

Rights of Way Committee

12 June 2012 – At a meeting of the Committee held at County Hall, Chichester.

Present:

Mrs Jupp (Chairman), Mr Blake, Mr Burrett, Mr B Hall, Mrs Mills*, Mr Rogers and Dr Wilsdon.

Apologies:

Mr Acraman, Mr Peters and Mr Whittington

*In accordance with notice provided by the Conservative Group prior to the meeting Mrs Mills acted as a substitute.

1. The Chairman welcomed Mr B Hall to the Committee following appointment at the previous meeting of the County Council.

Declarations of Interest

2. There were no declarations of interest.

Minutes

3. Resolved – That the minutes of the meeting held on 28 February 2012 be approved and be signed by the Chairman as a correct record.

Previous Rights of Way Decisions

4. 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

5. 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

6. The Committee received and noted a report from the Director Communities and Infrastructure on performance indicators relating to public rights of way for the quarter ending 31 March (copy attached to the signed minutes).

Highways Act 1980 Section 119

Donnington: Proposed diversion of part of Footpath 182

7. 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 182 at Donnington (report attached to the signed copy of the minutes). The Director of Communities and

Infrastructure introduced the report and advised the Committee of the legal tests that had been applied during assessment of the application.

8. Mr Gower, landowner and applicant spoke in support of the application. The proposed diversion would benefit all path users offering views to Chichester Cathedral and providing a good surface. Following two thefts from Mr Gower's house the application sought to protect the security and privacy of the property. The police officer investigating the thefts concluded that the right of way had been a factor; this detail had been omitted from the Sussex Police letter in the background papers. The safety of path users was compromised by the right of way following part of the drive to the house which featured a dangerous blind corner. At this section of the path there had been near-misses between fast moving vehicles and pedestrians. The legal test relating to the grounds for the diversion had been met due to privacy and security concerns.

9. Mrs Gower, landowner and applicant spoke in support of the application. The diversion was of benefit to the public, wildlife and the applicant's family. It was proposed that a wildlife habitat would be established alongside the path to provide a community project for the benefit of the public and future generations. Users of the current path often strayed from the path and such trespass caused destruction of orchids and mushrooms and path users dropped litter in the applicant's garden. The path offered users better views.

10. The Committee considered the following points:

- Sympathy for the applicant was expressed with regard to the need to increase security and privacy and the conservation intentions for part of the land.
- There were concerns that the diversion would move the path away from the current attractive course and the applicant was encouraged to examine alternative routes for the diversion.
- The Committee was satisfied that the legal tests for making a Diversion Order had not been met.

11. The Director of Communities and Infrastructure provided clarification that a number of options for potential diversions across the land had been considered and an alternative route to the South on grassland between the house and the canal that met the legal tests had been identified. The applicant had not been in favour of this route.

12. The Committee proposed and seconded the officer recommendation and agreed unanimously to decline the Diversion Order.

13. Resolved - that the Committee do not approve the making of a Diversion Order under Section 119 of the Highways Act 1980.

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)

14. The Committee considered a report by the Head of Legal and Democratic Services regarding a DMMO application to upgrade existing footpath 22CR to bridleway status and add two additional bridleways marked as Paths B and C in the application (report attached to the signed copy of the minutes). The Head of Legal and Democratic Services introduced the report and advised the Committee

that the additional, late evidence received relating to the cultivation of the field over which Path A ran (copy appended to the signed copy of the minutes) did not change the officer recommendation as ploughing and cultivation was a normal occurrence for cross-field paths and there was a statutory obligation to reinstate. The extra information had not provided any evidence that the path had not been reinstated following cultivation. It was confirmed that the Committee would have to assess if there was sufficient evidence to upgrade the existing footpath to a bridleway based on the user evidence provided by the applicant. This was distinct from the consideration of Path B which was a claim for a new right of way. The Committee was informed of corrections to paragraphs in the report which contained typographical errors relating to the number of path users quoted (copy of corrections appended to the signed version of the minutes).

