

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

6 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 Ali, Cllr Atkins, Cllr Duncton, Cllr Montyn, Cllr Oakley, Cllr Quinn and Cllr Wild

Apologies were received from: Cllr Gibson, Cllr McDonald and Cllr Patel

Absent: Cllr Kerry-Bedell

### **Part I**

#### **1. Declarations of Interest**

1.1 In accordance with the County Council's Code of Conduct, Cllr Duncton declared a Personal Interest in Item 5 – Public Rights of Way Progress Report 2022 because she is a member of South Downs National Park's Planning Committee.

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

2.1 Resolved – That the minutes of the Planning and Rights of Way Committee held on 7 February 2023 be approved and that they be signed by the Chairman.

#### **3. Urgent Matters**

3.1 There were no urgent matters.

#### **4. Definitive Map Modification Order**

##### **DMMO 8/21 – Definitive Map Modification Order to add to the Definitive Map and Statement for Cuckfield Rural a footpath from the southern end of footpath 11Ar to footpath 25Ar near Stone Barn Cottages, in the Parish of Ardingly**

4.1 The Committee considered a report by the Director of Law and Assurance. The report was introduced by Charlotte Nash, Trainee Legal Executive, who outlined the application and the key points. The Committee was advised that two corrections to dates in the Committee report should be noted as follows:

- Page 12, paragraph 7.1.12, bullet point 2 – the reference to "2 Nov 1995", should read 2 Nov 1955.
- Page 18, paragraph 7.1.24, bullet point 3 – the reference to "19/11/23" should read 23/11/54.

4.2 Mr Alan Hillier, representing The Bluebell Railway, one of the landowners, spoke in objection to the application. If this DMMO is approved the permissive route, linking the southern end of footpath 11Ar to footpath 25Ar that is on Mrs Knowles' land and has been in existence for many years and is in use, will be lost. Plans to reinstate this section of

railway line, including moving the permissive path alongside the railway fence (still on Mrs Knowles' land), have been put on hold awaiting this application outcome. The Lewes & East Grinstead Railway Act 1880 relevant deposited plans and Parliamentary Book of Reference were accepted as accurate when the status of this footpath was previously considered by East Sussex County Council in the 1950s. Any changes would have had an accompanying formal certificate amending the Parliamentary record; none has been produced. Paragraph 7.7.9 of the Committee report suggests that the route in the Book of Reference does not relate to the claimed route. However, the Railway Clauses Consolidation Act 1845 provided a general power to realign rivers, roads, streams, footpaths and occupation roads, such as this one. Often bridges were constructed away from the original pre-railway route, such as in this instance where the farmer would have wanted to continue to use the occupation road throughout the railway construction, then the footpaths were re-joined after. Further evidence of the status of the roadway through the underbridge can be provided in Enclosure 45 which is referenced as "Field, stream, occupation road and footpath"; it is not referenced as a public footpath. Railway evidence is considered high quality and inspectors would have spoken with all landowners and had detailed discussions with surveyors.

4.3 Ms Rosalind Emrys-Roberts of Routewise Consulting, representing Mrs Ann Knowles, one of the landowners, spoke in objection to the application. The only evidence provided that refers to a footpath to Burstye Farm comes from the Parish Council. The Ordnance Survey maps show the existence of a track, but not the existence of a public right of way. The Railway plans and documents provide evidence that the route was an occupation road. Neither they, nor the Finance Act documents, indicate whether the application route either was, or was not, a public footpath. Council records show that objections were made when this path was originally included in the 1950s on the draft Definitive Map. The Rural District Council and Ardingly Parish Council, in 1951, recorded that the gate under the railway was sometimes locked; there was no indication on the ground of the path to the south of the railway, and the route was difficult to follow. In 1956, the Parish Council accepted East Sussex County Council's ruling to delete this claimed route originally included on the Draft Definitive Map. Evidence does show that the application route originally existed as an occupation road for the farm to access its own land, the evidence does not show the existence of public rights. The claimed route has already been considered in the 1950s, the Committee cannot simply re-evaluate the evidence already considered, but needs to clearly identify new evidence which, in combination with the previous evidence, justifies the decision to reconsider the case and make the Order.

4.4 Mr Chris Smith, representing the Open Spaces Society, the applicant, spoke in support of the application. Historical evidence is important because common law provides that once a route is a public highway it remains a highway forever, unless there is a Court or other Order stopping it up or diverting it and no evidence of that has been found in this case. This is an archive only application, evidence of use is required, although it is recorded that the route was obstructed in the 1930s, which was not unusual during this period. The landowners were asked if they would dedicate the existing permissive path, but this was declined. The application route is part of a longer path, currently showing as a dead end at the northern side of the railway on the Definitive Map.

