

## A303 Amesbury to Berwick Down

### Proposed development consent order

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#### WRITTEN REPRESENTATIONS ON BEHALF OF THE TRAIL RIDERS' FELLOWSHIP (INCORPORATING COMMENTS ON RELEVANT REPRESENTATIONS AND RESPONSE TO EXAMINING AUTHORITY'S FIRST WRITTEN QUESTIONS)

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#### 1. INTRODUCTION

- 1.1. These Written Representations set out the case for the Trail Riders' Fellowship ("TRF") on the order for development consent ("DCO") sought by Highways England for the construction of a new all-purpose dual carriageway from Amesbury to Berwick Down, and related development. TRF submitted Relevant Representations on 10 January 2019 and pre-application consultation responses to Highways England ("HE") on 23 April 2018 (**Appendix 2**) and 13 August 2018 (**Appendix 3**). These Written Representations expand upon the representations made in those submissions. Appendices containing a number of documents on which TRF relies are enclosed with the Written Representations.
- 1.2. TRF's principal concern is to safeguard its members' long-standing use of Byways Amesbury 11 ("**Byway 11**") and Amesbury 12 ("**Byway 12**") as a meaningful part of the local network of byways open to all traffic ("**BOATs**") and unsealed unclassified public roads. It also raises a separate concern about the extinguishment of use of the A303 for small-capacity vehicles (including invalid carriages), which it submits is unnecessary.
- 1.3. At present, motorised vehicles can use the existing A303. However, following construction of the new tunnelled A303, it is proposed to extinguish use of the road for mechanically propelled vehicles by downgrading it to a restricted byway. This

will mean that Byway 11 will become a dead-end and that Byway 12 will no longer be accessible from the A303 or, via the A303, from Byway 11. The effect of the draft order therefore would be seriously prejudicial to public vehicular users, including TRF members.

1.4. This prejudice was recognised in the proposal originally presented for consultation by Highways England (“HE”). The proposal included a “New Link Between Byway 11 and 12” to the south of the current A303,<sup>1</sup> that while not an improvement would have preserved much of the current utility and enjoyment of the Byways, by retaining Byway 11 as a through route to the south of the World Heritage Site (“WHS”). On that basis TRF did not object to that proposal. It represents a reasonable alternative to keeping the A303 between Byways 11 and 12 open to MPVs. However, HE decided to remove the alternative link from the final proposal. TRF does not understand the justification for that in law, policy or on the merits. Whether an alternative link should be provided between Byways 11 and 12 is correctly recognised by the Examining Authority (“ExA”) as a principal issue.

## 2. TRF

2.1. TRF is a private company limited by guarantee whose registered office is at 218 Strand, London, WC2R 1AT and whose registered number is 05848933.

2.2. TRF was described by Mr Justice Ouseley in 2012 as “*a reputable national body which seeks to preserve the rights of motorcyclists and others to use vehicular green lanes*”.<sup>2</sup> It is a membership organisation, the objects of which are to preserve the full status of vehicular green lanes and the rights of motorcyclists and others to use them as a legitimate part of the access network in the countryside, both recreationally and as established by long custom and heritage. TRF publishes a

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<sup>1</sup> Consultation Booklet, Fig.5:16: The central section – within the World Heritage Site (WHS)

<sup>2</sup> Trail Riders Fellowship v Peak District NPA [2012] EWHC 3359 (Admin) para.1

Code of Conduct for its members promoting safe and respectful use of countryside ways (**Appendix 1**).

2.3. TRF has long had a particular interest in the green ways in Wiltshire and the byways around Stonehenge. It made representations in relation to earlier proposals that would impact upon the Byways at issue in this case.

### **3. STRUCTURE OF THESE REPRESENTATIONS**

3.1. The remainder of these Representations is structured as follows:

- Statutory and policy context (section 4);
- Impact on Byways 11 and 12 (section 5);
- Impact on users of small-capacity vehicles (section 6);
- Comments on Relevant Representations (section 7);
- Response to ExA's first written questions (section 8); and
- Conclusion (section 9).

