

**Rights of Way Committee**

25 February 2014 – At a meeting of the Committee held at County Hall, Chichester.

Present:

Mr Acraman, Mr Barling\*, Mr Burrett, Mrs Duncton, Mrs Hall, Mr Metcalfe, Mr Quinn\*\*, Mr R Rogers and Mr Whittington (Chairman).

\* Mr Barling arrived at 1.25p.m

\*\*Mr Quinn arrived at 1.00 p.m.

**Declarations of Interest**

29. None.

**Minutes**

30. Resolved – That the minutes of the meeting held on 18 June 2013 be approved and be signed by the Chairman as a correct record.

**Previous Rights of Way Decisions**

31. The Committee received and noted a report by the Head of Law and Governance setting out the progress on previous decisions made by the Committee (copy attached to the signed minutes). It was confirmed that Worthing Borough Council would be contacted in respect of FP 3114 to ascertain whether a diversion order was still required.

**Outstanding Applications**

32. The Committee received and noted a report from the Director of Communities Commissioning and Head of Law and Governance outlining applications awaiting consideration (copy attached to the signed minutes).

**Performance Indicators**

33. The Committee received a report by the Director of Communities Commissioning on performance indicators relating to public rights of way for the last three quarters of 2013 ending 31 December 2013 (copy attached to the signed minutes).

34. Members raised concern that there were no case management report figures from the Contact Centre for the period from 30/06/2013 – 31/12/2013. Jon Perks, Principal Rights of Way Officer, explained that there had been a delay in provision of these figures by the Contact Centre but they were expected to be available by the end of March. These figures could be reported at the next meeting.

35. Resolved that: the report be noted.

**Secretary of State Decisions**

36. The Committee received reports of the decisions of the Secretary of State (copy appended to the signed minutes). The Secretary of State did not confirm the Horsted Keynes Public Path (No 8/1) Diversion Order but did confirm the Worthing DMMO 1/09.

37. The following points were raised in discussion. Members:

- Requested clarification regarding the differing requirements placed on the County Council in relation to opposed diversion orders and Definitive Map Modification Orders (DMMOs). *Christine Luff, confirmed that the County Council had a legal obligation to submit opposed DMMOs to the Secretary of State for determination. There was no such legal obligation in relation to submitting opposed diversion orders, and where a decision was made to submit an opposed diversion order, the Council, rather than the diversion applicant would be responsible for the arising costs.*
- Highlighted that the Harrison Road restricted byway was overgrown and obstructed. *Jon Perks explained that, in this instance, and with offers having already been made to the Council, the Council intends to work with volunteers to assist with clearing overgrown vegetation. In addition the landowner had been made aware of the requirement to remove obstructions including a locked gate that presently prevents public access.*

38. Resolved that: the reports be noted.

**Highways Act 1980 Sections 25 and 26**

**Land south of Bramber: Proposed Creation Order**

39. The Committee considered a report by the Director of Communities Commissioning regarding proposals under the provisions of Sections 25 and 26 of the Highways Act 1980 for creation agreements and creating new public access rights by means of a creation order (report attached to the signed copy of the minutes).

40. The Director of Communities Commissioning introduced the report and updated the Committee with regard to additional consultation responses received since publication of the report. He explained that support for the proposal had been received from Sustrans, the South Downs Local Access Forum, the South Downs Society and Bramber Parish Council. It was also highlighted that works to implement the proposals could not be carried out until Summer 2014 due to the wet ground conditions prevalent at the site.

41. Mr Jones, South Downs Local Access Forum, spoke in support of the proposals. Having used the route, the existing crossing point had proved a stressful experience and the need to make improvements to the crossing had been voiced for a number of years. He enthusiastically supported the proposal and encouraged the Committee to make the creation order.

42. Mrs Butcher, British Horse Society and West Sussex Local Access Forum, spoke in support of the proposals. The existing crossing was dangerous for

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equestrians as it could take 10-15 minutes to cross the road safely meaning riders avoided it; the alternative provided a much safer access. The proposal created an opportunity for establishing a new path that many were in favour of and she hoped the Committee would all support the proposals.

43. Mrs Butcher also spoke on behalf of Bramber Parish Council who supported the proposals. The Parish Council felt the existing crossing was an accident waiting to happen; the safer route would encourage more use of the Downs Link and bring more people into Bramber itself.

