

# AGENDA

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**Meeting:** Western Area Planning Committee  
**Place:** Council Chamber - County Hall, Trowbridge BA14 8JN  
**Date:** Wednesday 12 August 2015  
**Time:** 3.00 pm

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Please direct any enquiries on this Agenda to Will Oulton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713935 or email [william.oulton@wiltshire.gov.uk](mailto:william.oulton@wiltshire.gov.uk)

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## Membership:

Cllr Christopher Newbury (Chairman)	Cllr Magnus Macdonald
Cllr John Knight (Vice-Chair)	Cllr Horace Prickett
Cllr Trevor Carbin	Cllr Pip Ridout
Cllr Ernie Clark	Cllr Jonathon Seed
Cllr Andrew Davis	Cllr Roy While
Cllr Dennis Drewett	

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## Substitutes:

Cllr Nick Blakemore	Cllr Gordon King
Cllr Rosemary Brown	Cllr Stephen Oldrieve
Cllr Terry Chivers	Cllr Jeff Osborn
Cllr Fleur de Rhé-Philippe	Cllr Jerry Wickham
Cllr Russell Hawker	Cllr Philip Whitehead
Cllr Keith Humphries	

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# 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 7 - 10*)

To approve and sign as a correct record the minutes of the meeting held on 1 July 2015.

3 **Chairman's Announcements**

To receive any announcements through the Chair.

4 **Declarations of Interest**

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

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 2.50pm 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 the officer named on the front of this agenda (acting on behalf of the Corporate

Director) no later than 5pm on Wednesday **5<sup>th</sup> August**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

## 6 **Planning Applications**

To consider and determine the following planning applications:

- 6a **14/01659/FUL - Haygrove Farm, 44 Lower Westwood, Bradford on Avon** *(Pages 11 - 32)*
- 6b **15/03114/FUL - Land at 119 St. Thomas Road, Trowbridge** *(Pages 33 - 42)*
- 6c **15/04899/FUL - 17 Palairt Close Bradford on Avon** *(Pages 43 - 52)*
- 6d **15/05185/FUL - 30 Palairt Close Bradford on Avon** *(Pages 53 - 62)*
- 6e **15/05186/FUL - The Long Barn Cumberwell Farm Great Cumberwell Bradford on Avon** *(Pages 63 - 70)*

## 7 **Rights of Way Items**

- 7a **Corsley 29 (Pt) Diversion Order and Definitive Map and Statement Modification Order 2015** *(Pages 71 - 94)*

## 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

## **WESTERN AREA PLANNING COMMITTEE**

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### **DRAFT MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 1 JULY 2015 IN THE COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.**

#### **Present:**

Cllr Christopher Newbury (Chairman), Cllr John Knight (Vice-Chair), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Dennis Drewett, Cllr Horace Prickett, Cllr Pip Ridout, Cllr Jonathon Seed and Cllr Roy While

#### **Also Present:**

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#### **66 Apologies for Absence**

Apologies for absence were received from Councillor Magnus MacDonald.

#### **67 Minutes of the Previous Meeting**

The minutes of the meeting held on 10 June 2015 were presented.

#### **Resolved:**

**To approve as a correct record and sign the minutes of the meeting held on 10 June 2015 subject to amendments to correct the spelling of Councillor Jon Hubbard's name.**

#### **68 Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

#### **69 Declarations of Interest**

Under consideration of the item 6b – application ref. 15/02843/VAR, Councillor Jonathon Seed declared that, as an owner of a similar business in the area, he would abstain from the vote.

## 70 **Public Participation and Councillors' Questions**

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

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

## 71 **14/07623/VAR - Weston Nurseries, Coomb View, Corton, Warminster, BA12 0SZ**

Public participation:

Mr John White and Mr William Harrison-Allen spoke in support of the application.

The Senior Planning Officer outlined the report that recommended that the application be approved with conditions.

Councillor Christopher Newbury spoke as the local member.

Issues discussed in the course of the debate included: the location the site and the planning history surrounding the existing residential property; how the site had been marketed, and the discount offered; the views of the agricultural consultant that the tie was not required to meet the needs of the agricultural community; the implications of previous appeal cases of this type; the relevance of local plan policy; and the views of the highway officer and the parish council.

Councillor Jonathon Seed proposed, subsequently seconded by Councillor Pip Ridout, that the Committee should approve the application as per the officers recommendation detailed in the report.

Having been put to the vote, the meeting;

### **Resolved**

**That the application be approved with the following conditions:**

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

- Location Plan received on 6th October 2014**

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

*Note: Councillor Chris Newbury voted against the proposal to approve.*

**72 15/02843/VAR - Church Farm, Tytherington, Warminster, BA12 7AE**

Public participation:

Ms Anna Giddings, Mr Nigel Hindle and Mr Peter Grist spoke in support of the application.

The Senior Planning Officer outlined the report that recommended that the application be refused.

Councillor Christopher Newbury spoke as the local member.

Issues discussed in the course of the debate included: the location of the site in the open countryside; the implications of potential traffic movements arising from the proposals; the current agreed use and the ties on the property; the implications of local plan policies; the marketing that had been undertaken; the sustainability of its location; how other uses for the site had been explored; the views of the Spatial Planning Team and the Parish Council.

Councillor Chris Newbury proposed, subsequently seconded by Councillor Trevor Carbin, that the Committee should approve the application with conditions.

Having been put to the vote, the motion was lost.

Councillor Andrew Davis proposed, subsequently seconded by Councillor Pip Ridout, that the Committee should refuse the application as per the officer's recommendation.

Having been put to the vote, the meeting;

**Resolved**

**That the application be refused for the following reasons:**

**That the site is in the open countryside and therefore is located in an unsustainable location where no special circumstances have been put forward to allow new residential dwellings. The proposal conflicts with the plan-led approach to the delivery of new housing sites outside of the identified limits of development, as set out in Core Policy 1 and 2 which**

**seeks to properly plan for sustainable development and provide new housing sites to deliver the identified needs in a community area through a Site Allocation DPD and/or a Neighbourhood Plan, a strategy that is supported by the Wiltshire Core Strategy Inspector and the Secretary of State in several appeal decisions. Furthermore, the proposal would inevitably result in an unacceptable precedence for other holiday lets in Wiltshire. The proposal therefore fails to comply with Core Policies 1, 2, 48 and 60 of the Wiltshire Core Strategy and the NPPF.**

*Note: Councillor Jonathon Seed abstained from both votes on the application.*

**73 Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.00 - 4.15 pm)

The Officer who has produced these minutes is Will Oulton, of Democratic Services, direct line 01225 713935, e-mail [william.oulton@wiltshire.gov.uk](mailto:william.oulton@wiltshire.gov.uk)

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## WESTERN AREA PLANNING COMMITTEE REPORT

Report No 1

<b>Date of Meeting</b>	22 July 2015
<b>Application Number</b>	14/01659/FUL
<b>Site Address</b>	Haygrove Farm, 44 Lower Westwood, Bradford On Avon, BA15 2AR
<b>Proposal</b>	Demolition of existing Dutch barn, stable building and shed Erection of a new building to contain 2 units of holiday accommodation; access and associated parking
<b>Applicant</b>	Mr I Harding
<b>Town/Parish Council</b>	WESTWOOD
<b>Ward</b>	WINSLEY AND WESTWOOD
<b>Grid Ref</b>	380947 159102
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Kenny Green

**Background** - Elected members may well recall this case which was debated at area committee back in 30 April 2014. At that meeting, members resolved **to grant permission for the above development subject to planning conditions and to the prior completion of a Section 106 legal agreement to restrict the occupancy of the accommodation to holiday accommodation only.**

Since the above resolution was made, the applicant's solicitor has liaised with the Council's legal team to draft up a s106 as the planning committee required. However, the legal process has somewhat stalled. The reason the s106 remains incomplete is summarised below; and since officers have no delegated authority in this particular case, member are asked to duly consider the applicants request.

The applicant wishes the planning committee to consider varying the above resolution removing the s106 tie on the basis of the additional information:

**Additional Information** – In a letter dated 25 November 2014, the applicant's mortgage provider (Santander) informed the applicant that they would not agree to any such s106 tie on the property on the basis that such requests fail to satisfy their lending policies. Santander have also advised the applicant to seek *"a more specialist lender"*. [A copy of the Santander letter is included within an appendix at the end of this report].

Following receipt of the Santander's letter, the applicant approached alternative lenders and found only one willing to mortgage the property with a s106 tie. The lender however advised that the interest rate would be 4.68% (over the BofE base rate), equating to 4.18% more than what the applicant currently pays. Within a separate letter, which is also included within the appendix, the applicant's financial advisor advises that this would not only *"seriously increase the monthly mortgage repayments, [it] would make this proposal significantly less viable commercially"*.

The applicant's planning agent also asks members to re-consider the legal "belt and braces" approach to controlling the occupancy of the holiday accommodation, as currently resolved, in recognition that two conditions which members previously approved (namely no's 4 & 5) would impose occupancy controls on the commercial property, should it be built.

The applicant is keen to stress as having no intention whatsoever using the accommodation other than for holiday rental purposes; and is agreeable to the cited conditions which are found towards the end of this report.

Prior to reaching a decision in April 2014, Members may recall having a debate about imposing a s106 restriction in addition to the conditions. Officers maintain that the imposition of occupancy planning conditions would be sufficiently robust to restrict the future use of the proposed holiday let units. Whilst each application should be considered on its own merits, your officer is aware of at least a dozen other detailed applications for holiday let accommodation which were permitted in 2014 across rural Wiltshire, some within the green belt (i.e. Woolley Park Farm, South Wraxall 14/04543/FUL), others in the AONB (i.e. 14/06051/FUL and 14/00330/FUL at Elcombe farm and West Farm Barns) and 14/03613/FUL which affected a Grade 1 listed building in the open countryside at Priory Farm, Edington; and, none were subject to a legal tie restricting future occupancy. They were all approved subject to planning conditions restricting occupancy. Since the beginning of 2015, the case officer is aware of eight approved applications across rural Wiltshire for holiday let accommodation without being tied by a s106. To assist members further, a list of all the approved holiday let applications in rural locations across Wiltshire are listed in the appendix. The case officer is aware of a 2014 holiday let proposal being refused in rural Corsham (ref 14/05991/FUL), but this was successfully appealed without any s106 restriction.

Members will however, need to be convinced that the above information and the appended documents justify a variation to the extant resolution. Should members decide that there is not sufficient planning justification to vary the previous resolution; the applicant's agent has advised the case officer that the s106 process would be completed to avoid the application being refused.

Members are also asked to note that the applicant has also been made aware that since Wiltshire Council is now a CiL charging authority and that this proposed development would be liable to CiL taxation, section 9 of the report has been amended to reflect CiL liabilities under the heading: Developer Contributions.

What follows next, is the case officer's report which was considered by Members in April 2014, subject to amendments within sections 6 and 9 in recognition that we now have an adopted Wiltshire Core Strategy and CiL.

For completeness sake, the original committee call-in request by Cllr Magnus MacDonald was exercised to enable Members to determine the impact of the development on the Green Belt and highway safety interests. These matters were debated previously before the resolution to grant permission was reached. Your officers respectfully recommend that Members limit their deliberations solely to the merits of the s106 tie given the extant nature of the resolution.

### **1. Purpose of Report**

To consider the above application and to recommend that planning permission be approved, subject to the planning conditions.

Westwood Parish Council Response – Objects for the reasons cited in section 7.

Neighbourhood Responses – 20 letters of support received and 13 letters of opposition - which are summarised in section 8.

Note: There have been no additional representations made following the Committee's resolution to grant permission.

### **2. Report Summary**

The main issues to consider are: The Principle of Development; The Impact on the Green Belt/ Open Countryside; The Impact on the Conservation Area; The Impact on Highway Safety and PROW

Interests; The Impact on Neighbours; The Impact on Ecology and Nature Conservation; The Impact on Archaeology; and Developer Contributions

### **3. Site Description**

This application relates to a 0.9 acre irregular shaped parcel of land located outside of the defined Westwood village settlement, accessed off the south side of the Lower Westwood Road (which is a minor 'C' classified public carriageway) located behind two residential properties numbered 43 and 44 Westwood Road – the latter of which is within the control and ownership of the applicant. The character of the properties along the southern side of the road (within the sites' immediate environs) is rather mixed in terms of various house types and designs.

The site subject to this application, forms part of an agricultural holding and is considered brownfield land located on the outer periphery of the village which has been used in the past for agricultural/equestrian use(s). There are three existing structures on the site comprising a rather imposing 7 metre high open-sided tin clad Dutch Barn (measuring 9 metres long x 6.5 metres wide); as well as a 2.5 metre high timber shed and concrete block stable block of a similar height and nearly 15 metres in length. All three structures are used to varying degrees for storage purposes. The site is located within the Western Wiltshire Green Belt and Conservation Area, but it is not, as some representors allege, located within the AONB. A Public Right of Way (W0014) runs to the west and south of the application site, but it would not be compromised by this planning proposal. Today, the site is found in various stages of dereliction, although the established agricultural use of the land remains extant. The majority of the contiguous land adjoining the defined site is either residential (to the north and east) or used for agricultural / equestrian purposes (further to the east, south and west), beyond which, the rural landscape is characterised by agricultural field systems divided by well established blocks of hedgerow and trees.

### **4. Planning History**

The application site (or a part thereof) has been subjected to several applications through the years. Although not exhaustive, the following record is considered to be the most relevant:

74/01200/HIS – Residential development – Refused 12.05.1975

77/00294/HIS – Outline application for 32 houses – Refused 08.07.1977

83/01224/OUT – Outline application for a single dwelling – Refused 03.01.1984

85/00228/OUT – Outline application for 9 dwellings – Refused 01.05.1985

91/01413/FUL – Demolition of farm buildings and erection of two dwellings – Refused 03.03.1992 and subsequent Appeal Dismissal 20.10.1992

98/01669/FUL – Change of use of land to residential and erection of a travel lodge – Withdrawn 07.01.1999

02/01908/FUL – Construction of 4 dwellings – Withdrawn 01.09.2003

13/02810/FUL – Demolition of existing Dutch barn, stable building and shed to be replaced by erection of new 3 holiday let accommodation units, access and associated parking – Withdrawn 01.10.2013

### **5. The Proposal**

This application seeks permission to erect a contemporary designed timber clad single-storey structure to accommodate two 2-bed holiday lets comprising circa 490 m<sup>3</sup> to replace three existing on-site structures (namely a Dutch barn which measures 330 m<sup>3</sup>, a timber shed measuring 17.7 m<sup>3</sup> and a stable block amounting to about 160 m<sup>3</sup>) which cumulatively total approximately 507 m<sup>3</sup>.

The holiday let accommodation has been designed following negotiations held with Council officials and Visit Wiltshire. The concept of the design is based on officer advice to reflect an agricultural vernacular – with similar proportions to an agricultural byre or cart shed. The proposed holiday accommodation has been designed to follow the site contours, utilise the footprints of the three structures on the site; and introduce internal maximum flexibility to satisfy the demands of individuals, couples and families.

The development constitutes as redevelopment of previously developed agricultural land, introducing a new building with a lower profile compared to the rather imposing Dutch barn as part of a scheme which the applicant asserts would be *“far more subtle than the existing buildings ...and [promote] a design that allows it to assimilate into its setting”* (page 18 of the Design and Access Statement).

The new build structure is based on a simple rectangular plan form with an asymmetric roof. Vertical timber cladding would be used to support a agrarian styled built form which would be supplemented by louvered timber over the fenestration. The north facing roof plan would also be timber clad, giving the building a rustic but contemporary aesthetic. The timber would be left to weather and soften naturally. The southern elevation would be more ‘modern’ although there would still be timber slatting in front of bedroom windows. Dark non-reflective solar PV panels are planned for the south facing roof plane to maximise solar gain and utilise renewable energy potential. Two modest (600mm) stove flues would nominally project above the ridgeline.

The applicant proposes to utilise the existing shared access arrangements off Lower Westwood Road and has submitted a plan showing on-site parking for 4 motor vehicles for the 2 holiday let units. The applicant is however keen to have the premises available to people arriving by public transport (with a bus stop located close by), bicycle and foot, and emphasises the proposed level access to the front door to suit most visitors, some of whom may have mobility limitations. Public sewer and water connections are proposed with a dedicated on-site surface water drainage treatment (which would also deal with roof water).

To support the application, the applicant has produced a heritage assessment as part of the submitted Design and Access Statement as well as providing outlining a policy and contextual analysis. Moreover, appended to the D&A, four letters of support from Visit Wiltshire and a selection of local businesses have been submitted (separate to the public notification and advertisement process).

