

**HIGHWAYS ACT 1980 AND WILDLIFE AND COUNTRYSIDE ACT 1981**  
**THE WILTSHIRE COUNCIL CHAPMANSLADE 12 (PART) DIVERSION ORDER AND**  
**DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2014**

**Purpose of Report**

1. To:
  - (i) Consider objections received to the making of “The Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014” 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. Wiltshire Council is in receipt of an application dated 9 June 2013, from Mr and Mrs Smith of Dye House Farm, Corsley, to divert Footpath No.12 Chapmanslade (part) under Section 119 of the Highways Act 1980 (please see location plan attached at **Appendix A**). The footpath presently passes alongside Dye House Farm, through the garden to the south of the house and it is proposed to divert the footpath further south into the adjoining meadow, which locates the footpath further away from the house, (as shown on the order plan attached at **Appendix B**).
4. The applicants have given the following reasons for the diversion:
  - To ensure privacy in our own garden.
  - Local people have advised us that they do not use the legal line as they are sensitive to the house owner’s privacy. We have seen only one person using the existing footpath since purchasing the property.

- There is some evidence that people may be using a route between the existing footpath and the proposed footpath, largely avoiding that part of the garden visible from the house.
  - We have started to mow the grass in the meadow between the proposed bridge and the telegraph pole (adjacent to point C on the order plan attached at **Appendix B**) and have planted a large number of trees to make the area attractive. We plan to move the fence line in the field and do the same with the resulting area between the fence and the stream to make the proposed route of the footpath at least as attractive as the current one. The new fence will include a kissing gate.
  - The current bridge has no side rails and so is unsuitable for young and old people.
  - The new bridge will conform to current safety standards.
5. Wiltshire Council carried out an initial consultation regarding the proposals in March 2014. No objections to the proposed diversion of Footpath No.12 Chapmanslade (part) were received.
  6. Officers of Wiltshire Council then produced a decision report in which they considered the application against the legal tests for diversion under Section 119 of the Highways Act 1980. Officers made a recommendation to Senior Officers that Footpath No.12 Chapmanslade (part) should be diverted under Section 119 of the Highways Act 1980, in the interests of the landowners. Senior Officers approved this recommendation on 27 June 2014.
  7. Wiltshire Council subsequently made a Public Path Diversion Order under Section 119 of the Highways Act 1980 and Section 53 of the Wildlife and Countryside Act 1981, on 15 July 2014.
  8. Following the making of the Order, Wiltshire Council received the following correspondence:
    - (i) E-mail of objection from Mr Francis Morland – 14 August 2014
    - (ii) Letter of support from Mr Peter Eyles – 25 August 2014
    - (iii) E-mail of support from Chapmanslade Parish Council – 12 September 2014
    - (iv) E-mail of objection from Mr Francis Morland – 15 September 2014
  9. Members of the Committee are now required to consider the objections received, against the legal tests for making a Public Path Diversion Order under Section 119 of the Highways Act 1980, in order to determine whether or not Wiltshire 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 at part 6 (pages 7 – 10) of the decision report attached at **Appendix C**.
13. A Public Path Diversion Order may be made under this legislation, in the interests of the owner or occupier of the land, or of the public. The termination point of the path or way shall not be altered where that point is not located on a highway and where it is located on a highway, it may not be altered unless to another point on the same highway or a highway connected with it and which is substantially as convenient to the public.
14. At the confirmation of a Public Path Diversion Order the Secretary of State or the Council shall not confirm the Order unless they are satisfied that:
  - (i) it is necessary to do so in the interests of the owner/occupier of the land or the public;
  - (ii) the new path or way should not be substantially less convenient to the public as a result of the diversion and
  - (iii) that it is expedient to confirm the Order having regard to the effect which the diversion would have on:
    - public enjoyment of the path or way as a whole and
    - on other land served by the existing public right of way and the land over which the new right of way is created.
15. Mr Morland has made the following objections to the making of the Diversion Order:

E-mail correspondence dated 14 August 2014:

***“The Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014 made 15 July 2014; The Wiltshire Council Chippenham Without 1 (part) Diversion Order and Definitive Map and Statement Modification Order made 17 July 2014; and The Wiltshire Council West Ashton 1 Rights of Way Modification Order 2014 made 29 July 2014 (Ref: BB/2013/17)***

*Please accept this as my duly-made objection to each of the above Orders, advertised in Public Notices on page 56 of the Friday, 1 August, 2014 issue of the Wiltshire Times newspaper.*

*Please advise where I can find the details of these Orders and the relevant entries of the existing Definitive Maps and Statements on the Wiltshire Council website (pursuant to its Publication Scheme)."*

16. Mr Morland followed this up with further detail of his objection in an e-mail sent to Wiltshire Council on 15 September 2014:

***"The Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014 made 15 July 2014 (Your ref: BB/2014)***

*I refer to your letter dated 27 August 2014.*

*Although the drafting of the above Order appears to be adequate to achieve its general purpose, it follows from the terms of [1] and [3] of the Order, which lack any conditionality, that the physical provision of the new length of footpath created by [3] of the Order and described in Part 2 of its Schedule was considered by the Order Making Authority to be complete and in a fit condition for use by the public when the Order was made on 15 July 2014 (or shortly thereafter).*

