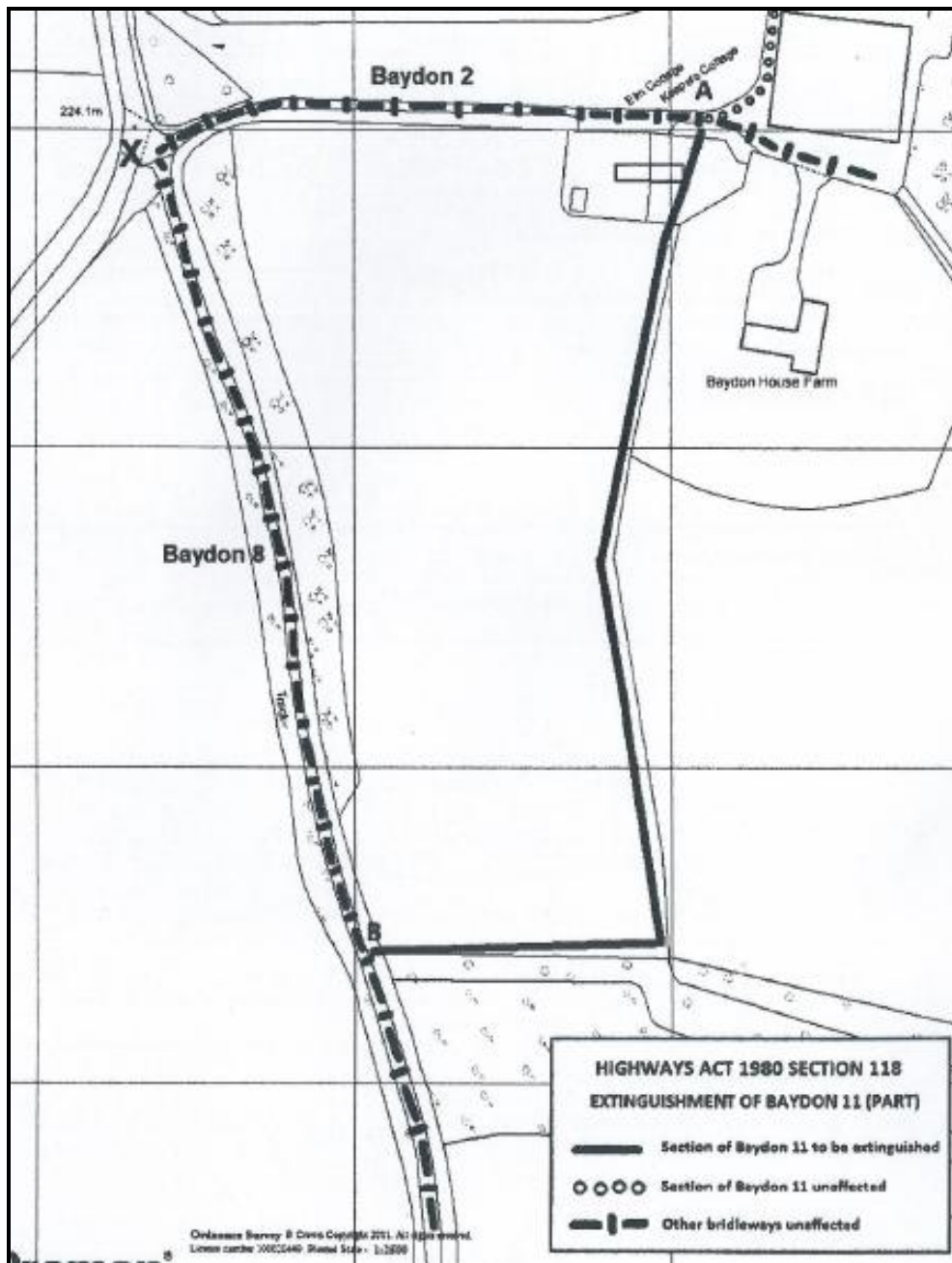


Highways Act 1980 s.118

Application to Extinguish Part of Baydon Path No. 11 at Baydon House Farm

1.0 Background

- 1 In November 2011 Wiltshire Council received an application from Mr Brook Johnson and Mrs Sally Johnson of Baydon House Farm, Baydon, Marlborough, SN8 2HX to extinguish part of bridleway Baydon 11 where it crosses their land. The section that is subject to the application leads from its junction with Baydon 2 to its junction with Baydon 8.
- 2 The plan submitted with the application shows the route that is subject to the application as a bold black line leading between points A and B.



2 The reasons given for the extinguishment of this part of the path are :

“Application for extinguishment of part of Baydon 11 shown from A to B on the application plan is made on the grounds that the path is not needed by the public.

The route has not been used by the public for many years. The route was inspected by the Council in August 1999 when no way through could be found. A further inspection in June 2002 found that the route came to a dead end.

Evidence has been submitted to the Council from Mr and Mrs Buse as to their knowledge of the path and that the same was not used by the public.

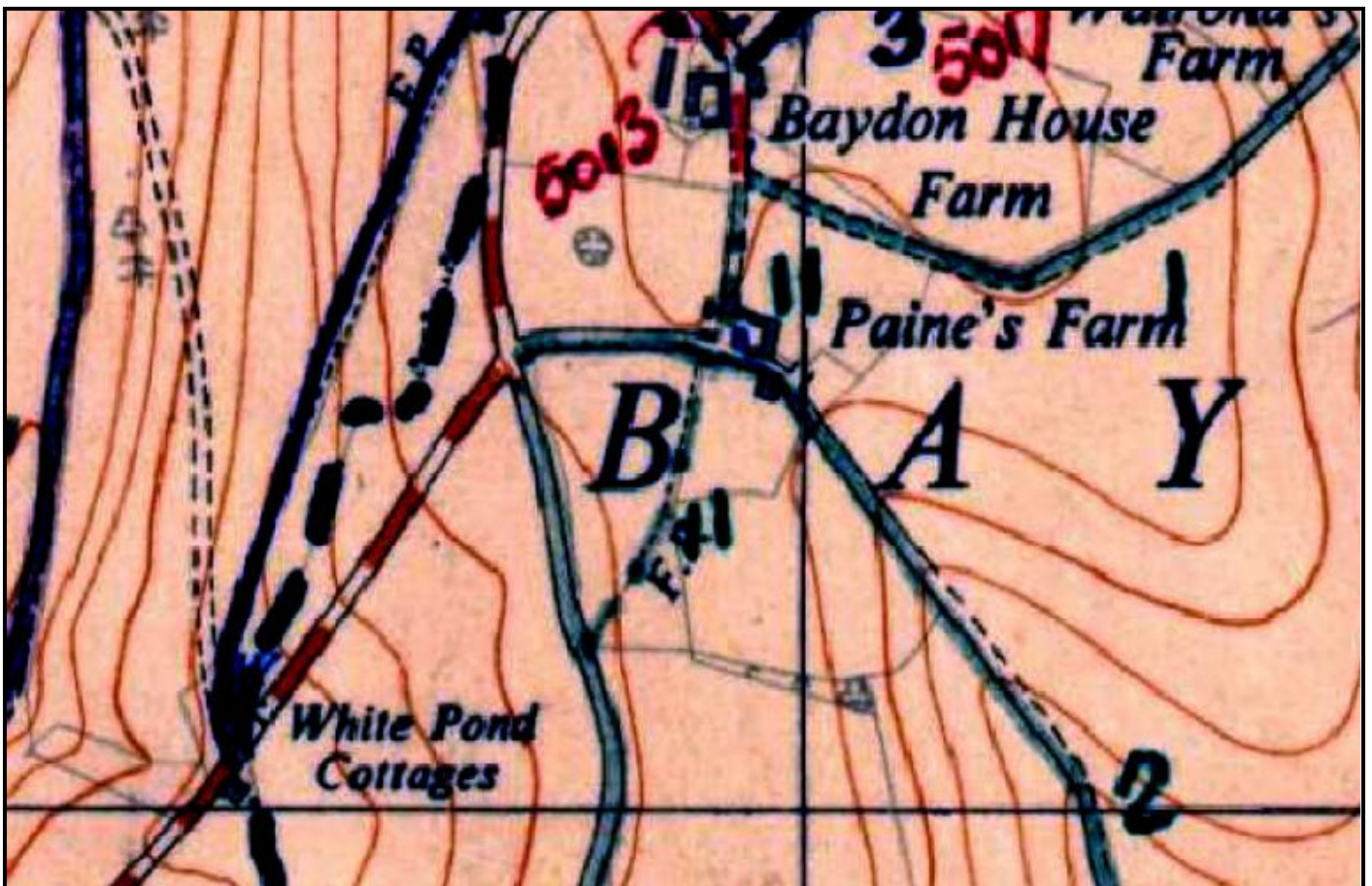
In 2003 the Parish Council raised the issue with the Council and an extinguishment was proposed. No further action was taken at that time. The path remained unused by the public.

