

HIGHWAYS ACT 1980 S.119 and s.26

**PROPOSED DIVERSION OF NORTON BAVANT 4 (PART) WITH
EXTENSION OF NORTON BAVANT 10 at SCRATCHBURY HILL**

1.0 Purpose of Report

(i) To consider an application to divert part of bridleway Norton Bavant 4 and create an extension to footpath Norton Bavant 10 at Scratchbury Hill.

(ii) To recommend that Wiltshire Council makes orders under s.119 of the Highways Act 1980 (HA80), s.26 of the Highways Act 1980 and s.53 of the Wildlife and Countryside Act 1981 (WCA81) to effect this change.

2.0 Background

- 1 On the 20th May 2015 Wiltshire Council received an application from Defence Infrastructure Organisation (DIO) (acting for the landowner, the Ministry of Defence) to alter the rights of way network at Scratchbury Hill, Norton Bavant.
- 2 The alterations are part of a larger package of alterations which will ultimately lead to the Imber Range Perimeter Path being available for horse riders and cyclists and more accessible for users on foot and with mobility aids. The aim is to provide a 34 mile circular route of at least bridleway status around the Imber Range (from which all public rights have been extinguished).
- 3 The majority of the route is now available for public use, predominantly as byway open to all traffic and bridleway but in some parts as a permissive bridleway. If the diversion that is the subject of this application is achieved the circular route would be complete.
- 4 The applicant gives the following reasons for the application:
 - *The existing definitive line of Norton Bavant bridleway 4 crosses agricultural holdings. The new route utilises field boundary and reduces conflict between agricultural management and recreation.*
 - *The existing definitive line of Norton Bavant bridleway 4 passes steep sections of hillside, one of which is cross camber. This creates a difficult and dangerous riding experience. The proposed route utilises a gentler gradient and forgoes the need to travel cross camber on a steep hillside. The*

proposed diversion is therefore a safer and more user friendly bridleway, likely to be available to more users.

- *The diversion of Norton Bavant bridleway 4 reduces the number of gates a user must pass through from four to one.*
- *The diversion of Norton Bavant bridleway 4 takes it further from sensitive areas of Scratchbury Hill, reducing the potential impacts on the historic monument from horse riding and cycling. Norton Bavant footpath 10 will remain, continuing to provide public access on foot.*
- *The diversion of Norton Bavant footpath 10 is necessary to ensure the public right of way links with the diverted public bridleway.*
- *The diversion of Norton Bavant footpath 10 adopts a natural desire line for those walking across Scratchbury. In addition to providing a more natural means of passing from the hill fort to Cotley, or vice versa, the proposed line of the footpath sits more easily into the agricultural management of the field.*
- *The overall proposal links with wider project to improve the Imber Perimeter Path, making the whole route accessible to horse riders.*

5 The land is farmed by Mr Andy Elliot of North Farm, Warminster who is in agreement with the application and has already performed facilitating works for the proposed new route.

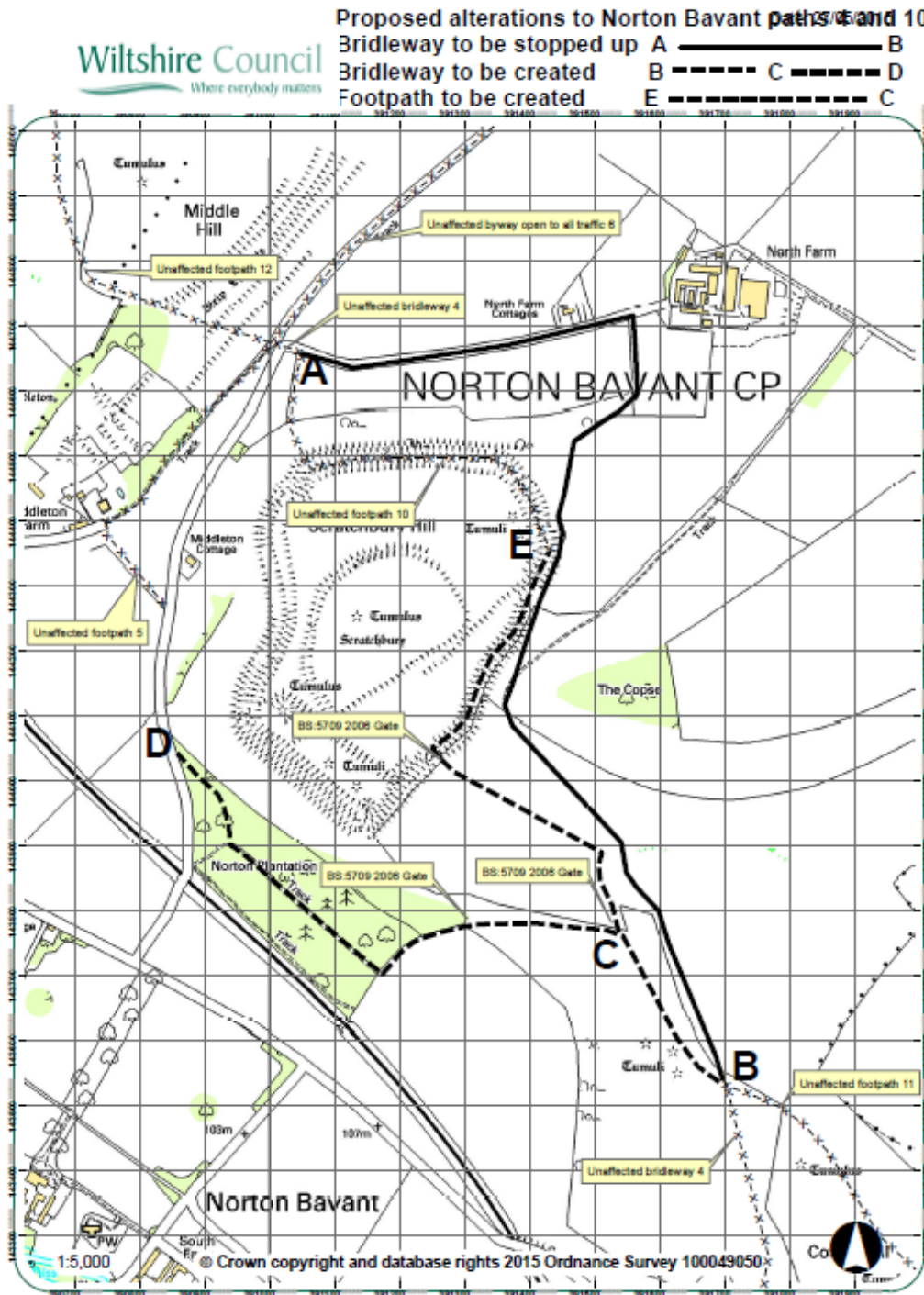
6 The existing bridleway number 4 (starting from point A on the map shown below) follows a tarmacadamed private road (accesses North Farm and a recycling waste storage facility) for approximately 550 metres before turning due south across a field before going through a gate to enter the enclosed area of Scratchbury Hill Fort. The sides of the hill fort are very steep and it is not possible to follow the definitive line next to the fence as the ramparts are very steep at this point, users here tend to traverse the cross fall to climb the ramparts. The route then meets footpath Norton Bavant 10 (which follows a route along the top of the ramparts) at point E where it leads through a gate, across a very steep cross fall to a track where through another gate to cross an arable field. The route then enters another field through a gateway (point B) and descends a wide grass track towards Heytesbury. This wider section towards Heytesbury is unaffected by the application.

