

REGULATION COMMITTEE

Minutes of a Meeting of the Regulation Committee held in the Luttrell Room - County Hall, Taunton, on Thursday 1 September 2022 at 2.00 pm

Present: Cllr T Lock (Chair), Cllr S Coles (Vice-Chair), Cllr B Bolt, Cllr M Caswell, Cllr M Dunk, Cllr T Grimes, Cllr E Hobbs, Cllr M Murphy, Cllr K Pearce, Cllr A Soughton and Cllr M Vale

Other Members present: Cllr M Stanton

Other members present virtually: Cllr A Boyden*, Cllr A Kendall*, Cllr H Kay*, Cllr S Osborne*, Cllr A Hadley, Cllr L Redman, Cllr A Dingwall, Cllr S Wakefield, Cllr S Ashton, Cllr R Wyke and Cllr L Trimnell
(* Reserve Committee member)

Apologies for absence: Cllr J Baker (Cllr M Martin – absent)

1 **Declarations of Interest** - Agenda Item 2

There were no new declarations made at the meeting.

2 **Public Question Time** - Agenda Item 3

There had been no requests registered by the deadline. The Chair advised that in view of the particular circumstances he had on this occasion agreed to receive a written statement from 2 members of the public which was taken during consideration of the relevant agenda item (agenda item 4 - application to add restricted byway and upgrade parts of footpaths in the Parish of Huish Episcopi, South Somerset).

3 **Wildlife and Countryside Act 1981 Section 53, Schedule 14 - Applications 681M (Huish Drove), 682M (Frog Lane) and 683M (Park Lane), in the Parish of Huish Episcopi, South Somerset** - Agenda Item 4

1. The Committee considered the Report by the Rights of Way Officer, concerning the applications from South Somerset Bridleways Associations to add a restricted byway over Huish Drove, Frog Lane, and Park Lane, and to upgrade parts of footpaths L 13/42 and L 13/43 to a restricted byway, from the junction with footpath L 13/45 westwards to the A378 in the Parish of Huish Episcopi, South Somerset (application references 681M (Huish Drove), 682M (Frog Lane), 683M (Park Lane)).
2. The Rights of Way Officer outlined the application by reference to the report, supporting papers and the use of maps, plans and photographs and the report and the presentation covered: the applications and

supporting evidence; description of the route; relevant legislation; documentary evidence; evidence from landowners, consultations and other submissions; discussions of the documentary and user evidence; and included a summary, conclusions and recommendations: -

- That the documentary evidence for all three application routes indicates that it is reasonable to allege (and in the case of footpaths L 13/42 and L 13/43, on the balance of probabilities) that the application routes have historically carried public vehicular rights. Key evidence includes Quarter Sessions records, Finance Act records, and several deposited plans. The various pieces of supporting evidence (including several commercial maps) are supportive of this conclusion.
 - The majority of the remaining evidence examined was not inconsistent with the existence of public vehicular rights over the application routes, and there is no incontrovertible evidence that public rights cannot have existed over Huish Drove, Frog Lane, and Park Lane.
 - The Natural Environment and Rural Communities Act 2006 (NERC) extinguished mechanical vehicular rights over the routes. This excludes the eastern section of Huish Drove (between points A-A1), which is recorded on SCC's List of Streets as a vehicular carriageway.
3. The Chair advised that he had agreed to receive the submission from Mr and Mrs Brooke, affected landowners opposing the application regarding Park Lane, and a summary of their points was read out at the meeting by the Governance Manager. The Governance Manager clarified that this was a statement from the affected landowners who opposed the application and that he has also been advised that the Chair of Drayton Parish Council does not agree with how the Parish Council has been depicted within the written submission: -
- Mr and Mrs Brooke started by explaining their difficult current circumstances have made it unrealistic for them to properly engage with the contents of the investigation report – hence why asking the Committee's consideration of the application to be deferred. The majority of their efforts in attempting to counter the modification application over Park Lane address the user evidence case rather than the documentary evidence case. They also raised concerns over the way in which the modification application was promoted and discussed on social media.
 - Knowing that the Committee members have now walked the route, they drew attention to the quarry office and lime kilns between points E and E1 and contend that the rail track on the industrial site to the south of Park Lane may have run over the lane itself to link the two quarries. This, they suggest, means that the lane was private, as if it were a public route then this rail track would have caused some consternation. Mr and Mrs Brooke additionally refer

