

Bath & North East Somerset Council

MEETING:	Regulatory (Access) Committee
MEETING DATE:	18 December 2012
TITLE:	Holy Trinity Church DMMO Investigation
WARD:	Chew Valley North
AN OPEN PUBLIC ITEM	
List of attachments to this report:	
Appendix 1 – Plan	
Appendix 2 – Photographs	
Appendix 3 – Section 53 of the Wildlife and Countryside Act 1981	
Appendix 4 – Consultation Responses	

1. THE ISSUE

- 1.1 The Regulatory (Access) Committee (“**the Committee**”) resolved that officers should investigate whether unrecorded public rights exist over a route to the south of Holy Trinity Church in Norton Malreward. An investigation has been carried out and it now falls to the Committee to determine whether a Definitive Map Modification Order (“**DMMO**”) should be made to modify the Definitive Map and Statement (“**the DM&S**”) based upon the evidence discovered.

2. RECOMMENDATION

- 2.1 The Committee is recommended to resolve that a DMMO should **not** be made to record additional public rights to the south of Holy Trinity Church on 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 are met from existing public rights of way budgets. The officer time required to make and advertise a DMMO is likely to cost the Authority between £1,000 and £1,500 and the newspaper notice to advertise the making of a DMMO is likely to cost £300.

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 On 30 May 2012, the Committee considered an application to delete bridleway CL15/11 at Manor Farm, Norton Malreward from the DM&S. The Committee resolved that a DMMO should be made to delete the section of bridleway CL15/11 commencing from a junction with restricted byway CL15/11 and continuing to a junction with public footpath CL15/2. On 18 September 2012 the Bath and North East Somerset Council (CL15/11, Manor Farm, Norton Malreward) (No. 2) Definitive Map Modification Order 2012 (“**Order No. 2**”) was made and Order No. 2 is also in front of the Committee for consideration under a separate agenda item.
- 4.3 The Committee also resolved that a DMMO should not be made to delete the remainder of bridleway CL15/11 between a junction with public footpath CL15/2 and the parish boundary. The junction with public footpath CL15/2 is not a point of common resort for horseriders and it is therefore highly unlikely that the public bridleway rights terminate at this location. Consequently, the Committee asked officers to carry out an investigation to determine whether the public bridleway rights continue to the south of Holy Trinity Church.
- 4.4 The route under investigation commences from a metal field gate with an adjacent narrow gap and a junction with a Class 4 Road at grid reference ST 6029 6507 (Point A on the plan contained at Appendix 1 (“**the Plan**”). The route continues in a generally southeasterly direction for approximately 65 metres to a wooden kissing gate, an adjacent metal field gate and a junction with public footpath CL15/2 at grid reference ST 6035 6503 (Point B on the Plan). The route turns in a generally north easterly direction over public footpath CL15/2 for approximately 80 metres to a junction with public bridleway CL15/11 (Point C on the Plan). The majority of the route runs to the south of Holy Trinity Church and is hereafter referred to as “the Investigation Route”.
- 4.5 The metal field gates at grid reference ST 6029 6507 (Point A on the Plan) and grid reference ST 6035 6503 (Point B on the Plan) have been padlocked during most site visits carried out by officers and both field gates have signs attached to them stating: “*Private No public right of way*”. Photographs of the Investigation Route can be found at Appendix 2.
- 4.6 The section of the Investigation Route between points A and B on the Plan is not currently recorded on the DM&S. If the Committee considers that on the balance of probabilities a presumption has been raised that this section of the Investigation Route has been dedicated as a public bridleway then a DMMO should be made pursuant to section 53(3)(b) of the 1981 Act. Alternatively, if evidence has been discovered which shows that a public bridleway subsists or is reasonably alleged to subsist over this section of the Investigation Route then a DMMO should be made pursuant to section 53(3)(c)(i) of the 1981 Act.
- 4.7 The section of the Investigation Route between points B and C on the Plan is currently recorded on the DM&S as part of public footpath CL15/2. If the Committee considers that on the balance of probabilities a presumption has been raised that this section of the Investigation Route has been dedicated as a public bridleway then a DMMO should be made pursuant to section 53(3)(b) of the 1981 Act. Alternatively, if evidence has been discovered which on the balance of probabilities shows that this section of the Investigation Route should be shown as a public bridleway then a DMMO should be made pursuant to section 53(3)(c)(ii) of the 1981 Act. Section 53 of the 1981 Act, as amended, is reproduced at Appendix 3.

