

# The Regulation Committee

Minutes of a meeting of the Regulation Committee held on Thursday 5 October 2017 at 14:00 in the Luttrell Room, County Hall.

## Present

Cllr J Parham (Chairman)

Cllr John Clarke	Cllr Andy Kendall
Cllr Simon Coles (substituting for Cllr T Lock)	Cllr Mike Pullin
Cllr Nigel Hewitt-Cooper	Cllr Dean Ruddle
Cllr Mark Keating	Cllr Nigel Taylor

**Other Members Present:** None

The Chairman welcomed everyone to the meeting, outlined the meeting procedures, made reference to the agendas and papers that were available and highlighted the rules relating to public question time.

## 1 **Apologies for Absence** – agenda item 1

Cllr Tony Lock

## 2 **Declarations of interest** – agenda item 2

Reference was made to the following personal interests of the Members of the Regulation Committee which were published in the register of members' interests which were available for public inspection in the meeting room:

Cllr Simon Coles	Member of Taunton Deane Borough Council Member of Devon and Somerset Fire and Rescue Authority
Cllr Nigel Hewitt-Cooper	Member of Mendip District Council
Cllr Mark Keating	Member of Haselbury Plucknett Parish Council
Cllr Andy Kendall	Member of South Somerset District Council Member of Yeovil Town Council
Cllr John Parham	Member of Mendip District Council Shepton Mallet Town Council
Cllr Mike Pullin	Member of Mendip District Council

Cllr Nigel Taylor

Member of Mendip District Council  
Member of Cheddar Parish Council

Cllr Mike Pullin declared a personal interest because he knew both the applicant and the landowner.

**3 Accuracy of the Minutes of the meeting held on 20 July 2017 – agenda item 3**

The Chairman signed the Minutes of the Regulation Committee held on 20 July 2017 as a correct record.

**4 Public Question Time – agenda item 4**

(1) There were no public questions on matters falling within the remit of the Committee that were not on the agenda.

(2) With the Chairman's permission, the Committee heard from Mr Butterworth who spoke regarding agenda item 6, and raised a number of points including: his membership of Parish and District Councils; the availability of alternative routes; the inherent danger of using the coast path; that there are known errors on the definitive map; Ordnance Survey Map No. 059 shows the route on high ground; fences have been erected blocking the route; and that the status of the path is in dispute.

All other questions or statements received about matters on the agenda were taken at the time the relevant item was considered during the meeting.

**5 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 - agenda item 5**

(1) The Case Officer with reference to the report, supporting papers, and the use of maps, plans and photographs outlined the application to add a footpath from Upper Breach to Bath Road, in the Parish of St Cuthbert Out.

The Committee were informed: the application was originally made in 2010 by the West Horrington Ladies Circle; there was currently a large backlog of Rights of Way applications; the applicant had made representations to the Secretary of State seeking a direction in relation to their application; the Secretary of State had directed the Council to determine the application by 4 October 2017; as a result if this a consultant had been employed to report on this case; the claimed route was not currently on the definitive map.

The Case Officer further highlighted: the application route was on the site of the former Mendip Hospital; part of the route was currently heavily overgrown, but had previously been more accessible; safety concerns were not applicable to the application being considered today; the application was supported by some historic evidence but that any pre-existing rights had been stopped up by legal order in 1907; the importance of evidence of use; that 20 years

uninterrupted 'as of right' use by the public could raise the presumption that public rights have been dedicated; the 20 year period had to be calculated from a point of challenge; that the presumption of dedication could be rebutted if the landowner had demonstrated a lack of intention to dedicate during the relevant period; that the period under consideration in this case was 1971 – 1991; that use to access the hospital was considered to be with permission and so did not qualify for 'as of right' use; that use was commensurate with what one would expect for a Right of Way in a rural setting; that the landowner had tried to demonstrate a lack of intention to dedicate the route as a right of way but only after the 20 year period under consideration; that evidence was mainly for use on foot.

