North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB-COMMITTEE

DATE OF MEETING: 28 JANUARY 2020

SUBJECT OF REPORT: MOD 64 - JUBILEE STONE PARSONS COOMBE - SECRETARY OF STATE APPEAL DECISION

TOWN OR PARISH: BACKWELL

OFFICER/MEMBER PRESENTING: LUCY ROCA

KEY DECISION: NO

REASON: THIS PROPOSAL IS OUTSIDE THE COUNCIL'S KEY DECISION CRITERIA

RECOMMENDATIONS

That the Report be noted.

1. SUMMARY OF REPORT

This report is to inform the Committee of an appeal decision from the Planning Inspectorate that was received by North Somerset Council ("the Council") on 10th December 2019. The decision is based on an appeal made by Woodspring Bridleways Association (now known as Axbridge Bridleways Association) on 21st November 2018 under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of North Somerset Council not to make an Order under Section 53(2) of that Act. The decision of the Planning Inspectorate is that the appeal is **dismissed**.

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

The subject of this report is an application submitted by Woodspring Bridleways Association on the 10th June 2003. That application requested that the Definitive Map and Statement are modified by adding a Bridleway, and downgrading Bridleway LA 2/7c to a Footpath.

The applicants claimed that the route of Bridleway LA2/7c (Point A to Point B) was incorrectly recorded on the Definitive Map following a Public Inquiry held in 1993. The application requested that the recorded route be downgraded to a Footpath and for a

Bridleway to be added in a different location (Point C to Point D). The location of these routes can be seen on the Location Map EB/MOD 64 attached in **Appendix 1.**

North Somerset Council's Public Rights of Way Sub-Committee considered this application on 26th September 2018 and it was formally resolved **"That the relevant officer be authorised to reject the application on the grounds that this is not the correct mechanism to change the location of Bridleway LA 2/7c".**

Following the Council's decision, Woodspring Bridleways Association (WBA) submitted an appeal to the Secretary of State on 6th December 2018. The grounds of the WBA's appeal are they believe to have followed the correct process to correct the mistake of Bridleway LA 2/7c.

An Inspector was appointed by the Secretary of State to determine this appeal who, in considering the evidence, took into account the relevant parts of the Wildlife and Countryside Act 1981. Namely Section 53(2) that requires surveying authorities such as the Council to modify its Definitive Map and Statement on the occurrence of "events" set out in Section 53(3). In addition, as the clamed realignment would involve deletion of the existing section of Bridleway LA2/7c and the addition of a new section, the relevant parts of Section 53(3)(c) require "discovery of evidence" which when considered with all other relevant evidence available shows:

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right of way subsists is a public path, a restricted byway or, subject to Section 54A, a byway open to all traffic

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

The Inspector having considered all the evidence presented to them concluded that the appeal should be **dismissed.** Details of the Inspector's Decision can be found in **Appendix 2** of this report.

4. CONSULTATION

Although North Somerset Council is not required to carry out consultations, affected landowners have been contacted and have been provided with a copy of the Planning Inspectorate's decision.

5. FINANCIAL IMPLICATIONS

This report is for informative purposes only. There will be no further financial implications on this matter.

Costs

There are no further costs relating to this project.

Funding

There are no funding requirements for this project.

6. LEGAL POWERS AND IMPLICATIONS

Section 53 of the Wildlife and Countryside Act 1981. 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 will result in appeals being lodged and possible directions being issued by the Secretary of State.

7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Improvements or additional routes added to the Public Rights of Way Network encourage sustainable travel be enabling the public to walk, cycle or ride a horse across our District reducing carbon emissions and improving our Environmental footprint.

8. RISK MANAGEMENT

There will be no further risk to the Council. The applicant has the right to challenge the Inspector's decision in the High Court. No further action is required for the Committee.

9. EQUALITY IMPLICATIONS

No – All 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

As this report is for information only, there are no further options for the Committee to consider.