7 The proposed new route leaves the tarmacadamed road at a point further south (on a section that is recorded as an unclassified road in the Council's Highway Record) leading along a track through woodland before turning north east along a track besides an arable field. The route then leads through a gate and into the same sheep pasture that Norton Bavant 4 enters on its original line. The proposed new

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route then leads over the sheep pasture to join the unaffected section of Norton Bavant 4 at point B. A gate at C facilitates access to the route from the proposed extension of Norton Bavant 10. See plan below:

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NBAV4 at point A



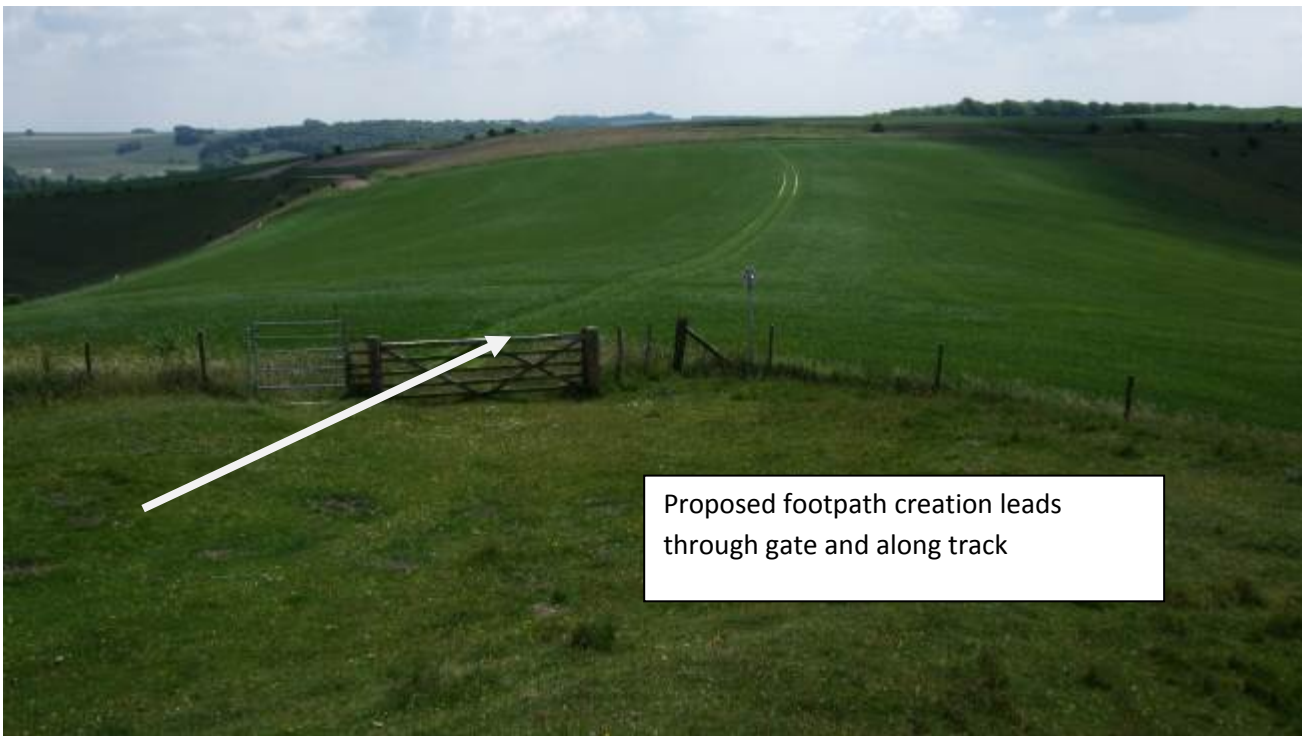
NBAV 4 leads up sides of hill fort

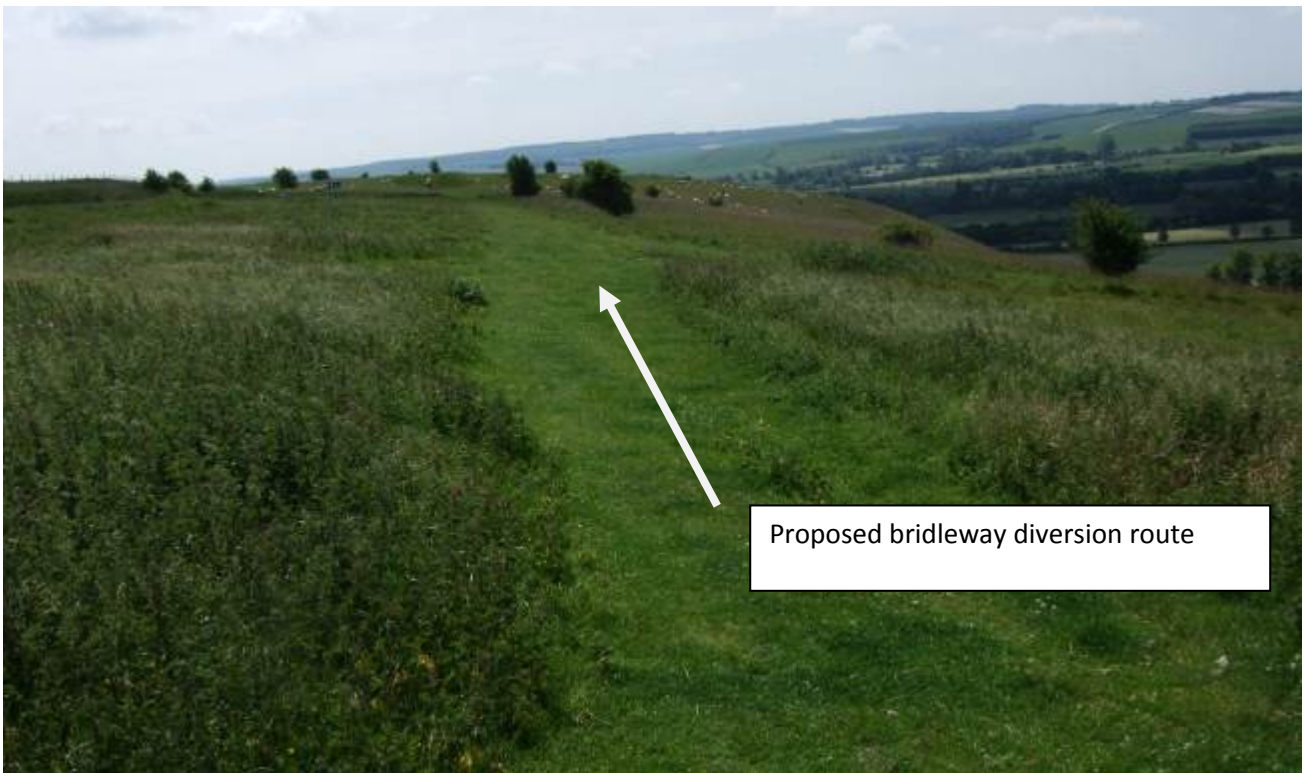


NBAV4 looking north – bridleway follows fence line over drop



NBAV 4 bridleway leads through Wiltshire gate and over drop to gateway beyond







Views from proposed new bridleway



Proposed new bridleway



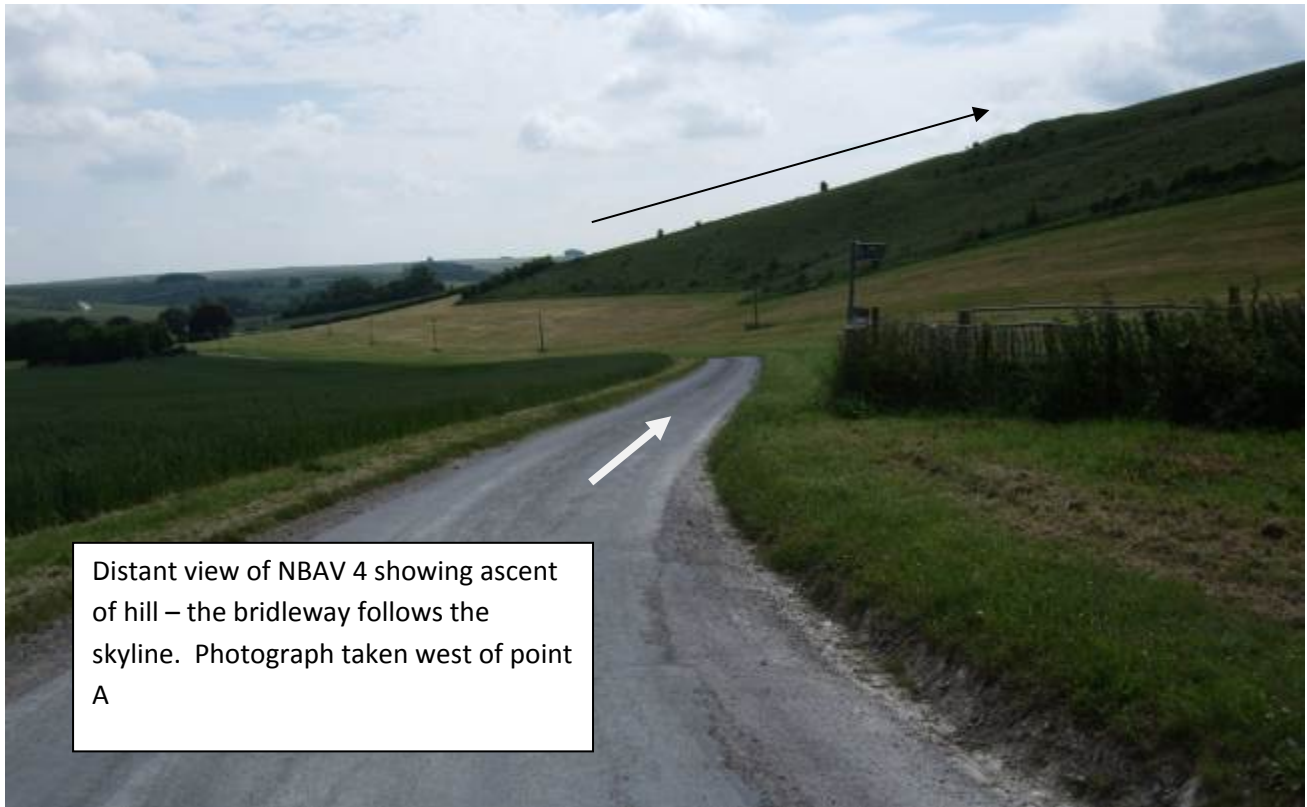




Junction of proposed bridleway with u/c road (point D). Visibility needs to be improved at this point by cutting vegetation back to give a better visibility splay.



A permissive bridleway is currently provided for riders to avoid the road



3.0 Consultation

10 The following letter was circulated on the 28th May 2015:

Highways Act 1980 s.119 and s.26

Proposed alterations to rights of way at Scratchbury Hill, Norton Bavant

Alterations to the rights of way network at Scratchbury Hill, Norton Bavant, BA12 0EN are proposed and your comments are invited. The proposed changes are shown on the attached map and are detailed as follows. The alterations form part of ongoing improvements to access in this area.

- i) The diversion of part of bridleway Norton Bavant 4 from its route to the north of the iron age hill fort to a route south of the hill. The existing route is almost inaccessible to horse riders being very steep in places and has 4 gates along its length whereas the proposed new route is more accessible to all users and only has 1 gate (BS5709:2006) along its length. The new route between points C and B offers extensive views.*
