Improvement Plan 2015 – 2025 – Rights of Way Improvement Plan 2.
17. At 2-5 page 38 the council recognises opportunities for improving access:
- Make routes more accessible, undertake surface improvements and improve maintenance.
 - Work within the framework of Wiltshire Council's Gaps, Gates and Stiles Policy.
 - Encourage landowners to follow best practice for furniture design as set out in the above mentioned policy.
 - Work in partnership to promote and create accessible trails.
18. The council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.
19. The matters contained within paragraphs 12 to 18 were considered by officers at the Order making stage (see **Decision Report Appendix B**) and reviewed in the light of the objection received to the Order (paragraphs 21 to 31 below).
20. **Objection**

Further consideration must be given to the content of the objection. This has been made by a member of the public and is as follows:

“I object to both diversion proposals for the reasons set out below.

I note that the routes currently proposed differ from those to which I objected when Wiltshire Council proposed diversions under s.257 of the TCPA. However, the reasons for objection then still apply. Indeed, the new proposed routing of WBAS10 is substantially worse.

WBAS111

I object to this diversion.

The revised proposal suffers from all the concerns that I raised about the earlier proposal. In addition, the proposed diversion now seeks to run the path along the footway to a road for a significant length. I set out my objection to this in the section headed “The legal impact of diverting a path along estate roads” in my letter dated 12 January 2018.

The diversion originally proposed with the planning application (1629/06) is entirely feasible, is more consistent with national and local planning policy and has other practical advantages.

I further note that:

1. *The image of this proposal is not available on Wiltshire Council's website. See below.*

[pasted image of web page]

2. *Although we have an agreement that you will send me copies of notices relating to the north Wiltshire area, I have not received this notice from you directly. I would be grateful if you could post or email me a copy."*

Letter dated 12 January 2018:

"...I object to both diversions for the reasons set out below.

WBAS10

The proposed diversion redirects the path westward of the existing line where it turns back on itself to head north to re-join the existing line.

I have a number of objections:

1. *This is not the diversion which accompanied the approved planning application (Drawing 1629/06).*
2. *The proposed diversion continues to use a stretch of the existing path which follows a line through a boggy area behind the bund.*
3. *The proposed diversion continues to use a stretch of the existing path which follows a line across a stream where there is no bridge.*
4. *The proposed diversion adds an unnecessary extra loop into the line of the path. In practice, many users are likely to ignore this loop and follow the line set out in drawing 1629/06 anyway.*
5. *The proposed route does not meet the requirements of NPPF para 75 and Wiltshire Core Policy 52 that developments should protect or enhance the green infrastructure.*

The line of 1629/06 suffers from none of the above shortcomings.

The route of 1629/06 would benefit from a bridge across the concrete sluice so that walkers did not have to negotiate the slope. The cost of such a bridge would be trivial in the context and cost of this development. A bridge would be consistent with national and local policy as set out in 5 above. It would also be consistent with Wiltshire Council PIG scheme. It is also relevant that the line of 1629/06 is already the official temporary diversion so walkers have become used to using it and may be less inclined to revert to the previous, now much less convenient, route than if the temporary diversion had never existed. If the public is going to use this route anyway then Wiltshire Council has a duty of care whether or not it is an official footpath. Attempts to block off this route would likely cost more than a bridge as well as introducing additional risk for determined users seeking to circumvent the blockage.

The line of 1629/06 incorporating a bridge would be far more accessible to users with restricted mobility than the proposed line through the bog and across the stream (where there is no bridge). It also affords level access to an attractive walk along the top of the bund.

I object to this diversion.

WBAS 111

The Facts

The drawing dated August 2017 showing the proposed “diversion” of WBAS 111 indicates a route that is substantially along estate footways adjacent to roads.

Law/policy

1. Policies on retention of green infrastructure

A number of national and local policies emphasise the retention or enhancement of green infrastructure when open country is developed:

1 National Planning Policy

The National Planning Policy Framework (NPPF) is the main document to guide planning decisions. Paragraph 75 states:

Planning policies should protect and enhance public rights of way and access. Local authorities should seek opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including to National Trails.

Government Planning Practice Guidance is available online to complement and elaborate on the NPPF. This states:

Public rights of way form an important component of sustainable transport links and should be protected or enhanced. The Defra Rights of Way Circular 1/09 gives advice to local authorities on recording, managing and maintaining, protecting and changing public rights of way. It also contains guidance on the consideration of rights of way in association with development. The Circular also covers the statutory procedure for diversion or extinguishment of a public right of way.

2 Wiltshire Core Policy

In January 2015, Wiltshire Council adopted its Core (Planning) Strategy. Paragraph 1.3 states as a key principle:

Protecting and planning for the enhancement of the natural, historic and built environments, including maintaining, enhancing and expanding Wiltshire’s network of green infrastructure to support the health and wellbeing of communities.

Strategic objective 5 is identified as “protecting and enhancing the natural, historic and built environment”.

Paragraph 3.8 explains that this includes “maintaining, enhancing and expanding Wiltshire’s multi-functional green infrastructure network”. The glossary defines green infrastructure network as including “green corridors, cycling routes, pedestrian paths and rights of way”.

The strategy contains a specific Core Policy (52) relating to green infrastructure. The Core Policy states (*inter alia*):

Development shall make provision for the retention and enhancement of Wiltshire’s Green Infrastructure network, and shall ensure that suitable links to the network are provided and maintained. Where development is permitted developers will be required to:

- *Retain and enhance existing on site green infrastructure.*
- *Put measures in place to ensure appropriate long-term management of any green infrastructure directly related to the development.*
- *Provide appropriate contributions towards the delivery of the Wiltshire Green Infrastructure Strategy if damage or loss of existing green infrastructure is unavoidable, the creation of new or replacement green infrastructure equal to or above its current value and quality, that maintains the integrity and functionality of the green infrastructure network, will be required.*

Development will not adversely affect the integrity and value of the green infrastructure network, prejudice the delivery of the Wiltshire Green Infrastructure Strategy, or provide inadequate green infrastructure mitigation.

Green infrastructure projects and initiatives that contribute to the delivery of a high quality and highly valued multi-functional green infrastructure network in accordance with the Wiltshire Green Infrastructure Strategy will be supported. Contributions (financial or other) to support such projects and initiatives will be required where appropriate from developers.

- 3 *WC’s Rights of Way Improvement Plan (ROWIP)*
Paragraph 3.6.3 of WC’s ROWIP states:

One aspect of improving access is to look at the planning process and individual development proposals as a means of maintaining and enhancing the public rights of way network. This approach is supported by the planning teams which have policies recognising the importance of access to the countryside and the need to improve opportunities to use public rights of way.

- 4 *Wiltshire Council’s Countryside Access Improvement Plan (CAIP)*
Page 33 of the CAIP states:

“new developments should retain or create good links in the Countryside Access Network.”

2. The legal impact of diverting a path along estate roads

When a public right of way is diverted on to a pavement which is part of the public highway (whether adopted or not), the footpath status ceases to

exist, the route then becoming one answering to the description of footway in Section 329 ('Further provisions as to interpretation') of the Highways Act 1980. This provides that "footpath" means a highway over which the public have a right of way on foot only, not being a footway; "footway" means a way comprised in a highway which also comprises a carriageway, being a right of way over which the public have a right of way on foot only.' So the pavement is not a public footpath at all but a pavement which would have been provided in any case. Where a road is made without a pavement, there is a right of way on foot in any case. In both cases the right of way on foot, whether on the footway or in the carriageway, now derives from the status of the way as a vehicular right way. It is therefore ultimately misleading to describe the proposals as a diversion when there will in fact be an extinguishment of the footpath.

The "diversion" of a footpath along an estate road constitutes a legal event under Section 53 (3)(a)(ii) of the Wildlife and Countryside Act 1981 whereby:

(ii) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description;

In such circumstances Section 53(2)(b) of the WCA requires the path to be deleted from the definitive map and statement.

Basis of objection

- 1. The proposals amount to the deletion of the "diverted" section of WBAS111. They therefore breach national and Wiltshire Council policy.*
- 2. Moreover, diverting walkers along housing estate pavements will necessarily reduce their enjoyment of the path or way as a whole. The public likes to go for "Country Walks" not "Housing Estate" walks.*
- 3. In another recent case where Wiltshire Council sought to close a path under s.257 of the TCPA 1990, local walkers proposed a diversion. However, Wiltshire Council rejected it as being insufficiently convenient compared to the route it would replace. This current proposal also contradicts Wiltshire Council's convenience criterion. The diverted route is well over twice the length of path to be extinguished. That would not matter if the diversion was scenic but it is not, it is along estate roads."*

End of objection.

21. Comments on the Objection

It is necessary for the council to consider the application of the legal tests contained within Section 119 of the Highways Act 1980.

22. **S.119(1) – The landowner’s interest**

The applicant is the landowner and developer for this site. It is clearly in their interest to divert the rights of way away from properties being developed to enable them to develop and sell the properties. They submitted the application and have agreed to reimburse the council for costs related to making and confirming the Order, both of which are actions that demonstrate their obvious interest and appreciation of the benefits.

23. **S.119(2) – Location and convenience of termination points**

The termination points of both routes (WBAS 10 and 111) are unaltered by the Order. There is therefore no alteration in the termination points and no reduction in the convenience of them as a result of the Order.

24. **S.119(6) – Convenience of the new path**

The diversion of WBAS111 moves the path to a direct line. 305 metres of path is extinguished by the Order and replaced by 310 metres of footpath. The route leads over a path beside a hedgerow and is not associated with any vehicular highway or footway. It is considered that there is no change to the convenience of the path.

25. The diversion of WBAS 10 moves the route in three distinct parts: one length of path moves to lead alongside a hedgerow (A to C on Order plan) and another length moves to cross an area of open land (D to B on Order plan). Neither of these lengths is associated with any vehicular highway or footway. The central section leads along the footway of Evening Star. This is a road that is the subject of an adoption agreement and which will eventually become a road and footway maintainable at public expense. However, in order to preserve the continuity of the footpath it is necessary to include this stretch of path in this Order, even though it will eventually be deleted from the definitive map. The new path is unlikely to be less convenient to use as although it is longer it includes a well-drained section of footway that is easy to follow and use. This length is approximately 100 metres in length which, on a path that is 2.7 kilometres in length overall, is not a significant increase in length or decrease in convenience. It is also noted that for anyone joining WBAS10 midway through (from properties along Evening Star, the north-east or the close to the north of it) the proposed route for joining the unaffected section of WBAS10 over the stream is more convenient. Likewise, for anyone travelling from the railway line boardwalk section over the bridge and onto areas to the north-west and east the order route offers a convenient route. For example, anyone seeking a recreational walk from Interface Business path to the railway and canal would find the order route more convenient than the existing.

26. Officers have considered other options for the route but consider there are none. The alternative route suggested by the objector is not possible for a number of reasons including accessibility and safety.

- (i) Part of the land is not in the developer’s ownership and there is no consent from the owner.
- (ii) It would take the public along and over a significant flood defence feature.

- (iii) The route would cross a large open ‘weir’ arrangement, designed to manage flood water. It incorporates water, which would be fast flowing at certain times of the year, and a significant drop and slope above the water and metal grills protecting it (see **Appendix C Images of Flood control**).
 - (iv) The Environment Agency has indicated it would object to any Order taking a public footpath over this area.
 - (v) There is no funding or consent for a bridge to be erected over the flood defence feature. Any bridge at this location, even if consented, would by necessity be large and costly to both build and maintain.
27. Details of the route favoured by the objector were shown in a plan approved as part of the planning permission for the development (Plan 1629/06), but the planning consent does not – and cannot – alter the public right of way and whilst it is regrettable that problems associated with the suggestion were not identified at the planning stage, neither the developer nor the council is bound in any way to proceed with that diversion.
28. **S.119(6) – Effect on public enjoyment of the path or way as a whole**
- WBAS10** Notwithstanding that there has only been one objection to the proposed diversion of this path from the public it is difficult to see that the diversion itself detracts from the public enjoyment of the path as a whole. The development of the Brynard’s Hill/Woodshaw area undoubtedly detracts from the enjoyment of the path as a whole for anyone wishing for a quiet rural walk but the diversion itself only exposes the public to approximately 100 metres of pavement walking which, given the easy nature of following the route and the fact that Evening Star is likely to be a relatively quiet estate road, cannot be said to have a significant effect on public enjoyment of the route as a whole.
29. It would seem certain that crossing the stream via the rustic bridge and raised walkway on Royal Wootton Bassett 10 offers a more pleasant and enjoyable route than crossing the industrial style flood defence mechanism beside the railway line that is the suggested alternative of the objector (see **Appendix C**).
- WBAS111** The diversion of this path is relatively insignificant and public enjoyment is unlikely to be affected one way or the other.
30. **S.119(6) – Effect on land served by the existing right of way**
- WBAS10** The privacy of the affected properties and their gardens is greatly improved by moving the footpath to the hedged boundary of the site and across the open land.
- WBAS111** The privacy of the affected properties and their gardens is greatly improved by moving the footpath to the hedged boundary of the site and across the open land.
31. **S.119(6) – Effect on land served by the new right of way**
- WBAS10 and WBAS111** There is no detrimental effect.

32. Consideration of the Rights of Way Improvement Plan

None of the diverted sections have any stiles or gates on them and surface improvements undertaken as part of the development will assist accessibility for all users, particularly as many users of these paths in future will be residents of the development.

33. Regard to the needs of agriculture, forestry and conservation of biodiversity

The land has been acquired for development and is being developed. There has been a clear impact on agriculture and the fauna and flora of the site, however, the diversion of the rights of way does not have any additional effect.

Overview and Scrutiny Engagement

34. Overview and Scrutiny Engagement is not required in this case.

Safeguarding Considerations

35. There are no safeguarding considerations associated with the confirmation of this Order.

Public Health Implications

36. There are no identified public health implications which arise from the confirmation of this Order.

Corporate Procurement Implications

37. There are no procurement implications associated with this Order.

38. In the event this Order is forwarded to the Secretary of State there are a number of opportunities for expenditure that may occur and these are covered in paragraphs 42 to 44 of this report.

Environmental and Climate Change Considerations

39. There are no environmental or climate change considerations associated with the confirmation of this Order.

Equalities Impact of the Proposal

40. The proposed new route will not contain any limitations to use (i.e. stiles or gates) and in parts will have a more accessible surface than the existing route.

Risk Assessment

41. There are no identified risks which arise from the confirmation of this Order. The financial and legal risks to the council are outlined in the “Financial Implications” and “Legal Implications” sections below.

Financial Implications

42. 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), permits authorities to recover costs from the applicant in relation to the making of public path orders, including those made under Section 119 of the Highways Act 1980. The applicant has agreed in writing to meet the actual costs to the council in processing this Order though the council's costs relating to the Order being determined by the Planning Inspectorate on behalf of the Secretary of State may not be reclaimed from the applicant.
43. Where there is an outstanding objection to the making of the Order, the committee may resolve that Wiltshire Council continues to support the making of the Order, in which case it should be forwarded to the Secretary of State for determination. The outcome of the Order will 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 £200 to £300; however, where a local hearing is held the costs to the council are estimated at £300 to £500 and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation (£300 to £500 without). There is no mechanism by which these costs may be passed to the applicant and any costs must be borne by Wiltshire Council. It is therefore considered appropriate where an Order is made under the council's powers to do so in the landowners' interest that the council does not provide any external legal support for the Order at a hearing or inquiry thus minimising the expenditure of public funds even though it considers that the legal tests have been met.
44. Where the council no longer supports the making of the Order, it may resolve that the Order be withdrawn and revoked and there are no further costs to the council. The making of a Public Path 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 supports it. However, where there is a pre-existing grant of planning permission the council must make very clear its reasons for not proceeding with the Order.

Legal Implications

45. If the council resolves that it does not support the Order, it may be abandoned. There is no right of appeal for the applicant; however, clear reasons for the abandonment or withdrawal must be given as the council's decision may be open to judicial review. This could be more likely where a grant of planning permission has already been made.
46. Where the council supports the making of the Order, because it has an outstanding objection, it must be sent to the Secretary of State for determination, which may lead to the Order being determined by written representations, local hearing or local public inquiry. The Inspector's decision is open to challenge in the High Court.

Options Considered

47. Members may resolve that:

- (i) The Order should be forwarded to the Secretary of State for determination as follows:
 - (a) The Order be confirmed without modification, or
 - (b) The Order be confirmed with modification.
- (ii) Wiltshire Council no longer supports the making of the Order, in which case the Order should be abandoned and revoked, with clear reasons given as to why Wiltshire Council no longer supports the making of the Order, i.e. why the Order fails to meet the legal tests.

Reason for Proposal

48. Officers consider that the tests contained within Section 119 of the Highways Act 1980 have been met and this Order should be confirmed.
49. The Order has a small error in it regarding the date it was sealed. The Order was sealed on 21 May 2018 but the date is given as “21st day of May 201”. Wiltshire Council has no power to amend the Order and insert the number “8”. However, the Secretary of State has the power to amend the Order and the council may request that he does this. It is noted that this is not a matter that has been raised by the objector to the Order.

Proposal

50. That The Wiltshire Council Parish of Royal Wootton Bassett Path No. 10 (part) and No. 111 (part) Diversion Order and Definitive Map and Statement Modification Order 2018 is forwarded to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that it is confirmed with a modification to the Order to correct the year of sealing to read “2018” at the end of the Order.

Tracy Carter

Director – Waste and Environment

Report Author:

Sally Madgwick

Acting Team Leader, Definitive Map and Highway Records, Waste and Environment

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

None

Appendices:

- Appendix A - Copy of Highways Act Order
- Appendix B - Decision report to make Highways Act Order
- Appendix B.A - Decision report to make Town and Country Planning Act Order
- Appendix B.B - Town and Country Planning Act Order
- Appendix C - Photographs of flood defence structures

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PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER**HIGHWAYS ACT 1980****WILDLIFE AND COUNTRYSIDE ACT 1981****WILTSHIRE COUNCIL****The Wiltshire Council Parish of Royal Wootton Bassett Paths No. 10 (part) and No. 111 (part) Diversion Order and Definitive Map and Statement Modification Order 2018**

This Order is made by Wiltshire Council ("the authority") under section 119 of the Highways Act 1980 ("the 1980 Act") because it appears to the authority that in the interests of the owner of the land crossed by the footpaths described in paragraph 1 of this order it is expedient that the line of the paths should be diverted.

This order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") because it appears to the authority that the Cricklade and Wootton Bassett Rural District Council definitive map and statement dated 1952 as modified under the Wildlife and Countryside Act 1981 require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely the diversion (as authorised by this Order) of a highway shown or required to be shown in the map and statement.

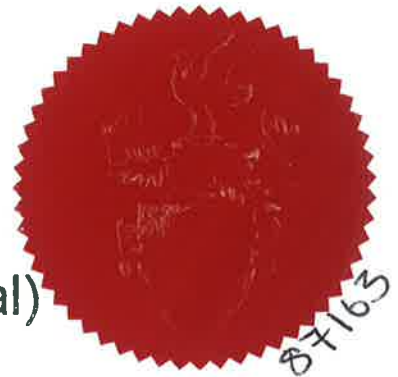
Royal Wootton Bassett Town Council has been consulted as required by section 120(2) of the 1980 Act.

BY THIS ORDER

1. The public rights of way over the land situated at Woodshaw Meadows, Royal Wootton Bassett and shown by a bold continuous line on the maps contained in this order and described in Part 1 of the Schedule to this order, after confirmation of the order, shall be stopped up on the date on which Wiltshire Council certify that work has been carried out to bring the site of the new highways described in Part 2 of the Schedule into a fit condition for use by the public and thereupon the Cricklade and Wootton Bassett Rural District Council area definitive map dated 1952 shall be modified by deleting from it those public rights of way.
2. There shall be at the end of 120 days from the date of confirmation of this order be alternative public footpaths over the land situate at Woodshaw Meadows, Royal Wootton Bassett and described in Part 2 of the Schedule hereto and shown by bold broken lines on the maps contained in this order and thereupon the Cricklade and Wootton Bassett Rural District Council definitive map dated 1952 shall be modified by adding those paths to it.
3. The Cricklade and Wootton Bassett Rural District Council area definitive statement dated 1952 shall be modified as described in part 3 of the Schedule to this Order.
4. Where immediately before the date on which the footpaths are diverted there is apparatus under, in, on, over, along or across them belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

THE COMMON SEAL of }
WILTSHIRE COUNCIL }
was hereunto affixed this }
this 21st day of May 201 }

Sue Schem
Team Leader (Legal)



In the presence of : -

JM
Sarah Marshall
Senior Solicitor
Wiltshire Council

SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

The whole width of Wootton Bassett path no 10 (part) (WBAS10) as shown on Plan A attached hereto by a bold black line leading from point A at OS Grid ref SU 0791 8193 leading broadly south east to point B at OS Grid ref SU 0808 8183. Approx length 200 metres. No recorded width.

