

# WARWICKSHIRE COUNTY COUNCIL CYCLE TRACK ORDER 2022

(DPI/H3700/23/20)

## Council's Closing Statement

*\*Bundle references in the form [B/Pg/Para]*

### Introduction

1. These Closing Submissions should be read together with Warwickshire County Council's ("the County Council") Opening Statement to avoid unnecessary repetition together with Mr Morris' proof of evidence and the representation submitted on behalf of the Warwick District Cycleways and Clean Air Warwickshire groups.
2. The County Council's overarching submission is that Cycle Track Order 2022 dated 8 December 2022 ("the Order") is vital to delivering on the County Council's local active travel strategy and consistent with national policy goals of improving active travel infrastructure. The realisation of the benefits from introducing cycle infrastructure can only happen once a functioning network of routes is in place. The Order has been properly consulted on, alternatives considered and the final design provides the necessary alignment and is responsive to concerns raised by local residents.

### The Scheme

3. The Cycle Track Order (the Order) is needed to deliver the northern section of the A429 Coventry Road cycle route. The Scheme is a 1.15km cycle route, which is focused on providing a safe and direct cycling route between the Spinney Hill roundabout on the outskirts of north Warwick and the St Johns junction.
4. The route has a number of clear benefits:

- a. it achieves best-practice under LTN 1/20 guidance including providing a segregation from motor vehicles and a 3m wide tarmacked route;
- b. this segregation will lead to a safer cycling environment, particularly in light of recorded accident data on the A429 Coventry Road **[B/94]**;
- c. the gradient of Coventry Road means this off-road cycle track will deliver a significantly more attractive route for cyclists than the status quo which involves sharing the road with motorised vehicles;
- d. it provides convenient, direct and attractive traffic-free facilities suitable for all ages and abilities of cyclists;
- e. its location means that residents of Woodloes park and surrounding neighbourhoods north of Warwick will receive an immediate benefit;
- f. it provides connections to Leek Wooten, Warwick Hospital and Kenilworth.

### **Some context**

5. The proposals simply involve the formalisation of a path that is already well used.
6. As Mr Morris set out in his oral evidence, the Scheme is supported by:
  - a. Town and District Councils;
  - b. Leader of the County Council;
  - c. Matt Western MP;
  - d. Warwick District Cycleways (local cycling group) and Clean Air Warwickshire, which together represent hundreds of residents and business owners local to Warwick, Leamington Spa and Kenilworth;
7. The Order is important and the County Council does not have forever. There are time limits on at least two of the funding schemes required to deliver the Scheme.

8. There have been six objections. We find ourselves in this inquiry not because any of these are of particular merit but because the 1984 Act requires the highway authority to submit an opposed order to the Secretary of State for confirmation<sup>1</sup>, who will usually require a local inquiry to be held.<sup>2</sup>

### **Objection 1: Whether the Scheme is within highway land?**

9. This is an objection raised by Ms Kitchen [B/9] and dealt with at section 4 of Mr Morris' PoE [B/39/4.1-4.2]. While there is reference in Ms Kitchen's representation that the land falls outside the designated highway boundary and is covenanted green space, resulting from a planning requirement, she has not presented any evidence before this inquiry to substantiate that claim.
10. This is ultimately a question of law. A local highway authority may only make an order to convert a footpath into a cycle track in respect of footpaths for which they are the highway authority: s.3 of the 1984 Act. Mr Morris's evidence is clear:
  - a. the Highway Extent Plan [B/44-45] is a map of the highway showing land that is maintainable at public expense;
  - b. the land captured by the Order is shown on that plan;
  - c. the plan was created following a search by Council's Searches teams of Council record. Essentially the land became publicly maintainable highway pursuant to an agreement made under s.40(1) of the Highways Act 1959 (since replaced by s.38 Highways Act 1980) between Warwick District Council and the landowner in February 1974. At that time, the District Council was acting as an agent for the County Council, as the highway authority.

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<sup>1</sup> Section 3(1)(a) of the 1984 Act.

<sup>2</sup> Regulation 6 of the Cycle Tracks Regulations 1984.

11. The County Council is of no doubt that it is the highway authority for all of the land covered by the Order such that it has the power to make the Order. As such, this objection goes nowhere.

**Objection 2: Whether the Scheme complies with the development plan?**

12. This is an amenity objection raised by Ms Kitchen [B/10] and is couched in similar terms to objections raised by Ms Jones [B/11] and Ms Malik [B/16]. The starting point is that neither the 1984 Act nor any aspect of government policy provide any statutory tests or guidance that must be applied when deciding whether or not to confirm orders to convert footpaths into cycle tracks.

13. Ms Kitchen relies on policies BE3 and BE1. Starting first with BE3, the explanatory text to the policy is clear that it is “*applicable to all development proposals*” [B/132/5.20], although the County Council’s case is that this is limited to those proposals requiring the planning permission of the local planning authority. However, this is not such a case. Once the Order is confirmed by the Secretary of State, the cycle track constitutes development that will have deemed planning permission (s.3(10) of the 1984 Act) and policy BE3 cannot change that position.

