



Regulatory Committee

Minutes of the meeting held at County Hall, Colliton Park,
Dorchester, DT1 1XJ on Thursday, 6 September 2018

Present:

Councillor Margaret Phipps (Vice-Chairman – in the Chair)
Councillors Jon Andrews, Shane Bartlett, Kevin Brookes, Jean Dunseith, Katharine Garcia,
Jon Orrell, Margaret Phipps and David Shortell.

Officers Attending: Maxine Bodell (Head of Planning) and David Northover (Senior Democratic Services Officer), Carol McKay (Senior Definitive Map Officer) and Phil Crowther (Senior Solicitor) and Vanessa Penny (Regulation Team Leader).

Public Speakers

David Hall CBE, applicant.

Steve Mills, local resident.

Jan Andrews, Rights of Way Officer, Gussage St Michael Parish Council.

Councillor Simon Tong, East Dorset District Council, Handley Vale Ward.

Councillor Steve Butler, Dorset County Council, Cranborne Chase Division.

(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 Committee to be held on **Thursday 18 October 2018**.)

Apologies for Absence

48 Apologies for absence were received from Councillors Ray Bryan and Keith Day.

Councillor Kevin Brookes attended as a Reserve Member.

Code of Conduct

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

Minutes

50 The minutes of the meeting held on 16 August 2018 were confirmed and signed.

Public Participation

51 Public Speaking

There were no public questions received at the meeting in accordance with Standing Order 21(1).

There were two public statements received at the meeting in accordance with Standing Order 21(2).

Petitions

There were no petitions received at the meeting in accordance with the County Council's Petition Scheme.

Application to divert part of Footpath 6, Gussage St Michael

52 The Committee considered a report by the Service Director – Highways and Emergency Planning setting out details of an application to divert part of Footpath 6, Gussage St Michael at Ryalls between points A-B-C-D, as shown on Drawing 17/33 accompanying the report.

With the aid of a visual presentation, the basis for the application and what it entailed was explained. Photographs and plans were shown to the Committee by way of illustration, showing how the footpath was being proposed to be diverted within the grounds of Ryalls; its current character and setting within the landscape and showing, particularly, where the footpath crossed a Grade II Listed packhorse bridge over a winterbourne seasonal stream, and the points between which it ran; and the characteristics and dimensions of the alternative route now being made available for the public, demonstrating what arrangements had been made by the applicant to provide an alternative means in accessing between points A-D.

The owner had made the application to reduce the intrusion and inconvenience he considered that the current route of the footpath imposed. The alternative route - which had been instigated, installed and financed by the applicant ahead of determination of the application - went some considerable way to alleviating the situation which currently affected him. Accordingly, the proposed diversion was therefore beneficial to the landowner in how Ryalls was able to be managed and maintained, by improving privacy and security.

The Committee noted that the applicant had purchased Ryalls from the current owner of the neighbouring property Hawneferne, in 1989. The land search undertaken then had, mistakenly, shown Footpath 6 running through Hawneferne's land. This error had only come to light, some 15 years later.

The applicant had previously made, and withdrawn, a Definitive Map Modification Order application to modify the Definitive Map and Statement. The applicant considered that the alternative route proposed by the current Public Path Diversion Order application was wholly reasonable and acceptable to those who wished to use the route.

Officers explained that the proposal met the legal criteria for Order making, but did not meet all the tests for Order confirmation. Whilst the alternative route was slightly shorter with improved accessibility and would not result in a path that was substantially less convenient to the public, the consultation responses indicated that the diversion would have a significant effect on the enjoyment by the public of the route as a whole. Part of the attraction of the route was to be able to traverse an exceptionally rare example of a historic packhorse bridge in the setting in which it was found. Objections to the formal consultation process had been made on that basis.

Similarly whilst there was no adverse effect on the land over which the new route ran, concerns had been raised about the effect of the proposed diversion on the adjacent landowner at Hawneferne, with an objection being made on that basis too.

As all the relevant tests were not met for confirmation purposes, the officer's recommendation was that the application should be refused, given that this was a discretionary power, as it was not expedient to confirm the Order having regard to the effect the diversion would have on public enjoyment of the footpath as a whole.

Public speakers then addressed the Committee with David Hall, the applicant, explaining that, in his opinion, the route of Footpath 6 had never been well defined, with its definitive route being a matter of interpretation, given that accessibility had been of some issue. He explained the various routes which he considered had been the walked routes over time and accepted that the route crossed the grounds of his property. He further explained how the situation in which he found himself had come about and what he had done to rectify the matter. He also recognised how the conclusion being recommended in the officer's report could have been reached, given what their interpretation of the matter was based.

Nevertheless, he considered the alternative route to be wholly reasonable and acceptable in still providing a means for that part of Footpath 6 to be enjoyed by a more accessible and safer route. He considered that evidence showed that his diversion route was being well used since its installation - with this being chosen in preference to the packhorse bridge. On that basis – and despite the conclusion reached in the officer's report – he asked that the Committee support the application.

