

Unconfirmed minutes – subject to approval /amendment at the next meeting of the Committee

Agenda Item No. 2

Rights of Way Committee

14 June 2011 – At a meeting of the Committee held at County Hall, Chichester.

Present:

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

- *Mr Hellowell attended the meeting as a substitute for Mr Rogers in accordance with notice given by the Liberal Democrat Group.

Apologies:

Mr Rogers

Declarations of Interest

1. There were no declarations of interest.

Minutes

2. Resolved – That the minutes of the meeting held on 22 February 2011 be approved and be signed by the Chairman as a correct record.

Previous Rights of Way Decisions

3. The Committee received 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).
4. Resolved – That the report be noted.

Outstanding Applications

5. The Committee received 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).
6. Resolved – That the report be noted.

Performance Indicators

7. The Committee received a report from the Director Communities and Infrastructure and the Head of Legal and Democratic Services on performance indicators relating to public rights of way for the quarter ending 31 March 2011 (copy attached to the signed minutes).
8. The Director Communities and Infrastructure reported that greater information would be available on future versions of the report to include rights of way within the South Downs National Park.

Unconfirmed minutes – subject to approval /amendment at the next meeting of the Committee

9. Resolved – That the report be noted.

Definitive Map Modification Order Application (DMMO 4/09) – Ardingly

10. The Committee considered a report by the Head of Legal and Democratic Services to add to the Definitive Map and Statement for Cuckfield Rural a footpath from footpath 19Ar through Standgrove Wood to footpath 14Ar in Ardingly (copy attached to the signed minutes).

11. Mr Paddy Jackman, Ardingly College, spoke against the application. Mr Jackman stated that area over which the path was claimed had been used by the College for sport over a 20-year period. Photographic evidence showed use of the area as an air landing strip and aerial photographs did not show a footpath. Relevant case law had been omitted from the officer report. The College would object to the application in any hearing and to prevent the incurring of further costs, on all sides, the Committee was encouraged to reject the application.

12. Mr Alan Smith, local resident, spoke in support of the application. Mr Smith had lived in the area since 1983 and had been a teacher at Ardingly College until 1998. The field had been regularly used by the public for walking and had also served as a football pitch and as a micro light airstrip. It had only been since 2008 that local residents had been told that they could not use the path and private signs had been erected.

13. The Head of Legal and Democratic services explained the recommendation in the report. It is necessary to show that a right of way subsists or is reasonably alleged to subsist. For a right of way to subsist, requires the evidence to meet the balance of probabilities test. Where, as in this case, there is conflicting factual evidence, the balance of probabilities test is not thought to be satisfied. It is then necessary to consider the reasonable allegation test. Under the latter test, although there is a conflict of factual evidence from the landowner, then an evaluation of whether the applicant has made a reasonable allegation that the claimed route subsists can be made when reaching a decision on the application.

14. The Committee considered the following points:

- The Committee requested sight of the photographs referred to by Mr Jackman during his submission to the Committee. Photographs from 2001 showing the micro light and aerial pictures of the field were shown to the Committee.
- During site visits to the field the Committee had not seen private signs and were surprised that the College had not erected such notices until 2008. The absence of signage prior to 2008 was queried.
- A footbridge across a stream formed part of the claimed path which was similar to facilities on established rights of way.
- It was felt that the evidence submitted by applicant and objector demonstrated two conflicting perspectives on the claimed right of way. The applicant had provided evidence that demonstrated the claimed route had been used as of right.
- The fencing around the field, enclosing the claimed path, was incomplete. It had been noted on site visits that very old fencing existed and more modern fencing had also been erected.
- During Site Visits members of the public had been encountered using the claimed path.

Unconfirmed minutes – subject to approval /amendment at the next meeting of the Committee

- The argument that the claimed path would negatively impact on the College's OFSTED report was not felt to be relevant as there was an existing right of way over the College.
 - The cost of a public inquiry and further hearings regarding the claimed path were not felt to be relevant to the decision of the Committee.
 - It was accepted that the evidence submitted reasonably alleged the existence of the claimed route and that the lower test had been met.
15. The Head of Legal and Democratic services provided the following further clarification:
- As part of the investigation into the application aerial photographs had been assessed by officers and were referred to in paragraph 5 of the report. These photographs had also been made available in the members room in advance of the meeting.
 - It was explained that a common means by which rights of way became established was the absence of private signs.
 - The College had the right to erect fencing in order to prevent trespass onto the claimed path.
16. The Committee agreed the officer recommendation unanimously and approved the application.
17. 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 footpath 19Ar south through Standgrove Wood to footpath 14Ar be made.

Registration of land to become a Village Green

Land at Terwick Woodland, Rogate

18. The Committee considered a report by the Head of Legal and Democratic Services regarding an application made under the provisions of Section 15 of the Commons Act 2006 to register land at Terwick Woodland, Rogate as a Village Green (report attached to the signed copy of the minutes).

19. Mr Gerry Devlin, landowner of part of the land under application, spoke against the application. Mr Devlin had only been made aware of the second application 4 days before the committee meeting. The application was an attempt to deny Mr Devlin's legal rights concerning the Green Land and to try to use the Rights of Way Committee to subvert a court order regarding the same. The latest statements submitted with the most recent application undermined the applicants' claim.

20. Ms Mairie Rennie, the applicant, spoke in support of the application. Ms Rennie queried the accuracy of plans submitted with the report and referred to witnesses who attested to access of the land as of right and the absence of private land notices. Paragraphs 127 and 131 of the Local Government Act 1972 concerning Land Transactions were raised in support of the application. Ms Rennie stated that the application should be decided at inquiry.

21. Mr Harvey Morgan, local resident, spoke in support of the application. Mr Morgan had lived at Terwick Common since 1978 and had used the woodland

Unconfirmed minutes – subject to approval /amendment at the next meeting of the Committee

since this time. Mr Morgan stated that Rogate Parish Council had not adequately represented the interests of local residents in relation to the status of the land.

22. Ms Ann Arnold, local resident, spoke in support of the application. Ms Arnold claimed that the Parish Council had acted partially toward the landowner following the threat of legal action and an out of court settlement. Many witness statements had been provided that supported the application.

23. The Committee considered the following points:

- It was not felt that the situation had changed since the Committee considered the earlier application in 2010.
- No new evidence had been submitted which would cause the Committee to take a decision that was contrary to the decision in 2010.
- The submissions to the Committee referring to the conduct of Rogate Parish Council were not relevant to the decision.
- The use of the land and the management arrangements on the land were not relevant.

22. The Head of Legal and Democratic services provided the following clarification:

- A typographical error in the report under paragraph 2.1 was corrected; the year of The Commons Act was 2006.

23. The Committee agreed the officer recommendation unanimously and rejected the application.

24. Resolved -

- 1) that application TVG30/24A to register Terwick woodland also known as Rayner's Woodland, Rogate as a town and village green be rejected,
- 2) that the Head of Legal and Democratic Services be authorised to determine any future application in respect of this land and to reject it unless in his legal opinion there is fresh evidence which could materially challenge any previous decision of the Rights of Way Committee.

Secretary of State's Decisions

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

26. Resolved - that the report be noted.

The meeting ended at 3.45 p.m.

Chairman