Bridleways 2 and 8 form an alternative route to this section of Bridleway 11 and are used by the public.

The applicants have discussed the matter with representatives of the Parish Council and believe that they will accept that there is no public need for the section of path in respect of which the extinguishment is sought.

It is not considered that the path would be used in the future.”

3 Baydon Path number 11 was originally recorded in the Marlborough and Ramsbury Rural District Council Area Definitive Map and Statement dated 1952 as a Road Used as a Public Path (RUPP). The statement records it as a Carriage Road Bridleway (C.R.B.).

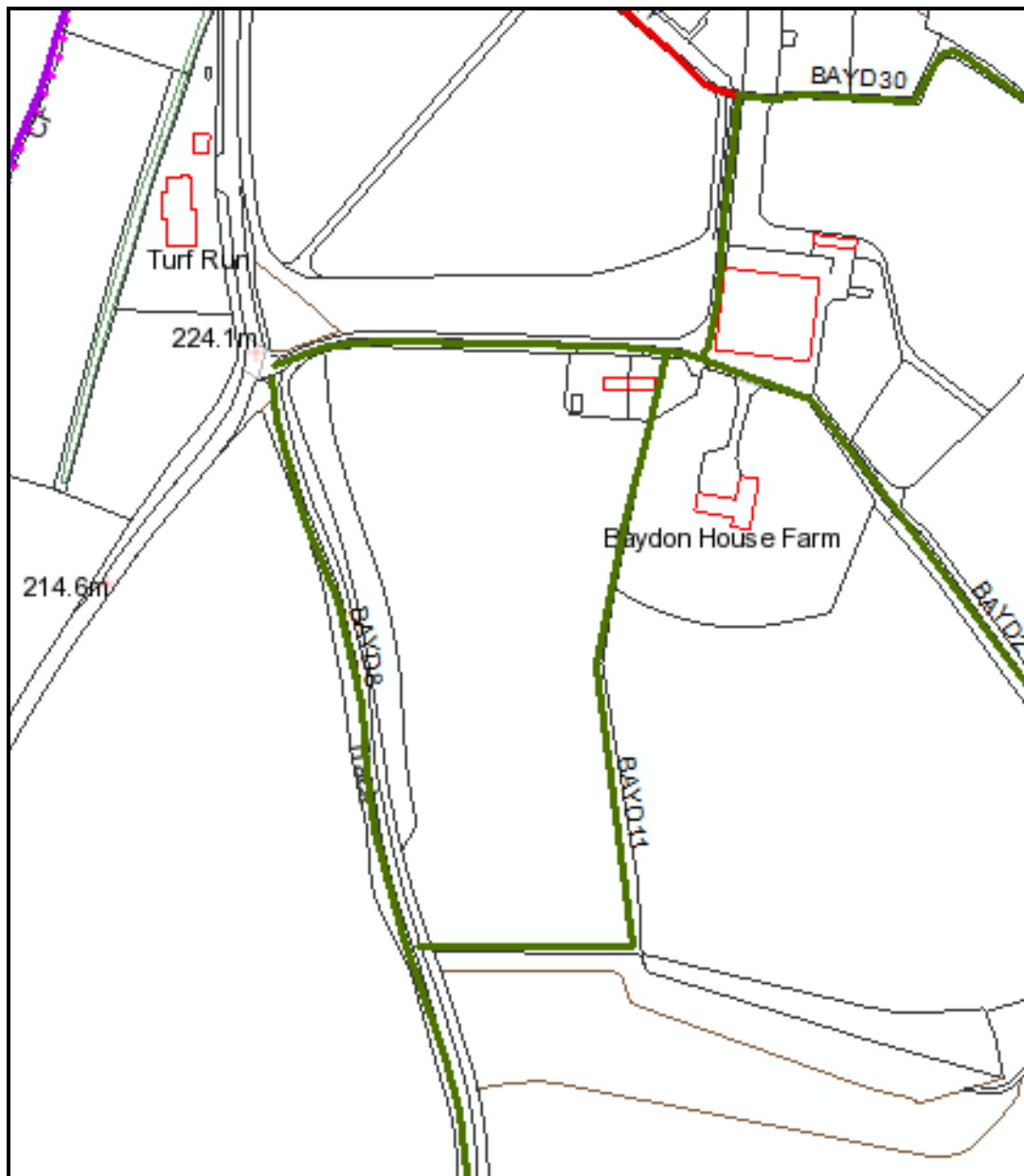


4 The 1952 statement reads:

11 C.R.B. From the southern end of road u/c 5013 at Baydon House Farm leading south south west past Paine's Farm, across path No. 2 to path No. 8, Green Lane. 550 yards.

5 Pursuant to the 1968 Countryside Act all RUPPs were reviewed by Wiltshire County Council at the Second and Special Review in the early 1970s. Baydon 11 was reclassified as a bridleway at this time.

6 The line of the bridleway near its junction with path no. 8 was diverted under Section 108 of the Highways Act 1959 by Magistrate's Court Order dated 15th August 1976 and the change in line is reflected in the working copy of the definitive map that the Council uses today.



7 The definitive statement for the bridleway section reads:

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.

