

Application Number: **848M**
Date Registered: **2 May 2017**
Parish: **Carhampton**
District: **West Somerset**
Member Division: **Dunster**
Local Member: **Councillor Lawrence**
Case Officer: **Andrew Saint**
Contact Details: **01823 359796, asaint@somerset.gov.uk**
Description of Application: **Request to take an application for a definitive map modification order out of turn:
Claimed public footpath to the north of Blue Anchor Chalets**
Grid References: **ST 0203 4349**
Applicant: **The Ramblers**
Location: **To the north of Blue Anchor Chalets**

1. Summary of Key Issues and Recommendation(s)

1.1. In May 2017 the Ramblers submitted an application for an order to modify the definitive map and statement by adding a footpath to the north of Blue Anchor Chalets. A plan of the route is attached at appendix 1.

1.2. The County Council has a significant backlog of applications of this type and these are dealt with in priority order. It would ordinarily be many years before the Ramblers' application reaches the top of the queue. This has led them to request their application be 'taken out of turn'; i.e. dealt with ahead of those which would ordinarily be determined ahead of it.

1.3. This report discusses the County Council's policy for dealing with such requests and whether the reasons put forward by the Ramblers, and others, for taking the application out of turn meet with that policy.

1.4. The report recommends that the request for this application to be taken out of turn is refused.

2. The Application Route

2.1. The application route begins at Blue Anchor Bay Road just north of the train station and runs in a westerly direction initially along a grass bank raised slightly higher than the adjacent beach.

2.2. The route passes to the south of a military installation understood to date from the second world war and then to the north of the Blue Anchor Chalets. Having passed the chalets it travels along a shingle ridge at the back of the beach running parallel with the railway line to reach footpath WL3/3 just north of a footpath level crossing.

2.3. There are three other routes in the immediate vicinity of the application route which are also of particular relevance to this case.

2.4. Firstly, Footpath WL3/19 leaves Blue Anchor Bay Road at approximately the same point as the application route. However, rather than running along the grass bank in front of the chalets it heads in a north westerly direction onto the beach and then west parallel with, and just above, the mean high water mark.

2.5. Secondly, the England Coast Path. While not strictly speaking a public right of way, there is a statutory right to walk the Coast Path. As with WL3/19, it leaves Blue Anchor Bay Road at the same point as the application route and leads down onto the beach. However, from here it takes a higher line closer to the chalets than WL3/19 passing immediately to the north of the military installation along the top of the beach to join the application route on the shingle ridge just to the west of the Chalets. It then continues west along the ridge. For all but its easternmost 165 metres, the application route follows the Coast Path and is therefore already subject to a statutory right.

2.6. Thirdly, the Steam Coast Trail is a surfaced cycle path with no formal cycling status. It currently terminates at the very western end of the application route. The Trail is promoted by a charity.

2.7. The application route, WL3/19, and the England Coast Path are all shown the plan at appendix 1.

3. Statement of Priorities

3.1. The County Council has a duty to maintain a Definitive Map and Statement of public rights of way (DMS). The DMS is a legal record and is conclusive of what it shows. However, it is not conclusive of what it omits. Therefore the fact that a right of way is not shown on the DMS does not necessarily mean that it does not exist. Applications can, and frequently are, made to modify it where the applicant believes the DMS to be in error.

3.2. The County Council receives a large number of applications of this type and so it is not always possible to process them as quickly as we would like. In the interests of fairness a 'Statement of Priorities' has therefore been adopted setting out the order in which applications will be determined (see appendix 2).

3.3. The Statement of Priorities provides for each application to be scored against a number of criteria including road safety implications, network connectivity and usefulness of the route¹. The resulting score, together with the order in which applications are received, is then used to establish the order in which they are determined with the highest ranked application being investigated first.

