

**PROPOSED DIVERSION OF PART OF LATTON BRIDLEWAY 17**

**Purpose of Report**

1. To:
  - (i) Consider and comment on the objection received to an Order, made under Section 119 of the Highways Act 1980, proposing to divert a section of Latton Bridleway 17.
  - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for confirmation.

The proposed diversion is shown on the plan attached at **Appendix A**.  
An overview plan showing the surrounding roads and rights of way is attached at **Appendix B**.

**Background**

2. Latton Bridleway 17 forms part of the ancient highway Golden Rose Lane (a bridle road) linking Seven Bridges Gate with Highworth. The route was recorded as a public footpath in the definitive map and statement in 1958 but was upgraded to bridleway by Order in August 2009 on the strength of historical evidence that higher rights subsisted. No objections were received to the definitive map modification order that effected this change.
3. In the 18<sup>th</sup> and 19<sup>th</sup> centuries Seven Bridges Gate was a toll gate allowing paying travellers access to or from the Turnpike Road that was formally the Roman road Ermine Street and is now part of the A419 Trunk road. Latton 17 joins a C class road (the C.114 Castle Eaton road) approximately 30 metres north-east of the A419.
4. Although it is likely that during the time the A419 was a turnpike road the bridle road Latton 17 was well used by travellers (as it was free from toll). After the A419 became a main road (after 1878) the bridle road fell into disuse. The owner of Seven Bridges Farm can not recall any use of the route by horses since before the Second World War.
5. Although it is likely that in the 18<sup>th</sup> and 19<sup>th</sup> century having a bridle road emerge so close to a major route did not give rise to problems for users (and besides, the turnpike road was gated at this point) the re-opening of the way for cyclists and equestrians in 2009 did raise safety concerns. During the definitive map modification process the fact that the A419 was such a busy road with a poor accident record was raised to Wiltshire Council by both the landowner and the Highways Agency, the highway authority for the A419.
6. Issues relating to desirability and safety may not be taken into account when determining whether higher rights exist on rights of way. It is Wiltshire Council's duty under Section 53(2) of the Wildlife and Countryside Act 1981 to modify the definitive map by order as soon as is reasonably practicable after such time as the Council becomes aware of the supporting evidence.

7. Although the Council has a duty to record the higher rights on the route on which they exist, it also has a power to divert the route, or part of the route under the Highways Act 1980 s.119.
8. In September 2009 officers consulted widely on a proposed diversion of part of Latton bridleway 17 at Seven Bridges Farm (as shown in **Appendix A**). The consultation was sent to landowners, Latton Parish Council, neighbouring properties, statutory undertakers, the Highways Agency and a range of groups representing users, both locally and nationally. The user groups consulted include the Ramblers' Association, the British Horse Society, the Wiltshire Bridleways Association and the Byways and Bridleways Trust.
9. Responses were received from the landowner, the Highways Agency, various statutory undertakers and one local horse rider, all of whom raised no objection to the proposed diversion.
10. There being no objections to the proposal, an Order was made to divert part of Latton 17 in the interests of the public on 19 November 2009.
11. The diverted route leaves a stoned track at point B (see **Appendix A**) through a gate and leads across two fields to join the C.114 at point C. The diverted route has a width of five metres and the three gates on it are specified to be to British Standard 5709:2006. The new route is approximately 590 metres long.
12. The route to be extinguished has a width of five metres, has four gates on it (three in the statement and one authorised for stock control) which are not to a specified standard and is approximately 750 metres long.
13. One objection to the making of the Order was received from Mr Ken Stimson of the Ramblers' Association. Mr Stimson stated in an e-mail dated 12 December 2009:

*“At our recent committee meeting the Ramblers decided to object to the proposal primarily on safety grounds. The proposed diverted route from A to B via C involves approximately 550 metres of walking along a narrow road which poses a serious safety issue to walkers. We note that the Rights of Way Improvement Plan states the intention to improve/maintain roadside verges. However, the safety considerations for walkers will apply until the intention is properly implemented. We note that the diverted route is approximately 350 metres longer than the current route. The footpath network in the vicinity of Kingshill Farm on the other side of the A419 links with Latton 17 by a short stretch of roadside verge and careful crossing of the A419 and forms part of a published circular walk starting at Cricklade”*

14. One representation was received from the Highways Agency. In a letter dated 22 December 2009 Mr Kevin Phillips states:

*“As highway authority for the A419, the Highways Agency's concern is bridleway users entering or exiting the original footpath near Seven Bridges Farm. At this point the C114 is narrow with no verge and lies only 36 metres from the A419/C114 junction. Drivers entering the C114 will be manoeuvring and therefore may not notice a horse and rider. As a consequence the original footpath access point is considered inappropriate for bridleway users. The diverted route removed our concerns because the exit was sited well away from the A419 junction”.*

## **Main Considerations for the Council**

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

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

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

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

18. 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”.*

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

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

- (a) *the diversion would have on public enjoyment of the path or way as a whole;*
- (b) *the coming into operation of the Order would have as respects other land served by the existing public right of way; and*

- (c) *any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it.*
20. The Council has to have regard to The Disabilities Discrimination Act 1995 (DDA95). Section 21 of this Act states:
- (1) *Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change that practice, policy or procedure so that it no longer has that effect.*
- (2) *Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to:*
- (a) *remove the feature;*
- (b) *alter it so that it no longer has that effect;*
- (c) *provide a reasonable means of avoiding the feature; or*
- (d) *provide a reasonable alternative method of making the service in question available to disabled persons.*
21. The Council has to also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP). The ROWIP recognises the Council's duty to have regard to DDA95 and to consider the least restrictive option.
22. The ROWIP also has as its aims:
- The promotion and development of the public rights of way network, enabling pedestrians, cyclists and horse riders to avoid heavy or intrusive traffic. (p.46.3)*
- Establishment of margins on highway verges to allow safe passage for horse riders, cyclists and pedestrians (p.47.5)*
23. The Council must also have regard to the needs of agriculture and forestry.

