

HIGHWAYS ACT 1980 AND WILDLIFE AND COUNTRYSIDE ACT 1981
THE WILTSHIRE COUNCIL PARISH OF NORTON BAVANT PATH NO.4 (PART)
DIVERSION ORDER AND DEFINITIVE MAP AND STATEMENT MODIFICATION
ORDER 2015

Purpose of Report

1. To:
 - (i) Consider the objection and representations received to the making of “The Wiltshire Council Parish of Norton Bavant Path No. 4 (part) Diversion Order and Definitive Map and Statement Modification Order 2015” under Section 119 of the Highways Act 1980 and Section 53 of the Wildlife and Countryside Act 1981.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination, with a recommendation from Wiltshire Council that the Order be confirmed with a small modification to the definitive statement.

Relevance to Council’s Business Plan

2. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. On 20 May 2015 Defence Infrastructure Organisation, on behalf of the Ministry of Defence, applied to Wiltshire Council to divert part of bridleway Norton Bavant 4 where it leads over Scratchbury Hill, a Scheduled Monument. Please see a location plan attached at **Appendix A** and the proposed diversion in the Order attached at **Appendix B**.
4. The application was made to facilitate better access over the training estate, to improve the accessibility of the Imber Range Perimeter Path, to reduce impact on the historic monument and to reduce conflict between agricultural management and recreation. The proposed diversion also reduces the number of gates on the route of the path from five to two.
5. The landowner also proposes the creation of an additional footpath link and this Order is attached at **Appendix C**. This Order was made concurrently with the diversion order and although it has attracted no objections may only be confirmed if the diversion order is confirmed and comes into effect.

6. Wiltshire Council carried out an initial consultation regarding the proposals. Although at that stage the Ramblers Association objected to losing the ability to walk the path to North Farm and over the northern slope of Scratchbury Hill, they did admit that they had been unable to follow it and have not objected to the Order. Support for the diversion was received from other parties, user groups and Historic England.
7. The case officer produced a Decision report, attached at **Appendix D**, in which they considered the application against the legal tests for diversion under Section 119 of the Highways Act 1980 and creation under s.26 of the same Act. The report made a recommendation to senior officers that the bridleway and a few metres of the adjoining footpath should be diverted under Section 119 of the Highways Act 1980, in the interests of the landowner and of the public and also that a length of footpath should be created on Scratchbury Hill. This recommendation was approved on 21 July 2015.
8. The Orders were subsequently made and notice duly served and posted.
9. Following the making of the Order, Wiltshire Council received one objection (from Mr F Morland) and two representations (from Mr A Wright and Mr J Pritchard). As a result, the Council may not confirm the Order which may be forwarded to the Secretary of State for determination.
10. Members of the Committee are now required to consider the objections received, against the legal tests for making and confirming a Public Path Diversion Order under Section 119 of the Highways Act 1980, in order to determine whether or not the Council continues to support the making of the Order.
11. If the Committee does continue to support the making of the Order, the Order must be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for determination and the Members of the Committee must decide the Wiltshire Council recommendation which is attached to the Order when it is forwarded i.e.:
 - (i) that the Order be confirmed as made, or
 - (ii) that the Order be confirmed with modification.
12. Where Wiltshire Council no longer supports the making of the Order, Members of the Committee may determine that the Order is withdrawn. Withdrawal of the diversion order would mean that the creation order would also not proceed and the additional footpath would not be created and recorded.

