

# AGENDA

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**Meeting:** Western Area Planning Committee

**Place:** Council Chamber - County Hall, Bythesea Road, Trowbridge, BA14 8JN

**Date:** Wednesday 14 December 2022

**Time:** 3.00 pm

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Please direct any enquiries on this Agenda to Stuart Figini, Senior Democratic Services Officer, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718221 or email [stuart.figini@wiltshire.gov.uk](mailto:stuart.figini@wiltshire.gov.uk)

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

**NOTE** – The Chairman invites members, officers and public to join him for some seasonal refreshments in the Members Room after the meeting.

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## Membership:

Cllr Christopher Newbury (Chairman)

Cllr Bill Parks (Vice-Chairman)

Cllr Trevor Carbin

Cllr Ernie Clark

Cllr Andrew Davis

Cllr Edward Kirk

Cllr Stewart Palmen

Cllr Pip Ridout

Cllr David Vigar

Cllr Suzanne Wickham

Cllr Jonathon Seed

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## Substitutes:

Cllr Matthew Dean

Cllr Jon Hubbard

Cllr Tony Jackson

Cllr Mel Jacob

Cllr George Jeans

Cllr Gordon King

Cllr Mike Sankey

Cllr Graham Wright

## **Recording and Broadcasting Information**

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**County Hall, Trowbridge**  
**Bourne Hill, Salisbury**  
**Monkton Park, Chippenham**

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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 5 - 12*)

To approve and sign as a correct record the minutes of the meeting held on 26 October 2022.

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 **no later than 10 minutes before the start of the meeting**. If it is on the day of the meeting registration should be done in person.

The rules on public participation in respect of planning applications are linked to 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 Wednesday 7 December 2022 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 Friday 9 December 2022. 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 **Town and Country Planning Act 1990 s.257 diversion for Footpath Hilperton 54 (Pages 13 - 62)**

To consider the report of the Director of Highways and Transport.

7 **Planning Appeals and Updates (Pages 63 - 64)**

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

Appeal decision notices are available to view at [Supplement One](#).

8 **Planning Applications**

To consider and determine the following planning applications.

8a **PL/2022/07194 - Ivy Lodge, Lower Woodrow, Forest, Melksham, SN12 7RB (Pages 65 - 78)**

Proposed two storey extension to Ivy Lodge.

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**

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

NONE

## Western Area Planning Committee

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### MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 26 OCTOBER 2022 AT COUNCIL CHAMBER - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

#### Present:

Cllr Christopher Newbury (Chairman), Cllr Bill Parks (Vice-Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Edward Kirk, Cllr Stewart Palmen, Cllr David Vigar, Cllr Tony Jackson (Substitute), Cllr Mike Sankey (Substitute) and Cllr Jonathon Seed

#### Also Present:

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## 72 Membership Changes and Apologies

### Membership Changes

The Chairman confirmed a number of Committee membership changes approved at Full Council on 18 October, 2022, as follows:

- Cllr Antonio Piazza was no longer a member of this Committee
- Cllr Jonathan Seed was appointed as a member of this Committee.

The Chairman thanked Cllr Piazza for his contributions to the work of the Committee and welcomed Cllr Seed.

### Apologies

Apologies for absence were received from

- Cllr Suzanne Wickham substituted by Cllr Tony Jackson
- Cllr Pip Ridout substituted by Cllr Mike Sankey

## 73 Minutes of the Previous Meeting

The minutes of the meeting held on 28 September 2022 were presented.

### **Resolved:**

**To approve as a correct record and sign the minutes of the meeting held on 28 September 2022, subject to minute 68 - public participation being amended to Kate Hayes representing Hilperton Parish Council.**

## 74 Declarations of Interest

Cllr Jonathan Seed reminded the Committee that at its previous meeting he was not a member of the Committee and spoke as a member of the public in support of the planning application for Kingsdown Farm, Lords Hill, Longbridge Deverill PL/2022/01141. To remain consistent in this approach, and following his appointment to the Committee in the intervening period, Cllr Seed indicated that he would withdraw from the Committee for this item and again speak as a member of the public.

75 **Chairman's Announcements**

The Chairman asked that all phones were switched off or turned to silent mode to minimise any potential disturbances and explained the procedure if a fire alarm were to sound.

76 **Public Participation**

No questions had been received from councillors or members of the public.

The Chairman welcomed all present. He then explained the rules of public participation and the procedure to be followed at the meeting.

77 **Planning Appeals and Updates**

The Planning Appeals Update Report for 16 September 2022 to 14 October 2022 was received.

Public Participation:

- Francis Morland spoke about the appeal decision in relation to Land to the west of Drynham Lane, Trowbridge.

The Development Management Team Leader, Kenny Green confirmed that unfortunately there was no officer representation available for the Drynham Lane, Trowbridge appeal.

Cllr Carbin asked whether web links could be added to future appeal reports so that members could access detailed appeal decision letters. Officers agreed to consider the most appropriate way of achieving this request. Planning Appeal Decision letters are attached to these minutes for Drynham Lane, Trowbridge and Middle Lane, Trowbridge.

**Resolved:**

1. **To note the Planning Appeals Update Report for 16 September 2022 to 14 October 2022.**
2. **That officers be asked to consider the most appropriate way of attaching web links for appeal decision letters in future appeal reports.**

78 **Planning Applications**

The Committee considered the following applications:

79 **PL-2022-01141 Kingsdown Farm Lords Hill, Longbridge Deverill**

Public Participation:

- David Scales – spoke in objection to the application
- Caroline Hobbs – spoke in objection to the application
- Kate Phillips – Applicant – spoke in support of the application
- Jonathan Seed – spoke in support of the application
- Matt Williams – Agent – spoke in support of the application

Steven Sims, Senior Conservation/Planning Officer introduced the report which recommended that planning permission be approved, for reasons detailed in the report, for the variation of condition 3 (pursuant to the timescale for the deposit of waste materials) imposed on 17/09988/VAR.

The officer reminded the Committee that they had considered the application at their last meeting on 28 September 2022 and had agreed to defer the application for a site visit, which was held just prior to this meeting. He commented further on the site visit, the landscaping scheme and current screening. The Committee noted that additional representations had been received, however the issues raised were similar in nature as those previously addressed in the officer's report.

The Committee noted that condition 3 in relation to a landscaping scheme, had been amended since the last meeting following concerns raised at that meeting about the applicant's ability to deliver the previous landscaping condition within timescales given. The revised condition allowed for the landscaping scheme to be phased in over the next 3 years.

The Chairman raised an issue in relation to screening of the site from various vantage points as viewed at the site visit earlier in the day and asked the Committee for comments on his suggestion. The Committee felt that Condition 3 was sufficient in detail to deal with any screening issues, and this did not need amending.

In response to technical questions asked by the Committee, officers explained how a s73 variation application should be considered, along with reviewing all the previously imposed planning conditions that were still 'live'; and reimpose those that still were necessary and met the six legal tests.

Officers recommended that Planning Condition no.3 was necessary in recognition that the extant conditions imposed on the original planning permission twelve years ago and subsequent variations were worked erroneously. Following negotiations held with the applicants agent, an agreement had been reached to impose and secure a phased landscaping scheme, with full planting stock specification and a detailed planting programme for the next 3 years to satisfactorily filter views of the site and break up the

massing of the various agricultural buildings built to date and for those still to be constructed; and in response to a query raised by Cllr Jackson, officers advised the Committee that Condition no.10 addressed external lighting and the protection of the international dark sky status of the AONB.

Members of the public then had the opportunity to present their views, as detailed above.

So that the Committee had something to debate Cllr Christopher Newbury proposed a motion to approve the application with conditions and informatives as detailed in the report. This was seconded by Cllr Edward Kirk.

A debate followed where Members commented further on the landscaping scheme condition; the additional time requested for the delivery of waste materials and impact on neighbouring residents; the storage of waste material on site; the need to retain countryside views and restraint in unnecessary screening; and concern that the delivery of waste material may again be delayed, requiring a further variation of the timescales.

At the conclusion of the debate, it was

**Resolved:**

**To grant planning permission, subject to conditions and informative notes:**

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

**Location plan scale drg no. 01020-31 A received on 26.07.2010**

**Topographic Survey drg no. 3158/01 received on 29.06.2022**

**Site Sections A-A, B-B, C-C and D-D drg no. 3158/03B received on 29.06.2022**

**Site Section E-E drg no. 3158/04B received on 29.06.2022**

**Site layout drg no. 01020-35 A**

**Proposed plans and elevations buildings 4 and 5 drg no. 01020-37 received on 12.10.2017**

**Proposed plans and elevations building 6 drg no. 01020-26 F received on 12.10.2017**

**Proposed plans and elevations 'Dung Store' drg no. 01020-32 A received on 26.07.2010**

**Proposed site section scale 1:1000 drg no. 01020-38 received on 13.12.2017**

**Landscape plan scale 1:1250 drg no. 1069/PL1 dated 7 March 2018**

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

- 2. The deposit of waste and all earthworks required to form the approved development shall be completed by 31st December 2025.**



Within a period of a further 12 months all plant and machinery shall be removed from the site (except which the local planning authority agrees in writing is required for future maintenance of the site).

**REASON:** To safeguard the amenities of local residents and the wider environment during the construction phase.'

3. Within 1 month of the granting of this permission, a detailed phased landscaping scheme to include full planting stock specification and a detailed planting programme for the next 3 years shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the landscaping shall be carried out during the associated planting and seeding season(s), for each phase. Any trees or plants which 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.

**REASON:** To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features and in the interests of the character of the area and character of the AONB.

4. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (Alan Webb Engineering Consultant - Revision A, dated December 2009 approved under application W/10/02377/FUL), and the mitigation measure as detailed within this document.

**REASON:** To prevent flooding by ensuring the satisfactory storage of or disposal of surface water from the site.

5. No materials other than inert waste and topsoil shall be imported into and deposited on the site. There shall be no screening or processing of inert waste material on the site at any time.

**REASON:** To control the type of waste imported and to safeguard the amenities of local residents and the wider environment during the construction phase.

6. No operations relating to the formation of the raised platform, including HGV vehicles entering and leaving the site, shall take place except between the hours of 07.00 - 17:30 on Mondays to Fridays and 08.00 - 13.00 on Saturdays. No operations related to the formation of the raised platform shall take place on Sundays, Bank or Public Holidays.

**REASON:** To safeguard the amenities of local residents and the wider environment during the construction phase.

7. No more than 50 HGVs (heavy goods vehicles) associated with the importation of waste shall enter the site on any working weekday, and no more than 25 on Saturdays.

**REASON:** To limit the volumes of traffic in the interests of the amenity of residents on and near the approaches to the site and highway safety.

8. All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturer's specification at all times and shall be fitted with, and use, effective silencers. No reversing beepers or other means of warning of reversing vehicles shall be fixed to, or used on, any mobile site plant other than white noise alarms or beepers where noise levels adjust automatically to surrounding noise levels.

**REASON:** To safeguard the amenities of local residents and the wider environment during the construction phase.

9. During the permitted working hours the free-field equivalent continuous noise level (LAeq, 1 hour) for the period due to normal waste importing and depositing operations shall not exceed 55dB as recorded at the boundary of any inhabited property.

**REASON:** To safeguard the amenities of local residents and the wider environment during the construction phase.

10. No additional 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 have been submitted to and approved in writing by the Local Planning Authority. The lighting approved shall be installed and shall be maintained in accordance with the approved details.

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

**INFORMATIVE 1:**

The applicant's attention is drawn to the comments of the Environment Agency advising the tonnage authorised to be deposited under the existing permit has been reached. If further waste is to be deposited under this permit, a variation (from the Environment Agency) will be required.

**INFORMATIVE 2:**

The applicant's attention is drawn to the compliance clauses applicable to conditions relating to details in conditions 2 (material samples), 3 (submission of a programme of archaeological works),

**6 (submission of a CEMP), 7 (scheme for the reception of waste materials) and 17 (highway works)**

80 **Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.00 - 4.20 pm)

The Officer who has produced these minutes is Stuart Figini, Senior Democratic Services Officer of Democratic Services, direct line 01225 718221, e-mail [stuart.figini@wiltshire.gov.uk](mailto:stuart.figini@wiltshire.gov.uk)

Press enquiries to Communications, direct line (01225) 713114 or email [communications@wiltshire.gov.uk](mailto:communications@wiltshire.gov.uk)

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

14 DECEMBER 2022

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**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257**  
**THE WILTSHIRE COUNCIL HILPERTON 54 DIVERSION ORDER**  
**AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2022**

**Purpose of Report**

1. To:
  - (i) Consider the four objections to The Wiltshire Council Parish of Hilperton 54 Diversion Order and Definitive Map and Statement Modification Order 2022.
  - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (**SoSEFRA**) with a recommendation from Wiltshire Council that the Order is confirmed without modification.

**APPENDIX 1.** The made Order and Order Plan showing the existing route and proposed change.

**APPENDIX 2.** The decision report following the initial consultation on the proposal.

**APPENDIX 3.** The objections to the made Order in full.

**APPENDIX 4.** The officer's comments on the objections in full.

**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. On 26 April 2022 Wiltshire Council received an application to divert Footpath Hilperton 54 (HILP54) under Town and Country Planning Act 1990 Section 257 (TCPA s.257) to enable a permitted development to proceed.
4. HILP54 leads from Bridleway Hilperton 33, known as Middle Lane, heading northeast for approximately 315 metres to Footpath Trowbridge 54. The land over which is subject to planning permission to build 187 dwellings, means of access, landscaping, drainage, public open space and all other infrastructure. On 3 November 2021 the Strategic Planning Committee approved the officer recommendation to delegate authority to the Head of Development Management to grant planning permission with conditions for Planning Application 20/09701/FUL and the decision notice granting planning permission is dated 30 June 2022.

