**SEVENHAMPTON PARISH COUNCIL**

**DRAFT MINUTES for**

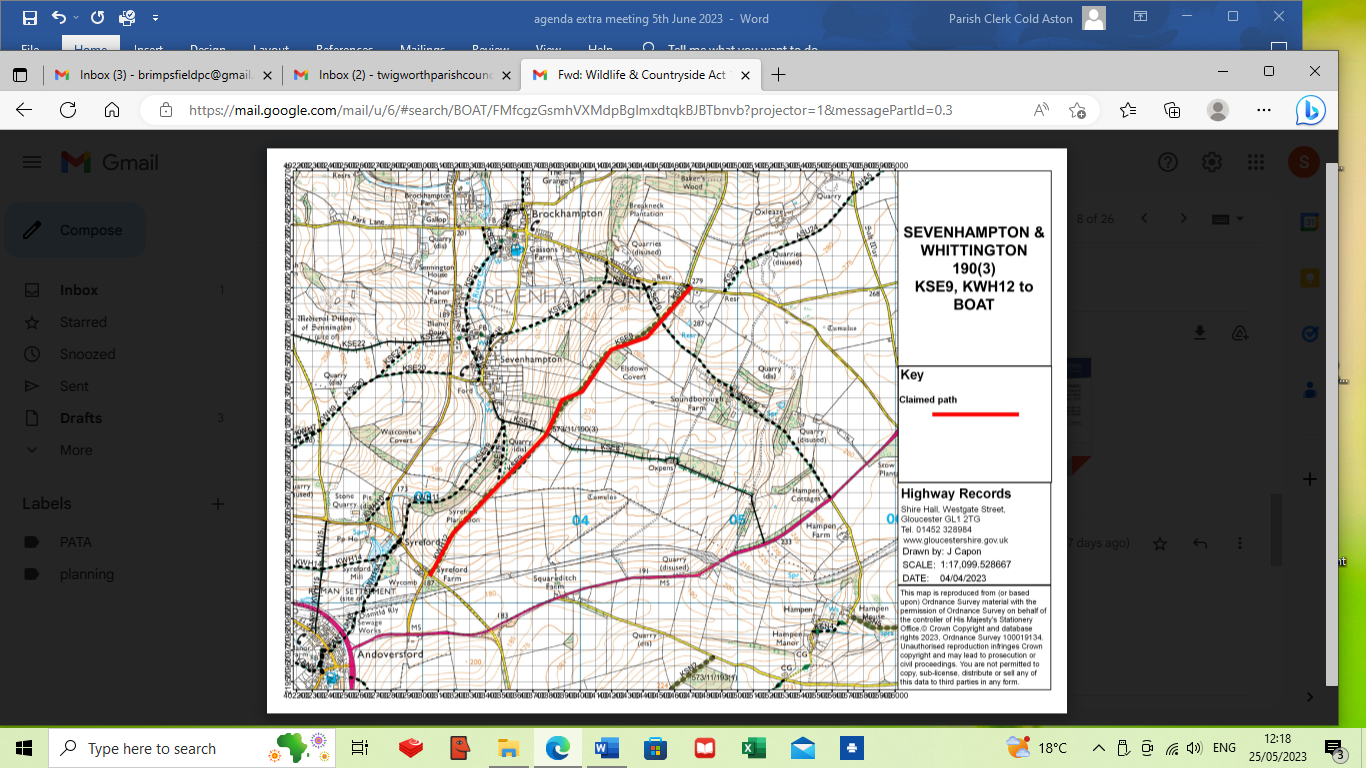
**Extra-ordinary meeting of Council**

**5th June 2023**

**held in the Village Hall**

**Brockhampton at 7.30pm**

|  |  |
| --- | --- |
|  | **Welcome and introductions** |
|  | **Attendance recorded as Parish Councillors Lynne Jackson, Harry Boyd, Bill Jenkin and Gordon Day, County Councillor Paul Hodgkinson & 11 members of the public attended** |
|  | **Apologies received accepted/recorded from Parish Councillor Emma Lanfear** |
|  | **Declaration of Interest for matters on the agenda were invited- none** |
|  | **Minutes of the previous Parish Council Meeting held on 15th May 2023 approved for accuracy** |
|  | **Report invited from County Councillor Hodgkinson- Definition of BOAT and if GCC approve application the resulting grading could include motorised vehicles** |
|  | **Public Participation was invited**   1. **Glos Highways staff informed public that application is result of DEFRA changing guidelines** 2. **Legislation in 2005 created restricted by-ways except for 5 specific categories- GCC did not discuss individually but made a global decision** 3. **DEFRA guidelines now mean that each individual Restricted Byways (RUPPS) must be reviewed individually** 4. **Locked gates/barriers noted** 5. **Agricultural landowners and walkers accessed the RUPPS** 6. **Emphasised the public value of the existing use** 7. **Local knowledge extends to many decades prior to 2005** 8. **Grazing in neighbouring fields** 9. **Potential harm & impact to environment if non pedestrian use is allowed** 10. **Listed as PROW as well as being on historical class 5 road register** 11. **Rural crime is a concern where motorized vehicles can access agricultural land** 12. **Conservation/habitat for rare and native species in this area** 13. **Significant pits/danger from historical mining activities** 14. **Danger to pedestrian/horses if vehicles access footpath areas.** 15. **All of the public expressed concerns/objections to these applications**   [**modificationorders@gloucestershire.gov.uk**](mailto:modificationorders@gloucestershire.gov.uk)  [**jack.capon@gloucestershire.gov.uk**](mailto:jack.capon@gloucestershire.gov.uk)  **public session closed at 20.04** |
|  | **Council agreed its response to** Wildlife & Countryside Act 1981, Section 53 Definitive Map Modification Order Application Reclassification of Restricted Byways (Formerly Roads Used as Public Paths) KSE9 and KWH12 to a Byway Open to All Traffic, Sevenhampton and Whittington Parishes (Syreford farm to Brockhampton Lane) 573/11/190 (3) -see attached information **Closing date 28th June 2023**  The Council noted that the PC expressed concerns in 2005/6 and continue to confirm that neighbouring landowners and those working for those landowners, pedestrians, horses and pedal cyclists are the only current and historical users of this restricted byways  It has not been by vehicle access other than the above.  