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24 August 2023

Planning and Rights of Way Committee

A meeting of the Committee will be held at **10.30 am** on **Tuesday, 5 September 2023** at **County Hall, Chichester, PO19 1RQ**.

The meeting will be available to watch live via the Internet at this address:

<http://www.westsussex.public-i.tv/core/portal/home>

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Agenda

1. **Declarations of Interest**

Members and officers must declare any pecuniary or personal interest in any business on the agenda. They should also make declarations at any stage such as an interest becomes apparent during the meeting. Consideration should be given to leaving the meeting if the nature of the interest warrants it. If in doubt, contact Democratic Services before the meeting.

2. **Minutes of the last meeting of the Committee** (Pages 3 - 22)

The Committee is asked to confirm the minutes of the following meetings held on:

- 27 June 2023 (cream paper, pages 3 to 15)
- 18 July 2023 (cream paper, pages 17 to 22)

3. **Urgent Matters**

Items not on the agenda that the Chairman of the Committee is of the opinion should be considered as a matter of urgency by reason of special circumstances.

4. **Definitive Map Modification Order** (Pages 23 - 42)

Report by the Director of Law and Assurance.

The Committee is asked to consider and determine the following application:

DMMO 2/21 – Definitive Map Modification Order to modify the definitive map and statement for Petworth to add a footpath between footpath 795 and footpath 797 in the parish of Loxwood.

5. **Date of Next Meeting** (Pages 43 - 50)

The next meeting of the Committee will be held at 10.30 am on Tuesday, 10 October 2023 at County Hall, Chichester.

Report by the Head of Planning Services, Director of Law and Assurance and Assistant Director (Highways Transport and Planning).

The Committee is invited to ask about planned agenda items and to note the following report:

Current Planning Applications, Current Definitive Map Modification Orders (DMMOs), Town and Village Green Applications (TVGs) and Public Path Orders (PPOs) under investigation.

To all members of the Planning and Rights of Way Committee

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Planning and Rights of Way Committee

27 June 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 Duncton, Cllr Gibson, Cllr McDonald, Cllr Oakley, Cllr Patel and Cllr Quinn

Apologies were received from Cllr Ali, Cllr Kerry-Bedell, Cllr Montyn and Cllr Wild

Part I

7. Declarations of Interest

7.1 In accordance with the County Council's Code of Conduct, Cllr Jay Mercer (as part of his written statement read out to the Committee) declared a Personal Interest in Item 5 – Planning Application WSCC/047/21 - because he has recently become the Cabinet Member for Environmental Health, Recycling and Waste at Horsham District Council, but stated that he has had no involvement in this planning application.

8. Minutes of the last meeting of the Committee

8.1 The Committee noted that at the time of the publication of the agenda for this meeting the minutes of the previous meeting of the Committee dated 6 June 2023 were in preparation. The minutes are now available as draft minutes on the Planning and Rights of Way Committee pages of the County Council's website and they will be submitted for confirmation to the next meeting of the Committee.

9. Urgent Matters

9.1 There were no urgent matters.

10. Planning Application: Regulation 3

WSCC/047/21 - Creation of a 3G Artificial Grass Pitch (AGP) with perimeter fencing, floodlighting, macadam hardstanding area, storage container, timber acoustic barrier fence and macadam access pathway. The Forest School, Compton's Lane, Horsham, West Sussex, RH13 5NT.

10.1 The Committee considered a report by the Head of Planning Services, as amended by the Agenda Update Sheet. The report was introduced by Edward Anderson, Planner, who outlined the application and the key points. The Committee was advised that the following should also be noted, which do not change the substantive recommendation:

- The response from WSCC Archaeology, as detailed in the Agenda Update Sheet, from which is proposed an additional Condition - 'Written Scheme of Investigation'.
- A slight error in paragraph 8.1 of the Committee report. It should be noted that third party representation numbers should read 115 representations, of which there were 70 objections, 28 in support and 17 that provided comments.

10.2 NOTE: the following representations to the Committee made reference either to an All-Weather Pitch (AWP) and/or Artificial Grass Pitch (AGP) and/or Multi-Use Games Area (MUGA). Such expressions, should, in general, apply to the whole proposed facility and could be viewed as interchangeable in most of the references.

10.3 Mr Dennis Manning, a local resident who has a son as a pupil at The Forest School, spoke in objection to the application. An AWP might be seen as an asset and a benefit to pupils. The proposed construction materials may pose a health concern and further studies should be considered before a decision is made. Residents would expect after school hours and weekends to be quiet, apart from the occasional school club. The Committee report clearly states that this development, in the school grounds on the eastern side of Compton's Lane, is in a "predominantly residential area" and refers to "properties along the northern side of St Leonard's Road to the south, which are located between 15m and 95m from the application site". Noise reduction plans will not stop noise reaching these residents. The World Health Organisation 'Guidelines for Community Noise' were written 24 years ago. Article 8 of the Human Rights Act provides for respect for "an individual's private life and home" and Article 1 of Protocol 1 provides that "an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest". This proposal will mean unacceptable disturbance and inconvenience at all hours, and residents will only be free from disruption after 21.00 hours in the evening. Should the residents pay the sacrifice for the football for the Horsham area being a "public interest"? There are adequate 3G AGP facilities elsewhere in Horsham, at Horsham Rugby Club and Tithe Barn. The provision for a complaints process compounds the point that complaints will be expected. There is no issue with a facility for pupils within school hours or an hour afterwards.

10.4 Mr Keith Hemsley, local resident, spoke in objection to the application. Objections are on the basis of location, hours of use and need. Of the four possible options, the chosen option is the one that would have the most impact on local residents, being sited very close to the perimeter fence. The acoustic report omitted the closest residential property from the plan and was only computer modelled. Due to the slope of the site the proposed AGP will be levelled, making it 5 metres above the patio of the closest houses on St Leonard's Road, which are 5-6 ft below the current level of the school field. The floodlights will be 17 metres high when viewed from the gardens. There would be considerable light pollution. The suggested "average" noise is disputed. There will be loud shouting, foul language and ball strikes reverberating again the fence. It is not understood why there is a need for intense use of the MUGA, as per the proposed hours of use, other than a financial one. Little consideration

has been given to residents' privacy and enjoyment of their gardens, which they should have the right to, especially in the evenings and at weekends. It is suggested that an AWP is a much needed amenity, but there are others in Horsham and more are planned. None are sited in the middle of residential areas. If the AWP was for the use of pupils only it would be supported, but it will impact the daily lives and mental well-being of the residents, who will not have any respite from disruption.

10.5 The Clerk to the Committee read out a statement in objection to the application on behalf of Mrs Angela Cornford, local resident. AGPs are not for multi-use, being only suitable for football and possibly rugby. Contrary to the Officer's Report, there is no regular use on weekday evenings. This is impossible in the winter months when I can get dark at 4pm. The financial benefits are questioned, especially with maintenance costs. Replacement would be required after an average 8-10 year lifespan, which also means it is not sustainable development. Would the proposal be economically viable and is there sufficient high demand for community use? The Southern Water Pre-capacity Check, dated 3 August 2021, was only valid for 12 months and has expired. The need for watering, as part of the Landscape Maintenance Plan, surely goes against water neutrality. The detrimental effect on the lives of local residents is a very serious matter. Articles about the concerns about the health risks caused by synthetic 3G AGPs and the use of toxic rubber crumb microplastics (ground-up end of life tyres), as well as the environmental impacts, were referenced. The European Commission in 2022 stated it is considering a ban on intentionally added microplastics. Michael Gove wants to ban all new housing developments from installing artificial grass. It has a devastating effect on ecology. Sport England is still promoting this proposal because there is no UK legislation and a lack of alternative suitable infill material. Could the Section 106 Agreement funding be better spent, e.g. on solar panels for school buildings or classroom provision?

10.6 Mr Ian Straw, Headteacher, The Forest School, Horsham, spoke in support of the application. In 2020 an agreement was made to give up some land for provision of outdoor space to the QEII School in exchange for an AWP. The Forest School is the only secondary school in Horsham not to have such a facility. Changes to the school have included the admission of girls. The school currently has full-sized rugby and football pitches, a cricket pitch, a 9-a-side sized football pitch, running track and long-jump sandpit, but there is a requirement to provide suitable co-educational sports facilities, including to add hockey to the curriculum. The existing pitches currently enjoy unlimited hours of use and, prior to Covid-19 and this application being made, they were regularly let out including in the evenings. However, the pitches are usually unusable from October to May due to the weather. This impacts on break and lunch-time space and also means the Hall has to be used for sports which then impacts on its use for Drama lessons. The MUGA would give year-round provision. It would be used for after school clubs until 4.30 pm and made available for hire from 5pm. 38 expressions of interest - many from youth-based clubs - have been made regarding hire of the facility and the proposed hours of use would give flexibility for bookings. The maintenance and budget will be taken seriously and it is

aimed for the facility to be self-sufficient. The Forest School wishes to be a responsible neighbour as well as providing a local facility.

10.7 Mr Dan Edwards, Manager of Roffey Robins Football Club, a football coach and parent of a pupil at The Forest School, spoke in support of the application. Roffey Robins has expanded since being founded and now needs to cater to 21 teams, requiring facilities to train during weekday winter evenings and for matchdays on weekend mornings. There is a lack of AWP's in Horsham for the number of clubs in existence in the immediate area, each with multiple teams. This would require nine plus AWP facilities, when currently there are only two. Grassroots teams are fighting a losing battle to provide adequate facilities for youth players. The proposed facility would be nothing but positive for the school, meaning that no PE lessons would have to move indoors because of pitch conditions. No after school matches would have to be cancelled. Last season the weather was extremely wet and there was almost 3 months where teams were unable to play matches and games were cancelled. As well as missed games, children missed out on the benefits of playing team sports, which can lead to negative impacts, especially for some vulnerable children. Player safety and development would be improved through the use of AGPs.

