

Roads and Rights of Way Committee

Minutes of a meeting held at County Hall, Colliton Park,
Dorchester on Monday 1 July 2013

Present:-

David Jones (Chairman)

Daryl Turner (Vice Chairman)

Barrie Cooper, David Mannings, Margaret Phipps, Peter Richardson and Kate Wheller.

The following members attended by invitation:

Michael Bevan, County Council Member for Sherborne Rural (minutes 94 to 97)

Robert Gould, County Council Member for Sherborne (minutes 81 to 83)

William Trite, County Council Member for Swanage (minutes 78 to 80)

Officers attending:

Roger Bell (Rights of Way Officer – Definitive Map Team), Andrew Brown (Traffic Engineering Team Manager), Phil Hobson (Rights of Way Officer – Definitive Map Team), Sarah Meggs (Senior Solicitor), Vanessa Penny (Senior Rights of Way Officer – Definitive Map Team) and Kerry Smyth (Democratic Services Officer).

Public Speaker:

Mr Jack Duncan, Chairman of the Users of Service Lane Exit into Rempstone Road, Swanage and petition organiser (minutes 78 to 80).

Apologies for Absence

75. Apologies for absence were received from Steve Butler, Beryl Ezzard and Ian Gardner.

Code of Conduct

76. There were no declarations by members of any disclosable pecuniary interests under the code of conduct.

Minutes

77. The minutes of the meeting held on 6 June 2013 were confirmed and signed.

Procedure for Petitions - Petition entitled Service Lane Exit to Rempstone Road

78.1 The Committee considered a report by the Director for Environment which outlined the details of a petition received which called for changes to the parking arrangements in Rempstone Road, Swanage during the winter months.

78.2 The Traffic Engineering Manager explained that the petition had been received from Mr Jack Duncan on behalf of the users of the Service Lane exit to Rempstone Road, Swanage and contained 112 signatures. With the aid of a visual presentation, members were shown the location of the roads and advised that the current parking restrictions were in place from 15 May to 30 September. Members were informed that the petitioners were concerned over limited visibility and for the safety of pedestrians and road users.

78.3 It was confirmed that the Service Lane was partly owned by Swanage Town Council and partly privately owned. No formal request for a review of the

parking restrictions had been received from Swanage Town Council but officers had been advised that the Town Council were aware of the residents concerns.

78.4 Mr Jack Duncan, Chairman of the Users of Service Lane Exit into Rempstone Road, Swanage addressed the Committee. He explained that the local residents felt that the current parking arrangements were unreasonable and unjust due to the lack of visibility that residents had when using the Service Lane exit onto Rempstone Road. He explained that when the parking restrictions were not in place vehicles would be parked either side of the exit, often parked there all day making visibility very difficult for drivers to safely exit the road. He felt that an easy solution would be to move the restrictions and signage further up the road.

78.5 The County Council Member for Swanage addressed the Committee. He explained that due to the number of signatures on the petition this was a serious request with a considerable amount of support from the local residents. He explained that the Service Road was used as it was often the quickest most convenient route and the current parking on the junction at the exit made access onto Rempstone Road dangerous. He stressed that unless something was done to prevent the parking it was likely that a serious accident would occur.

78.6 In response to a question from a member, the Traffic Engineering Manager confirmed that requests for parking restrictions were usually made by the relevant town or parish council and were considered and ranked in order of priority alongside other schemes in the County. He reminded members of the Committee that there would not be any Traffic Regulation Orders made or processed in the current year due to the work that was being carried out on updating the county system, but requests could be investigated and included on the programme for 2014/15 if appropriate.

78.7 The Committee discussed the request at length and felt that it was necessary to have and consider the views of Swanage Town Council and Purbeck District Council before making a decision on the matter. Officers could then report back to the Committee at a future meeting where appropriate proposals could be discussed.

Resolved

79.1 That the petition be noted.

79.2 That the petition be referred to Swanage Town Council and Purbeck District Council for their views, in consultation with the County Council member for Swanage, and reported back to the Roads and Rights of Way Committee at a future meeting.

Reason for Decision

80. In order to comply with the County Council's published scheme for responding to petitions and so as to enable local people to connect with local elected decision makers.

Application for a definitive map and statement modification order to upgrade Bridleway 16, Sherborne and Bridleway 22, Castleton (Quarr Lane) to byway open to all traffic

81.1 The Committee considered a report by the Director for Environment on an application for a definitive map and statement modification order to upgrade Bridleway 16, Sherborne and Bridleway 22, Castleton (Quarr Lane) to byway open to all traffic and the evidence relating to the status of the route.

81.2 With the aid of a visual presentation, the Rights of Way Officer provided a description of the route and the notable points along it. He explained that during the investigation of the application it was found that the definitive lines of the bridleways on the definitive map did not reflect those of the claimed route, it was therefore proposed to correct this mapping anomaly.