AUTHOR

Lucy Roca
Access Officer DMMO – Ext 7539

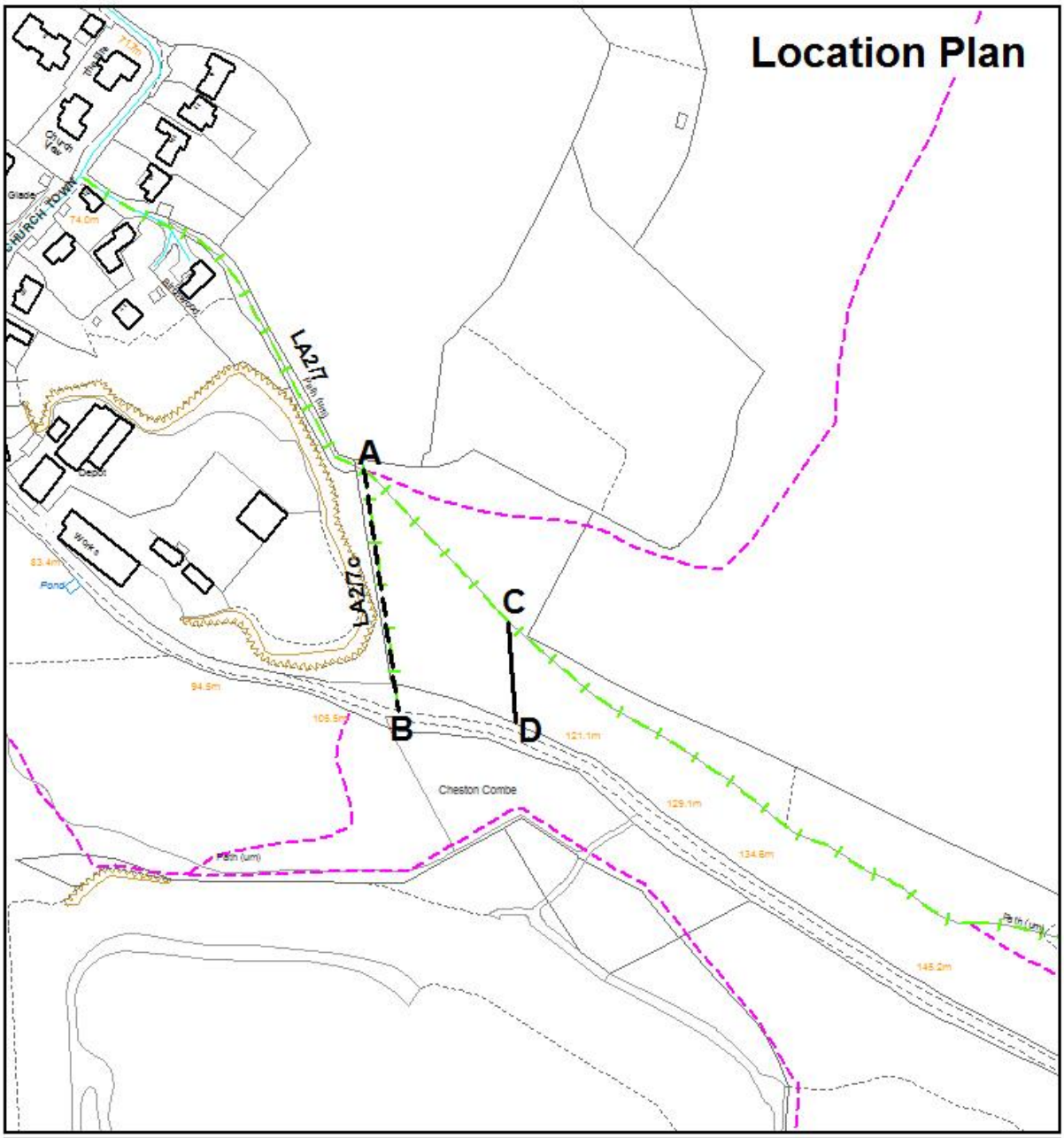
APPENDICES

Appendix 1 – Location Plan EB/MOD 64
Appendix 2 – Inspector's Decision dated 10th December 2019

BACKGROUND PAPERS

File Ref Mod 64

Appendix 1
Location Plan EB/MOD 64



Wildlife & Countryside Act 1981 - Section 53 North Somerset District Council

Mod 64 Jubilee Stone Backwell
Definitive Map Modification Order Application.

North Somerset Council

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

Scale 1:2500 NORTH

Date 9 November 2018

Grid Ref. ST4968

Map No. EB/Mod 64

Downgrade to FP A-B

Create Bridleway C-D

The Planning Inspectorate

Appeal Decision

by Helen Heward BSc (Hons), MRTPI

an Inspector on direction by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 10 December 2019

Appeal Ref: FPS/D0121/14A/9

- This appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of North Somerset Council not to make an Order under Section 53(2) of that Act.
- The application dated 10 June 2003 was refused by way of a decision letter from North Somerset Council dated 6 December 2018.
- The appellant, Mrs V Craggs [Woodspring Bridleway Association] claims that (1) a route should be recorded as a public bridleway and (2) that a recorded bridleway should be downgraded to a public footpath on the Definitive Map and Statement for the area.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The application dated 10 June 2003 was made on forms referring to the County of Somerset. North Somerset Council initially declined to accept them, but subsequently did so and proceeded to determine the application.