## **6. Planning Policy**

The 2015 adopted Wiltshire Core Strategy (WCS). The following Strategic Objectives of the Council are relevant to this application:

Delivering a Thriving Economy; To Address Climate Change; Helping to Build Resilient Communities; Protecting and Enhancing the Natural, Historic and Built Environment; and Ensuring that Essential Infrastructure is in Place to Support our Communities.

The relevant Core Policies are – CP2 – Delivery Strategy; CP3 – Infrastructure Requirements CP7 – Bradford on Avon Community Area; CP34 – Additional Employment Land; CP39 – Tourist Development; CP40 – Hotels, Bed and Breakfasts, Guest Houses and Conference Facilities; CP41 – Sustainable Construction and Low-Carbon Energy; CP42 – Standalone Renewable Energy Installations; CP48 – Supporting Rural Life; CP49 – Protection of Services and Community Facilities; CP50 – Biodiversity and Geodiversity; CP51 – Landscape; CP52 – Green Infrastructure; CP57 – Ensuring High Quality Design and Place Shaping; CP58 – Ensuring Conservation of the Historic Environment; CP60 – Sustainable Transport; CP61 – Transport and Development; CP63 – Transport Strategies; CP64 – Demand Management; CP67 – Flood Risk.

In addition to these adopted policies, within Appendix D of the WCS, the following former West Wiltshire District Plan – 1<sup>st</sup> alteration policy remains saved: U1a – Foul Water Disposal. The Wiltshire Local Transport Plan 2011-2026 – Car Parking Strategy.

Following the Council’s adoption of CiL, the following documents are relevant to this case: Wiltshire Community Infrastructure Levy Charging Schedule; Wiltshire Community Infrastructure Levy Planning Obligations SPD; Wiltshire Community Infrastructure Levy Regulation 123 List; and Wiltshire Community Infrastructure Levy Instalments Policy (all dated May 2015)

Government Guidance:

The National Planning Policy Framework (NPPF); Planning Practice Guidance (PPG); and, the Noise Policy Statement for England (NPSE)

## 7. Consultations

Westwood Parish Council – Objected and recommended refusal on the following grounds:

1. The proposal represents 'de facto' residential development in the Green Belt, Conservation Area, and on the edge of the AONB and Cotswolds Conservation Area.
2. The proposal is contrary to Green Belt policy as detailed in the NPPF and the Emerging Wiltshire Core Strategy;
3. The proposal does not address the Government's objectives for providing social affordable housing;
4. The current agricultural land use would be significantly changed; and
5. The access onto the Lower Westwood Road (a minor C class highway) is not appropriate for further development/traffic generation. There is a significant road safety hazard in the form of a narrow blind bend in the carriageway; and the proposed access to the development will exacerbate that danger to an unacceptable level. Recent statistics provided by the Community Speed Watch team (dated Feb 2014) showed that the danger along this carriageway is increasing with over 2000 vehicles observed at the pinch point near the site during a 9-hour period whereas a decade ago, the count compromised 1700 vehicles during a full day.

The Parish Council further resolved that should the Planning Committee be minded to permit the development, there should be a condition preventing the proposed holiday accommodation from being changed into a separate permanent residence or used for unrestricted residential purposes.

The Highways Authority – No objections raised, subject to a condition. A detailed summary of the highway position is covered in section 9 of this report.

The Council's Conservation Officer – No objections raised. This is a site within the Conservation Area at a rural edge. As such, the site forms a transition from the village to the countryside. There is a degree of visibility through the site as the form and scale of the existing buildings allow this. It is further appreciated that the site is highly visible from all sides as there are footpaths to the south and this raises its importance as a village/rural transition site.

The scheme has been revised through negotiations held with conservation and planning officials which has led to a smaller replacement building being proposed compared with earlier schemes. The proposed developed now submitted, is more sympathetic to the compensatory scale of the existing buildings and crucially, it would retain the sense of visibility through the site from the village to the countryside and back again. The revised building has also been moved further into the site, away from the footpath – which is located to the west and south of the application site. The general form of the building and the design of the north, east and west elevations are agricultural in style; and this is welcomed. The south elevation has been amended through negotiations to reduce a central projecting wall and canopy, which is to the benefit of the scheme visually.

The use of solar panels, if suitable units are chosen for a non-reflective appearance, would be acceptable providing they are removed if they ever fall out of use or are otherwise no longer needed.

The Council's Ecologist – Recommended that an informative be added (upon any permission) to protect breeding birds from any risk of harm.

The Council's Archaeologist – The Wiltshire and Swindon Historic Environment Record indicated that there is a low potential for heritage assets with archaeological interest to be impacted by the proposed development. No conditions are therefore recommended.

Wessex Water – No objections raised subject to informatives covering water and waste water connections as well as surface water drainage.

Wiltshire Fire & Rescue Service – Back in early 2014, Wiltshire Fire & Rescue Service reported that it does not receive funding to mitigate the risk generated by new growth in Wiltshire, and the burden of related infrastructure costs should be passed onto the developers through a Section 106 Legal Agreement/CIL. In this particular case, a financial obligation was sought for the sum of £63.36 and the applicant/developer should be responsible for the cost of hydrants and water supplies for fire fighting. Furthermore, domestic/ residential sprinklers are recommended by way of a planning informative.

## **8. Publicity**

The application was subject to individual neighbour notifications, a site notice (which was displayed opposite the site on 3 March) and a press advertisement.

20 letters of support were received citing the following:

### Access / Highway safety

- The carriageway adjacent to the site is not problematic. There have been no known / recorded accidents along the Lower Westwood Road in over 20 years. The addition of two holiday lets replacing an agricultural use would not pose substantive harm to highway safety interests.
- Future holidaymakers would be aware of any highway constraint. This would be no different to normal driver awareness. Any risks are mitigated for by the traffic system and signage in place to alert all road users to be cautious.
- Any holiday let booking literature should include access details to forewarn any visitor.
- One supporter argues that visitors would be more inclined to respect the 20mph restriction than locals.

### Policy Conflicts

- Supportive representations have been received from Visit Wiltshire, Wick Farm Farleigh Hungerford Conference/Wedding Centre, Little Court Avoncliff and Eastbrook Cottage B&B, Southwick as well as from the owner of Westwood's shop/post office. The proposal would enhance this derelict Green Belt site and would bring about significant improvements to both the site and surroundings. It is compliant with WWDP Policy and the NPPF.
- The self catering accommodation would be a great benefit to have in the village and would strengthen its economic vibrancy.
- Redeveloping the site from agricultural use would eliminate potential conflict with residential amenities.
- The objections from the Parish Council/third parties are contradictory. How can they argue against redeveloping this site, but say they want affordable housing? Any perceived lack of affordable housing provision is irrelevant to this case. The application is for a new business.
- This is an excellent proposal. Little regard has been given by the objectors to the fact that the site is brownfield previously developed land. Do we really want more bland suburban development?

### Need for Holiday Lets/Viability

- It is misguided to say Westwood is not a holiday destination, without local attractions. Nearby we have, Bath, Bradford on Avon, the Cotswolds, Longleat, Stonehenge, the Kennet and Avon Canal and Iford Manor to name just a few.
- The business should be supported as it would generate local economic development and would support existing local businesses (e.g. the shop/post office, pub and Westwood Social Club).
- The letter of support from Visit Wiltshire is noted. Visit Wiltshire report that the UK tourism is predicted to grow at 5% to 2020 with local tourism revenue in the UK for 2012 reaching £134bn. Visit Wiltshire report that the site proposals 'fit well with current trends and with good marketing this development would help contribute to the continued growth of Wiltshire's visitor economy'.
- Surely this venture would benefit the village overall. One supporter asserts to be more persuaded by the views of the CEO of Visit Wiltshire based on facts associated to tourism and business owners – whose livelihoods depend on considered judgement, than personal opinions raised by the objectors passing doubt over the future popularity of this business venture.

### Impact on Neighbours/Surroundings

- Contrary to what the objectors claim, the application has local resident support including some immediate neighbours. Contrary to what some objectors claim, a couple letters of support have been received from immediate neighbours' (including a resident since 1971 and another of over 20 years) and assert that the applicant has sympathetically restored his house and land, and this development appears of a similar high standard which would further enhance the surroundings.
- It is alarming that some objectors wish to deny some people their democratic right to voice their support just because they rent a property, live elsewhere in the village or even outside it. Surely everyone's views count?
- There would be no substantive noise complaints. BBQs form part of everyone's right to enjoy their private amenity garden ground. Why should this be objectionable?
- No animals are kept on the site. No pigs have ever been kept on the site. Is this what objectors want?

### Precedence

- If approved, the development would likely be restricted in terms of its use; and thus any future proposal seeking to change its use or extend it would require to future planning permission. The same would apply to any proposed housing development on adjoining land. When such applications are submitted, that would be the time to object, not now.

### Planning History

- The scheme has been negotiated with Council planning, highways and conservation officials for over a year. The scheme is one that should be supported.

### Other Matters

- Some doubts have been cast about the Parish Council position representing the feelings of the village. One letter writer asks whether the chairman of the Parish Council declared an interest in any vote, since he lives close by.
- It is further alleged that a small number of people have tried to influence other residents to oppose this development by circulating petty objection letters including matters totally irrelevant to what is being proposed and against democratic planning principles.

13 letters of objection were received citing the following concerns:

### Access / Highway safety

- The access to the site is dangerous with limited visibility located close to a pinch-point in the carriageway. An increase in traffic generation along such a narrow road would make matters worse.
- The applicant suggests that his target market shall be older people – who would be less likely to react quickly to traffic incidents.
- Holidaymakers would be unaware of the risks.
- A recent Community Speed Watch Survey recorded that 83% of over 2000 vehicles movements travelling through the village (over 9 hour periods during 4 days between 3-10 Feb 2014) were not Westwood residents.
- Concerns are raised over the impact upon the PRow. Any diversion/obstruction would be unacceptable.
- Will the Council/planners take full responsibility / accountability for any accident if this application is approved?

### Policy Conflicts

- The disturbing proposal is contrary to local and emerging plan policy, the NPPF and the 2011 Localism Act.
- Opposition is recorded to converting the agricultural land to residential. This proposal is for 'defacto' residential use, and adds to Government concerns about second homes.
- The proposal does not satisfy the Government's objectives for providing affordable housing.
- The proposal is inappropriate development in the Green Belt and AONB.

- The modern design would not be in keeping with the village where there are no similar wooden properties; they are instead mainly made of stone.
- The solar PV installation on the southern roof plane would be inappropriate in such a protected rural landscape and would have an extraordinary visual impact on neighbouring properties, at odds with the conservation area.

#### Need for Holiday Lets/Viability

- Lower Westwood is not a holiday destination. There are no facilities or services for tourists in the village. The village does not need holiday homes. Holidaymakers would go to Bradford on Avon, Bath and Somerset. The support from Visit Wiltshire should be disregarded – they exist to promote holiday destinations.
- The failed holiday let business at Atworth (Fairfield Barn) should be cautionary example of what happens when holiday businesses are set up away from prime tourist locations.
- Concern is raised about what happens if this business fails. The property would be converted into unrestricted residential use and would gradually be further extended.
- When not in use, the vacant premises would realise no benefit to the village/community.
- There is no guarantee that the applicant would continue his proposed objective or be successful. What happens if the property is sold on?
- The applicant has never been interested in holiday lets before, it's not his business and he has no such experience.

#### Impact on Neighbours/Surroundings

- The 2 holiday lets could accommodate up to 10 adults and children within such a small area. Holidaymakers have no regard for permanent residential occupants and would disturb the tranquillity of the area and impinge upon the peace of neighbouring properties. Holiday use is inevitably linked to boisterous fun, noise and BBQs.
- Concern is raised over the relationship the holiday lets would have upon the nearby cemetery and the path used by funeral processions.

#### Impact on Ecology

- The immediate open fields to the south of the site are the hunting ground for barn owls. Extreme care must be taken to ensure that no protected species or habitat is affected/harmed by this proposal.

#### Loss of Agricultural Land/Buildings

- The derelict buildings and the site should be retained for agricultural purposes. If the proposal was to replace the existing structures with new working agricultural buildings, that would be a different matter.

#### Precedence

- Concerns are raised over a precedent being set should this application be approved. One local landowner is recorded as saying that she shall apply to build houses on nearby green belt land should this proposal succeed, as a financial legacy for her grandchildren.

#### Planning History

- The site has been subject to a series of applications through the years, including one proposal for 32 houses. There is some concern that the applicant is seeking to realise residential development on the site by stealth.

#### Other Concerns

- The site has been subject to heavy water logging in recent years.
- The applicant has failed to discuss his plans with all neighbours.
- The proposal constitutes a significant change of use from agricultural.
- An alleged breach of planning control has been raised with respect to a games room being used for residential purposes.
- The applicant has allegedly broadcast views around the village saying that the application shall be approved, despite minimal local support. It is further alleged that the applicant has said that if the application is not approved, he shall use the site for keeping horses. Horses are not agricultural animals and in any case, the stabling block on the site is too small, and may have been used as piggeries.



- Some objectors argue that some of the letters of support should be disregarded. A letter of support from a nearby tenant should be ignored. Other support comes from individuals and businesses outside the village and most of the support from Westwood residents don't live near or adjacent to the site, and would not be directly affected. The support received from the local public house proprietor should be ignored since he has a business interest in supporting this scheme and has no environmental impact interest.
- Should permission be granted, there should be conditions imposed preventing unrestricted residential occupation and further expansion.
- The application should be determined by the elected members to consider all the material considerations and hear both the objectors and supporters.

## 9. Planning Considerations

Key Issues: The Principle of Development; The Impact on the Green Belt/ Open Countryside; The Impact on the Conservation Area; The Impact on Highway Safety and PROW Interests; The Impact on Neighbours; The Impact on Ecology and Nature Conservation; The Impact on Archaeology; and Developer Contributions

The Principle of Development - Officers fully appreciate the site's planning constraints and the site's planning history which is documented above and has been referenced by some local objectors. Members will be aware that each application must be considered on its own merits, although, planning history can be a material consideration. In this particular case, officers stress that there are substantial differences between what was previously applied for and refused compared to what is presented under this application. It is also necessary to be mindful that national and local plan policy has evolved since 1974. This scheme seeks permission to erect holiday lets – which although captured under a 'C3' planning class use, a holiday let use is quite distinct from a standard dwelling. Holiday lets in rural locations and where planning authorities consider it appropriate, it often restricts occupancy to prevent it being used as permanent letting or a sole residence.

The Haygrove Farm site is brownfield land located within both the Green Belt and Conservation Area, but the site nevertheless has potential for redevelopment. It is important to be clear that the national and local policy does not prevent new development taking place in such sensitive locations, although it is crucial that any new development is appropriate. This transition site located on the outer edge of the village, sited immediately behind residential properties (which are also defined as being outside the parameters of Westwood's development limits) has been identified by the applicant for holiday let accommodation purposes following extensive discussions with Council officials.

The proposals accord with established policy. Members accepted this in April 2014, and since the resolution to grant permission was made, the previous emerging policies have become adopted development plan policy, enshrined within the Wiltshire Core Strategy. In summary form, Core Policy 48 seeks to support and strengthen our rural communities whilst Core Policy 51 directs new development to "*protect, conserve and where possible enhance landscape character*". Core Policy 57 seeks a high standard of design to create a strong sense of place, encouraging development that responds positively to landscape and conservation interests as well as maximising sustainable construction techniques and renewable energy sources. Tourism is important to Wiltshire's economy and is worth £779million a year; and the provision of holiday accommodation would very likely contribute to the local economy in terms of new business generated locally in pubs, local visitor attractions, shops and the like. It is also appropriate to recognise that Core Policy 39 imposes importance upon scale, design and use of a proposed facility and for it to be "*compatible with its wider landscape setting*".

Through the adoption of its Core Strategy, the Council replaced WWDP policies C1 (Countryside Protection) and T03 (Self Catering Accommodation) although it is necessary to reflect that elements of these policies are enshrined within CP50 (biodiversity and geodiversity), CP51 (landscape), CP52

(green infrastructure), CP2 (delivery strategy), CP34 (additional employment land), CP39 (tourist development) and CP48 (supporting rural life).