10.8 A statement on behalf of Cllr Jay Mercer, local County Councillor for Horsham East, was read out by the Chairman. Many residents, who are parents or grandparents of pupils or past pupils at the school, have objected or raised concerns, although all recognise that the MUGA would be good for the school and students. Mitigating amendments should have been better and clearly communicated. The need for the position of the pitch has been explained, including the strategic pressure for school places and access for children with special educational needs or disabilities. Water neutrality mitigation has been explained. Concerns have been raised about potential environmental impacts of Grade 3 AWP's and the dispersal of in-fill material; Sport England has proposed mitigation measures including kickboards and brush-off-zones. Clarity is required about the size of the pitch; residents had been told it would be 90% of competition size but it is described as a "full-sized outside sporting facility". Residents' concerns about use by adult teams, resulting in additional traffic and crowd noise, has not been addressed in the Committee report. There is a difference in the hours of use requested by Horsham District Council's Environmental Health Officer, who would "maintain objection" if hours are not reduced to mitigate light and noise, and Sport England, who see reduction as restricting health, well-being and economic benefits. A Noise Management Plan will be critical for factors relating to noise monitoring, which the school has stated it will implement. Similarly for light. It is critical that the school should implement all mitigation actions if the application is approved.

10.9 In response to speakers' comments, the Planning Officer clarified the following:

- The terms AGP and MUGA; AGP refers to the grass pitch and MUGA refers to the whole facility including perimeter structures and lighting.

- The Noise Impact Assessment was updated during the process of the application and does include the closest residential property.

10.10 During the debate the Committee raised the points below and responses or clarification was provided by the Planning Officers, as follows:

Location of the proposed MUGA within the sports field

Points raised – What is the rationale for the location of the proposed MUGA within the sports field? Four options were mentioned, were these in different locations? The proposed MUGA is well thought out and makes good use of the land, including retaining the trees.

Response – The proposed location of the MUGA was deemed by the applicant to be the most appropriate in terms of maximum sporting provision, allowing for the retention of existing sports facilities including the running track and also the retention of trees.

Size of the proposed football pitch

Point raised – Clarification was sought regarding the point made by Cllr Mercer about whether the size of the proposed pitch is 90% or a full-sized football pitch.

Response – The proposed MUGA would accommodate an 11-a-side football pitch, so would be a full-sized football pitch.

Enforcement of letting

Point raised – How would the letting of the pitch and conditions that restrict hours of use be enforced?

Response – Control of use would be secured by agreements for the rental of the MUGA, including a time-schedule (Community Use Agreement as per recommended condition). It would also be subject to the Conditions 'Hours of Use' and 'Hours of Operation – Floodlights'. It should also be noted that the existing school field can be rented out.

Benefits to health, wellbeing and sporting achievement

Points raised – The benefits of sports, in terms of combatting obesity and mental health, were noted. The provision of the MUGA would provide more teams and people with the ability to train for longer and more regular periods.

Response – None required.

Need for the development

Points raised – There is a need for AWP's, including for weekend use. The proposal would benefit the local community. It would

keep facilities available for hire on one site. Horsham District Council's Sport Open Space and Recreation Study (2014) has referenced the requirement for at least five new playing pitches; are all of these subject to Community Use Agreements? Since that report, female participation in field team sports has increased and studies about the need for such facilities have not kept up with this.

Response – Policy 43 of the Horsham District Planning Framework states that the provision of community facilities or services would be supported, particularly where they meet the identified needs of local communities, as indicated in the current Sport Open Space and Recreation Study. The provision of the pitches mentioned in the study would be subject to Community Use Agreements, especially where they relate to a school site. Such sites are supported by Sport England where they provide maximum community engagement, alongside the deliverance of sporting benefits.

Impact on residential amenity

Points raised – It should be noted that there are four AWP's in Crawley, all of which are in residential locations. The Committee must consider the balance between intensification of use and the impact on residents, which is something that has become a common theme with other similar planning applications.

Response – None required.

Impact on highway capacity and road safety

Points raised – It was noted that there have been no objections from WSCC Highways with regards to parking, although WSCC Highways acknowledged there would be an increase in vehicle movements.

Response – None required regarding parking. The increase in vehicle movements was stated by WSCC Highways to be not unacceptable.

Height of the bund

Point raised – Clarification was sought regarding the height of the proposed bund.

Response – The bund would be 3m in height from the existing ground level. It should be noted that the bund varies in height along its top surface. Trees and shrubs would be planted and would, in time, somewhat disguise the top of the bund.

Landscaping

Points raised – It was suggested that planting should replace the proposed fence. The retention of the existing trees was noted.

Response – Some trees and shrubs will be planted, as noted in paragraph 9.16 of the Committee report. This would be controlled by the Condition 'Landscape Maintenance Plan', as noted in Appendix 1.

Economic viability

Point raised – Clarification was sought as to whether the economic viability of the proposed site is a material consideration.

Response – The economics of the way the site would be managed are not material to the consideration of the application. The Committee has to decide whether the proposal is an appropriate use of the land. However, a broader point is that a crucial issue has been that one of Sport England's key drivers is that the site should be made widely available for community use.

Water neutrality

Points raised – Water savings ought to be good practice. It was queried whether water neutrality considerations include water consumption during the construction phase? Was simultaneous use of both the MUGA and the cricket pitch included in the calculations in the water use report, as mitigations appear to only be based on use of the MUGA; this is a point of principle and should be borne in mind for other planning applications.

Response – It is for WSCC as landowner to ensure water efficiency in its buildings, albeit officers are aware that this is being reviewed in light of water resource issues. Water use during construction is not considered as part of proposed water demand. This is a consistent approach with other affected local authorities and has been accepted by Natural England. A cricket pitch is already in existence and the proposal is to move the wicket further to the west. There is not, therefore, any increase in water usage arising from the relocation of the cricket pitch. The worst case maximum water usage of the proposed MUGA has been taken into account. Offsetting measures include changes inside the school, e.g. reduced flow taps. The robustness of the water neutrality assessment has been verified by Natural England and an independent consultant.

Land drainage

Points raised – Will the proposed development affect existing land drainage flow routes, noting the current issues with waterlogging? Is this capacity based on the future forecast rainfall events, including 1 in 100 year rainfall events plus 40%? And is the 2 litres per second discharge, mentioned in the Drainage Plan, in addition to the 5 litres per second capacity as stated by Southern Water? Can the Committee be confident that there would not be flooding off-site due to overloading of the surface water drain on the southern edge of the site?

Response – The Condition 'Drainage Verification Report' would require the applicant to submit this prior to first use and it would need to ensure the site drains to agreed greenfield rates. The School would have to agree to Southern Water requirements prior to commencement of the development. A 2 litre per second discharge from the proposed site is anticipated and the surface water drain on the southern edge of the site has a 5 litre per second capacity. No drainage concerns in relation to this were raised throughout the consultation process.

Plan of the location of the cricket pitch

Points raised – It was noted that the Condition 'Approved Plans' does not include the proposed Site Plan which is the only one that includes the relocation of the cricket pitch, and it was suggested that Plan number 'S52890-03 Rev 07' be included. There is also a discrepancy between the location of the cricket pitch on that plan and the location on the Landscape General Arrangement Plan.

Response – The cricket wicket forms part of the application description. Should the Committee feel it appropriate to include Plan number 'S52890-03 Rev 07' then this could be delegated to the Head of Planning Services to include in the Condition 'Approved Plans'.

The cricket pitch, netting and simultaneous use with the MUGA

Points raised – How high would the ball-stop net to the east side of the cricket pitch need to be to allow for simultaneous use with the MUGA? Would the net be a permanent fixture? What would be the impact on the landscape?

Response – The net would be 14 metres high, directly between the cricket pitch and the MUGA to allow for simultaneous use. This application does not include the installation of a ball-stop net and so that cannot be considered to be part of the application. That would require a separate planning application. However, the Condition requires that at no time shall the MUGA be used concurrently with the cricket NTP until the ball strike protection netting to protect users of the AGP has been first installed, in accordance with any relevant planning permission. Without this both facilities cannot be used concurrently.

Condition 'Pitch Management and Maintenance Scheme'

Point raised – The proposed Condition 'Pitch Management and Maintenance Scheme' refers to a MUGA; Sport England has referred to the proposal as an AGP, so this should be clarified.

Response – As noted in Bullet Point 1 of Minute 10.9 above, AGP refers to the grass pitch and MUGA refers to the whole facility including perimeter structures and lighting. Should the Committee

feel it is required to amend the Condition 'Pitch Management and Maintenance Scheme' then this could be delegated to the Head of Planning Services to undertake.

Planting (see also Minutes 10.12 to 10.15)

Points raised – In reference to the Condition 'Landscape Maintenance Plan', it was suggested that replacement planting, required by condition, should be in perpetuity because other local authorities are moving towards this. As an alternative to this, 10 years should be considered for replacement planting instead of the standard 5 years.

Response – The substantive point would be the replacement of a five year replanting scheme with either one that is in perpetuity or for 10 years; the latter of which has been approved in some other planning applications. Planning Officers would need to check whether the proposal for planting replacement in perpetuity, in order to provide a biodiversity gain, would meet the legal tests and whether it would be reasonable to require this. The Committee could consider a motion to amend the Condition if a proposal to do so is made. Irrespective of the outcome, Planning Officers agreed to investigate the point and consider it for future applications, if relevant.