2.0 Consultation

- 8 On 07 September 2012 a letter was circulated inviting comments on the application. The application map was circulated and the covering letter stated:

“Highways Act 1980 S.118

Proposed extinguishment of Baydon 11 (part) at Baydon House Farm

Wiltshire Council has received an application to extinguish part of bridleway Baydon 11 at Baydon House Farm as shown on the attached plan. The reasons given for the application are that the path is not needed by the public and has not been used for many years; at least since 1999. It is also stated that bridleways 2 and 8 form an alternative route to this section of bridleway and are used by the public.

I would be pleased to receive any comments you have on whether this path is needed for public use, or is likely to be, by 19 October 2012. Your comments will be considered by the Council in deciding whether or not to make an order to extinguish this section of path.”

- 9 The letter was accompanied by the application map shown at paragraph 2.

- 10 The following were consulted:

The Auto Cycle Union
Commons, Open Spaces & Footpaths
Wiltshire Bridleways Association
Cycling Touring Club
British Horse Society
Baydon Parish Council
Byways and Bridleways Trust
Wiltshire Councillor Chris Humphries
Wiltshire Council Senior Rights of Way Warden Esther Daly
Mr B Riley
British Driving Society
Wiltshire Ramblers Association M Chandler
Wiltshire British Horse Society representative D Plummer
Mr and Mrs Lloyd, Baydon House
Mr and Mrs Johnson, Baydon House Farm
Mr M Wood, ET Landnet Ltd
Scottish and Southern Electric plc
Mr B Gribble
Linesearch (Utility Companies and other undertakers inc. National Grid gas and electricity)
Thames Water
Openreach BT
Virgin Media
Swindon Bridle Paths Group
Mr C Philips
Wiltshire Council Countryside and Access Development Officer Mike Crook

- 11 **Response number 1** : Sally Faber 13.09.12 No address supplied

“We believe that the footpath has not been in use for longer than you suggest. Indeed we are under the impression that it ceased being used around 1985 when it was diverted

around the field rather than going across it, so a long time previous to the date 1999 that you suggest. This was confirmed by both the previous occupiers and the farm manager/worker before that. It is also a long time since the footpath was actually used as a dangerous partially open cesspit for the cottages has always been sited there. It is also possible that the actual line of the footpath goes through the cottages. This matter is unclear.

There appears to be no need for it as any walkers go along the drive and then turn left down the wooded bridlepath in the direction of Aldbourne. And even then, most walkers using the Aldbourne wooded track come from the direction of the village via the main road, not along the driveway.

In two and a half years, nobody has stopped at the yard to ask for directions down that footpath and in the opinion of the Parish Council (and its chairman, a regular 'walker') Baydon 11 is surplus to requirements in all respects."

12 Response number 2 : Tony Prior 16 October Baydon resident (and see 09 October 2012)

"I have been asked to write to you by Mr Brook Johnson describing the Baydon Parish Council decision not to object to his application to extinguish the section of BAYD 11 running from east of Paines Cottages (on BAYD2) around the field to the so called Green Hill lane which goes down to Aldbourne – BAYD8. I assume that the subject is "live" again. I am no longer on the Council but was chairman when the subject was debated 17 Oct 2011. Minute 5.2 records "The chairman commented that there was no change in the distance of the alternative route and that to his knowledge the footpath had not been available for at least 4 years. The councillors agreed in principle that they had no objection to the proposed extinguishment and asked the Clerk to respond to Mr Wood."

The detail discussion revolved around the fact that the existing footpath, blocked by the side of Paines Cottages, traverses two sides on the inside of the rectangular field and that the proposed diversion would follow the other two sides of the field on existing rights of way i.e. the joining point is en route down BAYD8, is the same distance and not requiring the establishment of new paths. There would be no significant loss of view of a particular rural setting or architectural feature. Also the north to south leg of the existing footpath runs alongside Mr Johnson's garden and privacy was/is an issue. In my time as councillor or chairman there had not been public comment at meetings about the footpath blockage. On a broader point I was aware that an owner can develop his land for business purposes using the usual planning procedures.

I also recollect that several years ago, before my Council membership, the blockage was discussed leading to a conclusion that a diversion/extinguishment should be investigated. It was minuted but would require some "trawling" to find the references."

13 Response number 3 : Chris Humphries 17 September 2012 Wiltshire Councillor and local resident

"Thank you for your letter to me dated 7 September re Baydon 11 (part). This one has been going on for years, I believe since Mr Ian Lomax who owned Baydon Manor and all this land. There is better access along the unaffected bridleway joining Baydon 11 at a natural junction, hence I certainly do not raise any objection and wish you well in your obvious recommendation."

14 Response number 4 : Alan Brown 24 September 2012 Baydon resident

"I object to moves to extinguish in part or in whole the Right of Way referred to under the above notification. I walk my dog on a regular basis on this track as is my right. I am appalled that our local Parish Council has not consulted thoroughly with the Residents before replying as everyone I have spoken to who are dog walkers and country folk have used or are using this Right of Way. I accept that there are alternative routes but why should we have to change our ways handed down to us over centuries to satisfy land owners who have only had relatively recent occupation."

15 **Response number 5** : Colin Phillips 25 September 2012 Baydon resident

" I have no objection to planning for homes, but I do object to our historic rights of way being taken away from a village way of life.

These paths have been here before the village as they are part of the drovers highways that cross this county. I fail to see how no one has walked the path since 1999 as I walk all the rights of way in the parish of Baydon every year.

Mr Johnson has only been in the village about 4 years, and is trying to take our heritage away. He does not know where villagers have walked since 1999.

I took our then village parish chairman along the path last year to show him the fallen tree that is blocking this path, we also had many obstacles to overcome, e.g. shrubs, brambles, nettles etc and the fence line has been moved in toward the hedge line.

When we were children we watched the Vine and Craven Hunt train packs of hounds in the field, also it was a lovely short round walk for the elderly to walk."

16 **Response number 6** : Terence Ralph 27 September 2012 Baydon resident

"I would like to object to this proposal on the following grounds:

1. The existing right of way allows a short circular walk from Baydon.

2. The existing right of way also gives a direct route to the byway towards Aldbourne and Preston for longer walks.

3. The byway is suffering from heavy farm and 4X4 traffic which creates deep puddles rendering walking unpleasant; this is exacerbated by the poor maintenance of the bordering vegetation which forces walkers onto the deeply rutted, muddy central roadway. A cynic might suggest that this is part of a policy to render the rights of way so impassable that they may later be extinguished on grounds of low usage. Were the existing right of way now under consideration to have been properly maintained and signposted, it would be used much more frequently to avoid the badly maintained byway.

4. A previous extinction of the right of way across the face of Baydon House Farm has already made unnecessarily tortuous the route from the village centre to the head of the byway to Aldbourne: this further diversion from a straight line is most unwelcome. The alternative of walking along Aldbourne Road is hazardous since the road at that point not only lacks a footpath but is narrowed by steep banks. If you are minded to agree to this proposed extinction I suggest that you demand a compensating right of way be built from the centre of the village to the head of the Aldbourne byway on the land behind the hedge on the east side of Aldbourne Road. This would have the added benefit of creating

compensating circular routes for short walks from the village around the paddocks in front of Baydon House farm or down to Manor House Lane.”

