

WILTSHIRE COUNCIL

EASTERN AREA PLANNING COMMITTEE

04 APRIL 2013

HIGHWAYS ACT 1980 AND WILDLIFE AND COUNTRYSIDE ACT 1981 THE WILTSHIRE COUNCIL (SHEET SU 05 NW) EASTERTON 26 DIVERSION ORDER 2011 AND DEFINITIVE MAP MODIFICATION ORDER NO. 8, 2011

Purpose of Report

1. To:
 - (i) Consider objections received to the making of “The Wiltshire Council (Sheet SU 05 NW) Easterton 26 Diversion Order 2011 and Definitive Map Modification Order No. 8 2011”, under Section 119 of the Highways Act 1980.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for confirmation.

Description of Route

2. Bridleway No. 26 is located in the parish of Easterton, off the B3098 road, between the villages of Easterton and Urchfont, as shown on the location plan attached at **Appendix 1**. The public path diversion order is attached at **Appendix 2**, with the order plan which shows the definitive line of Bridleway No. 26 and the proposed diversion route.
3. The definitive line of the bridleway follows an irregular, cross-field route from its junction with the B3098 Road, leading generally north-west to its junction with Byway Open to all Traffic (BOAT) No.34 Urchfont, having no recorded width.
4. The proposed bridleway diversion route follows a track for approximately 370 metres, leading north-west from the B3098 road, and then a field edge route, leading north-west to its junction with BOAT No. 34 Urchfont, having a width of 4 metres.
5. The proposed diversion extinguishes approximately 840 metres of bridleway and creates approximately 640 metres of bridleway.

Background

6. Wiltshire Council received an application to divert bridleway No. 26 Easterton, on 31 January 2011. The application was made by the landowner, FJ Snook and Sons Ltd, the grounds for diversion stated as follows:
 - (i) To remove the bridleway from two fields used by breeding pigs (at the time of application).

- (ii) The definitive line of the bridleway leaves the B3098 road over a 5 feet high bank (impassable to horses) and follows an irregular route to its junction with BOAT No. 34 Urchfont. The alternative route would provide a more convenient and direct route.
 - (iii) To the landowner's knowledge the route has not been used since 1947 (or longer) and users of the bridleway have followed the proposed alternative route since that date.
7. Wiltshire Council undertook a public consultation exercise regarding the proposals on 11 May 2011, with a closing date for all representations and objections to be received, in writing, by 24 June 2011. The consultation included statutory undertakers, landowners, user groups and other interested parties, such as the Wiltshire Council Member for Urchfont and Cannings and Easterton Parish Council.
 8. No objections to the diversion proposal were received at the initial consultation.
 9. Officers considered the legal tests for making a public path diversion order, under Section 119 of the Highways Act 1980, in a decision report, dated 22 July 2011 (attached at **Appendix 3**). It was considered that the legal tests for diversion were met and a public path diversion order to divert Bridleway No. 26 Easterton 26 was made on 4 October 2011.
 10. Notice of the making of the Order was circulated to all interested parties, posted on site and advertised in a local newspaper. This was followed by a statutory objection period of 28 working days, during which time two objections were received from Wiltshire Bridleways Association (WBA) and Sarah Thomas. Additionally, an e-petition was established by WBA, which at the time of writing this report has been signed by 57 individuals and can be viewed at: www.wiltshirebridlewaysassociation.co.uk/petitions.html
 11. The objections to the making of the Order are set out below and copies of the objections are attached at **Appendix 4**.
 12. Sarah Thomas of Market Lavington wrote on 28 November 2011 making the following points:
 - *“Since the pig farms development, horse riders have been forced from using the EAST 26 bridleway due to the pig farm being in its place, an alternative has been made available; a very narrow track, some distance away from EAST 26 (I believe this would be the diversion you are currently considering), through the centre of the pigs with (for the most of it) an almost invisible single strand electric wire either side separating us from the pigs. A horse would not see this electric fence and if shielded from the pigs, would almost certainly get entangled and/or shocked from the fence, causing further panic and quite possibly, an accident.*
 - *The most sensible of horses are very often frightened by pigs much more than other farm animals; due to the high-pitched squeals, the smell and the way they move. This bridleway has already been made impossible to*

pass as well as its alternative, due to the risk. Therefore, many horse riders have chosen not to use it, despite its convenience.