14. The question then becomes whether, nonetheless, the amenity of nearby uses and residents remains a relevant consideration for the purpose of determining whether to confirm the Order. The County Council does not dispute that it is. However, taking this back to the context, this is a footpath that is already widely used by cyclists and Mr Morris’ oral evidence has shown how the County Council has ensured the Scheme’s design is responsive to local residents’ amenity concerns, in particular:

- a. lighting design [B/134];
- b. choosing a route that maintains the landscape buffer between the road and adjacent residential properties;

- c. choosing an option that moves the route further away from 8 and 9 Huddisdon Close **[B/18]**, consistent with existing desire lines.

15. Ms Kitchen’s reliance on policy BE1 does not change the position. This policy relates to the “Built Environment” and the Council’s case is that this does not apply to the conversion of an existing footway to a cycleway. In any event:

- a. the policy requires developments to demonstrate that they *“harmonise with, or enhance, the existing settlement in terms of physical form, patterns of movement”*; and
- b. as explained in its explanatory text:
  - i. it’s objective *“is to achieve good layout and design for all new development”*;
  - ii. *“[t]he Council is keen to encourage development solutions that will embrace sustainable planning objectives in order to bring forward positive impacts on the environment.”*

16. This is a well-designed Scheme that would clearly comply with the policy, were it to apply.

17. Having dealt with those two policies, Mr Morris set out the relevant scheme of national and local policy in his evidence **[B/37/3.1 – 3.13]**:

- a. First, Department for Transport: Gear Change; A bold vision for cycling and walking (2020) **[B/37/3.4]**:
  - i. sets out the Government’s ambition to transform the role cycling and walking play in our transport system to achieve a number of benefits including the creation of better connected, healthier and more sustainable communities;
  - ii. sets a vision that *“England will be a great walking and cycling nation”* with a target that *“Cycling and Walking will be the natural first choice*

*for many journeys with half of all journeys in towns and cities being cycled or walked by 2030.”*

- b. Second, Department for Transport: The Second Cycling and Walking Investment Strategy (2023) **[B/37/3.4]** – sets out the Government’s ambitious target that 50% of all journeys in town and cities should be walked or cycled by 2030.
- c. Third, Department for Transport: LTN 1/20 **[B/38/3.7]** - provides guidance to local authorities on delivering high quality, cycle infrastructure based on five core design principles; that networks and routes should be coherent, direct, safe, comfortable and attractive. It reflects good practice, standards and legal requirements and the Scheme has been planned and designed in accordance with it.
- d. Fourth, Warwickshire Local Transport Plan 4 (2023) **[B/38/3.7]** - places active travel at the top of a hierarchy of transport in urban areas and has a focus on contributing to Net Zero targets and identifies active travel as key to reducing carbon emissions.
- e. Finally, the draft LCWIP **[B/38/3.7-10]** - the Scheme is listed as a 'Programmed' cycle route in WCC's LCWIP **[B/124]**. The delivery of the LCWIP is of particular local importance (see **Warwick District Cycleways rep, pg. 2**).

18. As such, when the wider policy context is considered, any minimal remaining amenity impact cannot possibly rise to the level of being a clear reason for recommending refusal of confirmation of the Order, given the clear national and local policy requirements to deliver high quality cycle infrastructure.

**Objection 3: Whether there will be adverse ecological impacts due to the removal of trees?**

19. This is a complaint raised by Ms Kitchen [B/9-10], Ms Jones [B/11] and Ms Malik [B/16]. This is dealt with at section 6 of Mr Morris PoE [B/39-40/6.1-6.2], which makes it clear:

- a. the land captured by the Order and that is the focus of this inquiry is already currently used by pedestrians and cyclists (see images at [B/46-47]) and the formalisation of this is not expected to have any additional adverse impacts on biodiversity;
- b. the proposals require only two trees to be removed (see Detailed Design Plan at [B/149/View 2] in order to accommodate a desirable safe cycle track width that will also provide good sightlines for those using the track;
- c. the County Council's Forestry Officer has confirmed that the loss of these trees is not of concern and mitigation will be provided through the replacement of trees on a 2 for 1 basis in the local area;
- d. the existing landscape buffer between the Coventry Road and the proposed track will not be affected.

20. As to wider ecological impact, the proposals have been assessed by the County Council's ecology specialists. More specifically, an assessment of potential bat roosting sites has been undertaken this confirms the trees to be removed are of low or negligible suitability for roosting bats. The Bat Technical Report can be seen at [B/53].

21. It is right that the Technical Report has not been updated. However, as the Inspector has already been made aware, that report recommended tree removal works be undertaken only after further pre-inspection by an Ecological clerk of works (ECoW) and that he or she is present for the duration of the clearance works. This recommendation (along with all other recommendations to help mitigate impact on bats) is accepted the County

Council will carry out any further ecological studies on the request of the ECoW.

22. This is a non-issue.

**Objection 4: Whether there will be negative environmental issues due to the impact of the streetlighting, noise, littering, anti-social behaviour.**

23. This objection flows from the representations of Ms Jones [B/11] and Mr Altes [B/15]. The County Council's response is set out at section 7 of Mr Morris' PoE [B/40/71-7.4].

