

WILTSHIRE COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

PROPOSED DIVERSION OF BAYDON 2 (part) & 11 (part)

1 Purpose of Report

1 To:

- (i) Consider and comment on an application to divert part of Baydon path number 2 and part of path number 11 to enable a permitted development to take place.
- (ii) Recommend that an Order be made under s.257 of the Town and Country Planning Act 1990 to divert only that part of the path affected by the permitted development .

2 Background

2 On 12 June 2013 Wiltshire Council received two applications to divert public rights of way at Baydon House Farm. The applications affect parts of paths 2 and 11 and were submitted by Mrs Sally Johnson of Baydon House Farm.

3 One application is made under Town and Country Planning Act 1990 legislation (since it is clear that diversion or extinguishment is necessary to allow permitted development E/2013/0170/FUL to proceed) and the other is made under Highways Act 1980 legislation as the line of the path is not affected by a permitted development (permitted development E/2013/0138/FUL is close to the line of the path but not coincident).

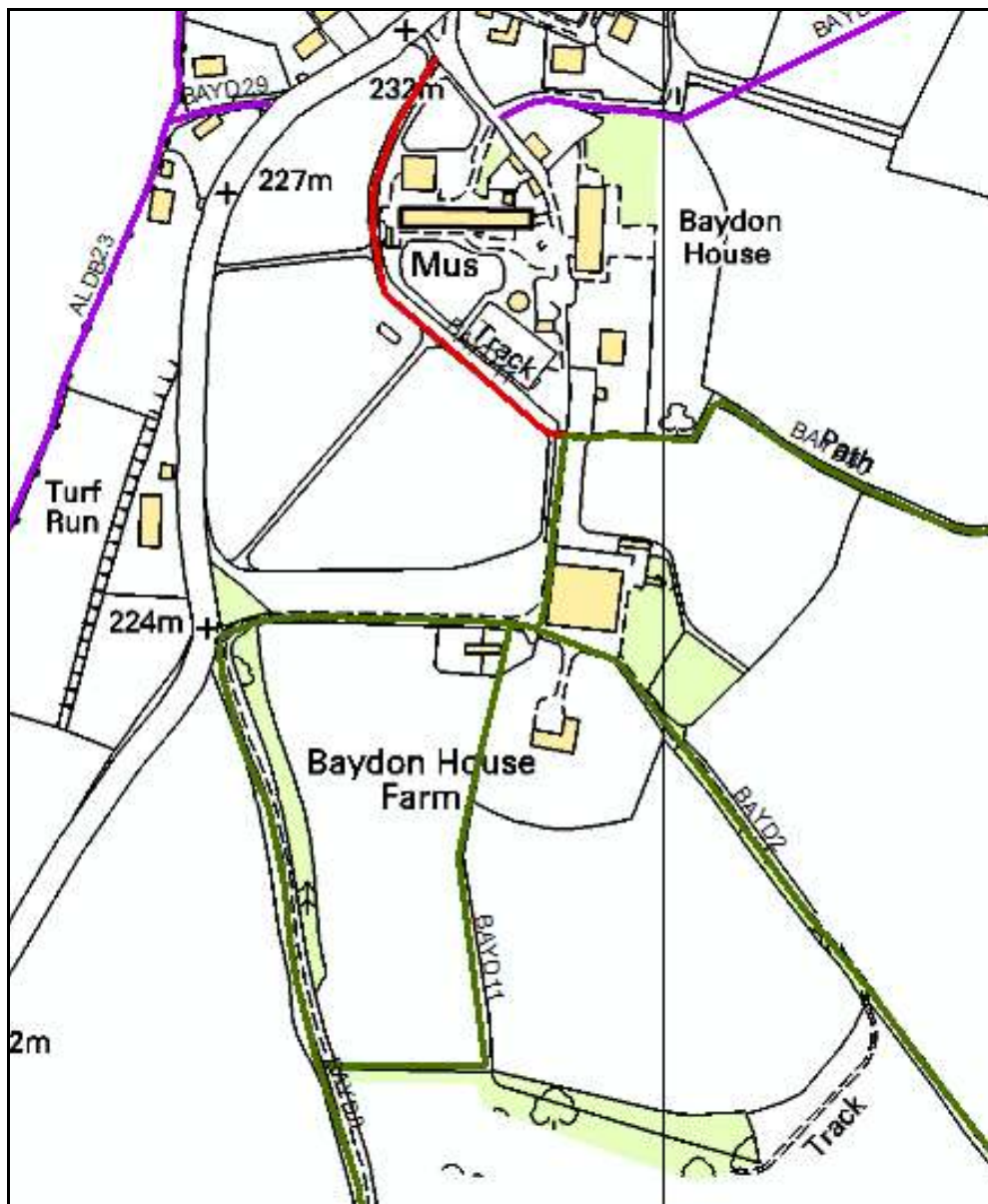
4 Baydon path no. 2 is called Paynes Lane and links road u/c 5018 in the east with road C.189 in the west. At Paynes Farm (now known as Baydon House Farm) the farm developed over time on either side of Paynes Lane and the current owners of Baydon House Farm wish to further develop the yard area and have been granted planning permission for buildings that would obstruct part of Baydon 2. Application Reference Number E/2013/0170/FUL.

5 Further to an earlier and unrelated query at this location officers investigated some historical evidence relating to paths 2 and 11. This report is appended here at APPENDIX A. It is noted that there is a considerable amount of evidence that supports that on the balance of probability higher rights than bridleway subsist on path no 2 and that in all likelihood the way should be recorded as a restricted byway. It would therefore be appropriate for any new part of path no. 2 to be created as a restricted byway and not a bridleway to expedite the diversion process. It will also be necessary to extinguish restricted byway rights over the existing route of path no.

2. The Council is not aware of any evidence that supports the retention of public vehicular rights post 2nd May 2006.

6 The permitted development also obstructs part of Baydon 11 north of the yard area. Baydon 11 is currently recorded as a bridleway but again some evidence exists that support that the section north of Baydon 2 has higher rights. The diversion of another part of this at Baydon House in 2010 was resolved with the creation of a section of restricted byway and it is proposed that this could happen here, though since the diversion of this section would be coincident with path no 2 (which has much stronger evidence of higher rights over it) at this point, this is less relevant. However, again it would be necessary to extinguish restricted byway rights over the length affected.

7 The Council's working copy of the definitive map represents the ways as below:



Footpaths = purple

bridleways = green

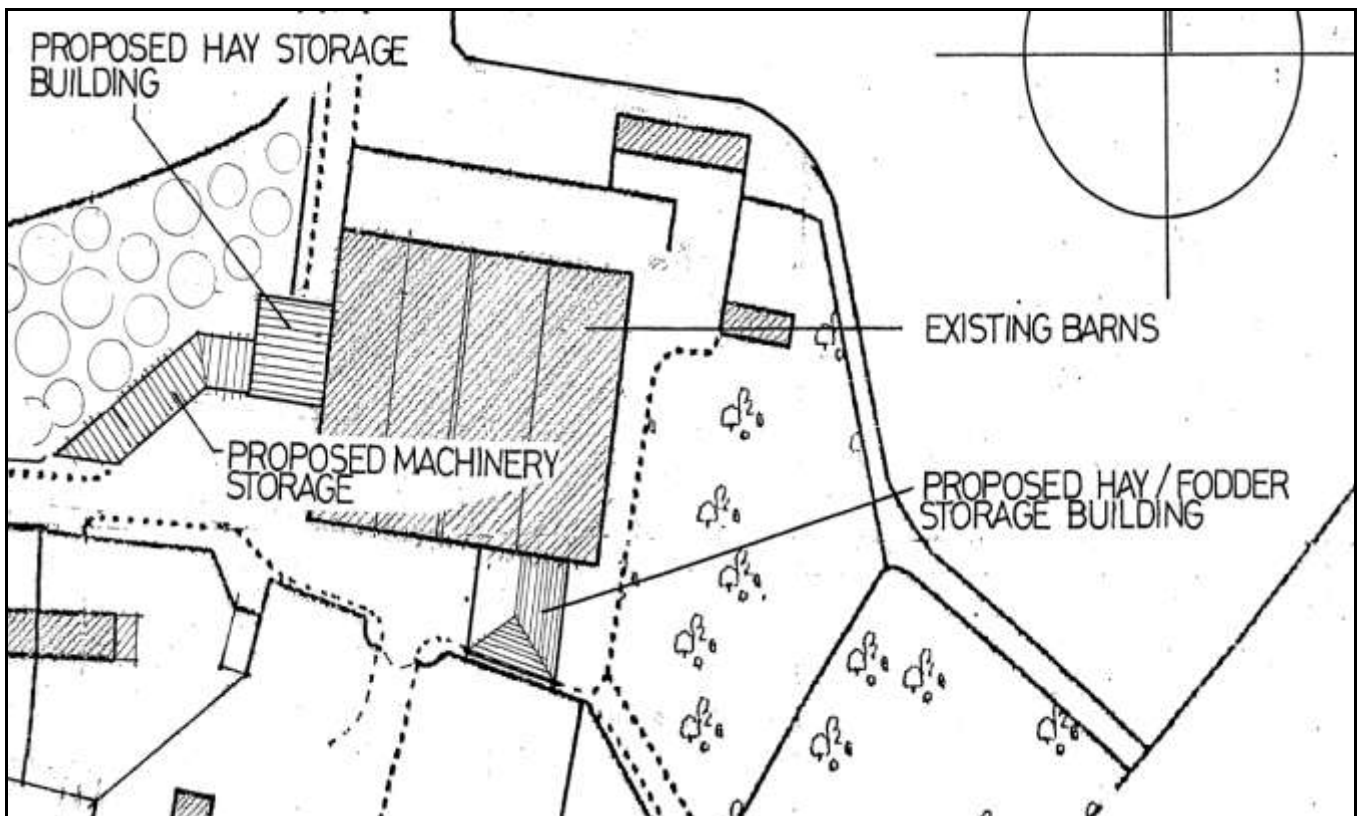
restricted byways = red

8 The definitive statement records:

Baydon 2 BRIDLEWAY Paynes Lane. From the Aldbourn road C.189, at its junction with path no. 8, leading east to Paine's Farm, then south-east to road U/C 5018 north of Gore's Copse. Approximate length 1.2 km.