The Council note the testimony of residents who have lived in this area at the relevant time, that the above is a true reflection of the historical and current use of this restricted byway  The Council also note that there is considerable concern of potential harm of the impact to the environment, noise pollution, security, damage to conservation/habitat to rare and native species in this area if motorized use is allowed  The Council also noted the strength of feeling and anticipate that many residents will respond individually |
|  | **Council agreed its response to** Wildlife & Countryside Act 1981, Section 53 Definitive Map Modification Order Application Reclassification of Restricted Byways (Formerly Roads Used as Public Paths) **relating to KSE2 Puckham S**crub Lane **to West Down Car Park (573/11/190(2)**  The Council noted that the PC expressed concerns in 2005/6 and continue to confirm that neighbouring landowners and those working for those landowners, pedestrians, horses and pedal cyclists are the only current and historical users of this restricted byways  It has not been by vehicle access other than the above.  The Council noted the testimony of residents who have lived in this area at the relevant time, that the above is a true reflection of the historical and current use of this restricted byway  The Council also note that there is considerable concern of potential harm of the impact to the environment, noise pollution, security, damage to conservation/habitat to rare and native species in this area if motorized use is allowed  The Council also noted the strength of feeling and anticipate that many residents will respond individually |
|  | **Council confirmed that its next scheduled meeting is Monday 17th July, commencing at 7.30pm** |
|  | **Further report from County Councillor Hodgkinson-**  Further information on “The Robin” community bus service was made available, which is free for concessionary pass holders 9.30 am to 11pm on weekdays, all day on weekends.  Phone 0345 263 8139 (select option 1) to make a booking or visit  [www.gloucestershire.go.uk/therobin](http://www.gloucestershire.go.uk/therobin)  The Robin Gloucestershire on app store |
|  | **Update on banking correspondence-** 2 emails confirming a) 24/5/23 initial review has been completed and have sent the case for final approval, also confirming no restrictions will be placed on the account b)2/6/23 confirming review is in the final stages of internal review and no action is required by PC  Both sent from KYC review team but different signatories |
|  | **Update on asset of community value request-** none received- Clerk to follow up TO ascertain the outcome |
|  | **Close of meeting- 20.38** |



**WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53**

**DEFINITIVE MAP MODIFICATION ORDERS (DMMO)**

**GENERAL INFORMATION SHEET**

**1. What is the Definitive Map and Statement?**

**The Definitive Map and Statement (the DM&S) of Public Rights of Way is the legal**

**record of public rights of way in the county. Gloucestershire County Council is the**

**surveying authority responsible for maintaining the DM&S as the accurate record of all**

**public rights of way in the County.**

**You can view the original Map at Shire Hall, Westgate Street, Gloucester, GL1 2TJ**

**during Shire Hall Reception open hours (no need to book an appointment).**

**An electronic representation of the recorded rights of way is available online at**

**https://www.gloucestershire.gov.uk/highways/public-rights-of-way/definitive-map-and-**

**associated-registers/. This is not the Definitive Map but our attempt to show the data in**

**an electronic format. The routes shown have been transposed from the original**

**Definitive Map, which is at a published scale of 1:10,560; therefore, please make due**

**allowance for any extra implied accuracy at the viewed scale.**

**The rights recorded on the Definitive Map & Statement are as follows:**

**• Footpath - right of way on foot only**

**• Bridleway - right on foot and to lead or ride a horse; pedal cycles may be used on a**

**bridleway**

**• Restricted Byway - carriageway which carries rights on foot, and to lead or ride a**

**horse, and for all non-mechanically propelled vehicles (for example, a bicycle or a**

**horse and cart)**

**• Byway Open to All Traffic (BOAT) - special category of carriageway that usually has**

**the character of a footpath or bridleway, and which carries a right on foot, to lead or**

**ride a horse, and a full vehicular right that includes motor vehicles**

**2. What is a Modification Order?**

**A Definitive Map Modification Order (DMMO) is a change to the Definitive Map &**

**Statement of Public Rights of Way governed by a legal process, and must be based on**

**evidence:**

**• Public rights may exist over a route not shown on the DM&S; higher rights may exist**

**over a route which is already shown; or rights may be shown which have been**

**recorded incorrectly or in error.**

**• Modification Orders are not about whether it is a good thing or a bad thing that a right**

**should be added or deleted, but about whether those particular rights exist.**

**• Section 31 of the Highways Act 1980 provides that where a way over land has**

**actually been enjoyed by the public as of right and without interruption for 20 years or**

**more, the way is deemed to have been dedicated as a highway unless there is**

**sufficient evidence that there was no intention during that period to dedicate it. (A**

**lesser period may be considered under common law.)**

**Therefore, the Council can only consider ‘legally relevant’ evidence, i.e. that relating to:**

**• The existence of the way - whether or not there is documentary evidence which shows that**

**a right of way for the public exists, or a history of use by members of the public sufficient to**

**show that a right of way exists;**

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**• The status of the way - whether or not there is evidence to show that the way has been**

