

Rights of Way Committee

14 March 2017 – at a meeting of the Committee held at County Hall, Chichester.

Present: Mr Whittington (Chairman), Mr Acraman*, Mr Bradbury, Mrs Duncton and Mr R. Rogers.

* Mr Acraman arrived at 2.20 p.m. and did not participate in the debate or vote on the Extinguishment Orders, under the Highways Act 1980 Section 118: West Sussex County Council (Fittleworth) Public Path (No. 702) and West Sussex County Council (Fittleworth) Public Path (No. 2866).

Apologies: Mr Metcalfe, Mr Quinn and Mrs Urquhart.

Substitutes: None.

39. The Chairman proposed that the applications – Items 6(a), 6(b) and 6(c) on the Agenda be heard ahead of Items 4(a), 4(b) and 5, in order that speakers on the applications and interested parties were not kept waiting. The Committee approved the proposal.

Declarations of Interest

40. Mrs Duncton declared a personal interest as County Council representative on South Downs National Park Authority, in relation to:

Extinguishment Orders, under the Highways Act 1980 Section 118:
West Sussex County Council (Fittleworth) Public Path (No. 702)
West Sussex County Council (Fittleworth) Public Path (No. 2866); and

Diversion of part of footpath, under the Highways Act 1980 Section 119:
East Lavington: Proposed Diversion of Part of Footpath (FP) No. 724 at Lavington Stud; and

Diversion of part of footpath, under the Highways Act 1980 Section 119:
Graffham: Proposed Diversion of Part of Footpath (FP) No. 987 at Lavington Stud.

41. Mrs Duncton declared a personal interest as local member, in relation to:

Extinguishment Orders, under the Highways Act 1980 Section 118:
West Sussex County Council (Fittleworth) Public Path (No. 702)
West Sussex County Council (Fittleworth) Public Path (No. 2866).

42. Mr Bradbury declared a personal interest as a member of Mid Sussex District Council in item 1 'Haywards Heath FP 25CU' on the Previous Committee Decisions Progress Report.

Minutes

43. Resolved – that the minutes of the meeting held on 7 June 2016 be approved and signed by the Chairman as a correct record.

Extinguishment Orders, under the Highways Act 1980 Section 118:

West Sussex County Council (Fittleworth) Public Path (No. 702)

West Sussex County Council (Fittleworth) Public Path (No. 2866)

44. The Committee considered a report by the Director of Law and Assurance, concerning an application to extinguish lengths of public footpaths 702 and 2866 (copy appended to the signed version of the minutes). Christine Luff, Team leader – Rights of Way introduced the report. Having reviewed the objection of the South Downs National Park Authority (SDNPA) and the comments on the objection from the applicant's agent, it is considered that the legal tests for making and confirmation of the Orders have been met. As the objection still stands, to progress to confirmation, the Orders will need to be submitted to the Secretary of State for determination and, therefore, authority to make the submission is sought.

45. Ms Sarah Manchester, consultant to SDNPA, spoke in objection to the application. The Orders do not meet the legal criteria for confirmation. The primary consideration is the extent to which the footpaths would be likely to be used by the public if not extinguished. Footpath 702 is a direct continuation of the local path, providing the most direct north-south route and the one most likely to be used by the public; only walkers coming to or from the east are likely to choose footpath 2864. Footpath 702 was seen to be overgrown in July 2016 and has been removed from the clearance programme; part of footpath 702 has not been reinstated through growing crops. Lack of use of an overgrown path can't be used as evidence that a path is unlikely to be used. The Committee report acknowledges the paths are used to some extent. Lack of objections does not prove the paths are not likely to be used. The footpaths offer good views of attractive historic buildings that will be lost to the public, if closed. Ms Manchester's understanding is that Case Law has shown that legislation referred to in paragraph 5.1 of the Committee report only applies to adjacent landowners regarding access to their property. The extinguishments will result in a net loss of enjoyment and the Rights of Way Improvement Plan states that only applications that don't result in such a loss of enjoyment should be considered. The County Council will bear the cost of a public inquiry and should only pursue the Orders if the legal tests are met.

