

Rights of Way Committee

3 November 2020 – At a virtual meeting of the Rights of Way Committee held at 2.15 pm.

Present: Cllr Whittington (Chairman)

Cllr Bradbury, Cllr Acraman, Cllr Boram, Cllr S Oakley and Cllr Patel

Apologies were received from Cllr Barton and Cllr Baldwin

Substitute: Cllr Patel

Absent: Cllr Buckland and Cllr Sudan

Part I

20. Declarations of Interest

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

21. Minutes of the last meeting of the Committee

21.1 The Committee was asked to confirm the minutes of the meeting held on 22 October 2019 and in doing so, in accordance with the Council's leaflet 'Rights of Way Committee – Public Participation' the Committee was also asked to consider a written request to amend the minutes of the meeting of the Committee of 22 October 2019.

21.2 In relation to minute 15.2 of the 22 October 2019 meeting, the Committee agreed that the minute should be corrected in accordance with the proposed amendments, as follows:

- Mr Manning referred to a letter sent to the council – date of the letter adjusted from 13 March to 15 March;
- inserted the word 'cyclists' to read, 'The Current Route (D to Y to Z) is regularly used by families, cyclists and many children'; and
- to replace the word 'hole' with 'tee' to read, 'In relation to Section E and F, part of the route runs directly in front of the 16th tee'.

21.3 Resolved – that the amended minutes of the meeting held on 22 October 2019 be approved and signed by the Chairman as a correct record.

22. Urgent Matters

22.1 There were no urgent matters.

23. Outstanding Applications and Delegated Decisions

23.1 In receiving the report on Outstanding Applications and Delegated Decisions concern was expressed that outstanding applications could be

forgotten under the new governance arrangements of the Rights of Way and Planning Committee. The Chairman advised that most of these decisions had been delegated to officers where orders had been dealt with quickly and confirmed. Becky Moutrey, Senior Solicitor advised that any delays were mostly those where orders were with the Planning Inspectorate.

23.2 The Committee noted the 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).

24. Previous Decisions Progress Report

24.1 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).

25. Definitive Map Modification Order

Definitive Map Modification Order No 1.19 – The addition of a Footpath from footpath 2704-1 and bridleway 2714 crossing Mouse Lane past Charlton Court Farm to footpath 2713 in the Parish of Steyning CP to the definitive map for Chanctonbury

25.1 The Committee considered a report by the Director of Law and Assurance concerning a Definitive Map Modification Order (DMMO) No 1.19 – The addition of a Footpath from footpath 2704-1 and bridleway 2714 crossing Mouse Lane past Charlton Court Farm to footpath 2713 in the Parish of Steyning CP to the definitive map for Chanctonbury.

25.2 This application had been received on 27 February 2019 and was made by Steyning Parish Council to add a new footpath in the parish of Steyning CP. The Chairman informed the Committee that he had made a site visit in respect of this order and introduced Charlotte Nash, Legal Assistant to present the report.

25.3 In presenting the report, Charlotte Nash, Legal Assistant, updated that the public way user evidence was from ten users, rather than eleven, attesting to frequent use of the claimed route “as of right” during the relevant period because one of the eleven users was found to also be an occupier. Members were informed that the establishment of a permissive path in 2009 was the act which brought use by the public into question and therefore the relevant 20 year period, taken back retrospectively from this date, was 1989 to 2009. It was further explained that letters found in the County Council’s path/parish files and from the landowner indicate use of the claimed route may have been withdrawn from the public in the 1990’s but it was not clear as to whether the interruption was to use on foot or on horseback. In addition, while the letters indicate the route was used by the public, it was unclear if use was “as of right” and tolerated by the landowner or with permission. The user evidence from ten users attested to frequent use of the claimed route “as of right” during the relevant period. It was stated that while there was some evidence of an

intention not to dedicate on the part of the landowner, it was not considered that this would defeat the claim, given there was no firm evidence that the landowner communicated an intention not to dedicate the claimed route or that use was interrupted by the landowner.

25.4 The Committee was further informed that where an applicant for a DMMO produces credible evidence of actual enjoyment of a way as a public right of way over a full period of 20 years, but there is a conflict of apparently credible evidence from the landowner in relation to one or other issues arising under Section 31 of the 1980 Act, then the allegation that the right of way has been reasonably alleged to subsist is used. It was concluded that the reasonable user would have believed they were using the claimed route "as of right" during the relevant period. Therefore, it could be reasonably alleged that the claimed route subsists and meets the relevant statutory tests set out in Section 31 Highways Act 1980 on the lower test of a reasonable allegation. It was noted that the application was made under Section 53 (3) (c)(i) Wildlife and Countryside Act 1980 (WCA), being the discovery by the County Council of evidence which 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.

25.5 Mr Richard Goring, landowner, spoke in objection to the application. The landowner, tenant farmer and adjoining landowners contest the evidence, arguing that the claimed route had only been used with permission and prior to a permissive path being established in 2009 and that public use of the route was not permitted. In general, the landowners were supportive of access and have encouraged public use over large areas of the estate. There are already a number of permissive paths and open areas that members of the public are able to freely use on an informal basis. Mr Goring objected to informal routes on the land being gifted under Rights of Way, although he was happy to grant permission for users to use the estate, but felt a demand by Steyning Parish Council was not necessary. A plea was put forward that Steyning Parish Council approach the landowner directly in these type of matters because it is preferable that informal discussions take place so that friendly agreement, with trust between the estate and the public, could be reached. One area of concern was the amount of money the estate had to spend on making accessible, public routes safe to use, e.g. the cost of felling dead Ash Trees, the closure of public rights of way for maintenance, and the need to encourage cattle grazing to encourage chalk grassland as a rare habitat which requires the management of public access. A permanent right of way would prevent flexibility of use. There are also concerns that other areas of the estate where the public had been permitted use may now become permanent. In view of this, if the application was agreed there would be a need to reassess 6.3km of permissive paths around Steyning which are heavily used and decide if closure would be necessary due to safety concerns and other issues.