5. HILP54 currently leads across an open field but is affected by the consent to develop the site and will need to be diverted. The Order Plan (**Appendix 1**) shows the conflict of HILP54 with the properties on site.
6. Wiltshire Council conducted an initial consultation on the application dated 11 July 2022 with an end date of 5 August 2022. The consultation included the landowners, the applicant, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council's Member for Trowbridge Adcroft and Member for Hilperton, Trowbridge Town Council and Hilperton Parish Council. Two responses were received; Hilperton Parish Council did not object to the proposal, Wiltshire Council Member for Hilperton, Cllr Clark, did object. The relevant tests and objection received were duly considered in the decision report (**Appendix 2**). TCPA s.257 requires the order making authority to be satisfied that the diversion of the footpath is necessary to enable development to be carried out, in accordance with planning permission granted under part III of the 1990 Act. The proposed development lies directly over the legal line of HILP54; therefore, the development cannot continue without the successful diversion of the footpath. The legal test for diversion, as set out under TCPA s.257, has been met by this application. An Order was made on 23 August 2022 to divert the path as per the Order Plan (**Appendix 1**).
7. The Order was duly advertised on site and in The Wiltshire Times on 9 September 2022 and attracted four objections. These objections can be seen in full at **Appendix 3**. Officer's comments on the objections can be seen in full at **Appendix 4**.
8. Due to the objections received, the Order must be considered by the Western Area Planning Committee whose members should consider the legal test for diversion against the objections received, in order to decide whether Wiltshire Council continues to support the making of this Order. It is important that only the legislative test is considered, and it should be noted that the footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council.
9. Where the Authority continues to support its original decision to make this Order, it should be forwarded to the SoSEFRA for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or with modification.
10. Where the Authority no longer supports its original decision to make the Order, it may be withdrawn with reasons given as to why the legal test for diversion are no longer met. The making of a public path diversion order is a discretionary duty for the Council, rather than a statutory duty; therefore, the Order may be withdrawn at any time.

### **Main Considerations for the Council**

11. *Section 257 of the Town and Country Planning Act 1990*
  - (1) *Subject to Section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway 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.*

12. Objections can be seen in full at **Appendix 3**. Officer's comments on the objections can be seen in full at **Appendix 4**.
13. Wiltshire Council, as planning authority, has determined the planning application and granted this application on 30 June 2022, it now falls on Wiltshire Council, as surveying authority, to determine the diversion application based on the legal test. The footpath diversion application is not a second opportunity to object to the approved planning permission.
14. The diversion Order is made under TCPA s.257 and requires the order making authority to be satisfied that the diversion of the footpath is necessary to enable development to be carried out, in accordance with planning permission granted under part III of the 1990 Act. The proposed development of 187 residential homes lies directly over the legal line of HILP54, therefore the development cannot continue without the successful diversion of the footpath. The legal test for diversion, as set out under TCPA s.257, has been met by this Order.
15. Environmental concerns are considered when determining the planning application which has now been granted but is not relevant to the legal test for a TCPA s.257. The loss of the rural area is regrettable, but it is the granted development which will be urbanising what had previously been an open field so there is already an effect on the character of HILP54, the diversion of the right of way in isolation has no additional environmental impact.
16. The diversion deletes approximately 315 metres of path and adds approximately 369 metres, a minimal increase of approximately 54 metres which is not considered to be substantially less convenient to the public. The Wiltshire Council "Wiltshire Countryside Access Improvement Plan 2015 -2025 Rights of Way Improvement Plan 2" (CAIP), also sets out Wiltshire Council's access for all and the gaps, gates and stiles policy (policy 7, page 10), stating that "*disabled people should have equal opportunities to use public rights of way and the wider access provision where this is practical*" and the "*least restrictive option*" principle *needs to be applied when a new route is being created.*" The current route of HILP54 is a narrow and unsurfaced, the diversion route will have a recorded width of 2 metres, open and available to the public, with an all-weather hoggin surface, therefore improving the access for all; including the less able bodied, families with prams etc, for members of the public and for the residents of the 187 homes of the granted development.

### **Overview and Scrutiny Engagement**

17. Overview and scrutiny engagement is not required in this case.

### **Safeguarding Considerations**

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

### **Public Health Implications**

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

### **Corporate Procurement Implications**

20. In the event this Order are forwarded to the SoSEFRA there are a number of potential requirements for expenditure that may occur, and these are covered in paragraphs 24, 25 and 26 of this report.

### **Environmental and Climate Change Considerations**

21. There are no environmental or climate change considerations associated with this Order

### **Equalities Impact of the Proposal**

22. The proposed new route will be more accessible to anyone with mobility or visual impairments.

### **Risk Assessment**

23. There are no identified risks which arise from the confirmation of the making of this Order. The financial and legal risks to the Council are outlined in the "Financial Implications" and "Legal Implications" sections below.

### **Financial Implications**

24. 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 TCPA s.257. 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 may not be reclaimed from the applicant.
25. 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 decision. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is £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 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.

26. Where the Council no longer supports the making of the Order, it may resolve that the Order be withdrawn 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**

27. 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.
28. 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**

29. 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, 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**

30. Where an Order is refused Wiltshire Council must demonstrate that the development, for which a planning application has been granted, can be carried out without the need to divert the footpath. In this particular case the planning application was granted on 30 June 2022 with the granted development lying directly over the legal line of HILP54, therefore the development cannot continue without the successful diversion of the footpath. The legal test for diversion, as set out under Section 257 of the Town and Country Planning Act 1990, has been met.

## **Proposal**

31. That the Wiltshire Council Parish of Hilperton 54 Diversion Order and Definitive Map and Statement Modification Order 2022 be forwarded to the Secretary of State for the Environment, Food and Rural Affairs with the recommendation that it be confirmed as made.

### **Samantha Howell**

Director of Highways and Transport

Report Author:

**Ali Roberts**

Definitive Map Officer

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

None

### **Appendices:**

- Appendix 1 - Order and Order Plan
- Appendix 2 - Decision report for the making of the Order
- Appendix 3 - Objections in full
- Appendix 4. Officer's comments on the objections in full

**PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER**

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 257 AND WILDLIFE AND  
COUNTRYSIDE ACT 1981 – SECTION 53A(2)**

**THE WILTSHIRE COUNCIL HILPERTON 54 DIVERSION ORDER AND DEFINITIVE MAP  
AND STATEMENT MODIFICATION ORDER 2022**

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 footpath to which this order relates in order to enable development to be carried out in accordance with planning permission granted under Part 3 of the Town and Country Planning Act 1990, namely construction of up to 187 dwellings, means of access, landscaping, drainage, public open space and all other associated infrastructure as per planning application no. 20/09701/FUL.

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 Bradford and Melksham Rural District Council Area Definitive Map and Statement dated 1952 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 footpath over the land shown by a bold black line on the attached map and described in Part 1 of the Schedule to this order (“the Schedule”) shall be diverted, and the Bradford and Melksham Rural District Council Area Definitive Map and Statement dated 1952 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 footpath as provided in Part 2 of the Schedule and shown by bold black dashes on the attached map.
3. The diversion of the footpath shall have effect on the date on which Wiltshire Council certify that the terms of Article 2 above have been complied with and upon the occurrence of that diversion the Bradford and Melksham Rural District Council Area Definitive Map and Statement dated 1952 shall be modified by deleting from it the path or way referred to in paragraph 1 of this order and the path or way 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, the undertakers 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 attached this  
23 August 2022  
In the presence of:

}  
}  
}  
}

*Rebecca  
HPS*

Authorised Signatory  
Wiltshire Council



12346

## SCHEDULE

### PART 1

#### Description of site of existing path or way

The entire width of that length of footpath Hilperton 54, Elizabeth Way, Hilperton, Trowbridge, as shown by a bold black line on the attached plan leading from point A at OS Grid Reference ST 8661-5926 in a south-easterly direction for approximately 315 metres to point F at OS Grid Reference ST 8682-5903.

### PART 2

#### Description of site of alternative highway

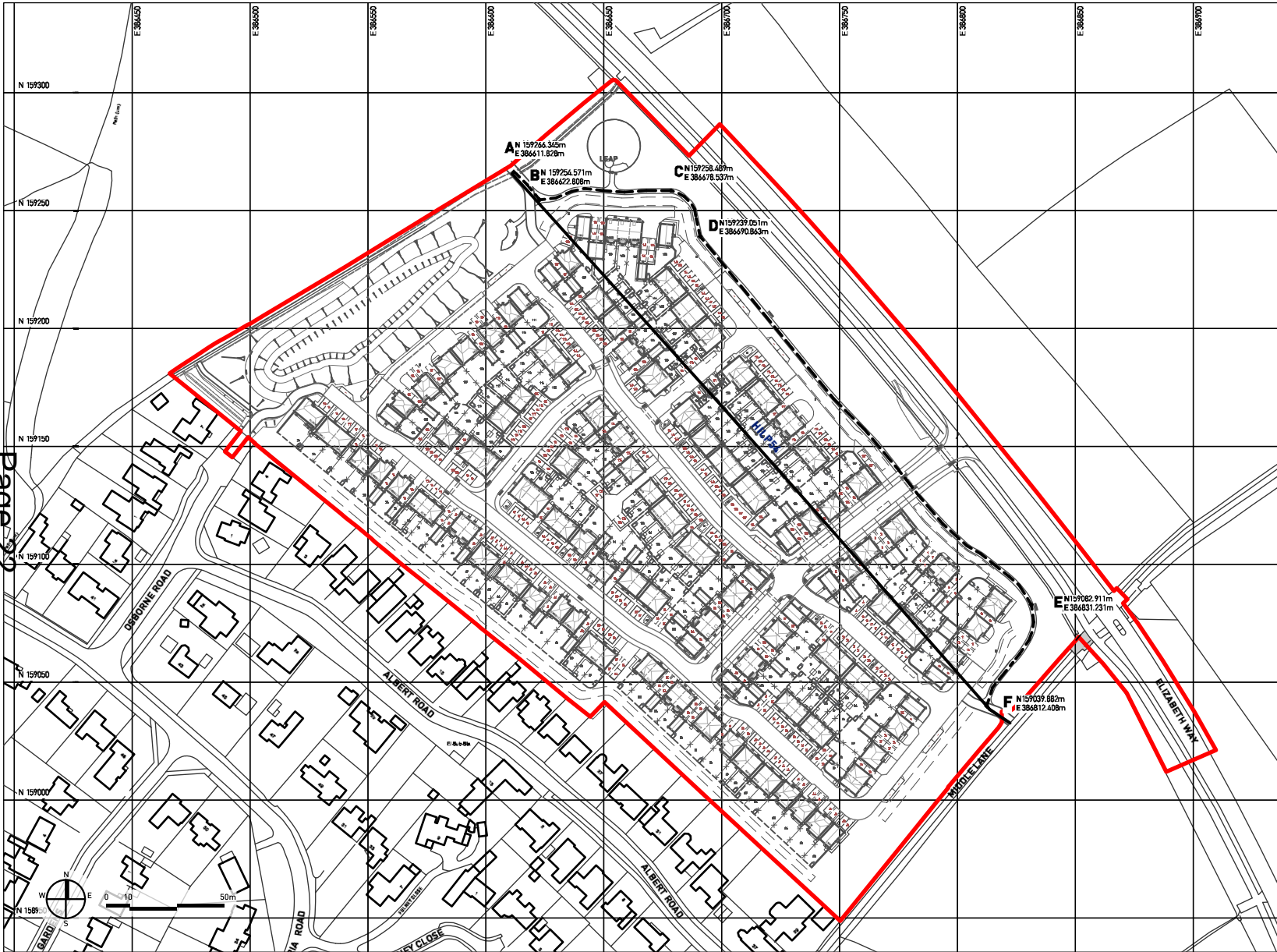
That length of footpath Hilperton 54, Elizabeth Way, Hilperton, Trowbridge as shown by a bold black dashed line on the attached plan leading from point A at OS Grid Reference ST 8661-5926, in a broadly south-easterly direction for approximately 364 metres to point F at OS Grid Reference ST 8682-5903, having a width of 2 metres.

## PART 3

### Modification of Definitive Statement

#### Variation of particulars of path or way

<u>Parish</u>	<u>Path No.</u>	<u>Modified Statement to read:-</u>	<u>Modified under Section 53(3) as specified</u>
Hilperton	54	<u>FOOTPATH.</u> From Footpath Hilperton 5 following the surfaced path through the open space in a broadly south-easterly direction to path Bridleway Hilperton 33, Middle Lane.  Approximate length 364 metres  Width 2 metres	53(3)(a)(i)



**KEY: PRoW DIVERSION**

- APPLICATION BOUNDARY
- UNAFFECTED LINE OF PATH
- SECTION OF PATH TO BE DIVERTED
- NEW PATH TO BE PROVIDED


**ELIZABETH WAY, TROWBRIDGE - PUBLIC RIGHT OF WAY DIVERSION [HILP54]**

**RECORD OF OFFICER DECISION**

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 257**

**AND SECTION 53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 – FOOTPATH HILPERTON 54**

**PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME**

<b>Name</b>	<b>Signature</b>	<b>Date</b>	<b>Approved Yes/No</b>
Sally Madgwick Definitive Map and Highway Records Manager		<b>16 August 2022</b>	<b>Approved</b>
Chris Clark Head of Local Highways	<b>Copy for information only</b>		
<b>From:</b>	Ali Roberts Definitive Map Officer		
<b>Date of Report:</b>	15 August 2022		
<b>Return to:</b>	Ali Roberts		

**Nature of Report:**

This is a report from Ali Roberts (Case Officer) to Sally Madgwick (Officer with the relevant delegated powers). The application to divert Footpath Hilperton 54 is made 26 April 2022. The associated planning application to this diversion is no. 120/09701/FUL was approved with conditions on 30 June 2022.

Section 257 of the Town and Country Planning Act 1990 requires the order making authority to be satisfied that the diversion of the footpath is necessary to enable development to be carried out, in accordance with planning permission granted under part III of the 1990 Act. The line of the existing footpath passes directly through the development site. It is therefore clearly necessary for the path to be diverted to allow the development to be carried out.

**Officer's Recommendation:**

That an order to divert Footpath Hilperton 54, is made under Section 257 of the Town and Country Planning Act 1990 and s.53 of the Wildlife and Countryside Act 1980, to divert the footpath affected by the development and Wiltshire Council to confirm the order if no representations or objections are received.