- *Bridleway EAST 26 forms a convenient link from Eastcott (Easterton) to a very popular bridleway offering the choice of many safe routes to Easterton Sands, Potterne and Urchfont, all avoiding the main roads. Should EAST 26 be re-routed, it would mean an even further distance to manage our horses past the pigs whilst riding along the busy B3098. This section of the road has high banks, causing a further risk, as the pigs would almost certainly create a serious hazard to all road users, due to the high risk of the horse shying away from the pigs and into the path of a vehicle. I am sure in time there would be a serious accident involving a horse and a vehicle.*
- *For the safety of all road users, horses and riders alike, EAST 26 should remain, as its original route and have Post and Rail fencing either side of the path, with a minimum distance across of 12 feet. This will allow enough room for the horse to pass wide, if the pigs are against the boundary of the bridleway and for horse riders to pass each other safely.”*

13. WBA wrote on 14 November 2011:

- *“The Wiltshire Bridleways Association object to the above order route on grounds of impracticality due to the movement of traffic along the proposed route and the adjacency of the pigs. Also, in order to keep both horse and rider safe and off the road, a track inside the field line is required.*
- *We feel an alternative route to that proposed should be something more suitable for equestrian use, closer to the original route and a minimum of 4 metres in width for the entire length. This route should then be protected with suitable fence and rail.”*

14. Michelle Haley of WBA e-mailed the Rights of Way and Countryside Manager, Mr. Richard Broadhead, on 13 February 2012:

- *“You will remember that on 18 December 2012, I served notice in Form 1 on Wiltshire Council to secure the removal of the obstructions on this route.*
- *You replied in Form 3, dated 11 January 2011, that you would not enforce removal of the obstructions if within one month Mr. Snook submitted an application to divert the route which he has done.*
- *We are extremely concerned that the definitive route has now been blocked for over a year while the diversion order is decided and we have received no indication as to when this may be determined, and that during this time riders have been forced to use the less harmonious and more dangerous permissive route.”*

15. WBA corresponded further on 12 March 2012, to advise:

- *“I would like to draw your attention to the circumstances which brought this request about. This bridleway has been accessible in the past as the land was unfenced; suddenly a fence appeared along the roadside,*

obstructing the bridleway, with no gate in it for horses, riders or walkers. Wiltshire Bridleways contacted the ROW Warden for the area, but no action was taken to remove the obstruction and get the route reopened. The landowner made no attempt to resolve this before setting up his pig enterprise. In a very short time this has become a massive operation.

- *Under Section 119 of the Highways Act 1980, subsection 2b it states “a public path diversion order shall not alter a point of termination of the path (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.” Moving the bridleway further east along the B3098, a busy and fast road at this point, with no useable verges, will cause more inconvenience and danger to walkers and horse riders, and is therefore unacceptable.*
- *We propose moving the bridleway west to Eastcott, to minimise the amount of road use, and to connect more easily with the other Easterton Rights of Way, Nos. 19, 20, and 28. This should be more commodious to the public, and would have the added benefit of separating horses from pigs and farm vehicles and electric fencing.”*

16. WBA then wrote again on 21 October 2012, suggesting alternative diversion routes which they would be content with.

- *“At present there is a diversion on this route which is not acceptable and dangerous for horse riders, as not only does it run through a pig farm, it also entails riding further along the very busy B3098 than the definitive route.*
- *I have been asked by John Holley to write to you giving a number of suggestions for an alternative route for your consideration. These are as follows and outlined on the attached map (please see letter and map attached at **Appendix 4**).*

Route 1

A to B along track

B to C along field edge

C to D along field headland to original exit of bridleway 26

Route 2

A to B along track

B to E to F to join up with the original route

Route 3

A to G headland path to pick up the start of the original bridleway 26, and the bridleway to be fully protected by post and rail minimum width of 15 feet.”

17. However, it was found that the alternative routes identified had been previously considered by the Rights of Way Department and were dismissed as the land over which the diversion routes suggested by WBA pass, is in the ownership of

another party, or the field boundaries used as reference points for the suggested routes, no longer exist.

