

Scrutiny for Policies and Place Committee

Wednesday 19 June 2019

10.00 am Council Chamber, Shire Hall,
Taunton



SUPPLEMENT TO THE AGENDA

To: The Members of the Scrutiny for Policies and Place Committee

We are now able to enclose the following information which was unavailable when the agenda was published:

Item 4	Public Question Time (Pages 3 - 10) The Chairman will allow members of the public to ask a question or make a statement about any matter on the agenda for this meeting. These questions may be taken during the meeting, when the relevant agenda item is considered, at the Chairman's discretion.
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Democratic Services, B3E, County Hall, Taunton

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Public Questions
Scrutiny for Policies and Place – 19 June 2019

Item 5 Rights of Way Service Update:

1. Joanna Roseff, Axbridge Bridleways Association

Comments on Efficiency of Processing DMMOs

Following the process review, several options were approved by the Regulation Committee on 9th May 2019, on which we have the following comments:

IR4 WCA 1981 s 53, (c) refers to the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows— etc

The important word is **relevant: it does not say exhaustive. Available evidence can become irrelevant depending on what else is found.**

Published county maps should be looked at first because they show the antiquity of the route and the places that it connected; they should move from the secondary to the primary list.

The investigating officer should have authority to mark against each item on the list whether or not they chose to investigate and if it was omitted, put a reason why.

Recently at Wedmore, the Definitive Map showed a FP through a building; the Provisional Map exposed a drafting error, yet the officer flogged through every map on the list adding no value.

IR8 Shorten the investigation when **sufficient evidence** has been found, not just when it is 'conclusive'. The relevant test is **'reasonable allegation', less than 50%**, or 'balance of probabilities', which is slightly more than 50%.

D2 The Regulation Committee are untrained and inexperienced. **They should not over-rule an informed decision by the R-o-W Department**, particularly if it was arrived at in consultation with the Legal Department – especially not on the basis of a site visit. On 9th May, they said the Investigation Reports are lengthy and hard to follow – **so no site visits.**

D3 For borderline decisions it is even more important that untrained Councillors should not interfere. **The decision should be based on the facts and not on politics. If it is borderline, the decision should always favour the public.**

Post Determination

The OMA has an obligation to protect and assert the rights of the public, so **if they have made an order in favour of the public, they should defend it.**

To do otherwise is not fair on applicants, particularly inexperienced ones.

User evidence and landowners in favour

These both have a shelf-life; users die or move away and landowners change; yet these claims are not listed on the Statement of Priorities as they should be.

2. Rachel Thompson MBE, Consultant to the Trails Trust / Founder member of Horse Access Campaign UK

Process Review – modifying the definitive map and statement – SCC suggestions to save time

Investigation and report

IR4: all published maps should be available at County Hall, if IR5 is taken forward (research volunteers digitising) most archives would be readily available.

IR5: use of volunteer resource – yes agree

IR6: Interview users by phone. Yes absolutely agree. All users should be interviewed immediately an application is presented due to severe time delays in investigating.

IR8: if there is conclusive evidence such as an express dedication / acceptance or a publicly awarded carriage road or bridleway in an inclosure award, further research is unnecessary. Furthermore, where there is conclusive evidence of a public right of way these should be immediately recorded on the Definitive Map and Statement by legal event order, saving hours of process time.

IR10: yes agree. Produce one good well researched report and let the matter rest.

Decision- making

D2: give up committee site visits altogether. These applications are judged on the evidence, not what the route looks like on the ground. This too often leads to judgements made on suitability, which is not the test. Trust the officer's decision.

D3: borderline evidence – trust the officer. If the evidence is borderline, the decision should err on the side of the public.

Past Determination

PD1: adopt neutral stance for opposed orders – disagree – Local Authorities have a legal duty to protect public rights. If the LA has made an order, it must defend it and negotiate with objectors to withdraw. If it seems likely that there will be objections, other than from the landowner, during the course of the inquiry, go for a dedication either express or HA80 s25. This was done with great effect in the past.

PD2: yes agree. Carry out the investigation, decide LA stance then let it rest, far too much time wasted arguing minor points, let the inspector weigh it up.