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 257**  
**AND SECTION 53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 –**  
**FOOTPATH HILPERTON 54**

**1. Application**

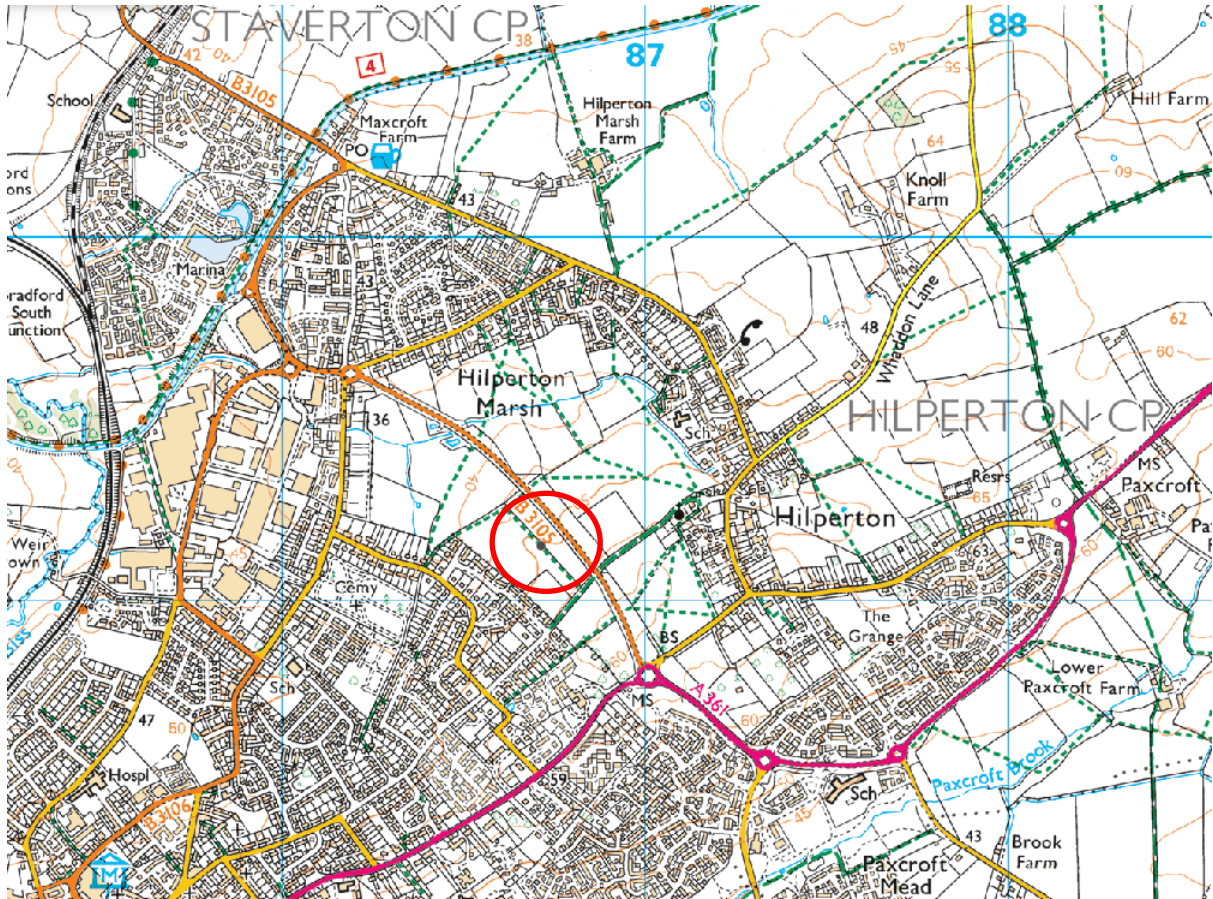
Application No: P/2022/08  
Application Date: 26 April 2022  
Applicant: BDW Trading Ltd (Barratt Bristol Division)  
Barratt House  
710 Waterwide Drive  
Aztec West  
Almondsbury  
Bristol BS32 4UD  
Planning Ref: 20/09701/FUL  
Location: Land at Elizabeth Way, Hilperton, Trowbridge  
Development: Construction of up to 187 dwellings, means of access, landscaping, drainage, public open space and all other associated infrastructure.  
Planning Decision: Approved with conditions 30 June 2022

**2. Relevance to Council's Business Plan**

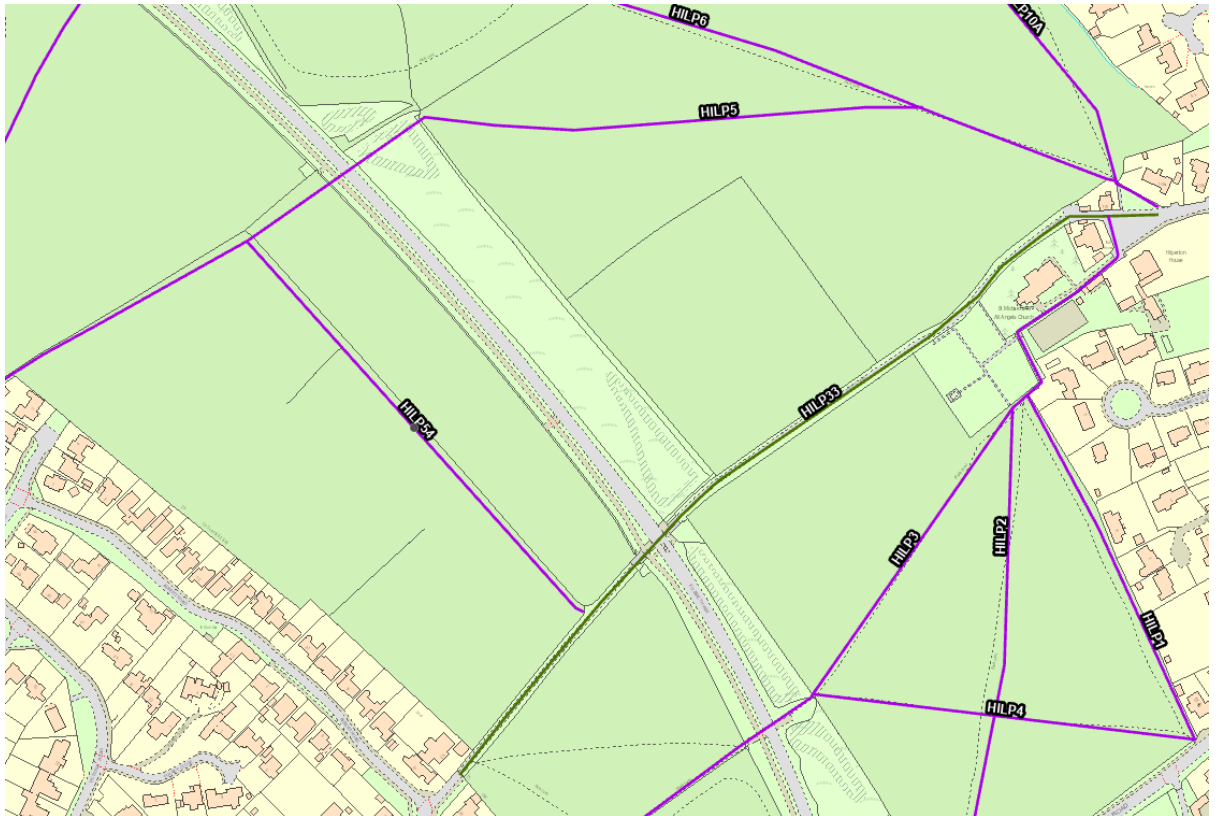
- 2.1 Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.



3. **Location Plan and working copy of the definitive map and definitive statement**



Hilperiton	54	<u>FOOTPATH</u> . From path No.5 leading south-east to path No.33, Middle Lane.  Approximate length 320 m.	relevant date  23rd December 1991
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### 3. Planning application and site plan

3.1. The Department for Environment Food and Rural affairs Rights of Way Circular 1/09 advises the following:

*7.2 The effect of development on a public right of way is a material consideration in the determination of applications for planning permission and local planning authorities should ensure that the potential consequences are taken into account whenever such applications are considered*

*7.3 Most outline planning applications do not contain sufficient information to enable the effect on any right of way to be assessed (and are not required to do so) and consequently such matters are usually dealt with during consideration of the matters reserved under the planning permission for subsequent approval.*

*7.8 In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be*

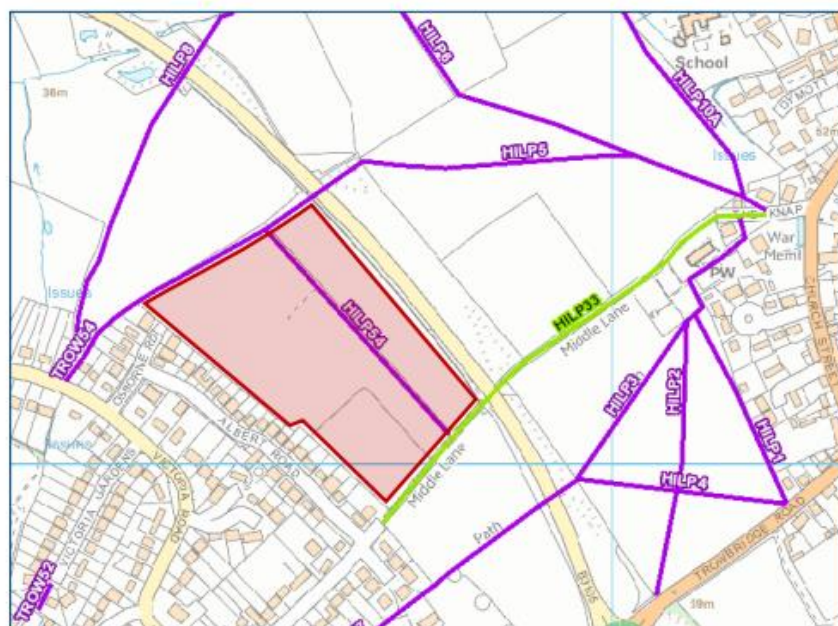
given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.”

- 3.2. The developer highlighted the need to deal with the rights of way within the site location in their travel plan of their planning application. “HILP54 is proposed to be improved and diverted as part of the development, which will retain its connection between TROW54 and Middle Lane (HILP33) allowing both routes to be accessed from the site.”

### 3.2 Public Rights of Way

- 3.2.1 A number of Public Rights of Way (PRoW) exist in the local area, including HILP54 which crosses the site, and HILP5 and HILP33 which bound the site to the north and south respectively. The PRoWs within close proximity to the site are shown in Figure 3.1.

Figure 3.1: Public Rights of Way



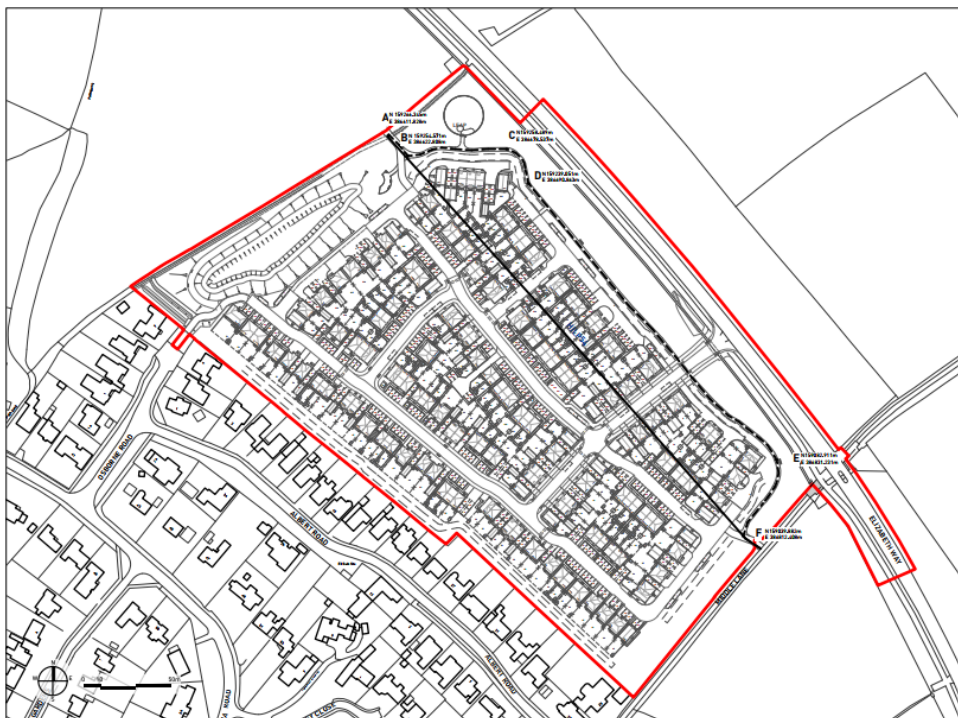
- 3.2.2 This includes a Bridleway along Middle Lane on the sites southern edge (HILP33), a public footpath along the sites northern edge (HILP5), and a public footpath through the site joining the other two paths (HILP54).

- 3.2.3 A diversion of HILP54 will be proposed as part of the development to ensure an alignment appropriate for the movement strategy for the site.

- 3.3. The site layout shows the diverted path through open space grassland to the northeast of the estate away from vehicular traffic.



## 5. Diversion Plan



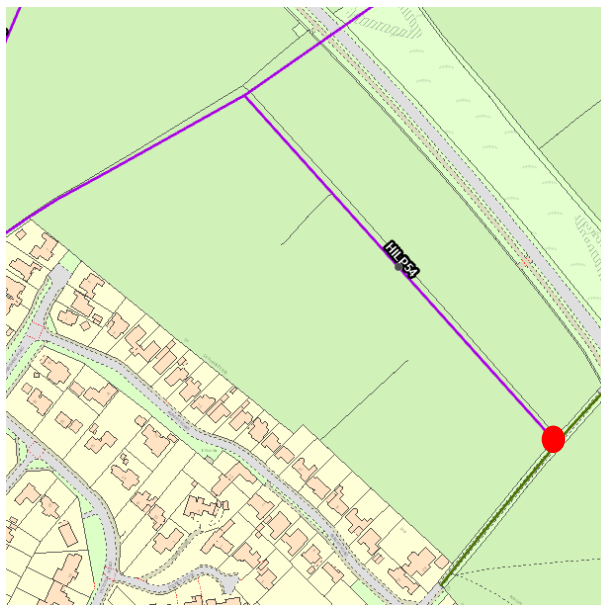
- 5.1 It is proposed to divert Footpath Hilperton 54 as shown by a bold continuous line to a new path as shown by a bold broken line on the plan.

