

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

TR010025

Wiltshire Council (A303-AFP022)

**Response to Comments Submitted at
Deadline 4a on Legal Submissions**

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1. Introduction

- 1.1 Wiltshire Council has reviewed the comments submitted at Deadline 4a on the legal submissions made by Wiltshire Council, Highways England (HE) and the Trail Riders Fellowship (TRF). The Council's response to selected comments is contained herein.
- 1.2 Wiltshire Council has clearly set out its position regarding Byways 11 and 12 within its written representations, legal submission and verbal submissions made at the Issue Specific Hearings. The Council will, if appropriate, comment further in its response to Deadline 6 once the Examining Authority (ExA) has made a decision on the Council's proposal submitted at Deadline 4.
- 1.3 This response is therefore submitted on a without prejudice basis to further submissions (both orally and in writing), it wishes to make on this issue.

2. Response to HE Comments on Legal Submissions Submitted at Deadline 4a (001269)

- 2.1 The Council has reviewed HE's comments on the submissions made at Deadline 4 on the proposed changes to the dDCO in relation to byways 11 and 12 and wishes to make the following points.
- 2.2 Wiltshire Council does not agree with the comments noted in paragraph 3.3. The Council asserts that there is evidence in the Examination which shows that previous changes to the highways network, i.e. the implementation of the Traffic Regulation Order (TRO) for the C506 (former A344), shows the use of the byways, in particular Byway 12, increased significantly. This is as evidenced by the traffic counts provided to the Council by HE. However, this is a substantive issue which only arises if the ExA concludes that it is able to consider the Council's proposed amendment. HE's submissions on this point are not a reason for the ExA to decline to hear that substantive argument.
- 2.3 The Council's comment in paragraph 2.2 above also should be read in response to paragraph 3.4 of HE's response.
- 2.4 The Council notes that the survey numbers quoted by HE in paragraph 3.5 (a-c) of their response only refers to vehicle counts on Byway 11, but not to the vehicle counts which took place on Byway 12. Whilst there was some increase in traffic on Byway 11, the significant increase in traffic following the 2012 TRO on the C506 occurred on Byway 12.
- 2.5 The Council considers that HE's comments in paragraph 3.7 (a-d) of their response, do not appear to recognise that Byway 12, and to a much lesser extent Byway 11, are already used by the public. These users are not necessarily passing traffic, but include those with a trip end at the Byway. It is not possible to know what sort of research users undertake prior to their visit, but many would probably assume that if others do, so can they. The fact that traffic would have to leave the A303 is axiomatic, and it is accepted that the deviation from the through route would be more onerous than is currently the case. However, the comments do not appear to recognise that anybody with access to the internet can find plenty of advice as to how they might use the byways. By way of example, the following two links appear on the front page of a Google search, 'camp on byway at Stonehenge':

<https://www.wandering-bird.com/wild-camping-stonehenge/>

<https://www.wildcamping.co.uk/forums/motorhome-chat/15380-urgent-save-stonehenge-byway-12-wild-camping.html>

The Scheme is altering the highway network, which includes the byways, within a World Heritage Site (WHS). It is expected that the public will quickly seek, with assistance from the internet, easier alternatives to access to the WHS and those routes of access are likely to be through the WHS byway network.

- 2.6 It should be noted that it is not illegal to park on a byway (although there is no right to park), as suggested above, but it is illegal to camp overnight.
- 2.7 With respect to comments made by HE in paragraph 3.11 of their response, the point made by Wiltshire Council in relation to the ‘doubling’ of traffic made in the context that every vehicle entering the byway will have to exit by the same route, so a double trip for every vehicle on the same length of byway. There will be only one access to Byway 11, and it is unlikely that access would simply cease from the north because access from the old route of the A303 is not possible.
- 2.8 At 3.12 HE assert that the Council has to demonstrate that the proposed amendments are necessary in order to make the development acceptable. As a matter of law, that is simply wrong. The proposed amendment would not be a requirement imposed under section 120(2) of the 2008 Act, but a “provision relating to, or to [a] matter ancillary to, the development for which consent is granted” under section 120(3). Consequently, it is not necessary for it to correspond to a condition which could have been imposed on the grant of any permission; all that is necessary is that it relates or is ancillary to the development for which consent is granted.
- 2.9 The Council asserts that HE has not considered the effect of ‘displacement’ in the comments in paragraph 3.15 of their response. If motorised vehicular use is extinguished on short sections of the byways, motor vehicles simply displace to a point beyond the prohibition. This has occurred at the Winter and Summer Solstice events and is why the temporary traffic orders for Solstice extend to lengths of Byways 11 and 12 within the WHS.
- 2.10 The Council believes that the enforcement required, due to the location of the Byways within the WHS and the impacts of the Scheme, would go beyond what would be considered to be normal enforcement for a rural right of way.
- 2.11 At 3.21 HE contend that the Council is seeking to create a “novel and unprecedented class of way”. However, section 120(3) and Schedule 5 Part 1 specifically authorise a DCO to specify “the classes of traffic authorised to use a highway”. There is nothing in the Act which requires that specification to correspond to the classification of rights of way as footpaths, bridleways or byways. It would, for example, be perfectly appropriate to impose weight on vehicles.
- 2.12 In response to HE’s concerns (at paragraph 3.22 of their response) about the creation of criminal offences, the power under Schedule 5 Part 1 clearly envisages that any restriction on user would be enforceable. If the Council’s suggestion is not appropriate, para 3.23 of HE’s response indicates how the same result could be achieved.
- 2.13 The Council does not agree with HE’s comments made at paragraph 3.26 of their response. The evidence of increase in use of the byways will not arise until the development is complete.

