

Roads and Rights of Way Committee

Minutes of a meeting held at County Hall, Colliton Park,
Dorchester on Friday 18 July 2014.

Present:-

David Jones (Chairman)
Steve Butler, Barrie Cooper, Beryl Ezzard,
David Mannings, Margaret Phipps, Peter Richardson.

Officers attending

Gordon Sneddon (Group Manager), Sarah Meggs (Senior Solicitor), Vanessa Penny (Definitive Map Team Manager), Phil Hobson (Rights of Way Officer) and Jason Read (Democratic Services Officer).

Public Speakers

Minute 57.6	Peter France, Local Resident
Minute 57.6	David Cunningham, Local Resident
Minute 60.7	Antony Argles, Pimperne Parish Council
Minute 60.7	Angela Barker, Pimperne Parish Council
Minute 60.7	Mr Fildes, Local Resident
Minute 60.7	Tim Clayton, Whitehead Vizard Solicitors.
Minute 60.7	Deborah Croney, Local Member for Hambledon.
Minute 63.4	Mr Conroy, Representative of Sebastian Walther.

(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 **4 September 2014.**)

Apology for Absence

51. Apologies for absence were received from Ian Gardner, Daryl Turner and Kate Wheller.

Code of Conduct

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

Minutes

53. The minutes of the meeting held on 20 June 2014 were confirmed and signed.

Public Participation

Public Speaking

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

54.2 Peter France (Local Resident) and David Cunningham (Local Resident) both made statements in accordance with Standing Order 21(2), as recorded in minute 57.6.

54.3 Antony Argles (Pimperne Parish Council), Angela Barker (Pimperne Parish Council) and Tim Clayton (Whitehead Vizard Solicitors), Mr Fildes (Local

Resident) and Deborah Croney (Local Member for Hambledon) all made statements in accordance with Standing Order 21(2), as recorded in minute 60.7.

54.5 Mr Conroy (A representative of Sebastian Walther, Local Resident) made a statement in accordance with Standing Order 21(2), as recorded in minute 63.4.

Petitions

Petition to Place Double Yellow Lines on Lone Pine Drive Between the Entrance and Exit to Lone Pine Park

55.1 The Committee considered a report by the Director for Environment and the Economy in relation to a petition to place double yellow lines on Lone Park Drive between the entrance and exit to Lone Pine Park.

55.2 It was explained that the site entrance and exit were both private drives that were accessed from Lone Pine Drive, which was a residential street. There were no reported personal injury accidents in the previous 5 year period at the location.

55.3 The Committee was informed that it was County Council Policy that requests for parking restrictions should be received from Town and Parish Councils. This was to ensure that any request had been considered by the locally elected representatives before being sent to Dorset County Council. The section of the road outlined in the report was in the parish of West Parley. If a request was received from the local parish council, the site in question and the suitability of the request would be assessed and added to the future work programme if it was considered appropriate and met the necessary criteria. It was noted that the entrance and exit to Lone Park Drive were both private drives, and the Council did not generally provide parking restrictions simply to enable easier entrance and exit from private properties.

55.4 It was clarified that Dorset County Council would not usually view the site as having a need for double yellow lines, but would consider any support from the local councils. Members therefore agreed that the item be deferred until the views of the local councils could be obtained.

Resolved

56. That a decision be deferred so that the views of Ferndown Town Council and West Parley Parish Council can be obtained.

Proposed Definitive Map and Statement Modification Order – Footpath 48 (part), Thorncombe

57.1 The Committee considered a report by the Director for Environment and the Economy that outlined consideration for modifying the definitive map and statement of rights of way to correct the recorded route of part of Footpath 48, Thorncombe.

57.2 Following several complaints, including one from Thorncombe Parish Council made in 2010, an investigation was undertaken to identify the correct course and direction of a part of Footpath 48, Thorncombe. As a result of the investigation it was discovered that the route of Footpath 48 may have been incorrectly recorded on the Definitive Map.

57.3 The Committee received a presentation that highlighted the route and identified key points along the footpath. It was explained that following an initial consultation in 2012 six objections to the proposed modification were received, none

of which had since been withdrawn. Three further objections from the same objectors were received following another consultation in 2013.

57.4 The initial investigation was to determine whether the route as shown from A to B was recorded correctly on the Definitive Map. It was explained that the majority of the evidence examined provided little assistance. However, it was the evidence derived from the statutory processes that led to the publication of the First Definitive Map, the Draft and the Provisional maps, which had provided the most compelling evidence. As no legal event had taken place and no objections or submissions were received in respect of what was now recorded as Footpath 48 on both the Draft and Provisional maps, the route shown on the First Definitive Map should be the same. However, the route recorded on the First Definitive Map had 'moved' to the north west of the line shown on both the Draft and Provisional maps. The Definitive Map is regarded as conclusive evidence in respect of the ways shown upon it. Although the legal test to delete a route from the Definitive Map remains that of the balance of probability, evidence offered in support of such an allegation would need to be of sufficient weight to overcome the initial presumption that the Definitive Map was correct. The technical issues, which could lead to the introduction of errors during the printing of the First Definitive Map, are well documented and it was considered that the error in the recorded route of Footpath 48 was introduced during the printing of the First Definitive Map. Consequently, it was considered that the evidence was of sufficient weight that, on the balance of probability, part of Footpath 48 as shown from point A to B on Drawing 12/29/1 was shown incorrectly and should be modified to follow the route as shown between points A-C-J-K-L-M-N.

