

REGULATORY COMMITTEE
2nd NOVEMBER 2005

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
DEFINITIVE MAP MODIFICATION ORDER NO. 7, 2005 -
UPGRADING FOOTPATH NO. 21 GRIMSTEAD (MACKS LANE)
TO A BYWAY OPEN TO ALL TRAFFIC

Purpose of Report

1. To reconsider the report attached at **Appendix 1** and
 - (i) Consider the objections received to the making of a Definitive Map Modification Order, under Section 53 of the Wildlife and Countryside Act 1981, to upgrade Footpath No. 21 Grimstead (Macks Lane) to a byway open to all traffic (BOAT).
 - (ii) Determine the County Council recommendation which should be attached to the Order when it is referred to the Secretary of State for decision.

Background

2. The report was first presented to the Regulatory Committee on 5th October 2005. Prior to that meeting objectors made available to Members their alternative interpretation of many of the historical documents considered by Officers in the making of the Definitive Map Modification Order.
3. Members therefore resolved to defer consideration of the report until the next meeting of the Regulatory Committee, in order that the objectors' interpretation of the historical evidence could be properly considered.

Additional Considerations for the Council

4. Officers have produced a written response to the objectors' interpretation of the evidence which is attached at **Appendix 2**. This should be read in conjunction with **Appendix 3**, Officers original summary analysis of evidence and **Appendix 4**, Objectors' interpretation of the evidence.
5. Members are requested to consider the County Council recommendation in paragraph 30 of **Appendix 1**. The Committee Report and resolution will be attached to the order when it is forwarded to the Secretary of State for decision.

Traffic Regulation Order

6. It is not within the remit of the Regulatory Committee to consider whether or not a Traffic Regulation Order (TRO) should be made and Members of the Committee are not requested to consider this matter.

7. Officers have carried out an initial consultation regarding the possible implementation of a permanent TRO on Macks Lane to ban all vehicular traffic from the path on a permanent basis, subject to the confirmation of the modification order. If a modification order is not confirmed and the path does not have vehicular rights, a TRO is not required.
8. The initial consultation resulted in a number of requests for a pre-emptive TRO to be made, i.e. before the outcome of the modification order is known. It is not the policy of the County Council to make such orders. The policy is as follows:

“Permanent traffic regulation orders on “byways open to all traffic” (BOATs) will be introduced only in response to specific problems and where a degree of enforcement action can be taken.”

9. Following the initial consultation regarding the TRO a number of objections were received which are now being investigated. The results of this process will be presented to the Cabinet Member for Environment, Transport and Economic Development as soon as investigations are complete. The initial consultation responses will also be reported to the Cabinet Member for consideration in deciding whether or not a TRO should be made subject to the confirmation of the Modification Order.

Application from Mr Riley

10. Objectors to the order have questioned the County Council's relationship with the applicant, Mr Bill Riley. The Council's Legal Department has considered the objections and has advised that the Council has acted appropriately in processing Mr. Riley's application.
11. Mr Riley is not employed by the County Council and is not engaged by the County Council in any capacity whatsoever. As far as officers are aware Mr Riley has chosen to look into the historical evidence relating to rights of way in Wiltshire to ensure that rights of way are correctly recorded on the Definitive Map and Statement.
12. The County Council, as the Surveying Authority, has a duty to keep the definitive map under continuous review and update it as necessary. Where evidence is discovered by the Council to show that a right of way may be incorrectly recorded, there is a duty to consider all the relevant evidence in order to determine whether or not a Definitive Map Modification Order should be made. In this way all applicants for Definitive Map Modification Orders are assisting the Council to fulfil its statutory duty by bringing evidence to its attention.
13. Any member of the public may make an application for a Definitive Map Modification Order to be made where they believe that a right of way is incorrectly recorded on the Definitive Map. They are required to submit a list of evidence to the Council to support their claim. Officers could refuse to consider an application where no evidence has been submitted.
14. Having received an application the County Council independently assesses the evidence provided by the applicant and also takes into account all other relevant evidence, either provided by the public, or obtained through research by Council Officers, as required by Section 53 of the Wildlife and Countryside Act 1981. Officers are required under delegated powers to form a view as to the status of a right of way on the balance of probabilities, taking into account all relevant historical and/or user evidence.

15. Where a decision is taken to make a Definitive Map Modification Order and no objections are lodged, the County Council then has the power to confirm the Order. Where objections are lodged, the matter is referred to the Regulatory Committee to consider whether the Secretary of State should be asked to confirm the Order. The Council itself cannot simply abandon a Definitive Map Modification Order to which objections have been duly made.

Recommendation

16. Members are asked to consider the recommendation made at paragraph 30 of the report attached at **Appendix 1**.

GEORGE BATTEN

Director of Environmental Services

Report Author

JANICE GREEN

Rights of Way Officer

The following unpublished documents have been relied on in the preparation of this Report:

Application dated 16th June 2003

Initial consultation by the County Council dated 25th July 2003 and subsequent correspondence