

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING:	29 MARCH 2016
SUBJECT OF REPORT:	PORTISHEAD GOLF COURSE
TOWN OR PARISH:	PORTISHEAD
OFFICER/MEMBER PRESENTING:	ELAINE BOWMAN
KEY DECISION:	NO

RECOMMENDATIONS

That the Public Rights of Way Sub Committee refuses the request to take this application, which is listed as Mod 102 on the Definitive Map Modification Order Register out of sequence.

1. SUMMARY OF REPORT

North Somerset Council have received two applications relating to this site requesting that routes are recorded as Public Footpaths. The first application dated 12 November 2013 was received from Ms E Courtney. This application is to modify the Definitive Map for the area by adding one footpath running parallel to the coastal path over land which is known and used as Portishead Golf Course. The second application dated 23 October 2015 was received jointly from Mrs A Townsend and Mrs J Davey. This application requests that two footpaths should be added to the Definitive Map, one being similar to the one submitted in the first application, the second footpath running from Nore Road to join the other route claimed. The claimed routes are over land which is in the ownership of North Somerset Council and are supported by user evidence forms.

The current practice of the Council is that modification order claims are dealt with in chronological order of receipt. This application is listed as Mod 102. This practice was described in a report to the Public Rights of Way Sub Committee on 21 April 2004.

2. POLICY

The maintenance of the Definitive Map is part of the management of the public right of way network and so contributes to all three of our corporate ambitions "Prosperity & Opportunity, Health & Wellbeing and Quality Places".

3. DETAILS

The first application dated 12 November 2013 was submitted by Ms E Courtney. The application claims that a footpath should be recorded which would run parallel to the coastal path which runs between Portishead and Clevedon. It was accompanied by 21 user evidence forms and a further three were received following submission. These forms claim

that this route has been used between 10 and 60 years by residents of the area to exercise their dogs, for pleasure and as part of longer walks. The application is also accompanied by a plan illustrating the route that is being claimed.

The second application dated 23 October 2015 was submitted jointly by Mrs A Townsend and Mrs J Davey. This application is claiming two footpaths across this land, one of which is similar to the route claimed in the first application, together with the addition of another route which would provide a direct connection to Nore Road. This application is accompanied by 46 user evidence forms claiming usage is between one year and 70 years. The claimed routes are illustrated on the attached plan Appendix 1 as A – B - C and D – B.

The claimed routes are illustrated on Appendix 1. The first claimed footpath commences at its junction with the coastal path at Point A then proceeds in an easterly direction along the edge of the golf course for a distance of approximately 590 metres passing through point B to Point C where it then re-joins the coastal path. The second claimed footpath commences on Nore Road Point D, where there is a pedestrian gate, and proceeds in a northerly direction for a distance of 135 metres to its junction with the first claimed footpath at Point B.

This area of land is Portishead Golf Club, the landowners of which are North Somerset Council. In 2013 the lease to this land was transferred to Mr A Stiff whose hope it has been to create an improved golf course. This raised concerns with some residents of Portishead and prompted the submission of the first application.

Due to concerns regarding public safety Mr Stiff padlocked the pedestrian gate on Nore Road, thereby stopping walkers from walking across the golf course and drive areas which has prompted the second application.

Mr Stiff has applied for planning permission to develop the golf course which has been granted subject to conditions. As landowners North Somerset Council have requested a Risk Assessment to be undertaken before landowner permission is given.

In an attempt to protect the perceived public access an application was also submitted for this area to be registered as a Town and Village Green, this has been refused due to planning permission already being granted.

4. REQUEST TO BE TAKEN OUT OF SEQUENCE

An email has been received from Mrs Davey requesting that this matter be brought to the attention of the Committee asking for Mod 102 to be determined out of sequence. A copy of the full request is attached to this report as Appendix 2.

Although a comprehensive email, a lot of the information contained within it is irrelevant at this stage. The elements which I consider irrelevant are illustrated in *italic*, that information will be evaluated when Mod 102 is determined.

The sections which are relevant are in **bold text** for ease of identification and addressed in the following section.

