

Planning and Rights of Way Committee

12 October 2021 – At a meeting of the Committee held at County Hall, Chichester, PO19 1RQ.

Present: Cllr Atkins (Chairman)

Cllr Ali, Cllr Duncton, Cllr Gibson, Cllr Hall, Cllr McDonald, Cllr Montyn, Cllr Oakley, Cllr Patel, Cllr Quinn, Cllr Sharp and Cllr Cherry

Apologies were received from Cllr Burrett and Cllr Joy

Also in attendance: Cllr Charles and Cllr Oppler

Part I

13. Declarations of Interest

13.1 In accordance with the County Council's Constitution: Code of Practice on Probity and Protocol on Public Participation in Planning and Rights of Way Committees, Cllr Quinn declared that he had been lobbied in relation to Agenda Item 4 'Application for DMMOs 4, 5, 6/19 in the parishes of Bognor Regis, Felpham and Bersted'.

13.2 In accordance with the County Council's Code of Conduct, Cllr Duncton declared a personal interest in Agenda Item 4 'Application for DMMOs 4, 5, 6/19 in the parishes of Bognor Regis, Felpham and Bersted' because she is the County Council's representative on the South Downs National Park Authority.

13.3 In accordance with the County Council's Code of Conduct, Cllr Sharp declared a personal interest in Agenda Item 5 'Recent Decision by the Secretary of State's Inspector, DMMO 5/16 – To add a footpath at Fyning Lane, Rogate' because she knows one of the parties involved.

14. Minutes of the last meeting of the Committee

14.1 Resolved – That the minutes of the Planning and Rights of Way Committee held on 7 September 2021 be approved and that they be signed by the Chairman.

15. Urgent Matters

15.1 There were no urgent matters.

16. Definitive Map Modification Order

Definitive Map Modification Order Application for DMMOs 4, 5, 6/19 in the parishes of Bognor Regis, Felpham and Bersted:

(1) Addition of a footpath from Brooks Lane to Downview School

(2) Addition of a footpath from the field adjacent to the rife to the Leisure Centre

(3) Addition of a footpath around the main field adjacent to the rife

16.1 The Committee considered a report by the Director of Law and Assurance, as amended by the Agenda Update Sheet (copies appended to the signed copy of the minutes). The report was introduced by Georgia Hickland, Trainee Legal Executive, who outlined the proposals.

16.2 Mr Stephen Brown, representing The Save Aldingbourne Rife Paths Action Group, spoke in support of the application. The Group seeks to have the three paths added to the West Sussex Definitive Map and Statement, so that they can be used for communication, leisure and recreation. There have been a significant number of users recorded for all three routes. This echoes the huge importance that local people attach to these paths and, for many, use of the paths is a daily part of their lives. The recommendation states that, on the balance of probabilities, each route has been proven to subsist. The report sets out that there is clear evidence in favour of the claimed routes being as of right and there is no credible evidence to the contrary. The County Council is requested to make a Definitive Map Modification Order for each route, as per the recommendation, with the view that they be added, in due course, to the said Definitive Map and Statement.

16.3 Cllr Francis Oppler, County Councillor for Bognor Regis East, spoke in support of the application. Details of the locality were provided. The application routes sit in both Bognor Regis East and Felpham electoral divisions. The application for all three footpaths is supported. The land is easily accessible by residents of Glenwood Estate and those further afield. The routes are used by dog walkers, school children and countryside walkers. All three footpaths have been in constant use for the last fifty years or longer. This is supported by the 107 user evidence forms, all of which are of a high standard. Currently, there is no access to Brooks Field because the owner has fenced off all access points. The application is supported by a variety of organisations and Bognor Regis Town Council, the South Downs National Park Authority and Nick Gibb MP were quoted. These remarks give a good understanding of the strength of evidence and community support in favour of making the paths public rights of way. The Ramblers Association also supports the application. Section 13.1 of the Committee report states that "the applicant has produced a substantial amount of credible evidence which demonstrates clear use of Application route 1, as of right, during the 20 year period", and the same remarks have been made in regard to routes 2 and 3. Section 12.3 of the report states that "in this case there is a significant amount of evidence which spans a considerable period of time. It could therefore be concluded that rights of way have been created at common law". It is clear that all of the legal tests have been met.

16.4 Cllr John Charles, County Councillor for Felpham, spoke in support of the application. Cllr Charles concurred with the views of Cllr Oppler. He added that the routes are very well used and provide a vital link for access to local schools in the locality. Without the retention of these routes there would be increases in congestion on local roads.

