

A303 Amesbury to Berwick Down

TR010025

Deadline 6

8.41 – Response to Wiltshire Council and Trail Riders Fellowship Deadline 5 Submissions on AMES 11-12

APFP Regulation 5(2)(q)

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

July 2019



Infrastructure Planning

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A303 Amesbury to Berwick Down

Development Consent Order 20[]**

Response to Wiltshire Council and Trail Riders Fellowship Deadline 5 Submissions on AMES 11-12

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Introduction

- 1.1.1 As set out in the Applicant's summary of submissions at the Issue Specific Hearing on Traffic and Transportation [REP4-034] and its Deadline 4a submission [REP4a-001], Highways England considers that a Procedural Decision will need to be made by the Examining Authority as to how it considers the proposals by Wiltshire Council ('the Council') and the Trail Riders' Fellowship ('the TRF') to change the DCO should be examined during the Examination period.
- 1.1.2 In those submissions, Highways England set out its view that such a decision should require both parties to carry out consultation on their change proposals and that they should be required to make a formal submission to the Examinations setting out the changes proposed, to be accompanied by appraisals of this change dealing with the heritage, environmental and equalities impacts and issues highlighted by Highways England.
- 1.1.3 Furthermore, the Applicant notes that a number of parties made submissions at Deadline 4a which were consistent with the Applicant's view that the change proposals to be considered formally within the Examination process.
- 1.1.4 At Deadline 5, the Council and TRF have made further submissions with regard to the proposed changes and how they should be examined. Pending a Procedural Decision from the Examining Authority, the Applicant has responded to the salient points in the tables below to help inform the Examining Authority's consideration of what form that decision should take..

Response to Wiltshire Council and Trail Riders Fellowship Deadline 5 Submissions on AMES 11-12

2.1	Wiltshire Council	
	Comment	Highways England's Response
1.1.6	<p>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.</p> <p>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.</p> <p>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.</p>	<p>The Applicant's view is that the Council will need to show that the Scheme itself would lead to the increase in traffic on the Byways (i.e. therefore causing a problem that needs to be remedied).</p> <p>Whilst past changes to the wider network may have caused vehicular increases on byways, although the evidence to support this assertion is sparse, this is not evidence which demonstrates that the Scheme will necessarily result in a material increase in the use of the byways. The past changes do not demonstrate that the Scheme will necessarily cause an increase in the use of the Byways – indeed, the Council has provided no reasoned rationale and no evidence from an appropriately qualified expert to demonstrate that the Scheme will give rise to a material increase in the use of the byways. The Council has set out that it considers that their proposed change needs to be made for the Scheme to be 'acceptable' to them. As this is not the Scheme that is being promoted, for such a change to be made the Secretary of State will have to be satisfied that the Scheme should be refused in the absence of the modification promoted by the Council. At present, the Council has not produced any evidence which demonstrates this – indeed, it has not even clarified whether its position is indeed that the Scheme should be refused absent the change to the byways it proposes.</p>

	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.	
1.1.7	<p>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': [Links provided]</p> <p>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.</p>	<p>The basis for a change cannot simply be that people can 'go on the internet' to find an alternative route - there needs to be evidence that people will in fact do this and that it will lead to consequences which are sufficiently harmful to justify refusal of the Scheme. Only then could it be established that the change proposed is necessary as a result of the proposed Scheme. HE considers that the Council's largely assertive case falls substantially short of establishing this.</p> <p>There needs to be some substantive evidence to show that there would be an increase in traffic on Byway 12 resulting from the Scheme as it currently stands (rather than any existing issues) meaning that a change is required. This would therefore need to show that the removal of the link between Byways 11 and 12 or that the change to traffic flows in the local area caused by the Scheme will necessarily cause more traffic to use Byway 12 to the extent that some harm to the public interest would result..</p> <p>Furthermore, it is the case that any traveller who decided to research byway access to the WHS before travelling would be able to see that Byway 12 exists (as the Council note here) – that is therefore an existing matter, not something that is changed by the Scheme.</p> <p>As such, the Council can either decide to remedy that <u>existing</u> situation by bringing forward its own TRO through the RTRA 1984 process, or seek to make an argument that the DCO should remedy that existing situation.</p> <p>As such, for DCO purposes, the Council therefore needs to make either the argument that the changes to the local network brought by the Scheme will cause more traffic on Byway 12 (and indeed Byway 11); or justify that it is appropriate for a remedy to the existing situation to be brought forward through the DCO. It is the Applicant's case that neither argument has been made out by the Council.</p>

