

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

Agenda Item No. 2

Rights of Way Committee

22 February 2011 – At a meeting of the Committee held at County Hall, Chichester.

Present:

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

Declarations of Interest

31. There were no declarations of interest.

Minutes

32. Resolved – That the minutes of the meeting held on 15 June 2010 be approved and be signed by the Chairman as a correct record.

Previous Rights of Way Decisions

33. 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).

34. Resolved – That the report be noted.

Outstanding Applications

35. 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).

36. Resolved – That the report be noted.

Opposed Path Orders and Definitive Map Modification Orders

37. The Committee received a report by the Head of Legal and Democratic Services regarding the process for the submission of opposed orders to the Secretary of State and options for reducing the number of outstanding opposed Path Orders and DMMOs (copy attached to the signed minutes).

38. Resolved – That the report be noted and that a member seminar be arranged to consider the issue in greater depth.

Performance Indicators

39. 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 December 2010 (copy attached to the signed minutes).

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40. The Director Communities and Infrastructure reported that good inspection progress has been made until the December 2010 snow and that the rangers and contractors were working hard to catch up. He explained that after the South Downs National Park Authority became fully operational in April 2011 a review would be conducted regarding the presentation of performance indicators to the Committee.

41. Resolved – That the report be noted.

Definitive Map Modification Order Application (DMMO 3/09) – East Lavington

42. The Committee considered a report by the Head of Legal and Democratic Services to add to the Definitive Map and Statement for Midhurst a circular bridleway from Cathanger Lane connecting bridleway 671 and back to Cathanger Lane in the Parish of East Lavington (copy attached to the signed minutes).

43. Mr Andy Bailey, the landowner, spoke against the application. Mr Bailey stated that the claimed paths had been used with permission and users could not have failed to see permissive bridleway signage on the land, in place for the past 15-20 years. He considered that the Committee report had inaccurately reported his evidence, during 2009 he had seen no more than two horses and two walkers use the paths. The evidence forms in support of the application claimed a daily average of 23 users but on most days Mr Bailey saw no one use the paths. It was felt that the evidence forms submitted grossly exaggerated the level of use of the paths. The density of bridleways on the plantation would be unprecedented and it was felt the applicant was claiming the paths as a horse exercise circuit.

44. Mr Simon Craig, National Trust (NT) Head Warden, Lavington Common spoke in support of the application. Mr Craig had worked at the Common for the previous 15 years and had regularly observed people using the claimed paths. The provision of the permissive bridleways across the NT land predated Mr Craig's involvement with the Common but the boundary to the NT land had never been fenced prior to the landowner's fencing in 2009. The permissive bridleway signs on the Common were small waymarkers that should be present on NT land only.

45. Vivien Gosden, the joint applicant spoke in support of the application. Mrs Gosden had regularly used the claimed routes for the past 33 years and had accessed the paths via the NT Common. Mrs Gosden had never been aware of ownership notices or blockages except in the 1980s when tree trunks were placed across the entrance from Cathanger Lane to prevent access by new-age travellers. Mrs Gosden had understood that the paths were not permissive and had enjoyed uninterrupted, long-term use of the paths without secrecy and as of right. The number of evidence forms indicated widespread local support for the application and justification to claim the tracks as public rights of way.

46. Kate Blunt, a local resident spoke in support of the application. Mrs Blunt had enjoyed unfettered use of the paths since childhood and had continued to use the tracks on a daily basis until the obstructions and signs were erected in February 2009. Mrs Blunt understood the landowner's reasons for obstructing the paths but explained the tracks passed through woodland and it was difficult to

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envisage what harm could occur as a result of the confirmation of the tracks as public rights of way.

47. 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.

48. The Committee considered the following points:

- It was felt that the level of use specified in the evidence forms was exceptionally high and may have been exaggerated but it was acknowledged that to reasonably allege the existence of a claimed route only a small amount of evidence of use was required.
- Sympathy was expressed for the landowner but it was acknowledged that the use of the route as a right of way would not harm the use of the area as a Scots Pine plantation.
- The circular route of the path was queried; rights of way were usually to link one place to another.
- The claimed location of the NT permitted bridleway sign on the paths was queried as it would not have been seen by the majority of users. It was not felt that the sign would have been located in such a position if the intention of the landowner had been to demonstrate that use of the paths was by permission. A landowner who wished to make it clear that use was by permission would have placed additional signs.
- It was accepted that the evidence submitted reasonably alleged the existence of the claimed route.

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

- The level of usage claimed was specified in the evidence forms provided by users of the route. The role of the Committee was not to assess the credibility of the level of usage but to determine whether the evidence reasonably alleged the existence of the claimed route.
- The officer recommendation was based upon the assessment of the application using the test of reasonable allegation of the existence of the claimed route. The Committee were required to determine whether a reasonable allegation had been made. This was the lower test, applied to the application, the claimed route could not be shown to exist on the standard of the balance of probabilities.
- If the order was approved the landowner had the ability to oppose the order and the evidence could be considered and tested in greater detail at public inquiry.

