

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

Purpose of Report

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

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

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

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

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

Relevance to the Council's Business Plan

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

Background

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

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

Main Considerations for the Council

11. *Section 257 of the Town and Country Planning Act 1990*
 - (1) *Subject to Section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out-*

- (a) *In accordance with planning permission granted under Part III, or*
- (b) *By a government department.*

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

Overview and Scrutiny Engagement

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

Safeguarding Considerations

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

Public Health Implications

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

Corporate Procurement Implications

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

Environmental and Climate Change Considerations

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

Equalities Impact of the Proposal

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

Risk Assessment

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

Financial Implications

24. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permits authorities to recover costs from the applicant in relation to the making of public path orders, including those made under TCPA s.257. The applicant has agreed in writing to meet the actual costs to the Council in processing this Order though the Council’s costs relating to the Order being determined by the Planning Inspectorate may not be reclaimed from the applicant.
25. Where there is an outstanding objection to the making of the Order, the Committee may resolve that Wiltshire Council continues to support the making of the Order, in which case it should be forwarded to the Secretary of State for decision. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is £200 to £300; however, where a local hearing is held the costs to the Council are estimated at £300 to £500 and £1,000 to £3,000 where the case is determined by local public inquiry with legal representation (£300 to £500 without). There is no mechanism by which these costs may be passed to the applicant and any costs must be borne by Wiltshire Council. It is therefore considered appropriate where an Order is made under the Council’s powers to do so in the landowners’ interest that the Council does not provide any legal support for the Order at a hearing or inquiry thus minimising the

expenditure of public funds even though it considers that the legal tests have been met.

26. Where the Council no longer supports the making of the Order, it may resolve that the Order be withdrawn and there are no further costs to the Council. The making of a Public Path Order is a discretionary power for the Council rather than a statutory duty; therefore, a made Order may be withdrawn up until the point of confirmation if the Council no longer supports it. However, where there is a pre-existing grant of planning permission the Council must make very clear its reasons for not proceeding with the Order.

Legal Implications

27. If the Council resolves that it does not support the Order, it may be abandoned. There is no right of appeal for the applicant; however, clear reasons for the abandonment or withdrawal must be given as the Council's decision may be open to judicial review. This could be more likely where a grant of planning permission has already been made.
28. Where the Council supports the making of the Order, because it has an outstanding objection, it must be sent to the Secretary of State for determination, which may lead to the Order being determined by written representations, local hearing or local public inquiry. The Inspector's decision is open to challenge in the High Court.

Options Considered

29. Members may resolve that:
 - (i) The Order should be forwarded to the Secretary of State for determination as follows:
 - a. The Order be confirmed without modification, or
 - b. The Order be confirmed with modification
 - (ii) Wiltshire Council no longer supports the making of the Order, in which case the Order should be abandoned, with clear reasons given as to why Wiltshire Council no longer supports the making of the Order, i.e. why the Order fails to meet the legal tests.

Reason for Proposal

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

Proposal

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

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Definitive Map Officer

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

None

Appendices:

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