

DECISION REPORT
WILTSHIRE COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990

PROPOSED DIVERSION OF PART OF PURTON PATH No. 71

1 Purpose of Report

1 To:

- (i) Consider and comment on an application to divert part of Purton footpath no. 71 to enable a permitted development to take place.
- (ii) Recommend that an Order be made under s.257 of the Town and Country Planning Act 1990 to divert the path where affected by the development and to confirm the order if no representations or objections are received.

2 Background

2 On the 3rd May 2013 Wiltshire Council received an application to divert and extend part of footpath Purton 71 adjacent to 1 The Fox, Purton. The application was made by Mr Glenn Simms of number 1 The Fox, Purton, SN5 4EF and submitted by his agent, James Wood of DPDS Consulting Group, Old Bank House, 5 Devizes Road, Swindon, SN1 4BJ.

3 The reason for the application was given as:

“Planning permission has been granted for an extension to the garden of no. 1 The Fox, Purton (Ref: APP/Y3940/A/12/2182533). To enable this proposal it is necessary to re-route the public footpath.”

It is noted that the actual grant made by the Planning Inspectorate is “for the extension of the residential curtilage and diversion of farm track”.

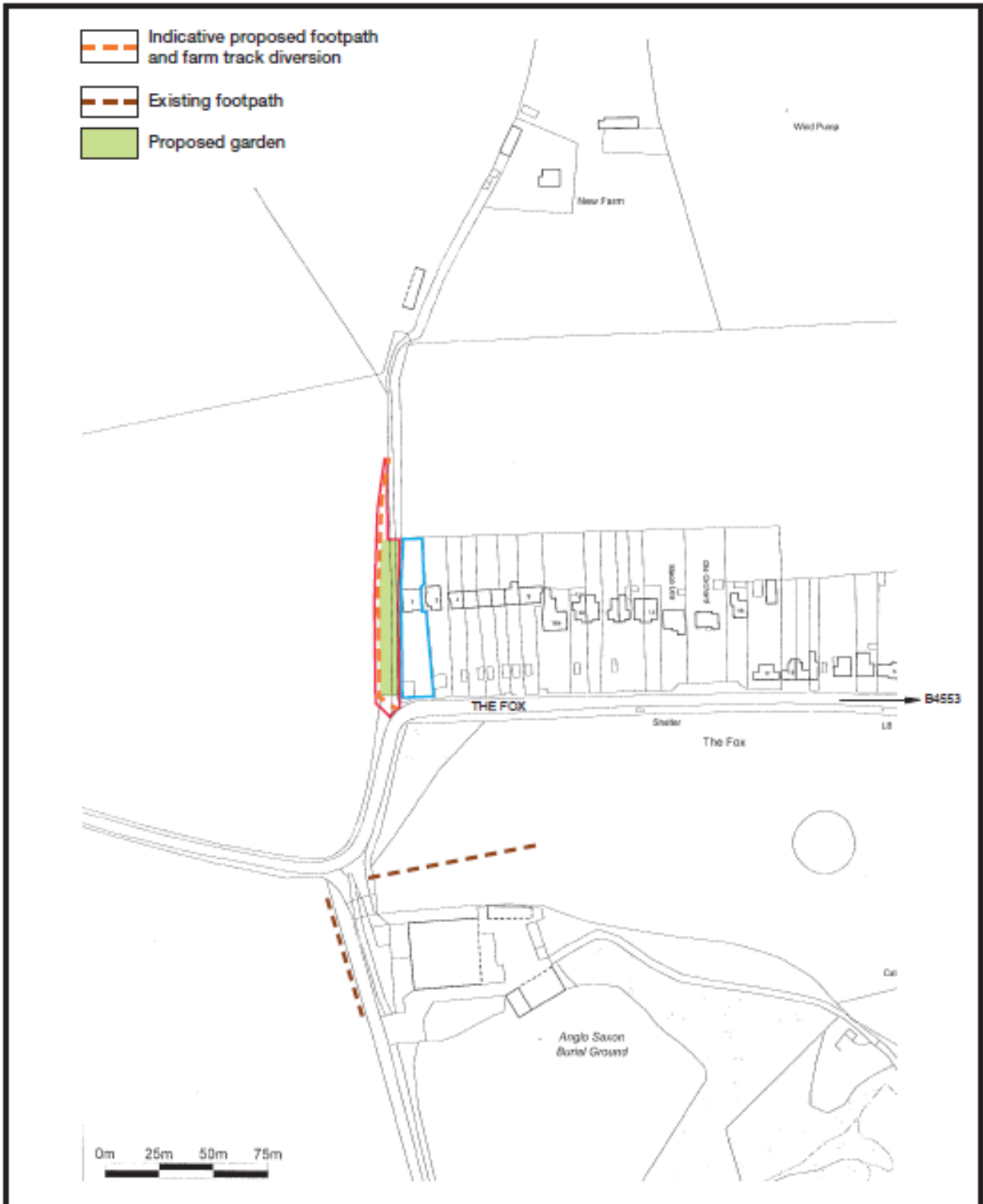
4 The application was accompanied by a signed agreement from Miss Barker of Purton House agreeing to sell land to Mr Simms in accordance with all conditions of the planning appeal Ref: APP/Y3940/A/12/2182533 and drawing number C11741/12/02.