**used, for example, by people on foot, horseback or in vehicles, and if so what the nature**

**and extent of that use is; and**

**• The precise route of the way**

**The following factors cannot be taken into account:**

**• The suitability of the way for the use being claimed**

**• The effect on the environment or on amenities in the area**

**• The existence (or not) of other rights of way in the immediate area**

**NB: If someone wishes to divert an existing public right of way, there are separate**

**procedures under the provisions of the Highways Act 1980 which should be followed -**

**please email prow@gloucestershire.gov.uk for more information.**

**3. Who can apply for a DMMO?**

**Anyone may apply for a Modification Order if they believe the DM&S is inaccurate or**

**incomplete. This includes national or local User Groups or a Parish Council.**

**4. Is there a charge to make a DMMO application?**

**There is no charge for making a Modification Order application as, if successful, it is in**

**effect a correction to the Definitive Map & Statement.**

**5. What evidence is required?**

**The Modification Order procedure is governed by the Wildlife and Countryside Act 1981**

**which requires that the application must be accompanied by copies of any supporting**

**evidence.**

**It is important to submit as much evidence as possible in support of the application, as**

**the decision whether or not to make an Order will be made on the basis of the evidence**

**provided and any other available evidence. There are two kinds of evidence which may**

**be submitted: user evidence or documentary evidence (or a mixture of the two).**

**[i] User Evidence**

**Most claims involving user evidence are considered under the provisions set out under**

**Section 31 of the Highways Act 1980, where the public can acquire rights over a way if it**

**has been used for at least twenty years (a lesser period may be considered under**

**common law). The qualifying period of use under Section 31 of the Highways Act 1980**

**is counted back from the date on which the public’s right was first brought in question.**

**In general, use must be by ‘the public’ (rather than, say, by those working for the**

**landowner, or those with private easements/rights of access). The use by the public**

**must also be ‘as of right’, and without force, secrecy or permission.**

**A claim may fail if there is sufficient evidence that there was no intention to dedicate it as**

**public during that period. Actions such as erecting signs stating no public right of way**

**subsists, challenging people, submission of a Section 31(6) Highways Act 1980**

**deposition, obstructing the route, or clear indication that use was by permission could all**

**demonstrate a lack of intention to dedicate.**

**Evidence of use can be from individuals who have used a route over the whole**

**qualifying period, or from a number of users whose use overlaps.**

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**User Evidence Statement forms in the prescribed format are available from the DMMO**

**Team. Each submitted form should be accompanied by a map on a scale of not less**

**than 1:25,000; but a larger [more zoomed in] scale map is preferable to be able to mark**

**the application route more accurately. The map should be marked by the User to show**

**the route they are referring to; the map should not be pre-marked by the Applicant. The**

**County Council can supply suitable location plans.**

**[ii] Documentary Evidence**

**Documentary evidence may consist of, for example, old maps, parish records, estate**

**records, photographs, Inclosure Awards, or Tithe Maps. Such documents may be found**

**in Gloucestershire Archives, National Archives, or other collections.**

**Whilst the County Council will carry out a search of primary sources as part of its**

**investigation of an application, the Applicant may wish to research the available records**

**for the area in question in support of their application. Further information (if required)**

**can be found in the Documentary Evidence Information Sheet.**

**6. How do I apply?**

**You should contact the DMMO Team in the first instance (contact details at the end of**

**this Sheet).**

**It would be helpful if you could provide a brief outline of why you think rights should be**

**recorded, and details of the approximate location of the route(s).**

**If appropriate, you will be sent an application pack, which will include a Form 1, a Form**

**2, a Form 3, blank location plans, and a supply of User Evidence Statement forms (if**

**applicable):**

**• Form 1 [Form of Application for Modification Order]**

**This should be completed by the Applicant to describe the change being requesting.**

**It should be returned to the DMMO Team with a map clearly showing the route in**

**question and copies of the evidence supporting the application.**

**• Form 2 [Form of Notice of Application for Modification Order]**

**This should be completed by the Applicant and sent to every owner and occupier of**

**any land to which the application relates, together with a map showing the claimed**

**route. Further copies of this form can be provided on request.**

**• Form 3 [Form of Certificate of Service of Notice of Application]**

**This should be completed by the Applicant and returned to DMMO Team (usually**

**together with Form 1) to confirm that Form 2 has been correctly served.**

**• User Evidence Statement forms (if applicable)**

**These should be passed to any Users of the route who are willing to submit evidence**

**of their use. The plans should not be pre-marked by the Applicant, as to do so may**

**prejudice the application. The User should pass their completed form and map back**

**to the Applicant for submission as part of the application. (If additional forms are**

**completed after the application has been made, they can be sent direct to us.)**

**All the forms submitted as part of the application must be signed and dated, and (where**

**applicable) Statements of Truth completed.**

**If you are referring to historical maps and documents to support your application, it will**

**be necessary to supply a copy of these documents. Your application will be regarded as**

**invalid under the relevant legislation if you simply provide a list of the documents you are**

**referring to. We will accept digital images by email, but these must be clear, referenced,**

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**and unedited. If you have any concerns about obtaining, or the submission of,**

