

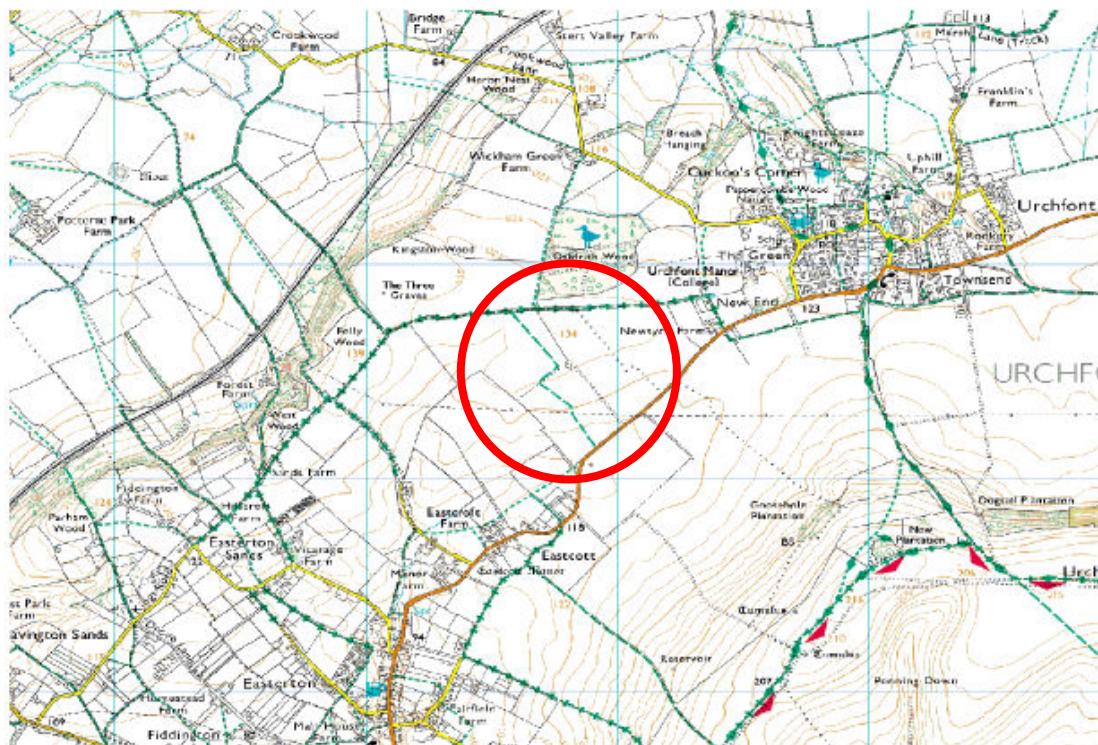
DECISION REPORT

PROPOSED DIVERSION UNDER SECTION 119 OF THE HIGHWAYS ACT 1980 – BRIDLEWAY NO.26 EASTERTON

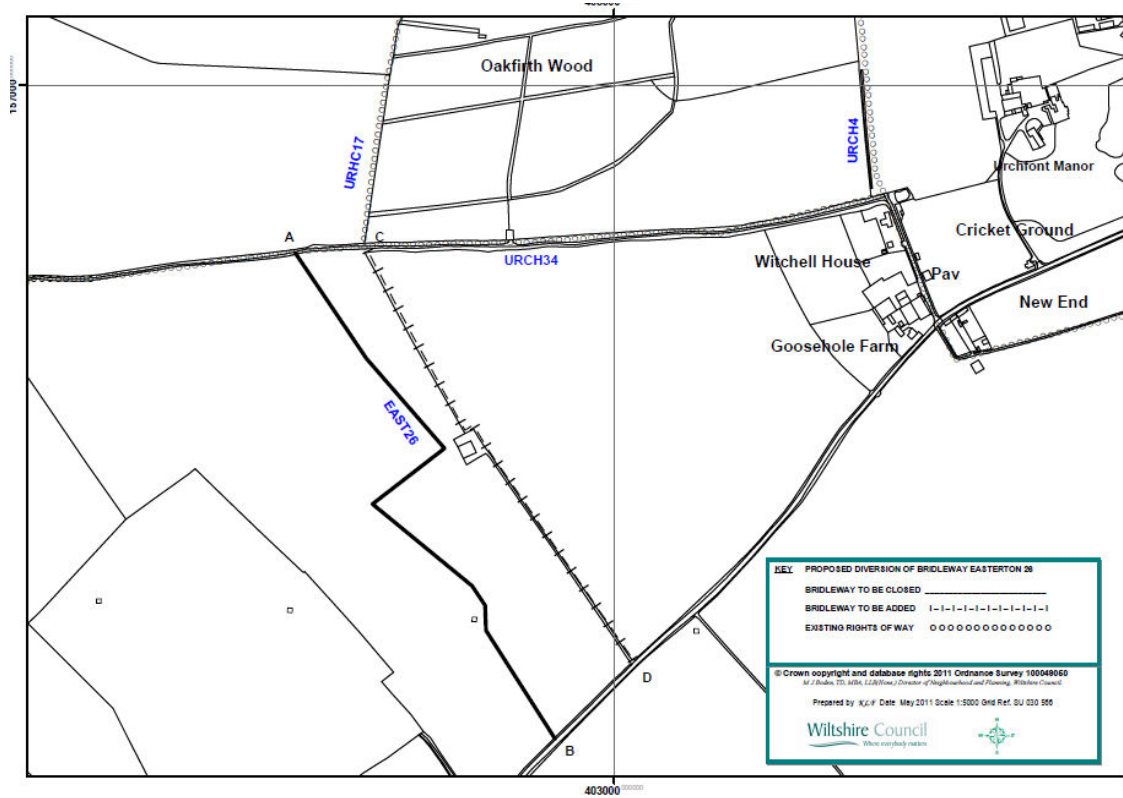
1. Purpose of Report

- 1.1. To consider an application, made under Section 119 of the Highways Act 1980, to divert Bridleway no.26 Easterton and remove the public right of way from two fields presently used by livestock and to provide a more convenient and direct route for the public.