3.4. However, the Statement of Priorities also makes provision for applications to be 'taken out of turn' and dealt with ahead of those applications which would normally be ranked above it in the queue. The policy provides that applications may be taken out of turn in the following circumstances:

- i) The path concerned has been identified as an important link in the Local Transport Plan (LTP);
- ii) the path concerned is likely to disappear as a result of development;
- iii) an affected party can demonstrate that they are experiencing exceptional significant problems due to an application that impacts on their property;
- iv) the path concerned is subject to a Section 130 notice² and the County Council is satisfied that there is cogent evidence that the status or route of the path is in dispute.

3.5. In reaching a judgment regard must also be given to paragraph 8.8 of the County Council's 'Code of Planning Practice - Commons Registration, Planning Control and Rights of Way' which states that 'Applications will only be taken out of turn in exceptional circumstances'.

3.6. The purpose of the Statement of Priorities is to achieve equity and consistency in the treatment of applicants, given the significant backlog of applications. While there is an inherent discretion to consider applications other than in accordance with the Statement of Priorities, such discretion should only be exercised in exceptional circumstances. Any decision to prioritise a case other than in exceptional circumstances risks requests from other applicants for their applications to be prioritised, and this could undermine the purpose of the Statement.

4. The Ramblers 'out of turn' request

4.1. The Ramblers application in relation to the claimed footpath at Blue Anchor was received on 2 May 2017. Ordinarily it would be many years before it reaches the top of the queue and is investigated. It is in light of this that the Ramblers have requested their application be taken out of turn.

4.2. It is important to bear in mind that, at this stage, the decision before Committee is not whether or not a public footpath does or does not exist. In

¹ It should be noted that these criteria are used solely for determining the order in which applications are investigated. They are not necessarily of any relevance when it comes to determining whether or not that application will ultimately be successful.

² Section 130a of the Highways Act 1980 allows members of the public to serve notice on the County Council requesting that they remove an obstruction from a highway (including rights of way).

responding to the Ramblers request the County Council is simply considering whether or not to prioritise investigation of the case.

4.3. In support of their request the Ramblers have made the following statement:

“I made [the] application to add a footpath....following the obstruction to its use recently. This path has been used for many years and I have submitted over 100 user statement forms setting out its unobstructed use over the required 20 year period. My request is that the matter be brought forward for consideration and that this application be taken out of turn for consideration and determination.

I appreciate that there is a substantial backlog of claims but believe that there are compelling and urgent reasons why this claim should be treated as a special case.

The path is in a popular holiday area and was well used by both local people and visitors to the area. This route is no longer available. The alternative, the definitive footpath west from Blue Anchor [WL3/19] takes a route below the high tide line. Anyone using this route is at potential serious risk from rising tides in stormy conditions. There is no alternative route now available. The claimed route was the safe route regularly used by locals and holiday makers. I would suggest that visitors to Blue Anchor are at particular risk if they are unaware that the definitive path is subject to being covered by the tide. Photographs have been submitted, as part of the claim, showing the definitive route at high tide, as well as photographs showing the claimed route clearly existing on the ground.

I trust that [the] committee will discuss the urgent need to determine this particular Modification claim on safety grounds. This request has the support of both the local County Councillor and District Councillor, as well as the Parish Council.”

4.4. As the applicant states the local member, Councillor Lawrence, has given her support to the request. In a letter of 3 July, she made the following comments:

- i) 120 people have submitted evidence in support of the application.
- ii) The route along the beach is unmanageable and unsafe for a number of users including those in wheelchairs, with pushchairs and with mobility issues. It is only suitable at low tide and in good weather and has never been signposted.
- iii) The route over the beach may not be compliant with the Equalities Act 2010.
- iv) Users of the route over the beach are in a danger at high tide particularly at the end of the day when light is dimming.
- v) The application route, was more accessible and had been used for many years but is now gated and fenced off.

5. Analysis

5.1. As mentioned in section 3 above, out of turn requests must be considered against the four criteria set out in the Statement of Priorities. Each of those criteria are considered in turn below:

The path concerned has been identified as an important link in the Local Transport Plan (LTP)

5.2. The LTP is now known in Somerset as the Future Transport Plan. The application route is not identified as an important link in the Future Transport Plan.