5. NORTH SOMERSET OFFICER RESPONSE

This land was acquired in 1984 when Woodspring District Council bought the land from Bristol City Council. The transfer document includes a paragraph which reads:

“2. the Purchaser on behalf of itself and its successors in title..... and each and every part thereof to continue to lay out maintain and use the said land as public open space and for no other purpose whatsoever”

The relevant text contained within the response from the Chief Executive Mike Jackson reads *“There is no specific consent in the lease to allow the lessee to exclude the public totally from the land. On the contrary, the tenant is specifically obliged to make the golf course land available for use by the general public at all times for the purposes of playing, practising, teaching and promotion of golf, on a ‘pay as you play’ basis; and to use the land to promote the golf course as being open as a ‘pay and play’ facility with no bookable slots or preference being given to anyone wishing to pay to play. You will appreciate that this is different to the tenant being required to make the golf course available to the public for general access for non-golf purposes”.*

The applicants consider that the use of this area as a “pay and play” golf course is not consistent with this deed of covenant. Advice had been sought from our legal department as to whether there is any breach. I have been advised that as this is a “pay and play” course open to everyone, not a members club, that this is consistent with the deed and that no breach has occurred.

On the 28 April 2015 Portishead Town Council, being members of the Open Spaces Society, sought advice from Chris Bloor of the Open Spaces Society. The document provides background information then relays residents’ concerns and the Town Councils concerns.

The Residents’ Concerns are that they have roamed the golf course unhindered for in excess of 40 years. The approved planning application includes building a bund alongside the coastal path to keep walkers to that path and prevent them wandering across the golf course. Residents are currently petitioning NSC to have the golf course classified as have Town Green Status.

In writing to Mr Bloor Portishead Town Council are seeking independent advice in order that a sound case is put forward to protect the interests of the people of Portishead with regard to access to/over Portishead Golf Course. They felt that there were two issue which they needed advice on. 1. Should the Town Council/residents be claiming public paths across the site after 20 years use? 2. Should the Town Council/residents pursue Town Green Status?

The advice within Mr Bloors’ response is:

“This sounds like bad news. The area around the Windmill is to my mind the heart and soul of Portishead (along with the Marine Lake and Battery Point). Portishead is also likely to benefit from the extension of the National Footpath from Brean Down to the old Severn Crossing, so anything that impinges on the path is likely to be bad for the town.

You should claim any public rights of way that have been established over the last 20 years. The problem is likely to be that the Highway Authority may claim that use was by permission, and that they were used by right rather than as of right”

Mr Bloor is right in his advice that a claim should be submitted, such registration upon the Definitive Map Modification Order Register affords protection to these routes in light of the cut-off date of 2026. However, his advice has no bearing on whether this application should be taken out of sequence.

In regard to the police incident recorded it is my understanding that this confrontation, instigated by one of the applicants, related to the greenkeeper cutting back vegetation, shrubbery etc which she considered to be against guidance within the Wildlife and Countryside Act, it did not occur because of a challenge upon use.

Although it is claimed that a number of people have been challenged by the concessionaire and greenkeeper, no complaints have been made directly to North Somerset Council as landowner.

Prior to the re-issue of the lease relating to this area it is believed that the residents of the area wandered around, not following any particular line, as they wished. When the current Lessee took over managing the golf course he was not advised by North Somerset Council that the public had enjoyed the use of this land and proceeded to place logs and parts of trees to enclose the golf course. He has subsequently ceased this action.

In regard to the gate on Nore Road. It is known that this gate was installed in 2008 when the fencing was replaced. Exactly why this was installed is unclear as its requirement was not listed on the works order however it has been there and had been used until the Lessee padlocked it in 2014/15. The lessee claims that he has undertaken this on the grounds of safety, its position providing an entrance onto the middle of the golf course and potentially walking across a number of fairways.

5. CONCLUSION

This application, numbered Mod 102 on the Definitive Map Modification Order Register is a relatively new application. The current register has a large number of applications awaiting determination, some of which date back to 1996.

This committee has in the past agreed for applications to be taken out of sequence when it has been:

- proven that the existence of the claimed routes could be lost due to development, and or
- the submission of an application has caused severe disturbance to the residents/landowner of the area.

In this case neither of these apply. The land has not been identified as potential development land, in fact the lessee has signed up to a 25 year lease which should be regarded as positive protection of this land.

