

REGULATORY COMMITTEE

18th DECEMBER 2002

DOWNTON: OBJECTIONS AND REPRESENTATIONS
TO ORDERS AFFECTING ROADS USED AS PUBLIC PATHS
NUMBERS 13, 14 AND 14a

Purpose of Report

1. To consider and comment on objections and representations received to the making of Orders under Section 54 of the Wildlife and Countryside Act 1981, reclassifying Downton RUPPs 13, 14, and 14a to Byway Open to All Traffic (BOAT), and to recommend that the Orders be submitted to the Secretary of State for the Environment for consideration and confirmation. The routes of the three RUPPs 13, 14, 14a are shown on the plan at **Appendix A**.

Background

2. Downton RUPPs 13, 14, and 14a were all claimed as public rights of way by the Parish Council at the preparation stage of the Definitive Map. The Parish Council surveyed the paths on 12th May 1950, and noted the period of uninterrupted user was 'beyond living memory'.
3. The tracks were included on the Definitive Map as RUPPs each with a width of 40 feet. No objections were received to this classification during compilation of the Draft Definitive Map or the First Review of the Definitive Map.
4. As RUPPs, the ways fell to be reclassified under the National Parks and Access to the Countryside Act 1949, as amended by the Countryside Act 1968.
5. The test for reclassification was:

"The considerations to be taken into account in deciding in which class a road used as a public path is to be put shall be:

- (a) whether any vehicular right of way has been shown to exist*
- (b) whether the way is suitable for vehicular traffic having regard to the position and width of the existing right of way, the condition and state of repair of the way, and the nature of the soil*
- (c) where the way has been used by vehicular traffic, whether the extinguishment of vehicular right of way would cause any undue hardship."*

6. Evidence relating to the way was considered in the 1970s and a consultation exercise undertaken. The County Council then decided that the correct status for the reclassification of the ways was Byway Open to All Traffic (BOAT).

7. When the proposed reclassifications were advertised, representations were made from the following:
 - Downton Parish Council - 14th Dec 1984 - the way should be Byway
 - Ramblers Association - the historical evidence is accepted
 - Trail Riders Fellowship - 5th January 1985 - the way should be Byway
 - Byways & Bridleways Trust - 17th January 1985 - the way should be Byway
8. One objection was received from:
 - Trustees of the Longford Castle and Trafalgar Estates. In a letter dated 24th April 1973 they stated that there was "no satisfactory evidence of public right of way for motor vehicles".
9. The objection was due to be determined by the Secretary of State for the Environment at a Public Inquiry, but before the Department of the Environment was able to convene an Inquiry, the Wildlife and Countryside Act 1981 was brought into force, affecting the reclassification of RUPPs. Section 54(3) of the Wildlife and Countryside Act 1981 lays down the test now to be applied in reclassifying a RUPP:
 - (3) *A road used as a public path shall be shown in the definitive map and statement as follows:*
 - (a) *if a public right of way for vehicular traffic has been shown to exist, as a byway open to all traffic*
 - (b) *if paragraph (a) does not apply and public bridleway rights have not been shown not to exist, as a bridleway, and*
 - (c) *if neither paragraph (a) nor paragraph (b) applies, as a footpath.*
10. Officers researched the history of the tracks and noted, amongst other evidence to support public vehicular rights over them, that they were each legally laid out in the relevant Inclosure Award, made under an Act of Parliament, as a "*public Carriage Road and Driftway of the breadth of forty feet*".

RUPP 13 - in the 1806 Coombe Bissett Inclosure Award

RUPP 14 - known as 'The Whichbury and Odstock Road' in the 1839 Wick Inclosure Award; and as also known as 'The Salisbury and Whitbury Road' in the 1812 Charlton Inclosure Award

RUPP 14a - known as 'The Downton and Martin Road' in the 1839 Wick Inclosure Award
11. The County Council's records show that the public vehicular rights have never been stopped up. In 1985 when the Council's Rights of Way Panel considered the status to be given to these RUPPs, it was resolved that they should be reclassified as BOATs.
12. On 22nd November 2001, three Orders were made within the provisions of Section 54 of the Wildlife and Countryside Act 1981, providing for the ways to be reclassified as BOATs.

13. It was noted that drafting anomalies exist as follows:
- (i) Order No. 5, 2001, Pt 1 of the Schedule to the Order. Grid Reference SU 116234 should read SU 119227.
 - (ii) Order No. 5, 2001, Pt 1 of the Schedule to the Order. Total approximate length should read 1800m instead of 2012m.
 - (iii) Order No. 5, 2001, Sheet No. should read SU12SW.
 - (iv) Order No. 6, 2001, Sheet No. should read SU12SW.
 - (v) Order No. 7, 2001, Sheet No. should read SU12SW.

Objections and Representations to the Orders

14. **Mr Bill Riley**, in a letter dated 30th November 2001, supported the Orders, with the following comment:

"The historical evidence underpinning the proposed reclassifications is of the highest order."

15. **Mr Jerry Collins**, on behalf of the Solent and District Land Rover Club, in a letter dated 30th December 2001, expressed full endorsement and support of the Orders.
16. **Wiltshire Wildlife Trust**, in a letter dated 4th December 2001, objected to the Orders on the grounds of 'ecological impact'. They consider that the concentration of Marsh fritillary butterflies in the vicinity of these RUPPs would be affected by the proposed reclassifications.
17. **Mr S Kelly**, in a letter dated 24th December 2001, objected to the proposed reclassifications. His concern surrounds the erosion of the ways, and his belief is that this problem will increase once the ways become Byways.
18. **Mrs Nancy Weatherill** on behalf of the Wiltshire Bridleways Association, in a letter dated 17th January 2002, supported the Orders.
19. **Miss Susan Howells**, in a letter dated 20th January 2002, objected 'in the strongest terms' to the Orders, on the following grounds:
- (a) that the CROW Act 2000 makes provision for the automatic upgrading of RUPPs to Restricted Byways
 - (b) that the ways '*complete a north/south and east/west link connecting tarmacked public roads*', thus allowing a potential increase in the volume of 4x4 vehicles.

