

DECISION REPORT

HIGHWAYS ACT 1980 S.119

PROPOSED DIVERSION OF BAYDON 2 and 11 AT BAYDON HOUSE FARM, BAYDON

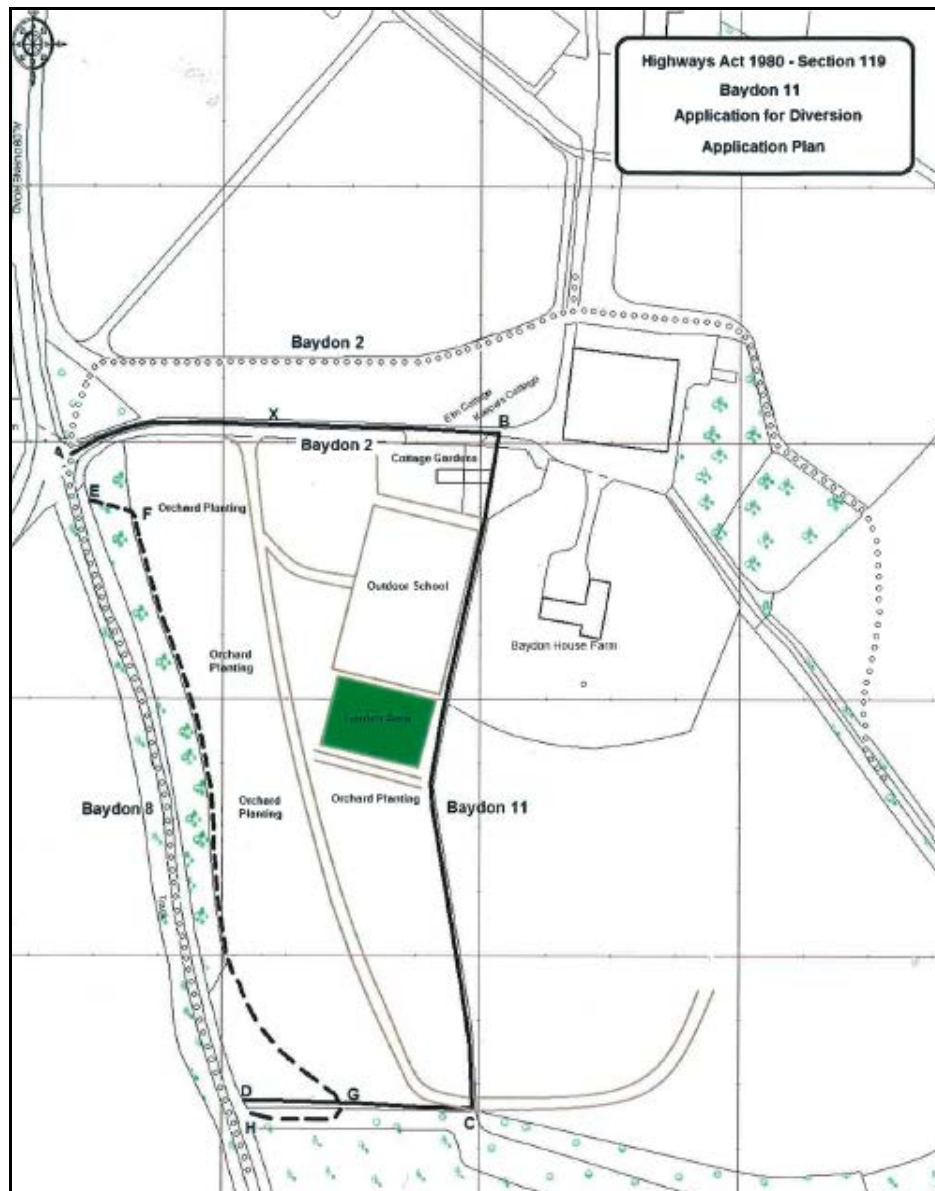
1.0 Purpose of Report

- (i) To consider an application to divert part of bridleways Baydon 2 and 11 at Baydon House Farm, Baydon
- (ii) To recommend that Wiltshire Council makes an order under s.119 of the Highways Act 1980 (HA80) and s.53 of the Wildlife and Countryside Act 1981 (WCA81) to effect this change.