15. Mr J Astor, local landowner spoke in objection to the application. The cultivation of fields over which Paths B and C passed clearly demonstrated no intention to dedicate. Mr Astor queried the Common Law position relating to dedication and explained that Mr Strong, who farmed the land over which the claimed paths passed, had been a contract farmer since 2008 and the land was therefore not under tenancy. On the basis of continual cultivation and the status of Mr Strong the application should be refused.

16. Mr A Astor, local landowner spoke in objection to the application. Mr Astor spoke on behalf of Mr Strong the contract farmer on the land. There existed health and safety concerns relating to horse riders in close proximity to farming processes and heavy machinery. The Highways Act 1980 provided protection against damage to agriculture; the impact of horse riding would damage Mr Strong's crops. Horse riding would cause damage to the existing path and impact upon pedestrian use of the path. The user evidence was disputed as the current contract farmer had never witnessed horses using the claimed paths.

17. Mrs Daniels, the applicant spoke in support of the application. Mrs Daniels had ridden Path A since childhood and referred to historical use of the path by horse riders. The evidence forms submitted with the application demonstrated use of the path by horse riders from 1937 to the present time with no evidence of forbidden notices or attempts to block horse riding. It was recognised that this represented the last chance to record the route as a bridleway and the dangers of riding on the roads prompted the application.

18. The Committee considered the following points:

- It was not felt that sections of Path A were unacceptably narrow for horse riding.
- Evidence of the use of Path A by horse riders had been observed during site visits.
- It would be difficult to accept the assertion that the evidence of the path was not believable given the amount submitted.
- The Committee felt that the user evidence demonstrated that on the balance of probability a bridleway over Path A existed.
- It was not felt that there was sufficient evidence to demonstrate the existence of Path B or Path C. It was accepted that the ploughing of these paths demonstrated no intention to dedicate on the part of the landowner.

19. The Head of Legal and Democratic Services provided the following clarification:

- The ploughing of Path B and C provided evidence of no intention to dedicate on the part of the landowner as there was no existing right of way. The ploughing of Path A was not sufficient to indicate no intention to dedicate as a footpath existed and there was a duty to reinstate. No evidence had been provided that the footpath was not reinstated.

20. The Committee proposed and seconded the officer recommendation and approved the part of the application for Path A unanimously and declined the part of the application for Paths B and C unanimously.

21. Resolved – That:

- i) a Definitive Map Modification Order to upgrade the existing footpath 22CR to bridleway status (shown as Path A on the report plan) under Section 53 (2) in consequence of an event specified in sub section (3) (c) (ii) of the Wildlife and Countryside Act 1981 be made;
- ii) a Definitive Map Modification Order to add a new bridleway (shown as Path B on the report plan) under Section 53 (2) in consequence of an event specified in sub section (3) (c) (i) of the Wildlife and Countryside Act 1981 be not made; and
- iii) a Definitive Map Modification Order to add a new bridleway (shown as Path C on the report plan) under Section 53 (2) in consequence of an event specified in sub section (3) (c) (i) of the Wildlife and Countryside Act 1981 be not made.

West Hoathly: Application for a Definitive Map Modification Order (App No: 2/11)

22. The Committee considered a report by the Head of Legal and Democratic Services regarding an application for a Definitive Map Modification Order (Application No: 2/11) to add to the Definitive Map and Statement for Cuckfield Rural a Footpath from Finche Field, through Garden Mead and Sandy Lane, to North Lane in West Hoathly (copy appended to the signed version of the minutes).

23. Christine Field, the local member, spoke in support of the application, having used the claimed path herself for 40 years. The path provided a safer route for accessing West Hoathly School and encouraged people to walk to school which alleviated congestion in the village.

24. The Committee considered the following points:

- The status of Sandy Lane and Garden Mead was queried. *It was confirmed that Sandy Lane and Garden Mead was classified as a private street and not part of the public highway.*
- The lack of any objections to the application was noted by the Committee.
- It was felt that the evidence submitted with the application demonstrated the existence of a right of way.

25. The Committee proposed and seconded the officer recommendation and approved the application unanimously.

26. Resolved – that a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub section 53 (c) (i) of the Wildlife and Countryside Act 1981, to add a footpath from Finche Field, through Garden Mead and Sandy Lane, to North Lane in West Hoathly be made.

Secretary of State's Decision

27. 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 3.35 p.m.

Chairman