### **4. LEGAL AND POLICY CONTEXT**

#### **Law and statute**

4.1. The key provision of the Planning Act 2008 ("**the 2008 Act**") relevant to TRF's interest is s.136 (on public rights of way); this provides:

*“(1) An order granting development consent may extinguish a public right of way over land only if the Secretary of State is satisfied that—  
(a) an alternative right of way has been or will be provided, or  
(b) the provision of an alternative right of way is not required.”*

4.2. In this case, the proposal is to extinguish the A303 a vehicular road and by diverting that road into a tunnel, to extinguish the historic connection between Byways 11 and 12, leaving Byway 11 in particular as a dead-end.

- 4.3. There is limited authority on s.136(1); in the Rookery South DCO, a few short stubs of PROW were considered not to be required. The guidance on the Transport and Works Act 1992<sup>3</sup> equates “required” with “needed” (see para.1.9); the extinguishment of a PROW without complying with the proviso was considered to be outside the scope of TWA orders (para.1.13); the same must apply to DCOs. Further, TRF submits that “required” in this context must mean “required for public use”. That is consistent with the analysis of s.116 of the Highways Act 1980 (see e.g. Ramblers Association v Kent CC (1990) 60 P & CR 464 per Woolf LJ at 471) and s.118 of the Highways Act 1980, that refers to a footpath (etc) “not needed for public use”.
- 4.4. The affected highways in this case are byways open to all traffic, which are defined at s.66(1) of the Wildlife and Countryside Act 1981 as “a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used”.
- 4.5. In Masters v SSETR [2001] QB 151 the Court of Appeal explained (at para.24) that:
- “The definition is ... not seeking to limit byways open to all traffic to those which are currently and actually used in the way section 66(1) describes. That this was the correct approach was confirmed by the common law principle “once a highway, always a highway”, that is to say, once it is shown that a highway has been dedicated for a certain use by the public that use of that way cannot be lost at common law. That use can only be terminated or altered by virtue of some power created directly or indirectly by statute, or possibly by some natural event such as erosion by the sea, which removes the land over which the public had enjoyed the right of way.”*
- 4.6. The key relevant point is that it is only by prescribed statutory processes that highways can be diverted or extinguished. Such processes are strictly circumscribed and relatively draconian. Apart from that a highways authority may manage the use

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of highways through informal controls or, if considered necessary, traffic regulation orders under the Road Traffic Regulation Act 1984.

4.7. Under the Highways Act it is the duty on all highways authorities *“to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it”* (s.130(1)) and *“to prevent, as far as possible, the stopping up or obstruction of”* highways (s.130(3)). Here, HE is the highways authority for the existing A303, but Wiltshire Council will become the highways authority for the line of the road if it is downgraded to a restricted byway. Wiltshire Council is also the highways authority for the Byways.

### **Policy**

4.8. The impact on public rights of way is a relevant factor in considering the appropriateness of a DCO and its terms. Paragraph 5.184 of the National Policy Statement for National Networks (December 2014) sets out the following guidance of general application:

*“... Applicants are expected to take appropriate mitigation measures to address adverse effects on coastal access, National Trails, other public rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve access. In considering revisions to an existing right of way consideration needs to be given to the use, character, attractiveness and convenience of the right of way. The Secretary of State should consider whether the mitigation measures put forward by an applicant are acceptable and whether requirements in respect of these measures might be attached to any grant of development consent.”*

4.9. Government policy is to afford protection to all public rights of way, including byways. While there may be conflicts between different users, Statutory Guidance to Local Highway Authorities in England on Rights of Way Improvement Plans (Defra, November 2002) (**Appendix 6**) indicates that measures should be taken to minimise conflicts and accommodate different classes of user wherever possible:

*“There is potential for conflict on ways carrying higher rights between different classes and types of users. Wherever possible proposals for improving rights of way should not unduly benefit one class of user at the expense of another. Improvements that are intended to benefit cyclists, harness-horse drivers, horse riders or walkers should not unduly restrict lawful motorised use of public vehicular rights of way ...”*  
(para.2.2.21).

4.10. The Statutory Guidance refers to Defra’s guidance Making the best of byways (current version, December 2005) that sets out a range of management tools to ensure that byways are properly managed for all lawful categories of user.

