



Order Decision

Site visit made on 3 August 2020

by Alan Beckett BA MSc MIPROW

appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 15 September 2020

Order Ref: ROW/3235285

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Wiltshire Council Parish of Westbury Path No. 15 (Part) Diversion Order and Definitive Map and Statement Modification Order 2019.
- The Order is dated 2 April 2019 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Wiltshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. The sole objector to the Order, Mr Morland had initially exercised his right to be heard when preparatory work had been undertaken in relation to the determination of the Order. At that time (December 2019) it was envisaged that Mr Morland's objection to the order could be dealt with by way of a conventional hearing.
2. Due to the public health restrictions arising from the Coronavirus pandemic, physical hearings were suspended in March and remain suspended which meant that it was not possible for the objection to the Order to be heard in the conventional way. It was proposed that a 'virtual' hearing should be held with all parties participating remotely via video or telephone link. However, Mr Moreland declined the opportunity to participate in a virtual hearing and withdrew his request to be heard, although his objection remains to be considered.
3. A late representation to the Order was received from Westbury Town Council. The Town Council submits that it had intended to be represented at the hearing, although as it was not a statutory objector and had not previously indicated its intention to attend, notice of the cancellation of the hearing had not reached it. The late submission made by the Town Council has been circulated and other parties have had the opportunity to comment on the matters raised.
4. I have considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the path at issue on Monday 3 August 2020.
5. Mr Moreland submits that Core Policy 32 of the Wiltshire Core Strategy (adopted January 2015) provided for the strategic allocation of housing at Station Road, Westbury. This housing allocation was to be delivered in accordance with the development template for such strategic allocations as set

- out in Appendix A of the Core Strategy. Mr Moreland contends that the four bullet points in relation to Transport set out on page 368 of the Core Strategy are vital to the delivery of the strategic allocation of houses, and that the masterplan for the site specifically protected the line of Westbury 15 from obstruction by the proposed development.
6. I have scrutinised those parts of the Core Strategy and Appendix A as it relates to the Westbury area and can find no reference to the requirement for footpath 15 to be afforded special protection. Reference is made to the provision of a new railway bridge crossing and improved access to Westbury station, but it is unclear whether this relates to footpath 15 or some other route. Although Mr Morland submits that the 'masterplan' for the site protected the footpath from encroachment, no copy of this 'masterplan' was submitted, and I cannot accord this submission any weight.
 7. Mr Moreland also contends that the relevant planning permission in relation to the Order is the outline planning permission granted (15/12551/OUT) and that the outline permission did not impact upon the alignment of footpath 15. Consequently, the Order should not be confirmed as the diversion was not required to enable development to be carried out in accordance with the permission which had been granted. Mr Morland submits permission 17/12194/REM relates to reserved matters and does not override the outline planning permission.
 8. Vistry Group¹ is the developer of the housing scheme at Station Road and the applicant for the Order. Vistry Group submits the application made in 2015 was in outline only for the "*erection of up to 300 dwellings, public open space, highway infrastructure including bridge over avoiding railway line, and associated works (all matters reserved except access) and the erection of a sailing club and associated works*" and did not contain sufficient detail regarding the final design of the scheme to indicate whether the scheme would impact upon footpath 15.
 9. The outline planning permission, agreeing in principle to the development of the site for housing, was granted in December 2016. Vistry Group submits that it was only at the reserved matters application stage that detailed site layout plans were put forward for consideration. Those plans demonstrated it was possible, with a minor diversion, to retain footpath 15 through the site.
 10. I am not persuaded by Mr Morland's submission regarding the lawfulness of the diversion order at issue. The outline permission would have been lacking in sufficient detail about the positioning of housing units or the location of estate roads for the Council to have been able to determine whether the development would impact upon the alignment of footpath 15. The reserved matters permission provides that detail.
 11. Condition 1 of the reserved matters permission requires the development to be carried out in accordance with the approved plans. The relevant approved plans in relation to footpath 15 are 0683-102-1 C and 0638-102-2 C; these plans show that the line of footpath 15 would be obstructed by the construction of 12 or 13 of the houses for which planning permission has been granted. The relevant permission is therefore 17/12194/REM and the preamble to the Order demonstrates that it has been made in consequence of that permission.

