

Rights of Way Committee

22 October 2019 – At a meeting of the Rights of Way Committee held at 2.15 pm at County Hall, Chichester.

Present: Mr Whittington (Chairman)

Mr Boram, Mrs Purnell and Mr S J Oakley

Apologies were received from Mr Bradbury, Mr Acraman, Mr Baldwin, Mr Buckland and Mr Lea

Substitute: Mr Oakley

Part I

10. Declarations of Interest

10.1 In accordance with the County Council's code of the conduct, there were no declarations of interest made by Committee members.

11. Minutes of the last meeting of the Committee

11.1 Resolved – that the minutes of the meeting held on 25 June 2019 be approved and signed by the Chairman as a correct record.

12. Urgent Matters

12.1 There were no urgent matters.

13. Previous Decisions Progress Report

13.1 The Committee received and noted a report by the Director of Highways, Transport and Planning and the Director of Law and Assurance setting out the progress on previous delegated decisions and decisions made by the Committee (copy attached to the signed minutes).

14. Outstanding Applications and Delegated Decisions

14.1 The Committee received and noted a report by the Director of Highways, Transport and Planning and the Director of Law and Assurance outlining applications awaiting consideration and delegated decisions (copy attached to the signed minutes).

15. Definitive Map Modification Order

Climping and Littlehampton CP: Applications for Definitive Map Modification Orders (Application No's: 2/17, 3/17 and 4/17) to add to the Definitive Map and Statement for Chichester a *restricted byway* between points D and E on plan 01733a and upgrade of a section of Footpath 829 between points A to D on Plan 01733a and to upgrade footpath 174 between points E and F on the Plan to a restricted byway, in the parish of Climping and town of Littlehampton

15.1 The Committee considered a report by the Director of Law and Assurance, as amended by the Agenda Update Sheet, concerning an application to add to the Definitive Map and Statement for Chichester a restricted byway between points D and E on plan 01733a to upgrade a section of Footpath 829 between points A to D on the plan and to upgrade footpath 174 between points E and F on the plan to a restricted byway, in the parish of Climping and town of Littlehampton (copy appended to the signed version of the minutes). Charlotte Nash, Legal Assistant, introduced the report. As per the recommendations in the report, it is considered that the legal tests for making the Orders have not been met.

15.2 Mr Sean Manning representing Littlehampton Golf Club, one of the landowners, spoke in objection to the application. Mr Manning referred to a letter sent to the County Council dated 13 March 2019 (shown by Officers to Committee members following Mr Manning's representation). There are strong concerns particularly in relation to application route D to E which crosses the 12th hole of the golf course, posing significant safety issues for the business, golfers and users of that proposed route. This section was legally stopped up in 1936. The current route (D to Y to Z) is regularly used by families and many children. In relation to section E to F, part of the route runs directly in front of the 16th hole, it is a blind crossing and whilst the golf club has warning signage in place it is felt that this footpath is not suitable for additional traffic that might result from an upgrade to a restricted byway. Furthermore, the golf club is believed to own land beyond footpath 174 and this application raises concerns about the impacts on its ongoing maintenance.

15.3 Mrs Julie Robinson, the applicant, spoke in support of the application. There is good, credible evidence to support the application. Regarding higher rights along section A to X, it is only the Definitive Map which has created a legal restriction; in centuries past the public would have had full access to Climping beach on foot, horse or by horse drawn cart, e.g. use by smugglers, horses to pull up boats and carts to collect seaweed would have occurred. There was no road drawn between Climping and Middleton at this period and the only possible access was via the beach. Route A to X from Climping Street and the Mill was on the public beach even if not always drawn. The old road to the Mill, off the end of Climping Street, is clearly different from the private road which begins further back from the shoreline and shows a distinctive loop further east around the barn and is much later, dating sometime after the 1843 Tithe Map and before the 1876 OS large scale map. It is not shown on earlier maps. Arguments that section A to X was private or only a footpath are highly implausible, the Mill business would have required road access for carts for heavy raw materials and customers taking away sacks of flour. Also, the Mill was described as being located on Common Lane which is not indicative of a private road. It further survived to become a 'public' footpath. Concerns by Littlehampton Golf Club regarding points D to E can be overcome by following the current route D to Y to Z.

15.4 Officers clarified that for the avoidance of doubt the Council is required to consider whether the applicant has shown that with regard to the following sections of the route: A to D and E to F the relevant legal tests are on the balance of probabilities. The exception being for points D

to E, this section of the claimed route deviates from the footpath presently in existence; the proposed restricted byway was diverted in 1936 by the General Quarter Sessions in Chichester Court Order and by that Court Order, all public rights along the path were stopped up including any higher rights; therefore, the application for addition of a restricted byway between points D to E fails on this basis.