PD3: disagree. Again the LA has a duty to protect the rights of the public and should ensure the best case goes forward to public inquiry. Again consider trying to achieve a dedication.

3. Lynne Myland, Isle of Wedmore Horse Riders and Carriage Drivers Access Group

Following on from the recent Regulation Committee's agreement to support the proposed changes to how applications to modify the definitive map are processed.

- Decision Making -D2 "Minimise site visits for committee decisions".
I would like to make the following point - The decisions should be Quasi Judicial and should be decided on the evidence placed in front of the committee, not on a visit to see the suitability or desirability. The officers will make a site visit; I believe site visits by Regulation Cttee unnecessary because they risk being influenced by suitability and recent topographical changes.

I will not be able to attend the meeting but very much appreciate the opportunity to have this opportunity to give my opinion for the Scrutiny Committee to consider.

4. Venetia Craggs, Axbridge Bridleways

4.4 Mentions Site Visits this is a total waste of time and money as Google can be used very successfully. Of course time also changes the way over 100/200 years.

If the Committee insist on a site visit then they will need an expert to point out the various landmarks, eg old ditches, walls, wayfaring trees, bench marks. old gate posts, etc.

Any Officer who makes a final decision must be very well trained in the legality of rights of way, and "protect and assert the rights of the public" before the landowners.

It Appears that User evidence claims are not being researched immediately. This of course is unfair as many users die before the claim is looked into or comes to a Public Inquiry.

Perhaps more help from Northumberland CC might be helpful.

5. Sarah Bucks, Chair, South Somerset Bridleways

Problems, from the perspective of a user group, with the DMMO application backlog

Backlog, referrals, inefficiencies, policies, possible/partial solutions

- Backlog,

The authority has had a backlog for many years and never the resources to make an impression on it. DMMO applications should be determined within 12 months and Inspectors are now finding delays of 10 and more years unacceptable, particularly in view of the 2026 cut off date. When an application is referred for non-determination, PINS are now directing the authority to determine it within 6 or 12 months.

The rate of submitting DMMO applications is going to increase exponentially as 2026 approaches. Even at the optimistic rate of processing 10 applications per year, the authority's current system is not fit for purpose. Other surveying authorities are trialling solutions, and working with user groups to streamline and standardise the process.

The Somerset LAF has already been provided with information from Northumberland and Yorkshire. Cornwall only require a set number of documents (tithe and 1910 Finance Act records and OS maps) to record the application on the modifications register and they encourage a standardised approach from the user groups and work with them to source documents. SCC require all researched information to be submitted, which may be over 20 documents, all of which will have to be assessed and a report written. Many authorities are now employing more experienced staff, as they can see that the rate of applications is going to grow exponentially. They are also evolving standardised and systematic ways of working.

- Referrals

This Surveying Authority has been ignoring directions from the Secretary of State for years. Whilst it is true that there is no direct penalty for not

complying with such directions, it is very poor practise. This list shows ones that we (South Somerset Bridleways Association) are aware of, there may be others.

<u>Parish</u>	<u>Route</u>	<u>Date of application</u>	<u>Instructed to determine the case by:</u>
Abbas and Templecombe	Lily Lane	August 2008	December 2018
Broadway	Long Drove	September 2008	May 2018
Broadway	Long Drove to Hare Farm	September 2008	May 2018
Broadway	Long Drove to Hare Lane	September 2008	May 2018
Broadway	New House Farm to Hare Lane	September 2008	May 2018
Charlton Musgrove	east from Balls Farm	September 2009	May 2018
Combe St Nicholas	Hamway Lane	January 2009	May 2018
Combe St Nicholas	Charmoor Drove	January 2009	May 2018
Combe St Nicholas	Charmoor Lane	January 2009	May 2018
Puckington	Gummers Lane	June 2008	May 2018
Shepton Beauchamp	Fouts Lane	September 2008	May 2018
South Petherton	Frogmary Lane	September 2008	May 2018
Combe St Nicholas	Sixteen Acre Lane	January 2009	June 2019 (20 th .)