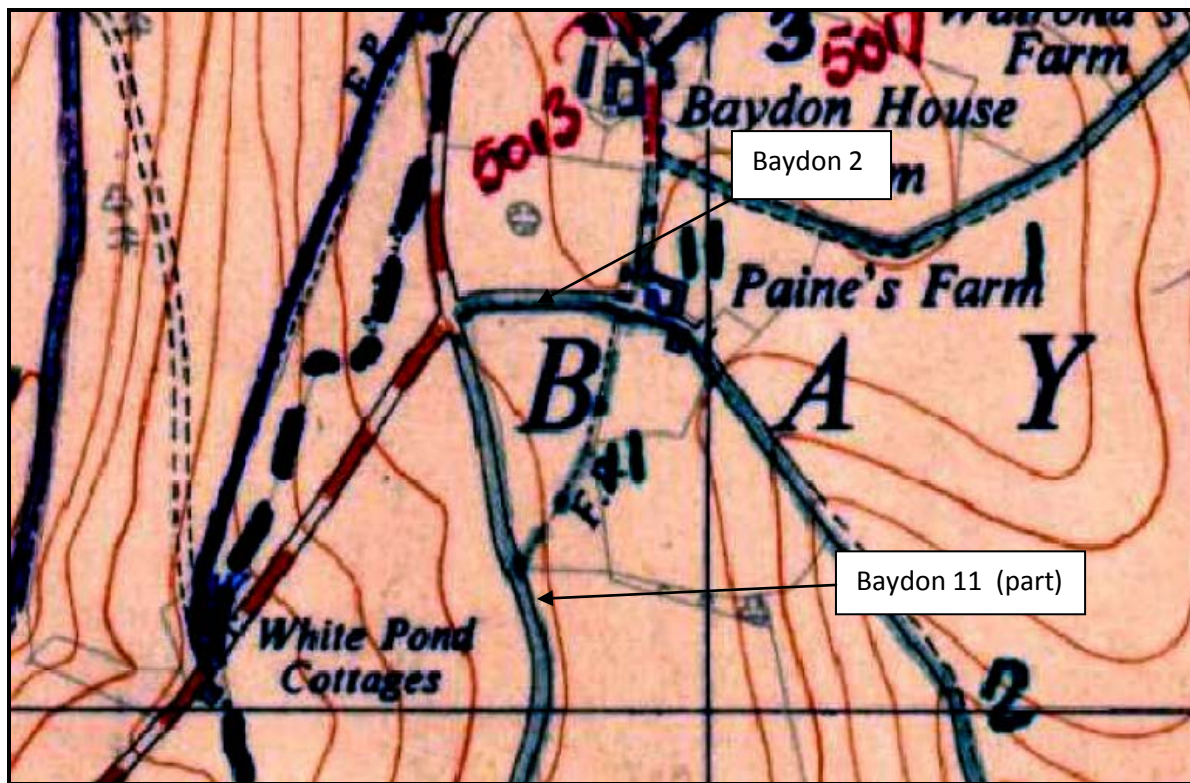
2.0 Background

- 1 On the 12th June 2013 Wiltshire Council received two applications to divert public rights of way at Baydon House Farm, Baydon. The applications affected paths 2 and 11 in the region of the farmyard and associated buildings. The applications were made by the owner of the land Mrs Sally Johnson, Baydon House Farm, Baydon, SN8 2HX and submitted by her agent Michael Wood, ET Landnet Ltd, The Quarry Office, Pen Y Garn, Cefneithin, Llanelli, SA14 7EU.
- 2 One of the applications was made under the Town and Country Planning Act 1990 as planning permission had been granted for the erection of two barns and it was necessary to divert parts of the rights of way to enable the development to proceed.
- 3 The second application was made under the Highways Act 1980 for different parts of the paths and was consulted on at the same time as the Town and Country Planning Act application as the changes to the network needed to be seen together, even though the legal tests for each application were wholly different. Responses showed that some members of the public were far from happy with any of the changes and that objections would be received to the Orders. To give clarity to the changes (for all parties) and to enable the applicant to pursue their permitted development only the Town and Country Planning Act application was proceeded with at that time.
- 4 Further to a public inquiry this application has now been successfully determined and the definitive map and statement amended accordingly.
- 5 The confirmation of the Town and Country Planning Act Order gave clarity to the rights of way network to the north of Baydon House Farm and as a result of this and discussions with Wiltshire Council another application to divert part of bridleways 2 and 11 was made. It is essentially the same as the 2013 application but officers took the view that it would again give clarity to the situation for all sides if this was treated as a fresh application and another consultation carried out.
- 6 Accordingly the second application is the one being considered in this report (application number 2013/16) and has been made under Highways Act 1980 legislation as the sections of Baydon paths 2 and 11 to be diverted are not affected by any permitted development.
- 7 The reasons given for the diversion of the path are appended at APPENDIX 1.

8 A plan showing the proposed diversion was included with the application:



9 Baydon Path number 11 was originally recorded in the Marlborough and Ramsbury Rural District Council Area Definitive Map and Statement dated 1952 as a Road Used as a Public Path (RUPP). The statement records it as a Carriage Road Bridleway (C.R.B.). Baydon Path number 2 was originally recorded as a bridleway and this section remains recorded as one today. However, it is considered that on the balance of probabilities higher rights subsist over this route and as a result any order made extinguishing public rights will address the need to extinguish the unrecorded higher right. The higher right was recognised in the Town and Country Planning Act Order and a restricted byway has been provided to the north. This section of Baydon 2 was left only to facilitate access to the southern part of Baydon 11. See working copy extract at Para. 13.



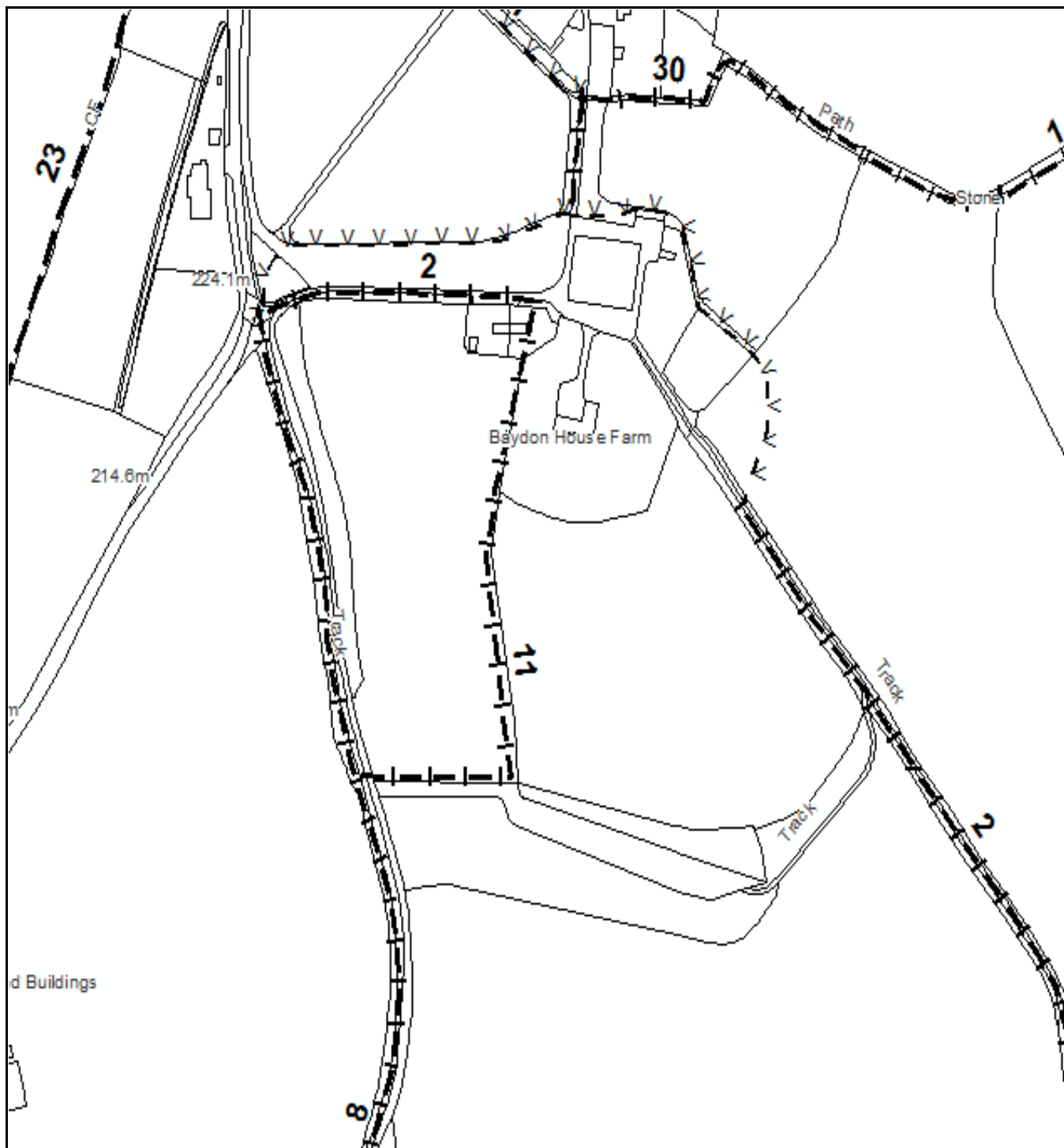
10 The 1952 statement reads:

