

LDC Supporting Statement

Marlborough National Cycle Network Route 403 Realignment

Supporting statement for a Lawful Development Certificate application

Document control

Alternate document control table:

Category	Details
Document number	16121
Version	01
Purpose of issue	For LDC Submission
Date issued	12/06/2026
Originator	AM
Checked	TM
Approved	TM

1. Facts

1.1 Location

- 1.1.1 This Lawful Development Certificate (LDC) application is for the upgrade of 350m of shared use walking, wheeling and cycling path running from Five Stiles Road (What3Words location [///sued.sleeping.paintings](#)) to Priory Court Care Home/ the Tesco Superstore on Salisbury Road, Marlborough (What3Words location [///backfired.quilt.grounded](#)). The route will be an improvement to National Cycle Network route 403 which currently runs off-road along the alignment of a disused railway from Chilseldon (as NCN 482) to Marlborough. At Five Stiles Road the current route has to join the road and continue through Marlborough Recreation Ground and across the A346/Salisbury Road on a crossing which does not meet government cycling infrastructure standards.
- 1.1.2 This LDC proposes to extend NCN 403 along the disused railway alignment, linking into a path between the Priory Court Care Home and Tesco Superstore which currently has a dead end.

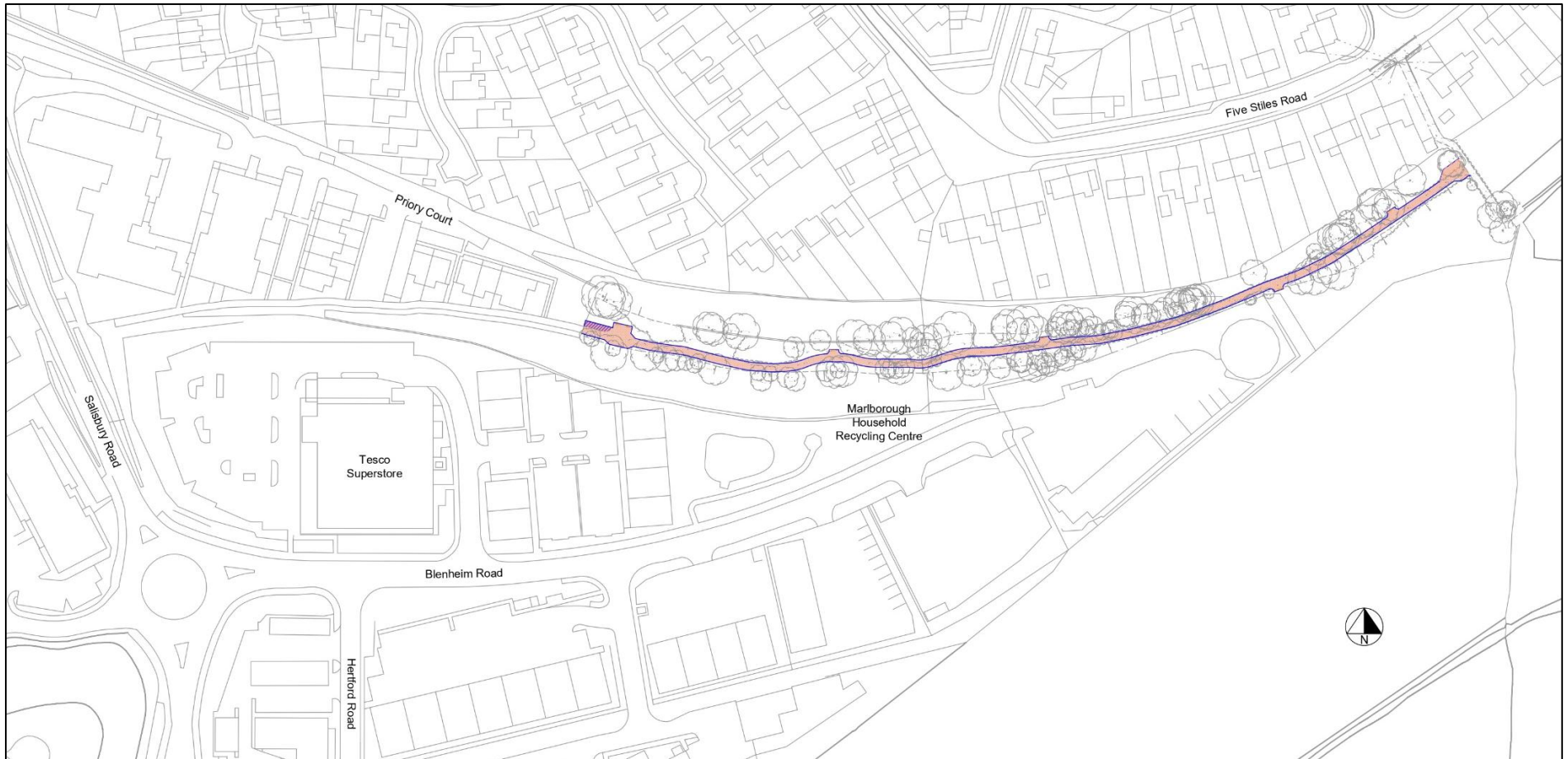


Figure 1 Extents of proposed works

1.2 Current Land Use

- 1.2.1 The disused railway alignment is a vegetated corridor approximately 10m wide, between residential properties to the north and Marlborough Business Park industrial area to the south.