17 **Response number 7** : Helen Knox 27 September 2012 Grew up in Baydon

“It has been brought to my attention that you have received an application to extinguish part of bridleway Baydon 11 at Baydon House Farm.

I would like to make clear that as a child growing up in Baydon & when playing with friends we use to walk this path on a very regular basis, & would frequently go & watch the hunters work the hounds. And when much older we continued to walk this path with friends & family.

The reason we are unable to walk this way now, & have not been able to walk it for many years is, because the actual fence has been moved making the bridleway much smaller (in width) that for a long time you had to walk one behind the other, & has for many years now become so overgrown & this being the reason why it has become impossible for anyone to walk this route at all.”

18 **Response number 8** : Kathryn Parkinson 03 October 2012 Aldbourne resident

“I have my reservations regarding this proposed change and I am sure other Aldbourne walkers and riders would feel the same. If the bridleway is not currently frequently used, why is it a burden or nuisance for the current occupier?

The current occupiers have gone out of their way since their arrival to make it abundantly clear that they do not wish anyone to walk or ride on their property. They have tried to lock a gate across the bridleway at right angles to the one in question and placed a large tree trunk across another. I have walked this area a few times as I am a keen dog walker as well as a rider. The general consensus among fellow walkers is that it is too unpleasant to undertake this walk often for fear of being ‘questioned’ as to what you are doing etc. I don’t think that because of its lack of use it should be closed – there is probably a reason for its lack of use.

Once these rights of way are closed – are they lost forever?”

19 **Response number 9** : Ben Potter 01 October 2012 Baydon resident

“I note with some concern the proposal to extinguish this right of way. Paths have formed part of our heritage for many hundreds of years, being formed by our ways of life and, in turn, forming and informing them. It would, I submit, take a brave soul to predict what future part they have yet to play, as well.

Further, local walkers prefer figure-of-eight walks where available. Were this section of bridleway to be cleared of obstructions, including one which spuriously declares it to be private, then another such walking route would be opened up.

I respectfully suggest that you strongly consider against agreement to extinguish this bridleway.”

20 **Response number 10** : Ali Keen 04 October 2012 Lifetime Baydon and Aldbourne resident

“In general I am very concerned that this (or any other) landowner be allowed to apply for an enforcement to close any route. He has already been permitted to re-route a bridleway. It is very clear from the barriers that have been put across his land that he is doing his best to deter walkers and riders from going across his land. These rights of way have been in existence for many, many years and the landowner would have been aware of them when he purchased his property.

One bridleway currently has a very large log across it which has very clearly deliberately been put there. We continue to ride this track and have made a path round the edge but his behaviour should not be tolerated. Is there anything the council can do to enforce clearing of the bridleway? My fear is that, if successful in his current application, the landowner will then be encouraged to apply for further closures due to “lack of use”.

Although I can understand that the Rights of Way warden did not see it as a priority to deal with the blocking of the bridleway in question as there is an alternative, to allow the landowner to close the right of way seems to be encouraging and rewarding his behaviour.

I regularly ride and walk my dogs on the bridle paths on this landowner’s property and have never seen anyone. I therefore find it difficult for him to state “lack of use”. If we don’t see him, he hasn’t seen us, so how does he know if it is used or not?

I have lived in Baydon and Aldbourne all my life and feel very strongly that the local people and visitors to the area should continue to be allowed to enjoy the beautiful countryside that we live in. This should not be restricted or spoilt by the selfish behaviour of a local landowner.”

21 Response number 11 : Barbara Furber 04 October Baydon resident (and see 13 October)

“Although I have no objections in principal to this proposal, as the track has not been passable for years, I am however concerned on several accounts.

a. The landowner has put a wrought iron gate (without planning permission) across Baydon 2 – the alternative route to Baydon 8, and the gate is not accessible from a horse.

b. In the other direction (Paines Lane) Baydon 2 is blocked by two very large tree trunks – again by the landowner.

*c. A gate has been erected across the other part of Baydon 11 (between Baydon House and Baydon House Farm). It is very off putting as it bears the sign “keep this gate closed”. It bears **NO** way marker signs and the bridleway sign has “disappeared”.*

I have telephone and e.mailed Esther Daly on these matters several times, but nothing has been done. Therefore I am in favour of the proposal with conditions that the alternative route is truly accessible, maintained and with the appropriate signage.”

22 Response number 12 : Phyllis Bishop 04 October 2012 Baydon resident

“I was born in Baydon and have lived here all my life, and recall clearly walking this bridleway many times over the years. I have since tried several times to walk this way again all to no avail, due to it being so overgrown and making this bridle path impossible for me, or for anyone else to walk this route.”

23 **Response number 13** : Mrs J Rees 04 October 2012 Baydon resident

"I wrote to you in July with regard to bridleway 2 in the above named parish, as yet I have had no reply. The Local Government Act 1972 provides that County Councils shall be the highway authorities and have primary responsibility for paths. If you do not request removal of the obstruction you are guilty of dereliction of duty. The owners of Baydon House Farm have erected gates on bridleway 2 and 11 without planning permission and the iron gate on bridleway 2 is impossible to open from horseback.

I also mentioned in my previous letter the need for a three way bridleway sign at the junction of bridleway 1 and 2. The sign for bridleway 2 as it leaves the Aldbourne Road is misleading and should read ?? 1.2 km as I stated before the previous owner of Baydon House Farm changed some signs around. As a matter of interest to you I have no objection to the part closure of Baydon 11 ??? its field. Could you please have the courtesy to acknowledge my letter."

24 **Response number 14** : Tony Prior 09 October 2012 Baydon resident

"Regarding the consideration of the Extinguishment application I would like to offer my opinions as a Baydon resident i.e. no connection with the Parish Council.

As I understand it there is no right of permanent existence for a ROW without legal challenge being possible.

I have been walking/rambling for 35 years in Yorkshire/Wiltshire. representing well more than 10000 miles, so have a significant experience of blockages, diversions, extinguishments etc, both reasonable and unreasonable.

The following is extracted from BPC footpath records and minutes.

1. 1976. BAYD11 was diverted in field 152 from a diagonal to along the east and south boundaries.

2. 1999. WCC (P Francis) found the ROW blocked at Paines Cottages 279 774

3. 2002. Baydon PC (BPC) found it still blocked.

4. 2003. BPC cllr responsible for footpaths of the opinion that the ROW section had not been used for years.

Esther Daly involved. Observations - WCC usually would request removal of obstruction but not practical in this case. (Reason not stated) Public consultation necessary.

5. 2004. Mr C Nelson (Baydon House Farm owner) confirmed to BPC he would apply for stopping-up order. Nothing happened.

6. 2011 Mr B Johnson (new owner) started application process.

BPC offered no objection to extinguishment proposal. No member of the public/walker attended the meeting to make a case i.e. little interest.

Comments:-

By my measurement there are about 23kms of ROWs in the Parish. The extinguishment will reduce part of BAYD 11 by about 400m.

