

Rights of Way Committee

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

Present: Mr Whittington (Chairman)

Mr Acraman, Mr Boram, Dr O'Kelly, Mr Quinn, Mrs Russell, Lt Col Barton and Mr Patel

Apologies were received from Mr Bradbury, Mr Baldwin and Mrs Purnell

Substitutes: Lt Col Barton and Mr Patel

Also in attendance: Mrs Pendleton

Part I

1. Committee Members

1.1 The Committee thanked Mrs Duncton for her work on the Committee and welcomed Mr Boram as a member. The Committee also wished it noted that Mr Baldwin is unwell and wished him a speedy recovery.

2. Declarations of Interest

2.1 No declarations of interest were made.

3. Minutes of the last meeting of the Committee

3.1 The Committee noted an error in minute 20; the title of the first of the Southwater public paths should read '1642', not '2642'.

3.2 Resolved – that the amended minutes of the meeting held on 5 March 2019 be approved and signed by the Chairman as a correct record.

4. Urgent Matters

4.1 There were no urgent matters.

5. Previous Decisions Progress Report

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

6. Outstanding Applications and Delegated Decisions

6.1 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).

7. Public Path Order Proposal

Ansty and Staplefield – Request for Diversion of Part of Bridleway (Bw) 40CR at Mizbrooks Farmhouse

7.1 The Committee considered a report by the Director of Highways, Transport and Planning concerning an application to divert part of Public Bridleway 40CR at Mizbrooks Farm near Cuckfield. Judith Grimwood, Senior Rights of Way Officer introduced the report. It is considered that the legal tests for making and confirming the order have been met.

7.2 The Chairman read out the following statement from Mr Pete Bradbury, local member for Cuckfield and Lucastes who was unable to attend:

“Unfortunately I am unable to attend Rights of Way Committee on 25 [June 2019]. However, this application is in my division, I have no objections to it and to date have received no submissions about it either for or against.”

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

- The application site is very rural and in a particularly attractive part of West Sussex.
- The comments of the British Horse Society’s County Access & Bridleway’s Officer for West Sussex that the proposed diversion would be “enjoyable to use”, as recorded in 7.1 of the Committee report, were highlighted; whilst this is subjective the preference “not to be in close proximity to the house and garden” supports the case for better privacy and security of the landowner’s property.
- Empathy was expressed for situations, such as in the case of this application, where landowners have public rights of way through their gardens.
- The objection made by the Open Spaces Society is considered to be unreasonable in the case of this application, where the proposed diversion route is a perfectly acceptable alternative route.

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

7.5 Resolved – That the Director of Law and Assurance be authorised to make a diversion Order under Section 119 of the Highways Act 1980 in respect of bridleway 40CR and to take reasonable steps to implement the proposal.

8. Definitive Map Modification Order

(Application No: 3/18) to add to the Definitive Map and Statement for Chichester a footpath from West of Drove Lane off FP200-1 at

Point A (SU972034), to point B (SU971034) and terminating at point C (SU907031), in the Parish of Yapton.

8.1 The Committee considered a report by the Director of Law and Assurance concerning an application to add to the Definitive Map and Statement a footpath from West of Drove Lane off FP200-1 at Point A, to point B and terminating at point C, in the Parish of Yapton. Charlotte Nash, Legal Assistant, introduced the report. It is considered that the lower legal test for making the order have been met, that is that it can be reasonably alleged that a footpath subsists. For the avoidance of doubt the Council is required to consider whether the applicant has shown on the balance of probability that a right of way subsists, or that it is reasonably alleged to subsist.

8.2 Mr Jonathan Cheal, solicitor, Moggers, Drewett, Wells, Somerset, representing Mr Langmead, the landowner spoke in objection to the application. Evidence in favour is unusually thin, evidence against is strong. The law requires that documentary evidence should show, on balance, that it is sufficiently strong to infer dedication. The land is and has always been privately owned farm land and there is no evidence of express dedication or acceptance/use by the public. Route A-B forms part of an existing footpath, which historically will have formed a farm access to Denges Barn. B-C is a non-existent route; maps are misleading – there is a drain [ditch/watercourse] immediately west of the route which looks like a path but is not, and also the alleged route is along the eastern boundary of a section of the parish. The OS First Edition 1876, the 1896 OS Map and boundary remarks sketchbook plans are insufficient to prove a public right of way (PROW); these may show footpaths markings but they are not necessarily evidence of a PROW. Section 5 of the report does not summarise evidential material against, but only contains the information provided by the tenant farmer: a balancing exercise would include primary sources where the route is not shown, which are: Yeakell & Gardner 1778, 1839 Yapton Tithe Map, 1867 Inclosure, 1910 Finance Act, 1949 Act (parish survey and definitive map), adding weight to the body of evidence against this being PROW.

