

Planning and Rights of Way Committee

18 July 2023 – At a meeting of the Planning and Rights of Way Committee held at 10.30 am at County Hall, Chichester, PO19 1RQ.

Present: Cllr Burrett (Chairman)

Cllr Atkins, Cllr Ali, Cllr Gibson, Cllr McDonald, Cllr Montyn, Cllr Oakley, Cllr Quinn and Cllr Wild

Apologies were received from Cllr Duncton, Cllr Kerry-Bedell and Cllr Patel

Part I

13. Declarations of Interest

13.1 In accordance with the County Council's Code of Conduct, Cllr Pieter Montyn declared a Personal Interest in Item 4 – DMMO 3/19 because the application is in his Electoral Division, The Witterings. Cllr Montyn elected to sit as a Planning and Rights of Way Committee member for this application and not speak as the local County Councillor.

14. Minutes of previous meetings of the Committee

14.1 Resolved: -

That the minutes of the meeting of the Committee held on 6 June 2023 be approved and that they be signed by the Chairman.

14.2 The Committee noted that the minutes of the previous meeting of the Committee dated 27 June 2023 were in preparation. The minutes will be submitted for confirmation to the next meeting of the Committee.

15. Urgent Matters

15.1 There were no urgent matters.

16. Definitive Map Modification Order

DMMO 3/19 - Definitive Map Modification Order Application to modify the definitive map and statement for Chichester by adding a bridleway from along the length of Sheepwash Lane, from the junction with the B2179 at Rookwood Lane, to its end on Redlands Lane, in the parish of West Wittering

16.1 The Committee considered a report by the Director of Law and Assurance. The report was introduced by Tanneth Melhuish, Chartered Legal Executive, who outlined the application and the key points. The Committee noted a point of clarification, as detailed below:

- Concerns about suitability of the application route and its condition cannot be taken into account as relevant to the legal tests. However, the 'concept and character' do become relevant

where they establish the regular and claimed type of use of the route and whether it meets the definition of a BOAT.

16.2 A statement in support of the application was read out by the Clerk to the Committee on behalf of Liza Lingham, the applicant (following the passing of the original applicant, Mr Peter Dawson). Ms Lingham is a local resident, an employee at Wicks Farm Caravan Park in Redlands Lane for 36 years and a regular user of Sheepwash Lane as a dog walker, cyclist and horse rider. Sheepwash Lane is an unlit, beautiful, peaceful route adjoining other footpaths and the Salterns Way cycle and wheelchair route. It has been used daily since well before 1998 to date by local horse riders, including two local riding schools, cyclists, walkers and runners, including local walking and cycling clubs, and mothers with young children including those on bikes and in prams. Visitors to Wicks Farm Caravan Park are provided with a map that includes the lane as a route to the beach, Itchenor Ferry and other paths. Users welcome the route as being free from noise and pollution and safe from traffic. It is the only off-road route in the village for horses and cyclists. Previously, cars were occasionally seen but none have been witnessed since the original applicant got Sat Nav routes updated and arranged that a 'Not Suitable for HGVs' sign be installed. Locals do not use the route as a rat-run. There is no good reason why Sheepwash Lane should have vehicular access, it is single track and no vehicles can pass safely. Properties located on the western end of Sheepwash Lane have a short access to the Malthouse, so do not need to access from the east. The eastern end is maintained by Chichester Harbour Conservancy.

16.3 During the debate the Committee raised the points below and responses or clarification was provided by the Legal Officer, the Chairman, and Cllr Pieter Montyn, using his local knowledge of the location, as follows:

Use of the route as a bridleway

Point raised – Is the route currently used as a public bridleway?

Response – Yes.

Use of the route by mechanically propelled/motor vehicles

Points raised – Matters raised relating to evidence of and possible future use of the route by mechanically propelled/motor vehicles were as follows:

- If the application were to be approved, would the route be opened as a road, e.g. to motor vehicles or would it be as a bridleway for horses, walking and cyclists?
- The surface of the road, which has hard surfacing and is wide enough to allow a motor vehicle, suggests that it is intended for use by such vehicles.
- The Committee expressed serious concerns, should the status of the route become that of a byway open to all traffic (BOAT), because of possible increased future use by motor vehicles,

including HGVs and off-road vehicles, and conflict between vehicles and horses, and as a means of fly-tipping.

- Current Sat Nav routing is dependent on drivers uploading new routes or on those having newer Sat Navs.
- Could a sign stating "No vehicles allowed" be erected?
- At which point in history does the evidence begin that points to use by mechanically propelled vehicles, e.g. at which point does the era of motor vehicles start? Which pieces of evidence show this?
- Could it be assumed that the width of Sheepwash Lane arose from its use as a field access, rather than its public use?
- Is there any user evidence of a 20 year period where there was no use by motor vehicles?