- 1.2. It is recommended that an order be made under Section 119 of the Highways Act 1980, to divert Bridleway no.26 Easterton, and to confirm the order if no representations or objections are received.

2. Location Plan



3. Diversion Application Plan



4. Photographs



SU 0292-5613 looking north-east.

The definitive line of Bridleway no.26 at point B, at its junction with road B3098. There is a steep bank to be negotiated by walkers and horse riders when accessing the path from the road at this point.



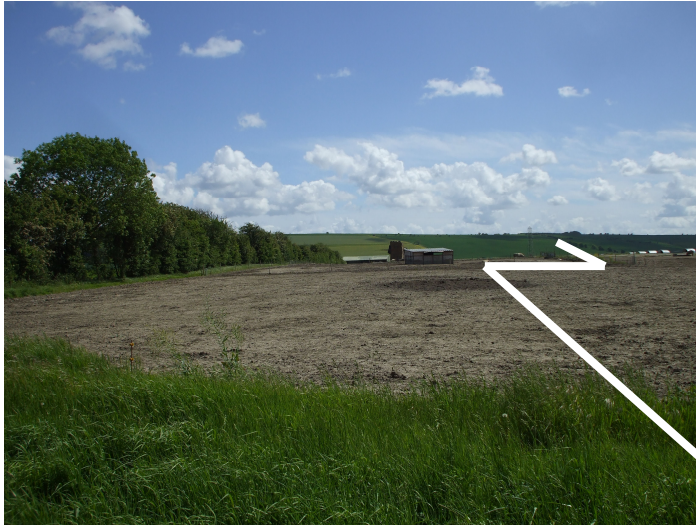
SU 0299-5628 looking west.
The definitive line leads from point B (as shown).