- 1.2.2 Approximately half the length of the path is accessible to the public and there is a well-trodden path used for recreational purposes by the local community. The path is blocked by a gate approximately half way along. 'Steps' have been informally created down a bank so that users can access the pavement on Blenheim Road and continue on to Tesco.
- 1.2.3 To the west of the gate the railway is less vegetated and is unused except for the dumping of some materials. The path leads to an already developed sealed surface path adjacent to Priory Court Care Home which runs down a slope to Salisbury Road roundabout, connecting to Tesco, the Premier Inn and new houses at Jennings Road.
- 1.2.4 The former railway track bed is visible along the full length of the route beneath a thin layer of mud, leaves etc and forms a path down the centre of the corridor. The railway corridor is bound to the north and the south by a combination of fencing, embankment and vegetation.

Land ownership

- 1.2.5 Wiltshire Council own the section of route which is already open to informal use by the public. The route is not a Public Right of Way or a Highway Maintainable at the Public Expense.
- 1.2.6 The other half of the route is in private land ownership and is also not a Public Right of Way.

Background

- 1.2.7 The existing alignment of NCN 403 in this area does not meet Local Transport Note 1/20 standards and therefore its improvement is a priority for Wiltshire Council. The disused railway alignment is a clear desire line for local residents and provides an opportunity for creating a high-quality path linking people to services. The upgraded route would become a realigned section of NCN 403.

1.2.8 The route is included in the draft Wiltshire Local Cycling and Walking Infrastructure Plan 2022. The Plan is due to be updated and published in 2027. As part of the developing LCWIP the alignment was voted second most popular active travel route priority.