Main Considerations for the Council

13. The Public Path Diversion Order is made under Section 119 of the Highways Act 1980. The requirements of this section of the Act are set out in full in Section 6 (pages 18 – 20) of the decision report attached at **Appendix D**.
14. The Planning Inspectorate's Advice Note 9 on 'General guidance on public rights of way matters' states:

“27. Section 119(6) was considered in *R (on the application of Young) v Secretary of State for the Environment Food and Rural Affairs* [2002] EWHC 844 and the views taken that subsection (6) has 3 separate tests to it:

- (1) *Firstly, that the Order is expedient in terms of section 119(1), i.e. that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path be diverted but not so as to alter the point of termination if not on to a highway or to a point on the same highway not substantially as convenient to the public.*
- (2) *Secondly, that the diverted path will not be substantially less convenient to the public in terms of, for example, features which readily fall within the natural and ordinary meaning of the word ‘convenient’ such as the length of the diverted path, the difficulty of walking it and its purpose.*
- (3) *Thirdly, that it is expedient to confirm the order having regard to the effect:*
 - (a) *The diversion would have on the public enjoyment of the path or way as a whole;*
 - (b) *Of the order on other land served by the existing public right of way; and*
 - (c) *Of the new path or way on the land over which it is to be created and any land held with it.*

There may nevertheless be other relevant factors to do with expediency in the individual circumstances of an order.

28. *It is possible that a proposed diversion may be as convenient as the existing path but less enjoyable, perhaps because it was less scenic. In this event, the view in ‘Young’ was that the decision-maker would have to balance the interests of the applicant for the order against those of the public to determine whether it was expedient to confirm the order.*

29. *Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way, for example). In such circumstances, the diversion order cannot be confirmed under section 119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion.”*

15. Mr. Morland has made the following objections to the making of the Diversion Order:

“I refer to a Public Notice in respect of the above-named Order on page 2 of the Friday, 14th August 2015 issue of The Warminster Journal newspaper, and in accordance with it please accept this e-mail as my duly made representations about and objections to the Order.

I do not regard it as within the power of the Order to stop up a portion of Norton Bavant footpath No. 10 (scaling off at approximately 34 metres on the plan attached to the Order), referred to only in Part 1 of the Schedule to the Order as “Additionally short spur at B”. The title and preamble to the Order refer only to Norton Bavant bridleway No. 4

(part). Furthermore, it is not clear whether the statutory tests in Section 119 of the Highways Act 1980 are met in respect of this portion of Norton Bavant footpath No. 10.

In any event, I consider that public footpath highway rights should be retained over the existing path between point A (shown in Part 1 of the Schedule to the Order and on the plan attached to the Order as at OS grid reference ST 91012 44674) and Point B (at its junction with Norton Bavant footpath No. 10, scaling off the plan as being approximately at OS grid reference ST 91437 44336).

My reasons/grounds are as follows:

1) It maintains all existing footpath accesses to the important Scheduled Monument known as Scratchbury Hill Fort, one in a line of Iron Age earthworks in the vicinity (viz. Roddenbury Hill, Cley Hill, Arn Hill, Cop Heap, Battlesbury Hill, Middleton Middle Hill and Scratchbury Hill). Reducing the number of footpath routes up to this monument will simply increase the footfall, wear and erosion on the routes that are left, which is unsatisfactory and undesirable.

2) It maintains public highway rights over the road (elsewhere erroneously described as a private road) to North Farm Cottages from its junction with the unclassified county road No. 9052.

3) It preserves public access to and use of the extant horse gate on the route.

4) It links to the existing portion of Norton Bavant footpath No. 10 at point B and prevents it from becoming a cul-de-sac.

5) In light of the reasons given by the Ministry of Defence, as landowner, for its application to divert Norton Bavant bridleway No. 4, it is unclear why (as a government department and public body) it could reasonably expect the extinguishment of footpath rights as well.

6) Inadequate consideration has been given to the relevant policies of the Wiltshire Council Rights of Way Improvement Plan (now called the Wiltshire Countryside Access Improvement Plan 2015-2025 Rights of Way Improvement Plan 2).

I wonder also whether the reference to "the footpath" in paragraph 1 of the Order adversely affects the existing rights of the statutory undertaker in question.