- ii) The creation of an additional length of footpath to footpath Norton Bavant 10 to reflect the walked route around the hill fort and across the field to the south east. The existing definitive map route between points E and B on the plan involves the use of 4 gates whereas the created route involves the use of 2 gates (BS5709:2006).*

If you have any comments to make please could you ensure that I receive them by Friday 3rd July 2015.

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11 The letter and copy of the plan at paragraph 8 were circulated to:

The Auto Cycle Union
Commons, Open Spaces and Footpaths Association
Wiltshire Bridleways Association
Wiltshire Cycling Touring Club
British Horse Society
Norton Bavant Parish Meeting
Wiltshire Councillor Christopher Newbury
Wiltshire British Horse Society
Byways and Bridleways Trust
British Driving Society
Wiltshire Council Rights of Way Senior Warden
Wiltshire Council Ecology Consultations
Wiltshire Ramblers B Micklam
Wiltshire Ramblers T Lewis
Mr B Riley
Natural England
Historic England
Defence Infrastructure Organisation J Nevitt
Defence Infrastructure Organisation K Birnie
Mr A Elliott, North Farm
Wessex Water
Scottish and Southern Electric plc
Wales and West Utilities
Lt Col (retd) N Linge
BT Openreach
LineSearchbeforeUdig
Digdat

4.0 Consultation Responses

12 **Virgin Media 01.05.15**

No apparatus affected.

13 **LineSearchbeforeUdig 01.05.15**

No apparatus affected.

14 **Openreach BT 01.05.15**

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No apparatus affected.

15 **Nigel Linge 27.05.15**

“Thank you for your request for comments on the proposed changes to Norton Bavant 4 and 10. I think that this is a splendid improvement to the network and allows riders and cyclists to avoid the Warminster to Heytesbury road and enjoy the stunning views from the new route. This will also allow the whole of the Imber Path to be elevated to a minimum of bridleway.

I am particularly impressed with the quality of way marking and the way the route avoids using the tarmac unclassified road to North Farm for much of its length.

My only observation is that there will be a small “tail” of Norton Bavant 4 that remains a bridleway, linked to a BOAT that is also a tail. My preference would be to reduce it to a footpath as it would only serve to confuse if left a bridleway. This could be achieved by:

