

AGENDA

Meeting: Eastern Area Planning Committee
Place: The Assembly Room - Devizes Town Hall, Devizes, SN10 1BN
Date: Thursday 4 April 2013
Time: 6.00 pm

Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email kieran.elliott@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

Membership:

Cllr Jane Burton	Cllr Jerry Kunkler
Cllr Nick Fogg	Cllr Laura Mayes
Cllr Richard Gamble (Vice Chairman)	Cllr Jemima Milton
Cllr Charles Howard (Chairman)	Cllr Christopher Williams
Cllr Chris Humphries	

Substitutes:

Cllr Liz Bryant	Cllr Simon Killane
Cllr Nigel Carter	Cllr Christopher Newbury
Cllr Bill Douglas	Cllr Jeffrey Ody
Cllr Peggy Dow	Cllr Jonathon Seed
Cllr George Jeans	Cllr Stuart Wheeler

AGENDA

Part I

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

1 **Apologies for Absence**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting (Pages 1 - 8)**

To approve and sign as a correct record the minutes of the meeting held on **21 February 2013**.

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 and Councillors' Questions**

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 in person **no later than 5.50pm on the day of the meeting**.

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. The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice.

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 committee@wiltshire.gov.uk **no later than 5pm on Tuesday 26 March 2013**. 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 **Highways Act 1980 and Wildlife and Countryside Act 1981 - The Wiltshire Council (Sheet SU 05 NW) Easterton 26 Diversion Order 2011 and Definitive Map Modification Order NO. 8, 2011 (Pages 9 - 50)**

To consider objections received to the making of "The Wiltshire Council (Sheet SU 05 NW) Easterton 26 Diversion Order 2011 and Definitive Map Modification Order No. 8 2011", under Section 119 of the Highways Act 1980, and make a recommendation to the Secretary of State for the Environment, Food and Rural Affairs.

7 **Planning Applications (Pages 51 - 52)**

To consider and determine planning applications in the attached schedule.

7a **E/2012/1536/FUL: Land adjacent to Swan Meadow, Pewsey (Pages 53 - 64)**

7b **E/2012/1216/FUL: Land to the rear of Wilcot Road, Pewsey, SN9 5EL (Pages 65 - 88)**

8 **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

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EASTERN AREA PLANNING COMMITTEE

**DRAFT MINUTES OF THE EASTERN AREA PLANNING COMMITTEE MEETING
HELD ON 21 FEBRUARY 2013 IN THE TOWN HALL, ST JOHN'S STREET,
DEVIZES, SN10 1BN.**

Present:

Cllr Jane Burton, Cllr Trevor Carbin, Cllr Richard Gamble (Vice Chairman),
Cllr Charles Howard (Chairman), Cllr Jerry Kunkler, Cllr Jemima Milton and
Cllr Christopher Williams

Also Present:

Cllr Brigadier Robert Hall

8. **Apologies for Absence**

Apologies were received from Cllr Laura Mayes.

9. **Minutes of the Previous Meeting**

The minutes of the meeting held on **31 January 2013** were presented for consideration.

It was,

Resolved:

That subject to:

- 1) The substitution of 'Cllr Jerry Kunkler' for 'Cllrs Jerry Kunkler' in Minute 1;
- 2) The inclusion of 'Mrs Gwen Phillips, applicant' among the list of speakers in support, in Minute 6a; and,
- 3) The substitution of 'worst affected routes' for 'worst affect routes' in Paragraph 6 of Minute 6a;

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

10. **Declarations of Interest**

There were no declarations.

11. **Chairman's Announcements**

The Chair gave details of emergency exits in the event of a fire.

12. **Public Participation and Councillors' Questions**

The Committee noted the rules on public participation.

No questions or statements were submitted.

13. **Planning Applications**

Attention was drawn to the late list of representations received, in relation to Minute 14, and which is attached to these minutes.

14. **E/2012/0941/FUL: 9 Easterton Lane, Pewsey, SN9 5BP**

Public Participation

Mr John Cheke spoke in objection to the application.

Mr Malcolm Treacher spoke in objection to the application.

Dr Gary Mantle spoke in objection to the application.

Ms Vanessa Tanfield, agent, spoke in support of the application.

Cllr Peter Deck, Pewsey Parish Council, spoke in support of the application.

The Planning Officer introduced the report, which recommended the item be refused permission. The details of the public footpath status as detailed in the report and the highways access were highlighted.

The Committee then had the opportunity to ask technical questions of the officers.

Members of the public then had the opportunity to address the Committee with their views, as detailed above.

The Local Member, Councillor Jerry Kunkler, then spoke in support of the application.

A discussion followed, where details of waste collection and fire access were raised and noted, as well as the existing presence of vehicles and garages servicing the lane, and the opinion of Highways officers was emphasized.

At the conclusion of debate, it was,

Resolved:

That planning permission be REFUSED for the following reasons:

1. **The traffic generated from the construction and occupation of this proposal would use a route which, by virtue of its function in the highway network, its inadequate width, alignment and substandard junctions, is considered unsuitable to accommodate the increase**

in traffic from this development.

2. The construction and subsequent occupation of the proposed development would result in an increase in vehicular traffic along a designated public footpath with consequent loss of amenity and risk of additional hazard and inconvenience to all users of the designated right of way.
3. The proposed development conflicts with the terms and objectives of national and local planning policy, as set out in the National Planning Policy Framework 2012, with particular reference to section 4 “Promoting sustainable transport”, and with the general application and considerations of Policy PD1 of the Kennet Local Plan 2011.

15. **E/2012/1362/FUL: 23 Astor Crescent, Ludgershall, SP11 9RG**

Public Participation

Mr Roger Greenwood spoke in objection to the application.

Mrs Anne-Marie Greenwood spoke in objection to the application.

Mrs Jackie Maynard spoke in objection to the application.

The Planning Officer introduced the report which recommended approval be granted. The history of planning applications on the site and their previous refusal was noted, and the scale and siting differences with the current application highlighted.

The Committee then had the opportunity to ask technical questions of the officer, where the context of the application in comparison to the surrounding area was sought.

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

The Local Member, Councillor Chris Williams, explained his reasons for bringing the item to Committee, and stated he would abstain from voting given he had been in close contact with both sides of the issue.

A debate followed, where the principle of development on the site, the presence of the ash trees lining the site and the design of the application were all raised. The relevant planning policies were discussed, along with the need for smaller housing in the town.

After discussion, it was,

Resolved:

That planning permission be REFUSED for the following reasons:

- 1. The proposed bungalow would appear cramped and out of character, eroding the sense of openness afforded by the side garden to the existing dwelling. As such the proposal would be contrary to policy PD1 of the Kennet Local Plan 2011 and government policy contained in Section 7 of the National Planning Policy Framework.**
 - 2. The proposed dwelling would extend into the root protection area of a number of existing Ash trees along the southern boundary of the site. These trees have been identified as being of local significance and they make an important contribution to the character and appearance of the area. The proposals are likely to result in the loss of the trees through physical damage to their root systems and/or pressure to reduce or remove the trees from future occupiers of the bungalow who will be affected by loss of light to their garden and lounge/diner. Loss of the trees (or their significant reduction) would be harmful to local amenity and the character and appearance of the area and as such the proposals are contrary to policy PD1 of the Kennet Local Plan 2011 and government policy contained in Section 11 of the National Planning Policy Framework.**
 - 3. The proposed bungalow would be bland and unattractive in appearance, displaying a poor standard of design which fails to take the opportunities available for improving the character and quality of the area. As such, the proposal is contrary to policy PD1 of the Kennet Local Plan 2011 and government policy contained in Section 7 of the National Planning Policy Framework.**
16. **E/2012/1537/FUL: New House (Wilds Farm Barns), Hilcott, Pewsey, SN9 6LE**

Public Participation

Mr Toby Farrell spoke in objection to the application.

Mr Richard Cook, applicant, spoke in support of the application.

Mr Nigel Kean, agent, spoke in support of the application.

The Planning Officer presented a report which recommended planning permission be granted. The current use of the site was noted along with the materials and currently granted permission for the adjoining parts of the site.

The Committee then had the opportunity to ask technical questions of the officers.

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

The Local Member, Councillor Brigadier Robert Hall, then spoke in objection to the application as detailed in the report, but stated that subject to the addition of

a condition preserving the paddock land to the east of the stables from hard surfacing, he and the principle objectors could support the application.

A debate followed, where the suggested condition from the local member was noted and detailed.

At the end of discussion, it was,

Resolved:

That planning permission be GRANTED for the following reason and subject to the conditions set out below:

The Council is required to give a summary of the reasons for this decision and its conditions, and a summary of the development plan policies and proposals relevant to the decision and its conditions. These are set out below:

The decision to grant planning permission has been taken on the grounds that the proposed development would preserve the character and appearance of the Hilcott conservation area and the settings of nearby listed buildings. The amenities and scenic qualities of the North Wessex Downs Area of Outstanding Natural Beauty would also be preserved by the proposals and any impacts on residential amenity are capable of being controlled by the use of planning conditions. There would be no harm to any other interests of acknowledged importance and the proposals would comply with Government policy contained in the National Planning Policy Framework and policies PD1, NR6 & NR7 of the Kennet Local Plan 2011.

Conditions

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

REASON:

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

- 2) **No development shall commence on site until samples of the bricks and clay tiles to be used for the external walls and roofs, and details of the finish proposed for the timber cladding for the external walls have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.**

REASON:

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

3) INFORMATIVE TO APPLICANT:

Please note that the Planning Office does not have the facility to receive material samples. Please deliver material samples to site, with a notification to the Planning Office where they are to be found.

- 4) There shall be no burning of horse manure, animal bedding or other stable waste within the site, or on land edged in blue.**

REASON:

In the interests of public health and safety, in order to protect the natural environment and prevent pollution.

- 5) No development shall commence on site until a plan showing the location of the covered trailer to be used for the storage of horse manure, soiled animal bedding and other stable waste has been submitted to and approved in writing by the Local Planning Authority. All horse manure, soiled animal bedding and other stable waste shall be stored in accordance with the approved details and none shall be stored elsewhere on the site, including on the land edged blue. The horse manure, soiled animal bedding and other stable waste shall be taken off site at least once a month for disposal.**

REASON:

In the interests of public health and safety, in order to protect the natural environment and prevent pollution.

6) INFORMATIVE TO APPLICANT:

The applicant is advised to site the covered trailer to the rear of the stables, as far as possible from nearby dwellings.

- 7) The development hereby permitted shall only be used for the private stabling of horses being kept by the occupants of the dwelling permitted under planning approval E/2012/0938/FUL and the storage of associated equipment and feed and shall at no time be used for any commercial purpose whatsoever, including for full or DIY livery, or in connection with equestrian tuition or leisure rides.**

REASON:

The application has been assessed on the basis that the proposal is for private stabling. Any commercial use may give rise to additional impacts which may require separate assessment.

- 8) No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage 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 prevent harm to bats.

- 9) No development shall commence on site, and no equipment, machinery or materials shall be brought onto site for the purpose of development, until protective tree fencing has been erected in accordance with the details**

shown on drawing no. PS/02. Before it is erected the type of fencing shall be agreed in writing with the Local Planning Authority and thereafter it shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations and no vehicle, plant, temporary building or materials, including raising and or, lowering of ground levels, shall be allowed within the protected area(s).

REASON:

To protect existing trees and hedging in the interests of landscape and visual amenity.

10) INFORMATIVE:

The applicant's attention is drawn to the conditions imposed on planning permission reference E/2012/0938/FUL.

- 11)** The development hereby permitted shall be carried out in accordance with the following approved plans: Application Form; Design & Access Statement; AAe Environmental Consultants Bat Survey; Drawing Nos; Loc – Location Plan; PS/01 – Site Plan; PS/02 – Landscaping & Tree Protection Strategy; PS/03 – Proposed Stables, Plan & Elevations; PS/04 – Context Elevation 1; PS/05 – Context Elevations 2 & 3; PS/06 – Aerial Perspective View; PS/07 – Stables Perspective View; PS/08 – Access Road View & A4 Sheet x3 Photographs, all received on 10.12.2012. Nedz Pro Equine Bedding Information Sheet on A4 received via email sent on 10.01.2013 @11:59 from Nigel Keen.

REASON:

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

- 12)** The land edged in blue immediately to the east of the stables hereby permitted shall be retained as grassed paddock and no hard surfacing shall be laid down on this area. There shall be no parking of horseboxes or horse trailers on this land.

REASON:

In the interests of preserving the character and appearance of the conservation area and the amenities of the Area of Outstanding Natural Beauty."

17. Urgent items

There were no urgent items.

(Duration of meeting: 6.00 - 7.30 pm)

The Officer who has produced these minutes is Kieran Elliott, of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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

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WILTSHIRE COUNCIL

EASTERN AREA PLANNING COMMITTEE

04 APRIL 2013

HIGHWAYS ACT 1980 AND WILDLIFE AND COUNTRYSIDE ACT 1981
THE WILTSHIRE COUNCIL (SHEET SU 05 NW) EASTERTON 26 DIVERSION
ORDER 2011 AND DEFINITIVE MAP MODIFICATION ORDER NO. 8, 2011

Purpose of Report

1. To:
 - (i) Consider objections received to the making of “The Wiltshire Council (Sheet SU 05 NW) Easterton 26 Diversion Order 2011 and Definitive Map Modification Order No. 8 2011”, under Section 119 of the Highways Act 1980.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for confirmation.

Description of Route

2. Bridleway No. 26 is located in the parish of Easterton, off the B3098 road, between the villages of Easterton and Urchfont, as shown on the location plan attached at **Appendix 1**. The public path diversion order is attached at **Appendix 2**, with the order plan which shows the definitive line of Bridleway No. 26 and the proposed diversion route.
3. The definitive line of the bridleway follows an irregular, cross-field route from its junction with the B3098 Road, leading generally north-west to its junction with Byway Open to all Traffic (BOAT) No.34 Urchfont, having no recorded width.
4. The proposed bridleway diversion route follows a track for approximately 370 metres, leading north-west from the B3098 road, and then a field edge route, leading north-west to its junction with BOAT No. 34 Urchfont, having a width of 4 metres.
5. The proposed diversion extinguishes approximately 840 metres of bridleway and creates approximately 640 metres of bridleway.

Background

6. Wiltshire Council received an application to divert bridleway No. 26 Easterton, on 31 January 2011. The application was made by the landowner, FJ Snook and Sons Ltd, the grounds for diversion stated as follows:
 - (i) To remove the bridleway from two fields used by breeding pigs (at the time of application).

- (ii) The definitive line of the bridleway leaves the B3098 road over a 5 feet high bank (impassable to horses) and follows an irregular route to its junction with BOAT No. 34 Urchfont. The alternative route would provide a more convenient and direct route.
 - (iii) To the landowner's knowledge the route has not been used since 1947 (or longer) and users of the bridleway have followed the proposed alternative route since that date.
7. Wiltshire Council undertook a public consultation exercise regarding the proposals on 11 May 2011, with a closing date for all representations and objections to be received, in writing, by 24 June 2011. The consultation included statutory undertakers, landowners, user groups and other interested parties, such as the Wiltshire Council Member for Urchfont and Cannings and Easterton Parish Council.
 8. No objections to the diversion proposal were received at the initial consultation.
 9. Officers considered the legal tests for making a public path diversion order, under Section 119 of the Highways Act 1980, in a decision report, dated 22 July 2011 (attached at **Appendix 3**). It was considered that the legal tests for diversion were met and a public path diversion order to divert Bridleway No. 26 Easterton 26 was made on 4 October 2011.
 10. Notice of the making of the Order was circulated to all interested parties, posted on site and advertised in a local newspaper. This was followed by a statutory objection period of 28 working days, during which time two objections were received from Wiltshire Bridleways Association (WBA) and Sarah Thomas. Additionally, an e-petition was established by WBA, which at the time of writing this report has been signed by 57 individuals and can be viewed at: www.wiltshirebridlewaysassociation.co.uk/petitions.html
 11. The objections to the making of the Order are set out below and copies of the objections are attached at **Appendix 4**.
 12. Sarah Thomas of Market Lavington wrote on 28 November 2011 making the following points:
 - *“Since the pig farms development, horse riders have been forced from using the EAST 26 bridleway due to the pig farm being in its place, an alternative has been made available; a very narrow track, some distance away from EAST 26 (I believe this would be the diversion you are currently considering), through the centre of the pigs with (for the most of it) an almost invisible single strand electric wire either side separating us from the pigs. A horse would not see this electric fence and if shied from the pigs, would almost certainly get entangled and/or shocked from the fence, causing further panic and quite possibly, an accident.*
 - *The most sensible of horses are very often frightened by pigs much more than other farm animals; due to the high-pitched squeals, the smell and the way they move. This bridleway has already been made impossible to*

pass as well as its alternative, due to the risk. Therefore, many horse riders have chosen not to use it, despite its convenience.

- *Bridleway EAST 26 forms a convenient link from Eastcott (Easterton) to a very popular bridleway offering the choice of many safe routes to Easterton Sands, Potterne and Urchfont, all avoiding the main roads. Should EAST 26 be re-routed, it would mean an even further distance to manage our horses past the pigs whilst riding along the busy B3098. This section of the road has high banks, causing a further risk, as the pigs would almost certainly create a serious hazard to all road users, due to the high risk of the horse shying away from the pigs and into the path of a vehicle. I am sure in time there would be a serious accident involving a horse and a vehicle.*
- *For the safety of all road users, horses and riders alike, EAST 26 should remain, as its original route and have Post and Rail fencing either side of the path, with a minimum distance across of 12 feet. This will allow enough room for the horse to pass wide, if the pigs are against the boundary of the bridleway and for horse riders to pass each other safely.”*

13. WBA wrote on 14 November 2011:

- *“The Wiltshire Bridleways Association object to the above order route on grounds of impracticality due to the movement of traffic along the proposed route and the adjacency of the pigs. Also, in order to keep both horse and rider safe and off the road, a track inside the field line is required.*
- *We feel an alternative route to that proposed should be something more suitable for equestrian use, closer to the original route and a minimum of 4 metres in width for the entire length. This route should then be protected with suitable fence and rail.”*

14. Michelle Haley of WBA e-mailed the Rights of Way and Countryside Manager, Mr. Richard Broadhead, on 13 February 2012:

- *“You will remember that on 18 December 2012, I served notice in Form 1 on Wiltshire Council to secure the removal of the obstructions on this route.*
- *You replied in Form 3, dated 11 January 2011, that you would not enforce removal of the obstructions if within one month Mr. Snook submitted an application to divert the route which he has done.*
- *We are extremely concerned that the definitive route has now been blocked for over a year while the diversion order is decided and we have received no indication as to when this may be determined, and that during this time riders have been forced to use the less harmonious and more dangerous permissive route.”*

15. WBA corresponded further on 12 March 2012, to advise:

- *“I would like to draw your attention to the circumstances which brought this request about. This bridleway has been accessible in the past as the land was unfenced; suddenly a fence appeared along the roadside,*

obstructing the bridleway, with no gate in it for horses, riders or walkers. Wiltshire Bridleways contacted the ROW Warden for the area, but no action was taken to remove the obstruction and get the route reopened. The landowner made no attempt to resolve this before setting up his pig enterprise. In a very short time this has become a massive operation.

- *Under Section 119 of the Highways Act 1980, subsection 2b it states “a public path diversion order shall not alter a point of termination of the path (where it is on a highway), otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.” Moving the bridleway further east along the B3098, a busy and fast road at this point, with no useable verges, will cause more inconvenience and danger to walkers and horse riders, and is therefore unacceptable.*
- *We propose moving the bridleway west to Eastcott, to minimise the amount of road use, and to connect more easily with the other Easterton Rights of Way, Nos. 19, 20, and 28. This should be more commodious to the public, and would have the added benefit of separating horses from pigs and farm vehicles and electric fencing.”*

16. WBA then wrote again on 21 October 2012, suggesting alternative diversion routes which they would be content with.

- *“At present there is a diversion on this route which is not acceptable and dangerous for horse riders, as not only does it run through a pig farm, it also entails riding further along the very busy B3098 than the definitive route.*
- *I have been asked by John Holley to write to you giving a number of suggestions for an alternative route for your consideration. These are as follows and outlined on the attached map (please see letter and map attached at **Appendix 4**).*

Route 1

A to B along track

B to C along field edge

C to D along field headland to original exit of bridleway 26

Route 2

A to B along track

B to E to F to join up with the original route

Route 3

A to G headland path to pick up the start of the original bridleway 26, and the bridleway to be fully protected by post and rail minimum width of 15 feet.”