## 6. Location Photograph

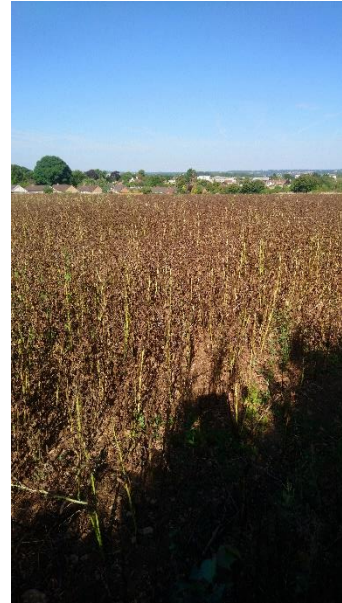
### 6.1 Aerial view



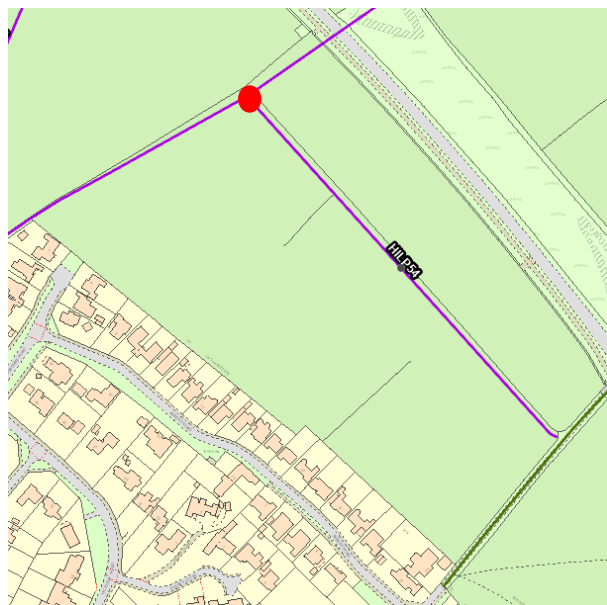
### 6.2 Current route of path



Kissing gate access to a crop field at the southeastern end of the path



Narrow field edge unsurfaced path enclosed by a tall hedgerow and a dead crop



The northwestern access on to TROW54 has no rights of way furniture at this point.

## 7. Registered Landowner and applicant

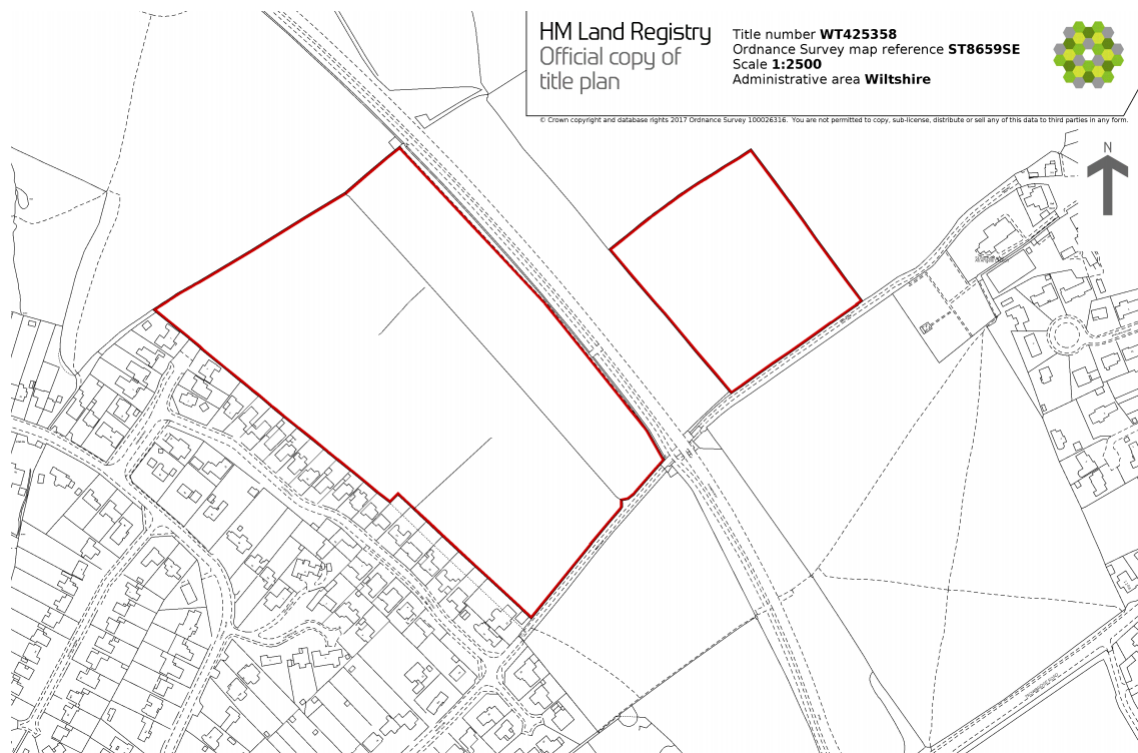
### 7.1 Landowners

Anthony Matthews  
Stables Cottage

Thrupp  
Kidlington  
OX5 1JY

Michael Fare Matthews  
14 Burton Street  
Loughborough  
LE11 2DT

Ian Robert Cradock  
255d Hill Street  
Hilperton  
BA14 7RS



## 7.2 Letter of consent



Stable Cottage  
Thrupp  
Kidlington  
OX5 1JY

Alex Winter  
Barratt Homes,  
Barratt House,  
710 Waterside Drive, Aztec West,  
Almondsbury,  
Bristol BS32 4UD




06.05.2022

ELIZABETH WAY, TROWBRIDGE PROW Diversion Application

Dear Alex,

We hereby consent to the permanent diversion of the section HILP54, crossing over land indicated in Official Copy (Title Plan) - WT425358 and as detailed in drawing P19-2592-22A-HILP54 PROW DIVERSION submitted in support of the Section 257 application by BBW Trading Ltd.

Yours sincerely,

A Matthews   
M F Matthews   
I R Cradock   
Trustees The Fare Trust

## 8. Legal Empowerment

- a. The application to divert Footpath Hilperton 54, is made under Section 257 of the Town and Country Planning Act 1990, which states:

***“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, bridleway or restricted byway 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.*



- (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, bridleway or restricted byway 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, bridleway or restricted byway;*
  - (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, bridleway or restricted byway 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; and*
  - (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.”*

b. Section 259 of the Act states:

**“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.*

- (2) *The Secretary of State shall not confirm any such order unless satisfied as to every matter of 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, bridleway or restricted byway 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.”*

c. Section 12 of the Growth and Infrastructure Act 2013 amends Part 10 of the Town and Country Planning Act 1990 (highways), as follows:

***“12. Stopping up and diversion of public paths***

- (1) *Part 10 of the Town and Country Planning Act 1990 (highways) is amended as follows.*
- (2) *In section 257 (footpaths, bridleways and restricted byways affected by other development: orders by other authorities), after subsection (1) insert-*

*“(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.”*
- (3) *In that section, in subsection (4)-*
  - (a) *omit the “and” following paragraph (a), and*
  - (b) *after paragraph (b) insert-*

*“(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.”*

(4) *In section 259 (confirmation of orders made by other authorities), after subsection (1) insert-*

*“(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.”*

(5) *In that section, in subsection (2), for “any such order” substitute “any order under section 257(1) or 258”.*

8.4 Previously it had only been possible to make an order under Section 257 of the Town and Country Planning Act 1990 where planning permission was already granted under part III of the 1990 Act, however the amendment of the 1990 Act under the Growth and Infrastructure Act 2013, also allows an order to be made where an application for planning permission has been made under part III of the 1990 Act and where, if the application is granted, it would be necessary to divert or extinguish the footpath in order to enable the development to continue. Any such order cannot be confirmed until full planning permission has been granted.

8.5 In this instance full planning application no. 20/09701/FUL was approved with conditions 30 June 2022.

## 9. **Background**

- 9.1. The application to divert Footpath Hilperton 54 is made by BDW Trading Ltd, under Section 257 of the Planning Act 1990 on 26 April 2022 and states “*To allow for the construction of the development as approved under planning application reference 20/09701/FUL.*”
- 9.2. The granted planning application no.20/09701/FUL, Land at Elizabeth Way, Hilperton, Trowbridge is for the construction of up to 187 dwellings, means of access, landscaping, drainage, public open space and all other associated infrastructure.

## 10. **Initial Consultation**

- 10.1. An initial consultation exercise was carried out on 11 July 2022, regarding the diversion proposal outlined within the application, with a closing date for all representations and objections to be received not later than 5:00pm on 5 August 2022.

### **“Town and Country Planning Act 1990 s.257 The Proposed Diversion of Footpath Hilperton 54**

*Wiltshire Council are in receipt of an application to divert Footpath Hilperton 54 in relation to planning applications 20/09701/FUL approved with conditions on 30 June 2022, the application is for construction of up to 187 dwellings, means of access, landscaping, drainage, public open space and all other associated infrastructure,. The proposal is to divert approximately 314 metres of the footpath from its current course shown on the attached plan with a bold continuous line leading to a new route shown with a bold dashed line. The diverted path will be approximately 369 metres with a width of 2 metres and have a porous, self-binding aggregate surface.*

*If you would like to make any observations or representations regarding the proposals, I would be very grateful if you could reply to me via email, no later than Friday 5 August 2022.”*

10.2. The consultation included the landowners, the applicant, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council’s Member for Trowbridge Adcroft and Member for Hilperton, Trowbridge Town Council and Hilperton Parish Council. The following consultation replies were received:

10.3. Statutory undertakers contacted:

Wessex Water

Scottish & Southern Electricity Networks

Wales and West Utilities

Openreach

National Grid

Linesearch

There was no plant located

10.4. Hilperton Parish Council :

*“This is to confirm receipt of your e-mail dated 8<sup>th</sup> July, in respect of the above proposal to divert Footpath Hilperton 54, and to say that Hilperton Parish Council does not object.”*

10.5. Cllr Clark

*“When will the required notices be displayed please”*

10.6. Officer’s response

*“This is the initial consultation on the application, an opportunity to look at the proposal and try to tackle any concerns that may arise before an Order is potentially made. The consultees include landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council Member for the area and the Parish or Town Council. In this case as the application is so close to the boarder of Trowbridge and Hilperton*

*I have included Cllr Kirk and yourself and Trowbridge Town Council and Hilperton Parish Council in this consultation.*

*If an Order is made the consultation on the Order will include the previous consultees, be advertised in the local paper and have notices posted on side. Any respondent to the initial consultation would be contacted to ask if they wish their representations to be carried forward as a duly made representation or objection.”*

10.7. Cllr Clark

*“I wish to FORMALLY OBJECT to the diversion of HILP54. I reserve the right to add to/amend my reasons at any later date.*

*The new route will be longer and less convenient to users. In addition, the diverted route will be close to the B3105 and thus be a less pleasant walk for users.*

*I presume that this is sufficient to ensure that the application must now be dealt with as an ‘opposed’ order. Please confirm receipt of this email”.*

10.8. Officer’s response

*This consultation is on the proposed application and is an opportunity to attempt to resolve any issues that may prevent objections to a made order.*

*This application is made under Section 257 of the Town and Country Planning Act 1990 and requires the order making authority to be satisfied that the diversion of the footpath is necessary to enable development to be carried out, in accordance with planning permission granted under part III of the 1990 Act. Do you have any suggestions for where the route could be diverted to that would alleviate your concerns as the development lies directly over Footpath Hilperton 54?*

*If an order is made to divert Footpath Hilperton 54 there is a 28 day consultation period where you will need to make an objection at that stage if you wish to. You will of course be included in the consultation list as a Wiltshire Councillor for the area and as an interested party who has already commented on the proposal”*

10.9. Cllr Clark

*“There is a planned road to the south-west of HILP54. If this road were moved north-east a short distance, it could follow the existing route of HILP54 and no diversion would be needed. The footpath diversion is therefore not necessary to enable development.*

*I understand that WC ‘may’, not ‘must’, make any such order. I cannot recall whether this site received ‘full’ or ‘outline’ planning permission”*

10.10. Officer’s response

*“Full planning permission has been granted, please see attached notice and site plan.*

*As stated in TCPA S.257 (1) “Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway 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 section 293A”. Wiltshire Council as planning authority has determined the planning application and granted this application on 30 June 2022, it now falls on Wiltshire Council as surveying authority to determine the diversion application based on the legal test.”*

10.11. Cllr Clark

*“You have my formal objection to your intention.”*

10.12. The suggestion to move the estate road north-east on to the definitive line of Footpath Hilperton 54 would mean that the right of way would not require diversion and the legal test of enabling development would not be met. However there are a number of reasons why this would not be the best course of action and detrimental to public access.

- Full planning permission has been approved with conditions 30 June 2022 with a number of homes to be built over the line of Footpath Hilperton 54.
- The Department for Environment Food and Rural affairs Rights of Way Circular 1/09 advises the following:

7.8 ... any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made-up estate paths through landscaped or open space areas away from vehicular traffic. To move the estate northeast resulting in the estate road being located on the current definitive line of Footpath Hilperton 54 is in direct conflict to this advice. However the diversion proposal will create an all weather path through open space to the northeast of the estate, avoiding vehicular traffic and is in accord with this advice.

- The estate road that has been suggested should be diverted on to the line of Footpath Hilperton 54 to avoid the need for a diversion is to be adopted highway. The diversion will result in an all weather path through public open space and the granted development includes the adopted estate road therefore this proposal will increase the amount of public access to the site.



Adopted highway plan showing the road coloured blue

## 11. Main Considerations for the Council

11.1. Section 257 of the Town and Country Planning Act 1990 requires the order making authority to be satisfied that the diversion of the footpath is necessary



to enable development to be carried out, in accordance with planning permission granted under part III of the 1990 Act. The line of the existing footpath pass directly through the development site. It is therefore clearly necessary for the path to be diverted to allow the development to be carried out.

- 11.2. Additionally, paragraph 7.15 of Circular 1/09 (Rights of Way Circular – Guidance for Local Authorities – DEFRA), advises that the disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally or to persons whose properties adjoin or are near the existing highway, should be weighed against the advantages of the order.
- 11.3. Hilperton Parish Council have stated that they have no objection to the proposed diversion.
- 11.4. There is currently no recorded width of Footpath Hilperton 54, the diversion of will benefit the public by adding a recorded definitive width of 2 metres. On the ground the route available is currently a narrow path of less than 1 metre. The application states the right of way will be 2 metres with a hoggin surface of porous self-binding aggregate therefore providing a greater extent of highway and an all weather route.
- 11.5. The diversion deletes approximately 315 metres of path and adds approximately 369 metres, a minimal increase of approximately 54 metres which is not considered to be substantially less convenient to the public.
- 11.6. There will be no additional furniture on the public right of way.
- 11.7. The character of the footpath will be altered by the development as the narrow unsurfaced path currently runs along a field edge between a dead crop and a tall hedgerow. It is proposed to divert the footpath to an all-weather surface path through the open space to the northeast of the estate.

- 11.8. It is considered reasonable that the diverted footpath should link with existing highway and the Rights of Way Law Review Practice Guidance Note 6, which deals with planning and public rights of way states:

*“10. Consider the boundaries of the application site and how paths can help integrate the development into the existing surrounding development or countryside. It is important that any new routes which will go to the edge of the site do join the public rights of way network or the adopted highway to avoid access and maintenance problems arising later.”* (Please note: The Rights of Way Law Review was a non-statutory committee which reviewed matters relating to public rights of way with the aim of agreeing consensus, bringing together a wide range of organisations. The Practice Guidance Notes provide practical advice and recommend working practices, they are advisory only but result from extensive discussions between principal interest groups.)