8.3 Mrs Hilary Pierce, representing Mr Chris Smith, the applicant, and also a member of Mid Sussex Bridleways Group spoke in support of the application. Mrs Pierce stated that the Committee report is fair and balanced in its conclusions to the recommendation that the order be made. A similar route can be seen on Yeakell & Gardner's 1778 map and is likely to be an ancient customary way. The altered course of the route seen later was the result of the construction of the Portsmouth and Arundel canal around 1820. It is unlikely that Ordnance Survey would have regarded a purely private path used by one household as a feature worthy of note on the boundary records. It is asserted that the route is blocked by a post and wire fence and that no public have been seen using the route during the tenant farmer's 48 year tenure. Mrs Pierce stated that maps have not shown the route since 1910, but there is a legal maxim "once a highway, always a highway" and a highway continues to exist unless there is evidence the route has been legally stopped up. Lack of use does not stop a route from carrying highway rights. Concerns about inconvenience and amenity value are not relevant.

8.4 The Chairman noted that Mrs Jacky Pendleton, local member for Middleton is in support of the application. Mrs Pendleton had no evidence but supports the addition of the route, which she considered could be a multi user path. In order to avoid possible confusion, the Chairman confirmed that the application was not about a multi-user path but about the route of a footpath.

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

- There is no evidence of use and this is a case made on historic archive evidence only. Officers clarified that from the historic archive evidence provided it is possible to determine that the footpath may be reasonably alleged to subsist, which is a lower test than balance of probabilities. If the evidence is finely balanced but there is no incontrovertible evidence that the claimed route could not subsist, then the test is met and an order should be made. With reference to S.32 Highways Act 1980, the weight to be given to the archive evidence is at the discretion of the Committee. The Committee noted that Mr Cheal made a strong case in opposition against the recommendation and the five documents mentioned by him, which support the case against, are significant. The fact that old documents show 'F' or 'FP' is not necessarily determinative of public status.
- Opinions were stated that route B-C does not go anywhere and that there is nothing of note at the end of the claimed route, but also that this should be considered irrelevant in determining the application. Additionally, it was noted that there are other paths close by.
- The case in support of the application has not been made and evidence would not hold up under the test of 'balance of probabilities'. It was also not considered that the evidence showed it was reasonable to allege the subsistence of a way. The Committee requested clarification on whether additional exploration of the archive evidence would be helpful. Officers advised that this would be unlikely to provide any further evidence or clarity – all archival evidence has been considered and commented on.

8.6 The motion below was proposed by Mr Boram and seconded by Mr Patel, and was voted on by the Committee and approved by a majority.

8.7 That, having considered the archive evidence summarised in the report and having heard the representations, the Committee's view on weight to be given to the archive evidence including, in particular, the antiquity of the documents and purposes for which the maps were produced, it is concluded that the claimed route is not reasonably alleged to subsist for the following reasons:

- Yeakell & Gardner 1778 was produced before the Portsmouth and Arundel Canal was constructed and so is not strong or persuasive evidence of the existence of the claimed route A-C.
- Tithe Mapping - While the mapping does distinguish a route A-B it is not possible to be certain this is different to FP200-1, which

runs along the tow path. Route B – C is not clearly shown on the Order of Exchange - while route A-B is shown coloured sepia (like Drove Lane); route B-C is not shown.

- While shown on early OS mapping, the status of the Claimed Route is not defined. OS maps are not determinative as to status.
- The claimed route did not appear on OS mapping after 1897.
- The claimed route was not included on the original Definitive Map.

8.8 Resolved – For the reasons given in minute 8.7 above, that an order under S.53 (2) of the Wildlife and Countryside Act 1981, 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 West of Drove Lane off FP200-1 at Point A, to point B and terminating at point C (SU907031), in the Parish of Yapton to the Chichester Definitive Map and Statement *be not made*.

9. Date of Next Meeting

9.1. The Committee noted that its next scheduled meeting would be held at 2.15 p.m. on Tuesday, 22 October 2019.

The meeting ended at 3.14 pm

Chairman