Part of Wootton Bassett path no 111 (WBAS111) as shown on Plan B attached hereto by a bold black line leading from point A at OS Grid ref SU 0780 8208 in a broadly south easterly direction for 175 metres where south south west and west south west to point B at OS Grid ref SU 0783 8190. Approx length 305 metres. Width 2 metres.

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

(WBAS 10). The path shown on Plan A attached hereto by a bold black broken line leading from point A at OS Grid ref SU 0791 8193 leading south south east to point C and its junction with the road "Evening Star" where leading north east along the footway to point D where broadly south to the bridge at point B at OS Grid reference SU 0808 8183. Approx length 341 metres. Width 2 metres.

(WBAS 111) The path shown on Plan B attached hereto by a bold black broken line leading from point A at OS Grid ref SU 0780 8208 in a south south easterly direction to its junction with path WBAS 10 where broadly west over constructed paths and a short length of footway to point B at OS Grid ref SU 0783 8190. Approx length 310 metres. Width 2 metres

PART 3

MODIFICATION OF DEFINITIVE STATEMENT

VARIATION OF PARTICULARS OF PATH OR WAY

<u>Parish</u>	<u>Path No.</u>	<u>Description</u>	<u>Modified under</u>
Royal Wootton Bassett	10	<p><u>FOOTPATH</u> From the southern end of Vowley View at Brynard's Hill leading south for approx. 40 metres then east south east towards the railway to OS Grid ref. SU 0791 8193 where south south east to its junction with Evening Star. Leading north east along the footway for 120 metres before turning south to the bridge over the stream and south east to the canal. Leading east north east to its junction with footpath Royal Wootton Bassett number 28.</p> <p>Continuing on the southern side of railway line at OS Grid ref. SU0813 8176 at its junction with footpath number 62 where south east and south to Wootton Meadows where west south west past Lanes Farm to the Marlborough Road B.4041: with a spur to the north of Brynards Hill Farm leading west and north west to road u/c 2075.</p> <p>Approx length 2700 metres Width: OS 0813 8181 to 0846 8188 2 metres OS SU 0791 8193 to SU 0808 8183 2 metres</p>	53(3)(a)(i)
Royal Wootton Bassett	111	<p><u>FOOTPATH</u> From its junction with path no 10 at Vowley View leading in a south easterly then north easterly direction to its junction with the estate road and from its junction with path no. 10 at OS Grid ref SU 0754 8202 leading east and east south east to the summit of Brynard's Hill and on to its junction with path no. 113 at OS Grid ref. SU 0773 8199. Continuing on from the northern end of path no. 113 in a north easterly direction then east and south east to OS Grid ref SU 0780 8208 where south south east and south east to its junction with path no. 10 where broadly east over made paths to OS Grid ref 0783 8190 where broadly south south west and south west to its junction with path no. 30 at the railway bridge. A further spur leading north west from OS Grid ref 0762 8184 to OS Grid ref SU 0751 8194 and its junction with path no. 30.</p> <p>Approximate length 1230 metres Width 2 metres</p>	53(3)(a)(i)

PLAN A - Wootton Bassett path no 10

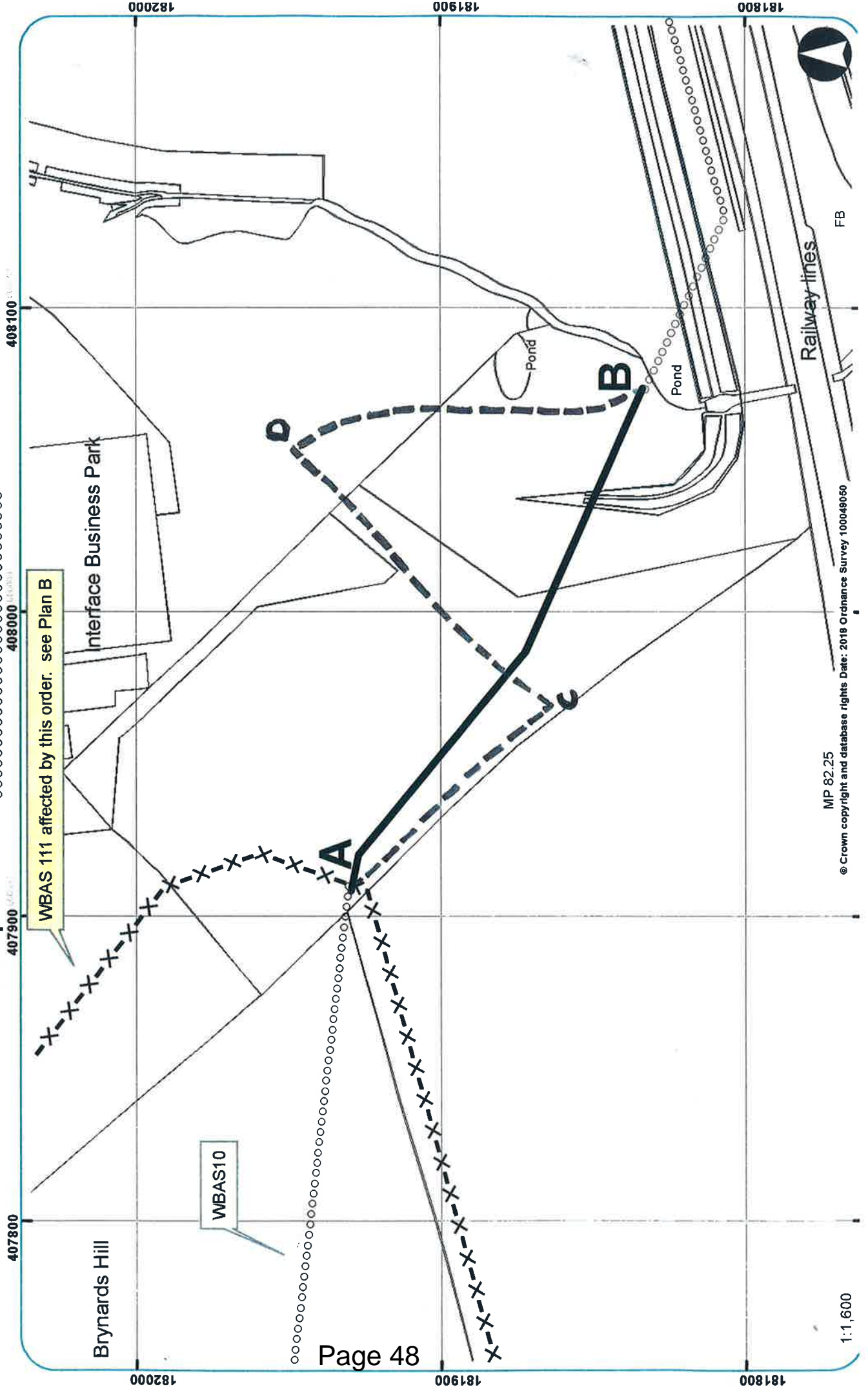
Path to be extinguished **A** **B**

Path to be created **A** **D**

Unaffected paths

Date: 16/05/2018

PLAN A



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WILTSHIRE COUNCIL

**APPLICATION TO DIVERT PARTS OF ROYAL WOOTTON BASSETT
FOOTPATHS 10 & 111**

TOWN AND COUNTRY PLANNING ACT 1990 s.257

1 Purpose of Report

1.1 To:

- (i) Consider and comment on an application to divert parts of footpaths Royal Wootton Bassett 10 and 111 (WBAS10 and WBAS111) to enable a permitted development to proceed.
- (ii) Recommend that an Order be made to divert the footpaths under s.257 of the Town and Country Planning Act 1990 and to confirm the Order if no representations or objections to the Order are made or have not been withdrawn.

2 Background

2.1 On the 4th August 2017 Wiltshire Council received an application to divert parts of footpaths WBAS10 and WBAS111 at Brynard's Hill, Royal Wootton Bassett. The application was made by:

Wainhomes (South West) Holdings Limited
Owlsfoot Business Centre
Sticklepath
Okehampton
Devon
EX20 2PA

2.2 The application has been made because a permitted development would obstruct two public footpaths, WBAS 10 and WBAS 111 if carried out.

2.3 The permitted development is for the construction of 92 dwellings with associated roads, footways, parking, landscaping and drainage works. Wiltshire Council application reference number 15/10486/FUL.

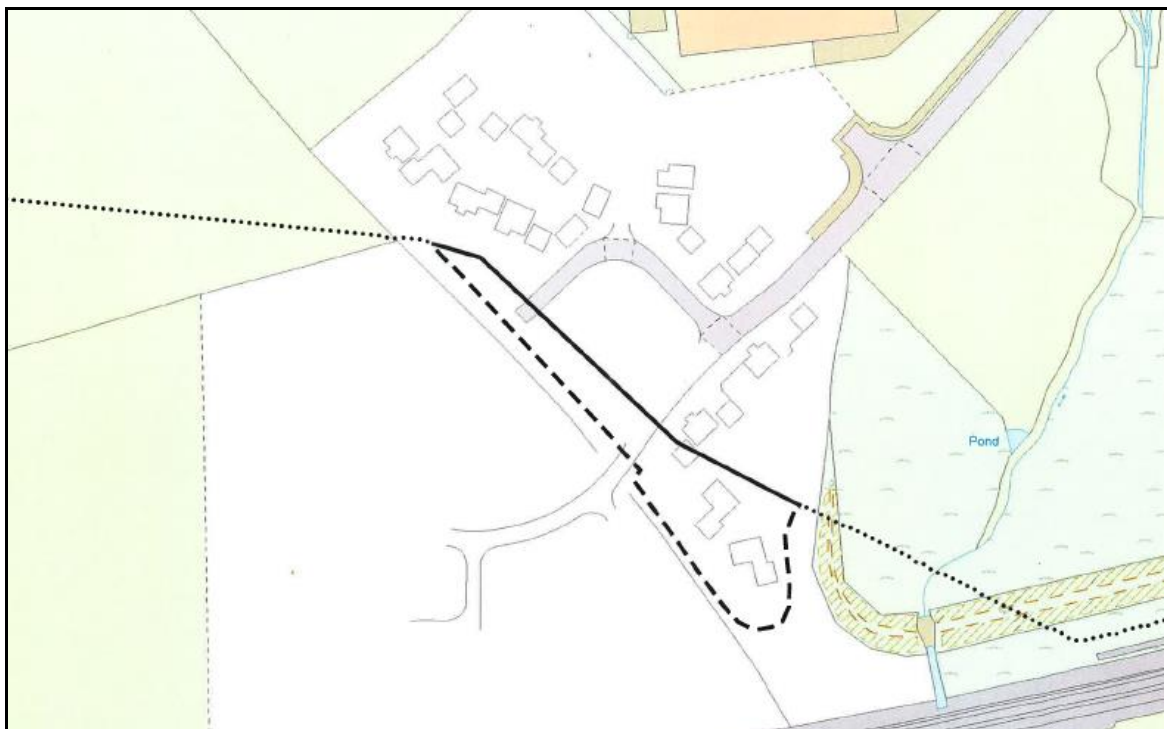
2.4 Drawing 1629/1 was originally submitted with the application for planning permission and was referred to in the application as being relevant for the diversion of the rights of way, however, it lacked sufficient detail. Further to objections from Mr P Gallagher on behalf of The Ramblers and from Wiltshire Council's Rights of Way team, a further drawing numbered 1629/06 was submitted before the planning application was being decided.

2.5 Drawing 1629/06 shows the line of WBAS10 obstructed by houses and gardens and leading across two roads and the line of WBAS111 obstructed by houses and gardens.

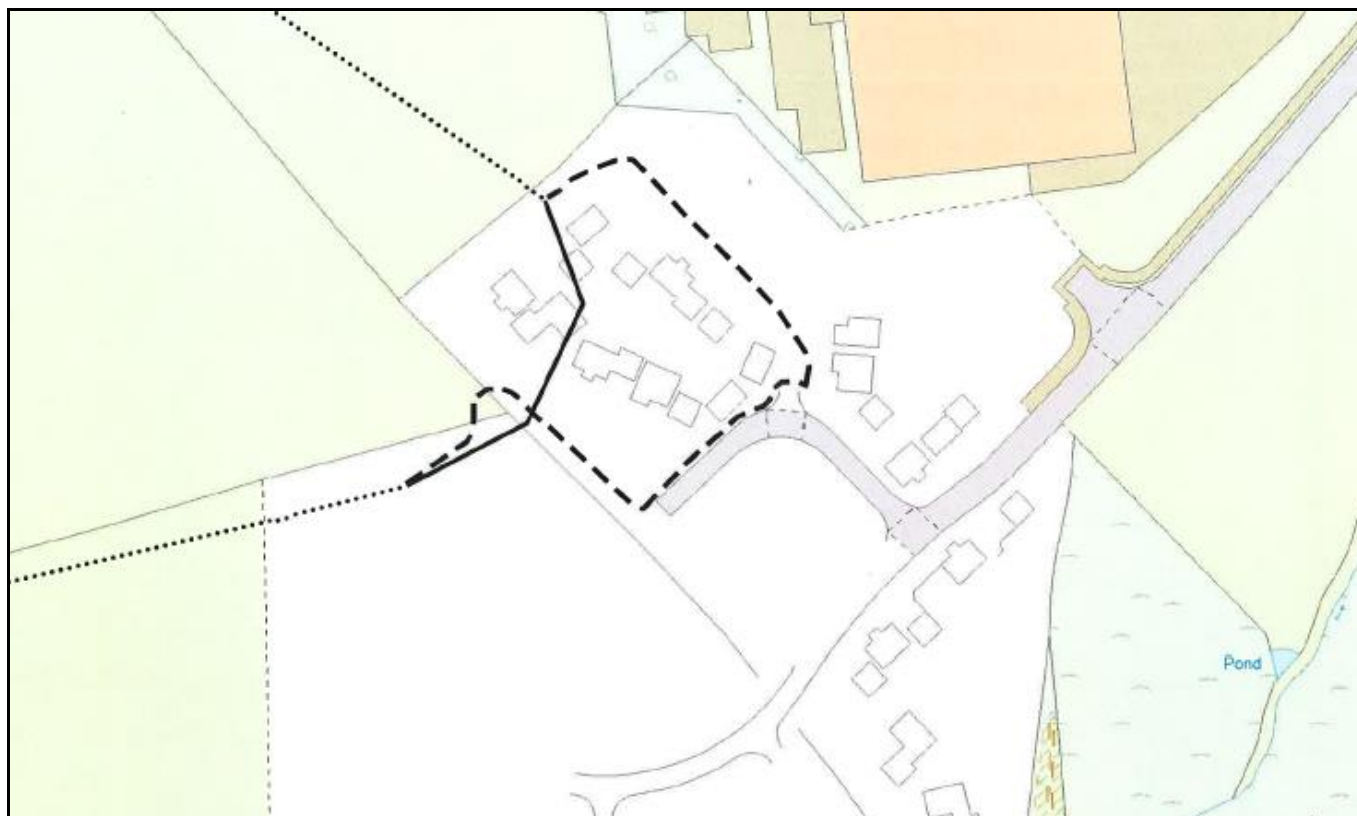
2.6 **Plan 1629/06** Existing rights of way solid line, proposed rights of way pecked lines.



2.7 Plan submitted with application to divert the paths (2017/14) – WBAS 10

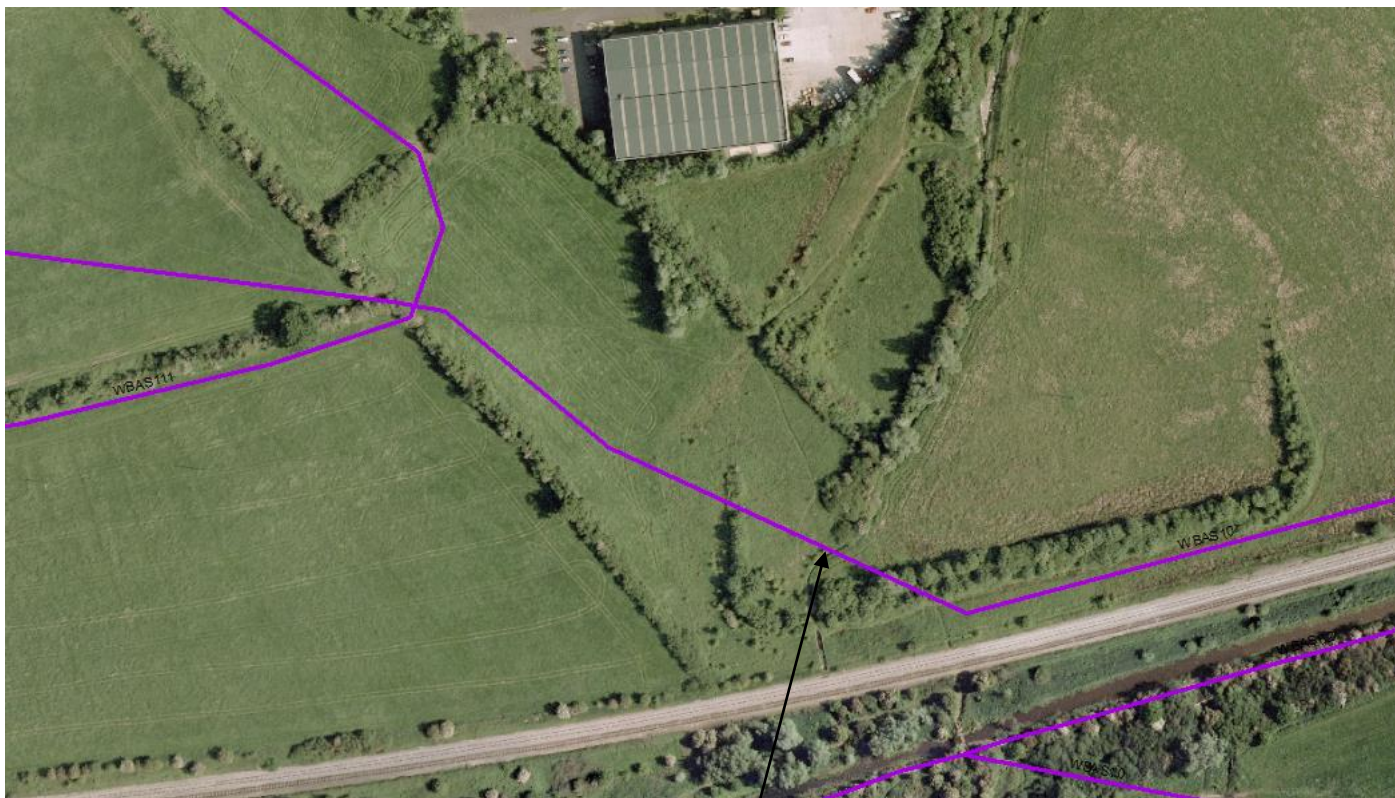


2.8 Plan submitted with application to divert the paths (2017/14) – WBAS 111



- 2.8 Works commenced on site before the application for a public path order was made and before a temporary closure was applied for. The area is popular with walkers and accordingly Wiltshire Council received complaints about WBAS 10 being obstructed. Around this time, and for reasons related to planning, the development was halted allowing a Traffic Regulation Order to be placed on the route. This order ran from 24/04/2017 to 26/06/2017 and extended from 22/06/2017 for six months.
- 2.9 Wiltshire Council received complaints in 23/5/2017 and 30/6/2017 that WBAS 111 was obstructed. Notice under s.130A of The Highways Act 1980 was served on Wiltshire Council on 21/06/2017. Wiltshire Council proceeded to serve notice under s.143 of The Highways Act 1980 on Wainhomes on 07/07/2017. The notice is currently outstanding (25/09/2017).
- 2.10 These events led Wainhomes to make the application to divert the paths that is the subject of this report. It is regrettable that the application was not made sooner.