The planning application states *“There is existing pedestrian infrastructure around the site, including comprehensive provision throughout the existing neighbourhood to the north and south providing opportunities for future residents to access primary education, employment, retail and health facilities by foot”. “HILP54 is proposed to be improved and diverted as part of the development, which will retain its connection between TROW54 and Middle Lane (HILP33) allowing both routes to be accessed from the site.”*

- 11.9 Officers are satisfied that the diversion proposal meets the requirements of this guidance.

## **12. Safeguarding Considerations**

- 12.1 If an order to divert Footpath Hilperton 54, Wiltshire Council will follow procedures set out in Schedule 14 of the 1990 Act and in doing so Wiltshire Council will fulfil its safeguarding considerations

## **13. Public Health Implications**

- 13.1 None.

## 14. Environmental Impact of the Proposal

- 14.1 Environmental considerations were undertaken during the planning process. The character of the footpath will be altered by the development as it has previously been through an open field with the approval of the planning application the diversion of the right of way in isolation has no identified environmental impact.

## 15. Equalities Impact of the Proposal

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

- 15.2 The Disability Discrimination Act (DDA) is now superseded by the Equalities Act 2010, which places a duty upon all authorities as follows:

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

- 15.3 The protected characteristics include disability and the Act places a duty on authorities to make reasonable adjustments to avoid disadvantage. Section 149 of the Act details the “public sector equality duty” placed upon a public authority, to:

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

*(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*

*(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”*

15.4 Officers are satisfied that in the proposed diversion of Footpath Hilperton 54 meets Wiltshire Council’s duties under the equalities Act 2010. The diverted route will have a recorded width of 2 metres, open and available to the public, with an all-weather hoggin surface.

## **16. Risk Assessment**

16.1 As stated the character of the footpath will be altered by the development. However, the applicant has stated that there will be provision of a 2 metres all-weather surface path through the open space to the northeast of the estate.

## **17. Financial Implications**

17.1 The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permit authorities to make a charge in respect of the costs incurred in the making of a public path order and in respect of local advertisement on the making, confirmation and coming into operation of the order (the charges levied must not exceed the costs that are actually incurred by the authority).

17.2 The applicant has agreed, in writing, to meet the actual costs to the Council in processing the order, including advertising the making of the order in one local newspaper and should the order be confirmed, the cost of advertising the notice of confirmation of the order and certification of the new route in one local newspaper (i.e. three advertisements).

17.3 The applicant has also agreed, in writing, to meet any costs which may be incurred in bringing the new footpath into a fit condition for use by the public,

as required by the Council. If an order is made and confirmed by the Council, it will not take effect until it has been certified by Wiltshire Council that the diversion route has been made available to a suitable standard for use by the public.

- 17.4 If a diversion order is made under Section 257 of the Town and Country Planning Act 1990 and there are no objections to the making of the order, Wiltshire Council may itself confirm the order and there are no costs to the Council.
- 17.5 If there are outstanding objections to the order which are not withdrawn and the Council continues to support the making of the order, it must be forwarded to the Secretary of State for decision. The outcome of the order will then be determined by written representations, local hearing or local public inquiry. If the case is determined by written representations, the cost to the Council is negligible, however where a local hearing is held the costs to the Council are estimated at £200 - £500 and £1,000 - £3,000 where the case is determined by local public inquiry. There is no mechanism by which the Council may pass these costs to the applicant.
- 17.6 The making of an order is a discretionary power for the Council rather than a statutory duty, therefore a made order may be withdrawn at any time, up until the point of confirmation, if the Council no longer continues to support it, for example, where it is considered that the proposals no longer meet the legal tests as set out under Section 257 of the Town and Country Planning Act 1990.

## **18. Legal Considerations**

- 18.1. There is no right of appeal for the applicant where the Highway Authority refuses to make a public path order; however the Council's decision is open to judicial review.

- 18.2. If the Council does make an order and objections are received, where the Council continues to support the order it must be forwarded to the Secretary of State for decision which may lead to the order being dealt with by written representations, local hearing or local public inquiry. The Inspectors decision may be subject to challenge in the High Court.
- 18.3. The making of an order is a discretionary power for the Council rather than a statutory duty; therefore an order may be withdrawn at any time up until the point of confirmation, where the Council no longer continues to support the making of the order.

## **19. Options Considered**

- 19.1. (i) To refuse the application, if it is considered that the legal tests for diversion, as set out under Section 257 of the Town and Country Planning Act 1990, are not met, or
- (ii) To make a diversion order under Section 257 of the Town and Country Planning Act 1990, where planning permission is in place, and if no objections or representations are received, confirm the order as an unopposed order.

## **20. Reasons for Proposal**

- 20.1. Where an application is refused Wiltshire Council must demonstrate that the development, for which a planning application has been granted, can be carried out without the need to divert the footpath. In this particular case the proposed development lies directly over the legal line of Footpath Hilperton 54, therefore the development cannot continue without the successful diversion of the footpath. The legal test for diversion, as set out under Section 257 of the Town and Country Planning Act 1990, has been met.

## 21. Proposal

21.1. That:

**An order to divert Footpath Hilperton 54, is made under Section 257 of the Town and Country Planning Act 1990 and s.53 of the Wildlife and Countryside Act 1980, to divert the footpath affected by the development and Wiltshire Council to confirm the order if no representations or objections are received.**

Ali Roberts Definitive Map Officer

Date of Report: 15 August 2022

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**From:** [REDACTED]  
**Sent:** 29 September 2022 14:24  
**To:** [Roberts, Ali](#)  
**Cc:** [REDACTED]  
**Subject:** Objection - Public right of way diversion (Hilp 54)

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I wish to object to relocation of public right of way ( hilp 54 )

The application takes no account of the huge environmental damage that will be done on the removal of approx 315 Meters of mature hedgerow.

The removal of this shelter & food source for the remaining local wild bird , bat & insect population, will adversely affect the local eco system.

This directly contravenes the current Government's emphasis on protecting and enhancing biodiversity.

I insist there is full replanting of a new hedgerow to surround any rerouted foot path well in advance of any removal of existing mature hedgerows.

Early adoption of this mitigation action may help sustain our local biodiversity to survive in an area which is about to be devastated by over redevelopment.

Regards

Mr Mike Linham.

[REDACTED] Devizes road

Hilperton

Trowbridge

Wiltshire

BA 14 [REDACTED]

**From:** [REDACTED]  
**Sent:** 29 September 2022 21:59  
**To:** [Roberts, Ali](#)  
**Subject:** Objection to Wiltshire County Council Hilperton 54 Diversion Order

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[REDACTED]

As a Hilperton resident and a regular user of Footpath 54 I would like to object to the diversion of the said footpath. The position of the footpath at present is situated in a rural area with a feeling of little traffic pollution and relative peacefulness. The repositioning of the footpath parallel to the main road of Elizabeth Way is unacceptable. The whole purpose of these footpaths is for people to enjoy the peace and quite of the countryside. Repositioning this footpath next to a busy main road defeats the whole purpose. The footpath needs to remain where it is now along with the existing hedgerow housing many birds, insects and wildlife. Replacing it with tarmac pavements is unacceptable. Any building company/planners with any care for the environment should take into consideration existing wildlife and bird life habitats by working around them instead of destroying them and covering them with tarmac and concrete.

Kind regards  
Jane Linham  
Devizes Road  
Hilperton

## **Objection to Order to Divert Footpath 54, Elizabeth Way, Hilperton, Wiltshire**

I wish to object to the Order proposed by Wiltshire Council to divert the above footpath. I understand that the Council can make an Order to divert a public right of way under s.257 of the Town & Country Planning Act 1990 if they are satisfied that diversion is necessary to enable development to be carried out. I also understand that full planning permission has been granted for the development of land at Elizabeth Way, Hilperton Trowbridge and that the line of the footpath in its current location passes directly through the development site.

My objections to diverting the right of way are as follows:

### **Alteration to Character**

1. Diverting it to the new location would vastly alter the character of the right of way and remove the salient features which currently give it that character including the kissing gate at the southeastern end of the path. The existing footpath is characterised by the fact that it is a rural footpath running through a field alongside an established hedgerow. If it was diverted, its rural character would be lost.
2. The new footpath would be widened to a width of 2 meters and given an all weather gravel surface. The existing footpath is much narrower and has a natural earth surface. Rather than enhancing the footpath, the character of it would be irredeemably altered by these changes.
3. The current footpath is historic and part of a network of footpaths which characterise the local area. By closing and diverting this path, its history would be lost.

### **Safety**

1. The path would be closer to Elizabeth Way, a busy bypass where traffic is limited to 50mph but often exceeds that limit (as a home owner whose house is on the corner of Horse Road, I can bear witness to this). There are high volumes of traffic noise and pollution from this road which do not have an impact on users of the footpath in its current position. If diverted, the walker would be exposed to the dangers of high levels of pollution and traffic. The sound of birdsong which gives walking along the current footpath part of its appeal, would be lost.
2. The surface of the new path and the extended width would not necessarily improve the path. It could have a detrimental effect in that it may attract those riding bicycles or scooters and put dog walkers or ramblers at risk.
3. The Diversion Plan appears to show that the development's major entrance/exit road from Elizabeth Way would cut through the proposed route of the diverted footpath thus bringing users into contact with a busy traffic route.

### **Disadvantages to members of the public and/or occupants of local properties**

1. The new path would be 54 meters longer than the existing path which would cause substantial inconvenience to the public. These include more elderly or less infirm residents who frequently use the path to walk their dogs or as part of a short cut to Middle Lane and the Victoria Road area beyond.
2. Diverting the footpath would bring it nearer to my home and could potentially interfere with the views from the upper windows of my house and my privacy. The wide pavement on Elizabeth Way already attracts a large number of runners, cyclists, dog walkers and families out for walks and its creation has in itself, created a recreational area alongside a busy road. The site of the new footpath could, potentially, increase those numbers and may attract anti-social activity particularly after dark.

3. It is not in the overall interest of the local residents and members of the public to divert the footpath.
4. Hilperton Parish Council may have no objection to the proposed diversion but their view is not necessarily that reflected by those who live in the area.
5. A compromise could be reached with the developers whereby the existing footpath could remain in its current location with alterations made to the plans for positioning the houses and roads. If a compromise is possible, this should be considered as a viable alternative to diverting the footpath.

### **Environmental Impact**

1. It is stated in the report dated 15<sup>th</sup> August 2022 that the diversion of the right of way in isolation has no identified environmental impact.
2. I appreciate that this assessment is a result of the considerations undertaken at the time the planning process was undertaken. However the relocation of the path must, logically, have a significant impact on the environment as the diversion will remove the hedgerows which run alongside the existing footpath. These are crucial habitats for local populations of foxes, badgers, birds and other creatures. It is part of the ecostructure which underpins their survival. Underneath the hedgerows are deep ditches which again are an essential part of this habitat.
3. Hedgerows have no legal protection but many in the Hilperton area are hundreds of years old and have been used as boundaries for centuries. Hedgerows provide an essential source of insects and shelter for bats, birds and other mammals. If this extended section was removed, it is bound to reduce the supply of shelter and food for the bat and bird population.
4. The Trowbridge Bat Mitigation Strategy, produced by Wiltshire Council, confirms that the landscape around Trowbridge is home to three species of rare bat which are functionally linked to a protected site, namely the Bath & Bradford on Avon Special Area of Conservation.
5. In a survey conducted in the neighbouring village of Staverton in 2021, fifteen species of bat were recorded. An unofficial survey undertaken in the Whaddon Lane area in the summer of 2022 recorded the presence of 15 species of bats. Given that there are 18 species in total in the UK (with 17 known to breed), this is an area of significant and sensitive ecological importance. Bats have a large ariel network of feeding, roosting and breeding routes and to remove a large swathe of established hedgerow in order to divert a footpath is disproportionate to the damage this could cause to their environment.
6. Swifts, now on the red list of conservation concern, return to the area every summer. Again, I can testify to this as I watch them from both my front and back gardens. They rely on insects from trees and hedgerows for food.
7. I appreciate that the development has been granted planning permission but anything that can be done to mitigate the effect of it on the surrounding environment must be considered.
8. The diversion of a footpath may appear a trivial matter but must be considered within the context of the neighbourhood and its rural character and the environment it supports. The removal of an established line of hedgerow may not be considered of vast importance to the developers but if it can be retained it would help to mitigate the impact the overall development is going to have on the local environment.
9. Is it necessary to divert the footpath in order for the development to proceed? Has an alternative been considered? If an alternative was available, and surely this must be an option when houses and roads are yet to be built, it would not be necessary to divert the footpath and the development could still proceed. Have the developers been approached and invited to consider an alternative, bearing in mind the particularly ecological sensitivities of the area they will be developing?

**Liz Gwinnell**



**Horse Road, Hilperton, Trowbridge, Wiltshire**

**5th October 2022**

**From:** [REDACTED]  
**Sent:** 05 October 2022 15:29  
**To:** [Roberts, Ali](#)  
**Subject:** HILP54 diversion order

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**Public path diversion and definitive map and statement modification order.  
Town and Country Planning Act 1990 and Wildlife and Countryside Act 1981.  
The Wiltshire Council Hilperton 54 diversion and definitive map and statement  
modification order 2022.**

Dear Madam,

Having discussed the above order with other users of HILP 54, I wish to register my formal OBJECTION to the above order made by Wiltshire Council on 23<sup>rd</sup> August 2022. This objection is made in accordance with the advert in the Wiltshire Times dated 9<sup>th</sup> September 2022.

My first objection is that the proposed new path is less convenient to users than the existing path as it is considerably longer in length.

My second objection is due to the fact that the proposed new path will be less amenable to users as it will run alongside the busy B3105 (Elizabeth Way) thus exposing users to noise and odours/exhaust gases from passing vehicles.

I would point out that if the applicant re-designed their proposed housing plan for the site, the existing path, which is arrow-straight, could remain in place. Perhaps the hedge too could then be retained.

I reserve my right to amend/add to these reasons at a later date.

Can you please confirm the safe receipt of this objection.

