

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB-COMMITTEE

DATE OF MEETING: 26 SEPTEMBER 2018

SUBJECT OF REPORT: BRIDLEWAY ORDER NO 3 2018 BLACKBERRY LANE

TOWN OR PARISH: WESTON-IN-GORDANO

OFFICER/MEMBER PRESENTING: DIRECTOR OF DEVELOPMENT & ENVIRONMENT

KEY DECISION: NO

RECOMMENDATIONS

It is recommended that

1. North Somerset District Council (Upgrade of Footpath LA18/5 and part of Footpath LA18/4 to Bridleway) Blackberry Lane Weston in Gordano Definitive Map and Statement Modification Order No 3 2018 be forwarded to the Secretary of State for determination requesting that this Order is confirmed.
2. That having submitted the aforementioned Order to the Secretary of State that the Committee confirm that the Council will support the confirmation of this Order at any subsequent Public Inquiry.

1. SUMMARY OF REPORT

A report was presented to this Committee on 15 November 2017 recommending that a Bridleway Order should be made relating to the route A-B-C-D on the attached Location Plan.

That Order was made on the 6 April 2018, advertised on 12 April 2018 and has attracted three objections. As North Somerset do not have the authority to determine an Order which has been objected to it is necessary to forward the Order to the Secretary of State for determination.

The report presented on 15 November 2017 did not seek authority for the proposed Order to be submitted to the Secretary of State if objected to or the stance (Support, Object or neutral) that the Council would take if this matter ended up at a Public Inquiry. The purpose of this report is to seek the necessary authorities for its submission to the Secretary of State. Further information is included in **Appendix 1**.

Location Map – EB/Mod 34 Blackberry Lane

2. POLICY

The maintenance of the Definitive Map should be considered as part of the management of the public right of way network and so contributes to the corporate plan “Health and Wellbeing” and “Quality Places”.

3. DETAILS

Background

i) The Legal Situation

North Somerset Council, as Surveying Authority, is under a duty imposed by the Wildlife and Countryside Act 1981, Section 53(2) to keep the Definitive Map and Statement under continuous review. This includes determining duly made applications for Definitive Map Modification Orders.

ii) The Role of the Committee

The Committee is required to determine whether or not a Definitive Map Modification Order should be made. **This is a quasi-judicial decision and it is therefore essential that members are fully familiar with all the available evidence. Applications must be decided on the facts of the case, there being no provision within the legislation for factors such as desirability or suitability to be taken into account.** It is also important to recognise that in many cases the evidence is not fully conclusive, so that it is often necessary to make a judgement based on the balance of probabilities.

The Committee should be aware that its decision is not the final stage of the procedure. Where it is decided that an Order should be made, the Order must be advertised. If objections are received, the Order must be referred, with the objections and any representations, to the Planning Inspectorate who act for the Secretary of State for Food and Rural Affairs for determination. Where the Committee decides that an order should not be made, the applicant may appeal to the Planning Inspectorate.

4. CONSULTATION

As the legal Order relating to this matter has already been made and advertised all relevant parties have been consulted. This included affected landowners, Weston-in-Gordano Parish Council, Local members, interested parties and relevant user groups. All responses will be forwarded to the Secretary of State along with the Legal Order.

5. FINANCIAL IMPLICATIONS

The forwarding of a Legal Order to the Secretary of State will incur expenditure especially if this leads to a Public Inquiry. Such costs will include hire of suitable venue, appointment of legal representation if a Public Inquiry is called and North Somerset Council defends its decision to make the Order. These financial considerations **must** not form part of the Committee’s decision.

Costs

Existing Revenue Budgets

Funding

Existing Revenue Budgets

6. LEGAL POWERS AND IMPLICATIONS

Section 53 of the Wildlife and Countryside Act 1981 requires that applications which are submitted for changes to the Definitive Map and Statement are determined by the authority as soon as is reasonably possible, within 12 months of receipt. Failure could result in appeals being lodged and possible directions being issued by the Secretary of State.

