

Rights of Way Committee

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

Present: Mr Whittington (Chairman)

Mr Bradbury, Mr Acraman, Mr Baldwin, Mrs Duncton, Mr Quinn and Mrs Russell

Apologies were received from Dr O'Kelly and Mrs Purnell

Part I

10. Declarations of Interest

10.1 In accordance with the County Council's code of the conduct, the following declarations of interest were made:

- Mr Bradbury declared a personal interest in 'West Hoathly: application for a Definitive Map Modification Order (Application No: 2/16) the addition of a bridleway at Top Road, Sharpthorne and to upgrade footpath 51ESx to a bridleway' because his partner is the Mid Sussex District Councillor for High Weald, the electoral division of the application site.

11. Minutes of the Last Meeting of the Committee

11.1 Resolved – that the minutes of the meeting held on 12 June 2018 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 from the Director of Highways and Transport and the Director of Law and Assurance outlining applications awaiting consideration (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 Law and Assurance setting out the progress on previous delegated decisions and decisions made by the Committee (copy attached to the signed minutes).

15. Definitive Map Modification Order

West Hoathly: Application for a Definitive Map Modification Order (Application No: 2/16) the addition of a bridleway at Top Road, Sharpthorne and to upgrade footpath 51ESx to a bridleway.

15.1 The Committee considered a report by the Director of Law and Assurance, concerning an application to add to the Definitive Map and Statement a bridleway at Top Road, Sharpthorne and to upgrade footpath 51ESx to a bridleway (copy appended to the signed version of the minutes). Georgia Hickland, Legal Assistant, introduced the report. It is considered that the legal tests for making the order have not been met. For the avoidance of doubt the County Council is required to consider in relation to making an Order under S.53 (2) in consequence of an event in relation to 1) Point A – B on the application plan: under Section 53(3)(c)(i) Wildlife and Countryside Act 1981 whether evidence submitted by the applicant shows that a right of way which is not shown in the Definitive Map and Statement subsists or is reasonably alleged to subsist over land; and in relation to 2) Point B – C on the application plan under Section 53(3)(c)(ii) Wildlife and Countryside Act 1981 being the discovery of evidence which shows that a highway shown on the map and statement as a highway of a particular description ought to be there shown as a highway of a different description on the balance of probability.

15.2 Mr Martin Robinson, Manager at Blackland Farm Girlguiding Activity Centre spoke in objection to the application. Girlguiding along with other landowners have researched maps for the route and concluded that where the proposed route is shown there is nothing to indicate it was ever a right of way. Current Ordnance Survey maps show routes that are private tracks and driveways to farms that are not rights of way. Any upgrade to FP 51ESx would necessitate the felling of trees to ensure the minimum required bridleway width of 3m. There is no evidence to support the claim for the map modification to be made.

15.3 Mr Paul Brown, the applicant, spoke in support of the application. The 1724 Budgen map, 1840 East Grinstead Tithe map, and 1831 1st Edition OS map do provide evidence of the route, contrary to the conclusions in the Committee report, and paragraph 8.1, in relation to existence of a 'feature' (a gate), is disputed because many bridleways do have gates. The evidence of Major Grubb, supplied with the application, shows the route was used until the turn of the 20th century/before WWI. Regarding points B to C on the route, the Budgens maps, Major Grubb's evidence, 1873 East Grinstead parish boundary sketchbook and 1997 archaeological study for the clay quarry extension would not have been considered in the 1950s. Regarding points A to B a bridleway can be reasonably alleged to exist. Regarding points B to C the higher legal test on 'balance of probability' may apply, quoting a Planning Inspectorate appeal on a similar application in 2017 who stated that where there are "different tests applied to the same evidence" which "may lead to different conclusions"... a "pragmatic approach would be for an order to be made...to a route as a whole".

15.4 During the debate the Committee raised the points below. Clarification was provided by Officers, where applicable:

- The application should be considered as a whole.
- Access to the route at point A is difficult to find; there is no signpost and it is accessed via a driveway between properties.
- The route is steep at points along point A to B.

- The conflict over the interpretation of archival evidence was acknowledged but the Committee noted that, as stated in the report, “none of the maps identified are produced for the purpose of confirming highway status” and it was, therefore, agreed there was no evidence of status.

15.5. The recommendation was proposed by Mr Bradbury and seconded by Mrs Russell, and was put to the Committee and approved unanimously.

15.6 Resolved – That a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub-section 53(3)(c)(i) and 53(3)(c)(ii) of the Wildlife and Countryside Act 1981, 1) to add a bridleway from point A, Top Road, Sharpthorne to point B, and 2) to upgrade footpath 51ESx to a bridleway from its commencement at point B to its termination at point C, Grinstead Lane, West Hoathly be not made.

16. Definitive Map Modification Order

Henfield: Application for a Definitive Map Modification Order (Application No: 1/17) to add to the Definitive Map and Statement a public footpath along Dagbrook Lane

16.1 The Committee considered a report by the Director of Law and Assurance, amended by the Agenda Update Sheet, concerning an application to add to the Definitive Map and Statement a public footpath along Dagbrook Lane (copy appended to the signed version of the minutes). Charlotte Nash, Legal Assistant, introduced the report. It is considered that the legal tests for making the order have not been met. For the avoidance of doubt the Council is required to consider whether the applicant has shown that on the balance of probability a right of way subsists, or that it is reasonably alleged to subsist.