Although the applicants have revealed a number of incidents where challenge has been claimed, no physical evidence has been submitted. No one has reported these incidents, other than one, to the police or North Somerset Council.

Despite the locking of the gate on Nore Road, users can be visibly seen wandering all over the golf course on a daily basis, not just sticking to the claimed routes, therefore there does not seem to be any disturbance to the residents as a whole.

Having regard for the information which has been given within this request, having met the applicants and the Lessee I do not find sufficient reason to recommend that this application, Mod 102, be taken out of sequence.

6. CONSULTATION

At this time no formal consultations have been undertaken. Should this request be granted then the routine DMMO consultation process would be undertaken including inviting comment from the landowner and Lessee.

7. FINANCIAL IMPLICATIONS

At present the council is required to assess the information available to it to determine whether there is sufficient evidence to support the request. Other than officer time there will be no financial implications during this process. Once investigation has been undertaken, if authority is given for an Order to be made then the Council will incur financial expenditure in line with similar cases already considered. More detail will be given when a further report is brought to this Committee.

8. RISK MANAGEMENT

As this report relates to a request for this application to be taken out of sequence it should be noted that if the committee decline this request, the applicant has the right to appeal to the Secretary of State for Environment, Food and Rural Affairs. The basis of the appeal would be that this authority has failed to determine this application within twelve months of receipt.

If authority is given to take this out of sequence, the landowner and lessee affected by this application may consider themselves disadvantaged believing that this matter would not be dealt with at this time. However if authority is given these parties will be consulted and given full opportunity to comment.

9. EQUALITY IMPLICATIONS

Public rights of way are available for the population as a whole to use and enjoy irrespective of gender, ethnic background or ability and are free at point of use.

10. CORPORATE IMPLICATIONS

Any changes to the network will be reflected on the GIS system which forms the basis of the relevant corporate records.

11. OPTIONS CONSIDERED

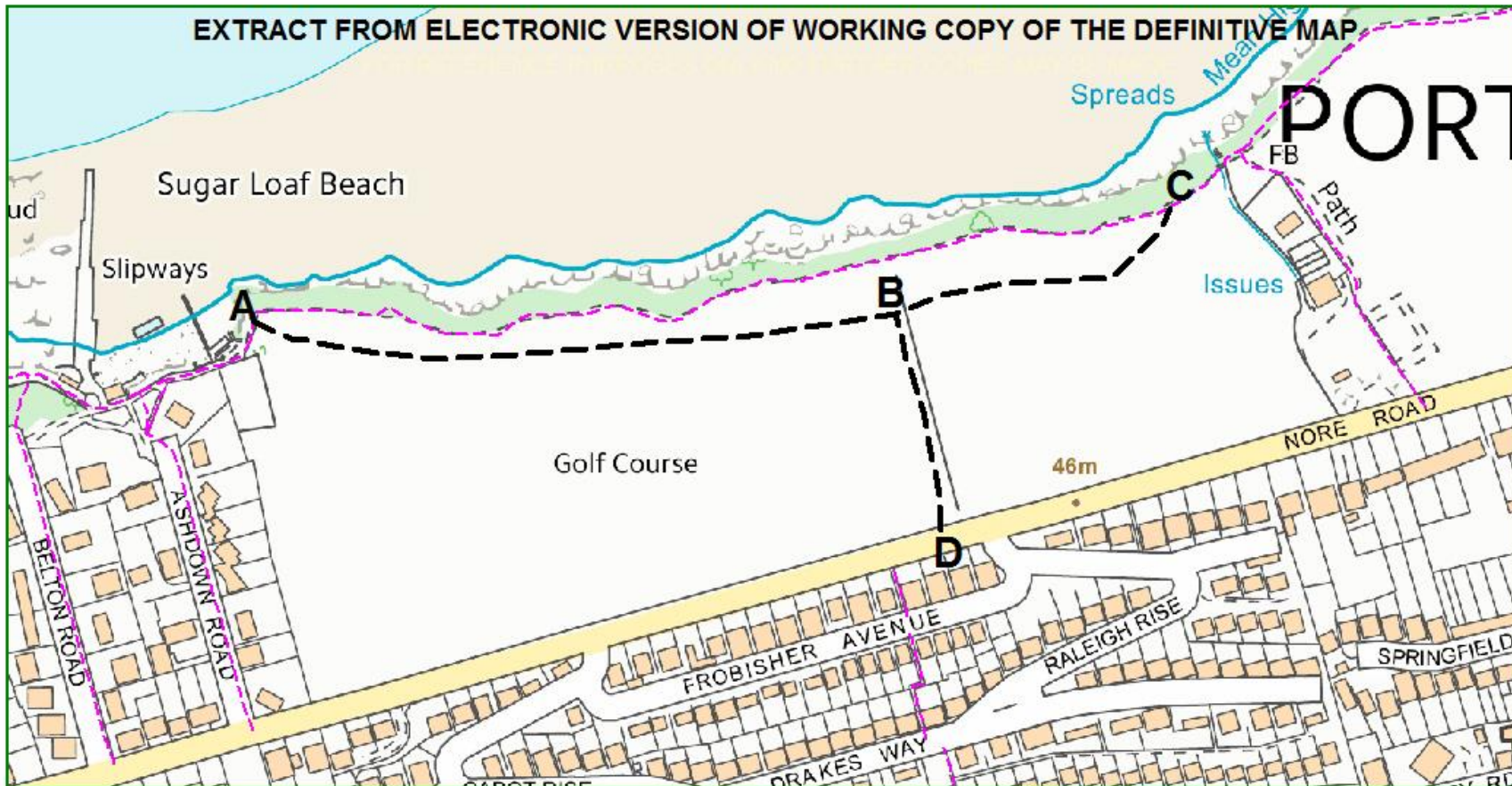
- 1 Continue with the practice of dealing with applications in its chronological order of receipt.
- 2 Authorise the determination of this application, which is listed as Mod 102 on the Definitive Map Register, out of sequence.