7. RISK MANAGEMENT

This application is one of those directed by the Secretary of State on 21 March 2017 to be determined by December 2018. That requirement was met by the presentation of the report in November 2017, however having made the required Order objections have been received. This Order now requires submission to the Planning Inspectorate (who act for the Secretary of State) and may incur costs associated with a Public Inquiry. North Somerset Council do not have authority to either decide the outcome of this matter or to refuse to proceed further.

8. EQUALITY IMPLICATIONS

No - 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.

9. CORPORATE IMPLICATIONS

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

10. OPTIONS CONSIDERED

1. That having authorised the making of a Bridleway Order for the route A-B-C-D, that the Committee hereby authorise the submission of North Somerset District Council (Upgrade of Footpath LA18/5 and part of Footpath LA18/4 to Bridleway) Blackberry Lane Weston in Gordano Definitive Map and Statement Modification Order No 3 2018 to the Planning Inspectorate for determination.
2. That having submitted the aforementioned Order to the Secretary of State that the Committee decides that the Council will support the Order at any subsequent Public Inquiry.
3. That having submitted the aforementioned Order to the Secretary of State that the Committee decides that the Council will object to the confirmation of the Order at any subsequent Public Inquiry.
4. That having submitted the aforementioned Order to the Secretary of State that the Committee decides that the Council will maintain a neutral position at any subsequent Public Inquiry.

AUTHOR

Elaine Bowman, Senior Access Officer Modifications, Access Team, Natural Environment
Telephone 01934 888888

BACKGROUND PAPERS: - Public Rights of Way File Mod 34

Submission of Bridleway Order to Secretary Of State.

The report presented to the Public Rights of Way Sub Committee on 15 November 2017 detailed the application which had been submitted by Woodspring Bridleways Association and the information provided by the User Evidence Forms.

The Public Rights of Way Sub Committee resolved that a Bridleway Order should be made for the route A-B-C-D. A Legal Order was made on 6 April 2018, advertised in the Weston Daily Press on 12 April 2018 where submissions were to be made by 24 May 2018.

During that time 3 objections were received. These expressed concerns regarding the effect the bridleway would have on their private land, safety, unnecessary cost and historical usage and damage to the environment.

The objectors feel that the condition and alignment of this route where it would exit onto busy highways is unsuitable. They feel that major construction works would be needed to make this into a route safe and suitable for horse riders.

The objectors have been advised that no construction work is to be undertaken, that claims such as this are recorded in their current condition other than removal of vegetation if that hinders use.

The Wildlife and Countryside Act 1981 does not permit Order Making Authorities to determine opposed Orders, these must be forwarded to the Planning Inspectorate, who act for the Secretary of State, for determination.