1.1.8	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.	<p>The Applicant agrees that there is no specific statutory provision stating that it is illegal to park, but notes that the case law in relation to section 137 of the Highways Act 1980 (obstruction of highways) indicate that the question is whether the use of the highway is unreasonable - judged by the duration and extent of the obstruction, its cause and purpose. In the context of the network surrounding Stonehenge the Applicant considers that the Council would be able to enforce under that provision, particularly in the context of section 130.</p> <p>The Applicant also notes regulation 103 of the Road Vehicles (Construction and Use) Regulations 1986 which makes it an offence for a person in charge of a motor vehicle or trailer to cause or permit the vehicle to stand on a road so as to cause any unnecessary obstruction of the road. Whilst case law indicates that this again requires consideration of the reasonableness of such behaviour, this further demonstrates that there is a regime in place to deal with parking that cause concerns on byways.</p>
1.1.9	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.	The Applicant acknowledges the first sentence of Wiltshire's comment. In relation to the second sentence, access will not be possible from the north of the A303, so it would cease.
1.1.10	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.	<p>This mischaracterises the point. The Applicant accepts that some of the DCO provisions sought by the Council could constitute part of the DCO pursuant to section 120.</p> <p>However, the Applicant does not consider that they should form part of the DCO. The question is therefore whether the DCO should be changed to include the provision – i.e. are the <u>changes</u> necessary to make the Scheme acceptable in planning terms; not the drafting which would follow as a result of the changes being potentially deemed as so necessary.</p>

1.1.11	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.	The Council needs to evidence that this displacement is likely to take place to the lengths suggested, show that this would arise as a result of the Scheme and that harm to the public interest would result. It has not yet done so.
1.1.12	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.	Whilst the Applicant acknowledges the difficulties for the Council, the Council has not demonstrated that there is an increase in difficulty arising from the Scheme, rather than an existing issue. It remains the case that the Council has the powers necessary to address the matters being complained of, and no further provision is required by way of the DCO.
1.1.13	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.	The Applicant's point is that such a creation of classes of use is novel and unprecedented in both the DCO regime and outwith the DCO regime, involving creating a 'stopping up but not quite' scenario, and uses that do not match its headline 'classification'.
1.1.14	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.	The Applicant disagrees – there is a clear prohibition on criminal offences in the Planning Act 2008.
1.1.15	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	As noted above, Byway 12 is able to be accessed now, so this is already an existing issue. The Council needs to demonstrate that the change caused by traffic potentially moving from Byway 11 will create such an impact that it makes the Scheme unacceptable.

	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.	
1.1.16	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.	Appropriate fencing and gates will be provided, pursuant to the commitments in the OEMP (e.g. in section 4 and MW-COM3) to prevent such action being taken.
1.1.17	<p>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.</p> <p>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.</p> <p>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</p>	<p>The Applicant agrees with the concerns expressed by the Council in respect of the TRF's proposals or any proposal to change the status of the restricted byway on the route of the old A303 to allow access for any form of vehicles other than those required for agricultural businesses.</p> <p>The Council will be able to enforce against any illegal use of the byways.</p>

	<p>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.</p> <p>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.</p>	
1.1.18	<p>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.</p>	<p>The Council's changes would prevent vehicular use of the byways from some distance away from the Stones - this is the concern raised by other Interested Parties, and is one of the reasons why the Applicant considers that the Council needs to assess the equalities impacts of its proposals.</p>
1.1.19	<p>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</p>	<p>As stated above, the Council needs to evidence that the Scheme will cause an increase in the use of the byways, rather than this being an extension of an existing problem. It has yet to do so.</p>

	of this objective by increasing the sight and sound of traffic within the WHS.	
2.2	Trail Riders Fellowship	
	Comment	Highways England's Response
1.1.20	Highways England in addition states that there is no proposal to stop up the northern end of byway 11 (although it accepts that the link would be extinguished for motorised users) and that turning arrangements are not proposed (paras.4.3-4). That is not what TRF had understood, but if correct, it hardly resolves the issue. There would still be a problematic cul- de-sac. As Historic England states in its deadline 4a response, if byway 11 is retained as a BOAT without the link, "this would either create and/or necessitate a cul de sac, gating requirements and /or turning facility where none exist at present" (see para.3(d)). Highways England is simply ignoring the issue.	<p>As stated in its Deadline 4a submission, while the detailed design of the northern terminus of Byway 11 remains to be developed, the Applicant considers the current width of the junction between Byway 11 and the A303 is sufficient to enable vehicles to perform this manoeuvre currently, and it is unlikely that it would need to install a turning circle. The current arrangement could be retained. As noted in the Council's Deadline 4 Submission (paragraph 61(i)), if parking becomes an issue, it would be addressed under the Council's powers as highway and traffic authority.</p> <p>The Applicant has committed to appropriate fencing and gating through the requirements of the OEMP and is therefore not 'ignoring' this matter.</p>
1.1.21	<p>As far as the objection to retaining the link, TRF reiterates that this would not be to <i>introduce</i> vehicular traffic, but to ensure that existing traffic is appropriately accommodated. It would plainly not give rise to significant additional impacts, but would avoid the problems and impacts identified in TRF's (and Wiltshire Council's) representations.</p> <p>Further, as TRF has already emphasised, Highways England's proposals would allow <i>private</i> vehicular use of the link. The claim that vehicular traffic would be reintroduced and/or would have a significant impact must be seen in this context. Low level recreational use is less impactful and intrusive than regular private use.</p>	<p>The reference to 'additional impacts' must be seen in the context of the <u>change to the application Scheme</u>. The Applicant's view is that the change to the Scheme, rather than a change from the existing is what falls to be considered.</p> <p>As set out in its Deadline 4 and 4a submissions, this needs to be assessed, but the Applicant considers that noise and heritage issues may arise.</p> <p>Agricultural traffic needs to continue to use the route to access farms that exist now in the context of the WHS and the Scheme continues that.</p> <p>TRF's proposals must be seen in the context of the additional traffic it brings on top of such private usage.</p>