16.5 During the debate the Committee raised the points below and a response or clarification was provided by the Legal Officers, where applicable, as follows:

Material Considerations

Points raised – In relation to applications for Definitive Map Modification Orders, the desirability, need or useability of the routes are not material considerations. The weight of evidence is a material consideration. Considerable weight of evidence showing use of these routes has been provided. The landowner evidence is extremely limited in relation to indicating their intention and, therefore, there was not enough substantive evidence provided to prevent the Orders going ahead.

Response – None required.

The alignments of the proposed routes 2 and 3

Points raised – Clarification was sought regarding how the alignments of the proposed routes 2 and 3 were arrived at. Regarding route 2, it was noted that this has a dog-leg across the western field as opposed to a direct line from the bridge on the west side to the route through the hedgerow to the south-east corner of that field. Regarding route 3, it was noted that this is circular, but that it doesn't go around the exact boundaries of the field. Additionally, clarification was sought regarding whether the alignments of all three routes were supported by user evidence or whether the evidence was of a more general nature.

Response – Details of all three routes were provided by the applicant and Officers have kept as precisely as possible to the details provided (maps can found as part of the Committee report at Appendix 2 and there is a further map which is part of the presentation document; both are available on the Planning and Rights of Way Committee webpages of the County Council's website). If the Orders were to be made then the Council's public rights of way rangers would also take a view in relation to the routes actually being used on the ground. All of the user evidence forms that were provided were reviewed in great depth and all documents showed the routes as provided on the plan. All of the witnesses also signed these plans.

Width of the paths

Points raised – Clarification was sought regarding the definitive width of the paths and how this was arrived at.

Response – The minimum width of the paths would be required to be between 2.5 metres and 3 metres, although this would need to be confirmed.

Use of the routes by school children

Points raised – The Committee noted comments made by Nick Gibb MP who stated that the routes are "significant for school children and students attending Downview Primary School and Felpham Community College".

Response – None required.

Clarification of type of land

Points raised – Clarification was sought regarding the land currently owned by Mr Brooks (as detailed in paragraph 6.3 of the Committee report) and whether this is part of a farm.

Response – The land is not understood to be part of a farm. It is a field or meadow and user evidence advises that the grass is cut once per year.

The 20 year period

Points raised – Clarification was sought regarding the 20 year period.

Response – Evidence must be provided of use over a minimum period of 20 years, or more.

Possible challenge to the application

Points raised – Clarification was sought regarding the risks of possible challenge - at both the point of the making of the Orders or when the Orders are submitted for approval – in relation to routes on the ground versus those on the plans and the fact that the Committee had not heard during the meeting from any speakers in opposition to the application.

Response – Should the Committee decide to make the Orders, the Orders would be made by the County Council and there would then be a consultation period, where anyone may oppose one or more of the Orders. If so, the Orders would be submitted to the Planning Inspectorate for decision, which may be carried out by written representations or a public enquiry. If the Committee were to decide not to make the Orders, then anyone could appeal against the Committee's decision to the Planning Inspectorate. The Planning Inspectorate would then decide whether to allow the appeal or not. If the appeal were allowed and the County Council had made the Orders, then the representation period would take place and the Orders would be submitted for final determination by the Planning Inspectorate.

16.6 The substantive recommendation was proposed by Cllr Patel and seconded by Cllr Quinn and approved unanimously.

16.7 Resolved - That:

- (1) Application Route 1 has, on the balance of probabilities, been proven to subsist and a Definitive Map Modification Order be made.
- (2) Application Route 2 has, on the balance of probabilities, been proven to subsist and a Definitive Map Modification Order be made.

- (3) Application Route 3 has, on the balance of probabilities, been proven to subsist and a Definitive Map Modification Order be made.

17. Secretary of State Decision

Recent Decision by the Secretary of State's Inspector: DMMO 5/16 – To add a footpath at Fyning Lane, Rogate

17.1 The Committee received and noted a report by the Director of Law and Assurance setting out the outcomes of the recent decision made by the Secretary of State (copy attached to the signed minutes).

17.2 Cllr Sharp took no part in the vote to note the report due to her declared personal interest in the item. Otherwise, the Committee voted unanimously to note the report.

17.3 Resolved – That the Committee notes the report.

18. Date of Next Meeting

18.1 The next scheduled meeting of the Planning and Rights of Way Committee will be on Tuesday, 9 November 2021 at 10.30 a.m.

The meeting ended at 11.02 am

Chairman