In summary the Committee were informed that it was felt that there was sufficient use of the route to reasonably allege that rights had been acquired, and that as such an order should be made to add the route to the Definitive Map and Statement of Public Rights of Way as a public footpath.

(2) The Committee heard from Chris Langdon who spoke on behalf of the applicant and raised a number of points including: the applicant had actively looked into permissive solutions; the report didn't consider the landowner; that much of the usage during the 20 year period under consideration was likely to have been by hospital staff; the history of the locality had not been taken into account; and safety concerns as the route joins a road on a blind corner.

(3) With the Chairman's permission the Case Officer responded to the points raised noting that: legally the Committee cannot consider safety concerns and that where evidence was clearly associated with access to the hospital it had been discounted by the consultant, there was no suggestion that the remaining use had been associated with the hospital

(4) The Committee proceeded to debate during which a number of questions were asked by Members including: the importance of site visits; understanding the local area; deferring determination of the application; permissive routes and diversions; and the potential to condition a diversion.

(5) Cllr Mike Pullin, the local Member for the application informed the Committee that: he had lived in West Horrington for 56 years; and that in his opinion a diversion should be considered.

(6) The Case Officer informed the Committee that no assurances could be given regarding a diversion, but that any proposal would be properly considered. In any case the likelihood of success of any future diversion applications was not something that could be taken into account when deciding whether or not public rights exist over the application route; Members should not allow discussion of a potential diversion to affect their decision in relation to this application.

(7) Cllr Nigel Hewitt-Cooper proposed the recommendations detailed in the officer report and this was seconded by Cllr Nigel Taylor.

(8) The Committee resolved in respect of application number 704M that (Cllr Pullin abstained from the vote):

- 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

**6 Request to take an application for a definitive map modification order out of turn: Claimed public footpath to the north of Blue Anchor Chalets – agenda item 6**

(1) The Case Officer with reference to the report, supporting papers, and the use of maps, plans and photographs outlined the request for an application relating to a path to the north of Blue Anchor Chalets be taken out of turn .

(2) The Chairman highlighted that today's request could only consider if the application should be taken out of turn and not the status of the path in question.

(3) The Committee were informed that: the request for the application to be taken out of turn was submitted by the Ramblers Association in May 2017; the validity of evidence was not under consideration today; there were four criteria which should be considered before an application could be taken out of turn; that there was no evidence that any of the four criteria had been met; that currently a Section 130 notice had not been received by the Council; that a Section 130 notice was a formal request for the Council to remove an obstruction from a highway; and that applications should only be taken out of turn in exceptional circumstances.

(4) The Case Officer further informed the Committee of the background to the application, noting that: the public already have a right to walk the coast path and that this provided an alternative route to the claimed path; that the claimed route would be more accessible should a right of way exist; parts of the claimed route crossed shingle, but this was more compacted than the section of the coast path in question;; there was a danger of rising tides when walking the coast path, but that this risk must be viewed in context; the alternative route is above the high water mark; there are notices displayed on the route advising of the risk of incoming tides; and that this application must be viewed in the context of all other outstanding applications. In conclusion the Case Officer informed the Committee that no compelling reasons had been put forward which would justify this application being take out or turn.

(5) The Committee heard from Carlton Earl who spoke on behalf of the applicant and raised a number of points including: the inclusion of the claimed route would enhance the coast path; the claimed route did not require users to walk onto the beach and so offered greater safety protections; that the exception criteria do apply due to the safety issues identified; the route was well used by both local people and holiday makers; and the risk of quick rising tides.

(6) The Committee heard from Lorna Scott, a local chalet owner who spoke against the officer recommendations and raised a number of points including: she was happy for people to walk past her chalet; fences had been erected to prevent any use of the claimed route; the claimed route was accessible to wheelchair users prior to the erection of the fences; and that she felt there were exceptional circumstances which justified the application being taken out of turn.