I do not understand why the approximate length of the route shown in Part 3 of the Schedule to the Order as 1200 metres omits the length of the unaffected part of bridleway 4 marked on the plan attached to the Order, nor (if that part of bridleway 4 is unaffected by the Order) how its width can be increased from 3.5 metres to 4 metres in the modification shown to the Warminster and Westbury Rural District Council area definitive statement dated 1953 pursuant to paragraph 3A of the Order. There appears to be a similar point of difficulty in the Creation Order made concurrently with this Order and referred to in the Public Notice. At present, no width of Norton Bavant footpath No. 10 is shown in the Definitive Map and Statement, whereas Norton Bavant bridleway No. 4 is shown as of width 3.5 metres. "

16. In response to the objection, officers make the following comments:

- (i) The concurrent creation order adds a length of footpath leading along the top of the ramparts to exit Scratchbury Hill at a wide gateway to the south-east of the monument. This reflects the existing desire line of walkers who clearly choose to walk along the ramparts (which offer superb views)

rather than use the definitive line of bridleway 4. There is no evidence on the ground of use of this path; almost certainly as a result of its inaccessibility. During consultation for this Order, The Ramblers Association responded that they had tried to walk Norton Bavant 4 “some years ago”, had found it “frustrating” and had ended up using the proposed creation route instead (**page 16 Appendix D**).

- (ii) A public highway right as a continuation of the u/c9052 to North Farm is unnecessary. North Farm belongs to the Ministry of Defence and access to it is over land in the same ownership. Any public access to North Farm is therefore by licence and unaffected by this Order. The route is not the historic continuation of the u/c 9052 (Byway Open to All Traffic Norton Bavant 6 is) and in any event it is likely that public rights do not extend beyond the current bridleway status.
- (iii) Access to the “horse gate” on the route is unnecessary as the gate leads onto a steep and inaccessible part of Scratchbury Hill. The gateway leads users into the Scheduled Monument section of the hill necessitating climbing or scrambling up the ramparts and slopes.
- (iv) Norton Bavant 10 will not become a cul-de-sac as a concurrent creation order has been made to create a footpath to link the network.
- (v) The Ministry of Defence seeks to take horse riders away from the Scheduled Monument and to create an additional length of footpath for walkers. This is supported by Historic England.
- (vi) The Rights of Way Improvement Plan is considered fully on **pages 22 to 23 of Appendix D**. The ROWIP seeks to improve access to the countryside and it is considered that the reduction in gates, gradient and improvement of surface in the proposed diversion route adequately meets those aims.
- (vii) The rights of the statutory undertaker affected by the Order are preserved in paragraph 2 of the Order though the paragraph should state ‘bridleway’ and not ‘footpath’. In the event that the Order is forwarded to the Secretary of State this may be easily amended.
- (viii) It is agreed that this diversion order cannot alter the width of the unaffected sections of Norton Bavant 4. The Secretary of State has two options here. Because the Order is a ‘combined order’ she may either confirm only part of the Order leaving the Council to make a separate Order to update the definitive map and statement or she may amend the Order to record the change in width of the bridleway.
- (xi) Officers consider it is acceptable to address the short spur of footpath 10 in this Order. Previous decisions of the Secretary of State have advised that what the Council calls paths is a matter for it; the Order diverts lengths of highways regardless of what they are called. The short linking spur of footpath 10 is unnecessary in the event that the bridleway is diverted and the new footpath created and could be addressed by a separate extinguishment order in the event that the Secretary of State

chose to omit that section of path from the Order. The most important matter here to recognise is that the creation order is concurrent with the diversion to ensure continuity of the routes.

17. A representation was made by Mr A Wright.

“The Reason given for the movement is a supposed conflict between recreational users and agricultural users yet this is not the reason for the change as no one has been able to use this route for the last year since the farmer illegally blocked the route by screwing the gate shut and adding locks to the gates and the Council chose not to do its duty and re open it. There is a complaint from me logged last year about this which was never resolved.

The farmer is creating a shooting estate with additional clay pigeon shooting in the valley and is trying to force all visitors to the area away from their property, despite them having a legal right to use the prescribed rights of way and this being an active military training estate requiring permanent military access across the area.

They have removed the original farm track up the hill from North farm to the Scratchbury Fort entrance which used to allow access to the ploughed field and hill fort safely, deciding instead to place a farm track in the SSSI site running along Cotley hill, so the farmer is driving heavy machines in a SSSI to protect his ploughed field and is trying to force the bridle path into the same enclosure.