46. Mr Nigel James, SDNPA, spoke in objection to the application. One of the statutory purposes of the National Park is to promote opportunities for the public's enjoyment of the Park's Special Qualities, including views of diverse landscapes and buildings. Warren Barn's footpaths are part of a historic network and are characteristic of the Western Weald, and provide walkers with unique views different to the alternative routes. Views of the Barn from footpath 2864 are hidden by a fold of in the land particularly when trees are in leaf. The SDNPA Conservation Officer's assessment is that Warren Barn forms an attractive group of buildings, contributing to the cultural heritage of the locality; planning documents support this. SDNPA would not like to see the contribution that these footpaths make to the enjoyment of the South Downs lost. The duty to have regard to National Park purposes does have to be given due weight. A more comprehensive consultation on the extinguishments is called for. The paths should not be permanently lost to current or future generations. The paths need to be maintained, as well as not extinguished, for the public to use

them, and are likely to be used by the public if they were to remain open. If the public rights of way are removed, this will set a precedent.

47. Mr Michael Wood, ET Landnet Ltd, agent for the applicant, spoke in support of the application. A statement from Mike Walker, consultant, addresses the following. The application hinges on a single objection from SDNPA, who had not previously objected at consultation on the making stage. Nothing has changed since. The footpaths do impact on the owners of Warren Barn because they pass through their garden, close to their front door. The legal tests have been satisfied. The routes are not everyday routes. During consultation there was no suggestion of a need to retain the footpaths nor that they are or will be needed. SDNPA had agreed that the footpaths do impact on the owners, having previously agreed to realign the Serpent Trail. There has been no objection from Open Spaces Society, Ramblers or local people. DEFRA's Stakeholder Working Group issues guidance that supports the extinguishment of footpaths that pass through farmyards or private gardens, where alternatives are available. Mr Wood acknowledged that there is some limited use of the footpaths. Only public need is relevant. If the public wished to see the views then there would be greater use of the paths. Superior views are enjoyed from the alternative route. The South Downs Society supports the extinguishments. Warren Barn is attractive but it is not a listed building. The legal tests have been met.

48. Mrs Ruth Huddleston, the applicant and owner of Warren Barn, spoke in support of the application. The SDNPA has been erratic in its views; first saying it would object only if others did; it now mention the setting of Warren Barn but told the Local Access Forum that their objection was because the route was an important, well-used link. When the property was purchased, searches did not mention the Serpent Trail. This was subsequently promoted but the leaflet did not state that the path passed through a private garden. The current paths are intrusive: some walkers have invaded the family's privacy, making personal and inappropriate comments, peering in through the windows, taking photos, allowing dogs to kill a chicken and made unfounded claims of path-blocking; the police asked one person to stop walking through the garden. Walkers cannot be unaware of the notices around the area. The claimed overgrown path was strimmed three times in the last 12 months. Neither the OS map nor the Serpent Trail guide have been updated to advise of the new route, which means walkers continue to walk through the thinking they are on the Serpent Trail. SDNPA has commented inappropriately on the value of Warren Barn and has, generally, shown a lack of respect to the family and have not sought to engage with them.

49. The Committee sought clarification on the following point:

- Who bears the cost of a submission? Officers advised that the cost is shared. The applicant will pay an increased administration cost. The County Council generally provides a room for the hearing or hires one at cost, there is then the cost of preparation for an inquiry including officer time and the cost of notices in the press and around the site are relevant. The Planning Inspectorate do not charge for their time.

50. In reaching a decision the Committee made the following points:

- The property was previously derelict.

