



**ENGLISH HERITAGE**

**COMMENTS ON LEGAL SUBMISSIONS SUBMITTED AT  
DEADLINE 4 FOR CHANGES TO dDCO (DEADLINE 4A)**

**ON BEHALF OF ENGLISH HERITAGE TRUST TO THE  
EXAMINING AUTHORITY (ExA)**

**Re: Application by**

**Highways England (HE) for an Order granting Development  
Consent for the A303 Amesbury to Berwick Down**

**PINS Reference No: TR010025**

**Interested Party Reference No: 20020117**

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## **I INTRODUCTION**

1.1 This document comments on the legal submissions made by Wiltshire Council (WC) and the Trail Riders Fellowship (TRF) on the proposed changes to the draft DCO (dDCO) submitted at Deadline 4 relating to:

1.1.1 Prohibiting use of Byways 11 and 12 (referred to as AMES 11 and 12) by motorised vehicles other than motor cycles and invalid carriages as proposed by WC; and

1.1.2 Continuing a link between AMES 11 and 12 for motor cycles as proposed by the TRF.

## **2 EHT'S POSITION**

2.1 The English Heritage Trust ("EHT") agrees with WC's proposal and disagrees with the TRF proposal. This is explained below.

## **3 COMMENTS ON LEGAL SUBMISSIONS**

3.1 EHT agrees with the legal submissions of WC set out in its submissions at paragraphs 14 to 18 that restricting the use of AMES 11 and 12 in the manner proposed by WC is plainly within the powers set out in S120(3) of the Planning Act 2008 as a restriction "relating" or "ancillary" to the development for which consent is sought. This is explained in more detail in EHT's written representations submitted on 3 May 2019 for Deadline 2.

3.2 Section 120(3) is drafted in wide and broad terms, signalling that Secretary of State has a broad discretion to cover ancillary matters in a DCO.

3.3 EHT agrees with WC that it would be wise and legally safer to treat the changes as material (para 33) (but not such that they in substance constitute a new project requiring a new DCO application) and that there is sufficient time to ensure the proposed changes are publicised and consulted upon during the current examination period.

3.4 EHT agrees with WC's legal submissions set out at paragraphs 29 – 32 that the ExA and Secretary of State can recommend and consider changes even if HE as the applicant do not promote them.

- 3.5 Given additional compulsory acquisition is not involved, EHT notes that there is no prescribed procedure set out in legislation for changes to be made or considered and requirements are limited to fairness and natural justice.
- 3.6 However, in addition to the matters that WC identifies, EHT would add that WC's proposed changes are justified on the basis of cultural heritage considerations. This is based on the current negative impact of traffic on the existing BOATs within the World Heritage Site (WHS), particularly in the vicinity of Stonehenge itself. On one level these vehicles substantially detract from the archaeological setting of the site of Stonehenge within its landscape and on another level they detract from scenic quality of the view in the open grassland landscape. Restricting vehicular use of the byways as proposed would restore and enhance the setting and tranquillity of Stonehenge and this major part of the WHS. This proposal will maximise the landscape enhancement opportunities offered by the scheme and meet one of the schemes objectives to "help conserve and enhance the World Heritage Site".
- 3.7 It would also make the wider WHS easier and safer to reach and explore for non-motorised uses (NMUs), given the proposed restrictions on vehicular use. This goes some way towards achieving Aim 6 of the Stonehenge & Avebury World Heritage Management Plan which is to reduce the negative impacts of roads, traffic and parking on the WHS and manage vehicular access to byways within the WHS to avoid damage to archaeology, improve safety and encourage exploration of the landscape on foot.
- 3.8 Whilst EHT consider that ideally there would be further benefit on cultural heritage considerations in prohibiting motor cycle access on AMES 11 and 12, it recognises that restricting other motorised vehicular access still delivers considerable conservation and enhancement of the WHS in an achievable manner. Therefore, EHT support WC's position and considers the resulting conservation and enhancement of the WHS is of considerable weight.
- 3.9 EHT disagree with the TRF proposal to maintain a connection for motor cycles between AMES 11 and 12 and, in particular, disagree that its proposal is consistent with the scheme objectives.
- 3.9.1 The objectives of the scheme as stated on p2 of HE's "Design and Access Statement" (Document 7.2) are:
- ***“Transport*** - *To create a high quality and reliable route between the South East and the South West that meets the future needs of traffic.*

- **Economic growth** - *To enable growth in jobs and housing by providing a free-flowing and reliable connection between the South East and the South West*
- **Cultural heritage** - *To help conserve and enhance the World Heritage Site and make it easier to reach and explore.*
- **Environment and community** - *To improve biodiversity and provide a positive legacy for nearby communities.”*

3.10 These are also stated to be scheme requirements on p6 of HE’s “The Case for the Scheme and NPS Accordance” (Document 7.1).

3.11 Maintaining the link for motor cycles between AMES 11 and 12 detracts from the WHS and fails to conserve and enhance it by negatively impacting on the setting and tranquillity of Stonehenge and this part of the WHS. The TRFs’ proposal detracts from the overall scheme of tunnelling the A303 by reinstating or maintaining along the existing A303 a motorised link between AMES 11 and 12. The proposal is not considered to be supportable as it does not achieve the desired cultural heritage outcomes.

#### **4 SUMMARY**

4.1 EHT agrees with WC’s proposal to prohibit the use of AMES 11 and 12 by motorised vehicles other than motor cycles and invalid carriages. There is sufficient time for this to be considered as part of the existing examination period whether or not HE promote the changes and the ExA and Secretary of State can recommend and consider the changes even if HE as the applicant do not promote them.