

Rights of Way Committee

7 June 2016 – at a meeting of the Committee held at County Hall, Chichester.

Present: Mr Whittington (Chairman), Mr Acraman*, Mr Clark, Mrs Duncton, Mr Metcalfe, Mr Quinn, Mr R. Rogers, Mrs Urqhart

* Mr Acraman arrived at 2.18 p.m.

Apologies: Mr Bradbury

Mr Burrett

1. The Chairman, Mr Whittington, advised the Committee that former member Mr Burrett is unwell. He agreed to pass on the Committee's best wishes to Mr Burrett.

Declarations of Interest

2. No declarations of interest were made.

Minutes

3. Resolved – that the minutes of the meeting held on 20 October 2016 be approved and signed by the Chairman as a correct record.

Previous Rights of Way Decisions

4. 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).

5. It was noted that in relation to agenda item 5a. Bersted FP 152 that the current position is that the second phase of the development has now begun. Jonathan Perks, Principal Rights of Way Officer, advised that a footpath remains available.

6. Members requested an update in relation to agenda item 5a, items 8. Crawley FP 3377 and Item 12. FPs 1528 and 353SY: Crawley Borough Council proposal to divert. Christine Luff, Team Leader - Rights of Way, advised that these orders lie within the remit of Crawley Borough Council as they were made under the Town and Country Planning Act 1990 and not with the County Council. Mr Quinn undertook to seek to clarify the situation with Crawley Borough Council.

7. Members requested an update in relation to item 21. Southwater: BW 1642, FPs 1650, 1651 diversion, extinguishment and creation. Christine Luff, Team Leader - Rights of Way, advised that a letter has been sent to the school asking for their comments on the objections. Once a response is received officers will consider the way forward.

Outstanding Applications

8. 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).

9. A correction to the report was noted: on the table for 1a. Definitive Map Modification Order applications/proposals, Pulborough should be listed as 3. and the following items should, therefore, be numbered sequentially.

10. Members requested clarification in relation to item 32. Upper Beeding/Henfield. Jonathan Perks, Principal Rights of Way Officer, advised that this is for a new cycle route.

11. 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.

Wildlife and Countryside Act 1981 - Section 53 (2) and sub-section 53 (3) (c) (i)

Bramber: Application for a Definitive Map Modification Order (Application No: 3/14) to add a public bridleway from existing restricted byway 2059 and the used route of bridleway 3183

12. The Committee considered a report by the Director of Highways and Transport concerning an application to add a bridleway from restricted byway 2059 to join with the used route of bridleway 3183 (the South Downs Way) in the Parish of Bramber to the Definitive Map and Statement for Chanctonbury (copy appended to the signed version of the minutes). Christine Luff, Team leader – Rights of Way introduced the report. It is not considered that the legal tests involved in the consideration of the application had been met.

13. Mrs Jenny Flake, also known as Passmore, the landowner, spoke in objection to the application. The Passmore family have owned their farm since 1901 and Annington Hill Top since 1920. A corner of the field was given by the family, as a car park, on the creation of the South Downs Way in 1963. In 1992, as part of a government scheme, the land became an environmentally sensitive area (ESA) and was given over to grazing; the opportunity of extra money for permissive access (not a right to roam) was not taken. Fences were removed during the period of the ESA only, but were re-erected in 2012. The model aeroplane club used Annington Hill Top in the early 1980s, then moved to the triangle field. In the late 1980s the casting club started to use the field. Both clubs put up health and safety signage, with the flying club having a permanent sign on the gate by the road. In 1987 the neighbouring farmer allowed the path to be moved into their field; a path was not agreed on the Passmore's land. Police were called to an illegal rave in 2005 and also on other occasions to stop access. The farm is over 2 miles away, so not all trespass is seen, but when the landowners do see people on their land they are challenged. Sheep have been killed and chased by dogs. Letters of support have been provided from Footprints of Sussex, a local member of the British Horse Society and the W.I.