11 *C.R.B. From the southern end of road u/c 5013 at Baydon House Farm leading south south west past Paine's Farm, across path No. 2 to path No. 8, Green Lane. 550 yards.*

11 Pursuant to the 1968 Countryside Act all RUPPs were reviewed by Wiltshire County Council at the Second and Special Review in the early 1970s. Baydon 11 was reclassified as a bridleway at this time.

12 The line of the bridleway near its junction with path no. 8 was diverted under Section 108 of the Highways Act 1959 by Magistrate's Court Order dated 15th August 1976 and the change in line is reflected in the working copy of the definitive map that the Council uses today.

13 Extract from working copy of definitive map:



14 Current definitive statements:

Baydon 2 BRIDLEWAY. Paynes Lane. From the Aldbourne road C.189, at its junction with path No.8, leading east for approximately 180 metres to its junction with Baydon path no. 11.

RESTRICTED BYWAY from OS grid reference SU2774 7741 leading north and east, east north east, east, south south east, south east and south south west where at OS grid reference SU 2804 7730

BRIDLEWAY leading south east to road U/C 5018 north of Gores Copse

WIDTH Restricted byway section OS grid reference SU2774 7741 to SU2793 7745 4.1 metres, SU2793 7745 to SU2800 7744 5 metres (3metres at SU2800 7744), SU2800 7744 to SU2801 7740 4.1 metres, SU2801 7740 to SU2802 7739 5 metres, SU2802 7739 to SU2804 7737 2.6 metres and from SU2804 7737 to SU2804 7730 5 metres to

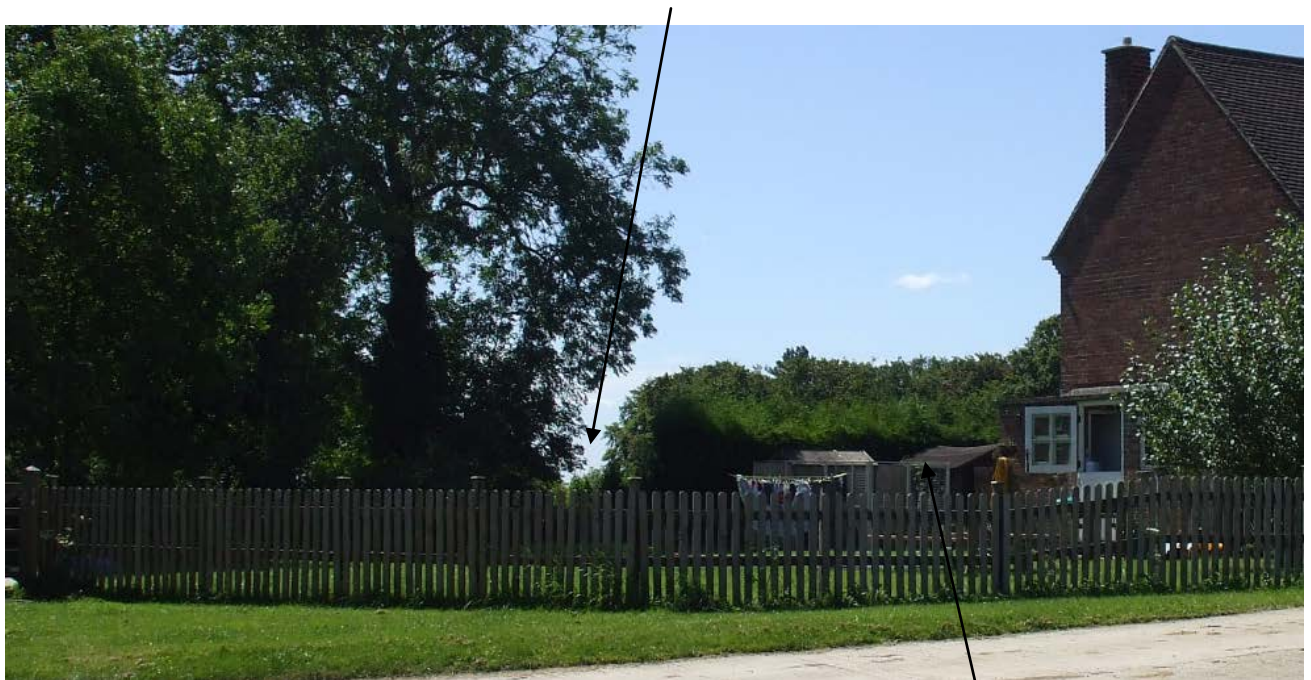
SU2800 7744 2.6 metres and from SU2800 7744 to SU2804 7730 4.1 metres

Approximate length 1.45kms

- Baydon 11 RESTRICTED BYWAY from the u/c 5013 at OS Grid Ref SU 2787 7773 leading south south west, south and south east to OS Grid Ref SU 2794 7751 at its junction with Baydon 30 where BRIDLEWAY leading south for approximately 60 metres to its junction with Baydon path no.2. Continuing as BRIDLEWAY from its junction with Baydon path no 2 at Keepers Cottage leading south for approximately 270m then in a westerly direction to path No.8.
- Width 4 metres OS Grid Ref SU 2787 7773 to OS Grid Ref SU 2794 7751. Approx. length 450 metres

- 15 The route of Baydon path 11 affected by this application has been obstructed for a long time. Officers were able to use the route in 2007 though a small deviation was required at the north end (by Keepers Cottage) as shown overleaf:

Access south possible here



Definitive line

- 16 Aerial photography from May 2006 with definitive line (working copy) overlaid:



17 Although the obstruction of path no. 11 is a long standing issue it is not a consideration for the Council when applying s.119 of the Highways Act 1980. The Council must consider the proposed diversion as if the existing definitive line were available and unobstructed.

