

GLEAM



Green Lanes Environmental Action Movement
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Patron: HRH The Duke of Edinburgh, KG, KT

Examination of the application by Highways England for an Order granting Development Consent for the A303 Amesbury to Berwick Down (TR010025)

Written representation by GLEAM, 3 May 2019

Summary

1. The Green Lanes Environmental Action Movement (GLEAM) seeks to stop recreational motor vehicles using unsealed public rights of way, because of the problems such use causes for non-motorised users, for land managers, and for the environment – including the ancient built environment. We therefore support the provision of new restricted byways in the draft Development Consent Order, which will expand the public rights of way network in the area for non-motorised users. We argue that the law and planning guidance prevent the provision of a new byway open to all traffic (BOAT) link between BOATs AMES 11 and 12, and that this would not be appropriate development in the World Heritage Site (WHS). A new BOAT link would also have an adverse effect on non-motorised users of the new restricted byway. We would like to see recreational motor vehicles prohibited from using AMES 11 and 12 but acknowledge that Highways England says such a prohibition is Wiltshire Council's responsibility. We also question the provision of a new BOAT in Winterbourne Stoke and argue it should be a restricted byway with private motor vehicular rights.

Introduction

2. The Green Lanes Environmental Action Movement (GLEAM) was founded in 1995 to campaign for changes in the law of England and Wales to stop off-road drivers damaging or destroying green lanes, and for the rights of walkers, horse riders, pedal cyclists, carriage drivers and the disabled to use green lanes (highways not sealed with tarmac or concrete) without danger, difficulty or inconvenience. This representation is GLEAM's written representation in response to the Examining Authority's Initial Assessment of Principal Issues (Annex C to the letter of 11 April 2019). It also takes account of the Examining Authority's first Written Questions to other parties, where appropriate.

Data, methodology and assumptions used to support our representation

3. The Trail Riders Fellowship (TRF) has raised issues about law and precedent in its representation, but has ignored changes to the law and national planning guidance which are reflected in the way Highways England has dealt with the issue of providing access for motorised users to public rights of way i.e. new byways open to all traffic (BOATs) in its consultations and application.
4. The change in the law was the Natural Environment and Rural Communities Act (NERCA) in 2006. Sections 66 and 67 of this Act prevent (i) historic rights for horse-drawn vehicles resulting in BOAT status, and (ii) the creation of public rights for mechanically propelled vehicles after commencement (2 May 2006 in England) unless the rights are created by an enactment or instrument (such as a Development Consent Order). NERCA has resulted in some public rights of way becoming dead end BOATs, where public rights for mechanically propelled vehicles have been extinguished over the continuation of the public right of way. Examples of these dead end BOATs exist within 3 kilometres of the A303 scheme; BSJA 10, a BOAT which continues as a restricted byway, STAP 13, and STAP 7, a BOAT which terminates on a restricted byway, STAP 6.
5. During the government's consultation in 2004 on the proposals which became law in NERCA, the Ramblers' Association commissioned a poll from ICM Research Ltd. The results of this poll showed that 79% of people said that recreational 4x4s and trail bikes using rights of way in the countryside meant increased danger for walkers, horse riders and cyclists, and that these vehicles were affecting the environment by introducing noise and pollution into the countryside and damaging habitats. 69% said that encountering recreational 4x4s and trail bikes would spoil their enjoyment of a country walk.
6. This level of government and public support for preventing recreational motor vehicle use of BOATs, because of the effects on the environment and on non-motorised users, is reflected in the planning guidance relevant to this development i.e. the National Policy Statement for National Networks (2014), specifically the sections on the historic environment (paragraphs 5.120 to 5.142) and land use including public rights of way (paragraphs 5.162 to 5.185)

Principal issue – sustainable transport and recreational use

Status of the new public right of way linking AMES 11 and AMES 12

7. The TRF, the Green Lane Association and individuals argue that *“an alternative link should be provided to replace the motorised link between byways AMES 11 and AMES 12 in the light of the existing use by motorised users and the need to comply with s136(1) of the Planning Act 2008”* (Examining Authority's Initial Assessment of Principal Issues. Page C9). We disagree for the following reasons.

8. The effect of NERCA is that a new public right of way for motorised users (i.e a BOAT) to link AMES 11 and 12 can only come into being by express dedication by the landowner and creation by an instrument such as the draft Development Consent Order (dDCO). If the landowner is not willing to dedicate a new public right of way and it is not included in the DCO, it cannot come into being. Subsection 66(1) of NERCA says:

“No public right of way for mechanically-propelled vehicles is created after commencement [2 May 2006 in England] unless it is-
(a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or
(b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.”

9. The landowners and the dDCO are prevented, in our view, from creating a new BOAT to link AMES 11 and 12 by the planning requirements alluded to/mentioned in Highways England’s response to the comments asking for a link (Relevant Representations Report page 14.2) i.e. the requirement to avoid adverse impacts on the Normanton Down barrow group, on the tranquillity of the World Heritage Site (WHS) south of the current A303 and the Scheme objective to remove the sights and sounds of motorised traffic from within the WHS.
10. The use of the current A303 as a link between AMES 11 and 12 is currently limited by an order preventing right turns from the BOATs onto the A303 and from the A303 onto the BOATs. This means that, of the four possible ways of using the A303 as a link between AMES 11 and 12, only one is currently legal (from AMES 11 west to the southern section of AMES 12). This order means that the northern section of AMES 12 is effectively a dead end for any users wanting to use it to access AMES 11. We wonder why the provision of a link between AMES 11 and 12 is so important to recreational motor vehicle users, when they are limited in their use of the current link. We also point out that their recreational use of AMES 11 and the northern and southern sections of AMES 12 will not be affected by the dDCO, albeit these sections will become dead ends for them, but not for non-motorised users (in a similar way to the effects of NERCA on other public rights of way in Wiltshire and elsewhere). We think that section 136 of the Planning Act 2008 does not require the provision of a BOAT link between AMES 11 and 12 for the reasons given by Highways England on page 14.6 of its Relevant Representations Report, i.e. that motorised users will be able to use the ordinary road network to travel between AMES 11 and 12.
11. The National Policy Statement for National Networks says, in paragraph 5.184, that public rights of way are *“important recreational facilities for walkers, cyclists and equestrians”* and that applicants should therefore take mitigation measures to address adverse effects on public rights of way. There is no requirement in this guidance to provide new public rights of way for motorised users nor to mitigate against BOATs becoming dead ends for motorised users. If motorised users were allowed to use the new restricted byway between AMES 11 and 12, by this section being dedicated as a BOAT and included in the dDCO,