14. Mrs Gill Muncey, the applicant, spoke in support of the application. The route has been enjoyed by the public as of right and without interruption for a period of 20 years from 1994 to 2014. Mrs Muncey and family have used the route since moving to Steyning in 1990, first as dog walkers up to 1997 and again from autumn 1998 to 2009, and then as walkers from 2009 to 2013, frequently parking in the car park by field A and using the path in field B. The route was never fenced and many other walkers, cyclists and horse riders have been seen to use the same route without impedence. Safety signs advise people to use the defined bridleway and path for safety reasons. Mrs Muncey provided the committee with two photographs and a still taken from YouTube of use during the 20year period. In 2014 a fence was erected preventing access between fields A and B, blocking this safe route. The alternative is a narrow, uneven grass verge which forces use of the road. Mrs Muncey has been asked by another walker and rider to point out to the Committee her safety concerns as well as the fact that she has never been asked to leave by the casting club. The application is supported by Bramber Parish Council and the British Horse Society.

15. Mr David Barling, member for Bramber Castle, spoke on the application. He sympathises with both the applicant and landowner and their respective positions; this is not an easy issue to resolve. He cannot recall seeing a fence on the land from 1997 until recently. The current route alongside the road is dangerous. He would welcome a footpath or permissive footpath.

16. The Committee sought clarification on the following points:

- the status of the path which is not shown on the map included in the report (which runs alongside Titch Hill Road from the north to point B): Jonathan Perks, Principal Rights of Way Officer advised that this is a permissive bridleway on neighbouring land; and
- the difference between the Definitive Route of Bridleway 3183 and the Used Route of Bridleway 3183: Jonathan Perks, Principal Rights of Way Officer advised that the Definitive Route is largely unused and the used route is one that the Passmore family have provided and is well signposted.

17. In reaching a decision the Committee:

- noted the issues faced by the landowner particularly in relation to uncontrolled dogs around livestock and the safety concerns regarding the road were acknowledged; and.
- considered and balanced the evidence put forward by the parties and upon reaching a decision, acknowledged that the law is clear in respect of the of the claim.

18. The officer recommendation was approved by a majority of the Committee.

19. 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 bridleway from restricted byway 2059 to join with the used route of bridleway 3183 (the South Downs Way) in the Parish of Bramber to the Definitive Map and Statement for Chanctonbury be not made.

Commons Act 2006 – Section 15

Application under Section 15 of the Commons Act 2006 for the registration of land claimed to have become a town or village green (Application No: TVG 30/41). Land at Selsey known as The Oval Field.

20. The Committee considered a report by the Director of Law, Assurance and Strategy concerning an application made under the provisions of s.15 (2) of the Commons Act 2006 to register land known as The Oval Field in Selsey as a town or village green (copy appended to the signed version of the minutes). Christine Luff, Team leader – Rights of Way introduced the report and advised the Committee that it is considered that the legal tests involved in the consideration of the application had been met.

21. Mr Anthony Tuffin, on behalf of the applicant Dr Lesley Bromley spoke in support of the application. Mr Tuffin stated that 145 households have supported the application and only two opposed it. The application has met all of the legal tests. The green space is unique to the area. The Town Council, as landowner, has not opposed this application. The Town Council had previously stated that it wishes The Oval Field to remain a green space, but in 2014 favourably considered proposals to develop it, although the proposal was withdrawn; because of this public concern has led to the application in order to preserve The Oval Field as a green space. Granting town or village green status will guarantee continuing protection for the benefit of current and future residents and visitors. Should the application fail to be granted there is very likely to be an appeal.

22. Mrs Donna Johnson, local resident, spoke in support of the application. The Oval Field is the only open green area in this part of Selsey and backs on to a sizeable housing estate with many children. The land provides an outdoors space for all member of the community: for children and young families for play, for young people and adults of all ages, and particularly the elderly, for sociability and exercise including cycling; all promoting active living and individual and social benefits. The Oval Field has significant historical connections and is a focal point for visitors contributing to the local economy.