SU 0279-5653 looking west.
The definitive line of bridleway no.26 Easterton, leads through two fields presently used by breeding pigs (as shown approximately).



SU 0277-5654 looking north-west.
The definitive line of Bridleway no.26 Easterton leading in a north-westerly direction to point A (as shown approximately).



SU 0262-5678 looking south.
The definitive route of Footpath no.26 Easterton (as shown approximately).



SU0257-5678 looking southwest.
The definitive line of Bridleway no.26 Easterton at its junction with Byway no.34 Urchfont, at point A.



SU 0302-5624 looking southeast.
The proposed diversion route at point D, at its junction with the road B3098. The junction here is a more convenient access to the bridleway from the road as there is no bank to be negotiated.



SU 0295-5634 looking north-west.

The proposed diversion of the bridleway leading north-west. The new bridleway will have an available width of 4 metres where none is presently recorded within the definitive statement.



SU 0280-5654 looking north-west.

The proposed diversion at the field edge, leading north-west to point C.



SU 0266-5678 looking north-west.

The proposed diversion route at point C, at its junction with Byway no.34 Urchfont.

5. Applicant and Registered Landowner

- 5.1. FJ Snook & Sons Ltd
Rookery Farm
Urchfont
Devizes
Wiltshire

6. Legal Empowerment

- 6.1. The diversion application 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.”

7. Background

7.1. Wiltshire Council are in receipt of an application dated 31st January 2011, from FJ Snook and Sons Ltd, to divert Bridleway no.26 Easterton, under Section 119 of the Highways Act 1980. The effect of the application is to remove the public right of way from two fields presently used by breeding pigs. The landowner has also indicated that there will be benefits to the public in the diversion of the bridleway. At its junction with the B3098 the definitive line leads over a high bank

which is impassable to horses and then follows an irregular route. The proposed diversion follows a more direct and convenient route.

- 7.2. The proposed diversion route follows a track between the B3098 and its junction with Byway no.34 Urchfont, as shown on the diversion application plan above. The new bridleway will have a width of 4 metres for its full length. In total the proposed diversion extinguishes approximately 840 metres of bridleway and creates 640 metres of bridleway.

8. Public Consultation

- 8.1. A public consultation exercise regarding the diversion proposals was carried out on 11th May 2011, with a closing date for all representations and objections to be received, in writing by 24th June 2011. The consultation included statutory undertakers, landowners, user groups and other interested parties such as the Wiltshire Council Member for Urchfont and the Cannings and the Parish Council.

- 8.2. The following responses were received:

Scottish and Southern Energy, correspondence dated 17th May 2011 -
"Plant at location."

National Grid Plant Enquiries, correspondence dated 24th May 2011 –
"National Grid's records show no apparatus in the vicinity of your enquiry."

BT Openreach, correspondence dated 31st May 2011 –
"Plant at location."

- 8.3. Two statutory undertakers have confirmed that they have plant located in the vicinity. The Section 119 Highways Act 1980 regulations, contain wording within the order to ensure that statutory undertakers retain

access to plant and therefore will not be affected by the diversion proposals.

8.4. No objections to the diversion proposals have been received.

9. Main Considerations for the Council

- 9.1. 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 and/or the public. This particular application has been made in the interests of the landowner to remove the right of way from two fields presently used by breeding pigs.
- 9.2. Additional public benefits have been identified whereby the proposed diversion route is more direct and more convenient for the public. There is no bank to be negotiated from the B3098 road.
- 9.3. 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 on a highway they must not be altered, other than to another point on the same highway. The northern termination point A (see diversion application plan above) is moved eastwards but remains of the same highway, i.e. Byway no.34 Urchfont and the southern termination point B is moved eastwards but remains on the same highway, i.e. road B3098.
- 9.4. The proposed diversion satisfies both the above-mentioned legal tests for the making of an order. However, 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 on 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.