The original reason for the tracks being placed where they were was that previous generations respected the ancient monument and the associated SSSI areas and did their best to protect them for future generations to enjoy, which the current farmer is also paid to do. Creating routes that go through protected wildlife sites with vehicles, horses and bikes cycling over the protected grass land will not protect this site but damage it.

The current path has been allocated to its position to allow safe passage of all while at the same time protecting the structure of the ancient monuments of Scratchbury Hill fort and the wildlife designated as rare in the SSSI with its protected species present in the Scratchbury and Cotley hill enclosures mainly being grassland which is being driven on and destroyed.

The gradient of the hill is steep and the path used is grass/chalk so controlled descent cannot be relied upon with the additional hazard of the exit point being compacted chalk which in winter on a steep gradient when wet is extremely slippery.

Once off the hill horse riders are funnelled through the woods to join the main road leading to North Farm. This exit is on a blind bend, within trees so neither the rider or traffic can be seen by the other, the exit point is up a meter high bank meaning if cycling or riding you are at risk of losing balance and ending up in the road. This exit point is also very restricted so a spooked horse has no room to manoeuvre and as this road is used by all the farm vehicles, military and recycling centre trucks it is not a safe route for any animals or people except on foot.

The Salisbury Plain training estate is 38,000 hectares and a large amount of that behind this hill is flat, away from the shoot, has tracks made for accessing ploughed fields, can be re ploughed and reinstated if damaged and does not contain any rare or protected species. There was until two years ago an actively used bridlepath (not legal but used daily and safely by horses) from the byway joining the military road (middle hill byway) along the valley floor exiting by the water works pumping station by west hill farm. All on active current farm track.

So if the military, Wiltshire Council, Natural England and the farmer are all paid to protect SSSI site under their management why are you all actively destroying these sites by adding tracks to them? Especially in dangerous locations, this makes no sense.

So I object to the change in this bridle path as the new route is not appropriate as alternative routes less damaging are available.”

18. In response to Mr Wright’s comments officers make the following points:
- (i) Bridle gates on the legal line of Norton Bavant 4 were removed approximately one year ago when the land was re-fenced. This caused the right of way to be obstructed. Although it is a duty for the Council to make the way available, Wiltshire Council’s operational team gave the matter low priority on account of there only being one complaint and the availability of an alternative route.
 - (ii) The application has been made by the landowner (the Ministry of Defence) and not the tenant farmer. Officers have no knowledge of plans to create a shooting estate but if that were the case, moving the bridleway away from it would be beneficial to the public, as well as the shooting estate.
 - (iii) Part of the current route crosses land that is both SSSI and Scheduled Monument. Part of the proposed diversion crosses land that is SSSI. Accordingly, both Natural England and Historic England have been consulted. Scratchbury Hill is scheduled under the Ancient Monuments and Archaeological Areas Act 1979 as amended as it appears to the Secretary of State to be of national importance. The remains represent one of the few extant archaeological “landscapes” in Britain and are considered to be of special significance because they differ in character from those in other areas. Historic England supports the diversion of the bridleway away from the monument.
 - (iv) The SSSI is listed as Scratchbury and Cotley Hills and is an area of Lowland Calcareous Grassland. Natural England recognises that the area requires active management and that in Area 2 (the SSSI that part of the proposed diversion leads over) the desire is to maintain a species rich sward without the area being dominated by stands of grasses such as Tor-grass. To achieve this grazing is an essential part of the management of the ground which also benefits from light trampling to break down decomposing leaves and other matter and to provide bare patches for some invertebrates and seed germination. A survey of the area in 2013 revealed that there was not enough bare ground. Natural England does not object to the proposed diversion, which in any event uses a path or grass track established by farm vehicles.

