

GLEAM



Green Lanes Environmental Action Movement

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Patron: HRH The Duke of Edinburgh, KG, KT

Examination of the application by Highways England for an Order granting Development Consent for the A303 Amesbury to Berwick Down (TR010025)

Comments by GLEAM on the changes proposed by Wiltshire Council and the Trail Riders Fellowship to the draft Development Control Order, 5 July 2019

Introduction

1. We made a written representation (document TR010025-00814) on 3 May in support of Highways England's proposals for restricted byways. We made a further representation (document TR010025-000965) on 31 May, in which we commented on the written representation (document TR010025-000840) made by the Trail Riders' Fellowship (TRF). We are grateful to the Examining Authority for the opportunity to comment on the legal positions subsequently established by the TRF and Wiltshire Council in their respective submissions (TR010025-001156 and TR010025-001165).
2. Our comments below explain why we object to the TRF's and Wiltshire Council's proposals on policy and legal grounds.

The TRF proposals

3. We object in principle to the TRF's proposed changes to the draft Development Control Order (dDCO) to allow public motorised use of the old A303. A primary intention of the scheme (and hence of the dDCO) has always been to make the old A303 into a restricted byway, a category of public right of way where, like footpaths and bridleways, there are no public motor vehicular rights. Non-motorised users (the majority) of the public rights of way network expect to use restricted byways free from the disturbance, inconvenience, damage and danger which motor vehicles cause. Allowing motor vehicles to use the old A303 would also have an adverse effect on the tranquillity of the area, for users of the rights of way network and access land and for visitors to Stonehenge. The ambient noise level of a quiet countryside environment is 30 decibels (dB), whereas cars operate at levels of around 70 dB (measured at a distance of 7.6 metres) and motorcycles are considerably

louder at 100 dB¹. The sight of motor vehicles using the old A303 (and potentially parking on it) would, in our view, have a negative effect on visitors' and non-motorised users' perception of the cultural heritage of the area.

4. The TRF argues (paragraphs 3, 11 and 12 of its submission) that the sealed road alternatives for motorcyclists are less safe than allowing motorcyclists to use the old A303 as a link between the byways open to all traffic AMES 11 and AMES 12. This argument is based on submissions by James Higgs appended to the TRF submission. Mr Higgs submits that trail motorcyclists will not be able to travel from the northern end of AMES 12 to its southern end, and will have to use less safe routes instead. But motorcyclists will be able to travel along the whole of AMES 12 under the dDCO as currently proposed by Highways England. Highways England has said that the public motor vehicular rights on AMES 12 will not be stopped up or otherwise restricted where it crosses the old A303². It seems unlikely that trail motorcyclists use AMES 11 and the A303 as part of a byway route between Salisbury Plain and what Mr Higgs calls the Bourne valley because the right turn from the A303 to AMES 11 (travelling north-south) is prohibited, presumably on safety grounds, and because the Bourne (?Avon) valley does not have any byways open to all traffic other than AMES 11. The TRF argued that travelling this route south-north, the prohibited right turn from the A303 onto AMES 12 was circumvented by turning left onto the southern section of AMES 12, then turning round and crossing the A303 to access the northern section of AMES 11. It seems unlikely that trail motorcyclists carry out this risky manoeuvre, crossing two lines of traffic, when crossing one line of traffic is unsafe.
5. The TRF's reference to impacts on users (paragraph 4 of its submission) ignores the impacts on non-motorised users if its proposals were accepted. Non-motorised users of the old A303 will be deterred from using the section open to motorcyclists because of the risk of meeting motor vehicles; there would be no alternative route for them, as there will be for motorcyclists. The benefits for non-motorised users of expanding the public rights of way network by converting the old A303 to restricted byway will be severely reduced. We referred to the level of public support for preventing recreational motor vehicle use of public rights of way, because of danger to non-motorised users and the effect on the environment, in paragraphs 5 and 6 of our initial representation (TR010025-000814).
6. The TRF comments in paragraph 6 of its submission that Highways England's current surveys do not say anything about types of use other than motorised use. We respond that byways open to all traffic, such as AMES 11 and AMES 12, are defined as being "*mainly used by walkers, cyclists and horse riders*" (Appendix 1). Making the old A303 a restricted byway is highly likely to increase the numbers of walkers, horse riders and pedal cyclists using AMES 11 and AMES 12, because they will no longer have to cross or use a road predominantly used by motor vehicles as part of their journey along AMES 12 or to/from AMES 11.

