

WILTSHIRE COUNCIL

EASTERN AREA PLANNING COMMITTEE

3 APRIL 2014

TOWN AND COUNTRY PLANNING ACT 1990

**WILTSHIRE COUNCIL PARISH OF BAYDON PATH 2 (PART) AND PATH 11 (PART)
DIVERSION ORDER AND DEFINITIVE MAP MODIFICATION ORDER 2013**

Purpose of Report

1. To:
 - (i) Consider an Order diverting parts of two public rights of way at Baydon House Farm, Baydon and the 20 objections and 17 representations duly made to it.
 - (ii) Recommend that the Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for determination and that Wiltshire Council maintains a neutral stance in the matter.

Description of the Routes

2. The Order is attached to this report at **Appendix 1** and contains a map showing the routes to be extinguished and the routes to be created.
3. One of the routes, Baydon Path No. 2, is called Payne's Lane and is a long route linking the C.189 Aldbourne to Baydon Road with an unclassified road (the u/c 5018) in the east. It has the appearance of an old carriage road except for the western section where Payne's Farm (now Baydon House Farm) has developed on either side of it. Although currently recorded as a bridleway, it is considered by officers that on the balance of probabilities, higher rights subsist over it.
4. The other route is Baydon Path No.11 which is a north-south route linking the village of Baydon with the settlement of Preston in the south via Baydon House Farm and Baydon Path No. 8, Green Hill or Green Lane, sometimes known as the Preston Track. Baydon Path No. 11 is currently recorded in part as a restricted byway and in part as a bridleway and there is some evidence that some of this section may carry higher rights.

Background

5. A full report relating to this Order is appended at **Appendix 2**. Release of this decision gave rise to representations from the landowner and the decision was subsequently amended. The Council's amended decision to make the Order is appended at **Appendix 3**.

6. The Order is made as a result of an application (2013/15) to divert parts of Baydon Path Nos. 2 and 11 arising out of planning permission which was granted to the owners of Baydon House Farm to build two agricultural storage buildings across the rights of way in the farmyard area (E/2013/0170/FUL).
7. Nothing in the planning permission permits the development to proceed unless the rights of way are diverted.
8. A further application (2013/16) was made to divert part of Baydon 11 south-west of the proposed development but this is not subject to any planning consent and must be considered under wholly separate legislation.
9. Owing to the different legal tests to be applied to the two applications officers have not progressed application number 2013/16 beyond the initial consultation stage at this time.
10. Although it is clear that some respondents to the Order refer to the path affected by application 2013/16 this report relates wholly to those lengths of path affected by the planning consent granted on 19 March 2013.
11. Officers are aware that the historic nature of rights of way in the Baydon area is greatly valued by a number of people and that consultations regarding alterations to this network, in the past have received a significant level of responses in support of its retention. The network of ways south of the village are well used and popular and initial consultations into application number 2013/15 (and 2013/16) raised high levels of responses both in support of, and in opposition to, the proposals.
12. Wiltshire Council, as surveying authority, does not have a statutory duty to make Orders altering the network (for example diversions or extinguishments) and will generally not make them where there is a high level of relevant local dissent to the proposal. However, the granting of planning permission that requires the diversion of rights of way to proceed, places an additional responsibility on the surveying authority where that authority is a unitary authority.
13. The Department for Environment Food and Rural Affairs Guidance for Local Authorities, Rights of Way Circular 1/09 Version 2 at 7.15 states:

“The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted permission for a development affecting a right of way, however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages of loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to person whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.”
14. In responding to planning application E/2013/0170/FUL the rights of way team submitted a full response detailing what would be required to effect a satisfactory diversion (see **Appendix C to Appendix 2**).

