

**Rights of Way Committee**

18 June 2013 – At a meeting of the Committee held at County Hall, Chichester.

Present:

Mr Acraman, Mr Barling, Mr Burrett, Mr Clark\*, Mr Metcalfe, Mr Quinn, Mr R Rogers, Mrs Urquhart† and Mr Whittington (Chairman).

Apologies:

Mrs Duncton and Mrs Hall

\*Mr Clark acted as Mrs Hall's substitute

†Mrs Urquhart acted as Mrs Duncton's substitute

**Declarations of Interest**

1. There were no declarations at this stage of the meeting please see minute 6 below.

**Minutes**

2. A correction to the minutes was raised by the Committee and it was noted that the date of the minutes confirmed at the previous meeting was 23 October 2012.

3. Resolved – That subject to the correction above the minutes of the meeting held on 26 February 2013 be approved and be signed by the Chairman as a correct record.

**Terms of reference**

4. The Committee received and noted its terms of reference.

**Previous Rights of Way Decisions**

5. 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). It was confirmed that a further report on Haywards Heath FP 25CU, Mid Sussex District Council proposed diversion order would be provided to the Committee.

6. Mr Burrett declared a personal interest in respect of Item No.2 Crawley FP86aW and 98W as a member of Crawley Borough Council (CBC). Clarification was requested on the latest position and it was confirmed that CBC had agreed to dedicate three separate bridleways.

**Outstanding Applications**

7. 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).

**Performance Indicators**

8. The Committee received and noted a report by the Director of Communities Commissioning on performance indicators relating to public rights of way for the quarter ending 31 March 2013 (copy attached to the signed minutes).

**Highways Act 1980 Section 119**

**Fulking: Proposed Diversion of part of Footpath 4F and Creation of new footpath**

9. The Committee considered a report by the Director of Communities Commissioning and Head of Law and Governance regarding an application made under the provisions of Section 119 of the Highways Act 1980 to divert part of footpath 4F and provide an additional link to footpath 10F (report attached to the signed copy of the minutes).

10. The Director of Communities Commissioning introduced the report and advised the Committee of two corrections to the information contained in the report. On page 23 of the report, the heading for Section 2 should state that the proposed diversion plan was attached as appendix B. On page 30 of appendix C to the report, under paragraph 2.5 it was noted that the following wording was omitted from the first line: 'It is noted that in recent times there has been some discrepancy in the recorded length of...'.  
11. David Campion, spoke in support of the application on behalf of the applicant. The application was intended to improve security and privacy of the applicant's home. Mr Campion felt that objections to the application were received late and of those submitted one was withdrawn and two were from the same household. The original assessment of the application had concluded that the additional 200m of the diversion was not an inconvenience to walkers. The claim in the report of an absence of attractive views from the diversion conflicted with the initial assessment that it was not considered less enjoyable than the present path which is enclosed on three sides. Concerns about cattle should not overturn the original recommendation as a number of local footpaths passed through fields with cattle.

12. The Committee considered the following points:

- The original officer recommendation to make the order was supported.
- It was felt that the reversal of the officer recommendation was to avoid a costly and time consuming public inquiry.
- Very little had changed since the officers original recommendation to make the order. The path was considered a recreational route and as such the additional distance of the diversion was not felt to be a problem. There was concern about the path crossing a field with cattle but the landowners commitment to provide fencing if necessary on either side of the path mitigated this issue. *It was confirmed that no investigations of the type of fencing to be erected had been undertaken by officers, that the officers had reservations about the effect fencing would have on the public's*

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*enjoyment of the path and that any decision for a condition relating to fencing would fall to the Secretary of State or his Inspector.*

- It was disappointing that the owner had obstructed part of the existing path before the legal processes had concluded.
- It was felt that the application still met the legal tests to make the order and that the Secretary of State should consider the application in more detail at a public inquiry.

13. A motion was proposed and seconded to submit the order to the Secretary of State for determination.

14. The Committee agreed to submit the order to the Secretary of State for determination by a clear majority: 6 in support; 1 against; and 2 abstentions.

15. Resolved – That the Proposed Diversion of part of Footpath 4F and Creation of new footpath order be submitted to the Secretary of State for determination.

### Commons Act 2006 Section 15

#### **Application under S.15 of the Commons Act 2006 for the registration of land claimed to have become a town or village green at land known as Fields at Rosier Wood, Billingshurst**

16. The Committee considered a report by the Head of Law and Governance regarding an application made under the provisions of Section 15 of the Commons Act 2006 to register land in Billingshurst as a town or village green (report attached to the signed copy of the minutes).