### **Comments on the Objection**

24. Officers have investigated accident statistics for both the stretch of the C.114 that the Ramblers' consider unsafe and the A419 junction. The Area Highway Engineer states in an e-mail dated 4 January 2010 referring to the C.114;
- I have little knowledge of this road and have not received any concerns via the Parish Council since being in my role as Area Highway Engineer for area 1 so am unable to comment. I will say foremost is I understand the Ramblers' concerns as they are exposed to traffic along this section of road. Having said this I can see that horses could potentially be cause for concern nearer the junction than further along the straight section of the Castle Eaton road."*

25. In the past five years there have been three reported accidents at the A419 junction and a further 12 on the A419 within 750 metres. There have been no reported accidents on the C.114 within 750 metres of the junction. A reported accident is one that is attended by the police. A Principal Highway Engineer in Highway Network Improvements at Wiltshire Council states that “as a rule of thumb we traditionally go on the belief that for every recorded accident, approximately 12 go unrecorded (i.e. the police were not called).” **(Appendix C)**
26. Of the three accidents at the junction, one involved a vehicle going too fast and crashing on the turn and another involved a vehicle having missed the turning, reversing back to it and colliding with another vehicle. The third accident involved a vehicle turning into the C.114 and the driver losing control of the vehicle.
27. Officers specifically asked local cycling and horse riding groups to comment on whether they considered that their enjoyment of the route would be affected by the diversion. In an e-mail dated 5 March 2010 Mr A Clarke of the Cyclists Touring Club stated:
- “We have no problem with the proposed diversion of LATT17 as indicated in your letter dated 3 March 2010 ref SM/PC139. For the reasons you point out it is preferable for us; one less gate and over better drained land. Our minimum speed is no less than 20 kph on a C class road so an extra distance of 500 metres or so takes us around one a half minutes maximum. This is not significant and is compensated for by the one less gate and easier cycling over better drained land. When cycling in a group coming from CRIC11 or CRIC15 it is quite clear for the leader to make sure the members know to take the C.114 and then regroup if necessary some way along it before taking the diverted LATT17. This is preferable to regrouping near the junction with the A419 where you have recorded a number of accidents. It is not unknown for the group leader to be passed by keen member cyclists who then wait when they are unclear which way to go next!”*
28. The diversion of Latton 17 only results in a longer journey if users are linking Latton 17 with the A419. If they are linking Latton 17 with the C.114 and travelling north towards the Thames Path National trail then the journey is shorter. Although Latton 18 is a nearby alternative to the north, this suffers from flooding problems and it is not uncommon in wet weather for the gateway at the C114 junction to have a depth of water of over six inches. Hence, walkers coming from the Thames Path may chose to use the drier route of Latton 17.
29. Although the Ramblers’ Association refer to Latton 17 being part of a featured walk that involves walking alongside and crossing the A419, because of the intrinsic dangers of the A419 officers consider it to be unlikely that the feature walk would ever be promoted nationally or developed as a National Trail or promoted as an equestrian or cycling route.
30. Turning to Section 119 (2) of the 1980 Act the route must be diverted to a point on a highway which is substantially as convenient to the public. Officers consider that moving the start/end of Latton 17 to a point approximately 550 metres north on the C.114 is more convenient for the public in that they are removed from the busy A419 junction and a kinked section of C.114 and are closer to the Thames Path from the north. The objector considers it less convenient if approaching from the A419 as users have to travel for 550 metres along the C.114. Although this is true, officers note that this section of road is straight, wide and has margins, unlike the section near the existing junction. There is no record of accidents in the last five years on this stretch of road.

31. Turning to Section 119 (6) of the 1980 Act the Order may not be confirmed unless Section 119 (2) above is satisfied and that it is expedient and 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.
32. It is considered that the potentially safer junction of Latton 17 with the C.114 will have an enhanced effect on the public enjoyment of the way as a whole and that the addition of BS5709:2006 gates to the route will also enhance the enjoyment for all users and will offer easier access for all (including the disabled). The land over which the diverted route runs is better drained than the section near Seven Bridges Gate, which floods.
33. The diverted route is approximately 160 metres shorter than the existing route. The path or way as a whole measures 1.3km to the Swindon Borough Boundary (bridleway Blunsden St Andrew 12) and approximately 1.6 km to the nearest road; this difference of approximately 10% is not considered significant.
34. The Order has no effect on other land served by the existing right of way.
35. The new route has the approval of the landowner who has expressed concerns over the safety of users at the existing junction of Latton 17 with the C.114. The landowner's own house access is nearby and they have experience of exiting and entering their property so close to the A419 and on this kinked section of C.114.
36. Moving the junction of Latton 17 with the C.114 away from the A419 also lessens the risk of escaping stock or loose and startled horses getting onto the A419.

### **Environmental Impact of the Recommendation**

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

### **Risk Assessment**

38. Risks associated with use of the A419 and C.114 are represented in **Appendix C**.

### **Financial Implications**

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

### **Options Consider**

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

### **Reasons for Recommendation**

42. The proposed diversion meets the test contained in Section 119 of the Highways Act 1980.

### **Recommendation**

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

### **MARK SMITH**

Service Director for Neighbourhood Services

Report Author  
**SALLY MADGWICK**  
Rights of Way Officer

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

None