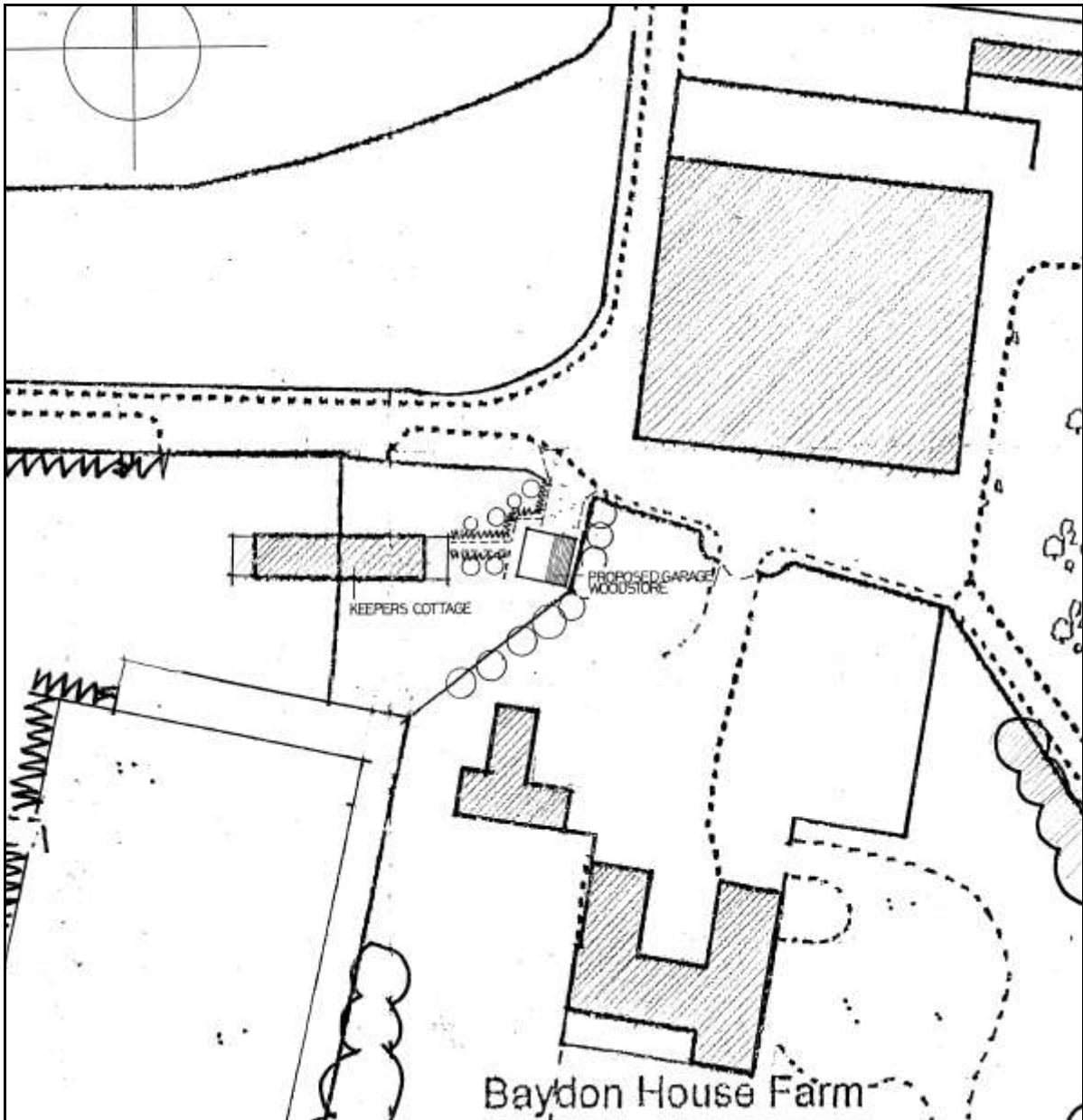
Baydon 11 RESTRICTED BYWAY from the u/c 5013 at OS Grid Ref SU 2787 7773 leading south south west, south and south east to OS Grid Ref SU 2794 7751 at its junction with Baydon 30 where **BRIDLEWAY**. South past Paine's Farm, across path No.2 continuing south for approximately 270 m then in a westerly direction to path No.8. Approximate length 513 m. Width 4 metres OS Grid Ref SU 2787 7773 to OS Grid Ref SU 2794 7751

9 Planning Application E/2013/0170/FUL is for the extension of agricultural buildings and was granted on 19 March 2013. The approved development is as below:



10 Baydon 2 will be obstructed by the proposed hay/fodder storage building and Baydon 11 will be obstructed by the proposed hay storage building.

- 11 Planning Application E/2013/0138/FUL is for the erection of a garage with log store and was granted on 27 March 2013. The approved development is as below:

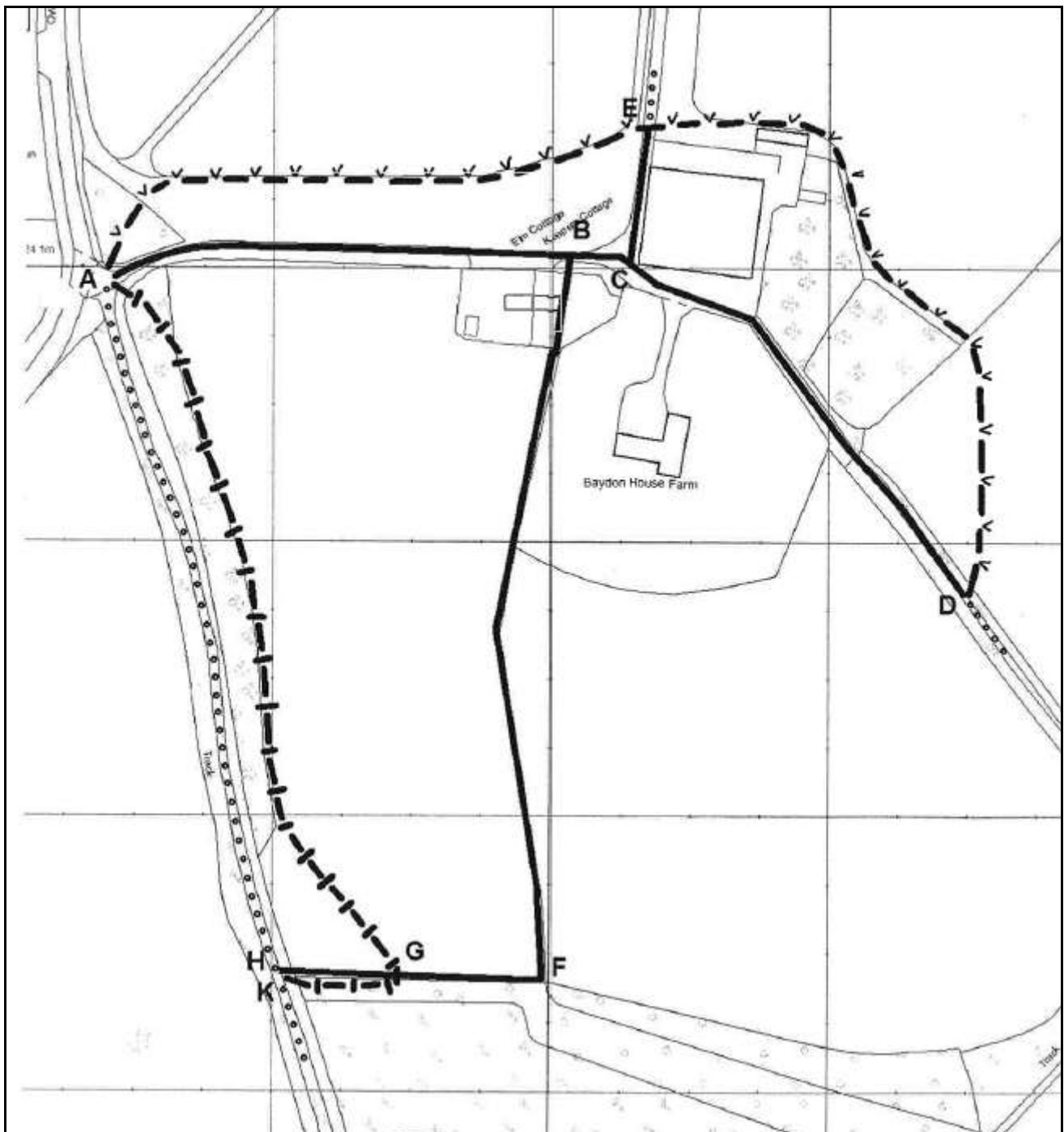


- 12 The southern section of Baydon 11 at Keepers Cottage has been unavailable for some time. The definitive map shows a staggering of Baydon 11 where it meets Baydon 2 at this location and is not affected by the permitted development which lies to the east of the line of the path. The line of the path is closer to Keepers Cottage, see working copy of the definitive map at paragraph 7.
- 13 An application to extinguish this part of Baydon 11 was turned down by Wiltshire Council in late 2012 (APPENDIX B – DECISION REPORT) and although the Council has a duty to make the path available, and notice to make it do so was served under s.130A of the Highways Act 1980, the submission of the application to divert the

way has meant that it is believed to be a better use of resources to consider the application to divert in the first instance.