- 2.14 Furthermore, the Council does not agree with the comments made at paragraph 3.27 of HE's response. The proposed amendment is related and ancillary to the development. The development will permanently alter the highway and rights of way network within the WHS and will directly impact on Byways 11 and 12 because they will be the only way to access Stonehenge for highway users who do not wish to visit Stonehenge through more formal routes, i.e. the Visitors Centre.
- 2.15 With respect to HE's comments at paragraph 4.2 on TRF's submission, the Council would expect given the remote location that motorised user are very likely (unless stopped by appropriate infrastructure) to 'create' their own link between Byways 11 and 12 either along the old route of the A303 or across private land.
- 2.16 HE outlined the series of variations proposed by the TRF in paragraph 4.6 of their response. The position taken by the TRF on the replacement of the Scheme proposal for a restricted byway along the line of the existing A303 between Longbarrow Junction and Stonehenge Road raises some significant concerns to the highway authority in relation to highway safety.
- 2.17 On the assumption that a significant number of people would be aware (through access to online mapping, social media etc.) that a possibility would be presented for those such as the significant numbers of representations made in relation to the loss of the view of the stones from passing traffic. As a consequence, much of the benefit of the Scheme proposals to restricting vehicular traffic within the WHS, and its consequential impacts on the Outstanding Universal Value (OUV) of the site, would be partially negated. The amount of traffic currently using and abusing the Byway 12 could (subject to any TRO restrictions) be supplemented by additional traffic parking on the byway in the vicinity of the area between and around the A303 / Byway 11 / 12 junctions, resulting in a worsening of the potential illegal camping, and parking on the byway.
- 2.18 There would also be consequences for highway safety at the Stonehenge Road end of the byway, and into Amesbury, where a significant number of 'through' vehicles could have adverse consequences within Amesbury town centre area, and put additional pressures on the A345 / London Road traffic signals controlled junction, which has been demonstrated by HE to be a junction where capacity improvements have already been identified as being necessary as a result of Scheme proposals (and not accounting for general development growth in the area). This traffic would be mixing with town centre pedestrian traffic, and would be an unwanted consequence were the 'through' route along the existing A303 to be deemed appropriate for access to traffic.
- 2.19 At the Longbarrow end of the byway, the existing design arrangements have in mind use of the restricted byway only by non-motorised users and very limited numbers of e.g. agricultural vehicles. The design at this junction is wholly inappropriate to consider for use by general byway traffic of the nature potentially attracted by the potential minor deviation away from the A303 tunnel route, in order to get a view of the Stones from the suggested byway. The current design proposes a moderately lightly used access from the A360, south of the southern new Longbarrow junction roundabout, in close vicinity (alongside) a proposed Pegasus Crossing. For the above reasons, it is essential that any traffic regulation order carries restrictions at least as onerous as TRF suggest in Amendment 3.

- 2.20 The Council disputes HE's assertion in paragraph 5.10 that "none is proposing consultation on them". The Council was quite clear in its legal submission that a consultation on its proposed amendments would be conducted if accepted for consideration by the ExA.
- 2.21 With regard to comments made in paragraph 6.11 of HE's response, the Druids, Pagans and other groups would not be prevented from accessing Stonehenge as the byways will not be closed or stopped up. Access to Stonehenge is provided at Solstice and could be provided at other events through an appropriate permit scheme managed by the Heritage partners.
- 2.22 Whilst, the Council notes the Scheme's objective to remove the sight and sound of traffic from much of the WHS landscape, as noted in HE's response at paragraph 6.15, the Council considers that an unintended consequence of the Scheme could be to significantly increase traffic using the byways, therefore reducing the realisation of this objective by increasing the sight and sound of traffic within the WHS.
- 2.23 The Council acknowledges HE's statement in paragraph 7.3 for submissions to be made at Deadline 6. However, no direction has yet been received from the ExA on whether parties are permitted to progress the suggested amendments to the dDCO.
- 2.24 The Council has consistently raised its concerns to the ExA regarding the impact of the Scheme on Byways 11 and 12 since its initial statutory consultation response submitted to HE in May 2018. This issue was detailed within the Council's Relevant Representation submitted on 11th January 2019, its Local Impact Report submitted on 18th April 2019, its Written Representation submitted on 3rd May 2019, its comments on the dDCO submitted on 31st May 2019, its oral submissions (and subsequent written summaries) made at the Issue Specific Hearings held on 4th June, 12th June and 13th June 2019 and submitted on 28th June 2019, in its legal submission submitted on 21st June 2019, in its response to Deadline 4a submitted on 3rd July 2019 and at the Compulsory Acquisition Hearings held on 9-10th July 2019. The Council has also stated its position on this issue in response to various representations, ExA questions and comments received throughout the Examination.
- 2.25 The Council is concerned that timescales are now becoming extremely limited to progress the required public consultation to fully consider this matter during the time remaining in the Examination. The Council would urge the ExA to provide direction on whether the Council is permitted to progress its proposed amendment concerning Byways 11 and 12 to the dDCO and make a timely decision on this matter, and if it is not possible to progress the public consultation during the Examination, for the ExA to advise how the Council's concerns can be addressed within the permitted process.