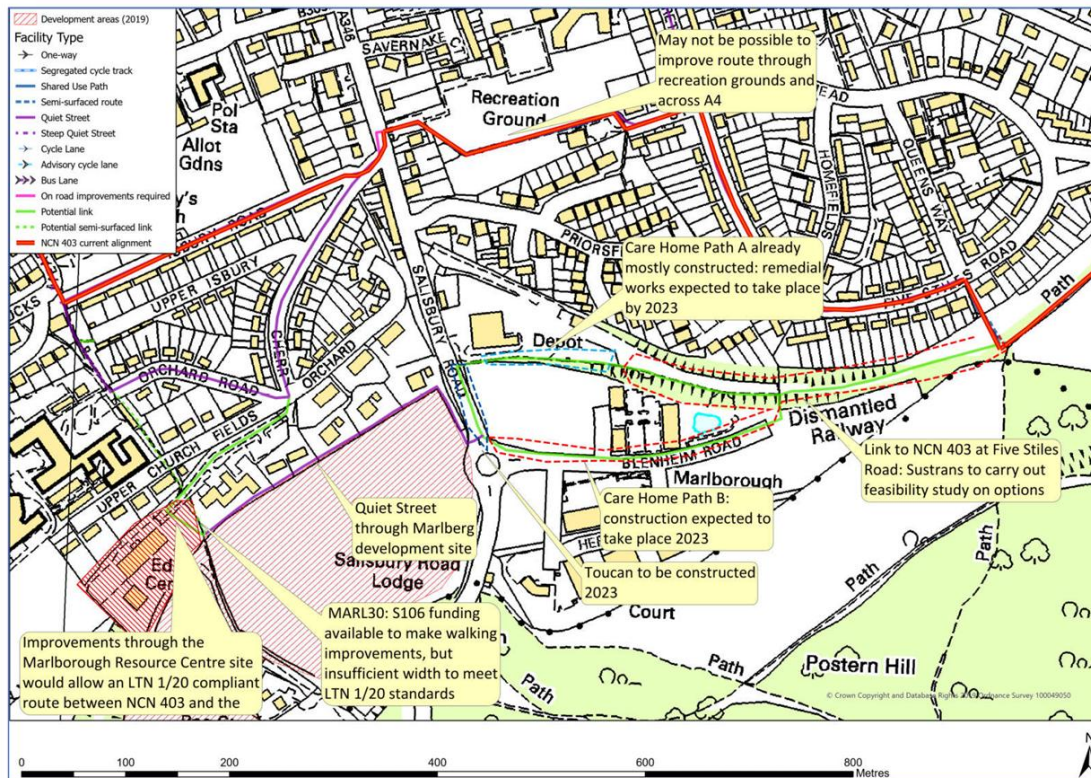


fig. 22
Marlborough
Railway path to
Orchard Road:
proposed
improvements

Figure 2 Excerpt from Wiltshire Local Cycling and Walking Infrastructure Plan showing 'link to NCN 405 at Five Stiles Road' (LCWIP) (2022)

1.2.9 Other consents such as ecology are being dealt with alongside this LDC application. A Preliminary Ecological Appraisal was carried out in 2024 and is submitted with this application. It makes recommendations for further surveys (GCN and reptiles). A reptile survey is being carried out at the moment (June 2026) and an eDNA survey for great crested newt of a nearby pond has been undertaken.

1.3 Proposed Works

1.3.1 The works detailed in this LDC application as shown on the submitted drawings have been designed in discussion with Wiltshire Council, with reference to LTN 1/20 "Cycle Infrastructure Design" guidelines.

1.3.2 The following works are proposed:

- 1.** Construct a 3m wide sealed surface path along 350m of disused railway
- 2.** Install inclusive seating areas/resting places
- 3.** Install cycle parking areas
- 4.** Install placemaking features
- 5.** Remove gates and open up the full 350m route for public use
- 6.** Clear rubble and other detritus from railway alignment

2. Law

- 2.1 We consider – for the reasons set out below – that all the proposed works fall within the scope of Part 9, Class E to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015. Whilst there are other relevant provisions of the GPDO, we have focused on Class E.

Class E, Part 9, Schedule 2 to the GPDO

- 2.1.1 The scope of the permitted works in Class E is described as follows:

Permitted development

E. The carrying out on land within the boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way.

Interpretation of Class E

E.1 For the purposes of Class E, “unadopted street” means a street not being a highway maintainable at the public expense within the meaning of the Highways Act 1980.’

A number of observations can be made about Class E of Part 9, Schedule 2:

- 1) A ‘private way’ means ‘a highway not maintainable at the public expense and any other way other than a highway’, see Article 2(1) of the GPDO.
- 2) An ‘unadopted street’ as defined in E.1 above can include any path which is not a highway maintainable at the public expense: the Secretary of State ruled, in an appeal decision (1996) JPL 70, that permitted development rights in Part 9 (Class A) of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (‘GPDO 1995’) were not limited to public highways - provided that the street or way is not a highway maintainable at the public expense (within the meaning of the Highways Act 1980) it could

include any road, lane, footway, alley or passage, whether a thoroughfare or not. However, for a development to be 'permitted', there must be a recognisable street or way already in existence. [We note that Class A, Part 9 of Schedule 2 to the GPDO 1995 had identical wording to Class E.]

- 3) Class E is not prescriptive about what works are included within the scope of development in that Class, provided they fall within the scope of 'maintenance' and/or 'improvement' of the path.
- 4) There is no cubic capacity or other limit specified in Class E for the works which fall within its scope.
- 5) The words 'maintenance' or 'improvement' are not defined. They are therefore to be given their natural and ordinary meaning.

Definition of 'maintenance' and 'improvement'

2.1.2 We rely on Cowen v SOE and Peak District National Park Authority [1999] 3 PLR 108, CA for the interpretation of (the now) Class E and the word 'improvement' of the street or way. In Cowen, the issue for the Court of Appeal (CA) to decide was the meaning of 'improvement' in Part 9 (Class A), now Class E, Part 9 of the GPDO.

2.1.3 The CA found that the Inspector had been wrong when he proceeded to restrict the ordinary meaning of the word "improvement" in Part 9 of Schedule 2 by comparing it with the word "alteration" in Part 6. They concluded that there was no overriding policy or planning objective which justified giving the words of Part 9 a narrower meaning than they ordinarily bear. The CA found that a decision as to what constituted an 'improvement' was a matter of fact and degree for the decision maker, properly directed (in law) on the applicable statutory provisions in Part 9. Evans LJ held as follows:

"How then is 'improvement' in Part 9 to be defined?

....in my judgment there is no overriding policy or planning objective which justifies giving the words of Part 9 a narrower meaning than they ordinarily bear....

