

**PROPOSED DIVERSION OF PART OF BAYDON BRIDLEWAY 11 AND
CREATION OF RESTRICTED BYWAY ON DIVERTED ROUTE**

Purpose of Report

1. To:
 - (i) Consider and comment on objections received to an Order, made under Section 119 of the Highways Act 1980, proposing to divert a section of Baydon Bridleway 11. Also to consider an Order made under Section 26 of the Highways Act 1980 proposing to create a restricted byway on the diverted route.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs for confirmation.

The proposed diversion is shown on the Order attached at **Appendix A**.
The proposed creation is shown on the Order attached at **Appendix B**.
An overview plan showing the surrounding roads and rights of way is attached at **Appendix C**.
Photographs of the routes are attached at **Appendix E**.

Background

2. It is a discretionary power of Wiltshire Council to consider applications from landowners to divert, create or extinguish footpaths, bridleways and restricted byways and make Orders under Sections 119, 116, 25, 26 and 118 respectively of the Highways Act 1980.
3. On 2 June 2006 the owner of land at Baydon House, Baydon applied to divert part of a bridleway (Baydon 11). Investigations by officers revealed that a length of the public road, the u/c 5013, was erroneously included and that the route of an adjoining bridleway, Baydon 1, was obstructed.
4. The application was withdrawn on 24 July 2006 but re-submitted on 30 January 2007.
5. During a site visit on 8 August 2007 officers noted that a planning application (K/56971/F) was being considered by Kennet District Council. The effect of the planning application was to build an arch and narrow gate across the junction of the u/c 5013 and Baydon 11. Had this development been approved, the northern section of Bridleway Baydon 11 and part of Baydon 1 would have been diverted under Town and Country Planning Act 1990 powers.
6. The application was refused by Kennet District Council by notice on 27 September 2007. An appeal was made and the Planning Inspectorate held a hearing for the application on 28 May 2008. The Inspector, Richard Merelie, dismissed the appeal.
7. A copy of the appeal decision is attached at **Appendix D**. The main issues addressed were whether the proposed diversion route would be less safe, less convenient or less attractive than the existing route.

8. Although the appeal decision provides useful comment, it must be noted that the legal tests to be applied are different for Town and Country Planning Act 1990 matters and the Highways Act 1980 Orders that are being considered here.
9. Subsequently, ownership of Baydon House changed but the new owner wished to maintain the application submitted to Wiltshire County Council affecting rights of way over his property.
10. In December 2009 Wiltshire Council officers carried out an initial consultation to gauge opinion on the diversions proposed by the owner of Baydon House. Consultees included Baydon Parish Council, Wiltshire Councillor for Aldbourne and Ramsbury, statutory undertakers, user groups and the landowner.
11. Six responses were received. The proposal to divert part of Baydon 11 at Baydon House was supported by the owners of Baydon House (2 responses – one from their agent), Baydon Parish Council, Virgin Media and The Ramblers' Association.
12. An additional respondent objected and pointed out that the definitive map and statement was in error with regard to Baydon 11 and that higher rights subsisted than were recorded. Officers considered this was a reasonable point and that to create a bridleway only on the diverted route could lead to a gap in public rights if the old route of Baydon 11 was eventually recorded as a restricted byway.
13. The landowner agreed that the diverted route could be dedicated to the public as a restricted byway. This would give continuity to the network in the event of the remainder of Baydon 11 being upgraded and the original objector withdrew his objection.
14. There being no objections to the proposed diversion it was considered that the proposal met the legal tests contained within Sections 119 (1) and (2) of the Highways Act 1980 and an Order to divert the route was made. A concurrent Creation Order under Section 26 of the Highways Act 1980 to record the new route as a restricted byway was also made.
15. The Orders were advertised in local press, on site and by circulation to statutory consultees and user groups on 13 May 2010.
16. Two duly made objections and no representations to the Diversion Order were received. No objections or representations were received to the Creation Order for the restricted byway.
17. One objection to the Diversion Order was received from Mr. B. M. Gribble, a resident of Baydon for 32 years. Mr. Gribble stated in a letter dated 27 May 2010:

“This footpath is part of a right of way that has been in existence for hundreds of years and should be seen as a small but important part of the local heritage of our village. For this reason it should be preserved and only sacrificed where there are significant benefits to the community as a whole.

The argument that the proposed alternative route offers better views of the surrounding countryside is of little value because Baydon is blessed with many footpaths of similar or better views that go in almost every direction.

