

APPENDIX 2



**TRAIL RIDERS
FELLOWSHIP**

1/15

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23rd April 2018

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Sent by email to: A303Stonehenge@highwaysengland.co.uk

A303 Stonehenge; Amesbury to Berwick Down

Proposed application for development consent order

Planning Act 2008, section 48

Infrastructure Planning (Applications: Prescribed Forms and Procedure)

Regulations 2009, Regulation 4

Consultation response of the Trail Riders' Fellowship

Preamble

1. The Trail Riders' Fellowship ("TRF") is a private company limited by guarantee whose registered office is at 218 Strand, London, WC2R 1AT and whose registered number is 05848933. TRF is a national 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.



Introduction and summary

2. TRF makes no case about the amenity merits or demerits of putting the A303 into a tunnel. We are concerned solely with safeguarding our members' long-standing use of Byways Amesbury 11 and Amesbury 12 ("the Byways") as a meaningful part of the local network of byways open to all traffic (BOATs) and unsealed unclassified public roads. We also raise a particular concern about the safety and travel interests of drivers of motorcycles under 50cc, and mopeds.
3. The part of the scheme that concerns TRF is set out in the drawing in the Consultation Booklet as Figure 5:16: The central section – within the World Heritage Site (WHS). This drawing shows Byway 11 and Byway 12 being cut-back southwards from their current junctions with the A303, and connected by a "New Link Between Byway 11 and 12".
4. On the basis that "New Link" will be a BOAT, much of the current utility and enjoyment of the Byways will be retained, because Byway 11 will remain a through route to the south of the WHS. To that extent TRF supports the proposals.
5. However, TRF has the following concerns about other aspects of the proposal:
 - a. firstly, given that the new route will exclude small-capacity powered two-wheeled vehicles, the proposed byway mainly on the at-grade line of the A303 should be available to this limited class of vehicle.
 - b. secondly, we strongly object to the comments set out at page 40 of the Consultation Booklet which go beyond what is appropriate for a development consent order application under the Planning Act 2008 ("the 2008 Act").
6. These points are expanded upon below.

Statutory context

7. The key provision of the 2008 Act relevant to TRF's interest is section 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.”

8. In this case, the proposal is to extinguish the A303 for certain categories of user and by converting that road into a tunnel, to extinguish the historic connection between Byways 11 and 12, leaving Byway 11 in particular as a dead-end.

9. There is no doubt that the impact on public rights of way is a relevant factor in considering the appropriateness of a development consent order 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.”

Representations

10. TRF makes three points by way of consultation response.

(1) Support for provision of link between Byways 11 and 12

11. Byways 11 and 12 have been used by members of the TRF, and the wider public, for decades. They provide great amenity and enjoyment to recreational motorcyclists, and there is no evidence of undue ground or environmental adverse impact. These routes are very important to our members, and their loss as part of the byway network would seriously degrade that network.
12. The proposal would remove the historic link between Byways 11 and 12 because the existing A303 would be converted to a restricted byway and the new A303 would be underground. However, the provision of a new linking BOAT to the south would prevent the connection being lost and would prevent Byway 11 becoming a dead-end. TRF therefore does not object to this aspect of the proposal.
13. It seems to us that the proposed new link between Byway 11 and Byway 12 would be physically suitable for light traffic. A motorcycle and rider together are considerably lighter than a horse and rider. There is no history of, and little if any visual evidence of, surface impact from motorcycles on Byways 11 and 12. Some form of restricted byway for horses, cyclists, carriage drivers, and walkers, would be as much a 'track on the land' as would a Byway with a right of passage for motorcyclists.
14. It is of particular relevance to this aspect of the proposed development consent order that the utility of Byways 11 and 12 has been recently considered on two occasions by independent planning inspectors. On both occasions, following extensive inquiries, the 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 appended to this response. TRF considers that they

warrant careful reading and provide a powerful justification for the retention of a suitable link between Byways 11 and 12, as Highways England propose.

15. The first case was the then Highway Agency's former proposal for a tunnel on the A303 at Stonehenge; the inspector accepted TRF's point that leaving Byway 11 as a dead-end "cannot ... represent a reasonably convenient alternative provision".
16. 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".
17. 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. The current proposal represents the minimum necessary.