15.3 During the debate the Committee made the points below.

Clarification was provided by Officers, where applicable:

- The Committee accepted that due to the stopping up of points D to E in 1936 the application for this section fails on this basis.
- Some of the historic line of the route A to X is no longer in existence due to coastal erosion, over time, along the foreshore. The Committee questioned whether any inherited higher rights of the historic route have been transferred to the line of the current footpath. Officers referred the Committee to section 9.4.3 of the report which summarises for Section A to X that only the Greenwoods 1825 map indicated a route with a status as public route; all maps which show a route between A to X cannot be distinguished from the private road leading to the Mill. Officers clarified that for an upgrade to restricted byway the evidence would need to show that a highway was shown as a byway for use by mechanical vehicles. Officers also clarified that higher rights would not be transferable where the line of a route has changed over time due to the disappearance of the original route, although it is not certain that the route is no longer there. However, irrespective of this, the application must be determined on the basis of the evidence submitted, with appropriate weight attached for the whole of the route A to D, as per application number DMMO 2/17.
- The Chairman noted that where concrete surfacing occurs along route A to X this was put in to facilitate use of the gun emplacements.
- Regarding points A to X to C, the Committee noted that it would appear reasonable to suppose that historic access to the Mill would include use by horse and cart.
- The Committee generally agreed that for points X to C the line of the current footpath follows the historic route shown in archive evidence.
- The Committee asked about the date of the flint wall bordering part of the golf course and whether this was indicative of the border of part of the historic route along section X to E. Officers advised that they did not think the wall is shown in photographic evidence provided by the landowners, the Bairds, of the Mill, dating from the time the golf course was built in the late 1800s but the existence and position of such a wall had not been considered in the report and the historic position of this wall is not known.
- Regarding section E to F, notwithstanding the physical restrictive conditions on the ground, the only historical evidence which clearly suggests the route as having a higher status than a path is the Atherington Estate Map. The Committee considered the purpose for which this map was drawn and the weight to be given to it and concluded that the embankment along part of the route

was likely put in place by the Estate for the purposes of drainage of land and, therefore, on balance, that the route was used as a footpath and so unlikely to have been a byway or as a means of cart access from Littlehampton to the Mill. The Chairman further noted that, in his opinion, farmers would be unlikely to cross a ford whilst carrying loads of grain.

15.4 In respect of DMMO 2/17 (section A to D), the motion below was proposed by Mr Oakley and seconded by Mr Boram, and was voted on by the Committee and approved by a majority:

Having considered the archive evidence summarised in the report and having heard the representations made, the Committee's view on the weight to be given to the archive evidence in respect of DMMO 2/17 including, in particular, the antiquity of the documents and purposes for which the maps were produced; it is concluded that for the claimed route A to D the evidence does show that a highway shown on the Definitive Map and Statement for Chichester as a footpath ought to be there shown as a restricted byway, given that this provided access to the Mill and the Committee infers from this that use was by horse and cart. Therefore, for those reasons, an order under Section 53 (2) in consequence of an event specified in Section 53 (3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade footpath 829 to a restricted byway between points A to D as shown on the application plan 01733 a in the parish of Climping and town of Littlehampton to the Definitive Map and Statement for Chichester be made.

15.5 Resolved – For the reasons given in minute 15.4 above, that an order under Section 53 (2) of the Wildlife and Countryside Act 1981 in consequence of an event specified in Section 53 (3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade footpath 829 to a restricted byway between points A to D in the parish of Climping and town of Littlehampton to amend the Definitive Map and Statement for Chichester, *be made*.

15.6 In respect of DMMO 3/17 (section D to E), the recommendation was proposed by Mrs Purnell and seconded by Mr Oakley, and was put to the Committee and approved unanimously.

15.7 Resolved - in respect of DMMO 3/17 that an order under Section 53 (2) in consequence of an event specified in Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a footpath between points D to E as shown on the application plan 01773a in the parish of Climping and town of Littlehampton to amend the Definitive Map and Statement for Chichester *be not made*.

15.6 In respect of DMMO 4/17 (section E to F), the recommendation was proposed by Mr Boram and seconded by Mr Oakley, and was put to the Committee and approved unanimously.

15.7 Resolved - in respect of DMMO 4/17 that an order under Section 53 (2) in consequence of an event specified in Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade footpath 174 from point E to F as shown on the application plan 01773a in the parish of Climping and

town of Littlehampton to amend the Definitive Map and Statement for Chichester *be not made*.

16. Secretary of State Decision

West Sussex County Council (Elsted & Treyford and Harting) Public Path (No. 871) Diversion Order 2017

West Sussex County Council (Elsted & Treyford) Public Path (No. 872) Diversion Order 2017

West Sussex County Council (Elsted & Treyford) Public Path (No. 873) Diversion Order 2017

16.1 The Committee received and noted a report by the Director of Law and Assurance setting out the outcomes of the recent decision made by the Secretary of State (copy attached to the signed minutes).

16.2 Resolved – The Committee noted the report.

17. Secretary of State Decision

West Sussex County Council (Chichester No. 1 (Parish of Walberton and Arundel addition of a Restricted Byway and Upgrade of Footpath 342 to a Bridleway)) Definitive Map Modification Order 2018

17.1 The Committee received and noted a report by the Director of Law and Assurance setting out the outcomes of the recent decision made by the Secretary of State (copy attached to the signed minutes).

17.2 Resolved – The Committee noted the report.

18. Secretary of State Decision

DMMO 2/16 – To add a bridleway and upgrade footpath 51Esx to bridleway from Top Road to Grinstead Lane in West Hoathly

18.1 The Committee received and noted a report by the Director of Law and Assurance setting out the outcomes of the recent decision made by the Secretary of State (copy attached to the signed minutes).

18.2 Resolved – The Committee noted the report.

19. Date of Next Meeting

19.1 The Committee noted that its next scheduled meeting would be held at 2.15 p.m. on Tuesday, 10 March 2020.

The meeting ended at 3.34 pm

Chairman