

Wiltshire Council

Western Area Planning Committee

15 June 2011

Proposed Diversion Of Edington Bridleway 15 (Part) And Keevil 5 (Part)

Purpose of Report

1. To:
 - (i) Consider and comment on the objection received to an Order, made under Section 119 of the Highways Act 1980, proposing to divert a section of Edington Bridleway 15 and a section of Keevil Bridleway 5.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for confirmation.

The proposed diversion is shown on the plan attached at **Appendix A**. A location plan showing the surrounding land and path network is attached at **Appendix B**. Photographs of the existing and proposed routes are attached at **Appendix C**.

Background

2. The Council has a power to divert any public path, or part of any public path, under the Highways Act 1980 Section 119 if it is expedient to do so in the interests of the landowner and if certain legal tests laid out below in paragraph 12 are met. Wiltshire Council received an application on 12th August 2010 to divert parts of public bridleways Keevil 5 and Edington 15 and an Order was subsequently made on 15th February 2011 by Mark Boden, Corporate Director of Neighbourhood & Planning. The Order was made because the diversion was expedient in the interests of the landowner for reasons of privacy (parts of existing route are very close to farm buildings), and land management (part of the path cuts diagonally across an arable field and part of the existing path passes through a field with cattle)..
3. In August 2010, Council Officers consulted widely on a proposed diversion of part of Edington Bridleway 15 and part of Keevil Bridleway 5 at Newhurst Park Farm, Keevil (as shown in **Appendix A**). The consultation was sent to landowners, Keevil and Edington Parish Councils, neighbouring properties, statutory undertakers and a range of groups representing users, both locally and nationally. The user groups consulted include the Ramblers Association, the British Horse Society, the Wiltshire Bridleways Association and the Byways and Bridleways Trust.

4. Responses were received from the landowner, Edington Parish Council, Keevil Parish Council, Development Control, various statutory undertakers, Wiltshire Bridleways Association and the Ramblers Association. The only representation against the proposed diversion was from the Ramblers Association, expressing the view that it was more pleasant to cross a field than to go around the edge on a track and proposing different diversions.
5. After a further exchange of correspondence with the Ramblers Association a decision to make an Order was taken by the Corporate Director of Neighbourhood & Planning and an Order was made on 15 February 2011. Notice of the Order was advertised in a local paper, copies of the notice were erected on site and on the Parish Council notice boards and there was a Statutory Consultation involving all parties mentioned above in paragraph 3, allowing 28 days for any objections to the Order to be received by the Council.
6. The only objection received was from the Ramblers Association, who state that there would be no benefit to walkers and that the diverted route is longer. The letter of objection dated 18 March 2011 is attached as **Appendix D**.
7. A letter was subsequently sent to the Ramblers Association seeking withdrawal of the objection because the legal tests for confirming the Order were met but this proved to be unsuccessful and the objection remains outstanding.

Main Considerations for the Council

8. Wiltshire Council has the power to make Orders to divert public paths under Section 119 of the Highways Act 1980.
9. The Order may be made in the interest of the public or in the interests of the landowner. This Order was made in the interests of the landowner but can only be confirmed if the new path or way will not be substantially less convenient to the public, having regard to the effect of the diversion on the public enjoyment of the path or way as a whole.
10. The Council has received an objection to the proposed Order and Members have to decide whether they still wish to support the Order or formally resolve not to proceed with it.
11. Section 119(1) of the Highways Act 1980 states that:

“Where it appears to a Council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the Council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order:

- (a) *create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and*
- (b) *extinguish, as from such date as may be [specified in the order or determined] in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the Council requisite as aforesaid.*

An Order under this section is referred to in this Act as a “public path diversion order”.

12. Section 119(2) of the Highways Act 1980 states:

“A public path diversion order shall not alter a point of termination of the path or way:

- (a) if that point is not on a highway; or*
- (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public”.*

In this case the start and end points of the diversion are the same as existing.