25.6 Mrs Gill Muncey, an interested party, spoke in support of the application, as a former Steyning Parish Councillor and resident in the area for some thirty years. Mrs Muncey advised that she has used this path for thirty years and has not seen any signage to deter public use nor has she ever been interrupted in use. There were many public users using the path by Charlton Court Farm due to the fact that footpath 2713 does not

connect with any other route. Charlton Court Farm pathway provides a circular route which connects to many other bridleways. Item 7 of the report detailing other evidence, including letters from residents dated 1990, 1991 and 1994, demonstrated that the footpath was used as of right from 1989 to 2009.

25.7 A statement was read out on behalf of Mrs Chris Young, Vice Chair of Steyning Parish Council (Steyning Parish Council being the applicant). Mrs Young has lived in Mouse Lane since 1985 and has walked extensively in the Countryside several times a week, frequently using the Charlton Court Farm footpath. Mrs Young has often met other walkers using the footpath which connects walkers to the South Downs and during this time had never been challenged in her use of the path. Open green spaces are needed for health and this pathway provides circular walks linking to existing public rights of way on either side.

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

- The Committee accepted the evidence that the path had been used during the period 1989 to 2009 as of right with no evidence that signage had been in place to prevent use. It was acknowledged that there was evidence of signage from 2009 onwards but this was outside of the relevant time period.
- The Committee, whilst understanding Mr Goring's objection, were minded to accept the Officer's legal advice because it seemed impossible to not agree that public use 'as of right' had been demonstrated. The Committee could not find any genuine reason to refuse the application and Officer advice was that the Committee were constrained to the legal tests that had been applied in their decision making.

25.9 In respect of DMMO 1.19 the recommendation was put to the Committee and approved by a majority.

25.10 Resolved – that a definitive map modification order to add a footpath from footpath 2704-1 and Bridleway 2714 crossing Mouse Lane past Charlton Court Farm to footpath 2713 in the Parish of Steyning CP for the Definitive Map for Chanctonbury be made.

26. Public Rights Of Way Annual Progress Report 2019

26.1 The Committee received the Public Rights of Way Annual Progress Report 2019 from Nick Scott, Principal Rights of Way Officer, that contained an annual progress report for the Public Rights of Way (PROW) team setting out the achievements on the network and customer service data during the 2019 calendar year. In receiving the report, the committee made a number of observations as follows, with clarification being provided by the Principal Rights of Way Officer, as required:

- A typographical error was amended at paragraph 4.1 of the report to replace the word 'surface' with 'service'.
- Concern was expressed with respect to Network Rail on the routine maintenance required for the replacement of pedestrian crossing

points across railway lines. It was agreed that the Chairman and the Principal Rights of Way Officer would discuss this matter further outside of the meeting so that relevant information could be accessed and progress sought.

- Information was requested on how the PROW team had coped through the pandemic, with the following information provided by the Officer:
 - work had been challenging and there was a period of three months where inspections had not taken place on rights of way networks. However, inspections had resumed with support from volunteers. The inspections remained slightly behind schedule;
 - works identified in the Capital Programme were still underway including work on surface improvement and bridge replacements;
 - No volunteer ranger tasks had taken place during the pandemic due to the government guidance about meeting in larger groups.
- The Committee were pleased with the increased use of the public rights of way network due to the pandemic, noting that there was an element of education required for new users.
- The Committee asked if improvements on the public rights of way network had been made through new developments/Section 106 monies. The Officer pointed out the Section 257 diversions listed in the Outstanding Applications and Delegated Decisions papers (copy attached to the signed minutes) as these were related to development and led by the District and Borough Councils. Section 106 monies are being used at the new development in Aldingbourne and further works on the footpath from Hunston Bridge to A27.
- Trees were noted as the responsibility of the landowner, if a tree fell on unregistered land then the County Council would undertake clearance.
- It was agreed that the Principal Rights of Way Officer would provide details for 2019/20 and 2020/21 financial years on any completed/in progress schemes linked with S106, Operation Watershed and how the PROW Team feed into the CIL process to Committee Members following the meeting.

26.2 Resolved – that the Public Rights of Way Annual Progress report 2019 be noted.

27. Secretary of State Decision

Recent Decision by the Secretary of State's Inspector- West Sussex County Council (Chichester- No.2 (Climping Parish and Town of Littlehampton: Upgrade of public footpath 174 to a restricted byway)) Definitive Map Modification Order 2020

27.1 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).

27.2 Resolved – That the report be noted.

28. Date of Next Meeting

28.1 As rights of way matters would, in future, be considered at a meeting of Planning and Rights of Way Committee this was the last meeting of the Rights of Way Committee. The Chairman was thanked for his diligent service to the Rights of Way Committee.

28.2 The meeting of the Planning and Rights of Way Committee was confirmed as taking place on Tuesday, 1 December 2020 starting at 10.30 a.m.

The meeting ended at 4.00 pm

Chairman