

**WILTSHIRE COUNCIL**

**TOWN AND COUNTRY PLANNING ACT 1990**

**PROPOSED DIVERSION OF PART OF WESTBURY FOOTPATH No. 15**

**1 Purpose of Report**

To:

- (i) Consider and comment on an application to divert part of footpath Westbury no. 15 to enable a permitted development to proceed.
- (ii) Recommend that an Order be made under s.257 of the Town and Country Planning Act 1990 to extinguish that part of the path affected by the development and to create an alternative route.

**2 Application**

**Number:** 2019/01

**Date of application:** 11 January 2019

**Applicant:** Richard Clare  
Linden Homes Western  
Linden House  
The Jacobs Building  
Clifton  
Bristol  
BS8 1EH

**Applicant's Agent:** Robert Roughan  
Transport Planning Associates  
25 King Street  
Bristol  
BS1 4PB

**Planning Application:** 17/12194/REM Approval of Reserved Matters pursuant of Outline Permission 15/12551/OUT and Variation of Condition permission 17/0314/VAR for erection of 300 no. dwellings with public open space, play areas, teenage facility and associated infrastructure. Land at Westbury Sailing Lake, Station Road, Westbury

**Path affected:** Footpath Westbury no. 15

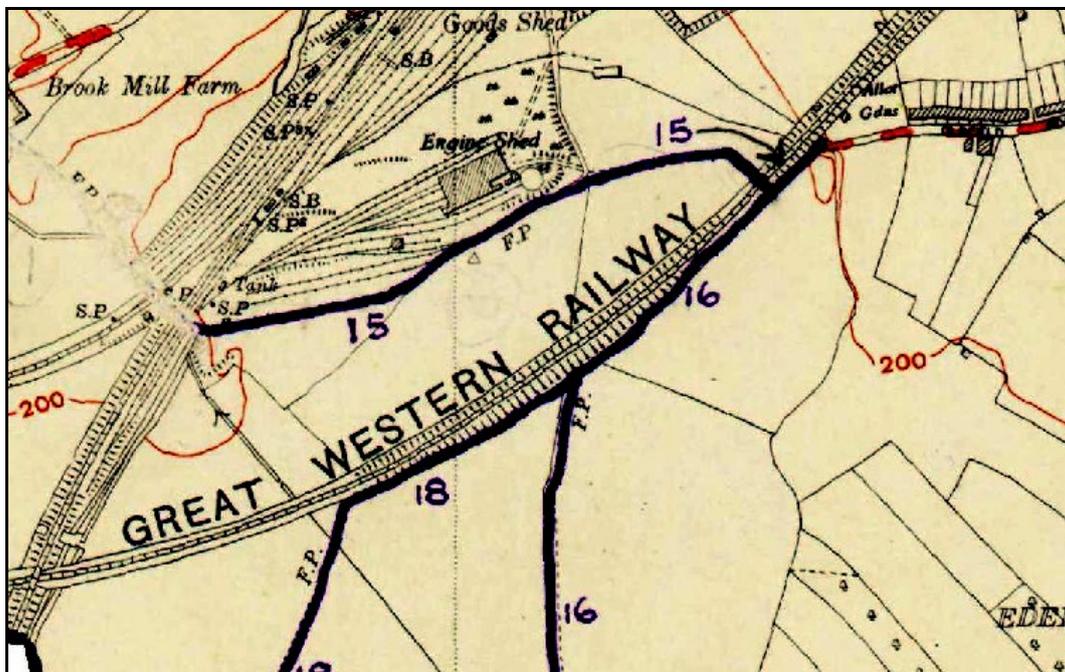
**Reason for application:** Part of Westbury 15 crosses the site and must be diverted to allow for the erection of 14 dwellings and associated infrastructure.

### 3 Land Ownership

The land affected by the application is owned by Linden Wates (Westbury) Limited.

### 4 Background

4.1 Footpath Westbury no. 15 is recorded in the Westbury Urban District definitive map and statement dated 1953 and its route has remained unchanged since that time.



