

Somerset County Council
Regulation Committee –
Report by the Interim Service Director (Environmental
Protection): Barry James

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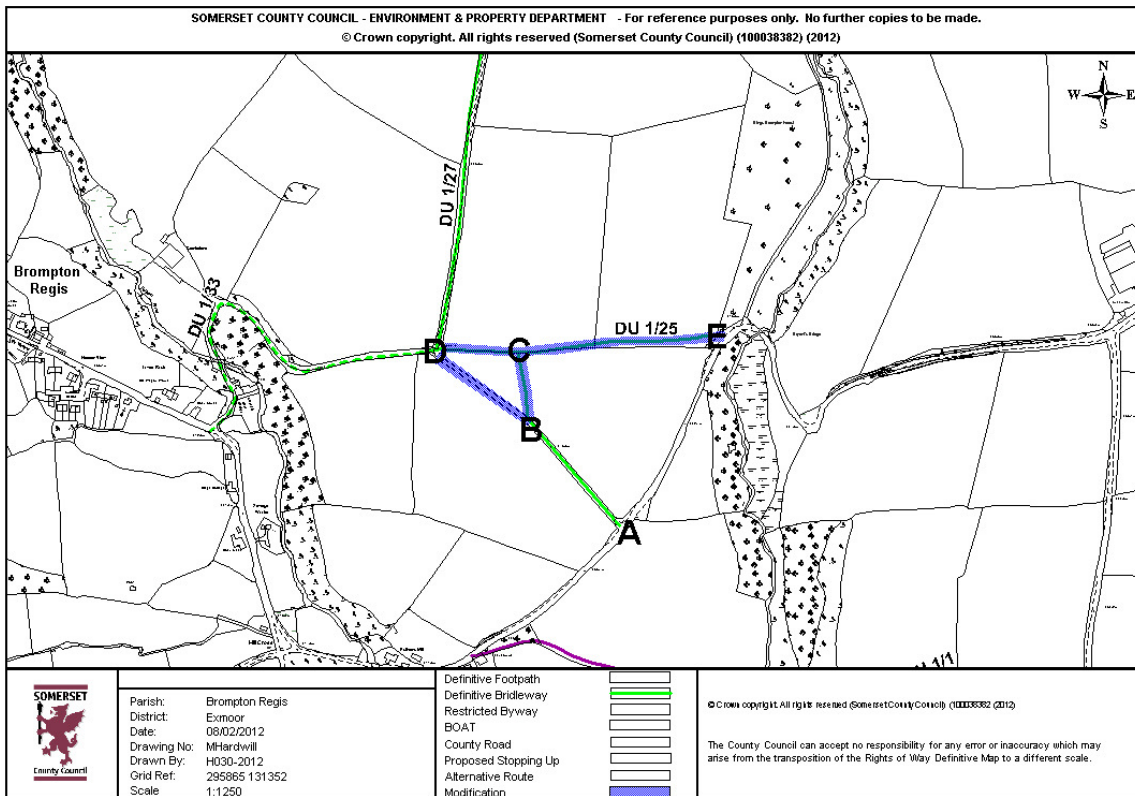
Application Number: **733M**
Date Registered: **October 2011**
Parish: **Brompton Regis**
District: **West Somerset**
Member Division: **Dulverton and Exmoor**
Local Member: **Frances Nicholson**
Case Officer: **Laurence Smith**
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Description of Application: **CLARIFICATION OF ROUTE OF DU1/27 AND STATUS OF DU1/25, BROMPTON REGIS**
Grid Reference: **SS 9531**
Applicant: **Somerset County Council**
Location: **DU1/25 and DU1/27, Brompton Regis**

- 1. Summary of Key Issues and Recommendation(s)**
 - 1.1 This application has been raised internally because of the uncertainty of the route and status of the bridleways on which notice has been served on the County Council under section 130A, Highways Act 1980.**
 - 1.2 The notice was served in June 2011 for the removal of obstructions on these paths. There is cause to doubt that the route of the path was correctly recorded during the preparation of the Definitive Map in the 1950s. Under section 130B (5) no order (for the removal of the obstruction) shall be made if the way obstructed under section 130A (2) is seriously disputed (there is documentary evidence to support the dispute).**
 - 1.3 The events so far, and the current confusion in relation to these paths, have been very stressful for the landowner and his family. To reinstate the eastern end of DU1/25 as a bridleway will cost the highway authority a minimum of £15,000.**
 - 1.4 A recommendation that this application is taken out of turn has therefore been made in this case.**

2. Description of the Application Route

- 2.1 The existing route of DU1/27 runs from the road at point A along the farm track then at point B (currently obstructed by a fence) heads north through a field to point C (obstructed by a hedge). It then turns west to D then continues north along the farm track. DU1/25 starts at a point (E) further north on the same road and runs west coinciding for some of its length from C-D with DU1/27, as shown on the plan below.