3.0 Consultation

18 The following letter was circulated on the 27th May 2015:

Highways act 1980 s.118/119 and Wildlife and Countryside Act 1981 s.53

Application to divert part of Baydon Paths no. 2 and 11 at Baydon House Farm

Wiltshire Council has received an application to alter parts of bridleways 2 and 11 at Baydon House Farm. Please find enclosed a location plan, a detailed plan showing the proposal and some explanatory notes provided by the applicant.

The proposed new route is currently in use by the public on a permissive basis though in the event that it were to be recorded as a public bridleway the width would be increased to 4 metres for its length. The route does not have any gates. Although it is not apparent from the map the proposed new route is not merely a duplication of Baydon 8 and offers different views, aspect and surface. Your comments are invited on the suitability of this route as an alternative for the current route along the drive, past the cottage and outdoor school and around the field edges.

Any comments you may have on the proposal are welcome and I would be grateful to receive them by Friday 3rd July 2015.

19 The letter, copy of the plan at paragraph 8 and the applicant's reasons for the diversion (Appendix 1) were circulated widely to statutory consultees, user groups and other interested individuals who had responded fully to earlier consultations:

The Auto Cycle Union
Commons, Open Spaces and Footpaths Association
Wiltshire Bridleways Association
Wiltshire Cycling Touring Club
British Horse Society

Baydon Parish Council
Wiltshire Councillor James Sheppard
Wiltshire British Horse Society
Byways and Bridleways Trust
British Driving Society
Wiltshire Council Rights of Way Senior Warden
Wiltshire Council Ecology Consultations
Wiltshire Ramblers P Gallagher
Mr B Riley
Mr and Mrs Johnson (applicant)
Mr M Wood (agent)
Mr B Gribble
Mr C Philips
Mr B Potter
Ms B Furber
Ms P Bishop
Mrs J Rees
Mrs A Smith
A and P Dobson
Mrs E Johnson
Mr W McCleery
Mrs A Newman
Mrs D Newman
Mr K Smith
Ms N Archer
Mr M Rowse
Mr and Mrs D Jukes
Mr D Tilbury
Mr A Kind
Thames Water
Scottish and Southern Electric plc
Wales and West Utilities
Southern gas Networks
BT Openreach
LinesearchbeforeUdig
Digdat

4.0 Consultation Responses

20 Virgin Media 26.05.15

No apparatus affected.

21 LinesearchbeforeUdig 26.05.15

No apparatus affected.

22 Openreach BT 26.05.15

Underground plant and joint boxes located on Baydon 2.

23 Case Officer's Comment

The rights for Openreach BT to have and access equipment at highway locations will be protected in the Order.

24 **Thames Water 26.05.15**

No apparatus affected.

25 **Ms B Furber 04.06.15**

"I am personally very happy with the new diversion, and walk it fairly regularly. I have never been able to access Baydon 11 (B to C) in the 38 years that I have been in Baydon, however I have ridden down Baydon 2 regularly.

The new route is attractive and easier on the feet, I use it to avoid some of Baydon 8 (which can be very muddy most of the year) to walk down towards Aldbourne. I also use it as a loop (back along Baydon 8) if I need a very short walk with the dogs.

The new route is certainly not less convenient but more pleasing to the eye.

I hope that when the new route is widened to 4 metres as requested by Wiltshire Council, that the tarmac surface is not increased. Grass is far more in keeping with the countryside and reflects the original footpath BAYD 11. There is certainly no need to duplicate BAYD 2's surface!."

26 **Mr B Gribble 05.06.15**

"I thank you for your letter and I wish I could give you some encouragement.

These paths around Baydon House Farm have been a real pain and I suspect from the tone of your letter that it is a last chance attempt to get rid of a 'running sore' in your department.

This letter will not help in that respect because I find the proposed alternative route for paths 2 and 11 totally unacceptable. It is ludicrous having two paths running within a few meters of each other and to pretend that they constitute a circular route. You might as well merge paths 2 and 11 into path 8 and extinguish path 11 because it is as certain as night follows day that your alternative route will not be used. If you are to achieve an alternate route for paths 2 and 11 that is of similar length and offer equal public enjoyment it must be moved east of Baydon House Farm and then link up with point C on your drawing. If you cannot do this then both paths 2 and 11 should remain where they are and the landowner forced to re-open them for public use.

I also take issue with your misleading statement that path 11 had been obstructed for 30 years. It may have been neglected for 30 years but it has always been passable and available for public use until 6 years ago when the current landowner moved in. Path 11 passes through a field that was, up to 6 years ago, used for agriculture, mainly cattle grazing. It was easy to walk through although few people did so the route was not well trodden. This is quite common for footpaths through agricultural land. However all changed when the current landowner arrived. The land was taken out of agricultural use and an equestrian school built across path 11. A large wall was erected on the path and various obstructions installed to make passage by the public very difficult. So path 11 is impassable at the moment because the current landowner chooses it so. It was not like that for the previous owners (within my 35 years in Baydon).

As you know a landowner has a legal obligation to keep rights of way on their land open for public use at all times and the current landowner of Baydon House Farm has been in breach of this obligation almost from the day he moved. It is hypocritical of your department, the Council and the Parish council who are all aware of this obligation have made no visible effort to force the landowner to re-open path 11. And yet at the same time we see plenty of activity, including your recent letter, to do all you can to promote the landowner's further interests. Your letter is heavily biased in favour of the landowner and your arguments are aimed at persuading the public to accept what is essentially a bad deal. If your proposal goes ahead routes ABCD and EFGH will disappear and Baydon will have lost about 550 metres of 'prime' footpath during the last 6 years (I use the word prime for paths that are so close to the village centre that they are easily accessible by all residents). This 550 metres of path is a significant proportion of the total 'prime' paths in our village. This is bad news for the walking fraternity in Baydon.