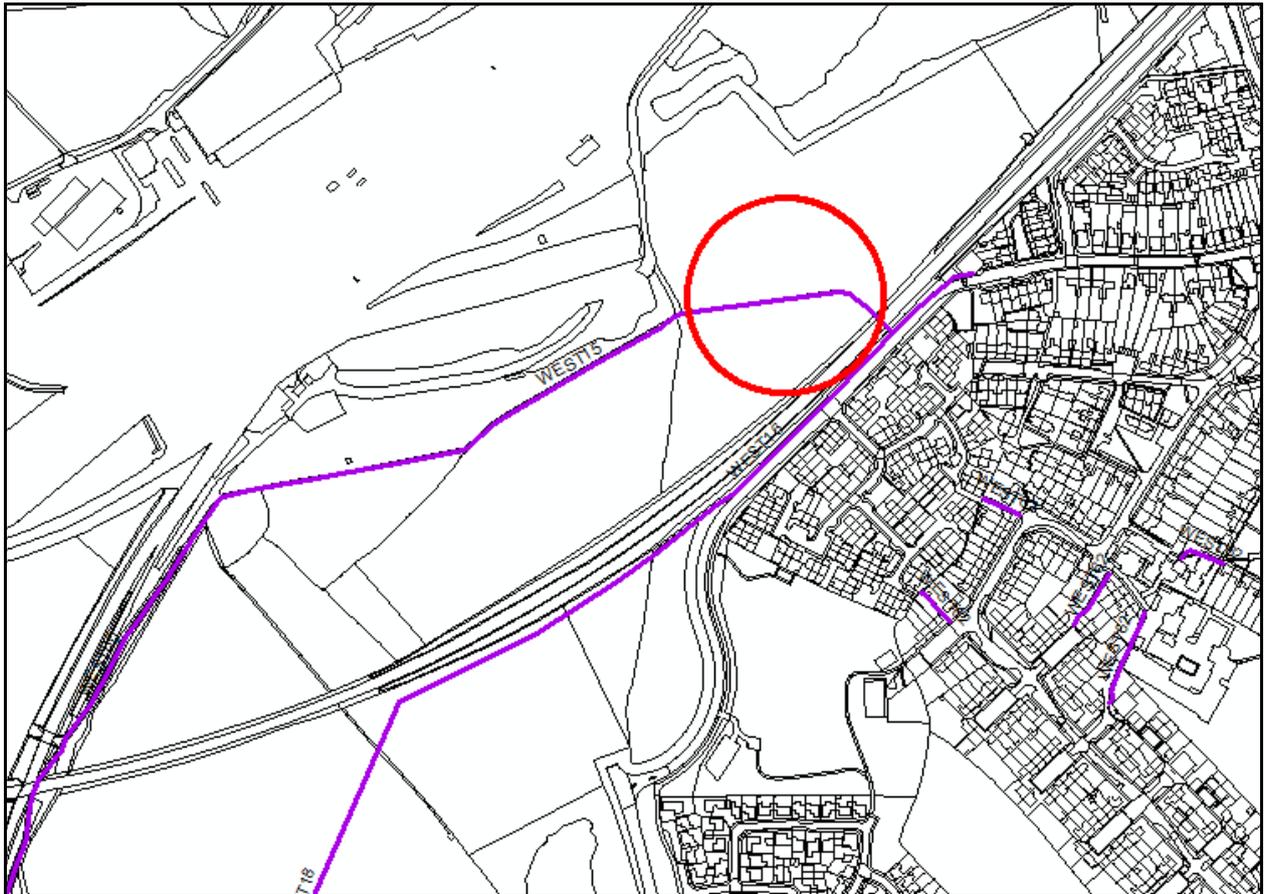
The working copy shows the route plotted onto a modern base map. It can be seen that Oldfield Road has been extended and residential development now occupies the land to the south east of the railway line:



4.2 The definitive statement reads:

Westbury 15 FOOTPATH. From the western end of Oldfield Road leading south-west along and then north-west over the Railway Loop line and south-west past the B.R. Engine Sheds to the Main Line. Approximate length 686 m.