Lifespan of the AGP

Points raised – Where does the information about the average lifespan of 8-10 years of an AGP originate from? It is understood that a similar facility in Worthing has an expected lifespan of 20-25 years.

Response – There is no definitive answer but it is understood that the lifespan of AGPs is typically 8-10 years. There is a relationship between use and management and maintenance of a facility, so a key consideration would be the ongoing maintenance of the AGP to a professional condition as required by professional sporting bodies.

Hours of use

Point raised – Clarification was sought regarding inconsistency around hours of use across different sites in the county.

Response – Hours of use for such facilities are fairly standard across the county. Variations are due to individual circumstances. The proposed hours of use for the MUGA were influenced by Sport England's requirement for it to be available for community use.

Infill material

Points raised – It was noted that different AWP's use different materials and that there is wide community concern around the proposal for use of the rubber crumb infill material. It is understood

that Mid Sussex District Council is researching alternative materials for AWP's.

Response – Officers consulted Sport England regarding the proposed infill material. The MUGA would be built to specifications required by different UK sporting bodies, whose view – and that of the UK Government - is that this is something they are keeping an eye on and looking for alternatives to.

10.11 The Committee delegated the following to the Head of Planning Services:

- To make any minor amendments to the Conditions in terms of any grammatical errors and to remove Informative D.
- To check whether it is necessary to change reference in the Condition 'Pitch Management and Maintenance Scheme' to AGP from use of the term MUGA, and make any such amendments that are deemed necessary.
- To include, as per the Agenda Update Sheet, a Condition 'Written Scheme of Investigation' in the appropriate position within the Conditions and Informatives, and, as a result, to renumber any Conditions, as appropriate.
- To include, if required, under Condition 'Approved Plans' Plan number 'S52890-03 Rev 07' within the list, which shows the proposed location of the cricket pitch and wicket.

10.12 Cllr Oakley proposed the following amendment:

Landscape Maintenance Plan

Prior to the commencement of the development, an updated Landscape Maintenance Plan shall be submitted to and approved in writing by the County Planning Authority. The plan should include details in relation to the watering, mulching and weeding schedule of the proposed landscaping. Any seeding which fails, plants which die, are removed or become seriously damaged or diseased within the first five years shall be replaced in the next planting season in accordance with the approved details **as soon as is reasonably practicable with others of species, size and number, as was originally approved, unless otherwise first agreed in writing by the County Planning Authority.** Thereafter the approved Plan shall be implemented and adhered to throughout.

*Reason: To ensure the proposed landscaping is maintained in the interest of the environment and residential amenity **To maintain, in perpetuity, the necessary landscape screening of the MUGA and also to ensure biodiversity net gain improvements for the longer term.***

10.13 No Committee Member seconded the proposal. Therefore, the motion fell.

10.14 Cllr Oakley proposed the following amendment:

Landscape Maintenance Plan

Prior to the commencement of the development, an updated Landscape Maintenance Plan shall be submitted to and approved in writing by the County Planning Authority. The plan should include details in relation to the watering, mulching and weeding schedule of the proposed landscaping. Any seeding which fails, plants which die, are removed or become seriously damaged or diseased within the first five **ten** years shall be replaced in the next planting season in accordance with the approved details. Thereafter the approved Plan shall be implemented and adhered to throughout.

Reason: To ensure the proposed landscaping is maintained in the interest of the environment and residential amenity.

10.15 The proposal was seconded by Cllr Gibson. The proposal was voted on by the Committee with two in favour and two against and four abstentions. This left a casting vote to the Chairman, who gave the casting vote against the proposal on the basis that, given the numbers, the case had not been made. Therefore, the motion fell.

10.16 The substantive recommendation, including changes to Conditions and Informatives as set out in Appendix 1 of the Committee report, as amended by the Agenda Update Sheet and also including amendments delegated to the Head of Planning Services, as approved by the Committee, was proposed by Cllr Duncton and seconded by Cllr Patel, and voted on by the Committee and approved unanimously.

10.17 Resolved:-

That planning permission be granted subject to the Conditions and Informatives as set out in Appendix 1 of the report and amended by the Agenda Update Sheet and also amended, as agreed, by the Committee.

10.18 The Committee recessed at 12.20 pm and reconvened at 12.28 pm. During the recess Cllr Duncton left the meeting.

11. Development Management Annual Report 2022

11.1 The Committee considered a report by the Head of Planning Services. The report was introduced by James Neave, Principal Planning Officer, who clarified that:

- The report is for the 2022 calendar year.
- Since the publication of the report, a decision notice has been issued by the Planning Inspectorate regarding the appeal on Application number WSCC/081/19, Proposed Temporary Concrete Crushing and Soil Recycling Facility, Kilmarnock Farm, Charlwood Road, Ifield, RH11 0JY. The Planning Inspector upheld, on all grounds, the decision of the Council, which was to refuse the application. The Planning Inspector's dismissal also

included additional matters relating to water neutrality and flooding; it is acknowledged that these did come in after the decision that was made by this Committee.

11.2 The Committee raised the points below and responses or clarification was provided by the Planning Officers, as noted below.

Hydrocarbons planning applications

Points raised – What additional procedures have been adopted to address the determination of hydrocarbon applications in required timeframes? It was noted that records are over two years, so determination percentages will change quickly given the limited number of hydrocarbons applications.

Response – Planning Officers now conduct a regular review of determination dates during weekly team meetings, including a traffic light reporting system. The team's Technicians also now review determination dates to ensure extensions in time are being picked up and recorded properly. It was agreed that performance figures can change very quickly given the limited number of hydrocarbon application dealt with, and that this is moving in the right direction.

Statutory Consultees

Points raised – Have there been any significant issues with timeframes for responses from statutory consultees? How often do we chase operators for compliance with operational conditions?

Response – Yes some are indeed delayed, albeit response times for statutory consultees vary. Resource problems are sometimes cited as the reason for delays. Where there are issues regarding the timeliness of responses, Planning Officers chase repeatedly for outstanding responses. Enforcement of conditions tends to be reactive. Visits to key waste sites are more frequent and often include spot visits and checks when officers are in the locality.

Follow-on actions and Discharge of Conditions

Point raised – The Committee was pleased with Discharge of Condition and Non-material Amendment applications now appearing as individual applications and on the online system. Do Town and Parish Councils get informed of Discharge of Condition applications?

Response – There is no statutory requirement to consult on Discharge of Condition applications, and this generally does not take place with Town and Parish Councils. There is however discretion for officers to consult any other parties should there be specific justification or reasoning for doing so, which is decided on a case-by-case basis. In general terms, technical consultees will be contacted (e.g. Highways/EHOs/Environment Agency) particularly where they have specifically requested a condition.

11.3 Resolved:

The Committee noted the report.

12. Date of Next Meeting

12.1 The next scheduled meeting of the Planning and Rights of Way Committee will be on Tuesday, 18 July 2023 at 10.30 am.

12.2 Members noted items likely to be considered at the next meeting of the Planning and Rights of Way Committee on Tuesday, 18 July would include DMMO 3/19 - Addition of a BW along the full length of Sheepwash Lane, West Wittering – G18. In addition, the following planning applications would be scheduled to be considered by the Committee in due course: WSCC/028/21 - The continued winning, working and processing of sand from the existing Rock Common Quarry, the importation of inert classified engineering and restoration material, the stockpiling and treating of the imported material, the placement of the imported material within the quarry void and the restoration and landscaping of the quarry, Rock Common Quarry, The Hollow, Washington, Pulborough, RH20 3DA, and also WSCC/021/23 - Regularisation, consolidation and extension to the existing waste transfer facility including an increase in throughput of waste, Recycle Southern Ltd, Elbridge Farm, Chichester Road, Bognor Regis, PO21 5EF. The scheduling of items to be considered by the Planning and Rights of Way Committee is subject to change.

The meeting ended at 12.43 pm

Chairman

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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