- 1. Stopping up Norton Bavant in its entirety and dedicating a new footpath*
- 2. Changing the status of the tail of Norton Bavant 4 when the remainder is stopped up.*

The other option of extending FP 12 would only serve to complicate things.”

16 **Case Officer’s Comments**

Mr Linge is correct in observing that the current signed and ridden route does avoid the unclassified road, however, the field edge route that permits the public to do this is a permissive route and while it may be aspirational to record this in the definitive map and statement this application does not address this.

Norton Bavant 10 is a relatively short footpath that relies on the bridleway Norton Bavant 4 at either end to enable access. The proposal does leave approximately 30 metres of bridleway spur at point A which could be extinguished and an interlinking section of footpath created by s.26 of the Highways Act 1980. Since this application requires the creation of an additional section of Norton Bavant 10 to meet the legal tests (section E to C) it could be achieved on the same s.26 Order made concurrently with the s.119.

17 **Scottish and Southern Energy 03.06.15**

There is a high voltage electricity supply leading beside part of the length of Norton Bavant 4 where it leads from point A to North Farm. Access to this would need to be retained in the Order.

18 **Historic England 17.06.15**

“Thank you for consulting Historic England on these proposed changes. Prior to submitting the proposals we were approached by Defence Infrastructure Organisation about them, and I reiterate here the advice we provided in April 2015.

The diversion of the bridleway running along the side of the Scratchbury Hillfort Scheduled monument will certainly help to relieve the erosion pressures upon the historic earthworks in this part of the monument. If as a result of the changes any works are required within the area of the Scheduled Monument (whether to repair erosion or to install signs, gates, fences etc) then those responsible for undertaking the works will need to obtain prior Scheduled Monument Consent (SMC) before proceeding, under the terms of the Ancient Monuments & Archaeological Area Act 1979.

