

## REGULATION COMMITTEE

Minutes of a Meeting of the Regulation Committee held in the , on Thursday 6 May 2021 at 10.00 am

**Present:** Cllr J Parham (Chair), Cllr N Hewitt-Cooper (Vice-Chair), Cllr M Caswell, Cllr J Clarke, Cllr S Coles, Cllr M Keating, Cllr A Kendall and Cllr M Pullin

**Other Members present:**

**Apologies for absence:** Cllr N Taylor

### 1 **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:

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

### 2 **Accuracy of the Minutes of the meeting held on 8 April 2021 - Agenda Item 3**

The Minutes of the meeting held on 8 April 2021 were signed as a correct record.

### 3 **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.

4 **Application to Upgrade Part of Footpath Y 9/35 to a Bridleway from the Eastern End of Restricted Byway Y 9/49 Southwards to the Junction with Footpath Y 9/46 in the Parish of East Coker - Agenda Item 5**

(1) The Committee considered a report by the Service Manager – Rights of Way on 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 upgrading part of the footpath Y 9/35 to a Bridleway, from the Eastern end of the restricted byway Y 9/49 southwards to the junction with footpath Y 9/46 in the parish of East Coker, submitted by the South Somerset Bridleways Association.

(2) The Rights of Way Officer outlined the application by reference to the report, supporting papers and the use of maps, plans and photographs. He added that

the investigation sought to establish if either higher public rights than currently recorded exist over the application route, and if so what level of public right or the application route is correctly recorded as a footpath, and as such the Definitive Map and Statement do not require 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, in which case the route will remain a footpath or resolving that higher public rights exist in the form of one of the following; 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; comments on landowner evidence; consultations and other submissions; discussions of the evidence; Ordnance Survey evidence: use of "F.P." annotation, presence of kissing gates, physical availability of the route for equestrian users and included a summary, conclusions and recommendations.

(4) Further to concerns about Ordnance Survey evidence: the Rights of Way Officer commented that use of the "F.P." annotation had been used to reflect the views of a particular surveyor, further adding that the installation of the kissing gates at the time of diversion was unlikely due to historical data showing that the bridleway was open and available to equestrian users at the time. Regarding concerns of the physical availability of the route for equestrian users, it was stated that the current physical limitations would not extinguish higher public rights of way this route.

(5) The Rights of Way Officer concluded that the Quarter Sessions records provided conclusive evidence of the creation of a public bridleway and that no evidence had been found of a legal extinguishment of those rights.

(6) The Chair read out a statement, which had previously been circulated to all Committee members, from Mr. D Pryor, his submission is summarised as follows: unable to understand why the recommendation has been put forward due to the pitfalls and potential danger of allowing the change of use for this footpath. Believes there is a total disregard for the wildlife and how this would be affected, including badgers which are a protected species. Believes changing this footpath to a bridleway will deprive walkers from safely using it and that in order to make the path safe would entail taking out the kissing gates and making the path wider and at what cost.

(7) The Chair read out a statement from Mr. P Hackett, Access Field Officer, South West, The British Horse Society, which had previously been circulated to all Committee members, his submission is summarised as follows: The Quarter Session evidence from 1899 is clear and unambiguous that the bridleway was created for public use and there is a certificate of completion which confirms that the route was 'in good condition and repair'.

(8) 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 explained that the route was dedicated as a bridleway by a previous landowner as part of a legal diversion and stopping-up process. The dedication of these public rights was done through the Quarter Sessions and the records of this legal process, which have been kept in safe custody, are clear. The route meets a definitive footpath at the southern end, which is under another application submitted in 2009 (reference number 671) and would be part of the local network.

(9) The Committee then heard from Cllr M Keating, local divisional member, whose comments/views are summarised as follows: expressed understanding of the concerns and practical considerations, however supported the application and requested that the kissing gates to be relocated.

(10) The Committee proceeded to debate the report, during which members raised matters regarding vehicle access, especially 4x4 access, the sufficient evidence of the bridleway, the kissing gates relocation,

wildlife, and badger set disruption, evidence of badgers in the area and evidence of school children usage.