Agenda Item 2

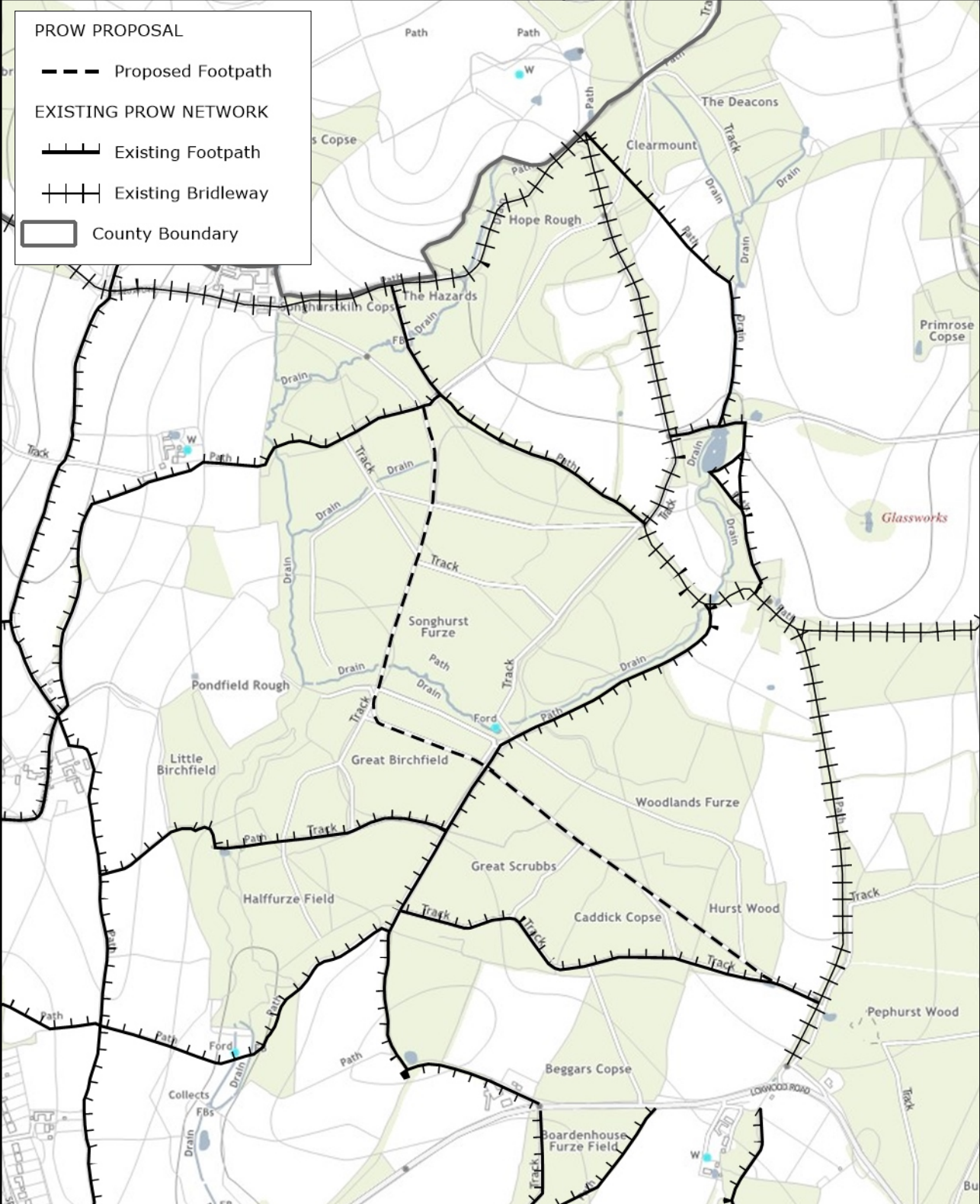
Tuesday, 5 September. The scheduling of items to be considered by the Planning and Rights of Way Committee is subject to change.

The meeting ended at 11.15 am


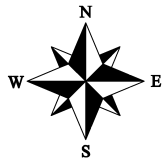
Chairman

Parish: Loxwood

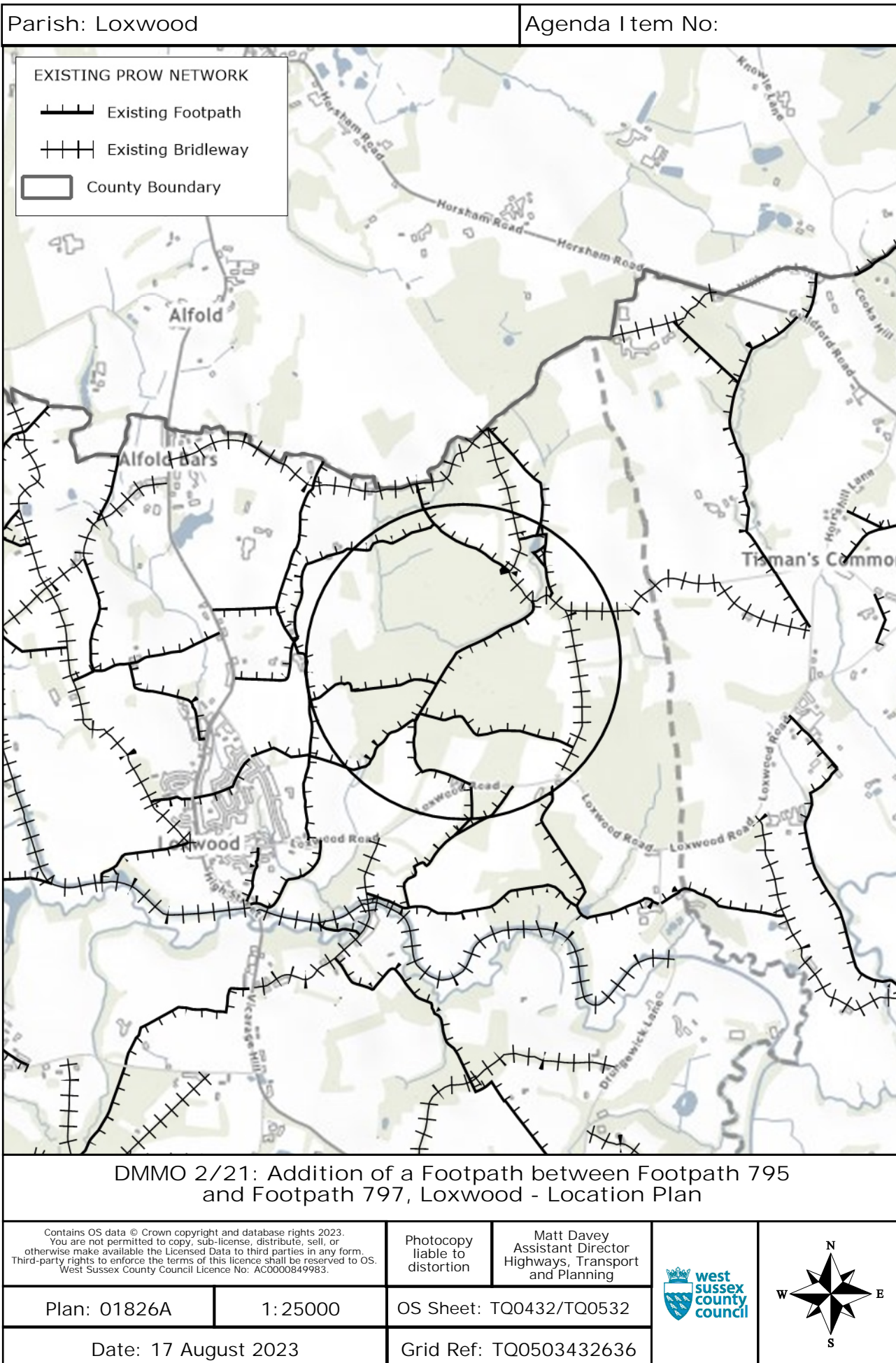
Agenda Item No:



DMMO 2/21: Addition of a Footpath between Footpath 795 and Footpath 797, Loxwood - Site Plan

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<p>Plan: 01826</p>	<p>1:10000</p>	<p>OS Sheet: TQ0432/TQ0532</p>			
<p>Date: 17 August 2023</p>		<p>Grid Ref: TQ0503432636</p>			

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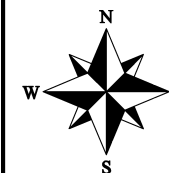


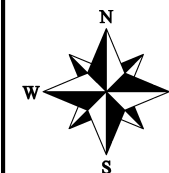
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**DMMO 2/21: Addition of a Footpath between Footpath 795
and Footpath 797, Loxwood - Location Plan**



Plan: 01826B	1:425000	OS Sheet: TQ0432/TQ0532	Photocopy liable to distortion	Matt Davey Assistant Director Highways, Transport and Planning		
Date: 17 August 2023		Grid Ref: TQ0470218684				

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**Key decision: Not applicable
Unrestricted**

Planning and Rights of Way Committee

5 September 2023

DMMO 2/21 – Definitive Map Modification Order to modify the definitive map and statement for Petworth to add a footpath between footpath 795 and footpath 797 in the parish of Loxwood

Report by Director of Law and Assurance

Electoral divisions: Petworth

Summary

The application seeks to modify the Definitive Map and Statement for Petworth by adding a footpath from public footpath 795 to footpath 797 in the parish of Loxwood. The application is supported by 116 public way evidence forms and documentary evidence.

Recommendation

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 to the definitive map and statement for Petworth from public footpath 795 to footpath 797 in the parish of Loxwood should be made.

1. Introduction

- 1.1 The application, made by Mr T J Bennett, was received on 31 January 2021 and seeks to add a footpath to the Definitive Map and Statement for Petworth in the parish of Loxwood. It is supported by 116 public way user evidence forms, testifying to the use of 118 users and by documentary evidence submitted by the applicant. The path claimed by the application is shown on the application plan.
- 1.2 The application is made under Section 53 (5) and is reliant on 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. The burden of proof rests with the applicant.
- 1.3 The requirements for the presumed dedication of a public right of way under statute are set out in Section 31 of the Highways Act 1980. This requires use of the claimed route by the public as of right and without interruption, over a period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route

had been dedicated. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public.

2. Characters and Features of the claimed route

- 2.1 The route which is being sought by the applicant begins at footpath 795 (grid reference 505607, 131934) and proceeds in a north-west direction across to footpath 797 (grid reference 504919, 132978). The surface of the claimed route consists of grass and dirt, which is enclosed by trees and vegetation on both sides. Throughout the route there are gates erected, which remained open during the officers site visit.

3. Land ownership

- 3.1 Land Registry documents show there are three landowners for the claimed route. The landowners are Nigel Ahmed Danhash, Ahmed Mansoor Danhash and Nadia Ahmed Danhash, who are joint owners of the land.
- 3.2 The applicant served notice of the application on each individual landowner on 31 January 2021.

4. Consultations

- 4.1 Standard consultations were sent to the amenity groups, the District Council and Parish Council.
- 4.2 The following comments were received:
- 4.3 Chichester District Council:

"We have no records that would support or dispute this claim. There is no planning history for the land, but a TPO was sought under reference 20/00275/TPO, this was not made. The site is within the Loxwood Neighbourhood Plan Area. The land is within the 6.5km Mens SAC buffer zone and 12km Ebernoe Common SAC buffer zone. There are also records of breeding birds, wolverine, bats and dormouse habitats and networks and records of designated statutory species including bluebell, Pearl-bordered Fritillary and White Admiral (butterflies) and the common lizard. The footpath also runs through ancient woodland."