1. The footpath has been blocked for at least 13 years. It has been raised only once since 1999 by BPC in 2003/4. No outcome i.e. little public interest and not pursued by walkers.
2. Field 152 is essentially rectangular with BAYD 8 forming the west boundary, BAYD 2 the north boundary. Thus using that route to reach the exit point of BAYD 11 in the south west corner onto BAYD 8 is virtually the same distance.
3. There is no significant rural view to be seen on the current ROW route. There is 6ft wattle fencing along the west boundary of Mr B Johnson's garden for privacy. A copse exists next to the south boundary.
4. I would dispute claims that there are many recreational walkers in the village (more dog walkers probably) or walkers, who want to use that specific section, visiting the village.
5. Apart from the legal closure costs (landowner charge) there are no costs necessary to provide the diversion. It is on existing bridleways.
6. I think it is a marginal claim to say the field forms part of a circular route. One either has to walk on the road (not particularly attractive or safe) from the village centre or loop around BAYD 11/8/2 and return to the same point at Paines cottages.
6. The field has been developed for horse training which is part of Mr Johnson's business. Also a new house access drive runs through it. I understand planning applications have been submitted.

For the above reasons I believe extinguishment is a reasonable request and therefore support it.”

25 **Response number 15** : Mr Johnson 12 October 2012 Baydon resident and applicant

“I do not believe we have met as yet or I apologise if we have and I have forgotten. I am Brook Johnson and live at Baydon House farm in Baydon. I am sure you know the location by now, with all the correspondence moving around about our footpath , Baydon 11. I will not bore you further with the facts as already submitted concerning Baydon 11 that we have applied to have extinguished. You have all of the history, I believe, from many independent sources. You have the recommendation for extinguishment from the Baydon Parish Council and I can confirm that we have an affidavit from the past owner of Baydon House farm, Mr. Charlie Nelson, that the pathway in question was not used in the 12 years he owned BHF prior to us. We can attest to the same fact for the 3 years we have been here.

I met with Tony Prior yesterday and we had a discussion where he brought up questions about the log on Baydon 2 and the gate on our driveway. First, I have not had any complaints on either to date and the fact is the gate on the driveway has been sanctioned by your ROW people. The handle in question to assist horse back riders is being installed, although I have checked with the few people who do ride on his driveway and , like me, find the present gate easy to operate from the back of a horse. As far as the log goes, we put that across the path with the advice of the Wilshire police after suffering our 4th break in in a year. BAYDON 2 has a direct connection to the Baydon road and is easily reached from Membury services off the M4. We have a terrible security problem and I must admit

since I travel a lot , I fear for the safety of my wife and young children at home. The police suggested that if the criminals cannot drive up to our house and barn to load the things they want to steal, then they will not do it. We have had no incidences since putting the log in place. We have left space for walkers and riders to go around the log and can make this better to hopefully appease all concerned. I am sure if anyone complaining had the same history of break-ins as us, they would be more understanding.

Sally and I have been in the community for 3 years, we have made major contributions to the local school even though our children do not attend there. We have tried to work with the community on all aspects of making life happy for all and have many local friends. We have many footpaths and bridleways on our land that we take care of and welcome those in the community who use them. I hope this email gives you a better feel for the type of citizens we are and helps explain the situation from our perspective. Andy Knowles will be with me at 1pm tomorrow to discuss what we are doing, you are certainly welcomed to join us.

Sally , I look forward to meeting you and thanks for all the work supporting our community.”

26 Response number 16 : Carole Oram 12 October 2012 Baydon resident

“It has been my intention to write to you for some time regarding the state of some of the bridleways around Baydon but firstly I wish to address the subject of the extinguishment of part of Baydon 11. I have lived in Baydon for 30 years and enjoy walking this area. Since retiring three years ago I have taken walking quite seriously and try to walk on a daily basis the bridleways which criss-cross this beautiful part of Wiltshire. It is free and very beneficial health wise and I feel strongly the right should not be removed from villagers. However, until recently I honestly did not realise the part of Baydon 11 which is being considered for extinguishment even existed, I recently approached an employee at Baydon Manor Farm House to show me where this bridleway was only to be told that they did not even know!!

Obviously if the path is overgrown and unmarked people cannot use it if they cannot find it. I am not one of those walkers who feel entitled to roam across other's land if it impinges on their privacy, however, in the last few years I have seen more and more land being fenced off depriving those of us who love the outdoors, are responsible people and who care deeply about the countryside from being able to enjoy it.

I do feel that this could be the thin end of the wedge and gradually we will lose our rights and the rights of our children and grandchildren to experience the pleasure of the countryside which surround our own village. I therefore would like to express my objection, at this point, to the extinguishment of Baydon 11 (part) and even request that it be opened up. I for one would use it.

Turning to other bridleways - Baydon 2 has had a massive tree trunk laid across it to restrict access and although one can get around it, once again I strongly feel villagers rights to walk the countryside surrounding their own homes is being eroded. I cannot see how this cannot be regarded as anything but an obstruction of a right of way and the responsibility of Wiltshire CC to have it removed. With the terrible weather we have had this summer, this path is also becoming very overgrown and much more difficult to walk even though I know for a fact that it is used by many villagers.

Further down a part of Baydon 7 (I think) going towards Pig's Hill is impassable where the quad bikes used to take feed to the alpacas have so eroded the path that it is totally flooded. I used to be able to squeeze passed on the narrow left hand bank but this is no longer possible as the bank is totally overgrown with nettles and itself being narrowed by erosion as the extent of the flooding is getting much worse. Surely this must be regarded as an obstruction to a right of way and therefore incumbent upon Wiltshire CC to do something to get it reopened?

I realise that times are hard for councils and perhaps the money to deal with such things as right of way obstructions may not be top of the list. However, landowners who buy properties fully aware of the right of ways which cross their land, and the responsibilities that go with them, should surely be made to honour these responsibilities.

I would welcome an acknowledgement of receipt of this email as I know a few villagers have contacted the council regarding these issues but to date have received no reply. Any comments or advice you can offer would also be gratefully received. Residents of Baydon who walk and ride these paths are beginning to feel the need to band together to protect ourselves but obviously it is in everyone's interest to get the matters sorted as easily as possible."

27 Response number 17 : Barbara Furber 13 October 2012 Baydon resident

"I have telephone, e.mailed and written frequently to Esther Daly without any joy, as have other people in our village. I have been thinking that maybe your department could add some more weight to our concerns.

How long will it be before the landowner applies for a further extinguishment, namely Baydon 2 (Paines Lane), simply because he has made it impassable?! The bridleway is very overgrown and, as I have previously reported, has two large tree trunks across it."

28 Response number 18 : Anne Smith 15 October 2012 Baydon resident

"I write regarding the above proposal to extinguish part of bridleway 11 at Baydon House Farm.

I strongly object to this proposal on several accounts; first of all this path is used by some villagers and the only reason it has not been in more general use is because the landowner maintained it properly, probably to allow him to apply for it to be extinguished, an unforgiveable situation.

