

# Roads and Rights of Way Committee

Minutes of a meeting held at County Hall, Colliton Park,  
Dorchester on Thursday 7 March 2013.

## Present:-

Tim Munro (Chairman)  
Rebecca Knox (Vice-Chairman)  
David Budd, Robin Cook, Ian Gardner and David Jones.

## Officers attending

Sarah Meggs (Solicitor), Vanessa Penny (Senior Rights of Way Officer – Definitive Map Team), Carol Mckay (Rights of Way Officer – Public Path Orders/GIS) and Kerry Smyth (Democratic Services Officer).

## Public Speaker

Minutes 37 to 39 Rosemary Tong, Clerk to Gussage St Michael Parish

## **Apologies for Absence**

31. Apologies for absence were received from Alex Brenton, Colin Jamieson and Peter Richardson.

## **Code of Conduct**

32. There were no declarations by members of any disclosable pecuniary interests under the Code of Conduct.

## **Minutes**

33. The minutes of the meeting held on 17 January 2013 were confirmed and signed.

## **Application for a definitive map and statement modification order to upgrade Bridleway 4, Pentridge (Bowling Green Lane) to byway open to all traffic and to add a byway open to all traffic from Bridleway 4 to the boundary with Hampshire**

34.1 The Committee considered a report by the Director for Environment which examined the evidence relating to the status of Bridleway 4, Pentridge (Bowling Green Lane) and a route leading from Bridleway 4 to the County boundary.

34.2 With the aid of a visual presentation, the Senior Rights of Way Officer provided a description of the route and the notable points along it. She explained that the claimed route was shown A-G (on Drawing 12/17/1), but that the majority of this route was currently a recorded bridleway which was shown A-F. She explained that there were therefore two potential ends to the route to be considered and confirmed that the definitive route between E and F had not been used for some time.

34.3 Members of the Committee were advised that although there was minimal user evidence, there was sufficient documentary evidence, the most significant being that of the Finance Act 1910 which showed that the claimed route was excluded from valuation throughout, from point A to E, continuing to be excluded along the definitive route of the bridleway to point F.

34.4 The Senior Rights of Way Officer explained that in 1973 a Special Review Committee considered the status of Bridleway 4 claimed by Pentridge Parish Council as a byway open to all traffic. The Committee's decision was to show the

route as a byway open to all traffic, however the review was subsequently abandoned due to objections and changes in legislation.

34.5 Members were informed that the Ordnance Survey maps from 1807, 1811 and 1887 showed the route as A-G, however the 1901 Second Edition Ordnance Survey Map showed the route as A-F. No explanation had been found as to why the route had changed. The Senior Rights of Way Officer explained that aerial photographs from 1947 showed three to four different routes to the County boundary and advised members that there was sufficient evidence to support a route from E-G and E-F. It was noted that point G linked to Byway 15 in Hampshire and there was no continuation of a route after point F.

34.6 In response to a question from a member, the Senior Rights of Way Officer explained that it would be open to the landowner to apply to extinguish part of the route if it could be proved that it was no longer needed for public use. The Solicitor explained that an extinguishment would have to be considered under the tests of the Highways Act 1980 and that this was not a matter for the Committee's consideration as part of the current application.

34.7 Members of the Committee discussed the evidence at length and agreed that there was sufficient evidence to suggest that a restricted byway subsisted between points A-G. A number of members expressed concern over the route E-F as it was felt that it did not continue elsewhere and was not currently used, it was therefore proposed that the route E-F be refused. Upon voting on this proposal, the amended proposal was refused.

#### **Resolved**

35.1 That the application be refused.

35.2 That an order be made to modify the definitive map and statement of rights of way to upgrade Bridleway 4, Pentridge as shown A-B-C-D-E-F to restricted byway; and add the route as shown E-G as a restricted byway on Drawing 12/17/1.

35.3 That if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.

#### **Reasons for Decision**

36.1 That subject to 36.2 below the byway open to all traffic claimed did not subsist nor could be reasonably alleged to subsist;

36.2 The available evidence showed, on balance, that in respect of the part of the route as claimed between points A-E and its continuation E-F, a highway shown on the definitive map and statement as a bridleway ought to be shown as a public vehicular way; and in respect of the part of the route claimed E-G a right of way for vehicles subsisted or was reasonably alleged to subsist.

36.3 As the application was submitted after 20 January 2005, and no other exceptions applied, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for mechanically propelled vehicles and therefore an order should be made for a restricted byway over the whole of the claimed route A-B-C-D-E-G and the route E-F; and

36.4 The evidence showed, on balance, that these routes should be recorded as restricted byways. Accordingly, in the absence of objections the County Council could itself confirm the Order without submission to the Planning Inspectorate.

**Application for a definitive map and statement modification order to upgrade Bridleway 10 (part), Gussage All Saints (James Cross Lane) to byway open to all traffic**

37.1 The Committee considered a report by the Director for Environment which examined the evidence relating to the status of Bridleway 10 (part), Gussage All Saints (James Cross Lane).

