

REGULATORY COMMITTEE  
13<sup>th</sup> FEBRUARY 2008

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**AMESBURY: PROPOSED DIVERSION OF BRIDLEWAY NO.29 AMESBURY (PART)**

**Purpose of Report**

1. To:
  - (i) Report on the objections received by the County Council, following an informal consultation exercise, to proposals to divert Bridleway No.29 Amesbury (part), at Solstice Business Park, as shown on the plan attached at **Appendix 1**.
  - (ii) Seek approval for an order to be made to divert Bridleway No.29 (part), 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 (APC).
3. APC made application to Wiltshire County Council in March 2004 for the following diversions:
  - (i) To divert Bridleway No.29 Amesbury (part), under Section 119 of the Highways Act 1980
  - (ii) To divert Byway No.1 Amesbury (part), to the west around Scheduled Ancient Monument No.12200 (barrow group), under Section 116 of the Highways Act 1980, at the request of English Heritage
  - (iii) To stop up a length of Byway No.1 Amesbury leading approximately 300 metres south of its junction with the A303 Trunk Road, and dedicate a new section of Byway No.1 leading east to link with the Allington Track, at the request of the Highways Agency.
4. Following discussions regarding how these proposals were to be taken forward, it was concluded that the proposals should be amended to be encompassed within one Section 116 diversion application to the Magistrates Court. As byways may only be diverted and stopped up under Section 116 of the Highways Act, officers considered that it was less misleading to deal with all three diversions in one application. A report seeking Members' approval to make an application to the Magistrates' Court was presented to the Regulatory Committee on 15<sup>th</sup> December, 2004. The Committee resolved that an application should be made to the Magistrates' Court (see report and resolution attached at **Appendix 3**).

5. Following the resolution of the Regulatory Committee, the Section 116 application was advertised and 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 with the Allington Track. Following discussions with APC, who were meeting the costs of the various diversions, the proposals were amended and it was decided to withdraw this part of the application. APC needed to secure only the diversion of the bridleway, as this directly affected the development of the site. Officers therefore prepared a report for the Regulatory Committee Meeting of 19<sup>th</sup> September, 2007, seeking Members' approval for an application to be made to the Magistrates' Court for the following diversions under Section 116 of the Highways Act 1980:
  - (i) The diversion of Bridleway No.29 Amesbury (part), to lie alongside the new estate corridor road and then enter a landscaped area leading to its junction with Byway No.1 (the route slightly amended at its southern end to take account of new landscaping features).
  - (ii) The diversion of Byway No.1 Amesbury (part), to the west around Scheduled Ancient Monument No.12200.
6. However, this report was withdrawn prior to being considered by Members (see Minute 35 at **Appendix 4**). It was discovered that a new road was proposed which would dissect the route of the bridleway for a second time. Section 116 of the Highways Act requires that the diversion route should be nearer or more commodious for the public and officers considered that this legal test was no longer met when the new route of the bridleway was dissected on two occasions by new estate roads.
7. APC have now submitted a new application to the County Council to divert only Bridleway No.29 Amesbury (part) under Section 119 of the Highways Act 1980 as shown in the application and plan attached at **Appendix 5**.
8. The County Council carried out a consultation regarding these proposals amongst user groups, statutory consultees and other interested parties on 19<sup>th</sup> October, 2007. The responses received are available for inspection in the **Members' Room**.
9. Objections were received from Abbey Manor Group and Mr. Alan Hill. The Abbey Manor Group has subsequently withdrawn its objection. However, Mr. Alan Hill has made a number of objections which have not been withdrawn. These are set out, with officers' responses, at **Appendix 6**.

### **Main Considerations for the Council**

10. Section 119 of the Highways Act 1980 provides for the diversion of footpaths, bridleways and restricted byways. There are separate tests, at the order-making stage and at the confirmation stage.

Sub-section 1 states:

*"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 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 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'."*

11. Officers consider that the legal tests in Section 119 have been met. The first test, as set out above, relates to the order-making stage and officers are satisfied that the diversion has been applied for in the interests of the landowner, APC, in order to enable the development of the Solstice Business Park to continue.

12. 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 not 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".*

13. The proposed diversion route retains the same termination point A at its junction with Solstice Park Avenue. The southern termination point C remains on the same highway, (Byway No.1), approximately 140 metres north-north-east of its original termination point B. The proposed diversion route of Bridleway No.29 is approximately 520 metres in length, as opposed to approximately 590 metres of the present definitive route. To reach point B using the proposed diversion route adds approximately 70 metres to the route. The view of officers is that this additional length is substantially as convenient to the public when considered in the general context of the overall length of this path and the greater distance that people using it will be walking or riding during their overall route.