4.3 The section of path affected by this application is circled in red below:



- 4.4 Although historically leading over agricultural land, the affected section of path is affected by a permitted development. Application 17/12194/REM was approved on the 8<sup>th</sup> June 2018 and is for the erection of 300 dwellings with public open space, play areas, teenage facility and associated infrastructure.
- 4.5 This development is subject to outline planning permission 15/12551/OUT (approved 21<sup>st</sup> December 2016) and a variation to that 17/01314/VAR (approved 8<sup>th</sup> June 2017).
- 4.6 Plans show the proposed layout of the dwellings and the road network that is likely to be adopted (subject to a section 38 Highways Act 1980 agreement). The definitive line of Westbury 15 enters the site by the railway level crossing (as it currently does) but its course north westward towards the former engine shed site is obstructed by 14 permitted dwellings. It is therefore necessary to divert the footpath to enable the development to proceed. The plan below is based on Drawing no

LHW/E4648/018 D (17/12194/REM) and shows the course of Westbury 15 across the site in green (green colouration added by case officer).



4.7 The proposed diversion is to move the path between 2 and 8 metres to ensure it misses the residential property plots and coincides with the proposed new highway network.

## 5 Site Visit 21 March 2019



Level crossing is unaltered

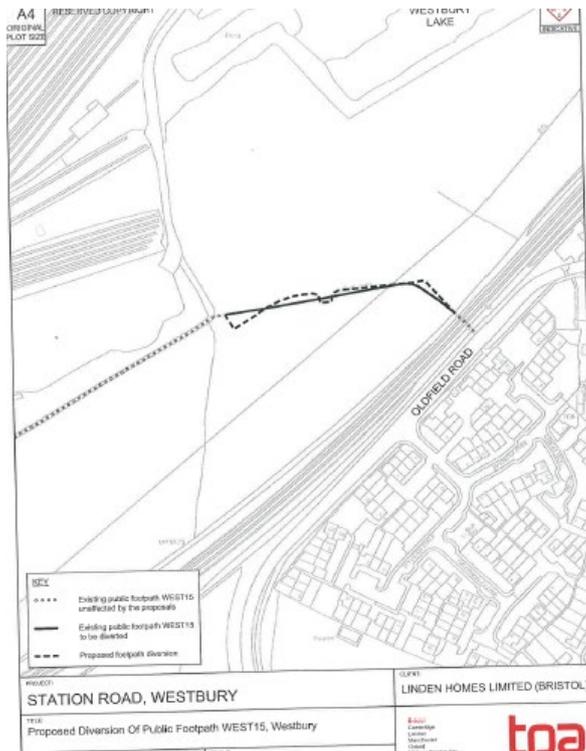


Path follows raised track



Path turns left at tree line

## 6 Application plan



## 7 Consultation

An initial consultation was carried out between 07 February and 22 March 2019. The following letter was circulated:

*“Town and Country Planning Act 1990 s.257  
Application to divert part of Westbury footpath No. 15 at Oldfield Road*

*Wiltshire Council has received an application to divert part of footpath Westbury 15 north west of the railway line to enable a development to proceed. The development is permitted by application numbers 15/12551/OUT, 17/01314/VAR and 17/12194/REM.*

*A short section of the path from the railway line to the western boundary of the site crosses a number of housing plots and needs to be re-aligned. The path will connect to the unaffected length of Westbury path no 15 leading towards the railway line and Dilton Marsh and a new section of path to be created as part of the development and linking to the railway station.*

*Please find enclosed a plan showing the location of the site and a detailed plan showing the effect of the proposed diversion. If you have any comments on the diversion I would be pleased to receive them by 22<sup>nd</sup> March 2019.*

Copies of the plan at 6.0 and a location plan were enclosed.