44. The Committee made points including those that follow:

- Requested clarification as to whether other options had been explored for siting a Pegasus crossing. *Jon Perks, Principal Rights of Way Officer, explained that this had been considered for installation both at point X on plan 01636, (attached to the signed copy of the minutes), and close to the A283 Steyning roundabout, however this would need additional highway works including traffic calming, lighting and speed control, meaning additional cost.*
- Were pleased to hear that the existing crossing point would remain open for those that wished to use it.

45. The officer recommendation was proposed and seconded and approved by the Committee unanimously.

46. Resolved:-

(1) That the Head of Law and Governance be authorised to make and confirm if unopposed an appropriate path creation order under Highways Act 1980 section 26 for section A – B – C – D as shown on plan 01636.

(2) That in the event of the creation order referred to in (1) above is able to be confirmed, the Head of Law and Governance be authorised to enter into appropriate bridleway and footpath creation agreements under Highways Act 1980 section 25 for sections F – E – Y – A, also D – X, and at point Y as shown on plan 01636.

(3) That in the event of the creation order referred to in (1) above is not able to be confirmed, the Head of Law and Governance be authorised to enter into an appropriate path creation agreement for a public footpath under Highways Act 1980 section 25 for section E – Y as shown on plan 01636.

### Highways Act 1980 Sections 118 and 119

#### **Slinfold: Proposed Diversion of Part of Bridleway 1400 and Extinguishment of Footpath 1401 at Dedisham Manor**

47. The Committee considered a report by the Director of Communities Commissioning regarding an application made under the provisions of Sections 118 and 119 of the Highways Act to divert part of bridleway 1400 and extinguish footpath 1401 at Dedisham Manor (report attached to the signed copy of the minutes). The Chairman explained that additional information in support of the

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application submitted by the applicant, including a written statement, sketch plan and photographs had been circulated to the Committee (copy attached to the signed minutes).

48. The Director of Communities Commissioning introduced the report highlighting that the proposal was not considered to satisfactorily meet the test for confirmation in that the proposal would have an adverse effect on walkers'/riders' enjoyment of the paths as a whole. This was supported by responses from consultees who cited loss of amenity and loss of user enjoyment in their objection to the proposed alternative route.

49. Mrs Harrison spoke on behalf of the applicant in support of the application. Property had been stolen which was considered to be a direct result of the close proximity of the bridleway 1400 to the applicant's house. This had led to heightened anxiety for those living at the house, particularly when their dogs barked, alerting them to the fact that people were present near the property. It was felt that the proposed diversion route was just as enjoyable as the existing bridleway and indeed some people were already using this despite the fact that it was not presently a public right of way.

50. The Committee made points including those that follow:

- Understood and sympathised with the applicant but accepted that many footpaths and bridleways passed close to properties and many were closer than this one.
- The present route passes close to other houses that are exposed to the same privacy and security issues but there is no opportunity to divert the path away from these properties.
- Some Members considered there was a loss of enjoyment in that the views from the proposed new route were less pleasant and did not provide sight of the historic, attractive Dedisham Manor and views from footpath 1401 would be lost.
- Conversely a Member suggested that the enjoyment of the path user would not deteriorate so significantly by diverting the bridleway that it outweighed the security of the property owner.

51. The officer recommendation was proposed and seconded and the Committee voted by a clear majority not to divert the bridleway or extinguish the footpath: 5 in support, 1 against and 1 abstention.

52. Resolved – That the making of a diversion order in respect of bridleway 1400 and an extinguishment order in respect of footpath 1401 be not approved.

### **Commons Act 2006 Section 15**

#### **Application under S.15 of the Commons Act 2006 for the registration of land claimed to have become a town or village green at land known as Fields at Rosier Wood, Billingshurst**

53. The Committee considered a report by the Head of Law and Governance regarding the findings of an independent Inspector, following a public inquiry, in relation to an application made under the provisions of Section 15 of the

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Commons Act 2006 to register land in Billingshurst as a town or village green (report attached to the signed copy of the minutes).

54. Members felt that the Inspector's report had provided clarity to the complex and conflicting evidence that had originally been considered by the Committee at their meeting in June 2013. *Peter Jupp, Rights of Way Officer, explained that the Inspector had the ability to test the evidence in public by interviewing the witnesses whereas officers of the County Council were only able to assess written evidence. The Inquiry had assisted in clearly proving all the legal tests required for registration of the land as a Village Green had not been satisfied.*

55. The officer recommendation was proposed and seconded and approved by the Committee unanimously.

56. Resolved: That the application for registration of land known as fields at Rosier Wood, Billingshurst be refused for the reasons set out in the Inspector's report dated 3<sup>rd</sup> December 2013.

