

**PROPOSED DIVERSION OF PART OF PEWSEY BRIDLEWAY 62
AT WEST WICK HOUSE, WEST WICK, PEWSEY**

**THE WILTSHIRE COUNCIL PARISH OF PEWSEY PATH NO. 62 (PART) DIVERSION
ORDER AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2012**

Purpose of Report

1. To:
 - (i) Consider and comment on objections received to an Order, made under Section 119 of the Highways Act 1980 which seeks to divert part of Bridleway Pewsey No. 62 at West Wick House, Pewsey.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs (SoSEFRA) for confirmation.

The proposed diversion is shown on the Order attached at **Appendix A**.

An overview plan showing the surrounding roads and rights of way is attached at **Appendix B**.

The Decision Report to make the Order is attached at **Appendix C**.

A summary of objections and representations is attached at **Appendix D**.

Documents circulated by officers when seeking withdrawal of objections at **Appendix E**.

Background

2. It is a discretionary power of Wiltshire Council to consider applications from landowners to divert, create or extinguish footpaths, bridleways and restricted byways and make Orders under Sections 119, 116, 25, 26 and 118 respectively of the Highways Act 1980.
3. On 16 May 2012 Mr. Gerard Griffin of West Wick House, Oare, applied to Wiltshire Council to divert part of Bridleway 62 from where it leads through his property at West Wick House and Farm to a field edge route to the north over land held in trust by the executors of the Lord Devlin Will Trust.
4. The application was accompanied by a letter of consent from the executors of the Lord Devlin Will Trust and e-mails from a representative of the Ramblers Association and the British Horse Society, Wiltshire Council's senior rights of way warden and a representative of Pewsey Parish Council, all of whom expressed that they had no objection to the proposal. The British Horse Society representative expressed concerns about the surface to be used for the new path.

5. Wiltshire Council conducted an initial consultation for the proposed diversion and informed consultees that the landowner's reasons for the diversion were as given in the application form. That is: *"that the interaction between pedestrians, horse riders, farm machinery and other vehicles is potentially dangerous in addition to the close proximity of the existing house reducing the enjoyment of the property on privacy and security grounds."*
6. There were no objections from statutory undertakers and other consultees and a response from Wiltshire Bridleways Association approved the proposed diversion but requested that the four metre wide field edge route be regularly maintained, not eroded and adequately way-marked.
7. It was considered that the legal tests for making the Order were met (see **Appendix C**) and the Order made and duly advertised between 8 November and 7 December 2012.
8. It is a requirement of the law that notices of making the Order are posted on site. The purpose of this is to bring the matter to the attention of users of the path and subsequent to the posting of notices a number of objections and representations were received.
9. Objections received during the advertisement period are considered as duly made objections and unless withdrawn the Council may not confirm the Order. An Order that has outstanding objections may only be abandoned by the Council or be confirmed by the Planning Inspectorate acting for SoSEFRA.

Duly Made Objections and Representations

10. The Council has received 19 objections (plus one received after the advertisement period had expired) and three representations in respect of this Order. These are summarised at **Appendix D**. Copies of the objections and representations in full may be viewed at the Rights of Way Section, Newbury House, Trowbridge, or are available on request from Sally Madgwick (sally.madgwick@wiltshire.gov.uk).
11. Officers wrote to all objectors to assure them that the diverted route would have an all weather surface, minimal gradients and ample width, all of which would mirror the existing route in terms of accessibility, and that it would only become the new right of way when the Council certified that it was acceptable. The opportunity was also taken to circulate a detailed map and letter from the applicant (see **Appendix E**). Objectors were invited to withdraw their objections.
12. Seven responses were received, five wished to sustain their objection, one withdrew and another conditionally withdrew. There are, therefore, now 18 outstanding objections. **Appendix E** highlights respondents.

Main Considerations for the Council

13. 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 landowner (as this is) 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.
14. The Council has received objections to the proposed Order and Members have to decide whether they wish to support the Order, which must then be forwarded to the Secretary of State for determination, or formally resolve not to proceed with it.

15. 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”.

16. 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”.*

17. 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.*

18. The Council has to have regard to The Equality Act 2010 (formerly the Disability Discrimination Act 1995 – DDA95). Broadly, this requires that 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.

19. There is no specific reference in the Equality Act to any aspect of rights of way management; however, guidance issued by the Department for Environment Food and Rural Affairs (Defra) in October 2010 is clear that authorities are required to have regard to their obligations under the Equality Act 2010 wherever changes or additions to the rights of way network are proposed.
20. The Council must 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.
21. 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)*
 - *To provide a more usable public rights of way network, suitable for changing user demands. (p.46.1)*
 - *Increase access to the countryside for buggies, older people, people with mobility problems and other impairments. (p.43.1 – 5)*
 - *Increase access to the countryside for people who are blind or partially sighted. (p.43.4 and 5)*
22. The Council must also have regard to the needs of agriculture and forestry.

