

Planning and Rights of Way Committee

1 March 2022 – At a meeting of the Committee held at County Hall, Chichester, PO19 1RQ.

Present: Cllr Burrett (Chairman)

Cllr Atkins, Cllr Ali, Cllr Boram, Cllr Duncton, Cllr Joy, Cllr McDonald, Cllr Oakley, Cllr Patel, Cllr Quinn and Cllr Sharp

Apologies were received from Cllr Gibson and Cllr Montyn

Absent: Cllr Hall

Substitute: Cllr Boram

Part I

19. Declarations of Interest

19.1 In accordance with the County Council's Code of Conduct, Cllr Joy declared a personal interest in Agenda Item 4 - DMMO Application 5/18 and Agenda Item 5 - DMMO Application 6/18 because he knows Mr D W Langmead, the landowner, having been at school with him.

19.2 In accordance with the County Council's Code of Conduct, Cllr Sharp declared a personal interest in Agenda Item 4 - DMMO Application 5/18 and Agenda Item 5 - DMMO Application 6/18 because she is a founder member of Chichester District Cycle Forum, although it does not geographically cover Yapton.

20. Minutes of the last meeting of the Committee

20.1 Resolved – That the minutes of the Planning and Rights of Way Committee held on 12 October 2021 be approved and that they be signed by the Chairman.

21. Urgent Matters

21.1 There were no urgent matters.

22. Definitive Map Modification Order

DMMO 5/18 - Definitive Map Modification Order Application to modify the Definitive Map and Statement for Chichester to upgrade FP 155, Drove Lane to a restricted byway from Point A to B, upgrade to a bridleway from Point B to C and to add a restricted byway from Point B to D, in the parish of Yapton.

22.1 The Committee considered a report by the Director of Law and Assurance, as amended by the Agenda Update Sheet and also by Agenda Update Sheet No. 2 (copies appended to the signed copy of the minutes). The report was introduced by Georgia Hickland, Trainee Legal Executive, who outlined the proposals and the key points.

22.2 Jonathan Cheal, Solicitor at Mogers Drewett, representing Mr D W Langmead, the landowner, spoke in objection to the application. Evidence is insufficient to demonstrate historic public carriageway status on Path 1 and Path 3 or bridleway status on Path 2. Neither restricted byway nor bridleway status has been established. Drove Lane lies within a long established farm tenancy. The whole route is privately owned and maintained. None of the archival evidence proves public status. There is none on the Inclosure Award evidence and Tithe evidence does not prove public status. The Finance Act 1910 map shows the whole route included within the hereditaments. The handover map is not available. WSCC road records classified Drove Lane as non-maintained, under private lane. The parish survey and the Definitive Map process consistently show the Drove Lane, Point A to Point B to Point C, as a footpath only. Adcock Highways Classification 1890, which is a list of public highways in each parish, shows 9 routes in Yapton but not Drove Lane. Drove Lane is an old route shown on old maps, but evidence of existence is not necessarily evidence of public status, e.g. the Greenwood map included private and public routes, but it does not prove public status. Neither public vehicular status nor bridleway status have been established. The bridge over the rife is narrow and marked FB, for foot bridge. The Inclosure Map and award for the parish to the south shows the path continuing southwards as a footpath over the footbridge and on towards the neighbouring parish still as a footpath: this shows consistency between parishes and it is virtually inconceivable that it was ever a through route public carriage way.

22.3 Paul Brown, representing the Open Spaces Society, spoke in support of the application. The objective for safe routes and the limited opportunities for walking, cycling and horse riding are noted in the West Sussex Rights of Way Management Plan 2018-28. Para. 6.14 of the Committee report regarding Felpham Inclosure Award 1826 confuses carriageway status when the application is for a bridleway. The name of Drove Lane stems from historical evidence of droving. Para. 7.5 fails to confirm that a public footpath does not contain the right to drive livestock, which is indicative of public bridleway rights. Para. 6.12 regarding the 1815 Deposit Plans for the Portsmouth and Arundel Canal mistakenly expects the level of public use to be revealed by the plan. The provision of a substantial bridge not a swing bridge is good evidence that it was expected to carry a large amount of traffic. No owner is shown in the Book of Reference, which is strong evidence that it was considered to be a public road at the time. The Deposit Plan shows a line, probably a barrier, at the junction with the main road, but gates are quite common on drove roads and bridle roads: the Highways Act 1835 specified that such gates should be a minimum width of 10 feet. The assessment is not in accordance with Judge Pollock who stated in 1866 that "...evidence should not be treated as links in a chain, but as strands of a rope, acknowledging that direct evidence before mapping will usually be impossible to find and the jury must draw inferences from circumstantial evidence". It is believed the route was wrongly registered in the Definitive Map and Statement (DMS) under the National Parks and Access to the Countryside Act 1949. The discovered evidence is substantial. The orders should be made to allow a planning inspector to reconsider all evidence and objections.