Officers find no substantive policy conflict with the development plan or its core planning objectives. The development would contribute towards delivering a thriving economy and help build a resilient community. Moreover, officers assert that whilst the site is located outside of the defined settlement limits of Westwood, the site cannot reasonably be described as 'isolated' and the proposal would not be an unsustainable form of development. The site is considered to be no less sustainable than anywhere inside the village, by virtue of it being serviced by the same road network and having good access to local amenities and infrastructure. The proposal would not demonstrably harm the open countryside by virtue of what exists on the site at present. Officers argue that the three existing buildings on the site have little or no architectural merit and the planned redevelopment has through negotiation, been planned sensitively to bring about a change of use and introduce some economic development to help support the village's vitality and widen the County's tourism accommodation offer.

Any doubt cast about the business succeeding is not a material planning consideration. Although, a degree of comfort can perhaps be gleaned from the views passed by the CEO of Visit Wiltshire – who asserted that *"there is significant consumer demand for high quality accommodation, offering flexibility for guest[s] in Wiltshire"*; and having reviewed the plans and visited the site in person, the official tourist board for Wiltshire is on record as stating that the *"proposed development fits well with current trends and providing [it] is marketed well will help contribute to the continued growth of Wiltshire's visitor economy"*.

At a national level, the NPPF places significant weight upon sustainable economic growth, to support proposals which contribute towards *"building a strong, responsive and competitive economy"* – which marries well with the Council's Core Strategy objectives; and, in paragraph 17 of the NPPF, a clear marker is laid through emphasising that the core planning principles should *"not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives"*. Within paragraph 19, the Framework records that *"The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system"*[officer emphasis added].

For completeness sake, it is worth recording that this policy context set the principle backdrop for the discussions held with the applicant and his appointed agents, and through extensive negotiations, officers pressed not only for having a replacement building that was commensurate to the existing range of structures, a single-storey 'limit' was set for the new build having a much lower profile than the Dutch barn; and, it had to be sited overlapping the existing footings of the three structures to retain views and glimpses of the open countryside beyond the site and back towards the village from the PRow to the south and east of the site.

According to the Council's database, the agricultural land designation for the site is graded as land of moderate quality, which is not used for food/crop production although officers would submit that the agricultural potential for the area amounting to less than 1 acre is probably best left limited to storage purposes given the close proximity of several residential properties. Although, as was conceded during the public debate back in April 2014, the established and lawful use of the site is for agriculture, and it was recognised that alternative agricultural fallback uses could generate far greater nuisance and disruption than what exists at present in terms of smells, noise, traffic generation. The parcel of land is not considered to be prime versatile agricultural land with much of it formed as hard standing, consequently, officers argue that in this case, there is no reasoned or justified planning objection to the 'loss' of such agricultural land.

The mixed level of support and objection from the local community remains duly recorded, and it is submitted that the key planning issues requiring detailed analysis concern: the impact on the green

belt/ open countryside; the impact on the conservation area; the impact on highway safety and PRow interests; and, the impact on neighbours. These are assessed in turn below.

The Impact on the Green Belt/ Open Countryside – Officers stress that the proposed redevelopment of the site would not have a materially greater impact than the present buildings on the openness of the Western Wiltshire Green Belt. The proposed replacement building would be smaller both volumetrically and in profile compared to the existing three structures and the visually dominant Dutch barn. Furthermore, officers maintain that the three structures do not positively contribute towards the landscape/ Green Belt setting or the transitional character of this edge of village site. Following extensive pre-application discussions and negotiations, the applicant proposes constructing a new building based on a simple rectangular form of a lower single-storey profile, set out encompassing the footings of the existing buildings to ensure that the essential character of the area is not harmed. The openness of the Green Belt – its most important element, would therefore not be compromised. Officers recognise that the site at present is rather unkempt with buildings in various stages of dereliction, but it is important to record that the site/ buildings are still used and benefit from an existing agricultural use with its own associated access and parking element – which could be intensified without requiring any Council approval. It is considered important to stress that the holiday let use and the type of vehicles using the shared access for such an enterprise would be more respectful to the immediate residential land use, than more intensive farming operations including tractor and other machinery use, silage storage or even animal housing which does merit some consideration as a potential fallback should this development not succeed.

Whilst the application site planning history is documented in section 4, which does include some historic refusal decisions, it is important to be clear that this application must be assessed on its own merits as a commercial venture and tested against up-to-date planning policy.

As referenced within the conservation officer's consultation commentary, officers welcome the applicant's revised proposal which follows much of the advice and guidance offered and crucially, it would allow for a sense of visibility through the site which satisfies the aims of the Green Belt in terms of preserving a sense of its openness as well as preserving important views into and out of the Conservation Area.

Having negotiated this scheme for over a year, planning and conservation officers find the design, scale, massing and use of materials to be acceptable; and if approved and implemented, would make a positive impact locally without harming the Green Belt or compromise the policies in place enshrined to protect it.

Impact on the Conservation Area - Section 66 & 72 of the Planning (Listed Building and Conservation Area) Act 1990 stipulates that the Local Planning Authority has a duty to pay special attention to the desirability of preserving and enhancing the setting of a building or buildings of special architectural or historic importance and the character or appearance of the Conservation Area. Furthermore, the NPPF identifies the need to conserve heritage assets in a manner appropriate to their significance.

In this particular case, officers duly assert that the three structures on the application site do not contribute positively to the character and appearance of the Conservation Area. Moreover, officers submit that the type and condition of the present buildings upon it, to a certain degree, devalues the character and appearance of the heritage asset. The functional use of the old stabling has now lapsed and the appropriateness of the domestic scaled timber shed on the site appears incongruous. The size of the Dutch barn appears visually striking in the landscape and somewhat discordant within such close proximity to several residential properties; and there is certainly no architectural merit to any of the structures to justify their retention in heritage terms. Officers therefore report no objection to the proposed demolition of the stabling, the shed and Dutch barn.

As far as the proposed new building is concerned, it is considered important to stress that the development has evolved in terms of its design, scale, massing and detailed elements through pre-

application discussions which involved the Council's Conservation officer. Through negotiation, the holiday let building has been re-sited so that it relates to the footings of the three existing structures which would be removed. The size and number of the holiday lets have been reduced, which in combination with the re-siting element, would allow for a degree of public visibility across and through the site to the wider countryside to the south and up towards the village when viewed from the PRoW to the west, south and east of the site.

It is fully acknowledged that neighbouring properties are of a more traditional vernacular comprising natural materials with dressed or random stone walls under clay tiled roofs. However, in recognition of the mixed materials used on the three structures on the site at present and having due cognisance of the site's agricultural land use, officers adopted a positive approach (as encouraged by the NPPF) through discussing the principle and finer details of redeveloping this site with the applicant and his appointed agents which date back to 2012. Officers firstly emphasised the importance placed upon ensuring that any replacement building should be commensurate to the scale/volumetric size of the existing buildings; and secondly, it was considered appropriate to promote the concept of a single-storey agrarian styled timber structure which could integrate with its surroundings without causing harm or conflict. Following a series of discussions and modifications, officers are fully satisfied that from a heritage viewpoint, the proposed building would be compliant with the relevant conservation/heritage based policies and that it would make a welcome contribution to the conservation area.

Impact on Highway Safety and PROW Interests - Whilst some local residents have raised concerns about highway safety implications associated to this site and proposal, it is necessary to stress that the **NPPF expressly asserts in paragraph 32 that “development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe”**. Officers duly assert that there would be no such “severe” highway impacts to justify a refusal in this particular case.

The highways team recognise that the site access is shared by No. 43 and No. 44 located within a 20mph speed limit and close to a narrowing in the road which aids the slowing of traffic speeds. The highway authority duly acknowledges the concerns raised by some local residents and the parish council, but it has to be recorded that there has been no recorded accidents at this point in the last 10 years. Furthermore, the submitted plans show 2.4m x 20m visibility to the centre line of the road at the narrowest point and 2.4m by 29m to the west. Given the nature of the road as reported above, no highway objection is raised.

All the highway based objections have been fully reviewed, including the referenced Community Speed Watch findings. Following a review of the submitted data, the highways team advise that the number of vehicles passing along the public carriageway within a 9 hour period (as referenced by the Parish Council), is not considered a large traffic flow and is certainly not a substantive highway safety constraint to justify a refusal in this case.

Impact on Neighbours - Officers acknowledge the fact that the three agricultural buildings on the site are located in close proximity to several residential properties, which could potentially led to some land use / amenity conflict if the site/ buildings were to be used more intensively for farming purposes away from storage. If approved and implemented, this application would result in the removal of the agricultural land use; and thus, erode any such future agricultural/residential conflict. As recorded above, the Council has received a mixed response from residents of Westwood with some registering full support and others raising concerns. For those opposing the application on amenity grounds, after visiting the site and carefully assessing the proposals, officers assert that the separation distances and relationships between the proposed new holiday let accommodation - with its main amenity space located to the rear; and the closest neighbouring residential properties, are acceptable and that it should not substantively disturb, interfere, conflict with or overlook adjoining dwellings or uses to the detriment of existing occupiers.

The two proposed self-contained holiday lets would each have 2 bedrooms, a kitchen/dining room and wc/bathroom as well as some dedicated outdoor space. Whilst the proposal would constitute a change the use of the land, it is considered that a holiday let use would be much more sympathetic to the prevailing residential use of all the adjoining neighbouring properties; and moreover, the level of visitor comings and goings should not have an undue negative impact on the amenities of neighbouring residential occupiers.

For the avoidance of any doubt, the use of the holiday lets can be controlled by planning conditions to restrict the occupation and impose a reasonable guest book management requirement so that the Council can properly monitor its future use. This is considered both necessary and entirely reasonable and consequently, planning conditions are so recommended.

The Impact on Ecology and Nature Conservation - As reported above, the Council's ecologist reports no objection to the development proposal on ecological/nature conservation grounds. Should permission be granted, an informative is recommended to advise the applicant/developer to ensure that when demolishing the three structures or disturbing any land, due consideration should be given to bats and breeding birds and to avoid the bird nesting season (March to August); and that even outside such a period, care should be taken.

The Impact on Archaeology - The Council's archaeologist reports no concerns and is on record advising that "*based on information in [the] Wiltshire Historic Environment Record...no concerns [are raised] regarding any archaeological impact by the proposed development*". This advice is also enshrined within page 19 of the submitted Design and Access Statement.

Developer Contributions – In April 2014, a financial request from the Wiltshire Fire & Rescue Service amounting to £63:36 was reported to the committee; and it was agreed at the time, that prior to the adoption of CiL, the associated legal costs of negotiating and entering a s106 (in addition to the officer time resource) for such a limited amount of money was not considered proportionate or proper use of Council resources. However, now that Wiltshire Council is a CiL charging authority, this type of development which is CiL liable, would be subject to development taxation prior to the commencement of work on site. Although the tax collection process is separate to the planning process, members may be interested in knowing that the proposed holiday let development falls within the Council's CiL Charging Zone 1 which levies a tax of £85 per sq.m on CiL liable development – and in this particular case, it generates a CiL liability of approximately £10183.

## **10. Conclusion**

This development has been debated at committee level and obtained member support for the principle of development. The only aspect of the application which is reasonably open for re-evaluation refers to whether or not Members would be satisfied that permission could be granted without a s106. In the interests of consistency, the original case officer recommendation remains unchanged arguing that the holiday let occupancy can be controlled robustly by planning conditions, which as an approach is consistent with all the other detailed applications that were approved by the Council in 2014. It is nevertheless duly acknowledged that Members were not sufficiently convinced in April 2014. This report has been updated to reflect and report on material changes since April 2014 and Members are respectfully invited to consider this case on its merits.

As previously advised, this application has been subject to extensive pre-application discussions. Through these discussions, the applicant reduced the scale of the holiday let accommodation from 3 to 2 units and reduced the size of the building so that it is more commensurate with the existing range of buildings on a compensatory replacement basis. The applicant agreed to re-site the new building so that it would overlap the footprints of the existing three structures – which belittle the character and appearance of the Conservation Area. Following their proposed demolition, the applicant seeks to erect a building having a simple agrarian form with a smaller cumulative volume than the three structures with a single-storey profile which would not have a materially greater impact upon the openness of the Green Belt and Conservation Area; but would, through the loss of the agricultural buildings and

changing the planning land use of the site, delete the future potential risks of residential neighbouring conflicts with such immediate agricultural operations.

Officers maintain that this development fits with the Central Government's emphasis placed upon stimulating economic growth, creating and supporting rural businesses and diversity, and job growth – enshrined under the banner of promoting economic, social and environmental sustainability. Officers are satisfied that the application accords with the key elements of the NPPF; as well as the Council's Policies, and consequently, this application is recommended for permission subject to conditions.

**RECOMMENDATION: To approve subject to the following conditions:**

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

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

- 2 No development shall take place until samples/details of the materials to be used in the construction of all the external surfaces of the development hereby permitted (including the exact type and colour and manufacturer of the solar PV panels) have been made available to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

REASON: To ensure that the development harmonises with its historic setting and protected surroundings.

- 3 No building works pursuant to the construction of the holiday let accommodation shall commence until all three existing structures identified for demolition on the site have been permanently demolished and all the debris has been removed from the site/landholding.

REASON: In order to define the terms of this permission and to ensure the site is redeveloped in an appropriate manner respectful to the protected surroundings and neighbours.

- 4 No person/s shall occupy the holiday accommodation for a continuous period of more than 1 month in any calendar year and it shall not be re-occupied by the same person/s within 28 days following the end of that period.

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

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

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

- 6 No part of the development hereby permitted shall be first brought into use until the access, turning area and parking spaces 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.

REASON: In the interests of highway safety.

- 7 All demolition/construction operations on site shall be restricted to the following hours:  
Monday-Friday 08:00-18:00, Saturdays 08:00-13:00 and not at all on Sundays and/or bank Holidays.

REASON: In the interests of safeguarding local and residential amenity.

- 8 Should the solar PV panels become obsolete, they shall be removed from the property within 3 months from the date they cease to be used or function for the purposes of providing renewable energy; and that the roof shall be clad in material to match the northern roof plan hereby approved.

REASON: In order to define the terms of this permission.

INFORMATIVES TO APPLICANT:

1. The applicant/developer is advised to duly note that bats and their roosts are protected at all times by the Conservation of Habitats and Species Regulations 2010. Planning permission for any development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. If bats or evidence of bats is found during the works, the applicant is advised to stop work and follow advice from an independent ecologist or to contact Natural England's Batline on 0845 1300 228

2. 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. The applicant is advised to check any structure or vegetation capable of supporting breeding birds and delay removing or altering such features until after young birds have fledged. Damage to extensive areas that could contain nests/breeding birds should be undertaken outside the breeding season. 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.

3. The applicant/developer is encouraged to contact Wessex Water to agree connections to the water supply and mains sewer infrastructure.

4. The applicant/developer is advised to contact the Wiltshire Fire & Rescue Service and to consider the installation / provision of residential sprinklers inside the new property. More information can be obtained from the Fire Authority through contacting them on tel. no: 01225 756500 or via email: [planning@wiltsfire.gov.uk](mailto:planning@wiltsfire.gov.uk)

5. The applicant is encouraged to arrange for appropriate literature to be provided to

all future visitors to the holiday let accommodation advising on the directions to the site and also to raise awareness of the localised highway constraints and limited visibility.





## Appendix 2 – Letter from the Applicant’s Financial Advisor

# Martin Jones

Financial Adviser

CertPES, CeMAP, DipFA

39 Broadstones, Monkton Farleigh, Bradford on Avon, BA15 2QA

01225 851002 Mobile 07766 722961

E-mail-martin.jones93@btinternet.com

Dear Sir/Madam,

Re- Haygrove Farm, 44 Lower Westwood, Bradford on Avon. BA15 2AR

My name is Martin Jones and I am the Financial Adviser to Ian Harding, Karla Harding and Michael Hopkins. I am writing to confirm that Santander will not counter sign the Section 106 agreement as the proposed holiday lets are going to be run as a business. Please see enclosed letter from Santander.

Mr. Harding's current mortgage with Santander is set at 0.5% over Bank of England Base Rate and after talking with both mortgage lenders and banks on behalf of Mr Harding and his family I could only find one company NatWest prepared to mortgage the property with a Section 106 attached to it. The interest rate for comparison would be 4.68%

This would seriously increase the monthly mortgage repayments, which would make this proposal significantly less viable commercially and I do not believe the council intended for the Section 106 to be financially punitive to this extent.

Yours faithfully,

Martin Jones

Financial Adviser

FCA Number [12570946](#)

Sole Proprietor: Martin Jones

Martin Jones is an appointed representative of Caerus Financial Ltd, Building 10,  
The... ..