15. It is noted that no users of the paths responded to the application to develop at this time, either in support or opposition. This is surprising, as the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) provides that development affecting a public right of way must be advertised in a local newspaper and by posting a notice on the site (this is entirely separate from any notices and advertisements required when making and confirming a subsequent extinguishment or diversion order).
16. The Order diverting the paths attracted 21 objections and 17 representations within the statutory advertisement period.
17. Details of the objections and representations are at **Appendix 4**.
18. The Defra guidance referenced at paragraph 13 above states at 7.11:
“The grant of planning permission does not entitle developers to obstruct a public right of way. It cannot be assumed that because planning permission has been granted that an order under section 247 or 257 of the 1990 Act, for the diversion or extinguishment of the right of way, will invariably be made or confirmed. Development, in so far as it affects a right of way, should not be started and the right of way should be kept open for public use, unless or until the necessary order has come into effect. The requirement to keep a public right of way open for public use will preclude the developer from using the existing footpath, bridleway or restricted byway as a vehicular access to the site unless there are existing additional private rights.”
19. It is therefore clear that until such time as an Order diverting or extinguishing the affected rights of way is made and confirmed, the development can not proceed.

Main Considerations for the Council

The statutory requirements

20. Section 257(1) of the Town and Country Planning Act 1990 states the following:
*“(1) Subject to Section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out –

(a) in accordance with planning permission granted under part III or
(b) by a government department”*
21. It is considered that this is met. The storage barns, if built as permitted, would obstruct the rights of way.

Effect of the proposal on other parties

22. Paragraph 7.15 of Defra Circular 1/09 advises that in considering whether or not to confirm the Order, the disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally, or to persons whose properties adjoin or are near the existing public right of way, should be weighed against the advantages of the proposed Order.

23. In response to the application to develop at this site (E/2013/0170/FUL) Wiltshire Council's rights of way team made the following comment:

"The specification for the diverted routes will need to be agreed between the Council and the landowners prior to the making of any diversion orders. As an indication of the Council's requirements, the replacement routes will need to be of a minimum of 5.0 metres in width, surfaced with good quality stone and with the minimum possible number of gates or barriers only for the purpose of controlling the ingress and egress of animals."

24. Wiltshire Council's Rights of Way Improvement Plan (page 53) gives that the minimum standards acceptable for the width of a new bridleway (in the case of a creation or diversion) is a minimum of 4 metres. It does not specify a minimum for a restricted byway as historically carriage roads in Wiltshire have ranged from 20 feet to 110 feet wide and were clearly dependent on a combination of legislation and local conditions.
25. The Council is also committed to allowing least restrictive access in line with its duties under The Equality Act 2010.
26. In recommending the width of 5 metres and the provision of a good quality stone surface officers sought to mitigate any loss to the public that the diversion of Paths 2 and 11 would cause.

The disadvantages or loss likely to arise as a result of the diversion to persons whose properties adjoin or are near the existing right of way

27. If the Order is confirmed there is a clear benefit to the owners of Baydon House Farm who will be able to proceed with their development and who will also not have a public right of way leading through their farm yard area.
28. The land adjoining the proposed diversion belongs to Mr M Lloyd of Baydon House. The land is used for grazing alpacas and Mr Lloyd has no objection to the diversion.

The disadvantage or loss likely to arise to members of the public as a result of the diversion

29. 13 of the 21 objectors identified a loss to their enjoyment of the way as a result of the loss of the historic route.

Five of the 21 objectors identified that the loss of width was grounds for objection.

Four people identified concerns about the surface of the new way.

30. Other losses identified included the loss of a direct route, problems that would arise when users tried to pass each other and potential problems with signage.

31. 17 people made representations relating to the Order; one of which did not object to the route but objected to anything other than a 'like for like' accessible surface. The majority of these responding in support considered the new route to be safer, easy to use and with better views than the existing route.
32. Objectors, and those making representations, agree that the paths are well used with representation number 17 stating that the ways are in frequent use, not only by the runners, but also by dog walkers, walkers and horse riders. Representation number 5 states that the routes are used by riders and grooms from a large equestrian property, often on a daily basis on both experienced and inexperienced horses. Other people describe using the route with a pushchair and young children and the author of representation number 9 has a horse who stops to take in the view.