¹ Vistry Group comprises the house builders Linden Homes and Bovis Homes

12. I agree with Mr Morland that the plan attached to the Order does not indicate how footpath 15 will be affected by the development, and greater clarity could have been given to interested members of the public if the order plan had been based on the approved development plan with the current and proposed line of footpath 15 superimposed on it. Notwithstanding this, the approved plans demonstrate that the approved development would adversely affect the current alignment of footpath 15.

The Main Issues

The statutory requirements

13. Section 257 of the 1990 Act requires that I must consider whether it is necessary to divert that part of footpath No 5 at issue to allow development to be carried out in accordance with the planning permission already given but not yet implemented.

Effect of the proposal on other parties

14. Paragraph 7.15 of Defra Circular 1/09 (version 2 of October 2009) advises that in considering whether or not to confirm the Order, the disadvantages or loss likely to arise as a result of the diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing public right of way should be weighed against the advantages of the proposed order.

Background

15. Footpath 15 commences on Oldfield Road and crosses the Westbury Avoiding railway line by means of the Penleigh Park level crossing. The path then runs in a westerly then south westerly direction to its junction with footpath 60. In turn footpath 60 leads to the Dilton Marsh parish boundary and on towards Fairwood Road. A non-definitive spur path leads from footpath 15 and provides a link to the access road extending from Station Approach which provides access to Westbury Station.

Reasons

Whether planning permission in respect of the development has been granted

16. Planning permission for the development of the land off Station Road for housing was given in principle under 15/12551/OUT, with approval of all reserved matters being given under 17/12194/REM. The permissions allow for the development of the site to provide 300 dwellings, together with associated public open space, highway infrastructure and a new bridged railway crossing.
17. I am satisfied that planning permission in respect of the development has been granted.

Whether the diversion of part of footpath 15 is necessary in order to allow development to be carried out in accordance with the planning permission already granted

18. I saw from my site visit that whilst development of the site is progressing with several of the houses closest to Station Road having been completed and occupied, the development in the vicinity of footpath 15 is in its initial stages with preparatory earthworks being undertaken.

19. As I travelled to the site, I received notification that the Council had made an emergency closure order for that part of footpath 15 north of the railway through the development site due to the risk posed to pedestrian safety arising from the construction works being undertaken. An alternative path outside the development site had been created to provide access to that part of footpath 15 unaffected by the development. I understand that in addition to the emergency closure, a Temporary Traffic Regulation Order has been applied for in relation to footpath 15 which will come into force on 21 September 2020.
20. It was not possible to walk that part of footpath 15 within the development site as the site was enclosed by security fencing. From my viewpoint immediately to the north of the railway line I was able to see that the course of footpath 15 had been marked by a series of metal pedestrian gates which had guided pedestrians through the development prior to the emergency closure. I was able to walk the proposed temporary alternative which ran along the south-eastern boundary of the site between the site security fence and the boundary fence of the Avoiding line. Although the Penleigh Park railway crossing at Oldfield Road is fitted with miniature stop lights, the gates at the railway boundary were chained and padlocked at the time of my site visit. The Council has confirmed that the railway crossing was not subject to the temporary closure orders and that the chains and locks on the gates at the railway crossing have been removed to allow pedestrian access to the temporary route of footpath 15.
21. The development of the Station Road site for the construction of 300 houses is development for which approval has been given but has not yet been fully implemented. The approved plans for the development demonstrate that construction of houses would result in the obstruction of the current line of footpath 15 at various points and would render it unusable; the diversion of the footpath is therefore necessary so that the development can be lawfully carried out. I conclude that in order for Vistry Group to be able to implement the planning permission granted, it is necessary for part of footpath 15 to be diverted.

