

The Regulation Committee

Minutes of a virtual meeting of the Regulation Committee held under the Coronavirus Regulations, 2020 on Thursday 8 April 2021 at 10.00am.

Present:

Cllr J Parham (Chair)
Cllr M Caswell
Cllr S Coles
Cllr N Hewitt-Cooper
Cllr A Kendall
Cllr M Pullin (substitute for Cllr M Keating)
Cllr N Taylor

Other Members Present:

Cllr M Lewis
Cllr C Paul

Apologies:

Cllrs J Clarke and M Keating

Officers Present:

Mrs J Allen, Solicitor
Mr M Bryant, Governance Specialist
Mr A Saint, Rights of Way Officer
Ms S Coman, Rights of Way Officer

The Chair welcomed everyone to the meeting, outlined the meeting procedures, referred to the agenda and papers and highlighted the rules relating to public question time.

1 Apologies for Absence - agenda item 1

None.

2 **Declarations of Interest** - agenda item 2

Reference was made to the following personal interests of the members of the Regulation Committee published in the register of members' interests which was available for public inspection via the Committee Administrator:

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| Cllr M Caswell | Member of Sedgemoor District Council |
| Cllr S Coles | Member of Somerset West and Taunton Council |
| Cllr N Hewitt-Cooper | Member of Mendip District Council |
| Cllr A Kendall | Member of South Somerset District Council and Yeovil Town Council |
| Cllr M Pullin | Member of Mendip District Council |

3 **Minutes** - Agenda Item 3

The Minutes of the meeting held on 4 February 2021 were signed 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) 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 **Application to Add a Bridleway between the A359 Sparkford and Footpath WN 23/38 Queen Camel**

(1) The Committee considered a report by the Service Manager - Rights of Way on an application for an order to amend the Definitive Map and Statement by adding a bridleway between G and K as shown on drawing number H59-20 in Appendix 1 to the report. The application was submitted by the South Somerset Bridleways Association who claimed that a public bridleway was missing from the Somerset Definitive Map between the A359 Sparkford and Queen Camel.

(2) The Rights of Way Officer outlined the application, with reference to the report, supporting papers and the use of maps, plans and photographs. She added that the investigation sought to establish whether a public right of way already existed

over the claimed route, and if so what level of public right, or whether no public right of way existed and the Definitive Map was already correct and therefore did not need updating, The Rights of Way Officer referred to the tests that had to be applied and potential outcomes which included refusing to make an Order or resolving that a public way already existed in the form of one of the following; footpath; bridleway; restricted byway; byway open to all traffic (BOAT).

(3) The report and presentation covered: the application and supporting evidence; a description of the route; relevant legislation; documentary evidence; evidence from landowners and those against the application (on the basis of the impact of A303, route being partly overgrown, obstructed, not used etc); comments on landowner evidence; consultations and other submissions; discussions of the evidence; and included a summary, conclusions and recommendations.

(4) Further to concerns about the impact of the A303 and the proposed new dualling scheme for this section of the road, the Rights of Way Officer pointed out that if it was determined that a right of way existed the County Council would not initially look to make the route available for public use but instead explore with Highways England and others what options there were for improvement or diversion of the rights.

(5) The Rights of Way Officer concluded that a restricted byway could be reasonably alleged to already exist between G and L on the plan comprising Appendix 1, but excluding the section crossed by a full vehicular highway - the A303, for the following reasons:

- the Quarter Session records provided conclusive evidence of the creation of a public carriageway
- no evidence had been found of a legal extinguishment of those rights other than in relation to mechanically propelled vehicles
- the Natural Environment and Rural Communities Act, 2006 extinguished mechanically propelled vehicular rights, therefore the rights of a restricted byway remained as the highest public right of way.

(6) The Chair read out a statement from Mr W Turner (made on behalf of Mrs K Anstey) who was registered to speak but was not present. His submission is summarised as follows:

- Mrs Anstey's family owned land crossed by the application route; the route had not been used as a highway/bridleway for over 40 years

- the land was overgrown, impassable, with steep banks where it joined the A303 and therefore unsuitable for horse riding
- the potential hazards of crossing the A303 would be exacerbated by its proposed dualling.