14 Although it is clear that both applications rely on different legislation and legal tests officers took the view that it would help the public better understand the landowners' aspirations if they were able to view the proposed diversions as a whole rather than in two distinct parts. This approach seems to have been successful in that people largely seem to have been able to differentiate between the matters before them.

15 The application proposals are summarised on the applicant's own map below:



- 15 However, the diversion of paths 2 and 11 to permit the development to proceed must be capable of standing independent of the diversion of 11 near Keepers Cottage and as a result this report will only consider the diversion relevant to the planning consent which is time limited.
- 16 The existing route of Baydon 2 is a mixture of traditional laid flint highway, concrete through the yard area and tarmac with grassed verges beyond.



- 17 The landowner has constructed a diversion of this route and this is available to the public as a permissive path. The way is currently mown grass and has a variable width of around 2 metres up to 4 metres.



- 18 The newly created section of restricted byway for Baydon 11 at Baydon House Farm referred to at para. 6 is as below:



3 Consultation

19 The following letter was distributed on 20 June 2013.

***Town and Country Planning Act 1990 s.257 & Highways Act 1980 s.119
The diversion of parts of Baydon paths 2 and 11***

Wiltshire Council has recently granted planning permission for a development at Baydon House Farm (E/2013/0170/FUL). The permitted development requires the diversion of parts of Baydon paths no. 2 and 11 to be able to proceed and an application to divert the ways has been received. Additional to this an application to divert part of path no 11 has been received. Although the application to divert to enable the development to proceed must be considered in isolation from the other alterations (owing to the need to use different legislation) it is useful to consult on the proposals at the same time as it is helpful to see the overall effect on the network of the applications. These alterations were given at the planning stage and attracted no detrimental comment.

Please find enclosed a location plan, a site plan showing the permitted development and a plan showing the proposed changes to the definitive map and statement.

Route E – C (Baydon 11 part) and C – D (Baydon 2 part) need to be diverted to enable the development to proceed and it is proposed that route A – E – D is created as a restricted byway, 5 metres wide with a hard, well drained surface. There are no gates on this route and your comments relating to width and surface are especially invited.

Route A – B – C (Baydon 2 part) and Route B – F – H (Baydon 11 part) are subject to the application to divert under Highways Act 1980 legislation and it is proposed to create a new bridleway A – G – K with a width of 4 metres, a natural (grass) surface and having no gates. Your comments are invited on this.

The applicant has taken account of requests from local walkers and riders for a short circular walk with a different character to others in the area and it is hoped that this will meet expectations. Both proposed new routes have been partially constructed and may be readily viewed from the existing rights of way. Your comments are invited by August 16 2013.

20 The plan at paragraph 15 was also circulated.

21 This initial consultation was sent to the following:

The Auto Cycle Union
Commons Open Spaces and Footpaths Society
Wiltshire Bridleways Association
Cycling Touring Club
British Horse Society
Baydon Parish Council
Byways and Bridleways Trust
Wiltshire Councillor
Wiltshire Council Senior Rights of Way Warden
Mr B Riley
British Driving Society
Wiltshire Ramblers Representative
Wiltshire British Horse Society Representative

Mr and Mrs M Lloyd, Baydon House Farm
Mr M Wood, ET Landnet Ltd
Scottish and Southern Electric
Openreach BT
Thames Water
Wessex Water
Virgin Media
National Grid (gas and electric)
Linesearch and Digdat (multiple cable search facilities)
Mr B Gribble
Mr C Philips
Mr B Potter
Ms M Furber
Ms P Bishop
Mrs J Rees
Mrs A Smith
A and P Dobson
Mrs E Johnson
Mr W N McCleery
Mrs A Newman
Mrs D Newman
Mr K Smith
Ms N Archer
Mr M Rowse

4 Consultation responses

22 Prior to the consultation conducted by the rights of way team the proposed diversions were in the public domain as part of the planning application consultation process. During this stage Baydon Parish Council supported the application E/2013/0170 (the extension to the farm buildings) and commented under Suggested special conditions:

“Conditions: Proposed diverted footpaths are suitable for all user types and in place before buildings.”

23 Responding to the same consultation Wiltshire Council’s rights of way officers submitted the response appended at APPENDIX C.

24 Further to the consultation conducted by the rights of way team the following were received:

25 **Mrs Anne Smith, Aldbourne Road, Baydon 25 June 2013**

“Further to your letter dated 20th June 2013, I write to protest strongly at this application to divert footpaths from their original routes.

I am quite concerned that following the previous unsuccessful application to close one of these paths the landowner has made no attempt to re-instate it and I believe that this further application is another attempt to in essence close public rights of way.

As background to my comments, it should be noted that when land is bought or sold, it is done so with the full knowledge of the existence of public rights of way. I can see that it is nice to have one's property remaining more private than maybe the case if a right of way is within close proximity; but from the other viewpoint, when walking in the countryside, passing buildings of architectural interest, substantially increases the enjoyment of the walk and it is precisely this enjoyment which encourages many people to increase the amount of walking they do- something to be encouraged by all, including the planning authorities.

Having considered the plans you kindly provided, I am puzzled to understand how planning permission can have been granted without permission having already been obtained to move the rights of way. However, I have no great objection to moving the bridleway (Baydon 11 – Part) from the route DCE to the direct route DE around the outside of the buildings . I would however, request that the path surface should be appropriate to the area- a properly constructed stone path and not inappropriate tarmac which was laid on the previous public right of way in this area.

The addition of AE is only necessary if ABE is removed from public use – As this is currently a tarmac roadway, I can see no need to do this but again have no great objection.

I am a little confused by the term restricted byway and would like to confirm that the proposed restriction is in effect keeping it to a bridleway rather than restricting the terms of the right of way (like a permissive path?).

I am saddened that the land owner in this area currently feels that these paths should be fenced either side by high deer proof type fencing which reduces the enjoyment of walks like this but I suspect it is not possible to legislate against this!

Of much greater concern is the proposed route for the Bridleway ABCD (Baydon2 – part) and BFH (Baydon 11 –Part). The proposed route of AGK is a ridiculous alternative as there is in effect already a path taking almost the same route (AH) and I suspect the thought of the landowner is to put in situ as route which with time will become dis-used and they can then apply for its abandonment. Should it be seen as appropriate to move the right of way from its current position, (which they have not instated despite the previous application to close it being rejected), I would like to suggest a much more suitable route would be for it to follow the field boundary to the south of Baydon House and join the existing track at point D. Thus creating a useful short circular route and linking in well to the existing network of tracks. If the landowner prefers to keep the new route away from the close vicinity of the house then I would suggest they might create a track across the middle of the field in a direct line between points F and D.

Finally, I would like to make sure that proper note is taken of the fact that public rights of way are exactly that; for public use and public enjoyment not to serve the landowner, so that in this case if they are to improve their privacy (presumably what they want in this case) then they should be prepared to give something back to the community, I believe when a builder applies for a change of land use there is a payment made to the community for their use and I would suggest that this may be appropriate in this case.”

26 **Mr D Tilbury, Eastleigh 25 June 2013** All of the below paragraph is a quotation.

I write, as a user of the paths in question and as someone who has made complaint about the obstruction of these two paths. One can only speculate as to why complainants were not deemed suitable consultees.

It has long been my understanding that a citizen should not profit from a criminal act yet in this matter we see a landowner illegally obstructing rights of way, not being prosecuted and the matter being resolved by the rights of way in question be diverted for the landowner's convenience. We have seen this in other parts of Wiltshire where the RoW Warden turns a blind eye, dismissing the obstruction glibly with phrases such as 'I don't have time to deal with every obstruction'. In every case it is the public that lose out.

Looking at the area it is apparent that Wiltshire Council have abjectly failed to deliver under the statutory **duty** to create an accurate definitive map. At a glance one can see two cul-de-sac BOATs, a cul-de-sac bridleway and an unclassified road that is metalled at both ends but recorded as bridleway in the middle. And there there are routes, like Baydon 2 and 8 that have the appearance of roads but are recorded as bridleways. In every instance the public are the losers.

Baydon 2 is a smashing lane. Most people would respect the public rights of way and develop around that that exists. The proposed development places a small hay storage building across Baydon 11 & Baydon 2. A more obviously artificial design could not conceived. Why two stores when one would be cheaper to build and easier to use? Oh! Silly me....

The proposal for Baydon 11 is ludicrous. What point is there in creating a bridleway that runs parallel to an existing bridleway?

It is a great shame that Wiltshire Council didn't spend as much time creating an accurate definitive map or abating obstructions as they do in assisting landowners to convert public roads into private access drives. In this case there is a history of piecemeal diversion, obstruction and further diversion that has been conceived to move the public away from traditional routes thus enhancing privacy and property values. Should this proposed DMMO go ahead it will mark a new low in Wiltshire's record of protecting and asserting the rights of the public, as per s.130 HA80.

27 **Mr B Riley, Bradford on Avon 02 July 2013**

"Taking Baydon 2 first; the diversion of an ancient route for the sole benefit of a landowner is regrettable - although I appreciate he has every right to request it. It is a pity that so few landowners have any appreciation of history. There is nothing in this proposal of benefit to the public, who would be far better off retaining the existing route.

Examination of the County Series 25-inch OS maps shows that the width of the existing affected length is mainly 9 metres, narrowing to 5.5 metres between the buildings, so an average width of at least 6 metres ought to be provided for any substitute. A hard well drained surface is appropriate for a carriageway as long as the material is suitable for ridden and driven horses.

In respect of Baydon 11, the original route was diverted many years ago, so its value is recreational rather than historical. The proposed alternative A-G-K duplicates Baydon 8 too closely to be of much utility. A route further east, perhaps utilising part of the avenue shown on the planning drawing would be more acceptable."

28 Mr M Lloyd, Baydon House, Baydon 09 July 2013

"We have received your letter regarding the diversions Johnsons are wishing to have passed of which we have no objections.