4.11. Wiltshire Council’s Countryside Access Improvement Plan 2015-2025 (Rights of Way Improvement Plan 2) (“**ROWIP**”) (**Appendix 7**) contains a number of relevant policies and objectives. TRF draws attention to the following in particular:

- Opportunity 1 – promote greater use of the Countryside Access Network (CAN) for a variety of purposes. This will bring knock-on benefits for health, the rural economy and give people a better appreciation of the countryside;
- Objective 1-4 – promote and improve the CAN for leisure and tourism purposes;
- Opportunity 2 – create a more coherent network. Provide new access where people want to go, better access for all in key locations and reduce severance by busy roads;
- Objective 2-1 – create and promote new access where there is a strong demand or likely to be a future need;
- Objective 2-2 – create and promote circular route opportunities;
- Objective 2-3 – reduce the extent to which the continuity of the network is interrupted by busy roads;
- Objective 2-4 – improve key entrance points to the CAN;
- Objective 2-5 – improve conditions on the network for those with mobility impairments; and

- Strategic objective SO15: to reduce barriers to transport and access for people with disabilities and mobility impairment, including promoting opportunities for *“disabled people driving along Byways Open to All Traffic to access remote locations.”*

4.12. While these objectives relate primarily to Wiltshire Council, TRF submits that the Secretary of State should have regard to them also insofar as a DCO proposal seeks to interfere with the Countryside Access Network.

## 5. IMPACT ON BYWAYS 11 AND 12

### Introduction and background

5.1. Byways 11 and 12 represent long-standing green ways that have been used by motorcyclists, and the wider public, for many decades (since before WW1). Byway 12 runs between Durrington in the north to the A360 at Druids Head in the south, it crosses the A303 and runs to the west of Stonehenge. Originally, the byway ran through Stonehenge itself, but this was diverted to the west of the stones in the 1920s and Byway 12 was further diverted onto its present alignment in the 1960s. In agreeing to that second diversion, the Minister indicated that the land had been carefully surveyed *“to find a new route for the Track which would follow the line of least visibility [etc]”*.<sup>4</sup> Byway 11 runs from the A303 in the north to Wilsford in the south, where it joins with local roads. While it is well to the south, it affords good views of Stonehenge from its northern end. The Byways provide links with Wiltshire’s relatively good and extensive network of byways open to all traffic.<sup>5</sup>

5.2. There is currently in place a traffic regulation order (“**TRO**”) that prohibits right turns onto the A303 from Byway 12. That is a current management measure that would be expected to be removed if the circumstances changed.

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<sup>4</sup> See letter of 7 October 1965 and plans relating to earlier diversions (**Appendix 4**)

<sup>5</sup> See ROWIP (**Appendix 7**) para.6.1 and Fig.9

5.3. By downgrading the A303 to a restricted byway the impact from the DCO would be to remove access to either Byway 12 and the A303 would be removed were that road downgraded to a restricted byway.

5.4. Both today and in the past, Byways 11 and 12 provide great amenity and enjoyment to recreational motorcyclists. Their loss as part of the byway network would seriously degrade the network and is not a necessary result of the operation of the tunnel (although TRF accepts that construction itself would require some temporary arrangements to stop up or divert Byway 12<sup>6</sup>).

5.5. TRF's primary case may be subdivided into the following propositions:

- a. There is considerable existing and past enjoyment of Byways 11 and 12;
- b. The proposal would extinguish the access to and link between the Byways without providing an alternative;
- c. It has not been argued (and could not sensibly be demonstrated) that an alternative is not required;
- d. Therefore, the proposal fails to provide any basis on which the Secretary of State could be satisfied that the criteria in s.136(1) of the 2008 Act is met;
- e. In any event, the loss of access to the Byways will have a negative impact that has not been properly justified, nor is it necessitated by the scheme objectives; and
- f. The proposal accordingly should be altered so that it does not extinguish the link between Byways 11 and 12 or, at the very least, so that it includes alternative provision.

5.6. Two further important points also should also be emphasised at this juncture.

5.7. First, planning inspectors have twice rejected proposals to prevent traffic proceeding along Byways 11 and 12. The inclusion of an alternative link respected

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<sup>6</sup> TRF therefore does not object to temporary impacts, provided that they are adequately mitigated



those conclusions. Consistency in decision-making is an important principle that applies in this case.

