

Application Number: **704M**
Date Registered: **20 October 2010**
Parish: **St Cuthbert Out**
pDistrict: **Mendip**
Member Division: **Mendip Hills**
Local Member: **Councillor Pullin**
Case Officer: **Andrew Saint**
Contact Details: **01823 359796**
asaint@somerset.gov.uk

Description of Application: **Wildlife and Countryside Act 1981 – Section 53
Schedule 14 - Application to add a footpath from Upper Breach to Bath Road, in the Parish of St Cuthbert Out**

Grid Reference: **ST 5727 4671**
Applicant: **West Horrington Ladies Circle**
Location: **South Horrington**

Recommendation:

It is recommended that:

- i. An Order be made, the effect of which would be to add to the Definitive Map and Statement of Public Rights of Way a public footpath between Upper Breach and Bath Road, in the parish of St Cuthbert Out (shown A-B on plan H003-2017).
- ii. If there are no objections to such an order, or if any objections which are made are subsequently withdrawn, it be confirmed
- iii. if objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation

1. Introduction

1.1. On 20th October 2010, West Horrington Ladies Circle made an application under Schedule 14 and Section 53(5) of the Wildlife & Countryside Act 1981 for an Order to amend the Definitive Map and Statement by adding a public footpath between Upper Breach and Bath Road in South Horrington.

1.2. On receipt of such an application, the County Council is under a duty to investigate and determine what, if any, public rights of way already subsist over the application route. Where the investigation shows the Definitive Map and Statement to be in error an order must be made to correct it.

2. Direction from the Secretary of State

2.1. Where applications such as the one made by West Horrington Ladies Circle remain undetermined after 12 months, the applicant is entitled to ask the Secretary of State to issue a direction requiring the County Council to determine it within a given timescale.

2.2. Last year the West Horrington Ladies Circle made representations to the Secretary of State seeking a direction in relation to their application. Their request was successful and the County Council were directed to determine the application by 4 October 2017.

2.3. In recent months there has been a significant increase in the number of directions issued by the Secretary of State nationally. In Somerset alone we have received 21 directions in the last 18 months. This has inevitably put greater strain on our already stretched resources. In order to meet the deadlines set by the Secretary of State, consultants have been instructed to investigate and report upon a number of applications, including this one.

3. Consultant's Report

3.1. Birchill Access Consultancy (BAC) have investigated the West Horrington Ladies Group's application on the County Council's behalf. In doing so they have followed the same procedures as those followed by officers of the County Council when investigating similar cases.

3.2. A copy of BAC's investigation report, which includes details of the relevant legislation, is attached.

3.3. As is explained in section 7.1.3, having drafted the report, it was circulated to various interested parties for comment. Four responses were received, two of which disagreed with to the recommendation. A summary of all the responses is included in BAC's report.

3.4. The case file, including the application, accompanying evidence and consultation responses can be viewed by Members by appointment.

4. Conclusions

4.1. As can be seen from their report, having considered all of the evidence and consultation responses, BAC conclude there is insufficient historic documentary evidence to demonstrate that public rights existed over the application route. Furthermore, any rights which had existed appear to have been extinguished by legal order in 1907.

4.2. However, the report correctly goes on to consider the evidence of public use stretching back as far as the 1930s. Having analysed that evidence, together with documentation showing that previous landowners had begun the process of dedicating the application route as a public right of way, BAC conclude that the tests of section 31 of the Highways Act 1980 were met over the 20 year period 1971-1991.

5. I therefore recommend that:

- i. An Order be made, the effect of which would be to add to the Definitive Map and Statement of Public Rights of Way a public footpath between Upper Breach and Bath Road, in the parish of St Cuthbert Out (shown A-B on plan H003-2017).
- ii. If there are no objections to such an order, or if any objections which are made are subsequently withdrawn, it be confirmed
- iii. if objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.