As I am sure you are aware a portion of the diversion land is owned by Basella Ltd for which I act as an agent for the trustees.

Johnsons are currently undertaking a land purchase of the land in question however the trustees have asked me to find out the process given you require feedback by the 16th and yet there is a possibility that the sale may not have proceeded by that date.

Could you please email the process so I can clarify with the trustees the timings."

29 Mr A Kind, Newcastle upon Tyne 03 July 2013

"My comment on the proposal is that I am not opposed to diversion if such is genuinely necessary for development purposes, but it looks to me as though the diversions are considerably more extensive than is necessary."

30 Mr K Smith, Aldbourne Road, Baydon 08 July 2013

"Thank you for the letter dated 20th June concerning the diversion of Baydon paths 2 & 11. This seems a complete U turn from the previous letter dated 4th Jan re SM/PC13 and I note that the plan was printed by Jan 29th OBVIOUSLY Plan B.

That it is VITAL to site those BARNS across rights of way leads me to think of an element of contempt or even taking the proverbial (P). The fact that no detrimental comments were offered at the planning stage is no surprise (I was at a meeting in Devizes once and this is the same behaviour as our MEPs).

As for the route E to C I would suggest it is 5 metres wide for the tractors etc.

Overall every aspect of the letter is for the benefit of BAYDON FARM who knew of these rights of way when obtaining the property, but actually denied the existence of part of path 11 although it is on the map (not to me personally). Anyway as there has been no action so far to make path 11 available to the public and the feeling I am as welcome as the taxman when I walk the dog past the house, I have to wonder how long the public would be allowed to enjoy any alternative paths.

I don't begrudge the privacy which is the reason for all this but I do worry about any safeguards for any new paths. Will they be signposted and what rights the public have.

(MAYBE BAYDON FARM WILL WANT A BIKE SHED or HELIPAD BLOCKING ANY NEW PATHS IN 6 MONTHS TIME).

That is the end of my rant. Hope to hear from you soon as I no longer know where I can or can't walk."

31 Mrs J Rees, Baydon 23 June 2013

“With regard to your letter of 20th June I have no objection to the new route A- E- D but would add that it is only 5 metres wide from A to E. There is no legitimate reason for the proposed new route A – G – K. The landowners have already erected a hunting gate on it. I can only think that if granted permission they would then want to place a gate on bridleway 8 where it leaves u/c 189 and close it off for public use. This right of way has been in use since 1773 and should remain so.”

32 Mr A Kind, Newcastle upon Tyne 22 July 2013

“Thank you for your letter of 18 July. My main concern is the proposed diversion that results in the alignment A – G. This brings two paths so close together as to detract from the integrity of the network and the enjoyment of the public. The route F – B can be varied westwards just enough towards the B end so as to allow a straight link up to the new A – E.”

33 Mrs A Smith, Aldbourne Road, Baydon 26 July 2013

“Further to my letter dated 25th June 2013, I write further to express my considerable alarm and concern over these proposed by way amendments.

The reason for my alarm is that I have noticed that the proposed footpaths have indeed been marked as in the application and indeed they have been sign posted too but they are marked as ‘permissive paths’. My alarm is that we appear to be losing permanent rights of way but instead being ‘given’ only permissive routes. These do not hold the same status in law and should the landowner want to in time may no longer exist. It is imperative that if these routes are to be amended we as the general public retain the right of way.

My second point is that I understand that these routes were in fact roads used as public paths (although it appears they may have been incorrectly designated at some point in time) and the proposed route certainly would not allow any vehicular traffic to travel along it as the corners are too sharp to get round.”

34 Mrs A Smith, Aldbourne Road, Baydon 26 July 2013

“Further to my letter/ e-mail of 25th June I am writing again as I have visited the site (I run that way most mornings but only this week took the proposed route!). I have some considerable reservations about what is being done- most particularly regarding the change from actual ‘right of way’ to ‘permissive path’ status. This is an alarming reduction of public rights and should be defended very strongly. If it is allowed, then I will consider taking legal action to appeal against the decision.”

35 Mr C Phillips, Ermin Street, Baydon 26 July 2013

“Thank you for your letter Baydon paths 2 & 11. The feelings of the villagers are well documented with the Council but alas they still let the village be raped and pillaged of its HISTORY.

It is a sad day for the countryside when money can dictate our heritage.

The alternative paths have been in place for months.

As for the circular walk, it is only on the other side of our hedge where the bridleway runs so it will only be walking down one side and back along the other side.

As planning has been given for the building work it seems that your department of Rights of Way are meaningless. Once again the heritage is lost.”

36 Mr A Knowles, Baydon PC Chair, 28 July 2013

A response from the parish council to Mrs Smith and copied to Wiltshire Council:

"In response to your concerns regarding 2+11, I feel that the landowners have addressed the concerns raised at the PC meeting previously.

In reality the part of Baydon 11 in question would not be made available due to its location to property and business needs, plus it has not been used for decades.

The new proposed route gives the village in effect another available path and serves the raised question of having a loop.

With regards to 2, the new route is safer for all users and has much better views across the countryside, so once again I see this as a positive?

Any change will generate differing views, however these are ones we consider positive rather than negative or detrimental to villagers."

37 Wiltshire Councillor Mr J Sheppard 29 July 2013

"I have no objections to the planned alterations to the rights of way at Baydon House Farm. The planned new route A-E-D is 5m wide, is this greater than the route it replaced? I would like to reinforce Baydon Parish Councils request that the new routes are in place before the new building work starts. Will the future upkeep of the new paths be the responsibility of the owners of Baydon House Farm?"

38 Mr B Gribble, Ermin Close, Baydon 01 August 2013

"I refer to your above letter and initially I would like to make the following comment on the development proposal as a whole.

It is clear from your drawing and to anyone walking around Baydon House Farm that there is ample room within the landowner's property for the three hay, fodder and machinery storage buildings to be positioned so that they do not impact on any of the existing rights of way which could then be left intact. Why these buildings had to be placed so brazenly across existing paths when there is so much open space both east and west of the main barn is unclear. Did anyone in the planning department ask the same question before approving it?

However the main point that I take issue with in your letter is the relocation of route B – F – H. As you are aware the landowner recently made an application to extinguish this path which resulted in over ninety residents from our area, including the Rambling Club, writing to the Council objecting against the proposal. Although this application was, quite rightly rejected, it now appears that the landowner has requested the path should instead be moved westwards to a new position A – G – K on your drawing which is no more than a few metres away from the bridleway BAYD8. This is plainly absurd as nobody will bother using the path as it is so close to Baydon 8. The landowner will find it easy to achieve extinguishment after a few years if the path ends up in this position.

If route B – F – H must be moved (and I still do not understand why) then the only sensible move is eastwards to join points D and F (see attached drawing). This new route has several merits:

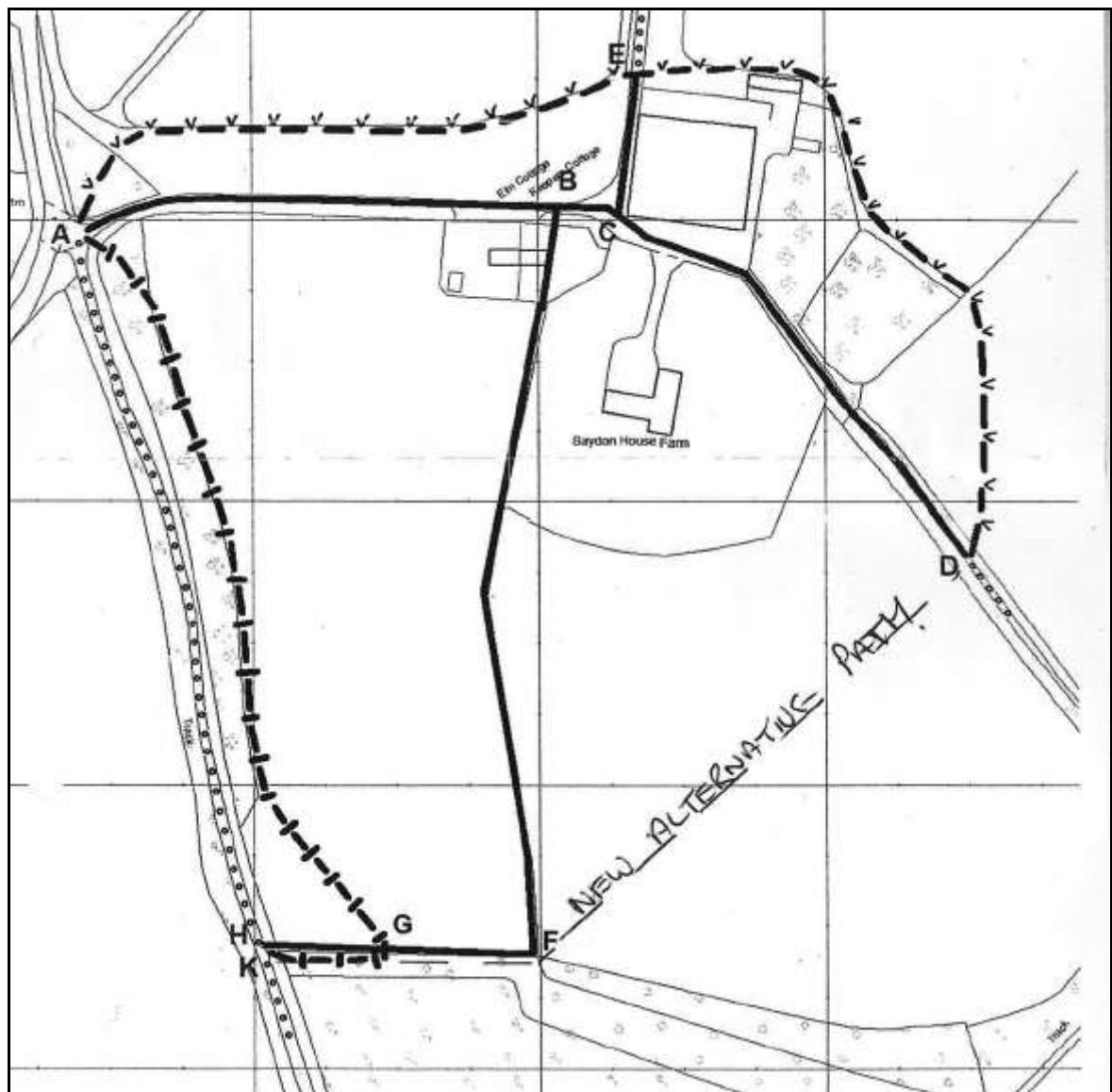
It moves the most contentious bridleway away from the landowners house.

