

DECISION REPORT - HIGHWAYS ACT 1980 S.119

PROPOSED DIVERSION OF PEWSEY PATH No. 62 (part)

1.0 Purpose of Report

- (i) To consider an application to divert part of bridleway Pewsey no. 62 at West Wick Farm.
- (ii) To recommend that Wiltshire Council makes an order under s.119 of the Highways Act 1980 (HA80) and the Wildlife and Countryside Act 1981 (WCA81) to effect this change.

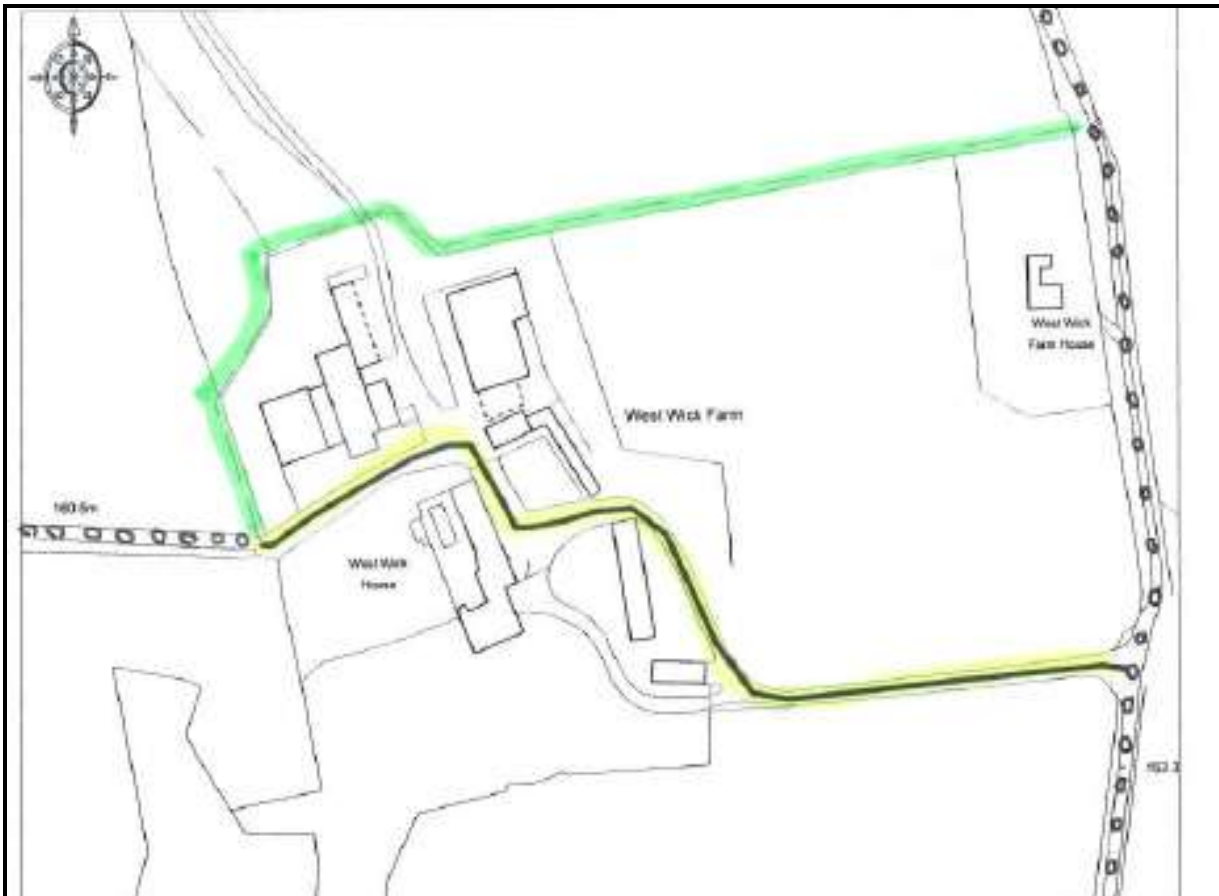
2.0 Background

- 1 On 17 May 2012 Wiltshire Council received an application from Mr Gerard Griffin of West Wick House, Oare, Pewsey, SN9 5JZ to divert part of bridleway 62 from land he owns at West Wick Farm to land owned by the Trustees of the late Lord Devlin's Will Trust and the Executors of the late Lady Devlin.
- 2 A letter dated 03 May 2012 and signed by Gil Patrick Devlin on behalf of the Trustees of the Lord Devlin Will Trust and the Executors of the late Lady Devlin was submitted with the application and confirms that consent has been granted for the diversion.