20. **Mrs Margaret Wilmot**, on behalf of COGS, in a letter dated 22nd January 2002, objected to the Orders on the following grounds:
- (a) that motorised traffic on unsurfaced tracks can cause severe damage
 - (b) that motorised traffic impinges on the public's right to peaceful enjoyment of the countryside, and increases risks to the safety of pedestrians, cyclists and horse-riders using the tracks
 - (c) that priority should be given to non-motorised users of the tracks
21. Mr Harper, on behalf of **Whitsbury Farm and Stud Ltd.**, in a letter dated 21st January 2002, expressed concerns regarding the existing amount of damage inflicted on green lanes in the area, resulting in deep ruts and muddy conditions making it *'unusable by walkers and very difficult for horseback riders'*.
22. The letters will be available for inspection in the **Members' Room**.

Legal Points to Consider

23. Paragraph 9 above sets out the test to be applied under Section 54 of the Wildlife and Countryside Act 1981 in reclassifying a RUPP. The test is absolutely unequivocal; if public vehicular rights exist over a way, then it must be reclassified as a BOAT. If this does not apply, then the way must be reclassified as a bridleway unless it can be shown that equestrian rights do not exist, then the way must be reclassified as a footpath.
24. Section 32 of the Highways Act 1980 states:
- "A court or other tribunal before determining whether a way has or has not been dedicated as highway, or the date on which such dedication, if any, took place shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled and the custody in which it has been kept and from which it is produced."*

Comments on the Objections/Representations

25. Mrs Wilmot was unaware of the legal obligation on the part of the County Council to reclassify RUPPs under the strict tests laid out by Parliament in Section 54 of the 1981 Act. Factors such as alleged current use, type of use, and the suitability of a way for users who have a right to use it, or the nuisance that they are alleged to cause, or be likely to cause, are irrelevant, and cannot be lawfully considered.
26. These facts were pointed out to Mrs Wilmot in a letter dated 29th January 2002, and she subsequently withdrew her objection on 4th February 2002.

27. Miss Howells also was unaware of legal obligations placed on highway authorities within the 1968 Act and under Section 54 of the 1981 Act. She was also unaware that the section of the CROW Act dealing with automatic upgrading of RUPPs to Restricted Byways is not yet in force. The legal facts were pointed out to Miss Howells in a letter dated 23rd January 2002, and her objection was withdrawn on 5th February 2002.
28. Similarly, Mr Kelly was informed of the Council's legal duties, in a letter dated 10th January 2002. No further communication was received from Mr Kelly.
29. Mr Harper, of Whitsbury Farm and Stud Ltd was informed of the legal position, setting out those factors which the County Council is unable to consider. With reference to his queries over closure of the ways during the winter months, the County Council is currently reviewing its policies regarding use of motorised vehicles on Byways.
30. Wiltshire Wildlife Trust object to the reclassification on grounds which may not legally be taken into account by the County Council or Secretary of State. Part of RUPP 13 starts adjacent to an SSSI. The A4 at Savernake runs through the centre of an SSSI; Salisbury Plain is also an SSSI directly crossed by very busy main roads and there is no suggestion of closing any of these roads.
31. The objection from the Trustees of the Longford Castle and Trafalgar Estate made in 1984 has not been withdrawn, and must be considered together with all other objections.
32. The Committee should note the receipt of letters of support for the Order.

Conclusion: Options Considered

33. The law is unequivocal in the tests to be applied in relation to a RUPP reclassification.
34. The evidence to support public vehicular rights on the ways has not been disputed or challenged by the objectors. Officers therefore believe that the only option available was to make the Order and now seek its confirmation.
35. Having discovered evidence (to use the words of Section 53 of the 1981 Act) whereby the ways were legally set out under the relevant Inclosure Awards as 40-foot roads, the Council is bound to make the Orders.
36. Implementation of Traffic Regulation Orders to prevent vehicular traffic over the badly damaged surface of RUPPs 14 and 14A has been considered.
37. When consulted, the landowners, Longford Estate, were not in favour of Traffic Regulation Orders. They envisaged these measures would encourage the trespass of users onto their land.
38. A site meeting was requested by the landowners to discuss further available measures.
39. The meeting was held in July 2002 between the landowners, Wiltshire County Council and Hampshire County Council, which resulted in agreement by the landowners to improve the surface of the ways.

40. These works have now been successfully completed, providing a route suitable for all users, negating the requirement for Traffic Regulation Orders.

Recommendation

41. That the Orders be submitted to the Planning Inspectorate, together with the objections and representations made, and the comments thereon, with the request that the Orders be confirmed subject to the modification of anomalies as identified in Section 13 of this report.

Reasons for Recommendation

42. To comply with the law.
43. RUPPs 14 and 14a are on the list of RUPPs for reclassification agreed by the Rights of Way Liaison Group at its meeting on 3rd October 2001. It would be appropriate to include RUPP 13 in this process as it forms part of the same network.

RICHARD J. LANDER

Director of Environmental Services

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

Correspondence with objectors and those making representations.

Environmental impact of the Recommendations contained in this Report:

Enhancement of the Rights of Way Network.