- 4.4 The West Sussex Ramblers:

"There is significant evidence of use of the route by the public over a considerable period, also confirmed by our Local Footpath Warden for Loxwood parish. The additional historical mapping that has been submitted by the applicant also confirms the existence of the route through the woodland for well over a century. The future of public access to the route has been brought into question by the current landowner installing gates in January 2021 that could be used to obstruct the route, though left open at the moment, and by their clear desire to develop the site for commercial purposes. We therefore believe that the claimed route covered by the application should be recognised and protected by adding it to the Definitive Map as a footpath."

4.5 Loxwood Parish Council:

“The route has been used by walkers for over 40 years as evidenced by correspondence from the local community. The route connects existing PROWs and enables a circular walk in the Woods there is no doubt it is a very popular amenity.”

4.6 Rudgwick Parish Council:

“The route connects existing PROWs and enables a circular walk in the Woods and has been used by walkers for over 40 years.”

5. Evidence submitted in support of the application

5.1 The application was made following the installation of gates on parts of the claimed route in January 2021. This is taken as the event which brought the public’s right to use the route into question.

5.2 The application is supported by 116 public way user evidence forms, testifying to use by 118 individuals from 73 postal addresses over the period 1950 to 2021. Additionally, there were 14 individual user statements in the form of written emails, testifying to the use of the path by 16 users.

5.3 The user evidence submitted with the application shows the following type of use:

5.1.1 all of the users claim to have used the route on foot,

5.1.2 twenty-nine of the users claim to have used the route on a bicycle,

5.1.3 three of the users claim to have used the route on a horse.

5.4 None of the claimed users report to having been turned away whilst using the route or claim to have seen any notices or otherwise preventing them from using the route, prior to 4 January 2021.

5.5 A number of users claim that gates were erected on the claimed route in January 2021. These gates were reported to be not locked and generally left open.

5.6 Five users claim to have been given permission to access the route.

5.7 Five users claim to have been told that the route was not public in 2020 during the Claypit webinar (planning application). Two users claim to have been told that the route was not public on 4 January 2021 when the gate were being erected.

5.8 All users report to have seen others using the route either on bicycles, horse and/or walking.

5.9 In addition to this, the Rudgwick Preservation Society provided a letter in support of the application. They referenced Diana Chatwin’s book on Rudgwick (The Development of Timber-Framed Buildings in Sussex

Weald), which is said to have described the woodlands as similar to The Mens in the South Down National Park near Wisborough Green. Further, the letter stated the antiquity of some of the woodland surrounding the proposed path has been recognised by Natural England as Ancient Woodland. They noted that in between these tracks of woodland further planting was undertaken by the landowners before and after the death of the Lord Manor, Denzil Onslow, and the sale of the woodland in 1879. They claim that the land was then owned by two estates, in turn Loxwood Hall Estate and Pallinghurst Estate, which were finally broken up in 1958/9. They claim in the "Onslow years", the woodland became important for uses of commercial forestry and sporting pursuits, which continued into the 20th century.

Officer comments: This additional evidence submitted by Rudgwick Preservation Society, though interesting, does not have any relevance as to whether the claimed route has public status and to what extent.

5.10 The application is supported by archival evidence, submitted by the Rudgwick Preservation Society. They assert that the evidence submitted demonstrates that the claimed route was historically a route used by the public, as a footpath.

5.11 Second Edition Ordinance Survey Map 1876 and 1879:

The Rudgwick Preservation Society state that the 1876 map is the first to show a layout of multiple geometric rides and tracks criss-crossing the woodland. They assert that there has been straightening and realignment of the track. The applicant notes that the southern half of the track is depicted, which has a curve in Hurst Wood which has been straightened in the 20th century and that the track finished in a field (104) in the north-west. The applicant states that the northern half also finishes in field 104 and that the field was later planted with birch trees and the two tracks joined up.

Officer comments: Part of the claimed route is shown on the map denoted by double dashed lines. The start of the route commencing at FP795-3 is not depicted on this map but is later denoted by double dashed lines heading in a western direction. When the claimed route meets FP 792-1 it is not depicted at this point heading in a western direction. The route is then depicted again in double dashed lines heading in a northern direction.

5.12 Third Edition Ordinance Survey Map 1897:

The Rudgwick Preservation Society state that the map shows the track now all the way through the woodland in the north-west. This necessitates a right angle turn in the track.

Officer comments: Part of the claimed route is shown on the map denoted by double dashed lines. The start of the route commencing at FP795-3 is not depicted on this map but is later denoted by double dashed lines heading in a western direction. The remaining section of the claimed route is depicted in double dashed lines.

5.13 Ordinance Survey Map 1974:

The track has been straightened in the southeast and right-angle bend curved for lorry access. The short section across a field in the south-east is clearly shown. The applicant states that the track is clearly the main access route.

Officer comments: The claimed route is shown on the map denoted by double dashed lines.

6. Evidence submitted against the application

6.1 A joint objection was received from the following landowners: Ahmed Danhash, Nadia Danhash and Nigel Danhash. Mr Nigel Danhash provided the following comments on behalf of all the landowners:

- The woodland has been owned by my family for just under 30 years and we have used Tillhill Forestry to manage and maintain the woodland all the time we have owned the woodland.
- Both Tillhill Forestry personnel and ourselves have always advised any trespassers on the main track that they are trespassing and that they are endangering themselves if they are on the track. Members of the public are always asked to return to the several footpaths, that cross our woodland.
- The route is a service road for Forestry vehicles and machinery to use during necessary maintenance and woodland operations.
- The route was created in order to maintain the woodland and perform woodland operations without endangering the public or infringing on official public rights of way.
- The public have been noted using the service route irregularly on foot and are considered unauthorised users.
- 4m gates are located at the start and end of the service road and are kept locked when not in use. Additional gates and barriers are used at access points to PROW when the service road is in operational use.
- Gates were installed in the 1990's, as set out in correspondence from 1995 with Mr Peter Harrison. The letter dated 23 May 1995 references several gates in Songhurst and Bulhams Woods.
- Two recent photographs showing some gates and signs erected were provided. Nigel Danhash identified the first photograph as being located between the layby and the eastern woodland. The second photograph is located mid-way along the track in the western woodland.
- 'No unauthorised access' is clearly sign posted on gates during operational use, additional warning signage is used including 'machinery access route' and 'timber lorry access route' signage is regularly vandalised and removed by the public.

- The public is informed of the dangers present on the service road and to keep to official rights of way when encountered.
- Tilhill Forestry are instructed to ensure public safety by keeping the public away from work areas and service routes.
- A form CA16 was deposited with effect from 9 July 2020
- Tilhill management have stated no intentions to allow public use of the service road. There are already a number of public rights of way allowing public access through the woodland to and from the points proposed. There is no reason why an additional right of way should be necessary.

Officer comments: On a site inspection, it was noted that one of the gates shown in a photograph provided by the landowner is not situated at the location of the claimed route. It was noted that the gates along the claimed route appeared to be in a new condition, with product code labels still adhered to the gates. In addition, a sign stating "PRIVATE WOODLAND Please keep to public footpath", which appeared to be new, was found on the claimed route but had been removed from the gate. Signs stating, "Danger of Death Overhead Powerlines" and "Warning Timber Lorries in Operation" were also found on a gate and post. No other notices were found to be present on the claimed route, at the time of the site inspection. It is noted that only one of the gates referred to in the 1995 correspondence relates to the claimed route.

7. Archive evidence

- 7.1 The following Ordnance Survey maps were consulted at the West Sussex Record Office – OS 1876, OS 1897, OS 1898, OS 1912, OS 1973 and OS 1974. It is concluded that none of these maps show evidence of a historic right of way. OS maps can show the physical existence of a route on the ground but are not definitive in connection with the status of a route or whether it is public or private. From 1888, OS maps carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public rights of way and on late 20th Century OS maps which show those ways which are recorded in definitive maps and statements, the disclaimer is modified to acknowledge that some route shown are public rights of way.
- 7.2 The Tithe Maps for Wisborough Green, Adcock Map and the Quarter Sessions were consulted. It is concluded that neither the maps nor the Quarter Sessions show evidence of a historic right of way.
- 7.3 The Draft and Provisional Definitive Maps were consulted and it is concluded that neither map show evidence of a historic right of way for the claimed route.
- 7.2 The Loxwood Parish File revealed a map of the Pallinghurst Estate. This map did not indicate that the claimed route had the status of a right of way, however it did depict the route in solid black lines. This indicates the

physical existence of the track, but it is not definitive in relation to the status of the claimed route.