Footpaths not only create good routes for access, they also provide excellent recreation facilities in an environment where there is much less provided by local authorities. It is these short paths which link together and make for circular routes which are much more enjoyable than reaching a full stop and having to turn around and return by the same route. By being close to the village centre, were it properly maintained, it would make a good contribution to encouraging a healthy lifestyle for the increasing population of Baydon.

Footpaths not only provide for access and recreation but also provide an excellent insight into the history of the village- how people once got around and which bits were important in days gone by and what is more they encourage people to look into the local history by taking you past interesting features within the local environment. Increasingly, it seems

these paths are being allowed to be diverted as if they were simply access ways but they are important in their own right as having been established long ago.

In this era of increasing and encouraging, access to the countryside, I feel very strongly that this extinguishing of rights of way goes against what is and should be being promoted.”

29 **Response number 19** : Esther Daly 15 October 2012 Wiltshire Council Rights of Way Senior Warden

“Warden’s comments are as follows: There have been a number of complaints about the lack of availability of this section of Baydon 11 over the years, and in particular in the last few years whilst the Johnsons have lived at the house. I have also had a few complaints which indicated that the Johnsons have actively discouraged use of this path and there is now no possibility of the public trying the route as it is at present deliberately obstructed with a locked gate. It is difficult to gauge whether a path is actually needed or not, at a time when most paths are required for leisure purposes rather than a specific necessity in the past for people to get to work, etc, but based on the amount of inquiries and complaints I have received, I have decided that, in my opinion, because people clearly do want to use it, then it is necessary for use by the public.

On balance, I do not believe that removing a path from the definitive map which some people have expressed a desire to use, is acting in the public interest. We have tried to discuss the possibility of a diversion rather than an extinguishment with the Johnsons, but a suitable route could not be found. As to future need, in general terms, rights of way and outdoor activities are becoming more popular rather than less so, especially with ever increasing encouragement to take healthy exercise, so the need for every public right of way could be justified on this basis alone.

I hope these comments are helpful.”

30 **Response number 20** : Paul Dobson 17 October 2012 Baydon resident

*“It has come to my attention that the land owner has applied to extinguish Baydon11.
I OBJECT MOST STRONGLY.*

The new land owner is making it difficult for local residents to use the various footpaths and byways that cross his land. He has already effectively blocked the entrance to Baydon 11 and also Baydon 2. A very large tree has been thrown across this byway – he says to inhibit burglars – but this is not so.

As a local dog walker and horse rider we would like to make more use of these facilities but the land owner uses intimidating tactics to put off dog walkers and riders. In particular he insists that we keep our dogs on leads – whilst his run free- his terriers try to nip at our ankles and bark constantly.

I have no objection to his gentrification and improvement of his estate, but he is clearly trying to exclude locals from all of his land including all of the footpaths and by ways, we have used for many years.

Please save our footpaths for future generations to enjoy.”

31 **Response number 21** : Allison Dobson 12 October 2012 Baydon resident

"I write with reference to the above and wish to voice my strong objection.

Having lived in Baydon for the past 20 years I categorically refute the fact that this bridleway is not used. As a dog walker I use it on a regular basis, albeit with since the current owner of Baydon house Farm as lived in his house and undertaken major landscaping works, the route of the start of the path had become less defined from Point A of the attached map with large planters used as obstacles, hedges, unkempt and overgrown, and from Point B, a 'Private' notice has been placed on the gate to deter walkers.

It is not reasonable for bridleways to be subject to closure because the new custodian of this particular path wishes to enclose and make private what has always been a valued and important part of the local, and indeed, wider communities ability to walk in the countryside. It is exceptionally important for villagers with disability/impairment, and there are quite a few from blind to mobile chair users, to be able to enjoy a shorter circular walk rather than the longer ones which are the alternatives. I also enjoy this bridleway with my own family.

I would kindly request that the council takes into consideration my views and ensures this bridleway remains in place for our future generations to use and enjoy."

32 Response number 22 : Enid Johnson 16 October 2012 Baydon resident

"I refer to the application to extinguish part of bridleway Baydon 11.

We are encouraged to be health conscious, to be active and walk more. In Baydon notice is effectively taken of this central government as well as medical initiative. I see families walking together as well as single folk of all ages.

As a previous parish councilor and chairman for many years I do know of several rights of way lost or diverted and the parish council has always given due consideration to closure and diversion applications. With regard to this particular application I would like to stress that the older folk welcome the walks near to the village centre and do appreciate circular routes. All rights of way have become established over many years and the section applied for does require clearance to make it accessible again.

Does the applicant realise that there are good numbers of walkers/riders of accessible paths? As far as I am aware, landowners in the area of Baydon House Farm are not resident in the village full time. Rights of way in this area have often been subjected to considered amendment by successive landowners.

I object to the application to extinguish part of bridleway Baydon 11."

33 Response number 23 : Bernie Gribble 13 October 2012 Baydon resident

Mr Gribble's response comprised a letter of representation, a petition containing 61 names and a letter from Baydon resident Mr W N C McCleery.

Mr Gribble's letter stated:

In response to your letter of 07 September 2012 concerning the above I would like to submit the following representation.

It is understood that the application is based on the premise that the path is not needed by the public and has been used for many years – at least since 1999.

I like most other walkers today use our footpaths for recreational purposes to gain all the many benefits associated with walking or riding in the countryside. We are not interested in going from A to B by the shortest or most convenient route, but, we are, however interested in two other things. Firstly many of us, like dog walkers, use our paths several times per day and to have a wider choice of different paths is very important. Secondly many of us will always choose a circular route in preference to one where you do not have to retrace your footsteps to return home. If this path is extinguished we reduce our choice of available routes and lose the circular route comprising parts of Baydon 11, 2 and 8. In addition we would lose the circular route used by most residents of Baydon because of its close proximity to their homes. So in summary I say that this path is needed and its closure would constitute a serious loss of amenity to Baydon.

It is not true that the path has not been used for many years at least since 1999. Some residents have managed to walk it in the last few years, the last one I heard about was when a couple walked it a couple of weeks ago. Even the chairman of our parish council walked it last year. It should be pointed out that the current landowner has only been resident in Baydon for less than five years and yet he is prepared to state that the path has not been used since 1999. However the truth is that the path is so overgrown and blocked with various obstructions that it is very difficult to walk, so the number of people actually using it is very low. The fact that the landowner has illegally put up a notice at one end of the path saying “Private Land – No Access to the Public” also helps to reduce the number of people using the route. This illustrates the tactics that have been employed to deter people using this part of Baydon 11.

It is appropriate to state that when I first came to Baydon thirty five years ago, Baydon House Farm had not been built and this section of Baydon 11 passed through agricultural land which I frequently walked with my family. The land remained in agricultural use for some time after the building of Baydon House Farm and it was with the recent change in ownership that the path became difficult to use because the field use changed from agricultural to equestrian activities. The current landowner made no provision for the path when he installed the equestrian facilities in the field and has placed many obstructions where the path should run.

