

## **BATH AND NORTH EAST SOMERSET**

### **REGULATORY (ACCESS) COMMITTEE**

Tuesday, 18th December, 2012

**Present:–Councillors:** Mathew Blankley (Reserve) (In place of Peter Edwards), Nicholas Coombes (Chair), Douglas Deacon, Jeremy Sparks and Tim Warren

**Also in attendance:**

#### **11 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer drew attention to the emergency evacuation procedure.

#### **12 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Councillor Peter Edwards sent his apology for this meeting. Councillor Mathew Blankley was a substitute for Councillor Edwards.

#### **13 DECLARATIONS OF INTEREST**

There were none.

#### **14 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN**

There was none.

The Chair thanked Norton Malreward Parish Council for providing the venue for this meeting. The Chair also thanked to all members of the public who turned out at the meeting.

#### **15 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS**

The Chair informed the meeting that 6 people registered to speak at the meeting according to the speakers list (attached as Appendix 1 to these minutes). The speakers will address the Committee on items 8 and 9 on the agenda. Each of the speakers will have 3 minutes to address the Committee. The traffic light system will show green light for 3 minutes, amber light 30 seconds and red light out of time.

#### **Appendix 1**

#### **16 ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS**

There was none.

## 17 MINUTES OF PREVIOUS MEETING

The Chair informed the meeting that purpose of the minutes of the last meeting is to report what happened at the meeting and give some idea why it happened. The draft of the minutes had been updated last few weeks but it remained just as draft which is yet to be approved by the Committee at this meeting.

It was **RESOLVED** that the minutes of the meeting on 30<sup>th</sup> May 2012 be approved as a true record with the following amendment:

- Page 4 of the minutes, first paragraph, should read: 'Graeme Stark replied that there is clear evidence of use but a section of the Application Route has been obstructed and the public use **a temporary permissive path, agreed with the Council**, to get from the start of the path until end.

## 18 MANOR FARM (NORTON MALREWARD) DEFINITIVE MAP MODIFICATION ORDER 2012 CL15/11

The Chair introduced the item and invited speakers to address the Committee.

Mr Paul Britten addressed the Committee by saying that he lived in Norton Malreward for 55 years and that he and his wife were on the Parish Council for some time, whether as Clerks or Members of the Parish Council and that he was familiar with all the information. For him this route is bridle path and it is classified as road used as a public path (RUPP) according to map from 1956.

Mr Gareth Jones addressed the Committee by saying that he is the owner of Manor Court. Mr Jones said that this order is to deal with fact and there is no evidence to demonstrate that any portion of the line from A to C on the map was ever established as Public Right of Way. Mr Jones said that, as the owner, he is more than happy to make it usable as a permissive right of way for walkers, horse riders, etc.

Mr Charles Thursby-Pelham said that he moved here around 12 years ago and part of the reason was use of the bridle path, which was used regularly by Mr Thursby-Pelham and his family. Mr Thursby-Pelham didn't realise that there was an issue of potential access to it until recently and his view is that the bridle path is a right of way, and it can be used, though if there is no access to it how it could it be a right of way. Mr Thursby-Pelham said that he doesn't think that the access should be closed until the alternative route is provided.

Ms Ann Fay (British Horse Society) said that the bridleway runs from Norton Malreward village to the B3130 a total length of approximately 1200 metres or three quarters of a mile. It starts to the north of the Church and runs for a short distance through the grounds of Manor Farm then on a well-defined track over open fields which include a small airfield before crossing the parish boundary and dropping steeply to the road. It is part of a much used circular route which passes through Pensford and Publow. If the short section covered by the Order is deleted the whole circular route will be annihilated and 1200 metres of bridleway over open fields will be rendered useless for horse riders.

Ms Fay said that the alternative would be to use a surfaced track to the south of the church which joins up to the field track of the bridleway. This path has a gate which is usually locked but if it is open it is used in preference to the designated path as it is surfaced and clean while the path through the grounds of Manor Farm is very muddy. The gate only prevents the use of a short distance of track before it joins the bridleway and does not give access to any additional property or agricultural operations. If the route were to be allowed, the locked gate could remain with a suitable gap to the side to allow access for horse riders.