"I can confirm that the Trustees and Executors agree for this new route to pass over our land and give Gerard Griffin and his successors in title the right to make the path up to a standard acceptable for a bridleway."
- 3 The land over which the proposed new route will lead is farmed by the applicant and recorded as the West Wick Farm Partnership of West Wick House, Oare, Pewsey.
- 4 The existing route leaves bridleway Pewsey no. 23 east of West Wick House and leads along a hard track and through a farm yard area, past West Wick House and onto a track leading west into the parish of Wilcot.
- 5 The proposed new route would leave bridleway Pewsey no. 23 north east of West Wick House and would lead along a field edge and soft track before joining the original route west of West Wick House. Thus effectively bypassing the farmyard over a route to the north.
- 6 The fields are arable and there are no gates along the proposed new route.

7 Application plan:

Route to be extinguished highlighted in yellow. Proposed new route coloured green.



8 Pewsey path no 62 was added to the Pewsey Rural District Council definitive map and statement in 1952 as a bridleway with a width of 10 feet and has been unaltered since that time.

9 The statement reads:

Pewsey 62 BRIDLEWAY. From the Wilcot Parish boundary at Oare leading east through West Wick Farm to path No.23.

Approximate length 526m

Width 3m

- 10 Extract from definitive map: Footpaths are purple, bridleways are green. Black dashed lines are parish boundaries.



- 11 Existing route: Bridleway 62 leading west from its junction with bridleway 23.



Proposed diversion of Pewsey bridleway 62 (part)

12 Existing route leads past farm buildings as it leads west towards Wilcot parish.



13 Existing route follows track leading to Wilcot parish. Section proposed for extinguishment ends by gate here.



- 14 Proposed new route leads from white arrow at gate above in para. 13 along field edge. 4 metre wide strip would need to be maintained.



- 15 Proposed new route follows track linking fields.



- 16 Proposed new path leads eastwards along field edge. 4 metre wide strip needs to be retained.



- 17 Proposed new path joins bridleway 23. Gap in hedgeline and graded slope needs to be established.



18 The applicant gives the following reasons for the diversion of this path:

“Current route passes through existing farmyard as well as within a few metres of West Wick House. Reasons for diversion are safety to pedestrians and horses from agricultural machinery and privacy.”

19 One of the features of the proposed new route are the extensive views that are offered from it: First picture to the north, second and third to the south.



3.0 Consultation

20 An initial consultation into the proposal was carried out between 07 August 2012 and 14 September 2012. The following letter was circulated:

Highways Act 1980 S.119

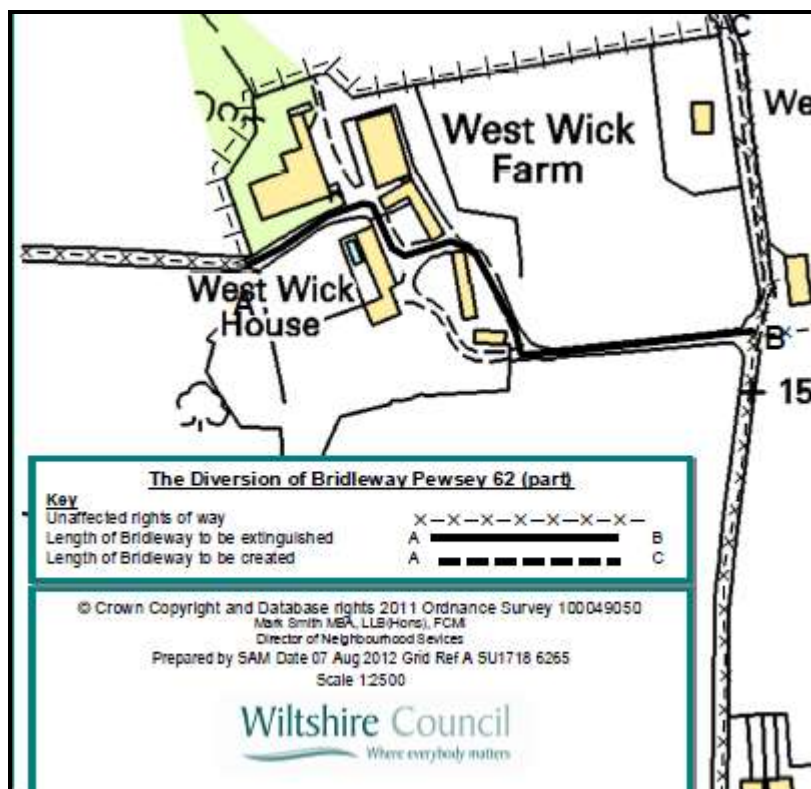
Proposed diversion of part of bridleway Pewsey 62 at West Wick Farm