(7) The Committee heard from Brenda Maitland-Walker who spoke on behalf of the local District and Parish Council's, against the officer's recommendations and raised a number of points including: highlighting the available documentary evidence including a Coast Path booklet which included the claimed route; there was clear usage of the claimed route; the Steam Coast Trail included the claimed route until fences were erected; the County Council's transport policy lists the Steam Coast Trail as a national cycle route; and that a Section 130 notice would be served if the application were not taken out of turn.

(8) The Committee heard from Siobhan Hutchings who spoke against the officer recommendations and raised a number of points including: her disabled son's use of the route; that her son had been accosted by chalet owners; that her son cannot use the alternative route as he wears rigid aids; her son had been forced to cycle home along a dangerous route; her son's health and wellbeing was being affected; and that the Committee should consider the accessibility of the alternative route.

(9) The Committee heard from Sarah Waite who spoken in support of the officer recommendations and raised a number of points including: there was no justification for the application to be taken out of turn; the claimed route was no safer than the alternative route; the claimed route had previously been flooded; there are warning notices regarding rising tides; the route of the coast path had been determined by the Secretary of State so as to not impact on residential properties; and that in an emergency there is gated access through the centre of the chalets.

(10) The Committee heard from Nick Simpson who spoke in support of the officer's recommendations highlighting that the route of the coast path was contentious and had been determined by the Secretary of State.

(11) The Committee heard from Cllr Christine Lawrence, the Local Member, who spoke against the officer recommendations and raised a number of

points including: she was the Chair of Somerset's Health and Wellbeing Board; that a Committee site visit had not taken place; the confused situation regarding the paths; the Rights of Way Improvement Plan included reference to local healthy walks and an easy to use network; that she was pleased that so many local people were involved; the difficulty in walking on the loose beach material; the coast path is submerged during high tides; the requirement for a safe path; that local people have always walked the contested route; and that there were many instances of lifeboats being called to help people who had become stuck in mud in the local area.

(12) With the Chairman's permission the Case Officer responded to the points raised by public speakers, noting that: many current outstanding applications were for routes which were currently impassable and for which there was no alternative route at all; there was shingle elsewhere on the route; the healthy walks reference in the Rights of Way Improvement Plan could be applied to many outstanding Rights of Way applications; that individuals had been caught in mud elsewhere in Blue Anchor Bay not on the coast path which ran over shingle; and that there may be an oversight in the Coast Path publicity material as highlighted by one of the public speakers but that this did not alter the legal line of the path.

(13) The Committee proceeded to debate during which a number of questions were asked by Members to which the Case Officer replied: Section 130 notices and the requirement for the removal of obstructions; the application of the Human Rights Act; consideration of the out of turn criteria; and the timescale for determination if the application were not taken out of turn.

(14) Cllr Nigel Taylor proposed the application be taken out of turn, contrary to the officer's recommendations, and this was seconded by Cllr John Clarke.

(15) Jo Allen, County Council Planning Solicitor informed the committee that a Section 130 notice required the Council to remove an obstruction from a public right of way, but that in this instance there was a dispute over the status of the part of the route that was obstructed; and that there was an obligation on Members of the Committee to identify the relevant exceptional circumstances for the application to be taken out of turn.

(16) The Case Officer highlighted that all Rights of Way should be accessible to all, but in this instance it was not clear if a Right of Way existed; the Case Officer further questioned how this application differed from other outstanding applications.

(17) The Service Manager – Rights of Way highlighted the Regulation Committee's decisions in relation to previous out of turn requests.

(18) The Chairman noted that if today's out of turn request were unsuccessful the applicant could still make a non-determination appeal to the Secretary of State, and that this may mean the application would be determined sooner.

(19) The Committee considered and resolved by a majority vote not to accept the alternative recommendation to take the application out of turn.

(20) The Committee proceeded to vote on the following officer's recommendations and resolved that in respect of the out of turn request in relation to the application to modify the definitive map by adding a footpath at Blue Anchor (848M) it:

- 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.

**7 Any other business of urgency – agenda item 7**

There was no other business.

(The meeting closed at 15:54)

**Chairman, Regulation Committee**