8. Consideration of claim

- 8.1 The application was submitted with user evidence and some archive evidence summarised in paragraph 5 and contained in the background papers of this report. Evidence against the application is summarised in paragraph 6 and contained in the background papers of this report. Archive evidence has been reviewed as summarised in paragraph 7 of this report. Section 53 WCA 1981 requires there to be a “discovery” of evidence and the applicant relied on user evidence.
- 8.2 In determining the application, there are two possible tests. The Committee must decide whether the evidence provided by the applicant, together with all other relevant evidence available, shows that on the balance of probability a right of way exists, or that it is reasonable to allege the existence of a public right of way. The burden of proving this falls to the applicant. Matters such as suitability of a way and possible nuisance or need, are irrelevant and cannot be taken into account when reaching a decision. In respect of the user evidence, the application has been considered under Section 31 of the Highways Act 1980, which requires consideration of whether there has been use of a way by the public ‘as of right’ and without interruption for a period of twenty years prior to its status being brought into question and if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

9. The 20-Year Period

- 9.1 Under Section 31 of the Highways Act 1980, a relevant date needs to be established for the 20-year period of use. The relevant date is determined as the period when the land has actually been enjoyed by the public ‘as of right’ and without interruption for a full period of 20 years taken back retrospectively from the first date of challenge.
- 9.2 In this instance, users claim that a gate and notice was erected on the land in January 2021. There is also the fact that a CA16 landowner deposit was submitted by the landowner in July 2020. Therefore, the relevant 20-year period for the purpose of determining this application is July 2000 – July 2020.
- 9.3 Whilst it is not necessary for all users to demonstrate continuous use throughout the 20-year period, they must demonstrate that the use has been made by the public continually during that period.
- 9.4 During the relevant 20-year period 118 users claim to have used the claimed route, 62 of which claim to have used it continually for the whole 20-year period.
- 9.5 The use of the application routes ranges between twice to 365 times a year.

10. As of right and without interruption

- 10.1 "As of right" means use without force, secrecy or permission. It is irrelevant whether the users actually knew they were not entitled to use the route or were indifferent as to whether they could use it. What is important is that looked at objectively they appeared to be using the paths as of right.
- 10.2 As detailed in paragraph 9.4 above, evidence submitted in support of the application has shown that the claimed route has been used by 118 users, 63 of which claim to have used the route continuously from July 2000 – July 2020. This is a significant number of users.
- 10.3 Three of the users which claim to have used the route continuously from July 2000 – July 2020 report to have been given permission to use the route during the 20-year period. As such, this evidence has been discounted from the number of users which claim to have used the route continuously for the 20 year period. It therefore appears that access to the claimed route within the application has been available throughout the relevant period until the gate and notice appeared in January 2021.
- 10.4 With regard to the issue of 'permission' a distinction needs to be drawn between toleration and permission. A landowner may be aware of the use of a path but chooses to do nothing to prevent that use. In those circumstances, even if they later make it clear they did not support the use of the path during the relevant period, their actions could be regarded as toleration of the use during that period. This means the use could still be regarded as being as of right.
- 10.5 However, the situation would be different if the landowner permitted the public to use the path but made clear (either expressly e.g. by a sign or through their conduct e.g. by closing the path occasionally) that their consent could be withdrawn in the future. In that case the use would be with permission and not as of right.
- 10.6 Ahmed Danhash, Nadia Danhash and Nigel Danhash assert that gates and notices were erected on their land which advised the public 'No unauthorised access' during operational use and additional warning signage is used including 'machinery access route' and 'timber lorry access route' signage. It could therefore be argued that the notices showed an interruption to use within the 20-year period.
- 10.7 However, it should be noted that none of the users claim to have seen any notices across the application land prior to January 2021. This is a substantial number of users claiming that no gates or notices were present on the claimed route prior to January 2021. However, the landowner state the gates were installed in the 1990's and is seeking to rely on correspondence from 1995 with Mr Peter Harrison. The letter dated 23 May 1995 references several gates in Songhurst and Bulhams Woods, which the landowners have identified on a plan showing the location of the gates referred to in the 1995 correspondence. It should be noted that only one of the gates referred to in the correspondence relates to the claimed route. The landowner did provide two recent photographs

showing some gates and signs erected. He identified the first photograph as being located between the layby and the eastern woodland. As such, this gate is not located on the claimed route. However, the second photograph is located mid-way along the track in the western woodland, which is located on the claimed route.

- 10.8 However, not one witness has testified to seeing any gates locked or unlocked prior to January 2021 and the evidence of the users suggests that the claimed route was used 'as of right'.

11. Evidence of no intention to dedicate

- 11.1 It is considered that the user evidence has met the statutory tests as set out in Section 31 Highways Act 1980 for the claimed route. User evidence submitted in support shows that the claimed route has been used 'as of right' and without interruption for a period of 20 years or more. It is therefore necessary to further consider whether there is sufficient evidence of no intention to dedicate by the landowner during the relevant 20-year period.
- 11.2 Evidence of a landowner's intention not to dedicate a public right of way must be overt and contemporaneous. The landowner cannot assert after the event that there was no intention to dedicate.
- 11.3 As set out in paragraph 6.1 above, a CA16 deposit was made on 9 July 2020 under S.31(6) Highways Act 1980 and S.15a(1) Commons Act 2006 which may show an intention that the landowners did not intend to dedicate the land to the public during the relevant period. This date has been taken as the date on which the public's use of the path was first challenged.
- 11.4 There is no other evidence of no intention to dedicate.

12. Common Law

- 12.1 At Common Law a right of way may be created through express or implied dedication and acceptance. The onus of proof is on the claimant to show that the landowner, who must have the capacity to dedicate, intended to do so and that the public have accepted such dedication. Whilst there is no defined minimum period of continuous use to establish a right of way at Common Law, the use must be shown to have been 'as of right'.
- 12.2 As there is no defined length of time over which the use must occur, it simply must be long enough to justify an inference that there was an intention by the landowner to dedicate. A landowner needs to be legally capable of dedicating the way as public, therefore any periods in which the land was occupied by tenants could not be included in the period of use.
- 12.3 In this case there is a significant amount of evidence which spans a considerable period of time. It could therefore be concluded that a right of way have been created at common law.

13. Recommendation

- 13.1 The applicant has produced a substantial amount of credible evidence which demonstrates clear use of the claimed route during the relevant 20-year period. However, the landowners assert that gates are located at the start and end of the service road, which are kept locked when not in use. In addition, they state 'No unauthorised access' notices are sign posted on gates during operational use. As there is a conflict of evidence, the claimed route can only be reasonably alleged to subsist.
- 13.2 Archival research has indicated the existence of a route however has not indicated whether the route is public or private and/or its status.
- 13.3 It is therefore considered that as there is a conflict of apparently credible evidence from the applicant and the owners a public right of way has been reasonably alleged to subsist.
- 13.4 It is therefore recommended that an order should be made to add the claimed route to the definitive map.

14. Consultation, engagement and advice

- 14.1 See paragraph 3 above which details responses to statutory consultations as well as responses to additional consultations that were carried out as part of the investigation process.

15. Finance

- 15.1 The County Council is under a duty to investigate Definitive Map Modification Order applications and all costs associated with the consideration of the application by officers' falls within existing budgets.
- 15.2 Cost implications arise:
 - i. In the event of an order being made and objected to, the matter may fall to be considered at a public local inquiry or a public hearing. All fees incurred after the submission of the order are borne by the County Council. This includes but is not limited to fees relating to the venue hire, advertising costs etc.
 - ii. Should an order be made and confirmed; if any works are necessary to ensure that the path is open for public use.
 - iii. Should the decision of the committee be challenged by way of Judicial Review.
- 15.3 The recommendation made by the case officer and the decision of the Planning and Rights of Way Committee is based on the application of strict legal tests and the above costs cannot be a consideration in the determination of the application.

16. Risk implications and mitigations

- 16.1 The decision is one that must be taken on strict legal tests:

- i. If the application is not determined in accordance with the tests this could lead to a successful legal challenge by way of Judicial Review.
- ii. In the event that an order is made the landowner could appeal to the Secretary of State and the matter be considered by way of written representations, hearing or public inquiry.
- iii. In the event that an order is not made and the applicant disagrees with the decision then they have a right of appeal pursuant to Schedule 14 of the Wildlife and Countryside Act 1981 to the Secretary of State. The Secretary of State may direct the County Council to make an order, which if objected to could be considered by way of written representations, hearing or public inquiry.

16.2 In reaching a recommendation the case officer has considered the evidence in accordance with the law.

17. Policy alignment and compliance

Equality and Human Rights Assessment

17.1 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics.

Human Rights Act 1998 Implications

- 17.2 It is unlawful for a public authority to act in any way, which is incompatible with a convention right. The rights, which should be considered, are rights pursuant to Article 8, Article 1 and Protocol 1 and Article 6.
- 17.3 Article 8 protects the right to respect for private and family life including an individual's home. This is a qualified right and there may be interference by a public authority if that authority does so with an intention of protecting the right and freedom of others.
- 17.4 Article 1, Protocol 1 deals with the protection of property. Again, this is a qualified right and interference of it may take place where it is in the public's interest to do so subject to the conditions provided by law. Any interference, however, must be proportionate. The main body of the report identifies the extent to which there is an interference with these rights and whether the interference is proportionate.
- 17.5 The Committee should be aware of Article 6, the focus of which (for the purpose of this Committee) is the determination of an individual's civil rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for rights of way matters, the decision-making process as a whole, which includes the right of review by the High Court, complied with Article 6.

Crime and Disorder

- 17.6 The Definitive Map Modification Order process involves the application of legal tests, which mean that it is not possible to give weight to any effect on crime and disorder.

Climate Change

- 17.7 Enhancement of the public rights of way network is a positive contribution towards the County Council's stated ambition of being carbon neutral by 2030, however such considerations are not matters that can be taken into account when considering applications against the strict legal tests.

Public Health

- 17.8 The addition of public rights of way through the Definitive Map Modification Order process could assist in enhancing the general health and wellbeing of the communities served by the Council. However, such considerations are not matters that can be taken into account when considering applications against the strict legal tests.