3 Aerial Photograph 2006 Footpaths = purple lines

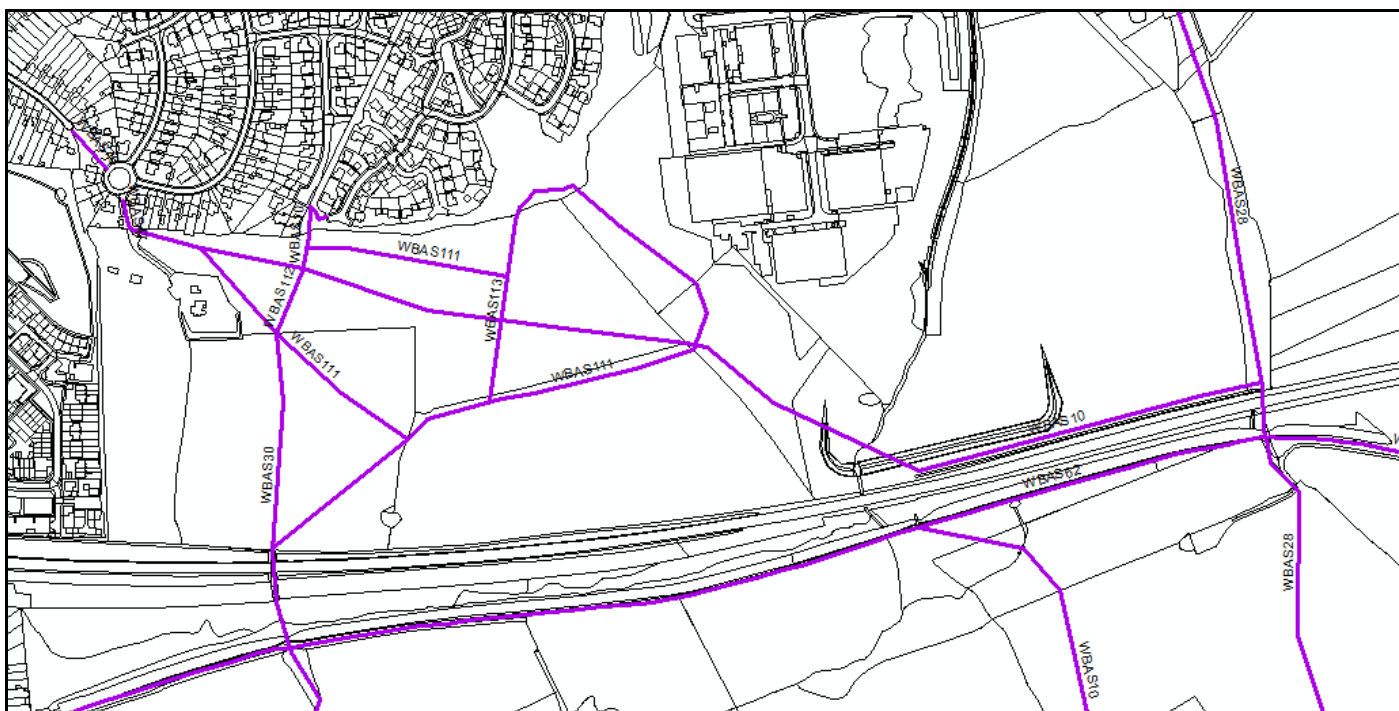
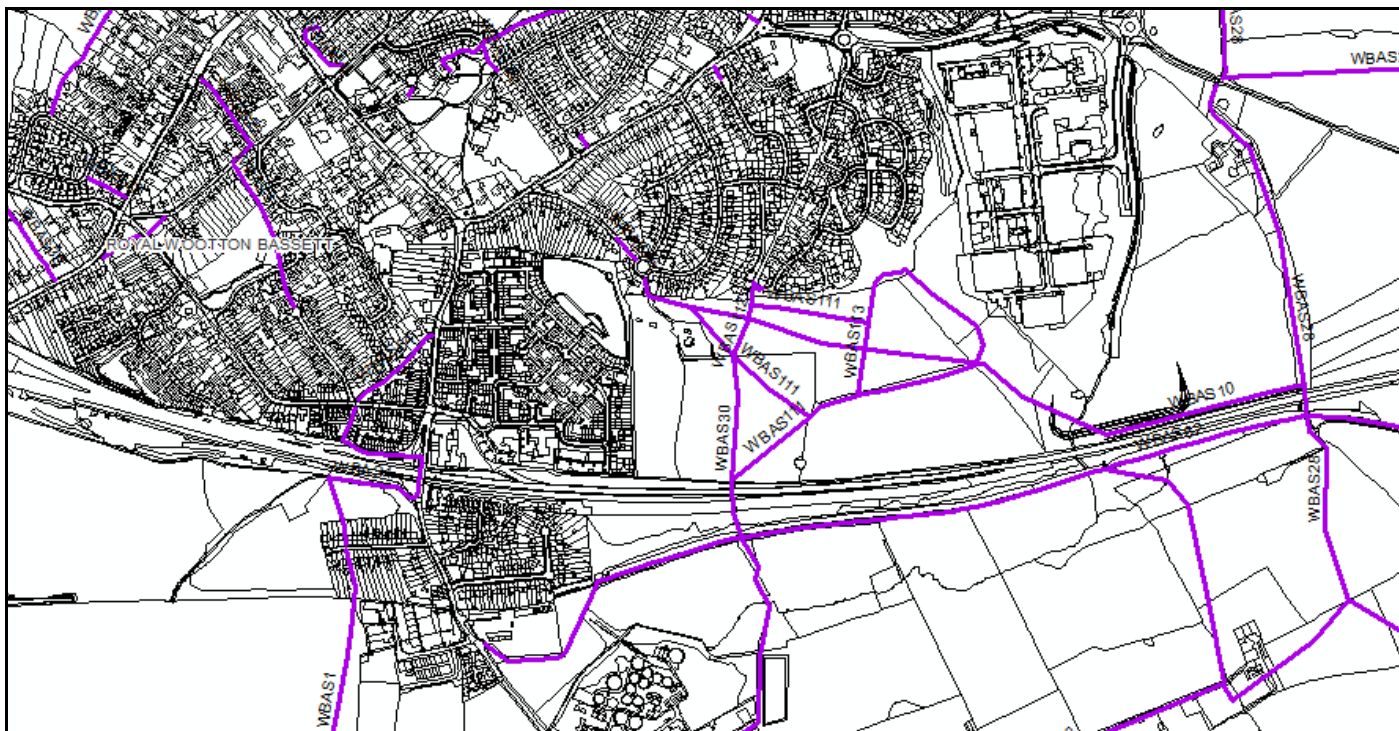


The aerial photograph shows WBAS 10 leading alongside the railway line before turning north west up the hill. The bridge over the watercourse/drain is currently broken and the used route continues along the line of the railway and over a stone drain before turning north west up the road.



4 Current Records

WBAS10 is a historic path over Brynard's Hill but WBAS 111 was only added to the definitive map and statement in 2010 as the result of an application for an Order based on public use of the way for a period of at least 20 years. The working copy of the definitive map records the network and reflects recent changes as a result of public path orders since the original definitive map was drawn up in 1952: Purple lines = footpaths.



The definitive statement records the following:

Royal Wootton Bassett	10	<p><u>FOOTPATH.</u> From the southern end of Vowley View at Brynard's Hill leading south for approximately 40 m, then east-south-east towards the railway where east north east for 340 metres to join footpath Wootton Bassett number 28.</p> <p>Continuing on southern side of railway line at OS grid reference SU0813 8176 at its junction with footpath number 62 where south east and south to Wootton Meadows where west south west past Lanes Farm to the Marlborough Road B4041: with a spur to the north of Brynards Hill Farm leading west and north west to road u/c 2075.</p> <p>Approximate length 2485 metres</p> <p>Width OS 813 8181 to 0846 8188 2 metres</p>	relevant date 23 rd October 2012.
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Royal Wootton Bassett	111	<p><u>FOOTPATH.</u> From its junction with path no. 10 at Vowley View leading in a south easterly then north easterly direction to its junction with the estate road and from its junction with path no. 10 at OS Grid SU 0754 8202 leading east and east south east to the summit of Brynards Hill and on to its junction with path no. 113 at OS Grid ref. SU 0773 8199. Continuing on from the northern end of the path no. 113 in a north easterly direction then east and south east then leading west south west at OS Grid ref. SU 0792 8191 to its junction with path no. 30 at the railway bridge. A Further spur leading north west from OS Grid ref. SU 0763 8184 to OS Grid ref. SU 0751 8194 and its junction with path no. 30</p> <p>Width 2.0 metres</p> <p>Approximate length 1100 metres</p>	Relevant date 26 th March 2015
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5 Land Ownership

The land is owned by the applicant:

Wainhomes (South West) Holdings Ltd
Owlsfoot Business Centre
Sticklepath
Okehampton
EX20 2PA

6 Consultation

- 6.1 An initial consultation was circulated from the 9th August to the 15th September 2017. The application plans shown here at paragraphs 2.7 and 2.8 were sent along with the following letter:

“Town and Country Planning Act 1990 s.247, Highways Act 1980 s.119 and Wildlife and Countryside Act 1981 s.53 Diversion of parts of footpaths WBAS10 and WBS111 at Brynards Hill, Royal Wootton Bassett, SN4 8FJ

Wiltshire Council has received an application to divert parts of two footpaths at Brynard’s Hill, Royal Wootton Bassett. The line of footpaths WBAS10 and WBAS111 are affected by the permitted development of 92 dwellings with associated roads, footways, parking, landscaping and drainage works. The development arises out of application number 15/10486/FUL which may be viewed at www.wiltshire.gov.uk.

Please find enclosed a plan showing the location of the site and the local network and plans showing the proposed diversions.

If you have any comments on the proposal I would be pleased to receive them by 1700 on 15th September 2017.”

- 6.2 The consultation was sent to the following:

The Auto Cycle Union
Open Spaces and Footpaths Society
British Driving Society
British Horse Society (Wiltshire)
British Horse Society
Byways and Bridleways Trust
Cycling Touring Club
Trail Riders Fellowship
Senior Rights of Way Warden (Wiltshire Council)
Royal Wootton Bassett Town Council
Wiltshire Bridleways Association
The Ramblers (Wiltshire)
The Ramblers (North Wiltshire)
Mr D Mannering (interested party)
Wainhomes (South West)
GTC Pipelines Ltd
UK Power Solutions
Digdat.co.uk
LinesearchbeforeUdig.co.uk
BT Openreach

National Grid (electricity and gas)
Wessex Water
Thames Water
Wiltshire Council Cllr Hurst
Wiltshire Council County Ecologist

7 Consultation responses

7.1 No plant or statutory undertakers were affected.

7.2 The Ramblers 03.08.17

“We have no objection to the proposed diversion of WBAS111.

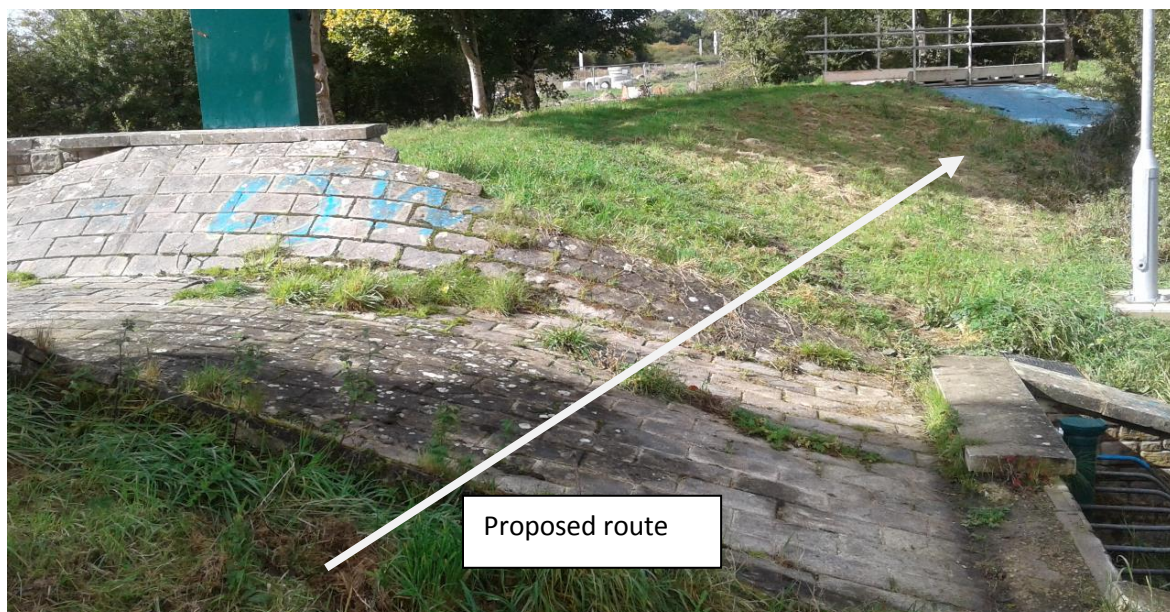
In regard to WBAS10, this is another case where the applicant is now proposing a different alignment to that which they put forward with their planning application. At that time, they proposed the diversion shown on the attached drawing 1629/06; this drawing appears in the list of those on which the consent was based. The fact that the diversion extended beyond the red line gave rise to a question as to land ownership; however, an email from Michael Crook to planning officer Lee Burman dated 4 March 2016 states that, having examined the title plans supplied by Wainhomes, Mike was satisfied that they owned all the land required.

The diversion shown on drawing 1629/06 is much better than that shown on the drawing enclosed with your letter for two reasons:

- *It is more direct;*
- *It avoids the marshy ground inside the Environment Agency bund (I understand this section of path is currently unusable because of a broken footbridge over the stream).*

We consider the diversion route now proposed to be unsatisfactory as it provides an unnecessarily circuitous route; the diversion put forward at the time of planning consent should be implemented instead.”

7.3 Officer’s Comment: The observations received from the Ramblers were forwarded to Wainhomes for comment. They had concerns that the route shown on drawing 1629/06 (see this report para. 2.6) crossed complex drainage features. See below:





Drainage feature to side of proposed route
 – note blue graffiti in both pictures to demonstrate alignment

8 Considerations for the Council – Legal Empowerment

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

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

8.3 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.

8.4 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.

8.5 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)

8.6 The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP 2 2015 - 2016). 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.

8.7 The ROWIP also has as its aims:

- The creation of a more coherent network (page 37 Opportunity 2)
- Improvement of key access points (page 38 Opportunity 2.4)

8.8 The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.

8.9 The Council is also empowered to make a ‘combined order’ under s.53(2)A of the Wildlife and Countryside Act 1981. The effect of this means that on the confirmation of the order the definitive map and statement may be changed without the further need to make an order under s.53(3)(a)(i) of the 1981 Act (also known as a ‘legal event order’ or an ‘unadvertised order’).

8.10 An Order made under s.257 of the Town and Country Planning Act 1990 will come into effect only after confirmation and on the acceptance and certification of the new route by Wiltshire Council.

9 Comments on Considerations

9.1 **Whether it is necessary to divert the routes in question to allow development to be carried out in accordance with the planning permission already given but not substantially completed**

9.2 It is clear from the approved plans and drawings that both WBAS 10 and WBAS 111 will need to be diverted to allow for the permitted development to proceed as there are 3 proposed properties on

the course of WBAS 10 and 7 proposed properties on the course of WBAS 111. None of the properties are substantially complete at the time of writing this report.

9.3 The effect that the Order would have on those whose rights would be affected by it or whose properties adjoin or are near the existing path

9.4 The definitive line of Wotton Bassett 10 is not available where it crosses the watercourse and walkers are using a route to the south. This leads along cambered ground and crosses a complex drainage feature. The incorporation of this drainage feature into a right of way would have far reaching implications for maintenance liability (which would fall to Wiltshire Council) and for health and safety considerations, especially during a flood event. The drainage features would undoubtedly be attractive places for children to play with all the risks of associated with doing so. It is not considered advantageous to place a right of way over a feature that is clearly designed for another purpose entirely, is sloped and potentially very hazardous.

9.5 For the purposes of comparison of routes Wiltshire Council must consider the definitive line as if it were available.

9.5 The width of all diversion will be 2 metres and both diversions increase the length of the path. However, these routes are recreational routes and the increase in distance is not significant when considered with the path as a whole. Additional length may be seen as an advantage by some users of the network (i.e. runners or dog walkers).

Path	Length to be extinguished	Length to be created	Additional length	Existing length of path	Percentage increase
WBAS 10	140 metres	195 metres	55 metres	2485 metres	2.2
WBAS 111	110 metres	240 metres	130 metres	1100 metres	11.8

10 Other considerations

10.1 Material provisions of the Rights of Way Improvement Plan

10.2 At page 5, section 1B.1 of the policy document referring to public path orders it states *“The council has discretionary powers to alter the rights of way network.....The main procedures are set out within the Town and Country Planning Act 1990 and the Highways Act 1980.* Accordingly, this diversion is being processed under those stated powers.

10.3 Page 6 of the policy document at section 1B.2 in relation to *Public Path Order Applications and their Prioritisation* states *“A diverted/ newly created path should meet the Council’s minimum standard width: Footpath 2 metres”.* This diversion is proposed with a width of 2 metres and meets the Council’s accepted minimum.

10.4 Environmental Impact of the Recommendation

Planning permission was granted with full consideration of any environmental impact arising from the development. The diversion of the rights of way have no identified environmental impact.

10.5 Risk Assessment

There are no risks to users of the paths associated with the diversion over the route applied for. The route identified by The Ramblers would, in the view of officers, carry additional risks for users. However, there is a risk that if the development continues to being substantially complete the Order will not be capable of confirmation as it will no longer meet the legal tests contained within s.257 of the Town and Country Planning Act 1990 which is a risk for the applicant.

10.6 If this were to happen Wiltshire Council has the power to abandon the Order and the applicant would only pay costs proportional to getting the Order to that stage. It would be open for the applicant to re-apply under Highways Act 1980 legislation if they wished to.

10.7 In the event the Order attracted objections and was sent to the Secretary of State for determination they would refuse to confirm the Order if the development was substantially complete.

10.8 Legal Considerations and Financial Implications

The applicant 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).

10.9 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.

10.10 Equality Impact

There is no detrimental impact.

10.11 Safeguarding Considerations

The proposed diversion has no effect on matters relating to safeguarding.

11 Options to Consider

- i) To make an Order to divert the ways under s.257 of the Town and Country Planning Act 1990.
- ii) Not to make an Order.

12 Reasons for Recommendation

12.1 It is considered expedient to make an Order since the development may not lawfully proceed until the rights of way are diverted.

12.2 No statutory undertakers are affected by the proposal.

13 Recommendation

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 divert parts of Royal Wootton Bassett footpaths 10 and 111 and if after due advertisement no objections or representations are received (or are outstanding) be confirmed and after certification of the new route that the definitive map and statement be altered accordingly.

Sally Madgwick
Rights of Way Officer

24/11/2017

PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257 APPENDIX B
to Appendix B

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53(A)(2)

**WILTSHIRE COUNCIL ROYAL WOOTTON BASSETT PATH 10 (PART) AND PATH 111
(PART) DIVERSION ORDER AND DEFINITIVE MAP MODIFICATION ORDER 2017**

This Order is made by Wiltshire Council under Section 257 of the Town and Country Planning Act 1990 because it is satisfied that it is necessary to divert the footpaths to which this order relates in order to enable development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990 namely Wiltshire Council application reference number 15/10486/FUL the construction of 92 dwellings with associated roads, footways, parking, landscaping and drainage works.

This order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") because it appears to the authority that the Cricklade and Wootton Bassett Rural District Council area Definitive Map and Statement dated 1952 as modified under the Wildlife and Countryside Act 1981 require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the diversion (as authorised by this Order) of a highway hitherto shown or required to be shown in the map and statement.

BY THIS ORDER:

1. The footpaths over the land shown by bold black lines on the attached plans (Plan A and Plan B) and described in Part 1 of the Schedule to this order ("the schedule") shall be diverted and the Cricklade and Wootton Bassett Rural District Council area Definitive Map and Statement dated 1952 and as modified by the Wildlife and Countryside Act 1981 shall be modified as provided below.
2. There shall be created to the reasonable satisfaction of Wiltshire Council an alternative highway for use as a replacement for the said footpaths as provided in Part 2 of the Schedule and shown by bold black dashes on the attached plans (Plan A and Plan B).
3. The diversion of the footpaths shall have effect on the date on which Wiltshire Council certify that the terms of Article 2 have been complied with and upon the occurrence of that diversion the Cricklade and Wootton Bassett Rural District Council area Definitive Map and Statement dated 1952 as modified under the Wildlife and Countryside Act 1981 shall be modified by deleting from it the paths or ways referred to in paragraph 1 of this order and the paths or ways referred to in paragraph 2 of this order shall be added to it, and the definitive statement shall be modified as described in part 3 of the Schedule.
4. Where immediately before the date on which the footpath is diverted there is apparatus under, in, on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking shall continue to have the same rights in respect of the apparatus as they then had.

THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
Was hereunto affixed this }
30th day of November 2017 }
In the presence of: -

Karweese
Senior Solicitor



SCHEDULE

PART 1

Description of site of existing path or way

Plan A Length of footpath Royal Wootton Bassett 10 as shown on Plan A by a continuous black line starting at point A leading to point B. Length 140 metres. Width not recorded.

Plan B Length of footpath Royal Wootton Bassett 111 as shown on Plan B by a continuous black line starting at point A leading to point B. Length 110 metres. Width 2 metres.