- 4.8 The Authority's Senior Rights of Way Officer has examined all the available evidence which is in the Authority's possession, which is held at the Somerset Heritage Centre ("SHC") in Taunton and which has been submitted by consultees.
- 4.9 The section of the Investigation Route between points B and C on the Plan is shown by a solid black line on the Parish Survey Map which was produced by Norton Malreward Parish Council in preparing for the production of the DM&S. The associated survey card describes this section as follows; "...*proceed through field to wooden stile at Church, continue around the wall and over stone stile at rear of Church...*" The path is identified as number '2' and as a public footpath. This section of the Investigation Route is shown by a solid purple line on the Draft, Provisional and Definitive Maps. The Definitive Statement describes this section as follows; "...*through field to wooden stile at the Church. It runs around the wall and over the stone stile at the rear of the Church...*" The path is identified as 'CL15/2' and again as a public footpath.
- 4.10 The section of the Investigation Route between points A and B on the Plan is not shown or referred to in the Parish Survey, Draft Map, Provisional Map or Definitive Map and Statement. The DM&S records therefore show that the section of the Investigation Route between points B and C on the Plan was at least a public footpath but they do not provide any evidence regarding the section of the Investigation Route between points A and B on the Plan.
- 4.11 The 1809 2" Edition Ordnance Survey ("OS") Surveyor's Map delineates the Investigation Route by parallel pecked black lines to the south of a church, the 1903 6" Edition OS Map delineates the section of the Investigation Route between points B and C on the Plan by a solid and a parallel pecked black line to the south of Holy Trinity Church and the 1958 1:2500 Edition OS Map depicts a route to the south of 'Holy Trinity Church (C of E)' by parallel pecked lines. These OS maps provide evidence of the physical existence of these respective sections of the Investigation Route but these OS maps do not provide any evidence regarding the existence or otherwise of public rights. Additionally, the 1830 1" Edition OS Map and the 1986 1:2500 OS Map do not show any section of the Investigation Route.
- 4.12 A 'Sale Particulars Plan' (copy held by the Authority) which was produced when the buildings and a number of the fields which formed part of Manor Farm were sold in 1992 show the section of the Investigation Route between points A and B on the Plan delineated by a shaded area within 'Lot 7' and the majority of the section of the Investigation Route between points B and C on the Plan is delineated by a hatched area within 'Lot 10'. The Sale Particulars Plan is signed by the vendor and dated 18 July 1992; however, the plan does not contain a key to explain the meaning of the shaded and hatched areas. This Sale Particulars Plan suggests that almost the whole section of the Investigation Route between points A and C on the Plan physically existed in 1992 but does not provide any evidence of public rights.

4.13 The following documents which relate to the Investigation Route, or land adjacent to the Investigation Route, do not provide evidence of either the physical existence of the Investigation Route or whether the Investigation Route was a public bridleway:

- 'Langton Estate Survey' dated 1693 (SHC Ref: DD\GL/118),
- 'Norton Malreward, etc., deeds' dated 1718-1799 (SHC Ref: DDX\BROC/1),
- 'Day and Masters' Map' dated 1782 (SHC Ref: D\B\wsm/38/6),
- 'Norton Malreward Tithe Map and Tithe Award' dated c.1840 (SHC Refs: D\D\Rt/A/78 and D\D\Rt/M/78),
- 'North Somerset Railway and Branches plans' dated 1860 (SHC Ref: Q/RUP/273b),
- 'Chew Valley Tramway plans' dated 1861 (SHC Ref: Q/RUP/275),
- 'Vestry Minute Book' dated 1861 (copy provided by a consultee and held by the Authority)
- 'Bristol and North Somerset Railway plans' dated 1862 (SHC Ref: Q/RUP/285),
- 'Bristol and London Railway plans' dated 1882 (SHC Ref: Q/RUP/402),
- 'South Western Junction Railway plans' dated 1886 (SHC Ref: Q/RUP/420),
- 'Finance (1909-1910) Act 1910 documents' dated 1910-1914 (SHC Ref: DD\IR\W413. The National Archives Ref: IR128\2\31),
- 'Highway Authority Records' dated 1930 (held by the Authority),
- 'Bartholomew's map' dated 1945,
- 'List of Streets' dated 2012 (held by the Authority).

4.14 Consultee 3, who is the daughter of the previous landowner, has stated that the two metal field gates referred to in paragraph 4.5 above were erected and locked in 1992 (see Appendix 4) and the Authority is not in receipt of any user evidence relating to the Investigation Route.

4.15 The evidence detailed in paragraphs 4.9 to 4.14 above does not demonstrate that a public bridleway subsists or can be reasonably alleged to subsist over the section of the Investigation Route between point A and B on the Plan. Furthermore, on the balance of probabilities the evidence does not demonstrate that any section of the Investigation Route should be recorded on the DM&S as a public bridleway. A DMMO should therefore not be made to modify the DM&S in respect of the Investigation Route.

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.

7. CONSULTATION

7.1 The Authority wrote to the affected landowner and adjacent landowners, 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. Copies of the responses received can be found at Appendix 4.

8. ISSUES TO CONSIDER IN REACHING THE DECISION

8.1 The Authority's decision as to whether a DMMO should be made to record the Investigation Route as a public bridleway 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 Investigation Route. The 1981 Act does not permit personal considerations to be taken into account.

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)
Please contact the report author if you need to access this report in an alternative format	