The path concerned is likely to disappear as a result of development

5.3. While it is possible that, overtime, the grass bank in front of the Chalets and on which the application route sits will be eroded by the sea, there is no evidence at present that the application route is threatened by development.

An affected party can demonstrate that they are experiencing exceptional significant problems due to an application that impacts on their property

5.4. Based on the submissions by the applicant and local member it might be argued that exceptional and significant problems are being experienced. However this part of the Statement of Priorities specifically refers to problems that are impacting on property. None of the nearby landowners have put forward any evidence or arguments as to how the application is negatively impacting their property. In fact the owners of the adjacent chalets have collectively made representations against the application being taken out of turn.

The path concerned is subject to a Section 130 notice and the County Council is satisfied that there is cogent evidence that the status or route of the path is in dispute

5.5. The application route is not currently subject to a section 130 notice.

5.6. Whilst the application does not meet any of the criteria specified in the Statement of Priorities for it to be investigated out of turn, the applicant raises other points in support of the out of turn request. It is appropriate to consider whether these could amount to exceptional circumstances justifying the prioritisation of the application. Those points appear to fall into the following general categories:

- i) the strength of evidence relating to the claimed path;
- ii) accessibility; and
- iii) public safety.

Strength of Evidence

5.7. It is acknowledged that the evidence does demonstrate considerable local interest in the application. However, even if this had been relevant to one of the four

'out of turn' criteria (which it does not appear to be), the strength of the evidence in support of the application is unlikely to satisfy the exceptional circumstances test set out in the Code of Conduct (see paragraph 3.5). Most applicants will believe their evidence to be strong; if they did not then they would presumably not have made an application. It would therefore be counter-productive to prioritise every application which was considered by the applicant to be well supported. In any case, until the evidence has been assessed it is not possible to establish exactly how strong it is. For example, while lots of people may have given evidence of use, one act by the landowner demonstrating a lack of intention to dedicate public rights may be sufficient to rebut a claim.

Accessibility

5.8. Turning to the applicant's case in relation to accessibility, it has been suggested that the only alternatives to the claimed path run across the beach and are particularly difficult to use for those with mobility difficulties and pushchairs. This overlooks the fact that the majority of the application route is already available for the public to use by virtue of the fact that it follows the England Coast Path. Therefore, an alternative to this section is unnecessary.

5.9. Having said this, it is undeniably the case that the eastern end of the claimed route is obstructed by fencing and the alternative available routes are over the beach. However, as with the strength of evidence argument, it is difficult to see how this makes the case exceptional. Many of the applications that are received are triggered by the route in question becoming unavailable, often there is no suitable alternative. Therefore, taking applications out of turn simply because the claimed route is unavailable, would lead to a situation whereby a high proportion of cases qualify to be taken out of turn. Furthermore, the public in this case are in a better position than many in that there is an alternative route available (albeit one which may not be accessible during certain times of the year or to some sections of society).

5.10. In her submissions, Councillor Lawrence, suggests that the routes over the beach may not be compliant with the Equalities Act 2010. Amongst other things, this Act requires public bodies to consider the needs of all individuals when delivering services. As the Secretary of State forms part of a public body he will have had regard to the Equalities Act 2010 when defining the England Coast Path and must have been satisfied that it was compliant.

5.11. If, in due course, rights are found to exist over the application route then it would offer a more accessible route for some sections of society. However, there is no question of the application not being investigated; the question before the Committee is 'should that investigation be given greater priority'? To prioritise this case would result in the investigation of other claimed routes, for which there are no alternative, being delayed.

Safety

5.12. Finally, the matter of public safety is one that the applicant quite rightly considers of great importance. It has been suggested that anyone using the definitive footpath (i.e. WL3/19) is at serious risk of being caught out by a rising tide and that, without the application route, there is no alternative available. However, once again, this ignores the England Coast Path.