24. As to lighting:

- a. the Warwickshire Design Guide requires cycleways within the highways to be lit [B/134];
- b. the streetlighting design in respect of this scheme has been prepared with consideration of the local environment [B/134]. The apparatus chosen will only illuminate the target areas- see Street Lighting Plan at [B/150];
- c. given the amenity and privacy concerns, streetlight columns will be fitted with back shields, facing away from residential properties, minimising undesirable light spillage;
- d. further, the light sources will be altered to a different colour temperature to remove any impact of lighting on bats along the Scheme;
- e. the effect of lighting is that it will help to detect potential hazards, discourage crime and increase the feeling of security along the route.

25. There is just no evidence that the tarmacking of a footpath that is already in regular use and additional lighting will lead to increased noise, littering or anti-social behaviour.



26. This also seems the most appropriate place to deal with additional flood risk, which is a point raised by Ms Kitchen [B/9]. As Mr Morris stated in his oral evidence, the proposed cycle track would be designed with adequate drainage in mind, and would be constructed with a fall away that drains any surface water towards the ditching that runs between the proposed track and the Coventry Road.

27. Again, this objection goes nowhere.

**Objection 5: Whether the Scheme has been appropriately designed and alternative alignments properly considered?**

28. The two most prominent proponents of alternative routes are Ms Bridgman [B/8] and Mr Rutherford [B/13].

29. The cycle tracks within the Scheme provide a cycling alignment that meets the LTN 1/20 Core Design Principles within the scope and budget of the Scheme: see paragraph 17.c) above.

30. Mr Morris' evidence has shown that:

- a. alternative routes have been considered (see Morris PoE [B/41/8.2-8.3] and Alternatives Plan [B/75]) and these have been rejected on the basis of safety, the desire to maintain the landscape buffer, and compliance with LTN 1/20 (including the 3m width) and arboriculture/ecology; and
- b. further, no suitable alternative off-road design could be achieved due to the physical barrier created by the ditch and treeline that runs parallel to the footway on the A429 Coventry Road.

31. This objection must also be dismissed.

**Objection 6: Whether the Scheme will cause safety issues due to cyclists joining the carriageway in front of properties and cyclists using the carriageway.**

32. This is a concern raised primarily by the objectors who live on Huddisdon Close (Mr Rutherford and Mr Altes) and dealt with at section 9 of Mr Morris' PoE [B/41-2]. The starting point is that the Road Safety Audit raised no concerns regarding the route in the Order [B/74-75].
33. Further, the short section of proposed cycle track fronting 9 & 11 Huddisdon Close is required to provide access to the existing cycleway north of Primrose Hill junction (National Cycle Network Route 52). It is important to note that the route is currently used by cyclists and pedestrians. As such, this section of the route will have limited added impact on adjacent residents as it will not affect their existing access arrangements or introduce additional conflict or safety issues for cyclists or pedestrians.
34. The reality is that complaints about parking go nowhere and these residents will simply have to exercise due care and attention while sharing the road when entering and exiting their driveways,<sup>3</sup> as others on Huddisdon Close already do [B/18].
35. If a later issue arises around the speed at which cyclists are exiting the roundabout and entering the track, the County Council has a number of tools at its disposal to control this behaviour. Indeed, Mr Morris explained that this is exactly the approach that has been undertaken on the Woodloes cycle track. In addition, he showed that the County Council's "wait and see" approach is consistent with national policy and more likely to lead to increased use of the Scheme.
36. The County Council has had regard to and will continue to monitor the safety concerns of residents – particularly those at 8 and 9 Huddisdon Close. However, the Inspector is asked not to prioritise the turning movements of a few individuals over the potential of what can be achieved by opening up the

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<sup>3</sup> Rule 159 of the Highway Code.

cycle network in the manner proposed by the Order and to the benefit of the District as a whole.

## **Conclusion**

37. As the use of motor vehicles has increased and, on certain parts of the highway, has come to dominate carriageway traffic, new legislation such as the 1984 Act has been introduced to protect and encourage cyclists' use of highway land and minimise potential conflict between motor vehicles and cyclists.
38. This is a well-designed scheme in which the County Council is seeking to formalise the position in respect of an existing route to enable it to deliver high-quality active travel infrastructure in the District. Such a goal is also consistent with national policy. The representation submitted on behalf of the Warwick District Cycleways and Clean Air Warwickshire groups shows that this has widespread support from residents in this area.
39. Mr Morris' evidence has dealt with every objection raised by the objectors and when these are considered against the benefits the Scheme is expected to deliver, the Inspector is respectfully invited to recommend confirmation of the Order.
40. Two final points of administration:
  - a. if the Inspector is minded to make this recommendation, the spelling of "Townsend Close" and "Huddisdon Close" will need to be corrected in the Order if confirmed;
  - b. as the Inspector identified in the inquiry, there is a discrepancy between the positioning of the street lighting on the plan currently appended to the Order **[B/4]** and the Street Lighting Plan **[B/150]**. The correct position is that shown on the latter plan and the County Council will produce an updated Order plan to correct the position.

**Dated 11 January 2024**

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