At 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 have given written consent to the diversion proposals and no compensation claims are anticipated.

- 9.5. 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 3098 road.
- 9.6. Additionally 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.
- 9.7. There have been no consultation responses from the public, or otherwise, to suggest that there will be an adverse effect on public enjoyment of the path as a result of the diversion. Views from the path remain unaffected, and there are no additional limitations or conditions on public use of the path.
- 9.8. Officers consider that the legal tests of confirmation of an order are met at present, therefore the order appears capable of being confirmed, however this is subject to a further consultation period once an order has been made.

9.9. 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 1010) 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.

9.10. The ROWIP also includes the following 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 Improvement 3).* Bridleway no.26 provides a useful link from the B3098 road to Byway no. 34 Urchfont, taking walkers, horse riders and cyclists away from the B3098 road.
- *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, which links to other rights of way, including byway no.34 Urchfont which may also be used by horse riders and cyclists.
- *Increase access to the countryside for buggies, older people, people with mobility problems and other impairments (p.43 Improvement 1).* 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 byway, Urchfont 34.
- *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. It also provides a level access from the B3098 road and the route provides a more direct link with the adjoining byway, Urchfont 34.

9.11. 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 used by breeding pigs. 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 on this land 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.

10. Risk Assessment

10.1. None.

11. Environmental Impact

11.1. None.

12. Costs

12.1. The applicant has agreed, in writing, to meet the actual costs to the Council in processing the order, including advertising the order in one local newspaper and should the order be confirmed, the actual costs of advertising the notice of confirmation in one local newspaper, (i.e. two advertisements).

12.2. 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.

- 12.3. If a diversion order is made under Section 119 of the Highways Act 1980, and there are no objections to the making of the order, Wiltshire Council may itself confirm the order and there are no costs to the Council.
- 12.4. If there are outstanding objections to the order which are not withdrawn and the Council continues to support the making of the order, the order can be forwarded to the Secretary of State for decision. The outcome of the order would then be decided by written representations, hearing or local public inquiry, all of which have a financial implication for the Council.
- 12.5. The making of a diversion order is a discretionary duty for the Council rather than a statutory duty, therefore a made order may be withdrawn at any time if the Council no longer continues to support it, for example if the order no longer meets the legal tests as set out under Section 119 of the Highways Act 1980.

13. Options to Consider

- 13.1. (i) To refuse the application
(ii) To make an order to divert Bridleway no.26 Easterton, under Section 119 of the Highways Act 1980.

14. Reasons for Recommendation

- 14.1. It is considered that the legal tests for the making of a diversion order under Section 119 of the Highways Act 1980, have been met, i.e. the order can be made in the interests of the landowners to remove the public right of way from two fields presently used by breeding pigs. There is an additional public benefit by creating a route which is more direct and convenient to the public. The termination points of the path are located to a different point on the same highway at the northern and southern ends of the path.

14.2. The diversion will benefit the public by adding a width of 4 metres, open and available for public use, to the new bridleway, where no width is presently recorded within the definitive statement. The diversion route is not substantially less convenient to the public and there are no additional limitations on public use of the path as a result of the diversion. No consultation responses have been received to suggest that public enjoyment of the path will be affected. It is therefore considered that the tests for confirmation of an order have also been met.

14.3. The proposed diversion also meets other considerations which the Council must take into account, such as the needs of agriculture and forestry and the provisions of the ROWIP. The diversion proposals present the Council with a less restrictive option for public use when considered against the definitive line of Bridleway no.26 Easterton.

15. Recommendation

15.1. That an order to divert Bridleway no 26 Easterton, be made under Section 119 of the Highways Act 1980 and that if no objections or representations are received, the order be confirmed by Wiltshire Council as an unopposed order.

Janice Green
Rights of Way Officer, Wiltshire Council

Date of Report: 22nd July 2011