Ms Jane Hanney (Solicitor representing Gareth Jones) said that on the 30th May this year the Committee unanimously voted to support the order to delete the section A to C of this bridleway. The Committee is now being asked if they are going to continue to support the order, oppose the decision or take neutral stance. Nothing else should be considered tonight in relation to this order. Mr Stark recommendation is that the Committee should oppose this order although he gave no reason for his recommendation. In conclusions set out in the paper it says there is no evidence to support such recommendation. Paragraph 4.12 concludes that none of the evidence listed provides evidence of public rights of way along the order route. These documents only provide the evidence that at least a section of order route existed. Just because the route physically exist does not mean it is public; it could be equally private right of way. Paragraph 4.13 concludes that the evidence listed does not provide evidence of whether the order route was a public rights of way – so none of the documents in the evidence provided says that the order route was public rights of way. Paragraph 4.14 concludes that on balance the order route physically existed and it was passable by pedestrians though there is no evidence to support that. In paragraph 4.15 it said that it is considered that these documents provide modest evidence of the existence of public rights over the Order Route on the Relevant Date of 26 November 1956. It does not explain how Mr Stark came to this conclusion. At the last meeting the Committee voted to support the order and the only valid reason to change this stance would be if there is new evidence to show that your previous decision was not justified. There is no such new evidence. The Committee should continue to support the order and if they don't do so than it would be perverse, irrational and open to challenge.

*A full statement from Ms Jane Hanney is available on the minute book in Democratic Services.*

Mr John Ives (Open Spaces Society) said that what we have here is long standing dispute about the legality of the bridleway. The applicants have to establish whether the highway authority made a mistake when the definitive map was constructed – i.e. that no rights of way existed at that time. Mr Ives doesn't believe that the applicants proved their case but the Council had a different view on it. If the order is confirmed then we are left with a bridleway with no access. Mr Ives said that there is an obvious alternative which is the establishment of the route south of the church. Mr Ives concluded that Council now must consider what to do once the result of the inquiry is known.

The Chair thanked everyone who made their statement and asked if anyone else, who was not on speakers list, would like to address the Committee. There were no other speakers.

The Chair also informed the meeting that there were no comments from the Parish Council or from Ward Councillor.

The Chair invited Graeme Stark (Senior Rights of Way Officer) to take the Committee through the report.

Graeme Stark summarised the main points for consideration. On 30th May 2012 the Committee resolved that a section of CL15/11 should be deleted from the Definitive Map and Statement. The Definitive Map Modification Order (DMMO) was subsequently made and 55 people made objection to this order. One extra objection was received after the date. Due to the outstanding objections to the DMMO the authority is required to submit the order to the Secretary of State (SoS) for determination. It doesn't have the option to abandon the order or confirm itself so the order must be submitted to the SoS. Before doing so the Committee needs to consider the objections and decide whether the authority should confirm the order, oppose the confirmation of the order or alternatively to take neutral stance and to allow objectors and supporters of the order to present their case at inquiry.

Graeme Stark informed the Committee that the order was originally recorded on DM&S with a relevant date of 26<sup>th</sup> November 1956. The DM&S process is described in Appendix 2 of the report. In 1989 the application route was the subject of re-classification order and that is described in Appendix 3 of the report. The legal test which must be considered in relation to deletion of the routes are in Appendix 4 of the report. The Committee must consider the evidence contained in Appendix 5 of the report along with the evidence in Appendices 2 and 3 and the duly made objections and representations to the DMMO are in Appendix 6 of the report. Graeme Stark drew the Committee's attention to paragraph 4.34 of DEFRA's Rights of Way Circular 1/09.

Graeme Stark concluded by saying that his assessment is that there has not been sufficient evidence to demonstrate that an error was made and that the Order Route should not therefore be deleted, although it is for the Committee to decide whether the Authority should support, oppose or take neutral stance regarding confirmation of Order No. 2.

Councillor Tim Warren asked for a clarification on what neutral stance is.

Simon Elias (Senior Legal Adviser) said that this is not a re-hearing and that the decision maker now is the Inspector. If the Committee wish to change their decision then they need to give the reasons for it. Simon Elias explained that the Planning Inspectorate's Advice Note No.1 on neutral stance is the following; "Local authorities do not always support orders that they have made. A local authority may have been directed to make an order by the Secretary of State, or new evidence may have come to light after the order was made which leads the local authority to change its view."

Councillor Tim Warren felt that the Committee should not change the decision made on 30<sup>th</sup> May 2012.