I hope this simple advice is clear, but please don't hesitate to contact me if you require any further advice in relation to this proposal.”

19 **Brian Micklam, Wiltshire Ramblers 11.07.15**

This is the relevant part of my reply to Nigel this morning that I have also copied to you. It was the last part of that message, but because it was rather long and involved I have re-sent this part of it to you. Since we are further on the consultation procedure with this part of Nigel's project, I thought I would ask you specifically to insert it into the Consultation as an objection.

quote

RoW Dept letter SM/2015/11/NBAV4 & 10 proposed Alterations to RoW at Scratchbury Hill, Norton Bavant dated 28 May 2015

Referring to Sally's letter, unfortunately I have missed her requested 'Reply By' date of 3rd July due to my intervening holidays and, indeed, our morning out with you was only two days before it. I am sending this to her in the hope that it can still catch up with the consultation procedures.

We have no problem with the proposals to designate bridleways and footpaths along B,C, to D, or from C to D, on Sally's Plan. Far from it, these are excellent suggestions.

However, I do query the necessity to stop up Bridleway A to B, the northern section of NBAV4. Maybe this section is of no use to people on horses but probably it can be used by walkers. I haven't inspected it but will walk it within the next couple of weeks. It almost certainly has completely different characteristics to proposed bridleway B to C, and footpath C to D, and would count as a loss to the community. We cannot see the point in stopping it up. That would just reduce the possibilities available to walkers generally. We object to A to B being stopped up.

Unquote

20 **Brian Micklam, Wiltshire Ramblers 14.07.15**

“I did walk all the proposed bridleways and paths today with a friend, Bob Lewis. I realised that I have walked the line B – C – E – A previously some years ago and the line used at that time was virtually the same as the line proposed by you now. I remember the frustration of trying to find the line B to E via the old bridlepath before we finally ended up using the the new one, B – C – E . I have therefore revised my earlier opinion about NBAV4.

However I still think that the two means of getting from E to A should be retained, i.e. NBAV10 as it is and always has been, and the rest of NBAV4 as it leaves the ramparts, goes down to the hedge, through the horse gate and across the field down to the road between North Farm Cottages and North Farm before it turns left to go along the road to A.”

21 **Case Officer’s Comments**

Mr Micklam revised his opinion of the proposed diversion after walking it and it is not difficult to see why, he admits that it was impossible to find ‘some years ago’ and that he ended up using the proposed new route then. The proposed new route offers a much more accessible route with greater access over the monument than the definitive bridleway line which is steep and merely follows a fence line at the edge of the monument.

Notwithstanding this it is noted that the Ramblers would like to see the right of way retained between A and E. This would create a cul-de-sac bridleway over very difficult terrain and would be of no utility. If the way were to be retained as a footpath it is difficult to see what purpose it would have since it offers lesser views than those from the existing Norton Bavant 10, is very difficult to traverse and takes users past two houses at North Farm Cottages before heading along a tarmacadamed road. Since Mr Micklam had found the route impossible to find ‘some years ago’ it can only be assumed that the route received little or no use, users choosing to use the higher route. Certainly the wear on the ground supports that this is so.

The application does not seek to retain footpath rights and even if they were offered it is unlikely that the Council would wish to retain and accordingly maintain such a difficult route of such limited utility.

22 **Norman Beardsley, Wiltshire Bridleways Association Telephone Conversation**

Mr Beardsley had walked the routes and raised no issues other than to comment on the loss of the view for horse riders (walkers have a better view of the same from Norton Bavant 10) over the western slopes of the Imber Range.

23 **Case Officer's Comments**

It is agreed that horse riders do lose a far reaching view of the edges of the Imber Range beyond North Farm. Although this view may be enjoyed by riders continuing south east along the permissive section of the Imber Range Perimeter Path it is lost to riders using only Norton Bavant 4. The diverted section B to C and part on to D affords expansive views of the area west of Scratchbury Hill and has a sense of purpose and direction in heading for the distant mound of Cley Hill, however, the route is on the wrong side of the hill to see any of the Imber Range.

24 This is an important consideration when weighing up the effect of the diversion on the use and enjoyment of the path as a whole. The far greater accessibility offered by the proposed new route does mean that a much greater number of people will be able to use the route (it is known that local horse riders just don't use the existing route as it so steep and difficult to follow) and when weighed against the loss of the view to the few horse riders and cyclists who may have used the existing route officers consider that the greater enjoyment would be with the proposed new route. Additionally the proposed new route has a sense of direction and purpose about it which the existing route fails to have; it has the feeling of a route accommodated as far from the monument as possible and as close to the fence line as it will go. A factor no doubt that was considered when it was originally recorded.

5.0 **Existing Records : Definitive Map and Statement**

25 The routes are recorded in the Warminster and Westbury Rural District Council Area definitive map and statement dated 1953 as follows:

Norton Bavant 4 BRIDLEWAY. From the northern end of road U/C 9052 at its junction with path No.6 leading east towards North Farm then south past Scratchbury Camp and south-east past The Copse and Tumuli to the Southampton - Bath Trunk Road, A.36, opposite the Heytesbury - Mere road, B.3095. [Extensive roadworks have altered the road junction at this end of the path. There is now a large roundabout at the junction of B.3095 with A.36(T).]