So I am asking you again to show a bit more sympathy to footpath users, fight a bit harder for their rights and for our children and not kowtow to the wealthy landowners around us."

27 Case Officer's Comment

Although it is clear that this section of Baydon 11 is currently obstructed at both ends it is agreed that it was possible to walk the definitive line, or a route very close to it in 2007 when I tried it. It is also agreed that the route should be available for the public and that the Council has a duty to ensure that it is so. However, whether or not it is currently obstructed is not a matter for s.119 and the Council must consider the merits of the diversion as if the way were fully available. Obstruction is therefore not a relevant point.

28 Mr Gribble considers that the proposed new route will not be used and will become overgrown and impassable resulting in the loss of 550 metres of path. Acting on an application the Council consulted on the extinguishment of this section of Baydon 11 in 2012. Consultation responses firmly showed a desire for local people to retain the path as they liked the short circular walk option it gave them. As a result the Council turned down the application.

29 Although this response highlighted the need to resolve the issue of the availability of Baydon 11 south of Baydon House Farm significant changes to the rights of way, land use and development of the farm have occurred since that time.

30 Even if Baydon 11 were to be made available again it would pass directly through a garden, very close to the porch and door of a cottage, very close to a manege, across an access drive to the main house and through a gate. Access to the path would be along Baydon 2 which is also the main entrance to the farm which is gated.

31 Officers therefore consider that if a more accessible and well provided route were offered, then, given the previously stated desire for a path, it would be likely to be well used.

32 It is therefore agreed that the proposal would lead to a loss of 200 metres of right of way but not 550 metres as suggested by Mr Gribble.

33 Although it is agreed that a better circular route would be achieved via a route south and east of the house linking to Baydon 2 this route has not been proposed by

the applicant. The Council does have powers of creation though these are unlikely to be exercised at this time.

34 **Mrs J Rees 06.06.15**

"I am writng to say I have no objection to the part closure of bridleway from B – C – D. It used to go from B – D until it was diverted round the headland in the late seventies. I feel it should have been deleted then. I also do not object to the closure for bridleway 2 from A – B. I do think that the new sign post on green lane bridleway 8 is not in the correct position. Section 27 of the Countryside Act 1968 states that signs should be placed where the path leaves a metalled road. This sign is misleading as to where bridleway 2 is."

35 **Officer's Comment**

The matter of the signpost has been raised with the rights of way warden for the area. Photographic evidence from 2007 does show the sign correctly placed at the roadside and not in its current position. It has clearly moved.

36 **Mrs A Smith 09.06.15**

"I am deeply saddened and feel quite let down by the system.

This application is exactly what we had feared would happen when Mr and Mrs Johnson were applying for both planning permission and subsequently permission to move the footpaths, supposedly in order to facilitate the building of machinery stores- which to date have not been commenced beyond groundworks- despite more than six months having elapsed since it was clear they had the footpaths moved.

Whilst I object most strongly about this change to the footpaths for many of the reasons given in the previous case; the footpaths were there when the property was bought and should have been taken into consideration of their plans; it takes away historic routes; it doesn't allow for what may occur in the future and it doesn't go any way to compensate the public now or in the future for the loss of access: it is unlikely that it will make any difference because the grounds on which it is possible to object have been diminished by the previous application- for example distance travelled as being acceptable, this new application reduces the travel distance since you can no longer go through the yard!

I still believe this is not an acceptable alternative route as it more or less duplicates the route already in place and a better alternative would be to continue along the line DC projected through the rough woodland to meet the existing track (seen bottom right of the plan supplied) and progress down onto meet Baydon 2 (I think) south east of the new route. Please note: I am NOT suggesting the route marked on your map close to the house, which would end close to the start of the new route but more to the south. The grounds for this are to compensate the public for the loss of a good circular route by the provision of an alternative circular route.

The applicant suggests they are keen to work with the local community- I would suggest they are keen to work to achieve their ends. They are certainly less keen to work with people who do not share their opinion. I suggested this route to Mrs Johnson but she made it clear this would not be something she wished to discuss.

What really saddens me is that it seems that this could easily have been foreseen and should have been taken into consideration at the last hearing. I believe most of

this development has been to reduce the public access close to their house. Access which has been in place for generations and the public/ private land owners have got along fine despite the area being much more realistically a farmyard, whereas now it is substantially only horses for pleasure for folk in the 'big house'. My belief is that if they wanted that level of privacy, they should not have bought this property.

Rights of way are extremely costly as was found in Bucklebury when the Hartley Russells won their case to charge local houses for the right of way to reach the road. It should therefore follow that in the case of the removal of the right of way the landowner should compensate each and every one who has that right, annually for perpetuity. Maybe that sort of decision would deter land owners from attempting to extinguish/move rights of way."

37 Officer's Comment

Mrs Smith also suggests an alternative route south of the house, however this has not been put forward by the applicant and is unlikely at this time to be the subject of any creation order promoted by the Council.

38 Mr P Gallagher, The Ramblers 18.06.15

"I am responding to your letter dated 27 May, setting out the applicant's latest diversion proposals and the reasoning behind them.

We do not consider the proposed diversion route to be acceptable. As you know, it is almost identical to that which the applicant proposed in 2013. We advised then that we did not think it satisfactory and we understand that other respondents were of the same view.

We believe that the proposed route would make the way as a whole less enjoyable to users than the existing obstructed route. We accept that E-F-G has a different aspect to the parallel Baydon 8 but we think it adds little to the overall walking experience. To the west, you see the other side of the hedgerow which you can see from Baydon 8. To the east, because the ground rises, you have near views of grassland and trees with nothing of particular interest and no long-distance views. It is not possible to see horses being exercised in the Outdoor School, which would have added interest, because the applicant (for perfectly legitimate reasons) has chosen to screen it off with trees. By contrast, the existing route B-C is on the crest of the hill and offers much more extensive views to the east.

