

Rights of Way Committee

26 February 2013 – At a meeting of the Committee held at County Hall, Chichester.

Present:

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

Apologies:

Mr Blake

Declarations of Interest

43. Mr Burrett declared a personal interest in Item 4(a) as a member of Crawley Borough Council.

Minutes

44. Resolved – That the minutes of the meeting held on 23 October 2013 be approved and be signed by the Chairman as a correct record.

Previous Rights of Way Decisions

45. 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).

46. Mr Burrett asked why Item No.2 Crawley FP86aW and 98W was not marked as having a change in position since the last meeting. The Director of Communities Commissioning advised that he was aware of the proposal by Crawley Borough Council to make the dedication .

Outstanding Applications

47. 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).

48. The Committee noted that Number 1(Section 1), East Wittering Application 3/11 should have been marked as Category B as there was a report on the application before the meeting.

49. With regard to Section 2 Number 13, dedication of three footpaths at Lindfield, the Director of Communities Commissioning advised that agreement had been reached for the dedication of the three paths, effected through officer delegation overcoming the need for further investigation into the DMMO applications.

50. With regard to Number 27 (Footpath 1445/2 Warnham), the Director of Communities Commissioning advised this proposal had low priority. The Chairman stated that it should be progressed or removed from the list.

Performance Indicators

51. The Committee received and noted a report by the Director of Communities Commissioning on performance indicators relating to public rights of way for the quarters ending 30 September 2012 and 31 December 2012 (copy attached to the signed minutes).

52. The Chairman observed that the pace of maintenance was adequate given the difficult weather conditions over recent months.

Highways Act 1980 Section 118A

Angmering and East Preston: proposed extinguishment of part of Public Footpath 2127/1

53. The Committee considered a report by the Director of Communities Commissioning regarding an application made under the provisions of Section 118A of the Highways Act 1980 to extinguish part of Public Footpath 2127/1 (report attached to the signed copy of the minutes).

54. The Director of Communities Commissioning introduced the report and advised that this was the first application for the Committee to consider under Section 118A and was part of a dialogue between the County Council and Network Rail about level crossing closures. He advised that work on an alternative means of crossing the railway at Roundstone had now been completed. The legal test for an application under Section 118A was a test for safety of the public using the crossing and this had been met.

55. Emma Robinson, of Network Rail, spoke in support of the application. The crossing was situated on the main-line between Brighton and Portsmouth in a busy built up area near schools. The crossing is regularly used as a route to school by pupils, many of them unaccompanied. There has been a history of misuse at the crossing and such incidents are also a danger to rail travellers and train drivers too. A bridge over the railway line was not possible in the location and as an alternative safer route now exists it was therefore expedient to close the crossing.

56. Peter Evans, the local member, spoke on the application. He stated that the crossing had been a concern for him since 2005 when he was elected as a County Councillor. He had worked closely with the Headteacher of Angmering School on safety issues for pupils. He fully supported the extinguishment of the footpath as there was now a suitable alternative route.

57. The Committee considered the following point:

- The alley ways leading to the crossing were on unregistered land and therefore vulnerable to misuse. *The Director of Communities*

Commissioning advised that Network Rail had agreed to put in suitable gates or barriers at the junctions with Ashurst Way and Warren Crescent.

58. The Committee agreed unanimously to approve the application.
59. Resolved – That the Head of Law and Governance is authorised to make a stopping up order under Highways Act 1980 Section 118A subject to receiving dispensation from the Secretary of State to overcome the need to serve the usual owner/occupier notice of the order in respect of the unregistered land.

Highways Act 1980 Section 25

Burgess Hill/Hassocks/Hurstpierpoint: proposed creation of Public Footpaths and Public Bridleways

60. The Committee considered a report by the Director of Communities Commissioning regarding an application made under the provisions of Section 25 of the Highways Act 1980 to enter path creation agreements in and around Burgess Hill (report attached to the signed copy of the minutes).
61. The Director of Communities Commissioning introduced the report and advised that the proposed path dedications and upgrades had attracted much support in the community. Two of the proposed paths were not considered suitable for an upgrade and dedication as bridleways, one due to safety concerns and the other due to a detrimental effect on its current characteristics.
62. Resolved – That the Head of Law and Governance be authorised to enter into appropriate path creation agreements under Section 25 of the Highways Act 1980.

Commons Act 2006 Section 15

Memorial Playing Field, Steyning: registration of land claimed to have become a town or village green

63. The Committee considered a report by the Head of Law and Governance regarding an application made under the provisions of Section 15 (1) and (2) of the Commons Act 2006 to register land known as the Memorial Playing Field, Steyning as a town or village green (report attached to the signed copy of the minutes).
64. The Head of Law and Governance introduced the report and advised that the application had met the legal tests for registration as town or village green, a significant number of inhabitants had used the land as of right for 20 years.
65. Paul Campbell spoke in support of the application on behalf of 'Friends of the Memorial Playing Field'. The playing field is a single open space, with stunning views, used for many pastimes and not a single resident had objected to the registration. Only the Parish Council had objected as it wished to install a skate park on the playing field which Mr Campbell considered would be an

eyesore. The Committee was urged to follow legal advice and preserve the Memorial Playing Field as it is for the future.