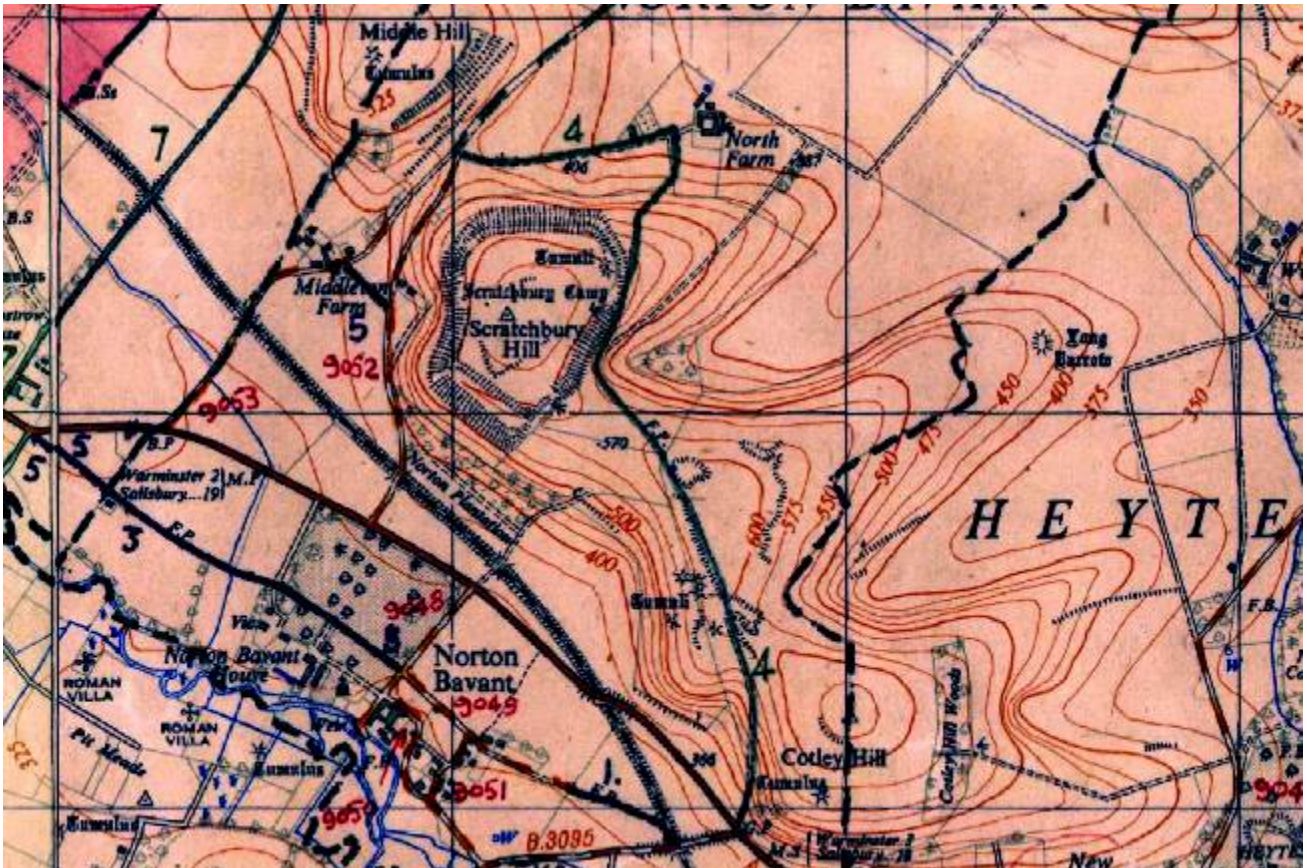
Approximate length 2.4 k.m.

Width 3.5 m.

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FOOTPATH. Part of the Imber Range Perimeter Path. From path No.4 leading south then east and south around Scratchbury Camp, Scratchbury Hill, to its junction with path No.4.

Approximate length 731 m.



The working copy of the definitive map is shown here at paragraph 8.

6.0 Considerations for the Council

26 Wiltshire Council has the power to make orders for the diversion of public paths under s.119 of the Highways Act 1980.

27 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

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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.

28 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”.

29 Although the Council is only required to consider s.119(1) and (2) to make an order it is clear that it is appropriate for it to also consider s.119(6) at the order making stage.

30 In *Hargrave v Stroud DC* [2002] EWCA Civ 1281, Schieman L.J. stated that:

“On the face of the subsection therefore the authority has discretion as to whether or not to make an order. I do not consider that the mere fact that it is expedient in the interests of the owner that the line of the path should be diverted means that Parliament has imposed on the authority a duty to make such an order once it is satisfied that this condition precedent has been fulfilled.”

31 Subsection (6) sets out factors which are to be taken into account at the confirmation stage. However, it has been held that the Authority is entitled to take these factors into account at the order making stage. In *Hargrave v Stroud* (above), Schieman L.J. held that:

“...the authority faced with an application to make a footpath diversion order is at liberty to refuse to do so. In considering what to do the Council is, in my judgment...entitled to take into account the matters set out in s.119(6). It would be ridiculous for the Council to be forced to put under way the whole machinery

necessary to secure a footpath diversion order where it was manifest that at the end of the day the order would not be confirmed.”

- 32 After making an order the Council should also again 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*

- 33 This application requires that a length of footpath is created to allow connectivity between footpath Norton Bavant 10 and Norton Bavant 4 on its new route. This may be achieved by either an agreement made under s.25 of the Highways Act 1980 or an order made under s.26 of the Highways Act 1980.

- 34 There is a need for the s.119 diversion order to be made concurrently with the creation as the two cannot satisfy the legal tests without each other (as independently cul-de-sac highways would be created). This is best achieved by the publication of both a diversion order and a creation order at the same time. In this way the public has certainty that due process is being followed, the process is transparent and can be followed by the public and the maps and Order make better sense. It is a clearer process that will give greater confidence. There is an additional cost associated with making a creation order, this is related to the advertisement of the statutory notices in the Warminster Journal. This is likely to be in the region of an additional £30 per notice giving an overall public notice charge considerably less than any other newspaper charges for just one notice; as a result the cost sits comfortably within the fee charged.