18. In December 2012 Wiltshire Council was notified by the applicant that the pigs were to be removed permanently from the land as of August 2013. WBA was advised of this development; however, the objections were maintained. Michelle Haley e-mailed on 12 December 2012:

“The removal of the pigs is good news but as you are aware our main reason for the objection is the extra length of the main road which horse riders would have to negotiate if the diversion route went ahead.”

19. Due to the objections received, the Order now falls to be considered by the Eastern Area Planning Committee whose Members should consider the legal tests for diversion against the objections received, in order to decide whether or not Wiltshire Council continues to support the making of the Order.
20. Where the Authority continues to support the making of the Order, it should be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or with modification.
21. Where the Authority no longer supports the making of the Order, it may be withdrawn with reasons given as to why the legal tests for diversion are no longer met. The making of a public path diversion order is a discretionary duty for the Council, rather than a statutory duty; therefore, the Order may be withdrawn at any time.

Main Considerations for the Council

22. The Diversion Order has been made under Section 119 of the Highways Act 1980, which states:

“119. Diversion of footpaths, bridleways and restricted byways

- (1) *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’.

- (2) *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.*
- (3) *Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall-*
- (a) specify a date under subsection (1)(a) above, and*
 - (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.*
- (4) *A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.*
- (5) *Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,-*
- (a) any compensation which may become payable under section 28 above as applied by section 121(2) below; or*
 - (b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public; or*
 - (c) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (9) below.*
- (6) *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 subsection (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; so, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into*

account the provisions as to compensation referred to in subsection 5(a) above.

(6A) The considerations to which-

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and

(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.”

23. Section 119 of the Highways Act 1980 allows the highway authority to divert a bridleway where it considers it expedient to do so in the interests of the landowner, lessee or occupier of the land and/or the public. This Order has been made in the interests of the landowner to remove the irregular route of the bridleway from the land and create a more convenient and direct route. This allows the landowner to farm the land and maintain the route of the bridleway more easily. This legal test for the making of a Diversion Order is met.
24. Additional public benefits have been identified whereby the proposed diversion route is more direct and convenient for the public. There is presently a bank at the junction of the bridleway with the B3098 road, where the proposed diversion route has a level access onto and from the B3098.
25. The diversion of the bridleway must not alter the termination points of the path where these are not on a highway and where they are located on a highway they must not be altered, other than to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public. The northern termination point A, (see order plan at **Appendix 2**), is moved eastwards but remains of the same highway, i.e. BOAT No. 34 Urchfont. The southern termination point B is moved eastwards, but remains on the same highway, i.e. the B3098 road; however, objectors have argued that the new junction on the B3098 road is not substantially as convenient to the public as horse riders are forced to travel further on the B3098 road. Members must now consider whether this legal test for the making of a Diversion Order is met in the light of the objections received.
26. Additionally, at the confirmation of an Order there are a number of legal tests to be considered:
 - 1) It must be expedient to confirm the Order in the interests of the landowner and or the public (as seen above).
 - 2) The diverted route must not be substantially less convenient to the public.
 - 3) It must be expedient to confirm the Order having regard to the effect which:
 - (i) the diversion would have on public enjoyment of the path or way as a whole;

- (ii) the coming into operation of the Order would have as respects other land served by the existing public right of way;
 - (iii) 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.
- 27. At 3 (ii) and (iii) above, the land over which the existing path passes and the land over which it is proposed to place the newly created bridleway, are in the ownership of the applicant, FJ Snook and Sons Ltd, who has given written consent to the diversion proposals and no compensation claims are anticipated.
- 28. At 2 above, the diversion of the bridleway deletes approximately 840 metres of bridleway and creates approximately 640 metres, which is not substantially less convenient for the public. The proposed route is more direct and there is no bank to negotiate at its junction with the B3098 road. However, objectors have argued that the diversion route is substantially less convenient to the public as horse riders are forced to travel extra distance on the B3098 road (approximately 146 metres); however, this distance is only further for users approaching from an easterly direction.
- 29. When considering the public enjoyment of the path or way as a whole, the diverted bridleway will have a recorded width of 4 metres, open and available for public use, where no width is presently recorded within the definitive statement. Views from the path remain unaffected, and there are no additional limitations or conditions on public use of the path. However, objectors are concerned that their enjoyment of the path will be affected by the extra distance on the B3098 road for horse riders approaching from the east and sharing the diverted route with agricultural vehicles.
- 30. Under sub-section 6A of Section 119 of the Highways Act 1980, the Council must also have regard to any material provision of any Rights of Way Improvement Plan, the Wiltshire Council Rights of Way Improvement Plan 2008-2012 (ROWIP). The ROWIP recognises the Council's duty to have regard to the Disability Discrimination Act 1995 (now replaced by the Equalities Act 2010) and to consider the least restrictive option for public use. The proposed diversion route is a less restrictive route as there are no gates necessary for stock control, it will have a recorded width of 4 metres open and available for public use, and there is no bank to be negotiated at its junction with the B3098 road.
- 31. The ROWIP also includes the following aims:
 - *To provide a more useable public rights of way network, suitable for changing user demands (p.46 Improvement 1).*