The Application

2. The application seeks to realign a short section or spur of bridleway leading south from bridleway LA2/7. The realignment sought consists of the deletion of public bridleway LA2/7c from the junction with public bridleway LA2/7 in Backwell Parish to where it meets the road at Cheston Combe. Secondly it seeks to add a route starting further to the south east along public bridleway LA2/7, and ending by the road at Cheston Combe, a point further east of where the definitive route ends.

Background and Legal Framework

3. Section 53(2) WCA81 requires surveying authorities such as the Council to modify its Definitive Map and Statement on the occurrence of "events" set out in s53(3). As the claimed realignment would involve deletion of the existing section of Bridleway LA2/7c and the addition of a new section, the relevant parts of s53(3)(c) require "discovery of evidence" which, when considered with all other relevant evidence available, shows:

   (i) *that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic*

   (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any or any other particulars contained in the map and statement require modification.

4. The existing route, bridleway LA2/7c, is referred to in Order No 12, 1991 which modified the Definitive Map and Statement of the area as follows:-

"adding thereto, the public bridleway which starts at its junction with LA 2/7 in Backwell Parish approximately 192 metres from Church Road and runs in a southerly direction to the road at Cheston Combe as shown between points B – G by a broken line with crossbars in the intervals on the plan annexed to the Order, the number of the bridleway as LA2/7c."

5. The appeal form summarises the proposed modifications as "*to delete a bridleway and move to correct position*". The appellant claims errors were made as follows:
   i. on the original application plan (which Mrs Craggs submitted to the Council with the original application in 1989),
   ii. in a drafting error made on the Order Plan prepared by Avon County Council (and confirmed) showing the link LA2/7c in the wrong position, and
   iii. that LA2/7c was subsequently wrongly recorded on the Definitive Map.
6. The appellant relies on recent research concerning evidence used in considering the original application and making of *Order No 12 1991* between 1989 and 1991 and regarding evidence that was before the subsequent public inquiry.
7. Correction of a Definitive Map under s53 (3)(c)(iii) as opposed to section 53(3)(a) or (b) is dependent on the 'discovery of evidence'. An inquiry cannot simply re-examine the same evidence that had been considered when the Definitive Map was drawn up. The new evidence has to be considered in the context of the evidence previously given, but there must be some new evidence which in combination with the previous evidence justifies a modification. It would be sufficient that a "drafting error" is found as a result of recent research[1].

Main Issue

8. The main issue is whether there is sufficient cogent new evidence that has been discovered or which was not previously considered to support the claimed addition and alteration of the bridleway.

Reasons

9. The appellant claims that the mistake came to light following the erection of a waymark post on the road to Cheston Combe when a letter from the Woodspring Bridleways Association in January 1996 noted *"that there is a bridleway sign incorrectly placed on Cheston Combe, Church Town, Backwell."* The Council replied that the sign was correctly positioned at the end of bridleway LA2/7c. The application, subject of this appeal was not made until 2003.
10. The appellant draws attention to a plan prepared after the application had been submitted and before the Council made the Order, showing the route claimed in a thick line. Handwriting on the document reads "*I certify that the route of the bridleway and spur which is the subject of this claim is shown in red on this plan. Veneta F Craggs 7. 12. 1990*". The black and white copy produced clearly shows a spur or link on the alignment D to E; the link claimed in this appeal.
11. The County Solicitor considered the issue in some detail and noted in December 1990 that the plan attached to the application, 'Plan B', did not clearly identify the extent of the claim, and therefore a site meeting was held between an officer of the Council and Mrs Craggs, resulting in the production of 'Plan A' which Mrs Craggs certified as correct. However, as the County Solicitor pointed out, the user evidence forms included plans showing the route alleged to have been used

[1] *Kotarski v Secretary of State for the Environment, Food and Rural Affair [2010] EWHC 1036 (Admin); [2010] 5 WLUK 271*

largely on the same lines as Mrs Cragg's original application plan: Plan B, and the only spur apparent on the application plan is not where Mrs Craggs indicated on Plan A. There is little evidence to suggest that he was doing any more than assisting Mrs Craggs in clarifying her claimed route.

12. The County Solicitor produced Plan C as a typical copy of the plans submitted with the 19 user evidence forms. He wrote "*I have compared these plans and the information referred to in the evidence forms – I cannot see any evidence which indicated use of the spur as shown on Plan 'A'.*" The relevant committee of the Council considered a report in February 1991 which advised that 14 evidence forms indicated use for periods of more than 20 years. It noted that although the applicant had confirmed that the claim related to a spur C-J (which corresponds to the route claimed in this appeal) that claim had subsequently been withdrawn.

13. In respect of the spur B-I (which corresponds to Points A-B in this appeal) the report noted that it was clear from the evidence that this spur had been used as a bridleway without any let or hindrance for the requisite period, and that a presumed dedication of this spur had occurred. The Committee authorised a DMMO, including spur B-I but expressly not spur C-J.