17. However, it was found that the alternative routes identified had been previously considered by the Rights of Way Department and were dismissed as the land over which the diversion routes suggested by WBA pass, is in the ownership of

another party, or the field boundaries used as reference points for the suggested routes, no longer exist.

18. In December 2012 Wiltshire Council was notified by the applicant that the pigs were to be removed permanently from the land as of August 2013. WBA was advised of this development; however, the objections were maintained. Michelle Haley e-mailed on 12 December 2012:

“The removal of the pigs is good news but as you are aware our main reason for the objection is the extra length of the main road which horse riders would have to negotiate if the diversion route went ahead.”

19. Due to the objections received, the Order now falls to be considered by the Eastern Area Planning Committee whose Members should consider the legal tests for diversion against the objections received, in order to decide whether or not Wiltshire Council continues to support the making of the Order.
20. Where the Authority continues to support the making of the Order, it should be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or with modification.
21. Where the Authority no longer supports the making of the Order, it may be withdrawn with reasons given as to why the legal tests 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

22. The Diversion Order has been made under Section 119 of the Highways Act 1980, which states:

“119. Diversion of footpaths, bridleways and restricted byways

- (1) *Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,-*
- (a) *create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion; and*
- (b) *extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.*

An order under this section is referred to in this Act as a ‘public path diversion order’.

- (2) *A public path diversion order shall not alter a point of termination of the path or way-*

 - (a) *if that point is not on a highway; or*
 - (b) *(where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.*

- (3) *Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall-*

 - (a) *specify a date under subsection (1)(a) above, and*
 - (b) *provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.*

- (4) *A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.*

- (5) *Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-*

 - (a) *any compensation which may become payable under section 28 above as applied by section 121(2) below; or*
 - (b) *where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public; or*
 - (c) *where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.*

- (6) *The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which-*

 - (a) *the diversion would have on public enjoyment of the path or way as a whole;*
 - (b) *the coming into operation of the order would have as respects other land served by the existing public right of way; and*
 - (c) *any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it; so, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into*

account the provisions as to compensation referred to in subsection 5(a) above.

(6A) The considerations to which-

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and

(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.”

23. Section 119 of the Highways Act 1980 allows the highway authority to divert a bridleway where it considers it expedient to do so in the interests of the landowner, lessee or occupier of the land and/or the public. This Order has been made in the interests of the landowner to remove the irregular route of the bridleway from the land and create a more convenient and direct route. This allows the landowner to farm the land and maintain the route of the bridleway more easily. This legal test for the making of a Diversion Order is met.
24. Additional public benefits have been identified whereby the proposed diversion route is more direct and convenient for the public. There is presently a bank at the junction of the bridleway with the B3098 road, where the proposed diversion route has a level access onto and from the B3098.
25. The diversion of the bridleway must not alter the termination points of the path where these are not on a highway and where they are located on a highway they must not be altered, other than to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public. The northern termination point A, (see order plan at **Appendix 2**), is moved eastwards but remains on the same highway, i.e. BOAT No. 34 Urchfont. The southern termination point B is moved eastwards, but remains on the same highway, i.e. the B3098 road; however, objectors have argued that the new junction on the B3098 road is not substantially as convenient to the public as horse riders are forced to travel further on the B3098 road. Members must now consider whether this legal test for the making of a Diversion Order is met in the light of the objections received.
26. Additionally, at the confirmation of an Order there are a number of legal tests to be considered:
 - 1) It must be expedient to confirm the Order in the interests of the landowner and or the public (as seen above).
 - 2) The diverted route must not be substantially less convenient to the public.
 - 3) It must be expedient to confirm the Order having regard to the effect which:
 - (i) the diversion would have on public enjoyment of the path or way as a whole;

- (ii) the coming into operation of the Order would have as respects other land served by the existing public right of way;
 - (iii) any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it.
- 27. At 3 (ii) and (iii) above, the land over which the existing path passes and the land over which it is proposed to place the newly created bridleway, are in the ownership of the applicant, FJ Snook and Sons Ltd, who has given written consent to the diversion proposals and no compensation claims are anticipated.
- 28. At 2 above, the diversion of the bridleway deletes approximately 840 metres of bridleway and creates approximately 640 metres, which is not substantially less convenient for the public. The proposed route is more direct and there is no bank to negotiate at its junction with the B3098 road. However, objectors have argued that the diversion route is substantially less convenient to the public as horse riders are forced to travel extra distance on the B3098 road (approximately 146 metres); however, this distance is only further for users approaching from an easterly direction.
- 29. When considering the public enjoyment of the path or way as a whole, the diverted bridleway will have a recorded width of 4 metres, open and available for public use, where no width is presently recorded within the definitive statement. Views from the path remain unaffected, and there are no additional limitations or conditions on public use of the path. However, objectors are concerned that their enjoyment of the path will be affected by the extra distance on the B3098 road for horse riders approaching from the east and sharing the diverted route with agricultural vehicles.
- 30. Under sub-section 6A of Section 119 of the Highways Act 1980, the Council must also have regard to any material provision of any Rights of Way Improvement Plan, the Wiltshire Council Rights of Way Improvement Plan 2008-2012 (ROWIP). The ROWIP recognises the Council's duty to have regard to the Disability Discrimination Act 1995 (now replaced by the Equalities Act 2010) and to consider the least restrictive option for public use. The proposed diversion route is a less restrictive route as there are no gates necessary for stock control, it will have a recorded width of 4 metres open and available for public use, and there is no bank to be negotiated at its junction with the B3098 road.
- 31. The ROWIP also includes the following aims:
 - *To provide a more useable public rights of way network, suitable for changing user demands (p.46 Improvement 1).*

The diversion of the bridleway will create a more convenient and direct route for public use, and a more direct link to other rights of way and the established network between the parishes of Easterton and Urchfont, much of which is available for use on horseback.

- *Increase access to the countryside for buggies, older people, people with mobility problems and other impairments (p.43 Improvement 1), and to*
- *Increase access to the countryside for people who are blind or partially sighted (p.44 Improvement 4).*

The proposed diversion route will have a recorded width of 4 metres, with no limitations such as gates. It also provides a level access from the B3098 road and the route provides a more direct link with the adjoining BOAT Urchfont 34.

32. Under the Countryside and Rights of Way Act 2000, the Council must also have regard to the needs of agriculture and forestry. This diversion is being proposed in the interests of the landowner to remove the right of way from two fields to enable the landowner to farm this land more easily and more productively by creating a more direct and convenient route. This will also allow the route of the right of way to be more easily maintained. This also has an additional public benefit as the proposed route will be partly located within an existing track and partly at the field edge, there will be no stock over the route and therefore no requirement for gates or other limitations for the purposes of stock control. This also meets the Council's duty under the Equalities Act 2010 to advance equality of opportunity between people who have a disability and people who do not. The proposed bridleway diversion presents the Council with the least restrictive option for public use.

Comments on the objections

33. The main points of objection concern the presence of the pigs over the land, path users sharing the proposed diversion route with vehicular traffic and the safety of horse riders travelling further on the B3098 road to reach the diversion.
34. It is acknowledged that following the making of the Order, the landowner moved the breeding pigs from land over which the definitive line passes, to a new location alongside the proposed diversion route. However, the landowner has now confirmed that the pigs will be permanently removed from the land from August 2013. Despite the pigs no longer being present the diversion is still required by the landowner to remove the irregular route of the right of way from the land, to a new, more direct route, which makes the land more productive, easier to farm and the route of the bridleway easier to maintain.
35. The landowner has confirmed that the track onto which it is proposed to divert the bridleway is used by agricultural vehicles only. This use will be greatly decreased following the removal of the pig farm operation and the track will only be used by agricultural vehicles to access one or two fields and the barn at the northern end of the track, which is used to store straw at harvest time, which is then sold.
36. Officers sought advice from the Area Highway Engineer regarding the safety of equestrian users on the B3098, with the following comments:

"I have now inspected the bridleway at Easterton, in relation to the safety issue comments from equestrians regarding its new location. Although I

appreciate their concerns regarding the extra short distance, the new route runs along the straight section of road and into the field entrance.”

The Officer also suggested speaking with the Traffic Management Team to give their opinion on erecting horse warning signs.

37. The Senior Traffic Management Engineer responded as follows:

“I know this stretch of road reasonably well and I have also taken a look on streetview. Your diversion is, as you say, just a short distance along the B3098. The road is reasonably straight at this point, the hedgerows are kept to a low level and sightlines for all road users are very good.

Signs should only be provided to warn motorists of situations that are not obvious and the Highway Code also advises motorists to look out for horses in rural areas. I am not convinced that warning signs would improve safety at this location and no further action will be taken at this time.”

38. Additionally, the diversion creates a further distance for users approaching from the west only, for example from Easterton, for users approaching the diversion route from the east, for example from Urchfont, use of the B3098 road is reduced.

39. WBA has suggested a width of 4 metres over the entire length of the proposed new bridleway. The width of the diversion route has been recorded within the Order at 4 metres and therefore this is the minimum width of the path which should be available for use by the public along its whole length. At present there is no recorded width against the definitive line.

40. It has been suggested that the new path should have a post and rail fence; however, Wiltshire Council has no power to require a right of way to be fenced and this is entirely at the discretion of the landowner. It may not be necessary to fence the right of way when the pigs are removed from the land.

Environmental Impact of the Recommendation

41. None.

Risk Assessment

42. Objectors have raised safety concerns regarding the diversion on the following points:

- (i) The safety of horses and riders in close proximity to the pigs.
- (ii) Use of the proposed diversion route by vehicles.
- (iii) The safety of horses, riders and all road users in horse riders having to travel a further distance on the B3098 road, to reach Bridleway No. 26 Easterton.

43. The landowner has confirmed that from August 2013 the pigs will no longer be present on the land.
44. The landowner has confirmed that the track is used only by farm vehicles and this use will greatly decrease following the removal of the pig farm operation.
45. For users of the bridleway coming from Eastcott the diversion adds approximately 146 metres of roadwork on the B3098 for horse riders. This additional length is over a straight part of the road and the entrance to the proposed diversion route at point D (please see order plan at **Appendix 2**) gives level access onto the B3098. At present the definitive line of the bridleway exits and egresses onto the B3098 road via a steep bank at point B. Please also see comments from the Area Highway Engineer and the Senior Traffic Management Engineer at paragraphs 36 and 37.

Financial Implications

46. The applicant has agreed, in writing, to meet the actual costs to the Council in processing the Order, which includes staff time and the costs of advertising the making of the Order, the confirmation of the Order and the certification of the new route, in one local newspaper.
47. The applicant has also agreed, in writing, to pay any expenses which may be incurred in bringing the new bridleway into a fit condition for use by the public, as required by the Council.
48. If the Order is withdrawn by Wiltshire Council, the Order is not confirmed and there are no additional costs to the applicant or the Council. However, although there is no form of appeal process against the Council's decision to withdraw the Order, the Council's decision is open to Judicial Review and clear reasons must be given for the withdrawal of the Order.
49. If the Order is forwarded to the Secretary of State for decision, the Order will be determined by written representations, hearing or local Public Inquiry, all of which have a financial implication for the Council as none of these costs can be passed to the applicant. 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.

Options Considered

50. Having considered the objections received against the legal tests for diversion there are two options available to Members of the Committee:
 - (i) Where Members of the Committee no longer support the making of the Order in the light of the objections received, the Order may be withdrawn. 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. Although there is no appeal procedure for the landowner where the Order is withdrawn, the Council's decision is open to

Judicial Review and reasons why the Order no longer meets the legal tests should be clearly stated.

- (ii) Where Members of the Committee consider that the Order continues to meet the legal tests for the making and confirmation of a public path diversion order, the Order should be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or confirmed with modification.

Reasons for Recommendation

- 51. Despite the objections received it is considered, for the reasons given within the report, that the making of “The Wiltshire Council (Sheet SU05 NW) Easterton 26 Diversion Order 2011 and Definitive Map Modification Order No. 8, 2011”, continues to meet the legal tests for the making of a Diversion Order under Section 119 of the Highways Act 1980. Additionally, the legal tests for the confirmation of a public path diversion order, as set out under Section 119 of the Highways Act 1980, are met.

Recommendation

- 52. That “The Wiltshire Council (Sheet SU 05 NW) Easterton 26 Diversion Order 2011 and Definitive Map Modification Order No.8, 2011”, be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

MARK SMITH

Service Director – Neighbourhood Services

Report Author

Janice Green

Rights of Way Officer

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

None

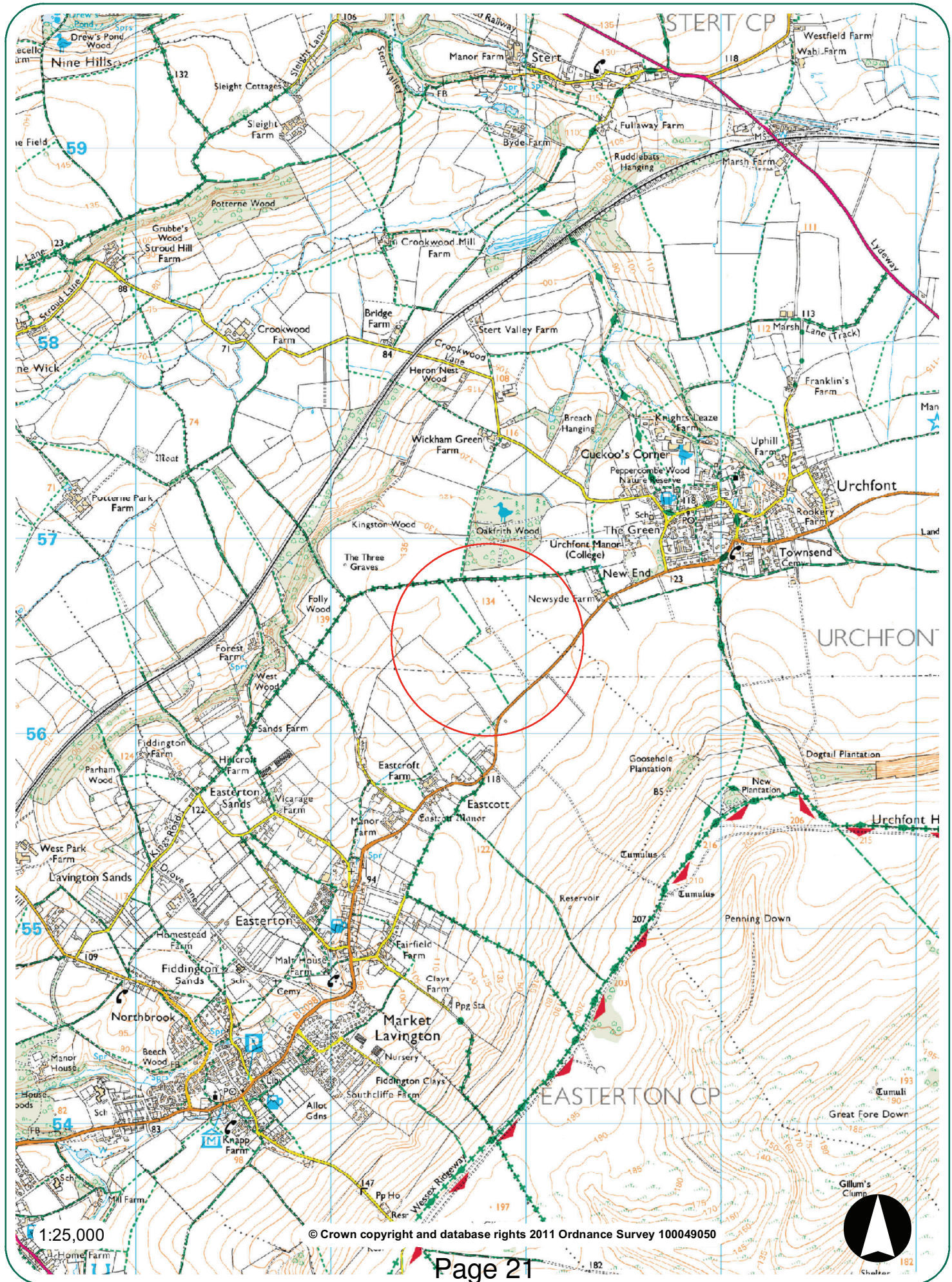
Appendices

Appendix 1 - Bridleway Location Plan

Appendix 2 - Public Path Diversion Order

Appendix 3 - 22 July 2011 Decision Report

Appendix 4 - Objections to the Order



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APPENDIX 2

PUBLIC PATH DIVERSION ORDER – BRIDLEWAY NO.26 EASTERTON

PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER HIGHWAYS ACT 1980 WILDLIFE AND COUNTRYSIDE ACT 1981 WILTSHIRE COUNCIL

THE WILTSHIRE COUNCIL (SHEET SU 05 NW) EASTERTON 26 DIVERSION ORDER 2011 AND DEFINITIVE MAP MODIFICATION ORDER NO.8, 2011

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

This Order is also made under Section 53A(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") because it appears to the authority that the Devizes 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 shown or required to be shown in the map and statement.

BY THIS ORDER:

1. The public right of way over the land situate at Easterton and shown by a bold continuous line on the map contained in this order and described in Part 1 of the Schedule to this Order shall be stopped up after 28 days from the date of confirmation of this Order, and thereupon the Devizes Rural District Council Area Definitive Map dated 1952 shall be modified by deleting from it that public right of way.
2. Notwithstanding this Order Scottish and Southern Energy and BT Openreach shall have the following rights over the land referred to in paragraph 1 namely:-

Where immediately before the date on which the bridleway is diverted there is apparatus under, in, on, over, along or across it belonging to these statutory undertakers for the purpose of carrying on their undertaking, these undertakers shall continue to have the same rights in respect of the apparatus as they then had.

3. There shall at the end of 28 days from the date of confirmation of this Order be a public bridleway over the land situate at Easterton described in Part 2 of the Schedule and shown by a bold continuous line with cross bars at intervals on the map contained in this Order, and thereupon the Devizes Rural District Council Area Definitive Map dated 1952 shall be modified by adding that path to it.

4. The Devizes Rural District Council Area Definitive Statement dated 1952 shall be modified as described in Part 3 of the Schedule to this Order.

SCHEDULE

PART 1

DESCRIPTION OF SITE OF EXISTING PATH OR WAY

That length of bridleway as shown on the enclosed plan by a bold continuous line, from point A at OS Grid Reference SU 0258-5677, at its junction with Byway Open to All Traffic no.34 Urchfont, leading generally south-east for approximately 322 metres, then leading west-south-west for approximately 118 metres, before leading generally south-east for approximately 400 to point B at OS Grid Reference SU 0292-5614, at its junction with the road B3098.

PART 2

DESCRIPTION OF SITE OF NEW PATH OR WAY

That length of bridleway as shown on the enclosed plan by a bold continuous line with cross bars at intervals, from point C at OS Grid Reference SU 0267-5678, at its junction with Byway Open to All Traffic no.34 Urchfont, leading south-east for approximately 270 metres, before leading east-north-east for approximately 12 metres and continuing in a south-easterly direction for approximately 370 metres to Point D at OS Grid Reference SU 0302-5624, at its junction with the road B3098, having a width of 4 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>
Easterton	26	<u>BRIDLEWAY.</u> From its junction with Byway Open to All Traffic no.34 Urchfont, at OS Grid Reference SU 0267-5678, leading south-east for approximately 270 metres, then east-north-east for approximately 12 metres and then continuing in a south-	53(3)(a)(i)

easterly direction for approximately 370 metres to its junction with the B3098 road, at OS Grid Reference SU 0302-5624.

Approximate length: 652 metres.

Width: 4 metres.

THE COMMON SEAL OF }
THE WILTSHIRE COUNCIL }
Was hereunto affixed this }
4th Day of *October* 2011 }
In the presence of:

12394.