## Appendix 3 – Record of Approved Applications for Holiday Lets in rural Wiltshire without a s106

### 2014 Holiday Lets Approved by the Council without s106

References	Address	Description	Site Constraint
14/00330/FUL	West Farm Barns, Fovant	Conversion of farm buildings to shooting lodge/holiday lets	AONB
14/06051/FUL	Elcombe Farm, Alvediston, Salisbury	Erection/siting of 6 temporary holiday let units	AONB
14/01332/FUL	Honeywood Stables, Easterton	Change of use to 2 holiday lets	Open Countryside
14/01335/FUL	Barford St Martin, Salisbury	Erection of a holiday let	AONB and affecting heritage assets
14/03613/FUL	Priory Farm, Edington	Change of use of land and buildings to holiday lets	affecting heritage asset
14/02189/FUL	Horsecroft Farm, Heywood	Change of use to form 3 holiday lets	Open Countryside
14/02659/FUL	Woolley Barn Farm, Woolley Green	Replacement Dwelling and Conversion to Holiday let	Green Belt
14/06549/FUL	Honeywood Stables, Easterton	Change of use to 2 holiday lets	Open Countryside
14/07993/FUL	Cart Shed Barn, Sutton Mandeville, Salisbury	Change of sue to holiday let	AONB
14/08318/FUL	Bays Farm, Pinkney Green, Farleigh Wick	Change of use to form 1 dwelling and holiday let	Green Belt and AONB
14/12006/FUL	Bankside, Bishopstone, Salisbury	Change of use to holiday let	AONB & Conservation Area
14/04543/FUL	Woolley Park Barn, Woolley Green	Change of sue of barn to holiday let	Green Belt

### 2015 Holiday Lets Approved by the Council (Jan-July 2015) without s106

15/00312/FUL	Church Farm, Upper South Wraxall	Change of use to 2-bed holiday let	Green Belt & Conservation Area
15/01191/FUL	Long Knoll Barns, Kilmington	Change of use to holiday lets	AONB
15/01220/FUL	Church Farm, Kington Langley	Change of use of cow byre to holiday let	Open Countryside & nearby heritage assets
15/01250/FUL	The Holdings, Ashton Common	Change of use to holiday let	Open Countryside
15/01595/FUL	West View, Yatton Keynell	Change of use of barn to holiday let	AONB & nearby heritage assets
15/04143/FUL	Factory Lane, Barford St Martin	Erection of a holiday let	AONB
15/04544/FUL	West Wick Farm, Pewsey	Conversion of agricultural building to holiday let	AONB
15/05049/FUL	Clay Street, Crockerton	Change of use of stable to holiday let	AONB

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Item 1 - 14/01659/FUL Haygrove Farm, 44 Lower Westwood, Bradford on Avon



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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No. 2

<b>Date of Meeting</b>	12 August 2015
<b>Application Number</b>	15/03114/FUL
<b>Site Address</b>	Land rear of 119 St Thomas Road Trowbridge BA14 7LU
<b>Proposal</b>	Construction of detached 3 bed chalet bungalow
<b>Applicant</b>	Mr Neal Raines
<b>Town/Parish Council</b>	TROWBRIDGE
<b>Ward</b>	TROWBRIDGE ADCROFT
<b>Grid Ref</b>	386428 158676
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Steve Vellance

### Reason for the application being considered by Committee

This application is brought to Committee at the request of Councillor Blakemore for consideration of the scale of development, visual impact on the surrounding area, relationship to adjoining properties, design, environmental or highway impact and car parking.

#### 1. Purpose of Report

To assess the merits of the proposal and to recommend that planning permission be granted.

#### 2. Report Summary

The proposals are considered in terms of the development plan which is formed by the Wiltshire Core Strategy that was adopted in January 2015. The key policy is Core Policy 57 which relates to Ensuring High Quality Design and Place Shaping.

Neighbour objections and consultee response are considered with the recommendation for approval based on the conclusion that the site is acceptable where the proposals would not give rise to significant harm to planning interests.

Neighbourhood Responses: Three objectors submitted responses over the two consultation periods, some with several items of correspondence.

Trowbridge Town Council – No Objections raised, subject to there being no significant adverse impact on neighbours amenities

### **3. Site Description**

The site is located within the town policy limits of Trowbridge. The site currently forms a part of the rear garden to 119 St. Thomas Road, Trowbridge and is located within an established residential development; the proposal would be accessed off Rodwell Park. The scheme would comprise of an infill dwelling within a section of the existing rear garden area of number 119. The immediate area has a mix of building styles, ranging from bungalows to two storey detached and semi detached buildings.

### **4. Relevant Planning History**

- |              |  |
|--------------|--|
| 14/09371/CLP | Infilling the rear of dwelling to create bedroom. Conversion of existing garage into ensembles and an additional bedroom. Construction of replacement garage in front of original garage (Certificate of Lawfulness for Proposed Development). Refused. 21.10.2014 |
| 14/10212/FUL | Infill rear area of building with new bedroom, convert existing garage, and construct new attached garage in front of existing. Not Determined.  |
| 15/07054/FUL | New fencing adjacent the highway. Application in progress.   |

### **5. The Proposal**

The proposal is for the construction of an infill development comprising of a detached three bedroom chalet bungalow within a section of rear garden land belonging to 119 St. Thomas Road. The dwelling would have three bedrooms, one at ground floor and two at first floor level, with an open plan kitchen, dining/living room and utility and W.C. on the ground floor. The property would have 2 parking spaces located to the front south west aspect of the site.

The proposed plans have been amended to omit the original two high level windows on the front elevation to address the neighbour concerns relating to this fenestration.

The proposed dimensions would approximately be: 19.3 metres (length) by 9 metres (width) 2.7 metres (height to eaves) and 5.5 metres height to ridge.

### **6. Local Planning Policy.**

Wiltshire Core Strategy (adopted January 20<sup>th</sup> 2015):

Core Policy 1: Settlement Strategy;  
Core Policy 2: Delivery Strategy;  
Core Policy 57: Ensuring high quality design and place-shaping.

National Policy: National Planning Policy Framework (NPPF)

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



Trowbridge Town Council – No objections subject to there being no significant adverse impact on neighbours amenities

Highways Officer – No objection subject to two planning conditions.

Wiltshire Fire Service – Comment on the application and advise the use of a sprinkler system.

Wessex Water – No objections.

## **8. Publicity**

The first consultation process generated four letters of representation with one person writing in twice raising the following points:

- Inferior, inappropriate design because of profit
- Problems accessing Council's system and inappropriate title of applicant.
- Inaccurate descriptions/statements within the D & A Statement
- Highway concerns.
- Design inappropriate for locality and inappropriate description
- Overdevelopment and Council refused similar scheme and asked for amendments
- First floor windows overlook 2 Rodwell Park and 119 St. Thomas Road.
- Retention of hedgerow
- Block plan omits extension which is currently being constructed on bungalow at 119 St. Thomas Road.
- Proposal is not similar to 1A Rodwell Park
- First floor window would overlook rear garden area of 117 St. Thomas Road.
- Proposal too large for plot and is a house and not a bungalow.
- Proposal wouldn't follow building line and would restrict light to front of 2 Rodwell Park.
- Detail over existing boundary between site and 2 Rodwell Park.
- Proposal would impact on amenities of 2 Rodwell Park.

The second consultation process following the submission of revised plans generated two letters of representation raising the following points:

- Reiteration of points raised within previous letter/s.

- Reference to previous permission for single storey bungalow opposite at 1A Rodwell Park.
- Scheme not suitable.
- Highway concerns.
- Overdevelopment of the site.
- Loss of amenities and privacy for number 2 Rodwell Park.

## 9. Planning Considerations

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

The proposed dwelling would be located within the settlement limits of Trowbridge, whereby the town is also designated as a Principal Settlement in the Wiltshire Core Strategy within Core Policy 1. The Core Strategy identifies this as a site which has the potential for significant development that will increase jobs and homes in each town in order to help sustain and where necessary enhance services and facilities. The policy also aims to promote better levels of self containment and viable sustainable communities.

Core Policy 57 is of relevance and which states in part:

*“Making efficient use of land whilst taking account of the characteristics of the site and the local context to deliver an appropriate development which relates effectively to the immediate setting and to the wider character of the area. AND*

*Having regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing; vibration; and pollution (such as light intrusion, noise, smoke, fumes, effluent, waste or litter)”.*

The principle of a new dwelling within the settlement limits is therefore consistent with the development plan policy of the Wiltshire Core Strategy subject to other material planning considerations, as discussed further within this report.

### Impact on the highway.

The scheme would create a new access to the site on the south west aspect by the removal of a domestic hedgerow which currently serves No. 119. The scheme proposes two off street car parking spaces that would be located to the front of the proposed dwelling. Neighbour concerns have raised the creation of this access as a possible highway problem, however importantly and of significance, the Highways Officer has not raised any objections within this respect, which is seen as a response to such concerns.

### Impact on neighbouring amenity.

The proposal would see the continuation of the existing building line which is apparent and which is an important consideration within the policy requirements of the Core Strategy. Acknowledging neighbour concerns in relation to the two high level windows on the proposed front elevation, the applicant has submitted revised plans omitting this fenestration; this is significant because by doing so, the perception of being overlooked has been removed. A second neighbour consultation process was undertaken whereby two letters of neighbour objections have been received.

Consequently, the two first floor bedrooms within the proposal would solely rely on roof lights for natural light, as would the bathroom and cloakroom at this level. This is considered to be acceptable and it is noted that concerns have been received from the neighbour at number 2 Rodwell Park relating to amenity and overlooking from these roof lights. The three proposed roof lights whilst being sited within the direction of this dwelling would not overlook this property and more specifically its rear patio area because they would be set at a high level following the pitch of the roof and pointing up towards the sky.

Likewise, this household has also raised concern that the front of their dwelling would have light restricted to it. It is considered that due to the approximate separation distance of 3.5 metres between the proposed build and number 2 Rodwell Park and because this neighbouring property does not have side windows, the relationship of the proposed new build to this existing dwelling is considered to be acceptable and would not incur any substantial loss of light, if any at all. It is further noted that there is a high level boundary fence in place between the two sites, which may currently serve to restrict light. Number 2 Rodwell Park has also raised a private boundary issue relating to the low level chain link fence which is sited within the application site and which abuts and touches the boundary fencing. This is a private civil matter between the parties.

Concern has also been raised that the proposed development constitutes overdevelopment. This is not considered to be the case as the built form would not utilise the entire site but would leave a sufficient area of private rear amenity space for both the proposal and the existing bungalow, it is further noted that there are varying sizes of residential plots of land and garden areas within the immediate vicinity of which the proposal would be one. The objectors make reference to 1A Rodwell Park which is a dwelling sited opposite the current proposal and which is of a similar design to the proposal but smaller by solely occupying the ground floor. It is considered that whilst every planning application has to be considered on its own individual planning merits, the current proposal is considered to sit comfortably within its setting

#### Impact on the Character of the area

The residential properties in this particular area consist of a variety of styles, ranging from two storey semi detached/detached buildings to bungalows. The scheme would be subject to conditions controlling its final appearance, which would include a condition relating to materials and a condition controlling landscaping/boundary treatment. It is considered that for these reasons the built form would not negatively impact on the mixed character of the area.

## **10. Conclusion.**

The proposal is considered to accord with Core Policy 57 of the Wiltshire Core Strategy in terms of the applicable criteria and appropriate conditions would address issues of materials, highway safety and landscaping/boundary details.

**RECOMMENDATION:** Permission subject to the following conditions:

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

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

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

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

- 3 The development hereby permitted shall not be first brought into use until the access and parking spaces have been consolidated and surfaced (not loose stone or gravel). The access and parking area shall be maintained as such thereafter.

REASON: In the interests of highway safety.

- 4 No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first brought into use until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained.

- 5 No development shall commence on site until a scheme of hard and soft landscaping and boundary details has been submitted to and approved in writing by the Local Planning Authority, prior to the commencement of any such works. The works shall then be carried out strictly in accordance with the approved details.

REASON: To ensure a satisfactory landscaped setting for the development

- 6 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five

years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

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

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), there shall be no first floor windows on the south west elevation and north east elevation.

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 such additions.

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

Drawing reference 648/BL registered on 02 April 2015

Drawing reference 648/01b received by email on 08 July 2015

Drawing reference 648/SP registered on 02 April 2015

Drawing reference 648/S01 registered on 02 April 2015

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

- 9 INFORMATIVE: The applicant is advised to contact Wessex Water direct on 01225 526 000 with regard to the connection of water and waste supplies for this proposed development.

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Item 2 - 15/03114/FUL Land at 119 St. Thomas Road, Trowbridge



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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No. 3

<b>Date of Meeting</b>	12 <sup>th</sup> August 2015
<b>Application Number</b>	15/04899/FUL
<b>Site Address</b>	17 Palairet Close Bradford On Avon Wiltshire BA15 1US
<b>Proposal</b>	Garage extension, porch extension, new garden wall, installation of flue, new driveway and dropped kerb to highway.
<b>Applicant</b>	Mr Paul Gould
<b>Town/Parish Council</b>	BRADFORD ON AVON
<b>Ward</b>	BRADFORD-ON-AVON SOUTH
<b>Grid Ref</b>	382893 159994
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Kate Sullivan

### Reason for the application being considered by Committee

Councillor Ian Thorn has requested that the application be considered by the Local Planning Authority for the following reasons:

- The proposals significantly undermines the entire landscape strategy that was conceived for Palairet Close and surrounding roads when the scheme was built and are the thin end of the wedge
- The enclosure of gardens takes away significant visual and community amenity from other residents
- The enclosure of gardens creates greater opportunities for crime and anti-social behaviour
- The proposed enclosures appear to be partially on third party land and therefore cannot be delivered
- Being mindful of local opinion. There is considerable community and political opposition to the proposals

#### 1. Purpose of Report

To assess the merits of the proposal and to recommend approval of the application.

#### 2. Report Summary

The main issues to consider are:

- Principle of development
- Design issues

- Impact upon the character and appearance of the area
- Impact upon the neighbouring amenity
- Highway impact
- Other

### **3. Site Description**

The application site is a dwelling within the residential area of Bradford on Avon known as the Southway Park Estate.

The application site is a two storey, detached dwelling which occupies a corner plot.

The land to the side of the dwelling outside the existing boundary wall is in ownership of the application site (Land Registry document has confirmed) and the Highways Department have confirmed that the land in question is not within Highway ownership.

### **4. Planning History**

W/76/00231/HIS Phase 3 and 4 Residential Development. (Approval of matters reserved) – Withdrawn

W/76/00784/HIS Outline for residential development – Approved 07/03/97

W/77/00819/FUL Proposed erection of 31 dwellings – Approved 03/03/78

W/78/00824/FUL Proposed substitution of house types for those already approved on plots 185 186 202 203 and 204 of phase 3b Southway Park, Bradford on Avon – Approved 13/10/78

W/79/01500/FUL Erection of additional residential accommodation on top of garage – Approved 04/03/80

W/86/01307/FUL Two storey extension (15 Palairt Close)– Approved 25/11/86

W/87/00634/FUL Extension - Withdrawn

W/93/01277/FUL Single storey extension to rear (21 Palairt Close) – Approved 22/11/93

### **5. The Proposal**

The application seeks to realign the boundary wall to enclose some of the open land to the side of the dwelling. The proposals also include the construction of a single storey garage that would be attached to the dwelling and be constructed of matching materials.

The proposals also include the creation of a one off road car parking space.

The application also seeks to erect a cylindrical stainless steel flue which would sit at the ridge height of the existing roof.

### **6. Local Planning Policy**

Wiltshire Core Strategy, 2015

CP1 Settlement Strategy

CP2 Delivery Strategy

CP7 Bradford on Avon Community Area

CP57 Ensuring High Quality Design and Place Shaping  
CP58 Ensuring Conservation of the Historic Environment (Landscape Setting)  
CP61 Transport and Development

National Planning Policy Framework, 2012

Planning Practice Guidance, 2014

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

Bradford on Avon Town Council: Recommend that the application is refused on the following grounds:

- The estate is a low density 1970s development with extensive landscaping that has now matured. The open spaces and verges give the whole area its special character.
- The reduction of the verge outside number 17 would adversely affect the overall open character of the estate.
- The proposed garage would not have a major impact, but the moving of the wall would.
- It would create a significant change to the street scene.
- The proposal fails to respect the importance of the landscape and is contrary to good design requirements of the NPPF and Wiltshire Core Strategy.
- There are restrictive covenants on the land preventing these proposals being undertaken.

Bradford on Avon Preservation Trust: No comment to make on the application.

Highways Department: No objection subject to a condition relating to visibility splays.

## **8. Publicity**

The application was advertised by a site notice and neighbour notification letters. The deadline for any correspondence was 23 June 2015.