- (v) The u/c 9052 is a cul de sac vehicular highway leading to North Farm, North Farm Cottages and a business dealing with recycling waste on part of the farm. The road is little used by farm traffic (as land can be accessed from other routes) and is not generally used for military traffic (the area not forming part of the actively used training estate). Lorries visit the recycling centre infrequently during weekdays and although they are large, do travel slowly on account of the condition of the road. The u/c 9052 is subject to an Inclosure award and has a width far exceeding the tarmac carriageway section (providing an area to one side which in places the public on foot, horseback or cycle may use. It is agreed that the current junction with the u/c 9052 is not of a sufficient standard to be acceptable to the Council. The landowner has agreed to grading and widening works here which will give up to 50 metres visibility in either direction. In the event that the Order is confirmed it will not come into effect until the new route is certified as acceptable by Wiltshire Council.
- (vi) The provision of an alternative route for horse riders and cyclists to the north of Scratchbury Hill has been discussed with the landowner. Any route at this location would take the public nearer to the firing range boundary and would lead to a loss of land in agricultural production. As a result, the landowner is unwilling to agree to any new routes in this area. Officers also consider that the views from such a route would be considerably poorer than those offered by either the current definitive line or the proposed new route.

19. A representation was made by Mr J Pritchard:

“My wife and I regularly walk and ride in this area and are delighted to have the new route avoiding the steep part of Scratchbury Hill. This has always been difficult to use and my wife would only use it one way on her horse and then leading over parts. The old route was difficult to find, infact it was overgrown for a few years though recent scrub clearance did make it possible where it was intended to go. Having a usable route opens up lots more rides and routes and we love the variety of it, I can’t think of any other woodland rides nearby.”

20. A representation was made by the British Horse Society. This was submitted after the advertisement period ended but is included here as an expert view of the diversion (photographs submitted with the representation are appended at **Appendix E**):

“I write, as requested, in response to your email to me of 28.9.2015 where you referred to me (and to my wife Myra) the issues raised by Mr A. Wright in his email of 29.8.2015 as to the suitability of the descent from the ridge adjoining Scratchbury Hill Fort to the road below. Mr Wright has raised concerns regarding the section running from the junction of footpath no 10 with the intended revised bridleway, to point D on the Order Plan.

This response is given by me in my capacity as a BHS Assistant Bridleway Officer and is endorsed by Myra who is also an ABO.

I am familiar with the section described by Mr Wright since I rode it first on 12th July 2015 with Myra and with you. That ride was made by us at the invitation of

both Wiltshire Council and the MOD. We were asked our views as to the way marking of the ride. On that day we rode the southern section of the Imber Path from Tilshead to Warminster.

Following your email, Myra and I revisited the route between points C – D on foot and walked the route to be extinguished. We started at the cottages just to the west of the livery at the farm and then walked to point B. We then walked the line B – C, so far as possible. I say “so far as possible” because part of that route has been wired off and the line B- C is extremely difficult to follow. It also has an extremely difficult cross slope running south of point B, on the route B – C and is very overgrown there. That complete, we walked the route C – D – A and from thence back to the cottages.

My views as to the validity or otherwise of Mr Wright’s concerns are given in the light of my experience as a rider. Accordingly, it is worth setting that experience out briefly.

I first learnt to ride in my late twenties in 1982 and by my late thirties rode to pre-novice eventing standard. Since approximately 1998 I have concentrated not on eventing but on hacking. From approximately 2000, I started to take part in the Pleasure Riding sections of some GB Endurance rides e.g. Barbary Castle, covering distances of 32/34k. In 2008 (when I was granted a sabbatical) Myra and I covered some 450 miles each, over a 3 month period, raising money for charity. I have ridden in both England and Wales as well as in Africa. Throughout my riding life, until my recent retirement, with the exception of holidays and the sabbatical period, I have been a weekend rider. I therefore classify, in riding terms, as a reasonably experienced novice rider who is used to covering reasonable distances across the country. My present horse is a 16.1 fairly heavy Irish Draught.

Accordingly, when I view a slope or exit onto a road I do that, in my view, in much the same way as a reasonable number of other amateur riders do; and I am not in the category of expert rider, who have so much experience and time in the saddle, that concerns that would be material to me, do not cause them any issues at all.

