

## **Planning and Rights of Way Committee**

11 October 2022 – At a meeting of the Committee held at County Hall, Chichester, PO19 1RQ.

Present: Cllr Burrett (Chairman)

Cllr Atkins, Cllr Ali, Cllr Duncton, Cllr Gibson, Cllr Joy, Cllr McDonald, Cllr Montyn, Cllr Oakley, Cllr Patel, Cllr Quinn and Cllr Sharp

Apologies were received from Cllr Hall

### **Part I**

#### **8. Declarations of Interest**

8.1 The following declarations of interest were made in relation to Agenda Item 4 – Definitive Map Modification Order DMMO 11/18:

- In accordance with the County Council's Code of Conduct, Cllr Gibson declared a Personal Interest due to his membership of the British Horse Society (BHS). The Committee noted that BHS is not in support of the application, as stated by Miss Wood, speaker in objection (see minute 11.2 below).

#### **9. Minutes of the last meeting of the Committee**

9.1 Resolved – That the minutes of the Planning and Rights of Way Committee held on 18 May 2022 be approved and that they be signed by the Chairman.

#### **10. Urgent Matters**

10.1 There were no urgent matters.

#### **11. Definitive Map Modification Order**

##### **DMMO 11/18 To upgrade parts of public footpaths 165 and 166 to bridleway and to add new lengths of bridleway in the parishes of Yapton, Climping and Middleton-on-Sea**

11.1 The Committee considered a report by the Director of Law and Assurance, as amended by the Agenda Update Sheet (copies appended to the signed copy of the minutes). The report was introduced by Georgia Hickland, Trainee Legal Executive, who outlined the proposals, key points and amendments and advised that the approximate location of Park Farm, as noted in the Committee report, was marked on the plan on the Committee presentation.

11.2 Miss Amanda Wood, local resident, horse owner and rider, spoke in objection to the application. The claimed route [F to G] cuts a diagonal line across her land including a private driveway, outbuildings and pony paddocks. The route was only ever a footpath. It was formally diverted away from the property by the local authority in 1954. The diverted

footpath, marked on all OS maps, is clearly indicated on Ancton Lane pointing along Kingsmead Road and Sunnymead Close. It would not be lawful to rescind an official diversion. The claimed route would be disruptive to the business. Lost grazing would mean pony owners being forced to find other facilities. Horse riders could be a danger to users of her static caravan site, who access the site along the private driveway. It would increase security concerns and may impact on her insurance premiums. The rest of the proposed route is unsuitable as a bridleway without considerable upgrading and expense. The footpath through the woods is too narrow and trees protected by TPOs may need to be felled. Crossing the busy A259 is dangerous and would require an underpass. The whole route does not link to anywhere of interest to a horse rider. Mark Weston, Director of Access, British Horse Society via email on 30 November 2018 states the BHS has not chosen to support this claimed route.

11.3 Mr Jonathan Cheal, Solicitor at Mogers Drewett, representing Mr D W Langmead as owner of the route between the parish boundary and point D, and also Mrs S M Abbot, the owner of the central section of the route from the parish boundary northwards to point C, spoke in objection to the application. Reference is only to points C to D and Mr Cheal does not represent nor speak for any of the owners of the rest of the route. The evidence is insufficient to demonstrate that public bridleway rights have come into being between point C and D, which is privately owned; the definitive route is public footpath and the applicant has failed to supply proof of a higher status, based on the historic documents available. There is no real evidence that the route has become a bridleway, whether by creation or dedication. There is no inclosure evidence to demonstrate bridleway status and no Tithe evidence - the Climping Tithe Map does not show the route at all. The Yeakell & Gardner Map shows a faint dotted line approximating to the route, but the Map's prospectus stated that private routes were shown and also footpath routes. The old OS Map and Greenwood show a route going as far as Park Farm but no further. OS Maps tended to show what was on the ground, without indication of status. Greenwood also portrayed private routes. It was claimed as a footpath in the parish survey prior to the first definitive map.

11.4 The clerk to the Committee read out a statement in objection to the application from Shelley Towse, local resident [F to G]. This bridleway would have a negative impact on the yard where she keeps her horse, as it would go through paddocks and mean a loss of grazing. With a shortage of local stable yards it could result in horses having to be sold. The claimed bridleway would not be safe as it is currently not wide enough for a horse let alone a horse and member of the public passing in opposite directions. The path would need to be widened considerably and resurfaced. The bridge, which has steps, is not bike or horse friendly. The claimed route leads to the A259 which is not a safe road to cross on foot or horseback; it would need an underpass. This application would be of no benefit to riders.