- Fittleworth Parish Council is in support of the extinguishments.
- The reason why SDNPA has only chosen to object at the confirmation stage is questioned.
- There will be different views from the alternative route, but nothing is being lost to walkers or the community. Different views are part of all routes.
- The lengths of the footpaths proposed for extinguishment, particularly 702, are very close to Warren Barn, which is a private home.
- Measured online, using a satellite mapping tool, there is only a minor difference in distance between the lengths to be extinguished and the alternative route.
- SDNPA's comments regarding the County Council bearing the cost of inquiry are not material to the consideration of the application.
- The alternative route provides an easier path.
- The proposed extinguishment orders are reasonable.

51. The amended officer recommendation, proposed by Mr R. Rogers and seconded by Mrs Duncton, was approved unanimously by the Committee.

52. Resolved – That the Public Path Extinguishment Orders made in respect of footpaths 702 and 2866 in the Parish of Fittleworth be submitted to the Secretary of State for determination.

Diversion of part of footpath, under the Highways Act 1980 Section 119:

East Lavington: Proposed Diversion of Part of Footpath (FP) No. 724 at Lavington Stud

53. The Committee considered a report by the Director of Highways and Transport, amended by the Appendix Update Sheet (copy appended to the signed version of the minutes), concerning an application to divert part of Public Footpath 724 at Lavington Stud in East Lavington (copy appended to the signed version of the minutes). Judith Grimwood, Senior Rights of Way Officer, introduced the report. It is considered that the legal tests for making and confirmation of the Orders have been met and it is recommended that an Order be made.

54. Mr Lee Scott, Savills, agent for the applicant, spoke in support of the application. The owners of the Stud have high expectations and wish to minimise risks to the health and wellbeing of valuable horses. Biosecurity means protecting the horses from diseases and the opportunity for diseases to be passed on from humans or animals. Many of the horses are also skittish, meaning there is a risk to people and dogs and also to the horses themselves; for example, mares can be particularly distressed if with foals. If the Stud owners cannot provide protection they may look to move their business elsewhere. It is not possible to fence both sides of the route through the field; this would subdivide the field, cut-off the water supply and reduce the land available. There is evidence that many people already walk around the edge of the field. The alternative route would not be less convenient, adding only a minute or two extra and there are no gates or stiles. It will not be less

attractive because it offers pleasant views across fields and for people who are nervous around horses it will improve their enjoyment due to absence of worry.

55. The Committee sought clarification on the following point:

- Information about the design of the fence on the northern side of the path was requested, because in some cases fencing-in has created a tunnel effect. Officers advise that this will be the high quality, attractive post and rail design currently seen elsewhere on the Stud's land; it will be the standard height for such livestock. The proposed path will be wider than average, being 3 metres. Whilst there is hedging to the south of the path, there are still some views to the south of the golf course and of other paddocks.

56. In reaching a decision the Committee made the following points:

- There is no significant loss of amenity, the extra 100m on the alternative route will only take a couple of minutes to walk.
- It makes more sense to have the route around the edge of the field, especially for people who are nervous around horses.
- The alternative path also offers some shade in summer as it passes through a small wood.

57. The officer recommendation, proposed by Mr Acraman and seconded by Mr R. Rogers, was approved unanimously by the Committee.

58. Resolved – That the Director of Law and Assurance be authorised to make a diversion Order under Section 119 of the Highways Act 1980 in respect of footpath 724 and to take reasonable steps to implement the proposal.

Diversion of part of footpath, under the Highways Act 1980 Section 119:

Graffham: Proposed Diversion of Part of Footpath (FP) No. 987 at Lavington Stud.

59. The Committee considered a report by the Director of Highways and Transport, amended by the Appendix Update Sheet (copy appended to the signed version of the minutes), concerning an application to divert part of Public Footpath 987 at Lavington Stud near Graffham (copy appended to the signed version of the minutes). Judith Grimwood, Senior Rights of Way Officer, introduced the report. It is considered that the legal tests for making and confirmation of the Orders have been met and it is recommended that the Orders be made.

