

Roads and Rights of Way Committee

Minutes of a meeting held at County Hall, Colliton Park,
Dorchester on Monday 2 September 2013

Present:-

David Jones (Chairman)
Daryl Turner (Vice-Chairman)
Steve Butler, Beryl Ezzard, Ian Gardner, David Mannings, Margaret Phipps and Kate Wheller.

The following member attended by invitation:

Paul Kimber, County Council member for Portland Tophill (minutes 107 to 109).

Officers attending:

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

Public Speaker:

Jim Welch, Dorset Local Access Forum Member/Green Lane Association/Dorset Land Rover Club (minutes 104 to 106).

(Note: These minutes have been prepared by officers as a record of the meeting and of any decisions reached. They are to be considered and confirmed at the next meeting of the Roads and Rights of Way Committee to be held on 10 October 2013.)

Apologies for Absence

98. Apologies for absence were received from Barrie Cooper and Peter Richardson.

Code of Conduct

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

Minutes

100. The minutes of the meeting held on 1 July 2013 were confirmed and signed.

Proposed No Waiting at Any Time – Locarno Road, Swanage

101.1 The Committee considered a report by the Director for Environment which outlined the objection and support in response to the public advertisement of the proposal to introduce 'No waiting at any time' restrictions in a section of Locarno Road, Swanage.

101.2 Members were advised that the request for the restriction had been made by Swanage Town Council following a petition from residents and complaints from Purbeck District Council as refuse collection vehicles were frequently unable to gain access to the road due to parking on the double bend.

101.3 With the aid of a visual presentation, the Traffic Engineering Team Manager explained that emergency vehicles were also unable to gain access along

the road. He advised that one letter of objection had been received in response to the proposal on the grounds that a space for the parking of one car should be created within the restriction. He confirmed that Swanage Town Council and the County Council member for Swanage supported the proposal, and the Police and Purbeck District Council had no objections.

Recommended

102. That the Cabinet approve the proposed order as advertised for Locarno Road, Swanage.

Reason for Recommendation

103.1 To avoid danger to persons or other traffic using the roads, or any other road, and to prevent the likelihood of any such danger arising.

103.2 To facilitate the passage on the road, or any other road, of any class of traffic (including foot passengers) or of vehicles, thereby linking to the Corporate Aims to protect and enrich the health and well-being of Dorset's most vulnerable adults and to safeguard and enhance Dorset's unique environment and support our local economy.

Application for a definitive map and statement modification order to downgrade part of Bridleway 5, West Knighton to Footpath or Bridleway

104.1 The Committee considered a report by the Director for Environment which detailed the evidence relating to an application for a definitive map and statement modification order to downgrade part of Bridleway 5, West Knighton to a Footpath or Bridleway.

104.2 Members of the Committee were advised of a number of corrections to the Director's report. Paragraphs 1.1 and 1.2 referred to Drawing 13/12/1 and 13/12, this should have been Drawing 13/18/1. Paragraph 10.56, after the list of maps it was stated that "The extracts from the small scale maps of Dorset submitted in evidence by the applicant" should have read "The extracts from the small scale maps of Dorset examined during the investigation".

104.3 With the aid of a visual presentation, the Rights of Way Officer (Definitive Map Team) provided a description of the route and the notable points along it.

104.4 The Rights of Way Officer explained that the application was submitted by Mr C Lousley on 24 January 2006. He acknowledged that whilst the applicant was concerned as to the potential damage to the site through the use of vehicles, this was not an issue that the law allowed to be taken into consideration when determining what public rights existed.

104.5 Members were informed that there had been eight submissions in response to the application, two in support, four objecting and two having no comments to make.

104.6 Members were advised that when considering an application to downgrade a right of way, certain stringent requirements had to be met and that evidence considered at the time the Definitive Map was originally compiled could not simply be re-examined. Any evidence relied upon by the applicant had to be significant and of sufficient substance to overcome the presumption that the Definitive Map was correct.

104.7 The Rights of Way Officer explained that the most significant pieces of evidence relied upon by the applicant were related to the Special Review of 1973 and the Statutory Declaration (The Brymer Declaration) of 1934, through which Mr Brymer acknowledged the existence of a number of public highways on his land. It was noted that this Statutory Declaration was considered by the Committee during the Special Review in 1973 and without the benefit of the newly discovered evidence it could not be re-examined in isolation or considered at all. He explained that the applicant's argument was that the Statutory Declaration had been misinterpreted by the Committee during the Special Review.

104.8 Members were advised that there were a number of significant pieces of documentary evidence available to support the current status of the route. The Puddletown and Vestry Minutes and the Minutes of the Dorchester Highway Board identified the route as a public carriageway, and part of the application route as shown A-B was excluded from valuation in the Finance Act 1910, thereby providing strong evidence that it was recognised as a public carriageway.

104.9 In response to a question from the Chairman, the Rights of Way Officer confirmed that the applicant had been involved in the process of his application at all stages and made aware of any new evidence discovered at all times. The Chairman of the Committee acknowledged the amount of work and research that Mr Lousley had carried out and expressed his gratitude over the amount of time he had taken in preparing his application and submissions. One member expressed her disappointment over the decision that had been taken to not defer the consideration of the application in order for Mr Lousley to attend the meeting, particularly due to the great deal of time and attention he had put into his application.