37.2 With the aid of a visual presentation, the Senior Rights of Way Officer provided a description of the route and the notable points along it. She explained that there was no user evidence to consider and that the most significant piece of documentary evidence was that of the Finance Act 1910 which showed the whole of the claimed route was excluded from valuation. A number of Inclosure Awards described the claimed route as a public carriageway and in 1973 a Special Review Committee considered the status of the route and concluded that it should be shown as a byway open to all traffic.

37.3 Rosemary Tong, Clerk to Gussage St Michael Parish meeting addressed the Committee on behalf of the local residents. She urged the Committee to refuse the application and retain the route as a bridleway. She explained that the route had only ever been used as a bridleway and felt that there was confusion over the lane. She explained that the lane was a roman road and as a result was exceptional and unique. It was not a through lane and despite any historic use, its current use was as a bridleway.

37.4 Members of the Committee discussed the evidence at length and unanimously agreed that there was very strong documentary evidence and it was clear that the route claimed should be recorded as a restricted byway.

**Resolved**

38.1 That the application be refused.

38.2 That an order be made to modify the definitive map and statement of rights of way to record part of Bridleway 10, Gussage All Saints as shown A-B-C on Drawing 12/33 as a restricted byway.

38.3 That if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to this Committee.

**Reasons for Decision**

39.1 That subject to 39.2 below the byway open to all traffic claimed did not subsist nor could be reasonably alleged to subsist;

39.2 The available evidence showed, on balance, that a highway shown on the definitive map and statement as a bridleway ought to be shown as a public vehicular way. As the application was submitted after 20 January 2005, and no other exceptions applied, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for mechanically propelled vehicles and therefore an order should be made for a restricted byway over the claimed route; and,

39.3 The evidence showed, on balance, that the route claimed should be recorded as a restricted byway. Accordingly, in the absence of objections the County Council could itself confirm the Order without submission to the Planning Inspectorate.

**Application for a public path order to divert part of Footpath 26, Lyme Regis (part of the South West Coast Path National Trail)**

40.1 The Committee considered a report by the Director for Environment on an application for a public path order to divert part of Footpath 26, Lyme Regis (part of the South West Coast Path National Trail). The report also sought permission to request that Natural England should seek a varying order from the Secretary of State to change the approved route following confirmation of the diversion order.

40.2 With the aid of a visual presentation, the Rights of Way Officer provided a description of the route and the notable points along it. She explained that the current route was mostly inaccessible and the proposed diversion moved the path onto a more usable route which had been in use for some time.

40.3 Members were advised that there was one outstanding objection to the proposal which was concerned over access to the private chalets. She confirmed that any private rights for chalet owners to walk through the bowling club would be unaffected by the diversion of Footpath 26.

**Resolved**

41.1 That the application to divert part of Footpath 26, Lyme Regis from K-E-F to K-L-M-N-O-P-Q-R as shown on Drawing 12/07/1 be accepted and an order made.

41.2 That the Order include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion.

41.3 That if the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to the Chairman.

41.4 That Natural England be asked to seek a Varying Order from the Secretary of State to change the Approved Route following confirmation of the Order.

**Reasons for Decision**

42.1 The proposed diversion met the legal criteria as required by the Highways Act 1980.

42.2 The inclusion of these provisions in a public path order meant that there was no need for a separate legal event order to modify the definitive map and statement as a result of the diversion.

42.3 Accordingly, the absence of objections may be taken as acceptance that the proposed new route was expedient and therefore the County Council could itself confirm the Order.

42.4 A Varying Report would change the recorded Approved Route of the South West Coast Path.

**Dorset County Council (Part of Bridleway 13, Compton Abbas) Public Path Diversion Order 2007**

43.1 The Committee considered a report by the Director for Environment which sought members' opinion on the position to be adopted by the County Council on the submission of the Dorset County Council (Part of Bridleway 13, Compton Abbas) Public Path Diversion Order to the Secretary of State following the receipt of one objection.

43.2 The Rights of Way Officer explained that an outstanding objection to the order remained from a Mr Kind on the grounds that the limitations and conditions were inadequately specified within the order.

43.3 Members were advised that as an objection had been received the County Council was unable to confirm the order itself and it therefore had to be submitted to the Secretary of State.

43.4 The Rights of Way Officer explained that it was hoped that the matter could be dealt with by written representation rather than Public Inquiry and therefore no significant investment of public resources would be necessary.

#### **Resolved**

44.1 That the Dorset County Council (Part of Bridleway 13, Compton Abbas) Public Path Diversion Order 2007 be submitted to the Secretary of State for confirmation with modifications; and

44.2 That the County Council takes a positive stance in the proceedings.

#### **Reasons for Decision**

45.1 The diversions which were the subject of the Order, complied in all respects with the law and therefore the Order should be confirmed. However, as there has been an objection to the Order the County Council must submit it to the Secretary of State for confirmation.

45.2 The application was likely to be dealt with by written representations rather than a Public Inquiry therefore no significant investment of public resources was anticipated.

45.3 Supporting the Order would be consistent with the previous decision by the Committee.

#### **Questions**

46. No questions were asked by members under Standing Order 20(2).

Meeting duration 10.00am to 10.50am