This is likely incorrect because a footpath will normally join another footpath, highway or a place of public interest, which the bridge was unlikely to have been. The only objection to the path as a whole came from the Railway Board. The Parish Council likely withdrew their objection in the face of probably quite complex, time consuming and expensive legal procedures. The Finance Act 2010 surveys are new evidence, which were not in the public domain at the time of the 1956 decision on the Definitive Map. The Railway Board asserted, at the time, that there was no footpath through the bridge, but quite clearly there was, although its public status could be objected to. Throughout all of the reference books for this line and the one to Lewes there is only one reference to a public footpath and the information about responsibility was incorrectly recorded anyway. It was common for proposers not to state whether footpaths were private or public. Whilst this is not clear evidence of public rights, it is evidence of the existence of a route. The Inland Revenue evidence is extremely powerful and fairly set out in the Committee report. The evidence provided makes it clear that it is reasonable to allege that the right of way subsists and that an Order should be made so that a Planning Inspector can make a final decision.

4.5 All speakers making representation to the Committee stated that the Committee must make a decision on the grounds of the lower legal test that a right of way could be reasonably alleged to subsist.

4.6 In response to speakers' comments, Legal Officers clarified how the evidence has been dealt with and the legal tests under which it has been considered. There is a conflict of credible evidence. The Council archives are not conclusive. Records no longer exist for the 15 February 1956 East Sussex County Council hearing, so we cannot be certain what evidence was considered but the Summary of Evidence indicates that the historic documents considered were: the Railway Plans, Tithe Map, Landowner depositions and some user evidence. Evidence submitted by the applicant for this claim includes the following new evidence, not considered in 1956: Ordnance Survey (1<sup>st</sup> Edition), Finance Act Field Maps and Conveyance of Land from Lt Col Sampson to Railway Company, 1883. In order to make a decision, it is reasonable that all of the evidence, both new and that previously taken into account, must be considered as a whole. Officers have concluded that the evidence meets the lower legal test and that a footpath can be reasonably alleged to subsist [as per the recommendation and paragraph 8.14 of the Committee report].

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

#### **Clarification of the route of the permissive path**

**Point raised** – Clarification was sought as to whether the route of the current permissive path is the same as the claimed route.

**Response** – The permissive route lies to the west of the claimed route [shown as the dotted line on slide number 2 of the Committee PowerPoint presentation – available on the 6 June 2023 Planning and Rights of Way Committee meeting page of the West Sussex County Council website at the following url:

<https://westsussex.moderngov.co.uk/ieListDocuments.aspx?CIId=764&MIId=3372&Ver=4.>]

### **Was the footpath ever stopped-up?**

**Point raised** – Did the decision of the East Sussex County Council on 13 March 1956 mean that the footpath was stopped-up?

**Response** –The purpose of the 1956 East Sussex County Council hearing and decision was to determine the status of the footpath and whether it should be included on the Definitive Map, having been included on the Draft Definitive Map. The decision did not stop-up the footpath.

### **New evidence**

**Points raised** – Is it possible to state what evidence was lost in relation to the 15 February 1956 hearing and whether the recently discovered evidence is, therefore, classed as new evidence? Does the new evidence date from after the construction of the railway? Clarification was sought about what happens in cases where evidence is in conflict. Clarification was sought as to whether the Council would make a case for the Order on the basis of the higher legal test if an objection were to be made to the Planning Inspectorate and if the Committee should be making a decision on that basis now.

**Response** – [See also Minute 4.6 above]. The Committee has the right to consider new evidence or evidence that was not available at the time of the 15 February 1956 hearing. It is considered that there is new evidence submitted by the applicant, in particular the Finance Act 1910 and Ordnance Survey First Edition. The Officer's conclusion on Finance Act evidence was that it is not certain that the claimed route was one of the public rights of way for which a deduction was made. However, it cannot be ruled out. While an item of evidence may have little evidential value in itself, it gives rise to a need to consider the evidence as a whole, with new evidence being seen as a link in a chain. In cases where evidence is in conflict or there may be doubt, the law requires that a decision should fall on the side of the argument that a footpath can be reasonably alleged to subsist. In these circumstances, if an objection is made to the making of the Order then the Planning Inspectorate would test the evidence in the form of an Inquiry, either by written submission, hearing or Public Local Inquiry and make a decision on confirmation of the Order on the basis of the higher legal test, whether, on the balance of probability, a footpath subsists. Throughout this confirmation process, the County Council would maintain a neutral stance in that it would defend the decision of the Committee but would not support confirmation of the Order as it is not considered the higher test is met. The applicant would be required to make the case for confirmation. The Committee is required to reach a decision as to whether the claimed route meets the lower test, that a right of way could reasonably be alleged to subsist.