PART 2

Description of site of alternative highway

Plan A Length of footpath as shown on Plan A by a broken black line starting at point A leading to point B. Length 195 metres Width 2 metres

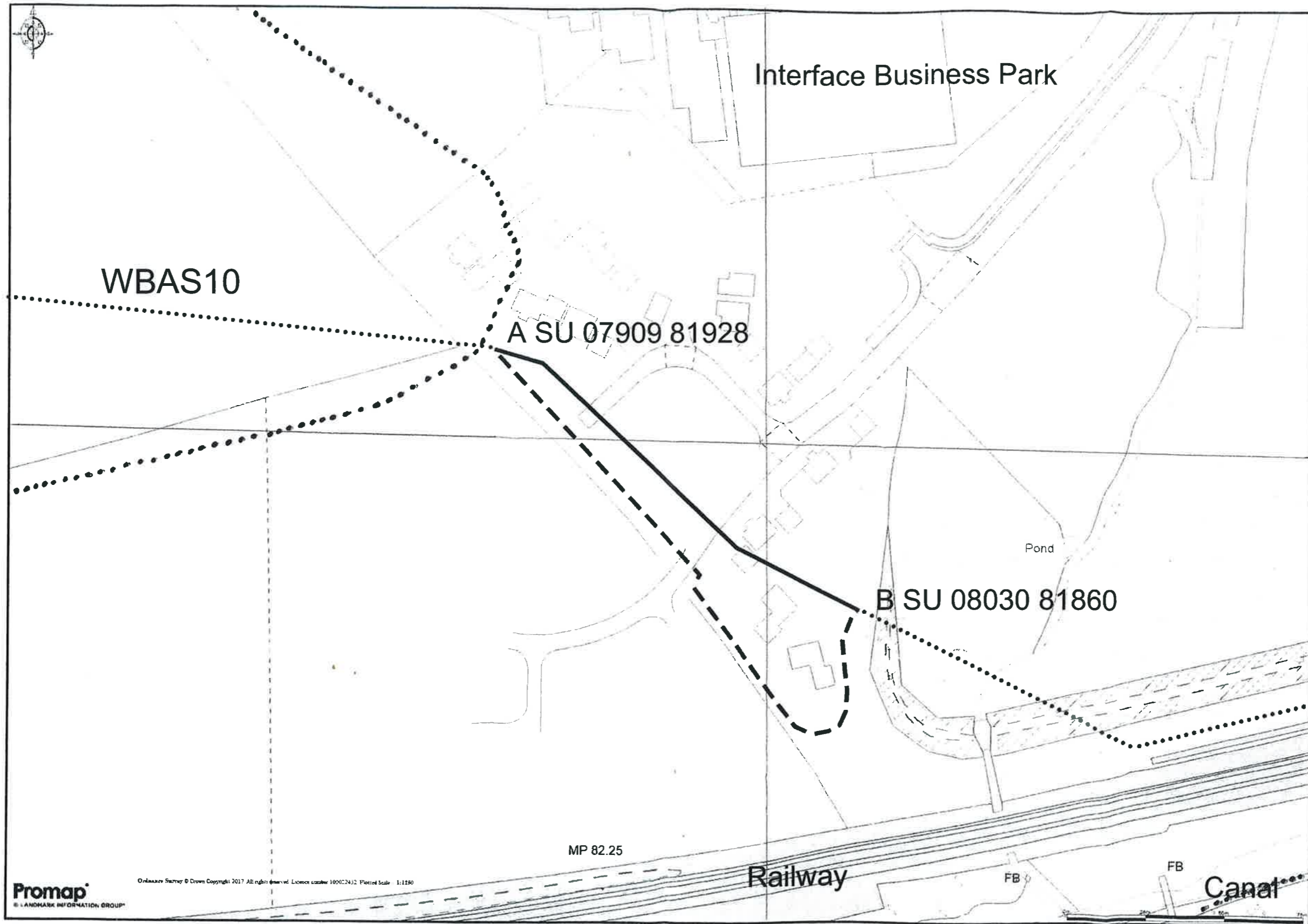
Plan B Length of footpath as shown on Plan B by a broken black line starting at point A leading to point B. Length 240 metres Width 2 metres

PART 3

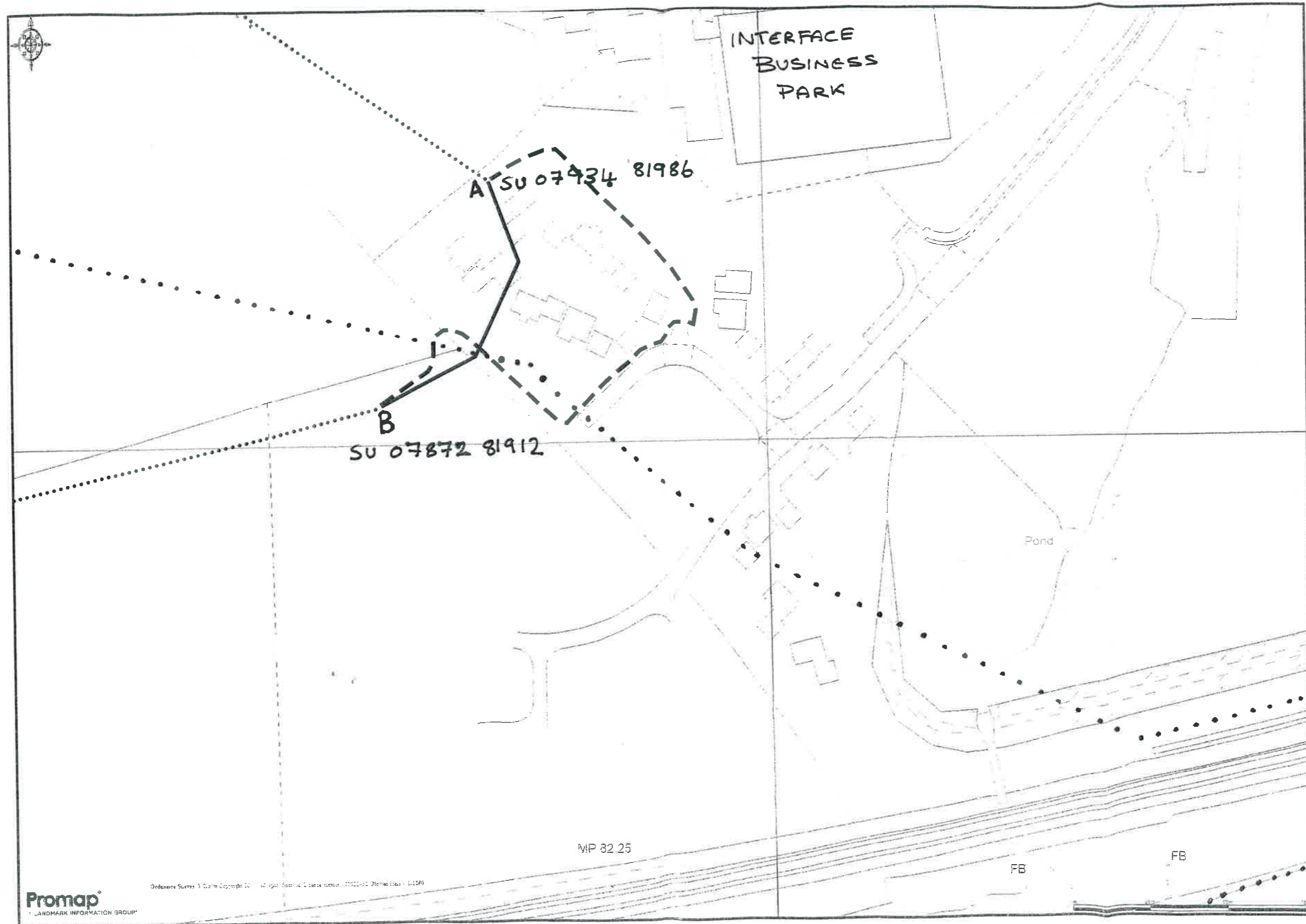
Modification of Definitive Statement

Variation of particulars of path or way

Parish	Path No	Description	Modified under
Royal Wootton Bassett	10	<p><u>FOOTPATH</u> From the southern end of Vowley View at Brynard's Hill leading south for approx. 40 metres then east south east towards the railway to OS Grid ref. SU 07909 81928 where leading south east for 150 metres then turning north north east to OS Grid ref. SU 08030 81860 where south east and east north east following the course of the railway line to join footpath Royal Wootton Bassett number 28.</p> <p>Continuing on the southern side of railway line at OS Grid ref. SU0813 8176 at its junction with footpath number 62 where south east and south to Wootton Meadows where west south west past Lanes Farm to the Marlborough Road B.4041: with a spur to the north of Brynards Hill Farm leading west and north west to road u/c 2075.</p> <p>Approx length 2550 metres</p> <p>Width: OS 813 8181 to 0846 8188 2 metres OS SU 07909 81928 to SU 08030 81860 2 metres</p>	53(3)(a)(i)
Royal Wootton Bassett	111	<p><u>FOOTPATH</u> From its junction with path no 10 at Vowley View leading in a south easterly then north easterly direction to its junction with the estate road and from its junction with path no. 10 at OS Grid ref SU 0754 8202 leading east and east south east to the summit of Brynard's Hill and on to its junction with path no. 113 at OS Grid ref. SU 0773 8199. Continuing on from the northern end of path no. 113 in a north easterly direction then east and south east to OS Grid ref SU 07934 81986 where following estate paths and footways east north east, south east, south west and north west and south west to OS Grid ref. SU 07872 81912 where west south west to its junction with path no. 30 at the railway bridge. A further spur leading north west from OS Grid ref. SU 0763 8184 to OS Grid ref. SU 0751 8194 and its junction with path no. 30.</p> <p>Width 2 metres</p> <p>Approximate length 1230 metres</p>	53(3)(a)(i)



- Unaffected line of paths
- Section of path to be diverted
- - - - - New path to be provided



- Unaffected line of paths
- A ——— B Section of path to be diverted
- A - - - - - B New path to be provided

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WILTSHIRE COUNCIL**APPLICATION TO DIVERT PARTS OF FOOTPATHS ROYAL WOOTTON
BASSETT 10 and 111****1 Purpose of Report**

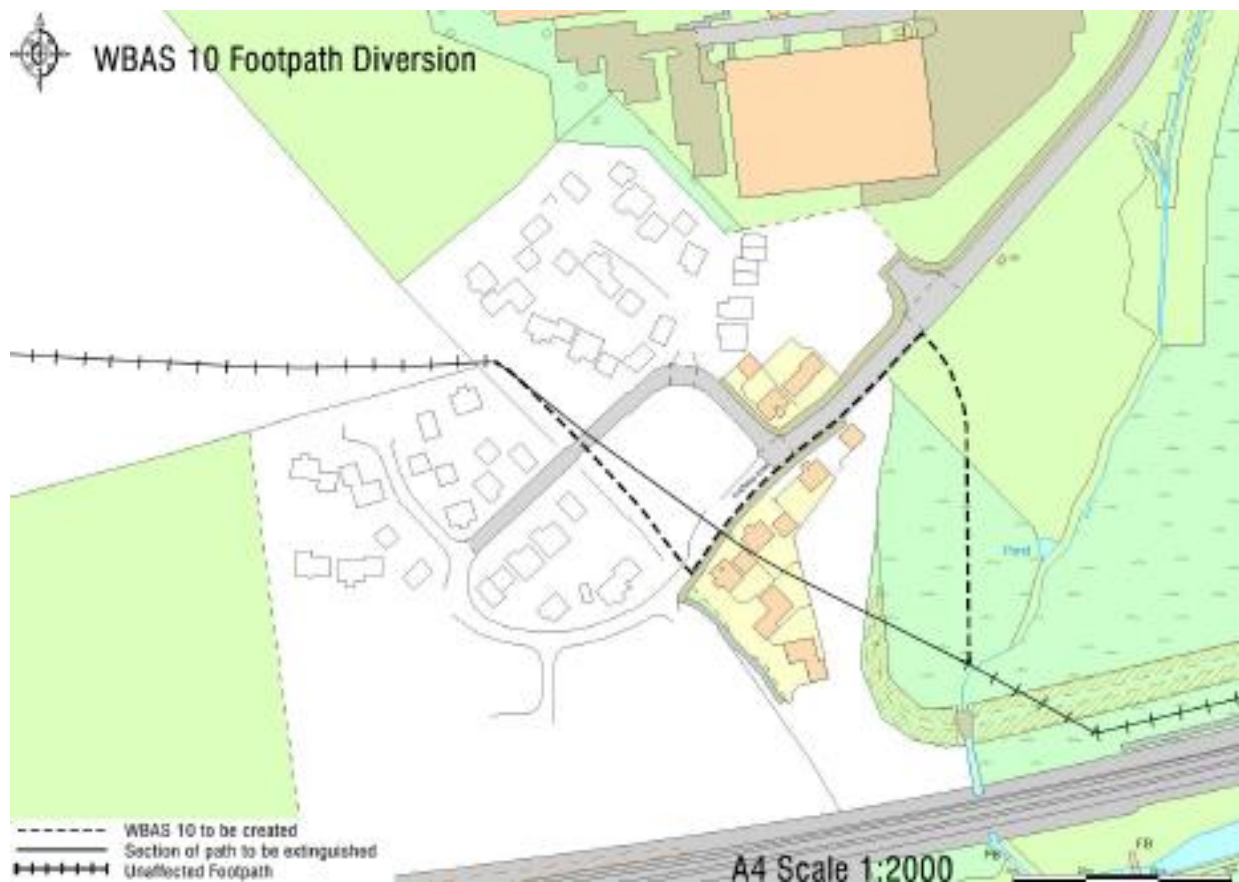
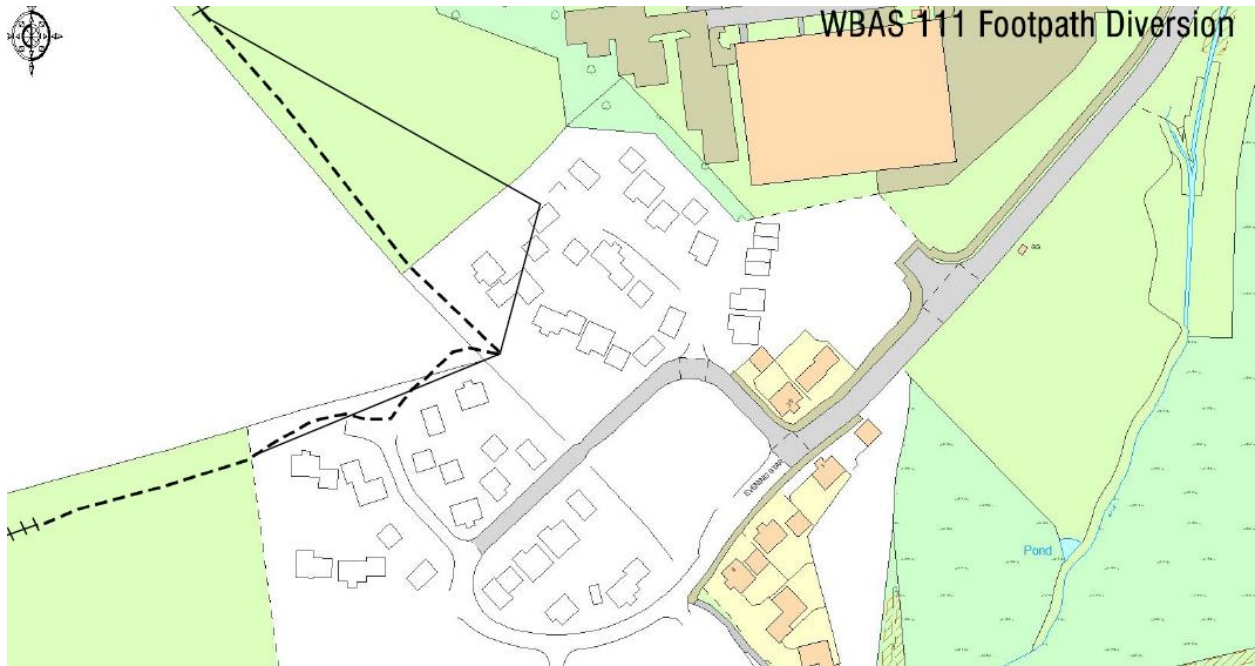
1 To:

- (i) Consider and comment on an application to divert footpaths over land at Woodshaw Meadows, Brynard's Hill, Royal Wootton Bassett to enable a permitted development to proceed and to avoid existing structures.
- (ii) Recommend that an Order be made to divert the footpaths under s.119 of the Highways Act and to confirm the Order if no representations or objections are made. The Order will be drafted to require the certification of works before the Order comes into effect.

2 Background

- 2.1 In August 2017 Wainhomes (South West) Holdings Ltd applied for an order to divert parts of footpaths 10 and 111 where they crossed the site of a permitted development at Brynard's Hill, Royal Wootton Bassett. The diversion of the paths was necessary to enable the permitted development to proceed and a decision to make an order was made. See Appendix A.
- 2.2 On 30 November 2017 Wiltshire Council made an order under s.257 of the Town and Country Planning Act 1990 to divert the paths (see Appendix B). The order was duly advertised and attracted one objection. As a result of the objection officers of the Council once again visited the site to investigate the comments made in objection and noted that the development was substantially complete with respect to the right of way.
- 2.3 Where a permitted development is substantially complete an order made under s.257 of the 1990 Act cannot be confirmed and accordingly the Council has no choice but to abandon the order.
- 2.4 The development (housing, gardens and garages) now obstructs the rights of way through the site and the developer continues to require a diversion of the paths. Accordingly officers of the council have considered the diversion of the footpaths under s.119 of the Highways Act 1980.
- 2.5 It is a feature of this location that it is on a hillside leading down to the canal and the mainline railway in the south. This area towards the bottom of the hill is prone to waterlogging and has a significant drainage feature managed by the Environment Agency to the south east. See images at paragraph 7.3 Appendix A. There are no public rights along the embankment that forms part of the flood defence but it has been observed that members of the public do walk in this area.
- 2.6 Owing to the purpose of the features here (flood management), the ownership and control of them (the Environment Agency) and risks associated with slipping and falling, children playing and fast flowing water the rights of way may not be diverted along these routes or over these features.

2.7 There is therefore relatively little scope to divert the paths whilst retaining their rural character and their accessibility. However, a proposed route for path no 111 has been identified that leads south east beside a hedge line before leading south west through proposed green space. A proposed route for path no 10 has been identified that in part leads beside a hedge line, in part along an estate footway and then across a landscaped space to re-join the definitive line of path no 10 over an existing bridged crossing of a stream.



3 Consultation

- 3.1 A consultation into the above proposals was circulated to those listed at Appendix 1 paragraph 6.2 between 29 March and 04 May 2018.

4 Consultation responses

4.1 27 April 2018 The Ramblers, Swindon and North East Wiltshire

“You refer to the problem of the poor drainage on parts of this site. In our opinion the diversion route proposed in your letter dated 29 March does not overcome this problem as it will still require walkers to use the section of the existing route of WBAS 10 which runs between the footbridge and the flood defence bund. As you know, this section of path is on very marshy ground and we believe this is why walkers have been using an alternative route along the top of the bund, causing the legal route to become overgrown and unusable. We believe most walkers will continue to use the alternative route unless the Council improves the legal route by installing a boardwalk across the marshy ground as well as rebuilding the footbridge. Clearly this could be rather expensive.

You say in your email that any route that leads over the flood defence system will not be considered. We agree that the crossing of the watercourse on this route is currently unsafe but it could be made safe by the installation of a metal handrail/safety barrier and the removal of a small section of the brickwork. We believe that these works might be less expensive for the Council than the required improvements to the legal route; they would also legitimise use of a route which is still likely to be used anyway.

We would therefore ask the Council to reconsider the proposed diversion.”

- 4.2 **Officer’s comment:** the Senior Rights of Way warden has explained to the Ramblers respondent that works will be undertaken to improve access over the wet area of the definitive line south of the footbridge and has also explained the constraints that the Council would have for building any sort of structure on the Environment Agency’s asset. Any new route would not be certified as acceptable until it was formed in accordance with the council’s specification.

4.3 30 April 2018 Wiltshire Bridleways Association

“With reference to your letter of 29th March 2018 concerning the proposed diversion of Paths WBAS 10 & WBAS 111, Wiltshire Bridleways Association objects to this diversion for the following reasons:

WBAS 10 has Higher Rights as exemplified by the Finance Act 1910 Valuation Map and is a restricted byway and as such cannot be diverted as a footpath.

Please note our objections accordingly.”

4.4 Officer’s comment:

Wootton Bassett path no. 10 is a long path (approximately 2.5 km in length) and whilst it is accepted that a section south of the railway and the canal is uncoloured on the Finance Act plan the section of path leading over Brynards Hill that is affected by this proposal is coloured and included in the valuation of the hereditaments. This section of the path has been consistently shown as a footpath in historic Ordnance Survey mapping and officers are unaware of any evidence to support any higher rights over this part. Accordingly the objection of the Wiltshire Bridleways is unlikely to manifest in the event that an Order is made as it is believed their objection relates to a part of path no 10 that is unaffected by the Order and is in fact separated from it by both the railway and the canal. No higher rights were found at the point where path no 10 crossed the railway when it was built and path no 10 was preserved across the railway line as a foot crossing on the level.