*That is, I think, confirmed by Brian Micklam's e-mail below sent 06 September 2014 (Footpath Secretary to the West Wilts Ramblers Group), which also helpfully sets out the rather troubled history of this footpath.*

*As he points out, there is at present a bridge over the stream on the existing route, which is of full width and solid masonry construction, and the structure of which, as far as I am aware has not required any significant repairs within living memory.*

*By contrast the new bridge over the stream, referred to in this Order only in Part 3 of the Schedule, is entirely of timber construction and of rather limited width (significantly less than the width of 2 metres referred to in Part 2 of the Schedule), and not at all equivalent to the bridge it is intended to replace.*

*I accept Mr Micklam's assessment that existing constraints elsewhere on the route make it unlikely in the foreseeable future that there will be a demand for the full range of lawful footpath uses on the diverted section.*

*Nevertheless, Wiltshire is currently afflicted with a large number of footpaths (including that at Mill Lane, Hawkeridge) which are impassable because existing bridges on the route have been removed, fallen into disrepair, collapsed or been closed off for safety reasons, and without Court action to compel it, the Local Highway Authority is unwilling or unable to fund their replacement or repair.*

*Due to a similar lack of resources, no Report on the proposed diversion of this footpath is, as far as I am aware, currently in the public domain, so I do not know*

*what period the manufacturers of the new timber bridge state to be its expected working life, but it appears likely that, notwithstanding the third paragraph of the Preamble to the Order, this footpath will again be permanently out-of-use within a decade or so, unless Wiltshire Council is prepared to underwrite/guarantee the future repair or replacement of this structure indefinitely from public funds. Is it prepared to give such an undertaking?"*

17. Mr Morland attached to this e-mail a copy of an e-mail addressed to himself from Brian Micklam, Secretary for the West Wilts Ramblers Group (dated 6 September 2014):

*"I certainly agree that agreed notification procedures should be adhered to.*

*I would not have been advised about Chippenham, which is outside the West Wilts Ramblers group area.*

*However for the other two I did receive the following –*

- *West Ashton*

*Two letters under the heading 'West Ashton footpath 1', Dated 17 June 2014 and 30 July 2014, both Ref BB/2013/17*

- *Chapmanslade*

*Two letters concerning CHAP12-*

- *First letter dated 28/3/14 under Ref JG/PC/48 headed "Highways Act 1980 – Section 119 / Town and Country Planning Act 1990 – Section 257 – Proposed Diversion of Footpath No.12 Chapmanslade (part)'*

*This is the letter which gave the reasons for the deviation, was not entirely correct in that the path was not used for a long time because the previous owners had blocked the entrance to the path from the road.*

*The alternative route was only used because of the difficulty in using the correct route, and in any event a walker was always required to find their own way to the bridge at the back of the property so as to get over the stream. The current Owner has left access open, but it was still difficult to find one's way around the house to the bridge.*

*I did not object, though, because I agreed with the proposal for the new diversion.*

- *The second letter dated 25/7/14 under Ref JG/PC/48 2013/13 confirmed the Diversion Order and Definitive Map and Statement Modification Order and within a few days, our WWR working party, of which I am a member, under the direction of the RoW Dept was installing the bridge and kissing gate involved to activate the diversion. At the time it did seem to have happened rather quickly, but I had no real argument against that.*

*This footpath is not suitable for prams and push chairs. The continuation of the path is rough grassland, terminating in a steep set of steps and a stile. I shall be using it for one of our lead walks in November."*

18. Wiltshire Council also received two representations of support for the making of the Order, as follows:

Mr P Eyles – Correspondence dated 25 August 2014:

*“I would like to give my full support for the proposed footpath diversion. I have been walking the footpaths in the Chapmanslade area for many years and the new route is a huge improvement. The new sign and kissing gate off the lane leading to Dye House makes access much clearer and protects the privacy of the landowner. It improves the possibilities of circular walking routes to the south of the village. Even a diversion around the plot of land would have been a great and acceptable improvement. All parties in this change will gain substantially so I hope that it will be accepted and be made permanent. A ‘dogs on lead’ sign would be courteous to the landowner.”*

19. Mr Phil Jefferson, Chairman – Chapmanslade Parish Council – E-mail dated 12 September 2014:

*“At a meeting of Chapmanslade Parish Council held last night, parish councillors resolved to repeat their support for the proposed diversion of footpath 12 in the vicinity of Dye House Farm.*

*The resolution was passed unanimously, with the exception of one member who declined to participate in the vote.*

*It is our hope that this matter can be resolved quickly as we are quite convinced that the new route is a considerable improvement on the previous arrangement.”*

20. In response to the objections, Officers would make the following comments:

- (i) The new timber bridge has been provided to a standard form which is Wiltshire Council approved and is generally used on rights of way, the structure of which conforms to BS5709 and the expected lifespan of the bridge is 15-20 years. Handrails are provided which are not present on the stone bridge on the definitive line, which makes the new bridge much more suitable for use by all members of the public.
- (ii) The new bridge was provided at an early stage, after the initial consultation as no objections were raised at this time and the landowners requested the bridge as they were aware that members of the public felt uncomfortable using the right of way through the garden. The landowners have agreed to pay all costs of this installation and it was made clear to the landowners at this time that there was no guarantee that the Diversion Order would be successful. Please note that the Diversion Order has not yet been confirmed as suggested by Mr Morland.
- (iii) Any kissing gates added on the proposed new route are not recorded within the Public Path Diversion Order as limitations or conditions, but

may be authorised later if the Diversion Order is successful, for the purposes of stock control.