23. The Committee sought clarification on the following points:

- the reason for the exclusion of the multi-use games area (MUGA) play area (defined in red on the additional map distributed at the committee and appended to the minutes), and the future implications in relation to the exclusion. Laura Floodgate, Solicitor, advised that it is acknowledged that there is a possibility that any future changes of use of these areas may mean they are excluded from the status of town or village green, however, under the legislation their current permissive use excludes their inclusion. Any issues arising in the future would need to be addressed at the relevant point in time; and
- the reasons for the objections. Laura Floodgate, Solicitor, advised that objections relate to the unintended consequences of village green status in future years and the ability to enclose the land and the playground and MUGA, plus the potential impacts for enhancing the visitor experience, vehicular access and coastal defence works. It was

also stated that the land has been used with the landowners express permission and is already used as a public open space under the provisions of the Open Spaces Act 1906. It has been determined that Selsey Town Council by erecting signs informing users that the equipment in the play area and MUGA are owned by them have stated a clear intention that these parcels of land are being used with the permission of the Selsey Town Council. The land is not registered as an Open Space. In respect of an assessment into the use of land for a number of public events, some of which Selsey Town Council have advertised and charged entry for, there was no evidence that demonstrates that other users of the land were in any way notified by the landowner that they were using the land under licence or with the landowners permission or that the public were excluded unless they paid a fee for entry whilst the events took place; and that Selsey Town Council has, in fact, encouraged the use of the land by the public at large. Therefore, it is considered that use of the land, except for those parts that make up the play area and MUGA, have been used 'as of right' and not 'by right'.

24. In reaching a decision the Committee:

- discussed that there has been a lot of development in Selsey and there is a diminishing amount of green space, so value is seen in retaining The Oval Field as a town or village green; and
- concluded that the application meets the criteria for a Town or Village green.

25. The officer recommendation was approved unanimously by the Committee.

26. Resolved – that the land known as The Oval Field, Selsey, shown hatched black on the application plan, with the exception of the play area and MUGA, as shown edged red on the application plan be registered as a town or village Green.

Commons Act 2006 – Section 15

Application under Section 15 of the Commons Act 2006 for the registration of land claimed to have become a town or village green (Application No: TVG 30/42). Land at Steyning known as Abbey Road Open Space.

27. The Committee considered a report by the Director of Law, Assurance and Strategy concerning an application made under the provisions of s.15 (1) and (3) of the Commons Act 2006 to register land known as Abbey Road Open Space as a town or village green. (copy appended to the signed version of the minutes). Peter Jupp, Rights of Way Officer introduced the report. It is considered that the legal tests involved in the consideration of the application had been met.

28. Mr David Barling, member for Bramber Castle, spoke on the application. The green is well used by the public. The north-east side was always intended

as a flood plain and will never be developed. The Parish Council has allowed a local group to grow wildflowers on this portion of the land. The Committee was urged to grant the application.

29. In reaching a decision the Committee:

- acknowledged that the north-east portion of the land was intended by the original developers to be a flood plain and noted it is understood that the south-west portion was intended as a green space for residents; and
- concluded that the application meets the criteria for a Town or Village green.

30. The officer recommendation was approved unanimously by the Committee.

31. Resolved – that all of the land known as Abbey Road Open Space as shown hatched black on the application plan attached be registered as a town or village green.

Arrangements for decision making on certain rights of way matters

32. The Committee received a report by the Director of Law, Assurance and Strategy's report on arrangements for decision making on certain rights of way matters. Laura Floodgate, Solicitor introduced the report and advised the recommendations are driven by recent and forthcoming changes in legislation and a need to improve effectiveness in balance with the Rights of Way Committee schedule and resources, and to ensure that the County Council complies with its legal obligations. The recommendations are in line with previous delegation on public path order proposals.

33. In reaching a decision the Committee considered the following points:

- that the democratic process will be eroded and local people will lose their right to a voice on Rights of Way applications;
- that changes are being implemented for a financial reason and more resources should be given to the Rights of Way team to enable them to achieve the deadlines within the new legislation, but that, in the current financial climate, more resources will not realistically be forthcoming. Laura Floodgate, Solicitor advised that in addition to the requirement to meet the deadlines, the County Council must also take into account the implications of not doing so, in terms of resources and costs involved in defending any cases presented to Magistrates' Courts; and
- that the local member should be consulted on applications, alongside the Chairman of Rights of Way Committee.