14. Mrs Craggs may have been confused when she withdrew her claim for spur C-J before the Order was made. Nonetheless the withdrawal of her evidence regarding routes C-J and B-I meant that although she was the applicant, the Council's decision was based on other evidence. It seems to me that the Council carefully considered the position of the spur on the available evidence and found that other user evidence was sufficient on which to conclude that route B-I was the definitive line of the bridleway. Moreover Mrs Craggs appeared at the inquiry.

15. I find nothing from the recent research to suggest that there is new evidence before me that was not fully considered by both the relevant officers and Committee of the Council. The other users may have based their plans on Mrs Craggs' original application plan, but the County Solicitor had found the evidence on those forms to be consistent with route B-I, and there is no evidence to suggest that any of the other users had meant route C-J rather than B-I. The Committee may not have had every piece of information before it, but the report set out the situation in some detail.

16. The plan produced for the Order was "*Map No.1 Map of Modification Order, County Council of Avon Definitive Map Modification Order No. 12 1991*" dated August 1991. The route to be added was shown in sections and the plan was annotated with the text "*Path to be redesignated A-|-B-|-C D-|-E Bridleway to be added B-|-G C-|-X-|D E-|-F*". Spur/link B-|-G is labelled "LA 2/7c" and clearly shown in the position which was subsequently added to the Definitive Map. By the time this plan was produced the Council had relabelled spur B-|-I as B-|-G but the route was not changed and the Order made follows the route approved by the Council. Whether or not the plan Mrs Craggs originally submitted was correct, was not material to the Council's deliberations. The recent research does not produce any material new evidence to suggest that a drafting error was made on the Order Plan showing LA2/7c in the wrong position.

17. At the public inquiry, October 1993, the Council's evidence described the route of what is now the existing definitive spur shown as A-B as following "*the remains of a stone wall at B through woodland dropping steeply down to the road in Cheston Coombe*". A referenced plan showed it in the same position as that which was to be later added to the Definitive Map. The Council set out for the Inspector in its evidence that it resolved to make an Order to modify the Definitive Map by

including spur B-G (A-B in this appeal) but that it also specifically resolved not to make an Order in respect of a spur to the south of B-G.

18. Whilst there is evidence that Mrs Craggs drew other matters to the attention of the Inspector, there is no evidence that she pursued C-J as a modification at the inquiry. There was no duty on the Inspector to consider evidence in respect of C-J: his task was to consider whether there was sufficient evidence for B-J.

19. In considering B-J the Inspector concluded that, on balance, the evidence supported the view that prior to the date that the status of the claimed bridleway was called into question – 12 June 1989 – horse riders did enjoy for at least 20 years uninterrupted use of the claimed route including the spur B-G. He was aware that the Parish Council stated B-I [later B-G] had not been used as a bridleway. He was also aware of the history of the claim, that there had been an issue about the position of spur B-J, and that, although the applicant had considered it to be further south than shown on the plan, she had withdrawn the claim in respect of spur B-G.

20. The Order is specific about the starting point of spur B-G: *"adding thereto, the public bridleway which starts at its junction with LA 2/7 in Backwell Parish approximately 192 metres from Church Road..."*. This provided clear instructions to the Inspector as to where the spur started from, and he could have been in no doubt when he made his site visit. He had also been advised that the route of the spur that the applicant had claimed but withdrawn was "further south".

21. The route has to be the route that was ridden but the evidence forms and maps were clearly assessed in this respect. The appeal submissions critique the events that occurred based on evidence which, by Mrs Craggs' own admission, was before the Council and the inquiry at the time. The claim in effect seeks to reopen and re-determine the previous application and events.

22. An email from Mrs Craggs, 28 December 2018, adds little by way of new evidence about the alignment of spur LA2/7c. Mrs Craggs' assertion that there were errors may be genuinely made, but I find little recent research to amount to new evidence to say that LA2/7c is not on the route referred to in user evidence presented to the 1993 inquiry or in the position confirmed in the Order and subsequently added to the Definitive Map. In the end the Inspector confirmed the Order with the Order Plan.

23. On a balance of probability I find that the recent research has not disclosed any new evidence, that a reasonable person would conclude was not before the public inquiry in 1993, that shows an error was made by witnesses, users and the Inspector as to where route B-G was on the ground, or that the Inspector made any error in confirming the Order Plan. The Definitive Map and Statement were amended in accordance with the Order and Order plan and I find no error here.

Conclusion

24. I conclude that there is insufficient convincing new evidence that has been discovered or which was not previously considered to support the claimed addition and alteration of the bridleway.

Formal Decision

25. The appeal is dismissed.

Helen Heward

Inspector