Steve Mills, local resident, said that he used the path regularly and supported Mr Hall's application saying that the route over the bridge was only possible to walk in recent years. He considered the bridge posed a safety hazard as it was slippery, and that the alternative provided much improved accessibility, setting the house and bridge in context. He had not seen people crossing the bridge since the alternative route had been in place.

Jan Andrews, Rights of Way Officer for Gussage St Michael Parish Committee, considered that the alternative route did not properly meet the provisions for such a diversion, nor the needs of those using the route. Part of the attraction of the current route was the ability to traverse a rare bridge with such heritage and what was being proposed would deny this. She considered that the application should not be supported but that the two routes could be open in tandem as long as they were properly signed.

East Dorset District Councillor Simon Tong supported the applicant's case, and commented that a number of objections appeared to not be necessarily relevant as they were from those who were not necessarily residents of the area, whereas those supporting the application were local and more familiar with the route. He said that the bridge had only become walkable when an access was cut through the hedge in 2013. He commended the applicant for doing what he had to improve accessibility on that part of the footpath and felt that enjoyment of the bridge was better from the side - to see it in its context - rather than to walk across it. He felt that the applicant had bought the property in good faith, believing the footpath to run along a different route and was now providing a sensible alternative.

Additionally, whilst unfortunately unable to attend the meeting in person, a statement from Jill Pigdon-Jones - daughter of Mr Pigdon, the owner of the neighbouring property, Hawneferne - was drawn to the attention of members in objecting to the application on the grounds that the proposed diversion would result in a lower quality of views for path users, removing significant features of general interest such as the pack-horse bridge and a view of Ryalls. The diversion would limit the enjoyment of using that part of the footpath and be detrimental to its character. Moreover she contested that the diversion would also increase issues regarding security, privacy, and right of peaceful enjoyment, as it would unacceptably alter the balance to Mr Pigdon's detriment.

The County Councillor for Cranborne Chase, Steve Butler, supported the application in that it now provided for an acceptable and accessible means to use that route. Previously this had not always been able to be the case and it was only when the County Council constructed a bridge at the northern end of the route in 2016 that access could be gained. He also considered that continued use of the bridge posed potential safety concerns especially in wet or icy conditions. Given this he asked the Committee to support the application.

The opportunity was then given to the Committee to ask questions about what they had heard and read and took this opportunity.

The senior solicitor advised that Mr Hall's incorrect local search result and its consequences were not a matter that could be taken into account in determining the application. Officers also confirmed that where the definitive route currently ran was

not in dispute – they were being asked to determine whether they considered the alternative proposal was acceptable in light of the tests which had to be met to confirm any Order.

One member suggested that by way of compromise, if the application was to be refused, the applicant could choose to allow use of the proposed new route on a permissive basis and allow the public to walk the route they preferred, as was suggested by Gussage St Michael Parish Council. Once again officers confirmed that this would be possible but allowing use of a permissive route was in Mr Hall's gift.

Having taken into consideration all they had seen and heard and having had the opportunity to debate the issue fully in all that it entailed and its implications, on being put to the vote, the Committee agreed that, on balance, the benefit to the applicant of diverting part of Footpath 6, Gussage St Michael, outweighed any disadvantage in maintaining the route as it stood. They considered that the alternative route provided was both acceptable and reasonable and, being more accessible, better surfaced and safer, would not adversely detract from the enjoyment of those using the route, particularly as the packhorse bridge could be seen in context and as one with the house from a different, yet equally satisfying, perspective and the majority of the Committee considered that, in their view, this provided for a quite acceptable alternative. On that basis it was agreed

Resolved

That the application to divert part of Footpath 6, Gussage St Michael from A – B – C – D to A – E – F – G – H – I – J – K – D be accepted and an Order made and advertised.

2. That the Order include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion; and
3. If the Order is unopposed, or if any objections are withdrawn, it be confirmed by the County Council without further reference to the Committee.
4. That should any objections be received to the advertised Order which were not withdrawn, the matter be referred back to the Committee to decide whether the application should be submitted to the Secretary of State for confirmation.

Reasons for Decisions

That on balance the benefit to the applicant of diverting part of Footpath 6, Gussage St Michael, outweighed any disadvantage in maintaining the route as it stood. The alternative route provided was both acceptable and reasonable and, being more accessible and safer, would not adversely detract from the enjoyment of those using the route, particularly as the packhorse bridge could be seen in context and as one with the house from a different, yet equally satisfying, perspective.

Decisions on applications for public path orders ensure that changes to the network of public rights of way comply with the legal requirements and supports the Corporate Plan 2017-19 Outcomes Framework:

People in Dorset are **Healthy**:

- 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.

Dorset's economy is **Prosperous**:

- 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.

Before confirming a public path creation, diversion or extinguishment order a council or the Secretary of State must have regard to any material provision of a rights of way

improvement plan prepared by the local highway authority. Dorset's Rights of Way Improvement Plan sets out a strategy for improving its network of Public Rights of Way, wider access and outdoor public space.

Questions from County Councillors

53 There were no questions raised by members under Standing Order 20(2).

Meeting Duration: 11.15 am - 12.40 pm