It is also appropriate not to forget the heritage attached to our footpaths. We have a superb rights of way network in this country which we should all be proud of. Many of these routes extend back more than a thousand years or more and we should strive to ensure that they remain in place for the next millennium. This small part of Baydon 11 in question here is part of this network and who knows how many hundreds of years it may have existed? I cannot think of any reason why our community would benefit from the extinguishment of this path. We live in times when our villages and towns are seeing a rapid expansion to house our ever increasing population and Baydon is no exception to this. It is not illogical to argue that we should be increasing the number of our footpaths and definitely not extinguishing any of them.

I hope this letter will assist the Council on whether to oppose or support the application to close part of Baydon 11.”

34 **The petition** contains names, addresses, signatures and dates. All give addresses in Baydon. Each sheet was prefaced by the following:

"I the undersigned wish to object to the above extinguishment for reasons that include the following:

- 1. The bridleway is very close to Baydon village centre and is ideal for short walks.*
- 2. Paths close to a village centre are more frequently used than those further out and therefore should not be closed.*
- 3. Baydon 11, in conjunction with Baydon 2 & 8, forms a circular route which is very popular with recreational walkers. If extinguished this circular route would not exist.*
- 4. This bridleway like all our other rights of way are part of our national heritage that goes back hundreds of years. I do not want to see it disappear."*

35 **Mr McCleery's letter** stated:

"I remember some years ago trying to walk a path off bridleway 8 in an easterly direction (Bridleway 11), however when progress became impossible I turned about and never tried again.

If this section of bridleway 11 was made negotiable it would not only be used by riders but would also be a great asset to the citizens of Baydon providing a pleasant short walk in beautiful open country. Round walks are – I find – so much more interesting than walks where one has at some stage to turn back retracing ones steps.

It is for these reasons that I strongly object to the proposed extinguishment of any part of bridleway 11 Baydon."

36 **Response number 24** : Andy Knowles 17 October 2012 Baydon Parish Council Chair

"Following our telephone conversation earlier, please find below the feedback that represents the views of Baydon Parish Council following our meeting held on the 15th October 2012.

A letter was received for the councillors to review prior to the meeting so that it could be added as an agenda item - this was acknowledged during the meeting. The letter requested that the councillors review the decision made in 2011, whereby we voted a "No Objection" to the extinguishment to part of Baydon 11.

A thorough examination of the evidence was detailed out and the following out-turn happened as a result:

The councillors voted to uphold the decision made in 2011 and therefore voted to "No Objection" to the finalisation to extinguish the relevant part of Baydon 11 based on the following:

- Very few concerns over the footpath have been raised dating back further than 1980.*
- The general public do not gain or lose anything with this footpath, due to the 2 other paths serving the same purpose and bring you to the exit point of baydon11.*

- At a point of Baydon 11 there is a concern over an individual's privacy at Paines Cottages and Baydon House Farm.

- Where the ongoing business concerns of Baydon House Farm, with regards to horses - will be a safety conflict with dogs not ideally suited in and around horses and impact the owners business.

- The surrounding views are significantly improved by using the other 2 paths, the referenced part of Baydon 11 has no views to enjoy, just an opportunity to look into someone's own private garden.

- With 23km of footpaths in the Parish, we are only discussing 400m - therefore it is of little impact to the village."

37 **Response number 25** : Maurice Chandler 17 October 2012 Ramblers Association rep.

"The N E Wiltshire Branch of The Ramblers objects to the proposal to extinguish part of Baydon bridleway 11 at Baydon House Farm.

It is our understanding that the path is needed by the public, particularly the people of Baydon village and that it certainly has been used within the last two or three years. Furthermore, our information is that the landowner across whose land this path runs has made very strenuous efforts to stop people using the bridleway by barriers (fencing etc) and by intimidating and threatening people trying to use it.

We feel that there is a considerable value in keeping this path open and are very unhappy with the use of intimidation to try to have it closed."

38 **Response number 26** : Ann Newman 15 October 2012 Baydon resident

"I am writing to you in connection with the proposed extinguishment of Baydon 11 (part) at Baydon House Farm.

I have lived in Baydon all my life 60 plus years and recently all I seem to hear is yet another public right of way under threat. I am appalled with this. These public rights of way are part and parcel of Baydon and this one needs to be left as it is, for people to use. The reason it has not been used for so long is because it is overgrown, this is a deliberate act to prevent its use, if this right of way is left open then it will need to be cleared also it is part of a circular route (as a young child I walked it many times). It is a bridleway/public right of way and it must stay this way. I can see what it is in Mr brook Johnson's mind as do many in this village; looking at the Ordnance Survey if this part is closed there is another section that he will then want to try and close. This must not happen. I can respect his privacy but not to change too much of this lovely village of Baydon. This public right of way will be used if accessible and must not be closed."

39 **Response number 27** : Dorothy Newman 15 October 2012 Baydon resident

"I strongly object to the extinguishment of part of bridleway 11 in Baydon. I was born in Baydon many years ago and have lived here all my life and walked the bridleways and footpaths many times with my parents and then my late husband until old age and disability prevented us.

These ancient footpaths and bridleways must be kept open and clear so that as well as now future generations can enjoy our beautiful countryside. If house or land owners object to the public using rights of way on or near their property they should not have bought it in the first place.

The bridleway must be kept open and clear."

40 Response number 28 : Mr K Smith undated Baydon resident

"Regarding the proposed extinguishment of Baydon 11 (part) at Baydon House Farm I would like to object to any closure.

The present owner has only been there for five years while the path has been used for hundreds of years. The current lack of usage is probably due to the fact it is so overgrown and hidden at one end and there is a no entry sign at the other end put up by the present owner.

To say paths no 8 and 2 form alternative routes is misleading as no 8 is muddy all the year round due to the tractors zig zagging along it causing the sides to collapse in making it almost impossible to get past without a TANK. As no-one to my knowledge owns a tank in Baydon, the lack of usage of No 8 could be the next excuse for closing this path.

Also it doesn't take Mystic Meg to see that Path 2 is next in line. Everything is gated just waiting for a padlock and chain. While the present owner might be temporary the closure of the path would be forever."

42 Response number 29 : Nicola Archer 25 October 2012 Baydon resident

"I have just found out that part of the bridleway Baydon 11 could be closed in the near future. As a horse rider who rides the tracks in and around Baydon I am very much against this closure even though it is blocked at the present time. I do not like riding on tarmaced roads and feel that there are already too few bridleways in our village where I can escape road traffic. Please do not allow this number to be reduced even further and I would be delighted if you could arrange for this bridleway to be re-opened."

43 Response number 30 : Marcus Rowe 27 October 2012 Aldbourne resident

"May I please request that public access is retained for the above bridleway for horses, walking and research purposes. Centred on Four Barrows this whole area including Baydon House Farm is a prehistoric observatory. The enclosed maps show the navigation lines only but footpaths enable in the field dowsing of the streams of associated earth energy (both beneficial and detrimental) referred to all but briefly or geopathic stress zones (these cannot be dismissed as irrelevant because of their proven connection with illness in 'sick houses' where occupants suffer illness for no apparent cause). Ongoing research also puts the Battle of Baydon on this site (the footpath in question and to the South East).

All footpaths are a wonderful heritage for today and should be kept for tomorrow too".