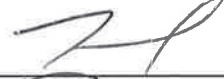




[Handwritten signature]

Principal Solicitor

**COVERING PAGE FOR DECISION REPORT ON WHETHER TO MAKE A PUBLIC PATH
DIVERSION ORDER UNDER SECTION 119 OF THE HIGHWAYS ACT 1980 – BRIDLEWAY
NO.26 EASTERTON**

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

		Signature	Date Signed Off
To:	Barbara Burke (Senior Rights of Way Officer)		25.7.
	Richard Broadhead (Rights of Way Manager)		26.7.11
	Ian Brown (Head of Amenity & Fleet)		16.8.11
	Mark Smith (Service Director, N & P)		9/9/11
	Mark Boden (Corporate Director, N & P)		14 Sep 11
From:	Janice Green		
Date of report:	22 nd July 2011		
Return to:	Janice Green, Rights of Way (Ext. 13345)		

Nature of Report: This is a report from Janice Green (Case Officer) to Mark Boden (Officer with the relevant delegated powers).

Executive Summary

On 31st January 2011, Wiltshire Council received an application from FJ Snook & Sons, of Rookery Farm 'Archfont, to divert Bridleway no.26 Easterton under Section 119 of the Highways Act 1980, which deals with the diversion of footpaths, bridleways and restricted byways.

It falls to Wiltshire Council to determine the diversion application and the Council must consider the legal tests set out under Section 119 of the Highways Act 1980 for the making of an order, i.e. is it expedient to divert the line of the path or way in the interests of the owner, lessee or occupier of the land crossed by the path or way, or of the public.

In this case it is considered expedient to make an order to divert Bridleway no.26 Easterton in the interests of the landowner and the public. Officers have also taken into account the legal tests set out within the Act for the confirmation of an order and consider that if made, a diversion order would be capable of confirmation.

Officer's Recommendation: That an order to divert Bridleway no.26 Easterton, be made under Section 119 of the Highways Act 1980 and that if no objections or representations are received, the order be confirmed by Wiltshire Council as an unopposed order.

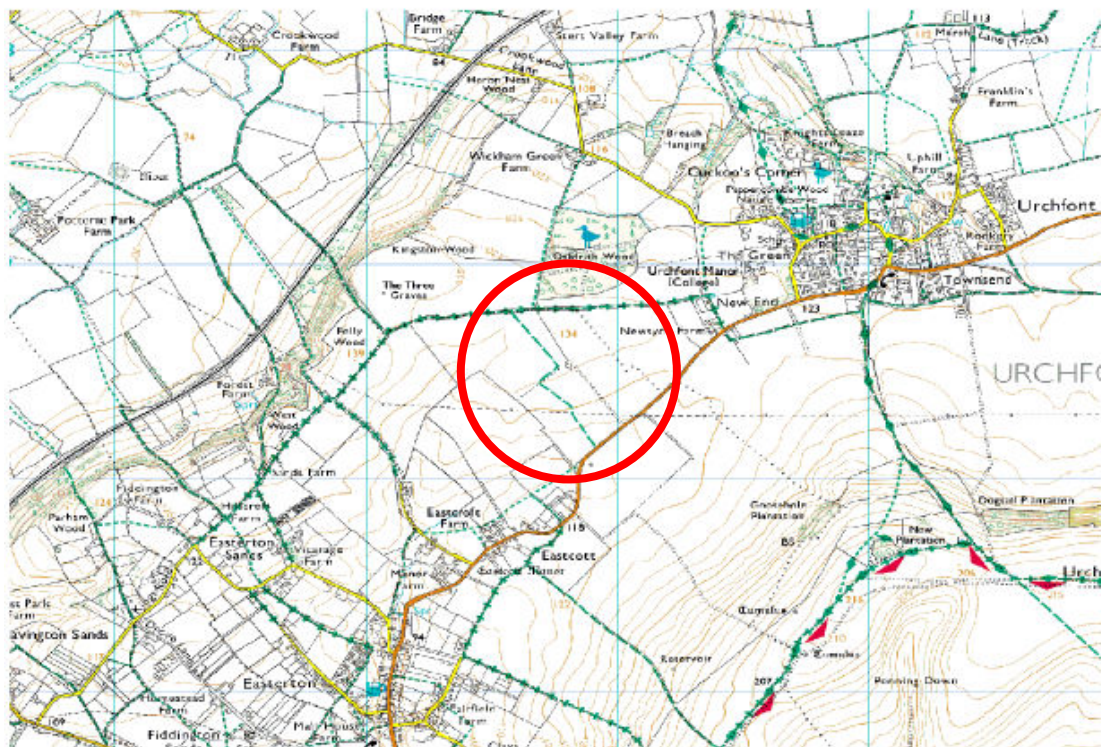
DECISION REPORT

PROPOSED DIVERSION UNDER SECTION 119 OF THE HIGHWAYS ACT 1980 – BRIDLEWAY NO.26 EASTERTON

1. Purpose of Report

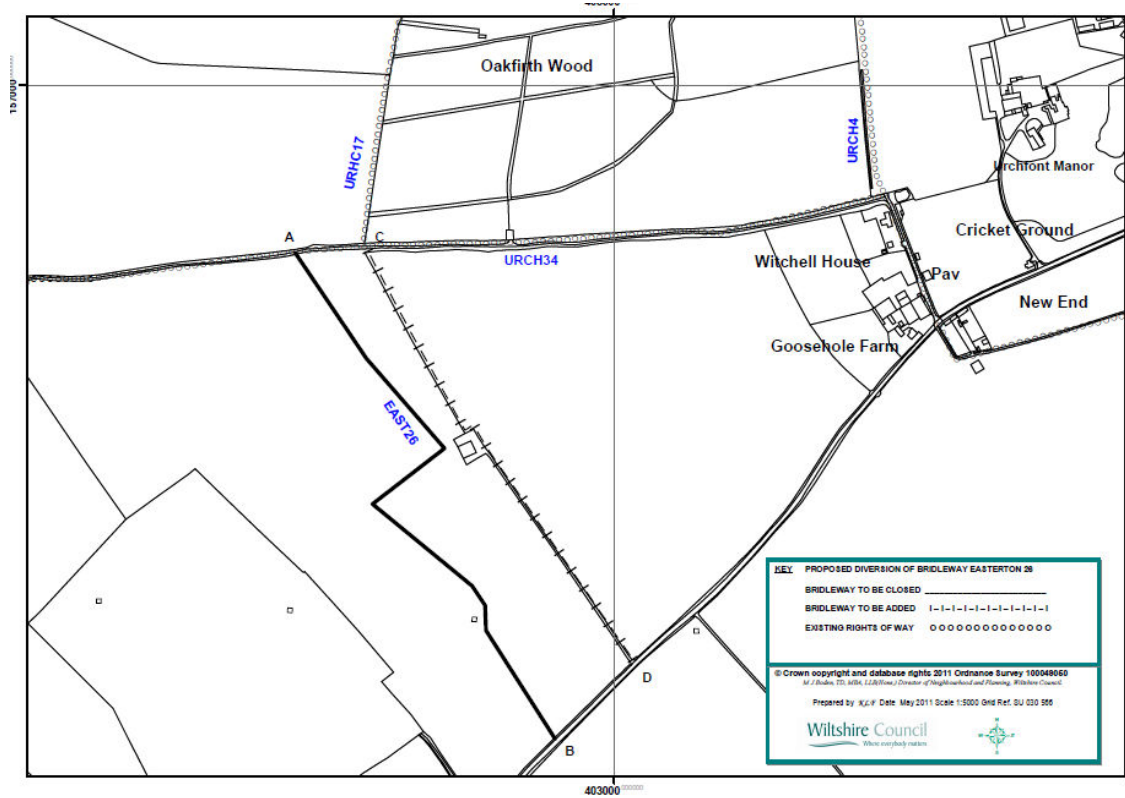
- 1.1. To consider an application, made under Section 119 of the Highways Act 1980, to divert Bridleway no.26 Easterton and remove the public right of way from two fields presently used by livestock and to provide a more convenient and direct route for the public.
- 1.2. It is recommended that an order be made under Section 119 of the Highways Act 1980, to divert Bridleway no.26 Easterton, and to confirm the order if no representations or objections are received.

2. Location Plan



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3. Diversion Application Plan



4. Photographs



SU 0292-5613 looking north-east.

The definitive line of Bridleway no.26 at point B, at its junction with road B3098. There is a steep bank to be negotiated by walkers and horse riders when accessing the path from the road at this point.



SU 0299-5628 looking west.
The definitive line leads from point B (as shown).



SU 0279-5653 looking west.
The definitive line of bridleway no.26 Easterton, leads through two fields presently used by breeding pigs (as shown approximately).



SU 0277-5654 looking north-west.
The definitive line of Bridleway no.26 Easterton leading in a north-westerly direction to point A (as shown approximately).



SU 0262-5678 looking south.
The definitive route of Footpath no.26 Easterton (as shown approximately).



SU0257-5678 looking southwest.
The definitive line of Bridleway no.26 Easterton at its junction with Byway no.34 Urchfont, at point A.



SU 0302-5624 looking southeast.
The proposed diversion route at point D, at its junction with the road B3098. The junction here is a more convenient access to the bridleway from the road as there is no bank to be negotiated.



SU 0295-5634 looking north-west.

The proposed diversion of the bridleway leading north-west. The new bridleway will have an available width of 4 metres where none is presently recorded within the definitive statement.



SU 0280-5654 looking north-west.

The proposed diversion at the field edge, leading north-west to point C.



SU 0266-5678 looking north-west.

The proposed diversion route at point C, at its junction with Byway no.34 Urchfont.

5. Applicant and Registered Landowner

- 5.1. FJ Snook & Sons Ltd
Rookery Farm
Urchfont
Devizes
Wiltshire

6. Legal Empowerment

- 6.1. The diversion application has been made under Section 119 of the Highways Act 1980, which states:

“119. Diversion of footpaths, bridleways and restricted byways

- (1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,-
- (a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion; and
- (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a ‘public path diversion order’.

- (2) A public path diversion order shall not alter a point of termination of the path or way-
- (a) if that point is not on a highway; or

- (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- (3) Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall-
- (a) specify a date under subsection (1)(a) above, and
- (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.
- (4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.
- (5) Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below; or
- (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public; or
- (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.
- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are

satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which-

- (a) the diversion would have on public enjoyment of the path or way as a whole;
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way; and
- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it;

so, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into account the provisions as to compensation referred to in subsection 5(a) above.

(6A) The considerations to which-

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.”

7. Background

7.1. Wiltshire Council are in receipt of an application dated 31st January 2011, from FJ Snook and Sons Ltd, to divert Bridleway no.26 Easterton, under Section 119 of the Highways Act 1980. The effect of the application is to remove the public right of way from two fields presently used by breeding pigs. The landowner has also indicated that there will be benefits to the public in the diversion of the bridleway. At its junction with the B3098 the definitive line leads over a high bank

which is impassable to horses and then follows an irregular route. The proposed diversion follows a more direct and convenient route.

- 7.2. The proposed diversion route follows a track between the B3098 and its junction with Byway no.34 Urchfont, as shown on the diversion application plan above. The new bridleway will have a width of 4 metres for its full length. In total the proposed diversion extinguishes approximately 840 metres of bridleway and creates 640 metres of bridleway.

8. Public Consultation

- 8.1. A public consultation exercise regarding the diversion proposals was carried out on 11th May 2011, with a closing date for all representations and objections to be received, in writing by 24th June 2011. The consultation included statutory undertakers, landowners, user groups and other interested parties such as the Wiltshire Council Member for Urchfont and the Cannings and the Parish Council.

- 8.2. The following responses were received:

Scottish and Southern Energy, correspondence dated 17th May 2011 -
"Plant at location."

National Grid Plant Enquiries, correspondence dated 24th May 2011 –
"National Grid's records show no apparatus in the vicinity of your enquiry."

BT Openreach, correspondence dated 31st May 2011 –
"Plant at location."

- 8.3. Two statutory undertakers have confirmed that they have plant located in the vicinity. The Section 119 Highways Act 1980 regulations, contain wording within the order to ensure that statutory undertakers retain

access to plant and therefore will not be affected by the diversion proposals.

8.4. No objections to the diversion proposals have been received.

9. Main Considerations for the Council

- 9.1. Section 119 of the Highways Act 1980 allows the highway authority to divert a bridleway where it considers it expedient to do so in the interests of the landowner and/or the public. This particular application has been made in the interests of the landowner to remove the right of way from two fields presently used by breeding pigs.
- 9.2. Additional public benefits have been identified whereby the proposed diversion route is more direct and more convenient for the public. There is no bank to be negotiated from the B3098 road.
- 9.3. The diversion of the bridleway must not alter the termination points of the path where these are not on a highway and where they are on a highway they must not be altered, other than to another point on the same highway. The northern termination point A (see diversion application plan above) is moved eastwards but remains of the same highway, i.e. Byway no.34 Urchfont and the southern termination point B is moved eastwards but remains on the same highway, i.e. road B3098.
- 9.4. The proposed diversion satisfies both the above-mentioned legal tests for the making of an order. However, at the confirmation of an order there are a number of legal tests to be considered:
- 1) It must be expedient to confirm the order in the interests of the landowner and or the public (as seen above).
 - 2) The diverted route must not be substantially less convenient to the public.
 - 3) It must be expedient to confirm the order having regard to the effect which:

- i) the diversion would have on public enjoyment on the path or way as a whole;
- ii) the coming into operation of the order would have as respects other land served by the existing public right of way;
- iii) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

At ii) and iii) above, the land over which the existing path passes and the land over which it is proposed to place the newly created bridleway, are in the ownership of the applicant, FJ Snook and Sons Ltd, who have given written consent to the diversion proposals and no compensation claims are anticipated.

- 9.5. The diversion of the bridleway deletes approximately 840 metres of bridleway and creates approximately 640 metres, which is not substantially less convenient for the public. The proposed route is more direct and there is no bank to negotiate at its junction with the B3098 3098 road.
- 9.6. Additionally the diverted bridleway will have a recorded width of 4 metres, open and available for public use, where no width is presently recorded within the definitive statement.
- 9.7. There have been no consultation responses from the public, or otherwise, to suggest that there will be an adverse effect on public enjoyment of the path as a result of the diversion. Views from the path remain unaffected, and there are no additional limitations or conditions on public use of the path.
- 9.8. Officers consider that the legal tests of confirmation of an order are met at present, therefore the order appears capable of being confirmed, however this is subject to a further consultation period once an order has been made.

9.9. Under sub-section 6A of Section 119 of the Highways Act 1980, the Council must also have regard to any material provision of any Rights of Way Improvement Plan, the Wiltshire Council Rights of Way Improvement Plan 2008-2012 (ROWIP). The ROWIP recognises the Council's duty to have regard to the Disability Discrimination Act 1995 (now replaced by the Equalities Act 1010) and to consider the least restrictive option for public use. The proposed diversion route is a less restrictive route as there are no gates necessary for stock control, it will have a recorded width of 4 metres open and available for public use, and there is no bank to be negotiated at its junction with the B3098.

9.10. The ROWIP also includes the following aims:

- *The promotion and development of the public rights of way network, enabling pedestrians, cyclists and horse riders to avoid heavy or intrusive traffic (p.46 Improvement 3).* Bridleway no.26 provides a useful link from the B3098 road to Byway no. 34 Urchfont, taking walkers, horse riders and cyclists away from the B3098 road.
- *To provide a more useable public rights of way network, suitable for changing user demands (p.46 Improvement 1).* The diversion of the bridleway will create a more convenient and direct route for public use, which links to other rights of way, including byway no.34 Urchfont which may also be used by horse riders and cyclists.
- *Increase access to the countryside for buggies, older people, people with mobility problems and other impairments (p.43 Improvement 1).* The proposed diversion route will have a recorded width of 4 metres, with no limitations such as gates. It also provides a level access from the B3098 road and the route provides a more direct link with the adjoining byway, Urchfont 34.
- *Increase access to the countryside for people who are blind or partially sighted (p.44 Improvement 4).* The proposed diversion

route will have a recorded width of 4 metres, with no limitations such as gates. It also provides a level access from the B3098 road. It also provides a level access from the B3098 road and the route provides a more direct link with the adjoining byway, Urchfont 34.

9.11. Under the Countryside and Rights of Way Act 2000, the Council must also have regard to the needs of agriculture and forestry. This diversion is being proposed in the interests of the landowner to remove the right of way from two fields used by breeding pigs. This also has an additional public benefit as the proposed route will be partly located within an existing track and partly at the field edge, there will be no stock on this land and therefore no requirement for gates or other limitations for the purposes of stock control. This also meets the Council's duty under the Equalities Act 2010 to advance equality of opportunity between people who have a disability and people who do not. The proposed bridleway diversion presents the Council with the least restrictive option for public use.

10. Risk Assessment

10.1. None.

11. Environmental Impact

11.1. None.

12. Costs

12.1. The applicant has agreed, in writing, to meet the actual costs to the Council in processing the order, including advertising the order in one local newspaper and should the order be confirmed, the actual costs of advertising the notice of confirmation in one local newspaper, (i.e. two advertisements).

12.2. The applicant has also agreed, in writing, to pay any expenses which may be incurred in bringing the new bridleway into a fit condition for use by the public, as required by the Council.

- 12.3. If a diversion order is made under Section 119 of the Highways Act 1980, and there are no objections to the making of the order, Wiltshire Council may itself confirm the order and there are no costs to the Council.
- 12.4. If there are outstanding objections to the order which are not withdrawn and the Council continues to support the making of the order, the order can be forwarded to the Secretary of State for decision. The outcome of the order would then be decided by written representations, hearing or local public inquiry, all of which have a financial implication for the Council.
- 12.5. The making of a diversion order is a discretionary duty for the Council rather than a statutory duty, therefore a made order may be withdrawn at any time if the Council no longer continues to support it, for example if the order no longer meets the legal tests as set out under Section 119 of the Highways Act 1980.

13. Options to Consider

- 13.1. (i) To refuse the application
(ii) To make an order to divert Bridleway no.26 Easterton, under Section 119 of the Highways Act 1980.

14. Reasons for Recommendation

- 14.1. It is considered that the legal tests for the making of a diversion order under Section 119 of the Highways Act 1980, have been met, i.e. the order can be made in the interests of the landowners to remove the public right of way from two fields presently used by breeding pigs. There is an additional public benefit by creating a route which is more direct and convenient to the public. The termination points of the path are located to a different point on the same highway at the northern and southern ends of the path.

14.2. The diversion will benefit the public by adding a width of 4 metres, open and available for public use, to the new bridleway, where no width is presently recorded within the definitive statement. The diversion route is not substantially less convenient to the public and there are no additional limitations on public use of the path as a result of the diversion. No consultation responses have been received to suggest that public enjoyment of the path will be affected. It is therefore considered that the tests for confirmation of an order have also been met.

14.3. The proposed diversion also meets other considerations which the Council must take into account, such as the needs of agriculture and forestry and the provisions of the ROWIP. The diversion proposals present the Council with a less restrictive option for public use when considered against the definitive line of Bridleway no.26 Easterton.

15. Recommendation

15.1. That an order to divert Bridleway no 26 Easterton, be made under Section 119 of the Highways Act 1980 and that if no objections or representations are received, the order be confirmed by Wiltshire Council as an unopposed order.

Janice Green
Rights of Way Officer, Wiltshire Council

Date of Report: 22nd July 2011

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Sarah Thomas
36 Stirling Road, Market Lavington, Wiltshire, SN10 4DD
Telephone: 01380 812477

28th November 2011

Barbara Burke
Rights of Way Officer
County Hall
Trowbridge

Dear Ms Burke

Bridleway Modification Order for Diversion – Easterton 26

It has been brought to my attention that the above bridleway is in the final stages of your department agreeing a diversion. I would like to make you aware of the concerns I have, as do many of my horse riding friends.

Since the pig farm's development, horse riders have been forced from using the EAST 26 bridleway due to the pig farm being in its place, an alternative has been made available; a very narrow track, some distance away from EAST26 (I believe this would be the diversion you are currently considering), through the centre of the pigs with (for most of it) an almost invisible single strand electric wire either side separating us from the pigs. A horse wouldn't see this electric fence and if shielded from the pigs, would almost certainly get entangled and/or shocked from the fence, causing further panic and quite possibly, an accident.

The most sensible of horses are very often frightened by pigs much more than other farm animals; due to the high-pitched squeals, the smell and the way they move. This bridleway has already been made impossible to pass as well as its alternative, due to the risk. Therefore, many horse riders have chosen not to use it, despite its convenience.