34. The following amendments to the proposals in the Recommendation and paragraph 3.2 of the report were proposed by Mrs Urqhart and seconded by Mr Rogers, and were put to the Committee and approved by a majority:

Recommendation:

1. That the Rights of Way Committee delegates to the Director of Law, Assurance and Strategy in consultation with *the local member and the* Chairman of the Rights of Way Committee those matters listed in section 3 to this report.
2. The Governance Committee is recommended to amend the terms of reference of the Rights of Way Committee such that the 2014 Commons Regulations are referenced.

3.2

It is therefore proposed that: -

The preliminary assessment of definitive map modification applications and the consideration of objections be delegated to the Director of Law, Assurance and Strategy;

The determination of definitive map modification orders (making and confirmation), where no significant evidence in conflict has been received, be delegated to the Director of Law, Assurance and Strategy in consultation *with the local member and* the Chairman of Rights of Way Committee;

The determination of village green applications, where no significant evidence in conflict has been received, be delegated to the Director of Law, Assurance and Strategy in consultation *with the local member and* the Chairman of Rights of Way Committee;

The determination of applications to amend the commons and village green registers be delegated to the Director of Law, Assurance and Strategy in consultation *with the local member and* the Chairman of Rights of Way Committee;

The Governance Committee be recommended that a change is required to the terms of reference of the Rights of Way Committee to reflect the recently introduced Commons Regulations.

35. Resolved – Resolved that, subject to the amendments as agreed by the Committee, the new arrangements are approved as below:

1. That the Rights of Way Committee delegates to the Director of Law, Assurance and Strategy in consultation with *the local member and the* Chairman of the Rights of Way Committee those matters listed in section 3 to this report.
2. The Governance Committee is recommended to amend the terms of reference of the Rights of Way Committee such that the 2014 Commons Regulations are referenced.

Update on Performance

36. The Committee noted a verbal report by Jonathan Perks, Principal Rights of Way Officer, who provided an update on performance during the 2015-16 financial year, as follows:

- The County Council continued to deliver the 15-month cyclical parish inspection and maintenance programme. The support of volunteer Parish Path Inspectors (PPIs) remains invaluable to enable this programme to continue and deliver benefits for path users.
- The annual maintenance contract, held by County Tree Surgeons (CTS) was extended, enabling it to continue to deliver repairs and renewals to signs, bridges and steps, and vegetation clearance. During the last year, the works delivered by CTS included repair or replacement of over 1,300 signs and over 100 bridges and boardwalks.
- The successful 'gates for stiles' programme was continued, replacing 82 stiles with gates.
- Volunteer rangers provided 29 days of practical activities supported by volunteers donating 1,306 hours of their time. Projects included: 3.7km of vegetation clearance; 30m of surfacing; and the installation of 2 x 6m bridges, 187 new steps, 6 kissing gates and 59m of handrails.
- A programme of summer vegetation clearance ran from mid-July to mid-August 2015. Paths were identified from historic problem reports and input from Access Rangers. Over 300km of clearance was undertaken, costing £32,347.50.
- 4,583 problems were logged onto the service's database, Countryside Access Management System (CAMS). Officers prioritise health and safety issues over issues of minor maintenance, such as damaged signage.
- The database continued to develop, both in functionality and population. Its use for maintenance work orders has now been fully adopted, as has logging problem reports on-line and through the contact centre. An on-line portal will be rolled-out shortly for volunteer PPIs and customers to enable them to log reports and track their progress.
- There were two formal customer complaints; one upheld (Selsey) and one not (Horsham).

37. The Committee sought clarification on the following points:

- how the County Council compares with other authorities. Jonathan Perks, Principal Rights of Way Officer, advised that where like for like comparisons can be made, the National Highways and Transport Survey shows an improvement in these areas, including satisfaction; and
- what is being done to improve publicity around volunteering and the good works being carried out? Jonathan Perks, Principal Rights of Way Officer, advised that the service currently has a sufficient number of volunteers, and that events are publicised through the Ramblers' magazine and discussions are taking place with the Council's Rights of

Way Volunteers' Co-ordinator about the profile of the County Council. A Member suggested that all members should endeavour to promote events to their Parish Councils.

Date of Next Meeting

38. The Committee noted that its next scheduled meeting would be held on 11 October 2016.

The meeting ended at 3.56 p.m.

Chairman