Tony Kershaw

Director of Law and Assurance

Case Officer: Gemma Penfold, Legal Assistant, 0330 22 27074

Appendices

- Appendix 1 – Site Plan 01826
- Appendix 2 – Location Plan 01826A
- Appendix 3 – Parish Location Plan 01826B

Background papers

- (1) Application and plan
- (2) Witness Table
- (3) Consultation responses
- (4) Evidence in support
- (5) Evidence in opposition
- (6) Archive Evidence

Agenda item X – DMMO 02/21

Proposal:

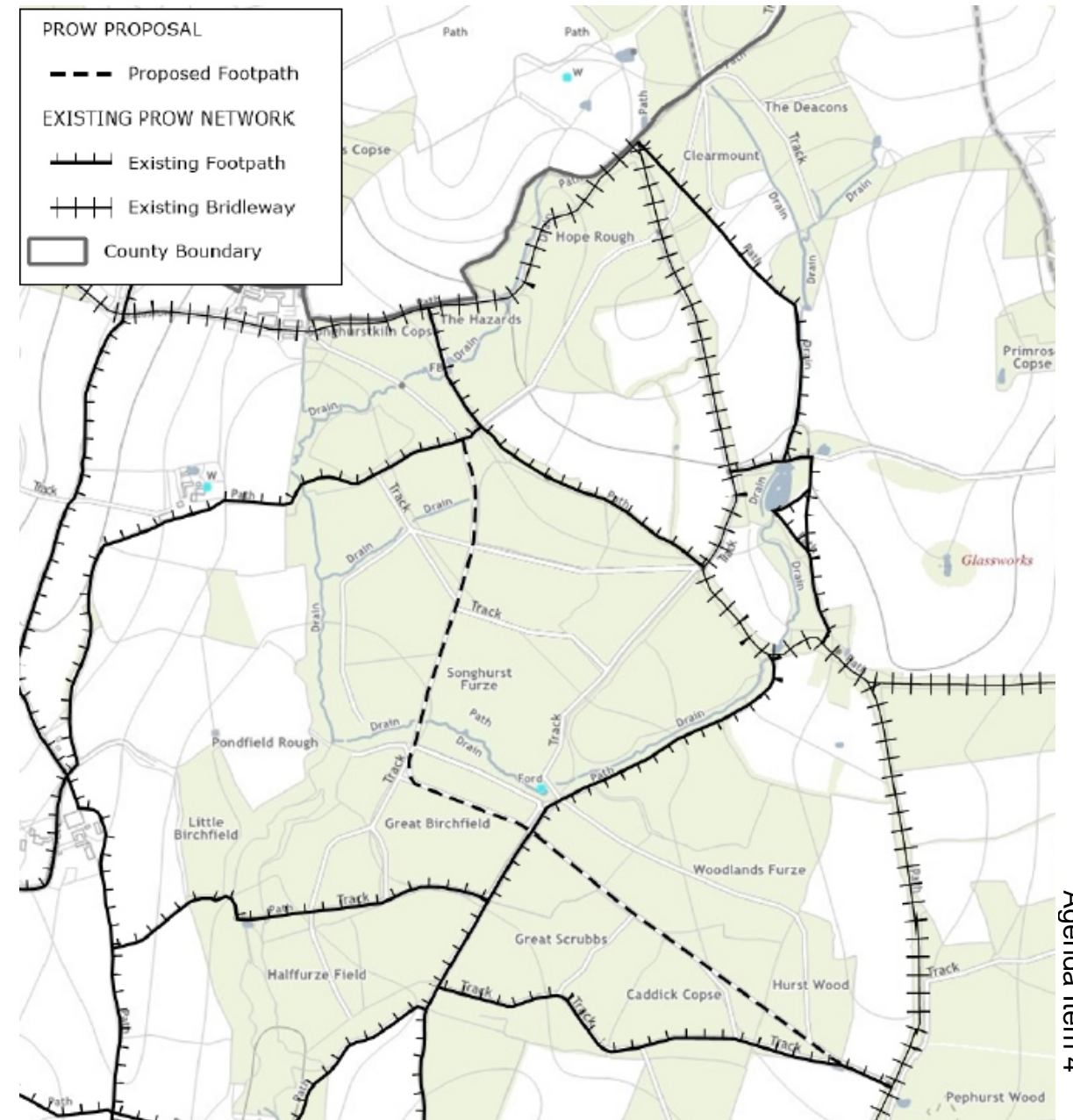
To add a footpath between footpath 795 and footpath 797 in Loxwood.

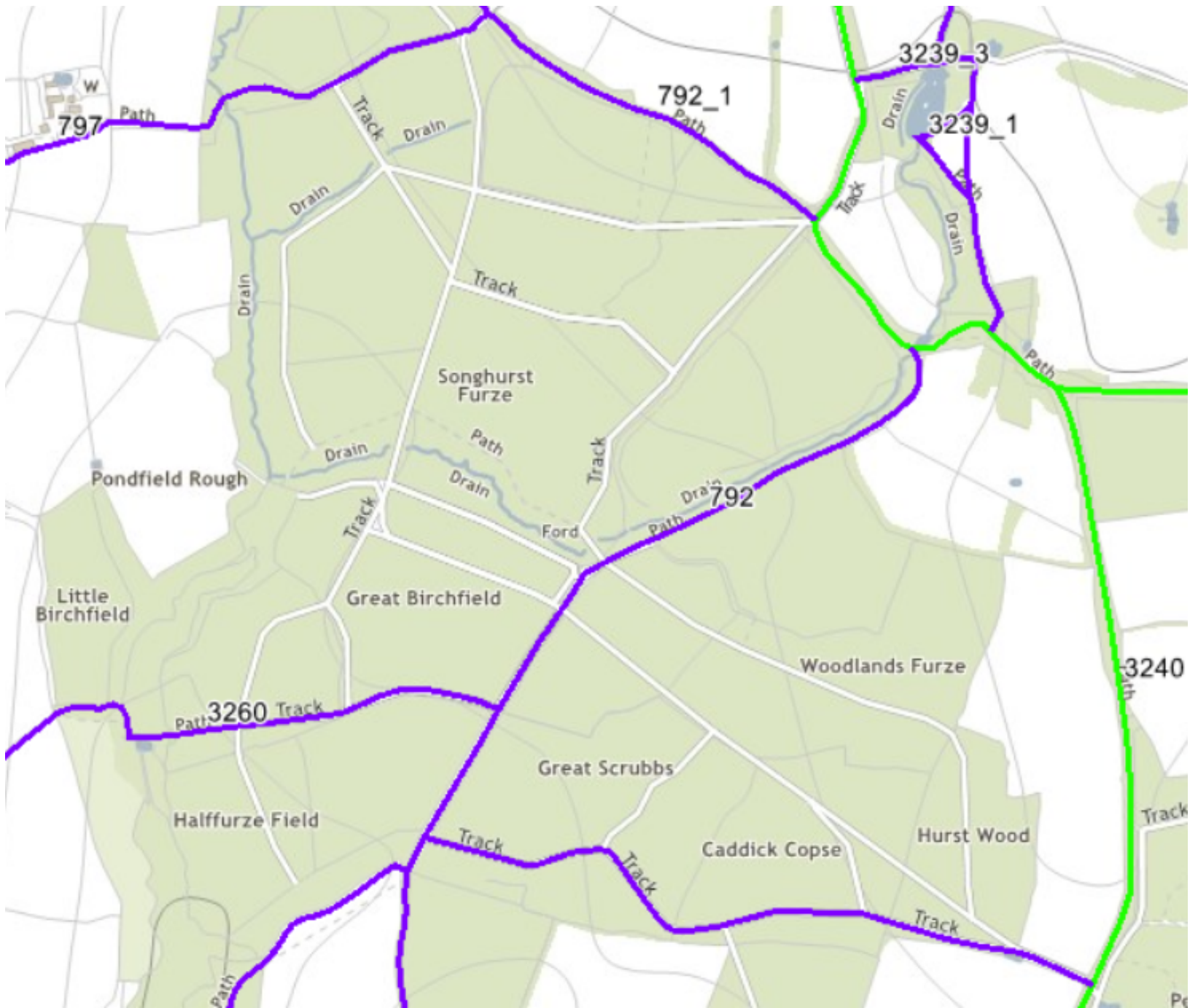
Evidence:

The application is based on user evidence showing continuous use by the public of the claimed route beginning at footpath 795 and proceeding in a north-west direction across to footpath 797, since 1950. The evidence shows that use was as of right and without interruption on the route in the 20-year period between July 2000 and July 2020. It is concluded that the evidence meets the lower legal test and that the claimed route can be reasonably alleged to subsist.

Recommendation:

That a Definitive Map Modification Order to add the footpath be made.