57.5 During the investigation a question arose as to whether Footpath 48 should have ever been recorded at all. It was explained that a detailed submission in support of this view was provided by the objectors and was summarised and analysed in the report. However, members were asked to consider the statutory processes through which the route was initially recorded and to which no objections or representations had been made. In light of the evidence derived from the publication and examination of the draft and provisional maps and in the absence of any other sufficiently cogent evidence to demonstrate that the way was not in fact a highway, it must be sufficient to conclude, on the balance of probability, that the whole of Thorncombe Footpath 48 should remain on the Definitive Map and Statement. Therefore, the Officer recommended that the suggestion that the route be deleted should be refused, and the modification to the footpath as outlined in the report, be approved.

57.6 Two members of the public addressed the Committee requesting that members refuse the recommendations as set out in the report and approve the deletion of the route.

57.7 Members asked what evidence there was that the route had been walked. It was explained that the route was presently obstructed and that these obstructions had been recorded at the time of the initial Parish Survey. The Parish Survey had also noted that the path was little used and there had been little use of the footpath in recent years.

57.8 Officers were asked to highlight the landowner's property on the map. Concerns were raised that the Footpath ran past the front entrance of the property and that this was inconvenient for the landowner. The Senior Solicitor explained that members were not being asked to consider what was convenient for the landowner, but to look at the documentary evidence. It was clarified that the amount of use the footpath had received was irrelevant if the documentary evidence showed that the

path existed. It was also clarified that in regards to the request to delete the path, no objections were received in the original drafting stage, and there was sufficient documentary evidence to suggest the path should remain.

57.9 A member asked if the Committee could decide to remove the part of the footpath recorded on the map as A to B, but then decide not to move it anywhere else. It was clarified that this could be done, but only if members were satisfied that the evidence was sufficient to delete the route as currently recorded but insufficient to record it on the alternative route as the recommendation in the report suggested. All decisions had to be based on evidence and not the convenience of the landowner.

57.10 It was asked that if the Committee approved the recommendations in the report, what would be the next step in the process. The Committee was informed that the Order would be made, and there would then be an objection period. If objections were received, the matter would be passed to the Planning Inspectorate for a decision. However, if no objections were received the County Council could confirm the Order.

57.11 It was proposed and seconded that parts A to B as highlighted in the report be deleted, and parts A to N not be added. On being put to the vote the proposal was not agreed.

57.12 It was subsequently proposed and seconded that, although the Committee had sympathy towards the landowner, based upon the documentary evidence, the recommendations as set out in the report should be approved.

Resolved

58.1 That an order be published to modify the definitive map and statement of rights of way to correct the route of part of Footpath 48, Thorncombe from the recorded route as shown A – B to that shown A – C – J – K – L – M – N on Drawing 12/29/1.

58.2 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

59.1 The analysis of the available evidence demonstrated that part of Footpath 48, Thorncombe subsisted on the proposed modified line and not the current definitive line.

59.2 The evidence showed that, on balance the correct route of Footpath 48 was as proposed. Accordingly, in the absence of objections the County Council could itself confirm an Order to modify the definitive map and statement as proposed without submission to the Planning Inspectorate.

Application for a Definitive Map and Statement Modification Order to Upgrade Parts of Bridleways 13, 14 and 17, Tarrant Hinton to Byway Open to all Traffic and to Add a Byway Open to all Traffic at Tarrant Hinton (One Continuous Route)

60.1 The Committee considered a report by the Director for Environment and the Economy that outlined an application for a Definitive Map and Statement Modification Order.

60.2 It was explained that the application to upgrade parts of Bridleways 13, 14 and 17, part of a recorded public road and part with no recorded public rights at Tarrant Hinton as shown A – B – C – D – E – F – G – H – I – J – K – L – L1 – M on

Drawing 13/25/2 was made by David Oickle on behalf of the Trail Riders Fellowship on 27 March 2006.

60.3 The Committee received a presentation that highlighted the route and showed photographs of key areas. It was explained that whilst there was some evidence of use by motorcycles, that was considered as being insufficient to fulfil the requirement of 20 or more years use by the public, as of right and without interruption, prior to the date public rights were brought into question, nor did it satisfy the common law requirements to infer a dedication of public vehicular rights.

60.4 It was considered that the most important pieces of documentary evidence were the 1827 Tarrant Hinton Pre-Inclosure map and the 1827 Tarrant Hinton Inclosure map and Award as they set out the parts of the claimed route as shown between points A – B – C – D – F and H – J – K – L – L1 – M on the map, as public carriage roads 30 feet in width. The sections as shown between F – X and X – H on the map were not included as part of the claimed route but the evidence from the Inclosure Award demonstrated that they were also awarded and set out as public carriage roads 30 feet in width.