Bridleway EAST26 forms a convenient link from Eastcott (Easterton) to a very popular bridleway offering the choice of many safe routes to Easterton Sands, Potterne and Urchfont, all avoiding the main roads. Should EAST26 be re-routed, it would mean an even further distance to manage our horses past the pigs whilst riding along the busy B3098. This section of the road has high banks, causing a further risk, as the pigs would be almost head height to the horse. Riding along this stretch of road, under these circumstances, would most certainly create a serious hazard to all the road users, due to the high risk of the horse shying away from the pigs and into the path of a vehicle. I'm sure in time there would be a serious accident involving a horse and a vehicle.

For the safety of all road users, horses and riders alike, EAST26 should remain, as its original route and have Post and Rail fencing either side of the path, with a minimum distance across of 12ft. This will allow enough room for the horse to pass wide, if the pigs are against the boundary of the bridleway and for horse riders pass each other safely.

I urge you to understand and consider my concerns and those of other local horse riders, and the reasons for wanting the original route re-instated. I hope you have enough information to make the right decision, if only from a safety aspect. Should you wish to discuss anything in this letter, please feel free to contact me.

Yours Sincerely

Sarah Thomas



Wiltshire Bridleways Association

Please reply to:

Mrs R. Cunningham

Staddle House, Charlton St Peter, Pewsey, Wilts. SN9 6EU

Tel: 01980 630321 Fax: 01980 635153

14th November 2011

Ms Janice Green
Rights of Way Officer
Wiltshire County Council
Department for Neighbourhood and Planning
County Hall,
Trowbridge,
Wiltshire BA14 8JD

Dear Ms Green,

Ref: JG/PC/87 2011/02

**The Wiltshire Council (Sheet SU 05 NW) Easterton 26 Diversion Order 2011 and
Definitive Map Modification Order no.8, 2011**

With reference to your letter of 11th October 2011 concerning the above-mentioned proposed Order, and copy of the Order with map and Public Notice.

The Wiltshire Bridleways Association object to the above order route on grounds of impracticality due to the movement of traffic along the proposed route and the adjacency of the pigs. Also, in order to keep both horse and rider safe and off the road, a track inside the field line is required.

We feel an alternative route to that proposed should be something more suitable for equestrian use, closer to the original route and a minimum of 4metres in width for the entire length. This route should then be protected with suitable fence and rail.

Please note are objections and suggestions accordingly.

Yours faithfully

Rosie Cunningham

Rosie Cunningham (Mrs)
WBA Administration Secretary

Patron: The Countess of Cardigan

12th March 2012

Wiltshire Bridleways Association
Staddle House
Charlton St. Peter
Pewsey
Wiltshire
SN9 6EU

Rights of Way Section
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Your ref :JG/PC/87/2011/02

Dear M/s Green

Diversion Order, Bridleway 26, Easterton.

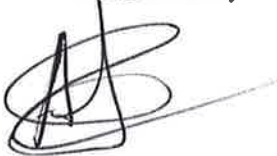
Thank you for your letter of 21st February concerning a possible diversion of the above bridleway. I would like to draw your attention to the circumstances which brought this request about. This bridleway has been accessible in the past as the land was unfenced. Suddenly, a fence appeared along the roadside, obstructing the bridleway, with no gate in it for horses riders or walkers. Wiltshire Bridleways contacted the R.O.W. warden for the area, but no action was taken to remove the obstruction and get the route reopened. The landowner made no attempt to resolve this before setting up his pig enterprise. In a very short time this has become a massive operation.

Under section 119 of the Highways Act 1980, subsection 2b it states " a public path diversion order shall not alter a point of termination of the path, (where it is on a highway) , otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public. Moving the bridleway further east along the B3098, a busy and fast road at this point, with no usable verges, will cause more inconvenience and danger to walkers and horse riders, and is therefore unacceptable.

We propose moving the bridleway west to Eastcott, to minimise the amount of road use, and to connect more easily with the other Easterton rights of way, nos. 19 , 20, and 28. This should be more commodious to the public, and would have the added benefit of separating horses from pigs and farm vehicles and electric fencing.,

If the landowner is interested in principle in considering our suggestion, we would be happy to attend a site meeting to discuss this further,

Yours sincerely



pp Mrs R. Cunningham.
Wiltshire Bridleways Association.



Wiltshire Bridleways Association

3 Chestnut Close
Rowde
Devizes
Wiltshire
SN10 2PY

21st October 2012

Dear Janice,

I am writing on behalf of Wiltshire Bridleways Association, as I understand you have been in communication recently with our chairman John Holley regarding Easterton Bridleway 26.

At present there is a diversion on this route which is not acceptable and dangerous for horse riders, as not only does it run through a pig farm, it also entails riding further along the very busy B3098 than the definitive route.

I have been asked by John Holley to write to you giving a number of suggestions for an alternative route for your consideration. These are as follows and outlined on the attached map.

Route 1

A to B along track

B to C along field edge

C to D along field headland to original exit of bridleway 26.

Route 2

A to B along track

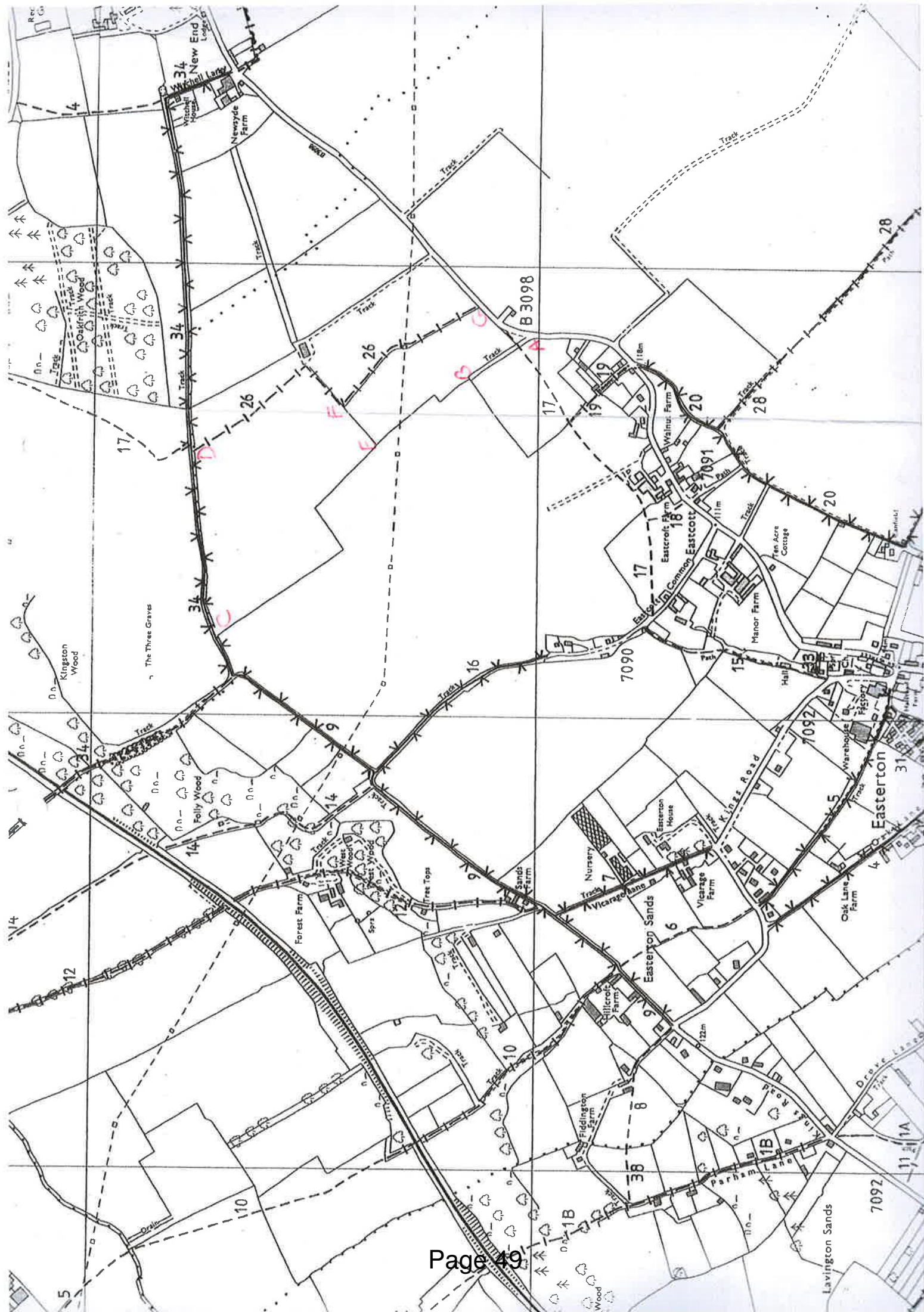
B to E to F to join up with the original route.

Route 3

A to G headland path to pick up the start of the original bridleway 26, and the bridleway to be fully protected by post and rail minimum width of 15 feet.

Yours sincerely

Michelle Haley



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Agenda Item 7

EASTERN AREA PLANNING COMMITTEE

INDEX OF APPLICATIONS ON 04/04/2013

	APPLICATION NO.	SITE LOCATION	DEVELOPMENT	RECOMMENDATION
7a	E/2012/1536/FUL:	Land adjacent to Swan Meadow, Pewsey	Erection of 10 no. detached dwellings; with associated parking, turning, landscaping and the creation of two vehicular access points	Approval subject s.106 legal agreement
7b	E/2012/1216/FUL	Land to the rear of Wilcot Road, Pewsey, SN9 5EL	Erection of 10 houses and 4 flats with access from Wilcot Road	Refusal

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REPORT TO THE AREA HUB PLANNING COMMITTEE

Date of Meeting	04 April 2013
Application Number	E/2012/1536/FUL
Site Address	Land Adjacent to Swan Meadow, Pewsey, Wiltshire.
Proposal	Erection of 10 no. detached dwellings; with associated parking, turning, landscaping and the creation of two vehicular access points.
Applicant	Mr & Mrs Middleton
Town/Parish Council	PEWSEY
Grid Ref	416905 159594
Type of application	Full Planning
Case Officer	Peter Horton

Reason for the application being considered by Committee

The application has been called to committee at the request of the division member, Cllr. Kunkler.

1. Purpose of Report

To consider the recommendation that the application be approved subject to conditions and subject to a S106 agreement to provide financial contributions for off-site provision in lieu of the on-site provision of children's recreational play space.

2. Report Summary

The main issue to consider is whether, being located within the Pewsey Limits of Development (LOD), the development of the site is acceptable in principle. If it is, does the proposed scheme represent a sustainable development which is satisfactory in terms of layout, design and highway safety, and can it be developed without adverse impacts in terms of landscape, ecology, flood risk, the historic environment and neighbour amenity.

3. Site Description



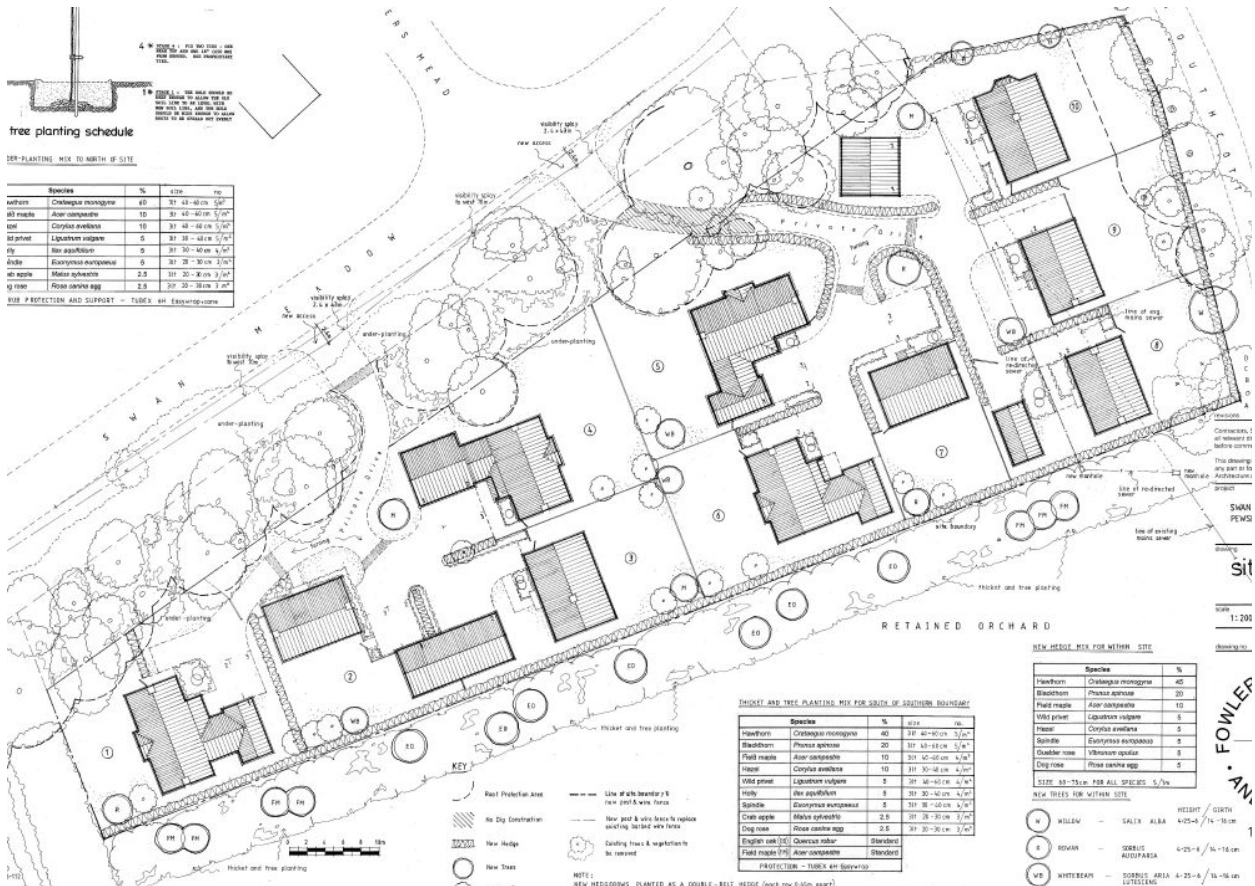
The site is a triangular piece of land located to the south of Swan Meadow (opposite its junction with Tinkers Mead), and to the north of the cider orchard at Southcott. It is occupied by trees formerly planted as a shelter belt, but many of which were cleared in 2012, and by the northernmost section of the orchard. The eastern boundary of the site is raised above the level of Southcott Road. The site immediately adjoins a recently constructed development of 8 detached two storey dwellings at Hurly Lane. The site is in the curtilage of the grade 2 listed Southcott Manor, which is situated around 250m to the south. The site lies in the North Wessex Downs AONB.

4. Planning History

There is no planning history.

5. The Proposal

The proposal is for the erection of 10 open market detached dwellings (5 no. 4 bedrooomed and 5 no. 3 bedrooomed) in two cul-de-sacs accessed off Swan Meadow, one of 4 dwellings and one of 6 dwellings. They would be constructed using varied materials: brick, painted brick, render and timber boarding, with plain clay tiles and slate. The development would sit behind the existing trees along the Swan Meadow frontage, which are the subject of recently served TPOs. The proposal would involve the removal of 43 other trees from within the shelter belt and 136 of the 947 trees in the cider orchard i.e. 14% of the total orchard. The dwellings were initially proposed to be mainly two and a half storey dwellings. However, revised plans have been received showing two storey dwellings of lesser ridge heights.



6. Planning Policy

The development plan for the area comprises the Kennet Local Plan 2011 and the Wiltshire & Swindon Structure Plan 2016. There is no specific housing policy for Pewsey in the local plan as the previous policy HC21 "housing on unallocated sites in Pewsey" was not saved. The key local plan policy is PD1 "Development and Design". Policy HC35 on children's recreation provision is also relevant. Structure Plan policy C8 covers development in AONBs. The National Planning Policy Framework (NPPF) is also relevant.

In due course the Wiltshire Core Strategy will replace the Kennet Local Plan as the statutory local plan for the East Wiltshire area. The Wiltshire Core Strategy Pre-Submission Document went out to public consultation in February 2012 and the Wiltshire Core Strategy was presented for examination in July 2012. However, it is not expected to be adopted until late 2013. Because the document is not in an advanced stage of preparation, it does not yet carry much weight when making planning decisions.

7. Consultations

Pewsey Parish Council: Objected to the originally submitted plans for the following reasons:

- It is an overdevelopment of the site.
- The houses are too large. The two and a half storey design is not in keeping with the area and does not fit in with the vernacular, in particular with the adjacent bungalows.
- The design could be more imaginative, and inappropriate in scale and the materials used do not pay any respect to the feel of the location.
- This development does not give any consideration to the provision of much needed affordable housing.
- There is a need for a Flood Risk Assessment to be undertaken.
- The design of a soakaway system to prevent water draining onto the highway should be detailed.
- There is a loss of amenity for Pewsey in general.
- There is a loss of a wildlife corridor.
- A wider wildlife survey should be undertaken at a more relevant calendar date.

North Wessex Downs AONB Officer: Objects for the following main reasons:

- Although the site is in the village Limits of Development, the boundary is clearly questionable as it follows no established boundary;
- The AONB Management Plan notes a key issue as being “unsympathetic incremental expansion of the settlements of the AONB, detracting from surrounding countryside”;
- Pewsey’s housing needs can be met by using previously developed land rather than greenfield sites;
- The NPPF states that great weight should be given to conserving landscape and scenic beauty in AONBs.

Natural England: Notes the concerns of the AONB officer and has no reason to doubt them. Endorses the mitigation measures proposed by the applicants’ ecological consultants and recommends that these are secured by condition requiring the preparation and implementation of a Biodiversity Mitigation/Enhancement Plan.

Wiltshire Wildlife Trust: Objects. The Extended Phase 1 Habitat Survey is inadequate, having been undertaken at an unsuitable time of year (December 2012). It is not possible to genuinely confirm the presence or absence of either habitats or species at this time of year, or the impact of the development on protected species such as bats or breeding birds.

Environment Agency: Declines to make specific comment as resources do not allow them to comment on proposals such as this with only moderate flood risk. Instead, refers the local planning authority to their Flood Risk Standing Advice on their website.

Wessex Water: New water supply and waste water connections will be required from Wessex Water. A public sewer crosses the site and the applicant should contact Wessex Water for further advice. Separate systems of drainage will be required to serve the development.

Highway Authority: No objection subject to conditions.

The Council's Ecologist: The submitted Extended Phase 1 Habitat Survey is appropriate to the site and to the proposed development. The authors state that due to the seasonal constraints of the baseline survey, the list of botanical species cannot be seen as a complete list, but it is sufficient to establish site value and to determine mitigation and enhancement opportunities. She agrees with this statement. The purpose of a phase 1 habitat survey is to identify the habitat types and their relevance to nature conservation and can be carried out at any time of the year by a competent ecologist. The report's authors have the necessary botanical skills and experience for the work. All the habitats identified within the site are common across Wiltshire and of low ecological value, hence no further targeted botanical survey is indicated.

The site has limited potential for protected species and no habitats or species of note were found within the site. However, the consultant ecologists have identified that trees provide opportunities for nesting habitat for small birds and foraging areas for birds, bats, small mammals and invertebrates, and recommend that trees and shrubs should be retained where possible. Recommendations are included in the report for planting that would benefit birds noted on site.

No habitats or species of high conservation value will be lost from the site and it will be possible to construct the proposed development without significant impact on existing local biodiversity. However, the submitted report did not address the provision of ecological enhancement for the site relative to the surrounding habitats and the species they support, as required by the NPPF. Therefore a mitigation and enhancement strategy for the site needed to be drawn up.

One was subsequently submitted and she finds it to be acceptable. It wholly addresses the issues raised in her initial comments. It will be sufficient to ensure that the local landscape area remains permeable to all wildlife species currently present. Furthermore the mitigation and enhancement proposed will result in an appropriate level of ecological gain for the site and surrounding landscape area and the wildlife species these habitats support.

The Council's Arboricultural Officer: No objection.