The new bridleway will be of similar length.

It retains a circular route which is highly desirable to most walkers and riders.

I therefore ask that your department should strongly oppose the new route A – G – K. the path should either stay where it is, to the landowner must offer a route between points D – F – H of similar length to B – F – H.

Finally I would like to emphasise not to underestimate the importance of this path. It is so close to our village centre that it is easily accessible to all residents. This was clearly illustrated by the recent application to extinguish this path when over ninety people (almost one person from ninety houses) wrote to the Council objecting. Please do not lose sight of this because I doubt whether these people will want to write again when most of them believed that the path is now safe as the extinguishment was rejected. There is a frustrating imbalance in this development application. Everything seems to be in favour of the landowner and his family whereas everybody else in the village and further afield are losing out because they will no longer have the freedom to walk or ride where they could before."



39 **Mrs A Smith, Aldbourne Road, Baydon 03 August 2013 in response to Parish Council e.mail dated 28 July 2013 and here at paragraph 36.**

"I am very saddened by your response to my two e-mails regarding the proposed footpath changes, bearing in mind that I wrote at the end of June and made you aware that I was not available to attend

the meeting due to being away camping with Guides, you waiting to respond to my e-mail until I am already away, seems obtuse to say the least. It also suggests to me that you might have presented to the council the fact that you had written to me in response and had no reply- implying that I had no further objections.

I have acknowledged that the proposed new route of Baydon 2 whilst irritating, in that there is no reason for the change, other than to allow Baydon House Farm to exclude public access through their yard, as they have plenty of space to build their additional buildings without diverting the paths, is agreeable. I do not hold with your view that it opens up new/ better views across the countryside and would suggest that by walking it you would see the views are already available from Baydon 2 and Baydon 30.

You state that Baydon11 could not be re-instated due to its location to property and business needs, I would dispute that this could not be re-instated, but acknowledge that it is unlikely. The fact that it hasn't been used in recent years is entirely because it was not kept in passable condition by this or the previous landowners- a breach of their duties and therefore should not be seen as a mitigating factor as to the death of a footpath.

You suggest that creating a circular route has been achieved by the proposed move of Baydon 11 to a parallel path to Baydon 8. In reality, this is simply walking in one direction and straight back in the same direction- this does not represent a circular route. It seems that a better compromise, to give the landowners, the privacy they desire and the public a reasonable access to the countryside, a completely new route should be proposed. One which does create a proper circular route. Your comments about everyone having different opinions about possible routes is of course true but I feel that your comments suggest that any debate on an acceptable alternative will not be debated, is unacceptable in the circumstances. The suggestion was made not to determine the absolute route but to point out the principle that if modifications are being made which benefit the landowner, then those modifications should also benefit the public. This principle is noted through developers having to pay to the community when they build new homes and I see no reason why it shouldn't be part of this debate. I strongly disagree with your comment that the proposed route does create a proper circular route through giving an additional path.

Please forward to me minutes of the council meeting, so that I can see how this was presented and what comments were raised for discussion. I am really sorry I was not able to be present."

40 Mr P Gallagher, Ramblers, NE Wiltshire and Swindon Area, 06 August 2013

"I am responding to your letter dated 20 June, to Richard Harpin.

Baydon 2

We consider the proposed diversion route A-E-D to be acceptable. However, we do not support the proposed surface treatment of this path. A hard surface would be out of keeping with its surroundings and not in the interest of most users of the existing bridleway. The landowner's existing permissive path along this route has a grass surface and this should be retained.

Baydon 11

We accept that the planning permission which has been granted makes some diversion from the existing route necessary but the proposed route A-G-K is not a satisfactory solution. Its proximity to the existing Baydon 8 means that it is likely to be little used.

A more acceptable option would be to retain the existing section H-F (which needs to be cleared so that it can be used) and then divert the path from point F in a north-easterly direction to join Baydon 2 at or close to Point D. This would link the paths together in a much more useful way and would provide the facility of a short circular walk close to the village, the importance of which was mentioned by many of the local residents who objected to the previous proposal to extinguish this part of Baydon 11 (please refer to your Decision Report dated 15 November 2012)."

41 Mr and Mrs D Jukes, Ermin Street, Baydon, 11 August 2013

"Re: Recently granted planning permission E/2013/0170/FUL

Having already contacted you about this at the beginning of July I was advised that I would be notified when a rights of way officer was appointed to this case, but I am concerned that I have heard nothing since then so am writing to voice my concerns and to point out that other residents of Baydon will not have the opportunity to voice their concerns before the time to raise objections has expired which I understand to be August 16th 2013.

Before it is too late I would like to object strongly to the proposed diversion of parts of Baydon paths 2 and 11.

I have been provided with a letter sent to one of my neighbours by yourselves with a reference of SM/2013/15 & 16 BAYD2/11 along with location plans which my comments below refer to:

Firstly I refer to the proposed changes to Route E – C (Baydon 11 part) and C – D (Baydon 2 part) being replaced with Route A – E – D

The proposed replacement Route A – E – D has already been created and it is plainly obvious it is neither the same width nor surface as the current right of way or as specified in the letter as being 5 metres wide and a hard well drained surface.

The current right of way has a hard well drained surface and is wide enough to allow large agricultural vehicles to gain access to the various farm lands surrounding Baydon village.

The effects of the loss of this access was plainly felt when the current right of way was blocked for some time and large agricultural vehicles were forced through the village and down unsuitable alternative routes to gain access to the farm lands that have been accessed for many years via the current right of way.

Secondly I refer to the proposed changes to Route A – B – C (Baydon 2 part) and Route B – F – H (Baydon 11 part).

At best the existing route which is currently blocked illegally should be reopened but at worst the alternative path, if one has to be provided, should follow the route of the existing path as far as possible. This could be achieved by way of a small diversion around the site of the blockage allowing the walk from B to H via F to still be enjoyed.

The replacement so called circular walk is not circular it is simply a straight walk along one side of a hedge/tree row and the same straight walk back along the other side of the same hedgerow and would be a very poor alternative.

The letter I have been passed a copy of states that comments are invited by August 16th 2013 and I am concerned that the proposed changes will be pushed through without allowing enough time for the residents of Baydon to be properly informed about the proposed changes and then to consider and raise any objections they may have.

These rights of way have been in place for centuries and the removal of them should not be carried out lightly or without proper due consideration if at all."

42 Rodney Powell and Alex Franklin, Bishopstone, Wiltshire 13 August 2013

"Dear to whom it may concern, we totally support all the bridle path diversions around Baydon House Farm as with horses it is safer hacking away from tractors and farm machinery and through a busy yard"

43 Ms G Taylor, Baydon 13 August 2013

"I am a regular user of the footpath that dissects the above property. I am in full support of the diversion of this footpath. I have a small child and both myself and my partner feel it would be much safe if the footpath did not go through a busy working yard, with all the associated machinery, traffic and risks of loose horses running into a pram. I also feel the views will be far more enjoyable from the proposed new footpath. Please do not hesitate to contact me if you would like any further elaboration on my thoughts."

44 Ms A Windsor-Clive, Marridge Hill 13 August 2013

"I have walked and ridden past Baydon House Farm for nearly 25 years. Only a couple of days I walked past on the new Permissable Path. What an improvement, no more embarrassment of interrupting a working yard, no more slippery concrete. A new beautifully planned peaceful path. I sincerely hope that this path gets the go-ahead."

45 Mr W Blackiston, Baydon, 13 August 2013

"I write in support of the above mentioned planning application in reference to Baydon House Farm, SN8 2HX.

I live at 2 Paynes Cottage in Baydon and work at Baydon House Farm.

The nature of my role involves working large pieces of farm machinery including hedge cutters, hay bale spikes and tractors, all of which are operational whilst the current route goes directly through the working yard.

Consequently I've experienced added stress amid safety concerns for walkers, cyclists and riders (some of which are children). Even with the greatest of care taken, I believe this stress would have been avoided and safety increased with the diversionary routes in place.

The new barns will be a positive and efficient development for the storage of haylage (which requires dry storage for longevity) and for the storage of farm machinery (which is currently and rapidly degenerating and rusting due to it being kept outside). The day-to-day running of the farm would be a lot easier and safer.

The second diversionary 'Baydon 11' new route is also better, as on a number of occasions I have found members of public with their faces pressed to the windows of my home and also trespassing in my garden, therefore walking a route that does not even encompass 2 Paynes Cottage (it goes through the cottage next door).

More recently, I have met a number of ramblers who have tried the new paths and returned to ramble as a result of their support.

Thank you in advance for your consideration of this support letter."

46 **Ms S Faber for and on behalf of Ms Dionicia Caparas, Paynes Cottages, Baydon House Farm, 10 August 2013**

"I am writing in support of the diversion around Baydon house farm. It makes a lot of sense avoiding both the farm and house traffic and the working yard. The path that has been put in is much more suitable than the existing route. I would object to it being surfaced with Tarmac or stone as the route is in the countryside and is not a pavement through a village or town. The grass surface is much better for walkers and horses and more attractive to look at. It is safer in the winter when the ground freezes as it often does in this area of Wiltshire."

