

Regulatory Committee



Dorset County Council



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| Date of Meeting | 12 July 2018 |
| <u>Local Member(s):</u> n/a | |
| <u>Lead Officer(s)</u> Carol McKay, Senior Definitive Map Officer | |
| Subject of Report | Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic following the Supreme Court ruling |
| Executive Summary | <p>On 7 October 2010 the Roads and Rights of Way Committee considered a report concerning the Determination of Applications to Modify the Definitive Map and Statement.</p> <p>The Committee resolved that</p> <ul style="list-style-type: none"> i) five applications for Byways Open to All Traffic (BOAT) received before 20 January 2005 (the cut off date for extinguishing vehicular rights) should be refused on the basis that they were invalid as they did not comply with the requirements set out in the Wildlife and Countryside Act 1981. The question of compliance with the requirements of the 1981 Act centred mainly around the use of computer generated maps and whether the maps used were invalid enlargements of small scale maps. ii) For all other pre 20 January 2005 applications for byways open to all traffic where the County Council had already made a decision the County Council's stance in any further local inquiry or other process be modified to reflect the Committee's view that applications supported by computer generated enlarged versions of ordnance survey maps were not in |

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| | <p>strict compliance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981.</p> <p>The Committee's decision was challenged by the Trail Riders Fellowship (TRF) in judicial review proceedings. The case went all the way to the Supreme Court; the High Court having found in favour of DCC. However, the Supreme Court, accepting the TRF's case, hold that the maps did comply with statutory requirements.</p> <p>Following the Supreme Court ruling, it is necessary for the Regulatory Committee to revisit the decision made by the Roads and Rights of Way Committee in October 2010.</p> |
| Impact Assessment: | <p>Equalities Impact Assessment: An Equalities Impact Assessment is not a material consideration in considering this application.</p> <p>Use of Evidence: Recommendations in this report are based on the application of relevant law and guidance.</p> <p>Budget: Financial implications arising from this issue are not material considerations and should not be taken into account in determining the matter.</p> <p>Risk Assessment: As the subject matter of this report relates to the determination of definitive map modification order applications the County Council's approved Risk Assessment Methodology has not been applied.</p> <p>Other Implications: None</p> |
| Recommendations | <p>That the following applications all be accepted and investigated:</p> <p>(a) i) byway open to all traffic at Bailey Drove, Batcombe/Leigh; ii) upgrade Bridleway 8 (part) Cheselbourne and Bridleway 18, Dewlish to byway open to all traffic (Doles Hill Plantation east to Chebbard Gate);</p> |

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| | <p>iii) upgrade Bridleway 12, Tarrant Gunville to byway open to all traffic and add an unclassified road in Chettle as byway open to all traffic (one continuous route); iv) upgrade Bridleway 14, Beaminster to byway open to all traffic (Meerhay to Beaminster Down); and v) upgrade Bridleways 17 and 35 to byway open to all traffic and to add an unclassified road as byway open to all traffic (one continuous route – Crabbs Barn Lane). And;</p> <p>(b) That for all other pre 20 January 2005 applications for byways open to all traffic where the County Council had already made a decision the County Council’s stance in any further local inquiry or other process be as originally intended and unchanged by the Committee’s decision on 7 October 2010.</p> |
| <p>Reasons for Recommendations</p> | <p>(a) ;</p> <p>Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and supports the Corporate Plan 2017-18 Outcomes Framework:</p> <p>People in Dorset are Healthy:</p> <ul style="list-style-type: none"> • To help and encourage people to adopt healthy lifestyles and lead active lives • We will work hard to ensure our natural assets are well managed, accessible and promoted. <p>Dorset’s economy is Prosperous:</p> <ul style="list-style-type: none"> • To support productivity we want to plan communities well, reducing the need to travel while ‘keeping Dorset moving’, enabling people and goods to move about the county safely and efficiently |
| <p>Appendices</p> | <p>1 - Report to the Roads and Rights of Way Committee 7 October 2010 and appendices 2 - Minutes of the Roads and Rights of Way Committee Meeting held on 7 October 2010</p> |
| <p>Background Papers</p> | <p>R (on the application of Trail Riders Fellowship and another) v Dorset County Council [2015] https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0153_Judgment.pdf</p> |

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Determination of Applications to Modify the Definitive Map and Statement of Rights of Way to Record Byways Open to All Traffic following the Supreme Court ruling