Plus there are another dozen that SCC have been directed by PINS to determine in the next couple of years, and of the many applications submitted by the South Somerset Bridleways Association, another 130 are paragraph 2 compliant and so could be referred for non-determination at any time.

- Inefficiencies:
 - ROW staff looking for too much evidence rather finding 'reasonable allegation' or 'balance of probability' and making an order. If an order is made, then it can be objected to or confirmed, and many would go through without objection.
 - Reports too long and confusing, not balanced or adding positive evidence together, but dismissing any evidence which does not offer 'proof'. No summary sheet.

- Researching and producing irrelevant or excessive information – e.g. comparisons with other routes in other parishes.
- Lack of continuity - cases are not followed through to conclusion, but ‘parked’ for many years and often more than once.
- Not processing adjacent or connecting routes at the same time.
 - For example in South Chard there is a network of connecting routes for which applications were submitted in March 2009 and which rely on many of the same documents. In the queue, laboriously compiled by SCC, the applications for Factory Lane to Green End Lane are 19, Chilson Common to Hoskins Lane 96, and Dyke Hill to Chard Junction 148 respectively. **If** SCC achieve a rate of processing applications at 10 / year, these 3 applications will be processed in approximately 20, 70 and 150 years’ time respectively – making dead end routes for many decades. Why not process them at the same time as they rely on the same evidence? Obviously all current users will be dead so there is little enthusiasm to collect user evidence.
 - Sixteen Acre Lane in Combe St Nicholas was submitted at the same time as three others in Combe St Nicholas, and has also been referred for non-determination, yet it has not been processed with the other three, and we don’t think any work has been done on this application – another direction to determine date missed.
- Holding back cases which should be sent to PINS. We believe that the following applications have had orders made, objections received, and are waiting to be sent back to PINS. There may be other such cases.

Chaffcombe	Whitemoor Hill	order made in December 2015
Pitney	Underhill Lane	Secretary of State overturned SCC’s decision to refuse to make orders on the evidence provided for these three applications, and
Pitney	Dyer’s Piece Lane	
Pitney	Northern end of Westerngate Lane	

		directed SCC to make orders for RBs. Orders made in January 2016
Crewkerne	Butts Quarry Lane	Secretary of State overturned SCC's decision and directed SCC to make orders for RBs orders made in July 2016
Crewkerne	Higher Easthams Lane	
Pilton	Westholme Lane	order made in February 2018

- Orders about to be made: (what is the delay?)

Kingsbury Episcopi route from Rusty Axe to Pulpits Way
Secretary of State directed SCC to make order for
RB in June 2019

Puckington Gummers Lane (objection period has passed some
time ago, what is the delay now?)

- SCC ignoring own policies:
 1. County farm land at Dowlish Wake was sold without a 100 yard section of connecting bridleway being dedicated. This goes against both the ROWIP and the policy to dedicate public rights of way before selling county land, especially where the land concerned had a DMMO application (submitted 2009) was brought to the council's attention. End result will be an expensive Public Inquiry when the application is eventually processed, and in the meantime riders are on the roads.
 2. Taking applications out of turn where a planning application is made. The current application for another anaerobic digester and service roads in South Petherton crosses the land of Frogmary Lane and potentially Fouts Lane. Applications for these routes were submitted in 2008, SSBA referred the applications to the Secretary of State for non-determination in August 2017 about the time the planning applications were submitted. The Secretary of State directed the council to determine the applications by May 2018. To date the authority still hasn't determined the applications.
- Possible Solutions:
 - Process applications which are backed by a legal Act (Inclosure award or Quarter Sessions record). Make reports on that evidence alone, and

not keep demanding more documentation which is superfluous; the record of the legal event should be sufficient.

- Make orders for routes which are thought not to be contentious.
- Training – by IPROW, and for economies share day with neighbouring authorities. IPROW will provide bespoke days for surveying authorities who have particular problems.
- Short term (say 2 years) contract for an experienced and proven ROW professional with the remit to reduce the DMMO application backlog.
- Do not employ people without experience and then spend years training them internally with staff who should be processing applications, so delaying DMMO processing work.
- Attempt to have objections withdrawn rather than just stacking the cases up to be sent to PINS many years later.