

**Wiltshire Council**

**Western Area Planning Committee**

**4 January 2011**

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**WILTSHIRE COUNCIL (SHEET ST 85 SE) WESTBURY 25 (PART) DIVERSION  
ORDER AND DEFINITIVE MAP MODIFICATION ORDER NO. 22 2011**

**Purpose of Report**

1. To:
  - (i) Consider the abandonment of an Order made under Section 257 and paragraph 1 of Schedule 14 of the Town and Country Planning Act 1990 and Section 53A of the Wildlife and Countryside Act 1981 proposing to divert a section of Westbury Footpath No. 25.
  - (ii) Resolve that the Order is abandoned and revoked.

**Background**

2. In July 2010 the Westbury Group Practice applied to Wiltshire Council for permission to build a Primary Care Centre (PCC) on land north-west of Westbury Leigh Primary School, Mane Way, Westbury. Application No. W/10/02170/FUL.
3. Planning permission was granted on 17 November 2010.
4. Part of the development coincided with the line of part of Westbury Footpath No. 25 requiring its diversion to allow development to proceed.
5. Using powers contained within the Town and Country Planning Act 1990 and the Wildlife and Countryside Act 1981 an Order diverting part of the footpath was made and advertised in accordance with the legislation on 15 April 2011 (see **Appendix 1**).
6. Although no objections had been received during the consultation process, one objection from Mr. F. Morland was received to the Order requiring the Order to be considered by the Western Area Planning Committee. This Order was considered at its meeting on 17 August 2011.
7. The Committee resolved:

*That the Wiltshire Council (Sheet ST 85 SE) Westbury 25 (part) Diversion Order and Definitive Map Modification Order No 22 2011 is forwarded to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that the Order be confirmed with the modification to the Order Plan detailed below:*

*The s.38 Highways Act 1980 adoption plan shows that a two metre stretch leading from the roundabout past point A to footpath Westbury 54 has not been adopted as highway. Hence, the recording of this section as a public footpath is possible and preserves rights on foot. The Order Plan does require a small modification of the line to reflect this.*

8. The delay caused by the objection and anticipated delays related to the Planning Inspectorate determining the Order led the developer to submit a revised application for planning permission for the site (Application No. W/11/01853/FUL).
9. This second application did not interfere with the line of any public rights of way.
10. Permission was granted on 24 August 2011.
11. Development is now proceeding according to this second application rendering the Order to divert part of Westbury Footpath No. 25 unnecessary and incapable of confirmation.

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

12. The Town and Country Planning Act of 1990 states, 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.
  - (2) An order under this section may, if the competent authority is 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; 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.

### **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 who made it.
  - (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.”
13. The Department for Environment, Food and Rural Affairs (Defra) publication “Rights of Way Circular 1/09 – Guidance for Local Authorities” version 2 October 2009 advises at paragraph 5.29 in relation to public path orders:

*Authorities have the discretion not to proceed with orders to which there are representations or objections or may withdraw an order for other reasons, such as external factors making a scheme no longer appropriate. In order to bring the procedure to an end, the authority must make a formal resolution not to proceed, and should notify the applicant and those who have made representations or objections of the passing of the resolution.*

14. The recommendation has no effect on the environment.

### **Risk Assessment**

15. The proposed abandonment of the Order has been agreed with the developer. There is no risk associated with abandonment of the Order.

### **Financial Implications**

16. Costs associated with the making of this Order will be paid by the applicant. Any costs associated with the Planning Inspectorate would be found by Wiltshire Council. There is no additional cost associated with abandoning the Order.

### **Options to Consider**

17. Development is proceeding according to Planning Application No. W/11/01853/FUL and not the planning application that the Order was based upon, hence there is only one option to consider:

(i) Abandon and revoke the Order.

### **Recommendation**

18. The Wiltshire Council (Sheet ST 85 SE) Westbury 25 (part) Diversion Order and Definitive Map Modification Order No. 22 2011 is abandoned and revoked.

### **MARK SMITH**

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

None