I set out below Mr Wright’s concerns and deal with each in order.

- 1. First he is concerned that the gradient of the hill from point C in the direction of point D, is steep and the path used is grass/chalk so controlled descent cannot be relied on, with the additional hazard of the exit point being compacted chalk which, in winter on a steep gradient when wet, is extremely slippery.*

The gradient issue can be divided into first, the section above the gate shown on the Order Plan and, second, the section below the gate as far as the turn into Norton Plantation.

The gradient of the section above the gate is not, in my view, particularly steep. I attach 6 photographs (sent under separate cover) each taken on the 4th October which confirm this.

Further, this section rode well on the 12th July ride, despite being wet from the rain that had fallen over the preceding weeks. I rode this section on my heavy horse Lottie. I am also 14 stone. So, if there was an issue with gradient, at least in summer, which is when the majority are likely to ride this section, I would have expected to have become aware of it!

Equally, my wife, riding her 15.1 cob experienced no difficulty on the 12th July whatsoever. Further, on the 12th, we both commented that we would infinitely rather ride this than the alternative route shown A – B – on the Order Plan, Myra commenting that hill forts were built to keep people out and had formidable slopes designed to do just that.

Additionally, if you refer to the photographs, you will see that this section is well covered with grass which assists the horses with grip.

By way of comparison, I would not wish to ride the drop off Scratchbury Hill from point B on the Order Plan north to the road leading to the Livery Yard because it is much too steep to be ridden safely. I would also not wish to ride the horrible steep cross slope which lies at/just south of point B. This slope would certainly be dangerous when wet. Equally, none of those riding on the 12th (you, me and Myra) had any difficulty at all with the section that Mr Wright raises concerns over.

- 2. As to the section below the gate, this is part exposed chalk and part grass/scrub. I attach three photographs showing the section under discussion. There is some gradient over this section but not enough, in my view, to cause concern. It was wet and slightly slippery on the 12th July and bone dry on the 4th October.*

Despite being slightly slippery on the 12th, this section rode perfectly adequately for both Myra and I. I accept, of course, that compacted chalk is likely to be slippery when wet and, as such is not ideal underfoot, especially in winter. However, the same can be said for quite a few Wiltshire/Hampshire bridleways (see parts of the Clarendon Way for example). Further, even if the surface complained of were an issue here, it is not difficult to get off the chalk onto the grass/scrub that runs alongside it.

Additionally, the grass/scrub area which adjoins the visible compacted chalk could be simply widened if a working party of riders was to be put together for a morning to clear the wood back, and the landowners consent obtained to the clearance operation. I suspect that in the circumstances of this track, that consent could be obtained since the wood showed clear signs of having already been flailed back.

- 3. As to the “slippery” right turn into the wood this is, I suspect, a matter of taking the turn steadily and is not a material concern.*
- 4. Furthermore, it was perfectly clear from our inspection that this section of the route is ridden. We found hoof marks from several different horses to prove it.*

5. *The same cannot be said for the northern drop off Scratchbury Hill from point B where we looked carefully for any sign of the route having been ridden but found no evidence to suggest that the route had been ridden at all. I also walked the cross slope from point B and, again, could find no sign of it having been ridden.*
6. *Overall, in relation to these elements of his concerns, it was clearly evident from hoof marks in the wood and on the chalk section below the gate, that this route is being ridden and by different horses. Further, the section in question is a descent off the ridge adjoining Scratchbury Fort, so some gradient must be expected; and the ground conditions complained of (grass over chalk/compacted chalk) may very well be quite similar over much of that area and the route provided rode well in many respects.*

What is also very clear is that this route is rideable; and it is rideable by different riders on quite different horses (you on your pony, Myra on a 15.1 cob and me on a heavy 16.1 cob). The same cannot be said for either the cross slope area at point B nor for the current descent from B on the Order plan to the road to the north. Not only was there no evidence that either of these sections were being ridden but also both routes would be very difficult, at best, to ride. Certainly I would not care to ride either section even on a dry day in summer with dry ground underfoot – they are both, in places at least, far too steep.

