

**AMESBURY: PROPOSED DIVERSION OF BYWAY OPEN TO ALL TRAFFIC NO.1
(PART) AND BRIDLEWAY NO.29 (PART)**

Purpose of Report

1. To:
 - (i) Report on the objections received by the County Council to proposals to divert two rights of way at Solstice Park, Amesbury (as shown on the plan attached at **Appendix 1**).
 - (ii) Seek approval for an application to be made to the Magistrates' Court to divert the paths, as shown on the plan attached at **Appendix 1**.

Background

2. The plan attached at **Appendix 2** shows the location of the Solstice Business Park in Amesbury, which is being developed by the Amesbury Property Company.
3. The Amesbury Property Company applied for three diversions at Solstice Park, i.e. to divert Byway No. 1 Amesbury (in two parts) and Bridleway No. 29 Amesbury (part), in March 2004. After discussions regarding how these proposals were to be taken forward, it was concluded that the proposals should be amended to be encompassed by one Section 116 application to the Magistrates' Court to divert the paths. A report seeking Members approval to make an application to the Magistrates Court was presented to the Regulatory Committee on 15th December 2004. The Committee resolved that an application be made to the Magistrates' Court (see previous report attached at **Appendix 3**).
4. However, the proposals have since been amended as following the resolution of the Regulatory Committees to make an application to the Magistrates' Court, objections were received, particularly in relation to the diversion of Byway No. 1 at its junction with the A303 Trunk Road, to a new junction on the Allington Track. Following discussions with The Amesbury Property Company, who are meeting the costs of the diversions, it was concluded that this part of the diversion proposals should be withdrawn from this particular application as it is Officer's understanding that it is the diversion of the Bridleway No. 29 which the Amesbury Property Company need to secure to continue with the development. Diversions are a discretionary duty for the County Council rather than a statutory duty and the withdrawal of the proposal to divert Byway No. 1 at its junction with the A303, does not preclude an application for this diversion being made in the future. Officers are therefore seeking Member approval for a new application to be made to the Magistrates' Court for the following diversion proposals:
 - (i) The diversion of Bridleway No. 29 Amesbury (part), to lie alongside the new estate road corridor and then enter a landscaped area.

- (ii) The diversion of Byway No. 1 Amesbury (part) to the west around Scheduled Ancient Monument No. 12200.
- 5. Since Members last approved the application, the proposed diversion of Byway No. 1, at its junction with the A303 Trunk Road, leading south for approximately 300 metres, to a new route leading east onto the Allington Track, has been withdrawn from the application. The proposed diversion route of Bridleway No. 29 has altered slightly where it enters open land, due to landscaping of the site.

Consultations

- 6. The County Council carried out a new consultation seeking comments regarding the amended proposals, amongst user groups, statutory consultees and other interested parties, on 14th May 2007. The responses received are available for inspection in the **Members' Room**.
- 7. One objector, Mr Alan Hill, has put forward a number of objections. These are set out, together with Officer's responses, in **Appendix 4**.

Main Considerations for the Council

- 8. Section 116 of the Highways Act 1980 provides for the power of the Magistrates to stop up or divert a highway.

Sub-section 1 of Section 116 states:

“(1) Subject to the provisions of this section, if it appears to a magistrates' court, after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road) as respects which the highway authority have made an application under the section-

(a) is unnecessary; or

(b) can be diverted so as to make it nearer or more commodious to the public;

the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.”

- 9. The diversion of the northern section of Bridleway No. 29 has already been secured within a Highways Agency Side Roads Order dated April 2002, which diverted this section of the path to a safer crossing point of the A303 enabling use of a new bridge providing a screened route for horse riders. The remainder of the route, shown on the plan at **Appendix 1**, between points A and B, goes through a farmyard, The Pennings (now demolished) and then follows an indeterminate route across a field. The farmer stated that there had not been a defined route on the ground for many years. The proposal is to divert that section of bridleway A-B, onto a new route between points A and C, leading south-east firstly on the southern side of an estate road corridor called the “*Zone A Access Road*”. This would provide a defined 3 metre wide grass verge area immediately adjacent to the road which would form the bridleway and 3 metre wide combined cycleway and footpath adjacent to the bridleway. From the end of the access road the bridleway would cross an estate road into what is to be a permanently landscaped area, where the width of the bridleway would exceed 3 metres.

This would be natural Wiltshire grassland with an opening in the fence at its southern end to provide access to Byway No. 1. The proposed route differs slightly to the original application, (see **Appendices 1 and 3**).