11.5 Miss Amanda Wood read out a statement in objection to the application from Christine Chamberlain, Arun District resident and horse and pony owner, one of which resides on the land in question [F to G]. Mrs Chamberlain has been party to this land and the local area since the

late 1960s and at no time has been aware of a bridle path nor would ever have had a reason to use it or cross over the fields in this way. There is a question as to whether it was ever such a right of way, looking back over the years. There is no direct access to the beach unless you were to ride via Yapton Road and through the village. The A259 is treacherous at the best of times. The claimed route is a most impractical suggestion. The population of horse riders in the vicinity has diminished over the years. None of the remaining local riders would ever consider attempting a journey on horseback to a beach, which since the new sea defences, is not ideal, and also the times of day available to ride have now been restricted.

11.6 Mr Paul Brown, representing the Open Spaces Society, spoke in support of the application. The landowner deposit, noted in para. 5.1.11 of the Committee report is irrelevant to an archive evidence DMMO application. The applicant's evidence, Appendix 1 (ACA/MD 2345), refers to a 1564 Sherriff's Court ruling where three individuals were indicted for closing up a gate on the route through the former Ford Park, which was described as being part of a longer road from Felpham to Madehurst. This was not properly explored in the Committee report and in para. 4.2 it states that 'it is not possible to determine the exact route.' This evidence should not be denigrated on the basis of a "feature", i.e. a gate, which is shown on the Yapton Tithe Map on Cinders Lane as bridleways commonly had gates. The claimed route is supported by 1838 Tithe Maps evidence and the 1872 Boundary Remarks Book, which show the same route is congruent with the 1564 indictment. In 1989 Wessex Archaeology stated that "Parish territorial boundaries often follow pre-existing landscape features such as roads, tracks and streams. Most parish boundaries were probably established by 1200". In *R v Exall*, 1866, Judge Pollock said that circumstantial evidence is to be considered not as the links of a chain but... "like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength." Page 40 of *Rights of Way, A Guide to Law and Practice* by Riddall and Trevelyn states that "relatively few highways can be shown to have been expressly dedicated. The great majority have been accepted as being public since beyond memory".

11.7 Mrs Julie Robinson, the applicant, spoke in support of the application. The points raised by Mr Brown regarding the 1564 Sherriff of West Sussex's indictment were reiterated. There would not have been a meaningless deviation off to the east through Ford Park (shown on later maps as Park Farm), but it makes perfect sense when seen as a route to Ancton. The claimed route is one and the same and is still in existence, whilst the rest of the road to Madehurst became the B2132. Historically, land was an open and shared environment and would have been criss-crossed by bridleways used by pack horses and people on horseback. *Rights of Way Law, 1896*, by Sir Robert Hunter covers the definition of a bridleway and how, before good roads became commonplace, most transportation was effected by means of pack-horses, it notes that many of the oldest tracks are pack-horse ways and that such ways tended to either develop into cart ways, or to degenerate into footpaths. It also describes the common loss of bridleways by landowners obstructing them, or disputing there was a right for horses whilst that for foot passengers was admitted, showing the widespread diminution of bridleways to only footpath status during the 19<sup>th</sup> century. Later OS mapping shows the coastal plain, in particular, to be practically devoid of bridleways and this

should be taken with a very large pinch of salt. There is evidence of some sort of higher status public route on historic County maps, supporting it being the same route as the one in the Sherriff Court indictment. Not being shown on the Climping Tithe Map is not evidence against and a bridleway would not have affected the productivity of the land and its liability to tithe. Para. 4.6 of the Committee report misunderstands the applicant's comment about an easement - the legal definition of a highway is merely a right of the public over land, so the sale of Cinders Lane is irrelevant. The Finance Act 1910 evidence shows a higher status as public highway. Para. 4.13 of the Committee report misrepresents the supplied evidence regarding how the route fits the description of a highway from Felpham to Madehurst, describing this as speculative.

