

Bath & North East Somerset Council

MEETING:	Regulatory (Access) Committee
MEETING DATE:	30 May 2012
TITLE:	Manor Farm Definitive Map Modification Order Application
WARD:	Chew Valley North

AN OPEN PUBLIC ITEM

List of attachments to this report:

- Appendix 1 – Application
- Appendix 2 – Description of Application Route
- Appendix 3 – Photographs
- Appendix 4 – Plan
- Appendix 5 – Definitive Map and Statement process
- Appendix 6 – Reclassification Order
- Appendix 7 – Deletion from the Definitive Map and Statement
- Appendix 8 – BBT's paper on "The deletion and downgrading of public rights of way"
- Appendix 9 – Evidence
- Appendix 10 – Consultation responses

1. THE ISSUE

- 1.1 Bath and North East Somerset Council, in its capacity as the surveying authority, (**"the Authority"**) is required to determine an application for a Definitive Map Modification Order ("DMMO") to modify the Definitive Map and Statement (**"the DM&S"**) to delete public bridleway CL15/11, at Manor Farm, Norton Malreward (**"the Application"**).

2. RECOMMENDATION

- 2.1 The Regulatory (Access) Committee is recommended to resolve in relation to the Application that a DMMO is **not** made to delete public bridleway CL15/11 from the DM&S.

3. FINANCIAL IMPLICATIONS

- 3.1 Financial implications are not a relevant consideration which may be taken into account under the provision of the Wildlife and Countryside Act 1981 (**"the 1981 Act"**). The Authority's costs associated with DMMOs, including Schedule 14(4) Appeals, the making of DMMOs and subsequent determinations, are met from existing public rights of way budgets.

4. THE REPORT

- 4.1 The Authority is under a legal duty to keep the DM&S under continuous review under the 1981 Act.
- 4.2 Any person may apply to the Authority for a DMMO under the 1981 Act making such modifications to the DM&S as appear to the Authority to be requisite in consequence of the occurrence of certain events. The Authority must investigate the matters stated in an application and after consultation decide whether or not to make the order.
- 4.3 On 26 March 1998, Mr M J P Pye, Mrs R A Pye and Mr J G Jones (**"the Applicants"**) made the Application for a DMMO to be made to delete "Bridleway CL15/11 at Manor Farm, Norton Malreward" from the DM&S on the ground that the route is not a public right of way. A copy of the form of Application is at Appendix 1. The Application was not accompanied by copies of the documentary evidence which the Applicants wished to adduce in support of the Application; however, the covering letter did refer to a number of documents which are each considered below and in Appendices 7 and 9. The Application was also not accompanied by a map drawn to the prescribed scale and showing the way to which the Application relates; however, the covering letter stated that the Application relates to "Bridleway CL15/11".
- 4.4 "Bridleway CL15/11", (**"the Application Route"**) is described at Appendix 2 together with relevant photographs of the Application Route contained at Appendix 3 and a plan contained at Appendix 4.
- 4.5 The Application does not meet the prescribed form set out in Schedule 14 of the 1981 Act; however, in the interests of fairness it is considered appropriate for the Authority to process the Application as originally indicated to the Applicants by the Authority back in 1998.
- 4.6 The Application Route was originally recorded on the DM&S which has a relevant date of 26 November 1956. The DM&S, the process involved in the production of the DM&S and the process involved in the inclusion of the Application Route on the DM&S are discussed at Appendix 5.
- 4.7 The Applicants contention is that the Application Route was recorded in error and that the Application Route was not, and is not, a public right of way.
- 4.8 In 1989 the Application Route was the subject of a Reclassification Order and two public inquiries and a High Court hearing were subsequently held as discussed at Appendix 6. This Reclassification Order process was concerned with whether or not the Application Route should be reclassified as another status of public right of way.
- 4.9 The purpose of the Reclassification Order, public inquiries and High Court hearing did not principally consider whether or not the Application Route was a public right of way. Subsequent to the conclusion of the Reclassification Order process, the Applicants submitted their Application contending that there are no public rights over the Application Route.
- 4.10 In making the DMMO pursuant to the Application the Authority must conclude that there is no public right of way over the Application Route. To arrive at such a conclusion the evidence must fulfil certain requirements:
 - the evidence must be new.
 - the evidence must be of sufficient substance to displace the presumption that the DM&S is correct.
 - the evidence must be cogent.