16 letters of objection were received raising the following concerns:

- Corner is sufficiently hazardous and this would be increased by having a garage on the corner
- Permission has been declined in the past for such developments
- Loss of open space
- Deeds clearly state that the open space and verges are to be retained.
- Estate was designed to be linked with its rural location
- Stainless chimney is ugly and from experience the height is not sufficient to stop a nuisance from the fumes.

## **9. Planning Considerations**

### **9.1 Principle of development**

The application site is located within the limits of development of the Market Town known as Bradford on Avon where there is a presumption in favour of sustainable

development. The application is therefore considered to comply with CP1, CP2 and CP7 of the Wiltshire Core Strategy.

## 9.2 Design issues

The proposed realignment of the boundary wall would not be incongruous to the design of the dwelling. Currently a boundary wall runs along the side elevation of the property and the proposal would move this closer to the road, but would still retain open land to the side of the dwelling.

The proposed extension to construct a garage would be a small, subservient extension that would match the existing dwelling in terms of design and materials and would be considered appropriate to the host dwelling.

The erection of a stainless steel flue to be associated with a wood burner would not be incongruous to the host dwelling. It would sit alongside the original dwelling and extend out of the garage roof.

It is therefore considered that the proposed alterations comply with the relevant criteria of CP57 of the Wiltshire Core Strategy.

## 9.3 Impact on the character and appearance of the area including the Landscape Setting

The estate in which the application site is located is characterised by open space with boundary walls being set back from the pavement. The land outside the boundary walls has in many cases been planted with domestic plants.

Although the realignment of the boundary wall would remove some of the land from public view, the proposal would still retain land to the side of the proposed development which would remain outside of the realigned boundary wall. Therefore it is not considered that the proposed realignment of the boundary wall would unduly harm the character and appearance of the neighbouring area.

The small single storey side extension to house a garage would not be incongruous to a dwelling of this size and style and is not considered to harm the character or appearance of the immediate area or the landscape setting of the wider town of Bradford on Avon given the small subservient nature of the development and the use of matching materials. The inclusion of a flue would not be considered incongruous to a dwelling in this location. It is therefore considered that the proposal complies with the relevant criteria of CP57 and CP58 of the Wiltshire Core Strategy.

## 9.4 Impact upon neighbouring amenity

The realignment of the boundary wall would relocate the wall closer to the road than currently exists on the site, however, land would remain outside the proposed extension and the new wall, and the pavement, and this would not harm the neighbouring amenity. The character of the area is considered to be retained and the realigned wall is not considered to harm the neighbouring amenity.

The proposed garage extension would be single storey and would not have any windows inserted, therefore there would be no impact on overlooking any neighbouring dwelling.

The creation of a garage and off road car parking space in this context would not be incongruous and is not considered to harm the neighbouring amenity.

A neighbour has raised concerns regarding the flue and the nuisance that this may cause the properties nearby. It is considered that the flue would be located some distance away from any neighbouring dwelling

It is therefore considered that the proposed alterations comply with the relevant criteria of CP57 of the Wiltshire Core Strategy.

#### 9.5 Highway Impact

Comments have been raised regarding the safety of the proposed garage on the corner of the road. It is considered that there is sufficient visibility on the site and given that the dwelling is located in a residential area in a no through area of the estate traffic should be moving slowly.

The highways department have not raised any objection to the proposals subject to a condition being placed on the application relating to the creation and maintenance of visibility splays.

It is therefore considered that the proposals comply with the relevant criteria of CP61 of the Wiltshire Core Strategy.

#### 9.6 Other

The applicant has submitted a land registry extract showing that the land which is proposed to be taken inside the boundary wall is in the ownership of the applicant. The highways team have confirmed that the land is not within their ownership or interest. Previously a number of planning applications have been refused on the grounds that “the height and relocation of the boundary wall encroaching on land to the side of the property, would be visually intrusive in the street scene and harmful to the openness and historic spatial characteristics of the area”. It is noted that since these applications were refused there has been a number of changes in planning policy including the adoption of the Wiltshire Core Strategy and the NPPF.

Whilst this proposal does encroach onto the land to the side of the dwelling, as already noted, it would still retain land outside of the boundary wall which would retain the open characteristic of the area. As the boundary wall would be rebuilt, it would be in keeping with the surrounding area. In previously refused permissions the new boundary walls would be relocated closer to the boundary of the property, alongside the existing pavement which would reduce the openness of the area.

It is understood that there is a covenant on the land restricting the moving of the boundary wall, however, covenants are a civil matter and the granting of planning permission would not change the covenant whereby separate permission would be required.

## 10. Conclusion

In conclusion whilst it is acknowledged that the proposals would result in a reduction of land between the boundary wall and the pavement, it is not considered that the proposal would harm the overall open characteristics of the immediate area. The land is considered to be within the residential curtilage of the application site and this would not be altered as a result of the proposals.

**RECOMMENDATION:** It is recommended that the application is approved subject to conditions.

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

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

- 2 The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture those used in the existing building.

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

No part of the development shall be brought into use until the visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of [INSERT] 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

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

Plans and elevations as proposed dated April 2015

Plans and elevations as existing dated April 2015

Block Plan dated May 2015

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

- 5 No part of the development shall be brought into use until the area between the nearside carriageway edge and a line drawn 2.0 metres parallel thereto over the entire site frontage has been cleared of any obstruction to visibility at and above a height of 600mm above the nearside carriageway level. That area shall be maintained free of obstruction at all times thereafter.

REASON: In the interests of highway safety



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Item 3 - 15/04899/FUL 17 Palairet Close Bradford on Avon



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## REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Report No. 4

<b>Date of Meeting</b>	12 <sup>th</sup> August 2015
<b>Application Number</b>	15/05185/FUL
<b>Site Address</b>	30 Palairt Close Bradford on Avon BA15 1US
<b>Proposal</b>	Proposed single storey extension, internal alterations and proposed realignment of boundary wall
<b>Applicant</b>	Mrs E Dawe
<b>Town/Parish Council</b>	BRADFORD ON AVON
<b>Ward</b>	BRADFORD-ON-AVON SOUTH
<b>Grid Ref</b>	382949 159996
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Kate Sullivan

### **Reason for the application being considered by Committee**

Councillor Ian Thorn has requested that the application be considered by the Local Planning Authority for the following reasons:

- The proposals significantly undermines the entire landscape strategy that was conceived for Palairt Close and surrounding roads when the scheme was built and are the thin end of the wedge
- The enclosure of gardens takes away significant visual and community amenity from other residents
- The enclosure of gardens creates greater opportunities for crime and anti-social behaviour
- The proposed enclosures appear to be partially on third party land and therefore cannot be delivered
- Being mindful of local opinion. There is considerable community and political opposition to the proposals

### **1. Purpose of Report**

To assess the merits of the proposal and to recommend approval of the application.

### **2. Report Summary**

The main issues to consider are:

- Principle of development
- Design issues
- Impact upon the character and appearance of the area

- Impact upon the neighbouring amenity
- Impact on the protect tree
- Highway impact
- Other

### 3. Site Description

The application site is a dwelling within the residential area of Bradford on Avon known as the Southway Park Estate.

The application site is a two storey, detached dwelling which occupies a corner plot. Within the application site is a lime tree which is protected with a Tree Preservation Order (TPO Ref. W/05/00005/IND).

The land to the side of the dwelling outside the existing boundary wall is in ownership of the application site. The Applicant has submitted a land registry search showing the extent of the properties ownership. The Highways Department have confirmed that the land in question is not within Highway ownership.

### 4. Planning History

- W/12/02085/TPO Crown thin Lime Tree (T1) by 15% and crown lift to 3m – Approved 10/12/12
- W/06/00973/TPO Crown thinning and crown raising of Common Lime tree – Approved 15/05/06
- W/86/01051/FUL Conservatory to rear (28 Palairet Close) – Approved 28/10/86
- W/85/00640/FUL Construction of external chimney (32 Palairet Close) – Approved 09/07/85
- W/77/00407/FUL Residential development of 42 dwellings, Phase 3A – Approved 13/08/97
- W/77/00819/FUL Proposed erection of 31 dwellings – Approved 03/03/78  
This permission includes a condition stating:  
3. In order to safeguard the appearance of the estate as a whole and notwithstanding the provisions of the Town and Country General Permitted Development Orders 1973-74 no extensions shall be carried out to the dwellings hereby permitted, no additional garages shall be constructed and no gates, fences, walls, hedges or other means of enclosure shall be erected, planted or maintained in front of the forward most part of the front of any dwellings house or in front of the flank/screen wall on return frontages, without permission granted on an application made in that behalf under Part 3 of the Town and Country Planning Act 1971.
- W/76/00231/HIS Phase 3 and 4 Residential Development. (Approval of matters reserved) Withdrawn
- W/76/00784/HIS Outline for residential development – Approved 07/03/97

## **5. The Proposal**

The application seeks to realign the boundary wall to enclose some of the land to the side of the dwelling and to construct a small single storey side extension which would be set back slightly from the front elevation to create a study. The extension would be constructed of materials to match the existing dwelling.

The conversion of the garage to a kitchen and the removal of the garage door and its replacement with a window would not require planning permission and could be carried out under the properties permitted development rights.

The internal alterations included along with the application would not be subject to planning permission.

## **6. Local Planning Policy**

Wiltshire Core Strategy, 2015

CP1 Settlement Strategy

CP2 Delivery Strategy

CP7 Bradford on Avon Community Area

CP57 Ensuring High Quality Design and Place Shaping

CP58 Ensuring Conservation of the Historic Environment (Landscape Setting)

CP61 Transport and Development

National Planning Policy Framework, 2012

Planning Practice Guidance, 2014

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

Bradford on Avon Town Council: Recommend that the application is refused on the following grounds:

- Realignment of the boundary wall would adversely affect the open character of Southway Park;
- Realignment of the boundary wall would put at risk the long-term survival of an important protected lime tree;
- Covenants restrict the development on the land which is subject to the planning application;
- The proposal fails to respect the importance of the landscape and is contrary to the good design requirements of the NPPF and Wiltshire Core Strategy.

Bradford on Avon Preservation Trust: No comment to make on the application.

Tree and Landscape Officer: Supports the application: Drawing 68/05A shows the proposed block wall addition is perilously close to the existing Lime trees. The applicant will need to submit detailed plans and designs of a screw thread piling system around

the tree roots. As these trees have not reached full maturity, there will still be a significant amount of root expansion in this area which could lead to extensive disruption of the proposed wall. There is clear evidence of underground utilities too, either within the pavement or adjacent in the grass area.

The designing of the wall foundations will need to consider this proposed root development and future seasonal fluctuations within the soil environment.

If permission is granted the following conditions should be included:

- Detailed plans of services in relation to the trees;
- Erection of screen walls/ fences to prevent overlooking;
- No-dig specification;
- Tree work to accord with BS3998;
- Tree work crown lifting;
- Tree root pruning.

Highways Officer: Have confirmed that the land is not highway land or owned by the Council and that the visibility splays are provided by the existing road and pavements.

## **8. Publicity**

The application was advertised by a site notice and neighbour notification letters. The deadline for any correspondence was 6 July 2015.

14 letters of objection were received raising the following concerns:

- The proposal to move the boundary will erode the original plans for the estate which are open plan;
- The attempt at absorbing communal green verges into private land boundaries is out of character;
- Permitting this application will set a precedent for other applications;
- The site is a corner plot and the alterations will be very noticeable;
- The proposed block wall may compromise the attached wall to the rear;
- The new wall would be located very close to the lime tree protected by a Tree Preservation Order which is located within the neighbours dwelling at number 32 Palaret Close and the protected lime tree within the application site;
- In order to maintain the protected lime tree in the adjacent garden, access would be required from the neighbouring property;
- Covenants on the land restrict this development;
- Planning permission has been refused in the past for proposals in the area;
- The loss of the green verges will alter the street scene balance between homes, private gardens and open public spaces;
- The permitting of this scheme will send a clear signal that the Council has had a change in policy.

No letters of support have been received.

## **9. Planning Considerations**

### 9.1 Principle of development

The application site is located within the limits of development of the Market Town known as Bradford on Avon where there is a presumption in favour of sustainable development. The application is therefore considered to comply with CP1, CP2 and CP7 of the Wiltshire Core Strategy.

### 9.2 Design issues

The proposed realignment of the boundary wall would not be incongruous to the design of the dwelling. Currently a boundary wall runs along the side elevation of the property and the proposal would move this closer to the road, but would still retain open land to the side of the dwelling.

The proposed extension would be a small, subservient extension that would match the existing dwelling in terms of design and materials and would be considered appropriate to the host dwelling. The proposal is therefore considered to comply with the relevant criteria of CP57.

### 9.3 Impact on the character and appearance of the area including the Landscape Setting

The estate in which the application site is located is characterised by open space with boundary walls being set back from the pavement. The land outside the boundary walls has in many cases been planted with domestic plants.

Although the realignment of the boundary wall would remove some of the land from public view, the proposal would still retain land to the side of the proposed development which would remain outside of the realigned boundary wall. Therefore it is not considered that the proposed realignment of the boundary wall would unduly harm the character and appearance of the neighbouring area.

The small single storey side extension would not be incongruous to a dwelling of this size and style and is not considered to harm the character or appearance of the immediate area or the landscape setting of the wider town of Bradford on Avon given the small subservient nature of the development and the use of matching materials. It is therefore considered that the proposal complies with the relevant criteria of CP57 and CP58 of the Wiltshire Core Strategy.

### 9.4 Impact upon neighbouring amenity

The realignment of the boundary wall would relocate the wall closer to the road than currently exists on the site, however, land would remain outside the proposed extension and the new wall, and the pavement, and this would not harm the neighbouring amenity. The character of the area is considered to be retained and the realigned wall is not considered to harm the neighbouring amenity.

The proposed extension would be single storey and given the context of the site and the distance from the front windows to the dwelling on the opposite side of the road it is not considered that the proposed extension would harm the neighbouring amenity.

The conversion of the garage to a kitchen and the removal of the garage door and its replacement with a window would not require planning permission and could be carried

out under the properties permitted development rights. The proposal is therefore considered to comply with the relevant criteria of CP57.

#### 9.5 Impact on the protected tree

It is noted that a lime tree is currently located outside of the existing boundary wall that is protected by a tree preservation order. The proposals would enclose the tree within the new boundary wall. The applicant has undertaken discussions with the Council's Tree Officer who, subject to a number of conditions to ensure that the long-term survival of the tree is not compromised by the development, would support the proposals.

It is therefore considered that subject to conditions being imposed on the application that the proposals would comply with the relevant criteria of CP58 of the Wiltshire Core Strategy.

#### 9.6 Highway Impact

The loss of the existing garage and the conversion of this space to create an enlarged kitchen would not be controlled through the planning system and the 1977 permission does not restrict the use of the existing garages on the site.

The existing access and off road car parking space would not be affected by the proposals and the highways department have confirmed that the realignment of the boundary wall would not impact on the visibility splays required on the street. It is therefore considered that the proposals comply with the relevant criteria of CP61 of the Wiltshire Core Strategy.

#### 9.7 Other

The applicant has submitted a land registry extract showing that the land which is proposed to be taken inside the boundary wall is in the ownership of the applicant. The highways team have confirmed that the land is not within their ownership or interest.

Previously a number of planning applications have been refused on the grounds that "the height and relocation of the boundary wall encroaching on land to the side of the property, would be visually intrusive in the street scene and harmful to the openness and historic spatial characteristics of the area".

It is noted that since these applications were refused there has been a number of changes in planning policy including the adoption of the Wiltshire Core Strategy and the NPPF. Whilst this proposal does encroach onto the land to the side of the dwelling, as already noted, it would still retain land outside of the boundary wall which would retain the open characteristic of the area. As the boundary wall would be rebuilt, it would be in keeping with the surrounding area. In previously refused permissions the new boundary walls would be relocated closer to the boundary of the property/pavement which would reduce the openness of the area.

There is no evidence that realigning the boundary wall would compromise the adjoining wall to the rear of the dwelling. However, if permission is granted for the proposal the applicants would be responsible to ensure that the proposals do not compromise the adjoining wall.



It is understood that there is a covenant on the land restricting the moving of the boundary wall, however, covenants are a civil matter and the granting of planning permission would not change the covenant whereby separate permission would be required.

## **10. Conclusion**

In conclusion whilst it is acknowledged that the proposals would result in a reduction of land between the boundary wall and the pavement, it is not considered that the proposal would harm the overall open characteristics of the immediate area. The land is considered to be within the residential curtilage of the application site and this would not be altered as a result of the proposals.