Responses – Responses to the above points are noted below:

- Should the Order be made and confirmed, the status would be a BOAT. The definition of which is that use would be predominantly by those on foot or horseback and as a restricted byway, although there would be the benefit of use by vehicles.
- As noted in Minute 16.1, the suitability of the route is not a consideration that is relevant under the legal tests; however, the concerns about vehicular use were acknowledged. Should the Committee agree that the Order be made, if objections were to be received then the matter would be referred to the Planning Inspectorate to confirm the Order. If the Order were to be confirmed the management of traffic would become an operational issue for WSCC Highways and it is possible that a Traffic Regulation Order could be considered so as to restrict vehicular use, although the outcome cannot be guaranteed.
- Where a route is a BOAT it would not be possible to erect a sign stating that vehicles cannot use it.
- Non-mechanically propelled vehicles, e.g. horse and cart can be used on a restricted byway.
- The time when mechanically propelled vehicles came into being was about the 1890s. The Adcock Report would have been written with a view to use by such vehicles and recording the state of repair of the local roads. Evidence to support the officer's recommendation can be taken from some Ordnance Surveys (although Ordnance Survey maps were not indicative of status they are able to show us what is on the ground at the time the maps were produced), the report on the survey of rights of way, the Finance Act Maps, user evidence, and the 1979 newspaper article.
- The width of Sheepwash Lane is not relevant to the legal tests. The historic width is unknown but evidence points to historic use by mechanically propelled vehicles and so it was likely wide enough for that.
- The evidence of use by motor vehicles is mainly historic but there is some user evidence.

Possible status of the route as a bridleway

Points raised – Matters raised regarding the possible status of the route as a bridleway were as follows:

- It was noted that the original application was for a bridleway, but the recommendation is for a BOAT.
- Would it be possible for the Committee to pursue the original application that the status should be that of a bridleway?
- If the Committee were to decide that the application route be approved as a bridleway what would be the situation for residents who live along the route who need vehicular access, including for personal use and deliveries?
- Would the status of a bridleway meet the higher legal test?

Responses – Responses to the above points are noted below:

- Regarding the evidence pointing towards a BOAT, the archive has been investigated to establish the extent of the rights on the route, and it suggests historic use by mechanically propelled vehicles. The Committee must adhere to the strict legal tests and should not ignore that evidence. The recommendation for a BOAT is made on the lower legal test 'that a right of way which is not shown on the definitive map and statement subsists or is reasonably alleged to subsist'; however, the evidence may be considered as conflicting. Should the Planning Inspectorate be minded to confirm the Order an Inspector would need to test whether the evidence is conclusive, so as to confirm the Order on the basis of the higher legal test, that being on the balance of probabilities.
- Any access to properties on Sheepwash Lane should be covered by private rights, which is something that the Committee cannot consider. Private rights for vehicular access on bridleways would allow for use by refuse vehicles and postal deliveries as well as access by private vehicles.
- It is the officers' opinion that the higher legal test 'on the balance of probability' would be met in relation to the evidence of the existence of a bridleway due to user evidence establishing use on horseback; however, the historic archive does support vehicular rights.

Dates of the user evidence

Points raised – What is the reason that the user evidence is dated between 1998 and 2018 and why is there no user evidence since that point to date?

Response – The application was submitted by the previous applicant in January 2019, so user evidence was up to the end of 2018, at the time of submission.

G-class Highway and fifth-class Highway, as defined by Adcock

Points raised – What is a fifth-class highway, as defined by Adcock? What is a G-class highway?

Response – Adcock used five classifications for routes. The fifth, marked in dark green, was the lowest class and although the extent of use of fifth-class highway is not clear, it can be argued that these routes had minimal or some vehicular rights. A G-class highway is of a status that is unknown.

West Wittering Parish Council

Points raised – It was noted that West Wittering Parish Council supported the original application for the route to be added to the Definitive Map and Statement as a bridleway. There appeared to be some confusion as to whether the Parish Council was aware the evidence has led to the proposal now being for a BOAT, not a bridleway, and it was suggested that the item should be deferred to allow Cllr Montyn, in his capacity as the local County Councillor, to speak with the Parish Council about this.

Response – The Parish Council was consulted when the application was submitted and has been sent a copy of the Committee report and the recommendation.

16.4 The substantive recommendation, as set out in the Committee report, was proposed by Cllr Atkins and seconded by Cllr Ali, and voted on by the Committee and approved by a majority.

16.5 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 byway open to all traffic to the definitive map and statement for Chichester along the length of Sheepwash Lane, from its junction at Rookwood Lane with the B2179 to a point 80m west of its end at Redlands Lane, West Wittering, be made.

17. Date of Next Meeting

17.1 The next scheduled meeting of the Planning and Rights of Way Committee will be on Tuesday, 5 September 2023 at 10.30 am.

17.2 Members noted the report on 'Current Planning Applications, Current Definitive Map Modification Orders (DMMOs), Town and Village Green Applications and Public Path Orders (PPOs) under investigation', further noting that some planning applications still appear on the list that the Committee has already made a decision on, and that this is because Decision Notices have yet to be issued. Officers advised that it is not confirmed yet which applications will be in a position to be considered at the next meeting of the Planning and Rights of Way Committee on

Tuesday, 5 September. The scheduling of items to be considered by the Planning and Rights of Way Committee is subject to change.

The meeting ended at 11.15 am

Chairman