(2) Object to extinguishment of A303 for small-capacity powered two-wheeled vehicles

18. The alternative route proposals bite against the users of mopeds, electric mopeds, and motorcycles under 50cc. These drivers have an expectation that their safety and amenity will be reasonably protected.
19. Electric mopeds are virtually silent in use and often physically resemble a mountain bike, but cannot lawfully be driven on a restricted byway or bridleway. The alternative route is adequate in the sense that you can get from A – B, however, a moped (petrol or electric) rider would be exposed to the greater hazard of using an A road instead of a safer BOAT. The additional distance (twice as far on the diversion as on the current line) is a factor in terms of battery range for the electric moped. It is also physically and mentally taxing to ride a moped on fast A roads, for a

substantially greater mileage to get from A-B. The change may deter people from taking the (electric) moped and result in their choosing car travel instead.

20. The fact that the proposed restricted byway along the line of the old A303 will be available to emergency vehicles demonstrates that it will be more than adequate to carry small powered two-wheelers.

(3) Object to reference to statutory process that is no part of the development consent sought

21. While, the proposal maintains a necessary link that preserves the amenity of motorised users and is fully justified by the legal requirements under the 2008 Act, the evidence in this case and two recent recommendations of independent inspectors (see above), TRF notes with concern the following statement on page 40 of the Consultation Booklet:

“Downgrading of these byways for non-motorised use only would support the scheme’s objective of fully removing the sight and sound of traffic from the vicinity of Stonehenge and we would support any such future proposals.”

22. TRF strongly objects to this reference to downgrading the Byways that was rejected as recently as 2011 and is no part of the development consent order applied for.
23. Further there is no conflict between the scheme’s objectives and the limited use of ancient byways by vehicular users. The impacts were considered by the inspector in 2011, who concluded them to be negligible and/or limited. [Add anything else about the nature of motorised use that helps this point]

Further engagement.

24. TRF has a particular and long-standing interest in this proposal, as shown by its active participation in the former processes. Nothing has happened since to alter that position. We ask please to be kept fully engaged with the decision-making process, and, if an application is made under s.55 of the 2008 Act, to be afforded the opportunity to submit further evidence and to appear before the Examining Authority at any relevant hearings.

Contact details

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The Trail Riders Fellowship

23rd April 2018

APPENDIX

Byway Management Proposals at Stonehenge over the Past Fourteen Years

There have been two major road schemes affecting Byways 11 and 12 (“the Byways”), with recommendations issued following public inquiries in 2004 and 2011. Neither scheme was implemented as regards the Byways. The issues raised by TRF, and others, at those inquiries, and the inspectors’ conclusions and recommendations, go squarely to the issues in this current scheme.

Below is a brief summary, with abstracted text, of the two applications.

THE A303 TRUNK ROAD STONEHENGE IMPROVEMENT (STONEHENGE BYWAY) (PROHIBITION OF MOTOR VEHICLES) ORDER 200_

Report to the First Secretary of State and the Secretary of State for Transport

Date of Report: 31 January 2005.

Reference: HA61/4/3

Summary

The proposal was for a tunnel to carry the A303, with the original line of the A303 (or thereabouts) becoming a byway for non-motorised traffic, plus motorcycles under 50cc, and mopeds, which would be prohibited from the tunnel. As proposed, the north end of Byways 11 and 12 would become dead ends.

Rights of way users including TRF (in objection) argued that the proposed new byway should be amended so as to join Byway 11 to Byway 12, for the classes of traffic that currently use the Byways.

The inspector recommended that the order be confirmed with amendments, including retaining the link between Byways 11 and 12. The proposed scheme was not put into effect.

Extracts

TRF's objection and the Highways Agency's response to it is recorded in the Report at [6.24.1]-[6.24.16].