**Key decision: Not applicable
Unrestricted**

Planning and Rights of Way Committee

5 September 2023

Current Planning Applications, Current Definitive Map Modification Orders (DMMOs), Town and Village Green applications (TVGs) and Public Path Orders (PPOs) under investigation

Report by Head of Planning Services, Director of Law and Assurance and Assistant Director (Highways Transport and Planning)

Table 1 - Minerals and Waste (County Matter) Planning Applications

Reference (Case Officer)	Applicant	Proposal	Location
WSCC/080/19 (Chris Bartlett)	H Ripley & Co Ltd	Variation of conditions 2, 8, 9 and 12 of planning permission WSCC//037/18/CR to alter approved plans and documents relating to noise control, waste deliveries and skip and waste storage and non-compliance with condition 4 relating to access and discharge of Condition 5 relating to cycle parking.	International Park, Priestley Way, Northgate, Crawley RH10 9NT
WSCC/001/20 (Chris Bartlett)	Britaniacrest Recycling Ltd	Variation of conditions 1,2,4,8,19 and 22 of planning permission WSCC/009/18/SR to allow two further years' extraction and restoration by 2028.	Washington Sand Pit Hampers Lane Sullington West Sussex RH20 3EX

Reference (Case Officer)	Applicant	Proposal	Location
WSCC/028/21 (Chris Bartlett)	Dudman (Rock Common) Limited and The Wiston Estate	The continued winning, working and processing of sand from the existing Rock Common Quarry, the importation of inert classified engineering and restoration material, the stockpiling and treating of the imported material, the placement of the imported material within the quarry void and the restoration and landscaping of the quarry.	Rock Common Quarry, The Hollow, Washington, Pulborough, RH20 3DA
WSCC/015/22 (Edward Anderson)	South Coast Skips Ltd	Change of use of existing hangar building from B2/B8 industrial/storage to sui generis, installation of combined heat and power plant, receipt of up to 15,000 tonnes per year of feedstock, generation and export of up to 1.25mW electricity and 5.5mW thermal and installation of HV meter cabinet.	South Coast Skip Hire Unit H9-H10 Ford Road Arundel BN18 0BD
WSCC/007/23 (Chris Bartlett)	RM Pettett Ltd	Change of use of land to form additional storage area in connection with existing metal recycling yard including hard surfacing and new boundary walls (Part retrospective).	The Old Coal Yard, Jury Lane, Sidlesham Common, Chichester, West Sussex, PO20 7PX
WSCC/008/23 (Chris Bartlett)	BASF Agricultural Specialities Ltd	Installation of an Anaerobic Digestion (AD) plant to treat liquid biological waste stream from manufacturing plant	Modern Moulds Business Centre, Unit A1 – A3, Harwood Road, Littlehampton, West Sussex, BN17 7AU
WSCC/034/20/DIS1 (Chris Bartlett)	Mr Mark Weil	Discharge of conditions 4 (Surface Water Drainage – Verification) of Planning Permission WSCC/034/20.	Ounces Barn Livery, Halnaker, Chichester, PO18 0NP
WSCC/013/23 (Chris Bartlett)	Mr Colin Huckwell	Variation of condition 2 to allow the continuing of processing and recycling of waste and final restoration of the site until December 2024.	Bridgers Farm Langton Lane Hassocks BN6 9HA

Reference (Case Officer)	Applicant	Proposal	Location
WSCC/040/09/DIS1 (James Neave)	Wienerberger Ltd	Discharge of conditions 8 (Working and Restoration Scheme), 16 (Management of Waste from Dewatering and Discharges), 19 (Woodland Management and Maintenance Scheme), 20 (Detailed Restoration Scheme), and 21 (Aftercare Scheme) of Planning Permission WSCC/040/09/NH.	Langhurstwood Quarry, Langhurstwood Road, Horsham, West Sussex, RH12 4ZL
WSCC/018/23 (Chris Bartlett)	Biffa Waste Services Limited	Installation of a fire suppression and prevention system	Crawley Waste Transfer Station, Metcalf Way, Crawley, RH11 7SU
WSCC/004/20/DIS1 (Chris Bartlett)	Mr Pearce	Restoration of the former Standen Landfill site with a woodland and pasture landfill cap system (Discharge of Conditions; 4 – Construction Management Plan, 5 – Construction Environmental Management Plan, 6 – Ecological Management and Aftercare Plan, 7 – Phasing Plan, 8 – Verification Plan, 9 – Soft landscaping Plan) of planning permission WSCC/004/20.	Evergreen Farm, West Hoathly Road, East Grinstead, RH19 4NE
WSCC/021/23 (James Neave)	Recycle Southern Limited	Regularisation, consolidation and extension to the existing waste transfer facility including an increase in throughput of waste.	Recycle Southern Ltd Elbridge Farm, Chichester Road, Bognor Regis, PO21 5EF
WSCC/023/23 (Tyra Money)	Southern Water Services Ltd	Construction of 2no. Kiosks and associated works	Pagham Wastewater Treatment Works, Summer Lane, Pagham, PO21 4NG

Table 2 - Regulation 3 Planning Applications:

Reference (Case Officer)	Applicant	Proposal	Location
WSCC/021/22 (Tyra Money)	West Sussex County Council	Demolition of existing single storey extension and erection of two storey side extension.	18 Teasel Close, Crawley, RH11 9DZ
WSCC/022/22 (Tyra Money)	WSCC Assistant Director of Property & Assets	Demolition of existing garage. Erection of two storey side extension and single storey rear extension.	21 Lancing Close, Crawley RH11 0DJ
WSCC/023/22 (Tyra Money)	WSCC Assistant Director of Property & Assets	Change of use from D1 to C2 residential home. Demolition of existing and erection of new single storey extension on same building footprint.	40 Teasel Close, Crawley RH11 9DZ
WSCC/017/23 (Chris Bartlett)	WSCC Assistant Director of Property & Assets	The retention, repair and replacement of windows and doors to the original 19th century wing of Slinfold CE Primary School.	Slinfold C of E Primary School, The Street, Slinfold, Horsham RH13 0RR
WSCC/020/23 (Tyra Money)	WSCC Assistant Director of Property & Assets	Erection of multiple single storey extensions, with alterations to car park, landscaping and other associated works.	Edward Bryant Junior and Infants School, London Road, Bognor Regis
WSCC/026/23 (Edward Anderson)	WSCC Assistant Director of Property & Assets	Installation of wet pour rubber safer surfacing to the existing trim trail.	Wisborough Green Primary School, Newpound Lane, West Sussex, RH14 0EE
WSCC/029/23 (Edward Anderson)	WSCC Assistant Director of Property & Assets	Installation of air source heat pump and replacement of existing windows, rooflights and doors around the building.	Durrington Library, Salvington Road, Salvington, Worthing, West Sussex, BN13 2JD
WSCC/030/23 (Edward Anderson)	WSCC Assistant Director of Property & Assets	Installation of Solar Panels to southern roof pitch, air source heat pump and replacement of existing windows and doors around.	Steyning Fire Station, High Street, Steyning, BN44 3BU

Reference (Case Officer)	Applicant	Proposal	Location
WSCC/052/20/NMA2 (James Neave)	WSCC Assistant Director of Property & Assets	Non material amendment to planning permission ref. WSCC/052/20 (Construction of a single carriageway with shared cycleway / footway, roundabouts, road markings, traffic signals, bus stops, provision of hard and soft landscaping, construction of a substation building, installation of a noise barrier, and other associated works) to provide an additional field access.	Land to the north of Eastergate and north-west of Barnham, PO22 0DF
WSCC/027/23 (Chris Bartlett)	WSCC Assistant Director of Property & Assets	The replacement of windows and the installation of PV panels.	Haywards Heath Public Library, Boltro Road, Haywards Heath, RH16 1BN
WSCC/028/23 (Chris Bartlett)	WSCC Assistant Director of Property & Assets	The replacement of windows, doors and rooflights, and the installation of PV Panels and Solar Thermal Panels.	Glebelands Day Care Centre, Middle Road, Shoreham-by-Sea, BN43 6GA.
WSCC/010/22/NMA1 (Tyra Money)	WSCC Assistant Director of Property & Assets	Non-material amendment to planning permission ref. WSCC/010/22 (2 no. SEN extensions to the existing school building with associated landscaping and other works) to allow changes to windows and the drainage scheme.	West Park Church of England Primary School, Marlborough Road, Worthing, West Sussex, BN12 4HD
WSCC/031/23 (Edward Anderson)	WSCC Assistant Director of Property & Assets	Installation of Solar PV Panels, Air Source Heat Pump and replacement of existing windows, rooflights and doors around.	Storrington Library, Ryecroft Lane, Storrington, RH20 4PA
WSCC/024/23 (Tyra Money)	WSCC Assistant Director of Property & Assets	Installation of artificial grass	Hawthorns Primary School, 9 Poplar Road, Northbrook, Worthing, BN13 3EZ
WSCC/046/21/DIS1 (Tyra Money)	WSCC Assistant Director of Property & Assets	Discharge of conditions 8 (Tree Protection Plan) and 9 (Hand and Soft Landscaping Plan) of Planning Permission WSCC/046/21.	Orchard Lodge, Hanlye Lane, Cuckfield RH17 5HN

Table 3 - Current DMMOs under investigation:

App. No.	Application Details	Date received	Status and notes
DMMO 2/19 Archive	Upgrade FP 2540 to Restricted Byway and to add a Restricted Byway in Henfield and Woodmancote.	11/03/19	Investigation commenced April 2023.
DMMO 2/21 User	Addition of a FP between FP 795 to FP797 Loxwood.	31.01.21	Report to 5 September 2023 Committee.
DMMO 4/21 User	Addition of a path with two extensions connecting Steyning Rifle Range, Footpath 2715 and Bridleway 2714.	09.03.21	Investigation commenced May 2023. PINS direction to determine within 15 months of 8 March 2023 (by 8 June 2024). Report possible for September 2023 Committee

Table 4 – Current Town and Village Green (TVG) applications under investigation:

App. No.	Application Details	Date received	Status and notes
TVG 31/52	Application to register TVG at Nutham Lane, Cedar Drive and Easteds Lane, Southwater	July 2022	Investigation commenced November 2022.
TVG 30/53	Application to register TVG at Collingwood Road, Horsham	September 2022	Investigation commenced November 2022. Report possible for October 2023 Committee.

5. Public Path Orders (PPOs):

We will shortly be recommending the processing of public path orders, to divert or extinguish public rights of way under Section 118 and 119 Highways Act 1980. In anticipation of the right to apply regulations being brought into effect and the proposed changes under these regulations, applications have not been accepted since 2018.

Monthly updates on applications under active investigation will be reported here.

Michael Elkington
Head of Planning Services

Tony Kershaw
Director of Law
Assurance

Matt Davey
Assistant Director
(Highways and Transport)

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