Wiltshire Council has received an application to divert part of bridleway Pewsey 62 at West Wick Farm. Please find enclosed a location plan and a plan showing the proposal.

Currently the route (A – B) leads past West Wick Farm buildings and house and it is proposed to divert it over land to the north. The new route would have a width of 4 metres, no additional gates and leads along arable field edges and across a short wooded section. The reasons given for the proposal are that the interaction between pedestrians, horse riders, farm machinery and other vehicles is potentially dangerous in addition to the close proximity of the existing path to the house reducing the enjoyment of the property on privacy and security grounds.

The applicant has already gained the approval of the Ramblers, British Horse Society and Parish Council but if there are any further comments I would be pleased to receive them by Friday 14 September 2012.

21 The following plan was circulated:



22 The letter and plan went to the following consultees:

The Auto Cycle Union
Commons, Open Spaces & Footpaths
Wiltshire Bridleways Association
Cycling Touring Club
British Horse Society
Pewsey Parish Council
Wiltshire Councillor J Kunkler
Wiltshire British Horse Society representative
Byways and Bridleways Trust
Wiltshire Council Senior Rights of Way Warden Esther Daly
Wiltshire Ramblers representative
Wiltshire Council County Ecologist
Marriotts, Chartered Surveyors (agent)
Mr G Griffin (applicant)
The Lord Devlin Will Trust (landowner)
Wessex Water
Scottish and Southern Electric
Virgin Media
Linesearch (includes National Grid Gas and Electricity)
Openreach BT
Thames Water

4.0 Consultation Responses

23 No consultation responses were received.

24 Accompanying the application were a number of responses which arose from pre-application discussions that the applicant had held. This is perhaps the reason why no responses were received to the Council's consultation. These responses were as follows:

25 Ramblers Association 14 March 2012

"I have now been out to Oare and seen the proposed diversion at West Wick House. I met your client and he showed me the new line to be followed. On behalf of the Ramblers Association I have no objections provided that the proposed diversion is well maintained on the ground and any gates/stiles are user friendly."

26 British Horse Society 29 February 2012

"Great to meet you yesterday and to hear about the plans for the diversion. The BHS would have no objection to the proposal, our concerns would be for the surface to be used. Riders would prefer a more stable durable surface so that it does not go

boggy. A well drained grass track or mix of grass/gravel or compacted scalplings (which would be a permanent solution) would be brilliant.”

27 Pewsey Parish Council 05 April 2012

“Raised this at tonight’s meeting. It was proposed to accept your request for diversion, and motion carried by a large majority. I will forward a copy of the minutes when they are accepted, but I can confirm your proposal was accepted.”

28 Wiltshire Council Rights of Way Warden 06 February 2012

“I can’t see any objection to the proposal from my point of view, but obviously I can’t speak for the parish council and any of the user groups and local people who may have different ideas”

29 On 05 September 2012 the case officer and the rights of way warden held a site visit and walked both routes. It was observed that the existing route was available for the public to use and wholly unobstructed. It was also observed that the proposed new route would need to be created to provide a level, well drained surface that was not at risk from ploughing or disturbance. It was also noted that some grading of the slope where the new route met bridleway 23 would be required.