60. Mr Lee Scott, Savills, agent for the applicant, spoke in support of the application. There are perceived risks to the health of the horses at the Stud, which are different depending on which parts of the Stud's land is involved; this doesn't mean that the Stud is being inconsistent in its approach to footpaths on its land. Footpath 987 lies very close to the village of Graffham and is used frequently by people taking their children to school, dog walkers and holidaymakers, and so there is a higher risk of diseases coming into contact with the horses. The proposed route would not be more inconvenient because it is

similar in length and takes a direct, ungated route, which is already used by many people anyway because it is perceived as the more obvious path. The proposed path will not be less scenic and offers an alternative, scenic view of traditional buildings. There is little risk of contact with farm machinery because the main centre for the Stud is some miles away. SDNPA's objection directly contradicts their opinion on another application for extinguishment orders at Fittleworth, stating here that walkers prefer a rural route to one near buildings.

61. The Committee sought clarification on the following point:

- A Committee member raised concerns about the condition of the proposed path and requested that the agent speak with the applicant about this. Officers advised that they have inspected the proposed route, noting the surface is of mixed hardened material and they do not have any concerns. It was highlighted that the connecting path at the end is rural in nature and does not have a smooth surface. The member's comments were noted by the Committee.

62. In reaching a decision the Committee made the following points:

- This application does differ from those usually seen, in that most people wish to move footpaths away from the front of buildings and particularly front windows.
- There have been no objections from the residents of the cottages.
- The owners of the Stud have acknowledged the concerns about increased footfall passing buildings and the potentially higher risk of criminality. Additionally, in relation to the Police's concerns about the proposed path leading to an increased risk of crime, it is noted that the rear of buildings are also used as access routes by criminals as well as the fronts.

63. The officer recommendation, proposed by Mrs Duncton and seconded by Mr R. Rogers, was approved unanimously by the Committee.

64. Resolved – That the Director of Law and Assurance be authorised to make a Diversion Order under Section 119 of the Highways Act 1980 in respect of footpath 987 and to take reasonable steps to implement the proposal.

Previous Rights of Way Decisions

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

66. Jonathan Perks apologised to the Committee that in relation to item 1 of the report 'Haywards Heath FP 25CU', the information is incorrect. A Permissive Path Agreement has not been completed nor a Diversion Order made by Mid Sussex District Council, who declined to make an order under concurrent powers citing lack of experience. Issues with planning permission mean that the County Council has no further information and this is not currently listed as a priority. The Committee expressed a wish for Officers to be more proactive in contacting parties because the Diversion Order and Permissive Path agreement are

necessary to avoid legal problems should the owners decide to prevent access to the path or use the land for other purposes.

67. Judith Grimwood advised that in relation to item 6 of the report 'Warnham FPs 1578 and 1577 and upgrade to BW', there were a number of objections to the original Diversion Order; the applicant took on a position of responsibility and was unable to pursue the application for a period, but has recently expressed a wish for the Orders to be submitted to the Secretary of State for determination. Judith will now visit the site in order to prepare comments for the submission.

68. Officers advised that in relation to item 29 of report 'Bramber: DMMO 3/14: addition of BW from RB 2059 to used route of BW 3183', due the death of one of the landowners, there would be a delay in the making of the Definitive Map Modification Order for a short period of time as a courtesy to the family.

Outstanding Applications

69. The Committee received and noted a report from the Director of Highways and Transport and the Director of Law and Assurance outlining applications awaiting consideration (copy attached to the signed minutes).

70. Officers advised that in relation to the removal of land from the TVG register at Nepcote House, this has now been agreed.

71. Officers advised that in relation to item 6 of report 'Billingshurst FP 1322', a delegated decision has now been taken.