### **Commons Act 2006 Section 15**

#### **Application under s.15 of the Commons Act 2006 for the registration of land claimed to have become a town or village green at Land to the East of Manor Close, Henfield**

57. The Committee considered a report by the Head of Law and Governance regarding an application made under the provisions of Section 15 of the Commons Act 2006 to register land to the east of Manor Close in Henfield as a town or village green (report attached to the signed copy of the minutes).

58. The Head of Law and Governance introduced the report and advised the Committee that it was not felt the neighbourhood described met the required test and, despite the volume of evidence including use of well trodden paths, use of the land as a whole was not demonstrated. In this respect, on balance, the application had failed to prove that all the tests for registration had been satisfied.

59. Mr Foulkes, landowner, spoke in objection to the application. The field was private land and in agricultural use, for grazing cattle in the period until 1995, and for a hay crop since then. A worn path through the field suggesting local residents were using it as a cut through prompted the erection of plastic signs indicating no public right of way, when these were destroyed they were replaced with a metal sign concreted into the ground. Letters were also sent to the local residents asking them to stop using the field. Fencing surrounded the field which was regularly repaired when broken through vandalism. Contractors who worked for the landowner had asked people seen on the land to refrain from trespassing. Mr Foulkes asserted that public access had not been allowed at any time and it was not a village green.

60. Mr Knight, contractor for the landowner, spoke in objection to the application. He had maintained fencing and gates on the field between 2006 and 2009. Fencing around the site had regularly been broken and had to be repaired, chain link fencing had been replaced with barbed wire in places as the

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chain link had been repeatedly removed. Dog walkers had been seen in the field but no other activities were observed taking place. Those trespassing had been challenged and told they shouldn't in the field as there was no right of way.

61. Mr Dyer, Solicitor who represented the Foulkes family, spoke in objection to the application. The officers were correct and the application was weak. The site had been granted planning permission for development of 100 houses and the timing of the application for village green status coincided with the planning permission. Many of those who had submitted objections to the planning application were from the Wantley Estate but the objections related to traffic and road safety issues, and did not reference the fact that the land was a village green. If the area had been used as a village green more evidence would be observed; the only evidence was of people walking a direct route across the land.

62. Sarah Deelman, spoke on behalf of the applicant, in support of the application. It was felt that a housing estate could be considered as a neighbourhood for the purposes of the village green criteria. The land had not been entered by force and there were well trodden entry points. The sign erected by the landowner faced away from the land, was difficult to see and was overgrown with vegetation. It was felt that the signs should have been put at all access points if it was to be made clear that there was no entry to the land by the public. The collective evidence showed many uses of the land in entirety rather than just dog walking or following a linear path through the site; in any case it was considered that dogs walking should be thought of as a valid pastime. Cattle grazing on the land had also not proved a deterrent to its use by local people. Consultation responses submitted in relation to the Planning application were focussed on the content of that application and so did not reference the village green.

63. Claire Hazeldean, local resident, spoke in support of the application. She had used the field since childhood and access had been obtained through gaps in the fence. The field had been used for a number of pursuits including parties, nature studies and easter egg hunts. Ball games were also played here as they were not allowed at other sites within the village. It was felt that the landowner was unaware of the range of activities that had taken place in the field because they were not present at the site day to day.

64. Tim Anscombe, local resident, spoke in support of the application. The field had been accessed through a back gate in his property and, when it was accessible in dry months, he had mown a grass area within the field. It was felt that grazing cattle at the site and using it as a village green were not incompatible. He had used the field when he was younger and cattle grazed there and this had not caused a problem, indeed it was a good opportunity for children to learn how to behave around cattle. He had not been told as a child that he couldn't use the field, nor had permission been given to play in it. However the field had been accessible with gaps in the hedge and fences, he didn't have to climb over to gain access. The current situation was that other recreational space within the village was aimed at and appealed to younger children; therefore older children used the field.

65. The Committee made comments including those that follow: -

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- It was felt that the London Road Estate could be considered as a neighbourhood.
- The Committee was divided in its opinion of the evidence provided. Some members of the committee felt that it was fair to take into account the worn linear path across the field as evidence of use, and along with the other information, felt there was overwhelming proof of public use. . Other members considered that it was a piece of farmed land, and was just being used as an unofficial right of way.
- It was considered that the weight of evidence the applicant was required to supply, proving use, was too excessive as it was not reasonable to expect people to take photographs when they used the field for leisure purposes.
- Sympathised with the applicants but highlighted that the legislation was very precise and, on the weight of evidence supplied, the application did not meet all the required tests.