I would agree, however, that the ordinary meaning of 'improvements' is limited to changes which do not alter the basic character of the thing which is improved. But to establish this test, it is necessary to establish what the basic character was.

The primary attribute of the rutted farm track for present purposes was its status as a private way, for vehicles as well as pedestrians. In this sense, the hard surface was an improvement of the way, as the inspector found, but it does not follow from this that its character was changed.

What has changed is the construction of the way. This was the "marked change in character" to which the inspector referred. The issue as I see it is whether Part 9 is limited to improvements that do not alter the surface or method of construction of the way.

There are indications in Part 9 itself that the meaning is not so limited. "Improvement" is permitted as well as "maintenance", and the provision clearly is concerned with the surface of the way. If the relevant character of the way is its status as a vehicular way, then the creation of a hard surface for the way is an improvement without altering its character. Similarly, a pedestrian right of way could be given an appropriate hard surface that was suitable for pedestrians, but it could not be converted for use by vehicles.' (underlining added).

2.1.4 It is clear from Evans LJ's judgment in Cowen, therefore, that:

- It is necessary to establish what the basic character of the path is;
- The path may be improved as well as maintained;
- Part 9 is not limited to improvements that do not alter the surface or method of construction of the way;
- By way of example, a pedestrian right of way could be given an appropriate hard surface that was suitable for pedestrians, but it could not be converted for use by vehicles and fall within the scope of permitted development.

2.1.5 In our submission, the proposed works which form part of this LDC application can properly be described as works of 'improvement'

within the scope of Schedule 2, Part 9, Class E, for the following reasons:

1. The 'basic character' of the existing path is a former railway corridor with a cleared area where the former track bed was and vegetation either side. The railway corridor is bound to the north and the south by a combination of fencing, embankment and vegetation. A small section of wall is present on the northern edge of the western extent of the corridor. It is a path used by the public for recreation (mainly walking) and accessing local services. It adjoins existing sealed surface shared use paths at either end. There is no public motorised vehicular use of the path.
2. The proposed works are all for the purpose of improving this path. Any 'improvement' implies a degree of alteration and the works are required for the improvement of the existing way within the ordinary meaning of that term. The improved path would continue to be a transport corridor used by members of the public. It would be extended and made accessible to a variety of users (people on bikes, mobility scooters, wheelchairs, children on scooters etc, as well as people walking). It would be suitable for walking, wheeling and cycling but it would not be appropriate or accessible for public motorised vehicular use.
3. The path would, therefore, remain a transport corridor and recreational path for the benefit of the public. The basic character of the path would not change and so the works would not go beyond the scope of an "improvement" of the way permitted by Class E, Part 9, Schedule 2.

- 2.1.6 Class E permits works 'within the boundaries of an unadopted street or private way'. The disused railway corridor is not a Public Right of Way or a Highway Maintainable at the Public Expense, therefore is a 'private way'. As described, the railway corridor is bound to the north and the south by a combination of fencing, embankment and vegetation. The proposed works will all take place within these boundaries.
- 2.1.7 In our submission, the following works are works of improvement for the benefit of members of the public who wish to walk, wheel and

cycle from Five Stiles Road to Tesco Superstore and nearby services and developments:

- Construct a 3m wide sealed surface path along 350m of disused railway
- Install inclusive seating areas/resting places
- Install cycle parking areas
- Install placemaking features
- Remove gates and open up the full 350m route for public use (this also falls within the scope of Class C of Part 11, Schedule 2 to the GPDO)
- Clear rubble and other detritus from railway alignment

2.1.8 There would be changes to the existing disused railway corridor and path but these would not alter the basic character of the path. This is consistent with the reasoning in Cowen (supra). These works therefore fall within the scope of permitted development, namely:

1. Class E of Part 9, Schedule 2 to the GPDO - repairs to unadopted streets and private ways; and
2. Class C of Part 11, Schedule 2 to the GPDO - demolition of gates, fences, walls etc.

Registered Office: Walk Wheel Cycle Trust, 2 Cathedral Square, College Green, Bristol BS1 5DD.
T: 0117 926 8893.

Belfast: T: 028 9043 4569. **Cardiff:** T: 029 2065 0602. **Edinburgh:** T: 0131 346 1384.

London: T: 020 7017 2350. **With regional offices in:** Birmingham, Bristol, Glasgow, Leeds, Manchester, Newcastle, Nottingham.

Walk Wheel Cycle Trust is a registered charity no. 326550 (England and Cymru), SC039263 (Scotland) and 20206824 (Republic of Ireland)