10. In 2000 outline planning consent was secured across the whole of Bridleway No. 29. The consent carried a condition that *“no development shall take place that affects Bridleway No. 29 until it has been formally diverted”*. Part of the bridleway crosses land that will be developed on an incremental basis over a number of years, certainly beyond 2011. Section 257 of the Town and Country Planning Act could be used to divert the path, the legal test being that the development cannot continue without the path being diverted. However, there would be numerous applications to divert the path as the extent of the development becomes apparent and requests for short lengths of diversion could continue until 2020.
11. The diversion of Bridleway No. 29 Amesbury is more commodious for the public for the following reasons.
 - The diversion would provide a defined, permanent route, not subject to continual diversion and disruption as planning applications over the route are made and would ensure that the path is not disturbed by building activities. This would be beneficial for members of the public using the path in the future.
 - Additional width would be added to the path by the diversion. The legal width of the bridleway is presently recorded within the definitive statement as 1.84 - 2.4 metres. The new width of the path alongside the estate road corridor would exceed this, having a width of 3 metres and in the landscaped area the width would exceed 3 metres.
 - The new route is shorter in distance, having a length of approximately 490 metres, whilst its present length is approximately 580 metres. Although the diversion has a different termination point, it remains on the same highway (i.e. Byway No. 1 Amesbury) and to reach the same termination point on Byway No. 1 Amesbury (i.e. point B on **Appendix 1**) the diversion adds approximately 80 metres.
12. The proposed diversion of Byway No. 1, around Scheduled Ancient Monument No.12200 (barrow group), has been suggested by English Heritage to protect the monument and its setting. It will be more commodious to the public for the following reasons.
 - The new track will be laid with a hardcore material surface with a 2 metres wide grass verge. This will be beneficial to the public as the surface of Byway No. 1 can become very rutted and waterlogged in the winter months.
 - The new 6 metres wide track and verge of 2 metres will exceed the legal width of the byway presently recorded in the Definitive Statement, i.e. 2.5 – 3.6 metres is replaced by 6 metres.
 - There is no substantial increase in the length of the path (approximately 108 metres is replaced by approximately 140 metres) and it has the same start and termination points.

13. The diversion of Byway No. 1 Amesbury has no bearing on the planning proposals for Solstice Park, but has been included at the request of English Heritage and fully supported by the Amesbury Property Company. The company has agreed to dedicate the land in its ownership in order to accommodate the new path and bear the costs of the works involved in the making of the order and making the route available.
14. Section 116 (sub-section 3) of the Highways Act 1980, places a duty on the Highway Authority to give notice of the proposals to the Town and District Councils and request their consent, as follows:

“If an authority propose to make an application under this section for an order relating to any highway (other than a classified road) they shall give notice of the proposal to:

- (a) if the highway is in a non-metropolitan district, the council of that district; and*
- (b) if the highway is in England, the council of the parish (if any) in which the highway is situated or, if the parish does not have a separate parish council, to the chairman of the parish meeting; and*

the application shall not be made if within two months from the date of service of the notice by the authority notice is given to the authority by the district council or Welsh council or by the parish or community council or, as the case may be, by the chairman of the parish meeting that the council or meeting have refused to consent to the making of an application.”

15. Consent to the diversion proposals has already been received from both Salisbury District Council and Amesbury Town Council.
16. It is possible under Section 116 sub-section (4) of the Highways Act 1980, to retain a footpath or bridleway rights if the byway is stopped up, or footpath rights if the bridleway is stopped up:
- “An application under this section may be made, and an order under it may provide for the stopping up or diversion of a highway for the purposes of all traffic or subject to the reservation of a footpath or bridleway.”*
17. It is not considered necessary for footpath rights to remain on the extinguished route of Bridleway No. 29 as the footpath would remain subject to future planning applications to divert it, nor for bridleway and footpath rights to remain on the extinguished route of Byway No.1 Amesbury, over the Scheduled Ancient Monument, as the byway is being diverted to remove the public from the monument and to protect it.

18. Section 116 (sub-section 5) of the Act states:

“An application or order under this section may include two or more highways which are connected with each other.”

Bridleway No. 29 and Byway No. 1 meet this requirement.

19. Section 116 (sub-section 6) of the Act continues:

“(6) A magistrates’ court shall not make an order under this section unless it is satisfied that the applicant authority have given the notices required by Part 1 of Schedule 12 to this Act.”

