

**AMESBURY: BRIDLEWAY NO. 11 -  
OBJECTIONS TO MODIFICATION ORDER**

**Purpose of Report**

1. To consider and comment on objections received to the making of an Order under Section 53 of the Wildlife and Countryside Act 1981, providing for the upgrading of Amesbury bridleway No. 11 to byway open to all traffic.

**Background**

2. An application for a Modification Order was received by the County Council from Amesbury Town Council dated 13<sup>th</sup> November 1987 based on documentary evidence to show the existence of vehicular rights.
3. This path had been previously reclassified as byway by the County Council at the Second and Special Review. The re-classification was agreed by the Secretary of State for the Environment in 1976, but this decision was quashed by a technicality by the Appeal Court in October 1980.
4. An Inquiry in June 1982 found that the path should be classified as a byway. The Secretary of State accepted the Inspector's findings of fact, but dismissed the evidence on the grounds that new evidence was not admissible at the Second and Special Review. Nevertheless he stated that such evidence would fall to be considered at the next Review, but this did not take place.
5. Bridleway No.11 Amesbury and Byway No.2 Wilsford-cum-Lake are one path and are only designated separately because they are in different Parishes. The two sections of the same path should not be given a different status when evidence has been discovered to show that vehicular rights exist on Amesbury 11.
6. Amesbury 11 falls within the Stonehenge World Heritage Site (WHS). As Members are aware, improvements are proposed for the A303 and the restoration of the landscape. The Committee will be considering a separate report on recent developments regarding the A303. That report seeks approval for the publication of Traffic Regulation Orders prohibiting motorised vehicular traffic on the A344 and on byways within the WHS on completion of the road scheme. It is in the interest of all those involved in the Management Plan for the WHS, the Highway Authorities and the public, that the status of Amesbury 11 is resolved without undue delay.
7. A site plan is attached at **Appendix 1** indicating the modification route.

## **Main Considerations for the Council**

8. To comment on the objections and representations made to the making of the Order.

9. Objections and representations have been received as set out below:-

(i) **Howard Smith, Chartered Valuation Surveyor on behalf of his client Mr. I. Sandell of Pikes Cottage, West Amesbury**

- Upgrading to byway open to all traffic is in direct opposition to the aims and objectives of the Avebury and Stonehenge WHS, encouraging vehicular movements in a restricted area.
- The Modification Order will have an impact upon archaeology and jeopardise the aims and objectives of projects promoted by DEFRA, English Heritage and the National Trust to help improve the natural diversity and the beauty of the landscape.
- Mr Sandell runs a large commercial suckler herd of about 180 cows and his livestock enterprise will be jeopardised by the Modification Order as the livestock being grazed to the east of the path will be frightened by late night traffic and noise from users of the proposed byway open to all traffic.
- The Modification Order seeks to extend the width of the path from 6.09 metres to 9.14 metres, which will affect the land of which he is tenant if additional land is required to sustain this new width. There is no justification for the increase in width stated and attracting vehicles could cause damage to areas that should be protected by the WHS designation.

(ii) **Isabelle Bedu, Stonehenge World Heritage Site Co-ordinator, English Heritage, Amesbury**

- Impact upon policies agreed in the Stonehenge WHS Management Plan for conservation, enhancement and sustainable use of the World Heritage Site. The County Council has agreed and endorsed the WHS Management Plan.
- The re-classification of the bridleway Amesbury 11 to byway open to all traffic is contrary to the objective of the WHS Management Plan Objective 23 to remove motorised traffic which states that “Measures should be identified ... to reduce traffic movements”. Section 4.6.4 (part 4, page 19) recommends consideration of “measures for controlling access by motorised/vehicular traffic on byways within the WHS, except for essential maintenance, emergency services and farm access (such as through downgrading byways to bridleways)”.
- Even if the County Council intends to restrict traffic by the use of a Traffic Regulation Order, there is still the risk of opening up the byway to motorised traffic at a future date is higher than if it remains a bridleway.

(iii) **Mr P Robinson of Burges Salmon on behalf of his clients The National Trust, Bishopstrow**

- Not accepted that sufficient evidence of vehicular rights exists, either user or documentary.
- Location of national importance, the legal test applied must therefore be entirely met, with justification.

(iv) **Mr. G. Leech, Wilsford cum Lake Parish Meeting**

- Not accepted that there is sufficient evidence to substantiate the modification
- The route is in the centre of the WHS and it is immediately adjacent to Stonehenge. It is therefore regarded as extremely important that the proposal to upgrade Amesbury 11 is considered in the context of the plans for the future of the WHS as a whole.

10. **Mr B Riley, Trail Riders Fellowship**, has written in support of the application:

- The correction of this long standing anomaly is most welcome, especially in view of the impending improvements to the A303 which would complicate matters even further if this anomaly is not resolved.
- Some of the evidence has not been considered before and this new evidence would support the Order and the Trail Riders Fellowship agrees and supports the Order.
- The Trail Riders Fellowship will support the Order with evidence both historical and user.

11. **Mrs N Weatherill, Wiltshire Bridleways Association**, is supporting the order:

- The documentary evidence for vehicular rights is very strong and exceptional in some ways.
- Improved access for carriage drivers.
- The Order is desirable and correct.

12. Copies of these letters will be available for inspection in the **Members' Room** prior to the meeting.

**Legal Implications**

13. The main considerations for members are those set out in the following paragraphs. Members must consider the issue on these grounds alone in order to avoid serious and costly legal implications.