7. *Mr Wright describes the route through Norton Plantation as being “funnelled” through the woods. For my part, I think this is harsh. I found this section easy to ride. It also has very good going underfoot. I attach a photograph showing the view from the woods towards the eastern entrance into Norton Plantation (sent under separate cover).*
8. *That leaves the issue of the exit at point D. It is fair to say that this exit point is awkward and requires careful negotiation given that the sight lines here are limited both to left and to right. There is also limited room for manoeuvre at the exit itself. I also agree that the drop down onto the road is reasonably steep so that there is a risk of loss of balance. However, that applies to any reasonable drop. It may be that there is room to improve the sight lines here; and if that is possible, then that improvement would be beneficial.*

The MOD has, however, provided a really useful, albeit Permissive, route on the other side of the road. Once down onto the road this is very quickly reached and rides well. It is also sited far enough away from the railway line on the other side of the field to assist hugely with any horse likely to be spooked by passing trains.

9. *Overall, on this aspect, I think the difficulties with the exit point need to be looked at in the context of the overall improvements offered by the varied route. The plain fact of the matter is that the varied route is a vast improvement; and this is shown by the fact that it is being ridden whilst the former route showed no signs of that, most probably due to the real difficulties isolated above. No route is ever perfect over its whole length. The route C – D offered here is both rideable and being ridden. This is in stark contrast to the former route. I very much hope, therefore, that the new route is confirmed. If the site lines at D can be improved by one means or another that would be excellent.”*

21. It is therefore considered that the proposed diversion is not only made in the landowner's interest but also in the interest of the public, who will gain a substantially more accessible route and, for walkers, a route which allows a circular walk in the area.
22. With regard to whether the alternative path is substantially less convenient, it is considered it is more convenient and that it has a positive effect on the use and enjoyment of the path.
23. It is not considered the proposed diversion will have any detrimental effect on any land served by the existing right of way or that there will be any effect on the land served by the proposed right of way.

Safeguarding Implications

24. DEFRA's "Rights of Way Circular (1/09) Guidance for Local Authorities" Version 2, October 2009, states at paragraph 5.5:

"The statutory provisions for creating, diverting and extinguishing public rights of way in the 1980 Act have been framed to protect both the public's rights and the interests of the owners and occupiers. They also protect the interests of bodies such as statutory undertakers. The requirements for making, confirming and publicising orders are set out in Schedule 6 to the 1980 Act."

In making "The Wiltshire Council Corsley 29 (part) Diversion Order and Definitive Map and Statement Modification Order 2015", officers have followed the procedure set out in Schedule 6 of the 1980 Act and in doing so Wiltshire Council has fulfilled its safeguarding considerations.

Public Health Implications

25. There are no identified public health implications which arise from the proposed diversion.

Procurement Implications

26. There are no procurement implications associated with this application as all costs for works and furniture associated with the new route will be met by either the applicant or user groups.

Environmental and Climate Change Considerations

27. Natural England and the County Ecologist were consulted regarding the diversion proposals and no adverse comments regarding the environmental impact of the diversion were received.

Equalities Impact of the Proposal

28. The Wiltshire Council Rights of Way Improvement Plan 2015-2025 (WCAIP) recognises the Council's duty to have regard to the Equalities Act 2010 and to consider the least restrictive option for public use. The proposed diversion provides a more accessible path than the present definitive line. Additionally, the

proposed new route will have a recorded width of 4 metres, open and available for public use, over a defined route, where the definitive line has a lesser width recorded within the definitive statement and has more gates along its length.

Risk Assessment

29. There are no identified risks which arise from the proposed diversion. The financial and legal risks to the Council are outlined in the “Financial Implications” and “Legal Implications” sections below.