### **Termination of FP 11Ar**

**Point raised** – It would be reasonable to suppose that footpath 11Ar did not terminate at the railway bridge but formed part of a network to link to footpath 25Ar; this is compelling evidence that a historic footpath existed, even though it was removed from the Draft Definitive Map in 1956 due to lack of user evidence.

**Response** – The claimed route was shown on the Draft Definitive Map before the decision of the 13 March 1956 hearing to remove it. The 15 February 1956 hearing concluded that there was more evidence of the existence of a public footpath for the part to the north of the railway bridge (footpath 11Ar), including evidence of use, and the landowners had declared it to be a public footpath at the time of the hearing. There was less evidence for the southern part of the route, the claimed route.

### **West Sussex County Council and Ardingly Parish Council**

**Point raised** – In reference to paragraphs 7.1.10 and 7.1.11 of the Committee report, what was the outcome of the 1985 exchange of letters between West Sussex County Council and Ardingly Parish Council, and the 1992 evidence from the Parish Council regarding possible reinstatement of the claimed route?

**Response** – There is no evidence on file that Ardingly Parish Council ever took forward any options, including the option to apply for a DMMO to reinstate the claimed route.

### **Clarification of the term 'public rights of way user'**

**Point raised** – In reference to paragraph 7.3.6 of the Committee report, clarification was sought regarding whether the term public rights of way user refers to the public's right to access a piece of land, rather than a footpath.

**Response** – That is correct, this term would mean to access broader access rights, for example, access to common land.

### **Other points**

**Points raised** – The cost of reinstatement of the claimed route, whether the reinstatement would impact the businesses of the landowners and the length of the route were queried.

**Response** – These matters are not material to the consideration of the application and the legal tests that must be applied.

4.8 The substantive recommendation was proposed by Cllr Atkins and seconded by Cllr Duncton, and voted on by the Committee and approved by a majority.

4.9 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 footpath from the

southern end of public footpath 11Ar to footpath 25Ar near Stone Barn Cottages in the Parish of Ardingly be made.

## 5. Public Rights of Way Progress Report 2022

5.1 The Committee considered a report by the Principal Rights of Way Officer. The report was introduced by Nick Scott, Principal Rights of Way Officer, who outlined the key points, specifically also noting that the number of gates installed has reduced since 2021 and this may be accounted for by the increase in costs of materials in the last year. Thanks were also given to the various volunteers and groups mentioned throughout the report and to County Tree Surgeons in recognition of the work they undertake to help maintain the Public Rights of Way network (PROW network). The Committee was advised that two corrections to dates in the Committee report should be noted as follows:

- Page 37, paragraph 2.2 – the reference to “our database 2021” should read 2022.
- Page 37, paragraph 3.1 – the reference to “2021” should read 2022.

5.2 The Committee raised the points below and responses or clarification was provided by the Principal Rights of Way Officer, as noted below. Members were also encouraged to report any issues to the Public Rights of Way Team, so they can be prioritised.

### **Contracts**

**Points raised** – What is the length time of the contract with County Tree Surgeons and also the summer clearance contract?

**Response** – The PROW maintenance contract with County Tree Surgeons is for four years with an option to extend for a further three years. The summer clearance contract is in its second year of a two year contract.

### **Type 1 surfacing**

**Point raised** – What is Type 1 surfacing?

**Response** – This is a grade of stone used for footpaths, from 40mm down to dust. Bridleways may have a different surface.

### **Use of kilometres rather than miles**

**Point raised** – Why are measurements in kilometres not miles, which is the system used for highways in the UK?

**Response** – Historically this is the measurement that the PROW Team has used. It is likely that this is due to the Ordnance Survey maps being in kilometres.

### **Volunteers in urban areas**

**Point raised** – Are there any volunteers working in Crawley to address issues, which are mainly with overgrown vegetation?

**Response** – There are fewer volunteers from urban areas, but the roaming volunteer inspectors do cover the urban network and Highways Officers inspect the paths that have highway status.

### **England Coastal Path**

**Points raised** – The creation of the England Coastal Path was welcomed. It was noted that the scheme allows for rollback where sections of the route may be subject to coastal erosion in future. Are there any outstanding issues in relation to Chichester Harbour Conservancy? Who is providing the capital and revenue funding for the project and will there be an increase in revenue funding provided to the County Council on completion?

**Response** – There are no outstanding issues with Chichester Harbour Conservancy that the Council is aware of. It is for Natural England to work with all the landowners and ensure the relevant agreements are in place. Once that is done the responsibility for the route will pass to the Council as the relevant access authority. Natural England is covering the capital costs of the project and the costs of the Officer to implement it in West Sussex. Most of the Coastal Path in West Sussex runs along existing public rights of way as well as some footpaths with highways status. In future, grants will be available, but details of these have not yet been finalised and match funding is likely to be required. There is the possibility that the Council will form a partnership with another local authority, but that has yet to be agreed; if so, this would have impacts on grant funding.