¹ <https://www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm>

² A303 Amesbury to Berwick Down, Deadline 2, 8.10.4 Alternatives (AL.1), Highways England, May 2019 (TR010025-00801), page 4-48.

7. In paragraphs 7-10 of its submission the TRF argues that the amenity of trail motorcyclists would be affected if they are not able to use the old A303 to travel between AMES 11 and AMES 12. But, as discussed above, they will still be able to use these byways; the only amenity they will lose is that of travelling on the A303 itself. Mr Higgs (paragraph 8) will still be able to stop on AMES 11 and admire the view of Stonehenge from the south; moreover his view should be enhanced because there will be no motor vehicle traffic obscuring it. Mr Peer (paragraph 9) will still be able to enjoy AMES 11 and AMES 12, and will benefit from a safe crossing of the old A303, in his use of AMES 12.
8. The TRF argues, in paragraphs 14 to 26 of its submission, that making the old A303 a restricted byway is not justified by policy and that it should become a byway open to all traffic (BOAT). We presented evidence in our written representation that government policy is against the creation of new byways open to all traffic, in line with public opinion (our paragraphs 4-6). Paragraphs 3.16 and 5.184 of the National Policy Statement for National Networks (NPSNN) are about non-motorised, sustainable, travel and therefore cannot be used to justify the TRF's arguments for the creation of a new BOAT or the retention of motor vehicular rights on the old A303. (The conversion of the old A303 to a restricted byway would, on the contrary, fulfil the requirement in paragraph 3.17 of the NPSNN to reduce barriers to cycle and pedestrian travel by making the connections between AMES 11 and the two sections of AMES 12 more attractive and safer for non-motorised users than at present.)
9. The TRF says (paragraph 15) that it is not an objective of the scheme (as recorded in the Design and Access Statement) to remove all traffic from Stonehenge. But page 2 of the Design and Access Statement includes as one of the 4 objectives defined by the Department for Transport "*Cultural Heritage – To help conserve and enhance the World Heritage Site and to make it easier to reach and explore*"; this broad objective is the basis of the aims of removing the sight and sound of traffic from Stonehenge³ and improving connectivity and amenity for non-motorised users of public rights of way in the World Heritage Site.
10. We agree with the National Trust that motor vehicle use of the old A303 could have a detrimental and unacceptable impact on the integrity of the World Heritage Site's Outstanding Universal Value (OUV)⁴. ICOMOS-UK also makes the point that there is no suggestion (in the ICOMOS Guidance on Heritage Impact Assessment for Cultural World Heritage properties such as Stonehenge) that "*benefits to ... motorists would be seen as having high value, nor more importantly, that high levels of benefits could outweigh damage to attributes of OUV [Outstanding Universal Value]*"⁵. In our view, the TRF has failed to demonstrate how the benefits for motorcyclists in having access to the old A303 outweigh the negative effects on OUV for non-motorised users of the route and other visitors to the

3 A303 Stonehenge Public Consultation Booklet, Highways England, February 2018, page 40

4 Written summaries of oral submissions put at hearings held between 4 and 14 June 2019, National Trust, (TR010025-001166), paragraph 6.14

5 Written summary of oral submission, ICOMOS-UK, 21 June 2019 (TR010025-001174), paragraph 5

World Heritage Site, such that this element of the ICOMOS Guidance could be disregarded by the Examining Authority.