3. Comments on Various Submissions Made at Deadline 4a

- 3.1 Wiltshire Council makes the following comments to submissions made by Chris Moore (001232), Paul Carter (001233), Chris Greaves (001234), Michael Mercer (001235), Anthony Wingrove (001236), Ellian Latrache (001237), Graham Fowler (001238), Gary Jones (001239), J Chandler (001240), Andrew Down (001241), Adrian Miller (001242), Simon Jenner (001244), David Smeeton (001245), Jake Noble (001246), Paul O'Callaghan (001247), Ian Addis (001248), Ashley Brewer (001249), Ben Geary (001250), John Newman (001251), Richard Hare (001252), Trevor Tucker (001253), Peter Milner (001254), Chris Douglas (001255), James Lyon (001256), Andrew Wilson (001257), Phil Hooper (001258), Jamie Hoadley (001259), Tim Basset (001260), Iain Campbell (001261), Marco van Staden (001263), Peter Jones (001265), and Nigel Linge (001276) submitted at Deadline 4a.

- 3.2 Please see the Council's response to HE's comments in Section 2 above.
- 3.3 Furthermore, the Council wishes to state that the comments made in the referenced representation were expected and the proposed public consultation will enable the issues raised in the submissions to be addressed.
- 3.4 It should also be noted that motorcycles with an engine capacity of under 50cc will not be permitted to use the tunnel.

4. Comments on King Arthur Pendragon Submission (001229)

- 4.1 Please see the Council's response to HE's comments in Section 2 above.
- 4.2 The ExA already has evidence concerning the findings and outcome of the 2011 public inquiry. In so far as the TRF v WC 2018 case is concerned (Trail Riders Fellowship v Wiltshire Council 2018 EWHC 3600), the court found in that case that the Council had in error not fully complied with the 1996 regulations so far as appropriate pre-consultation was concerned. However, if Wiltshire Council's proposal is accepted by the ExA, there would be the appropriate 28-day public consultation.

5. Comments on Simon Banton Submission (001262)

- 5.1 Use of the highways is subject to change over time; traffic using the highway network within the WHS (including the rights of way and local roads) has increased. Wiltshire Council is now looking to futureproof the byways from the expected effects of this Scheme on the WHS byways.

6. Comments on Stonehenge Alliance Submission (001266)

- 6.1 Please see the Council's response to HE's comments in Section 2 above.

7. Comments on English Heritage Trust Submission (001267)

- 7.1 The Council agrees that the Secretary of State has a broad discretion under s.120 of the Planning Act 2008. The public consultation for Wiltshire Council's proposal will also provide further information for the ExA to consider.

8. Comments on Barry Garwood Submission (001268)

- 8.1 Wiltshire Council is concerned about the damage that is expected to be caused to the byways by the expected significant increase in motorised traffic as a direct result from the Scheme. Invalid carriages would not be prohibited from using Byways 11 and 12.

9. Comments on Rollo Maughfling Submission (001277)

- 9.1 Please see the Council's response to HE's comments in Section 2 above.
- 9.2 The Highways Act 1980 places a duty on local highways authorities to ensure highways are not obstructed and can be used to 'pass and repass'. The Road Traffic Regulation Act 1984 gives Wiltshire Council as the local highway authority the power to regulate how roads, which includes rights of way, are used. However, no 'custom' has been established allowing parking

on Byways 11 and 12 either at Solstice or following the 2011 non-statutory public inquiry (Planning Inspectorate Report Road Traffic Regulation Act 1984, 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 dated 16th November 2011, reference DPI/T3915/11/20.

10. Comments on Lois Lloyd Submission (001281)

- 10.1 Please see the Council's response to HE's comments in Section 2 above.
- 10.2 The public consultation will be expected to address the issues raised in this submission.
- 10.3 The Experimental Traffic Order is no longer in place and any restrictions on motorised vehicles using the byways were removed by 23rd December 2018.

11. Conclusion

- 11.1 Wiltshire Council's response to selected comments made in relation to the Deadline 4 legal submissions, which were submitted at Deadline 4a, are outlined above.
- 11.2 The Council requests that the ExA makes an early determination on this issue so that Wiltshire Council's arguments can be fully explored during the Examination.
- 11.3 This response is submitted on a without prejudice basis to further submissions (both orally and in writing), the Council wishes to make on this issue.