Financial Implications

30. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permits authorities to charge applicants costs in relation to the making of public path orders, including those made under Section 119 of the Highways Act 1980. Additionally, the British Horse Society has agreed in principle to pay for a new gate at ST 91303 43775 which would be erected by volunteers.
31. Where there is an outstanding objection to the making of the Order, the Committee may resolve that Wiltshire Council continues to support the making of the Order, in which case it should be forwarded to the Secretary of State for decision. The outcome of the Order will then be determined by written representations, local hearing or local public inquiry, all of which have a financial implication for the Council. If the case is determined by written representations the cost to the Council is minimal; however, where a local hearing is held the costs to the Council are estimated at £300 and between £1000 and £2000 where the case is determined by local public inquiry. There is no mechanism by which these costs may be passed to the applicant and these costs must be borne by Wiltshire Council. Current practice of the Secretary of State is to prefer written representations but to hold a hearing if the objector wishes to be heard. Officers would make recommendation to the Secretary of State to determine the Order by written representations.
32. Where the Council no longer supports the making of the Order, it may resolve that the Order be withdrawn and there are no further costs to the Council. The making of a Public Path Order is a discretionary power for the Council rather than a statutory duty; therefore, a made Order may be withdrawn up until the point of confirmation, if the Council no longer supports it, for example, where it is considered that the proposals no longer meet the legal tests set out under Section 119 of the Highways Act 1980.
33. If the Order is withdrawn Wiltshire Council will have to proceed with actions to make the existing definitive line open and available for use.

Legal Implications

34. If the Council resolves that it no longer supports the making of the Order, it may be withdrawn. There is no right of appeal for the applicant; however, clear reasons for the withdrawal must be given as the Council’s decision may be open to judicial review.

35. Where the Council continues to support the making of the Order, it must be sent to the Secretary of State for determination, which may lead to the Order being determined by written representations, local hearing or local public inquiry. The Inspector's decision is open to challenge in the High Court.

Options Considered

36. Members may resolve that:

- (i) Wiltshire Council continues to support the making of the Order, in which case the Order should be forwarded to the Secretary of State with a recommendation from Wiltshire Council that:
 - (a) The Order be confirmed without modifications, or
 - (b) The Order be confirmed with modifications.

or that:

- (ii) Wiltshire Council no longer supports the making of the Order, in which case the Order should be withdrawn, with clear reasons given as to why Wiltshire Council no longer supports the making of the Order, i.e. why the Order no longer meets the legal tests.

Reason for Proposal

37. Despite the objection received it is considered, for the reasons given in paragraphs 50 to 58 of the Decision report (please see **Appendix D**) that "The Wiltshire Council Parish of Norton Bavant Path No. 4 (part) Diversion Order and Definitive Map and Statement Modification Order 2015" continues to meet the legal tests for the making of a Diversion Order under Section 119 of the Highways Act 1980.
38. Additionally, the legal tests for the confirmation of a Public Path Diversion Order, as set out under Section 119 of the Highways Act 1980, appear capable of being satisfied and no new evidence has been submitted during the formal objection period which would lead Wiltshire Council to no longer support the making of the Order.
39. Minor errors in the Order may be corrected by the Secretary of State as modifications.

Proposal

40. That The Wiltshire Council Parish of Norton Bavant Path No. 4 (part) Diversion Order and Definitive Map and Statement Modification Order 2015 be forwarded to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that it be confirmed with the following modifications:
- (i) In paragraph 2 where referring to the rights of Scottish and Southern Energy replace the word "footpath" for "bridleway".

- (ii) In Part 3 of the Schedule amend the width to read “4 metres from OS Grid ref. ST 90853 44042 to ST 91694 43539 the remainder to be 3.5 metres”. Amend approximate length to be “1600 metres”.
- (iii) In the event that Order is confirmed, The Wiltshire Council Norton Bavant 10 (part) Creation and Definitive Map and Statement Modification Order, which has attracted no objections or representations, be confirmed.

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Report Author:

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Rights of Way Officer – Definitive Map

The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices:

Appendix A – Location Plan

Appendix B - Diversion Order

Appendix C – Creation Order

Appendix D - Decision Report

Appendix E - Photographs submitted by the British Horse Society