81.3 Members were advised 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 parts of the route were excluded from taxation. This was supported by the 1901 Ordnance Survey Object Names Book which recorded Quarr Lane as 'a public roadway'. The 1842 Sherborne Tithe Map also provided good supporting evidence to the claimed public vehicular rights.

81.4 The County Council Member for Sherborne addressed the Committee. He thanked the officer for a thorough report and explained that this was a simple issue where it was clear that the claimed route did have public vehicular rights, although these had since been extinguished by the Natural Environment and Rural Communities Act 2006 and that it was apparent there had been an error on the definitive map. He confirmed his support for the recommendation.

81.5 Having discussed the application and documentary evidence, members of the Committee agreed that it was clear that an anomaly had been made on the definitive map and the definitive lines and status of the route should be recorded correctly.

Resolved

82.1 That the application to upgrade the bridleway along Quarr Lane be refused;

82.2 That an order be made to modify the definitive map and statement of rights of way:

(i) To remove part of Bridleway 16, Sherborne as shown C1-C2-D and part of Bridleway 22, Castleton as shown E1-F2-G on Drawing 13/04/4;

(ii) To add a restricted byway in Sherborne as shown C1-D and a restricted byway in Castleton as shown E1-F-G on Drawing 13/04/4; and

(iii) To upgrade parts of Bridleway 16, Sherborne and Bridleway 22 Castleton as shown A-B-C-C1, D-E-E1 and G-H-I on Drawing 13/04/3 to restricted byways; and

(c) 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

83.1 That subject to 83.2 below the byway open to all traffic claimed did not subsist nor could be reasonably alleged to subsist;

83.2 That the available evidence:

(i) Showed, on balance, that there was no public right of way over land shown in the definitive map and statement as a bridleway;

(ii) Showed, on balance, that a restricted byway not shown in the map and statement subsisted or was reasonably alleged to subsist; and

(iii) 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

83.3 The evidence showed, on balance, that the route claimed should be recorded as a restricted byway on the line proposed. 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 22, Winterborne Kingston and Bridleway 7, Anderson (White Lane) to byway open to all traffic

84.1 The Committee considered a report by the Director for Environment on an application for a definitive map and statement modification order to upgrade Bridleway 22, Winterborne Kingston and Bridleway 7, Anderson (White Lane) to byway open to all traffic and the evidence relating to the status of the route.

84.2 With the aid of a visual presentation, the Rights of Way Officer provided a description of the route and the notable points along it. He 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 that the route was totally excluded from taxation. The 1844 Winterborne Kingston Tithe Map and 1848 Inclosure Map also showed the claimed route as part of the highway network as through route and this evidence combined strongly suggested that the claimed route was considered as public carriageway.

84.3 The Chairman of the Committee confirmed that the County Council Member for Egdon Heath was in support of the recommendation.

Resolved

85.1 That the application be refused;

85.2 That an order be made to modify the definitive map and statement of rights of way to record Bridleway 22, Winterborne Kingston and Bridleway 7, Anderson as shown A-A1-B-C on Drawing 12/35/1 as a restricted byway; and

85.3 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

86.1 That subject to 86.2 below the byway open to all traffic claimed does not subsist nor can be reasonably alleged to subsist;

86.2 That 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 motor powered vehicles and therefore an order should be made for a restricted byway over the claimed route; and

86.3 That 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 definitive map and statement modification order to upgrade Bridleway 11, Weymouth, Bridleway 24, Osmington and Bridleways 5 & 9, Poxwell to byways open to all traffic (part of the South West coast Path National Trail)

87.1 The Committee considered a report by the Director for Environment on an application to upgrade Bridleway 11, Weymouth, Bridleway 24, Osmington and

Bridleways 5 and 9, Poxwell (one continuous route) to a byway open to all traffic and the evidence relating to the status of the route.

87.2 With the aid of a visual presentation, the Rights of Way Officer provided a description of the route and the notable points along it. He explained that no user evidence had been submitted with the application and that the most significant piece of documentary evidence was that of the 1845 Southampton and Dorchester Railway Plans which showed the route under application as under a tunnel and in the 1846 a further revised plan was submitted which showed the claimed route as a 'public road unaltered'. Disputes relating to the old turnpike road also provided further evidence where all parties acknowledged it was a public road.

87.3 In response to a question from a member, the Senior Solicitor explained that the fact that a route had not been used for some time would not extinguish any previous public rights that had existed.

87.4 Members of the Committee discussed the evidence relating to the status of the route and agreed that despite the route not being used for sometime it was clear that the route had been used by carriages in the past and that the Natural Environment and Rural Communities Act 2006 had now extinguished any public rights for motor powered vehicles along the route.