5.8. Second, use of the Byways by motorcycles is not problematic in environmental or amenity terms. Wiltshire Council recently promoted an experimental traffic regulation order (“**ETRO**”) to investigate the impacts of vehicular use. However, that was quashed in the High Court (see TRF v Wiltshire Council [2018] EWHC 3600 (Admin)). HE states that “[c]hanging the status of existing BOATs is beyond the scope of this scheme and is a matter for Wiltshire Council as the local highway authority” [ref]. However, the proposed order changes the status of existing PROWs by stopping up the link between Byways 11 and 12. The Secretary of State should be cautious about proceeding with proposals that prejudice and/or cut across other statutory mechanisms.

5.9. The below headings expand upon the above points and provide further detail.

#### **2005 and 2011 decisions**

5.10. Considerable importance and weight should be given to the fact that the utility of Byways 11 and 12 has been recently considered on two occasions by independent planning inspectors (in 2005 and 2011). On both occasions, following extensive inquiries, planning inspectors recommended that the Byways – as linked by the A303 – served an important amenity function for motorised users. Summaries and relevant extracts from the two processes are enclosed with these representations at **Appendix 5**. TRF considers that they warrant careful reading and provide a powerful justification for the retention of a link between Byways 11 and 12.

5.11. The first case is of direct relevance to the present application as it concerned the then Highway Agency’s proposal for a tunnel on the A303 at Stonehenge. While that scheme was never pursued, the inspector accepted TRF’s point that leaving Byway 11 as a dead-end “cannot ... represent a reasonably convenient alternative

*provision*". He therefore recommended that the tunnel only go ahead if it did not prejudice vehicular rights in this way.

5.12. The second case was an inspector's recommendation on Wiltshire Council's proposal, among other things, to prohibit traffic on Byways 11 and 12. The inspector concluded that vehicular users of the routes had limited impacts and that the proposal would cause *"a significant loss of amenity to the motorised users of the BOATs, as well as increasing the level of risk to their safety, particularly those on motorcycles in his report"*.

5.13. Given those clear conclusions, it cannot sensibly be said that an alternative right of way connecting Byways 11 and 12 is not required by the current proposal.

#### **Utility and use of the Byways**

5.14. Byways 11 and 12 are important in their own right and provide an essential link to the wider byway network.

5.15. The fact that both the Byways and the link between them on the A303 are well-used by motorcycles is clear from (i) the 2005 and 2011 decisions, (ii) the witness statement prepared for Wiltshire Council for the 2018 legal challenge (**Appendix 8**)<sup>7</sup> and (iii) user evidence forms ("**UEFs**") collected from some of its members by TRF in the last month (**Appendix 9**).

5.16. In a short period of time, TRF has obtained 72 UEFs that demonstrate the level of use and strength of feeling among its members about the use of the Byways. While not all of the users ride the A303 to link Byways 11 with Byway 12, the vast majority do (see responses to question 5) and would see it as a negative impact on the network were the link on the A303 to be taken away for motorcycles (see response to question 9). The UEFs also provide details of users' reasons for and enjoyment of trail riding (question 7) and the wider circuits they use Byways 11 and

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<sup>7</sup> Wiltshire Council has agreed to this being put before the ExA as a background document

12 as part of (question 8). A number of users have included photographs and route maps with their UEFs.

### **Impact of extinguishing link between Byways 11 and 12**

5.17. Extinguishing the link between Byways 11 and 12 will prevent riders connecting the Byways or accessing the Byways from the A303. While the A303 is a busy road and there are currently restrictions on right hand turning from Byway 12, this would be a seriously negative step for the connectivity of the network of publicly accessible green ways in Wiltshire. It would turn Byway 11 into a *cul-de-sac*, it would prevent access from or onto Byway 12 and it would mean that users would have to find more circuitous (and potentially more dangerous) routes, or simply stop riding. The ExA is referred to the detailed responses to question 9 in the UEFs.

5.18. TRF also draws attention to the fact that turning Byway 11 into a *cul-de-sac* and excluding vehicular traffic (in particular) two-wheeled vehicles from the A303 is contrary to is contrary to Defra's 2002 Statutory Guidance (see above) and a number of the policies and objective in Wiltshire Council's ROWIP, including (i) to promote greater access to the countryside for all users, in particular for leisure and tourism, (ii) to create a more coherent network, including creating and promoting circular routes, (iii) to reduce interruptions to the network and (iv) to improve entrance points. Consistently with those provisions, HE should be seeking to *improve* the recreational byway network, not to sever it.