11. In paragraph 20 of its submission the TRF suggests that motor vehicle parking e.g. for camping on AMES 11 and AMES 12 will increase when the old A303 becomes a restricted byway. We respond that if the old A303 were to be made a BOAT as the TRF proposes, motorised users would probably start parking and camping on it, as they currently do on AMES 11 and AMES 12, which would not conserve and enhance the World Heritage Site.
12. The 2005 inquiry decision cited by the TRF in paragraphs 22 and 23 pre-dates the Planning Act 2008 and the NPSNN, and is therefore not binding on the Examining Authority. The 2011 inquiry report cited by the TRF in paragraphs 24 and 25 was about a traffic regulation order proposed by Wiltshire Council for AMES 11 and AMES 12; it is not relevant to the dDCO proposal for the old A303.
13. The TRF claims in paragraph 26 that there would be negative consequences for countryside access, heritage, noise and visual impacts from making the old A303 a restricted byway. We argue that the opposite is true. Access to the countryside through which the old A303 passes will be enhanced for non-motorised users (the majority), as will their appreciation of the World Heritage Site, by making it a restricted byway. The area will become tranquil and the impact of motor vehicles on the views from Stonehenge will be reduced.
14. We disagree with the TRF's interpretation of section 136 of the Planning Act 2008 (paragraphs 27- 31 of its submission). The TRF argues that the A303 is a public right of way for the purposes of this section and that an alternative public right of way for motor vehicles is therefore required if it becomes a restricted byway. This is incorrect. The A303 is an all-purpose highway, not a public right of way (footpath, bridleway, restricted byway and byway open to all traffic) as defined by the government (see Appendix 1 to these comments) and there is no legal requirement to provide a byway open to all traffic as an alternative to it. It is clear from paragraph 5.184 of the NPSNN that section 136 Planning Act 2008 applies to public rights of way, not to all-purpose highways. This paragraph starts with the sentence "*Public rights of way, National Trails, and other rights of access to land (e.g. open access land) are important recreational facilities for walkers, cyclists and equestrians.*" This mirrors the definition of byway open to all traffic as a public right of way mainly used by non-motorised users, the opposite of an all-purpose highway which is mainly used by motor vehicles.
15. In paragraphs 29-31 the TRF argues that it is illogical to make AMES 11 a cul-de-sac for motor vehicles. But this has been the logical consequence of government policy and legislation on green lanes since 2006, when restricted byways came into existence. We provided examples of byways open to all traffic in the vicinity of the scheme which are now culs-de-sac for motor vehicles because they terminate on restricted byways, in our written representation. We therefore think it is not illogical or unusual for AMES 11 to become a cul-de-sac for motor vehicles.

16. In paragraphs 32-36 the TRF discusses possible traffic regulation measures (albeit without referring to the Road Traffic Regulation Act 1984, the primary mechanism for traffic authorities to take such measures). It concludes that “*a better solution would be to retain public vehicular access on the [old] A303*”, as an alternative to traffic regulation measures on the old A303. But the consequence of retaining public vehicular access on the old A303 would be to make major elements of the scheme pointless.
17. The TRF submission then suggests 4 amendments to the dDCO; we comment on these using the TRF’s headings.

TRF Amendment 1: to avoid extinguishment of link between byways 11 and 12

18. The TRF asserts that this amendment, which would allow motor vehicles to use the old A303 between AMES 11 and AMES 12, is not material. We think that this is highly material, in the Oxford English Dictionary definitions of “**3 a** *Serious, important; of consequence.. b* *Pertinent, relevant; essential....c ...Of evidence or a fact: significant, influential, esp. to the extent of determining a cause, affecting a judgement, etc.*” Allowing motor vehicles to use this section of the old A303 would have, as we have argued above, significant and detrimental effects on the amenity of users of the new restricted byway, on the tranquillity of the area, and on the view of the area from Stonehenge. It would be contrary to the scheme’s aim of removing the sight and sound of traffic from the World Heritage Site.
19. The relevant sections of Chapter 2 of Highways England’s Environmental Statement (TR010025-00193-6.1) say that:

“Within the WHS: The existing A303 would be converted to a restricted byway accessible to pedestrians, wheelchairs and mobility scooters, cyclists, equestrians and horse drawn carriages. Authorised agricultural, emergency service and maintenance vehicles would also be permitted.

The restricted byway would provide safe access for the above user groups, compliant with the Equalities Act and with the aim of providing increased recreational opportunities across the WHS. This restricted byway would extend along the stopped-up section of Stonehenge Road.