1.1.22	<p>As far as the materiality of the change, TRF maintains that no further information is necessary to understand the implications of retaining the link rather than extinguishing it. Evidence about the current use of the byways is before the Examining Authority. Retaining the link would avoid rather than create issues.</p> <p>Moreover, in environmental impact assessment terms, extinguishment of the link appears to be a matter in the context of the scheme as a whole that Highways England has not assessed as significant. Para.6.13 of Highways England's deadline 4a response refers to ES para. 13.9.62 (APP-051). However, that simply states that "[t]he potential changes in severance for vehicular users assessed for the removal of the connection between Byways AMES 12 and AMES 11 overall are assessed to be minor adverse and not significant." TRF therefore does not accept the largely unsubstantiated suggestions made by some parties that retaining a minor link between byways for existing traffic would be of significant material consequence, still less one that needs to be addressed by the scheme, if there are impacts from retaining the link together with use of the byways, they will be capable in due course of being addressed by Wiltshire Council. It would therefore be disproportionate and unnecessary to have further rounds of consultation or to require any fuller assessment of such a minor change. That said, if the Examining Authority requires any further clarification or assistance on this point, TRF will seek to assist.</p>	<p>The Applicant would restate its submissions at parts 5 and 6 of its Deadline 4a submission which demonstrate that this allegedly 'minor' change could have material effects.</p> <p>It is also not appropriate to suggest that any problems arising from the change would be able to be dealt with 'in due course' by Wiltshire Council.</p> <p>The point is that a change is sought to the Scheme, the Scheme with that change therefore needs to be considered acceptable to the Examining Authority and the Secretary of State - it cannot be left until after the DCO if it would in fact be acceptable. Further, such a course of action does not resolve the natural justice issues that would arise were a material change to be proposed which the public had not been consulted upon in a manner which is consistent with the Sedley principles as explained in the Applicant's submissions at Deadline 4a.</p> <p>Assessments are therefore required to demonstrate that the changed Scheme would therefore be acceptable.</p>
1.1.23	<p>Finally, it is important to recall that TRF does not suggest these amendments in a vacuum, but as necessary changes <i>without which its objections cannot be overcome</i>. The alternative option for the Examining Authority would be to recommend that the DCO is not made as applied for, effectively requiring Highways England to reconsider the matter and come up with an acceptable solution.</p> <p>TRF appreciates that this is just one of many matters that the Examining Authority has to consider, but the volume of interest in it</p>	<p>The Applicant agrees that by the end of the Examination, if certain steps are followed, this will be the choice open to the Examining Authority and Secretary of State.</p> <p>However, the Applicant notes that in making that choice:</p> <p>as noted in its Deadline 4 and 4a submissions, such a change can only be made at the decision stage if all parties have had a chance to make fully informed submissions on the change, taking account relevant assessments of</p>

<p>demonstrates its importance. That said, unless the Examining Authority would like TRF to answer further questions upon it or would be assisted by further information, TRF considers that it has made its case and invites the Examining Authority on that basis to recommend either that:</p> <p>The amendments sought are made to the DCO; or</p> <p>The DCO is not made on the basis that it gives rise to an unacceptable impact from the stopping up of the A303 to vehicular traffic (in particular motorcycles) which is a matter that needs to be addressed by Highways England.</p>	<p>the effects. The Applicant's position is that this process still needs to be facilitated within this Examination; and</p> <p>that in making its recommendation and decision on the DCO, the Examining Authority and the Secretary of State will need to consider all of the benefits and impacts of the Scheme – the impact to trail riders will only form one element of this decision. The Applicant does not consider that the impacts to trail riders are of such weight or veracity that in and of themselves should lead to refusal of the Scheme.</p>
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