The diversion of the bridleway will create a more convenient and direct route for public use, and a more direct link to other rights of way and the established network between the parishes of Easterton and Urchfont, much of which is available for use on horseback.

- *Increase access to the countryside for buggies, older people, people with mobility problems and other impairments (p.43 Improvement 1), and to*
- *Increase access to the countryside for people who are blind or partially sighted (p.44 Improvement 4).*

The proposed diversion route will have a recorded width of 4 metres, with no limitations such as gates. It also provides a level access from the B3098 road and the route provides a more direct link with the adjoining BOAT Urchfont 34.

32. Under the Countryside and Rights of Way Act 2000, the Council must also have regard to the needs of agriculture and forestry. This diversion is being proposed in the interests of the landowner to remove the right of way from two fields to enable the landowner to farm this land more easily and more productively by creating a more direct and convenient route. This will also allow the route of the right of way to be more easily maintained. This also has an additional public benefit as the proposed route will be partly located within an existing track and partly at the field edge, there will be no stock over the route and therefore no requirement for gates or other limitations for the purposes of stock control. This also meets the Council's duty under the Equalities Act 2010 to advance equality of opportunity between people who have a disability and people who do not. The proposed bridleway diversion presents the Council with the least restrictive option for public use.

Comments on the objections

33. The main points of objection concern the presence of the pigs over the land, path users sharing the proposed diversion route with vehicular traffic and the safety of horse riders travelling further on the B3098 road to reach the diversion.
34. It is acknowledged that following the making of the Order, the landowner moved the breeding pigs from land over which the definitive line passes, to a new location alongside the proposed diversion route. However, the landowner has now confirmed that the pigs will be permanently removed from the land from August 2013. Despite the pigs no longer being present the diversion is still required by the landowner to remove the irregular route of the right of way from the land, to a new, more direct route, which makes the land more productive, easier to farm and the route of the bridleway easier to maintain.
35. The landowner has confirmed that the track onto which it is proposed to divert the bridleway is used by agricultural vehicles only. This use will be greatly decreased following the removal of the pig farm operation and the track will only be used by agricultural vehicles to access one or two fields and the barn at the northern end of the track, which is used to store straw at harvest time, which is then sold.
36. Officers sought advice from the Area Highway Engineer regarding the safety of equestrian users on the B3098, with the following comments:

"I have now inspected the bridleway at Easterton, in relation to the safety issue comments from equestrians regarding its new location. Although I

appreciate their concerns regarding the extra short distance, the new route runs along the straight section of road and into the field entrance.”

The Officer also suggested speaking with the Traffic Management Team to give their opinion on erecting horse warning signs.

37. The Senior Traffic Management Engineer responded as follows:

“I know this stretch of road reasonably well and I have also taken a look on streetview. Your diversion is, as you say, just a short distance along the B3098. The road is reasonably straight at this point, the hedgerows are kept to a low level and sightlines for all road users are very good.

Signs should only be provided to warn motorists of situations that are not obvious and the Highway Code also advises motorists to look out for horses in rural areas. I am not convinced that warning signs would improve safety at this location and no further action will be taken at this time.”

38. Additionally, the diversion creates a further distance for users approaching from the west only, for example from Easterton, for users approaching the diversion route from the east, for example from Urchfont, use of the B3098 road is reduced.

