

CABINET MEMBER FOR HIGHWAYS AND TRANSPORT – CLLR. PHILIP WHITEHEAD

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REFERENCE: HT-21-16

PROPOSED APPLICATION TO DIVERT PARTS OF BYWAY 29, DURRINGTON

Purpose of Report

- 1 To ask the Cabinet Member to consider whether the Council should apply to the magistrates' court for orders diverting Durrington Byway 29 on the grounds that the diverted routes would be nearer or more commodious to the public.

Relevance to the Council's Business Plan

- 2 Working with the local community to provide a rights of way network fit for purpose.

Main Considerations for the Council

- 3 Case law has clarified that in deciding whether to make an application, the Highway Authority has to consider all the factors which would be relevant to the consideration by a Magistrates' Court of whether an order should be made. In the case of a proposed application for a diversion of a highway, the new route must be 'nearer or more commodious'. "Commodious" has a flavour of convenience, roominess and spaciousness'.
- 4 The central question to be addressed is whether the highway concerned can be diverted to make it either nearer or more commodious to the public. If the answer is that it can, the authority should consider whether there are reasons why an application should not be made.

Background

5. The byway runs over land owned by the Ministry of Defence and the proposed application is a part of the Army Basing Programme. If the application is made and the byway diverted, it will help to facilitate the building of new homes for army personnel and a school for their children.
6. It is considered that the public would benefit from the proposed diversions to the rights of way network. Officers consider that the diversions would make the byway nearer or more commodious to the public.

Anyone travelling from west to east on Durrington 29 to join Durrington 31 would find the new route C to D both nearer and more commodious. It is shorter (by 98 metres, i.e. 28 + 70) and has better views over Salisbury Plain than a more prominent view of the golf club car park. The same applies when travelling over the same route, but in the opposite direction. The diverted byway would sit to the south of the proposed new housing estate

following a newly-created estate road, as per the blue pecked lines on the annotated plan. This will also free up the plot to the south of 29 and west of 31 to enable the proposed new school to be built.

7. Anyone travelling from the south on Durrington 29 with the aim of staying on Durrington 29 would find their journey longer by 42 metres. However, Durrington 29 as it leads around the perimeter of the camp requires a journey of 4150 metres to be travelled. An extra 42 metres is considered to be negligible when using these long routes on Salisbury Plain. Under this proposal, visibility is likely to be better and therefore safer at junction D than at E when leading north; as the angle of the junction is less acute. Diverting the line of A to B would reflect the reality on site, as the public already use this metalled track. It offers an easier and better-drained route than the northern A to B route which runs across rough ground.
8. The new route C to D will need to be created at a width of 6 metres to be made up of 4 metres of metalling and 2 metres of verge.
9. Under Section 116 of the Highways Act 1980, Magistrates' Courts have a power to authorise the stopping up or diversion of a highway, as follows:

(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 or a special road) as respects which the highway authority have made an application under this 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.

[sub-section 2 has been repealed]

(3) 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

(aa) if the highway is in Wales, the Welsh council for the area in which it is situated if they are not the highway authority for it; 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

(c) if the highway is in Wales, the council (if any) of the community in which the highway is situated;

and the application shall not be made if within two months of 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 the application.

(4) 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, bridleway or restricted byway.

(5) An application under this section may include two or more highways which are connected with each other.

10. Officers are satisfied that the proposed diversions as shown on the plan at **Appendix 1** would, on balance, be nearer or more commodious to the public than the present route and are therefore willing, subject to the Cabinet Member's consent, to make the proposed application.
11. Durrington Town Council and the landowner, the Ministry of Defence, have consented to the proposed application. A copy of each of the respective consents dated 13 April and 12 February 2016 is attached at **Appendix 2**.

Safeguarding Considerations

12. There are no relevant safeguarding considerations.

Public Health Implications

13. There are no relevant public health implications.

Environmental Impact of the Proposals

14. There is no negative environmental impact to the proposals, as all diversions are onto existing tracks.

Equalities Impact of the Proposals

15. The proposed diversions will make the network more accessible for all users including those who rely on using mechanically propelled vehicles to access the countryside for reasons of mobility or other impairment.

Risk Assessment

16. There is no risk to the Council in applying for these diversions. The diversion of rights of way onto well drained and identifiable tracks is likely to present a lesser risk to users and the proposed improvement to the crossing of the B390 is also likely to present a lesser risk to users of the right of way and the B390.

Financial Implications

17. The MoD has agreed to pay the legal costs of the application and the costs of bringing the proposed diverted sections of highway up to the standard of a byway open to all traffic.

Legal Implications

18. The application for a diversion under s.116 of the Highways Act is a power of, and not a duty for, the Council.
19. If the Magistrates are minded not to make the Order, Wiltshire Council will continue to have a legal responsibility for the maintenance and signage of the existing rights of way.
20. If the application is made and granted, the magistrates will be asked to make the order subject to the condition that it will not take effect until the proposed diverted sections of highway have been constructed to the standard of a byway open to all traffic. Once the Rights of Way Warden is satisfied that this has happened, the court will be asked to issue a justices' certificate bringing the order into effect.

Options Considered

21. The Cabinet Member for Highways and Transport may resolve to:
- (i) Refuse to give consent to the application in which event, reasons should be given for doing so.
 - (ii) Consent to the application.

Reason for Proposal

22. Officers are satisfied that the sections of highway can be diverted so as to make them nearer or more commodious to the public.

Proposal

23. It is proposed that the Cabinet Member adopt the option at 21(ii) above. If the proposal is accepted the consent form attached at Appendix 3 should be completed and returned to Legal Services.

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

None.