The Council's Drainage Engineer: No objection in principle. The flood risk to the site and the downstream properties is low and has been considered appropriately in the Flood Risk Assessment. The preliminary drainage designs are very satisfactory, but a condition is required requiring the submission and approval of detailed designs following site specific soakaway tests.

County Archaeologist: The site lies within an area with some archaeological potential. Recommends that an archaeological condition be attached to any planning permission to allow for archaeological investigation and mitigation.

The Council's Land Adoptions Team: Requires a commuted sum of £3065 per dwelling to be utilised towards the cost of providing improvements to existing equipped and casual play space in the village.

8. Publicity

7 letters of support have been received.

Individual letters of objection have been received from 52 local residents from 51 households, as well as one from Pewsey Environmental Action Team (PEAT). In addition a 127 signature petition has been submitted opposing the development. The main points raised can be summarised as follows:

- The inclusion of the site within the village LOD is an illogical anomaly: the line was drawn many years ago to accommodate a previously proposed Pewsey by-pass. The line should have been withdrawn when the proposal for the road was dropped. Swan Meadow is the obvious natural boundary of the village. Hence the proposal is not a logical "rounding-off", but an incongruous and illogical first bite into agricultural land south of Swan Meadow;
- The proposal will set a precedent for other development south of Swan Meadow;
- Preference should be given to building on brownfield sites rather than on agricultural land;
- The site is classified as grade 2 agricultural land, which is defined as "very good quality

- agricultural land”; development should be directed to poorer quality land;
- The proposed modern development will harm the character of Southcott, an ancient hamlet with a number of historic houses, and lead to its coalescence with Pewsey;
 - The proposal represents encroachment of development into the countryside and would be harmful to the AONB. Planning permission for major developments in the AONB should be refused except in exceptional circumstances (NPPF para 116 refers);
 - The proposal will harm the setting of Southcott;
 - The proposed 3 storey dwellings will dominate their surroundings, being out of keeping with the prevailing character of the area which is predominantly of bungalows;
 - The density is not in keeping with Southcott;
 - The proposal would provide incongruous, urban style development on agricultural land in an edge of village location;
 - No affordable housing is proposed. The village needs more affordable homes, not executive properties; there is a surplus of the latter, with many new builds lying empty (including the adjacent Hurly Lane development);
 - Job creation has not kept pace with new housing development in Pewsey;
 - The development will not be sustainable by any definition of the term. Occupants of the proposed dwellings will be dependent on the car due to distance from the village centre and schools and the lack of local jobs;
 - Pewsey has inadequate infrastructure to serve 10 additional dwellings;
 - The trees on the site were planted as a shelter belt for the cider orchard and as a buffer between Swan Meadow and Southcott. Many have been removed (without consent) and more will be. This will involve loss of habitat for migrating and nesting birds. The arboricultural report undervalues many of the trees; even old and dying trees have an important place in the ecosystem, being of value to insects, birds and bats. The trees are worthy of a TPO;
 - The thinning of the woodland took place before the habitat survey, so any bat or owl sites were already lost;
 - The proposal will lead to a loss of habitat for owls, bats and badgers; the submitted ecological report is misleading and inaccurate, undervaluing the site and portraying it as ecologically worthless. The surveys were done at the wrong time of year and are completely meaningless and inappropriate. The report is professionally poor and overly sympathetic to the development;
 - The site is part of a valuable wildlife corridor and the development will seriously impact local wildlife;
 - The survey and report that provide the Arboricultural Impact Assessment are inaccurate and incorrectly founded and should be disregarded; the report assumes that the proposed development will proceed and is not an impartial assessment – it is meaningless and should be discounted;
 - The proposal is adjacent to a flood plain and run-off from the site will exacerbate existing flooding problems in Southcott Road. These are worse since Tinkers Mead and Hurly Lane were developed, and will be worse still if the current proposal is allowed. There are other suitable locations for new housing which would not exacerbate flood risk;
 - The existing sewage infrastructure in the area is already at capacity. At times when the ground is saturated the surface water drainage system does not function properly and surface water infiltrates the sewage system and leads to raw sewage spilling into the stream;
 - The proposal is in the curtilage of two listed buildings: Southcott Manor and the barn at Southcott Manor, and would be harmful to the setting of both;
 - Surrounding houses and gardens will be overlooked;
 - The proposal will increase noise levels in an otherwise tranquil rural setting;
 - The proposal will increase light pollution in the AONB;
 - The local sewage system is inadequate and regularly gets blocked: the proposed additional properties will exacerbate this problem;
 - The proposal is over 750m away from the nearest children’s play area;
 - The proposal makes no allowance for recreational space;
 - The proposal will lead to increased traffic on the already dangerous road leading south past Waterloo Cottage and the petrol station;

- The proposal will inevitably increase the traffic using Southcott Road;
- The applicant did not engage with the local community and seek their views prior to making the application.

9. Planning Considerations

Swan Meadow forms the current edge of the built up area of Pewsey, with residential development to the north and countryside to the south. However the site does lie within the Pewsey Limits of Development (LOD), within which there is no “in principle” objection to residential development. There are no features on the ground to indicate why the line of the LOD has been drawn where it has: it runs through the northernmost section of the cider orchard. However, research has indicated that the line dates back at least as far as the mid-1980s (being in the 4 most recent local plans), and most probably further back still. It is clearly an anomaly, but it is where it is, and has previously been unchallenged in the local plan process. It is unclear why it has taken until now for a planning application to come forward, but now that one has, it stands to be assessed on its own planning merits. And the fact that the site lies within the LOD is a strong material planning consideration indicating that development is acceptable in principle.

Being located within the LOD, adjacent to the Swan Meadow estate and being comparatively close to the village centre, the site is considered to be a sustainable location for new development, with occupiers of the proposed dwellings having ready access to public transport facilities and being within walking and cycling distance of village amenities.

It has been argued by several objectors that to allow the development would lead to the coalescence of Pewsey and its outlying settlement of Southcott. However, the impact would be marginal, the site only extending 45m (3 houses width) down Southcott Road, and because the development would build right up to the limits of the LOD, it would represent the maximum extent of permissible development within the presently defined limits of the village. Any further expansion would be contrary to policy.

The proposal would not impact on the mature trees along the Swan Meadow frontage which have recently been made the subject of TPOs. It would however involve the removal of 43 other trees from within the shelter belt and 136 of the 947 trees in the cider orchard i.e. 14% of the total orchard. Whilst tree loss is always regrettable, the proposal is accompanied by a planting scheme which specifies considerable new planting, both within and adjacent the site (including 150 replacement apple trees). This planting will enhance the setting of the development, mitigating against any wider landscape harm, as well as providing ecological benefits.

Notwithstanding certain public criticism of it, the Council’s Arboricultural Officer has not cast doubt on the professionalism of the submitted Arboricultural Impact Assessment.

The whole of Pewsey is washed over by the AONB. The AONB designation is not a bar on development. Although the site is not without character, it is not considered to perform a wider visual role within the overall landscape of the AONB and hence its development would not materially harm the scenic quality of the AONB. For instance, from Swan Meadow the development will be screened by the line of TPO trees and from the south the site borders on to a private orchard. The only notable public view of the development will be from Southcott Road.

Whilst the AONB Management Plan seeks to resist unsympathetic incremental expansion of the settlements of the AONB which would detract from the surrounding countryside, this particular site lies within the LOD and therefore has previously been considered to have potential to accommodate development without harming the landscape setting of the village.

The site lies within the ownership and curtilage of Southcott Manor, a grade II listed building. However, the Manor is situated approximately 250m distant, with an extensive orchard in between. Hence the proposal will not be detrimental to the setting of the Manor. Neither will it be detrimental to the setting of the Manor’s grade II listed barn, which is situated around 200m distant, with the aforementioned orchard in between.

The Council's ecologist is satisfied that sufficient survey has been carried out by the applicant's consultant ecologists to identify that the habitats within the site and immediate surrounding area are not of high ecological value. No habitats or species of high conservation value will be lost from the site and it will be possible to construct the proposed development without significant impact on existing local biodiversity. However, the initially submitted report did not address the provision of ecological enhancement for the site relative to the surrounding habitats and the species they support, as required by the NPPF. This has been rectified by the submission of a supplementary report setting out a robust mitigation and enhancement strategy. The Council's ecologist is satisfied that the proposed strategy (enforceable via condition) will be sufficient to ensure that the local landscape area remains permeable to all wildlife species currently present and that it will result in an appropriate level of ecological gain for the site and its surroundings and the wildlife species these habitats support.

The majority of the site lies in flood zone 1 (low risk). However, the eastern-most part of the site falls within flood risk zone 2 (medium risk), an area equating to 18% of the total 0.49 hectare site area. This affects plots 8, 9 and 10. The proposed development of flood risk zone 2 land does not necessarily preclude development. However, there is a requirement for the applicant to submit a Flood Risk Assessment (FRA). In determining planning applications such as this, local planning authorities are required by the NPPF to ensure that flood risk is not increased elsewhere and that development is appropriately flood resilient and resistant. The NPPF states that "inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere".

The submitted FRA concludes that flood risk from public sewer, ditch and groundwater sources is low. Flood risk from fluvial and overland flow sources is considered moderate. As a result certain mitigation measures are proposed: (a) a low level bund is proposed around the site's southern perimeter so as to prevent runoff from the orchard entering the site; (b) surface water runoff will be disposed via soakaway and permeable pavement; (c) floor levels within the development will be set to a minimum of 150mm above surrounding ground levels, and; (d) the 1:1000 year flood extent (flood zone 2) coincides with the 111m contour, so recommends that the finished floor levels for plots 9 and 10 are set at this level.

The Council's drainage engineer has no objection to the principle of the development, considering that the flood risk to the site and to downstream properties is low and that the issues have been appropriately considered in the FRA. Whilst acknowledging that Southcott Road is prone to being flooded, the application site is raised on a much higher level. Subject to a condition requiring the implementation of the above listed mitigation measures, and another one requiring the submission and approval of detailed soakaway and permeable paving designs, the development of the site is not considered likely to either exacerbate existing flood risk elsewhere or to put occupiers of the proposed properties at risk.

The Environment Agency's standing advice for housing developments involving flood zone 2 land is that the applicant should submit a "sequential test". The NPPF states that "the aim of the sequential test is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding". So the preference is to locate development in flood zone 1, but where there is no reasonably available site in flood zone 1, there is scope to consider locating in flood zone 2.

The applicant has carried out and submitted a sequential test relating to just the village of Pewsey. The report argues that it would be unreasonable to carry out the test for the whole of the Wiltshire area for such a local development. Officers do not disagree with this view. The report identifies 9 potential alternative sites in Pewsey, as listed in the Council's Strategic Housing Land Availability Assessment (SHLAA). Of these 9, 1 is located within flood zones 2 and 3 so is not sequentially preferable. The other 8 are located within flood zone 1 so are sequentially preferable. However 5 are located wholly outside the LOD and the other 3 sites have significant planning constraints. Hence none of the 8 sites in flood zone 1 are reasonably available for the proposed housing development. Since there are no reasonably available sites for development of a comparable nature, the proposal is held to pass the sequential test.

The proposal is for 5 no. 3 bedroomed and 5 no. 4 bedroomed open market homes, to be constructed variously of brick, painted brick, render and timber boarding, with clay plain tiles and slate for the roofs. The designs of the proposed dwellings are considered acceptable. A majority of the dwellings were initially proposed to be 2½ storey, with rooms in the roof. However, officers were concerned that such designs would not integrate satisfactorily with the prevailing pattern of surrounding development, characterised by predominantly single storey development (Swan Meadow and Tinkers Mead) and two storey development (Hurly Lane). Following negotiation, amended plans have been received showing 2 storey dwellings of lesser ridge height than initially proposed.

Under the provisions of the Kennet Local Plan, there is no requirement to provide affordable housing on sites of less than 25 units in Pewsey. Hence the proposed 10 unit scheme is exempt. This is likely to change once the Core Strategy is adopted, as draft Core Policy 43 requires a 40% affordable contribution on sites of 5 or more dwellings. However this emerging policy carries little present weight and the application stands to be determined in accordance with the Kennet Local Plan.

The development is made up of 2 cul-de-sacs serving 4 and 6 properties respectively. The layout of the development is considered acceptable and the highway authority raises no objection subject to conditions.

The siting of the proposed dwellings will not be materially detrimental to the amenity of surrounding existing occupiers. For instance the proposed dwellings are around 40m distant from the existing dwellings in Tinkers Mead and Woodlands Road and 28m distant (and at an oblique angle) from Mills Farm. Whilst there will be a degree of overlooking of the garden of Mills Farm, with a separation distance of 19m the impact is not so material as to warrant a refusal of planning permission.

Local plan policy HC35 requires the provision of children's recreational play space on small housing schemes of 5 to 19 units. In this particular instance, the applicant is proposing no play space. However, the Council's Land Adoptions Team would be prepared to accept a commuted sum of £3065 per dwelling in lieu of on-site provision to be utilised towards the cost of providing improvements to existing equipped and casual play space in the village. This could be achieved via a S106 agreement.

There has been certain public criticism that the applicant failed to consult the local community prior to submitting the application. However, there is no statutory requirement for applicants to consult prior to submitting applications. Whilst the Localism Act has introduced a duty to consult, this has not yet come into effect and the regulations are yet to be published. However in any event, the local planning authority has consulted widely on the application so the applicant's failure to engage in prior consultation has not prejudiced the local community, with the number of representations that have been received being an indication of just how widely known the application has become.

10. Conclusion

The site lies within the Limits of Development and hence there is no in principle objection to the site's development. The site represents a sustainable location for new development, and could be developed without any adverse landscape impact or harm to the setting of nearby listed buildings. Satisfactory designs and layout are proposed, with no adverse highway safety implications and with no material harm to the residential amenity of existing local residents. The applicant has demonstrated that there will be no harm to local biodiversity and that with appropriate flood risk mitigation measures, the development will not increase flood risk in the locality.

RECOMMENDATION

That planning permission be GRANTED subject to a S106 legal agreement to secure financial contributions in lieu of on-site children's play space provision for the following reason and subject to the following conditions:

The site lies within the Limits of Development and hence there is no in principle objection to the site's development. The site represents a sustainable location for new development, and could be developed without any adverse landscape impact or harm to the setting of nearby listed buildings. Satisfactory designs and layout are proposed, with no adverse highway safety implications and with no material harm to the residential amenity of existing local residents. The applicant has demonstrated that there will be no harm to local biodiversity and that with appropriate flood risk mitigation measures, the development will not increase flood risk in the locality.

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

REASON:

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

- 2 **INFORMATIVE TO APPLICANT:**
This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the [INSERT].

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

REASON:

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

- 4 No development shall commence on site until the trees on the site which are protected by a Tree Preservation Order have been enclosed by protective fencing, in accordance with British Standard 5837 (2012): Trees in Relation to Design Demolition and Construction. Before the fence is erected its type and position shall be approved with the Local Planning Authority and after it has been erected, it shall be maintained for the duration of the works and no vehicle, plant, temporary building or materials, including raising and or, lowering of ground levels, shall be allowed within the protected areas(s).

REASON:

To enable the Local Planning Authority to ensure the protection of trees on the site in the interests of visual amenity.

- 5 All soft landscaping shown on drawing numbers 120516-102D and 120516-112 shall be carried out in the first planting and seeding season following the first occupation of the dwellings or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

REASON:

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

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.

REASON:

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

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), the garages hereby permitted shall not be converted to habitable accommodation.

REASON:

To secure the retention of adequate parking provision, in the interests of highway safety.

- 8 No part of the development hereby permitted shall be first occupied until the accesses, turning areas and vehicle parking areas have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter. The first 7 metres of each access shall be surfaced in a well-bound consolidated material (not loose stone or gravel).

REASON:

In the interests of highway safety.

- 9 No part of the development shall be first occupied until the visibility splays shown on approved plan 120516-102D have been provided with no obstruction to visibility at or above a height of 900mm above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

REASON:

In the interests of highway safety.

- 10 The mitigation measures detailed in Section 4 of the approved Flood Risk Assessment (February 2013 Issue 2, Cole Easdon Consultants) shall be carried out in full prior to the first occupation of the development.

REASON:

In the interests of flood prevention.

- 11 No development shall commence on site until detailed designs for both soakaways and permeable paving, along with soil percolation tests adhering to industry standard BRE 365 procedures, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

REASON:

In the interests of flood prevention.

- 12 The development shall be carried out in strict accordance with the recommendations made within the document "Ecological Appraisal including Mitigation and Enhancement Strategy, Final Report 15 February 2013" by Malford Environmental Consulting, in particular the site layout drawing on page 41 and as amplified in approved drawing 120516-112.

REASON:

To mitigate against the loss of existing biodiversity and nature habitats.

- 13 No development shall commence until:

- a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
- b) The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON:

To enable the recording of any matters of archaeological interest.

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

120516-103A received 30/01/13
120516-104A received 30/01/13
120516-105A received 30/01/13
120516-106A received 30/01/13
120516-107A received 30/01/13
120516-108A received 30/01/13
120516-109 received 30/01/13
120516-110A received 30/01/13
120516-112 received 26/02/13
120516-102D received 28/02/13

REASON:

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

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REPORT TO THE AREA HUB PLANNING COMMITTEE

Date of Meeting	04 April 2013
Application Number	E/2012/1216/FUL
Site Address	Land to Rear Of Wilcot Road, Pewsey SN9 5EL
Proposal	Erection of 10 houses and 4 flats with access from Wilcot Road
Applicant	Pewsey Ltd
Town/Parish Council	PEWSEY
Grid Ref	415956 160225
Type of application	Full Planning
Case Officer	April Waterman

Reason for the application being considered by Committee

This application has been called to the committee at the request of the division member, Cllr Jerry Kunkler.

1. Purpose of Report

To consider the recommendation to refuse the application for full planning permission.

2. Report Summary

The main issues in this case are the principle of residential development at this location and the detailed aspects of the proposal, including:

- a) The suitability of the site for noise-sensitive development
- b) Highway, access and parking matters
- c) Grain and density of development in the locality
- d) Character and appearance of the area and impact of the proposal on heritage asset (the Conservation Area)
- e) Trees, landscaping and wildlife habitat
- f) Contamination issues
- g) Impact of the proposal on the amenity of neighbouring residential occupiers
- h) The provision of additional public recreation space

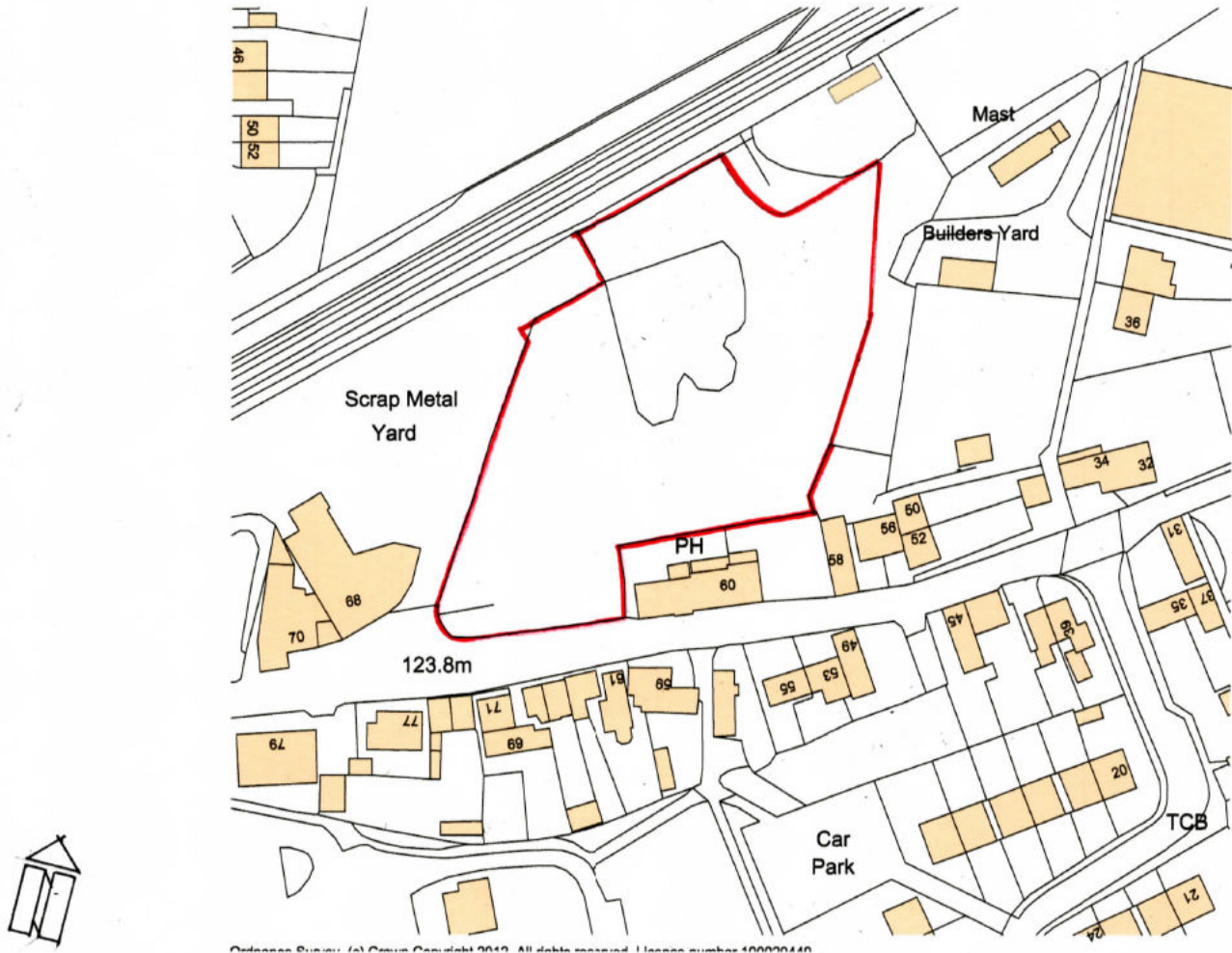
The assessment of the noise issue in this case is set out in fuller terms than is usual for a committee report, including the detail of relevant consultation and correspondence, as it is considered that the complexity of this case warrants a greater amount of information to be available to Members to assist their decision-making. Members are encouraged to visit Wilcot Road, although there is no free access onto the site itself.