**documentary evidence, please contact the DMMO Team.**

**In order for an application to be formally accepted as a “duly made” (proper) application,**

**it must be accompanied by all the required signed forms, location map at the appropriate**

**scale and copies of evidence being relied upon.**

**7. What if I cannot find out who the landowner/occupier is?**

**If, after reasonable enquiry has been made, you are unable to trace the landowner/**

**occupier(s) affected by the application in respect of Form 2 above, you can apply to the**

**County Council to dispense with the usual personal notice and instead serve notice by**

**addressing it to the “owner or occupier” and fixing it to some conspicuous object on the**

**land. If this applies, please contact us for advice.**

**The certificate that notice has been served (Form 3) is essential; without it the Council is**

**under no obligation to consider the application.**

**8. What happens after the application has been made?**

**Once received by the DMMO Team, the application will be assessed and given a priority**

**score according to the statement of priorities as set out in the approved Rights of Way**

**Improvement Plan 2011-2026, and placed in an open queue based upon its priority**

**rating.**

**It is possible for the priority given to any application to change if significant factors come**

**to light; for example, if the evidence is weaker than first thought, or stronger evidence**

**comes to light to demonstrate a greater public need, or if the site is subject to planning.**

**The Application will also be uploaded to the official Register of Applications (online**

**version available at https://www.gloucestershire.gov.uk/highways/public-rights-of-**

**way/definitive-map-and-associated-registers/register-of-definitive-map-modification-**

**order-applications/#main). See also below regarding data privacy.**

**Typical timescales for the processing of any application are generally quite long because**

**of the number of statutory stages that are involved, and our legal responsibility to consult**

**with various parties. For example, an application will typically take two years from**

**commencement to resolve if there are no objections; but if there are objectors, this may**

**require the application to be submitted to the Planning Inspectorate for a decision and**

**overall timescales will be much higher.**

**In order to fully investigate the application, the County Council must consult the relevant**

**Parish and District Councils, other statutory bodies, and investigate any matters raised**

**in the application. A summary of any User evidence will be sent to the landowner/**

**occupier(s) affected by the application and an opportunity given for them to comment.**

**Any landowner comments may then be sent to the Applicant for their observations. In**

**addition, the County Councillor for the area will be consulted, and any documentary**

**evidence discovered will also be taken into account.**

**9. How will the application be decided upon?**

**Once the application has been researched and consulted upon, Officers will produce a**

**Report which will form the basis of the application’s “determination” by the County**

**Council’s Commons and Rights of Way Committee or by an Internal Officer Panel.**

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**If the Committee or Panel determine that sufficient evidence of the right exists, a**