TRF's objection included the following:

- “6.24.2 The Tunnel Regulation Order would prohibit pedestrians, cyclists, animals (ridden, led or driven by a person), vehicles drawn by animals, motorcycles (whose engine cylinder capacity is less than 50 cc) and invalid carriages from using the proposed tunnel. All of those classes of traffic, with the exception of motorcycles with an engine capacity of less than 50 cc, would be able to use the Stonehenge Byway. Motorcycles (whatever their engine capacity) would not be able to use the Byway.
- 6.24.3 At present, the A303 to the south of Stonehenge is joined from the south by a right of way shown on the current Definitive Map as Bridleway Amesbury 11. Following consideration of a Definitive Map Modification Order made under section 53 (2) (b) of the Wildlife and Countryside Act 1981 at a public inquiry held on 24 and 25 February 2004 ... this right of way has recently been reclassified as a Byway Open to All Traffic. It is therefore open to use by motorcycles, along with other vehicular traffic.
- 6.24.4 Some 400 m to the west of the junction of what is now Byways Amesbury 11, the A303 is joined from the north by byway Amesbury 12.
- 6.24.5 At present, users of Byways Amesbury 11 and Byway Amesbury 12 can move between the two Byways using the A303. If the published scheme were carried out, the A303 in the section between Byway Amesbury 11 and Byway Amesbury 12 would be in a tunnel. If the restriction contained in the Byway Regulation Order were to apply, this would mean that users of motorcycles and other vehicles would not be able to move between



Byway Amesbury 11 and Byway Amesbury 12 along the proposed Stonehenge Byway. Byway Amesbury 11 would thus become a dead end for those classes of user. (Byway Amesbury 12 would not, because it continues as Byway Wilsford cum Lake 1 to the south of the A303.)

6.24.6 To address this issue, the TRF seeks an exemption from the restriction of vehicular traffic on the 400m length of Stonehenge Byway between the points at which it is joined by Byway Amesbury 11 and Byway Amesbury 12.

6.24.10 Prohibiting those motor vehicles which would be affected by the Byway Regulation Order from the 400m between Byway Amesbury 11 and Byway Amesbury 12 would not improve the amenities of the area; that improvement would be achieved by placing the A303 in a tunnel. Vehicles of the type used by members of the TRF are not unsuitable, having regard to the character of the road, a Byway replacing a trunk road which forms part of an ancient landscape. The Order would not conserve and enhance the flora, fauna and beauty of the area, because no flora or fauna exist on the surface of the A303 nor are any likely to colonise the surface of the Byway. The beauty of the area would not be affected by members of the TRF, whose sporadic and transient use already takes place in areas of beautiful countryside without any adverse effect.

6.24.11 The trail motor cycles used by members of the TRF are road legal, fuel efficient, quiet, unobtrusive and have a significantly lower impact on the surface and amenities of a route than agricultural vehicles, statutory undertakers' vehicles, transport vehicles for people with disabilities and emergency vehicles.”



The Highways Agency argued among other things that “reasonable alternative route” would be available: [6.24.13].

In his conclusions the inspector referred to the parties’ cases at [10.225]-[10.240]. At [10.231] he stated the test that “[i]t is necessary for the proposed arrangements to make reasonably convenient provision to replace rights of access and rights of way affected by the scheme.” His conclusion on Byways 11 and 12 was as follows:

“10.234 As regards the short distance of the proposed Byway between Byways Amesbury 11 and Amesbury 12, I entirely take the point made by the objectors – if the short distance between those two connections were not open to motor vehicles using Byway 11, then that Byway would be turned into a dead end. At the moment it can be used with the A303 as part of a rights of way network, but, if the present Byway Regulation Order were confirmed as requested by the Highways Agency, then that would no longer be possible. I cannot see how such an arrangement can represent a reasonably convenient alternative provision, as required for the approval of the Side Roads Order. Nor can I see how it would improve the amenities of the area to ban motorized users of Byways 11 and 12 from the 400m length of the Stonehenge Byway. Those users would still be able to take their vehicles perfectly legally to within around 250m of Stonehenge on either Byway 11 or Byway 12; they simply would not be able to travel between the two. This seems to me completely illogical.

10.235 **I conclude** that the amendment sought by rights of way users to remove the exemption which would deny access to motor vehicles to the 400m of the proposed Stonehenge Byway between the junctions of that proposed Byway with Byways Amesbury 11 and 12 should be supported, and I shall recommend accordingly.”