When we responded to the 2013 consultation we proposed an alternative diversion whereby B-C would be replaced with a new route from C to a point on Baydon 2 south-east of the farm. C-D would be retained. We understand that the applicant is unwilling to support this option and we understand their concerns about safety and security. However, we would still like to find a solution which would provide a circular walk from the village including the newly diverted section of Baydon 2. We believe that many local people would welcome this.

We therefore wish to put forward a slight variant to our previous proposal which we hope the applicants would be prepared to consider. From Baydon 8, the path would either follow the existing D-C or an alignment close to it, perhaps passing through the existing field gate immediately to the south of H. It would then continue in a roughly easterly direction to join Baydon 2 at SU 281772, where there

is another existing field gate. This alignment would take the junction with Baydon 2 further away from the farm than our previous proposal and should, from my observations on a recent site visit, not have any adverse impact on the equestrian activities.

Finally, I should make clear that if the Council decides to make an order to allow the diversion which the applicant has proposed I would anticipate that Ramblers will wish to object.”

39 Officer’s Comments

Mr Gallagher is the third respondent to suggest a better alternative route being to the south and east of the farm, however, this has not been proposed by the applicant and is not likely at this time to be the subject of any creation order promoted by the Council.

40 Mr Gallagher raises the valid observation that the view to the east is diminished along the proposed diversion route. It is agreed that it is though some of these views may be enjoyed from other parts of the network (Baydon 2). However, it is considered that although many rights of way in Baydon offer remarkable panoramic views, this part of Baydon 11 is not one of them.

41 Wiltshire Bridleways Association 09.07.15

“Following a recent site visit by myself, this was one of the items dealt with at our meeting last night...the decision made was that WBA will not be submitting any objection.”

42 British Horse Society 03.08.15

“I have not visited the site of Baydon 11 and I cannot seem to get hold of a BHS volunteer covering the area, but having studied the maps and information it seems to be a sensible solution that will be supported by the BHS. If I get a chance to visit the site soon I will.”

6.0 Considerations for the Council

43 Wiltshire Council has the power to make orders for the diversion of public paths under s.119 of the Highways Act 1980.

44 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.*

45 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”.*

46 Although the Council is only required to consider s.119(1) and (2) to make an order it is clear that it is appropriate for it to also consider s.119(6) at the order making stage.

47 In *Hargrave v Stroud DC* [2002] EWCA Civ 1281, Schieman L.J. stated that:

“On the face of the subsection therefore the authority has discretion as to whether or not to make an order. I do not consider that the mere fact that it is expedient in the interests of the owner that the line of the path should be diverted means that Parliament has imposed on the authority a duty to make such an order once it is satisfied that this condition precedent has been fulfilled.”

48 Subsection (6) sets out factors which are to be taken into account at the confirmation stage. However, it has been held that the Authority is entitled to take these factors into account at the order making stage. In *Hargrave v Stroud* (above), Schieman L.J. held that:

“...the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my judgment...entitled to take into account the matters set out in s.119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed.”

49 After making an order the Council should also again 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*

50 The Council must have regard to The Equality Act 2010. This act 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 a person who is not disabled. The Equality Act goes further than just requiring a public authority does not discriminate against a disabled person. Section 149 imposes a duty, known as the “public sector equality duty”, on the public bodies listed in sch. 19 to the Act, to have due regard to three specified matters when exercising their functions.

51 These three matters are:

- Eliminating conduct that is prohibited by the Act
- Advancing equality of opportunity between people who have a disability and people who do not; and
- Fostering good relations between people who have a disability and people who do not.

52 The Equality Act applies to a highway authority’s provision of public rights of way services. (DEFRA Guidance *Authorising structures (gaps, gates and stiles) on rights of way* Oct 2010)

53 Wiltshire Council relies on DEFRA (2010) Good Practice Guidance for Local Authorities on Compliance with the Equality Act 2010 version 1 and recognises at 7.2.1 that:

A highway authority has a duty, under the Highways Act 1980, to assert and protect the rights of the public to use and enjoy a highway. The Equality Act 2010 adds a further dimension by requiring (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from those functions as others would do or to show that there are good reasons for not doing so.

54 The Council should also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP) - the current plan is entitled Wiltshire Countryside Access Improvement Plan 2015 – 2025 – Rights of Way Improvement Plan 2. ROWIP 2 recognises the Council’s duty to have regard to the Equality Act 2010 and to consider the least restrictive option.

55 At 4.1 page 16 the Council recognises that considering the needs of those with mobility impairments is a statutory responsibility:

“..consider the needs of those with mobility impairments when maintaining the network and authorising structures (e.g. stiles and gates) on the rights of way network and seek improvements to existing structures where it would be beneficial (Equality Act 2010).”

56 At 7.4 page 32 the Council recognises the following:

“The requirements for improving accessibility for people with these sorts of disability are generally the same as discussed in conclusion 5.”

Conclusion 5 states:

“If older people are to keep active and therefore healthy, they will need a more accessible network as they are more likely to find stiles (and sometimes surfacing and latches) difficult than other people. This highlights the need to replace stiles with gaps or gates on key routes, which can also benefit wheelchair users and parents with buggies and children.”

- 57 At 2-5 page 38 the Council recognises opportunities for improving access:
- Make routes more accessible, undertake surface improvements and improve maintenance
 - Work within the framework of Wiltshire Council’s Gaps, Gates and Stiles Policy
 - Encourage landowners to follow best practice for furniture design as set out in the above mentioned policy
 - Work in partnership to promote and create accessible trails
 - Improve surfacing to byways open to all traffic where there is a demand for those with mobility impairments to be able to access remote locations

- 58 ROWIP 2 refers to the Council’s Gaps, Gates and Stiles Policy. This is Policy number 7 and is appended to ROWIP2.

The Policy recognises that the authority must consider the needs of those with mobility impairments when managing rights of way and access and that this requirement particularly applies when authorising structures (e.g. stiles and gates) on rights of way and seeking improvements to existing structures to make access easier.

- 59 ROWIP 2 (page 37 2-2) also recognises opportunities to create a more cohesive network and to create and promote circular route opportunities.

- 60 To ensure accessibility where a route is being diverted Wiltshire Council will specify a level of accommodation works that must be met before the new route is accepted by the Council and any Order made comes into force.