47 **Ms J Preston, no address given 13 August 2013**

"I have heard about the relocations of walk ways around Baydon and whilst normally I would suggest that they stay .. I think in this case .. It should be relocated as the farm machinery and the horses can be hazardous when we are walking the dogs, especially when you are with children ... I think it would be much better to walk a slightly longer distance and be safer."

48 **Mr J Grove, Downsmead, Baydon, 11 August 2013**

"As a resident and a fairly regular footpath walker I would like to support the moving of the footpath that runs through the middle of Baydon House Farm yard to around the back of the buildings. Several years ago when the buildings were used as sheep sheds and I was working on the farm I nearly ran over a small child who ran around the corner as I was reversing out and I only saw him at the last moment. I believe that footpaths should be kept out of dangerous places such as farmyards, industrial units etc.

My wife and I actually walked up the newly established footpath from Aldbourne road yesterday and we both agreed it is far more scenic and safer."

49 **Miss S Bristow, Russley Green, Baydon 11 August 2013**

"I understand you are the lady dealing with the proposed bridleway diversion sited at Baydon House, Baydon Wiltshire. I am totally in support of this diversion - as having lived in the villager for over 15 years and also being a horse owner/rider I can confirm that repositioning of this path does make sense. It will thus avoid going through another stable yard with other horses/dogs/machinery/distractions and provide a safe alternative route to rejoin the existing Preston track/Aldbourn Road. I cannot foresee any disadvantages to the new layout and hope that Wiltshire Council will strongly consider in favour this new proposed path for all riders/walkers to enjoy."

50 **Mr B Kingham, Snap Farm, Aldbourne 11 August 2013**

"I write in support of the application to relocate a foot path at Baydon house farm.

Some years ago I found it necessary to make a similar application to the Council to move a right of way which went through our, now much busier, farm yard and I therefore know from experience the serious danger such a right of way can be. Recent farm accidents serve to emphasise the point."

51 **Mr and Mrs S Arnott, Hellscombe, Aldbourne, 12 August 2013**

"We are writing to inform you that we are in total support of the proposed bridle path diversions around Baydon House Farm, in particular the ones avoiding the working barn area as these are unsafe. We have always been uneasy using the bridleway through a busy working farm and private

home and the suggested diversion will be infinitely more picturesque looking down the valley. We are therefore strongly in favour of it being carried out.

We are also in favour of the other diversion away from the farm workers cottages, however we would prefer not to use the path and question whether it is really needed. Perhaps an extinguishment would be a more obvious solution to a path issue that we have been aware of for a while?"

52 Mr A Knowles, Baydon Parish Council, 12 August 2013

"I thought it would be worth giving an update on behalf of the PC regarding the new diversions in place on Baydon 11 and 2.

Having discussed this in our recent meeting, we feel that Baydon 11 serves the purpose of the objections, such as the loop being created and the fact that the village is getting a path back.

Baydon 2 becomes safer for all users and the path has better views for people to enjoy.

The only question raised was to ensure the paths are suitable to most user types.

Though overwhelmingly we support the changes made."

53 Mr A Prior, Ermin Street, Baydon, 12 August 2013

"I am writing in support of the diversion of the existing route of BAYD2 through Baydon House Farm proposed by Mr and Mrs Brook Johnson. Since their purchase of the property horse activities have become a core part of the business, particularly active in the area between the house and the barns. There is also a need for a horsebox and agricultural vehicles to operate in the area. This all leads to the potential for problems, even accidents, for walkers and horse riders along the current route of the bridleway. It seem logical and reasonable, therefore, to consider an alternative route. The section from Aldbourne Road to the barns, off tarmac, and the section north of the barns connecting with the existing track below the active area add to form a superior route for users as regards, safety, ground conditions and views. It does not add any significant distance. Of equal importance is the opportunity for Mr & Mrs Johnson to improve their security against thefts from the area around the barns.

It also has similarities to the approved BAYD 11 diversion around Baydon House.

I am also aware of the BAYD11 situation in the field south of the two cottages. I support the proposed diversion to a position more westerly in the field because it connects quite nicely with the above diversion and again is a reasonable solution to the ongoing problem."

54 Mr N Bailey, Aldbourne, 13 August 2013

"I would be grateful if you would add me to the list of supporters of the application for the diversions of foot and bridle paths around Baydon House Farm.

The topic is certainly on the minds of many of the local community and a number of my clients, including horse owners, are all agreed that the proposed route would be safer for all and nicer without a doubt."

55 Ms A Franklin and Mr R Powell, 13 August 2013

"Dear to whom it may concern, we totally support all the bridle path diversions around Baydon house Farm as with horses it is safer hacking away from tractors and farm machinery and through a busy yard"

56 **Mr E Duvander, Reading, 14 August 2013**

"To whom it may concerns:

The New Zealand 3-day eventing team uses Baydon House Farm SN82HX regularly for training days. I believe that the diversion are in the best interest of the general public as cyclists and horses in training don't mix.

The paths have been a worry for both horses and riders with regard to safety and security during these training days."

57 **Mr S Moxon, Baydon, 14 August 2013**

"As a resident of Baydon I support the new diversions at Baydon house farm."

58 **Mr and Mrs J Harber, Aldbourne Road, Baydon, 14 August 2013**

Contains e.mail string as below:

"My wife and I write to you in support of the proposed changes to certain footpaths in and around Baydon House Farm. The changes we believe would not only compliment the current footpaths in and around Baydon but would also make good practical sense for a working facility especially from a safety perspective." "Bryan and Jacqueline Harber"

"Bryan, hello . Hope this email finds you well. Its been a while, we need to get together again in the near future. Could you please send an email tosallymadgwick@wiltshire.gov.uk..... supporting what Sally and I are trying to accomplish by diverting these footpaths. The summary attached on Sally's email . I believe we have good local support and please walk the new footpaths and see what you think. The usual critics are never happy with what people try to do, but hopefully the good people of Baydon will take advantage of this new system. The response has to be in by this Friday. All the best, Brook"

"We are writing in support of the application for the diversions of foot and bridle paths around Baydon House Farm, without which it makes it difficult and often unsafe to operate normal farm machinery around our barns. We have had a number of worrying incidents with young children running around the barns in our working farmyard and into the direct path of operating machinery including jcb and hay moving spikes. These were, luckily, close shaves but the result each time could have been of a considerably more deadly nature. With the paths diverted, the general public will be much safer and the route we have suggested takes in a fantastic view down the valley which you would otherwise not get.

Likewise the path from the back of the barns off the 'yard drive' in the direction of Aldbourne provide a much better route with no gates to open and shut and no traffic to avoid. The surface is grass and is therefore much safer for horse riders as we have had a number of path users on horseback and on feet slipping on the concrete during icy periods. Grass solves this issue and is certainly more in keeping (as noted and remarked on by some ramblers last week).

A number of local riders have asked in the past if we could consider an alternative route allowing them to avoid the barn and concrete areas as horses often 'spook' (which is particularly dangerous with metal shoes on concrete) and a few riders regularly have had to dismount to pass through our working areas.

The other diversion, in lieu of the previous applied for extinguishment, which involves the existing unusable route through our cottages should hopefully provide a happier solution for the problem we

inherited (not caused) as new owners nearly 4 years ago. It opens a path which has technically and literally been unusable for some 25 yrs plus by providing a usable and safe alternative

around the same field and of a similar length. All the above aside, for us to continue to work as a farm and to enable us to store equipment, hay and Haylage, we urgently need to build barns which for obvious reasons need to be located next to existing farm buildings and on level ground. To achieve this, we need to obtain permission to divert the existing paths allowing us to then erect the farm buildings.

We would very much appreciate both village and council support. In the meantime, we have worked hard to clear the proposed routes and make them suitable to use whether on foot or horseback. Any constructive suggestions you have on what we have tried to provide will be gratefully received.

Yours sincerely

Brook and Sally Johnson"

59 Mr M Lloyd, Baydon House, 14 August 2013

"I know we have spoken over this issue regarding the land sales that are going through to facilitate the diversion between S Johnson and Basella Ltd a few weeks ago.

However thought i would just reiterate that we are fully supportive of the proposed diversion and extinguishment that we have received correspondence on from the Wilts council.

The new route provides a much more safe as well as pleasant walk for our family when we walk down to Aldbourne."

60 Mr C McEwan, Lambourn, 14 August 2013

"To whom it may concern. My name is Christopher Roger McEwen M.R.C.V.S. working from the Valley Equine Hospital, Lambourn. I am the vet attending the horse yard at Baydon House Farm belonging to Mr and Mrs B Johnstone. They have extremely valuable eventers housed there. It would be much safer for the footpath routed at the moment in front of the yard to be re-routed as over the years there have been many occasions when riders and especially bikers come past the yard where veterinary procedures were being undertaken causing chaos. I am sure they do not do this on purpose however it is quite blind around the barn and suddenly come across us, causing the treated horses to erupt. If it was possible to re-route this path in my opinion it would be a much safer option."

61 Sir M Todd, Swindon, 15 August 2013

"Baydon House Farm

I often use the excellent facilities at Baydon House Farm for training purposes for my Olympic level three day eventing horses.

I truly believe that the diversions of the bridle paths are in the best interest of the general public as cyclists and fit horses in training don't mix.

I have been worried about the safety of both horse and riders on my visits to Baydon House Farm. Likewise, the safety of path users with fit competition horses in the yard being loaded and unloaded out of and into lorries on the concrete apron (over which the path runs) . Horses are predictably unpredictable at the best of times.

There is also a security concern in both the working yard and lorries

I totally support all the diversions at Baydon House Farm.

I hope this is all the information that you require but please do not hesitate to contact me if not.”

