

**WILDLIFE AND COUNTRYSIDE ACT 1981**  
**THE WILTSHIRE COUNCIL**

**THE WILTSHIRE COUNCIL DURNFORD 4 (WOODROW) RIGHTS OF WAY**  
**MODIFICATION ORDER 2016**

**Purpose of Report**

1. To:
  - (i) Consider the objections received to the making of The Wiltshire Council Durnford 4 (Woodrow) Rights of Way Modification Order 2016 made under 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.

A copy of the Order is attached at **Appendix A**.

**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. In 2005 Wiltshire Council received an application to record the right of way Durnford 4 (Woodrow) as a byway open to all traffic.
4. The application relied on historical evidence which showed that although the route was currently recorded as a bridleway it had a higher status and should be so recorded.
5. Officers of the Council have investigated the evidence and agree that Durnford 4 (Woodrow) is an ancient carriageway and road and that the definitive map and statement should be altered accordingly.
6. The full report including the relevant legislation is appended at **Appendix B**.
7. The report finds that the route has ancient origins and was awarded as a Public Carriageway and Driftway leading from Durnford towards Winterbourne Dauntsey by an Award arising out of an Act of Parliament in 1793. Any rights for the public to use the way with mechanically propelled vehicles (MPVs) was extinguished by Act of Parliament in 2006. Accordingly, the route may not now be recorded as a byway open to all traffic and should be recorded as a restricted byway instead.

8. The public have a right to pass and re-pass along a restricted byway on foot, on horseback or leading a horse, on a cycle or with a horse drawn vehicle (e.g. pony and trap). There is no right for the public to use the way with an MPV though anyone using the way for access to property retains a private right to do so with an MPV.
9. The parish council, applicant, local people and the landowner have not objected to this Order but two objections have been received from other members of the public. Although the objections contain no details of the basis for the objection and adduce no further evidence, Wiltshire Council may not disregard them and proceed with confirming the Order. The Order must now be sent to the Secretary of State for Environment, Food and Rural Affairs for determination.
10. A recommendation from the Council is required to accompany the Order when it is submitted.

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

11. Two objections have been duly made:

- (i) **Mr J Hawkins, Poulshot, Devizes**

*"I write in connection with the above application. I know the area well. I wish to object strongly.*

*I hereby object to the above order on the grounds that I have used the route over many years and insist on future use by myself and others on a motorcycle.*

*I believe the correct classification of this route to be a Byway Open to All Traffic.*

*The Countryside is and should remain open to all users."*

- (ii) **Mr S Packer, Bath**

*"I write to object to the aforementioned order on the grounds that I believe it is incorrect.*

*I believe the way to carry motor vehicle rights and the correct classification to be Byway Open to All Traffic."*

### **Comments on the objections**

12. Members of the Committee are now required to consider the objections received.
13. The Order 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, or
  - (iii) that the Order should not be confirmed.

14. Although it is recognised that those seeking to record and use Byways Open to All Traffic were severely affected by the Natural Environment and Rural Communities Act 2006, the belief that Durnford 4 (Woodrow) should be recorded as a byway open to all traffic is insufficient to achieve this. Additionally, the evidence from the first objector that he used the way on a motorcycle is insufficiently detailed to allow the Council to consider it as part of the evidence of use considered for the period 2001 to 2006 (see **Section 19 Appendix B**).
15. Officers have written to both objectors enclosing full details of the Council's decision to make the Order and have requested additional details of their evidence and invited the withdrawal of their objections. No responses have been forthcoming and hence officers consider that there is nothing in either objection that would alter the assessment of the evidence or the original decision to make and confirm (in the event that no objections had been received) the Order (**paragraph 29 Appendix B**).

### **Safeguarding Considerations**

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

### **Public Health Implications**

17. There are no identified public health implications which arise from this Order.

### **Procurement Implications**

18. There are no procurement implications associated with the withdrawal of this Order.
19. In the event that this Order is forwarded to the Secretary of State there are a number of opportunities for expenditure and these are explained in paragraphs 23 to 26 inclusive of this report.

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

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

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

21. The proposed new routes will be more accessible to a wider range of users.

### **Risk Assessment**

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

## **Financial Implications**

23. The making and determination of Orders made under the Wildlife and Countryside Act 1981 is a statutory duty for Wiltshire Council for which financial provision has been made.
24. Where there are outstanding objections to the making of the Order, the Committee may resolve that Wiltshire Council continues to support the making and confirmation of the Order. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is £200 to £300; however, where a local hearing is held the costs to the Council are estimated at £300 to £500 and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation (£300 to £500 without).
25. Where the Council objects to the Order (i.e. it no longer supports making it, or wishes it be modified to record a Byway Open to All Traffic) the Order must still be forwarded to the Secretary of State for determination. As in the case of a supported Order, the possible processes and costs range from £200 to £3,000 as detailed at paragraph 24 above.

## **Legal Implications**

26. Where the Council does not support the Order, clear reasons for this must be given and must relate to the evidence available. The applicant may seek judicial review of the Council if this decision is seen as incorrect or unjust by them. The cost for this may be up to £50,000.

## **Options Considered**

27. Members may resolve that:
  - (i) The Order should be forwarded to the Secretary of State for determination as follows:
    - (a) The Order be confirmed without modification, or
    - (b) The Order be confirmed with modification, or
    - (c) The Order should not be confirmed.

## **Reason for Proposal**

28. The historical evidence supporting Durnford 4 (Woodrow) being an ancient carriageway is cohesive and compelling and no parties have raised any objection to the historical aspect of the Order. Additionally, there has been no explicit challenge to the officers' interpretation of the 2006 Act and its effect of extinguishing public MPV rights.
29. The two objectors fail to raise any significant evidence or comment for the Council to consider and accordingly, and in line with its statutory duty, the Council should proceed with supporting the recording of the route as a restricted byway.

## **Proposal**

30. That “The Wiltshire Durnford 4 (Woodrow) Rights of Way Modification Order 2016” is forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination with the recommendation that the Order be confirmed without modification.

### **Tracy Carter**

Associate Director – Waste and Environment

Report Author:

### **Sally Madgwick**

Rights of Way Officer – Definitive Map

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

None

### **Appendices:**

Appendix A – Order and Plan  
Appendix B – Decision Report