

CABINET MEMBER FOR HIGHWAYS AND TRANSPORT – MR R TONGE

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PROPOSED APPLICATION TO DIVERT PARTS OF BYWAYS OPEN TO ALL TRAFFIC
NETHERAVON 9 AND FIGHELDEAN 21 and 25

Purpose of Report

1. To ask the Cabinet Member for Highways and Transport to consider whether to consent to a proposal by officers to apply to the magistrates' court for an order diverting parts of byways open to all traffic Netheravon 9 and Figheldean 21 and 25.

Background

2. All of these routes lead over land owned by the Ministry of Defence and have become part of an area of land called the Larkhill Artillery Range. This area of land is affected by the Larkhill Artillery Range Byelaws (Statutory Instrument No. 1327 1965) and the routes within the range boundary may be closed to the public when the range is in use.

3. In practice this occurs generally between 0830 and 1700 on weekdays, overnight on some days and during some weekends. Public access to this area is popular at weekends and evenings and the area is criss-crossed with hard surfaced tracks which the public regularly drive on to gain access to the centre of the plain and the peripheral villages. They are also extensively used for walking, horse riding and cycling.

4. The public rights of way in this area are largely historically based having been former coaching roads across Salisbury Plain before the land came into the War Department's ownership late in the 19th century or early in the 20th century.

5. The lines of these paths in the definitive map reflect these historic routes but changes in land use under the War Department's ownership has meant that some parts of these historic lines have become obscured as the public have chosen to use the more commodious hard surfaced tracks provided by the War Department and more recently the Ministry of Defence.

6. In the majority of cases these hard tracks coincide with the historical routes and no problems arise. However, for parts of Netheravon 9 and Figheldean 21 and 25 the historical

route is not used and has become obscured by firing platforms and undulating ground. The lack of reference points on Salisbury Plain makes navigation difficult and there is danger from unexploded ordnance lying undetected in this obscured ground. In 2007 there was an incidence of a ridden horse detonating a live round while not on a stoned track. Although the public could use the definitive lines, they are clearly not the chosen lines and people use the better defined and safer military tracks.

7. The byelaws preclude the acquisition of public rights by s.31(1) of the Highways Act 1980 and at common law.

8. The plans at **Appendix 1** and aerial photograph at **Appendix 2** show the effects of the proposal which seeks to:

(i) Plan A - divert all public rights on Figheledean 21 between points A and B and points C and D as shown by a bold black line at Larkhill Race Course to a track leading south from A to point E as shown by a black dashed line. The width of route A to E is 5 metres.

(ii) Plan A - divert all public rights on Figheledean 25 between points W and X as shown by a bold black line to a track leading south - south east from Y to point Z as shown by a black dashed line. The width of route Y to Z is 5 metres.

(iii) Plan B - divert all public rights on Netheravon 9 between points A and B as shown by a bold black line to a track leading south west from C to A as shown by a black dashed line. The width of the route is 12.1 metres.

9. Under Section 116 of the Highways Act 1980, Magistrates' Courts have a power to authorise the stopping up or diversion of highway, as follows:

(1) Subject to the provisions of this section, if it appears to a magistrates' court after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the highway authority have made an application under this section –

(a) is unnecessary, or

(b) can be diverted so as to make it nearer or more commodious to the public,

The court may by order authorise it to be stopped up, or as the case may be, to be so diverted.

[sub-section 2 has been repealed]

(3) If an authority propose to make an application under this section for an order relating to any highway (other than a classified road) they shall give notice of the proposal to –

(a) if the highway is in a non-metropolitan district, the council of that district; and

(aa) if the highway is in Wales, the Welsh council for the area in which it is situated if they are not the highway authority for it; and

(b) if the highway is in England, the council of the parish (if any) in which the highway is situated or, if the parish does not have a separate parish council, to the chairman of the parish meeting; and

(c) if the highway is in Wales, the council (if any) of the community in which the highway is situated;

and the application shall not be made if within two months of the date of service of the notice by the authority notice is given to the authority by the district council [or Welsh council] or by the parish or community council or, as the case may be, by the chairman of the parish meeting that the council or meeting have refused to consent to the making of the application.

..

(5) An application under this section may include two or more highways which are connected with each other.

10. The Director of the Department of Neighbourhood and Planning is satisfied that the diversions onto routes A – E and Y – Z on Plan A and route A – C on Plan B as shown on the plans at **Appendix 1** would be more commodious to the public than the present routes and he is therefore willing, subject to the Cabinet Member's consent, to make the proposed application.

11. Figheldean Parish Council, Netheravon Parish Council and the landowner (the Ministry of Defence) have consented to the proposed application. A copy of each of the respective consents dated 4 April, 28 March and 8 February 2011 is attached at **Appendix 3**.

Main Considerations for the Council

12. Case law has clarified that in deciding whether to make an application, the Highway Authority has to consider all the factors which would be relevant to the consideration by a Magistrates' Court of whether an order should be made. In the case of a proposed application for a diversion of a highway, the new route must be 'nearer or more commodious'. 'Commodious' has a flavour of convenience, roominess and spaciousness'.

13. The central question to be addressed is whether the highway concerned can be diverted to make it either nearer or more commodious to the public. If the answer is that it can, the authority should consider whether there are reasons why an application should not be made?

Conclusion

14. Officers consider the following:

(i) Figcheldean 21 (Plan A) A to E. The new route is of similar length to the route to be extinguished. It provides a straighter route that is well defined and does not require the user to go close to buildings associated with the racecourse. It is the used route.

(ii) Figcheldean 25 (Plan A) Y to Z. The new route does not traverse an area of terraced land in the demonstration area and is a clear and logical route. It is also further from the Aircraft Landing Ground. It is the used route.

(iii) Netheravon 9 (Plan B) Route A to C. The new route is slightly shorter and follows a well defined track giving certainty and clarity to the user. It is the used route.

15. All new routes provide the public with a clearer route that is more naturally used in an area with very few landmarks and over which navigation is difficult. The fact that the routes are the preferred routes for users supports their commodity value. Officers do not consider that there is a good reason why the application should not be made and would therefore be willing to proceed with an application if the Cabinet Member decided to give consent.

Environmental Impact of the Proposal

16. The proposed new routes are over surfaced tracks. Use of these instead of the soft unsurfaced and grassy tracks will protect the immediate environment.

Equalities Impact of the Proposal

17. The new routes are more accessible to all users as the terrain is less undulating and obscured.

Risk Assessment

18. None

Financial Implications

19. The legal and advertising costs incurred in making an application to divert the highway would be borne by the Council.

Options Considered

20. The Cabinet Member for Highways and Transport may resolve to:

(i) Refuse to give consent to the application in which event, reasons should be given for doing so.

(ii) Consent to the application.

Proposal

21. It is proposed that the Cabinet Member adopt the option at 20(ii) above.

Reasons for Proposal

22. Officers are satisfied that the sections of highway can be diverted so as to make them more commodious to the public as the diverted routes would provide greater accessibility for all users. It would therefore benefit the public.

The following unpublished documents have been relied on in the preparations of this report:

None