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

- Acknowledged the concerns locally and clarified that the process aims to record rights that already exist, therefore any practical considerations regarding safety and suitability cannot be considered under legislation and cannot have a bearing on the investigation
- The specifics of accessibility to be discussed with landowners in consultation and with input from the SCC maintenance team
- The kissing gate relocation is not for action on this application, however confirmed that consultation has and will continue with the Parish Council
- Confirmed that restricted byway status, if agreed, would preclude use of the application route by motorised vehicles
- Badger activity in the area is evident, however does this was not relevant to process, but this will be considered should any physical work be undertaken
- Usage of the route by school children does not affect the decision decided upon

(12) The Chair also highlighted; the clear evidence that the bridleway has and continues to exist and that the user information, physical condition, and physical impact does not affect the legal status of the route.

(13) Cllr J Clarke, seconded by Cllr N Hewitt-Cooper, moved and the Committee **RESOLVED** that;

i. an Order be made, the effect of which would be to add to the Definitive Map and Statement a public bridleway between points A B-C-D as shown on Appendix 1 of the Officer report;

ii. if there are no unwithdrawn objections to such an order 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.

5 **Application to Add a Restricted Byway and Upgrade Part of Footpath CH 5/57 to a Restricted Byway over Paintmoor Lane, Chard and Chaffcombe - Agenda Item 6**

(1) The Committee considered a report by a Rights of Way Officer, an application under Schedule 14 and Section 53(5) of the Wildlife & Countryside Act 1981 to add a restricted byway and upgrade part of the footpath CH5/57 to a restricted byway over Paintmoor Lane, Chard and Chaffcombe, submitted by South Somerset Bridleway Association.

(2) The Rights of Way Officer outlined the application by reference to the report, supporting papers and the use of maps, plans and photographs. She added that the investigation sought to establish whether higher public rights than currently recorded exist over the application route, and if so what level of public right, or if the route is correctly recorded (as a footpath in part, with no public right of way over the remainder of the route), and as such the Definitive Map and Statement do not require 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 to modify the DMS, resolving that a public right of way already exists in the form of one of the following; Footpath (over the whole route), 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, consultations and other submissions; discussions of the evidence; and included a summary, conclusions and recommendations.

(4) The Rights of Way Officer concluded that a 'Restricted Byway' can be reasonably alleged to exist over A to B and C to D, and that on the balance of probabilities a restricted byway exists over B to C.

(5) The Chair read out a statement from Mr. P Hackett, Access Field Officer, South West, The British Horse Society, which had previously been circulated to all Committee members. Mr P Hackett was registered to speak but was not present. His submission is summarised as follows: Made reference to the Rights of Way Officer report; noting "There is evidence in favour of the application route carrying public rights and no incontrovertible evidence to the contrary against those rights post enclosure and therefore it is considered reasonably alleged that the restricted byway exists over the application route." Furthermore in 10.4 it is made clear that the substitution of 'public road' and the object name book and Finance Act maps support this.

(6) 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 explained that the through route was always ridden, until an adjacent landowner commented that there was no public right of way and not available to horse riders. The historical records show that the northern end was part of a route diverted when the canal reservoir was built, which supports the supposition that the route has been in regular public use until a few years ago.

(7) The Committee then heard from Cllr L Vjeh, local divisional member, who thanked the Rights of Way Officer for a comprehensive report.

(8) The Committee proceeded to debate, during which members raising matters including: clarification of there being no gates on the route, detail of vehicle usage on a restricted byway, clarification of regulations regarding bicycles, consideration of gated access to route.

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

- Comments against upgrading of the record of the route are detailed in the report
- Restricted byway status would preclude the use of the application route by the general public with motorised vehicles, but would not delete any private right to do so. Use by the general public would only be by foot, horses, bicycles and non-mechanically propelled vehicles
- Bicycles can be ridden on a public bridleway.

(10) The Chair also highlighted; the condition of the route is subject to further negotiation, and the decision for this item is to establish the rights that exist on the route.

(11) Cllr M Keating, seconded by Cllr M Caswell, moved the recommendation and the Committee **RESOLVED** that:

i. an Order be made, the effect of which would be to add to the Definitive Map and Statement a restricted byway between points A and D as shown on Appendix 1 of the Officer report;

ii. if there are no unwithdrawn objections to such an order 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.

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- ii. if there are no unwithdrawn objections to such an order 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.

## 7 **Any Other Business of Urgency - Agenda Item 8**

There were no other items of business.



(Regulation Committee - 6 May 2021)

**(The meeting ended at 11.50 am)**

**CHAIRMAN**