- 4.11 Paragraphs 4.30 to 4.35 of DEFRA's Rights of Way Circular 1/09 provide guidance on what is required to delete a route from the DM&S. Extracts from this Circular and relevant case law are contained at Appendix 7.
- 4.12 The Byways and Bridleways Trust submitted a paper to the Authority entitled '*The deletion and downgrading of public rights of way, and 'positional correction orders'*' which sets out the Trust's assessment of the legal considerations; this is contained at Appendix 8.
- 4.13 The Authority's Senior Rights of Way Officer has examined all the available evidence which is in the Authority's possession comprising that which has been submitted by Applicants and consultees and that which is held at the Somerset Heritage Centre in Taunton and The National Archives in Kew. This evidence is detailed and assessed in Appendix 9.
- 4.14 The following documents provide evidence that, at the time they were produced, at least a section of the Application Route physically existed:
- 1" Ordnance Survey map (1809)
 - 1" Ordnance Survey map (1830)
 - Stanton Drew Tithe Map (1842)
 - 1:2500 Ordnance Survey (1903)
 - 1:2500 Ordnance Survey map (1958)
 - 1:2500 Ordnance Survey map (1986)
 - User Letter (1989)
 - Sale Particulars Plan (1992)
- 4.15 The following documents which relate to the Application Route, or land adjacent to the Application Route, do not provide evidence of either the physical existence of the Application Route or whether the Application Route was a public right of way:
- Langdon Estate Survey (1693)
 - Norton Malreward Deeds (1718-1799)
 - Day and Masters' Map (1782)
 - Vestry Minute Book (1861)
 - Railway Plans (1860-1886)
 - Norton Malreward Tithe Map and Award (1840)
 - Finance Act documents (1910-1914)
 - Building Control Plans (1914)
 - Take Over Map (1929)
 - Bartholomew's Map (1945)
 - Land Registry Title Plans (1992)
- 4.16 The landowner's letter (1990) contained at Fig. 18 of Appendix 9 and Mr Goldstone's Statutory Declaration (1997) contained at Fig. 22 of Appendix 9 suggest that the Application Route was not physically passable; however, this evidence must be weighed in balance with other evidence particularly that detailed in paragraph 4.14 above. The landowner's letter and Mr Goldstone's Statutory Declaration rely upon recollections of events which took place several decades earlier; whereas, with the exception of the User Letter, the authoritative documents detailed in paragraph 4.14 were produced following contemporaneous surveys. On balance, it is considered that the Application Route did physically exist and was passable by pedestrians, equestrians and cyclists prior to, and at the time of, the DM&S's Relevant Date of 26 November 1956.

- 4.17 Aside from the DM&S, it is considered the documents listed above and considered at Appendix 9 provide modest evidence of the existence of public rights over the Application Route on the Relevant Date of 26 November 1956. Notwithstanding that the approach in relation to the Authority's determination of the Application must be whether there is the necessary clear and cogent evidence to remove the public rights of way over the Application Route from the DM&S and that it is demonstrated that an error was made when the Application Route was originally recorded.
- 4.18 It is considered that the evidence fails to sufficiently show that on the balance of probabilities the Application Route could not have physically existed after 1830, for example because there was a mapped feature such as a building across the line of the Application Route. Additionally, the evidence does not explicitly show that the Application Route was a private way. Consequently, it is considered there is insufficient evidence to show on the balance of probabilities that an error was made when the Application Route was recorded as a public right of way on the DM&S. A DMMO should therefore not be made and the Application should be rejected.
- 4.19 If the Authority decides not to make the DMMO the Applicants may within a prescribed time period serve notice of appeal against the Authority's decision on the Secretary of State and the Authority. If on considering the appeal the Secretary of State considers that a DMMO should be made he/she may give the Authority such directions as appear necessary for the purpose.

5. RISK MANAGEMENT

- 5.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Authority's decision making risk management guidance.

6. EQUALITIES

- 6.1 An Equalities Impact Assessment has not been completed because the impact upon equalities is not a consideration which may be taken into account under the provision of the 1981 Act.
- 6.2 The Authority's decision as to whether a DMMO should be made to delete the Application Route from the DM&S must be based solely on the available evidence which indicates whether or not a public right of way exists. The Authority cannot take into consideration the desirability or suitability of the Application Route. The 1981 Act does not permit personal considerations to be taken into account.

7. CONSULTATION

- 7.1 The Authority wrote to all owners of the land over which the Application Route runs, the Applicants, Statutory Undertakers, national and local user groups, Norton Malreward Parish Council and the Ward Councillor. Consultees were invited to submit any evidence or comments they had within a six week period. The evidence submitted is contained at Appendix 9 and copies of the responses received can be found at Appendix 10. Additionally, Easynet Telecom, Scottish and Southern Energy, Orange PCS and Cable & Wireless Worldwide responded stating that they do not have plant in the vicinity of the Application Route.

8. ISSUES TO CONSIDER IN REACHING THE DECISION

- 8.1 The issues to be considered in reaching the decision are detailed in the body of the Report and in Appendix 7.

9. ADVICE SOUGHT

- 9.1 The Authority's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	Graeme Stark, Senior Rights of Way Officer (Telephone 01225 477650)
Background papers	DEFRA's Rights of Way Circular 1/09 Inspector's Decision Report into the Inspector's Decision Report dated 28 May 1997
Please contact the report author if you need to access this report in an alternative format	