then non-motorised users would find this section less attractive and less convenient than the remainder of the new restricted byway. We think that Highways England is not obliged to provide a BOAT between AMES 11 and 12 because the A303 is not a BOAT, it is an all-purpose highway.

12. Including a BOAT link between AMES 11 and 12 in the dDCO would be contrary to paragraphs 5.128-5.142 of the National Policy Statement for National Networks, which require the Secretary of State to avoid or minimise the impacts of the proposal on the WHS.
13. In our initial representation (RR-1742) we argued that Highways England should liaise with Wiltshire Council to stop up or otherwise prohibit recreational motor vehicle use of the BOATs AMES11 and AMES 12 (which passes within 300 metres of Stonehenge). Otherwise, *“the scheme’s objective of fully removing the sight and sound of traffic from the vicinity of Stonehenge”* (page 40 of the consultation booklet) will not be achieved. Prohibiting recreational motor vehicle use of the two BOATs would also avoid adverse impacts on the Normanton Down Barrow Group, which is also part of the WHS. However we note that Highways England has said in the Relevant Representations Report (page 14.7) that changing *“the status of the existing BOATs is beyond the scope of the Scheme and is a matter for Wiltshire Council to consider as the local highway authority.”* We also note that Wiltshire Council is the traffic authority for the BOATs, i.e. has the power to make TROs regulating their use.

Examining Authority’s first Written Questions and requests for information

14. In Questions AL.1.20 and Tr.1.28 (i) the Examining Authority asks Highways England why the previously proposed link between AMES 11 and 12 has been omitted. We have explained above how NERCA requires express dedication of new BOATs by the landowner.
15. In Question HW.1.15 the Examining Authority asks Highways England for a response to the TRF’s concerns about a negative impact on the public rights of way network and implicitly on human health. We comment that the new restricted byways should enhance human health by allowing greater opportunities for non-motorised users to benefit physically and mentally from public rights of way which are free from recreational motor vehicles. Unless and until Wiltshire Council makes TROs on AMES 11 and 12, the TRF will still be able to use these BOATs, because their motor vehicle rights are not extinguished by the dDCO.
16. In Questions HW.1.18 and TR.1.30 the Examining Authority asks Highways England and Wiltshire Council for their response to concern in respect of ongoing disabled access to the WHS. One representor (RR-1731) cites Traffic Regulation Orders (TROs) which he considers have excluded the disabled. We point out that users of powered invalid carriages are exempt from TROs and also from the legislation which makes motor vehicle use of footpaths, bridleways and restricted byways illegal.

17. In Question HW.1.19 the Examining Authority asks Highways England to respond to the concern that recreational motorised and horse and carriage driver rights are being extinguished. We point out above that BOATs are not being extinguished, and restricted byway rights are being created.
18. In Question Tr.1.28 (iii) the Examining Authority asks Highways England to comment on the TRF's view that turning AMES 11 into a cul de sac is unlawful. We argue against the TRF's view above at paragraphs 10-12.
19. In Question Tr.1.29 the Examining Authority asks Highways England what consideration it has given to the conclusions of Inspectors in the inquiries HA61/4/3 and DPI/T3915/11/20 in respect of rights of access for motorised users of the existing BOAT network. We comment that the second of these inquiries was about TROs suspending motor vehicle rights on AMES 11 and 12; it was not about what is being proposed in the dDCO. The first inquiry took place before the NERC Act 2006 limited the creation of new BOATs and the Planning Act 2008 provided for the rules and guidance governing DCOs. These factors mean that Inspectors' conclusions in these earlier inquiries are not binding on Highways England. We also point out that, with regard to the need for TROs on AMES 11 and 12, the factors which led the Inspector in the second inquiry not to recommend TROs no longer apply. He considered that the impact of noise and visual intrusion from motor vehicles on the BOATs was outweighed by traffic on the A303; this consideration will no longer apply when the A303 is diverted. He was also concerned that agricultural vehicles were as likely to damage archaeological features crossed by the BOATs as were recreational vehicles. Farmers have agreed not to use the BOATs to access their fields, so their vehicles will not pose a risk to the archaeology crossed by the BOATs.

Status of the old A303 west of Winterbourne Stoke

20. We agree with Winterbourne Stoke Parish Council that this section of the old A303 should be converted to a restricted byway, "*to allow limited controlled farm access and to restrict potential criminality*" (Relevant Representations Report page 25.2), i.e. that it should become a restricted byway with private rights for motor vehicular use. We do not understand why Highways England has treated this section of redundant A303 in a different way to other sections, but has decided that it should be created as a BOAT. This decision contradicts Highways England's Preliminary Environmental Information Report, which said that new public rights of way would be non-motorised user routes (paragraph 2.2.46) and specifically said that this section of the old A303 would be a non-motorised public right of way with a private means of access (paragraph 2.2.45(a)).

Diana Mallinson, Honorary Secretary, of behalf of GLEAM

3 May 2019