For the purpose of this assessment, it is assumed that the restricted byway will consist of:
i. a 4m wide chalk grassland habitat, accessible to pedestrians and horse riders; and
ii. a 4m bound surface, to replace the existing A303 surface.” (paragraph 2.3.56)

“...the Scheme also includes new PRow routes to improve accessibility and connectivity for communities including Winterbourne Stoke and Amesbury. These are shown on Figure 2.5 and from west to east, are: f) a new restricted byway open to NMUs, and authorised agricultural and statutory utility vehicles would be created through the WHS along the route

of the existing A303, connecting with Stonehenge Road at the eastern end of the Scheme.” (paragraph 2.3.57)

“It is currently possible to gain access between byways AMES11 and AMES12 along the existing A303, however this vehicular access would be removed by the placement of this section of the A303 in tunnel (see Chapter 3 Assessment of Alternatives). NMU access between AMES 11 and 12 would be available along the new restricted byway along the line of the old A303, but vehicular access would not be retained.” (paragraph 2.3.58)

20. If this amendment to the dDCO proposed by the TRF were accepted, these sections of the Environmental Statement would have to be changed, to reflect the amendment and the adverse consequences for the safe access, recreational opportunities and connectivity for non-motorised users. We also comment that the TRF is incorrect in implying in paragraph 37 that the scheme will have an adverse impact on users of mobility scooters. The opposite is true – they will have more access than before because they will be able to use the new bridleways and restricted byways (Appendix 1).
21. The TRF argues in paragraph 45 that there would not be a significant change in use of the link by motor vehicles using it to travel between AMES 11 and AMES 12. We disagree; the revocation of the existing prohibitions on right turns and the creation of a new BOAT are likely to lead to more use by motor vehicles accessing the new BOAT via AMES 11 and AMES 12. Creating a new BOAT would have significant environmental implications compared to the restricted byway included in the dDCO and, as we have said above, is contrary to government policy.
22. We also disagree that the deadline 4a (two weeks after the TRF made its submission) is sufficient for interested parties to comment on the TRF’s proposals and meet the requirements of procedural fairness. If the Examining Authority were minded to accept the TRF’s amendments, we think that there should be a public consultation on the amendments, in the same way and to the same timescale as Highways England’s consultations on the scheme in 2018. This would help to ensure that the public, especially local communities, were aware of and could comment on the proposed change from restricted byway to byway open to all traffic.

Amendment 2: to ensure motorcycle-only use of link

23. This is an addition to amendment 1, to prohibit use of the new BOAT by motor vehicles other than motorcycles and invalid carriages. We agree with the TRF that the most appropriate way to regulate the use of the new BOAT, if amendment 1 were to be included in the DCO, would be for the traffic authority, Wiltshire Council, to exercise its powers under the Road Traffic Regulation Act (RTRA) 1984. This is because we think that this amendment is also material, and because the RTRA procedures allow for full public consultation and consideration of objections.

Amendment 3: to retain use of the A303 for small-capacity vehicles

24. This is also an addition to amendment 1, to prohibit use of the new BOAT by motor vehicles other than motorcycles with an engine capacity of less than 50cc. As with Amendment 2, we think such a regulation of use of the new BOAT, if amendment 1 were to be included in the DCO, would be for the traffic authority, Wiltshire Council, to exercise its powers under the Road Traffic Regulation Act (RTRA) 1984. This is because we think that this amendment is also material, and because the RTRA procedures allow for full public consultation and consideration of objections.

Amendment 4: to retain use of the A303 for motorcycles only

25. This amendment to the dDCO would make the whole of the old A303 in the World Heritage Site into a new byway open to all traffic, with a traffic regulation order to prevent use by motor vehicles other than motorcycles.
26. We comment that the TRF is inconsistent in seeking a traffic regulation order in the dDCO in this amendment, when it left traffic regulation to Wiltshire Council in amendments 2 and 3. Making the whole of the old A303 into a byway open to all traffic would have even greater detrimental effects on non-motorised users and on the World Heritage Site than amendment 1.