66. The officer recommendation was proposed and seconded and the Committee voted by a clear majority that the land East of Manor Close, Henfield should not be registered as a town or village green. The Committee voted: 4 in favour, 3 against.

67. Resolved – That all of the land known as land to the East of Manor Close Henfield be not registered as a town or village green.

### Commons Act 2006 Section 15

#### **Application under s.15 of the Commons Act 2006 for the registration of land claimed to have become a town or village green at Land at Wantley Fields, Henfield**

68. The Committee considered a report by the Head of Law and Governance regarding an application made under the provisions of Section 15 of the Commons Act 2006 to register land at Wantley Fields in Henfield as a town or village green (report attached to the signed copy of the minutes).

69. The Head of Law and Governance introduced the report and explained to the Committee that, whilst it was clear people were using the land as there were worn routes across it, this only proved use of informal paths not the land as a whole. In addition the claimed neighbourhood was not considered to be sufficiently cohesive to meet the legal tests.

70. The Committee made comments including those that follow: -

- Considered that evidence of use was not substantiated. On a site visit carried out on a sunny day at the weekend no-one was seen using the land.
- Felt that the London Road Estate could be considered as a neighbourhood but that other required legal tests had not been met.
- It was understood that local people valued areas of open land within their neighbourhoods but there were other opportunities for these to be preserved. Communities should be considering liaising with Parish Councils to look at identifying and setting aside areas of open space via their Neighbourhood Plan.

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71. The officer recommendation was proposed and seconded and the Committee voted by a clear majority that the land at Wantley Fields, Henfield should not be registered as a town or village green. The Committee voted: 4 in favour, 3 against.

72. Resolved – That all of the land known as land at Wantley Fields, Henfield be not registered as a town or village green.

### **Wildlife and Countryside Act 1981 Section 53**

#### **Loxwood: Application for a Definitive Map Modification Order (Application No:1/13)**

73. The Committee considered a report by the Head of Law and Governance regarding an application for a Definitive Map Modification Order (Application No: 1/13) to modify the Definitive Map and Statement for Petworth by adding a footpath from Station Road to the High Street in Loxwood, known locally as Nepp Lane (report attached to the signed copy of the minutes).

74. The Committee considered the following points: -

- Wondered what had triggered the application. *Ami Sweeney, Legal Assistant, advised local residents considered that the public status of the path should be legally secure, and so lodged the application, this was considered to be the 'trigger event'.*
- Concern was raised regarding the inaccessibility of the path, particularly the bridge, which it was not possible to use due to disrepair and queried whether the County Council would make it useable. *Becky Moutrey, Senior Solicitor, explained that in the event that a DMMO was made and confirmed, the County Council would not have an automatic duty to maintain the path but would consider using resources and/or encouraging volunteers to carry out work to get the route opened up.*

75. The officer recommendation was proposed and seconded and approved by the Committee unanimously.

76. Resolved: - That a Definitive Map Modification Order under Section 53 (2) in consequence of an event specified in sub-section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981, to add a footpath from Station Road to the High Street in the Parish of Loxwood be made.

### **Wildlife and Countryside Act 1981 Section 53**

#### **Worthing: Application for a Definitive Map Modification Order (Application No:1/12)**

77. The Committee considered a report by the Head of Law and Governance regarding an application for a Definitive Map Modification Order (DMMO) (Application No: 1/12) to modify the Definitive Map and Statement for Worthing by adding a footpath from Arundel Road to Cheviot Road in Worthing (report attached to the signed copy of the minutes).

78. The Committee considered the following points: -

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- Raised concern that, by allowing access, vandalism could occur and there was a risk that motorcycles would start driving along the path. Barriers would be needed
  - Highlighted that a locked gate that currently blocked the path would need removing.
  - Wondered how Members could learn about progress of this or other DMMO proposals. *The Senior Solicitor advised that Members should speak to the appropriate officers involved from the Legal Services team and that progress on previous decisions was routinely reported to each meeting.*
79. The officer recommendation was proposed and seconded and the Committee voted by a clear majority to make the Definitive Map Modification Order.. The Committee voted: 7 in favour and 2 abstentions.
80. Resolved: - That a Definitive Map Modification Order under Section 53 (2) in consequence of an event specified in sub-section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981, to add a footpath from Arundel Road to Cheviot Road in Worthing be made.

### **Date of Next Meeting**

81. The next meeting of the Committee would be held on 10 June 2014.

The meeting ended at 1.40 p.m.

Chairman