- 61 The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.

- 62 The Council is also empowered to make a ‘combined order’ under s.53(2)A of the Wildlife and Countryside Act 1981. The effect of this means that on the confirmation of the order the definitive map and statement may be changed without the further need to make an order under s.53(3)(a)(i) of the 1981 Act (also known as a ‘legal event order’ or an ‘unadvertised order’).

7.0 Comments on the Considerations

- 63 **S.119(1) HA80** says that Council may make an order to divert a path if it is satisfied it is in the interest of the landowner and/or the public to do so. The landowner’s

interest is demonstrated by the making of the application itself and there are clear benefits for the landowner in having the definitive line removed from their access road, through the garden and past the front door of one of their cottages. The removal of the public from these routes will enable them seek greater security measures should they wish to do so. The applicant highlights the benefit of improved privacy and security in their Reasons for the Application (Appendix 1) and I do not see how it can be argued against. **S.119(1) is therefore satisfied.**

- 64 **S.119(2) HA80** says that the Council shall not alter the termination point to one that is not on a highway or to one that is not on a connecting highway and is not substantially as convenient to the public. The termination points of the one route now recorded as Baydon 2 (part) and Baydon 11 (part) are altered by the proposed diversion. Both new terminal points are on a connecting highway (Baydon 8); the western end of Baydon 2 joins Baydon 8 approximately 15 metres south of its existing junction and the southern end of Baydon 11 joins Baydon 8 approximately 8 metres south of its existing junction.
- 65 The change in the southerly terminus is very close to the existing and is considered as convenient.
- 66 The change in the northerly terminus leads over a similar rise in the ground but does not have a tarmac surface. The rise in the ground has been graded to reduce the fall but no surface improvements are envisaged as the proposed new route has a green surface throughout. There are advantages and disadvantages that need to be weighed when comparing a tarmac surface with a natural surface. Although both surfaces will drain well (being on a low slope) the tarmac one will be more slippery for shod horses (especially in dry conditions) whereas the natural surface will be more slippery for walkers in wet conditions (in dry conditions there is no difference).
- 67 In considering the convenience of both terminal points it is considered that they are substantially as convenient as the existing (each is only a few strides away). **S.119(2) is therefore satisfied**
- 68 The Council could therefore proceed to make an order under S.119 to divert the highway. However, as detailed at paras 46 to 48 it is also appropriate to consider S.119(6) at this stage.
- 69 S.119(6) says that the new path must not be substantially less convenient to the public. The new path is shorter than the existing (existing route 550 metres, proposed new route 350 metres) and has no limitations or conditions attached to it (nor will there be any need for the authorisation of gates for stock control). The new route is easily followed (it is a 4 metre wide fenced route) and has a sense of purpose which, as a result of the recent Town and Country Planning Act diversions, the current route does not have. **The new path is not substantially less convenient to the public.**
- 70 The Council must also have regard to the effect on the public enjoyment of the path as a whole. The existing route (if available) would lead along a tarmac drive that is in part a house and farm access road. There is an authorised gate along the route before it heads south across a garden, past a cottage, past an outdoor school (manege), recrossing the access drive before leaving the land through a gate.
- 71 While some walkers will undoubtedly enjoy seeing this busy environment it is highly unlikely that any horse rider or cyclist would enjoy it. Additionally it is quite possible

that some horse riders would not feel safe using such a feature filled route while out for a rural ride. This is reflected in the consultation responses where walkers are divided in their opinion but horse riders support the proposed change.

72 Officers consider that on balance the new path enhances the public enjoyment of the path as a whole and that balancing the interests of the landowner it is expedient to divert the path. **S.119(6) is therefore satisfied and any Order so made is capable of confirmation.**

73 The Council must also consider the effect on the land served by the existing path. The land is owned by the applicant who will benefit from the removal of the path from its current location. Access and equipment rights will be retained for Openreach BT.

74 The Council must also consider the effect on the land served by the new route. The landowner has lost an area of grazed land to this path, however, since the landowner is also the applicant it must be considered that this effect has been offset for them by the removal of the existing path.

75 The Council must also consider the effect on agriculture, forestry and diversity of fauna and flora. There are no adverse effects associated with this diversion.

8.0 Environmental Impact of the Recommendation

76 There is no environmental impact associated with the recommendation.

9.0 Risk Assessment of the Recommendation

77 Risks to the Council are covered at 10.0 Legal and Financial Implications. Risks to the public associated with the recommendation are considered to be nil, in fact the new route is likely to be present a lower risk to users.

10.0 Legal and Financial Implications

78 Actual costs associated with making an order will be paid by the applicant.

79 If significant objection is received the Council may abandon the Order at no further cost to either the applicant or the Council.

80 If the Council refuses to make the order the applicant may seek judicial review against the Council's decision and may succeed if the Council has been unreasonable. Costs can be high for this (c.£50000).

81 If the Council makes the order and objections or representations are made the Council will consider the matter at a meeting of the Area Planning Committee. That Committee may decide to abandon the order or may decide to support its confirmation. If the Council supports the Order it will be forwarded to the Secretary of State to determine and the Council will pay costs relating to this. This may be negligible if the case is determined by written representations (a few hours of officer time), around £200 to £500 if determined at a local hearing or between £1000 and £2500 if determined at a public inquiry.

11.0 Equality Impact

82 The new route is more accessible than the definitive line.

12.0 Relevance to Council's Business Plan

83 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.

13.0 Safeguarding Considerations

84 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."

85 If an order to divert parts of Baydon 2 and 11 is made, Wiltshire Council will follow procedures set out in Schedule 6 of the 1980 Act and in doing so the Council will fulfil its safeguarding responsibilities.

14.0 Public Health Implications

86 No public health implications have been identified in the diversion of parts of Baydon 2 and 11.

15.0 Options to Consider

- 87
- i) To refuse the application
 - ii) To allow the application and make an order under s.119 HA80 and s.53A(2) WCA81.

16.0 Reasons for Recommendation

88 S.119(1) and (2) are met by the application and an order may be made.

89 S.119(6) is also met if no objections or representations are received and the order may be confirmed by Wiltshire Council if this is the case.