Resolved

88.1 That the application be refused;

88.2 That an order be made to modify the definitive map and statement of rights of way to record Bridleway 11, Weymouth, Bridleway 24, Osmington and Bridleways 5 and 9, Poxwell as shown A-B-C-D-E-F-G-H-I-J-K-L-M-N-O-O1-P on Drawing 12/39/1 as a restricted byway; and

88.3 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

89.1 That Subject to 89.2 below the byway open to all traffic claimed did not subsist nor could be reasonably alleged to subsist;

89.2 That 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 byway open to all traffic. As the application was submitted after 20 January 2005, and no other exceptions apply, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for motor powered vehicles and therefore an order should be made for a restricted byway over the claimed route; and

89.3 That 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 definitive map and statement modification order to upgrade Bridleway 26, Osmington to byway open to all traffic (part of the South West Coast Path National Trail)

90.1 The Committee considered a report by the Director for Environment on an application for a definitive map and statement modification order to upgrade Bridleway 26, Osmington to byway open to all traffic (part of the South West Coast Path National Trail) and the evidence relating to the status of the route.

90.2 With the aid of a visual presentation, the Rights of Way Officer provided a description of the route and the notable points along it. He explained that there was no user evidence in support of the application and that the most significant piece of documentary evidence was that of the Dorchester Rural District Highway Board Minutes which had references to the 'White Horse Hill Road, Osmington' and in 1880 the Dorchester Rural District Surveyor presented a list to the Board of a list of roads subject to only a small quantity of public traffic passing over them, which included White Horse Hill Road, Osmington'. Evidence was also provided by the 1845 Southampton and Dorchester Railway plans.

90.3 Having considered the documentary evidence summarised in the report the Committee agreed that part of a highway shown on the definitive map and statement as a bridleway (between points B1 and E) ought to be shown as a byway open to all traffic.

Resolved

91.1 That the application be refused;

91.2 That an order be made to modify the definitive map and statement of rights of way to record Bridleway 26, Osmington as shown B1-C-D-E on Drawing 12/40/1 as a restricted byway; and

91.3 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

92.1 That subject to 92.2 below the byway open to all traffic claimed did not subsist nor could be reasonably alleged to subsist. In addition, the part of the claimed route between points A and B1 was already recorded on the List of Streets and sufficient evidence exists as to its status being that of a public carriageway;

92.2 That the available evidence showed, on balance, that part of a highway shown on the definitive map and statement as a bridleway (between points B1 and E) ought to be shown as a byway open to all traffic. As the application was submitted after 20 January 2005, and no other exceptions apply, the provisions of the Natural Environment and Rural Communities Act 2006 extinguished the public rights for motor powered vehicles and therefore an order should be made for a restricted byway over the claimed route; and

92.3 The evidence shows, on balance, that part of 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.

Questions

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

Exempt Business

Exclusion of the Public

Resolved

94. That in accordance with Section 100 A (4) of the Local Government Act 1972 to exclude the public from the meeting in relation to the business specified in minutes 95 to 97 because it was likely that if members of the public were present, there would be disclosure to them of exempt information as defined in paragraph 5 of Part 1 of Schedule 12A to the Act and the public

interest in withholding the information outweighed the public interest in disclosing the information to the public.

The Queen (on the application of) Trail Riders Fellowship and Tilbury v Dorset County Council and others

95.1 The Committee considered an exempt report by the Director for Corporate Resources entitled 'The Queen (on the application of) Trail Riders Fellowship and Tilbury v Dorset County Council and others' which outlined the history of the legal case and the current position and sought the agreement of the Committee for the County Council to continue with its application for permission to appeal against the decision of the Court of Appeal.

95.2 The Senior Solicitor explained in detail the background of the case and the outcome of the Court of Appeal on 23 April 2013 which had allowed the claim for Judicial Review. She informed members that the County Council had been left in an unsatisfactory position relating to the applications and discussed the grounds for the County Council to appeal to the Supreme Court.

95.3 The County Council Member for Sherborne Rural addressed the Committee. He confirmed his support for the County Council to appeal against the decision made by the Court and felt that it was clear that all of the available evidence had not been considered.

95.6 The Chairman of the Committee presented a written submission from the County Council Member for Beaminster who supported the recommendation and believed it was the right course of action for the County Council to take.

95.4 Members discussed the detail of the case at length and thanked the Senior Solicitor for such a comprehensive report. They agreed that the decision of the applications would affect areas all over the county and agreed by majority that the County Council should continue with its application for permission to appeal against the decision of the Court of Appeal.

Resolved

96.1 That the County Council continue with its application for permission to appeal against the decision of the Court of Appeal (including at a hearing if refused on the papers).

96.2 That, if permission to appeal is granted, decisions as to the conduct of any appeal are made under delegated powers after consultation with the Chairman and Vice Chairman and in light of the advice from Leading Counsel.

Reasons for Decision

97.1 That the decision of the Court of Appeal was perfunctory and did not appear to take account of the evidence before the Court. The decision would leave the County Council in an unsatisfactory position as the reasoning is not entirely clear. This made it difficult to apply the decision in other cases.

97.2 That the Council was likely to receive proactive representations from competing interest groups and local communities about the merits of the applications in question. This was likely to make the determination of these applications particularly contentious, time consuming and resource demanding.

Meeting duration: 10.00am to 11.40am