1 Background

- 1.1. At its meeting on 7 October 2010, the Roads and Rights of Way Committee considered the report attached as Appendix 1.
- 1.2. The Natural Environment and Rural Communities Act 2006 extinguish unrecorded vehicular rights of way subject to limited exception. One exception is that on application to record the route as a byway open to all traffic was made before 20 January 2005, the cut-off date.
- 1.3. Members accepted the recommendations set out that five applications for Byways Open to All Traffic received before the cut-off date of 20 January 2005 be refused and that for all other pre 20 January 2005 applications for byways open to all traffic where the County Council had already made a decision the County Council's stance in any further local inquiry or other process be modified to reflect the Committee's view that applications supported by computer generated enlarged versions of ordnance survey maps were not in strict compliance with paragraph 1 of Schedule 14 to the Wildlife and Countryside Act 1981.
- 1.4. The Committee decision was subsequently challenged by way of judicial review by the Trail Riders Fellowship (TRF).
- 1.5. The matter was considered by the High Court in June 2012 and the claim was dismissed. Mr Justice Supperstone upheld Dorset's decision on the basis that: (i) the application maps did not comply with the statutory requirements; and (ii) applying the decision of the Court of Appeal in the case of *R (Warden and Fellows of Winchester College) v Hampshire County Council* [2008] EWCA Civ 431, the applications were invalid because the extent of the non-compliance was not negligible (de minimis).
- 1.6. In December 2012 permission to appeal was granted to TRF by the Court of Appeal.
- 1.7. The Court of Appeal allowed the appeal, holding that (i) the maps did comply with the statutory requirements, but (ii) if the appeal had failed on the first point, the non-compliance "could not sensibly be described as de minimis".
- 1.8. The County Council then appealed to the Supreme Court. In March 2015, the Supreme Court dismissed the County Council's appeal on the basis of point (i) and upheld –by a majority of 3-2 –the Court of Appeal's decision that the maps did comply with statutory requirements.
- 1.9. Following the decision by the Supreme Court in March 2015, it is necessary to revisit the original decision made by the Roads and Rights of Way Committee in 2010.
- 1.10.** This will enable Dorset County Council to investigate the five applications for Byways Open to All Traffic received before the cut off date of 20 January 2005 which have not yet been determined and to maintain its original stance with regards to those cases already investigated, some of which are awaiting submission to the Planning Inspectorate for consideration.

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2 Law and Guidance

- 2.1 A summary of the relevant law is contained in the earlier report attached as Appendix 1.
- 2.2 The Supreme Court Judgement R (on the application of Trail Riders Fellowship and another) v Dorset County Council [2015] https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0153_Judgment.pdf details the evaluation and decision made by the Supreme Court.

3 Conclusions

- 3.1 The Supreme Court on a 3:2 majority found that the County Council was wrong in its decision to reject the five applications for Byways Open to All Traffic and that the presented scale of the map, produced by printing at a scale of not less than 1:25000, information originally capture at 1:50000 was acceptable for the purposes of paragraph 1 of Schedule 14.
- 3.2 In light of this outcome, it is necessary to revisit the decision made by the Roads and Rights of Way Committee in October 2010.
- 3.3 The following applications should all be accepted and investigated:
- i) byway open to all traffic at Bailey Drove, Batcombe/Leigh;
 - ii) upgrade Bridleway 8 (part) Cheselbourne and Bridleway 18, Dewlish to byway open to all traffic (Doles Hill Plantation east to Chebbard Gate);
 - iii) upgrade Bridleway 12, Tarrant Gunville to byway open to all traffic and add an unclassified road in Chettle as byway open to all traffic (one continuous route);
 - iv) upgrade Bridleway 14, Beaminster to byway open to all traffic (Meerhay to Beaminster Down); and
 - v) upgrade Bridleways 17 and 35 to byway open to all traffic and to add an unclassified road as byway open to all traffic (one continuous route – Crabbs Barn Lane).
- 3.4 With regards to other pre 20 January 2005 applications for byways open to all traffic where the County Council has already made a decision, the County Council's stance in any further local inquiry or other process should be as originally intended and unchanged by the Committees decision on 7 October 2010.
- 3.5 In addition, applications received after 20 January 2005 which used similar mapping, can now be processed, having been previously put on hold pending the outcome of the appeals process.

Andrew Martin

Service Director, Highways and Emergency Planning
June 2018