### **Criteria in s.136(1)**

5.19. As is set out above, under s.136(1)(b) of the 2008 Act a DCO may only lawfully extinguish a PROW without providing an alternative if the Secretary of State is satisfied that an alternative right of way is not required for public use.

5.20. HE's proposals extinguish the historic connection between Byways 11 and 12, leaving Byway 11 in particular as a dead-end. The Byways are required for public use. The revised proposals however do not provide an alternative. It is not a

question of weighing up public rights of way against other objectives, such as visual amenity. Unless an alternative is not required, a DCO *may not* contain a provision extinguishing a PROW.

5.21. While the initial proposals included an alternative link, it is not clear what consideration HE has given to this point in its present proposals. Draft Art.10 of the DCO authorises the stopping up, among other things, of the A303, but on the basis that alternative provision would be “[t]he new and improved A303” (see Sch.3 Part 1, column (4)). However, that cannot be an alternative for those who used the A303 to access the Byways.<sup>8</sup>

5.22. TRF submits that HE needs to engage with the terms of s.136(1) and either to demonstrate that the use of the A303 by MPVs accessing the Byways is not required or to include suitable alternative provision. That would also be consistent with the Inspector’s conclusions on the Highways Agencies earlier proposals to construct a tunnel for the A303. TRF reserves the right to make further representations on this point in light of any clarification provided.

5.23. In any event, as set out below, TRF considers that the justification for not maintaining a link between Byways 11 and 12, or providing an alternative link, is flawed.

#### **Provision (or retention of) link between Byways 11 and 12**

5.24. As already explained, HE initially included an alternative link between Byways 11 and 12 in its proposals. It was not explained why HE favoured that particular link, however TRF agreed that it would represent adequate alternative provision. It seems to TRF that the optimal solution would be not to provide a new link at all, but to retain the link on the A303, at least for motorcycles. The problem with HE’s proposals is that they stop up the route to all vehicles. These Relevant

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<sup>8</sup> Nor, as discussed further below, is it an alternative for small-capacity vehicles that presently use the A303 but could not use a tunnelled dual carriageway

Representations therefore first consider the retention of the existing link, and then HE's alternative link.

*Retention of link on existing A303*

- 5.25. The justification for not retaining the existing link between the Byways appears to be a concern about preventing all vehicles from using the route of the old A303 given the proximity to Stonehenge and/or its setting. TRF submits that the justification is ill-founded. HE has done no assessment of the number of vehicular users making the link. Even were there an impact from some users (which is not demonstrated), that would not justify stopping up the connection for trail riders.
- 5.26. TRF appreciates the importance of the World Heritage Site and its setting, but considers that recreational use of the Byways by trail riders is not a concern in those terms. The statement of Outstanding Universal Value refers instead to "*the presence of busy main roads going through the World Heritage property*". The DCO, by moving the busy A303 into a tunnel addresses that issue. That does not however, give rise to the need to remove *all* vehicular traffic.
- 5.27. TRF also acknowledges that there may be concerns about people using the Byways to park cars or bring camper vans, especially in the summer. Those sort of concerns however are not sensibly dealt with by the Secretary of State on this DCO application. Nor is the case for them fully made out. That is demonstrated by the fact that Wiltshire Council is considering an *experimental* traffic regulation order.
- 5.28. As far as potential conflict between users, TRF does not consider that there should be any issue in this regard given the width of the existing A303, which will be available to emergency vehicles in any event. In short, it would be easy to acceptably accommodate vehicular and pedestrian/equestrian traffic over this short link. If necessary, certain controls could be put on some vehicles, but that would not be a matter for HE. As Dave King, a user since 1983, states in his UEF (answer to question 11):

*“It would make most sense to turn the existing line of the A303 into a Byway, rather than a Restricted Byway, but put a permanent TRO on it limiting use to vehicles with no more than two wheels. This would prevent car drivers using it as a short-cut, prevent 4X4 users damaging it and prevent travellers setting up home on it. This has been done to several byways in Hampshire with great success.”*

5.29. TRF therefore invites the ExA to recommend that the DCO is amended to exclude the extinguishment of the existing line of the A303 to vehicular traffic between Byways 11 and 12. That is neither legally justified (in the terms of s.136) nor merited on the facts.