Yours faithfully,

*E. Clark*

Ernie Clark,  
Wiltshire Councillor for Hilperton Division,

■ Stonelea,  
Hilperton,

**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257**  
**THE WILTSHIRE COUNCIL HILPERTON 54**  
**DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION**  
**ORDER 2022**

**Objections (in italics) and officer responses (in bold)**

Cllr Clark:

*“My first objection is that the proposed new path is less convenient to users than the existing path as it is considerably longer in length.”*

**The diversion deletes approximately 315 metres of path which is situated straight through people’s future homes and adds approximately 369 metres, a minimal increase of approximately 54 metres which is not considered to be substantially less convenient to the public. The current route of Footpath Hilpertont 54 (HILP54) is a narrow and unsurfaced, the diversion route will have a recorded width of 2 metres, open and available to the public, with an all-weather hoggin surface therefore improving the access for all; including the less able bodied, families with prams etc, for members of the general public and for the residents of the homes of the granted development.**

*“My second objection is due to the fact that the proposed new path will be less amenable to users as it will run alongside the busy B3105 (Elizabeth Way) thus exposing users to noise and odours/exhaust gases from passing vehicles.”*

**The diversion route is less than 45 metres closer to Elizabeth Way than the current definitive line and will be buffered by open space. The current route of HILP54 leads across an open field but with planning consent granted is to have homes built directly over the top of it.**

*“I would point out that if the applicant re-designed their proposed housing plan for the site, the existing path, which is arrow-straight, could remain in place. Perhaps the hedge too could then be retained.”*

**Wiltshire Council as planning authority has determined the planning application and granted this application on 30 June 2022, it now falls on Wiltshire Council as surveying authority to determine the diversion application based on the legal test. TCPA S.257 (1) “Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway 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. The granted development lies directly over the legal line of HILP54, therefore the development cannot continue without the successful diversion of the footpath.**

**The footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council.**

Mr Linham

*“The application takes no account of the huge environmental damage that will be done on the removal of approx 315 Meters of mature hedgerow.*

*The removal of this shelter & food source for the remaining local wild bird, bat & insect population, will adversely affect the local eco system.*

*This directly contravenes the current Government’s emphasis on protecting and enhancing biodiversity.*

*I insist there is full replanting of a new hedgerow to surround any rerouted foot path well in advance of any removal of existing mature hedgerows.*

*Early adoption of this mitigation action may help sustain our local biodiversity to survive in an area which is about to be devastated by over redevelopment”*

**This application is made under Section 257 of the Town and Country Planning Act 1990 (TCPA s.257) and requires the order making authority to be satisfied that the diversion of the footpath is necessary to enable development to be carried out, in accordance with planning permission granted under part III of the 1990 Act. The proposed development lies directly over the legal line of HILP54, therefore the development cannot continue without the successful diversion of the footpath. The legal test for diversion, as set out under TCPA s.257, has been met by this application.**

**Environmental concerns including the hedgerow issue is something that would have been considered when determining the planning application which has now been granted but is not relevant to the legal test for a TCPA s.257.**

**It is important that only the legislative test is considered. The footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council.**

Mrs Linham

*“As a Hilperton resident and a regular user of Footpath 54 I would like to object to the diversion of the said footpath. The position of the footpath at present is situated in a rural area with a feeling of little traffic pollution and relative peacefulness. The repositioning of the footpath parallel to the main road of Elizabeth Way is unacceptable. The whole purpose of these footpaths is for people to enjoy the peace and quiet of the countryside. Repositioning this footpath next to a busy main road defeats the whole purpose. The footpath needs to remain where it is now along with the existing hedgerow housing many birds, insects and wildlife. Replacing it with tarmac pavements is unacceptable. Any building company/planners with any care for the environment should take into consideration existing wildlife and bird life*



*habitats by working around them instead of destroying them and covering them with tarmac and concrete.”*

**Environmental concerns are considered when determining the planning application which has now been granted but is not relevant to the legal test for a TCPA s.257. The loss of the rural area is regrettable, but the development will be urbanising what had previously been an open field so there is already an effect on the character of the right of way. The development provides a surfaced path through open space to the northeast of the estate and an adopted paved estate road to the south west of the current definitive line of Footpath Hilperton 54. It is important that only the legislative test is considered. The footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council.**

Mrs Gwinnell

*“I wish to object to the Order proposed by Wiltshire Council to divert the above footpath.*

*I understand that the Council can make an Order to divert a public right of way under s.257 of the Town & Country Planning Act 1990 if they are satisfied that diversion is necessary to enable development to be carried out. I also understand that full planning permission has been granted for the development of land at Elizabeth Way, Hilperton Trowbridge and that the line of the footpath in its current location passes directly through the development site.*

**Mrs Gwinnell accepts that the legal test for diversion, as set out under Section 257 of the Town and Country Planning Act 1990, have been met by this application.**

*“My objections to diverting the right of way are as follows:*

*Alteration to Character*

- 1. Diverting it to the new location would vastly alter the character of the right of way and remove the salient features which currently give it that character including the kissing gate at the southeastern end of the path. The existing footpath is characterised by the fact that it is a rural footpath running through a field alongside an established hedgerow. If it was diverted, its rural character would be lost.”*

**The loss of the rural area is regrettable, but it is the granted development which will be urbanising what had previously been an open field so there is already an effect on the character of the right of way.**

2. *“The new footpath would be widened to a width of 2 meters and given an all-weather gravel surface. The existing footpath is much narrower and has a natural earth surface. Rather than enhancing the footpath, the character of it would be irredeemably altered by these changes”.*

**The right of way lies directly over the development site, it is the granted development that is changing the character of the right of way not the diversion.**

3. *“The current footpath is historic and part of a network of footpaths which characterise the local area. By closing and diverting this path, its history would be lost.”*

**Requirements on land where rights of way are situated can change therefore there are legal mechanisms in place to divert public rights of way within planning law, Town and Country Planning Act 1990 and highway law, Highways Act 1980.**

### *Safety*

1. *“The path would be closer to Elizabeth Way, a busy bypass where traffic is limited to 50mph but often exceeds that limit (as a homeowner whose house is on the corner of Horse Road, I can bear witness to this). There are high volumes of traffic noise and pollution from this road which do not have an impact on users of the footpath in its current position. If diverted, the walker would be exposed to the dangers of high levels of pollution and traffic. The sound of birdsong which gives walking along the current footpath part of its appeal, would be lost”.*

**The character of the footpath will be altered by the development as it has previously been through an open field with the approval of the planning application the diversion of the right of way in isolation has no additional environmental impact. The Order route is less than 45 metres closer to Elizabeth Way than the current definitive line.**

2. *“The surface of the new path and the extended width would not necessarily improve the path. It could have a detrimental effect in that it may attract those riding bicycles or scooters and put dog walkers or ramblers at risk.”*

**The Wiltshire Council “Wiltshire Countryside Access Improvement Plan 2015 -2025 Rights of Way Improvement Plan 2” (CAIP), also sets out Wiltshire Council’s access for all and gaps, gate and stile policy (policy 7, page 10), stating that “disabled people should have equal opportunities to use public rights of way and the wider access provision where this is practical” and the “least restrictive option” principle needs to be applied when a new route is being created.” The diverted route will have a recorded width of 2 metres, open and available to the public, with an all-weather hoggin surface therefore improving the access for all; including the less able bodied, families’s with prams etc, for members of the public and for the residents of the homes of the granted**

**development.**

3. *“The Diversion Plan appears to show that the development’s major entrance/exit road from Elizabeth Way would cut through the proposed route of the diverted footpath thus bringing users into contact with a busy traffic route.”*

**If HILP54 remained in its current location this would also be the case.**

*Disadvantages to members of the public and/or occupants of local properties*

1. *“The new path would be 54 meters longer than the existing path which would cause substantial inconvenience to the public. These include more elderly or less infirm residents who frequently use the path to walk their dogs or as part of a short cut to Middle Lane and the Victoria Road area beyond.”*

**The diversion deletes approximately 315 metres of path and adds approximately 369 metres, a minimal increase of approximately 54 metres which is not considered to be substantially less convenient to the public. The current route of HILP54 is a narrow and unsurfaced, the diversion route will have a recorded width of 2 metres, open and available to the public, with an all-weather hoggin surface therefore improving the access for all; including the less able bodied, families with prams etc, for members of the public and for the residents of the homes of the granted development.**

2. *“Diverting the footpath would bring it nearer to my home and could potentially interfere with the views from the upper windows of my house and my privacy. The wide pavement on Elizabeth Way already attracts a large number of runners, cyclists, dog walkers and families out for walks and its creation has in itself, created a recreational area alongside a busy road. The site of the new footpath could, potentially, increase those numbers and may attract anti-social activity particularly after dark”.*

**HILP54 is more than 500 metres from the address provided by Mrs Gwinnell. The footpath is likely to provide access to more people as there will be a new estate of 187 households.**

3. *“It is not in the overall interest of the local residents and members of the public to divert the footpath.”*

**The diversion will result in an all-weather path through public open space and the granted development includes the adopted estate road therefore this proposal will increase the amount of public access to the site. The current route of the footpath runs straight through residential homes and gardens of the granted development.**

4. *“Hilperton Parish Council may have no objection to the proposed diversion but their view is not necessarily that reflected by those who live in the area.”*

**Hilperton Parish Council is an elected local authority which aim to engage local people and respond to their needs. The Order has been advertised in the local paper and notices of the diversion have been placed on site. There are 4 individual (3 households in total) that have objected to this diversion.**

5. *A compromise could be reached with the developers whereby the existing footpath could remain in its current location with alterations made to the plans for positioning the houses and roads. If a compromise is possible, this should be considered as a viable alternative to diverting the footpath.*

**Wiltshire Council as planning authority has determined the planning application and granted this application on 30 June 2022. The diversion will result in an all-weather path through public open space and the granted development includes the adopted estate road therefore this proposal will increase the amount of public access to the site. It is important that only the legislative test is considered. The footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council**

#### *Environmental Impact*

1. *“It is stated in the report dated 15<sup>th</sup> August 2022 that the diversion of the right of way in isolation has no identified environmental impact.”*

**With the approval of the planning application to build 187 dwellings in a previously open field the diversion of the right of way in isolation has no additional environmental impact.**

2. *“I appreciate that this assessment is a result of the considerations undertaken at the time the planning process was undertaken. However, the relocation of the path must, logically, have a significant impact on the environment as the diversion will remove the hedgerows which run alongside the existing footpath. These are crucial habitats for local populations of foxes, badgers, birds and other creatures. It is part of the ecostructure which underpins their survival. Underneath the hedgerows are deep ditches which again are an essential part of this habitat.*
3. *Hedgerows have no legal protection but many in the Hilperton area are hundreds of years old and have been used as boundaries for centuries. Hedgerows provide an essential source of insects and shelter for bats, birds and other mammals. If this extended section was removed, it is bound to reduce the supply of shelter and food for the bat and bird population.*
4. *The Trowbridge Bat Mitigation Strategy, produced by Wiltshire Council, confirms that the landscape around Trowbridge is home to three species of rare bat which are functionally linked to a protected site, namely the Bath & Bradford on Avon Special Area of Conservation.*
5. *In a survey conducted in the neighbouring village of Staverton in 2021, fifteen species of bat were recorded. An unofficial survey undertaken in the Whaddon Lane area in the summer of 2022 recorded the presence of 15 species of bats. Given that there are 18 species in total in the UK (with 17*

known to breed), this is an area of significant and sensitive ecological importance. Bats have a large aerial network of feeding, roosting and breeding routes and to remove a large swathe of established hedgerow in order to divert a footpath is disproportionate to the damage this could cause to their environment.

6. Swifts, now on the red list of conservation concern, return to the area every summer. Again, I can testify to this as I watch them from both my front and back gardens. They rely on insects from trees and hedgerows for food.
7. I appreciate that the development has been granted planning permission but anything that can be done to mitigate the effect of it on the surrounding environment must be considered.
8. The diversion of a footpath may appear a trivial matter but must be considered within the context of the neighbourhood and its rural character and the environment it supports. The removal of an established line of hedgerow may not be considered of vast importance to the developers but if it can be retained it would help to mitigate the impact the overall development is going to have on the local environment.”

**Environmental concerns including the hedgerow issue you have raised is something that would have been considered when determining the planning application which has now been granted but is not relevant to the legal test for a TCPA s.257.**

9. *Is it necessary to divert the footpath in order for the development to proceed? Has an alternative been considered? If an alternative was available, and surely this must be an option when houses and roads are yet to be built, it would not be necessary to divert the footpath and the development could still proceed. Have the developers been approached and invited to consider an alternative, bearing in mind the particularly ecological sensitivities of the area they will be developing?*

**Wiltshire Council, as planning authority, has determined the planning application and granted this application on 30 June 2022, it now falls on Wiltshire Council as surveying authority to determine the diversion application based on the legal test. TCPA S.257 (1) “**Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway 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**”**

**It is important that only the legislative test is considered. The footpath diversion application is not a second opportunity to object to the planning permission which has been granted by Wiltshire Council.**

The officer sent the following email to Mr and Mrs Linham and Mrs Gwinnell and they all responded that they would not be withdrawing their objection

*“This application is made under Section 257 of the Town and Country Planning Act 1990 and requires the order making authority to be satisfied that*

*the diversion of the footpath is necessary to enable development to be carried out, in accordance with planning permission granted under part III of the 1990 Act:*

*“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, bridleway or restricted byway 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,*

*Where an application is refused Wiltshire Council must demonstrate that the development, for which a planning application has been granted, can be carried out without the need to divert the footpath. In this particular case the planning application was granted on 30 June 2022 with the proposed development lying directly over the legal line of Footpath Hilperton 54, therefore the development cannot continue without the successful diversion of the footpath. The legal test for diversion, as set out under Section 257 of the Town and Country Planning Act 1990, has been met by this application. I have attached the decision report explaining the reasons a diversion order has been made in full for your information.*

*Environmental concerns are considered when determining the planning application which has now been granted but is not relevant to the legal test for a TCPA s.257. The loss of the rural area is regrettable, but the development will be urbanising what had previously been an open field so there is already an effect on the character of the right of way. The development provides a surfaced path through open space to the northeast of the estate and an adopted paved estate road to the south west of the current definitive line of Footpath Hilperton 54*

*I wondered if after consideration of the information provided in this email and the attached decision report you might be minded to withdraw your objection to this order? If any objections are not withdrawn then Wiltshire Council cannot confirm the order and it must be referred to the Secretary of State who will appoint an inspector from The Planning Inspectorate to determine the order. Before sending the order to the Secretary of State it will go before Wiltshire Councils Western Area Planning Committee to determine what recommendation is attached to the order when sent to the Secretary of State. At the Planning Committee stage you will have the opportunity to address the committee and present your case. Again if the order is objected to and it reaches the Secretary of State they will decide whether to determine the order via written representations, a public hearing or a public inquiry, you will once again have the opportunity to present your case either in person and or in written form”.*