The following were consulted:

The Auto Cycle Union  
Open Spaces Society  
British Driving Society  
British Horse Society (national and Wiltshire)  
Byways and Bridleways Trust  
Wiltshire Cycling Touring Club  
Trail Riders Fellowship  
Wiltshire Council Senior Rights of Way Warden Paul Millard  
Westbury Town Council  
Wiltshire Councillor David Jenkins (Westbury North)  
Wiltshire Councillor Russell Hawker (Westbury West)  
Wiltshire Bridleways Association  
Ramblers (Wiltshire and South Wiltshire)  
Wessex Water  
Scottish and Southern Electric  
Southern Gas Networks  
Wales and West Utilities  
Virgin Media  
Digdat.co.uk  
LinesearchbeforeUdig.co.uk  
Open Reach  
National Grid Electric and Gas  
Wiltshire Council Ecologist

## 8 Consultation responses

### Openreach 07 February 2019

Openreach have equipment crossing the site. Accordingly a paragraph will be inserted in the order to protect their interest.

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

### Westbury Town Council 19 March 2019

*“We object to this proposal and feel that the footpath should be left in its current position. It is a traditional footpath that is well used by the community, has been established for over 50 years and we feel that the housing should be developed around the footpath and not expect the footpath to change to accommodate the development.”*

**Officer’s comment:** It is agreed that it can be regrettable to lose the character and rural aspect of a historic footpath and it is agreed that this is a well used historic path. However, although objection was made by the Town Council to the development at the planning application consultation stage, that objection only extended to the design, style and density of the dwellings and the insufficient contribution to local infrastructure. There was no concern shown for the footpath at this stage and accordingly alternative site designs that would accommodate the footpath were not considered

In practice, the diversion is very slight, in one place the path will move by 8 metres to the south but in all other places the diverted path crosses the definitive map line or leads within 2 or 3 metres of it. The character of the area will be significantly altered by the development and it may be that an all weather path linking Oldfield Road with the station offers a very useful facility for local people, not just from the new estate but from the estates around Oldfield Road. The proposed diversion lacks none of the purpose of the existing definitive line and will offer a clean and weatherproof surface. The proximity of estate traffic is an inevitable consequence of the development itself but the proposed diversion will utilise a crossing point at the edge of block paved ‘village square’ design area which should ensure a safe crossing point.

## 9 Considerations for the Council – Legal Empowerment

The Town and Country Planning Act of 1990 states (as amended by section 12 of the Growth and Infrastructure Act 2013), in sections 257 and 259:

### **257 Footpaths and bridleways affected by development: orders by other authorities.**

(1) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied that it is necessary to do so in order to enable development to be carried out—

(a) in accordance with planning permission granted under Part III, or

(b)by a government department.

(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that –

(a) an application for planning permission in respect of development has been made under Part 3, and

(b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.

(2)An order under this section may, if the competent authority are satisfied that it should do so, provide—

(a)for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;

(b)for authorising or requiring works to be carried out in relation to any footpath or bridleway for whose stopping up or diversion, creation or improvement provision is made by the order;

(c)for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath or bridleway;

(d)for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.

(3)An order may be made under this section authorising the stopping up or diversion of a footpath or bridleway which is temporarily stopped up or diverted under any other enactment.

(4)In this section “competent authority” means—

(a)in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the Secretary of State, who would have had power to grant it

(b)in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.

(c) in the case of development in respect of which an application for planning permission has been made under Part 3, the local planning authority to whom the application has been made or, in the case of an application made to the Secretary of State under section 62A, the local planning authority to whom the application would otherwise have been made.”

### **259 Confirmation of orders made by other authorities.**

(1)An order made under section 257 or 258 shall not take effect unless confirmed by the Secretary of State or unless confirmed, as an unopposed order, by the authority that made it.

(1A) An order under section 257(1A) may not be confirmed unless the Secretary of State or (as the case may be) the authority is satisfied –

(a) that planning permission in respect of the development has been granted, and

(b) it is necessary to authorise the stopping up or diversion in order to enable the development to be carried out in accordance with the permission.

(2)The Secretary of State shall not confirm any such order unless satisfied as to every matter as to which the authority making the order are required under section 257 or, as the case may be, section 258 to be satisfied.

(3)The time specified—

(a)in an order under section 257 as the time from which a footpath or bridleway is to be stopped up or diverted; or

(b)in an order under section 258 as the time from which a right of way is to be extinguished, shall not be earlier than confirmation of the order.