Mr Rowe also enclosed articles relating archaeological dowsing.

“As part of the revised Rights of Way Improvement Plan I’ve been looking at a variety of research. An on-going study by Natural England (Monitor of Engagement with the Natural Environment) has shown that around 1/3 of walks are within 1 mile of where people start (usually their home) and around 2/3 are within 2 miles. This is showing us that it is very important to provide good rights of way options right where people live. People particularly like short circular route options, of which this is only one of a few at Baydon. The study also shows how vital access to the countryside is in providing people with their opportunities to exercise. Accessing the countryside access for many people is the main form of exercise they get. Central government advice is clear that people must be encouraged to exercise more for their mental and physical wellbeing.

I therefore feel it is important to retain this link so we don’t reduce the (already fairly limited) variety of short walks available for Baydon residents. I can see why the applicant is keen to take the route away from their house. Perhaps a compromise here would be that, as long as the warden felt there were no issues on the ground, the north-south part of the route could be diverted east along the tree line to meet Bayd2.”

3.0 Legal Empowerment

45 **Highways Act 1980 Section 118** may be used to extinguish public rights on public paths.

- (1) *Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way. An order under this section is referred to in this Act as a ‘public path extinguishment order’.*
- (2) *The Secretary of State shall not confirm a public path extinguishment 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 it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.*
- (3) *A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.*
- (4) *Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.*
- (5) *When in accordance with the regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering –*

(a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use; or

(b) under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public; the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order would provide an alternative path or way.

(6) *For the purposes of subsections (1) and (2) above, any temporary circumstances preventing the use of a path or way by the public shall be disregarded.*

(6A) *The consideration to which –*

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and

(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local authority whose area includes land over which the order would extinguish a public right of way.

46 The Council must also 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.

47 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.

48 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)

49 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.

50 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)*

- 51 The Council must also have regard to the needs of agriculture and forestry.
- 52 The Council also has a duty to have regard for biodiversity in undertaking its functions (Habitat Regulations 2010).

4.0 Decision

- 53 The Council may make an order extinguishing public rights where it is expedient that it should do because the path is not needed for public use – s.118(1).
- 54 The Council may not confirm such an order unless it is expedient to do so having considered whether the path or way is likely to be used by the public and it must also consider the effects of the extinguishment on any land served by the path.
- 55 The extinguishment of public rights of way is often difficult to achieve as the value and potential value of them is keenly appreciated by users groups and local people. Officers note that although in some cases there is little or no response to the initial consultation, in this case there has been a significant response to this consultation. The council has received a large number of individually written representations the majority of whom are opposed to the application to extinguish.
- 56 Of the responses received 23 object to the extinguishment, 5 support it and 2 have provided a neutral response. However, it is necessary to look at the content of each response to determine the public need for the path, and if an order were made, whether the path is likely to be used and the effects on any land served by the path.
- 57 Of these representations 9 people claimed to have actually used the application route themselves and 9 indicated that they were likely to use it in the future. Many respondents stated that the route was difficult to find and use and that this has deterred use in more recent times.
- 58 1 of the representations suggested that a diversion of the route may be achieved with mutual benefit and another suggested provision of a replacement route to the north.
- 59 In summary:

Specified in correspondence	Response number
Have used the route	4, 5, 7, 8, 12, 21, 23, 26, 27
Likely to use	4, 5, 6, 9, 12, 16, 21, 26, 29
Possible alternative suggested	6, 31

- 60 It is acknowledged that the current route is not available to the public. The route is obstructed at Point A by a garden hedge and at Point B by a fence. The route is also overgrown. It is possible for the public to pass between points A and B but only by climbing fences and taking a detour into the field. Wiltshire Council has been aware of these obstructions for a considerable period of time (at least since 1999).

61 Point A in 2007



62 Point A in 2012



63 Aerial photograph showing line of path in green



64 Path at Point B in 2012



65 Line of path from point B leading east (line of path shown in white)



66 Although it could be argued that lack of use signifies no need for a path some respondents have made it clear that they have both tried to use the path and raised matters relating to obstructions with Wiltshire Council. The comments of Wiltshire Council’s Rights of Way warden (response number 19) states:

“It is difficult to gauge whether a path is actually needed or not, at a time when most paths are required for leisure purposes rather than a specific necessity in the past for people to get to work, etc, but based on the amount of inquiries and complaints I have received, I have decided that, in my opinion, because people clearly do want to use it, then it is necessary for use by the public.”

67 A number of respondents detail reasons why they consider the path is needed and why it will be used in the future. Examples includes:

“Circular walk”

“Short paths linking together”

“By being close to the village centre, were it properly maintained, it would make a good contribution to encouraging a healthy lifestyle for the increasing population of Baydon.”

“Older folk welcome the walks nearer to the village centre”

“In general terms, rights of way and outdoor activities are becoming more popular rather than less so, especially with ever increasing encouragement to take healthy exercise, so the need for every right of way could be justified on this basis alone.”

“An ongoing study by Natural England...has shown that around one third of walks are within 1 mile of where people start (usually their home) and around two thirds are within 2 miles, this is showing us that it is very important to provide good rights of way options right where people live. People like short circular walk route options, of which this is only one of a few at Baydon....I therefore feel it is important to retain this link so we don't reduce the (already fairly limited) variety of short walks available for Baydon residents...”

- 68 There has been considerable development in recent times around Baydon House and Baydon House Farm (formerly Paines Farm) and the character of the rights of way have changed. The northern end of Baydon 11 is now a metalled path within mowed verges and the connecting bridleway Baydon 2 leading west also lacks rural character (see below).



- 69 The bridleway Baydon 8 has the appearance and character of a rural lane:



- 70 The part of Baydon 11 that is the subject of this application has a different character again and offers users an opportunity to get wider views to one side and hedgerow views to the other. It is therefore a unusual path for the immediate area and offers variety for the user.
- 71 The route is currently recorded as a bridleway and it is noted that no cyclists have responded and few horse riders. The alternative routes of Baydon 2 and 8 are likely to be more attractive to these groups of users, though the value of a 'loop' section for horse riders should not be under valued as 'there and back' routes are not ideal for horses.
- 72 The land on either side of the proposed extinguishment is in the same ownership and access to the land is not dependent on the right of way.
- 73 It is considered that the section of path proposed for extinguishment is needed for recreational walking and has a value for horse riders and cyclists seeking variety. The application therefore fails s.118(1) and (2) of the 1980 Act and an order cannot be made.
- 74 However, it is noted that the current alignment of the path leads very close to Keepers Cottage and the manege and the owners of the land may like to consider whether a diversion of the route, perhaps linking paths 2 and 8 by way of a field edge route leading east from B, would provide an acceptable compromise for them and the public alike. Wiltshire Council accepts applications for diversion orders under s.119 of the 1980 Act and this may be worthwhile for the landowner to consider if use of Baydon 11, once it is made available again, is high.

5.0 Recommendation

It is recommended that the application for an order to extinguish part of Baydon 11 at Baydon House Farm is refused.

Sally Madgwick
Rights of Way Officer

15 November 2012