11.8 In response to points made by speakers, the Senior Solicitor clarified the following:

- In relation to the diversion of the footpath referred to by Miss Woods, footpath rights were stopped up, but it is likely any higher rights were not. It is right that the claimed historic route should be considered based on archive mapping and whether it meets the relevant tests.
- Section 31(6) deposits, that could negate a claim based on user evidence (para. 6.11 of the Committee report), are not relevant to an archive only based claim.

11.9 During the debate the Committee raised the points below and a response or clarification was provided by the Senior Solicitor and the Chairman, where applicable, as follows:

### **The difficulties of historic archive evidence claims**

**Points raised** – With archive evidence based applications it is extremely difficult to come to a definitive view because evidence is not up to modern standards of substantive evidence. Much has to be inferred. In this case it may be inferred that an historic bridleway existed but it is very difficult to show exactly the alignment of the route, an example being the 1564 Sheriff's Court indictment evidence.

**Response** – With the 1564 evidence, no plan was available. The evidence of the claimed route, referred to as a "Queen's highway used by pedestrians and horsemen", is speculative.

### **Amount of historic evidence required**

**Point raised** – How much historic evidence is required in order to make a decision?

**Response** – The maxim of 'once a highway, always a highway' applies. A view should be taken on the whole evidence.

### **User evidence, including pedestrians and horse-riders**

**Points raised** – What evidence of use by pedestrians is there and what would be the likely use by horse-riders?

**Response** – This is not a user-based application, so no evidence of use was provided. The question of suitability of use by bridleway users would not be relevant to the determination of the application.

### **B to C: development of land on this route and footpath**

**Points raised** – In reference to points B to C on the claimed route, the Committee report states there is outline planning permission [off Cinders Lane]. It is noted that the estate is now built with a diagonal path, which does not follow the claimed route, through to the northern boundary of the estate ending in a close board fence at the allotments; there is no path on the ground through the allotments to point B. Up to date information should have been included in the Committee report. It was queried whether it would be possible to upgrade the footpath, as it exists now on the ground, to a bridleway.

**Response** – At the time of the application in 2018, there were two outline planning permissions in place, off Cinders Lane. Since then the land has been developed and housing has been built and the “existing building” referred to in 5.2.2 (i) of the Committee report is no longer there. Only the claimed route can be considered by the Committee. If the Committee agreed that the archive evidence is sufficient to prove the claimed route, it could be added as a bridleway. This is irrespective of any development that now exists and if a bridleway were to ‘be made’ and it passed through an existing building then the property owner would need to apply for a diversion under the Highways Act; or the County Council could do so ‘in the interests of the public’.

### **D to E and F to G: safety**

**Points raised** – Crossing the A259 at this point would be dangerous. The condition of Grevatt’s Bridge is unsuitable for bridleway use. The concerns raised by Miss Wood regarding the dangers of riding through paddocks occupied by other horses were understood.

**Response** – Safety is not a consideration that can be taken into account. The application must be considered only on the archival evidence against the relevant legal tests.

### **F to Sunnymead Close: condition of the route**

**Point raised** – Whilst suitability of the route cannot be considered, it was noted that from point F southward to Sunnymead Close the route on the ground is extremely overgrown.

**Response** – None required.

## **Decision based on archival evidence against the relevant legal tests under the Wildlife and Countryside Act 1981**

**Points raised** – Any comments in the report and discussions regarding the current situation on the ground are irrelevant. The Committee should not be distracted by this because it risks the decision being overturned by the Planning Inspector.

**Response** – The application is supported by historic documentary evidence and can only be considered on this basis. Sometimes the implications of the legislation are not fully understood by consultees. However, it would be remiss if the Committee report [and minutes of the Committee meeting] did not accurately record all comments made by consultees and interested parties. Where comments are not relevant to the determination of the application, this is made clear. Committee members do, of course, become aware of contextual information, including observation during site visits, but the Committee must be clear that the decision should only be made in accordance with the legislation and on the archival evidence weighed against the relevant legal tests. An explanation of the appeals process should the recommendation to not make be approved and the involvement of the Planning Inspectorate was also provided.

### **B to C and D to E: evidence of a footpath, rather than a bridleway**

**Points raised** – In reference to B to C and D to E, if there is no historic evidence of a bridleway but evidence of the existence of a footpath, would it be reasonable to propose an amendment that concludes that footpath rights existed? Officers were asked whether they could direct the Committee or advise members whether or not to take such an amendment forward. Additionally, if this application were to be refused would this mean any future application for footpath status could not be made?