Consideration of the Objections

23. The Council must consider the provisions of Section 119 of the Highways Act 1980 in reaching a decision.
24. **Section 119(1) and (2)** relate to the making of the Order. The Order was made because it was considered that it was expedient in the interests of the landowner to move the path (**S.119(1)**). This is evidenced by the application (for which they are liable to all actual costs incurred) and by the fact that the diversion would remove the right of way from their land and the proximity of their house and buildings. Officers do not consider the movement of vehicles to represent a sufficient risk to the public to have made the Order in their interest.
25. It was also considered that **S.119(2)** was met in that the new termination point could be substantially as convenient as the existing. Currently, the site is overgrown, has a soft surface and a sharp gradient at one point. The construction of a new termination point would have to be as convenient as the old. The slope would need to be graded, a width in excess of four metres cleared (to allow leeway for seasonal growth) and a dry compacted surface supplied before Wiltshire Council could certify that the path is acceptable to become a highway maintainable at public expense. If the new path is not accepted by Wiltshire Council, and certified as such, a confirmed Order does not come into effect, the definitive map and statement is not changed and the old route remains the public right of way. The applicant has agreed that the new path should have a well drained compacted surface, be properly constructed and any sharp gradients graded.
26. It is noted that some objectors have stated that the adjoining path (Pewsey 23) is narrow and overgrown at this point. The cutting back of the overgrowth from adjoining land is the responsibility of that landowner and it is a duty of the Council to enforce that rights of way are not obstructed in these ways. This is not a reason to consider that the termination point is less convenient as Pewsey 23 has a recorded width of 3.5 metres which should be available to the public. The Council must consider this path as if it were fully available.

27. **Section 119(6)** relates to the confirmation of the Order and it is important that due consideration is given to the objections and representations in respect of this.
28. **Section 119(6)** requires that the new path must not be substantially less convenient to the public. 15 of the respondents (14 objectors and one representation) expressed concerns relating to the new route being potentially difficult to use owing to mud, ruts, gradient and poor drainage. It is agreed that all of these factors would make the route substantially less convenient to use. However, a well constructed and clearly defined track on the proposed new line would be usable all year round and would be unlikely to be substantially less convenient.
29. The proposed new route is approximately 20 metres longer (approximately 3.5% of the length of the whole route) than the existing route and since its use is primarily for recreation, it cannot be considered substantially less convenient for this reason.
30. The Council's duty with regard to The Equality Act 2010 must also be met in this regard and it has a duty to ensure that the new route is at least as accessible as the existing. Officers believe that it is possible to achieve this with good construction and a well drained surface.
31. **Section 119(6)(b)** requires the Council to consider the effect on land served by the existing right of way. All of the land served by the section that is proposed to be diverted belongs to the applicant and it is considered that there is no adverse effect to consider.
32. **Section 119(6)(c)** requires the Council to consider the effect on land over which the new right of way is created and on any land held with it. The land over which the new right of way would lead is not owned by the applicant. It forms part of the estate administered by the Trustees of the Lord Devlin Will Trust and the Executors of the late Lady Devlin and express permission has been granted for the new right of way to pass over the land and for the path to be made up to a standard acceptable for a bridleway.
33. **Section 119(6)(a)** requires the Council to consider the effect of the diversion on the public enjoyment of the way as a whole.
34. It is clear from both consultation responses and duly made objections and representations that there are a wide range of views on the value of the existing route to the rear of West Wick House. While some parties (for example the Parish Council) find the loss of the existing route unremarkable, others find the historic context an intrinsic part of the route that they enjoy.
35. The new route gives more extensive views of West Wick House than the existing route and allows the public to see the setting of the property in its grounds and garden much better but it is undeniable that if part of the enjoyment of the route is derived from using a historic route then the new route could never replace the old.
36. It is noted that although Bridleway Pewsey 62 as a whole has a sense of direction and purpose, it does not do so at West Wick House. This can be readily seen at **Appendix B** where the straight line of the east west path is disturbed only by the turns past structures at West Wick House.
37. It is considered that this existing loss of sense and purpose of the route, considered alongside the variety of responses (not everyone objected to the diversion), reduces the weight that the Council can put on the value of the historic route. This is further reduced by the views of West Wick House and gardens from the new route, that are not seen from the old route.

Environmental Impact of the Recommendation

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

Risk Assessment

39. There are no known risks associated with the proposals.

Financial Implications

40. The making of a public path Order is a discretionary power, rather than a statutory duty. Applicants pay actual costs relating to the Order but should the Orders be submitted to the Secretary of State, Wiltshire Council must pay additional costs.
41. Additional costs related to submitting the Orders to the Secretary of State could be variable, depending on how the Planning Inspectorate decides to determine the Orders. A determination under the written representations procedure involves officer time of approximately eight hours; should the Orders be determined at a hearing, costs are likely to not exceed £200 and approximately 16 hours of officer time. Should the Orders be determined at an Inquiry, it is usual for counsel to be appointed and total costs are likely to be approximately £5,000.

Options to Consider

42. The following options have been considered:
- (i) Not to continue with the Order.
 - (ii) To forward the Order to SoSEFRA with the recommendation that it is confirmed as made.

Reason for Recommendation

43. The proposed diversion meets the tests contained in Section 119 of The Highways Act 1980.

Recommendation

44. That the Order be referred to SoSEFRA for determination with the recommendation that it be confirmed as made.

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

None