5 Considerations for the Council – Legal Empowerment

5.1 To effect the diversion it will now be necessary to apply s.119 of the Highways Act 1980 as it is no longer possible to divert these rights of way under s.257 of the Town and Country planning Act 1990.

5.2 **The Highways Act 1980 s.119** states:

“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.

Section 119(2) of the Highways Act 1980 states:

“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”.

5.3 Although the Council is only required to consider s.119(1) and (2) to make an order it is clear that it is appropriate for it to also consider s.119(6) at the order making stage.

5.4 In *Hargrave v Stroud DC* [2002] EWCA Civ 1281, Schieman L.J. stated that:

“On the face of the subsection therefore the authority has discretion as to whether or not to make an order. I do not consider that the mere fact that it is expedient in the interests of the owner that the line of the path should be diverted means that Parliament has imposed on the authority a duty to make such an order once it is satisfied that this condition precedent has been fulfilled.”

5.5 Subsection (6) sets out factors which are to be taken into account at the confirmation stage. However, it has been held that the Authority is entitled to take these factors into account at the order making stage. In *Hargrave v Stroud* (above), Schieman L.J. held that:

“...the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my judgment...entitled to take into account the matters set out in s.119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed.”

5.6 Additionally then, after making an order the Council should also consider the second test under Section 119(6) which must be met at the Order confirmation stage.

Section 119(6) of the Highways Act 1980 states:

“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 Sub-section (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

5.7 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.

5.8 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. 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)

5.9 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.

5.10 The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.

5.11 The Council is also empowered to make a ‘combined order’ under s.53(2)A of the Wildlife and Countryside Act 1981. The effect of this means that on the confirmation of the order the definitive map and statement may be changed without the further need to make an order under s.53(3)(a)(i) of the 1981 Act (also known as a ‘legal event order’ or an ‘unadvertised order’).

5.12 Any Order made may come into effect a set time after confirmation. It is therefore important that works to create the new path are completed to the satisfaction of Wiltshire Council before the end of this period or in a manner prescribed in the Order.

- 5.13 Where the new path requires construction that falls within s.55(1) of the Town and Country Planning Act 1990 planning permission for the works will be required.
- 5.14 Section 55(1) of the 1990 Act states that development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Engineering Operations is defined within the 1990 Act (s.336(1)) as including the formation or laying out of means of access to highways and means of access includes any means of access whether private or public for vehicles or for passengers, including a street.

6 Comments on Considerations - Highways Act 1980 s.119

6.1 s.119 (1) – Expediency in the interests of the landowner

The landowner needs to divert the paths to prevent enforcement action by the Council to remove the obstructions to the highway. The obstructions are significant and form part of the overall design of the residential development.

6.2 s.119(2) – Alteration of the termination point

The termination point of the paths are unaltered. Joining points for the diverted sections are as convenient or more convenient than the existing ones.

6.3 s.119(6) – Convenience of the path

WBAS111

The proposed new route follows a more direct and natural line utilising some green features of the site. The new route is of similar length (existing = 305 metres, proposed = 310 metres).

WBAS10

The proposed new route leads south east from the existing length of WBAS10 to Evening Star where it leads along the reserved footway for 120 metres before leading broadly south to rejoin WBAS 10 near to a bridge over the stream. The proposed new route is longer (existing = 200 metres proposed = 341 metres), however, the ease of access offered by this new route is considerably better than the existing which leads over wet ground (the Council is obliged to consider the route without the obstructions it currently has – i.e. fences and buildings). In this area the closer you get to the railway and the canal the worse the drainage of the site is. Anyone walking this route would have further to go, but it would be easier to do so. In an area that is already popular with recreational walkers and is likely to become more popular with the spread and occupancy of the residential development and the development of the Wilts and Berks canal, the diversion of the path to an area of better drainage can only be advantageous from a perspective of convenience.

6.4 s.119(6) – Effect of the diversion on public enjoyment of the paths or ways as a whole

WBAS10 and WBAS111

The diverted paths will provide a clearer path through the development which can be used with greater confidence by the public. There is no doubt that the loss of rural aspect of the paths is regrettable from the perspective of anyone out to enjoy the countryside but it is an inescapable fact that the development in this area has altered the character of many of the paths and WBAS 10 is especially affected by this. The options for diversion are constrained by drainage features (especially flood relief features), soil type and development and it is considered that the public

enjoyment is better served by a clearly defined route that can be used confidently rather than by a more obscure route threading through the estate.

6.5 **s.119(6) – Effect on lands served by the existing right of way**

The use of the land over which the right of way leads has altered with the development of the area, the diversion of the rights of way will have little or no effect on any land served by them, other than to accommodate the permitted development.

6.6 **s.119(7) – Effect on lands over which new rights of way are proposed**

The use of the land over which the right of way leads has altered with the development of the area, the diversion of the rights of way will have little or no effect on any land served by them, other than to accommodate the permitted development.

6.7 **Material provisions of the Rights of Way Improvement Plan**

Wiltshire Council's Countryside Access Improvement Plan 2015 – 2025 (Rights of Way Improvement Plan 2) identifies that the network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users (appendix 4 page 19 W1).

6.8 It is clear that there would be mutual benefit if the route was moved from its historic course to allow the development of the area and to provide a more readily accessible route.

iv) **Environmental Impact of the Recommendation**

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

v) **Risk Assessment**

6.10 There are no risks to users of the path associated with the propose diversions. Alternative routes that lead over or near the Environment Agency's flood relief features are considered to represent an increased risk to the public, especially to children and anyone at risk from slipping or falling. Officers are unaware of any incidents at this location but consider it an unacceptable risk for the Council to accept.

6.11 The applicant will pay the actual costs associated with the application. If both routes are put on the same order the costs associated with advertisement will be reduced to half of what they would be for two orders. This is clearly advantageous but does carry with it the risk that if an objection to only one part of the order is made, it will have the effect of holding up the process for the other part of the order.

vi) **Legal Considerations and Financial Implications**

6.11 The applicant 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 £3000).

6.12 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

6.13 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.

6.14 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.

6.15 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)

6.16 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.

6.17 None of the routes will have any limitations or conditions attached to them and there will be no stiles or gates. Wiltshire Council would require all paths to be provided in a well drained form to maximise accessibility.

7 Options to Consider

- To make one order under s.119 of the Highways Act 1980 to divert both of the routes discussed in this report.
- To make two orders under s.119 of the Highways Act 1980 to divert the routes.
- To make no orders at all and instead to enforce the legal line of the paths through properties and through the site.

8 Reasons for Recommendation

8.1 It is clearly expedient to amend the definitive map in this area in respect of the existing development and to divert parts of the paths to enable the permitted development to proceed lawfully.

8.2 Officers are satisfied that the diversions discussed in this report meet all of the legal tests for making and confirming an Order made under s.119 of the 1980 Act.

8.3 Making one Order will incur less costs for the applicant.

8.4 Diverting the public footpath at this time will allow the development to proceed and would prevent the need for enforcement of the definitive line where there are existing obstructions.

9 Recommendation

63 **That Wiltshire Council makes an order under s.119 of the Highways Act 1980 and s.53 of the Wildlife and Countryside Act 1981 to divert parts of Royal Wootton Bassett paths 10 and 111 and to confirm the order if no objections or representations are received and to amend the definitive map accordingly.**

Sally Madgwick
Rights of Way Officer

15 May 2018

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Flood Defence Features at Woodshaw Meadows, Royal Wootton Bassett APPENDIX C

Hancocks Watercourse Reservoir - route suggested for WBAS10 by objector would cross this.





Route currently provided by WBAS10:



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REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Date of Meeting	27 th March 2019
Application Number	18/07128/FUL & 18/07246/LBC
Site Address	Manor Farm, The Street, Grittleton SN14 6AN
Proposal	Conversion of existing agricultural buildings to form 8 new dwellings and erection of 6 new dwellings and associated access, engineering and landscaping works
Applicant	Mr Julian Brunt
Town/Parish Council	Grittleton Parish Council
Electoral Division	Bybrook - Cllr Baroness Scott of Bybrook OBE
Grid Ref	385880 180065
Type of application	Full Planning and Listed Building Consent
Case Officer	Richard Sewell

Reason for the application being considered by Committee

The application has been called into committee at the request of Cllr Baroness Scott in order to discuss the various environmental impacts of the proposed development in terms of the scale of development, impact on the character and appearance of the area, impact on the historic environment, impact on residential amenities, ecology, drainage and highways

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that authority is delegated to the Head of Development Management to **REFUSE** planning permission for the reasons set out below.

2. Report Summary

The key issues in considering the application are as follows:

- Principle of development
- Impact on heritage assets
- Design, scale, materials and layout of proposed new dwellings
- Residential amenity
- Impact on ecology
- Impact on highways
- Impact on drainage

3. Site Description

The application relates to Manor Farm, located towards the western end of the small village of Grittleton as defined by the Wiltshire Core Strategy 2015. The current farm holding is accessed from The Street and is adjacent to the junction with Alderton Road. The farm building complex consists of a significant three storey farmhouse in the southwestern corner of the plot which is Grade II Listed. The building was listed in 1988 and the associated outbuildings within the site are also curtilage listed as a result.

Contained within the site are a significant number of agricultural buildings, with the majority to the east of the main dwelling being stone built with traditional materials for their roofs. To the north of the 'traditional' farm buildings (listed as buildings B1-B8 on the proposed site layout) are more modern agricultural barns, made from brick, steel and metal sheet work. The main fields for the farm holdings are located to the west of Alderton Road, with further fields to the north of the farm building complex and south east on the opposite side of The Street. The entire site is located within the Wiltshire AONB.

4. Relevant Planning History

16/10196/FUL-Conversion of existing agricultural buildings to form 8 dwellings; Erection of 4 new build dwellings; Associated Access, Engineering & Landscaping Works REFUSED

16/10552/LBC- Conversion of existing agricultural buildings to form 8 dwellings; Erection of 4 new build dwellings; Associated Access, Engineering & Landscaping Works REFUSED

16/10205/FUL- Division of existing farmhouse to create two separate dwellings APPROVED

16/10551/LBC- Division of existing farmhouse to create two separate dwellings APPROVED

16/10204/FUL- Erection of New Farmstead Comprising Agricultural Storage and Livestock Buildings together with a Farmhouse. Associated Access, Engineering and Landscaping Works APPROVED

5. The Proposal

Conversion of existing agricultural buildings to form 8 dwellings; Erection of 6 new build dwellings; Associated Access, Engineering & Landscaping Works (see plans for details).

Barns 1-8 labelled as B1-B8 on the proposed site plan are to be converted to allow a mixture of 2 and 3 bed properties together with outdoor amenity space and parking areas forming 28 spaces and an additional 10 visitor spaces.

In addition, 4 No new dwellings will replace the more modern agricultural buildings at the northern part of the site. These dwellings as proposed will be predominantly single storey and arranged around a central courtyard in a broad C shaped formation facing south.

In addition, the existing Dutch Barn located at the eastern boundary adjacent to Glebe House is to be demolished and replaced with a more contemporary styled barn building that will form a pair of 2 semi-detached dwellings.

Other aspects of the scheme include the reformation of the boundary wall at the western most access to the site from The Street, the creation of an new access route and vehicle turning within the site and also various hard and soft landscaping features.

6. Local Planning Policy

Wiltshire Core Strategy Jan 2015:

Core Policy 1-	Settlement Strategy
Core Policy 2-	Delivery Strategy
Core Policy 3-	Infrastructure Requirements
Core Policy 13-	Spatial Strategy: Malmesbury Community Area
Core Policy 41-	Sustainable Construction and Low Carbon Construction
Core Policy 42-	Standalone Renewable Energy Installations
Core Policy 48-	Supporting Rural Life
Core Policy 50-	Biodiversity and Geodiversity
Core Policy 51-	Landscape
Core Policy 52-	Green Infrastructure
Core Policy 57-	Ensuring high quality design and place shaping
Core Policy 58-	Ensuring the Conservation of the Historic Environment
Core Policy 60-	Sustainable Transport
Core Policy 61-	Transport and Development
Core Policy 62-	Development impacts on the transport network
Core Policy 63-	Transport Strategies
Core Policy 64-	Demand Management
Core Policy 67-	Flood Risk
Appendix D	
Appendix E	
Appendix G	

Saved Policies of the North Wiltshire Local Plan:

NE14-	Trees and the control of new development
NE18-	Noise and Pollution
T5-	Safeguarding

National Planning Policy Framework 2019:

Achieving sustainable development – Core Planning Principles (Paragraphs 8 and 11)	
Chapter 6-	Building a strong, competitive economy (Paragraphs 80, 81 & 82)
Chapter 12-	Requiring Good Design (Paragraphs 124, 127 and 130)
Chapter 14-	Meeting the challenge of climate change, flooding and coastal change (Paragraphs 148, 153 and 154)
Chapter 15-	Conserving and enhancing the natural environment (Paragraphs 170, and 180)
Chapter 16-	Conserving and enhancing the historic environment (Paragraphs 189, 190, 192, 193, 196, 200 and 202)

7. Summary of consultation responses

Grittleton Parish Council (GPC)- NO OBJECTION. Summary of points raised is as follows. GPC has refrained from commenting upon the financial viability analysis detailed by the applicant on the assumption that this will be assessed and verified by suitably qualified and experienced personnel. GPC would like to draw Wiltshire Council's attention to the natural hazard that exists at the crossroads adjacent to the main access to the development. There have been numerous accidents at this spot and any development must not exacerbate the problem. GPC supports the application providing that a restrictive covenant is placed on the land to the north of the rear wall of C1-C4, that it is returned to an agricultural field and all farmyard detritus be removed, and furthermore no development may take place on this land in the future. In addition GPC requests that full consideration is given to optimising the design and siting of units D1-D2 to minimise the impact on neighbouring properties.

Conservation – OBJECTION. The issue of the subdivision of the Threshing Barn remains as per the Conservation Officer's comments on the previous schemes 16/10196/FUL and 16/10552/LBC. In addition, the Conservation Officer retains their objection to the proposed demolition of the garden wall to provide an enlarged site access to the wider development.

Landscape Officer- NO OBJECTION subject to a condition requiring a detailed landscaping scheme being provided prior to the commencement of development

Ecology- NO OBJECTION subject to conditions requiring that all development and mitigation features shall be carried out in accordance with the submitted Bat Survey Report (TP Ecology, 2016) and also that a lighting strategy be provided prior to commencement of development

Highways- NO OBJECTION. Concerns raised with the suitability of the eastern most access providing acceptable visibility splays. Parking layout a refuse collection within the proposal site is now considered acceptable.

Waste Management- NO OBJECTION. Comments received in relation to the bin collection point to the right of B3 on the Site Plan being some distance from where the crew would collect from with concerns that as it is on a bend, access may be restricted with parked cars. A different bin collection point has been advised but the Waste Technical Officer has confirmed that it is not essential and would be happy to approve this application should this remain.

Spatial Plans- OBJECTION. The total of 14 new homes is contrary to Core Policy 2 because it will result in the addition of more housing than envisaged appropriate for small villages. It is not entirely clear in the Planning Statement how much consideration has been given to alternative uses for the existing barn buildings in relation to the requirements Core Policy 48 where preference is given to employment, tourism, cultural and community uses

Drainage- NO OBJECTION subject to conditions relating to surface and foul water drainage details being provided

Archaeology: NO OBJECTION

8. Publicity

The applications were advertised by neighbour letter, site notices and press advert. The planning application has generated over 37 neighbour representation letters: 20 in favour, 12 objections and 5 comments with the LBC application resulting in 4 in favour, 3 objections and 1 comment

Comments in favour of the proposals include:

- Improved visual appearance of site
- Existing farmstead not fit for purpose
- New housing will attract new families to village
- Proposal is for the redevelopment of a brownfield site to provide housing

Comments raising concerns include:

- Additional housing not needed in the village, no effort has been made to demonstrate any local housing need
- Proposal site not suitable location for significant housing development as it is contrary to Core Policies CP1 and CP2 relating to residential development within small villages
- Impact on amenity of existing residents in terms of loss of privacy
- Impact on highway safety through increased use of existing access, no traffic impact assessment provided
- Potential for further expansion of residential development
- Development does not benefit community, only provides funds for applicants
- Removal of historic farmstead will urbanise village
- Other uses for existing farm buildings should be explored before residential
- Proposed Dutch barn design not appropriate
- Other methods of funding new farmstead other than new residential development are available to the applicant
- Lack of affordable units

9. Planning Considerations

Principle of Development

Policy

Under the provisions of Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. At the current time the statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015) and the 'saved' policies of the North Wiltshire Local Plan (NWLP) 2011 (adopted June 2006)

The National Planning Policy Framework 2019 (NPPF) and Planning Practice Guidance (PPG) are material considerations which can be accorded substantial weight.

Core Policy 1 explains the settlement strategy for Wiltshire including small villages. It specifically says: 'Development at Large and Small Villages will be limited to that needed to help meet the housing needs of settlements and to improve employment opportunities, services and facilities.' This position is clarified in paragraph 4.16, which explains that 'some modest development may be appropriate at small villages, to respond to local needs and to contribute to the vitality of rural communities. Any development at Small villages will be carefully managed by Core Policy 2 and the other relevant policies of this plan.' In relation to small villages such as Grittleton, Core Policy 2 states:

'At Small Villages development will be limited to infill within the existing built area. Proposals for development at Small Villages will be supported where they seek to meet housing needs of settlements or provide employment, services and facilities provided that the development:

- i. Respects the existing character and form of the settlement*
- ii. Does not elongate the village or impose development in sensitive landscape areas, and*
- iii. Does not consolidate an existing sporadic loose knit areas of development related to the settlement.'*

The supporting text at Paragraph 4.34 clarifies that 'infill is defined as the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling. Exceptions to this approach will only be considered through the neighbourhood plan process or DPDs.'

WCS Core Policy 48 states that outside of the defined limits of development residential development will only be supported where it enables workers to live at or in the immediate vicinity of their place of work in the interests of agriculture or forestry or other employment essential to the countryside. Any proposal for accommodation to meet the need of employment essential to the countryside should be supported by financial and financial evidence. In relation to proposals that involve the conversion and re-use of rural buildings, preference is given for employment, tourism, cultural and community uses providing that they satisfy the following criteria:

- i. The building is structurally sound and capable of conversion without major rebuilding and with only necessary extension or modification which preserves the character of the original building
- ii. The use would not detract from the character or appearance of the landscape or settlement and would not be detrimental to the amenities of residential areas
- iii. The building can be served by adequate access and infrastructure
- iv. The site has reasonable access to local services
- v. The conversion or re-use of a heritage asset would lead to its viable long term safe guarding.

Where there is clear evidence that the above uses are not practical propositions, residential development may be appropriate where it meets the above criteria.

Local Plan Policy H4 states that a new dwelling in the countryside outside of any defined framework boundary will only be permitted provided that it is in connection with the essential needs of agriculture or forestry or other rural based enterprise

Housing Land Supply

The Council can currently demonstrate a five-year supply of deliverable land for housing as evidenced by the most recent Housing Land Supply Statement released in March 2018 which demonstrates that it is considered that the Council can currently demonstrate a 5 year housing land supply in the North & West HMA (6.25 year supply), with Appendix 6 confirming that there is a 0 remaining requirement in the Malmesbury Community Area.

This position is supported by a number of recent appeal decisions (APP/Y3940/W/16/3162997, APP/Y3940/W/16/3162581, APP/Y3940/W/16/3150514 and APP/Y3940/W/16/3162997) where it was considered that the Council can demonstrate a 5 year housing land supply in the North & West HMA.

As the Council can currently demonstrate in excess of a 5yr supply of housing (6.25yrs), WCS Core Policies 1, 2, 13, 48 and Saved Policy H4 are up to date and are afforded full weight in the assessment of this application

Financial justification

The application documents detail that the proposed barn conversions and new build elements are required to finance the relocation of the farmstead outside of the village (please see application 16/10204/FUL for details). The submitted viability assessment report completed by Carter Jonas is not considered to overcome the policy conflicts associated with the quantum of new residential development being proposed in this location regardless of its conclusions as will discussed later in this report. Irrespective of these findings, in this particular instance, the financing of the new farmstead is not considered to be a significant material consideration which would influence the decision in any particular direction, since other methods of facilitating the expansion/relocation of the farmstead could be available to the applicant.

Conversions

In relation to the conversion of Barns 1-8, CP48 is a key consideration. The Policy gives a clear preference towards the re-use of rural buildings for employment, tourism, cultural and community uses and only when these are proven not be practical propositions is residential development considered acceptable. The applicant has provided a viability assessment that details that these uses are not considered viable options.