62 Ms A Dobson, Baydon, 16 August 2013

“I refer to our telephone conversation and your letter of 20 June 2013 concerning the diversion of paths as above.

We are delighted to note that route A-E-D on your drawing is to be a hard well drained surface and 5m wide. The gradient from point A to the fence line of the paddock is at present very steep and will not be usable by wheelchairs. Can you please ensure that the applicant does his very best to reduce this gradient so all of our village, elderly, mums with prams and the disabled, can make use of the footpath.

The new route A-G-K, which is not going to have a hard surface presently appears to have no direction marks and it will be best for all concerned if users are encouraged to keep to the pathway rather than straying off.”

63 Mr and Mrs C Whale, Walronds Close, Baydon, 19 August 2013

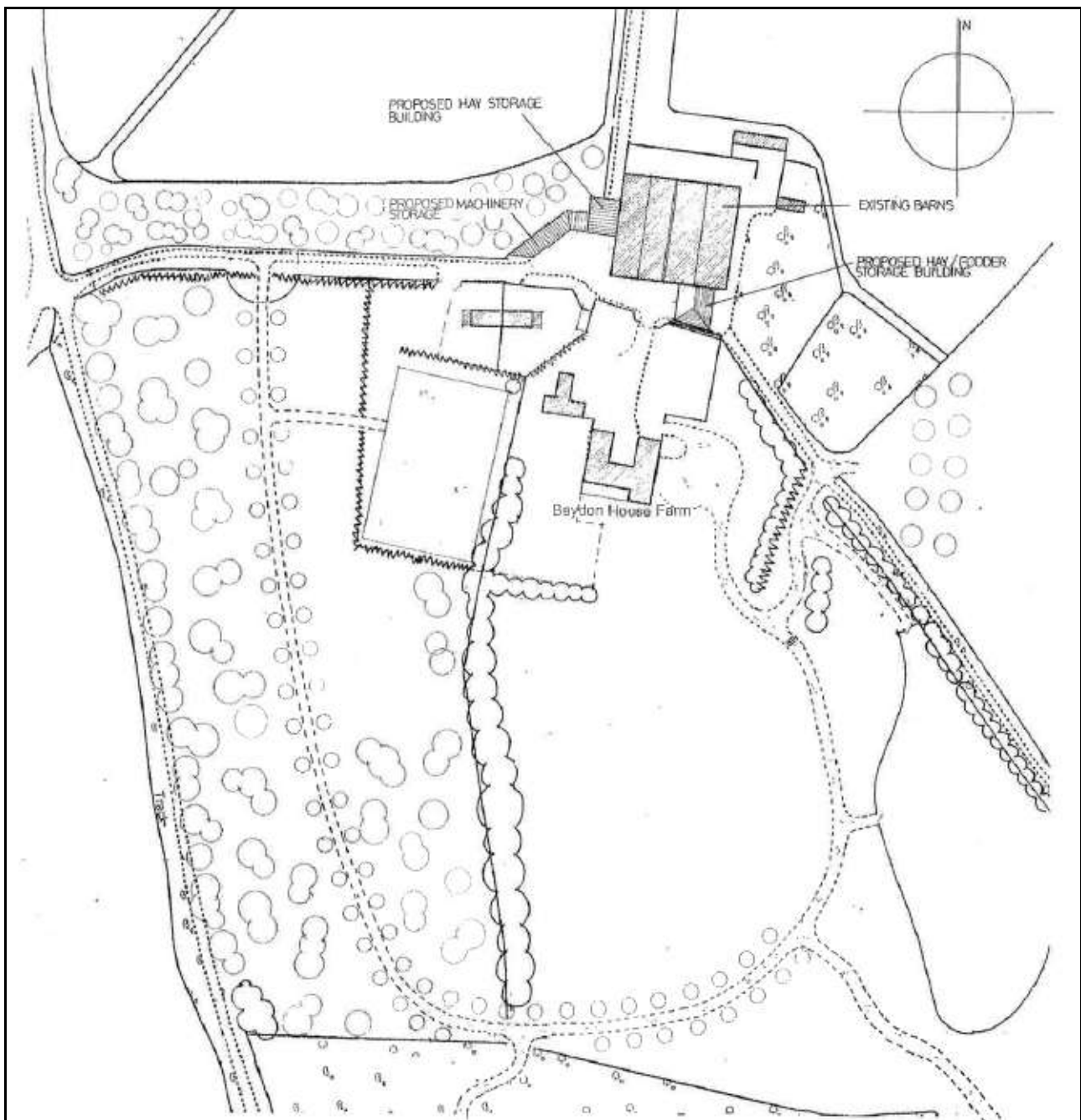
“ We are writing in full support of Mr & Mrs B Johnsons request to move the bridleway at Baydon House Farm to a new route on the boundary of the property. I have ridden the diversion today and have found it to be a suitable alternative as it means that the horses do not have to pass through a busy spooky stable yard and we as riders do not have to open and close gates which can be quite dangerous from the back of a horse.

My only concern is that during the winter months it may become muddy and therefore impassable.”

5 Further Consultation

64 An enquiry was sent to the applicant (Mrs S Johnson), the agent (Mr M Wood) and Mr Blackiston who works on the farm using heavy machinery to enquire about the plans for farm management movements once the planned buildings are erected (as the yard becomes a cul-de-sac once the buildings are erected) and whether the proposed diversion routes will be used by these vehicles (especially as an east to west link).

65 Plan showing permitted development:



66 **Mr M Wood on behalf of the applicant and Mr W Blackiston 30 August 2013**

Thank you for your letter dated 25 August. I am responding on behalf of the Applicant and William Blackiston to whom you have also written as he is responsible for the movement of agricultural vehicles on the farm.

I can confirm that no other land or person enjoys a private right of way over the driveway to Baydon House Farm or through the farmyard, so that Baydon House Farm has total control over the manner in which farm vehicles pass and repass.

The track to the south of Baydon 2 that was constructed recently to provide a vehicular access to the house and to the farm's other land was designed and built to the specification to accommodate the vehicles and machinery that are used on the farm. On completion of the development that is the route that will be taken for all east/west farm movements – see the red dashed line showing access ways on the attached plan.

The diversion route is not suitable for agricultural traffic or machinery and has not been designed for that purpose. Access would only be required by the Farm for any maintenance works to the boundaries or adjacent vegetation and this would only be with lightweight machinery. The diversion route is also free of any private rights of access in favour of any third party.



6 Considerations for the Council – Legal Empowerment

67 The Town and Country Planning Act of 1990 states, in sections 257 and 259:

257 Footpaths and bridleways affected by development: orders by other authorities.

(1) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath or bridleway 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.

(2) An order under this section may, if the competent authority are satisfied that it should do so, provide—

(a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;

(b) for authorising or requiring works to be carried out in relation to any footpath or bridleway for whose stopping up or diversion, creation or improvement provision is made by the order;

(c) for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath or bridleway;

(d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.

(3) An order may be made under this section authorising the stopping up or diversion of a footpath or bridleway which is temporarily stopped up or diverted under any other enactment.

(4) In this section “competent authority” means—

(a) in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the Secretary of State, who would have had power to grant it; and

(b) in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.

259 Confirmation of orders made by other authorities.

(1) An order made under section 257 or 258 shall not take effect unless confirmed by the Secretary of State or unless confirmed, as an unopposed order, by the authority who made it.

(2) The Secretary of State shall not confirm any such order unless satisfied as to every matter as to which the authority making the order are required under section 257 or, as the case may be, section 258 to be satisfied.

(3) The time specified—

(a) in an order under section 257 as the time from which a footpath or bridleway is to be stopped up or diverted; or

(b) in an order under section 258 as the time from which a right of way is to be extinguished,

shall not be earlier than confirmation of the order.

(4) Schedule 14 shall have effect with respect to the confirmation of orders under section 257 or 258 and the publicity for such orders after they are confirmed.

68 Section 257 of the Town and Country Planning Act requires that before the order may be confirmed either Wiltshire Council (in the case of an order that has not attracted objections) or the Secretary of State must be satisfied that it is necessary to divert the path in question in order to enable development to be carried out in accordance with planning permission granted.

69 Paragraph 7.15 of Circular 1/09 (Rights of Way Circular – Guidance for Local Authorities – Defra) advises that 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 highway should be weighed against the advantages of the Order.

70 7.15 states:

“...Having granted planning 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 or 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.”

7 **Comments on Considerations**

i) **Whether it is necessary to divert the path in order to enable development to be carried out.**

71 The development affects the line of paths 2 and 11 which must be diverted or extinguished in this place to permit the development to proceed.

72 The application proposes a diversion that extends for 150 metres west of the permitted development joining Baydon path no 8 and a proposed diverted section of Baydon path 11.

73 Although this diversion has the advantage of not having any gates along it, it is subject to a difficult gradient at its western end and given the comments made at the initial consultation stage relating to the proposed diversion of part of Baydon 11 west of Baydon House Farm (under different legislation), it is by no means certain that the junction of Baydon 11 would be at this point in the future.

74 Additionally, it is noted that in considering a diversion under Highways Act legislation (as would be the case for Baydon 11 west of Baydon House Farm) the Council is bound to consider all routes to be without obstruction and available.

Defra's Rights of Way Circular 1/09 states at 5.25:

Section 119 of the 1980 Act does not specifically entitle an authority to disregard temporary circumstances, including any buildings or structures preventing or diminishing the use of the existing way in considering whether or not to make an order and the consideration is equally not available to the body confirming the order. The Planning Inspectorate Advice Note 9 22 (s28) indicates that in forming an opinion on whether the replacement route is not substantially less convenient to the public, a fair determination can only be made on the assumption that the existing route is available to the public to its full legal extent.