The extent of loss and inconvenience likely to arise either to members of the public generally, or to persons whose properties adjoin, or are near the existing public right of way as a result of the diversion of the footpath

Impact upon members of the public generally

22. The Town Council submits that footpath 15 is of significant historic importance to Westbury as a former railway community in that the path had provided a link between the railway station and the residential area of the town where railway personnel had been housed, and that the integration of this path within the hard surfacing of the development would cause its historic line to disappear forever. The Town Council is of the view that the current line of footpath 15 should be preserved with the development being built around it.
23. Footpath 15 appears to be a recreational route crossing what has hitherto been open countryside; the land crossed by the footpath does not appear to have had any direct association with the railway industry other than it crossing the Avoiding line and running adjacent to the former railway sidings. Whilst it may be the case that the path was used by railway workers to travel between home and their place of employment, the development of the land off Station Road will retain footpath 15 albeit on a slightly different alignment. In addition, the

- approved drawings show the retention of a means of access to Station Approach. Therefore, those wishing to use footpath 15 in the manner that previous generations have done will continue to be able to do so. I consider it unlikely that the diversion of a small section of footpath 15 will have any significant impact upon the industrial archaeological interest of the area.
24. The proposed route would run over the footway of the estate roads which will serve the development. Although the physical nature of the footpath will change from grass and earth to having a sealed surface, the new surface will not be out of place as the overall character of the path will change due to the delivery of the housing development through which it will pass. It will be necessary for users to cross the internal estate road at two points as part of the diversion. However, it is unlikely that the estate roads will be subject to high volumes of vehicular traffic and users are unlikely to be inconvenienced in this respect.
25. The proposed diversion would increase the length of footpath 15 by approximately 5 metres; any user undertaking a recreational walk from Oldfield Road to Fairwood Road will walk approximately 1.4Km on such a journey. I consider that the negligible increase in the overall length of the footpath is unlikely to have any adverse impact upon users. Anyone embarking upon a journey along the footpath 15 in either direction is unlikely to be disadvantaged by the increased length arising from the proposed diversion.
26. The Council has clearly considered that in the interests of public safety a temporary closure of the current line of footpath 15 is necessary during the period when development of the site is actively proceeding. The temporary footpath is around the southern and western perimeter of the development site. Whilst the temporary diversion may cause some inconvenience to those pedestrians wishing to travel along footpath 15, any such inconvenience is likely only to last until the development of the proposed alternative footpath is completed.
27. For the above reasons I conclude that the proposed diversion would not result in disadvantage or loss to those members of the public who would seek to footpath 15.

Impact upon persons whose properties adjoin or are near the footpath

28. There is no evidence before me from which I could conclude that persons whose properties adjoin the existing right of way would suffer loss or inconvenience as a result of the proposed diversion.

Whether the Order should be confirmed

29. The Order has been made to enable Vistry Group to execute the planning permission applied for and subsequently granted. It is clear that the permitted development would obstruct part of footpath 15 and I have concluded that the proposed diversion would not result in inconvenience or loss to the public in general or to those whose properties are adjacent to the footpath.
30. The advantage of the order is that the planning permission already granted can be carried out whilst retaining use of footpath 15. I conclude that there would be no disadvantage or loss to other parties which would outweigh the advantages conferred by the Order.