BDW Trading Ltd, the applicant, response to the objections

*“It is BDW Trading Ltd’s position that consent 20/09701/FUL necessitates the diversion of HILP54. The diverted route provided is a suitable alternative.”*

**Wiltshire Council**  
**Western Area Planning Committee**  
**14<sup>th</sup> December 2022**

There are no Planning Appeals Received between 14/10/2022 and 02/12/2022

Planning Appeals Decided between 14/10/2022 and 02/12/2022

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
20/10353/FUL	37A Monkton Farleigh Bradford-on-Avon Wiltshire, BA15 2QD	Monkton Farleigh	Erection of replacement dwelling	WAPC	Written Reps	Approve with Conditions	Dismissed	18/10/2022	Appellant applied for Costs - <b>REFUSED</b>
PL/2021/06613	3 Market Place Warminster, Wiltshire BA12 9AY	Warminster	Replacement upper storey windows (retrospective) and replacement shopfront	DEL	Written Reps	Refuse	Dismissed	20/10/2022	None
PL/2021/09635	Land rear of 39 Woodrow Road, Melksham, SN12 7AY	Melksham	Erection of new dwelling	DEL	Written Reps	Refuse	Dismissed	21/11/2022	None
PL/2021/09894	The Paddock, Hill Road, Sutton Veny, BA12 7AT	Sutton Veny	The erection of a dwelling and associated works	DEL	Written Reps	Refuse	Dismissed	17/10/2022	None

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## REPORT FOR WESTERN AREA PLANNING COMMITTEE

Date of Meeting	14 December 2022
Application Number	PL/2022/07194
Site Address	Ivy Lodge, Lower Woodrow, Forest, Melksham, SN12 7RB
Proposal	Proposed two storey extension to Ivy Lodge
Applicant	Ms. J Ayliffe
Town/Parish Council	Melksham Without Parish Council
Electoral Division	Melksham Without North & Shurnhold ED – Cllr Phil Alford
Grid Ref	392-165
Type of application	Householder Planning Permission
Case Officer	Jonathan Maidman

### Reason for the application being considered by Committee

In accordance with the Council's Scheme of Delegation Specific to Planning', this application is brought to the area planning committee at the request of Cllr Phil Alford, based on the following:

*"The building is to provide additional accommodation to support the business".*

### 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 planning considerations and to recommend that the application should be refused.

### 2. Report Summary

The main issues discussed in the report are as follows:

- Principle of development
- Size, design, and impact on the building itself and appearance of the area
- Neighbour amenity
- Parking

### 3. Site Description

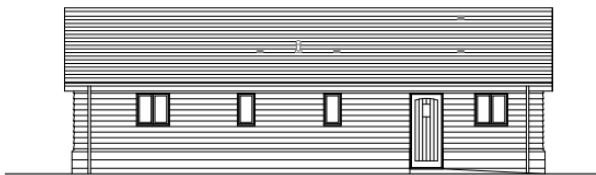
The application site is located in the open countryside and is accessed off the south side of the Lower Woodrow Road, to the north-east of Melksham. The surrounding area is characterised by hedged fields of varying heights interspersed with agricultural land and commercial and private equestrian holdings.

The applicant runs an equestrian business from the application site, which includes a range of buildings including two stable blocks with large loose boxes for foaling broodmares or horses

undergoing rehabilitation, a horse walker, a lunge pen, turn out paddocks, a solarium, wash down areas, indoor treatment areas, a hay barn, tack rooms, feed rooms and restrooms, a large riding arena, and an equestrian worker's dwelling. The plan below shows the layout of the site:



The application being reported to the elected members specifically relates to the existing 96sqm single storey dwelling, which is illustrated below, which was approved by the Council in March 2020 under application 19/11574/FUL and is subject to a restricted occupancy condition.



EAST ELEVATION

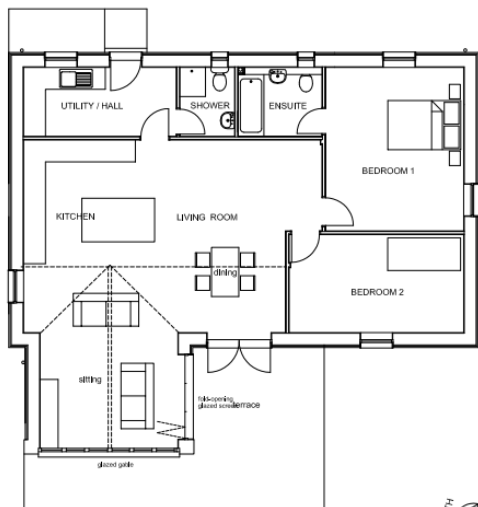


NORTH ELEVATION

PROPOSED MATERIALS-  
 Roof - Natural Slates.  
 Walls- Timber Horizontal Boarding over Beck Golden Buff Stone Plinth.  
 Joinery- Old English White Painted Timber.



WEST ELEVATION

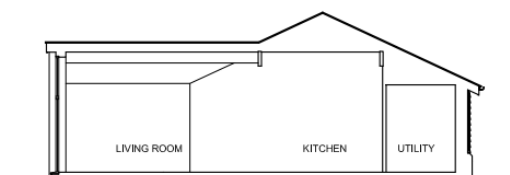


GROUND FLOOR PLAN

Gross Floor Area - 96 sq.m.



SOUTH ELEVATION



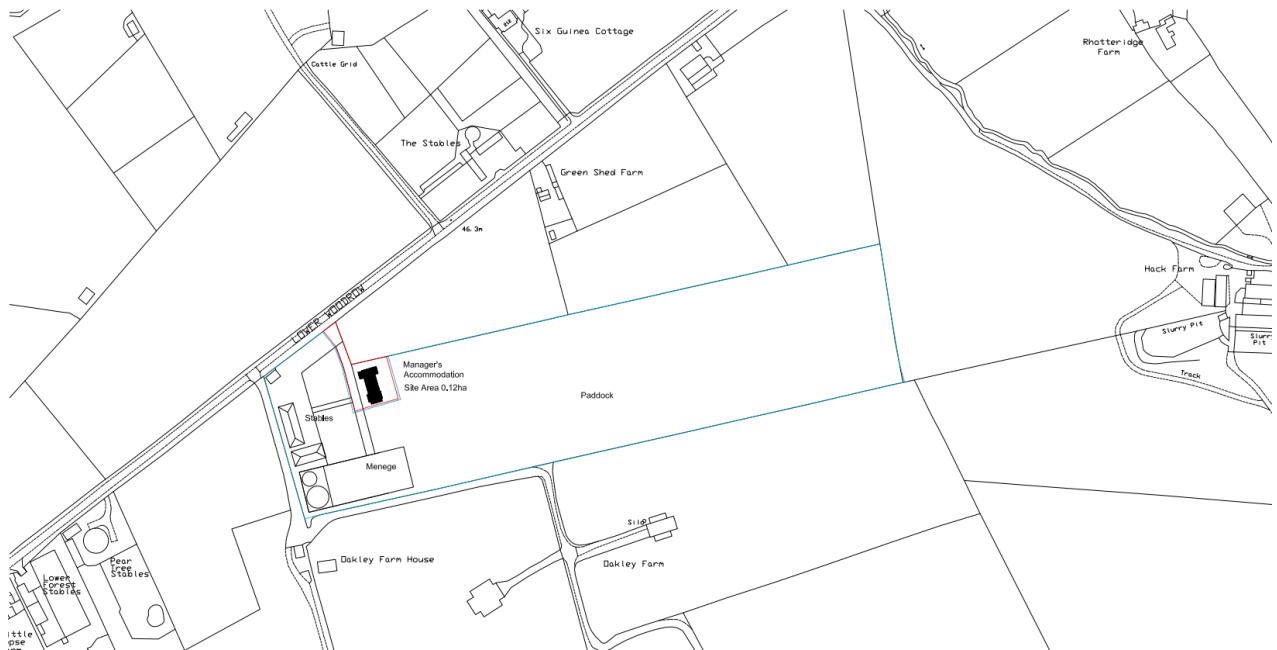
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The bungalow shown above has a pitched roof and comprises 2 bedrooms (one with an en-suite), an open plan living room, kitchen and dining area, a shower room and a utility room.

The building is clad in timber with a slate roof.

The below insert illustrates the application site and its local context and includes land owned by the applicant (outlined in blue).



#### 4. Planning History

- 16/08205/FUL: Erection of replacement equestrian stable block and temporary manager accommodation on existing equestrian use site - **Approved**. This permission was subject to a total of 19 conditions including condition 13 which stated, "the dwelling hereby permitted shall be removed and its use discontinued, and the land restored to its former condition on or before 18 November 2019."
- 19/11574/FUL: Permanent retention of equestrian worker's dwelling (approved under 16/08205/FUL for a temporary period) - **Approved**.

Note: This permission was subject to a total of 6 conditions including the following conditions which are relevant to the current planning application:

##### **Condition 2**

***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 the dwelling 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.***

##### **Condition 3**

**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.**

- PL/2022/05827: Proposed two storey extension to Ivy Lodge - **Withdrawn** in August 2022. This application was withdrawn after the case officer raised concerns about the size and bulk of the proposed extension.

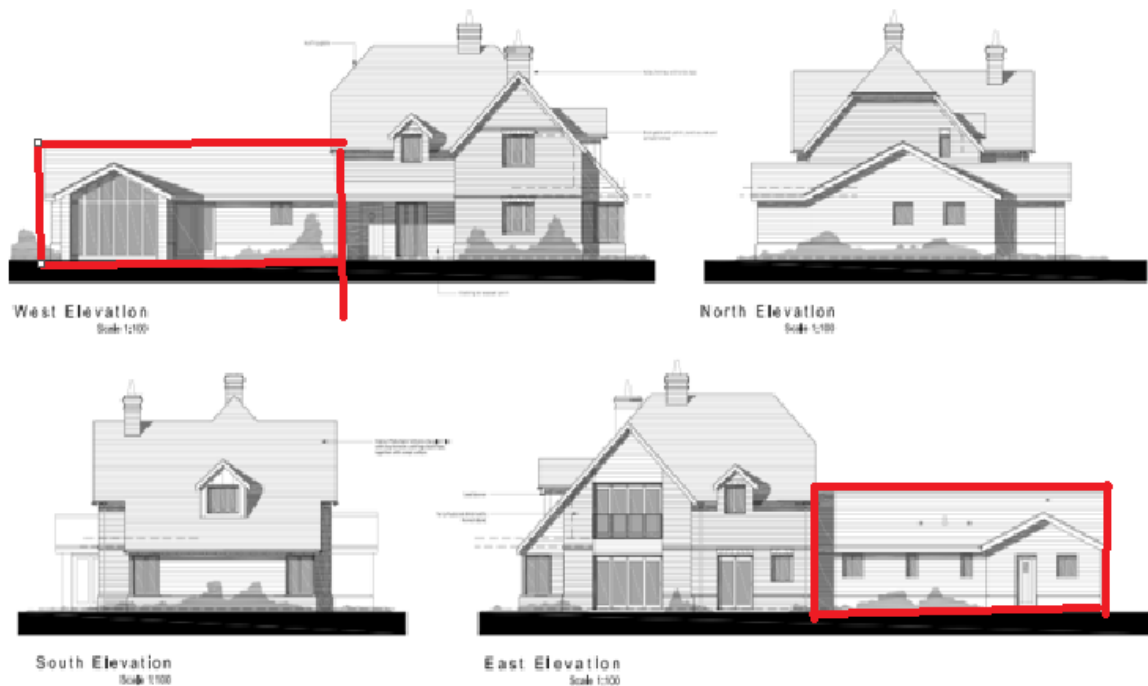
Note: The plans for the current application are identical to the plans of the withdrawn application.

## 5. The Proposal

This application seeks planning permission to erect a two-storey extension onto the southern elevation of the existing bungalow.

The proposed elevational plans are reproduced on the next page, which reveals the existing approved single storey structure identified in red.

As set out by the terms of the approved 2019 application, the property does not benefit from any permitted development rights for extensions.



In addition to the proposed 110 sq.m two storey extension to be constructed off the existing south gable elevation, an 11 sqm single storey extension is also proposed on the eastern elevation of the existing bungalow.

The nearest 'neighbouring' residential property is Oakley Farmhouse, which is approximately 100 metres to the south.

In support of the application, the applicant has argued the following:

*The consented dwelling does not provide a family sized house with facilities for grandparents, children, and grandchildren to stay. The existing dwelling is a bungalow design giving the appearance of a chalet type holiday home and does not reflect the surrounding properties.*

*It provides one room for cooking, eating and living with two bedrooms whereas the proposed house is a storey and a half with the design and size of other dwellings with a tie in the locality. Examples being: Oakley Farm, Oatley Farm, Hack Farm and Owl Lodge.*

*The proposal provides an additional living space on the ground floor and only one addition bedroom [and would create a] three-bedroom house with a floor area similar to the above examples.*

*This would provide a dwelling for me an any other rural worker with a home that is necessary for a close-knit generational family”.*

## **6. Planning Policy**

### National Planning Policy Framework (NPPF)

Chapter 2. Achieving sustainable development; 4. Decision-making 12. Achieving well-designed places; and 15. Conserving and enhancing the natural environment

### Wiltshire Core Strategy (WCS)

Core Policy 1: Settlement Strategy; Core Policy 2: Delivery Strategy; Core Policy 15: Melksham Community Area; Core Policy 48: Supporting Rural Life; Core Policy 51: Landscape; Core Policy 57: Ensuring High Quality Design and Place Shaping; and Core Policy 64: Demand Management

### Wiltshire Local Transport Plan 2011-2026 Car Parking Strategy

## **7. Summary of consultation responses**

Melksham Without Parish Council: No objection.

WC Highways Department: The site is able to provide at least 3 car parking spaces, therefore, no highway objection is raised.

## **8. Publicity**

The application was advertised by neighbour notification and no third-party responses were received.

## **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.

### **9.1 Principle of Development**

9.1.1 The site is located outside of a settlement boundary and is therefore in the open countryside as far as the adopted Plan is concerned. The application proposal however relates to an existing approved dwelling, and although conditions were imposed to remove permitted development rights under the 2019 application, there is no objection to the principle of extending the existing bungalow.

The following section critically assesses the merits of the proposed size and design of the extension – which are considered the most important determining factors.