The Chair said that he would prefer neutral stance on this matter. The reason for this is that at the last meeting the Committee reviewed the evidence. The question

in front of us is was there new evidence since the route was recorded in the 1950s to suggest that the route should not have been recorded. In his view, at the time, new evidence was cited by an objector to suggest that path might not have gone through the farmyard. That is why the Committee made their decision that the order should be made to delete the section A-C. This deletion order is now going to the Secretary of State/Inspector to decide and we now must decide if we will make representations at that decision. In his view, after rereading the report, the evidence that was referred to at the last meeting persuaded me that there may be evidence on the balance of probability that the route did not exist. However, the Chair said that now, now including the vestry minutes evidence that was referred to at the last meeting, he is no longer convinced by the evidence. The Chair said that he would like to withdraw his earlier support to delete the path and that is why he feels it would be correct that the decision should be with the Inspector without the input from the Council so it should be between the applicant and objectors to argue their cases in front of the Inspector.

Councillor Jeremy Sparks agreed with the Chair's view on this matter and supported that the issue should be handled by the Inspector.

Councillor Tim Warren moved that the Committee should support confirmation of Order No. 2 which it was previously satisfied to make. This was a correct decision made by the Committee in his view.

There was no seconder to the motion. Motion failed.

The Chair moved that the Committee take a neutral stance on the Order No. 2 because in light of the evidence now available to the Committee he was no longer convinced that a mistake was made when the path was recorded.

Councillor Jeremy Sparks seconded the motion.

Voting: 4 in favour with 1 against.

Motion carried.

On a motion from Councillor Nicholas Coombes and seconded by Councillor Jeremy Sparks it was **RESOLVED** that the Committee take a neutral stance on the Order No. 2 because in light of the evidence now available to the Committee and making the Committee is no longer convinced that a mistake was made when the path was recorded.

## 19 HOLY TRINITY CHURCH DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION

The Chair introduced the item and invited speakers to address the Committee.

Ms Ann Fay addressed the Committee by saying that it would be good to put this alternative route into use.

Ms Julia Bowman asked if one end of the bridleway is closed then would the Council improve the visibility, and accessibility, of the other end.

Graeme Stark replied that he would be happy to discuss the details with Ms Bowman after the meeting.

The Chair informed the meeting that there were no comments from the Parish Council or from Ward Councillor.

Graeme Stark said that the Committee resolved at the last meeting that officers should investigate whether unrecorded public rights exist over a route to the south of Holy Trinity Church in Norton Malreward. An investigation had been carried out by officers and the evidence detailed in paragraphs 4.9 to 4.14 of the report 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 Definitive Map and Statement (DM&S) as a public bridleway. Therefore, the Committee is recommended to resolve that a Definitive Map Modification Order (DMMO) should not be made to record additional public rights to the south of Holy Trinity Church on the DM&S.

Councillor Tim Warren commented that he is happy with officers' recommendation and moved that a DMMO should not be made to record additional public rights to the south of Holy Trinity Church on the DM&S.

Councillor Mathew Blankley seconded the motion.

The Chair said that he read the report, considered the evidence presented and also visited the site and his view is that there is a bridleway somewhere though he was not sure where exactly the actual way is. The Chair said that he will not support the motion from Councillor Warren and suggested that the Committee should defer their decision on this subject and wait for the report from the Inspector.

Councillor Tim Warren said that he will withdraw his motion at this time though he will not support deferral.

Councillor Mathew Blankley withdrew as seconder to the original motion.

Councillor Nicholas Coombes moved to defer the decision of the Committee and wait for the report from Inspector.

Councillor Jeremy Sparks seconded the motion.

Voting: 3 in favour with 2 against.

It was **RESOLVED** to defer the decision on whether or not a DMMO should be/not be made to record additional public rights to the south of Holy Trinity Church on the DM&S.

**20 UPDATE OF DEFINITIVE MAP ORDER AND PUBLIC PATH ORDER WORK**

Graeme Stark took the Committee through the report by highlighting brief details of all Definitive Map Modification Order applications and Public Path Orders (PPO) applications and current progress on each application.

Graeme Stark also informed the Committee that the Public Rights of Way Team received a Town and Village Green application for Bath Rec on Monday 17<sup>th</sup> December 2012 (which was not included in the report as the document was printed before the application was duly made).

It was **RESOLVED** to note the report.

The meeting ended at 7.30 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**