## **RECOMMENDATION**

It is recommended that the application is approved subject to conditions.

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

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

- 2 The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture those used in the existing building.

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

- 3 Detailed landscaping plans to be submitted prior to work being undertaken on the site shall include a plan at not less than 1:200 scale, showing the position of any trees proposed to be retained and the positions and routes of all proposed and existing pipes, drains, sewers, and public services, including gas, electricity, telephone and water. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or of any Order revoking and re-enacting or amending that Order with or without modification), no services shall be dug or laid into the ground other than in accordance with the approved details.

REASON: To ensure the retention of trees on the site in the interests of visual amenity.

- 4 No development shall commence on site until a full 'No-Dig' specification for works within the root protection area/canopies of protected and retained trees has been submitted and approved in writing by, the Local Planning Authority. The construction of the surface shall be carried out in accordance with approved details and thereafter retained.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in order to protect trees on and adjacent to the site which are to be retained with surfacing placed near to or over the trees root system.

5 The applicant should note that the work hereby permitted should be carried out in accordance with good practice as set out in the "British Standard Tree Work - Recommendation for Tree Work", BS 3998: 2010 or arboricultural techniques where it can be demonstrated to be in the interests of good arboricultural practice.

6 The crown lifting hereby granted by consent shall be carried out such that the lowest part of the crown is now more than 5 metres above ground level.

(to provide adequate access during construction of the block wall)

REASON: In the interest of maintaining healthy trees and the visual amenity and character of the local area.

7 No root pruning shall be carried out until a site meeting has been arranged by the applicant, their appointed arboricultural consultant and a representative from the Local Planning Authority (LPA) to discuss details of the working procedures and that meeting has taken place with the Local Planning Authority in attendance. Any approved works shall subsequently be carried out under strict supervision by the LPA immediately following that approval.

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on-site will not be damaged and to ensure that as far as possible the work is carried out in accordance with current best practice

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

Proposed ground floor plan received 5 June 2015

Existing ground floor plan received 5 June 2015

Proposed elevations received 5 June 2015

Existing Elevations received 5 June 2015

Proposed alterations received 5 June 2015

Land registry title

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

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## WESTERN AREA PLANNING COMMITTEE REPORT

Report No. 5

<b>Date of Meeting</b>	12 August 2015
<b>Application Number</b>	15/05186/FUL
<b>Site Address</b>	The Long Barn Cumberwell Farm, Great Cumberwell, Bradford on Avon, BA15 2PQ
<b>Proposal</b>	Retrospective permission for reconstruction of an agricultural barn.
<b>Applicant</b>	Messrs C & A James
<b>Town/Parish Council</b>	SOUTH WRAXALL
<b>Ward</b>	HOLT AND STAVERTON
<b>Grid Ref</b>	381874 163276
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	David Cox

### **Reason for the application being considered by Committee**

Councillor Trevor Carbin has requested that this application be determined by Members should officers be supportive of it and to allow Members to consider the following key issues:

- The design, bulk and general appearance of the proposal.

### **1. Purpose of Report**

To consider the above application and to recommend approval subject to conditions.

### **2. Report Summary**

The main planning issues to consider are:

- The Principle of Development.
- The Impact on the Green Belt.
- The Impact on a Non-Designated Heritage Asset.
- Impact on Archaeology.
- Impact on Ecology.
- Developer Contributions / Community Infrastructure Levy.(CIL)

### **3. Site Description**

The subject building known as the long barn is comparable to a two storey building and is constructed from natural stone under a clay tiled roof. The long barn is part of a wider complex of buildings on site which includes a farm house and other buildings that are used as holiday lets. The long barn is approximately 170 metres to the south east of the Cumberwell Golf Course club house. The application site is within the Western Wiltshire Green Belt and a Bridleway – SWRA26 runs immediately past the barn.

### **4. Planning History**

W/92/00884/FUL Additional 18 hole golf course amendments to design and siting of clubhouse incorporating stewards accommodation

It should be noted that the 1992 application had a red outline that captured the whole Cumberwell Farm and did not directly involve or change the long barn.

## **5. The Proposal**

Under this application, retrospective planning permission is sought for the re-construction of the agricultural barn. The barn is approximately 32 metres long by 10 metres wide and has a ridge height of approximately 9 metres sloping to 5.2 metres at the eaves. It has been constructed using natural stone and has a double roman tiled roof. The barn has been split into two sections and has a number of window and door openings but also includes two archway openings into each section. Both archways are large enough to allow a tractor to enter the building.

The applicant states that the ground level has been excavated by approximately 1.2-1.8 metres across the site. The boundary with an adjacent farm building with green metal sheet cladding appears to show evidence and scarring of earthworks and excavation where a stone wall is being built. Whilst the extent of excavation is unknown it does appear that some excavation works have taken place.

## **6. Planning Policy**

Government Guidance - The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG). The National Planning Policy Framework (NPPF) acts as a principal material consideration in the determination of planning applications. It introduces the presumption in favour of sustainable development at paragraph 14 as a 'golden thread' running through plan making and decision taking

The Adopted Wiltshire Core Strategy (Jan 2015) - Strategic Objective 1 - Delivering a Thriving Economy; Strategic Objective 4 - Helping Build Resilient Communities; and Strategic Objective 5 - Protect and Enhance Natural, Built and Historic Environment. The following Core Policies are also relevant to this case:

CP7– Bradford on Avon Community Area; CP48 – Supporting Rural Life; CP57 – Ensuring High Quality Design and Place Shaping; CP50 – Biodiversity and Geodiversity; CP51 – Landscape; CP58 – Ensuring the Conservation of the Historic Environment; CP67 – Flood Risk.

The adopted WCS also includes a number of policies carried over from the West Wiltshire District Plan 1<sup>st</sup> Alteration 2004 (as documented within Appendix D) however, in this particular case none of the policies are relevant.

Since May 2015, Wiltshire Council has become a CiL charging authority and the following documents are relevant: Wiltshire's Community Infrastructure Levy – Planning Obligations Supplementary Planning Document (Planning Obligations SPD); Wiltshire's Community Infrastructure Levy - Charging Schedule (Charging Schedule) and Wiltshire's Community Infrastructure Levy - Regulation 123 List

## **7. Consultations**

South Wrexall Parish Council – Objects for the following reasons:

- Deliberate destruction of original historic building.
- Should have been re-built with respect to original barn.
- Original design should have been given on the application so consideration could be given to the changes.
- Do not feel it resembles an agricultural barn, but more like a residential property.

The Council's Enforcement Officer – Reported that he had visited the site on several occasions in the recent past before the barn was reconstructed whilst investigating matters relating to the adjacent holiday lets. The Council's enforcement officer was asked to review the submitted application details and reflect upon his own site inspections and members are advised that the officer is confident that the barn has not been raised in height since his site visit. The officer further reports that it would have been apparent to him if this was the case when he visited the site on the 21<sup>st</sup> May 2015, which was after the barn was reconstructed. The officer also confirmed that when he inspected the barn on the 21<sup>st</sup> May 2015, it did not appear to have a different footprint. On the basis of the above, the size and dimensions of the barn when visited were found to be the same as when the site was previously visited (prior to the barn's reconstruction).

The Council's Archaeologist – No objection subject to a planning informative.

The Council's Ecology Officer – No objection subject to conditions and informative.

## **8. Publicity**

This application was advertised by a site notice which was displayed on a telegraph pole at the main entrance to the golf club as well as individual neighbour notifications. The expiry date for third party representations was 30 June 2015, however no comments were received.

## **9. Planning Considerations**

The Principle of Development: The reconstructed barn has been built to a high specification using good quality stone and good attention to architectural detailing, as demonstrated by the bull's-eye window. The barn has two archway openings that are large enough for tractors to access (as illustrated in the applicant's submission). From the site inspections undertaken by officers the barn could function as part of a working farm, officer's report there is no reason or evidence to suggest that the reconstructed barn is for anything other than for agricultural purposes.

Contained within the applicant's Design and Access Statement, there is a photo snippet of the previous barn which reveals the former barn was built with stone under a tiled roof. Whilst the concerns raised by the parish council are duly noted, the fact that the building has been reconstructed to a high specification is not contrary to established planning policy. Officers find no reason to doubt that the building could be used for agricultural storage purposes. Since there has clearly not been a material change of use of the building, officers find no reason to doubt the applicant's intention.

The Impact on the Green Belt: The NPPF (paragraph 89) states that local planning authorities should regard the construction of new buildings as inappropriate in Green Belt. However, the NPPF provides some exceptions and one of which relates to buildings for agriculture. Given the officer appraisal above and the extant agricultural use for the site, paragraph 89 is satisfied and the proposal is therefore considered appropriate development in the Green Belt.

The NPPF (paragraph 79) leads on to state that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts is their openness and permanence. It is therefore necessary for the Council to assess the effect of any new development on the openness of the green belt. In order to make a reasoned appraisal, officers have visited the site and appraised the evidence submitted by the applicant in the form of historic site photographs. The Council's enforcement officer has shared his site inspection records and recollection which assists in building an understanding about the site and the barn's former design, bulk and appearance. Officers acknowledge that the historic photographs do not fully capture the former barn and

since the old barn has been reconstructed, a qualified assessment must be made on the evidence that exists. The Council's enforcement officer has been involved in this site in the past and has knowledge of the previous barn. The enforcement officer has made it clear that the replacement barn is of a similar height, size and dimension to the building it replaced. In the absence of any evidence to the contrary, elected members are invited to concur with officers and conclude that the reconstructed barn would not detrimentally affect the openness of the Green Belt.

The Impact on a Non-Designated Heritage Asset: Whilst due regard has been given to the parish council's concerns, the barn is not listed nor is it within a conservation area; and consequently, it has no designated heritage asset status. Officers do however accept that the former barn was of some considerable age. Within paragraph 135 of the NPPF states that the effect of an application on the significance of any non-designated heritage asset should be taken into account as part of the determination process. The NPPF calls for a balanced judgement having regard to the scale of any harm or loss and the significance of any such asset.

Whilst retrospective applications are never ideal, the Council must consider the application on its merits and assess the impacts accordingly. The site inspections, historic site photographs and the evidence submitted by the applicant as well as officer knowledge of the site have been taken into account as part of the 'balanced judgement'. The Design and Access statement includes three external pictures of the barn which show that it had stone walls and a red tiled roof. Officers have appraised the submitted photographs showing internal walls leaning significantly. Whilst it is not possible to confirm that the former barn had to be rebuilt for structural reasons, there is some evidence showing structural failing.

The Design and Access statement reveals that existing stone has been re-used, which was the subject of an officer query, since the stone appeared to be new and of much lighter colour. However the applicant's agent has advised that the stone was cleaned to ensure the full removal of the previous mortar. Overall, officers are satisfied that the development does not harm the significance of the Cumberwell Farm steading.

Impact on archaeology: The application site is identified as having an Archaeology monument record titled as "Cumberwell Deserted Medieval Settlement". The applicant has also confirmed to have excavated the ground level down by 1.2-1.8 metres (which could have necessitated the need for a survey or watching brief). However, the Council's archaeologist has confirmed that the monument is not protected by statute like a listed building or scheduled monument. The archaeologist further submits given that the ground has already been excavated and the building has been rebuilt, there is little the Local Planning Authority can do other than add an informative to make the applicants aware of the monument record.

Impact on Ecology: The Council's ecologist has stated that the precautionary principle should be applied to retrospective applications and makes the assumption that roosting bats were possibly present and compensation should be required to provide replacement roosting features/areas. The photos of the original barn building demonstrated that it had potential for roosting bats with a partially open wooden slat door on the gable end, gaps at the bargeboards and a slate/tile roof. Bats had access through the open door, including horseshoe bats.

Whilst there are no bat records for the site, there are several bat roost records within 1 – 2 km including Lesser horseshoe, Whiskered, Natterer's, Brown long-eared, Pipistrelle and Serotine bats. The landscape around the site would be highly suitable for commuting and foraging bats with hedgerows, woodlands, wetlands and watercourses. There is a watercourse to the northeast that eventually meets the River Avon south of Broughton



Gifford. This passes through Little Chalfield and Great Chalfield, which are known roosts for Lesser horseshoe bats (including a maternity roost) and also has records for Greater horseshoe bats. The site also lies within the Bath and Bradford on Avon Bats Special Area of Conservation (SAC) Consultation Zone and the Lesser horseshoe and Greater horseshoe buffer areas to the SAC. It is submitted that it is likely that bat surveys would have been required before determination of the application if the works had not been commenced due to the likelihood of it being used by horseshoe species.

Bat roosts will therefore need to be retrofitted into the converted barn as a condition.

Developer Contributions/ Community Infrastructure Levy: This development proposal is not CIL liable as agricultural uses are not listed in the adopted CiL Charging Schedule.

**Conclusion (The Planning Balance)** Whilst the concerns of the Parish Council are duly noted and have been taken into account, officers have exercised a balanced judgement for this particular case and have used site knowledge as well as appraising all the submitted evidence and information. On the basis of the above appraisal, officers respectively advise members that there is no planning reason to refuse the application. The building is capable of functioning for agricultural purposes and is immediately adjacent to a working farm; and in officers opinion, the proposal would not contravene Green Belt policy, the NPPF or established WCS policies.

## **RECOMMENDATION**

### **Approve with conditions.**

1. The development to which this planning permission relates (having been begun in advance of the determination of this planning application) is considered to have become authorised on 08/06/2015, being the date on which the development was known to have been begun.

REASON: To clarify the terms the planning permission, in relation to the provisions of Section 73A of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. Within 3 months from the date of this permission, details of the provision of bat roosting features into the retrospective agricultural building shall be submitted to the local planning authority for approval, including a plan showing the locations and types of features. The approved details shall be implemented within 6 months of the date of planning consent.

REASON: Where works have already commenced on site with the potential to support protected species and where a planning application has been submitted retrospectively, the precautionary principle is applied to ensure proper measures are taken to safeguard the habitat of protected species, in the interests of biodiversity.

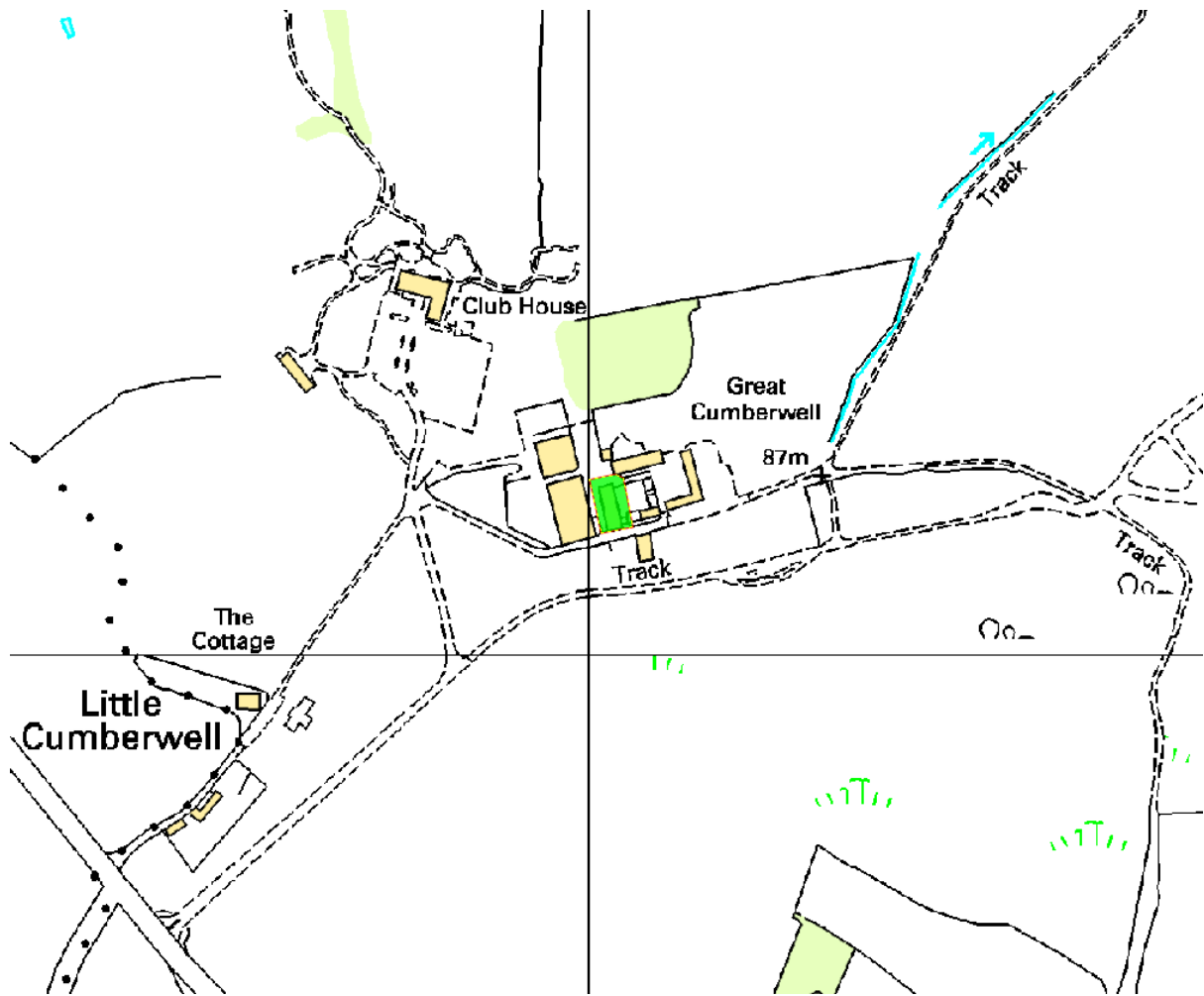
### **Informative:**

1. The applicant is advised that the application site is located over an archaeology record of a possible deserted medieval village, Cubrewelle in AD 1086. Whilst the record is not statutorily protected it is still a material consideration that would have needed to be taken into account. Further information of the record can be found on this link and should be consulted for any further applications that may come forward in this general area <http://www.wshc.eu/our-services/archaeology/24-our-services/archaeology/226-wiltshire-farmsteads-project.html>

2. Please note that this consent does not override the statutory protection afforded to any protected species. All British bat species are protected under The Conservation of Habitats and Species Regulations 2010 (as amended), which implements the EC Directive 92/43/EEC in the United Kingdom, and are therefore European protected species, and the Wildlife and Countryside Act 1981 (as amended). This protection extends to individuals of the species and their roost features, whether occupied or not. If bats are discovered, all works should stop immediately and a licensed bat worker should be contacted for advice on any special precautions before continuing (including the need for a derogation licence from Natural England).