17. The Head of Law and Governance introduced the report and advised the Committee of the complex and conflicting factual evidence relating to the application which had prompted the officer recommendation for the evidence to be considered at a public inquiry before the Committee came to a decision on the application.

18. Tim Fogarty, Solicitor acting for Bellway Homes, spoke in objection to the application. There was significant, conflicting evidence and the recommendation to consider the evidence at a public inquiry was supported. Bellway Homes did not accept that there had been sufficient use of the land to meet the legal tests in the Act. Fences and signs had been erected on the land and some of the fields had been cultivated. It was not felt that the area of Billingshurst specified in the application met the legal test of a neighbourhood as defined in the Act. Mr Fogarty referred to direction from the Court of Appeal that local authorities should refer complex applications to public inquiry.

19. A motion was proposed and seconded that stated: 'The matter be dealt with by this Committee at the next meeting and the Chairman be asked to permit more than three speakers to speak for more than five minutes.'

20. The Committee considered the following points:

- The extension of the number of speakers requested in the proposed motion was queried. *It was confirmed that the Chairman could allow more than 3 speakers but could not extend the five minute time limit.*

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- The possibility of constituting a committee of the county council to consider the application was raised.
- The Committee was divided in its opinion of the appropriate course of action. Some members of the committee felt that the referral of the application to a public inquiry was an abdication of the Committee's responsibilities. Other members contended that the lack of an appeal process for village green applications and the range and complexity of the evidence ensured that a public inquiry was vital.
- It was acknowledged that the inspector would not make a decision on the application but would produce a report following a public inquiry. *It was confirmed that the Committee would not be bound by the conclusions of the inspector. The report produced by an inspector would consist of recommendations of an independent expert and it was hoped that such a report would provide balanced recommendations for the Committee to consider.*
- Information was sought regarding the amount of land owned by Bellway Homes on the application site. *Almost all of the 59 acres in the application were owned by Bellway Homes.*
- The Committee queried the 2009 DMMO application relating to the area and requested details of why it failed. *The application failed at the initial stage by virtue of section 31 of the Highways Act 1980, no intention to dedicate, and the applicant withdrew the application after advice from officers.*
- The length of time it would take to arrange a public inquiry was queried. *The latest advice from Defra suggested that it would take 8 – 10 weeks to convene a public inquiry.*

21. The Committee voted by a clear majority to defeat the motion: 'The matter be dealt with by this Committee at the next meeting and the Chairman be asked to permit more than three speakers to speak for more than five minutes.' The Committee voted: 4 in favour, 5 against.

22. The officer recommendation was proposed and seconded and the Committee voted by a clear majority to appoint an Inspector to consider the evidence at a public inquiry. The Committee voted: 5 in favour, 2 against and 2 abstentions.

23. Resolved – That an Inspector be appointed to consider the evidence at a non-statutory public inquiry and that the matter be reported back to Committee upon receipt of the Inspector's report.

### Secretary of State Decisions

24. The Committee received and noted reports of the decisions of the Secretary of State (copy appended to the signed version of the minutes). The Secretary of State confirmed the Balcombe DMMO 5/06 with a minor amendment but did not confirm the Ashurst DMMO 4/08.

### Rights of Way committee delegations to officers

25. The Committee considered a report by Director for Communities Commissioning and Head of Law and Governance (copy appended to the signed version of the minutes). The report set out a proposal to amend officer

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delegated powers; in the event of the receipt of objections following use of officer delegated powers the Chairman of the Rights of Way would be consulted about the submission of the order to the Secretary of State. This would avoid the need for the order to be considered by the Committee before submission to the Secretary of State.

26. The Committee considered the following points:

- The officer delegation agreed in 2010 was intended to avoid non-controversial applications being determined by the Committee. The safeguard was that if objections were received following the use of officer powers then the decision to submit the application to the Secretary of State would be considered by the Committee.
- Since the delegation was agreed in 2010 only 2 applications have had to return to the Committee which was not considered too onerous for members or officers.
- The consideration of applications by the Committee following receipt of objections when an order was made offered the opportunity for speakers to attend a meeting and make representations.

27. A motion was proposed and seconded that the officer delegation agreed in 2010 remains unchanged. The Committee agreed the motion; 8 in support and 1 abstention.

28. Resolved – That the officer delegation agreed in 2010 remains unchanged.

The meeting ended at 3.40 p.m.

Chairman