14. Section 119 (6) below sets out the second test, 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;*

*so, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above."*

15. It is considered that the proposed diversion route will not affect the public enjoyment of the path as a whole. The current route, between points A and B, goes through what was a farmyard (The Pennings), now demolished and then follows an indeterminate route across a field, now being developed. The farmer who previously farmed the land advised APC that there had not been a defined route on the ground for many years and no clearly defined route presently exists. The proposal is to divert the northern section of the route through landscaped areas of the proposed development, being 2 metres wide and laid to grass. There will be strategic landscaping and planting designed to screen the buildings from Equinox Drive. The route would run parallel to Equinox Drive with a separation of approximately 6 metres at least from the area of the road used by vehicular traffic. The developers have advised of their wish to “create a ‘country’ route similar to that which once existed”. The route then crosses a new estate road, Equinox Drive, at right angles and then the southern section passes into an area of designated public open space, in excess of five acres, set aside as an amenity area adjacent to the barrow group (scheduled ancient monument No.12200). This area has already been created. The Bridleway exits this area of land at its junction with Byway No.1. The creation of the new route is subject to certification by the local Rights of Way Warden and a new route will not be accepted until the Highway Authority is satisfied that the diversion route is provided to a suitable standard, fit for use by the public.
16. The benefits to the public are as follows:
- (i) The applicant’s desire to create a “country” route similar to that which once existed.
  - (ii) A proper delineated route for Bridleway No.29, which will be permanent once provided.
  - (iii) A safer access from Byway No.1 to Bridleway No.29 within Solstice Park.
  - (iv) A route without fences, gates and other obstructions.
  - (v) Safe separation for users of the right of way from motor traffic using Equinox Drive.
  - (vi) Not substantially less convenient for the public in its length.
17. The landowner, APC, has confirmed that they are the only landowner over whose land the proposed diversion passes, therefore no compensation costs are envisaged.
18. Before seeking Members’ approval to make an order under Section 119 Highways Act 1980, officers considered whether it would be more appropriate for APC to apply to divert the bridleway under Section 257 of the Town and Country Planning Act 1990 (TCPA). Section 257 (1) of the TCPA states:
- “Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out:*
- (a) in accordance with planning permission granted under Part III, or*
  - (b) by a government department.”*

19. However, APC cannot utilise this power as there is no detailed planning permission in place. Outline planning permission for the site was granted in January 2000 but there is currently no reserved matters approval for development of the site on the length of the bridleway that needs to be diverted. Therefore, the applicant is unable to demonstrate that the diversion is necessary to enable permitted development to be carried out.
20. Officers have therefore concluded that the application has been correctly made under Section 119 of the Highways Act 1980 for the following reasons.
- (i) It is understood that a planning application was made for a distribution centre to be built over part of the definitive line of the bridleway in December 2007 (as yet undetermined). Planning permissions and approval of reserved matters will be taking place on a piecemeal basis over a number of years over the length of the bridleway. If the planning permissions are carried out on a plot by plot basis, the use of Section 257 of the TCPA to divert Bridleway No.29 would continue for a number of years and lead to several disadvantages for the developer and the public. There is an extra cost, both administratively and financially, to the developer as several diversion applications must be processed once the detailed design of each plot has been established and reserved matters approval granted. A number of diversions over several years also create disruption and confusion to the public using the path as diversion routes are made available. This would have the effect of creating a disjointed route as sections are diverted individually, depending upon the planning permissions applied for and granted. It would take several years to create a single, sensible route which takes into account the whole of the development, i.e. that which has been applied for under Section 119 of the Highways Act 1980.
  - (ii) The diversion of the Bridleway as one single application under Section 119 of the Highways Act 1980 would allow the developers to complete the development of the site more quickly, bringing economic development and local employment to the area.
  - (iii) Under both powers, the public have equal opportunity for objection and to be heard at a public inquiry. The public are therefore placed at no disadvantage by the use of Section 119 of the Highways Act 1980.

### **Environmental Impact of the Recommendation**

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

### **Risk Assessment**

22. There are no risks arising from the recommendation set out within this report.

### **Financial Implications**

23. The making of a public path diversion order is a discretionary duty for the Highway Authority rather than a statutory duty. The applicant has confirmed that they will meet the reasonable costs to the County Council in processing the application, including advertising costs.

24. The applicant has also confirmed that they will undertake works and meet the costs to bring the diverted bridleway into a fit condition for public use and this work will be certified by the local Rights of Way Warden.
25. APC has confirmed that they are the only landowner affected by the proposals, therefore no compensation costs or expenses are envisaged.

### **Options Considered**

26. The present legal line of Bridleway No.29 Amesbury could be retained. However, the Solstice Business Park development is already well advanced and the land use around the bridleway is changing from agricultural to business use. By proposing to divert the bridleway, it is safeguarded and the most appropriate route for it is chosen. The developer has also expressed their desire for the bridleway to retain a "country" feel. This cannot be guaranteed if the route remains in its present location as this would require a major re-working of the development proposals and the bridleway may end up sandwiched between buildings where space is limited.
27. The diversion cannot be dealt with as one route under Section 257 of the TCPA for the reasons set out at paragraph 19.

### **Reasons for Recommendation**

28. Section 119 of the Highways Act 1980 is considered to be the most appropriate legislation under which to divert the bridleway and officers consider that the legal tests under this legislation are fully met, for the reasons set out within this report.

### **Recommendation**

29. That an order be made and advertised under Section 119 of the Highways Act 1980 to divert that section of Bridleway No.29 Amesbury as shown on the plan attached at **Appendix 1**, from A-B to a new line leading from A-C.

### **GEORGE BATTEN**

Director of Environmental Services

Report Author

**JANICE GREEN**

Rights of Way Officer

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

None