5 The planning permission granted is “for the extension of residential curtilage and diversion of farm track”.

6 The original application for planning permission (N/12/01601/FUL) made to Wiltshire Council included details of the proposed footpath diversion including an extension south of the development. A number of respondents during that part of the process objected to this extension of the route and although it was applied for again at the public path order application stage (and again was the subject of objection when

consulted on) the applicant has now amended the application to remove the extension.

7 Amended application plan (submitted 09 June 2013)

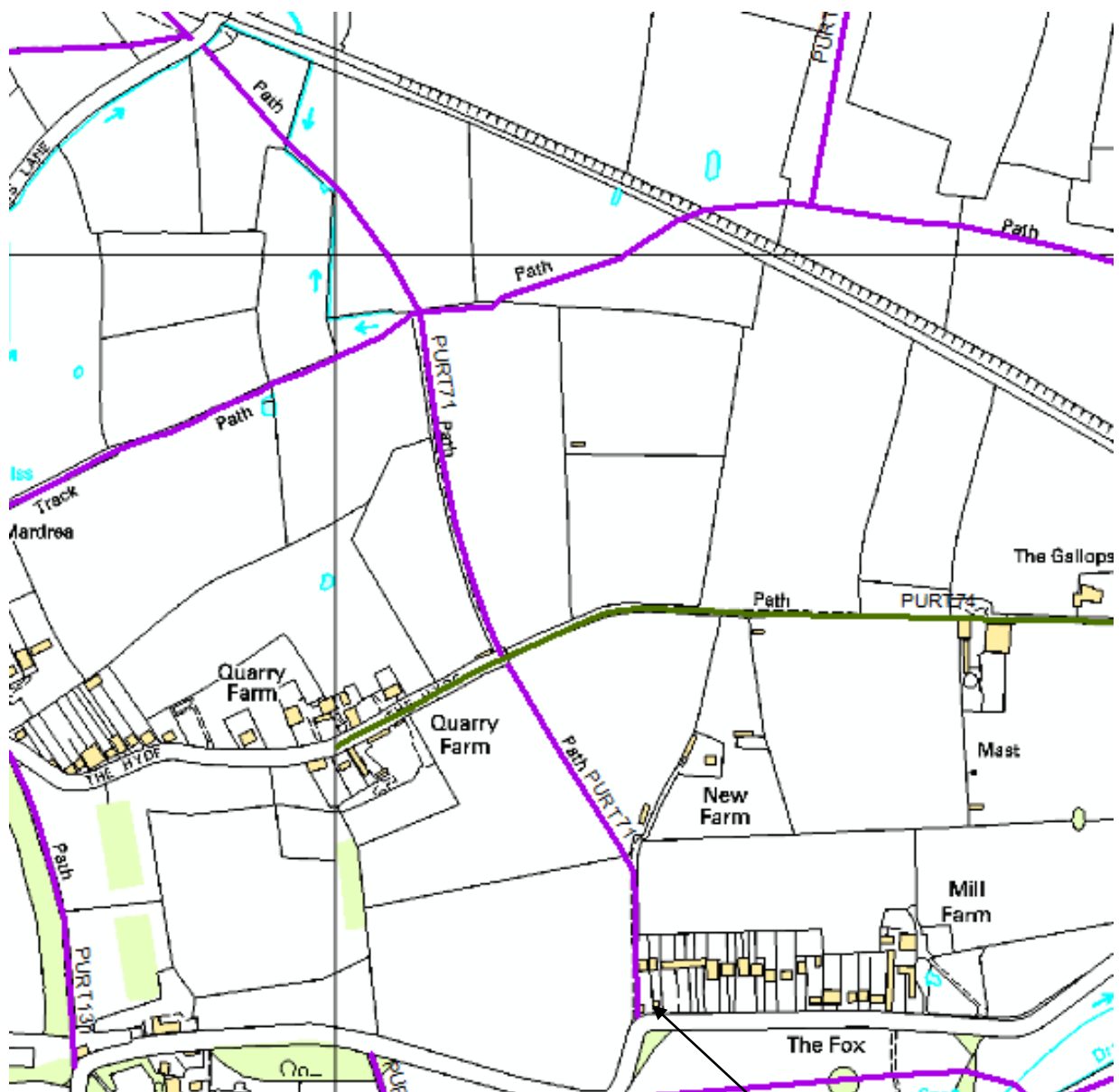


8 Purton path no. 71 was added to the Cricklade and Wootton Bassett definitive map and statement dated 1952 and has not been altered since that time. The definitive statement reads:

Purton 71 FOOTPATH. From Collins Lane, C.126 south of the Railway, leading south-east across paths Nos.72 and 74 to road U/C 2055 at The Fox.

Approximate length 1.371 km.

Width 0.6 m.



Working copy of definitive map

Section affected by this application

9 Photograph of existing route of Purton 71 at 1 the Fox, Purton