- (iv) Rights of Way Officers contacted the Wiltshire Council Principal Engineer – Bridges, to seek a view on the old bridge in comparison to the new bridge. The Engineer inspected the bridges and made the following comments:

*“We have had a look at the bridges on the original and the proposed route. The original route has an old brick bridge that appears to have been recently refurbished (we assume by the landowner), it is well built but does not have any parapets. The new bridge is a standard Wiltshire Council approved structure...and is used countywide on rights of way. Of the two the timber bridge is safer because it has handrails fitted.*

*At the moment our liability for the stone bridge is minimal, where rights of way cross private structures such as this the landowner is assumed to be responsible for maintenance and we would contribute up to 5% of any reasonable repair costs incurred. Problems can and do arise when farms are broken up and sold and old ditches and streams are used to form new boundaries, if these are crossed by an old farm bridge then neither new landowner would have any need for the bridge and they can fall into disrepair, the burden then falls on the Council to maintain an old and possibly dilapidated stone bridge.*

*On balance I think the timber footbridge will be less of a liability to the Council and I have no objections to the proposed diversion.”*

- (v) The objector is concerned that the new timber bridge may be an additional maintenance burden for the Council; however, as the Bridge Engineer points out, there can be difficulties for rights of way where private structures, such as the stone bridge on the definitive line, fall into disrepair.

- (vi) The new bridge is not recorded in the Public Path Diversion Order as a limitation as DEFRA guidance suggests that it is not necessary to record a bridge as such. DEFRA Guidance on “Authorising structures (gaps, gates and stiles) on rights of way – Good practice for local authorities on compliance with the Equality Act 2010” (Version 1, October 2010) states:

*“As a bridge is a legal highway structure (not an illegal interference) and an aid to crossing whatever feature is causing the interference with the public’s ease of passage, they cannot be defined as limitations...Where a bridge is narrower than the full width of the way, this should not be expressed as a change in the width of the highway, nor as a limitation. The full width of the highway continues either side of a narrower bridge, just as, at, for example, a gate or stile.”*

- (vii) The Parish Council and one other local user have expressed their support for the making of the Order on the grounds that the proposed diversion route is preferable to the definitive line. On a recent inspection of Footpath No.12 Chapmanslade at Dye House Farm, Rights of Way

Officers noted that there was a clearly defined track on the proposed diversion route and users appear to be already using the proposed diversion route in preference to the legal line. Mr Micklam of the Ramblers Association confirms that he will be using the proposed diversion route for a led walk in November.

- (viii) Regarding the previous obstructions of the right of way, Planning Inspectorate guidance, (“Advice Note 9: General Guidance to Inspectors on Public Rights of Way Matters”), is to consider the definitive line against the proposed diversion, as if it were not obstructed, i.e. it may disregard any temporary circumstances preventing or diminishing the use of the existing route by the public.

### **Safeguarding Considerations**

21. 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 Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014”, 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**

22. There are no identified public health implications which arise from the proposed diversion of Footpath No.12 Chapmanslade (part).

### **Environmental Impact of the Proposal**

23. 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**

24. The Wiltshire Council Rights of Way Improvement Plan 2008-2012 (ROWIP) recognises the Council’s duty to have regard to the Disability Discrimination Act 1995 (now superseded by the Equalities Act 2010) and to consider the least restrictive option for public use. The proposed diversion route places no additional limitations or conditions on public use of the path. The definitive line presently has two gates present on that part proposed to be diverted, whereas it is proposed to add two kissing gates over the proposed diversion route, which may be authorised at a later date for the purposes of stock control. The provision



of kissing gates for public use is a less restrictive option. 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**

25. There are no identified risks which arise from the proposed diversion of Footpath No.12 Chapmanslade (part). The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.

## **Financial Implications**

26. 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 any materials provided in bringing the new footpath into a fit condition for use by the public.
27. Where there are outstanding objections 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 negligible; however, where a local hearing is held the costs to the Council are estimated at £300 – £500 and £1,000 - £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.
28. 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**

29. 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.
30. 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**

31. 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**

32. Despite the objections received it is considered, for the reasons given at part 18 of the decision report (please see **Appendix C**), that “The Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014” continues to meet the legal tests for the making of a Diversion Order under Section 119 of the Highways Act 1980.

33. 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**

34. That “The Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014”, 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:

**Janice Green**

Rights of Way Officer

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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

Appendix C – Decision report (20 June 2014)