39. WBA has suggested a width of 4 metres over the entire length of the proposed new bridleway. The width of the diversion route has been recorded within the Order at 4 metres and therefore this is the minimum width of the path which should be available for use by the public along its whole length. At present there is no recorded width against the definitive line.

40. It has been suggested that the new path should have a post and rail fence; however, Wiltshire Council has no power to require a right of way to be fenced and this is entirely at the discretion of the landowner. It may not be necessary to fence the right of way when the pigs are removed from the land.

Environmental Impact of the Recommendation

41. None.

Risk Assessment

42. Objectors have raised safety concerns regarding the diversion on the following points:

- (i) The safety of horses and riders in close proximity to the pigs.
- (ii) Use of the proposed diversion route by vehicles.
- (iii) The safety of horses, riders and all road users in horse riders having to travel a further distance on the B3098 road, to reach Bridleway No. 26 Easterton.

43. The landowner has confirmed that from August 2013 the pigs will no longer be present on the land.
44. The landowner has confirmed that the track is used only by farm vehicles and this use will greatly decrease following the removal of the pig farm operation.
45. For users of the bridleway coming from Eastcott the diversion adds approximately 146 metres of roadwork on the B3098 for horse riders. This additional length is over a straight part of the road and the entrance to the proposed diversion route at point D (please see order plan at **Appendix 2**) gives level access onto the B3098. At present the definitive line of the bridleway exits and egresses onto the B3098 road via a steep bank at point B. Please also see comments from the Area Highway Engineer and the Senior Traffic Management Engineer at paragraphs 36 and 37.

Financial Implications

46. The applicant has agreed, in writing, to meet the actual costs to the Council in processing the Order, which includes staff time and the costs of advertising the making of the Order, the confirmation of the Order and the certification of the new route, in one local newspaper.
47. The applicant has also agreed, in writing, to pay any expenses which may be incurred in bringing the new bridleway into a fit condition for use by the public, as required by the Council.
48. If the Order is withdrawn by Wiltshire Council, the Order is not confirmed and there are no additional costs to the applicant or the Council. However, although there is no form of appeal process against the Council's decision to withdraw the Order, the Council's decision is open to Judicial Review and clear reasons must be given for the withdrawal of the Order.
49. If the Order is forwarded to the Secretary of State for decision, the Order will be determined by written representations, hearing or local Public Inquiry, all of which have a financial implication for the Council as none of these costs can be passed to the applicant. If the case is determined by written representations the cost to the Council is negligible; however, where a local hearing is held, the costs to the Council are estimated at £200 - £500 and £1,000 - £3,000 where the case is determined by local Public Inquiry.

Options Considered

50. Having considered the objections received against the legal tests for diversion there are two options available to Members of the Committee:
 - (i) Where Members of the Committee no longer support the making of the Order in the light of the objections received, the Order may be withdrawn. The making of a public path diversion order is a discretionary duty for the Council rather than a statutory duty; therefore, the Order may be withdrawn at any time. Although there is no appeal procedure for the landowner where the Order is withdrawn, the Council's decision is open to

Judicial Review and reasons why the Order no longer meets the legal tests should be clearly stated.

- (ii) Where Members of the Committee consider that the Order continues to meet the legal tests for the making and confirmation of a public path diversion order, the Order should be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification, or confirmed with modification.

Reasons for Recommendation

- 51. Despite the objections received it is considered, for the reasons given within the report, that the making of “The Wiltshire Council (Sheet SU05 NW) Easterton 26 Diversion Order 2011 and Definitive Map Modification Order No. 8, 2011”, continues to meet the legal tests for the making of a Diversion Order under Section 119 of the Highways Act 1980. Additionally, the legal tests for the confirmation of a public path diversion order, as set out under Section 119 of the Highways Act 1980, are met.

Recommendation

- 52. That “The Wiltshire Council (Sheet SU 05 NW) Easterton 26 Diversion Order 2011 and Definitive Map Modification Order No.8, 2011”, be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire Council that the Order be confirmed without modification.

MARK SMITH

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Rights of Way Officer

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

None

Appendices

Appendix 1 - Bridleway Location Plan

Appendix 2 - Public Path Diversion Order

Appendix 3 - 22 July 2011 Decision Report

Appendix 4 - Objections to the Order