104.10 Jim Welch, Dorset Local Access Forum member, Dorset Area representative for the Green Lane Association and the Rights of Way Officer for Dorset Land Rover Club addressed the Committee. He expressed hope that the Committee would refuse the application and felt there were grounds under history and legacy, access for all and tourism and changes to definitive map.

104.11 He explained that having looked at the evidence it was clear that this section of Byway 5 had been recorded in the Parish Records and on the definitive map under the classification as a byway in excess of two hundred years and had been handed down through the generations. He confirmed that the lanes were part of a network used by many individuals to discover and enjoy the countryside and most users used them responsibly. He explained that the route was accessible and easy to drive and if the application were to be approved it would cause great disappointment, particularly to the vulnerable/disabled users.

104.11 In response to a question from a member, the Rights of Way Officer explained that a CRB was a carriage or cart road which was mainly used as a bridleway but was open to vehicular traffic. He also confirmed that any vehicular rights that had been in existence, whether exercised or not, remained so unless they had been extinguished.

104.12 Members of the Committee discussed the evidence in detail and agreed that it was disappointing to see the evidence of abuse of some users along the route and members had sympathy with Mr Lousley's concerns. However it was noted that these concerns could have been addressed through other means such as a Traffic Regulation Order in order to try and restrict inappropriate usage and

members agreed that on balance there was sufficient evidence to demonstrate that the decision to record the route as a byway open to all traffic was correct.

Resolved

105. That the application be refused.

Reason for Decision

106. The analysis of the available evidence submitted and or discovered does not demonstrate that the application route, with the recorded status of Byway Open to All Traffic, ought to be shown as a highway of a different description. The evidence demonstrates that the route is recorded correctly and should remain recorded as a Byway Open to all Traffic.

Proposed creation of bridleways (upgrading of parts of Footpaths 25, 26 and 29 and creation of a new bridleway) and proposed extinguishment of part of Footpath 26, Portland at Weston

107.1 The Committee considered a report by the Director for Environment which outlined proposals to create four bridleways (upgrading parts of Footpaths 25, 26 and 29 and creation of a new bridleway) and to extinguish part of Footpath 26, Portland at Weston as part of the improvement of public rights of way in the area connecting to the new Tesco store.

107.2 With the aid of a visual presentation, the Rights of Way Officer provided a description of the routes and the notable points along them. She explained that as part of the proposals improvements would be made to the surface condition of the routes and any obstructions removed from them.

107.3 Members were advised that there were currently no bridleways recorded on Portland although it was an area with a high level of horse ownership and a commercial equestrian centre. The Rights of Way Officer explained that the recent development of a new Tesco store on the island had led to the request for improvements on the rights of way in the area and Tesco had contributed £30,000 for the improvement works.

107.4 The Rights of Way Officer advised that following consultation on the proposals, six objections were received, one of which was subsequently withdrawn. There were four main areas of concern raised by the objectors; user conflict; illegal use of the public rights of way; concern that additional vehicle rights would be created on the proposed right of way; the need for bridleways.

107.5 Members were advised that there was no evidence to suggest there would be a conflict between different users of the routes; concerns over illegal usage of the routes were a management issue that would be addressed if required; there would be no public vehicle rights along the route for mechanically propelled vehicles; and due to a nearby equestrian centre and the number of horses owned on the island there was a high level of need for bridleways.

107.6 The County Council member for Portland Tophill addressed the Committee. He confirmed his support for the proposals and explained that they would help contribute to tourism and improve public access for the local community.

107.7 Members of the Committee discussed the proposals and concern was raised over the removal of bollards and stones along the routes as this would likely result in the illegal use by motor bikes/vehicles, which was already being experienced in other areas on Portland. The Rights of Way Officer explained that the bollards had

been installed without permission and would need to be removed in order to ensure that the routes were accessible to a range of users including wheelchair users and horse riders. She explained that if illegal use did occur then the management of the bridleways would be reviewed.

Resolved

108.1 That the proposals to:-

- (i) Upgrade part of Footpath 25 to bridleway as shown H-B-C-D-E;
- (ii) Upgrade part of Footpath 26 to bridleway as shown A-G;
- (iii) Upgrade part of Footpath 29 to bridleway as shown C-F;
- (iv) Create a bridleway as shown G-H; and
- (v) Extinguish part of Footpath 26 as shown B-G

on Drawing 12/36/2 (attached as Appendix 1) at Weston, Portland be accepted and the orders made.

108.2 That the Orders include provisions to modify the definitive map and statement to record the changes made as a consequence of the extinguishment and creations.

108.3 That if the Orders are unopposed, or if any objections are withdrawn, they be confirmed by the County Council without further reference to the Chairman.

Reasons for Decision

109.1 The proposed extinguishment and creations meet the legal criteria as required by the Highways Act 1980.

109.2 The inclusion of these provisions in a public path order means that there is no need for a separate legal event order to modify the definitive map and statement as a result of the extinguishment and creations.

109.3 The proposed extinguishment and creations also meet the criteria for confirmation as required by the Highways Act 1980. Further, the absence of objections may be taken as acceptance that the applications are expedient and therefore the County Council can itself confirm the orders.

Questions

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

Meeting duration: 10.00am to 11.10am