Route of footpath Purton 71(along existing farm track). This track to become part of residential curtilage and garden development. New track to be built to the west (right).. New track to carry public footpath rights.

3 Land Ownership

10 The land is owned by Mr Glenn Simms of 1The Fox and Miss Barker of Purton House Farm. They have both consented to the proposed diversion as amended (para. 7).

4 Consultation

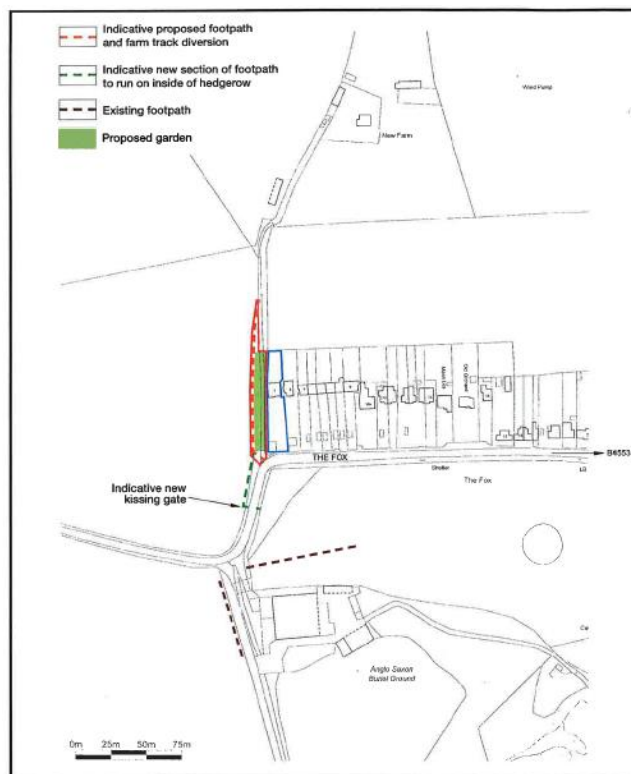
- 11 An initial consultation period was carried out between 08 May 2013 and 12 June 2013. At the time of the consultation the amended application plan had not been received. As a result the consultation invited comment on both the diversion onto the new farm track from the old farm track and the extension south. The following letter was circulated:

“Proposed diversion of Purton path 71 (part) at 1 The Fox

Planning permission has been granted for the extension of residential curtilage and the diversion of a farm track at 1 The Fox, Purton, SN5 4EF (application Ref N/12/01601/FUL). Public footpath Purton 71 leads over the existing farm track at this point and Wiltshire Council has received an application to divert this section of path onto the new farm track.