Conclusions on the TRF's proposals

27. The TRF ignores the effects of its proposals on non-motorised users of the old A303 and on the scheme aims of improving tranquillity and removing the sight and sound of traffic from the World Heritage Site. If the Examining Authority were minded to include the TRF proposals in the dDCO, we think these effects are material and should therefore be subject to full public consultation before further consideration by the Examining Authority.

Wiltshire Council's proposals

28. Wiltshire Council's legal submission on byways AMES 11 and 12 proposes that the use of these byways open to all traffic be prohibited to motor vehicles, other than motorcycles and invalid carriages (paragraph 1 of its legal submission).
29. One way of doing this would be a traffic regulation order (TRO), as proposed by the TRF in its amendments 2, 3 and 4. But a TRO would be the responsibility of Wiltshire Council, as the traffic authority for AMES 11 and AMES 12, not Highways England.
30. However, what Wiltshire Council is proposing in its legal submission is not a TRO, which suspends public rights and which can therefore be revoked or modified, but a stopping up

order, which extinguishes public rights forever. It says in paragraph 16 that the order it is proposing has “*essentially the same effect as a TRO*”, but this is not correct.

31. We disagree with Wiltshire Council’s arguments for allowing continued motorcycle use in paragraph 10 of its legal submission. Motorcyclists do give rise to problems in terms of damage and conflicts with non-motorised users on byways open to all traffic elsewhere (subparagraphs 10a and 10b). If the numbers of motor vehicle users of AMES 11 and AMES 12 increase and the associated issues of parking and camping increase, as Wiltshire Council predicts in paragraph 4, some of these users will be motorcyclists who may wish to park to view Stonehenge (as Mr Higgs currently does) or camp (Appendix 2 is an article promoting camping on green lanes published on the TRF website). Wiltshire Council’s hypothesis in subparagraph 4d that motorcyclists would not obey a traffic regulation order which prohibited them, unless barriers which also prevented horse-drawn carriage use were installed, is not borne out by experience elsewhere. It is also not a reason for not making a TRO which prohibits motorcycle use.

32. We note Wiltshire Council’s quotation from the 2011 letter from the government to Bob Neill MP in paragraph 26:

*“if the Examining Authority decides to consider material changes to an application as part of the examination, the Examining Authority will need to act reasonably and in accordance with the principles of natural justice. In particular the principles from the **Wheatcroft** case must be fully addressed, which essentially require that anyone affected by amended proposals must have a fair opportunity to have their views **heard and properly taken into account regarding them.**”*

33. This supports our comment above on the TRF proposals that they should be subject to public consultation in the same way as Highways England consulted on its proposals in 2018.

34. Wiltshire Council argues in paragraphs 36 and 37 that interested parties are fully aware of its proposal from the representations made at the Issue Specific Hearing on 13 June 2019 and that its proposal is already therefore in a form which enables public participation. But interested parties are not the same as “*anyone affected*”. Again we comment that a public consultation would be required to hear the views of those affected, followed by full consideration of those views.

35. The body of Wiltshire Council’s legal submission describes its proposed amendment as if it were a TRO made under the RTRA 1984, i.e. suspending public rights for motor vehicles other than motorcycles on AMES 11 and AMES 12. However, Appendix B to the legal submission reveals that the amendment proposed is actually a stopping up, an extinguishment, of public rights for motor vehicles other than motorcycles and certain other classes of use, not a suspension of public rights. We think that the dDCO cannot be amended in this way because Wiltshire Council has not shown how alternatives to the public

rights of way AMES 11 and AMES 12 will be provided or that alternatives are not required, i.e. the terms of subsection 136(1) Planning Act 2008 have not been met.

Conclusions on Wiltshire Council's proposal

36. GLEAM would welcome a prohibition on motor vehicles using AMES 11 and AMES 12 but we think that Wiltshire Council's proposal for an amendment to the dDCO is not the way to do it. This is for two reasons; first that Wiltshire Council has not shown how its proposal for extinguishment of public rights for motor vehicles other than motor cycles is compatible with subsection 136(1) Planning Act 2008, and second, because we are not convinced by Wiltshire Council's arguments for permitting continued use by motorcycles.

Diana Mallinson, Honorary Secretary, of behalf of GLEAM

5 July 2019

Appendices

1 Gov.uk website, Use public rights of way