**THE COUNTY OF WILTSHIRE (STONEHENGE WORLD HERITAGE SITE,
PARISHES OF AMESBURY, BERWICK ST JAMES, DURRINGTON,
WILSFORD CUM LAKE, WINTERBOURNE STOKE AND WOODFORD)
(PROHIBITION OF DRIVING) ORDER 2010**

Report to Wiltshire Council

Date of Report: 16 November 2011.

Reference: DPI/T3915/11/20

Summary

This Report followed a non-statutory public inquiry called by Wiltshire Council, to advise on whether the statutory grounds for implementing the proposed traffic regulation order were met. The proposed orders would have prohibited traffic on the A344 and various byways, including Byways 11 and 12. The public inquiry was opened at the same date and venue as a road closure inquiry under section 247 of the Town and Country Planning Act 1990 that was reported separately and did not affect the Byways¹. The effect of the traffic prohibition orders, if made, would have been to deny meaningful use of Byways 11 and 12 to members of TRF, and the wider public.

The inspector recommended that the order be made, but only as it regarded the A344, not to affect the Byways.

Extracts

The parties' cases are set out in sections 3-6 of the Report – TRF's objection is recorded at [3.4]-[3.6].

At [7.26] and following, the inspector summarises the objections in relation to the use of byways open to all traffic, noting particularly road safety issues ([7.32]), loss of the network ([7.33]), archaeological impact ([7.42]) and wildlife impact ([7.44]).

¹ Reference DPI/T3915/11/6

Balancing those factors, the inspector's clear conclusion is that it would not be expedient to make the order in respect of the Byways in order to preserve or improve the amenities of the area.

His conclusions were as follows:

“Conclusions re. BOATs

7.60 I have found that the introduction of the TRO would lead to 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. I recognise that the numbers affected would be low in absolute terms as well as relative to the number of other visitors to the WHS, but the impact of the TRO on their enjoyment of the BOAT network would be exacerbated by the importance of these particular links. The loss of amenity in this respect has to be balanced against the gains in other aspects of the amenity of the WHS.

7.61 It is undisputed that the majority of visitors to the WHS congregate around the Stones themselves (the WHS Management Plan indicates that around 900,000 do so each year), although some do use the BOATs and open access land to venture to other areas of the WHS where other monuments and archaeological features exist. No evidence was presented to the Inquiry to show that visitors consider the presence of vehicles travelling along the BOATs to be a significant detractor from the amenity of the WHS. I saw that only on parts of BOAT Amesbury 12 is there a clear relatively close view of traffic using it from around the Stones, and given the limited number of movements involved I do not consider that noise or visual intrusion detract significantly from the amenity around the Stones.

...

- 7.65 As regards the tranquillity of the WHS, to my mind only 'Byway 11' south of Normanton Down could truly be said to be tranquil, but the use of this route by recreational vehicles appears to be very low, so any impact on the amenity of this part of the WHS by continuation of such use would be minimal [2.8, 5.27-5.28, 5.43, 5.46].
- 7.66 I recognise that the BOATs cross a number of archaeological features, and that most or all of these have been damaged. I fully recognise the significance of damage to such irreplaceable heritage interests. However, there is scant evidence that such damage has in the past been, or more importantly would in the future be exacerbated by, recreational use of these routes as opposed particularly to agricultural vehicles that could not be excluded by the TRO from using them. Again the level of recreational use is significant. It seems to me that the potential for addressing such matters other than through the TRO has not been fully considered.
- 7.67 For the reasons indicated above I consider that the effect of use of the BOATs by motor vehicles, other than for the purpose of parking near Stonehenge, has negligible effect on the settings of other Ancient Monuments. Similarly there is little evidence of an adverse effect on nature conservation interests.
- 7.68 In the light of the above factors and all other material considerations, I am not persuaded that the gain to the overall amenity of the WHS would outweigh the loss of amenity of motorised users, and consequently I consider that the TRO should not be implemented with respect to the BOATs."

Overall, the inspector recommended that the traffic regulation order only be made to apply to the A344; on that basis Wiltshire Council did not proceed with prohibition of motors orders for Byways 11 and 12.