Structural analysis of the buildings has been provided and it appears that they are capable and suitable for conversion without the need for major rebuilding, with the exception of B6 as proposed which requires a substantial section of roof and external wall elevation to be created in order to form a L- Shaped dwelling. This element is not considered to be in accordance with the conversion criteria contained within CP48 as it involves unnecessary extension and modification. The proposal site is served by two existing access points and is not in an isolated or remote location. The residential conversion would lead to the viable long term safe guarding of curtilage listed buildings which is awarded significant weight in this assessment.

Therefore, the conversion of Barns 1-8 is considered compliant with CP48 with the exception of the proposed works to Barn 6. However, as this element of the proposal is relatively minor in relation to the wider conversion of the historic farm buildings, it is not considered to outweigh the public benefit of securing the long terms safeguarding of the heritage assets meaning the residential conversion of Barns 1-8 is considered compliant with CP48.

New build

Turning to the new build element of the scheme, the principle of this part of the development is not supported as the proposal involves the erection of 6 new dwellings on land outside of any defined settlement boundary, with the scale and location of the proposed development not being considered to meet the requirements of infill development within small villages contrary to CP2 (particularly the explanations and definitions contained within paragraph 4.34 to this policy). As none of the proposed 6 new dwellings are for those employed in association with the essential need of agriculture, forestry or other rural based enterprise these units are also contrary to Core Policy 48 and Saved Local Plan Policy H4.

When seen in addition to the proposed 8 residential conversions, the total quantity of housing proposed would result in an imbalance within the community between the provision of homes and available services, facilities and means of employment available within a designated small village such as Grittleton which the Core Strategy recognises as having a low level of services and

facilities and few employment opportunities. This would result in Grittelton being further used a dormitory-type village by future occupants with a predominance of out-commuting, thus compromising the sustainability of the scheme under the terms as outlined in the WCS and NPPF

This level of harm is not considered to be outweighed by the benefit of providing additional housing as the council can currently demonstrate in excess of a 5yr supply of housing and the community area requirement for this locality has already been met there is no pressing need for this site to be brought forward for residential development contrary to the settlement strategy for North Wiltshire. The principle of development in this instance is therefore not supported as the proposal is contrary to WCS Core Policies 1, 2, 13 and 48 and also Saved Local Plan Policy H4

Impact on designated heritage assets

Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty on decision makers in considering whether to grant consent for works that affect a listed building or its setting to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant planning permission for works which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses

Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

Core Policy 58 states that development should protect, conserve and where possible enhance the historic environment. Designated heritage assets and their settings will be conserved and where appropriate enhanced in a manner appropriate to their significance including buildings and structures of special architectural or historic interest.

The proposal site is within the Conservation Area, with the existing stone farm buildings being curtilage listed and within the setting of the Grade II Listed Manor Farm house and also the adjacent properties known as Masons and Weighbridge. In accordance with the NPPF, when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The existing historic significance of the curtilage listed farm building arises from their layout and grouping within the historic farm yard setting. The front boundary wall is a prominent and attractive feature within the Conservation Area and contributes to the setting of the listed building

Following the submission of an updated Heritage Impact Assessment which details the proposed works, in principle the proposed overall design and materials associated with the proposed conversion of buildings B1-B8 are broadly considered to be in keeping with the historic character and appearance of both the Conservation Area and historic farm yard setting, with the proposed conversions maintaining and preserving the existing relationship between buildings and the listed farm house and neighbouring properties known as Masons and Weighbridge.

However, as per the previous applications on site (16/10196/FUL+16/10551/LBC) the Council's Conservation Officer has maintained their objection to the division of the existing threshing barn to form buildings B2 and B3 as this would result in the unjustified less than substantial harm to the character, appearance and historic fabric of the building.

The Officer is clear that when the original building was extended, the northern gable wall was removed to form a single large internal volume, hence the existing building never having been designed to be perceived in a truncated form meaning the proposed subdivision is considered to cause a degree of harm. In addition to this, the Conservation Officer has maintained that the proposed alteration to the boundary wall fronting the highway would result in the unjustified less than substantial harm to the setting of listed farm house and character and appearance of the Conservation Area. The wall is curtilage listed and a prominent feature within the Conservation Area meaning its demolition and rebuilding requires clear justification in order to outweigh the identified harm.

The comments of the Council's Conservation Officer as detailed above in relation to the threshing barn have been addressed within the updated Heritage Impact Assessment by JME Conservation Ltd dated May 2017. The assessment states that the barn was originally a shorter one that was subsequently extended and enlarged and that the current proposal takes its reference from the historic plan of the original barn and the removal of all the inserted agricultural clutter and more modern partitions will enhance the special quality of both spaces. Externally the scheme requires minimal intervention and the barn itself will still read as a single structure. It is therefore considered by the Heritage Impact Assessment that although the barn is being sub-divided, the scheme respects the special character of the barn and any harm arising from the sub-division is offset by the opening up of the interior and the long term benefit of securing the future of the building.

In accordance with paragraphs 194 and 196 of the NPPF, any harm or loss to heritage assets should require clear and convincing justification and where less than substantial harm has been identified, consent should be refused unless it is demonstrated that the harm can be outweighed by the public benefit of the proposal including securing its optimum viable use.

The special historic significance of the curtilage listed threshing barn arises from its layout and grouping within the historic farm yard setting. As the proposed works to this building will do little to alter the external appearance and wider historic setting, it is considered that the less than substantial harm identified by the Council's Conservation Officer is outweighed by the public benefit associated with the residential conversion of the building securing its optimum viable use in accordance with WCS 57, 58 and paragraphs 194 and 196 of the NPPF.

In relation to the proposed alterations to the curtilage listed boundary wall of the western entrance to the site from The Street, the amended plans show the relocation of the wall which is required to overcome Highways concerns by providing a wider vehicular access with improved visibility and a footpath into the site. The updated Heritage Impact Assessment acknowledges that the alteration causes some harm to the significance of the curtilage listed wall and the setting of the listed farm house and this part of the Conservation Area however this harm is considered to be less than substantial and balanced by the benefit arising from securing the long term future of the farm buildings.

The wall is curtilage listed and a prominent feature within the Conservation Area meaning its demolition and rebuilding requires clear justification in order to outweigh the harm identified by the Conservation Officer. It is considered that the proposed alterations to this wall section will broadly mirror the appearance of the wall on the opposite side of the entrance adjacent to Masons and the other boundary walls within the Conservation Area. In addition, the existing stonework could be re-used, with exact details of the appearance and details of the wall being secured via condition in the event of permission being granted. Taking these factors into account and also the benefit to visibility and highways safety, on balance these works are considered justified in relation to the impact on the historic environment and therefore to accord with paragraphs 194 and 196 of the NPPF.

Therefore, the proposed works related to the residential conversion of Barns B1-B8, the amendments to the access and their impact on the historic environment and designated heritage assets are considered acceptable and to accord with the requirements of Core Policies 57, 58 and Section 16 of the NPPF.

Design, scale, materials and layout of proposed new build dwellings

The 4 No. dwellings are designed to reflect the rural character of the locality through the use of low range shed type buildings with external elevations and a palette of materials common to the area. The general layout and scale of the properties, set in an inward facing broad C shaped linear formation at the northern part of the site is not visually prominent within the AONB as it will be seen against the back drop of the existing residential development in the locality when viewed from the north. Two further dwellings will be constructed as a new Dutch barn type building on the eastern side of the site adjacent to Glebe House. This will replace the existing open Dutch barn structure located in the same position. This new building will be in a more contemporary style with local vernacular and agricultural elements utilising traditional materials. All of the proposed new dwellings are well set back from the highway meaning they are not clearly visible within the street scene which will limit any visual impact on the character and appearance of the historic core of the Conservation Area. Therefore the design, scale, materials and layout of proposed new build dwellings are considered acceptable in relation to the requirements of CP57 and 58

Residential Amenity

The proposed site plan indicates an adequate level of outdoor amenity space for all of the proposed dwellings. The siting, layout and spacing between existing and proposed dwellings will avoid any overbearing impact and will provide an acceptable level of privacy for all residents as there will no unacceptable degree of overlooking. This is particularly applicable to the units D1 and D2 as and the adjacent properties known as Glebe House and Weigh Bridge House. Distances between these properties are considered appropriate so as to avoid any unacceptable overbearing impact over and above that of the existing barn building. Windows on the proposed east elevation are also at a high level so as to avoid any direct overlooking with Glebe House. First floor windows on the south elevation will feature fixed timber shutters to restrict views but at 26m between the habitable rooms of both properties it is not considered that his relationship will result in an unacceptable loss of privacy to residents of Weigh Bridge House.

The close proximity of proposed buildings B1, B7 and B8 to the adjacent properties known as Weavers Barn and Masons is also noted, but the submitted floor plans do not indicate any alterations to the external elevations including additional openings on the rear elevations of these buildings meaning there will not be any additional overlooking or loss of amenity to neighbouring residents.

Therefore the proposal is considered acceptable in terms of the impact on the residential amenities of existing and future properties in accordance with Core Policy 57.

Highways

The previous application on site was refused partly due to the lack of acceptable parking provision and swept path analysis for refuse vehicles. The Council's Highways Officer has reviewed the current submission documents and has confirmed that the locations and amount of residents and visitor parking spaces (2 per dwelling and 10 visitor spaces) are now acceptable. In addition it has

been confirmed by the Council's Waste Management Team that access for refuse vehicles and bin collections points has now been adequately demonstrated.

Concerns relating to the width and visibility splays of both access points to The Street have been raised by the Highways Officer. However, it is to be noted that both these access points as existing currently serve the farmhouse, wider farmstead and also accommodate larger agricultural vehicles. The issue of visibility was not a previous reason for refusing the application and so a consistent approach must be adopted as it would be unreasonable of the Council to now introduce this in relation to this proposal.

Paragraph 109 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Considering the totality of the issues, it is concluded that the increased amount of residential vehicle movements in relation to the proposed dwellings would not amount to an unacceptable impact on highway safety considering the existing use of these access points, the proposed alterations and improvements to the western access and the fact the eastern access will only provide vehicle access to 2 dwellings (B4 + D2) meaning it's use will not be significantly increased in comparison to the existing agricultural use. Therefore in terms of safe access and parking the proposal is considered compliant with the requirements set out in CP60 and 61.

Irrespective of the above factors, as the proposal does not constitute *infill* development, as allowed for by Policy CP2, the proposal is considered to be located remote from a range of services, employment opportunities and is unlikely to be well served by public transport is contrary to the key aims of local and national sustainable transport guidance which seeks to reduce growth in the length and number of motorised journeys. Therefore the proposal is not in accordance with Core Policies 60 and 61 in this respect.

Drainage

Insufficient evidence in relation to surface and foul water drainage was provided within the previous submission on site. In relation to this current proposal the Council's Drainage Engineer has confirmed that surface water drainage of the site is acceptable, noting that further details can be supplied either via conditions should the applicant wish to undertake further infiltration testing with the aim of reduction in soakaway sizing. Wessex Water has confirmed consent for foul connection and storm water disposal by soakaways and so the Council's Drainage Engineer is happy in this respect also provided that these details are also secured via condition. Therefore the proposal is considered acceptable in terms of surface and foul water drainage.

Ecology

The Council's Ecologist has assessed the proposed drawings against the recommendations given in the TP-Ecology Ltd. bat survey report dated 13 October 2016 and marked FINAL. The Ecologist has confirmed the details shown are sufficient to allow the bat mitigation and enhancement proposals to become an enforceable part of any planning permission granted. Furthermore, it is considered that the level and amount of mitigation is suitable such that the likelihood of the necessary licence from Natural England should be forthcoming, without alteration to the agreed plans under this planning permission. Subject to conditions requiring the development to be carried out in accordance with the Bat Survey Report and for the submission of a lighting strategy, the proposed development is therefore considered to comply with Core Policy 50

10. Conclusion

18/07128/FUL

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise as do paragraphs 8 and 11 of the NPPF.

Paragraph 11 of the National Planning Policy Framework states the presumption in favour of sustainable development, whilst paragraph 8 outlines that the three dimensions of sustainable development are environmental, social and economic factors.

Paragraph 12 states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

In this circumstance, the Local Planning Authority is able to demonstrate a 5 year land supply in the North & West HMA, which contains the application site. The community area housing requirement for this locality as set out in WCS CP13 has also already been met meaning there is no pressing need to bring forward this unsustainable site for residential development.

The quantum of proposed residential development being 6 new dwellings and their siting in relation to the built form of the village is not considered to meet the requirements of infill development as specified in Core Policy 2 which clarifies infill is defined as the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling.

The total quantity of housing proposed (14 dwellings) would result in an imbalance within the community between the provision of homes and available services, facilities and means of employment available within a designated small village such as Grittleton which the Core Strategy recognises as having a low level of services and facilities and few employment opportunities. This would result in Grittleton being used as a dormitory-type village by future occupants with a predominance of out-commuting, thus compromising the sustainability of the scheme under the terms of the settlement hierarchy contained in the WCS

As none of the proposed 6 new dwellings are for those employed in association with the essential need of agriculture, forestry or other rural based enterprise these units are contrary to Core Policies 2, 13 and 48 and Saved Local Plan Policy H4.

As the proposal does not constitute infill development the proposal is considered to be located remote from a wide range of services, employment opportunities and is unlikely to be well served by public transport is contrary to the key aims of local and national sustainable transport guidance which seeks to reduce growth in the length and number of motorised journeys. Therefore the proposal is not in accordance with Core Policies 60 and 61 in this respect.

The residential conversion of the existing agricultural barn buildings is considered acceptable as it secures the long term safeguarding of the heritage assets and accords with the requirements of Core Policy 48. The proposed works to these curtilage listed buildings and the design and

materials of the proposed new build elements are all considered to accord with the requirements of both the WCS and NPPF.

It is considered that the proposal will not result in any significantly detrimental impact on the current level of residential amenity awarded to the surrounding properties and will provide acceptable living conditions for any future occupants.

The Council's, Drainage and Ecology Officers are all satisfied with the proposal subject to various conditions in the event of any permission being granted.

Concerns are still raised by the Council's Highways Officer in relation to the two access points to The Street. However, as discussed above these currently serve a significant number of agricultural and domestic vehicle movements and the issue of visibility was not a reason for refusing the previous application on site. Proposed works to the western access will help improve visibility and the increase in private vehicle movements as a result of the residential development of the site is not considered to result in a cumulative impact on the highways network severe enough warrant a refusal as per the requirements of paragraph 109 of the NPPF. Adequate parking provision and refuse vehicle tracking has also been demonstrated within the submission documents

In accordance with paragraph 8 of the NPPF the three overarching objectives of the NPPF being economic, social and environmental factors are all requirements in achieving sustainable development and therefore are awarded significant weight in the planning balance.

It is therefore necessary to balance the various adverse impacts of the development as identified above against any benefits of the proposal in terms of economic, social, and environmental factors and also any other material considerations that may weigh in favour of the application and which may indicate that a decision otherwise than in accord with the development plan would be appropriate.

In this instance, the short term economic gain of the development by providing employment to local trades during the construction phase is recognised. The safeguarding of the heritage assets being the curtilage listed buildings is also a material consideration awarded significant weight. However this benefit could be undertaken the need for the erection of 6 new dwellings in what is considered an unsustainable location. The social gain of providing 14 new dwellings is a benefit that would make a significant contribution to local housing supply. However, the need for housing in this locality has already been met and exceeded meaning there is no pressing requirement for any additional dwellings in this location meaning the social benefit of additional housing is awarded a limited weight in the planning balance.

As outlined above, section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 states that "determination must be made in accordance with the plan unless material considerations indicate otherwise". Paragraphs 2, 11, 12 & 47 of the NPPF reiterate and confirm this requirement. At the current time the Council is able to demonstrate a 5 year land supply and so there are no material considerations which indicate that the determination should not be made in accordance with the plan.

As such, very significant weight is given to the conflict with the sustainable plan led approach to development contained in WCS Core Policies 1, 2, 13, 48 & Saved Policy H4 of the development plan and the benefits associated to the development would not outweigh this conflict in isolation.

Therefore, on balance the proposed development is not considered to accord with the policies of the development plan or national guidance contained in the Framework and this conflict and the various adverse impacts of the proposal are not outweighed by any economic, social and environmental factors or any other material considerations.

18/07246/LBC

In respect of the Listed Building Consent, the proposed works necessary to convert Barns B1-B8 to residential, the amendments to the access and their impact on the historic environment and designated heritage assets are considered acceptable and would accord with the requirements of Core Policies 57, 58 and Section 16 of the NPPF. Whilst the Listed Building Consent application is capable of being recommended for consent, it is acknowledged that the associated planning permission is not and that the inability to implement such an LBC renders it merely academic.

RECOMMENDATION for 18/07128/FUL: That Planning Permission is REFUSED for the reasons:

1. Being situated outside of any defined settlement boundary and not being considered to constitute infill development, as defined by CP2 of the Wiltshire Core Strategy, the proposal amounts to new residential development in the open countryside that is not related to the essential need of agriculture, forestry or other rural based enterprise. The proposal is therefore contrary to WCS Core Policies 2, 13 and 48, Saved Local Plan Policy H4 of the North Wiltshire Local Plan 2011 and paragraph 2, 8, 11, 12 & 47 of the NPPF.
2. The unsustainable location of the proposal site and the quantum of proposed new dwellings is considered to result an imbalance within the community between the provision of homes and the available services, facilities and means of employment. Due to the site not being well served by public transport, this is considered to result in the need for a significant amount of out commuting via the use of private motor vehicles which is contrary to the key aims of local and national sustainable transport policy guidance which seeks to reduce growth in the length and number of motorised journeys and is therefore contrary to WCS Core Policies 1, 2, 60 and 61 and paragraphs 8 & 11 of the NPPF

RECOMMENDATION for 18/07246/LBC: That Listed Building Consent is GRANTED subject to the following conditions:

1. The works for which Listed Building Consent is hereby granted shall be begun before the expiration of three years from the date of this consent.

REASON: To comply with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The natural stonework to be used externally on the proposed development shall match that of the existing building in terms of type, colour, size, dressing and bedding of stone, coursing, type of pointing and mortar mix.

REASON: In the interests of visual amenity and the character and appearance of the area.

3. Notwithstanding the approved drawings, no works shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:

- (a) Large scale details of all external joinery including metal-framed glazing (1:5 elevation, 1:2 section) including vertical and horizontal cross-sections through openings to show the positions of joinery within openings, depth of reveal, heads, sills and lintels;
- (b) Large scale details of all internal joinery (1:5 elevation, 1:2 section);
- (c) Full details of proposed rooflights, which shall be set in plane with the roof covering;
- (d) Full details of external flues, background and mechanical ventilation, soil/vent pipes and their exits to the open air;
- (e) Full details of proposed meter and alarm boxes;
- (f) Large scale details of proposed eaves and verges (1:5 section);
- (g) Full details of proposed internal service routes;
- (h) A full schedule and specification of repairs including:
 - (i) a structural engineer's report setting out the nature of, and suggested remedial work to, structural defects
 - (j) proposed timber and damp proof treatment
 - (k) proposed method of cleaning/paint removal from historic fabric
 - (l) a full schedule of internal finishes to walls, ceilings and floors
- (m) Full details of external decoration to render, joinery and metalwork; and
- (n) Full details and samples of external materials.

The works shall be carried out in accordance with the approved details.

REASON: In the interests of preserving the character and appearance of the listed building and its setting.

