

Planning and Rights of Way Committee

5 September 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

18. Declarations of Interest

18.1 There were no Declarations of Interest made by members of the Planning and Rights of Way Committee.

19. Minutes of previous meetings of the Committee

19.1 Regarding the minutes of the meeting held on 27 June 2023, following a request from Mrs Angela Cornford regarding a speech read out on her behalf at the meeting, the Committee noted and approved the following amendments to Minute 10.5 of the meeting:

10.5 The Clerk to the Committee read out a statement in objection to the application on behalf of Mrs ~~Alison~~ **Angela** Cornford, local resident. AGPs are not for multi-use, being only suitable for football and possibly rugby. ~~Currently, there is no use at weekends and evening use is impossible after 4pm in winter.~~ **Contrary to the officer's report, there is no regular use on weekday evenings. This is impossible in the winter months when it 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 water surely goes against water neutrality.~~ **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?

19.2 The Committee also noted and approved an amendment to correct an error in the following paragraph of Minute 10.10 of the minutes:

The cricket pitch, netting and simultaneous use with the MUGA

Points raised – How high would the ball-stop net to the west 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?

19.3 Regarding the minutes of the meeting of 27 June 2023, it was resolved:

That the minutes of the meeting of the Committee held on 27 June 2023 be approved, subject to the correction to Minutes 10.5 and 10.10, as highlighted in paragraphs 19.1 and 19.2 above, and that they be signed by the Chairman.

19.4 Regarding the minutes of the meeting of 18 July 2023, it was resolved:

That the minutes of the meeting of the Committee held on 18 July 2023 be approved and that they be signed by the Chairman.

20. Urgent Matters

20.1 There were no urgent matters.

21. Definitive Map Modification Order

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

21.1 The Committee considered a report by the Director of Law and Assurance. The report was introduced by Gemma Penfold, Legal Assistant, who outlined the application and the key points.

21.2 Mr Adrian Morris read out a statement from Mr David Wright, local resident since 2007, in support of the application. The application route and surrounding ancient woodland are very close to the local community's heart, which is not a factor in the decision making but the overwhelming weight of user evidence in support is such a factor. The landowners' objection refers to "irregular use" of the path by members of the public. Some evidence user forms confirm use of the route on a daily basis and also 62 forms show use for the full 20-year period. Also, prior to the refusal of the planning application for a clay pit and waste recycling facility bordering the path, a CCTV survey carried out on behalf of the landowners took place over a 7-day period in August 2020. This indicated that around 32 people used the path every day, which is hardly "irregular use". The landowners' objection also appears to claim that gates and "no

unauthorised access” signage were installed in the 1990s, presumably on or across the path. Neither Mr Wright nor any of the user statements recall any such gates or signage on or across the path until January 2021, when workers were witnessed installing two gates.

21.3 Dr Jill Sutcliffe spoke in support of users of the route, noting that every evidence statement mentioned the length of time that the person and/or their family has walked the route unhindered; as children, as adults old or young and as residents of many years or as newer arrivals. She provided quotes from a small sample of the user statements. Common themes included the tranquillity and ease of the route, benefits to physical and mental health and the variety of nature to be found. Also quoted were the numbers of years these walkers have used the route and the frequency in which they did so: 40 years, 30 years, 16 years, 9 years and 7 years, with 3-4 times per day and daily use mentioned. Two of the quotes mentioned the lack of any challenge to use of the route, including one person who stated that in the last couple of years they had occasion to chat with the landowners’ agents from Protreat, who dealt with the claypit application, and were not challenged about using the route. One mentioned that the path seems to be “an old access route which has been there for years”.

21.4 Mr Tim Bennett, the applicant, spoke in support of the application. The route is easily accessible from the villages of Loxwood, Alfold, Tismans Common and Rudgwick. It is a hugely popular local amenity that has been enjoyed by walkers, cyclists and all manner of leisure users for many years. The significant volume of user evidence in support is overwhelming. All have testified to having regularly used the claimed route on foot as well as for cycling and other leisure purposes, ranging from twice a year to 365 times a year, with 62 users having used it continually for the full 20-year relevant period, thus demonstrating constant use. People have been walking this path from as far back as 1950, right through to the current day. Not a single one of the claimed users has ever been turned back, nor has anyone seen any notices or any indication that would prevent their use of the route; it was only the installation of gates in January 2021 that alerted the matter to the local community. Furthermore, the landowners have failed to demonstrate a lack of intention to dedicate the route as a public right of way during this same period. The existence and uninterrupted use of the claimed route by the public, ‘as of right’ for a period well in excess of twenty years has been clearly demonstrated. West Sussex Ramblers, Loxwood Parish Council and Rudgwick Parish Council are all unambiguous in their support.

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

Current warning signs along the route

Point raised – Paragraph 6.1 of the Committee report, under Officer’s Comments, states that there is a warning sign stating “Danger of Death Overhead Powerlines”. Where is this sign?