14. Section 53 of the Wildlife and Countryside Act 1981 places a duty upon the County Council to keep the Definitive Map and Statement under continuous review.

Section 53(2)(b) states:-

*“As regards every Definitive Map and Statement, the Surveying Authority shall:-*

*(b) As from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event”.*

15. The events referred to in Section 53(2)(b) which are relevant to this case are as follows:-

*“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-*

*(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.”*

16. If Members are satisfied that the available evidence is sufficient to enable it to be reasonably alleged that vehicular rights exist on the path, but will be more suitable for use by walkers and horseriders, an Order should be made under Section 53 of the Wildlife and Countryside Act 1981.

17. Section 32 of the Highways Act 1980 states:-

*“A court or other tribunal, before determining whether a way has been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give such weight thereto as the court or tribunal considered justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced”.*

18. In the case of R v Secretary of State for the Environment, Transport and the Regions ex parte Masters (2000), the Court of Appeal considered the definition of “byway open to all traffic” in Section 66 of the Wildlife and Countryside Act and Dyson J’s interpretation of the Nettlecombe case.

19. The Court of Appeal's view was that Parliament’s intention was to preserve rights of way to give access to the countryside for walkers and horseriders. Parliament also intended to include ways over which the public had vehicular rights, even if the rights were rarely, if ever, exercised by the public. The definition of “byway” is referring to a type of highway. It does not seek to limit byways open to all traffic to those which are currently and actually used. It would cover, for example, public carriage roads that have fallen into disuse but whose character makes them more likely to be used by walkers and horseriders than by vehicles.

20. Lord Justice Roch upheld the judgement of Hooper J and stated:-

*“Parliament did not intend that highways over which the public have rights for vehicular and other kinds of traffic should be omitted from definitive maps and statements because they had fallen into disuse if their character made them more likely to be used by walkers and horseriders than vehicular traffic because they were more suitable for use by walkers and horseriders than by vehicles. Indeed, where such ways were previously shown in the maps and statements as roads used as public paths, Parliament made it obligatory that they continue to be shown on maps and statements when these were reviewed after 28<sup>th</sup> February 1983”.*

21. The decision has now clarified the “user test” to be applied. A Modification Order adding a byway open to all traffic will be appropriate where historical evidence of vehicular use exists, but recent public use was exclusively by walkers and horseriders or both or such use exceeded all other public use. The test for a carriageway to be a byway open to all traffic relates to its character or type and in particular whether it is more suitable for use by walkers and horseriders than vehicles.

### **Comments on the Objections**

22. The legal issues are set out in paragraphs 13 - 20. The County Council, as Surveying Authority, has a legal duty to record all public rights of way on the Definitive Map and Statement. The Council must look at all the evidence available and decide on the balance of probabilities what rights of passage the public have over the highway. The Council is entitled to take into account the historical evidence.
23. The objections cited, other than that based on insufficient evidence, are irrelevant to the test determining what public rights exist. These concerns can however be addressed if the Order is confirmed and a problem arises through management measures such as a Traffic Regulation Order.
24. Orders that have objections must be determined by the Planning Inspectorate. Once received, the Inspectorate will assess the objections and those deemed to be legally irrelevant receive a very forceful letter advising the objector of the irrelevance of their particular objection. Objectors are asked to withdraw their objection or reconsider or risk the possibility of costs being awarded against them. A copy of this standard letter will be available for inspection in the **Members' Room** prior to the meeting.

### **Environmental Impact of the Proposal**

25. Objectors have not raised environmental concerns, but have questioned the impact upon the WHS and its archaeology, both above and below ground.
26. If Amesbury Bridleway 11 is upgraded to a byway open to all traffic, officers can monitor its use and, with advice from experts, make regular assessments of any damage. Appropriate action can then be taken through the use of a Traffic Regulation Order to relieve any problems which might arise.

### **Risk Assessment**

27. There is a potential conflict which could arise between the different categories of user. Use of the right of way can be monitored and the Council has the requisite powers to manage the public rights. If conflict between the different user types does arise there is a risk of third party claims. However, this cannot be taken into consideration in the decision to make the Order. Members must make the decision on the evidence.

### **Financial Implications**

28. If the bridleway is upgraded to byway open to all traffic and management of the exercise of public vehicular rights is required, financial provision has been allocated in a specific budget.

### **Options Considered**

29. Members are asked to consider the objections received and decide whether or not the Order should be confirmed. If members resolve that the objections are duly made and should be accepted, the Order must be submitted to the Secretary of State for determination. The County Council cannot rule the objections irrelevant. The objections do not appear to overturn the evidence of public vehicular rights.

### **Reasons for Recommendation**

30. To clarify the status of public rights of way by following the statutory procedures relating to Orders made under Section 53(2) of the Wildlife and Countryside Act 1981.

### **Recommendation**

31. That:-
- (i) The Order upgrading Amesbury bridleway No. 11 to a byway open to all traffic be submitted to the Secretary of State with the recommendation that it be confirmed without modification.
  - (ii) Should the Order be confirmed, officers be requested to monitor the use and condition of the byway open to all traffic with a view to taking appropriate measures to deal with any issues which might arise.

**GEORGE BATTEN**  
Director of Environmental Services

Report Author  
**JANICE GREEN**  
Rights of Way Assistant

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

Correspondence with objectors.