4. The works hereby permitted shall be carried out in accordance with the following approved plans:

tbc

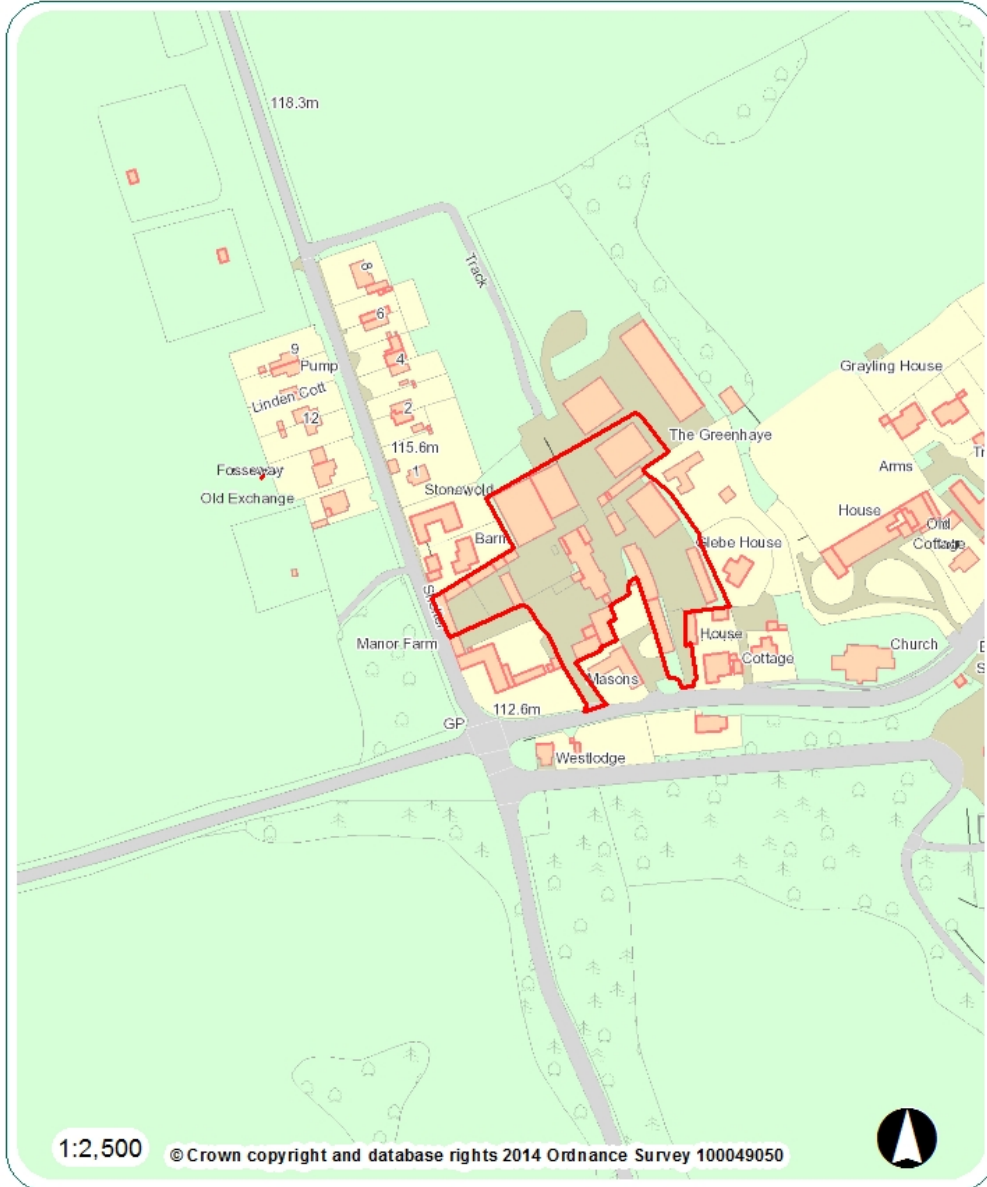
REASON: For the avoidance of doubt and in the interests of proper planning.

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18/07128/FUL & 18/07246/LBC



Manor Farm
The Street
Grittleton
Chippenham
SN14 6AN



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REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Date of Meeting	27 th March 2019
Application Number	18/10662/FUL
Site Address	Trotting Horse Bushton Royal Wootton Bassett Wiltshire SN4 7PX
Proposal	Change of use of the former public house to create one dwelling
Applicant	Mr & Mrs Tucker
Town/Parish Council	CLYFFE PYPARD
Electoral Division	Lyneham – Councillor Allison Bucknell
Grid Ref	406251 177923
Type of application	Full Planning
Case Officer	Catherine Jackson

Reason for the application being considered by Committee:

The application has been called to Northern Area Planning Committee by the Local Member, Councillor Allison Bucknell, in order to allow Members to consider whether the change of use would result in the loss of a community asset, which is against the Community Plan for the parish.

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations.

Clyffe Pypard Parish Council object to the proposal. 7 letters of support and 6 letters of objection have been received.

The report recommends that Planning Permission be **GRANTED** subject to the imposition of conditions.

2. Report Summary

The main issues in the consideration of the above application are as follows:

- The principle of development
- Loss of the public house
- The impact of the proposal on the character and appearance of the application site and the surrounding rural landscape.
- The impact of the proposal on the amenities of surrounding residential properties.
- The impact of the development on highway safety.

3. Site Description

The application site comprises The Trotting Horse Public House (which has been closed for business since September 2016) together with its associated car park, two holiday chalets and stable block. Several residential dwellings are located within the immediate vicinity of the site, however the surrounding land use is predominately agricultural.

The public house building itself is two storeys in height with a pitched roof and render finish. As is common with PHs, residential accommodation within the building includes three bedrooms to the first floor.

The site is located to the North of Bushton, which is not identified within the settlement hierarchy set out by CP1, CP2 and CP19 of the Wiltshire Core Strategy. In planning terms, Bushton and the application site is therefore regarded as open countryside in planning terms.

4. Planning History

N/87/01180/FUL	Change of use of land from agricultural to car park	Refused September 1987
N/13/01529/S73A	Stable to Rear of Car Park, Demolition of Skittle Allet and Erect 2 Chalets as Holiday Accommodation (Retrospective)	Approved October 2013
14/02091/FUL	Siting of Caravan for Occasional Staff Accommodation (Retrospective)	Refused April 2014
14/00138/FUL	Mobile Home in Car Park of Public House	File Closed – Breach remedied by the mobile home not being in residential use.

5. The Proposal

The application seeks to change the use of the former public house to a single residential dwelling. The new dwelling would consist of five bedrooms.

The existing holiday chalet accommodation and stable would be retained for use as per their current purposes. The existing car parking and garden areas is to be retained together with a degree of additional planting.

6. Planning Policy

National Planning Policy Framework (NPPF)

Wiltshire Core Strategy (WCS):

- Core Policy 1: Settlement Strategy
- Core Policy 2: Delivery Strategy
- Core Policy 19: Spatial Strategy for the Royal Wootton Bassett and Cricklade Community Area
- Core Policy 49: Protection of Rural Services and Community Facilities
- Core Policy 51: Landscape
- Core Policy 57: Ensuring High Quality Design and Place Shaping

7. Summary of consultation responses

Wiltshire Council Highways: No objection.

Wiltshire Council Estates Surveyor: Summary of comments:

- From the information provided and one site visit, concurs with the description of the property and offer - approximately 465m² (5,000sq. ft.) on a site of 0.26 ha (0.63 acres).
- There are 7 pubs within 3 miles and 27 pubs within 5 miles of the property and observes that there is a very limited customer catchment base (shared with the other pubs in the vicinity) from which to render a viable business.
- Considers that the 30 covers offered is insufficient for a food led or destination pub, and it would without significant expenditure (which cannot on the basis of the accounts be financially justified) struggle to compete with the other pubs in the area.
- In 2013 a £39,000 refurbishment was undertaken, and the holiday chalets were built. B&B was offered, but despite 3 re-launches, the accounts provided show it traded at a loss for each month, despite the owners taking no salary.
- The property was put on the market in March 2017 by Sidney Philips who are acknowledged specialists in licensed and leisure property. They were unable to secure any credible offers.
- After 18 months (well in excess of the 6 months marketing period called for in Core Policy 49 and by CAMRA) there is no record of offers having been received. Sidney Phillips appear to have carried out a business-like marketing campaign over a prolonged period, the property being advertised on various property, licensed property and business websites.
- Comments note that at the time of their site visit, there was a "For Sale" board on the site, but not, as the report suggests, an "All Enquiries" board. There is no evidence that it was offered on a leasehold or* freehold basis (*author's emphasis).
- The open market is the best way to test viability. The property has been exposed to the market since March 2017, without achieving a sale. Accounts are used to establish profitability. Earnings before interest, taxes, depreciation, amortisation and [restructuring or] rent (EBITDAR) is a key performance indicator and valuation metric of profitability employed in the valuation of hotel and leisure properties. According to the Sturt & Company report:

Since 2013 three unsuccessful attempts to relaunch as a going concern.

After the initial refurbishment in 2014, the run up to Christmas (the strongest trading period) losses were sustained each week without the owners drawing salary.

Further refurbishment was undertaken in 2015 and the pub was reopened but after poor sales, it was closed in September.

After further advertising and promotion, a final re-launch in May 2016 opening on a limited basis (Friday and Saturday - the busiest days of the week) produced no return from the public house, holiday cabin income and B&B.

Summary accounts have been provided for trading years 2014 – 2016 suggesting a loss – although notes that it remains unclear whether the income includes that from the B&B offer or data on the makeup of gross costs, is of the opinion that the indications are clear.

From the information provided, EBITDA is demonstrably negative. The business is unviable.

- A comprehensive marketing campaign (as required under CP49) has been undertaken, and the report states that all other options have been exhausted.

Wiltshire Council Archaeology: No comment.

Clyffe Pypard Parish Council: Objection. Comments repeated verbatim below:

“Clyffe Pypard Parish Council are opposed to the application for change of use at the Trotting Horse Pub.

Prior to the current owners purchasing the Trotting Horse, the pub was much used by the community.

The Parish Council understand the difficulties of running a successful rural pub, but a key attribute is that it needs to be open, and since refurbishing the pub in 2015, it hasn't been open often enough to truly test if the pub is viable. When it was open, local residents did their best to support the pub, but the management was so chaotic, few wished to repeat their experience.

With reference to Wiltshire Council's Core Policy 49 An applicant for change of use must demonstrate they have tried to run a successful pub, the failure of this pub is due to the poor management. An applicant for change of use should have tried to market the property as a going concern. There are a number of parties interested in purchasing the pub, but considering the work required to reopen, with much of the ground floor including the kitchen having been gutted, the price being asked by the owners is not realistic.

The Parish Council are confident that if the application for change of use is turned down and the pub is marketed at its true commercial value, a new owner would reopen the pub as the successful venue it used to be.”

8. Publicity

The application was advertised by site notice and direct neighbour notification letter in accordance with the Council's adopted Statement of Community Involvement.

Seven letters of support were received and are summarised as follows:

- The proposed change of use to residential accommodation is the best option for the site.
- Both a change in village life and drinking habits have resulted in a decline in business for the public house.
- The owners have tried very hard to make the business work but it is not generating a profit.

Six letters of objection (by eight members of the public) were received and are summarised as follows:

- The Trotting Horse has the potential to be a successful pub if run correctly.
- The recent changes to the pub, including the loss of the skittle facility and dart board as well as the internal alterations have resulted in the decline of customers.
- The property has been put on the market for an unrealistic price and therefore the marketing exercise is flawed.
- The pub provides a community facility which should remain.

9. Planning Considerations

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

Principle of development

Whilst the application site and property is positioned outside the limits of development identified, the proposal will not result in the erection of a new dwellinghouse which would be contrary to the settlement strategy set out by the WCS. Further, the existing PH already includes a component of residential accommodation and, accordingly, the proposal would merely represent an extension of existing accommodation rather than a frequency count increase of residential units in the open countryside.

The existence of the ancillary holiday accommodation is not affected by the proposal.

Loss of the public house

Whilst the property is not nominated or listed as an Asset of Community Value (ACV) under Section 88(1) and (2) of the Localism Act (2011), the proposal should nonetheless rightly be considered against CP49 of the WCS since it will result in the loss of a community facility (paragraph 6.71 to the WCS suggests public houses should be regarded as such).

CP49 states that proposals involving the loss of a community service or facility will only be supported where it can be demonstrated that the site/building is no longer economically viable for an alternative community use. Preference will be given to retaining the existing use in the first instance, then for an alternative community use. Where this is not possible, a mixed use, which still retains a substantial portion of the community facility/service, will be supported. Redevelopment for a non-community service/facility use will only be permitted as a last resort and where all other options have been exhausted. CP49 goes on to confirm that in order to reach a conclusion on the veracity of a proposal for a non-community re-use, a comprehensive marketing plan should be completed.

Such a marketing exercise has been carried out and submitted in support of the application as part of a more encompassing Community Resource Analysis report (prepared by Stuart & Company, August 2018). It provides the following commentary in respect of each of the criteria attached to CP49:

- i. Be undertaken for at least six months - *At the time of the application's submission, The Trotting Horse had been on the market for eighteen months with the current marketing plan being in place for at least six months.*
- ii. Be as open and as flexible as possible with respect to alternative community use - *A variety of alternative community uses appear to have been considered at the site including a Community Village Hall/Theatre, Indoor Sports/Recreation Facilities, a Health and Care Establishment, a Convenience Store/Post Office as well as Library, Cultural and Arts Facilities. A number of constraints are present at the site, which have deterred the Applicants from pursuing the above uses. For example, there is no identified need for a Village Hall at the site given the existence of several village halls close by, including the Bushton Village Hall. The site is regarded as being too small to provide any indoor sports facilities. A Health and Care Establishment in this remote location would be considered unsustainable and due to the small scale of Bushton, the Applicants consider it unlikely that a Convenience Store/Post Office would be sustained at the site. Furthermore, Library, Cultural and Arts Facilities are not considered to be in demand at the site, due to the close proximity of the nearby Bushton Village Hall.*
- iii. Establish appropriate prices, reflecting local market value, for the sale or lease of the site or building, which reflect the current or new community use, condition of the premises and the location of the site - *The property was initially marketed for £625,000, however due to the lack of interest in the property, it was offered in February 2018 on an 'All Enquiries' basis, on both 'For Sale' and 'To Let' tenures. The property has been marketed by Sidney Phillips who, according to their website, are specialists in dealing with sales, acquisitions, valuations and insurance of Licensed businesses, including public houses.*
- iv. Demonstrate the marketing has taken into account the hierarchy of preferred uses stated above - *The property has been marketed as a public house.*

- v. Clearly record all the marketing undertaken and details of respondents, in a manner capable of verification - *The property was advertised via marketing brochures, websites, mailing and a marketing board, as well as being featured in 'The Morning Advertiser' in April and July 2018. The submitted report provides the figures for the numbers of applicants notified of the availability of the property as well as those who downloaded or received the details of the property.*
- vi. Provide details of any advertisements including date of publication and periods of advertisement – *The advertisements used have been reproduced within the submission.*
- vii. Offer the lease of the site without restrictive rent review and tenancy conditions, or other restrictions which would prejudice the reuse as a community facility - *The property has been marketed on 'For Sale' and 'To Let' tenures and the submitted report indicates that the owner is flexible in terms of lease length and rent cost.*
- viii. Demonstrate contact with previously interested parties, whose interest may have been discouraged by onerous conditions previously set out - *According to the submitted report, no approach was made by the Parish Council or other community organisations to inspect the property, neither were there any offers from them to take over the pub. The Parish Council suggests however that a number of parties are interested in purchasing the pub for the right price. Following the change in price of the property from £625,000 to 'All Enquiries', details of the property were sent to 1511 applicants and during a subsequent marketing campaign, a further 1378 applicants were notified.*

The submitted Community Resource Analysis Report, which includes a summary of trading accounts for the years 2014 – 2016, has been reviewed by the Council's Estates Surveyor. They consider the submission to make a coherent case in favour of addressing the requirements of CP49. In their commentary, they suggest that the marketing of the business over a period of 18 months has exceeded that required by CP49 and whilst the submitted report omits any data of offers received (Note: the report suggests there were none in any event), there is also little evidence to support that a wider exposure to the market would render results. The Council's Estates Surveyor ultimately concludes that the marketing campaign has been carried out by a known specialist in such property (Sidney Phillips) was well orchestrated and credible.

Paragraphs 3.20-3.24 of the submitted Community Resource Analysis Report also sets out the steps taken by the applicant so as to render their business viable and attractive to trade; spending money on the property and re-launching the business a number of times, albeit unsuccessfully. It is acknowledged that representations (including that of the Parish Council) suggest that the attempts have been sporadic and without proper management, there is no evidence before the LPA to dispute the submission in this regard – indeed, the Council's Estates Manager observes that the submission confirms 3 separate unsuccessful re-launches in the context of a trading loss each month, despite the owners taking no salary.

Both CP49 and the NPPF (particularly para.92) require that planning decisions should, *inter alia*, guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. As identified within the submission there are several pubs within three miles of the application site; The Goddard Arms being less than one mile. The Goddard Arms is in fact registered as an Asset of Community Value, however a representation received from the owner indicates that the pub is currently closed and there is no intention to re-open it. Nevertheless, in the context of a multitude of other open pubs in close proximity to the application site it is considered that the community's need for a public house such as The Trotting Horse is still being met in the locality.

A comprehensive consideration of the evidence submitted within the application, its substantive nature and general concurrence with the views of the Council's Estates Surveyor, when seen in the context of other PHs in the locality, does tend to fall in favour of regarding the proposal as meeting the requirements of CP49 and the NPPF.

Character and Appearance

There are no external changes proposed for the building as a result of development taking place.

The site currently comprises a large area of hardstanding which is not considered to contribute positively to the character and appearance of the locality. The submitted site plan shows that much of this would be replaced by areas of lawn and planting, thereby likely to significantly improve upon the sites appearance and presentation to the street.

Given the amount of soft landscaping proposed and its integral function to a successful change the use of a property from a commercial enterprise to dwellinghouse, it is considered reasonable to impose a planning condition which would compel implementation and maintenance for a minimum period of 5 years.

In this regard, the proposal is considered to comply with the provisions of CP57 of the WCS.

Residential Amenity

The application site directly adjoins existing residential properties.

Although there is no evidence that the operation of the PH has caused noise or disturbance to surrounding neighbours, the change of use to a single residential dwelling would nonetheless potentially result in improved residential amenity of the locality. It is reasonable to assume a reduction in traffic movements associated with the change of use, particularly at peak times, as well consequent noise, light spill and activity connected to the operation of a PH.

In this regard, the proposal is considered to comply with the provisions of CP57 of the WCS.

Highway Safety

The application seeks no changes to the existing access and the substantial hardstanding/car park is to be partially seeded to grass.

The site will retain adequate access and car parking space to serve a five bedroom dwelling with ancillary holiday accommodation. As referred above, it is likely that there would be a reduction in traffic movements as a result of the proposed change of use.

The Council's Highway Engineer has raised no objections to the proposal when considered against relevant criteria contained in CP57 of the WCS and there is considered to be no reason to disagree with those conclusions

10. Conclusion

Whilst regrettable, the loss of the public house, as a community facility, is acceptable in this instance and would comply with the criteria set out by policy CP49 of the WCS as well as the NPPF.

In all other respects, it is considered that the proposed development would comply with the development plan, meeting the requirements of the various development control criteria set out by policy CP57 of the WCS.

The development is considered to be acceptable on its planning merits and having regard to all other matters raised, it is recommended that planning permission be granted subject to the imposition of suitable planning conditions.

RECOMMENDATION: That planning permission is GRANTED, subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (Drawing Number 1222/04), Proposed Ground Floor Plan (Drawing Number 1222/11) and Proposed First Floor Plan (Drawing Number 1222/12) dated 12 November 2018 and Proposed Site Plan (Drawing Number 1222/15) dated 9 January 2019.

REASON: For the avoidance of doubt and in the interests of proper planning.

- 3 Notwithstanding Class C3 of the Schedule to the Town and Country (Use Classes) Order 1987 (as amended)(or any order which revokes and re-enacts that Order with or without modification), the chalet accommodation within the curtilage of the dwelling hereby granted planning permission shall be used to provide holiday accommodation only, which shall not be occupied as permanent, unrestricted accommodation or as a primary place of residence. An up to date register of names and main home addresses of all occupiers shall be maintained and shall be made available at all reasonable times to the Local Planning Authority.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.

- 4 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

INFORMATIVE TO APPLICANT:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance,

available access and the ground conditions appertaining to the sewer in question.