Conclusion

31. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

32. I confirm the Order.

Alan Beckett

Inspector

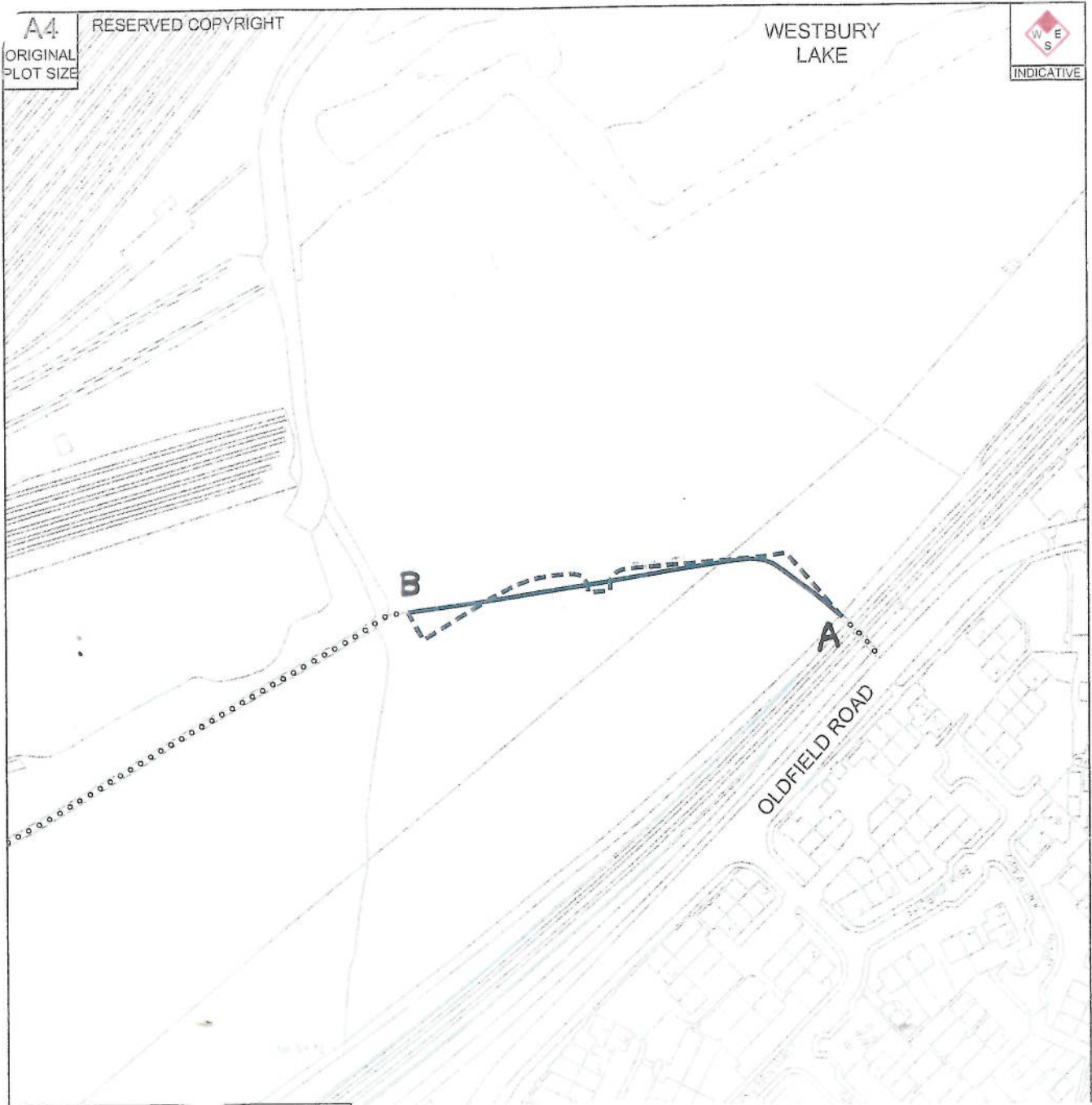
A4
ORIGINAL
PLOT SIZE

RESERVED COPYRIGHT

WESTBURY
LAKE



INDICATIVE



The Diversion of Westbury 15 (part)

Key

Length of Footpath to be closed



Length of New Footpath



Length of unaffected Footpath



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Point A OS Grid reference ST 8627 5153 Scale at A4 = 1:2000

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