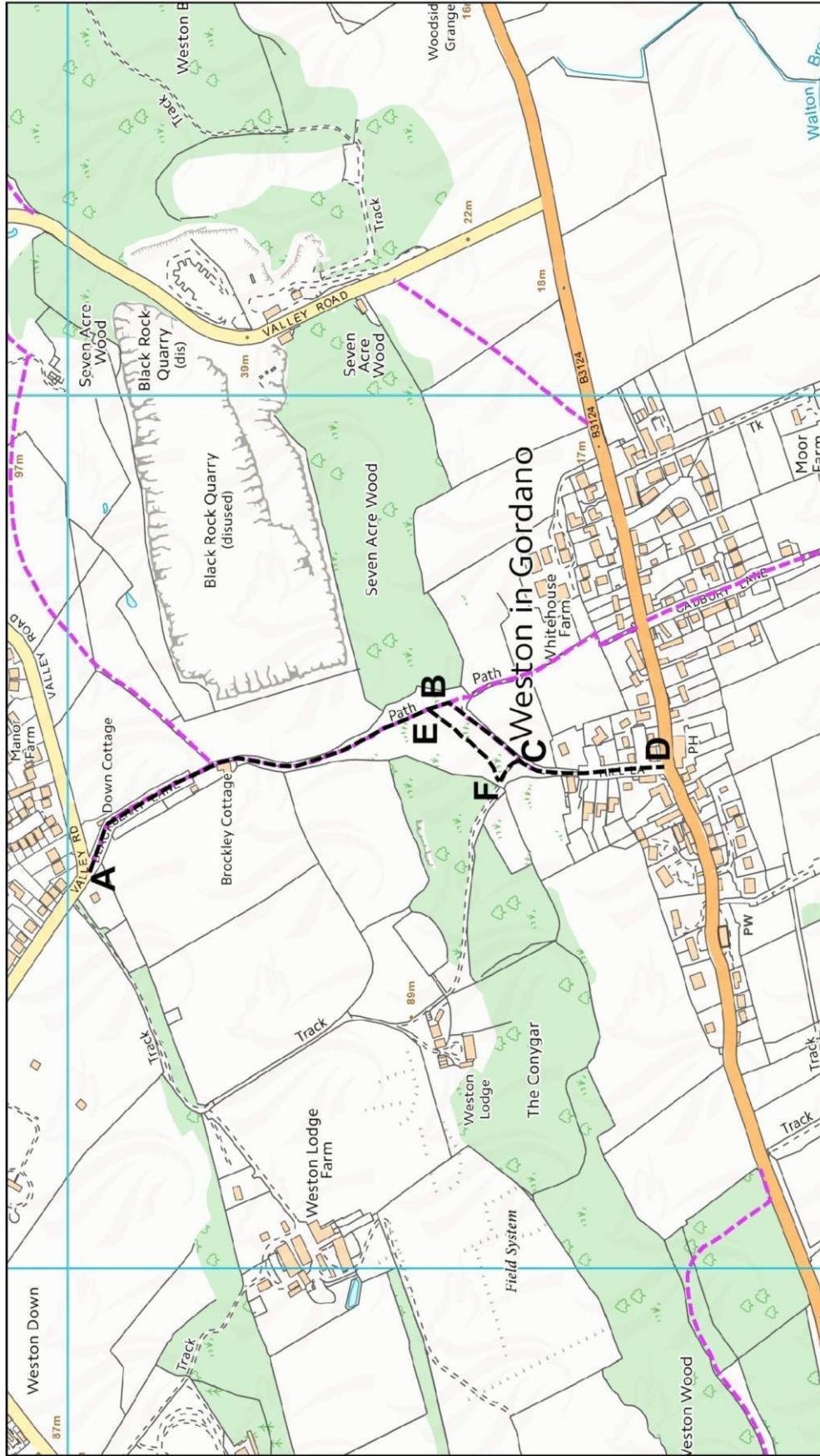
Therefore it is necessary for the Public Rights of Way Sub Committee to authorise the submission of the above named Order to the Planning Inspectorate for determination.

In addition to this it is also necessary for the Committee to decide on the stance to be taken by North Somerset Council Officers when this matter is being determined by the Planning Inspectorate.

The options available to the Committee are as follows:

- Support the Order – This would require officers to present the evidence previously considered by the PROW Sub Committee either supported or unsupported by legal representation.
- Objector to the Order – This would require Officers establishing a case as to why the Bridleway Order should not be confirmed. As the PROW Sub Committee resolved that an Order should be made and no evidence has been submitted to change that opinion this is not considered to be an option.
- Neutral – This option would mean that North Somerset Council would submit (not present) the evidence already considered but have no role in the proceedings should a hearing or public inquiry be held.

LOCATION PLAN



MOD 34 - Blackberry Lane
 Weston-in-Gordano (Grid Ref: ST4474)

Public Rights of Way
 Castlewood, Tickenham
 Road, Clevedon, BS21
 6FW

Scale: 1:6000
 Drawn by: Lucy Roca
 Date: 26 July 2017
 Time: 09:38:32



© Crown copyright and database rights 2017 Ordnance Survey 100023397. You are not permitted to copy, sublicense, distribute or sell any of this data to third parties in any form. © Aerial Photography, 2008 and 2014 Imagery copyright Getmapping Pl.C. www.getmapping.com. © and database right Crown Copyright and Landmark Information Group Ltd. (All rights reserved 2017).