## 9.2 The Size, Design, and Visual Impacts of the Proposed Extension

9.2.1 There is no dispute that there is an essential functional need for the applicants to occupy the single storey dwelling which was approved and constructed in recent years following the granting of application 19/11574/FUL. There is also no prescriptive national or adopted local policy for Wiltshire that sets a size or floor plan threshold for a rural worker's dwelling. Officers maintain that every application should instead be tested on its own merits and be subject and assessment of the adopted Wiltshire Core Strategy (WCS) and any other material considerations.

9.2.2 Adopted WCS Core Policy 48 explains the approach that will be taken to support rural communities, outside the limits of development of Principal Settlements, Market Towns, Local Service Centres and Large Villages and outside the existing built areas of Small Villages. The policy is based on some key objectives, the first of which is to “*protecting the countryside and maintain its local distinctiveness*”.

9.2.3 Adopted WCS Core Policy 51 moreover states that all new development should protect, conserve and where possible enhance landscape character and it must not have a harmful impact upon landscape character and any negative impacts must be mitigated through sensible design and landscape measures.

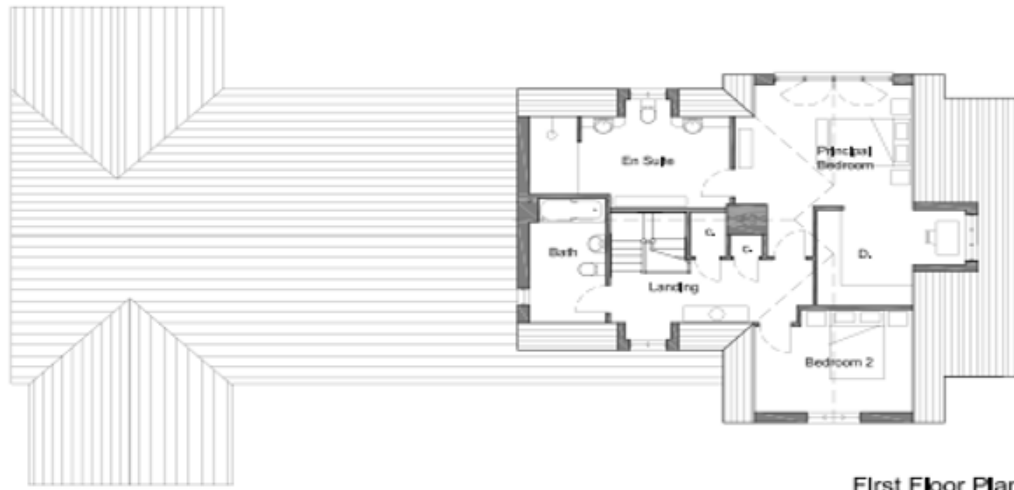
9.2.4 Adopted WCS Core Policy 57 requires a high standard of design in all new development that must respond positively to the existing characteristics and landscape features in terms of, amongst others, building line, plot size and streetscape, to effectively integrate the new development with its setting.

9.2.5 In support of the application proposal, the applicant argues that some of the proposed extension is required to support the management and running of the equestrian business with an extended utility/boot room in the proposed single storey extension and an office at ground floor in the two-storey extension.

9.2.6 The following insert reveals the proposed extended floor plan of the dwelling and from the details submitted, officers do not consider the two-storey extension that would more than double the size of the footprint of the existing rural worker's dwelling, to be justified. In addition to having a dining and sitting room, a 60sqm drawing room is proposed and at the first-floor level, 75 sqm of additional floorspace would be provided to create a large landing area, additional bathroom, and 35sqm of floor space being dedicated to another bedroom with an en-suite and dressing area.



Ground Floor Plan



First Floor Plan

9.2.7 The existing dwelling has an agrarian modest design and form with a low-pitched roof. The following photographs (taken within the site) show the front and rear elevations of the existing dwelling, which are followed by photographs showing one of the stable buildings behind:

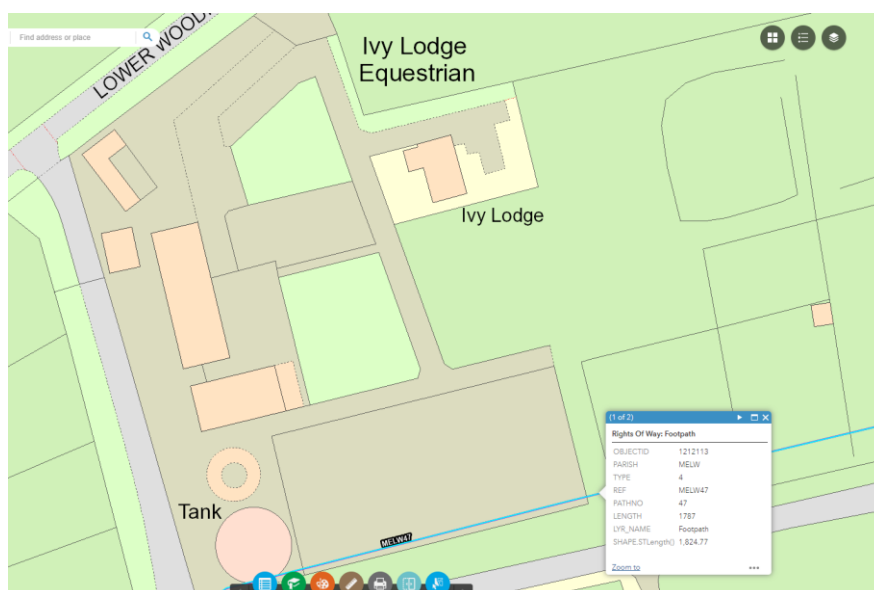


9.2.8 The existing dwelling has limited visual impact upon the wider landscape character and assimilates well with the existing single storey associated equestrian related outbuildings. As illustrated below, the site photo (which was taken in late November) illustrates the roof of single storey property being visible from the Lower Woodrow highway which is taken near the applicant's site entrance:



9.2.9 The proposed extension would represent a significant increase in terms of added bulk to the existing dwelling and would more than double the floor area. The proposed elevations would not be subservient to the existing property and would considerably change the visual relationship of the existing property with the equestrian outbuildings and rural setting.

9.2.10 The proposal would in turn make the dwelling significantly more prominent when viewed from the public domain including the road (particularly at the entrance) and from the MELW47 Public Rights of Way Footpath which runs parallel to the site's southern boundary as shown below:





9.2.11 The existing bungalow and the associated equestrian outbuildings are visible from extensive sections of the footpath as the following photographs illustrate:



9.2.12 The two-storey extension would dominate the existing dwelling and significantly change the appearance of the modest existing bungalow in public view, particularly at the entrance to the site

and from the footpath to the south. The scale and bulk of the proposed extension would completely subsume the host building, and consequently would not 'respond positively' to the existing built form, massing, scale and design of the host property, contrary to adopted WCS Core Policy 57.

9.2.13 The proposal would not be readily identifiable as a later subservient addition to the dwelling and would instead appear as an incongruous addition which would unbalance and adversely change the simple character and appearance of the host building.

9.2.14 The proposal is thus found to be contrary to CP57 in the WCS and the provisions of paragraphs 126, 130 and 134 of the National Planning Policy Framework which requires development to be of a high-quality design which is sympathetic to local character.

9.2.15 Whilst officers have had regard to the justification provided by the applicant (as quoted within section 5 of this report, the proposal is not supported and is recommended for refusal. Notwithstanding the applicant's own submission to support this application, it is necessary to reference the supporting submissions made when the applicant applied for permission in 2019. Within paragraph 6.5 of the Planning Statement (dated November 2019) to support application 19/11574/FUL, the size of the dwelling was "*commensurate with the needs of the business and suitable for the locality, having regard to its height, scale, appearance and landscaping*".

9.2.16 To support the two -storey addition, the applicant's agent has made numerous references to extensions which could be undertaken as 'permitted development', however as detailed in the planning history, condition 2 imposed upon 19/11574/FUL removed permitted development rights for additions and extensions.

9.2.17 To further support the application, the applicant and their appointed agent, have also referred to several nearby dwellings in the vicinity of the site and some further afield which are larger than Ivy Lodge and have been extended. Some of the examples relate to buildings which have an agricultural/equestrian/forestry tie, whilst some do not. Whilst the examples have been considered by officers, each application must be assessed on its own merits. None of the cited examples have exactly the same site characteristics. Furthermore, none of the shared examples relate to a single storey dwelling being extended with a two-storey addition that more than doubles the floor plan area. In the interests of keeping the applicant, agent, and local Cllr fully informed, the officer concerns were shared, and all were advised that officers would not be supporting this application, and given the call-in request, it would be reported to the elected members of the western area planning committee.

9.2.18 Notwithstanding the significant concerns raised about the two-storey extension, there is no objection to the proposed single storey extension. However, since local planning authorities cannot issue split decisions, this application is recommended for refusal on the basis that the two-storey addition is unacceptable in planning terms.

### **9.3 Neighbour Amenity Impacts**

9.3.1 The nearest residential dwelling to Ivy lodge is Oakley Farmhouse, which is located approximately 100 metres to the south. Due to the separation distance, the proposal would not have an adverse impact on the living conditions of neighbouring residents in terms of overlooking or loss of privacy.

### **9.4 Parking Impacts**

9.4.1 The proposed enlarged dwelling would have one additional bedroom and no objection has been raised by the Council's highway officers. It is accepted that there would be sufficient space to park at least 3 vehicles on the existing hard surfaced area within the curtilage of the dwelling.

## **10. Conclusion (The Planning Balance)**

The proposal is not considered to comply with relevant policies of the adopted Wiltshire Core Strategy and the NPPF, and accordingly it is recommended for refusal.

### **11. RECOMMENDATION: Refuse for the following reason:**

The proposed development by virtue of its scale and bulk would dominate and change the appearance of the existing bungalow in public views, particularly at the entrance into the site and from the footpath to the south. The proposal would not be identifiable as a subservient addition to the dwelling and would instead appear as an incongruous addition which would subsume, unbalance, and adversely alter the simple agrarian character and appearance of the host building. No substantive evidence has been submitted to justify the proposal for commercial reasons.

The application is not in accordance with section 2 - Achieving sustainable development (paragraph 8c), section 12 - Achieving well-designed places (paragraphs 126, 130 a), b), c) and d), and 134) of the National Planning Policy Framework, and is contrary to the adopted Wiltshire Core Strategy and in particular would conflict with the Council's policy approach to 'Protecting the countryside' (as set out within bullet point 1 of para.6.66 supporting Core Policy 48). The development would also conflict with Core Policies 51 and Core Policy 57 of the adopted Wiltshire Core Strategy – which requires a high standard of design for new development, and to respond positively to existing built forms, as well as massing, scale and design.

### **Informative**

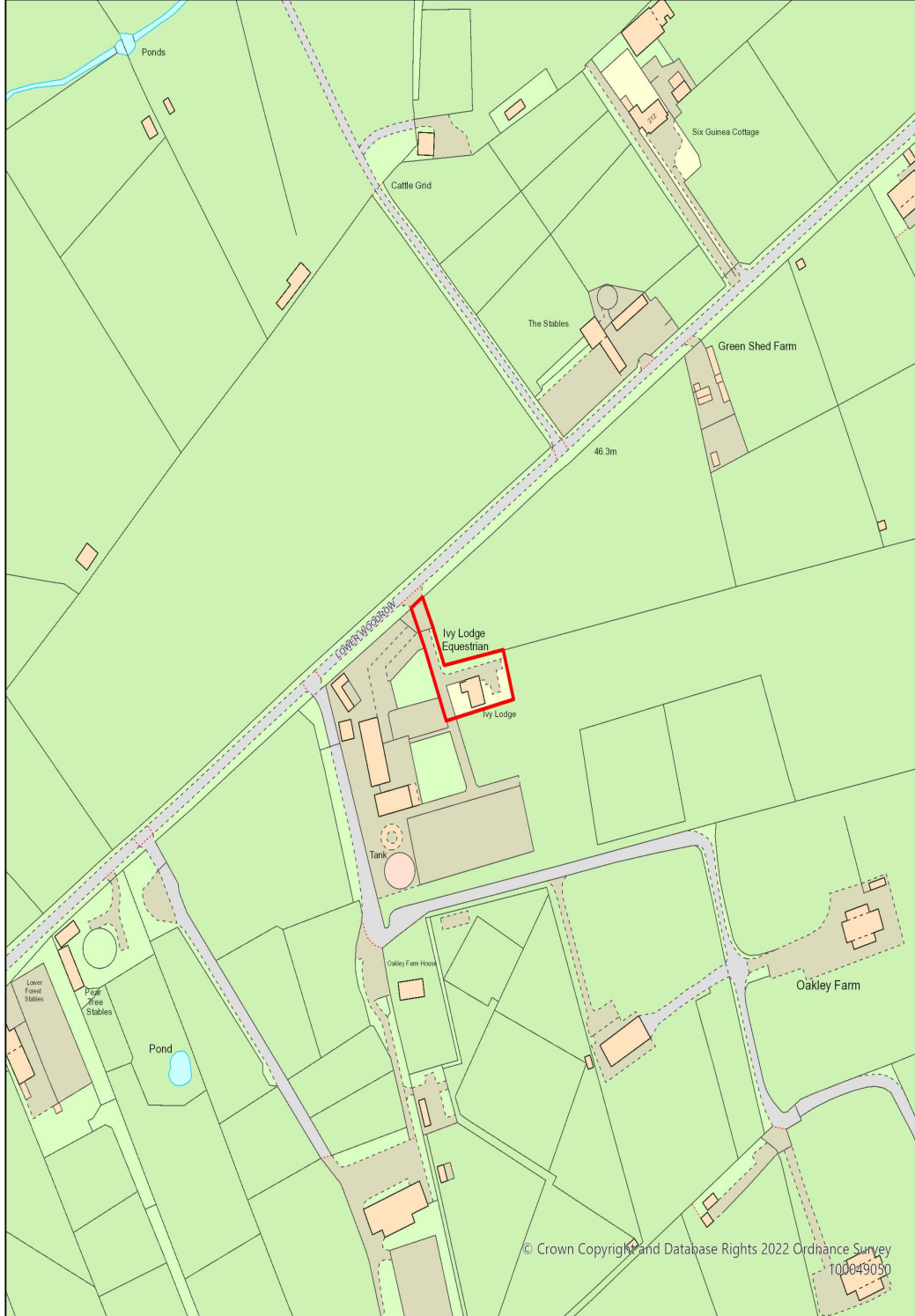
The decision to refuse this application has been based on the following plans:

P-01 (PROPOSED Floor Plans and Elevations) dated 05.2022

P-02 (LOCATION PLAN) dated 05.2022

P-03 (PROPOSED Site Plan) dated 05.2022

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