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

9.1 Section 257 of the Town and Country Planning Act 1990 requires that before the order may be confirmed either Wiltshire Council (in the case of an order that has not attracted objections) or the Secretary of State must be satisfied that it is necessary to divert the footpath in question in order to enable development to be carried out in accordance with planning permission granted.

9.2 Paragraph 7.15 of Circular 1/09 (Rights of Way Circular – Guidance for Local Authorities – Defra) advises that the disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the Order.

## **10 Comments on Considerations**

### **i) Whether it is necessary to divert or extinguish the footpath in order to enable development to be carried out.**

It is necessary to divert part of Westbury 15 as a number of houses have been permitted to be built across the way. Only diversion (or extinguishment) of the affected footpath would enable the developer to build these houses.

### **ii) The disadvantages or loss likely to arise as a result of the diversion**

The diversion is slight and involves moving the line of the path to a route leading over paths and footways. The path will undoubtedly lose its rural aspect, a point of objection for Westbury Town Council, but officers consider that since the development itself will inevitably cause the loss of the rural nature of the site, the effect of the difference on the right of way is negligible.

The new route will be 5 metres longer than the existing which is considered insignificant over a route that is 686 metres long.

### **iii) Environmental Impact of the Recommendation**

Planning Consent has been granted with full consideration of the environmental impacts of the proposal. See conditions 18, 19, 20, 21, 22, 23 and 24 15/12551/OUT.

**iv) Risk Assessment**

There are no risks to users of the path associated with the proposed changes to the rights of way.

**v) Legal Considerations and Financial Implications**

The landowner will meet costs related to the application and will meet all costs related to the confirmation of the order excluding any costs associated with sending the Order to the Secretary of State (SoS) for determination. This occurs if objections are received. The SoS may choose to determine the order by written representations (no additional cost to the Council), a local hearing (approximate cost £200-£300) or a public inquiry (approximate cost £2500).

Although the making of public path orders is a power that Wiltshire Council has and is not a duty, where the planning authority and the highway authority are the same authority, a duty is implied. If Wiltshire Council fails to make an order following the granting of planning permission it is liable to application for judicial review from the developer. This has a potential cost to the Council of up to £50000.

**vi) Equality Impact**

The Council has regard to The Equality Act 2010. This act requires (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that a disabled person is not put at a substantial disadvantage in comparison with a person who is not disabled. The Equality Act goes further than just requiring a public authority does not discriminate against a disabled person. Section 149 imposes a duty, known as the “public sector equality duty”, on the public bodies listed in sch. 19 to the Act, to have due regard to three specified matters when exercising their functions.

These three matters are:

- Eliminating conduct that is prohibited by the Act
- Advancing equality of opportunity between people who have a disability and people who do not; and
- Fostering good relations between people who have a disability and people who do not.

The Equality Act applies to a highway authority’s provision of public rights of way services. (DEFRA Guidance *Authorising structures (gaps, gates and stiles) on rights of way* Oct 2010)

The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP). The ROWIP recognises the Council’s duty to have regard to DDA95 (replaced by the Equalities Act 2010) and to consider the least restrictive option.

- 10.1 The proposed new path will be more accessible for all users. It will have an all weather surface and a recorded width of 2 metres.

## **11 Options to Consider**

- i) To make an order to divert part of Westbury footpath no. 15 under s.257 of the Town and Country Planning Act 1990 and to record it under s.53 of the Wildlife and Countryside Act 1981.
- ii) Not to make an order to divert part of Westbury footpath no. 15 under s.257 of the Town and Country Planning Act 1990 and not to record it under s.53 of the Wildlife and Countryside Act 1981.

## **12 Reasons for Recommendation**

In order for the development to proceed the public footpath must be diverted. The resultant changes are likely to be advantageous to the applicant and to the public.

## **13 Recommendation**

**That an order to divert part of footpath Westbury no. 15 is made and duly advertised. If no objections or representations are forthcoming then Wiltshire Council confirms the order.**

Sally Madgwick  
Rights of Way Officer

**25 March 2019**