INFORMATIVE TO APPLICANT:

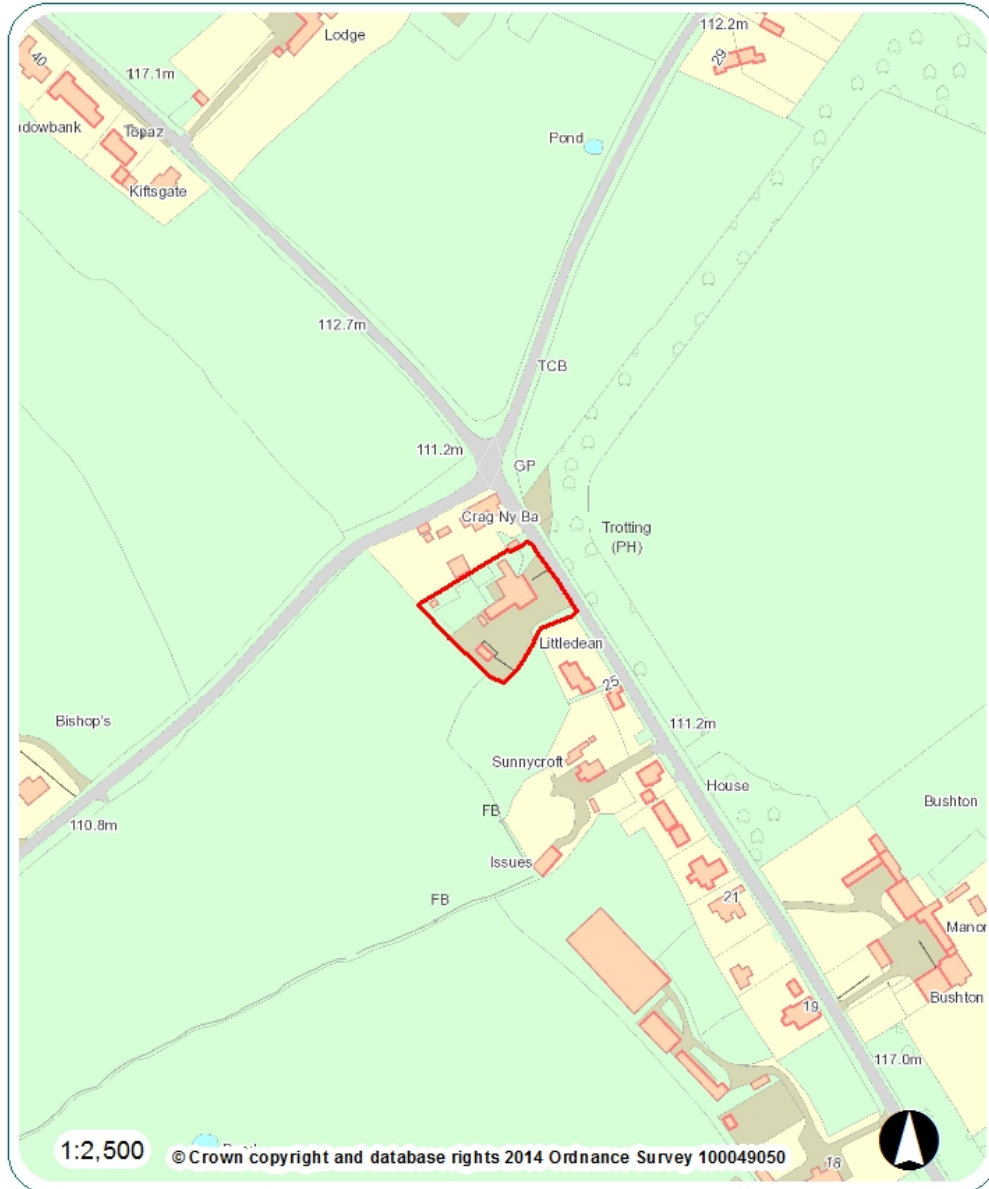
The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

INFORMATIVE TO APPLICANT:

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

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REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Date of Meeting	27 th March 2019
Application Number	18/11700/FUL
Site Address	Land East of Foscoote, Grittleton
Proposal	Conversion of an agricultural building to form a single dwellinghouse, associated curtilage and access driveway
Applicant	Mrs M Richardson
Town/Parish Council	GRITTLETON
Electoral Division	BY BROOK – Cllr Baroness Scott of Bybrook OBE
Grid Ref	385916 179321
Type of application	Full Planning
Case Officer	Rose Fox

Reason for the application being considered by Committee

The application has been called to Committee by Cllr Baroness Scott of Bybrook OBE in order to consider the visual impact and environmental or highway impact. The Parish Council has requested the application is discussed at NAPC.

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved, subject to conditions.

2. Report Summary

The critical issues in the consideration of the application are as follows:

- Principle of Development
- Impact on the Character and Appearance of the Area (AONB)/Design
- Impact on setting of Conservation Area
- Highways and Parking
- Drainage
- Residential Amenity
- Ecology

The application has been met with objection from Grittleton Parish Council. Objections have been received from five members of the public.

3. Site Description

The application site comprises a rural building which is proposed for conversion to a dwelling pursuant to this application. The building is a small steel-framed barn with two lean-tos. The building is finished in breeze blocks and green corrugated metal sheeting, set beneath a fibre cement sheeting roof. The building and wider field is enclosed by a post and rail fence, albeit this does not delineate the proposed residential curtilage pursuant to the application.

The application site is located within the open countryside, south of the village of Grittleton, which is defined as a Small Village within the Core Strategy. The closest buildings are Foscoote Cottages to the north east which are separated by a field. The site is situated within the Cotswold AONB and outside of but near to the Grittleton Conservation Area (which starts approximately 29m to the north east from the closest point and encompasses Foscoote Cottages).

4. Planning History

- N/10/03539/FUL - Temporary Siting of a Transportable Wooden Lodge for Essential Stud Worker for a Period of Three Years – Withdrawn
- N/10/03536/FUL - Siting of two stable blocks to provide three no. stables and one feed store, construction of associated access track and manure store. – Refused
- N/88/01181/OUT - OUTLINE APPLICATION FOR DETACHED DWELLING - GARAGE AND 3 NO.LOOSE BOXES - Refused

5. The Proposal

The proposal comprises the conversion of a rural building into a two bedroom dwelling, with associated residential curtilage and parking. The northern lean-to would be used as a car port with storage behind, and the remaining building would be converted to habitable space. The proposed new dwelling would consist of an open plan kitchen/dining and living room, two bedrooms and bathrooms, a lobby and utility room.

The conversion would utilise some existing openings beneath one lean-to and introduce some new windows into the building, finished in dark coloured PVC. The building would be converted retaining the existing frame of the building and without major structural changes to the form of the building; albeit some external materials are proposed to be replaced. The cement fibre roof sheeting would be replaced with profiled metal insulated sheeting of a similar appearance as shown in Appendix KCC1 of the Supporting Statement. The existing lower half of the walls comprising breeze blocks would be retained and painted light green. The green corrugated metal sheeting to the top part of the walls is proposed to be replaced with vertical timber cladding.

The existing vehicular and pedestrian field accesses would be utilised and a driveway and turning area is proposed to be made from Cotswold stone chippings, and 5m of tarmac at the entrance from the lane. A modest residential curtilage is proposed around the building. The proposed boundary treatment is for no changes to the existing hedgerow/foilage to the north, a new mixed species hedgerow to the south and east, and a post and rail fence to the west, as shown on the Landscaping Plan.

6. Local Planning Policy

The following policies of the Wiltshire Core Strategy (Jan 2015) (WCS) are relevant:

Core Policy 1 (Settlement strategy)

Core Policy 2 (Delivery strategy)

Core Policy 10 (Community Area strategy: Chippenham Community Area)

Core Policy 48 (Supporting Rural Life)

Core Policy 50 (Biodiversity and Geodiversity)

Core Policy 51 (Landscape)

Core Policy 57 (Ensuring high quality design and place shaping)

Core Policy 58 (Ensuring the Conservation of the Historic Environment)

Core Policy 60 (Sustainable Transport)

Core Policy 61 (Transport and development)

Core Policy 64 (Demand management)

Core Policy 67 (Flood Risk)

National Planning Policy Framework (NPPF) (Feb 2019)

Paragraphs 11, 38, 79, 172, 190, 195 and 196 and Sections 5, 9, 12, 15 and 16

7. Summary of consultation responses

Grittleton Parish Council

“There is no plan for the disposal of foul or surface water, it was noted that after periods of heavy rain the surface water drains from the site into the access lane and ultimately on to the Grittleton – Yatton Keynell Road at the crossroads.

At the junction of the access road onto the Yatton Keynell – Grittleton Road there is very restricted visibility. This road has a 60 mph speed limit, the junction is at the foot of downhill section when travelling north. There is a history of accidents at the crossroads and whilst there was traffic calming measures implemented in 2015 these have not been effective.

The proposed conversion is unsuitable and would therefore be detrimental to the AONB, furthermore it lies outside of the settlement boundary and on the edge of the Conservation Area. The site is visible from the Yatton Keynell Road.

The Supporting Statement submitted by the applicant – Sct 5.20 Access to Local Services is incorrect – there are no schools in Grittleton, nor is there a shop.

The nearest Bus Stop is located at the crossroads in the centre of Grittleton some 750 metres from the site. It should also be noted that there is no pavement on the access road and that the pavement to Grittleton is only accessible having crossed the Yatton Keynell road which has a 60 mph limit.”

Highway Engineer

No highway safety or parking concerns – recommends informative.

Additional comment following Parish's comments and representations in respect of highway safety at the junction:

"I have had a look at accident data in the vicinity of the site and there were only 2 recorded accidents, classed as slight and each with one casualty. These were back in 2001 and 2003. The available accident data indicates that there are no fatalities at the Junction mentioned over the search period 1998-2017. And having searched our accident database, there were no recorded fatalities in this location in the last 6 years up until May 2018. Therefore my opinion remains unchanged with regard to this application."

Drainage Engineer

Support subject to conditions of detailed surface water and foul drainage. Requested outline foul drainage plan prior to determination, which has been submitted and is considered acceptable.

Environmental Health Officer

No objection subject to condition

County Ecologist

No comment

8. Publicity

The application was advertised by site notice and neighbour notification letter.

5 representations have been received in objection from members of the public which are summarised below:

- Harm to AONB and Conservation Area/unsuitable industrial design/not in keeping with nearby properties
- Site is not isolated and is visible from nearby properties
- Queries if the building is structurally sound
- Highway safety issues at junction including a fatality
- Road traffic issues for current occupants on the access road
- Drainage concerns
- No shop, primary or secondary school in the village
- The existing building has been in use in the past year
- Speculation as to the reason for the application (not a material planning consideration)
- Wildlife at the site

9. Planning Considerations

Principle of development

New residential development in the open countryside outside of any defined settlement boundaries is strictly controlled so as to restrict homes being built in unsustainable locations remote from local services, facilities and transport routes. CP1 "Settlement Strategy" of the Wiltshire Core Strategy sets out where sustainable development will take

place across the plan period. CP2 “Delivery Strategy” of the Wiltshire Core Strategy states that other than in circumstances permitted by other policies within the plan, development will not be permitted outside the limits of development. These policies include Policy CP48, relating to development in the countryside.

Amongst other types of development, CP48 states that proposals to convert and re-use rural buildings for employment, tourism, cultural and community uses will be supported where they satisfy a number of criteria. Only if there is clear evidence that these uses are not practical propositions, then residential development may be appropriate where it meets the same criteria. The criteria are as follows:

- i. The building(s) is/are structurally sound and capable of conversion without major rebuilding, and with only necessary extension or modification which preserves the character of the original building.
- ii. The use would not detract from the character or appearance of the landscape or settlement and would not be detrimental to the amenities of residential areas.
- iii. The building can be served by adequate access and infrastructure.
- iv. The site has reasonable access to local services.
- v. The conversion or re-use of a heritage asset would lead to its viable long term safeguarding.

The applicant has submitted justification in relation to this policy and it is considered sufficient reasoning has been provided that employment, tourism, cultural and community uses would not be practical in this location.

In respect of the criterion i, from a site visit it appears that the building is structurally sound. Whilst there would be some change in external materials to the roof and introduction of cladding, the structural frame of the building will be retained. The proposed building would be converted as per the existing form, without extension. It is not considered the proposed works would constitute major rebuilding and the proposed alterations would preserve the character and form of the original building.

In considering criterion ii, the property is situated within the Cotswold AONB, which Policy CP51 of the WCS and Para 172 of the NPPF applies great weight to conserving and enhancing landscapes and scenic beauty. The proposal would result in a modest area of residential curtilage which will be screened by hedgerow. A new driveway would be proposed with Cotswold stone chippings and tarmac at the entrance. The new timber cladding is proposed to weather naturally and a condition can be applied to prevent the painting or visible staining of the timber without approval from the Local Planning Authority. The replacement roof material would be similar in appearance to the existing. As this is a shallow roof and will not be widely visible from the surrounding area, samples are not considered necessary. The proposed green paint to the blockwork is not considered to be adversely harmful in appearance. The proposed building alterations are considered to improve the appearance of the existing building overall and would retain its rural character. The proposal is considered to be a relatively sensitive conversion, with modest associated curtilage that would preserve the special interests of the Cotswold AONB as a result. Permitted Development rights for extensions and outbuildings could be removed to ensure the LPA can consider any such proposals and associated landscape impact in future.

Given the distance from the closest neighbouring properties, there would be no impact on residential amenity as a result. There would be adequate amenity at the proposed dwelling.

In respect of criterion iii, the proposed dwelling would be accessed by an existing access drive from the main highway, which terminates as a dead end to the west of the application site. Parking for 2 no. cars is available at the proposed dwelling. No objection has been received from the Council's Highway Engineer. It is understood the Parish and members of the public have raised concerns in respect of highway safety at the junction with the main road, but as per the Highway Engineer's comments, no accidents have been recorded here recently. The Drainage Officer has no objection subject to detailed drainage being dealt with by condition. It is considered the property can be served by adequate access and infrastructure, subject to conditions.

Considering criterion iv, the application site is situated approximately 800m from the village core of Grittleton. Approximately 140m of this is along the access track, and the remaining distance is along the main road with a pavement (the main road would have to be crossed to reach this). There are bus stops at the village which appear to have a service Chippenham – Grittleton (no 35) five times on a weekday and there is a school service to Chippenham Sheldon School (no 74) twice in the morning and twice in the afternoon on weekdays. Grittleton is defined as a Small Village in the WCS, which are defined as having a low level of services and facilities. The village has a public house, village hall, a church and sports facilities. Considering there are low level services within walking distance and Chippenham can be reached by public transport on a relatively regular basis, it is considered that the site has reasonable access to local services available.

Criteria v is not applicable. It is therefore considered that the proposal complies with the relevant criterion in CP48 and is acceptable in respect of all relevant considerations.

Heritage assets

The Planning (Listed Buildings and Conservation Areas) Act 1990 provides powers for the designation, protection and enhancement of conservation areas. The Act requires that special attention to preserving or enhancing the character or appearance of the conservation area (s.72).

Paragraph 190 of the NPPF requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by the proposal (including any development affecting the setting of a heritage asset). Paragraphs 195 and 196 require local authorities to assess whether there is substantial harm, less than substantial harm or no harm to the heritage asset. Core Policy 57 requires, amongst other things, that new development must be sympathetic to and conserve historic buildings. Core Policy 58 requires that development should protect, conserve and where possible enhance the historic environment.

The application site is situated approximately 29m from Grittleton Conservation Area. There is no Conservation Area Appraisal currently published for this designation. However, the conservation area, by virtue of its designation, is significant in heritage terms. Given the

distance from the Conservation Area and the modest nature of the proposals i.e. a conversion of an existing building, it is not considered the proposal would cause any harm to the setting of the conservation area. There is not considered to be any harm to the significance of the heritage asset.

Other matters

In the interests of safeguarding against any potential contamination at the site, the Environmental Health Officer has recommended a condition requiring an assessment of historic uses of the site/building and how development works will address any potential for land contamination that may exist.

The Council's Ecologist does not identify any ecological constraints and has no objection to the proposal.

10. Conclusion

Overall, it is considered that the proposed new dwelling represents sustainable development in accordance with Core Policies 1, 2, 10, 48, 50, 51, 57, 58, 60, 61, 64 and 67 of the WCS (Jan 2015); and Paragraphs 11, 38, 79, 172, 190, 195, and 196 and Sections 5, 9, 12, 15 and 16 of the NPPF (Feb 2019), and is acceptable in planning terms.

RECOMMENDATION: That planning permission is GRANTED subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Plans as received by the LPA 11/12/18:

Site Location Plan (KCC2667/01 11/18/rm, Dated: Nov 2018);

Block Plan (KCC2667/02 11/18/rm, Dated: Nov 2018);

Proposed Elevations and Floor Plan (KCC2667/03 11/18/rm, Dated: Nov 2018); and

Existing Elevations and Floor Plan (KCC2667/04 11/18/rm, Dated: Nov 2018).

Plan as received by the LPA 06/03/19:

Landscaping Plan (KCC2667/07A 03/19cb, Dated: March 2019).

And materials in accordance with details specified on the application form and Supporting Statement (Dated: December 2018).

REASON: For the avoidance of doubt and in the interests of proper planning.

- 3 No development shall commence on site until a detailed scheme for the discharge of foul water from the site has been submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that the development can be adequately drained

- 4 The development shall not be first occupied until foul water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained

- 5 No development shall commence on site until a detailed scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details together with permeability test results to BRE365, has been submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that the development can be adequately drained

- 6 The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained

- 7 Former agricultural use of the site/building may have given rise to potential sources of land contamination e.g. asbestos within the structure. As it is now intended to use the site for residential purposes a statement/letter must be provided which confirms the historical uses of the site/building and how development works will address any potential for land contamination which may exist. The strategy must be agreed in

writing by the Local Planning Authority and fully implemented prior to the occupation of the dwelling.

REASON: To ensure that land contamination can be dealt with adequately prior to the residential use of the site

- 8 No paint or visible stain finish shall be applied to external timber until details of the paint or stain to be applied have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the development being first occupied.

REASON: In the interests of visual amenity and the character and appearance of the area (AONB)

- 9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

- 10 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no garages, sheds, greenhouses and other ancillary domestic outbuildings shall be erected anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

INFORMATIVE TO APPLICANT:

The applicant would be advised to contact the area office for a vehicle crossover license with details of the proposed access arrangement. The proposal includes alteration to the public highway, consent hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a license may be required from Wiltshire's Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact the vehicle access team on telephone 01225 713352 or email

vehicleaccess@wiltshire.gov.uk for further details.

INFORMATIVE TO APPLICANT:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

INFORMATIVE TO APPLICANT:

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

INFORMATIVE TO APPLICANT:

Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

INFORMATIVE TO APPLICANT:

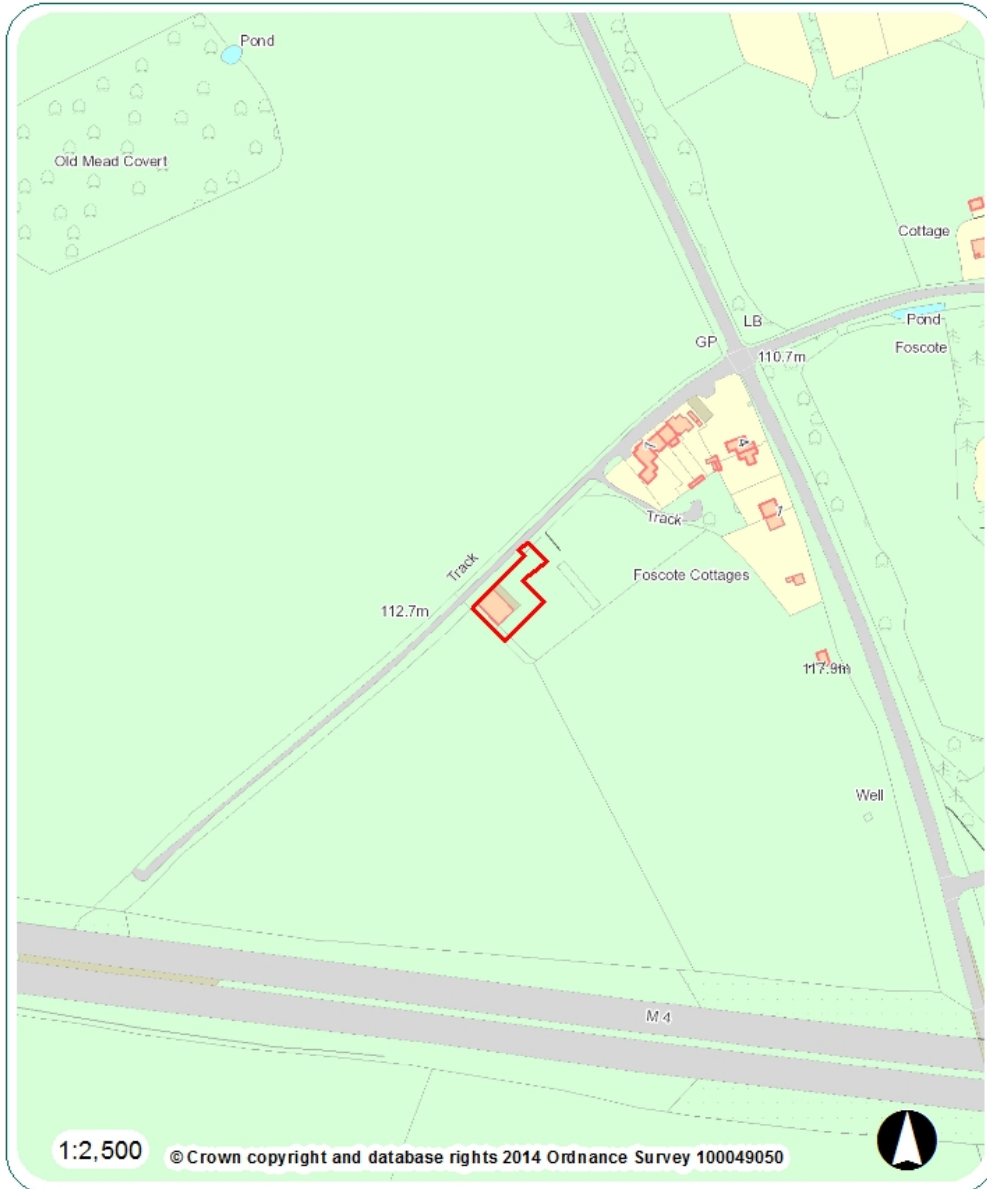
Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

INFORMATIVE TO APPLICANT:

The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is

determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructure/every.

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