AUTHOR

Elaine Bowman
Senior Access Officer Modification
Access Team Ext 7406

BACKGROUND PAPERS

Rights of Way Section
File Ref Mod 102



The Definitive Map has a relevant date of 28th November 1956 and has not been formally re-published since then. This map shows an electronic working copy of the Definitive Map which attempts to show the information on the Definitive Map and any subsequent legal changes. The Council can accept no responsibility for any error or inaccuracy which may arise from use of the electronic Working Copy map.



Development & Environment
 Public Rights of Way
 Streets and Open Spaces
 North Somerset Council
 Town Hall
 Walliscote Grove Road
 Weston-super-Mare
 BS23 1UJ
 Tel: 01934 888 802

Project
 PROW Sub Committee 29 March 2016

Location
 Portishead Golf Course

Client
 PROW Sub Committee

OS Licence No.
 100023397

NORTH
 Scale 1:3335

Drawn by
 Mrs E Bowman

Drawing No.
 Mod 102

Date
 8 March 2016

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Dear Mrs Bowman,

I wish that the applications for two Rights of Way on Portishead Golf Course received by your department in November 2014 and further on 23rd October 2015 be added to the Agenda of the Sub- Committee Meeting of 29th March 2016 to decide if they can be heard out of sequence, for the following reasons.

Historically, the seaslope of Portishead has been open down, uncultivated land, frequented by goatherds and shepherds; it was known as Weston Down, in a map from circa 1721 (recently consulted); however, this map may have been incorrect, as other sources refer to it as Portishead Down.

As early as 1679 enclosure was urged and it is possible that much of the land in Portishead became the property of Bristol City, that took it as payment for the costs of enclosure. But open undivided land still had rights of grazing, until enclosure was finally completed between 1814 and 1823.

A public watering place, now partially covered by a car park, existed until recently on the downland above the windmill; the stream above it has been diverted by drainage, so there is no longer enough water to wash. The cove below the present golf course was known as The Ladies Bathing Place, but that has also ceased to exist.

In the 1880s the land in question became a golf course. This included land to the north of Nore Road, now built on, and also land to the east of the present golf course, now known as Kilkenny Field. It has not always been a golf course from 1880 to the present day; we have been informed that at one time, probably between the wars, it was leased by Herbert Gale and used as farm land, and during the war it was ploughed up for agriculture. More recently it has been only intermittently used as a golf course, and has been used by the residents of Portishead for recreation. The bottom edge of the course has never been enclosed.