16.2 Mr Mark Elsam, owner of Brookside Farm, spoke in objection to the application. The route is an ‘occupation road’ linking Brookside, Pokerlea and Rye Farms; this is supported by archive maps. Brookside Farm, including Dagbrook Lane which is part of the farm, has been owned by the Elsam family since 1940. The proposed route is an important woodland wildlife corridor. There are historical and ongoing problems with uncontrolled dogs causing a detrimental impact on wildlife and if the proposed route is allowed then even more people will roam off the route as well as on it causing even more harm. The family has always sought to stop trespassing. There have been many incidences of fencing being cut, locks damaged and gates propped open all over the farm. Signs have been put up and repeatedly illicitly removed for years. Suggestions that the family has not opposed trespassing over the years are untrue. The family objects to the proposal in the strongest possible terms.

16.3 Mrs Hilary Pierce, an interested party, spoke in support of the application. ‘Occupation road’ cannot equate to private access only; maps demonstrate the majority of the 24 occupation roads in Henfield, shown on the Henfield Tithe apportionment, now have rights of access of various highway statuses. Early map evidence does suggest public access rights for the whole length of Dagbrook Lane, which is shown as a road on the first one inch OS map and the OS Survey Book of Reference and it is also

shown on the Finance Act Map in 1910 which almost always supports public vehicular rights. It is probable that routes like this, that join two other roads, are for use by the public. The Committee should be sure that evidence provided of ownership of the route along Dagbrook Lane is sound because it has no registered owner. The public have probably used the whole lane for centuries. Good 'User Evidence' has been supplied with the application.

16.4 During the debate the Committee raised the points below. Clarification was provided by Officers, where applicable:

- Ownership of the proposed route along Dagbrook Lane was queried. At the invitation of the Committee, Mr Elsam reiterated his ownership.
- It is clearly evidenced that the Elsam family has continually tried to restrict access and that notices have been repeatedly removed.
- The impact of harm to wildlife was acknowledged, but the Committee noted that this is not material to the application.
- The proposed route does not lead to a place of public interest or a special view point and whilst at point C it does lead to a connecting path, that path is a permissive track used with permission and not 'as of right'.
- The conflict over the interpretation of archival evidence was acknowledged but the Committee noted that whilst the path is listed on several maps as an 'occupation road', as stated in the report, "none of the maps identified are produced for the purpose of confirming highway status". The meaning of 'occupation road' is a matter of interpretation but this is understood to be a term used to describe a road laid out for the benefit of occupiers of adjoining properties and not a public highway.
- The archive evidence considered as part of this application was not strong enough on its own to recommend an order be made and, therefore, the evidence of use submitted under S.31 Highways Act 1980 has been considered. Officers concluded that while there is a conflict of evidence, given the account of locked gates and notices on site, as well as a user's account of obtaining permission to use Dagbrook Lane, it is reasonable to conclude that the land owner has throughout time attempted to prevent the public using the route and that use of the route has not been shown to be 'as of right'.

16.5. The recommendation was proposed by Mr Patel and seconded by Mr Quinn, and was put to the Committee and approved unanimously.

16.6 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 footpath from FP 2563 and then east along Dagbrook Lane to an unmarked track in Henfield be not made.

17. Urgent Action

Adur and Worthing Council's Public Path Diversion Order Town and Country Planning Act 1990 S 257 Public Footpath 2048 (Shoreham Adur Tidal Walls Development) Diversion Order 2018

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

17.2 Officers provided an update and advised that works are close to completion and the pathway is now in public use, although it may need to be temporarily closed to allow the surface to consolidate.

17.3 Resolved – The Committee noted the Urgent Action decision published on 15 August 2018.

18. Secretary of State Decision

West Sussex County Council (Warnham) Public Path (No. 1577) Diversion Order 2013 West Sussex County Council (Warnham) Public Path (No. 1578) Diversion Order 2013

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). An error was noted, in paragraph 1.4 of the report: 27 September '2019' should read '2013'.

18.2 Resolved – The Committee noted the report.

19. Secretary of State Decision

West Sussex County Council (Petworth No.1 (Parish of Loxwood addition of Footpath)) Definitive Map Modification Order 2014

19.1 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).

19.2 Resolved – The Committee noted the report.

20. Secretary of State Decision

West Sussex County Council (Southwater) Public Path (no. 2642) Part Special Diversion Order 2016 West Sussex County Council (Southwater) Public Path (no. 1650) Part Special Extinguishment Order

20.1 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).

20.2 The Committee noted that an interested party has raised concerns to a Committee member relating to this application, which will be passed to Officers to check and action, where required.

20.2 Resolved – The Committee noted the report.

21. Secretary of State Decision

Application for a Definitive Map Modification Order (Application No. 5/16) to add a public footpath from bridleway 1163 to Fyning Lane in the Parish of Rogate

21.1 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).

21.2 Officers provided an update and advised that the order has now been made, and that consultation ends on 11 April 2019.

21.3 Resolved – The Committee noted the report.

22. Update on Delivery of Works

22.1 The Committee noted a verbal update on delivery works in the last year. The report was introduced by Judith Grimwood, Senior Rights of Way Officer. The update was circulated to Committee members following the meeting.

22.2 The Committee requested that in future the update on delivery of works should be appended to the agenda as a written report to allow members to study the report and consider any questions in advance of the Committee meeting.

22.3 Resolved – That future updates to the Rights of Way Committee on delivery of works be presented to the Committee as a written report.

23. Date of Next Meeting

23.1. The Committee noted that its next scheduled meeting would be held at 2.15 p.m. on Tuesday 25 June 2019.

The meeting ended at 3.56 pm

Chairman