3. The applicant is advised that in order to help discharge condition 2, there is a list of consultant ecologists that operate in Wiltshire on the council's website. <http://www.wiltshire.gov.uk/consultant-ecologists-working-in-wiltshire.pdf>

Item 5 - 15/05186/FUL The Long Barn Cumberwell Farm Great Cumberwell  
Bradford on Avon



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WILTSHIRE COUNCIL

WESTERN AREA PLANNING COMMITTEE

12 AUGUST 2015

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**HIGHWAYS ACT 1980 AND WILDLIFE AND COUNTRYSIDE ACT 1981**  
**THE WILTSHIRE COUNCIL CORSLEY 29 (PART) DIVERSION ORDER AND**  
**DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2015**

**Purpose of Report**

1. To:
  - (i) Consider the objection received to the making of “The Wiltshire Council Corsley 29 (part) Diversion Order and Definitive Map and Statement Modification Order 2015” under Section 119 of the Highways Act 1980 and Section 53 of the Wildlife and Countryside Act 1981.
  - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

**Relevance to Council’s Business Plan**

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

**Background**

3. On 16 February 2015 Mr. and Mrs. Churchill of 22 Heathway, Corsley applied to Wiltshire Council to divert a short section of Corsley Footpath No. 29 under the Town and Country Planning Act 1990, (please see a location plan attached at **Appendix A** and the proposed diversion on the plan attached at **Appendix B**).
4. The diversion of the path is required to enable the construction of a rear extension to the property which has received planning approval. The proposed diversion not only seeks to divert that section of the footpath affected by the planning consent but the continuation of the path which is obstructed where it crosses the gardens of numbers 20 and 21 Heathway. When the former West Wiltshire District Council constructed the Heathway development it did not secure the diversion of Footpath 29 before building houses 20, 21 and 22 Heathway and the footpath appears to have been obstructed since that time. For this reason it is not appropriate to seek to use the powers under the Town and Country Planning Act 1990 to effect the diversion and Section 119 of the Highways Act 1980 would be appropriate.

5. Wiltshire Council carried out an initial consultation regarding the proposals and no objections were received.
6. The case Officer produced a Decision report, attached at **Appendix C**, in which they considered the application against the legal tests for diversion under Section 119 of the Highways Act 1980. The report made a recommendation to Senior Officers that the footpath should be diverted under Section 119 of the Highways Act 1980, in the interests of the landowners. This recommendation was approved on 17 April 2015.
7. The Order was subsequently made and notice duly served and posted.
8. Following the making of the Order, Wiltshire Council received an objection dated 5 June from Mr. Francis Morland.
9. Members of the Committee are now required to consider the objection received, against the legal tests for making and confirming a Public Path Diversion Order under Section 119 of the Highways Act 1980, in order to determine whether or not the Council continues to support the making of the Order.
10. If it does continue to support the making of the Order it must be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination and the Members of the Committee must decide the Wiltshire Council recommendation which is attached to the Order when it is forwarded to the Secretary of State, i.e.:
  - (i) that the Order be confirmed as made, or
  - (ii) that the Order be confirmed with modification.
11. Where Wiltshire Council no longer supports the making of the Order, Members of the Committee may determine that the Order is withdrawn.

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

12. The Public Path Diversion Order is made under Section 119 of the Highways Act 1980. The requirements of this section of the Act are set out in full in paragraph 3.3 of the decision report attached at **Appendix C**.
13. The Planning Inspectorate's Advice Note 9 on 'General guidance on public rights of way matters' states:
  - "27. *Section 119(6) was considered in R (on the application of Young) v Secretary of State for the Environment Food and Rural Affairs [2002] EWHC 844 and the views taken that subsection (6) has 3 separate tests to it:*
    - (1) *Firstly, that the Order is expedient in terms of section 119(1), i.e. that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path be diverted but not so as to alter the point of termination if not on to a highway or to a point on the same highway not substantially as convenient to the public.*

- (2) Secondly, that the diverted path will not be substantially less convenient to the public in terms of, for example, features which readily fall within the natural and ordinary meaning of the word 'convenient' such as the length of the diverted path, the difficulty of walking it and its purpose.
- (3) Thirdly, that it is expedient to confirm the order having regard to the effect:
  - (a) The diversion would have on the public enjoyment of the path or way as a whole;
  - (b) Of the order on other land served by the existing public right of way; and
  - (c) Of the new path or way on the land over which it is to be created and any land held with it.

*There may nevertheless be other relevant factors to do with expediency in the individual circumstances of an order.*

- 28. *It is possible that a proposed diversion may be as convenient as the existing path but less enjoyable, perhaps because it was less scenic. In this event, the view in 'Young' was that the decision-maker would have to balance the interests of the applicant for the order against those of the public to determine whether it was expedient to confirm the order.*
  - 29. *Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way, for example). In such circumstances, the diversion order cannot be confirmed under section 119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion."*
14. Mr. Morland has made the following objections to the making of the Diversion Order:

E-mail correspondence dated 5 June 2015:

*"I refer to your Public Notice on page 2 of the Friday 8<sup>th</sup> May 2015 issue of the Warminster Journal newspaper.*

*I wish to object to the Order.*

*The description of the existing public path in the Notice does not appear to correspond with that shown on the Ordnance Survey 1:25000 Explorer sheet 143 (2004), and neither of the grid references shown for the two ends of the portion of the path in question (ST 8212 4570 and 8214 4574) appear to connect with any existing public path or highway.*

*Accordingly, I am doubtful that the Order achieves its intended purpose.*

*In any event, the Notice states that the diverted route is 70 metres in length compared to the existing route of 41 metres, and appears to put a substantial dog leg into it.*

*I reserve the right to amend or add to these grounds as and when further information reaches me; it appears that neither the order nor the order map are yet available on the Wiltshire Council public access website."*

15. In response to the objection, Officers would make the following comments:
- (i) The description of the existing public path in the Notice and Order map does not correspond with the route of a footpath shown in this location by the Ordnance Survey on its 1:25000 Explorer map because the Order and Notice are made with reference to the route of the path as shown on the definitive map.
  - (ii) The Ordnance Survey grid references in the Notice and Order relate to the position of the footpath as it is shown on the definitive map and do connect with existing highway.
  - (iii) The diverted route is longer but Officers would argue it is expedient to confirm the Order since the alternative path has a tarmac surface for nearly half of its length making it more accessible than the existing route. In addition to this, that section of the path which will run in the field will provide the user with far reaching views across the surrounding countryside which are not currently available on the existing route. The existing route requires the user to cross the rear gardens of three houses. The open aspect of the alternative path allied with its better views, width and surface will increase public enjoyment of the route as a whole.
  - (iv) There is no requirement to publish copies of public path orders and order maps on the Council's website.
16. Officers believe it is clearly in the interests of the owners of the properties through which the right of way passes to divert the path.
17. With regard to whether the alternative path is substantially less convenient, whilst the alternative path is longer the tarmac surface on part of it will make the path easier for people with mobility problems and other impairments to use and consequently enjoy the views of the surrounding countryside which they cannot access on the existing path. The existing path does not have a legally defined width, whereas the alternative path will have a width of 2 metres.
18. It is not considered the proposed diversion will have any detrimental effect on any land served by the existing right of way.
19. The owners of the land over which the alternative route will cross have consented to the proposal.

### **Safeguarding Considerations**

20. DEFRA's "Rights of Way Circular (1/09) Guidance for Local Authorities" Version 2, October 2009, states at paragraph 5.5:

*"The statutory provisions for creating, diverting and extinguishing public rights of way in the 1980 Act have been framed to protect both the public's rights and the interests of the owners and occupiers. They also protect the interests of bodies such as statutory undertakers. The requirements for making, confirming and publicising orders are set out in Schedule 6 to the 1980 Act."*



In making “The Wiltshire Council Corsley 29 (part) Diversion Order and Definitive Map and Statement Modification Order 2015”, Officers have followed the procedure set out in Schedule 6 of the 1980 Act and in doing so Wiltshire Council has fulfilled its safeguarding considerations.

### **Public Health Implications**

21. There are no identified public health implications which arise from the proposed diversion of a section of Footpath No. 29 Corsley.

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

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

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

23. The Wiltshire Council Rights of Way Improvement Plan 2015-2025 (WCAIP) recognises the Council’s duty to have regard to the Equalities Act 2010 and to consider the least restrictive option for public use. The proposed diversion provides a more accessible path than the present definitive line. Additionally, the proposed new route will have a recorded width of 2 metres, open and available for public use, over a defined route, where the definitive line has no width recorded within the definitive statement.

### **Risk Assessment**

24. There are no identified risks which arise from the proposed diversion of the section of Footpath No. 29 Corsley. The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.

### **Financial Implications**

25. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permits authorities to charge applicants costs in relation to the making of public path orders, including those made under Section 119 of the Highways Act 1980. The applicant has agreed in writing to meet the actual costs to the Council in processing the diversion order. The applicant has also agreed in writing to pay any expenses which may be incurred by the Council and for any materials provided in bringing the new footpath into a fit condition for use by the public.
26. Where there is an outstanding objection to the making of the Order, the Committee may resolve that Wiltshire Council continues to support the making of the Order, in which case it should be forwarded to the Secretary of State for decision. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is £200 to £300; however, where a local hearing is held

the costs to the Council are estimated at £300 to £500 and £1,000 to £3,000 where the case is determined by local public inquiry. There is no mechanism by which these costs may be passed to the applicant and these costs must be borne by Wiltshire Council.

27. Where the Council no longer supports the making of the Order, it may resolve that the Order be withdrawn and there are no further costs to the Council. The making of a Public Path Order is a discretionary power for the Council rather than a statutory duty; therefore, a made Order may be withdrawn up until the point of confirmation, if the Council no longer supports it, for example, where it is considered that the proposals no longer meet the legal tests set out under Section 119 of the Highways Act 1980.

### **Legal Implications**

28. If the Council resolves that it no longer supports the making of the Order, it may be withdrawn. There is no right of appeal for the applicant; however, clear reasons for the withdrawal must be given as the Council's decision may be open to judicial review.
29. Where the Council continues to support the making of the Order, it must be sent to the Secretary of State for determination, which may lead to the Order being determined by written representations, local hearing or local public inquiry. The Inspector's decision is open to challenge in the High Court.

### **Options Considered**

30. Members may resolve that:

- (i) Wiltshire Council continues to support the making of the Order, in which case the Order should be forwarded to the Secretary of State with a recommendation from Wiltshire Council that:
- (a) The Order be confirmed without modification, or
- (b) The Order be confirmed with modification.

or that:

- (ii) Wiltshire Council no longer supports the making of the Order, in which case the Order should be withdrawn, with clear reasons given as to why Wiltshire Council no longer supports the making of the Order, i.e. why the Order no longer meets the legal tests.

### **Reason for Proposal**

31. Despite the objection received it is considered, for the reasons given in paragraphs 3.6.a to 3.7.d the Decision report (please see **Appendix C**), and in paragraphs 15 to 19 above, that "The Wiltshire Council Corsley 29 (part) Diversion Order and Definitive Map and Statement Modification Order 2015" continues to meet the legal tests for the making of a Diversion Order under Section 119 of the Highways Act 1980.

32. Additionally, the legal tests for the confirmation of a Public Path Diversion Order, as set out under Section 119 of the Highways Act 1980, appear capable of being satisfied and no new evidence has been submitted during the formal objection period which would lead Wiltshire Council to no longer support the making of the Order.

### **Proposal**

33. That “The Wiltshire Council Corsley 29 (part) Diversion Order and Definitive Map and Statement Modification Order 2015”, be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

### **Tracy Carter**

Associate Director – Waste and Environment

Report Author:

**Barbara Burke**

Definitive Map and Highway Records Team Leader

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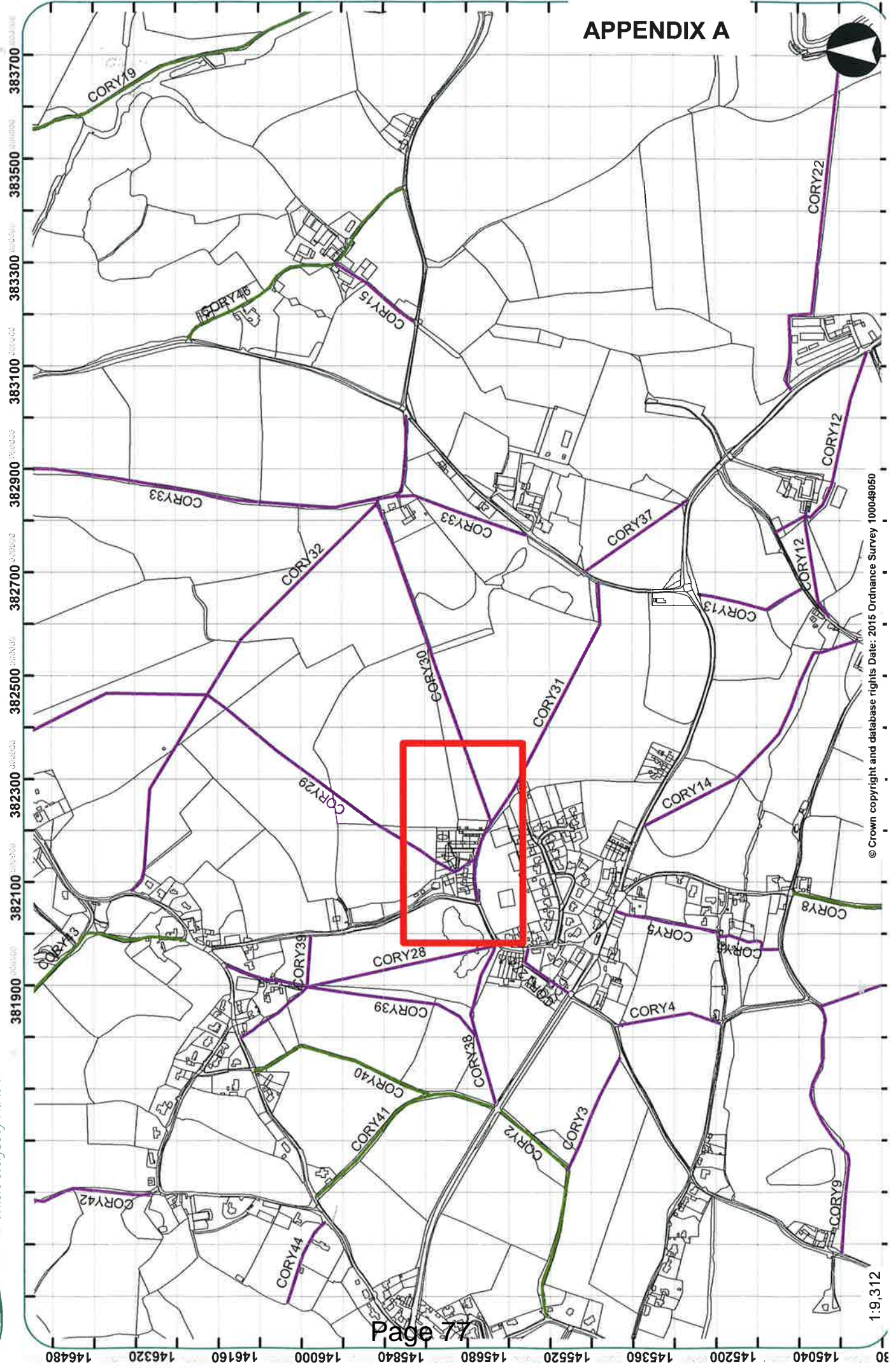
### **The following unpublished documents have been relied on in the preparation of this Report:**