50. The Committee agreed the officer recommendation unanimously and approved the application.

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51. 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 circular bridleway from Cathanger Lane to bridleway 671 and back to Cathanger Lane in East Lavington be made.

Registration of land to become a Village Green

Land at Memorial Field, Graffham

52. The Committee considered a report by the Head of Legal and Democratic Services regarding an application made under the provisions of Section 15 (1) and (2) of the Commons Act 2006 to register land at Memorial Field, Graffham as a Village Green (report attached to the signed copy of the minutes).

53. Mr Tim Read, Lavington Stud, spoke against the application. Mr Read had been the Stud manager for the previous 20 years and had never received reports of the activities claimed by the applicants taking place on The Memorial Field. The value of horses on the Stud meant that trespass was treated very seriously and Mr Read would have been aware of any such incidents. The applicant had approached the Stud in 2010 to explain the purpose of the application was to prevent the development of affordable housing on The Memorial Field. Neither the Parish Council nor the Stud were in favour of such development but a minority of residents had submitted the application to deny the right of Lavington Stud to manage the land as it intended.

54. Mr Godman-Dorington, Graffham Parish Council spoke against the application. The Parish Council had considered the application against the legal tests and did not believe that sufficient evidence had been submitted to satisfy the claim that the land had been used as of right. Permission was granted on an annual basis to allow car parking on the field for the summer fete but the activities outlined in the evidence forms had not been witnessed by the Parish Council. The need for a Village Green was queried with the presence of the 8-acre recreation ground adjacent to The Memorial Field.

55. Carl Dyer, Thomas Eggar, representing Lavington Stud, spoke against the application. Memorial Field was not situated at the heart of the community. The application claimed use of the land to walk dogs but a right of way existed across the land. A number of the evidence forms had been completed by people from outside the village. The horses at the Stud were valuable and the land was policed. Employees of the Stud had not witnessed the claimed relevant activities on the field and photographs submitted with the application did not show such activities. The Parish Council did not support the application and 24 letters from local residents had countered the evidence submitted. Mr Dyer understood that the application was intended to prevent affordable housing on the field but there were no concrete plans for such development. In any case such considerations were irrelevant to a Village Green application. The Lavington Estate had donated the Empire Hall and the War Memorial to the village and the application had been perceived as ingratitude or mischief making.

56. Karin Skanberg, the applicant, spoke in support of the application. Mrs Skanberg's family had enjoyed unchallenged use of The Memorial Field for a variety of purposes and had accessed the land via the footpath and from the recreation ground. The implications of not submitting the application concerned

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local residents and the application sought to protect The Memorial Field for the community. Mrs Skanberg had lived opposite the field for 7 years and had never witnessed the grazing of livestock on the land.

57. Nicholas Lobley, the applicant, spoke in support of the application. Mr Lobley explained that the footpath offered unfettered access to the land which enabled leisure activities. Dogs were often allowed off the lead on the field and the land provided a location for children to play at a safe distance from traffic. The field was important as the centre of a tranquil village, providing a view of the Downs. It was not felt that the judgement of the application by Graffham Parish Council represented the views of local residents.

58. Mr Derek Stewart Smith, the applicant, spoke in support of the application. It was felt that the officer report placed a disproportionate emphasis on objections to the application. Reports of fencing on the Memorial Field submitted as evidence in objection to the application were disputed. The land had not been used consistently for the grazing of livestock during the relevant 20 year period. The application report did not refer to comments contained in the applicant's letter of 28 October commenting on the evidence provided by the objectors. It was requested that the Committee defer determination of the application to allow for a more extensive consideration of evidence submitted by the applicant (particularly with reference to the letter of 28 October) to be outlined in the officer report.

59. The Committee considered the following points:

- The letter of 28 October had been provided in the background papers and was available to be seen by members of the Committee.
- The presence of grazing animals and fences on the land was irrelevant to the consideration of the application.
- It was felt the report was balanced and fair in the assessment of the evidence submitted.
- It was not felt that the evidence submitted regarding recreational use of the land was convincing. During site visits to the area visitors had been observed using the footpath only and not the wider field area.

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

- The letter from the applicants of 28 October had been fully considered during the preparation of the report and was included in the background papers made available for member inspection prior to the committee meeting.
- Potential future development on the site was not a matter for consideration of the Committee and registration of the land as a village green would formalise what rights exist, it would not provide irrevocable protection from future development.

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

62. Resolved – that all of the land known as The Memorial Field, Graffham be not registered as a village green.

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Secretary of State's Decisions

63. 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).

64. Resolved - that the report be noted.

The meeting ended at 4.35 p.m.

Chairman