

**Extract from the minutes of Rights of Way Committee meeting of
14 March 2017:**

**West Sussex County Council (Fittleworth) Public Path (No. 702)
West Sussex County Council (Fittleworth) Public Path (No. 2866)**

44. The Committee considered a report by the Director of Law and Assurance, concerning an application to extinguish lengths of public footpaths 702 and 2866 (copy appended to the signed version of the minutes). Christine Luff, Team leader – Rights of Way introduced the report. Having reviewed the objection of the South Downs National Park Authority (SDNPA) and the comments on the objection from the applicant's agent, it is considered that the legal tests for making and confirmation of the Orders have been met. As the objection still stands, to progress to confirmation, the Orders will need to be submitted to the Secretary of State for determination and, therefore, authority to make the submission is sought.

45. Ms Sarah Manchester, consultant to SDNPA, spoke in objection to the application. The Orders do not meet the legal criteria for confirmation. The primary consideration is the extent to which the footpaths would be likely to be used by the public if not extinguished. Footpath 702 is a direct continuation of the local path, providing the most direct north-south route and the one most likely to be used by the public; only walkers coming to or from the east are likely to choose footpath 2864. Footpath 702 was seen to be overgrown in July 2016 and has been removed from the clearance programme; part of footpath 702 has not been reinstated through growing crops. Lack of use of an overgrown path can't be used as evidence that a path is unlikely to be used. The Committee report acknowledges the paths are used to some extent. Lack of objections does not prove the paths are not likely to be used. The footpaths offer good views of attractive historic buildings that will be lost to the public, if closed. Ms Manchester's understanding is that Case Law has shown that legislation referred to in paragraph 5.1 of the Committee report only applies to adjacent landowners regarding access to their property. The extinguishments will result in a net loss of enjoyment and the Rights of Way Improvement Plan states that only applications that don't result in such a loss of enjoyment should be considered. The County Council will bear the cost of a public inquiry and should only pursue the Orders if the legal tests are met.

46. Mr Nigel James, SDNPA, spoke in objection to the application. One of the statutory purposes of the National Park is to promote opportunities for the public's enjoyment of the Park's Special Qualities, including views of diverse landscapes and buildings. Warren Barn's footpaths are part of a historic network and are characteristic of the Western Weald, and provide walkers with unique views different to the alternative routes. Views of the Barn from footpath 2864 are hidden by a fold of in the land particularly when trees are in leaf. The SDNPA Conservation Officer's assessment is that Warren Barn forms an attractive group of buildings, contributing to the cultural heritage of the locality; planning documents support this. SDNPA would not like to see the contribution that these footpaths make to the enjoyment of the South Downs lost. The duty to have regard to National Park purposes does have to be given due weight. A more comprehensive consultation on the extinguishments is called for. The paths should not be permanently lost to current or future generations. The

paths need to be maintained, as well as not extinguished, for the public to use them, and are likely to be used by the public if they were to remain open. If the public rights of way are removed, this will set a precedent.

47. Mr Michael Wood, ET Landnet Ltd, agent for the applicant, spoke in support of the application. A statement from Mike Walker, consultant, addresses the following. The application hinges on a single objection from SDNPA, who had not previously objected at consultation on the making stage. Nothing has changed since. The footpaths do impact on the owners of Warren Barn because they pass through their garden, close to their front door. The legal tests have been satisfied. The routes are not everyday routes. During consultation there was no suggestion of a need to retain the footpaths nor that they are or will be needed. SDNPA had agreed that the footpaths do impact on the owners, having previously agreed to realign the Serpent Trail. There has been no objection from Open Spaces Society, Ramblers or local people. DEFRA's Stakeholder Working Group issues guidance that supports the extinguishment of footpaths that pass through farmyards or private gardens, where alternatives are available. Mr Wood acknowledged that there is some limited use of the footpaths. Only public need is relevant. If the public wished to see the views then there would be greater use of the paths. Superior views are enjoyed from the alternative route. The South Downs Society supports the extinguishments. Warren Barn is attractive but it is not a listed building. The legal tests have been met.

48. Mrs Ruth Huddleston, the applicant and owner of Warren Barn, spoke in support of the application. The SDNPA has been erratic in its views; first saying it would object only if others did; it now mentions the setting of Warren Barn but told the Local Access Forum that their objection was because the route was an important, well-used link. When the property was purchased, searches did not mention the Serpent Trail. This was subsequently promoted but the leaflet did not state that the path passed through a private garden. The current paths are intrusive: some walkers have invaded the family's privacy, making personal and inappropriate comments, peering in through the windows, taking photos, allowing dogs to kill a chicken and made unfounded claims of path-blocking; the police asked one person to stop walking through the garden. Walkers cannot be unaware of the notices around the area. The claimed overgrown path was strimmed three times in the last 12 months. Neither the OS map nor the Serpent Trail guide have been updated to advise of the new route, which means walkers continue to walk through the thinking they are on the Serpent Trail. SDNPA has commented inappropriately on the value of Warren Barn and has, generally, shown a lack of respect to the family and have not sought to engage with them.

49. The Committee sought clarification on the following point:

- Who bears the cost of a submission? Officers advised that the cost is shared. The applicant will pay an increased administration cost. The County Council generally provides a room for the hearing or hires one at cost, there is then the cost of preparation for an inquiry including officer time and the cost of notices in the press and around the site are relevant. The Planning Inspectorate do not charge for their time.

50. In reaching a decision the Committee made the following points:

- The property was previously derelict.
- Fittleworth Parish Council is in support of the extinguishments.
- The reason why SDNPA has only chosen to object at the confirmation stage is questioned.
- There will be different views from the alternative route, but nothing is being lost to walkers or the community. Different views are part of all routes.
- The lengths of the footpaths proposed for extinguishment, particularly 702, are very close to Warren Barn, which is a private home.
- Measured online, using a satellite mapping tool, there is only a minor difference in distance between the lengths to be extinguished and the alternative route.
- SDNPA's comments regarding the County Council bearing the cost of inquiry are not material to the consideration of the application.
- The alternative route provides an easier path.
- The proposed extinguishment orders are reasonable.

51. The amended officer recommendation, proposed by Mr R. Rogers and seconded by Mrs Duncton, was approved unanimously by the Committee.

52. Resolved – That the Public Path Extinguishment Orders made in respect of footpaths 702 and 2866 in the Parish of Fittleworth be submitted to the Secretary of State for determination.