60.5 It was explained that conclusions in respect of the Inclosure Award were supported by the 1840 Tarrant Hinton Tithe Apportionment and Plan, which depicted part of the claimed route as shown between points A – B – C – D – F – X – H – J – K – L – M on the map. This demonstrated that on balance, the routes awarded in the Inclosure of 1827 were set out as required. In respect of the part of the claimed route as shown between points K and M on the map, it was clarified that this was excluded from valuation on the 1910 Finance Act Plan and was also included on the Dorset County Council List of Streets (publicly maintained highways). This provided evidence to suggest that the route was considered to be a public highway, probably a public carriageway.

60.6 The Committee was informed that there was aerial photographic evidence for part of the claimed route, as shown between points D – E – F – G on the map, demonstrating that it was in use by 2002. However, no other documentary evidence regarding this section has been found.

60.7 A Local Resident, a representative of the Landowner, two representatives of Pimperne Parish Council and The Local Member for the Hambledon Division all addressed the Committee and spoke against the recommendations outlined in the report.

60.8 Members asked where the route would lead following Point A on the map, if the recommendations in the report were to be agreed. It was clarified that the route would lead onto the road. Members were reminded that the decision needed to be made on the evidence under consideration and not where it would lead.

60.9 The Committee was informed that whilst the Definitive Map was conclusive with regards to those ways shown upon it this was subject to the discovery of new evidence that may suggest the contrary. It was clarified that the evidence provided by the Inclosure Award carried distinct weight, and regardless of the amount of use the route had received, the evidence showed the route existed, the legal maxim being 'once a highway, always a highway'.

60.10 Some members raised concerns in relation to the effects on local wildlife and issues of traffic safety. It was clarified that although these concerns were understandable they were not relevant issues that could be taken into consideration

when determining the application. Members were reminded that they were required to look at the evidence in the report, which suggested that the recommendations be supported.

60.11 It was proposed and seconded that the recommendation in the report be accepted, which was agreed.

Resolved

61.1 That the application be refused.

61.2 That an order be made to modify the definitive map and statement of rights of way to;

(i) Upgrade to restricted byway part of Bridleway 17, Tarrant Hinton as shown B – C – D – X,

(ii) Upgrade to restricted byway part of Bridleway 13, Tarrant Hinton as shown H – J – K,

(iii) Add as restricted byway the route as shown A – B

(iv) Add as restricted byway the route as shown X – H all as shown on Drawing 13/25/2.

61.3 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 Decisions

62.1 Subject to 62.2 below the byway open to all traffic claimed did not subsist nor could be reasonably alleged to subsist.

62.2 The available evidence showed, on balance, that: (i) & (ii) Highways shown on the definitive map and statement as a bridleway should be shown as public vehicular routes; (iii) & (iv) Highways not shown on the definitive map and statement subsisted or were reasonably alleged to subsist as public vehicular routes; However, 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.

62.3 The evidence showed, on balance, that 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 Record a Bridleway from Higher Farm to Brimley Mill, Stoke Abbott

63.1 The Committee considered a report by the Director for Environment and the Economy that outlined an application for a bridleway at Stoke Abbott.

63.2 A presentation was given to highlight key areas of the route and photographs of the area were shown. It was explained that Route A to E on the map was currently unrecorded and E to F was recorded as a Footpath.

63.3 The Committee was informed that the application had been made primarily on the basis of user evidence. However, the evidence of use provided was not particularly strong. Additionally, during the investigation process it became apparent that the previous landowner had often objected to public use of the route. However, documentary research had shown that points A to A1 had been excluded on the Finance Act 1910 map, and this was a strong indication that this part of the route was considered to be a public highway, probably a public carriageway. It was

suggested that the evidence provided within the report supported the recommendations put to the Committee.

63.4 Mr Conroy advised the Committee that his client, Mr Walther, had no objection to the proposal as set out in the report.

63.5 It was proposed and seconded that the recommendation in the report be accepted, which was agreed.

Resolved

64.1 The application to add a bridleway in Stoke Abbott as shown A – A1 – B – C – D – E – F on Drawing 13/40/2 (Appendix 1) be refused.

64.2 An order be made to modify the definitive map and statement of rights of way to add,

(i) A restricted byway as shown A – A1; and,

(ii) A footpath as shown A1 – B on Drawing 13/40/2.

64.3 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

65.1 In respect of the claimed route as shown A – A1 – B – C – D – E – F the available evidence did not, on balance, show that the claimed right of way subsisted or was reasonably alleged to subsist.

65.2 In respect of the part of the claimed route as shown,

(i) A – A1 the available evidence showed, on balance, that this part of the claimed route not shown on the definitive map and statement should be shown as a public vehicular way. However, 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 this part of the claimed route.

(ii) A1 – B the available evidence showed, on balance that this part of the claimed route not shown on the definitive map and statement should be shown as a footpath.

65.3 Accordingly, in the absence of objections the County Council could itself confirm the Order without submission to the Planning Inspectorate.

Questions from Members of the Council

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

Meeting duration 10.00am to 11:55am