Response – The sign is where the claimed route meets FP 795. In general, where Officers take into account signage as evidence of no intention to dedicate a route these would be such signs as 'no public right of way' or 'private land'. In this instance, the warning sign might be taken as a warning to users of route, thus acknowledging that the route is used by the public. **Note** – It was pointed out by a member of the Committee that a warning sign on a route that is used by vehicles cannot necessarily be taken as an acceptance that the route is used by the public if it is intended only for those operating vehicles that are permitted.

Committee member witness to use of the route by the public

Points raised – One member of committee advised that during a visit to the site she witnessed three joggers, four dog walkers and a lady with a child using the route, all within the space of one hour.

Responses – None required.

General comments about the route

Points raised – Whilst the Committee was unable to take the following into account in determining a decision, the same member of the Committee who witnessed the use of the route noted that the route is lovely and delightful and is very wide, free of encroaching vegetation and well surfaced.

Responses – None required.

The gate currently in existence

Points raised – It was pointed out that whilst there is a gate currently in existence it is easy to gain access to the route by going around either side of the gate.

Response – The gate currently in existence is the one referred to in the Committee Report that was installed in January 2021, which is outside the period of 20-years' claimed use.

The CA16 landowner deposit and 20-year period of use

Points raised – What is a CA16 landowner deposit and how does this affect the 20-year period of use?

Response - A CA16 is a statement submitted to and deposited with the County Council testifying that the landowner has no intention to dedicate a route. The landowner submitted a CA16 in July 2020, which will last for a period of 20 years, making it effective up to July 2040. Users claim that a gate and notice was erected on the land in January 2021. Therefore, the submission of the CA16 form becomes the 'First date of challenge' due to the lack of other definitive evidence of challenge. This means that the relevant 20-year period is counted backwards from the date the CA16 was

received, so for the purpose of determining this application that would be July 2000 – July 2020.

The gate mentioned in 1995 correspondence and the strength of this as evidence of no intention to dedicate the route

Points raised – Clarification was sought regarding the evidence of the gate about which the landowner has provided correspondence with a Mr Peter Harrison, dated 23 May 1995. Was this gate shown on a plan? Whilst a gate in itself does not necessarily indicate an obstruction, can it be evidenced that this signalled that the landowners did not intend to dedicate the route, e.g. would it have had to have been locked or had a sign as well? Is there any evidence, other than this, that can be considered to show that use of the route was not 'as of right', or that it was a private footpath or that challenge to use of the route was made during the 20-year period? And, if there is no such evidence, is there a reason why the higher legal test, on the balance of probabilities, cannot be used?

Response – The evidence considered was the correspondence with a Mr Peter Harrison, dated 23 May 1995. The landowners also provided a copy of a plan on which gates were marked. Only one of the gates on the plan and in the letter relates to the claimed route. Of the two photographs of gates that were provided by the landowner, only one is on the claimed route and this is the gate that was erected in January 2021, so does not apply to the gate that was mentioned as being in place in the 1990s. As stated, gates are not necessarily an indication of challenge, especially if they are kept unlocked or can easily be got around. As per the Highways Act 1980, in assessing the evidence Officers considered that because there is a conflict of apparently credible evidence from the applicant and the owners then an assessment should be made on the basis of the lower legal test, which is whether a route be reasonably alleged to subsist. It was considered, in the report, that the evidence of a gate in 1995 was apparently credible evidence of no intention to dedicate. However, an earlier period of use, 1975 to 1995, had not been considered in the report and it could be argued that because there had been no evidence submitted during this earlier period to show a lack of intention to dedicate that an Order could be made on the higher test of balance of probabilities. User evidence dates back to the 1950s. It is not necessary for the Committee to state which legal test is being considered when making the decision on the recommendation.

Subsequent point by the Committee – Evidence supporting the making of the Order is clear and there appears to be insufficient evidence by the landowners of challenge to use of the route and insufficient evidence of any intention not to dedicate the route.

The legal test used for confirmation of the Order

Points raised – If the decision were to be appealed against by the landowner, would the Planning Inspectorate be required to make a

decision to confirm the Order against the higher legal test, on the balance of probabilities?

Response – Confirmation of an Order must meet the higher legal test, the balance of probabilities.

21.6 The substantive recommendation, as set out in the Committee report, was proposed by Cllr Oakley and seconded by Cllr Ali, and voted on by the Committee and approved unanimously. In making the decision, the Committee wished that it be recorded that its view is that evidence in support of the Order being made would meet the higher legal test, on the balance of probabilities.

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

22. Date of Next Meeting

22.1 The next scheduled meeting of the Planning and Rights of Way Committee will be on Tuesday, 10 October 2023 at 10.30 am.

22.2 Members noted the report on 'Current Planning Applications, Current Definitive Map Modification Orders (DMMOs), Town and Village Green Applications (TVGs) and Public Path Orders (PPOs) under investigation'. Items that may be scheduled for consideration at the next meeting of the Planning and Rights of Way Committee include Planning Application WSCC/021/23: Elbridge Farm, Bognor Regis; DMMO 2/19: Henfield and Woodmancote; and TVG 30/53: Collingwood Road, Horsham, although it should be noted that scheduling can be subject to change.

The meeting ended at 11.19 am.

Chairman