Safeguarding Considerations

33. Considerations relating to safeguarding anyone affected by the making and confirmation of an Order made under Section 257 of the Town and Country Planning Act are not relevant considerations for this Order.

Public Health Implications

34. Considerations relating to any public health implications of the making and confirmation of an Order made under Section 257 of the Town and Country Planning Act are not relevant considerations for this Order.

Environmental Impact of the Recommendation

35. No environmental impact has been identified.

Risk Assessment

36. This application has attracted an unusually high amount of correspondence and input from local people. It is clear that there are conflicting opinions on the new paths and officers consider that even if this Order were abandoned and another made, there would still be objections and representations that would prevent Wiltshire Council being able to confirm the Order. There is therefore a risk to the Council that abandonment and re-making would not advance the case.
37. Wiltshire Council has a duty to enable better access and to follow the least restrictive option in all cases. As a result of this there is a risk of judicial review attached to any decision of the Council that conflicts with this.
38. Although several respondents refer to the new route being safer than the old, the Council has no records of reports of accidents or incidents at this location. It is likely that where public use is as heavy as it is stated to be here, anyone using the farm yard area would be very aware of the public around them (in the same way the public may be expected to be on a village street) and would take appropriate care.

Financial Implications

39. The applicant has agreed to pay all costs relating to this Order but they may not be charged for any costs related to sending the matter to the Planning Inspectorate for determination. If the Council agrees to support the Order, costs could be in the region of £6,000 to £10,000 and would be payable by the Council.
40. The Planning Inspectorate in Advice Note No. 1 (as revised May 2013) advises that sometimes an Order Making Authority (OMA) is content to make the requested Order but is not prepared to support it at an inquiry. It continues to say that this often occurs when an Order is made under the Town and Country Planning Act 1990 to enable development to proceed and that the OMA may choose to remain neutral as regards confirmation of the Order. There is no cost associated with this.

Options Considered

41. To:
- (i) Forward the Order to the Secretary of State with the recommendation that it is not confirmed.
 - (ii) Forward the Order to the Secretary of State with the recommendation that it be confirmed with modifications.
 - (iii) Forward the Order to the Secretary of State with the recommendation that it be confirmed as made.
 - (iv) Forward the Order to the Secretary of State and maintain a neutral stance.
 - (v) Abandon the Order.

Reasons for Recommendation

42. Objections have made it clear that the width of the new route is unacceptably narrow and will not permit traffic to safely pass at the pinch points. This agrees with officers' original stance on this, both in the advice originally offered at the planning application stage, and the initial decision stage. The applicant has made it clear that they cannot create a wider route without demolishing buildings. It is therefore not possible to abandon and re-make an Order with a greater width, though it is noted that an Inspector appointed by the Planning Inspectorate does have the power to modify the Order if they see fit.
43. A large number of people claim that there is a disadvantage and loss to them if they cannot use the direct historic route and that it should remain.
44. This is counteracted by letters of support for the new route and there is clearly a conflict here that cannot be resolved by the making of a different Order. As a result of this, officers consider it better if the conflicting views could be given in a hearing or inquiry setting.

45. Wiltshire Council, in taking a neutral stance, can facilitate this process.

Recommendation

46. That the Wiltshire Council Parish of Baydon Path 2 (part) and Path 11 (part) Diversion Order and Definitive Map Modification Order 2013 is sent to the Secretary of State for Environment, Food and Rural Affairs and that Wiltshire Council takes a neutral stance in the proceedings.

Tracy Carter

Associate Director of Environment and Leisure

Report Author

Sally Madgwick

Rights of Way Officer

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

Correspondence with Parish Councils, user groups, other interested bodies and members of the public

Appendices:

Appendix 1 - Order

Appendix 2 - Decision Report and Appendices (2.A, 2.B and 2.C)

Appendix 3 - Amended Decision Report and Appendices (3.A and 3.B)

Appendix 4 - Objections and Representations