to the gate at point E1. They argue that the original gate, which stood between 2001 and 2010, included fencing that together with the gate covered the whole width of Park Lane, stressing that this was essential to keep in livestock and maintain biosecurity. A new gate was installed in 2010, which initially had a metal frame adjacent to it which covered the gap, but this was subsequently removed by a third party. They also suggest that the user evidence is in error on this matter as the user statements contained in the investigation report do not distinguish different gates that have been present at point E1 between 2001 and the present day. Mr and Mrs Brooke maintain that the design of the current gate was to prevent horses, bikes and wandering livestock, which they believe it clearly does. They also stress that the main gate has always been locked and that the padlock and chain has been replaced at least six times. Attempts were also made to challenge members of the public using Park Lane and on one occasion this led to a threatening response.

- They conclude by asserting that “the report’s conclusions do not reflect an accurate representation of the facts”. They request that consideration by the Committee of this item is deferred or that the modification application is refused.

4. The Rights of Way Officer responded to the matters raised by the objectors: -

- Referred to the user evidence information and the relevant period of use was 2000 – 2020. There is conflict in the evidence on the matter - Mr and Mrs Brooke suggest that the gate and accompanying fencing spanned the whole of Park Lane between the years 2001 and 2010, whereas the user evidence suggests that there was access available for both pedestrians and cyclists.
- Given the large volume of user evidence submitted and the fact that there is no conclusive evidence concerning the design of the 2001 to 2010 gate, it is considered reasonable to allege that the side gate or gap has been present since the gate was first erected at point E1, and that the public use of Park Lane on foot and by bicycle was not affected by this gate.
- The argument about the rail track crossing Park Lane is not supported by any documentary evidence (and referred to Appendix 10G of the report).
- The Investigation report does not dispute Mr and Mrs Brooke’s version of events, but nor does it discount the evidence of use provided by members of the public.
- The user evidence concerning this aspect of the case is in conflict, and so in these circumstances, and in the absence of incontrovertible evidence to the contrary, it is reasonable to allege

that bridleway rights came into being over Park Lane between the years 2000 and 2020.

- Stressed that the documentary evidence indicates that it is reasonable to allege that Park Lane was already a public vehicular carriageway at this point from at least 1910, as evidenced by the Finance Act record plan and other documents.

5. The Chair welcomed the Local Divisional Member, Cllr M Stanton to the meeting. Cllr Stanton confirmed that he was also representing the views of the local Divisional member, Cllr R Wilkins, who was unfortunately unable to attend the meeting due to work commitments. Cllr Stanton made the following comments: -

- That he represents the area at Parish and District Council level;
- There is essentially a difference of opinion between the landowners and those wanting to be able to use the byway;
- The route is easy to use surface for bikes, walking and horses – feels as if it ought to be in public use;
- Cllr Wilkins has campaigned for it to be opened up as it provides safe, traffic free cycling and riding and walking route and will be of benefit to the communities in area as well;
- Based on the evidence, the Officers' recommendation and the huge number of historical documentation, would like the Committee to decide in favour of the officers recommendation to keep open this really much needed natural route between parishes and villages.

6. The Committee discussed the matter and the following comments were made and responded to by Officers, as follows: -

- Thanked Officers for the comprehensive report and for the opportunity to visit the site ahead of the meeting;
- Park Lane and comment about possibility of gate being shown on earlier documentation – explained that it is possible for a public vehicular route to have a gate on it which is open and closeable;
- Relevance of ownership – the fact that a route is privately owned does not mean that public rights cannot exist over it;
- Huish Drove and Frog Lane applications are well evidenced – in respect of Park Lane, the evidence it is in conflict and referred back to the points made by the landowners and the user evidence and that the documentary evidence as a whole suggests it is reasonable to allege that public vehicular rights exist over Park Lane.

7. Cllr Caswell, seconded by Cllr Hobbs, moved the recommendation and the Committee unanimously **RESOLVED**: -

1. That an Order be made the effect of which would be to add to the Definitive Map and Statement, restricted byways between points A1-A2-B-C-D, D-E, and E-E1-F-G-G1-H as shown on Appendix 1 of the submitted report.
2. That if there are no unwithdrawn objections to such an Order, the Order be confirmed.

4 **Any Other Business of Urgency** - Agenda Item 5

There were no additional items of business raised at the meeting.

(The meeting ended at 2.58 pm)

CHAIR