35 **S. 26 Highways Act 1980**

(1) Where it appears to a local authority that there is a need for a footpath, bridleway or restricted byway over land in their area and they are satisfied that, having regard to –

(a) the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area: and

(b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 below,

It is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath bridleway or restricted byway over the land.

(2) relates to powers of the Secretary of State to make orders

(3) A local authority shall, before exercising any power under this section, consult and other local authority or authorities in whose area the land concerned is situated.

(3A) The considerations to which –

(a) the Secretary of state is to have regard in determining whether or not to confirm or make a public path creation order, and

(b) a local authority are to have in regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes the land over which the proposed footpath, bridleway or restricted byway would be created.

(4) A right of way created by a public path creation order may be either unconditional or subject to such limitations or conditions as may be specified in the order.

36 **S.28 Highways Act 1980**

(1) Subject to the following provisions of this section if, on a claim made in accordance with this section, it is shown that the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.

37 The creation of the extra length of footpath is contained within the application to alter the rights of way at Scratchbury hill and is therefore approved by the landowner and tenant. There is therefore no risk of compensation being sought.

38 The Council must have regard to The Equality Act 2010. This act requires (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that a disabled person is not put at a substantial disadvantage in comparison with a person who is not disabled. The Equality Act goes further than just requiring a public authority does not discriminate against a disabled person. Section 149 imposes a duty, known as the “public sector equality duty”, on the public bodies listed in sch. 19 to the Act, to have due regard to three specified matters when exercising their functions.

39 These three matters are:

- Eliminating conduct that is prohibited by the Act
- Advancing equality of opportunity between people who have a disability and people who do not; and
- Fostering good relations between people who have a disability and people who do not.

40 The Equality Act applies to a highway authority’s provision of public rights of way services. (DEFRA Guidance *Authorising structures (gaps, gates and stiles) on rights of way* Oct 2010)

41 The Council must also have regard to the Wiltshire Council Rights of Way Improvement Plan (ROWIP) - the current plan is entitled Wiltshire Countryside Access Improvement Plan 2015 – 2025 – Rights of Way Improvement Plan 2. ROWIP 2 recognises the Council’s duty to have regard to the Equality Act 2010 and to consider the least restrictive option.

42 At 4.1 page 16 the Council recognises that considering the needs of those with mobility impairments is a statutory responsibility:

“..consider the needs of those with mobility impairments when maintaining the network and authorising structures (e.g. stiles and gates) on the rights of way network and seek improvements to existing structures where it would be beneficial (Equality Act 2010).”

43 At 7.4 page 32 the Council recognises the following:

“The requirements for improving accessibility for people with these sorts of disability are generally the same as discussed in conclusion 5.”

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Conclusion 5 states:

“If older people are to keep active and therefore healthy, they will need a more accessible network as they are more likely to find stiles (and sometimes surfacing and latches) difficult than other people. This highlights the need to replace stiles with gaps or gates on key routes, which can also benefit wheelchair users and parents with buggies and children.”

- 44 At 2-5 page 38 the Council recognises opportunities for improving access:
- Make routes more accessible, undertake surface improvements and improve maintenance
 - Work within the framework of Wiltshire Council’s Gaps, Gates and Stiles Policy
 - Encourage landowners to follow best practice for furniture design as set out in the above mentioned policy
 - Work in partnership to promote and create accessible trails
 - Improve surfacing to byways open to all traffic where there is a demand for those with mobility impairments to be able to access remote locations

- 45 ROWIP 2 refers to the Council’s Gaps, Gates and Stiles Policy. This is Policy number 7 and is appended to ROWIP2.

The Policy recognises that the authority must consider the needs of those with mobility impairments when managing rights of way and access and that this requirement particularly applies when authorising structures (e.g. stiles and gates) on rights of way and seeking improvements to existing structures to make access easier.

- 46 Wiltshire Council relies on DEFRA (2010) Good Practice Guidance for Local Authorities on Compliance with the Equality Act 2010 version 1 and recognises at 7.2.1 that:

A highway authority has a duty, under the Highways Act 1980, to assert and protect the rights of the public to use and enjoy a highway. The Equality Act 2010 adds a further dimension by requiring (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from those functions as others would do or to show that there are good reasons for not doing so.

- 47 Where a route is being diverted Wiltshire Council will specify a level of accommodation works that must be met before the new route is accepted by the Council and any Order made comes into force.
- 48 The Council must also have regard to the needs of agriculture, forestry and the conservation of biodiversity.
- 49 The Council is also empowered to make a 'combined order' under s.53(2)A of the Wildlife and Countryside Act 1981. The effect of this means that on the confirmation of the order the definitive map and statement may be changed without the further need to make an order under s.53(3)(a)(i) of the 1981 Act (also known as a 'legal event order' or an 'unadvertised order').