Please find enclosed a location plan, a plan showing the proposed diversion and an indicative layout plan. The applicant has also sought to improve public access at this point and has proposed an additional length of footpath leading along the field edge to the south, emerging on a straight section of the road u/c2055 nearer to footpaths 75 and 79 than is currently afforded by footpath 71. Although this has the effect of making path 71 longer, it reduces the distance to be walked on the road accordingly.

Your comments on the application would be appreciated. Please submit these to me at the above address to arrive by 12 June 2013”



12 This was sent to:

The Auto Cycle Union
Commons, Open Spaces and Footpaths Society
Wiltshire Bridleways Association
Wiltshire Cycling Touring Club
British Horse Society (BHS)
Purton Parish Council
Wiltshire Councillor Ms J Lay
Mrs D Plummer BHS Wiltshire
Byways and Bridleways Trust
British Driving Society
Wiltshire Council Senior Rights of Way Warden Stephen Leonard
Wiltshire Ramblers representative Mrs Judy Hible
Wiltshire Council County Ecologist Fiona Elphick
Mr B Riley
Mr J Wood, DPDS Consulting
National Grid Electricity and Gas
Scottish and Southern Electric plc
Wales and West Utilities
Easynet BT
Wessex Water
Virgin Media
Mr G Simms
Owner or occupier, Foxmill Farm
Owner or occupier, Huntersbrook House
Miss Barker, Purton House
Mrs R Meers, Purton House Farm
Mr Cook, New Farm

4 Consultation responses

13 Purton Parish Council 28 May 2013

NB Much of the Parish Council's response relates to the proposed extension of Purton 71. This extension no longer forms part of the application and as a result the comments relevant to the remaining proposal have been highlighted in red for clarity.

"The Parish Council raises objection to the proposed footpath diversion for the following reasons:-

Footpath 71 utilises the existing farm track and enters onto the highway (u/c 2055) on the outside of a sharp bend which allows unrestricted vision by walkers against oncoming traffic from the east and some 65mts to the south thus enabling walkers to cross the highway in a safe manner and walk along the eastern edge of the highway/verge in order to access footpath 75 and 79 to the south of footpath 71.

The proposed diversion seeks to extend footpath 71 in a southerly direction within an adjoining field and to emerge on to a straight section of the highway between two 'blind' bends only 65mtrs apart. This proposal will greatly reduce walker's vision of oncoming traffic down to approx 30mtrs in each direction as opposed to the greater visibility afforded to them by the existing footpath location as it enters upon the highway.

The proposed diversion will also have a detrimental impact on residents living at The Fox resulting in the requirement for them to walk a further 30mtrs plus along the western edge of the highway in southerly direction in order to reach the proposed new access point for footpath 71.

The existing access point relating to footpath 71 and the highway has no recorded accidents against it, likewise with footpath 75 and 79.

Residents of The Fox use footpath 71 as a school route and access to the village. Moving the access point will mean that such residents will have to walk a further 30mtrs along the edge of the carriageway in a southerly direction in order to reach the proposed new access before heading towards their chosen destination which is in a north/westerly direction.

In conclusion the Parish Council can see no merit in this proposal for the reasons stated above and request that the application be refused."

14 **Mr and Mrs H Orr-Ewing** 23 May 2013

NB Mr and Mrs Orr-Ewings' response relates to the proposed extension of Purton 71. This extension no longer forms part of the application and as a result the comments relevant to the remaining proposal have been highlighted in red for clarity.

"We own the land on the east side of the public road opposite the proposed re-routing of FP71. We also own the land traversed by footpaths 75 and 79. We are therefore familiar with pedestrian and vehicular traffic in this area.