5.13. As mentioned above, all but the easternmost 165 metres of the application route coincides with the Coast Path. As such it already has a public right of access over it and any public safety benefits that it offers are already available. In light of this it is assumed that the applicant's comments regarding safety must relate to the eastern end of the application route. Here the Coast Path takes a slightly more northerly line passing along the back of the beach and running approximately 12 to 28 metres south of the mean high water mark.

5.14. One would generally expect the public not to use the relatively short section of the Coast Path (approximately 165 metres) that does not correspond with the application route on those rare occasions when the tide is high enough to endanger them. This is particularly the case given that there are clear warning signs at either end of the path in order to mitigate the risks associated with an incoming tide. However, were anyone to find themselves becoming cut off by the tide they would either need to retrace their steps or move off of the Coast Path and higher up the beach.

5.15. In terms of retracing ones steps, an individual would never be more than 85 metres from either the steps up to the road at Blue Anchor or from the point at which the Coast Path and application route converge (and therefore the point at which the application route would offer no additional safety benefits even if it were found to be a public footpath). Even at a very slow pace it would take very little time to get travel the 85 metres from the Coast Path to the application route³.

5.16. If retracing ones steps was not possible, it should still be possible to access higher ground. For much (88 metres) of the easternmost end of the application route there is no barrier between the coast path and the application route. Where barriers do exist they are formed of:

- i) the military installation (approximately 16 metres);
- ii) two sections of fencing (approximately 8 and 22 metres in length); and
- iii) a one metre high bank on which the application route runs (approximately 38 metres in length)

The bank referred to in (iii) has scrub growing on its sloped sides. However, there are three points at which there is no scrub making it easier to walk up.

5.17. It would be disingenuous to say that walking on any section of coast is without risk. Indeed, it has been known for waves to overtop the grass bank thus making the

³ At one mile per hour it would take a little over three minutes to walk 85 metres.

application route unavailable. However, that risk needs to be seen in context. The section of Coast Path that the applicant is concerned about (i.e. the 165 metres which does not correspond with the application route) is relatively short, at the back of the beach, and is only one metre lower than the ridge on which the application route sits. In addition, while there are some barriers between the coast path and last 165 metres of application route, there are also a number of places where one can pass between the two if trapped by the tide. Maybe the greatest risk to the public comes from individuals finding their way blocked by a particularly high tide and knowingly walking through the sea in order to continue their walk and reach their intended destination (as opposed to finding themselves unwittingly being trapped by the tide). It is not known whether, or to what extent, the Secretary of State considered all of these factors when defining this section of the England Coast Path. However, he was required to have regard to the safety of those members of the public using it and concluded the route along the top of Blue Anchor beach was acceptable.

5.18. Many of the applications within the backlog address safety concerns, often allowing vulnerable users to avoid travelling on busy roads. In light of this, and the points made above, it is suggested that the safety concerns in relation to this application do not make it 'exceptional'.

5.19. The applicant raises several reasons why they feel that the importance of the application route means that their application should be prioritised. However, none of those reasons address the policy criteria for being taken out of turn. Furthermore, the same or similar arguments as put forward by the applicant could be made in relation to many of the other applications in the County Council's backlog and so it is difficult to see how they make this particular case exceptional.

6. What happens next?

6.1. If Members resolve to take the application out of turn it will be moved to the top of the queue and processed once all other open cases, and some of those which are the subject of a direction from the Secretary of State, have been determined. At that stage a report will be produced that contains a recommendation as to whether the application route should be added to the Definitive Map.

6.2. If Members resolve not to take the application out of turn, the investigation will still take place in due course. However, it will be prioritised in the same way as all other applications received and wait its turn in the queue.

7. Recommendation

7.1. It is recommended that the out of turn request in relation to the application to modify the definitive map by adding a footpath at Blue Anchor (848M):

- i) fails to meet the 'out of turn' criteria set out in the County Council's Statement of Priorities;

- ii) does not demonstrate exceptional circumstances which justify the application being taken out of turn; and
- iii) should therefore be refused.

Appendices

1. Plan showing the claimed route, England Coast Path and definitive rights of way network.
2. Somerset County Council's Rights of Way Statement of Priorities
3. Photographs of the route