7.0 Comments on the Considerations

- 50 S.119(1) HA80 says that Council may make an order to divert a path if it is satisfied it is in the interest of the landowner and/or the public to do so. The landowner's interest is demonstrated by the making of the application itself and there are clear benefits to agriculture as a result of the loss of the need to spray out the crop where it leads across arable fields on the line A to B. There are also clear benefits for members of the public as the definitive line is steep in places and has a number of gates along it. Additionally there is a benefit to Historic England (and hence public funds) in that the diversion would reduce the erosion pressures on the monument. S.119 (1) is therefore satisfied.
- 51 S.119(2) HA80 says that the Council shall not alter the termination point to one that is not on a highway or to one that is not substantially as convenient to the public. The proposed new termination point for Norton Bavant 4 is a point on the same highway (the u/c 9052 road) 650 metres further south. This means that any user coming from the south has less of the u/c 9052 to travel along but any user coming from the north has more to travel along. The u/c 9052 is generally a quiet route serving a couple of houses before leading east as a private road to become a dead end at a farm and a recycling storage yard. Additionally the area is criss crossed with other rights of way and the new bridleway NBAV 4 gives walkers using NBAV 5 the opportunity to walk on less of the u/c 9052 than if they chose to use the definitive line. Officers consider that either termination point is as convenient as the other and that S.119(2) is therefore satisfied.
- 52 The Council could therefore proceed to make an order under S.119 to divert the highway. However, as detailed at paras 30 to 32 it is also appropriate to consider S.119(6) at this stage.
- 53 S.119(6) says that the new path must not be substantially less convenient to the public. The new path is much easier to use as the gradients are more gentle and the
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route has less gates along it. It is not considered to be substantially less convenient and is considered to be more convenient. The existing route is 2000 metres long and the proposed diversion is 1200 metres long.

- 54 The Council must also have regard to the effect on the public enjoyment of the path as a whole. The current route of NBAV 4, even if a horse rider or cyclist could find it (the respondent, Mr Micklam, for the Ramblers had failed to find it) is unlikely to be described as enjoyable, even if passable. Traversing the steep slopes of the hill fort with a horse or cycle is not for the faint hearted and it is likely that many people simply don't use the route because of its accessibility problems. As a result it is considered that the diversion offers a much more accessible, safer route. This can only be more enjoyable.
- 55 It is considered that s.119(6) is therefore satisfied and that any order so made would be capable of being confirmed subject to the creation of the linking footpath NBAV10. This route reflects a more usable route that it seems people looking for NBAV 4 end up using anyway.
- 56 The Council must also consider the effect on the land served by the existing path. The tenant farmer has approved the proposed diversion and will benefit from not having to clear crops in arable fields. There is a line of SSE electricity poles to the east of the bridleway where it leads towards North Farm. These poles do not appear to be on the highway (or its wastes) but access to the equipment will be put into the order as a precaution.
- 57 The Council must also consider the effect on the land served by the new route. The tenant farmer and the land owner are in agreement with the diversion.
- 58 The Council must also consider the effect on agriculture, forestry and diversity of fauna and flora. Part of the definitive line leads over ground that is designated SSSI and part of the new route also leads over SSSI designated land. Natural England have been consulted and do not object to the change in route. Additionally Historic England welcome the removal of the right of way from the hill fort (pedestrian access is retained via NBAV10).

8.0 Environmental Impact of the Recommendation

- 59 There is no environmental impact associated with the recommendation.

9.0 Risk Assessment of the Recommendation

- 60 Risks to the Council are covered at 9.0 Legal and Financial Implications. Risks to the public associated with the recommendation are considered to be nil, in fact the new route is likely to be present a lower risk to users.

10.0 Legal and Financial Implications

- 61 Actual costs associated with making an order will be paid.
- 62 If significant objection is received the Council may abandon the Order at no further cost to either the applicant or the Council.
- 63 If the Council refuses to make the order the applicant may seek judicial review against the Council's decision and may succeed if the Council has been unreasonable. Costs can be high for this (c.£50000).
- 64 If the Council makes the order and objections or representations are made the Council will consider the matter at a meeting of the Area Planning Committee. That Committee may decide to abandon the order or may decide to support its confirmation. If the Council supports the Order it will be forwarded to the Secretary of State to determine and the Council will pay costs relating to this. This may be negligible if the case is determined by written representations (a few hours of officer time), around £200 to £500 if determined at a local hearing or between £1000 and £2500 if determined at a public inquiry.

11.0 Equality Impact

- 65 The new route is more accessible than the definitive line.

12.0 Relevance to Council's Business Plan

- 66 Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

13.0 Safeguarding Considerations

- 67 DEFRA's "Rights of Way Circular (1/09) Guidance for Local Authorities" Version 2, October 2009, states at paragraph 5.5:

"The statutory provisions for creating, diverting and extinguishing public rights of way in the 1980 Act have been framed to protect both the public's rights and the interests of the owners and occupiers. They also protect the interests of bodies such as statutory undertakers. The requirements for making, confirming and publicising orders are set out in Schedule 6 to the 1980 Act."

68 If orders to divert and create rights of way at Norton Bavant are made, Wiltshire Council will follow procedures set out in Schedule 6 of the 1980 Act and in doing so the Council will fulfil its safeguarding responsibilities.

14.0 Public Health Implications

69 No public health implications have been identified in the diversion and creation of Norton Bavant paths 4 and 10.

15.0 Options to Consider

- 70 i) To refuse the application
- ii) To allow the application and make orders under s.119 and s.26 HA80 and s.53A(2) WCA81.

16.0 Reasons for Recommendation

71 S.119(1) and (2) are met by the application and an order may be made.

72 S.119(6) is also met if no objections or representations are received and the order may be confirmed by Wiltshire Council if this is the case.

73 It is necessary to make an Order under s.26 to ensure connectivity of the network.

74 There is no cost to the Council associated with paras 67, 68 and 69.

75 The receipt of objections or representations that are not withdrawn will cause Wiltshire Council to reconsider S.119(6) HA80 at a meeting of the Area Planning Committee giving a second chance for the consideration of Section 6.

17.0 Recommendation

76 **That an Order under S.119 of the Highways Act 1980, S.26 of Highways Act 1980 and S.53A(2) of the Wildlife and Countryside Act 1981 is made in accordance with the application and duly advertised. If no representations or objections are made (or any made are subsequently withdrawn) the Orders should be confirmed and the definitive map and statement altered accordingly.**

Sally Madgwick
Rights of Way Officer
21 July 2015

The Diversion of Norton Bavant 4 and 10 (part)