*We object to the proposed diversion of FP71 because the proposed extended realignment would join the public road mid-way between the blind right angle bends to the north and south. Despite the 30 mph limit cars and vans come round both corners at excessive speeds and pedestrians would have 35 meters view of approaching traffic from either direction if this re-routing were permitted. **Currently pedestrians joining the main road from FP71 at its present exit can see greater distances both to the east and south than the limited view from the proposed exit"**.*

15 **Chippenham Ramblers** 30 May 2013

NB Part of the Chippenham Ramblers response relates to the proposed extension of Purton 71. This extension no longer forms part of the application and as a result the comments relevant to the remaining proposal have been highlighted in red for clarity.

“Chippenham Ramblers have no objection to the proposal as it presents a very minor change from the current route. The proposed extension may provide a safer route for pedestrians, particularly if it makes them less likely to attempt to cross the road from the inside of the bend, with restricted visibility opposite 1 The Fox”

16 **Dr Richard Pagett** 10 June 2013

“Having walked the footpath and considered the map with the application, I am generally in agreement with the proposal PROVIDED the path still exits at the corner of the bend (where it currently exits). Obviously the track is being moved but allowing for that, the path should still exit in the immediate vicinity of where it currently exits.

By exiting at the corner (where it currently exits) one has line of sight in both directions and is infinitely safer than exiting halfway between the two bends where one has no line of sight of more than a few seconds.

The notion that by exiting halfway between the two bends means less road to walk is not tenable. When one exits at the corner one can see sufficiently in both directions to safely cross and walk to the next footpath entry in such a manner as to optimise the view towards Purton Church. One does not walk into the oncoming vehicles on this occasion as going round a right-hand bend would make no sense. Instead one crosses the road and walk on the “wrong” side of the road because one can see “around” the bend and one is visible to oncoming traffic sooner.

In summary, provided the path exit is approximately where it is now, then I support the application. If the exit is shifted to be between the bends then I object to the application.”

17 **Mr B Broad** 17 June 2013

“I am not against this diversion providing that the exit on to the road remains where it is now. To move it towards Purton direction would be dangerous due to the bend. Visibility at present is reasonable in both directions.”

18 **Wiltshire Councillor Jacqui Lay** 17 June 2013

NB Part of Councillor Lay’s response relates to the proposed extension of Purton 71. This extension no longer forms part of the application and as a result the comments relevant to the remaining proposal have been highlighted in red for clarity.

“I agree with Mr Broad regarding the exit onto the road especially for users of the path from The Fox as they would then need to walk back down the road with their backs onto the traffic. The Ridgeway Farm development is also likely to generate foot traffic (and potentially bike users) so this path could be more used in the future especially if it becomes a popular route to Bradon Forest School.

As a point of interest can cyclist push their bikes along a public footpath? I realise

that they are not supposed to ride them.

It would be good if part of this application could include some improvements to drainage in the area. The hedgeline along the west side of the road (where they are proposing to exit out) is very wet. The ditch needs digging out and a culvert under the road to the dry ditch on the south side of The Fox. There are issues with too much water going into the culverted ditch on the north side which Malcolm Beaven and Steve Scothern at the Council are aware of.

If permission is granted to come out at the mid way point, which I hope will not be the case, there needs to be a bridge over the ditch although I would think that also a new tarmac path back towards The Fox to ensure that pedestrians are safe hence potentially all of the ditch would need to be culverted. Where would the water off the field then go?"

19 Wiltshire Councillor Jacqui Lay 18 June 2013

"If you are able to liaise with Malcolm Beaven and Steve Scothern they may be able to confirm what the issues are with drainage in the area. It may be that if the ditch along the hedge was dug out this would solve some of the problems however I am always hopeful we can use an application to solve some of the issues in an area. I would suspect that water currently flows down the track and out onto the road so this would be useful if we can direct the water to the dry ditch on the south side of the road.

There is one house further down the road which is suffering with water and they took photos recently to show the water flowing down the road as being cloudy sandy colour - potentially off driveways, however I did go out just after the rainstorm and could see no evidence of a driveway discharging sand.