3. Site Description

This 0.49 hectare parcel of land lies towards the north western end of the settlement of Pewsey, with a road frontage on to part of the one-way section of Wilcot Road between the Crown Inn PH and Pewsey Metal (a.k.a. Black's scrap yard and recycling facility). The site wraps around the

back of the pub and its small garden. To the east of the site lie the rear gardens of residential property fronting Wilcot Road, a builder's yard and car parking for the railway station. The main West Country – London railway line forms the northern edge of the site, and to the west is the scrap yard. Housing runs along the south side of Wilcot Road, opposite the frontage. There are a number of street-edge parking spaces on the north side of Wilcot Road, which are time-limited. The site is bounded by a mixture of constructed fences (metal, timber, post and wire, chain link and block wall) and by hedging, some of which has grown on to tree size on the Wilcot Road frontage.

The site falls within the Limits of Development for Pewsey. A strip along the site frontage of Wilcot Road lies within the Conservation Area, but the majority of the land falls outside this designation.



LOCATION PLAN 1 1250

The land is predominantly level, both within the site and with its neighbouring plots, although there is a significant slope down to the railway cutting at the northern edge of the site. The land within the site has been cleared of brambles and trees, except for a field maple in the south western corner.

The submitted site outline plan has been amended to show the correct alignment of its eastern boundary, where it meets the rear garden of no. 58 Wilcot Road. The applicant has not amended the position of the application site boundary adjoining the western edge of the curtilage of the Crown Inn PH, notwithstanding a claim from the owner of that property that its alignment is incorrectly shown. Copies of the applicants' title plan (Land Registry) have been submitted indicating the extent of land ownership.

4. Planning History

Planning permission has been sought for a variety of residential developments on this site.

K/55760/FUL	Erection of 6 houses and 18 flats	Withdrawn 30/03/2007
K/46067	Erection of 19 houses and construction of access	Refused 26/11/2003 Appeal withdrawn 17/12/2004
K/44383	Erection of dwelling	Refused 10/12/2002
K/16916	Erection of 21 low cost starter homes	Refused 01/08/1991 Appeal dismissed 29/04/1992
K/15255	Erection of 25 starter houses	Application withdrawn ??/05/1990

In all but the most recent case (withdrawn in advance of determination) the potential disturbance to the prospective residents of the development from the scrap yard to the west of the site has featured in the reasons for refusal of planning permission, and in the Inspector's appeal decision. Although not binding on the Council, the last correspondence from the planning officer with the agent on the most recent case (K/55760) did not cite the issue of noise disturbance as a likely reason for planning permission being refused. Instead, acoustic treatment of fenestration and vents was noted as likely to reduce the noise exposure to residents from both the adjoining scrap yard and the railway line.

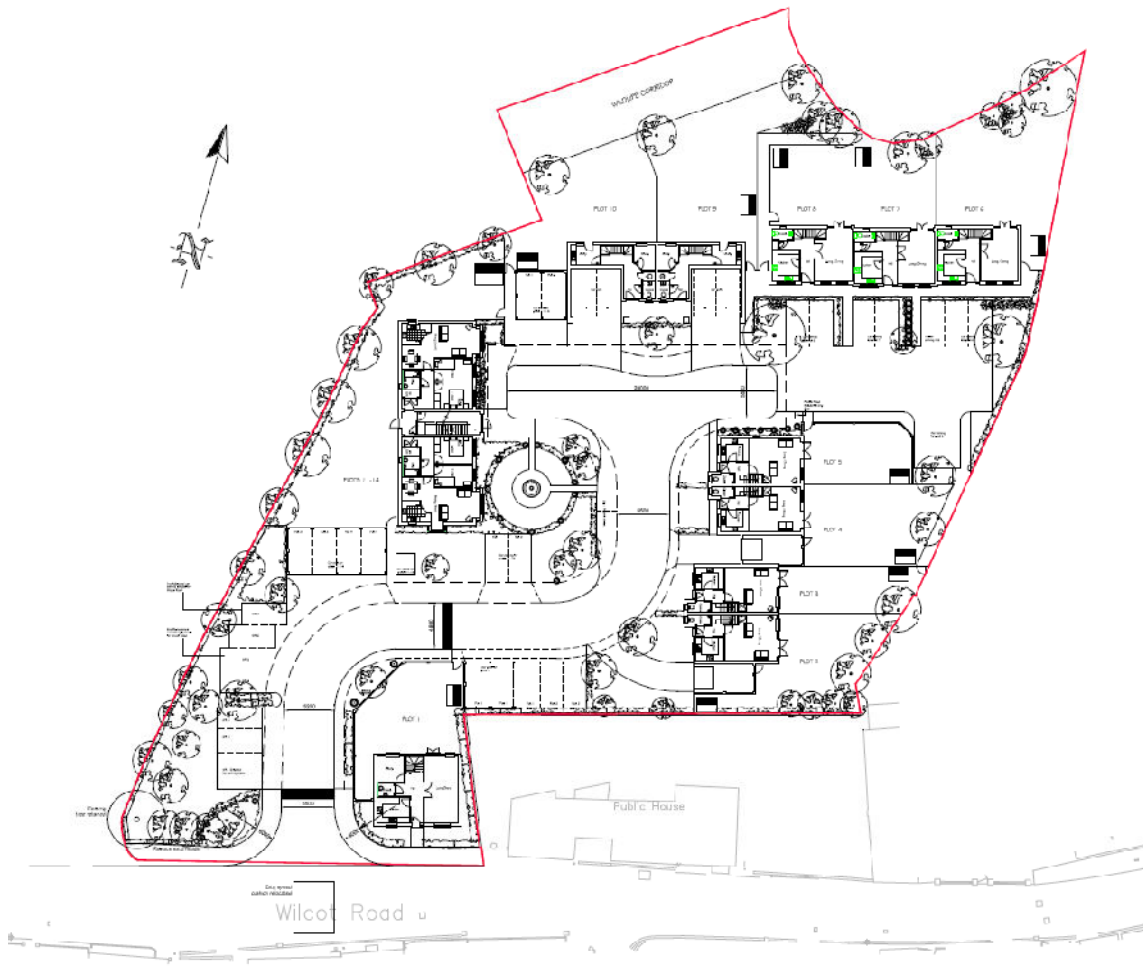
The planning history of the adjoining scrap yard is also of importance to this case.

Appeal	Against the imposition of the time-limiting condition.	Appeal allowed 05/12/1980 in effect permitting the use permanently.
K/79/279	Renewal of permissions to use land for storage and conversion of scrap metal and including office accommodation building	Approved subject to time-period condition (until 31/12/1984) 24/01/1980
	Two previous temporary (5 year) permissions	

Other conditions imposed on the K/79/279 permission restricted scrap metal conversion operations to the hours between 08.00 and 17.00 Mondays-Fridays, and 08.00 and 12.00 on Saturdays (no such operations to be carried out on Sundays or Bank Holidays), and for storage and conversion activities to be limited to a specific area of the site (excluding a strip 5 metres wide adjoining the current planning application site). The appeal did not contest these conditions, and the Inspector did not alter or remove them from the permission.

5. The Proposal

Full planning permission is sought for the erection of 14 dwelling units, comprising two-storey detached, paired or terraced houses, a block of two-storey flats, and a pair of two-and-a-half-storey houses. A new access road is proposed to serve the development from Wilcot Road. The scheme layout and its landscaping have been amended in line with recommendations made on highways, parking and planting schedule issues. The layout includes 7 car parking spaces (one of which has disabled parking space dimensions) to replace (and exceed) those lost from the Wilcot Road frontage. The strip of land closest to the railway cutting is excluded from the plot 9 and 10 gardens, and is reserved as a wildlife corridor.



Should planning permission be granted for the development, the applicant has agreed to enter into a Section 106 agreement with the Council to secure financial contributions to cover various works to the highway and traffic orders, and to contribute towards the provision of public recreational facilities off-site. In-detail work to prepare the agreement has not yet commenced.

In addition to the plans, the application included reports into the assessment of the ecological, arboricultural and archaeological resource of the site, a report of investigations into the potential for the site to include soil contamination and an assessment of the impact of noise emissions from existing surrounding land uses on the proposed residential development. The application was also accompanied by a Code for Sustainable Homes Pre-Assessment, which gave a predicted Code Level 3 rating for all units on the site.

In response to the initial comments of the Environmental Health Officer, the agent made a further submission on noise matters, which, for ease of reference, is set out in the consultation section of this report.

6. Planning Policy

National Planning Policy Framework 2012

Wiltshire and Swindon Structure Plan 2016

- DP1 Priorities for sustainable development
- DP2 Infrastructure
- DP3 Development strategy
- DP7 Housing in towns and main settlements
- HE7 Conservation areas and listed buildings

Kennet Local Plan 2011

PD1 Development and design

HC35 Recreation provision on small housing sites

NR4 Nature conservation outside designated sites

HH1 Protection of archaeological remains

7. Consultations

Parish Council

THE PARISH COUNCIL SUPPORTS THIS APPLICATION AND OFFER THE ATTACHED TYPED LIST OF COMMENTS FOR YOUR CONSIDERATION:

1. *Site Access*

- *There should be a rumble strip sited at the entrance to the development to encourage traffic exiting the site to slow down.*
- *There should be a stop sign at the junction with Wilcot Road.*
- *A one-way sign should be sited opposite the exit so that traffic leaves the site turning right only.*
- *There should be no protrusion of the development onto the main highway of Wilcot Road, the development should be flush with the current highway boundary.*

2. *Additional Parking*

- *There should be an increase of parking provision just inside the entrance from 4 spaces to 10, including 1 disabled bay, that can be used by members of the public.*

3. *The location of the gas tank to fuel the site is not shown.*

4. *Confirmation is required of the future site maintenance and management.*

5. *The Parish Council expect the letter from Mr Hughes to be fully investigated by the Environmental Health department as the PC are not acoustic experts.*

6. *A bund should be built towards the north as added protection from the rail track noise which will not affect the wild life corridor.*

Parish Council (amended plans)

THE PARISH COUNCIL SUPPORTS THIS APPLICATION AND OFFER THE ATTACHED TYPED LIST OF COMMENTS FOR YOUR CONSIDERATION:

1. *Site Access*

- *There should be a stop sign at the junction with Wilcot Road.*
- *A one-way sign should be sited opposite the exit so that traffic leaves the site turning right only.*

2. *The location of the gas tank to fuel the site is not shown which is of significant importance.*

3. *Confirmation is required of the future site maintenance and management.*

4. *The Parish Council expect the letter from Mr Hughes to be fully investigated by the Environmental Health department as the PC are not acoustic experts.*

5. *A bund should be built towards the north as added protection from the rail track noise which will not affect the wild life corridor.*

6. *The relocated speed hump directly in front of the exit from the development interferes with the pavement on the south side of the road.*
7. *The pub landlord's boundary problem has been addressed, and although this is not a planning matter it is of importance to a very close neighbour.*

Highways

I refer to the above planning application. I recommend that this application be refused on highway grounds for the reasons given below:-

1. *The proposed development requiring the loss of 6 on-street limited waiting spaces from Wilcot Road (in an area where there is considerable parking pressure) makes inadequate provision to replace those spaces, and also does not provide sufficient curtilage and visitor parking for the residential development proposed. For these reasons the proposed development would lead to indiscriminate parking and to additional parking on nearby roads to the detriment of the safety and convenience of road users.*

NB The Council's current minimum parking standards require 3 spaces for 4 bedroom dwellings and 1 visitor parking space per 5 dwellings. A 5.5 metre carriageway estate road could accommodate some parking but a 4.8 metre road as proposed is considered inadequate to provide regular parking within the carriageway in a safe and convenient manner.

2. *The submitted details are inadequate to enable the highway aspects of the proposed development to be properly considered and assessed. The Site Layout plan does not detail the correct Wilcot Road highway situation, in that the footway on the opposite side of the road and the nearby limited parking areas have not been detailed. No track has been provided of the correct sized refuse vehicle to prove that the proposed junction and estate road will safely accommodate refuse vehicle, and removal lorry movements.*

Any revised plan should detail low-key traffic calming such as a 1 metre wide rumble strip located about 5 metres into the site and a further strip about 32 metres further in (beyond the first bend).

It may be appropriate to relocate the Wilcot Road no-entry signs to just east of the site access (enabling the residents of the development to access the site directly from the west), but I am discussing this with traffic officers. If so the developers would be required to fund this and the required traffic order amendments.

Highways (amended plans)

I refer to the above planning application, and to the amended plan 2089/18/A. The plan is satisfactory from the highway point of view. Any grant of permission should be conditioned to cover the following points:-

1. *Prior to first occupation the footway over the site frontage shall have been constructed in accordance with details to be first submitted to and approved by the Local Planning Authority.*
2. *A negative condition that the development shall not be occupied until the relocation of the speed control cushion near the entrance to the site has been advertised, any objections received been reported to the lead cabinet member of the council, and the relocation of the cushion been implemented in accordance with details to be first submitted to and approved by the Local Planning Authority, - in the event that the lead cabinet member decides to approve the relocation.*
3. *A negative condition that the development shall not be occupied until a Traffic Regulation Order for the relocation of the existing no-entry signs west of the site entrance to a position to*

the east of the site entrance has been advertised, any objections received been reported to the lead cabinet member of the council, and Traffic Order been implemented in accordance with details to be first submitted to and approved by the Local Planning Authority, - in the event that the lead cabinet member decides to approve the Order.

- 4. A negative condition that the development shall not be occupied until a Traffic Regulation Order for the alteration of the on street parking on Wilcot Road near to the site entrance, including the imposition of any required waiting restrictions within the site, has been advertised, and the approved changes implemented.*

The applicants should be advised that they will be required to bear the costs of the above 4 points including all traffic order and traffic calming advertisement costs, and that it will be essential for a Section 38 Agreement to be entered to secure the adoption of the road within the site as public highway, in order that replacement highway parking for the on-street Wilcot Road parking can be achieved.

Environmental Health Officer (Environmental Control and Protection)

There are 3 main noise sources to consider, the public house, the railway and the scrap yard. I will discuss each in turn:

Public House

It is accepted that the proposals for design and layout of the site will mean that the proposed properties will be better protected from potential noise from this source than current properties. This department has received complaints regarding noise from this public house in the past, in 2007 and 2009. These complaints appear to have been one offs and no further action was taken. This department would not recommend refusal of this application based on noise from the public house.

Railway

The assessment has been made in line with the method of (withdrawn) PPG24 as recommended. The assessment is based on train movements over one night and section 3.6 states that a review of the rail timetable suggests a maximum of 5 passenger trains passing the site and an estimate of 3-4 freight trains. It is vital that the applicant confirm that these assumptions in writing with Network Rail. On the basis that these assumptions about the number and type of rail movements overnight can be confirmed it will be necessary that alternative means of rapid ventilation are provided. Please see my further comments below regarding ventilation.

Scrap yard

This source remains our greatest concern. I have been advised that the scrap yard is limited to hours of operation by planning conditions. Scrap metal conversion should only take place 08:00-17:00 Monday – Friday and 08:00 – 12:00 Saturday. This restriction prevents noisy work being carried out on the site at more sensitive times.

There is also the possible 5m access road between the scrap yard and site in question. If this area was cleared it would increase the distance between the noisy work and residential properties. However, the significance of this increased distance is not assessed in the report and is likely to be slight. We note that the reported legal requirement for a 5m gap has not been enforced at this time and without any independent guarantees that such a requirement can and would be enforced at a future date it would be wrong to assume anything other than the status quo.

The layout of the proposed dwellings and the figures that the noise calculations are based on have not changed since the pre planning enquiry. As such, my comments are similar: The proposed layout is shown to be effective at reducing the sound levels in 'habitable rooms' to a level that could be considered acceptable. The calculation of the sound levels are based on measurements taken on two separate days and on a number of assumptions.

With respect to Sections 3.7 and 3.8 of the report; no information is presented which demonstrates

why the applicant believes the full range of noise making activities carried out at the scrap yard were assessed by the two noise surveys referred to in the acoustic report. If such information does exist we would be pleased to receive it.

Secondly, as above, the noise assessment and its conclusions are based on measurements taken on two separate days. Without any information, such as confirmation from the operator, that the level of activity on these days was "typical" we are not convinced that the noise surveys on the two days mentioned can be confidently said to be representative of activities on site by the current operator. If evidence to the contrary is available then we would be pleased to receive it.

My response earlier this year requested historical noise assessments that had been mentioned to us during conversations with the applicant. It had been suggested to us that the historical noise assessments showed similar results to the submitted noise assessment and would back up this assessment.

During a site visit in March this year [2012] it was pointed out by the applicant on a number of occasions that the scrap metal yard had reduced its operations considerably, therefore the sound levels that potential residents would be exposed to could be mitigated by the layout of the site. Unfortunately the fact that the scrap yard operations are currently reduced means that the noise data that has been submitted may not be representative of the sound levels that residents could be exposed to should operations on the site increase in the future. The calculations are based on the assumption that noisy activities will take place for 15 minutes in each hour. The noisy activities on the site would only need to double for the predicted sound levels to increase by 3dB and therefore become unacceptable.

Letters of representation have been submitted to the planning team by some local residents. Comments made in these letters back up our opinion that the noise assessment for the scrap yard does not satisfactorily illustrate the sound levels produced by work at the scrap yard.

This department has to consider not only the current activity but also the class of use on neighbouring sites. The scrap yard is a large site which under planning can be used as a scrap metal site. Waste management companies sometimes actively search for sites with this class of use. If they find they are able to buy the site they would not have to apply for planning permission to move in and could significantly intensify activities. Notwithstanding this, the current owner of the site could significantly intensify his level of activity on the site. In either event such intensification would be perfectly legal and would invalidate the assumptions used within the noise assessment. Given the application and noise report highlights that the scrap yard site is currently under used we would suggest that future intensification of use, with obvious implications for noise levels on site, is foreseeable.

With respect to the BS4142 assessment; paragraph 5.2.2 suggests the use of BS4142 to assess noise of an industrial nature affecting new housing is debatable. We do not agree. I would highlight a paragraph from the foreword from BS4142 which I attach here for completeness, contradicts that assertion. "The standard is intended to be used for assessing the measured or calculated noise levels from both existing premises and new or modified premises. The standard may be helpful in certain aspects of environmental planning...." The BS4142 assessment has indicated that noise from the scrap yard will be just above "marginal significance" at various points on the development site.