In 1984 Woodspring District Council bought the land from Bristol City Council for the sum of £210,000; the transfer included a covenant stating that it was for "public open space and for no other purpose whatsoever".

During 2013 the land was leased out to Roddy Watkins, and the lease sold on to Adrian Stiff in 2014. I have been informed by Mike Jackson, CEO of North Somerset Council, that the land is still "Public open space, but only for people to pay and play golf." This is not consistent with the deed of covenant.

On 28th April 2015 Chris Bloor of the Open Spaces Society wrote to Jo Duffy, Clerk to Portishead Town Council, and urged that claims should be made for any Rights of Way that have been established over the last 20 years; he advised that this was urgent, and that the claims should be made swiftly to protect the interests of the people of Portishead, as he considered that the future of the land was in danger. He describes the two claimed Rights of Way to be recorded, as one passing through the site broadly parallel to the coastal path and a further north- south path leading to a gate in Nore Road. He also advised that access had been unhindered in excess of 40 years.

During 2015 an application for Asset of Community Value was made by Portishead Town Council, and was subsequently awarded. A further application for Town and Village Green Status was made, but was not awarded because of a "trigger action" on the land caused by a planning application and planning permission, which were applied for in November 2014 and awarded in February 2015.

During November 2014 22 residents of Portishead applied for a Right of Way on the golf course, along the bottom of the golf course, but further up the slope than the coastal path. Further applications for the same footpath were made in October 2015, and another path has also been claimed, leading from a gate on Nore Road, opposite the road leading to Raleigh Rise, straight down to join the other claimed path at the bottom of the golf course.

The first right of way, parallel with the present coastal path, is in constant use. People use it when the coast path is impassable. This occurs during the winter, when it can become extremely muddy and slippery, and also during the summer when it can become overgrown. The coastal path is frequently crossed by streams.

The proposed path can be clearly seen as a well-worn path if you consult "Google Earth" maps, and I have also provided photographs of its use as further evidence.

The second claimed path, that from the (now locked) gate on Nore Road, down to the first claimed path, is a bit less straightforward.

The gate was put into the new fence during 2008, and has since been used constantly as an access point by the public, until it was locked sometime during 2015. We have evidence that this path has been in use in excess of 20 years. I have looked at old postcards of the area and it seems that there was always access at that point, although I am not able to provide evidence, except that provided on the user evidence forms.

I believe, like Chris Bloor of the Open Spaces Society, that it is important to decide this matter with the utmost urgency. I agree with Chris Bloor's reasons, but I also have other reasons that seem even more pressing.

On 18th May 2015 the police were called to an incident on the golf course when I approached the greenkeeper. He swore at me and threatened me with his motormower. He was given a warning and I was asked if I wished to make a complaint. There is a police report in existence on this incident. I have a police number. My husband has also been threatened by him.

Subsequently, I have been contacted by a number of people, who did not wish to give their names, and both the greenkeeper and the concessionaire have behaved in a threatening manner towards them. One man reported on social media that the greenkeeper had shouted at him and also threatened his elderly dog; this man feared that the dog would be run over, and he had to go and rescue him.

On several occasions logs and part trees have been put as barriers at the bottom corner of the golf course, near the sailing club, to stop people getting in. These barriers have been removed by the public, who seem to have no intention of their access being barred.

I have reason to believe that it is likely that disgruntled members of the public could well take matters into their own hands, and remove the padlock from the gate.

We have spoken to many people whilst we have been collecting evidence of use, and it is clear that nothing is going to stop the residents of Portishead using those paths,

as most feel that they have used them for so many years they are not going to stop now. I believe that by not legally awarding those paths quickly we are inviting inflammatory behaviour, which would not reflect well on the management of the situation by North Somerset Council.

A similar situation occurred behind Merlin Park some years ago. The Police barred the way with a high gate; this did not remain in situ for long, as members of the public took the gate off its hinges and threw it down into the undergrowth beside the gate.

I look forward to hearing from you as to whether this pre-application will be heard on 29th March.

I wonder if you would also be able to find out whether Ann Townsend and myself will be able to attend the sub-committee meeting, as we would wish to be able to present the evidence ourselves.

Yours sincerely,

Janet Davey