

Rights of Way Committee

24 February 2015 – At a meeting of the Committee held at County Hall, Chichester.

Present:

Mr Acraman, Mr Bradbury, Mr Burrett, Mr Clark, Mrs Duncton , Mr Metcalfe, Mr Quinn, Mr Rogers and Mr Whittington (Chairman).

Declarations of Interest

22. None at this stage of the meeting. Please see minute 30 below.

Minutes

23. Resolved – That the minutes of the meeting held on 10 June 2014 be approved and signed by the Chairman as a correct record.

Previous Rights of Way Decisions

24. The Committee received and noted a report by the Director of Law, Assurance and Strategy setting out the progress on previous decisions made by the Committee (copy attached to the signed minutes).

Outstanding Applications

25. The Committee received and noted a report from the Executive Director Residents' Services and the Director of Law, Assurance and Strategy outlining applications awaiting consideration (copy attached to the signed minutes).

Performance Indicators

26. The Committee received and noted a report by the Executive Director Residents' Services on performance indicators relating to public rights of way for the periods to the end of June 2014, end of September 2014 and end of December 2014 (copy attached to the signed minutes).

27. The Committee considered a report from the Executive Director Residents' Services which outlined changes to the reporting of performance at future meetings of the Rights of Way Committee (copy appended to the signed version of the minutes). The proposed changes were broadly supported but it was felt that further clarification of the relevance and value of the additional annual indicator from the National Highways and Transport Annual Survey was required before the new performance indicators were finalised.

28. Resolved – That the Committee agrees the new arrangements for performance reporting subject to the comments raised in paragraph 27 above.

Highways Act 1980

Balcombe: proposed diversion of part of Public Footpath 13Ba

29. The Committee considered a report from the Director Highways and Transport regarding an application from Network Rail to divert part of Public Footpath 13Ba in Balcombe (copy appended to the signed version of the minutes). The report was introduced by the Director Highways and Transport and it was explained that: the application was retrospective; officers had deemed that the legal tests involved in the consideration of the application had been met; and the application had been presented to committee for determination due to the high profile of the location and proposal.

30. Under the Code of Conduct Robin Rogers declared a personal interest in the Balcombe diversion application as he received a pension from British Rail.

31. The Committee agreed that the application met the legal tests and was an important diversion to safeguard the safety of pedestrians. Disappointment was expressed that the application was retrospective and that communication with the applicant had been difficult.

32. It was proposed that the recommendation was amended to incorporate the wording that the Director of Law, Assurance and Governance was authorised to take all necessary steps to confirm the Order, including, in the event that an objection is made, submitting the order to the Secretary of State for confirmation. The Committee agreed the amendment and voted unanimously to approve the application.

33. Resolved – that the Director Law, Assurance and Governance be authorised to make a diversion order under Highways Act 1980 section 119A and to take all necessary steps to secure confirmation of the Order .

Earnley/Selsey/Sidlesham: proposed creation of Public Footpaths and Permissive Bridleways

34. The Committee considered a report by the Director Highways and Transport regarding the creation of new public access opportunities around Medmerry (copy appended to the signed version of the minutes). The Director Highways and Transport introduced the report and advised the Committee that the Environment Agency (EA) had proposed the creation of the new footpaths, permissive footpaths and permissive bridleways as part of its flood defence work in the locality.

35. The Committee supported the addition of the permanent and permissive paths to the rights of way network in the County and recognised the advantage to the public of entering into access agreements with the Environment Agency. The Committee queried the significance of an end date of 2025 for the permissive access rights. *The Director Highways and Transport advised this was at the request of the EA in its application, however it was standard practice in permissive agreements to make clear when permissive agreements were capable of termination.*

36. The Committee voted unanimously to approve the proposed creation and permissive path agreements.

37. Resolved – that the Committee authorises the Director of Law, Assurance and Strategy to:
- i) enter into creation agreements with the Environment Agency, the Royal Society for the Protection of Birds and the owner of Wilsons Farm under the Highways Act 1980 section 25; and
 - ii) enter into permissive footpath and bridleway agreements with the Environment Agency, the Royal Society for the Protection of Birds and the owner of Wilsons Farm.

Commons Act 2006

Application for the Registration of land as a Town or Village Green at Land known as Cuthman’s Field and Fletcher’s Croft

38. The Committee considered a report by the Director of Law, Assurance and Strategy concerning an application to register land known as Cuthman’s Field and Fletcher’s Croft as a village green under Section 15 of the Commons Act 2006 (copy appended to the signed version of the minutes). The Director of Law, Assurance and Strategy introduced the report and explained that the applicant had claimed lawful pursuits had been undertaken on the land as of right. Evidence submitted during consultation on the application had challenged unfettered use of the land and officers had concluded that the application had also failed to meet the Neighbourhood test that must be satisfied in the Commons Act. It was explained that the evidence submitted against the application was considered to outweigh the evidence in support significantly and that the officer recommendation was for refusal.

