

REGULATORY COMMITTEE
21st MAY 2008

HIGHWAYS ACT 1980 – SECTION 119
PUBLIC PATH DIVERSION ORDER - BRIDLEWAY NO.29 AMESBURY (PART)

Purpose of Report

1. To:
 - (i) Report on the objections received by Wiltshire County Council, following the making of a Public Path Diversion Order under Section 119 of the Highways Act 1980, to divert that part of Bridleway Number 29 Amesbury, as shown on the plan attached to the Order (see **Appendix A**).
 - (ii) Seek approval for the Order to be forwarded to the Secretary of State for decision with a recommendation from Wiltshire County Council that the Order be confirmed without modification.

Background

2. The plan attached at **Appendix B** shows the location of the Solstice Business Park in Amesbury, which is being developed by the Amesbury Property Company.
3. On 16th October 2007, the landowners, the Amesbury Property Company and Kenmore Capital Portfolio Ltd, applied to divert the route of Amesbury Bridleway Number 29 (part), in order to allow the development of the site to continue.
4. At the initial consultation objections were received from Mr. Alan Hill. These objections were considered at the Regulatory Committee Meeting on 13th February 2008 and Members resolved that a Public Path Diversion Order should be made under Section 119 of the Highways Act 1980, to divert Bridleway Number 29 Amesbury (part), (report and minute available in the **Members' Room**).
5. Officers made and advertised a Public Path Diversion Order on 6th March 2008. This was followed by a formal objection period of 28 days, during which formal objections and representations to the making of the Order could be lodged with the Highway Authority.
6. Objections to the making of the Order have been received from Mr. Alan Hill, Wiltshire Bridleways Association and Lincoln College. These letters of objection are available in the **Members' Room** and a summary with Officer's responses is attached at **Appendix C**.

Main Consideration for the Council

7. At its meeting on 13th February 2008, the Regulatory Committee considered the diversion proposals, the objections made at the initial consultation stage and the legal tests for the making of a Public Path Diversion Order, as set out under Section 119 of the Highways Act 1980. Members were satisfied that the legal tests had been met and resolved that a Public Path Diversion Order to divert Bridleway Number 29 Amesbury (part), should be made.

8. Since formal objections have now been received, there are two options available to the Council:
 - (i) It may decide not to confirm the Order in which case the Order may be withdrawn.
 - (ii) It can submit the Order to the Secretary of State for determination with a recommendation that the Order be confirmed without modification.
9. Members are therefore requested to consider the formal objections and decide whether, in the light of the objections, they are satisfied that the legal tests in Section 119 of the Highways Act 1980 have been met.
10. The legal tests applicable to the making of a Public Path Diversion Order under Section 119 of the Highways Act 1980 are set out at paragraphs 10-13 of the report presented to Regulatory Committee on 13th February, 2008. These paragraphs are set out in **Appendix D** and a copy of the full report is available in the **Members' Room**. Section 119 (6) of the Act sets out the second stage of the test to be satisfied at the order confirmation:

“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..... 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.”
11. Officers consider 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, follows an indeterminate route across an open area over which outline planning permission has been granted, and which is now the subject of a detailed planning application for a regional distribution centre being considered by Salisbury District Council. The Public Path Diversion Order diverts the bridleway from point A, through proposed landscaped areas of the development, being 3 metres wide and laid to grass. It is intended that there will be strategic landscaping and planting designed to screen the buildings from Equinox Drive as part of the separate planning application being simultaneously considered and the developers have advised of their wish to “create a ‘country’ route similar to that which once existed”. The bridleway route would run parallel to Equinox Drive with a separation of approximately 6 metres at least from the area of the highway used by vehicular traffic, i.e. a 3 metre wide verge and a 3 metre wide cycleway/footpath would lie between the proposed new bridleway and vehicles using Equinox Drive.

The route then crosses a new estate road, the proposed continuation of Equinox Drive, at right angles and passes into an area of designated public open space, in excess of five acres, already set aside as an amenity area adjacent to the barrow group, (scheduled ancient monument No.12200). The new section of bridleway would be subject to certification by the Area 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.

12. The benefits to the public are as follows:

- (i) The applicants' desire to create a "country" route similar to that which once existed.
- (ii) A proper delineated route for Bridleway Number 29, which will be permanent once provided.
- (iii) A safer crossing from Byway Number 1 to Bridleway Number 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.

13. Officers consider that the bridleway diversion is not substantially less convenient to the public in its length. The proposed diversion is approximately 520 metres in length, as opposed to approximately 590 metres of the definitive route. To reach point B using the proposed diversion route adds approximately 70 metres. 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. The Amesbury Property Company and Kenmore Capital Portfolio Ltd. have confirmed that they are the only landowners over whose land the proposed diversion passes, therefore no compensation costs are envisaged.

15. Officers consider that the tests for making and confirming the order have been met and that it is expedient to confirm the order.

Environmental Impact of the Recommendation

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

Risk Assessment

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

Financial Implications

18. The making of a Public Path Diversion Order is a discretionary duty for the Highway Authority rather than a statutory duty. The applicants, the Amesbury Property Company and Kenmore Capital Portfolio Ltd., have confirmed that they will meet the reasonable costs to the County Council in processing the application, including advertising costs.

19. The applicants have 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 Area Rights of Way Warden.
20. The Amesbury Property Company and Kenmore Capital Portfolio Ltd. have confirmed that they are the only landowners affected by the proposals; therefore, no compensation costs or expenses are envisaged.

Options Considered

21. If it is considered that the Order does not meet the legal tests as set out under Section 119 of the Highways Act 1980, Members may decide not to confirm the Order in which case the Order should be withdrawn. Alternatively, Members may decide to submit the Order to the Secretary of State for determination, with a recommendation that it be confirmed without modification.

Reasons for Recommendation

22. Officers consider that the Diversion Order meets the legal tests as set out under Section 119 of the Highways Act 1980.

Recommendation

23. That the Order be forwarded to the Secretary of State for determination, with a recommendation from Wiltshire County Council that the Order be confirmed without modification.

GEORGE BATTEN

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

None