

**A303 Amesbury to Berwick Down
(Stonehenge) Wiltshire
TR010025**

**Wiltshire Council (A303-AFP022)
Comments on TRF (001156) and HE
(001144) Legal Submissions Regarding
Byways AMES 11 and AMES 12
Submitted at Deadline 4**

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1. Introduction

- 1.1 Wiltshire Council has reviewed the legal positions submitted by the Trail Riders Fellowship (TRF) and Highways England (HE) regarding the proposals for byways AMES 11 and AMES 12, which were submitted at Deadline 4.
- 1.2 Wiltshire Council has clearly set out its position regarding these two byways within its written representations, legal submission and verbal submissions made at the Issue Specific Hearings. The Council will be commenting more fully in its response to be submitted at Deadline 5 after all comments on the Council's proposals have been received. Therefore, the Council reserves the right to provide further comment on both the TRF and HE submissions at this point.
- 1.3 The Council wishes to make the following initial comments on the TRF and HE submissions. This response is submitted on a without prejudice basis to further submissions (both orally and in writing) it wishes to make on this issue.

2. Comments on Trail Riders Fellowship (TRF) Legal Submission

- 2.1 Within paragraph 3 of the TRF submission it states, "*The deliberate breaking of the rights of way network between byways AMES 11 and 12 is therefore inconsistent with the general approach.*" It is the Council's assertion that the links within the rights of way network are often 'broken' where development takes place. Furthermore, there is no duty on the Highway Authority to ensure rights of way links are not broken.
- 2.2 In paragraph 5, the submission states, "*On numbers, while countryside access in motorbikes may not be very substantial, the evidence is of steady use by a consistent number of individuals.*" The Council believes that this is a matter of balance between the various users of the highways. Section 122 of the Road Traffic Regulation Act 1984 places a duty on the Highway Authority to 'balance' or consider the impact on highways users before a decision is made. Highways users in this context means pedestrians, equestrians, cyclists as well as motorists and motorcycles.
- 2.3 Paragraph 15 contains the assertion that, "*They are part of a network and should, as a matter of policy and law (see below), be protected unless there is a good reason to close or divert them.*" The Council wishes to clarify that there is no duty to 'protect' routes. The Highway Authority have powers to stop up or divert highways under the Highway Act 1980 or place restrictions under the Road Traffic Regulations Act 1984.
- 2.4 With respect to the extract of the Inspector's findings from the 2011 Inquiry referenced in paragraph 24, which specifically states, "*The loss of amenity in this respect has to be balanced against the gains in other aspects of the WHS.*" The Council wishes to highlight that at the time of the 2011 Inquiry, the evidence of usage of the byways by motor vehicles was low compared to now. There were between 16 and 30 vehicles daily at peak period in 2011, compared with 100 or more per day now, which the Council believes is as a direct result of the closure of the C506 (formerly known as the A344).
- 2.5 The Council seeks clarity on why the TRF have referenced the Ramblers Association v Kent County Council in their submission. This is an old 1990 High Court case concerning stopping up of rights of way under section 116 of the Highways Act 1980 and site notices. The main issue concerned wrongly sited site notices which did not comply with s.116 and the High Court found were misleading. The court also found that whether a way was necessary (under s.116) was a question of fact for the magistrates.

3. Comments on Highways England (HE) Legal Submission

- 3.1 In HE's response (page 16), it states, "The Applicant therefore continues to maintain that there is limited use of the link between Byways 11 and 12 and the byways themselves." The Council notes that there was an emphasis on motorcycle use at this hearing, and it is the Council's opinion that this was due to insufficient time being available to cover in detail the issues of general vehicular use (4 wheel / HGVs / Vans etc.). Wiltshire Council has found that 4 wheeled vehicles have caused more damage to the byways and the number of which increased after the closure of the C506 (former A344).
- 3.2 On page 17, it states, "*The Applicant considers that these issues will be able to be managed by Wiltshire Council pursuant to its highway, traffic and street authority powers (e.g. section 137 of the Highways Act 1980 in respect obstructions to highways).*" Whilst this is accepted by the Council, because this is a World Heritage Site (WHS), it will not be 'normal' enforcement. The area is an internationally renowned site, which is remote, and therefore any enforcement action required would go beyond the normal 'occasional' enforcement normally required for byways. The financial burden of significant enforcement that would be expected to be required (because it is a WHS) would fall on Wiltshire Council. Furthermore, as the area is remote, the use of CCTV etc. would not be practicable and the expected driver behaviour would occur. The Council also considers it likely that drivers would 'create' their own link between byways 11 and 12 unless sufficient and substantive vehicle proof barriers, which may not be in keeping with the WHS, are put in place and appropriately maintained.
- 3.3 HE's response also states, "*The Applicant therefore considers that it is for TRF and Wiltshire Council to bring forward their proposed changes if they so desire them, to allow them to be fully examined, and to consequentially allow the ExA to recommend, and the SoS to decide in what way it wishes to make the DCO in a legally acceptable fashion*" (page 18). The Council considers that the purpose of the Examination is for the ExA to consider the information put forward by all interested parties, not simply to receive the application put forward by HE and to pass it forward to the SoS for determination. HE and Wiltshire Council have been unable to agree a solution to this particular issue (the WHS byways) therefore it follows that the Council should be permitted to make its own proposals to the ExA, to be heard on those proposals and for those proposals to be properly considered by the ExA.

4. Conclusion

- 4.1 Wiltshire Council has clearly set out its position regarding byways AMES 11 and AMES 12 within its written representations, legal submission and verbal submissions made at the Issue Specific Hearings.
- 4.2 The Council's initial comments on HE's and TRF's submissions at Deadline 4 are contained herein and will be supplemented with a more detailed response, which will be submitted at Deadline 5, following the consideration of other interested parties' comments on its proposals. Therefore, this response is submitted without prejudice and the Council reserves the right to make further representations on this issue during the course of the Examination.