39. The Local Member to the application, David Barling, spoke on the application. Mr Barling explained that: he supported the officer recommendation for refusal; that the application concerned an unusual area for a town or village Green; and he queried the amount of officer time used to process the application.

40. The Committee felt that the application had failed to meet the tests for the registration of a town or village green. Additionally, the application site was not felt to be suitable for a town or village green and the Committee queried the purpose of making the application. *It was explained that officers were required to accept without question applications if they were submitted in accordance with legislative requirements.*

41. The Committee voted unanimously to refuse the application for a town or village green at land known as Cuthman’s Field and Fletcher’s Croft, Steyning.

42. Resolved – that all of the land known as Cuthman’s Field and Fletcher’s Croft be not registered as a town or village green.

Wildlife and Countryside Act 1981

Application for a Definitive Map Modification Order (Application No.: 1/14) to add a public footpath from King Barns Lane to Public Footpath 3204 (the riverbank)

43. The Committee considered a report by the Director Law, Assurance and Strategy concerning a Definitive Map Modification Order to add a public footpath from King Barns Lane to Public Footpath 3204 at the riverbank (copy appended to the signed version of the minutes). The Director of Law, Assurance and Strategy introduced the report and advised the Committee that for the relevant period of 1982 – 2002 there had been no evidence produced of use of the path by consent. The evidence that had been submitted suggested that use of the path during the relevant period had been unchallenged and as of right therefore the officer recommendation was to approve the application.

44. Cynthia Locke, Local Landowner spoke against the application. Ms Locke had taken ownership of the land from her father in 1997 which had been subject to a countryside stewardship scheme providing consent for public access over the land. The scheme had been in place 1992 – 2002 and evidence could be produced to substantiate the period of the scheme. The relevant period for the application should therefore cover the period 1972 – 1992. The application could not be determined or an order made without due regard to the additional evidence concerning the countryside stewardship scheme.

45. Lindy Moors, the applicant, spoke in support of the application. Ms Moors had spoken to many pedestrians who claimed to have used the path unobstructed since the 1970s. The track was used regularly by people to provide access from the Downlink to the riverside without use of a local highway. The route was often used by local pedestrians as part of a circular walk and the application would make a positive addition to the rights of way network in the local area.

46. David Barling, the local member spoke on the application. Mr Barling supported the application but respected the views of the local landowner. Mr Barling was mindful that the additional evidence submitted by the landowner required consideration before the application could be determined. The Highways Committee of Steyning Parish Council supported the application.

47. The Committee queried the late additional evidence referred to by the landowner and asked that officers assess the new information before the application was determined. A motion to defer consideration of the application until the next meeting was proposed to allow officers to consider the new evidence in detail.

48. There was a brief adjournment at 3.21 p.m. The meeting recommenced at 3.30 p.m.

49. The motion to defer the application was seconded and the Chairman asked that all further evidence to be considered under the application be submitted to the County Council by the end of March 2015. The motion to defer the application was carried by a clear majority of the committee.

50. Resolved – that the Committee defer consideration of DMMO Application No: 1/14 until the meeting on 9 June 2014.

Secretary of State Decisions

51. The Committee received and noted a report concerning the Secretary of State decisions on Diversion Orders for public paths in Heyshott and Fulking (copy appended to the signed version of the minutes).

52. The Committee expressed concern that the sole objection to the Heyshott diversion order from the Open Spaces Society (OSS) had resulted in significant resource implications for the County Council. Officers from the County Council had worked to overcome the objection of the OSS and provide reassurance but the objection had been maintained and the order was therefore submitted to the Secretary of State. The Secretary of State's decision supported the County Council, the objection was not upheld and the order was confirmed. The Committee asked that the Chairman write to the OSS to express disappointment that their objection had resulted in significant resource implications for the County Council.

53. Resolved – that the Committee asks the Chairman to write to the OSS to express disappointment over the circumstances of the objection to the diversion order for public paths in Heyshott.

The Commons Registration (England) Regulations 2014

54. The Committee received and noted a report concerning the Commons Registration (England) Regulations 2014 (copy appended to the signed version of the minutes). The Committee asked: if the new regulations incorporated a clear distinction between Common Land and Town and Village Greens (TVGs); and what were the implications of the regulations on the County Council. *The Committee was informed that a clear distinction between Common Land and TVGs was contained in the Committee's guide to the law which would be circulated following the meeting. The number of applications to the County Council that the new regulations would generate was hard to estimate but the authorities that had piloted the new regulations had not received an excessive level of applications.*

Date of Next Meeting

55. The Committee noted that its next scheduled meeting would be held on 9 June 2015.

The meeting ended at 3.47 p.m.

Chairman