

North Somerset Council

Report to the Public Rights of Way Sub-Committee

Date of Meeting: 22 November 2022

Subject of Report: Incomplete Definitive Map Modification Order Applications

Town or parish: District Wide

Officer/Member presenting: Elaine Bowman

Key Decision: No

Recommendations

It is recommended that the Public Rights of Way Sub Committee authorises the relevant officer to formally close the files on the 24 Definitive Map Modification Order Applications listed in Appendix 1 from the Section 53b Register.

1. Summary of Report

This report is to advise the Committee that North Somerset Council (“the Council”) has 24 Definitive Map Modification Order Applications on the Section 53b Register (see Appendix 1) which have not been completed in accordance with the legislation laid down in Schedule 14 of the Wildlife and Countryside Act 1981.

North Somerset Council would be ill advised to determine these applications when the correct procedures have not been undertaken by the applicant, this could lead to legal challenge by owners of the land and interested parties. Attempts have been made to contact the applicant to address this lack of process and missing information, to date no response has been received from the applicant.

It is therefore proposed to no longer pursue these applications and to close them down on the Section 53b Register.

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 “A Thriving and Sustainable Place” (a great place for people to live, work and visit) and “An Open and Enabling Organisation” (collaborate with partners to deliver the best outcomes).

3. Details

On 28th March 2006, a total of 24 Definitive Map Modification Order Applications were submitted by Mr R Stephens claiming that several Roads Used as Public Paths (which

under the Natural Environment and Rural Communities Bill 2006 (relevant date 20th January 2005) became Restricted Byways) should be reclassified as Byways Open to All Traffic.

Each of the applications consisted of an Application Form for a Modification to the Definitive Map and Statement, Form of Certificate of service of notice of Application for Modification Order, and Documentary Evidence Checklist stating a Pre 1835 Victorian 1st Ed Ordnance Survey. These applications were then placed on the Council's Section 53 Definitive Map Register. A list of the 24 applications is attached as **Appendix 1** of this report.

Following the outcome of 'The Winchester Case' 28 November 2007 (**Appendix 2**) all local authorities should, when looking at an application, ensure that the application has been submitted to the detail required in Schedule 14 of the Wildlife and Countryside Act 1981. North Somerset Council have undertaken this exercise and found that the 24 applications submitted by Mr Stephens do not meet those requirements.

All 24 applications are deficient on two counts.

Firstly, notices have not been served upon the relevant landowners, nor have there been attempts to locate any landowners; the only information that is held is that notices were placed at each end of the routes.

Secondly, the applications state the only documentation referred to is an OS map pre 1835 Victorian first Edition, however copies of this were not supplied.

In order to attempt to process these applications, on 23rd March 2015, North Somerset Council Officers sent a letter, Recorded Delivery to Mr Stephens outlining the deficiencies in his 24 applications. The applicant was informed that no further action would be taken upon these files until the relevant information was received and that if no response was received by 1st May 2015, then the Council would arrange for them to be closed on the Section 53 Register.

This is a significant outstanding number of applications on our Section 53 Register and now having addressed the 21 Secretary of State Directions which were issued in March 2017 we are trying to continue progress on the 53b Register.

Due to the time lapse since the last letter and taking any action on this matter a further letter was sent on 23 February 2022 to follow up on this matter advising that this report was being written requesting that authority is given for these files to be closed

Following these letters, the Council have not received any further correspondence from Mr Stephens and are therefore recommending the closure of all 24 applications from the Section 53b Register of Definitive Map Modification Order Applications.

4. Consultation

The applicant was consulted on 23rd March 2015 requesting the additional documentation to validate all 24 applications and 23 February 2022. There is no requirement for any further consultation.

5. Financial Implications

There will be no financial implications on this matter.

Costs

There are no costs relating to this project.

Funding

There are no funding requirements for this project.

6. Legal Powers and Implications

Schedule 14 of the Wildlife and Countryside Act 1981 Extract included within this report as **Appendix 3**. Failure to adhere to the legal requirements of the legislation could lead to applications being legally challenged as defective applications further along the process.

7. Climate Change and Environmental Implications

Improvements or additional routes added to the Public Rights of Way Network aim to encourage sustainable travel by enabling the public to walk, cycle or ride a horse across our District reducing carbon emissions, encouraging access to the natural environment, and improving health and wellbeing.

8. Risk Management

There will be no further risk to the Council. The applicant has the right to resubmit any applications with relevant information which will be added to the current Section 53 register.

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

No other option has been considered.