**Response** – Should the Committee decide that there is sufficient archival evidence then it could be concluded that a footpath was 'reasonably alleged to subsist'. However, the application under consideration is for the addition of a bridleway at points B to C and D to E. As such, the evidence has only been considered and tested by officers on that basis. The conclusion is that sections B to C and D to E do not meet the 'reasonably alleged to subsist' test. The Committee was advised that because of this any decision to make a DMMO to add B to C and D to E as footpath could be open to challenge. If this application for bridleway status were refused it would not preclude a future application for footpath status following the discovery of evidence.

11.10 The substantive recommendations, as set out, were proposed by Cllr Patel and seconded by Cllr Atkins and voted upon by the Committee and approved by a majority.

11.11 Resolved:-

- (1) That a Definitive Map Modification Order, under Section 53(2) in consequence of an event specified in sub-section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade public footpath 166 to a bridleway between points A to B and C to D on the application plan be not made.
- (2) That a Definitive Map Modification Order, under Section 53(2) in consequence of an event specified in sub-section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade public footpath 165 to a bridleway between points E to F on the application plan be not made.
- (3) 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 bridleway between points B to C, D to E and F to G on the application plan be not made.

11.12 The Committee recessed at 11.33 a.m. and reconvened at 11.41 a.m.

## **12. Public Rights of Way Annual Progress Report 2021**

12.1 The Committee considered a report by the Principal Rights of Way Officer who set out the key points of the report.

12.2 During the debate the Committee raised the points below and a response or clarification was provided by the Principal Rights of Way Officer, where applicable, as follows:

### **Condition of structures on public rights of way (PROW)**

**Points raised** – What can be done to encourage landowners to maintain structures, e.g. bridges, to a good state of repair? If a bridge is reported as defective, where does the risk liability lie?

**Response** – Where a structure is an accommodation bridge for private access with a PROW over it, the main responsibility lies with the landowner although the Highways Authority has an interest in it. Reported issues with structures are assessed. Officers work with the landowner to agree repairs. Bridges under the ownership of the Council are assets which the Council is responsible for. The PROW team assesses smaller wooden bridges, larger structures are assessed by the Structures team. Assessments lead to a recommendation on the timescale for repairs. Resources would have to be found to do so. Regarding liability for a privately owned structure which carries a PROW, the Council has responsibility for the public status of the route and would work with the landowner. If a structure is unsafe then it may need to be closed to the public until made safe.

### **Reduction in compliments**

**Point raised** – What has accounted for the reduction of compliments to 6 from 19?

**Response** – There is an element of expectation that the Council undertakes the work it should. It is felt that the PROW team does an excellent job and has not reduced the volume or standard of work. Compliments are dependent on the individual.

### **Ploughing**

**Point raised** – How often has the PROW team had to engage with farmers who have encroached on PROWs through ploughing?

**Response** – Officers did not have statistics to hand; however, it was clarified that any reports or incidents raised through inspection would be assessed and prioritised against the reporting standards - Low, Medium and High. If a High priority then Landowners would be contacted and encouraged to reinstate the path. If Low or Medium priority it would usually wait until the next routine maintenance inspection. Most landowners are open to reinstating paths, but enforcement procedures are available although used as a last resort.

### **Vegetation**

**Point raised** – Only about 10% of PROW vegetation is cut back. Does this keep up with annual growth or is some useability of the network affected?

**Response** – The PROW team's budget allows for cutting back 10% of the network under the Summer Clearance Contract, which focuses on reported heavily overgrown paths that restrict access. This is separate to the 15-month Routine Maintenance Contract cycle.

### **Ash Dieback**

**Point raised** – How is Ash Dieback affecting operations and the network, including the risks to users and blocking of watercourses from failing trees? And, to what degree is this affected by Riparian owners not undertaking their duty?

**Response** – The Council has a contract to deal with Ash Dieback which includes the PROW network. Access Rangers undertaken inspections of the PROW, any concerns are reported to the landowner or Arboricultural team who undertake a detailed tree inspection and determine the course of action and timescale, which then goes on the list for contracted works and is cleared under that contract if the landowner is unknown or, if necessary the work is undertaken as part of enforcement action if landowners do not. Officers and volunteers are aware of the issue and vigilant and, at this time, there have been no major concerns on the PROW network. Whilst drainage can be an issue, trees falling into water



courses is not generally an issue, but can occur at times, and again any issues are prioritised.