(7) The Committee heard from Mrs S Bucks, Chair of the South Somerset Bridleways Association. Further to her written submission circulated to Committee members, Mrs Bucks confirmed that the reason for making the application was to alert Highways England to the public right of way across the A303 who would have to mitigate for this, and with a view to the route being diverted to cross the road on a bridge that she understood was likely to be constructed a short distance to the east. There was no intention that horses should descend the steep banks of the application route at the edge of the carriageway and cross the A303 without a suitable bridge. It was hoped that the County Council would approve the application for a bridleway or restricted byway and support the suggested mitigation and diversion which would obviate the need to use an underpass beneath a nearby roundabout.

(8) The Committee then heard from Cllr M Lewis, local divisional member, whose comments/views are summarised as follows:

- the reason for putting forward the application was not to establish a use by horseriders and pedestrians but to try to encourage provision of access or a bridge for horseriders and pedestrians over the A303, and he understood that the application had been taken out of turn to consider this
- referring to alternative historical arrangements for access to Hazelgrove House and its estate, there was no evidence that the general public had used the application route as a bridleway, and its use to access land on either side of the A303 was inappropriate
- the issue was not raised during lengthy public consultation with Highways England on the rights of way network between Sparkford and Podimore
- while acknowledging that the proposed bridleway between H and L was recommended for refusal, and referring to his concerns about the route leading nowhere and possible misuse by motorised vehicles etc, a restricted byway between G and H in particular would cause significant public harm and nuisance.

(9) in response to the points raised, the Rights of Way Officer commented as follows:

- although the route was at risk of obstruction by the development of the A303 in this area, the application was originally brought forward for investigation as part of a batch of applications with clear evidence of the legal creation of a right of way
- while acknowledging concerns about safety and the practicalities of public use of the route raised by the local divisional member and others, under the current law these were not factors that could be taken into consideration when determining the application
- the route had been created by Court Order and could not be extinguished through lack of use; it would need to be extinguished through due legal process and there was no evidence that this had taken place
- she had recommended refusal of the application to add a bridleway between H and K (not between H and L) on the plan comprising Appendix 1 and to add restricted byways on either side of the A303 (G - H and the point opposite H on the other side of the A303 carriageway J - L), with only the A303 itself being exempted
- while the blue line on the plan accurately reflected the route shown in the application, the straight line route G - L with the section shown in green was a closer representation of the route as shown on historic documents
- the County Council would approach Highways England about mitigation but could not guarantee what they would provide.

(10) The Committee proceeded to debate during which Members raised matters about issues arising from future schemes for the improvement of the A303 that might impact on the application route and whether four-wheel drive vehicles in particular could use the proposed restricted byways. The Rights of Way Officer confirmed that as with the currently proposed dualling scheme for the A303 Highways England would look to incorporate the existing local rights of way network into the new road that they were creating. However, this future scheme would not affect the current legal status of the route; if a right of way was found to exist it must be recorded on the Definitive Map and Statement. The Rights of Way Officer confirmed that restricted byway status, if agreed, would preclude use of the application route by motorised vehicles.

(11) Cllr N Taylor, seconded by Cllr N Hewitt-Cooper, moved the recommendation by the Service Manager - Rights of Way set out in the report which was adopted.

(12) The Committee RESOLVED unanimously:

(a) that the application to add a bridleway between H and K as shown on Appendix 1 to the Service Manager - Rights of Way's report be refused

(b) that an Order be made, the effect of which would be to add to the Definitive Map and Statement a restricted byway from point G to point H where it meets the A303 and another restricted byway directly opposite point H on the other side of the A303 to point L as shown on Appendix 1 to the Service Manager - Rights of Way's report

(c) that if there are no unwithdrawn objections to such an order, it be confirmed

(d) that if objections are maintained to such an order it be submitted to the Secretary of State for Environment, Food and Rural Affairs.

(The meeting ended at 10.40am)

CHAIR