72. Judith Grimwood advised that in relation to item 36 of report 'West Hoathly FP 31WH', the original application involved an extensive diversion, but due to a planning application to build a house and garage a shorter Diversion Order was confirmed in 2011. Since then the applicant has stated that he wishes to continue with the application for the extensive diversion. Consultation responses included a number of objections which resulted in the applicant being asked to review his plans in February 2016, to which there has been no response. Members directed Officers to contact the applicant and set a timescale of 10 weeks to 3 months for him to respond, after which if a response is not forthcoming the application should be cancelled.

73. Officers advised that in relation to item 37 of report 'West Thorney FP 202', parts of the path have disappeared due to coastal erosion and the situation is still changing. A diversion is still required and there is an identified used path. The Chairman pointed out that this may be picked up as part of the creation of a Natural England's Coastal Path plan.

74. Concern was raised regarding the long standing nature of a number of the applications. The Chairman advised that this matter has been discussed with officers.

Performance indicators and update on performance

75. The Committee noted a verbal report by Jonathan Perks, Principal Rights of Way Officer, who provided an update on performance during the 2016-17 financial year, as follows:

- The County Council's position in relation to performance against the National Highways and Transport (NHT) Annual Survey 2016 measurements regarding Public Rights of Way.
- The County Council, with the assistance of volunteer Parish Path Inspectors, continued to deliver the 15-month cyclical parish inspection and maintenance programme. The programme is on schedule.
- The maintenance contract has been re-procured with County Tree Surgeons (CTS) of Crawley Down and will begin on 1 May 2017 for 4 years. The works delivered include repairs and renewals to signs, bridges and steps, and vegetation clearance. During the last year, CTS repaired or replaced over 1700 signs and over 130 bridges and boardwalks.
- Volunteer rangers additionally support maintenance and availability of the network. There has recently been a recruitment drive to expand the service – an article in West Sussex Connections has attracted a lot of interest and we are currently reviewing applications.
- Between the Public Rights of Way Volunteer Ranger Team, the South Down's Volunteers and the Army, volunteers have donated 2,851 hours of time over 71 Task Days in the last year. With their help, amongst other projects, over 4km of vegetation has been cleared; the installation of 67m of boardwalks, 178 steps, 3 new bridges, 3 kissing gates; and 25 tonnes of new surfacing material moved.
- A programme of summer vegetation clearance ran from end of June to mid-August 2016. Paths were identified from historic problem reports and input from Access Rangers. Over 300km of clearance was undertaken, costing nearly £30,000. Parish Councils have been asked for suggested routes for inclusion in this year's Summer Clearance programme.
- The successful 'gates for stiles' programme was continued, replacing 54 stiles with gates.
- 4646 problems were logged onto the service's database, Countryside Access Management System (CAMS). Officers continue to prioritise health and safety issues over issues of minor maintenance, such as damaged signage.
- The CAMS database continued to develop, both in functionality and population. The roll-out of an on-line portal, which is intended to enable volunteer parish path inspectors and customers to log reports and track their progress, will be available later this year
- There were four new customer complaints, two of which went to Stage 2. One complaint was partially upheld (Selsey) (post meeting note: this complaint is now fully upheld) and three not (Arundel, Madehurst, Shermanbury).

- Two compliments were submitted directly to the WSCC Customer Service team. All other compliments received by the PROW team are not specifically logged.

76. One Committee member observed that the printed statistics from the NHT Survey were not useful in themselves, and two advised that a written report would be preferred. The members' comments were noted by the Committee. The Chairman advised that it had previously been agreed by the Committee that a verbal report would be received.

Date of Next Meeting

77. The Committee noted that there will be an additional date in the County Council's calendar in 2017, for a Rights of Way Committee Member Induction training event (part of the new Member Induction Programme 2017) which will be held at 2.15 pm on Tuesday 20 June 2017.

78. The Committee noted that its next scheduled meeting would be held at 2.15 p.m. on Tuesday 11 July 2017.

The meeting ended at 4.20 p.m.

Chairman