### **Capital Programme**

**Points raised** – How does the capital programme seek to improve the PROW network including access to and from new developments?

**Response** – The PROW Team feeds into consultations on new developments where they are within the red-line boundaries of the planning applications. The Team also looks at the situation outside the red-line boundary and it looks for opportunities to improve the network. The PROW Team bids for relevant s.106 and CIL funding, although all improvements are prioritised. Much of the Capital Programme is focused on maintaining the existing network.

### **Ash Die-back**

**Points raised** – How is Ash Die-back affecting the PROW network? Who is liable if a tree falls and causes loss or injury?

**Response** – The Council is very conscious of the issue of Ash Die-back. The full impact is difficult to know. A survey of the PROW network has not been carried out yet and options are being considered. The PROW Team is supported by the Arboricultural Officers. As with any issues with unsafe trees the liability lies with a landowner. If a concern is noticed or raised, the Team will engage the landowner to persuade them to carry out relevant works.

## **Impingement on the public rights of way network**

**Points raised** – How often are footpath widths impinged upon by landowners, for example, fences being moved? It was suggested that the Land Registry should be advised of any cases.

**Response** – The Team is aware of some cases. Issues raised would be looked at on a case-by-case basis and prioritised accordingly. As with any encroachment issue the landowner would be contacted to persuade them to resolve the issue. The Land Registry is informed if it is deemed necessary and land charges can be placed on the property, if required.

## **Nesting birds**

**Point raised** – How is the impact on nesting birds mitigated when carrying out works on the PROW network?

**Response** – It is not always possible to avoid carrying out works during the bird nesting season, due to this being the most intense period of vegetation growth. It is always a requirement - including for landowners - to check for nesting birds before works are undertaken.

## **Frequency of vegetation clearance**

**Point raised** – How often does vegetation clearance take place?

**Response** – On average, surface vegetation clearance takes place once every 15 months. Under the current contract summer clearance works take place from June to September; this is mostly on the main routes on the PROW network, e.g. popular and school routes. This contract, which equates to less than 10% of the work, is in addition to the maintenance contract with County Tree Surgeons. Side vegetation growth is the responsibility of the landowner.

## **Gates for stiles**

**Points raised** – Not all gates are suitable for those with mobility issues. It was noted that some gates do allow bikes, motorbikes and quadbikes to access the PROW network.

**Response** – Landowners do have a choice of the type of gate and this choice can often be influenced by the need for closure of the gate to safeguard livestock. The PROW Team works with landowners to encourage the best form of access that can be achieved.

## **Compliments**

**Points raised** – What type of compliments have been received?

**Response** – Compliments can be from individuals or Parish Councils and tend to be thanks for works done, for example, clearance or surfacing works, especially when it has been carried out quickly.

## **Signs**

**Points raised** – Page 38, paragraph 3.1, bullet point 1 of the Committee report mentions 1,154 signs, what was the work that was done?

**Response** – Signage work is mainly the replacement of signs which have deteriorated over time.

## **Bridges**

**Points raised** – Page 38, paragraph 3.1, bullet point 2 of the Committee report mentions 144 bridges, what was the work that was done?

**Response** – The reference is to maintenance and repair of bridges, for example, the replacement of handrails or rotten boards. Funding for new bridges comes from the Capital Programme, due to the much higher cost.

## **Volunteer Hours**

**Points raised** – Page 38, paragraph 4.1 of the Committee report mentions 3546 hours of volunteer work over 60 days, which does not seem like many days.

**Response** – The reference factors in all the volunteers and their time. Some volunteers are available more often than others. A volunteer co-ordinator leads on each project. Training is provided as is equipment. The number of volunteers listed with the County Council will be advised in the next annual report.

### 5.3 Resolved:

The Committee noted the report and agreed that a corrected version of the report should be circulated to all Committee members and that the report should be made available via the Bulletin (the Members' weekly newsletter) to all Members of the Council.

## 6. **Date of Next Meeting**

6.1 The next scheduled meeting of the Planning and Rights of Way Committee will be on Tuesday, 27 June 2023 at 10.30 am.

6.2 Members noted items likely to be considered at the next meetings of Planning and Rights of Way Committee include planning application 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 at The Forest School, Horsham at the Committee meeting on 27 June 2023 and DMMO 3/19 - Addition of a BW along the full length of Sheepwash Lane, West Wittering – G18 at the Committee meeting on 18 July 2023. The scheduling of items to be considered by the Planning and Rights of Way Committee is subject to change.

The meeting ended at 12.42 pm.

Chairman