Despite a 5dB correction being added for impulsive noises the method cannot account for the sudden, maximum sound levels that are shown in figures 4,5 and 6. In Figure 6 a peak marked as 'metal loading/unloading' reaches nearly 90dB. These are significant individual noise events which will be very apparent to the people living adjacent. The BS4142 methodology effectively "smooths" out the impact of this type of noise event during the day because it is based on equivalent continuous noise levels and this is a recognised flaw in the BS4142 methodology.

Section 5.2.2 (3) makes reference to a court case involving Mildenhall Stadium. This is an interesting

example but should be distinguished from the current situation. That case concerned the use of BS4142 in the consideration of noise nuisance and not the use of the standard in a land use planning capacity. The standard itself makes no reference to “who was there first” and nor does PPG24. The case is however an excellent example of where the character of an area and existing planning approvals for businesses can seriously limit the availability of remedies for people affected by noise nuisance who moved to an area containing an existing noise source. These same considerations can and do also limit the powers of Councils in using their statutory powers to address nuisance.

I note that the noise assessment recommends in 5.1.6 that alternative ventilation is installed for all habitable rooms and the preferred method should be determined by the architect. Unfortunately I cannot see a preferred method in the design and access statement or plans. Has this matter been overlooked?

The applicant has highlighted the newly adopted National Planning Policy Framework. We would also like to highlight that document and in particular how it makes clear that existing businesses should be protected from the impact of changes in land use nearby after they are established. We are concerned that this is exactly the situation that might occur if planning approval is granted for this development. Both the assessment of internal noise levels (and corresponding specification of the necessary glazing and ventilation) and the BS4142 assessment are based on the questionable assumption that the intensity of use the scrap yard will not significantly increase in the future. Perfectly legal intensification of the scrap yard would increase noise levels and invalidate the noise assessment and its conclusions. It may also lead to statutory nuisance. Where a Council is satisfied that a nuisance exists it is legally obliged to take enforcement action against those responsible. This can lead to expensive and protracted legal proceedings and could lead to extensive legal costs for and restrictions on the operation of the businesses involved. Notwithstanding that it is not guaranteed that action by the Council can always resolve nuisance caused by businesses. Unfortunately we have recent experience with a large business who accepted they were causing a nuisance but nevertheless successfully pursued an appeal against the Council. The company has been permitted by the Court to continue operating under their existing arrangements and continue to cause a nuisance.

Based in the information supplied with this application this department has to recommend that the application is refused because of serious concerns that future residents may be unacceptably disturbed by noise from the surrounding land uses.

Agent's response to initial EHO comments

I refer to the application comments made by your Environmental Health Officer (EHO) concerning the noise report issued by our consultant, Ian Sharland Ltd

It would appear that Vicky Browns comments on our application fall into two categories. The first being the number of surveys undertaken on the site and the second being the possible intensification of use of the site. There is however an agreement that the working hours of the scrapyards are restricted by planning condition. There is also an agreement that the proposals are acceptable in absolute terms given the sound recordings provided with the current application. There are several matters like the exact type of attenuated sound ventilation that can be correctly dealt with by planning condition.

1. It is well established through Case Law that every application must be considered on its own merits. This legal precedent is clearly not being applied by the Environmental Health Officer to the extent that the consideration of our application seems to be related to a recent case of “nuisance” on another site with different circumstances to our own. This is clearly an unrelated case, whatever its financial outcome for the Council, and consideration of our application must not be linked to this other case.
2. The Appeal decision in 1980, in granting planning permission for the continued use of the adjoining yard also imposed conditions. The Inspector, representing the Secretary of State, imposed conditions relating to time of

operation and specific areas of the site where work could be lawfully carried out (shown hatched on the plan) and the maximum height of stored materials

3. If the Environmental Health Department are concerned about possible intensification and how the yard is operating then the above mentioned appeal clearly sets out what the scrapyard operator has valid permission for. These conditions are enforceable. It is therefore somewhat surprising that on investigation of all complaints concerning noise levels received by the Council in the past ten years, no enforcement action was taken. Four complaints were received. A complaint was received from a resident of Wilcot Road on 17/9/2008, the complainant was advised that there were no restrictions on the operating hours of the business. This was clearly incorrect advice as the Appeal decision in 1980 clearly restricted hours. No action was however taken. A complaint was received from a resident of Cossor Road on 1/9/2009, the complainant was again misinformed by the Council and told that there were no restrictions on the hours of operation of the scrapyard. When seeking confirmation from the operator of the scrapyard as to the hours of working he stated that “he never started work before 7.30 am”. This is in effect an admission of a breach of the lawful working hours granted in the Appeal, dated 1980, which restricted starting hours to 8.00 am. No action was however taken. A complaint was received from a resident in Cossor Road on 4/6/2010, again he was incorrectly informed that there were no restrictions on the hours of work activity on site. The owner of the scrapyard did not reply to an EHO letter, this was not followed up and the case was closed on 8/7/2010. The same resident in Cossor Road complained again on 4/7/2011 and clearly stated that the crane was being used at 7.00am an hour before the consented start of operations. No action was taken and the case was closed on 4/8/2011. These are the only four complaints made during the last ten years and have been obtained from your Office of Information Ref RFI 4839. Four complaints from three local residents over a period of ten years does not on the face of it represent a major noise nuisance, but even so the Council could have enforced a reduction in activity of the scrapyard, if they had chosen to do so, by applying the terms of the 1980 Appeal planning Conditions. The Council still has these powers today to enforce a reduction in activity.
4. The same Appeal decision on 1980 also restricted the area of operation and specifically excluded a 5m wide strip of land running parallel with the common boundary of our client’s site and for its entire length. This strip of land has to be kept clear at all times as the owner of the application site has a right of way over this 5m strip of land. This strip of land’s exclusion from

the permitted operating area is clearly an enforceable planning Condition. However it appears that this strip of land is being actively used by the operator of the scrap yard in clear breach of the conditions imposed by the Secretary of State. The Council has never taken enforcement action over this land. Every time we have been on site the strip of land was in active use and a scan of Google Earth will also confirm this.

5. The Planning Inspector (representing the Secretary of State), clearly did not consider intensification to be a credible risk or likelihood and neither should the Council. Paragraph 10 of the Inspectors decision letter clearly stated:

“Much of the concern has arisen as a result of the changed management leading to more intense activity at the scrapyards, added to which are fears of future growth. In my opinion both the physical limitations of the site and the restrictions imposed by other planning Conditions make a further significant increase in activity unlikely”

The Council have chosen not to enforce any of the planning Conditions applicable to this site and the site continues, it would seem, to operate outside of its permitted hours and also to encroach on land that has no planning permission for scrapyards use. The same Appeal decision also restricted the height of storage to 3m. If these conditions were actively enforced by the Council this would ensure that rather than an increase in activity from its current levels, a decrease would occur. The site is constrained from physical growth due to its triangular shape formed by Wilcot Road, the railway and our application site. In addition all activity on site is further restricted to the cross hatched areas referred to in the Inspectors 1980 decision. Any future new owner wishing to carry on a use as a scrapyards would be bound by the same limiting planning Conditions, any change of operation would also be subject to a new planning application.

6. The original planning application in 2006 included two noise surveys by W S Atkins; the current application contains the results of two separate noise surveys. In addition the Hospital site also contained noise surveys taken in 2002. These noise surveys are all in the possession of the Council. The various noise levels taken over a period of ten years and individually spread over days/weeks are consistent with the current results recorded and clearly demonstrate that the average noise levels are indeed consistent. The adjacent Depot site realised higher train noise than our site and no further surveys or information was requested in that recent application

In conclusion, intensification is unlikely to occur as verified by the Inspector in restricting hours of work, areas of work and height of storage in the Appeal case. The Council has the benefit of the 1980 Appeal decision which clearly empowers it to enforce less activity on site should it choose to do so. Indeed any intensification of use can be a “material change of use” in Use Class Order terms, if any intensified use significantly changes the nature of the use to a different use. The surveyed noise levels on the site and the computer generated site layout are acceptable to EHO as they stand. The existence of consistent noise surveys on this site and adjacent sites over a period of ten years provides a good average figure without the need for further surveys. The adjacent consented depot site realised higher train noises than the application site and yet no further surveys or information were requested. We have addressed the two main area of concern raised by the EHO, intensification and spread of noise surveys, and trust that our response deals satisfactorily with these issues.

Environmental Health Officer (Environmental Control and Protection) comments on applicant's response

Having given due consideration to the letter from The Edwards Irish Partnership LLP dated 24th January I write in response from the Environmental Protection Department.

To order my response I will respond to each relevant paragraph in turn.

Paragraph 2

The calculations and modelling in the noise survey indicate that the proposed layout, with methods of amelioration detailed in section 5.2 sound levels can meet the 'marginal significance' level of BS4142. This indicates that the likelihood of the potential residents complaining because of the sound levels is marginal, not unlikely. The usefulness of the data used in the calculations for this result will be discussed below.

Paragraph 3

Our concerns about the potential for noise from the scrap yard having a significant effect on potential residents are based on the inadequacies of the information and noise survey that has been provided.

I will address each concern in turn:

- Sound measurements were taken over 2 days. There was no contact with the scrap metal yard operator to ensure that these two days were typical working days or that all of the noisy equipment on site was being used. We therefore have no reason to believe that the sound levels measured show worst case scenario or indeed typical days.*
- The assumption based on 'site observations' that external noisy working will take place for 15 minutes in the hour. Section 3.20 of the noise report states: 'From site observations, it would seem likely that such activity levels may occur for perhaps 15 minutes in any hour'. The consultant themselves have placed a number of caveats on the 15 minute assumption and again we have no evidence that this assumption has been confirmed by the operator of the site.*

Our concerns, the main relate to noisy work occurring for more than 15 minutes in the hour. Of course the operator may increase the amount of equipment on the site or bring in noisier equipment, which could also increase the sound levels significantly. An increase in noise levels caused by the use of other noisier equipment and/or more prolonged use of the existing equipment on site would, notwithstanding the other comments made here, invalidate

the noise assessment and mitigation measured proposed.

The sound levels from the site can vary significantly from day to day. The noise calculations have been based on the large grab handler being approximately 22m from the monitoring point and development. I have discovered that this machine is not stationary and moves all over the site. It may therefore, at times be operating much closer to and along the length of the boundary with the proposed development site.

It has also come to light that the scrap yard has a smaller grab handler has not been accounted for in the noise survey. Lorries delivering metal to the site may sometimes tip out a large skip of 10-15 tonnes of metal creating noise and vibrations.

Needless to say these circumstances have not been included in or assessed by the acoustic report. A moving noise source is likely to significantly reduce the screening effect of block to the western edge of the site.

- *Figures 4, 5 and 6 of the noise report show the sound levels recorded during the survey. BS4142 uses average sound levels which has the effect of smoothing out the noisier events. The green line on the graphs show the maximum noise level recorded.*
 - *Figure 4 shows night time noise and is included to illustrate sound levels attributed to night time trains. However there is a peak between 08:30 and 09:00 in the morning which showed the maximum noise level went up to 90dB. There is no annotation to show what caused this peak. It may have been caused by operations at the scrap metal yard.*
 - *Figure 5 shows daytime noise levels on 20th December. There is a peak between 10:40 and 10:45, marked as 'use of grab handler,' which goes over 80dB, the sound levels is close to 80dB for around 5 minutes. There is a peak between 11:20 and 11:25 which reaches approximately 78dB which is not labelled. Train movements are marked and appear to peak at or below 70dB, but this peak has not been labelled. It is assumed in absence of evidence to the contrary this noise was from the scrap metal yard. Sudden noises like this could have a significant effect on residents of the proposed properties.*

This graph shows results from approximately 10:40-11:35, less than 1 hour. There is no record of the noise for the start of the day or afternoon. This graph was not representative of a full operational day at the scrap yard.

- *Figure 6 shows results from just before 10:00 to approximately 18:00 on 6th January 2012. There is no record for the sound levels at the start of the day. If we look at the maximum sound levels we can see two of the peaks have been marked. The 'use of the grab handler' for 5 minutes showing sound levels over 80dB. Within the same hour metal loading/unloading for 9 minutes peaking at nearly 90dB. These 2 activities, within the same hour amount to 14 minutes in this hour of sound levels of approximately 80dB. It would seem reasonable to assume that this sort of activity, and these levels of noise, could be a frequent occurrence.*

Through the remaining 6 hours of the noise survey there are a further 6 peaks over 80dB which have not been labelled. Two peaks which reach approximately 70dB are labelled as 'High Speed Train.' Due to the difference in sound levels it is reasonable to assume that the 6 unlabelled peaks are not train movements but are likely to be noisy activities from the scrap metal yard. Sudden very loud noises like this are likely to have a significant effect on potential residents.

The scale of the submitted graphs make it difficult to interpret the data accurately. We would like the data presented in hourly graphs.

A number of letters of representation submitted by nearby residents support our concerns that the noise measurements do not adequately represent the noise from the scrap metal yard.

Paragraph 4

Historic noise reports

The applicant continues to refer to historical noise surveys to back up the findings of this current noise survey. If the applicant wishes to rely on these reports to support his application, they must be provided in evidence in order that they may be considered in the context of the application

I note the survey conducted in connection with the site to the East of the proposed development which was submitted with application E/09/1206/REM for houses behind the station car park. If this survey is one that the applicant refers to I can confirm that it does not support the findings of the current noise assessment for a number of reasons:

- The survey location was 125m to the east of the survey location for this report, and approximately 115m further away from the scrap yard than the nearest properties will be in this proposal.*
- The scrap yard was not mentioned as a noise source in this noise survey, the focus was on the trains.*
- In a similar trend to the current noise survey it appears that no contact was made with the scrap metal yard to check that they operating as normal on those days, they may not have been operating at all.*

Paragraph 5

We are yet to see evidence that scrap yard activities have been broadly consistent over time. In regards to historical complaints we have received complaints from 3 separate households since 2008. One of the households complained on 2 separate occasions. The complaints who contacted us about noise from the site are at least twice as far away from the operational area of the scrap metal yard that the nearest residents proposed here.

Paragraph 6

This department does not consider the report based on surveys carried out on 2 days as representative. Particularly as we have no evidence that the operator of the site has confirmed their operations at the time were typical. The survey on one of these days was carried out for less than an hour. The surveys did not start until approximately 10am whereas the scrap yard is permitted to commence scrap metal conversion at 8am 6 days a week.

Paragraph 7

We are yet to see the historical noise reports or the reasoned conclusions based on their findings. However, as the applicant states that the surveys were for adjacent sites, not this site so their findings and recommendations were likely to have been different.

In addition to the comments above I have spent further time studying the noise assessment and documents that were submitted at the pre application stage. Table VIII shows estimated façade levels due to scrap yard activity. This table does not show the estimated levels for the western façade of block 11-14, the closest façade to the scrap yard. In the pre application information the estimated façade level at 1st floor level height was 62.6dB.

While referring to the floor plans it can be seen that the only window on this façade will be the bathroom window, however, there is no mention of this window being sealed. If this window is opened it will only provide around 10dB reduction in sound levels. The average sound level experienced inside the property through could be around 52dB. I say average; there would be peaks much higher than this. At the north gable end of this block there are windows leading on to an open plan kitchen/living room. On the south gable end there is a protruding bay style window on the

ground and first floor leading in to a dining/living room.

The windows on the north and south gable ends would obliquely overlook the scrap yard and be much less protected than those windows facing away from the scrap yard. Their exposure to noise, and the potential route for noise break in they create, is not assessed in the acoustic report. These windows would not receive much if any screening protection from the building; particularly as we are now aware that the plant at the scrap yard can and does move around the site. Should the windows be opened they would only provide around 10 dB reduction in sound levels and we would therefore expect noise levels within those habitable spaces to be above the recommended internal noise levels when the scrap yard is in operation. BS8233 and the World Health Organisation recommend that sound levels from anonymous noise sources in habitable rooms should be below 40dB for a reasonable level, or 30dB for good. This is the recommendations for anonymous noise sources. The noise generated by the scrap yard operations is far from anonymous.

Should the potential residents wish to complain to this department about noise from the scrap yard we would have a duty to investigate. If we found that the noise was causing a statutory noise nuisance under the Environmental Protection Act 1990 we would be required to take legal enforcement action. This may obviously lead to significant restrictions or changes to the operation of the scrap yard. Alternatively, the business may successfully claim they have used "Best Practicable Means" which would effectively give the scrap yard licence to continue causing a nuisance. We would suggest that the possibility of either of these outcomes should be avoided.

We would also highlight that the NPPF goes to great lengths to highlight the need to promote and protect businesses. Including the following paragraphs which are particularly relevant:

Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by "... preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution...."

Paragraph 123 which states that Planning policies and decisions should aim to "... recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established...."

It should be noted that the applicant is yet to confirm their proposals for acoustic glazing and associated ventilation for all habitable rooms on the sensitive facades. The consultant sets out in 5.2.17 that suitable double glazing and mechanical ventilation should be installed to reduce noise from the scrap yard. This is also the case for the sensitive facades facing the railway line as set out in 5.1.5. The consultant recommends that all habitable rooms have acoustic ventilation. The applicant has yet to provide details of this aspect of the application.

Edwards Irish Partnership have submitted a further letter dated 8th February 2013. The following is in response to the points raised in that letter. The applicant has commented on our concern about intensification of use of the site beyond that discussed within the acoustic report. Before commenting further I would highlight that we do not accept that there is sufficient evidence to demonstrate that the acoustic report is representative of the operations on the scrap yard site for the reasons outlined elsewhere in these comments.

Firstly, The operator of the scrap yard would, under his existing planning approval, be perfectly entitled to operate the site and equipment continuously during their working day. There are no restrictions in the planning approval preventing them from doing so.

Secondly, it is generally accepted that the average normal business will operate as efficiently and consistently as possible. In our view the assumption that the existing scrap yard operator will only operate for 15 minutes in the hour highlights that the intensification of this the current use, in terms of

its operating time, is reasonably foreseeable.

It is also reasonably foreseeable that the site might change hands and be operated by someone else with, for instance, different equipment, different workloads, more prolonged working hours etc. Any suggestion that we should ignore the reasonably foreseeable and perfectly legal intensification of use of the scrap yard is unreasonable and wrong.

The Environmental Protection team has received no evidence to cause a change in our recommendation that this application is refused.

Environmental Health Officer (Environmental Control and Protection) comments on amended plans

I understand that the applicant will not be submitting any further noise data regarding this proposed development and that it is hoped that the case will be heard at committee on 4th April.

I therefore attach details of my visit to the site on 12th February when an assessment was made of some of the noise from the scrap yard. The report backs up comments that have been made by this department in this and previous responses about this application.

The detailed comments made on my response dated 15th February still stand. In summary the main points were:

- *The noise survey and submitted assessment do not reflect the noise levels produced by activities at the site.*
 - *We do not agree with the assumption that noisy work takes place for around 15 minutes in the hour. The report of my visit on 12 February 2013 attached here clearly demonstrates that assumption is incorrect.*
 - *The grab handler on site is on tracks and therefore moves around the site, making the calculations based on noise measurements from one point unrepresentative.*
 - *The fact that the grab handler can move means it is likely that the screening effect of block 11-14 will be significantly reduced.*
 - *The small grab handler and lorries delivering skips of metal do not appear to have been considered in the noise assessment.*
 - *The assessment does not accurately reflect the impact on potential residents of the peaks in maximum sound levels emanating from the scrap metal yard.*
 - *Noise survey was carried out over 2 days. On one of these days recordings were made for less than an hour. The owner of the scrap yard was not contacted to make sure that these were typical working days; they may have been very quiet days. They were both in the winter, when activities at the site are likely to be reduced due to wet weather and poor ground conditions.*
- *Using figures supplied by the noise consultant it can be seen that it is likely sound levels inside the block 11-14 will not meet levels set out by British Standards and by the World Health Organisation.*
- *Notwithstanding the points above it is reasonably foreseeable that operations at the site may increase in terms of noisy equipment or the amount of time that noisy equipment at this site is used. For clarity we are referring to the perfectly legal increases in use under the scrap yards existing planning approval. Such increases would clearly invalidate the findings of the acoustic report. During a recent conversation with Mr Black of Pewsey Metal he confirmed that he was currently looking to bring in more business to maintain economic viability of the company.*

EHO Assessment of noise from Blacks Scrap Metal Yard 12th February 2013

On 12 February 2013 I visited the development site to make an assessment of noise from the site. I arrived at 8:30am and parked on the road. At 08:47 vehicle noise was heard coming from the scrap metal site. I left my car and discovered that the large "Grab handler" had been turned on. I walked on to the development site - to the location indicated by the red "X" in Figure 1 below, and set up a sound level meter to measure the levels of noise coming from the scrap yard. Between 08:48 and 09:03 the engine was left idling. At 09:03 the grab handler began operating. It was picking up metal, rotating, and depositing the metal in another location, it continued to do so until 09:27. I continued to take measurements of the general environmental noise in this location until 10:05. I have included a table of data, Figure 2; a time history of the average (LAeq dB) measured noise levels during my visit Figure 3; and a time history of the maximum (LAmx dB) sound levels while the grab handler was in operation, Figure 4.