**Modification Order will be ‘made’ and published.**

**If the Committee or Panel decide there is insufficient evidence to ‘make’ an Order, the**

**Applicant has twenty-eight days in which to appeal to the Secretary of State who will**

**consider the evidence and direct the County Council accordingly.**

**10. What happens after any Modification Order is ‘made’?**

**Notice of the ‘made’ Order will be served on the Applicant, landowner/ occupiers and**

**other statutorily interested parties. It will also be posted on site, in the local newspaper,**

**and within the Register of Applications available on our website at**

**https://www.gloucestershire.gov.uk/highways/public-rights-of-way/definitive-map-and-**

**associated-registers/register-of-definitive-map-modification-order-applications/#main).**

**A period of forty-two days will be allowed for any objections or representations regarding**

**the Order. If no objections are received, or they are subsequently withdrawn, a**

**‘confirmation’ order will be signed and published. A further forty-two days will then be**

**allowed during which it is possible to apply to the High Court for a judicial review into the**

**making of the Order (i.e. on the grounds that the process of law was not followed).**

**After this period, and if no judicial review is lodged, the Definitive Map & Statement will**

**be updated, along with the electronic Public Rights of Way map, the National Street**

**Gazetteer, and Ordnance Survey.**

**If objections are received to the ‘made’ Order and not withdrawn, the ‘contested order’**

**must be passed to the Secretary of State for the Environment, who will ask the Planning**

**Inspectorate (“Pins”) to determine whether the Order should be confirmed by holding**

**either a local Public Inquiry, a Hearing or by Written Representations.**

**11. How will my data be used?**

**Please see our Data Privacy notice concerning DMMO applications at**

**https://www.gloucestershire.gov.uk/media/2117337/dmmo-privacy-notice\_vaug2022.pdf.**

**12. Any other questions?**

**If you have any further questions about the DMMO process, please contact us:**

**• Post: Highway Records & DMMO Team, Gloucestershire County Council, Shire Hall,**

**Gloucester GL1 2TH**

**• Email: modificationorders@gloucestershire.gov.uk**

**• Web:** [**www.gloucestershire.gov.uk/prow**](http://www.gloucestershire.gov.uk/prow)

**Section 67(1) National Environment**

**& Rural Communities (NERC) Act 2006**

**~ overview of exceptions to extinguishment of motor rights ~**

**Part 6 of the NERC Act 2006 sought to limit access by motorised vehicles to the Rights**

**of Way network in England and Wales by extinguishing (with some exceptions)**

**unrecorded motor vehicular rights, and by ensuring that in the future a long period of**

**use by mechanically propelled vehicles cannot give rise to public motor vehicular rights.**

**Section 67(1) of the NERC Act extinguished public rights for mechanically propelled**

**vehicles over ways which were “not shown in a definitive map and statement”, or “was**

**shown in a definitive map and statement only as a footpath, bridleway or restricted**

**byway”, with a number of exceptions which are set out in Section 67(2).**

**Please note, therefore, that public motor vehicular rights have not been extinguished**

**over existing recorded Byways Open to All Traffic (BOATs) on the Definitive Map of**

**Public Rights of Way.**

**Section 67(2) states that the extinguishment of mechanically propelled vehicles rights**

**under Section 67(1) does not apply to an existing public right of way if:**

**(a) it is over a way whose main lawful use by the public during the period of 5 years**

**ending with commencement was use for mechanically propelled vehicles,**

**(i.e. ways that have been lawfully used more by motor vehicles than by other users [e.g.**

**walkers, cyclists, horse riders and horse drawn vehicles], over the period 2001-2006)**

**(b) immediately before commencement it was not shown in a definitive map and**

**statement but was shown in a list required to be kept under section 36(6) of the**

**Highways Act 1980 (c. 66) (list of highways maintainable at public expense),**

**(i.e. ways that are recorded on the List of Streets of highways maintainable at public**

**expense, but are not recorded on the Definitive Map of Public Rights of Way. Thus,**

**there is a presumption that motor vehicular rights have been extinguished over “dually**

**recorded” routes (ways that are on both sets of records) unless one of the other**

**exceptions at section 67(2) applies.**

**(c) it was created (by an enactment or instrument or otherwise) on terms that**

**expressly provide for it to be a right of way for mechanically propelled vehicles,**

**(d) it was created by the construction, in exercise of powers conferred by virtue of any**

**enactment, of a road intended to be used by such vehicles, or**

**(e) it was created by virtue of use by such vehicles during a period ending before 1st**

**December 1930.**

**(i.e. when it first became an offence to drive off-road)**

**Link to full legislation:** [**https://www.legislation.gov.uk/ukpga/2006/16/section/67**](https://www.legislation.gov.uk/ukpga/2006/16/section/67)

**Please note the County Council can only consider ‘legally relevant’ evidence in deciding whether to modify**

**the Definitive Map & Statement. This includes:**

** The existence of the way - whether there is documentary evidence which shows that a right of**

**way for the public exists, or a history of use by members of the public, sufficient to show that a**

**right of way exists;**

** The status of the way - whether there is evidence to show that the way has been used by**

**people on foot, horseback or in vehicles and if so what the nature and extent of that use is; and**

** The precise route of the way.**

**The following factors cannot be taken into account:**

** The suitability of the way for the use being claimed;**

** The effect on the environment or on amenities in the area;**

** The existence (or not) of other rights of way in the immediate area.**

**A formal report based on relevant evidence will be presented to either the County Council’s**

**Commons and Rights of Way Committee or an Internal Officer Panel, who will decide whether the**

**route has been dedicated as a public right of way. If sufficient evidence exists, a legal Order will be**

**published (as stated in the attached General Information Sheet).**