90 There is no cost to the Council associated with paras 88 and 89.

91 The receipt of objections or representations that are not withdrawn will cause Wiltshire Council to reconsider the Order at a meeting of the Area Planning Committee giving a second chance for the consideration of Section 119(6).

17.0 Recommendation

- 92 **That an Order under S.119 of the Highways Act 1980 and S.53A(2) of the Wildlife and Countryside Act 1981 is made in accordance with the application and duly advertised. If no representations or objections are made (or any made are subsequently withdrawn) the Order should be confirmed and the definitive map and statement altered accordingly.**

Sally Madgwick
Rights of Way Officer
06 August 2015

APPENDIX 1 to this report follows:

APPENDIX 1 to Decision Report

**Highways Act 1980 Section 119
Application for the Diversion of Public Bridleways Nos 2 and 11
Baydon House Farm, Parish of Baydon**

The Applicant

Mrs Sally Johnson, Baydon House Farm, Baydon, Wiltshire SN8 2HX

The property is registered at HM Land Registry under Title No. WT129431

The Property

Baydon House Farm, purchased by the current owners in 2010, comprises the main house and cottages which have been completely remodelled, and farm buildings that are now part of a significant equestrian operation used by international equestrians for training. The change to the farm's operation to equestrian requires the retention on the farm of the hay that is cut together with buying in additional hay. With the lack of storage facilities and insufficient space to accommodate horses, together with tractors and mechanical handlers / plant needing to be housed under cover, planning permission has been granted that will shortly see the existing barns extended to provide the additional storage and accommodation needed.

A sand school has also been constructed. The grassland is used to take a hay crop for fodder for the horses and there is some grazing by sheep. Horses are turned out into paddocks.

The farm has four public rights of way: -

- Restricted Byway No 2, which was recently diverted to the north to facilitate the development of the farm buildings for which the planning permission was sought.
- Bridleway No 8, which runs along the western boundary.
- Bridleway No 2, which runs along part of the access road to the farm, and

- Bridleway No 11, which runs across the main drive to the house and immediately adjacent to the outdoor school. It is then partially obstructed where it passes through one of the two cottages.

The latter two paths are the subject of this application.

Description of Existing Paths, 2 and 11

The proposal is as shown on the plan attached.

Bridleway No 2, between points A and 8 on the plan, runs part way along the formal driveway to the farm yard area. It is the residue of the path that was otherwise diverted recently under the Town and Country Planning Act 1990 in order that development of the farm buildings could take place. Midway between the two points there is a field gate across the path.

Bridleway No 11 runs from Bridleway No 2 at Point B to points C and D to join with Bridleway No 8. The route is obstructed and has been for more than 30 years, long pre-dating the current owner's involvement with the land.

The Diversion Sought

The applicant has been anxious to work with the local community in order to resolve the longstanding problem with regard to the obstruction of Bridleway No 11 and to try to provide a new and better facility for use by the public whilst allowing the land to be used effectively and more securely for a major equestrian facility. A section of Bridleway No 2 was retained, following the diversion of the remainder of the path by recent Order and now this serves for no other reason than to allow a legal connection to Bridleway No 11.

The proposal is to formally divert the path **A-B-C-D** to the route **E-F-G-H**. The new route is available on the ground and is now in use by the public on a permissive basis, although it will be widened to achieve a 4 metre width throughout to meet Wiltshire Council's requirements.

The advantages of the proposal are: -

1. It overcomes a longstanding problem with the path's obstruction to provide a usable facility for use by the public.
2. It provides a wide, grass surfaced alternative to a section of Bridleway No 8.
3. It provides a – much-requested – local circular walk for path users within the village.
4. There is no specific need to utilise Bridleway No 11, which only returns to Bridleway No 8 in any event.
5. It improves the privacy and security of the property for the benefit, not only of the owners of Baydon House farm, but also the occupants of the two cottages along the route of Bridleway No2 and to the large numbers of the owner's clients that make use the equestrian facilities.

Diversion Order Confirmation Tests- Section 119(6)

For a Diversion Order to be confirmed, the diverted path must not be substantially less convenient to the public. This takes account of matters such as the length of the diversion, the width, the gradient, and the surface. It must also be expedient having regard to public enjoyment of the way as a whole.

• "Not substantially less convenient"

Length – the length of the path to be diverted (A – B – C – D) is approximately 523 metres. The length of the diversion E – F – G – H is approximately 310 metres. The diverted path is therefore approximately 210 metres shorter. Whilst this is quite unusual, it is more 'convenient' in the sense of being shorter. There is nothing to be gained in terms of 'accessing the countryside' using the existing route- notwithstanding its obstruction- which only returns to Bridleway No 8.

Width – the existing route of Bridleway No 11 has no recorded width, the southern section having been diverted to its present position by Magistrates in 1975, and Bridleway No 2 is around the 5 metre width of the formal driveway. The diverted path will be 4 metres wide throughout in order to meet Wiltshire Council's requirements for a bridleway width.

Gradient – There are no gradient issues, and these are comparable on both existing and proposed routes.

Surface – The existing Bridleway No 2 has a tarmac surface, being the formal driveway to the farm and is not a surface that would normally be in keeping with

use as a public bridleway. The existing Bridleway No 11 is, primarily, grass. The proposed route has a predominantly grassed / earth surface.

Public enjoyment of the way as a whole – The applicant is seeking to provide an outlet for a path that has long-since been unavailable for use by the public and, without some serious enforcement on the part of Wiltshire Council cannot be made available on its 1975 alignment. The proposed route is a pleasant walk / ride within a wide corridor and gives views towards the farm, as well as a different outlook to that obtained from Bridleway No 8. There is little scope to provide a route anywhere else without severely impacting on and compromising the working of the equestrian business and the security and privacy to allow the owners to properly enjoy their property.

The applicant believes that public enjoyment of the way as a whole is not adversely affected by the diversion and that it is expedient to divert the path when balancing the interests of the landowner against the effect on public enjoyment of the way as a whole.

Many users may also feel an element of intrusion into the business area of the farm and, being so close to residences, are likely to prefer the option of being away from areas they might otherwise find intimidating or experience uncertainty in their use of the path. The feel of the proposed route, alongside woodland, provides users with a safe route free from direct interaction with the Baydon House Farm operations.