*Alternative link proposed by HE*

5.30. In the alternative, TRF invites the ExA to recommend that the new link between Byway 11 and Byway 12 that was initially proposed be included. This would be physically suitable for light traffic and would not have any significant adverse impacts that could not have been readily overcome.

5.31. The main reasons that now appear to be advanced by HE for removal of the alternative link is adverse impact on the adjacent Normanton Down barrow group and on the tranquillity of the WHS.<sup>9</sup>

5.32. TRF finds both justifications somewhat surprising. The new link would not have any direct impact on the Normanton Down barrow group, that is to the south of the proposed short new link. Nor would there be any significant impact on tranquillity. Moreover, recreational vehicles already use Byways 11 and 12. To the extent that there are impacts, requiring users to turn around at the dead-end and drive back along Byway 11 would be just as serious. TRF therefore considers both concerns to be unfounded and overstated.

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<sup>9</sup> The earlier justification included adverse impacts on archaeology and the Normanton Down RSPB Reserve/stone curlew; TRF commented that it had seen no surveys or other evidence to suggest that a minor track for motorised vehicles would have such impacts, still less impacts that could not be mitigated; that case appears to have been accepted

## *Conclusion*

5.33. Accordingly, there is no reason to think that a suitable link could not be provided or retained that would maintain the connection between Byways 11 and 12. The loss of the connection is not necessitated by the construction of the proposed tunnel. TRF also refutes the limited justification relied upon by HE for not providing a link, albeit that such justification is not strictly relevant to the test in s.136(1) of the 2008 Act.

## **6. IMPACT ON USERS OF SMALL-CAPACITY VEHICLES**

6.1. The new dual carriageway will exclude the following vehicles that can currently use the A303 between Amesbury and Berwick Down:

- Mopeds;
- Electric mopeds; and
- Motorcycles under 50cc.

6.2. Further, these categories of vehicle not be able to use the restricted byway that would replace the at-grade line of the A303. TRF submits that the proposed byway should be available for this limited class of vehicle for its entire length. There is no adequate alternative route available. Such motorists are particularly vulnerable; their safety and amenity should be properly considered and protected.

6.3. A separate but related point is that those with mobility impairments are more likely to use small-capacity vehicles of this nature and should be able to use the replacement byway. This is encouraged by policy in the ROWIP (see above). It does not appear that HE has given any consideration to this, whether in accordance with the public sector equality duty<sup>10</sup> or otherwise.

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<sup>10</sup> Equality Act 2010, s.149

## 7. COMMENTS ON RELEVANT REPRESENTATIONS

7.1. TRF makes the following comments on other parties' Relevant Representations to the extent that they relate to the concerns set out above.

### **Wiltshire Council**

7.2. The Relevant Representations submitted on behalf of Wiltshire Council ("**the Council**") are interesting and relevant to the TRF's concerns. As has been noted above, the Council has been seeking for some time to restrict the use of the Byways by MPVs, albeit through traffic regulation controls rather than stopping up/diversion.

7.3. Para.123 of the Council's Relevant Representations notes that severing the link between Byways 11 and 12 "*creates a breach of Wiltshire Council's statutory duty under s.130 Highways Act 1980 to prevent, as far as possible, the stopping-up of highway rights, with the lack of any mitigation measures.*" TRF agrees. Stopping up the link between the Byways without providing an alternative is antithetical to the statutory protection of highway rights.

7.4. However, the Council goes further and argues that HE's decision not to provide an alternative link has created the need for "*an order for the prohibition of driving of motor vehicles on the byways*" and argues that this should be associated development included within the DCO (ibid.).