75 Given that it is necessary to consider Baydon 11 unobstructed for the purposes of its own diversion it is logical to also consider it unobstructed for the purposes of diverting Baydon 2 and the northern section of Baydon 11 under different legislation.

76 Accordingly locating the end of the proposed diversion of Baydon 2 so far to the west is not necessary to enable the development to proceed and creates an unnecessarily sloping section of new path. Whilst it is understood that the landowners have a desire to route all rights of way from the access road and yard areas it is considered more appropriate to achieve this under different legislation and at the same time as any proposals to divert Baydon 11 south of Baydon 2 are considered.

ii) The disadvantages or loss likely to arise as a result of the diversion

77 Although some respondents have made it clear that there is value in retaining historic routes, the granting of planning permission dictates that the right of way must move from the yard area.

78 A variety of respondents have expressed a view that it would be advantageous to move the right of way from the busy yard area and whilst it is clearly in the landowner's interests to do so there is also public benefit in taking the right of way away from the yard area which is likely to be busy with farm related activities.

79 The route of Baydon 2 undoubtedly has a sense of direction and purpose that the proposed diversion does not have. However although the route itself is historic in nature none of the farm buildings or dwellings that it passes by are sufficiently attractive or interesting to represent a loss of enjoyment.

iii) Alternative Routes

80 The proposed diversion is the most convenient alternative east of the yard. An alternative route minimising the steep gradient at the western end is recommended to comply with the legislation and to offer more accessible routes. Gradient and slope are significant barriers to users who are mobility impaired, very young, walking with a pram or pushchair or cycling and the Council has a duty to enable least restrictive access wherever possible.

iv) Environmental Impact of the Recommendation

81 Planning Consent was granted with full consideration of the environmental impacts of the proposal.

v) Risk Assessment

82 There are significant risks associated with the new route as presented and the Council will require the way to have considerable width and surface improvements before it is certified and acceptable and any order comes into force. The new route must have an all weather surface at least in part to ensure that all users may use the way comfortably throughout the year.

83 There would be no risks to users of the path associated with the proposed new route which must be at least 5 metres wide having a compacted stone surface for 2 metres of its width.

84 The proposed new route would become a highway maintainable at public expense and it will be necessary to minimise the Council's maintenance liability by ensuring that trees are cut back well back from the route allowing sun and air and reducing the impact of any seasonal growth.

vi) Legal Considerations and Financial Implications

85 The applicant must meet all costs related to the formation of the new path to a standard that is acceptable to the council. The applicant will meet all costs related to the confirmation of the order excluding any costs associated with sending the Order to the Secretary of State (SoS) for determination. This occurs if objections are received. The SoS may choose to determine the order by written representations (no additional cost to the Council), a local hearing (approximate cost £200) or a public inquiry (approximate cost £3500).

86 Although the making of public path orders is a power that Wiltshire Council has and is not a duty, where the planning authority and the highway authority are the same authority, a duty is implied. If Wiltshire Council fails to make an order following the granting of planning permission it is liable to application for judicial review from the developer. This has a potential cost to the Council of up to £50000.

vii) Equality Impact

87 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.

88 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.

89 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)

90 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.

91 The diversion route offered by this proposal must be at least as accessible as the old route at all times of the year.

8 Options to Consider

- 92 i) To make an order to divert Baydon 2 and 11 as applied for.
- ii) To make an order to divert Baydon 2 and 11 with modifications to the application route.
- iii) To refuse to make an order to divert Baydon 2 and 11.

9 Reasons for Recommendation

- 93 A considerable number of responses were received during the initial consultation period. Some people gave detailed responses and referred specifically to the consultation plan and had clearly tried the newly created route, others expressed more general exasperation and others though generally in support of removing the right of way from the yard, did not appear to have seen a plan detailing the alternatives.
- 94 Generally, it seems to be accepted by respondents that the rights of way will be affected by the permitted development at the yard and must be diverted. Additionally, there does not appear to be disapproval of the new route leading from the east around the north side of the yard buildings and then westwards above the main drive though there are concerns about gradient and surface.
- 95 There is little disagreement with the new route being 5 metres wide though Mr Riley points out that the historic route is on average much wider than this. Officers consider a minimum width of 5 metres to be adequate though it is noted from comments that this route is well used by a variety of users. The current permissive route which narrows to 2 and 3 metres in places and is barely 5 metres even at its widest point (where defined by fencing) is unacceptable.
- 96 **Any new route will only be certified by the Council if it is at least 5 metres wide**
- 97 Officers also consider that the gradient at the western end is unacceptable. This was also highlighted by Ms A Dobson in her response and Baydon Parish Council also make it clear that the new route must be suitable for all users.
- 98 The land only slopes steeply at the western end and this gradient is un-noticeable on the land further east (in the direction of the yard). It would be possible to re-site this part of the path removing the excessive gradient while still avoiding the service vehicles (tractors etc) increased use of the main drive caused by the development (see para. 66).
- 99 The longer diversion also exceeds that which is necessary to divert under s.257 of the Town and Country Planning Act 1990.

- 100 **As a result the Council will only make an order that reflects a change in this end of the path to make it more accessible. See Appendix D**
- 101 Baydon Parish Council made it clear in their response (which was supported by some others) that the new routes must be in place before the building works start.
- 102 Any works on the existing lines of Baydon 2 and 11 prior to order confirmation and route certification would represent an obstruction, an interference or nuisance.
- 103 Any confirmed order diverting these routes will only come into effect when the new routes have been certified as acceptable by the Council.
- 104 **Adherence to the correct procedure should ensure that the public rights of way remain open and usable throughout this procedure without the need for the Council to pursue any enforcement measures.**
- 105 Twelve respondents referred to the surface of the new route and this is clearly an area of concern. The existing route leads over a tarmac, concrete and laid stone track with grass verges and banks to the side in some places. Although some users have commented that the surface can be slippery the Council has no record of complaints relating to the surface. It is further noted that world class equestrians train at this yard suggesting that ground conditions in the yard area do not present a significant problem to horses.
- 106 The existing hard surfaces of this route undoubtedly make the track more accessible to cyclists, the mobility impaired or people with prams and buggies and mean that the route remains easily usable in wet periods.
- 107 The following comments relating to the surface were received:

Baydon Parish Council “suitable for all user types and in place before buildings”

Mrs Anne Smith “the path surface should be appropriate for the area a properly constructed stone path and not inappropriate tarmac”

Mr B Riley “A hard well drained surface is appropriate for a carriage way as long as the material is suitable for ridden and driven horses.” “An average width of at least 6 metres ought to be provided.”

Mr K Smith “Route E to C I would suggest is 5 m wide for the tractors etc”

Wiltshire Cllr J Sheppard “would like to reinforce Baydon PC’s request that the new routes are in place before the building work starts.”

Mr B Gribble “I would like to emphasise not to underestimate the importance of this path. It is so close to our village centre that it is easily accessible to all residents.”

Ramblers “We do not support the proposed surface treatment of this path. A hard surface would be out of keeping with its surroundings and not in the interest of most of the users of the existing bridleway.”

Ms G Taylor is a regular user with small children and a pram.

Ms Windsor Clive welcomes “no more slippery concrete”.

Ms S Faber (the applicant) on behalf of Ms Dionicai Caparas “I would object to it being surfaced with tarmac or stone as the route is in the countryside and not a pavement through a village or town. The grass surface is much better for walkers and horses and more attractive to look at. It is safer in the winter when the ground freezes.”

Baydon Parish Council (after a meeting) “The only question raised was to ensure the paths are suitable to most user types.”

Ms A Dobson “We are delighted to note that route A-E-D on your drawing is to be a hard well drained surface and 5 metres wide. The gradient from point A to the fence line of the paddock is at present very steep and will not be usable by wheelchairs. Can you please ensure that the applicant does his very best to reduce this gradient so all of our village, the elderly, mums with prams and the disabled can make use of the footpath.”

Mr and Mrs Whale “My only concern is that during the winter months it may become muddy and therefore impassable.”

- 108 Responses show that the existing routes are readily accessible and well used by walkers, horse riders and cyclists. No part of the existing route of Baydon 2 is exclusively over grass and given the poaching of surfaces caused by horses in wet conditions it is considered highly likely that this route as built would become wet and difficult to use in winter months. Additionally without cutting and rolling maintenance the path could rapidly become uneven and difficult to use in dry periods. The proximity of fencing preventing deviation and trees and hedgerows to the side preventing sun and light drying the surface all contribute to the unsuitability of a grass surface at this location.
- 109 Although the applicant and owners of the land are likely to mow and maintain the route at this time (as it forms an integral part of their estate) the maintenance liability would rest with Wiltshire Council for all time and the Council will not certify a route that is difficult and expensive to maintain.
- 110 Although the nearby diverted section of Baydon 11 at Baydon House has a central tarmac strip between verges (providing a highly accessible route)(see para. 18) it is considered acceptable to construct the diversion at Baydon House Farm as a 2 metre wide compacted stone surface lying within grass verges within the 5 metre width.
- 111 Additionally some trees are very close to the proposed diversion and these would need to be removed to avoid future issues with overhanging trees and root disturbance of the surface.
- 112 **Wiltshire Council will only certify a route (and hence bring any order into effect) that has a 2 metre wide compacted stone section for its entire length and is of a minimum width of 5 metres at all points.**
- 113 The construction of the new route should only be done after consultation and a site visit with the rights of way warden for the area.

10 Recommendation

- 114 **That Wiltshire Council makes the order appended at D under s.257 of the Town and Country Planning Act 1990 to divert parts of Baydon 2 and 11 to enable a permitted development to proceed at Baydon House Farm.**
- 115 **That if no representations or objections are received that the order be confirmed but that confirmation and certification of the route are only carried out after the construction of an acceptable route of a minimum of 5 metres in width with a compacted stone surface over 2 metres of the width.**

Sally Madgwick
Rights of Way Officer

05 September 2013