My observations during the visit were that the operation of the grab handler was a very significant noise source. During its operation the noise from the grab handler was by far the most significant noise source in this area and the other sources of environmental noise were insignificant in comparison. In particular the picking up of the metal, rotation of the grab handler cab, and the dropping of the metal were all clear and identifiable noise features. In my opinion locating any residential properties in such close proximity to the scrap yard, and in particular the grab handler, is likely to lead to the occupants of those properties being seriously and adversely affected.

The noise data in Figures 2 and 3 speak for themselves and illustrate that the operation of the grab handler leads to a very significant increase in noise. They show a dramatic and very significant increase in environmental noise on the development site when the grab handler is in operation. The noise level (LAeq) caused by the operation of the grab handler is significantly over and above the background noise levels in its absence.

The difference in equivalent continuous noise level (LAeq) between the operation of the grab handler and its absence is 17.3dBA. The difference between the equivalent continuous noise level (LAeq) and the background noise level (LA90) is 29.2dBA. To put this in perspective, the operation of the grab handler is, in terms of its subjective loudness, around three times as loud as the general background noise levels in this area.

The maximum noise levels (LAmx) are also very important in assessing the impact of a noise. As you can see from the time history below during the operation of the grab handler there are frequent, very high, sudden peaks in noise level. From my observations these increases were caused by the grab handler dropping material. On one occasion this peak in noise level reached 91dBA and peaks were regularly in excess of 80dBA. My on site observations when these peaks occurred were that the noise level was so high they gave the impression that the ground was shaking. In my opinion these frequent, sudden very high sound level would startle some residents.

The measurement location was representative of plot 1 and is further away from the noise sources than the nearest proposed dwellings plots 11-14. I would highlight that the noise assessment assumed that the grab handler would not be in use for more than 15 minutes in the hour and that the grab handler is a static noise source. My observations on site illustrate that both these assumptions are incorrect and calls into question the conclusions of the acoustic report and in particular the BS4142 assessment.

As you will see from this report I measured a noise level of 66 dB LAeq on the development site, at the location indicated on Figure 1, when the grab handler was in operation. The noise report (see para 5.2.7) and noise model appears to have used a source noise level of between 60 and 65 dBA at the boundary at survey position SP1 (seen on Page 24 of the noise assessment). When taking into account that our measurement point was significantly further from the noise source and that a barrier along the boundary was providing some acoustic screening during our measurements it would appear the source noise levels used in the noise assessment are a significant underestimation.

Public Protection (contaminated land)

I've had a good look through the comprehensive Site Investigation document. It concludes a low risk of contamination at the site with the only aspect that they cannot be 100% about being if the site has any 'made ground'. They recommend either a watching brief during the development phase or establishing if any material has been imported by using some boreholes and I would like to see confirmation of which method is to be used. This can either be agreed as part of the application phase (I suspect they will use bore holes as they will want to check the soil chemistry – sulphates etc) or by a condition. If it is to be the latter I would look for the basic contaminated land condition below to apply please – this covers either option – Part 'A' if they do further investigation (submit the report and conclusions) or B & C if they chose the watching brief approach:

Should the boreholes establish a problem then obviously we would need to discuss the matter with the applicant and their consultants at that time.

WH2B CONTAMINATION INVESTIGATION-SUBMIT AND IMPLEMENT

No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been undertaken and until:

- a) The Local Planning Authority has been provided with written confirmation that, in the opinion of the developer, the site is likely to be free from contamination which may pose a risk to people, controlled waters or the environment. Details of how this conclusion was reached shall be included.*
- b) If, during development, any evidence of historic contamination or likely contamination is found, the developer shall cease work immediately and contact the Local Planning Authority to identify what additional site investigation may be necessary.*
- c) In the event of unexpected contamination being identified, all development on the site shall cease until such time as an investigation has been carried out and a written report submitted to and approved by the Local Planning Authority, any remedial works recommended in that report have been undertaken and written confirmation has been provided to the Local Planning Authority that such works have been carried out. Construction shall not recommence until the written agreement of the Local Planning Authority has been given following its receipt of verification that the approved remediation measures have been carried out*

REASON: To ensure that land contamination can be dealt with adequately prior to the use of the site hereby approved by the Local Planning Authority.

POLICY-[number & purpose]

Environment Agency

*We have **no objection** to the proposed development **subject to the following conditions and informatives** being included in any planning permission granted.*

Potentially Contaminated Land

We note that the planning application makes reference to the redevelopment of a Brownfield site. However, it is unclear from the detail submitted what previous commercial use the land has been used for. However, we are mindful of the fact that the land could have historically been used for potentially contaminating uses, and such uses have been developed on land adjoining the site. Therefore there is potential for the site to be contaminated.

CONDITION

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

REASONS

To protect controlled waters from pollution.

Surface Water Drainage

The applicant proposes to direct all surface water to soakaways. This is the preferred option, providing ground conditions permit and percolation tests demonstrate that they are appropriate.

INFORMATIVE

The surface water soakaways may require the approval of the Local Authority's Building Control Department and should be constructed in accordance with the BRE Digest No 365 dated September 1991 or CIRIA Report 156 "Infiltration Drainage, Manual of Good Practice". Only clean, uncontaminated surface water should be discharged to soakaway.

Water Efficiency

CONDITION

No development approved by this permission shall commence until a scheme for water efficiency has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the agreed details.

REASON

In the interests of sustainable development and prudent use of natural resources.

INFORMATIVE

The development should include water efficient systems and fittings. These should include dual-flush toilets, water butts, water-saving taps, showers and baths, and appliances with the highest water efficiency rating (as a minimum). Greywater recycling and rainwater harvesting should be considered.

An appropriate submitted scheme to discharge the condition will include a water usage calculator showing how the development will not exceed a usage level of 105 litres per person per day.

Pollution Prevention During Construction

INFORMATIVE

Safeguards should be implemented during the construction phase to minimise the risks of pollution from the development. Such safeguards should cover:

- the use of plant and machinery*
- oils/chemicals and materials*
- the use and routing of heavy plant and vehicles*
- the location and form of work and storage areas and compounds*
- the control and removal of spoil and wastes.*

The applicant should refer to the Environment Agency's Pollution Prevention Guidelines at:

<http://www.environment-agency.gov.uk/business/topics/pollution/39083.aspx>.

NOTES TO APPLICANT

Sustainable Construction

Sustainable design and construction should be implemented across the proposed development. This is important in limiting the effects of and adapting to climate change. Running costs for occupants can also be significantly reduced.

Waste Management

Should this proposal be granted planning permission, then in accordance with the waste hierarchy, we wish the applicant to consider reduction, reuse and recovery of waste in preference to off site incineration and disposal to landfill during site construction.

If any controlled waste is to be removed off site, then site operator must ensure a registered waste carrier is used to convey the waste material off site to a suitably authorised facility.

If the applicant require more specific guidance it is available on our website www.environment-agency.gov.uk/subjects/waste/.

INFORMATIVE

In England, it is a legal requirement to have a site waste management plan (SWMP) for all new construction projects worth more than £300,000. The level of detail that your SWMP should contain depends on the estimated build cost, excluding VAT. You must still comply with the duty of care for waste. Because you will need to record all waste movements in one document, having a SWMP will help you to ensure you comply with the duty of care. Further information can be found at <http://www.netregs.co.uk>

Ecologist

I have now reviewed the submitted 'Extended Phase 1 Habitat Survey' report (January 2012). I understand that the site was cleared of vegetation several months before the survey took place and it now comprises large areas of bare ground and ruderal vegetation, with low ecological value. Prior to clearance the site appears to have been a disused patch of land, likely providing refuge for local wildlife, particularly given its location adjacent to the railway corridor with connectivity to adjacent habitats.

The ecology survey found no evidence of protected species, although it is possible that low numbers of reptiles are present along the site margins, and breeding birds are likely to use the site. Appropriate management measures are given to dissuade reptiles from re-colonising the site prior to construction; an Informative should be issued to provide advice for both reptiles and breeding birds (see below).

The proposed plans show that the undevelopable area of land adjacent to the railway will be retained as a 'wildlife corridor'. There is no access to this area (it is located to the north of residential gardens) and no proposed management. This area of scrub will however be beneficial in retaining connectivity along the railway corridor.

I have no objection to the proposed plans and recommend that the following Informative is issued:

'The adults, young, eggs and nests of all species of birds are protected by the Wildlife and Countryside Act 1981 (as amended) while they are breeding. Vegetation should be cleared outside the breeding bird season unless checked by a competent ecologist beforehand. The season is usually taken to be the period between 1st March and 31st August but some species are known to breed outside these limits. Reptiles are also protected under the Wildlife & Countryside Act 1981; the site should be continually managed prior to construction work in order to dissuade reptiles from colonising the site, further details are provided in section 4.4 of the 'Extended Phase 1 Habitat Survey' report (January 2012).'

Arboricultural Officer

There is not much to say about the proposed scheme, which now has very limited tree cover across the site. The row of Hawthorn in the vicinity of the proposed entrance has some wildlife value, but is out of keeping with the rest of the street. The landscaping scheme is seems appropriate for the main, but I would recommend the following:

- *All Ash to be removed from the scheme and replaced with Wild service tree, or similar.*
- *The larger tree species on the western boundary to be spaced further apart giving the trees a little more room to develop unhindered by its neighbour as it matures.*
- *The removal of all Blackthorn from the hedging mix replacing it with Hawthorn bulked up to 70%, with Hazel/Privet/Holly and Field maple making up the remaining percentage. Blackthorn has a tendency to spread through root suckers and is likely to be problematic in the long-term.*

Land Adoptions Officer (Open space)

Having corresponded with Pewsey Parish Council the contribution to be sought is towards provision of Recreation Facilities to be located at the Pewsey Campus, the Pewsey Campus is located off Wilcot Coat Road at the leisure centre, which is almost directly opposite the proposed development.

The figure has been arrived at in accordance with Policy HC35, please see attached the East Wiltshire Community Benefits SPG which details Policy HC35 on pdf pages 36 and 37. The calculation was £3,048 per dwelling x 14 Dwellings, thus £42,672 total.

Archaeology

No comments received at the time this report was prepared. Any that are received subsequently will be reported verbally at committee.

North Wessex Downs Area of Outstanding Natural Beauty

The North Wessex Downs AONB raise no comments in respect of the principle of this development. In terms of the overall design it is bland and does not respect the local style in terms of detailing, fenestration, chimneys, etc, so improvements could be made.

Wiltshire Fire and Rescue Service

Requests a contribution of £1065.82 towards the provision of hydrants and water supplied for fire fighting, and additional or enhanced fire and rescue service infrastructure

Wessex Water

Standard information supplied relating to the need for water supply and waste water connections to be made to serve the development. No objections raised to the proposals.

8. Publicity

The application was advertised by site notice and notification letter to nearby addresses. Notification of the receipt of amended plans was sent to neighbours and those who had commented on the initial plans.

In summary, comments received from neighbours and other members of the public included the following points:

- Planning permission for development on this site has been refused many times
- The development would cause additional traffic problems along this narrow route
- Wilcot Road is supposed to be one way at this point but this restriction is being ignored
- On-street parking provision would be lost
- Large vehicles exiting the site would increase the risk of accidents, both with other vehicles and with pedestrians using the footway opposite the site (which is level with the road)

- The scrap yard is too noisy to live close to, and garden areas will be unusable
- New homes close to the established scrap yard would prompt complaints that could restrict the business
- The noise survey isn't accurate: the scrap yard is noisier than indicated, and there are numerous inaccuracies in the noise report.
- The boundary between the Crown Public House and the plot no. 1 house is wrongly shown (it means that house may be built on the Crown Inn's land)
- This development would be followed by a proposal for the builder's yard, then the railway car park adding more traffic to Wilcot Road
- New residents could complain about the noise from the railway line, threatening the service
- The ecological survey was carried out after the site had been cleared anyway – perhaps if carried out before all the trees were removed the outcome would be different
- Many residences close to the site had rat infestations as a result of the clearance of its vegetation
- The clearance of the land and its development does not accord with the idea of a conservation area
- Bats and common lizards are present on the site, and many birds nest in the hedge
- The mature hedgerow along Wilcot Road is a valuable part of the natural street scene
- Flash flooding has affected properties in Wilcot Road – the proposal will do nothing to help this
- Rear windows on plots 2 and 3 will overlook existing residences on Wilcot Road
- Permission given for a garage and office above will overlook plot 1
- Proposals for trees proposed to be planted on or near boundaries should be changed to stop branches overhanging/roots disrupting other property
- A modern estate would look out of place in the variety of old buildings along Wilcot Road
- No objection to the principle of the development, but issues of parking, landscaping etc are important.

9. Planning Considerations

Sustainable location

The site is considered to stand in a sustainable location, within the bounds of this reasonably well-serviced settlement, enjoying commercial, social and employment provision within walking distance. Links by public transport are also good. The proposal shows an efficient use of the plot in terms of numbers of homes, and the layout is considered to create a reasonable sense of place, with the scale, form and presentation of building units set out in an acceptable design.

a) Noise issues

The principal constraint to residential development on this site is its capacity to deal with the noise emissions from adjoining land uses. The railway to the north of the site is a main line into London, with Pewsey Station performing an important role as a stop on this cross-country route. Of greater significance is the scrap yard to the west, where operations can cause noise levels that would be unacceptable without mitigation. The question in this case is whether enough representative data of the levels of noise emitted from neighbouring uses has been gathered to give a basis upon which a decision can be made, and whether the measures to reduce the levels of disturbance proffered (in the design and orientation of the buildings) would adequately mitigate the likely disturbance. The evidence and assessment of this issue of both the applicant and the Environmental Health Officer is set out in section 7 above. It is considered that, notwithstanding the points made by the agent relating to levels of operation historically, the ability of the Council to control activities on the scrap yard site, and the design measures incorporated into the layout and construction of the buildings, there remains a likelihood of inadequate levels of residential amenity being provided for the new residents, and little guarantee of safeguarding even that level of amenity, without imposing a restriction on the business activities of these enterprises.

b) Highways and parking

The degree of additional traffic that the scheme would generate is considered to be acceptable for the local highway network to absorb, provided the revisions to the highway and traffic management arrangements are secured. The scheme incorporates new parking which is considered to improve on the situation presently. Should further applications for permission be forthcoming, to develop other plots adjoining and to use the same access as now proposed, a further assessment of the issues will need to be undertaken. In principle, there is no objection to the development, therefore, on highway grounds, although permission should be refused if there is no accompanying agreement to oblige the applicant to secure necessary highways works.

c) Grain and density of development

The pattern of development on the south side of Wilcot Road itself is mainly in ribbon form along the street frontage, although there are some strands of development or individual houses set back from this core alignment on the north side of the route. Development to the south, in the C20 estate, has a regular spacing of pairs and terraces of housing, with front gardens, while development further to the west is of much larger modules (school buildings) or conversions of historic structures (Pewsey Workhouse). There is no strict pattern of development to follow among the surrounding built forms, therefore. The density of development within these various patterns is quite high, and the scheme is considered, for the reasons set out in the first part of this section, to be acceptable.

d) Impact on the character and appearance of the conservation area

The character and appearance of the area has been recognised as of value culturally and aesthetically in the designation of part of Wilcot Road as a Conservation Area. The road frontage of the site falls within this designation. The scale, design and orientation of the proposed house on plot 1 at the entrance to the site is acceptable, given the spacing, size, form and variety of materials and architectural styles that are evident along the northern side of Wilcot Road. The loss of the hedge would not preserve the character or appearance of this heritage asset, but the proposal would replace this green edge with another of mixed native species, at least for part of the street frontage, and would retain the field maple in the south east corner of the site.

e) Trees, landscaping and wildlife habitat

The clearance of the site is indeed regrettable, not because it resulted in the loss of any outstanding tree specimens, but because it altered the habitat on the land before a full investigation of its biodiversity resource could be properly recorded. The measures set out in the ecology report, to safeguard the strip of land along the railway to continue this wildlife corridor, are important. The tree planting shown on the boundary of the rear gardens of plots 9 and 10 with the wildlife corridor are not likely to cause any problem in terms of proximity to the railway line.

f) Contamination issues

Both the Environment Agency and the Council's Public Protection Officer raise no objection to the scheme following the submission of information on the potential for pollutants to be already on the site, or for the development site to become a receptor.

g) Impact on neighbouring amenity

The proposed development would cause no unacceptable overlooking or overshadowing of other residential property. The upper floor rear windows (serving bedrooms) of proposed units 2, 3 and 4 would be a minimum of 11 metres away from the boundaries of adjoining gardens, with no direct aspect into windows of other dwellings on Wilcot Road. The proximity of the proposed house on plot 1 to the boundary of the Crown PH, and to any permitted building on that property, does not warrant the refusal of the scheme.

h) Public recreation facilities

Although there are areas of shared landscaping to the east of the proposed flats building, and elsewhere around the site, the scheme does not show any reasonable amount of communal garden to satisfy the requirements of policy HC35, with regard to recreational space on new residential developments. Although confirmation has been received that the applicant is willing to enter into an agreement with the Council to make an appropriate financial contribution towards recreational facilities at the new Pewsey Campus (at the Pewsey Vale School, Wilcot Road), in the absence of a signed agreement to this effect the scheme must be considered to be in conflict with policy HC35 of the local plan.

10. Conclusion

This scheme has been subject of pre-application planning advice, and during its assessment as a formal application for planning permission dialogue with the agent has sought to overcome any problems identified (highways, parking, landscaping and open space) with the proposal. These discussions have resulted in the amended scheme now before committee. Although subject of much discussion, however, there has not been a resolution to the problem of placing noise sensitive development next to noise-emitting land-uses, and so for the reasons set out in this report, it is concluded that planning permission should not be granted for this proposal.

RECOMMENDATION

That planning permission should be refused for the following reasons:

1. The proposed development would be located within close proximity to established sources of noise that would be likely to cause unacceptable levels of disturbance to the occupiers of the units. Insufficient information has been provided to demonstrate that there would be no statutory noise nuisance experienced by the new residents. The impact of the existing neighbouring land uses, particularly in terms of noise and disturbance on the residential use of the site would be likely to represent an incompatible mix of land uses, resulting in poor levels of residential amenity, contrary to the terms and objectives of Policy PD1 of the Kennet Local Plan 2011. Furthermore, the introduction of a noise sensitive development on the site would be likely to place unreasonable restrictions on the continuance of the established businesses nearby, in conflict with the advice contained in the National Planning Policy Framework 2012. The proposal is therefore considered not to accord with national and local planning policy and guidance.
2. The proposed development includes no mechanism for securing the provision of a suitable amount and type of public recreational facilities on or near the site to serve the increased population to be housed in the development. The proposal therefore conflicts with the requirements of policy HC35 of the Kennet Local Plan 2011, policy DP2 of the Wiltshire and Swindon Structure Plan 2016 and advice contained in the National Planning Policy Framework 2012.
3. The proposed development includes no mechanism for securing the provision of works to the highway and traffic management arrangements that would be necessary to ensure the safe and convenient integration of the development into the local highway network. The proposal therefore conflicts with the requirements of policy PD1 of the Kennet Local Plan 2011, policy DP2 of the Wiltshire and Swindon Structure Plan 2016 and advice contained in the National Planning Policy Framework 2012.