7.5. There are three key points in response.

7.6. First, TRF does not consider that a TRO can properly be "*associated development*" included within the DCO.

7.7. Second, there has been no consultation on any such proposal.

7.8. Third, the proposal is not in any event justified. TRF would agree that stopping up the link between Byways 11 and 12 will cause problems. Most obviously it will



prevent motorcyclists and other users taking a through-route, and force them to turn back or avoid the route altogether. The extent of the impact does not appear to have been assessed by HE. However, that does not justify the making of a TRO. The suggestion appears to be largely self-serving. The Council has in the past failed to impose such restrictions on the Byways (in 2011) and more recently has been pursuing only *experimental* orders. That is a very weak starting point for the argument that a permanent TRO is needed, still less given that the future circumstances in which such regulation is to be required is unknown, unassessed and unclear.<sup>11</sup> It does however underscore the inappropriateness of the DCO stopping up the existing link in the first place: it is part of a wider regulatory debate which should be addressed (if at all) separately.

## **8. RESPONSE TO EXAMINING AUTHORITY'S FIRST WRITTEN QUESTIONS**

8.1. None of the first questions from the ExA are directed specifically to the TRF. TRF makes the following short observations in response to the questions asked at this stage.

### **G.1.10: reliance on ETRO**

8.2. TRF reminds the ExA that the ETRO was quashed in December 2018 (see para.5.8 above).

### **AL.1.20: removal of the previously proposed link Byways 11 and 12**

8.3. In addition to the above points (paras.5.30-5.32), TRF notes with regard to point (ii) – the impact of vehicle traffic in the World Heritage Site – that the WHS Management Plan recognises that “[t]he presence of ... roads has played a fundamental role in the development and character of the wider area throughout history” (para.11.1.1) and does not advocate the exclusion of vehicular traffic on byways, but instead that:

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<sup>11</sup> Para.99 of the Council's April 2018 consultation response noted the need to “*be cautious given the outcomes of the inquiries in 2005 and 2011*” and did not argue that circumstances had changed

*“Impacts of motorised access on byways open to all traffic in the WHS should be monitored and the most appropriate management response identified and implemented” (para.11.4.5).*

8.4. TRF welcomes the fact that HE is being required to provide a detailed justification on this point, which it has hitherto failed to do, despite it being raised in TRF’s consultation responses.

**Tr.1.21: safety benefits**

8.5. While the TA states that the scheme will result in safety benefits, it failed to consider the impact on motorcycles, vulnerable road users who will be forced to use longer routes on busy roads as a result of the current proposals.

**Tr.1.28: extinguishment of vehicular rights over the A303 between Byways 11 and 12**

8.6. TRF welcomes the fact that HE is being required to provide a detailed justification on this point, which it has hitherto failed to do, despite it being raised in TRF’s consultation responses.

**Tr.1.29: conclusions of previous Inspectors**

8.7. TRF welcomes the fact that HE is being required to provide a detailed justification on this point, which it has hitherto failed to do, despite it being raised in TRF’s consultation responses.

**Tr.1.30: discrimination**

8.8. The exclusion of small-capacity vehicular users from the restricted byway that would replace the A303 is potentially discriminatory against those with mobility impairments, something which does not appear to have been considered by HE (see para.6.3 above).

**Tr.1.31: Wiltshire Council**

8.9. Extinguishing rights for motorised users without providing an alternative would be contrary to highway law and inconsistent with both HE’s and the Council’s duty

under s130 of the Highways Act 1980. A prohibition of driving order should not be included within the DCO (see paras.7.6-7.8 above).

## **9. CONCLUSION**

9.1. TRF would welcome the opportunity to expand upon the points set out above at an issue specific hearing. It invites the ExA to have regard to its objections and only to make a DCO that properly safeguards the interests of byway users.

**3 May 2019**

## LIST OF APPENDICES

Appendix 1	TRF Code of Conduct
Appendix 2	TRF pre-application consultation response of 23 April 2018
Appendix 3	TRF pre-application consultation response of 13 August 2018
Appendix 4	Letter of 7 October 1965 and plans relating to earlier diversions of Byway 12
Appendix 5	Relevant extracts from Inspector's report dated 31 January 2005, Inspector's report dated 7 September 2011 and Secretary of State decision letter dated 31 October 2011
Appendix 6	Statutory Guidance to Local Highway Authorities in England on Rights of Way Improvement Plans (Defra, November 2002)
Appendix 7	Wiltshire Council's Countryside Access Improvement Plan 2015-2025 (Rights of Way Improvement Plan 2)
Appendix 8	Witness statement of Parvis Khansari dated 5 September 2018
Appendix 9	User evidence forms