None

### **Appendices:**

Appendix A – Footpath Location Plan  
Appendix B – Public Path Diversion Order Plan  
Appendix C – Decision report

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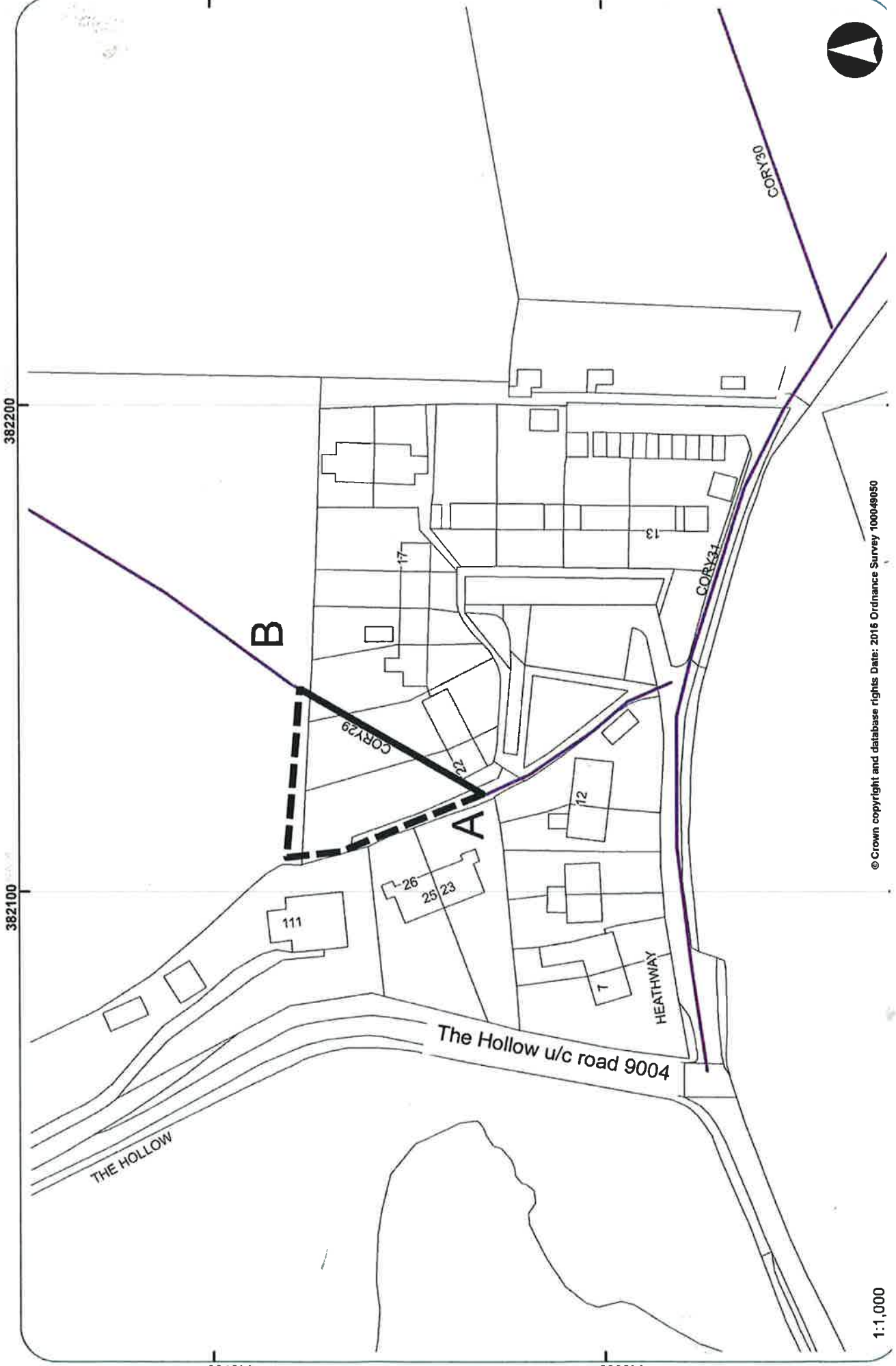
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## DECISION REPORT

### APPLICATION TO DIVERT A SECTION OF CORSLEY FOOTPATH 29 UNDER SECTION 257 OF THE TOWN AND COUNTRY PLANNING ACT 1990

#### 1. Purpose of the Report

- 1.1 To consider and comment on an application by Mr and Mrs Churchill of 22 Heathway, Corsley to divert a short section of Corsley footpath 29 as shown by a broken black line on the plan included with their application form. The plan is attached at Appendix A. The diversion of the path is required to enable the construction of a rear extension to the property which has received planning approval.
- 1.2 On the 10 September 1987 Mr and Mrs Brown the then occupants of 22 Heathway purchased the property from West Wiltshire District Council. Mr and Mrs Churchill bought the property from Mr and Mrs Brown in November 2014. On the application form, the applicants state the route of the footpath which passes through their and two adjoining properties does not exist on the ground indeed the hedges which bound the housing concerned were planted by the former District Council when the Heathway development was managed as part of the District Council's housing stock. The alternative route is already in situ, for half of its length it has a tarmac surface provided by the former District Council and has been signed by Wiltshire Council as a public footpath. There is a metal kissing gate of the brand and style usually installed by Wiltshire Council, leading from the tarmac section of the path in to the pasture field to the rear of the properties in Heathway.

#### 2. Consultation responses to the application

- 2.1 On the 25 February 2015 I consulted with the parish council, statutory undertakers, statutory and the usual non statutory consultees and owners and occupiers of land affected by the application on the proposed diversion proposal asking for comments to be sent to me by the 31 March.
- 2.2 The route of the alternative footpath will cross land in the ownership of Mr Michael Aylesbury and Selwood Housing both of whom have no objections to the proposed diversion and support regularising the current position on the ground. The Occupiers/Owners of 20 and 21 Heathway whose gardens the path crosses do not object to the proposed diversion.
- 2.3 Mr Brian Micklam who represents the Ramblers Association has no objections to the proposal.

- 2.4 The council's ecologist has confirmed there are no ecological constraints affecting the proposal.
- 2.5 Wiltshire Councillor Fleur De Rhe-Philippe supports the application.
- 2.6 Scottish and Southern Energy has confirmed it has no objection to the proposed change and an on line search has not revealed any other statutory undertakers apparatus affected by the proposed change.

**3. Main considerations for the council and officers comments on them in relation to the application**

- 3.1 The application has been made for an order under section 257 of the Town and Country Planning Act 1990. Section 257 states:

Footpaths and bridleways affected by development: orders by other authorities

- (1) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out-
  - (a) in accordance with planning permission granted under Part III, or
  - (b) by a government department.
- (2) An order under this section may, if the competent authority are satisfied that it should do so, provide-
  - (a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;
  - (b) for authorising or requiring works to be carried out in relation to any footpath, bridleway or restricted byway for whose stopping up or diversion, creation or improvement provision is made by the order;
  - (c) for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath, bridleway or restricted byway;

- (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.
- (3) An order may be made under this section authorising the stopping up or diversion of a footpath, bridleway or restricted byway which is temporarily stopped up or diverted under any other enactment.
- (4) In this section "competent authority" means-
  - (a) in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the Secretary of State, who would have had power to grant it; and
  - (b) in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made."

3.2 Section 259 of the Act states:

Confirmation of orders made by other authorities

- (1) An order made under section 257 or 258 shall not take effect unless confirmed by the Secretary of State, or unless confirmed, as an unopposed order, by the authority who made it.
- (2) The Secretary of State shall not confirm any such order unless satisfied as to every matter of which the authority making the order are required under section 257 or, as the case may be, section 258 to be satisfied.
- (3) The time specified-
  - (a) in an order under section 257 as the time from which a footpath, bridleway or restricted byway is to be stopped up or diverted; or

(b) in an order under section 258 as the time from which a right of way is to be extinguished,

shall not be earlier than confirmation of the order.

(4) Schedule 14 shall have effect with respect to the confirmation of orders under section 257 or 258 and the publicity for such orders after they are confirmed

3.3 The application seeks to not only divert that section of footpath 29 affected by the planning consent but the continuation of the obstructed path which crosses the gardens of numbers 20 and 21 Heathway. For this reason it is not appropriate to seek to use powers under the Town and Country Planning Act 1990 to effect the diversion and section 119 of the Highways Act would be appropriate. Section 119 of the Highways Act 1980 states:

(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 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.'

3.4 The owners and occupiers of the properties 20, 21 and 22 Heathways approve the diversion of that part of footpath 29 crossing their property as shown on the application submitted by Mr and Mrs Churchill and a case may be made that it is in the householders/owners interest to divert the footpath out of their property. A case may also be made that the change to the route of the footpath sought is in the public interest. All the grounds under section 119 will be examined in the following paragraphs.

3.5 In *Hargrave v Stroud* (2002) EWCA Civ 1281, Lord Justice Schiemann stated:

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

3.6 Subsection 119(6) sets out the factors which are to be taken into account at the confirmation stage. However, it has been held that the Authority is entitled to take these factors into account at the order making stage. In *Hargrave v Stroud* (above), Lord Justice Schiemann stated:

*'...the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my*

*judgment..entitled to take into account the matters set out in section 119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed.'*

***The interests of the owner of the land and or the public***

- 3.6.a** The proposal seeks to divert the public footpath out of the gardens of the three properties affected by it to not only allow the applicants to extend their property but to afford privacy and security for the inhabitants of all three properties and to regularise the legal position of the footpath providing security and confidence for users of the footpath. I am satisfied that the diversion order sought by the applicants would be expedient in the interests of the owners of the land to divert the footpath. The line of footpath 29 as shown on the definitive map through the gardens of the three properties is not currently available but even if it was made available its position would mean that members of the public are more likely than not to meet with the occupiers of the properties in this informal setting where they could feel as if they are very much intruding on the occupier's quiet enjoyment of their property. For this reason I believe the proposed diversion is also in the public interest.

***Convenience to the public***

- 3.6.b** In assessing the relative convenience of the present and proposed route, consideration has been given to various factors including length, width, surface and gradient and public enjoyment of the way as a whole.

- 3.6.c** The Planning Inspectorate's Advice Note 9 entitled 'General guidance on public rights of way matters' states at paragraph 29:

Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way, for example). In such circumstances, the diversion order should not be confirmed, since a diversion order cannot be confirmed under section 119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion.'

- 3.6.d** The length of the route to be diverted is approximately 41 metres and the length of the alternative route is 76 metres, not quite twice the length. The alternative route however has a tarmac surface for nearly half its length and that section of the path which will run in the field to the rear of the properties will provide the user with far reaching views across the surrounding countryside which are not available on the definitive route. The existing route requires the user to negotiate four fence/hedge lines to access the path whereas the alternative is open but for one kissing gate making it a much

more enjoyable, easier and convenient for the public to use. The applicants have stated on their application form the alternative path will have a width of 2 metres.

***Public enjoyment***

- 3.6.e** The open aspect of the alternative path affords better views of the surrounding area which allied with removing the feeling of encroaching on the privacy of the occupiers of the properties will I feel, increase public enjoyment of the route as a whole.

***The coming into operation of the order would have as respects other land served by the existing public right of way***

- 3.6.f** It is not considered the proposed diversion will have any detrimental effect on any other land served by the existing right of way.

***The effect 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.***

- 3.6.g** The owner of the land over which the alternative route will cross has consented to the proposal.

**3.7 *Other considerations***

- 3.7.a** Section 119 of the Highways Act 1980 requires the council to have regard to any material provision of any Rights of Way Improvement Plan. The Wiltshire County Council Rights of way Improvement Plan dated 2008 – 2012 includes the following aims:

Increase access to the countryside for buggies, older people, people with mobility problems and other impairments; and

Increase access to the countryside for people who are blind or partially sighted.

The application does not conflict with any of the aims of the Improvement Plan, nor the shortly to be published revised Plan now called the Countryside Access Improvement Plan which will cover the period 2015 – 2025.

- 3.7.b** The Equality Act 2010 places a duty on all authorities to:

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



The Act places a duty on authorities to make reasonable adjustments to avoid disadvantage. Section 149 of the Act details the 'public sector equality duty' placed on a public authority to:

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

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

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

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

The proposed alternative takes users out of the gardens of the properties through which the existing path crosses. I believe a walker could feel very uncomfortable walking, potentially with children and or their pets, through these gardens, and such use could expose them to potential conflict and physical hazards. The alternative path removes the user from this situation and also only necessitates one boundary to be crossed thereby increasing accessibility on the path.

**3.7.c** In making diversions orders, sections 29 and 121(3) of the Highways Act 1980, require authorities to have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological physiographical features. Section 40 of the Natural Environment and Rural Communities Act 2006 also place a duty on every public authority exercising its functions to have regard to the conservation of biodiversity, so far as it consistent with the proper exercise of those functions. In this section, conserving biodiversity includes that in relation to a living organism, or type of habitat and restoring or enhancing a population or habitat.

The proposed diversion would not affect land under cultivation and no objections have been made by the County Ecologist to the effect the proposal may have on the flora, fauna, geological and physiographical features.

**3.7.d** The owner of the land over which part of the alternative route will cross is already burdened with the remainder of the path crossing his land no compensation issues have arisen. The remainder of the alternative path is owned by Wiltshire Council.

#### **4. Safeguarding considerations**

**4.1** The proposed diversion will, if confirmed, improve the privacy and security of the three properties crossed by the existing path.

#### **5. Public Health Implication**

5.1 There are no expected adverse implications from this proposed diversion

## 6. Risk Assessment

6.1 No added risks have been identified as a result of this proposed diversion.

## 7. Financial Implications

7.1 DEFRA's Rights of way Circular 1/2009 Guidance for Local Authorities states at paragraph 5.5:

'The statutory provisions for creating, diverting and extinguishing public rights of way in the 1980 Act have been framed to protect both the public's rights and the interests of the owners and occupiers. They also protect the interests of bodies such as statutory undertakers. The requirements for making, confirming and publicising orders are set out in schedule 6 to the Act.'

It is not considered there are any risks associated with following the recommendation of this report for the council.

7.2 The recommendation of the report is to approve the making of an order on the grounds that the legal tests to make and/or confirm the order have been met and the applicants have agreed to pay the council's costs in processing the application. The applicants have also confirmed that they will pay any compensation which may arise in consequence of the coming into operation of the order and any expenses which may be incurred in bringing the new route into a fit condition for use by the public.

7.3 If an objection is received to the making of the order and the order is not abandoned by Wiltshire Council the order will be forwarded to the Planning Inspectorate for determination by an Inspector appointed by the Secretary of State. The additional costs accrued from the time the order is submitted to the Secretary of State to its determination will fall to Wiltshire Council. If the order were to be determined by written representations these costs would be in the region of £200 - £300 or £1000-£5000 for a public inquiry.

## 8. Options considered

- 8.1 i) To refuse the application to divert the footpath, or  
ii) To make the order

## 9. Reasons for the Recommendation.

It is considered the legal tests for making and/or confirming the order under section 119 of the Highways Act 1980 to divert a section of Corsley footpath 29 have been met for the reasons given in paragraphs 3.3 – 3.7.above.

## 10. Recommendation.

To make an order under section 119 of the Highways Act 1980 and section 53(2) of the Wildlife and Countryside Act 1981 to divert a section of Corsley footpath 29 as shown on the plan at Appendix A to this report. Additionally that the order be confirmed if no objections or representations are received to it and the definitive map and statement be modified accordingly.

Barbara Burke

Definitive Map and Highway Records team Leader