Author

Elaine Bowman
Principal Access Officer – Ext 7406

Background Papers

File Ref Mod 68-91

APPENDIX 1
Section 53 Register of 24 deficient applications

Reference	Location	Geographical Location (Grid Ref.)	Effect	From	To	Date of Registration
Mod 68	Summer Lane, West Wick, Puxton.	ST 371617 - ST 375614	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 69	Balls Barn Lane, East Rolstone, Puxton.	ST 390626 - ST 398627	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 70	Hatchers Lane, East Rolstone, Puxton.	ST 388630 - ST 395622	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 71	Blackmoor Langford College, Wrington.	ST 455610 - ST 461609	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 72	Brockley Coombe to Backwell Hill, Cleeve.	ST 485664 - ST 489669	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 73	Rhodyate to Claverham, Claverham.	ST 447656, ST 445648, ST 450653	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 74	Ilex Lane, Winscombe	ST 411592 - ST 418584	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 75	Lime Breach Wood, Nailsea	ST 462720 - ST 476729	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 76	Windmill Hill, Easton-in-Gordano	ST 513752 - ST 512747	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 77	Failand Farm, Easton-in-Gordano	ST 523732 - ST 534726	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 78	Gable Farm, Wraxall	ST 502708 - ST 501693	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 79	Myrtle House Farm, Winford	ST 534639 - ST 536631	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 80	Pinchay Lane, Winford	ST 541643 - ST 545636	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 81	Greatstone Lane, Winford	ST 534639 - ST 541640	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 82	Sutton Lane, Butcombe	ST 511621 - ST 508610	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 83	Row of Ashes Cottage, Redhill	ST 513632 - ST 515628	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 84	Long Thorn Lane, Butcombe	ST 528618 - ST 532612	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 85	Littleton Lane, Dundry	ST 553664 - ST 551647	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 86	B3130, Hanging Grove Farm, Dundry	ST 541663 - ST 551664	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 87	B3130, Rocks Lane, Dundry	ST 524665 - ST 537662	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 88	Tinkers Lane, Backwell	ST 508674 - ST 506664	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 89	Barrow Hill, Backwell	ST 503673 - ST 516610	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 90	Backwell Hill, Backwell	ST 485664, ST 499677, ST 500666	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 91	Freemans Farm, Backwell	ST 56677 - ST 516670	Upgrade	Restricted Byway	BOAT	28/03/2006

The Winchester Case

The Winchester Case **Neutral Citation Number [2008] EWCA Civ 431** (The Queen on the Application of Warden and Fellows of Winchester College and Humphrey Feeds Ltd and Hampshire County Council and The Secretary of State for Environment, Food and Rural Affairs – Court of Appeal 29 April 2008).

This case clarified the effect of the burden on the applicant to make application in the prescribed form. Section 46 and 47 of the Winchester case read:

46. In my judgment, as a matter of ordinary language an application is not made in accordance with paragraph 1 unless it satisfies all three requirements of the paragraph. Moreover, there are two particular indications that an application is only made in accordance with paragraph 1 of Schedule 14 if it is made in accordance with all the requirements of the paragraph. First, paragraph 1 is headed "Form of applications". The word "form" in the heading is clearly not a reference only to the prescribed form. It is a summary of the content of the whole paragraph. It is a reference to how an application should be made. It must be made in a certain form (or a form substantially to the like effect with such insertions or omissions as are necessary in any particular case). It must also be accompanied by certain documents. The requirement to accompany is one of the rules as to how an application is to be made.
47. Secondly, Schedule 7 to the 1993 Regulations shows that the prescribed form itself requires the route to be shown on the map "accompanying this application" and the applicant to "attach" copies of the following documentary evidence (including statements of witnesses) in support of the application. This language reflects the content of subparagraphs (a) and (b) of paragraph 1. It is artificial to say that, in order to be made in accordance with paragraph 1, an application must be made in the prescribed form or a form to substantially like effect; but that it need not be accompanied by a map or have attached to it the documentary evidence and witness statements to be adduced even though these are referred to in the body of the prescribed form itself. The language of the form shows that an application is only made in accordance with paragraph 1 if it is made in the prescribed form and is accompanied by a map and the documentary evidence and witness statements to be adduced.

APPENDIX 3
Schedule 14 Wildlife and Countryside Act 1981

Wildlife and Countryside Act 1981
Schedule 14: Applications for certain orders under Part III

Form of Applications

1. An application shall be made in the prescribed form and shall be accompanied by:
 - a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and
 - b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.

Notice of applications

2. (1) Subject to sub paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates.

(2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description 'owner' or 'occupier' of the land (describing it) and by affixing it to some conspicuous object or objects on the land.

(3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.

(4) Every notice or certificate under this paragraph shall be in the prescribed form.

Wildlife and Countryside Regulations 1993 SI 1993 No 12 Section 8

- (1) An application for a modification order shall be in the form set out in Schedule 7 to these regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case.
- (2) Regulation 2 above shall apply to the map which accompanies such an application as it applies to the map contained in a modification or reclassification order.
- (3) A notice required by paragraph 2 of Schedule 14 to the Act (applications for certain orders under Part III) shall be in the form set out in Schedule 8 to these Regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case.
- (4) A certificate required by paragraph 2 of Schedule 14 to the Act shall be in the form set out in Schedule 9 to these Regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case.