3. History and request to take out of turn

- 3.1 In June 2011, a section 130A notice was served on the County Council for the removal of obstructions at points B, C, D and E. The obstructing stiles at points D and E on the bridleway were subsequently removed.
- 3.2 Section 130B (5) states that no order (for the removal of the obstruction) shall be made if the way obstructed under section 130A (2) is seriously disputed. A highway falls within section 130A(2) if it is a footpath, bridleway or restricted byway or a way shown on the definitive map and statement as a byway open to all traffic.
- 3.3 If we are to rely on this provision not to remove the obstruction in relation to the obstructed sections of these bridleways, on the basis that we are satisfied that there has clearly been an error in recording the route, it would be advisable to be able to demonstrate to the court that we had started the

appropriate process for amending the definitive map so that it did not fall within section 130(A)2.

- 3.4 Documentary and on the ground evidence has been discovered which casts doubt on the exact route of the southern section of DU1/27 and of the correct status of DU1/25 which is currently recorded a bridleway.
- 3.5 The complainant has been notified that the route and status are disputed and no enforcement action will be taken until the investigation into the route and status of the paths has been completed.

4. Current Policy – Constitution and Statement of Priorities

- 4.1 The Code of Practice dated February 2010, which is part of the Council's Constitution, sets out the circumstances in which the Regulation Committee might make the decision on a request that an application be taken "out of turn" and specifies that this will only be done in exceptional circumstances.
- 4.2 The County Council's current Statement of Priorities was adopted on 20th October 2011 and this included a new clause that a DMMO application could be taken out of turn if '*The path concerned is subject to a Section 130 notice and the County Council is satisfied that there is a cogent evidence that the status or route of the path is in dispute.*'
- 4.3 The purpose of the Statement is to achieve equity and consistency in the treatment of applicants, given the significant backlog of applications.
- 4.4 It is only in exceptional circumstances that an application should be decided other than in accordance with the established criteria because of the need to be fair to all applicants and to minimise the risk of successful legal challenge. In this case the route concerned is subject to a Section 130 Notice therefore the application qualifies to be taken out of turn.
- 4.5 It is for Members to decide whether there is sufficient justification to prioritise this application, which will otherwise take a significant amount of time to be processed (with the risk that the complainant will invoke the section 130 notice by referral to Magistrates Court) and hence the current problems caused for the landowner, as described above, will continue.
- 4.6 All applications were scored and prioritised in November 2011, and this application received a high score, placing it at position number three in the queue of applications. If the application is not taken out of turn it could be dealt with in approximately one to two years time (taking into account there are ten applications currently being processed that were prioritised in the previous scoring round that was undertaken in 2006).

5. What happens next

- 5.1 If Members resolve to take the application out of turn it will be investigated and a report produced which contains a recommendation. If the recommendation is that no order be made, the County Council (or Exmoor National Park Authority as its agent) will proceed with action to remove the obstructions.
- 5.2 If an order is made to amend the route/status on the Definitive Map, then objections may be made to the order which will be sent with the order to the Secretary of State. The Secretary of State may then hold a Public Local Inquiry where the evidence for and against the order can be considered.
- 5.3 If the application is not taken out of turn, the application will be assigned a priority in line with its score and wait its turn. As stated, there is a significant risk that the complainant will invoke the section 130A notice by referral to Magistrates Court.

6. Conclusion

- 6.1 These bridleways are currently the subject of enforcement notices and as such it is important that the investigation into the route and status of the paths is investigated without delay. Failure to do so could see the County Council taken to Court to defend its position. If Magistrates find in favour of the complainant the County Council/Exmoor National Park Authority will have to insist on the removal of the obstructions and make the bridleway at Bryants Bridge (i.e. point E on the plan) suitable for horse riders, which will cost at least £15,000.

7. Recommendation

- 7.1 That the application to investigate the route and status of DU1/25 and DU1/27 is prioritised and ‘taken out of turn’ in accordance with part one of the Statement of Priorities that was adopted in October 2011.**

Background Papers

Plan showing existing routes

Letter from landowner

Adopted statement of priorities, October 2011

This report has been circulated to all Members of the Regulation Committee.