What Baydon is not blessed with however are footpaths going passed (sic) fine country houses like Baydon House and this is why I and many others from our village enjoy walking this route. The house is the most impressive in our village and possibly the oldest and will be excluded from a walkers' itinerary if this path is closed.

It is important to consider who will benefit if this appeal is upheld and who will lose out. I can only think of one household that will benefit from the diversion of this path and yet the losers will be all other householders in Baydon who will no longer have the freedom to walk where their predecessors have done for hundreds of years before.”

18. Another objection to the Diversion Order was received from Mr. R. S. Maycock, a resident of Baydon. Mr. Maycock states in a letter dated 9 June 2010:

“The alternative path is, as its name implies, an alternative route for those who choose to use it. The existing path which leads to the front of Baydon House is an historic path which I use regularly and as such must mean; it must not be lost to the village of Baydon.

These alterations are of no benefit to the village. Indeed, the only people to benefit from the changes would be the occupants of Baydon House who obviously want to restrict the movements of villagers who regularly use the existing right of way, which forms an important access for the village folk.”

Main Considerations for the Council

19. Wiltshire Council has the power to make Orders to divert public paths under Section 119 of the Highways Act 1980. The Order may be made in the interest of the landowner (as this is) and can only be confirmed if the new path or way will not be substantially less convenient to the public, having regard to the effect of the diversion on the public enjoyment of the path or way as a whole.
20. The Council has received objections to the proposed Order and Members have to decide whether they still wish to support the Order, which must then be forwarded to the Secretary of State for determination, or formally resolve not to proceed with it.
21. Section 119(1) of the Highways Act 1980 states that:

“Where it appears to a Council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the Council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order:

- (a) *create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and*
- (b) *extinguish, as from such date as may be [specified in the order or determined] in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the Council requisite as aforesaid.*

An Order under this Section is referred to in this Act as a “Public Path Diversion Order”.

22. Section 119(2) of the Highways Act 1980 states:

“A public path diversion order shall not alter a point of termination of the path or way:

- (a) if that point is not on a highway; or*
- (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public”.*

23. The Committee must now consider the second test under Section 119(6) which must be met at the Order confirmation stage.

“The Secretary of State shall not confirm a public path diversion order, and a Council shall not confirm such an Order as an unopposed Order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in Sub-section (1) above and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the Order having regard to the effect which:

- (a) the diversion would have on public enjoyment of the path or way as a whole;*
- (b) the coming into operation of the Order would have as respects other land served by the existing public right of way; and*
- (c) any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it.*

24. The Council has to have regard to The Disabilities Discrimination Act 1995 (DDA95). Section 21 of this Act states:

(1) Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to:

- (a) remove the feature;*
- (b) alter it so that it no longer has that effect;*
- (c) provide a reasonable means of avoiding the feature; or*
- (d) provide a reasonable alternative method of making the service in question available to disabled persons.*

25. The Council has to also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP). The ROWIP recognises the Council’s duty to have regard to DDA95 and to consider the least restrictive option.

26. The ROWIP also has as its aims:
- *The promotion and development of the public rights of way network, enabling pedestrians, cyclists and horse riders to avoid heavy or intrusive traffic. (p.46.3)*
 - *To provide a more usable public rights of way network, suitable for changing user demands. (p.46.1)*
 - *Increase access to the countryside for buggies, older people, people with mobility problems and other impairments. (p.43.1 – 5)*
 - *Increase access to the countryside for people who are blind or partially sighted. (p.43.4 and 5)*
27. The Council must also have regard to the needs of agriculture and forestry.

Comments on the Objections

28. Both objectors point out that the owners or occupiers of Baydon House will benefit if the Diversion Order is confirmed.
29. It is noted that the road that leads past the whole of Baydon House (a Grade II listed building) is an unclassified road unaffected by this Order. If this Order succeeds, the public will still be able to pass and re-pass in front of Baydon House. The area that would be closed to the public is 80 metres of path where it leads past an outdoor riding ménage.
30. Section 119 of the Highways Act 1980 permits an Order to be made in the interests of the landowner if it is considered expedient to do so. Wiltshire Council permits applications from landowners and it is implicit in that application (for which landowners will pay costs) that they consider it convenient and practical to them. Hence, it is a matter of fact that it is expedient in the interests of the landowner to divert the path where they are the applicant; satisfying Section 119 (1).
31. Section 119 (2) must also be satisfied and this addresses whether the point of termination of the path or way “is substantially as convenient to the public”. The termination point is the northern end of the proposed diversion at its junction with the u/c 5013. Users of the new route have to travel approximately 280 metres, whereas the old route to access the same point involves travelling for approximately 260 metres. It is considered that this difference in distance is negligible. There are little differences in gradient and surface and hence it is considered as convenient to use the new route as it is the old route; satisfying Section 119 (2). Users of footpath 3 will have to walk an additional 35 metres north to access the new route before travelling approximately 280 metres to reach point A (**Appendix C**). However, this option does involve less walking on an unclassified road and is not considered substantially less convenient. The Act does not require that the new route is as convenient, just substantially as convenient.
32. Section 119 (6)(a) addresses the effect of the diversion on the public enjoyment of the path or way as a whole. It is this point that the two letters of objections address. Both objectors consider that a significant part of their enjoyment of using the existing route is that they are able to enjoy the historic village street and view Baydon House as part of a walk.
33. The Order will not prevent the public doing any of these activities; it will, however, create a cul-de-sac public right of way and the public would have to re-trace their steps having viewed the street and Baydon House.