There is also an issue in the long term for the young people from the Ridgeway Farm development accessing Bradon Forest School. The logic is a cycle path/route along The Fox. Cutting across where this footpath runs would cut off a corner of the route although the road route is not that long and relatively flat to cycle (as long as a short cut is not made through the churchyard).

I think the general view would be the diversion should follow the same route as the existing path, but just moved out from the new garden land, however the path needs to be of a similar or better standard of construction as I believe vehicles use part of the route and would make the route muddy and rutted if the standard was lower or the same."

5 Considerations for the Council – Legal Empowerment

20 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 who 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.

- 21 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.

22 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.

23 Wiltshire Council is adhering to Guidance issued by the Department for Environment, Food and Rural Affairs (Defra) in Rights of Way Circular 1/09 Guidance for Local Authorities Section 7. Specifically:

24 7.1 states:

“Proposals for the development of land affecting public rights of way give rise to two matters of particular concern: the need for adequate consideration of the rights of way before the decision on the planning application is taken and the need, once planning permission has been granted, for the right of way to be kept open and unobstructed until the statutory procedures authorising closure or diversion have been completed.

25 7.15 states:

“...Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to person whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.”

6 Comments on Considerations

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

26 The development affects the line of the path which must be diverted or extinguished to permit development to proceed. The planning permission is for the extension of the residential curtilage which may include the construction of a small extension of the original footprint of the building for which further planning permission may not be required (for example a porch or conservatory). The area may also be used as a garden and although it is noted that a public right of way may lead through a garden it is a usual feature of a garden to have a shed, a pond or perhaps a garden swing, all of which are structures that would obstruct the right of way and for which no further consent would be required.

- 27 The extension of the residential curtilage would also involve the erection of fencing or hedging to delineate the extended plot and these would form obstructions. The Council has no power to grant a stile or gate in these circumstances and besides, the addition of any limitation on the way would make the route less accessible and would be at odds with the Council's duties to facilitate reasonable access under the Equality Act 2010.
- 28 The applicant may also use some of the extension for an alternative and safer vehicular access. Clearly it would be desirable for the right of way not to share this.

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

- 29 There is no disadvantage or loss to the public in the diversion of the path as proposed. The new route has the same gradient and distance and would be used for the same purposes by the adjoining landowner who would also not be disadvantaged.

iii) Alternative Routes

- 30 There are no alternative routes.

iv) Environmental Impact of the Recommendation

- 31 Planning Consent has been granted with full consideration of the environmental impacts of the proposal. The diversion of the right of way has no significant environmental impact.

v) Risk Assessment

- 32 There are no risks to users of the path associated with the proposed new route.

vi) Legal Considerations and Financial Implications

- 33 The landowner will meet all costs related to the formation of the new path to a standard that is acceptable to the council. The landowner 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) or a public inquiry (approximate cost £3500).
- 34 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.

vii) Equality Impact

35 The Council must have 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.

36 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.

37 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)

38 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.

39 The diversion route offered by this proposal provides a flat and accessible path of comparable distance to the existing one. The route will be well defined and easy to follow. The construction of anew access track will lead to improvements in surface, condition and drainage over the existing one.

8 Options to Consider

- 40
- i) To make an order to divert part of Purton 71 under s.257of the Town and Country Planning Act 1990.
 - ii) Not to make an order to divert part of Purton 71 under s.257 of the Town and Country Planning Act 1990.

9 Reasons for Recommendation

- 41 In order for the development to proceed the public footpath must be diverted. Purton 71 forms a useful network link and it is in the public interest to divert it rather than extinguish it.
- 42 The need to divert the route was clearly shown on the submitted plans throughout the planning consultation process.
- 43 The proposed diversion is a sensible alternative route.

10 Recommendation

- 44 **That Wiltshire Council makes an order under s.257 of the Town and Country Planning Act 1990 and s.53 of the Wildlife and Countryside Act 1981 to divert part of Purton 71 and if after due advertisement no objections or representations are received the Order be confirmed and the definitive map and statement be altered accordingly with certification of the new route.**

Sally Madgwick
Rights of Way Officer

30 July 2013

