

## **Rights of Way Committee**

28 February 2012 – At a meeting of the Committee held at County Hall, Chichester.

Present:

Mr Acraman (Chairman), Mr Blake, Mr Burrett, Mrs Jupp, Mr Peters, Mr Rogers, Mr Whittington and Dr Wilsdon.

Apologies:

Mr Duncton

### **Declarations of Interest**

60. In accordance with the Code of Conduct Mr Peters declared a personal interest in agenda item 6a (Path Diversion application, Heyshott) as a sponsor of a dog trained by the applicants Canine Partners. Mr Rogers declared a personal interest in agenda item 7c (DMMO application, Worthing) as an associate of a registered speaker on the application.

### **Minutes**

61. Resolved – That the minutes of the meeting held on 18 October 2011 be approved and be signed by the Chairman as a correct record subject to the removal of the proofing note in paragraph 44 in brackets.

### **Previous Rights of Way Decisions**

62. The Committee received and noted a report by the Head of Legal and Democratic Services setting out the progress on previous decisions made by the Committee (copy attached to the signed minutes).

### **Outstanding Applications**

63. The Committee received and noted a report from the Director Communities and Infrastructure and Head of Legal and Democratic Services outlining applications awaiting consideration (copy attached to the signed minutes).

### **Performance Indicators**

64. The Committee received and noted a report from the Director Communities and Infrastructure on performance indicators relating to public rights of way for the quarters ending 30 September and 31 December 2011 (copy attached to the signed minutes).

### **Highways Act 1980 Section 119**

#### **Heyshott: Proposed diversion of part of Footpath 962/1**

65. The Committee considered a report by the Director of Communities and Infrastructure regarding an application made under the provisions of Section 119 of the Highways Act 1980 to divert part of footpath 962/1 at Heyshott (report attached to the signed copy of the minutes).

66. Clive Murray, Canine Partners (applicant) spoke in support of the application. The footpath bisects a field that was used by the organisation for the training of dogs to be provided as assistance dogs to people with disabilities. The diversion order was sought to avoid interruptions to the training of dogs and bonding sessions between dog and partner.

67. The Committee considered the following points:

- The Committee was satisfied that legal tests for making a Diversion Order had been met.
- The adverse comments received in response to consultation were not considered to be substantive or to be reason not to support the diversion proposal.
- Members of the Committee suggested that separation of the proposed path from the paddock should be achieved by fencing if possible, or if hedging is necessary then it should be kept trimmed to a reasonable height to prevent an unpleasant feeling of enclosure for path users.

68. The Committee agreed the officer recommendation unanimously and authorised the Head of Legal and Democratic Services to make the Diversion Order.

69. Resolved - that the Head of Legal and Democratic Services be authorised to make a Diversion Order under Section 119 of the Highways Act 1980.

#### **Pulborough: Proposed diversion of part of Footpath 2308/3 and upgrade to Bridleway**

70. The Committee considered a report by the Director of Communities and Infrastructure regarding an Order made under the provisions of Section 119 of the Highways Act 1980 to divert part of footpath 2308/3 and upgrade to Bridleway (report attached to the signed copy of the minutes). The proposal met with acceptance and support from path users at the consultation stage but, following officer delegated decision to make the Order, two objections were received.

71. Mrs Tricia Butcher, British Horse Society, spoke in favour of the application. The proposed upgrade of part of the diverted footpath would be of benefit to horse riders and cyclists enabling the avoidance of Broomers Hill Lane which is narrow but with fast cut-through traffic. The proposal would support the goals of the West Sussex Rights of Way Improvement Plan.

72. The Committee considered the following points:

- Following site visits the Committee advised that the entrance to the proposed path would need to be properly graded to enable use by horse riders. Clearance work on over hanging foliage would also need to be undertaken on the existing path to be upgraded to a Bridleway. The case officer advised that this work, together with surface improvements and the provision of gates was included as part of the works to be carried out to implement the proposal.
- It was acknowledged that the current path passed very close to the applicant's house which could have a detrimental impact upon privacy and security.

- The Committee was satisfied that the objections received did not present information to support an argument that the legal tests had not been met.

73. The Committee agreed the officer recommendation unanimously and authorised the Head of Legal and Democratic Services to submit the order to the Secretary of State for determination.

74. Resolved – That the Head of Legal and Democratic Services be authorised to submit Public Path (No 2308/3) Diversion Order 2011 to the Secretary of State for determination.

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

#### **Ansty and Staplefield: Application for a Definitive Map Modification Order (App No: 1[a, b and c]/2010)**

75. The Chairman confirmed that this report had been withdrawn and would be considered at the next meeting due to the late receipt of significant evidence. All interested parties would be written to and advised of a deadline for the submission of evidence before the next Rights of Way Committee meeting.

#### **Worth: Application for a Definitive Map Modification Order (App No: 2/09)**

76. The Committee considered a report by the Head of Legal and Democratic Services regarding an application for a Definitive Map Modification Order (Application No: 2/09) to add to the Definitive Map and Statement for Cuckfield Rural a Footpath creating a circular walk from the Martins alongside the stream and back at Worth (copy appended to the signed version of the minutes).