34. The objectors consider that the improved views over surrounding countryside offered by the proposed new route, although not disputed, are offered on plenty of other rights of way in Baydon.
35. Officers confirm that this is the case; however, it is unlikely that many of these provide opportunities for the less able in the highly accessible manner that the proposed new route does.
36. The proposed new route has a smooth surface making it accessible to the less able, mobility vehicles and people with small children. Hence, it does provide a significant opportunity to enjoy fine views in a motorised traffic-free environment.
37. The opportunity to view the village street and Baydon House also remains for these groups of people.
38. It is noted that the proposed new route, with a width of 4 metres, offers a surface of both grass and tarmac and leads between two fences. The existing route of Baydon 11 is made of compacted gravel and stone and leads past a high fence on one side and a more open aspect leading to the exercise ménage. The proposed new route would be more accessible for the partially sighted as the route is better defined on both sides.
39. It is noted that the proposed new route was created at least ten years ago and has been in use by the public since then as a permissive route. There is evidence of use of the way (hoof prints, horse dung and officers have observed walkers using it) in recent years.
40. In an e-mail dated 9 July 2010, the owner of Baydon House reported that “the wonderful and fair community spirit has been best evidenced by the fact that since the notification signs went up the foot traffic on the 80 metre length A to B has ceased altogether”. He also states that “In fact there is a gate at point B leading down the 80 metre section that has always been permanently open and we noticed a member of the public closed it well over a month ago and it has since stayed closed without one voice of concern”. The owner also makes it clear that if the Diversion Order is abandoned he would no longer wish to dedicate the new route as a restricted byway.
41. The Senior Rights of Way Warden confirmed that she was not aware of any complaints from the public relating to this obstruction. However, officers note that this second gate was open on 11 May, 2 June and 1 July 2010.
42. It is noted that the route at Baydon 11 may carry higher public rights than bridleway. By dedicating the new route as restrictive byway the landowner not only resolves future issues arising out of any subsequent upgrade where the route crosses his land, he also resolves the issue for Wiltshire council and the public at large, if only in respect of that part of Baydon 11.

Environmental Impact of the Recommendation

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

Risk Assessment

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

Financial Implications

45. The making of a public path Order is a discretionary power, rather than a statutory duty. Applicants pay actual costs relating to the Order but should the Orders be submitted to the Secretary of State, Wiltshire Council must pay additional costs.
46. Additional costs related to submitting the Orders to the Secretary of State could be variable, depending on how the Planning Inspectorate decides to determine the Orders. A determination under the written representations procedure involves officer time of approximately 8 hours; should the Orders be determined at a hearing, costs are likely to not exceed £200 and approximately 16 hours of officer time. Should the Orders be determined at an Inquiry, it is usual for counsel to be appointed and total costs are likely to be approximately £4,000.
47. Officers consider that should the Orders be forwarded to the Secretary of State, it is most likely that the Planning Inspectorate will determine the Orders by either written representations or at a hearing.

Options to Consider

48. The following options have been considered:
 - (i) Not to continue with either Order.
 - (ii) To forward the Orders to the Secretary of State with the recommendation that they be confirmed as made.
 - (iii) To abandon the Section 119 Order and confirm the Section 26 Order.

Reasons for Recommendation

49. The proposed diversion meets the tests contained in Section 119 of The Highways Act 1980.
50. The landowner has made it clear that he will only wish to dedicate the proposed new route to the public as a restricted byway if the Diversion Order is confirmed. This is considered reasonable. Additionally, Wiltshire Council would not wish to expand its rights of way network by having two routes in such close proximity with additional maintenance responsibilities.

Recommendation

51. That the Orders be referred to the Secretary of State for determination with the recommendation that they be confirmed as made.

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

None