

APPENDIX 3



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13th August 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**

Supplementary 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 submitted on 23 April 2018 a response to the consultation as set out in the *Public Consultation Booklet February 2018*. That response remains valid and should be read alongside this response to the Supplementary Consultation Booklet July 2018, in particular the concerns at paragraphs 5 and 18-23, which are not repeated here.
3. However, TRF is particularly concerned about, and objects to, the revised proposals for byways 11 and 12.
4. The specific proposal on page 2 of the *Supplementary Consultation Booklet* is:
“To remove the previously proposed link between Byways 11 and 12 in the Stonehenge World Heritage Site (see page 12 for more details).”
5. Page 12 sets out this proposal in greater detail:
“Removing the previously proposed link between Byways 11 and 12” and says in particular, “Following further consideration, we are no longer proposing this new link or stopping up part of Byway 11. The plans opposite show the change. The change means that motor vehicles will no longer be able to travel between Byways 11 and 12 because motorised access will be removed along the existing A303 when the tunnel is constructed. Non-motorised users will still have access between Byways 11 and 12 via the proposed new restricted byway along the line of the existing A303.”
6. As is set out in paragraphs 12-17 of TRF’s 23 April 2018 response, TRF *only* supported the extinguishment of existing vehicular rights on the basis that the new link was provided. TRF assumed that the link was provided in order to ensure that public rights of way (“PROW”) were not adversely compromised by the proposed new tunnel, as is required under section 136 of the Planning Act 2008 (“the 2008 Act”) and national guidance (see paragraphs 7 and 9 of TRF’s 23 April 2018 response). Given that, it is difficult to understand the basis in law or policy for the *volte face*. Indeed, as emphasised in our earlier response and the Appendix thereto, the amenity and safety implications of extinguishing vehicular rights between byways 11 and 12 have led to independent inspectors in recent years twice *rejecting proposals* to do so without providing an alternative link. While we have not seen all



of the consultation responses from other parties, we note that Wiltshire Council state in paragraph 99 of its April 2018 consultation response, the need to “be cautious given the outcomes of the inquiries in 2005 and 2011” and did not argue that circumstances had changed).

Supplementary response

7. Save for reiterating TRF’s case that a link is needed as a minimum (see paragraph 17 of our 23 April 2018 response), there are two additional points to emphasise.

(1) The amended proposal fails to have regard to s.136 of the 2008 Act and renders the proposals *ultra vires* the powers of the Secretary of State

8. A DCO may only extinguish a public right of way without providing an alternative if the Secretary of State is satisfied that “the provision of an alternative right of way is not required” (s.136(1)(b) of the 2008 Act).

9. TRF considers that “required” means “required *for public use*”. That is consistent with the analysis of section 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 section 118 of the Highways Act 1980, that refers to a footpath (etc) “not needed for public use”.

10. As such, a DCO may only lawfully extinguish a PROW if the Secretary of State is satisfied that an alternative right of way is not required for public use.

11. Highways England’s proposals extinguish the historic connection between byways 11 and 12, leaving byway 11 in particular as a dead-end. In TRF’s submission, as is amply demonstrated by the 2005 and 2011 inquiries, byways 11 and 12 *are* very clearly required for public use. The revised proposals however do not provide an alternative. It does not appear from the *Supplementary Consultation Booklet* that Highways England has given any consideration to this.

12. 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.



13. In any event, as discussed below, TRF does not consider the justification for removing the alternative link from Highways England's proposals to be either sound or properly evidenced.

(2) Inadequate justification

14. Page 16 of the *Supplementary Consultation Booklet* sets out in a table alleged justification for the removal of the Byway Open to All Traffic (BOAT) link between Byways 11 and 12. This table lists:

“Cultural heritage”, claiming the avoidance of “adverse impacts” on the archaeology of the local area,

“People and communities”, purporting to balance the public interest between a BOAT link and no BOAT link, and,

“Biodiversity”, claiming that the change will avoid “adverse impacts on the Normanton Down RSPB Reserve and stone curlew.”

15. As above, none of these reasons is relevant to the statutory test in section 136 of the 2008 Act, but in any event the TRF strongly refutes these claims. The claims are not supported by evidence, or at least any strong evidence, and do not properly address whether the DCO scheme, taken as a whole, and including the BOAT link (proposed now to be removed) represents an improvement to setting, protection of archaeology and/or ecology.

16. On archaeology, TRF has seen no surveys or other evidence that credibly suggests that a minor track for motorised vehicles would have any impacts, still less impacts that could not be mitigated.

17. On people and communities, there is no reference to the safety and amenity implications for recreational motorised users, among other factors.

18. On biodiversity, TRF has seen no basis to support the claim, but considers it inherently unlikely that mitigation could not be provided to avoid, offset or minimise



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any additional impact on birds (etc) from providing the new link, especially in the context of the wider scheme.

Conclusion and further engagement

19. We hope that the above persuades Highways England to reverse its decision to omit the byway link from its proposals.
20. 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 section 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.

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The Trail Riders Fellowship

13th August 2018