77. Mr Paul Vincent, a local landowner spoke against the application. He said that during the relevant period the route of the path on Hophurst Farm land would have been impassable due to undergrowth and barbwire fencing. The width of the path had not been specified in the application which was inconsistent with the requirements of the Act. No defined path existed to the east of the weir and there were discrepancies between the evidence forms and the summary of evidence submitted, as attached to the report.

78. Mr Robert Vincent, a local landowner spoke against the application. He said that there was no clearly defined footpath to the east of the weir and the claimed route passed through a large stream. It was not felt that it was possible to walk the whole of the claimed route. Correspondence between the landowners and the Thomas Barrett Trust was referred to and the lack of clarity regarding land ownership and maintenance obligations on the land beside Worth Way.

79. The Committee considered the following points:

- The Head of Legal and Democratic Services (HL&DS) confirmed the procedure undertaken to ascertain land ownership; notices had been served on all interested parties in the area and site notices had been erected. Notice had been served in accordance with statute therefore the issue of land ownership was not relevant to the decision of the Committee.
- It was confirmed that during an officer site visit in 2010 the whole of the path had been walked. In 2011 it had not been possible to walk the entire route due to flooding.
- Members who had attended the site and walked the route stated that the southern path was clearly defined as far as the weir where it became less

obvious. The route to the north was overgrown and not clearly defined. The HL&DS informed the Committee that the current state of the route was not relevant to the determination of the application. The Committee was examining the existence of the route retrospectively and whether user evidence of 20 years of use 'as of right' was persuasive.

- The route of the claimed path and the accuracy of the map provided with the report were queried. Concern was expressed that the user evidence was confused and unclear. The evidence provided by users required clarification to determine the route of the path precisely.
- To avoid further confusion, the two ponds in the vicinity should be described as being either the east or west pond rather than the larger or smaller pond.
- To address the confusion and uncertainty relating to the route of the path and the user evidence, the deferral of the application was proposed. It was requested that the following actions be undertaken by officers before the next meeting: confirm the route of the path with the applicant; clarify local land ownership issues; produce a colour coded map of local ownership; clarify the route of the path referred to in the witness statements and; produce a larger scale site plan.
- A group site visit involving all members of the Committee would be arranged before the next meeting.

80. A motion to defer determination of the application to the next meeting of the Rights of Way Committee was proposed and seconded by the Committee and agreed unanimously.

81. Resolved – that the Committee defers determination of application Worth: 2/09 to the next meeting of the Committee.

#### **Worthing: Application for a Definitive Map Modification Order (App No: 1/11)**

82. The Committee considered a report by the Head of Legal and Democratic Services regarding an application for a Definitive Map Modification Order (Application No: 1/11) to add to the Definitive Map and Statement for Worthing a Footpath from King Edward Avenue, between numbers 91 and 93, to Sackville Road, between numbers 24 and 26 in Worthing (copy appended to the signed version of the minutes).

83. Mr Kevin Skepper, a local interested party with access rights in the alleyway spoke against the application. He said he was surprised that officers had been unable to contact landowners; Mr Skepper had spoken to the land owners who had objected to the application. A covenant in the deeds of local houses provided a private right of access for residents. Since 2001 the alleyway had been closed off once a year at the Sackville Road end. The approval of this application would lead to a number of other claims for similar alleyways in the area.

84. A statement against the application from Mr and Mrs Warrington was read to the Committee. The statement said that if the application was approved responsibility for the maintenance of the path would pass to WSCC and that the applicant and the majority of supporters of the proposal did not live in the locality. There was no objection to members of the public continuing to use the alleyway but the adjoining land owners wished to retain the right to 'move-on' those path users causing a nuisance.

85. The Committee considered the following points:

- The Committee was satisfied that the application met the legal tests and the evidence produced in support of the claim was persuasive.
- The Committee did not view the application as desirable. It was felt that the only users of the path would be school children and local householders who had an existing private right of usage. It was hoped that there would not be similar applications for comparable alleyways in the locality.
- The HL&DS confirmed that site notices had been erected after searches had identified that two of the registered landowners had since died. It was confirmed that no evidence had been received of the blocking of the alleyway once a year. It was confirmed that maintenance arrangements were not relevant to the decision of the Committee.
- The Committee queried whether the covenant in the deeds of local properties overturned the application.

86. The meeting was adjourned at 4.25 p.m. to allow officers to examine Mr Skepper's deeds.

87. The meeting resumed at 4.30 p.m.

88. The HL&DS confirmed that the note in the deeds of Mr Skepper provided a right of way over privately owned land and did not negate the application.

89. The Committee agreed the officer recommendation and approved the application; 4 votes in favour, 3 against and 1 abstention.

90. 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 King Edward Avenue to Sackville Road in Worthing be made.

#### **Outstanding Definitive Map Modification Order (DMMO) Applications and Byways Open to all Traffic (BOATs) to the West Sussex Definitive Map and Statement in light of the Winchester Case**

91. The Committee received and noted a report by the Head of Legal and Democratic Services regarding the implications of the Winchester Case on outstanding DMMO and BOATs applications (copy appended to the signed version of the minutes).

#### **Secretary of State's Decision**

92. The Committee received and noted a report by the Head of Legal and Democratic Services regarding an order that had been submitted to the Secretary of State for determination (report attached to the signed copy of the minutes).

The meeting ended at 4.40 p.m.

Chairman