If Members recommend that an application should be made to the Magistrates’ Court for the proposed Order, the County Council will first comply with the requirement to give notice of the application to the appropriate parties.

20. Section 116 (sub-sections 7 and 8) state:

“(7) On the hearing of an application under this section the applicant authority, any person to whom notice is required to be given under paragraph 1 of Schedule 12, any person who uses the highway and any other person who would be aggrieved by the making of the order applied for, have the right to be heard.

(8) An order under this section authorising the diversion of a highway:

- (a) shall not be made unless the written consent of every person having a legal interest in the land over which the highway is to be diverted is produced to and deposited with the court; and*
- (b) except in so far as the carrying out of the diversion may necessitate temporary interference with the highway, shall not authorise the stopping up of any part of the highway until the new part to be substituted for the part to be stopped up (including, where a diversion falls to be carried out under orders of two different courts, any necessary continuation of the new part in the area of the other court) has been completed to the satisfaction of two justices of the peace acting for the same petty sessions area as the court by which the order was made and a certificate to that effect signed by them has been transmitted to the clerk of the applicant authority.”*

21. Officers are recommending that the County Council pursue both diversions under one Section 116 application to enable the changes to be considered for their collective effect and to reduce costs. The process does not preclude objectors from making their objections known as the public are welcome to attend the Magistrates’ Court hearing at which they may make representation.

Environmental Impact of the Recommendation

22. Diverting the section of Byway No. 1 Amesbury around Scheduled Ancient Monument No. 12200 will help preserve the barrow group from damage from all forms of user, ensure that the setting of the barrows is not compromised and help to preserve this part of the larger historic landscape.

Risk Assessment

23. There are no risks arising from the recommendation set out in this report.

Financial Implications

24. As the making of a diversion order is a discretionary duty for the Surveying Authority, rather than a statutory duty, the applicant has confirmed that they will meet the reasonable costs to the County Council in connection with the application to the Magistrates' Court, including advertising, together with the costs of works involved to implement the proposals.

Options Considered

25. To deal with both diversions under the umbrella of one application to the Magistrates' Court under Section 116 of the Highways Act 1980.
26. The present legal routes of Bridleway No. 29 and Byway No. 1 could be retained. However the retention of the present route of Bridleway No. 29 would impact directly upon the development of the Solstice Business Park, whereas the proposed diversion takes it out of the area still to be developed and onto the estate road corridor. The diversion of Byway No. 1 has been proposed by English Heritage to protect the scheduled ancient monument from damage and preserve its setting.
27. The individual rights of way could be diverted separately by dealing with the diversions under separate legislation. The diversion of the bridleway could be dealt with under Section 119 of the Highways Act 1980 which provides for the diversion of footpaths and bridleways without the need for the case to be taken to the Magistrates' Court. The byway diversion could then be dealt with under Section 116 legislation which would need to be heard before the Magistrates. However, it would save time and money if the orders were dealt with together by the Magistrates' Court and also enable the Magistrates to have a comprehensive overview of the proposed changes to the rights of way network at Solstice Park.
28. Pursue only one of the following proposals:
- Diversion of Bridleway No. 29.
 - Diversion of Byway No. 1 around Scheduled Ancient Monument No. 12200.
29. Retain bridleway and/or footpath rights on the original route of Byway No. 1 if the byway is successfully diverted and/or retain footpath rights on the original route of Bridleway No. 29 if the bridleway is successfully diverted.

Reasons for Recommendation

30. Although the Amesbury Property Company does not make any material gain by the diversion of Byway No. 1 (the proposals have been put forward by English Heritage), it has applied for the diversions and fully supports the application to the Magistrates' Court.
31. Placing the full proposals before the Magistrates, (including the bridleway diversion) would enable them to take an overall view of the effect of the diversions. Dealing with both diversions with a single application is less complex, more cost effective and is considered to be a more transparent and easily understood process than if the diversions were dealt with under different legal provisions.

Recommendation

32. That an application be made to the Magistrates' Court to make a Diversion Order under Section 116 of the Highways Act 1980, to divert:
- (i) Section of Bridleway No. 29 Amesbury, A-B, to a new line A-C so that it lies alongside the new estate road corridor for part of its length and enters a permanently landscaped area for the remainder of its route;
 - (ii) Byway No. 1 Amesbury (part), to the west around Scheduled Ancient Monument No. 12200 (see points D-C-E).

as shown on the plan attached at **Appendix 1**.

GEORGE BATTEN

Director of Environmental Services

Report Author

JANICE GREEN

Rights of Way Officer

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

None.