### **Local issue**

**Point raised** – Advice was sought on how to progress improvements to the network to enable pedestrian access to a particular primary school.

**Response** – It is understood that there are outstanding matters to be settled with landowners, including a change of ownership on one section. Landowner agreement is required to upgrade the path, which is there in principle, although the legal ownership needs to be dealt with first. Consideration of funding would follow once ownership is settled and an agreement to dedicate is in place.

### **Resources**

**Point raised** – Clarification was sought regarding resources, both funds and staff.

**Response** – There are finite resources. Planning is the key to delivering enhancements on the PROW network, including within red-line boundaries of development and developer contributions (Section 106 and Community Infrastructure Levy (CIL)). Landowner agreement to upgrade paths is also essential.

### **Urban footpaths maintenance and vegetation clearance**

**Points raised** – Who deals with the maintenance and vegetation clearance on footpaths in urban areas?

**Response** – Responsibility for urban areas depends on the location, it may be the PROW team or Highways. The PROW team maintains surface vegetation on urban footpaths to the same standard as the rural network, with the same provisos for privately owned land and trees, unless the landowner cannot be identified and a risk is posed, in which case the Council has a duty to take action. Encroaching vegetation is the landowner's responsibility and prioritised as described above. The Council's iMap will show whether land is private or Council owned.

### **The Art Project**

**Point raised** – Section 106 money has been allocated to providing signs through the Art Project to enhance the experience of using the Worth Way and related paths.

**Response** – Section 106 money is specific in what it can be spent on and it is unlikely that the PROW team would be able to get involved.

### **Crawley Down/Copthorne development**

**Point raised** – 3,000 houses are planned in the next 15 years in the Crawley Down/Copthorne area, which may provide ample opportunities for enhancements to the PROW network, as critical infrastructure including providing a link from the Worth Way to Copthorne and on to Gatwick and Crawley.

**Response** – None required.

### **Crawley Down Pond**

**Points raised** – Crawley Down Pond, which runs along the Worth Way, requires maintenance as it is silted up.

**Response** – The Worth Way is managed by Countryside Services, who would be best placed to advise on what to do.

### **Complaints**

**Point raised** – What is the most common type of complaint?

**Response** – It is seasonal. In summer, surface vegetation – overgrown paths. In winter, surface condition – muddy paths.

### **Gates for Stiles**

**Points raised** – What type of gate is provided? 48 gates have been provided to landowners, what is the cost?

**Response** – The budget is limited, so an offer is made to replace a stile only where there is no other within easy access. Gates are offered for free under the agreement that the landowner installs it. This is to encourage the replacement of stiles which the landowner may not otherwise replace. A range of structures can be offered, metal, wooden, self-closing or spring lock, depending on requirements.

### **New development – planning applications**

**Points raised** – How many planning applications does the PROW team respond to? How good is the response timeframe performance and how is it monitored?

**Response** – Officers did not have statistics to hand. This will be included in the next annual report. The system used is MasterGov. Access Rangers respond to smaller scale planning applications and the Planning Communities Officer considers the larger scale and strategic applications, working alongside the Principal Rights of Way Officer. All planning applications are responded to, some have a massive impact on the PROW network, some have no impact.

### **England Coast Path**

**Points raised** – Who is responsible for the proposed England Coast Path, what status will it have and what involvement does the PROW team have?

**Response** – Natural England had the initial responsibility to identify the potential route. Once signed off by the Secretary of State, responsibility has reverted to the local authorities (locally, a Trail Partnership, made up of stakeholders including the County Council as the local access authority) along with funding for the delivery and a project officer post, which in West Sussex is within the PROW team. The Coast Path will be for walkers only, following much of the existing PROW network but with sections of new paths that will be part of the national trail, but will be managed by West Sussex – some funding will be provided. Current delivery is for the Shoreham to East Head section, which has been signed off. The remaining section is not yet signed off, but is hoped to be soon with a view to delivering this in the next financial year.

12.3 Resolved – That the Committee notes the report and that it is circulated to the wider membership of the Council.

### **13. Date of Next Meeting**

13.1 The next scheduled meeting of the Planning and Rights of Way Committee will be on Tuesday, 8 November 2022 at 10.30 a.m.

### **14. Agenda Update Sheet**

The meeting ended at 12.19 pm

Chairman