13. The Committee must now consider the second test under Section 119(6) which must be met at the Order confirmation stage.

“The Secretary of State shall not confirm a public path diversion order, and a Council shall not confirm such an Order as an unopposed Order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in Sub-section (1) above and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the Order having regard to the effect which:

- (a) the diversion would have on public enjoyment of the path or way as a whole;*
- (b) the coming into operation of the Order would have as respects other land served by the existing public right of way; and*
- (c) any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it.*

14. The Council must have regard to The Equality Act 2010 which 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 persons who are not disabled. This duty is named in Section 149 of the Act as the ‘*public sector equality duty*’.

15. The Council must have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP). The ROWIP recognises the Council's duty to have regard to the Disability Discrimination Act 1995 (now repealed and replaced by the Equality Act 2010) and to consider the least restrictive option when considering whether to implement gaps, gates or stiles on new routes.
16. The Council must have regard to the needs of agriculture and forestry.

Comments on the Objection

17. The letter of objection indicates that the diversion is longer than the existing route; it is not (see paragraph 18(a) below). The objection letter also states that the diversion is not in the interest of walkers.
18. The legal tests to be met for an Order to be confirmed are that:

(a) The path will not be substantially less convenient to the public in consequence of the diversion and

(b) 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.

(a) **Not substantially less convenient:**

The new route is wider than the existing path and the gradient is similar. It will be well signed and will have easier accessibility because of fewer gates/stiles. The proposed route is also shorter at approximately 740 metres opposed to approximately 800 metres. Therefore it is wholly reasonable to say that the new route is not substantially less convenient than the existing route.

(b) **Effect which the diversion would have on public enjoyment of the path or way as a whole:**

The diversion, by replacing a cross-field path with a field-edge path, still offers similar views of the same open field and also gives views of another adjacent open field. On the other side of the field-edge path are hedgerow views, which many people find interesting. The existing route also passes very close to domestic buildings which in the Officer's experience tends to make many walkers feel embarrassed or uncomfortable, whereas the new route avoids this, giving a more rural feel to the walk. These points amply demonstrate that there is no substantial detraction to the public's enjoyment of the way as a whole.

19. The Order has no effect on other land served by the existing right of way.
20. By offering easier accessibility with fewer gates/stiles, the diverted route fulfils the Council's 'Public Sector Equality Duty' under Section 149 of the Equality Act 2010 and also compliments the 'Least Restrictive Option' principle in Wiltshire Council's Rights of Way Improvement Plan.

Environmental Impact of the Recommendation

21. There are no significant environmental implications arising from the recommendations set out within this report.

Risk Assessment

22. There are no risks associated with the diversion that are over and above the normal risks associated with using any other rural public bridleway.

Financial Implications

23. The making of a public path diversion order is a discretionary duty of the Highway Authority, rather than a statutory duty. Provision has been made within existing budgets for the costs involved in processing this Order.
24. If the Committee decided to refer the Order to the Secretary of State with the request that it should be confirmed, the Secretary of State must decide the most appropriate method of reaching his decision. In cases where there are few objections to an Order and these are of a relatively straightforward nature, it is often appropriate to make the decision after an exchange of written representations or by means of a hearing. Provision has been made within existing budgets to cover this.

Options Consider

25. The following options have been considered:
 - (i) Not to continue with the Order.
 - (ii) That the Order be referred to the Secretary of State for determination with the recommendation that it be confirmed as made.

Reasons for Recommendation

26. The proposed diversion meets the tests contained in Section 119 of the Highways Act 1980.

Recommendation

27. That the Order be referred to the Secretary of State for determination with the recommendation that it be confirmed as made.

Mark Boden

Corporate Director for Neighbourhood and Planning

Report Author: **Tim Chinnick, Rights of Way Officer**

The following unpublished documents have been relied on in the preparation of this Report: Correspondence to and from objector