5.0 Considerations for the Council

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

31 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.

32 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”.

33 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.

34 In *Hargrave v Stroud DC* [2002] EWCA Civ 1281, Schiemann 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.”

35 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), Schiemann 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.”

36 Additionally after making an order the Council should also 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*

37 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.

38 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.

39 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)

40 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 (replaced by the Equalities Act 2010) and to consider the least restrictive option.

41 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)*

- 42 The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.
- 43 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').

6.0 Comments on the Considerations

- 44 S.119(1) HA80 says that the Council may make an order to divert a path if it is satisfied it is in the landowners interest to do so. The landowner's interest is demonstrated by the making of the application itself (for which the landowner will meet all actual costs incurred) and the clear benefits of privacy and having a working area (the farm yard) free of the general public, horses and dogs. S.119(1) is therefore satisfied.
- 45 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 substantially as convenient to the public. The proposed new termination point for Pewsey 62 is 150 metres north along the same bridleway (Pewsey 23). This is considered as convenient to the public and S.119(2) is therefore satisfied.
- 46 The Council could therefore proceed to make an order under S.119 to divert the highway. However, as detailed at paras 33 to 35 it is also appropriate to consider S.119(6) at this stage.
- 47 S.119(6) says that the new path must not be substantially less convenient to the public. The new path covers ground that is unsurfaced and will be softer underfoot. It is unlikely to be as slippery as the tarmac driveway is for horses and would not present such a slip hazard in icy conditions. There is no significant change in gradient and provided the junction with path 23 is created to the Council's satisfaction the new path would not be less convenient.
- 48 The Council must also have regard to the effect on the public enjoyment of the path as a whole. Officers have observed that the existing route leads past a range of buildings, some of which are interesting and historic while others are more utilitarian. There is also a risk associated with moving farm vehicles. The new route denies users the chance to pass so close to West Wick House. Some users find this an enjoyable feature of a walk or ride whilst others lack the confidence to use a right of way that passes so close to a dwelling. The proposed new route has very good

views from it, including views over West Wick House, seeing in the wider context of its surroundings. The route has a softer surface making it better for horse riders but less easy to use for cyclists and walkers. However, the path as a whole is of a rural nature and the proposed new route is in keeping with the remainder of the route.

49 The new route has a width of 4 metres whereas the remainder of the route has a width of 3 metres. There are no gates associated with the new route. Should the land use change it would be necessary for an application for gates to be erected to be made under s.147 of the Highways Act 1980. If this were to happen Wiltshire Council has a duty to ensure that the least restrictive option is applied.

50 The new path is not substantially less convenient and will not have an adverse effect on the enjoyment of the use of the route as a whole. S.119(6) is therefore met.

7.0 Environmental Impact of the Recommendation

51 There is no negative environmental impact associated with the recommendation. It is likely that the maintenance of an undisturbed 4 metre headland in the arable fields will have a positive environmental effect allowing greater diversity of flora and fauna.

8.0 Risk Assessment of the Recommendation

52 Risks to the Council are covered at 9.0 Legal and Financial Implications. Risks to the public associated with the recommendation are considered to be nil.

53 The public is being removed from potential harm arising from farm vehicles using part of Pewsey 62.

9.0 Legal and Financial Implications

54 The applicant will pay all actual costs associated with making an order.

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

56 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).

57 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.

10.0 Equality Impact

58 Owing to the removal of members of the public from the driveway serving the property and the farmyard itself, the new path is considered safer to use for all members of the public but especially those with poor hearing (which may include older people as well as those with a registered disability).

11.0 Options to Consider

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

12.0 Reasons for Recommendation

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

61 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.

62 There is no cost to the Council associated with paras 60 and 61.

63 The receipt of objections or representations that are not withdrawn will cause Wiltshire Council to reconsider S.119(6) HA80 at a meeting of the Area Planning Committee giving a second chance for the consideration of Section 6.

13.0 Recommendation

64 **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) that Order should be confirmed and the definitive map and statement altered accordingly.**

Sally Madgwick
Rights of Way Officer
02 October 2012