66. The Head of Law and Governance advised on the recent case of *Barkas v North Yorkshire County Council* which the Parish Council had quoted in their objection to the application. The land at the Memorial Playing Field is held under general powers and Counsel's opinion had been sought and had confirmed that the circumstances at Steyning were different to those in the North Yorkshire case. The legal test of the use 'as of right' had been met.

67. The Committee considered the following point:

- Clarification about the status of the planning application for the skateboard facility. *The Head of Law and Governance advised that the planning application was with Horsham District Council and if the registration was agreed to by the Committee, the applicant would also have to seek authorisation from DEFRA for the skateboard facility. The planning application was not relevant to the Committee's decision.*

68. Seven members of the Committee voted to approve the application and one member abstained.

69. Resolved – That all of the land know as Memorial Playing Field, Steyning and as shown hatched black on the application plan in the report be registered as town or village green.

Wildlife and Countryside Act 1981

East Wittering: Definitive Map Modification Order (DMMO) No.3/11

70. The Committee considered a report by the Head of Law and Governance regarding an application for a DMMO, 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 Peerley Road, along Charlmead to the sea front, behind the beach huts, along Tamarisk Walk to join Shore Road and incorporating Shingle Walk (report attached to the signed copy of the minutes).

71. The Head of Law and Governance introduced the report and advised that the relevant 20 year period of continuous use considered for the purposes of this application was 1988 to 2008 and that there was evidence to show uninterrupted use during this time.

72. The Chairman reported that he had concerns about the recommendation as set out in report. A paper setting out three alternative amended recommendations was tabled (copy attached to the signed minutes) and summarised by the Head of Law and Governance: -

- Alternative recommendation 1 was the same as the set out in the report except that the recommendation had been split into points.

- Alternative recommendation 2 was the same as set out in the report but differed from (1) in that it recommended a path between points B and C in front of the beach huts.
- Alternative recommendation 3 was the same as set out in the report but differed from Alternative 1 and Alternative 2 in that it recommended that a footpath between points B and C on the annexed plan be not made.

73. Oliver James spoke on behalf of the owners of the East Wittering Beach Huts. He stated that a footpath probably existed through the beach hut site but that the location of the route was uncertain. The owners of the beach huts were opposed to a path running behind the beach huts and provided evidence from some longstanding owners who had no knowledge of path running behind the beach huts. He stated that the beach hut owners supported the principle of a continuous coastal path but wanted to ensure that the path was in front of the beach huts and that they were willing to agree to a path dedication along this route. The gate and fencing had been successful in preventing vandalism.

74. John Barber, a beach hut owner spoke on the application and stated that the proposed route behind the beach huts had been impassable in recent months due to flooding and felt that it would be impossible for the public to enjoy this route behind the beach huts.

75. Lucy Wright spoke on the application on behalf of East Wittering and Bracklesham Parish Council. The Parish Council was keen to preserve a right of way along the foreshore and that the fencing installed along the eastern side of the beach huts was preventing access. The Parish Council wished to make the right of way official whether it was in front of, or behind the beach huts.

76. Mr Lowe spoke on the application in support of East Wittering and Bracklesham Parish Council. He stated that in his opinion a path in front of the beach huts was preferable.

77. The Head of Law and Governance advised the Committee that the application before it related to a path running behind the beach huts. A decision by the Committee to make an order for a footpath in front of the beach huts could be seen as perverse and there would be a risk of challenge to this decision.

78. The Committee considered the following points: -

- Concern about the clarity of conclusive evidence for the route of the footpath running behind the beach huts and that the evidence base had possibly been perceived incorrectly.
- The path behind the beach huts was not attractive, it was muddy and impassable in bad weather.
- Concern about the high step and gate with a heavy spring making access difficult for the public with mobility disabilities.
- Concern about the original recommendation in the report and that it was subjective judgment.
- The Committee, whilst it listens to officer advice does not have to take it.

- The Committee owed it to the residents, having listened to their views, to make a decision and not defer it to a later date.

79. Mr Peters proposed that the Committee vote on the Alternative recommendation 2, this was seconded by Mrs Jupp.

80. Seven members of the Committee voted to approve the application and one member abstained.

81. Resolved – That a DMMO 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 to the Definitive Map and Statement for Chichester a footpath from Peerly Road along Charlmead to the sea front (A – B on the plan), from Point B west north westwards in front of the beach huts to Point C, from Point C along Tamarisk Walk to Shore Road (Point E) and from Point C along Shingle Walk to Point D.

82. The Chairman stated that the County Council, once the DMMO was made and confirmed, would ensure that there was suitable access for all to a new path in front of the beach huts, this might involve modifications to the step and gate.

The meeting ended at 4.05 p.m.

Chairman