22.4 Julie Robinson, the applicant and representing the British Horse Society, spoke in support of the application. Para. 1.3 of the Committee report omits "use with or without the right to drive animals of any description along the highway", a footpath does not include these rights. Para. 6 states that evidence for a drove way is "speculative, unless supported by further evidence", but the landowner's consultant archaeologist's report confirms Drove Lane is "probably part of a very ancient drove route between Felpham and the Weald". It was a direct route between the coast, Yapton and other communities, when the horse was the main mode of transport. Historically, the economy of the coastal plain was based upon agriculture and it is impossible to insist farming operations were separate from the public in general. Yapton had a complex manorial situation with intermixed land in small parcels until consolidation into large farms in the late 19th century and there must have been a lot of movement along the lane. In the absence of evidence of private easements it must be concluded that Drove Lane had higher rights than a footpath. Cul-de-sac roads can be included. The Portsmouth and Canal Act proposition does not identify specific owners and is strong evidence of its likely public status. The obvious reason the Felpham Inclosure Award 1840 set out the route the other side of Point C as a footpath was because the route had higher rights associated with the old drove route and public rights to ride or drive animals ceased because of the newly enclosed land on the Flansham side; it is questioned why no other footpath in Felpham was included. Many rural lanes on the Definitive Map shown as bridleways or byways were never considered maintainable by the public at large, but this is irrelevant to whether it was historically a public highway. The rights that may apply must be considered. Consideration must be given to whether, on the balance of probabilities, this route has at any time been used by the public that would indicate a bridleway or restricted byway status, regardless of whether its use may have subsequently declined into a footpath.

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

User evidence, 'the 20 year period'

Point raised – Clarification was sought on whether there was any user evidence, 'the 20 year period', in respect of this application and also what level of use there is.

Response – This application is based solely on archive evidence. No user evidence was submitted by the applicant. The only information about use of the route has been provided by Mr Hocking - see section 5.2 of the Committee report.

Likely future use of land in the locality

Point raised – On the basis that land is currently being fenced off along the route, clarification was sought on likely future use of land in the locality and access that may be needed for developments.

Response – Possible future use of land in the locality is not relevant to the legal tests to be considered in respect of this application.

Definition of Droving and implications

Point raised – Discussion took place regarding the definition of droving and whether this implies the use of horses and/or carts as opposed to just the movement on foot of livestock and people and also whether it can be inferred that droving was between just pastures or to marketplaces, and from this, whether higher rights could be implied. Clarification was sought regarding the earliest reference to Drove Lane.

Responses – There is more than one explanation of droving, but no definitive legal definition. Drove Lane (or variants of the name) is mentioned in a number of pieces of archival evidence and is likely to indicate the use by drovers as the practice of walking livestock from one place to another on foot and often with the aid of dogs. It was concluded that the route would not likely have been used for the purposes of droving between marketplaces but rather for moving livestock between pastures. The application should be determined on the whole evidence whilst considering the weight to be given to each piece of evidence. The earliest reference is to a 'Dro' Lane on Richard Wyatt's map of 1775.

Topography and access

Points raised – To the east of Point B, topography appears to indicate that the route linked coastal areas with inland areas including Yapton, Flansham and Felpham, which declined over time in favour of the easier route at Bilsham Lane.

Response – None required.

Archival, historic evidence

Points raised – Clarification was sought regarding how far back evidence should be considered.

Response – Evidence is set out chronologically in the Committee report. Relying on ancient rights, evidence should be taken as a whole and decided, on the balance of probabilities in respect of the upgrade of a route and in respect of the addition of a route determined on the basis that the route subsists on the balance of probabilities, or that it can be reasonably alleged to subsist, which is a lower test.

Obligations under the West Sussex Rights of Way Management Plan 2018-28

Points raised – Clarification was sought regarding the Council's obligations under the Rights of Way Management Plan to improve access.

Response – This is not relevant to whether the archival material meets the evidential tests for the making of the orders.

Point A to Point B only (Path 1)

Points raised – The Canal Reference Book is inconsistent regarding public use. References in two maps showing black lines across the north of the path may indicate restricted access and an impediment to rights of access, but this may just have been to control livestock. The investment and substantial construction, in medieval times, of Weststone bridge, as well as its width that was possibly suitable for a horse and cart, enforces the view the route was well-used for agricultural purposes and movement of livestock, as well as connecting settlements. Both purposes raise the question as to whether this indicates the route had a higher use than that of a footpath. Clarification was sought on earliest references to Weststone bridge? Clarification was sought regarding whether Path 1 is currently used for vehicular access, its width, surface and condition, and whether this implies restricted byway status. It was noted that many current farmers use vehicles, such as quad bikes, to access their fields. The Committee may wish to consider that evidence pointing to historic droving could provide sufficient evidence for Path 1 to be upgraded to a bridleway instead of the proposed restricted byway and for the proposal for Path 2 to be amended to 'be made'.

Responses – Path 1 has a reasonably wide, metalled surface with some potholes, it is understood to be used for farm machinery, access to the solar farm and also by Yapton Scouts. This does not necessarily confer the status of restricted byway or byway open to all traffic. None of the Natural Environment and Rural Communities Act 2006 (NERC 2006) exemptions apply in this case and any rights for mechanically propelled vehicles would have been extinguished, meaning the highest form of right possible for this route would be restricted byway. The earliest reference to a 'Stone' bridge, that is roughly in the same position as Weststone bridge, is to be found in Richard Wyatt's map of 1775. Reference to such a bridge might suggest that it was of a higher status than a footpath, however, it does not determine if it had public or private use. The purpose for which maps were produced should be taken into account. In determining the evidence for Path 1 and Path 2 under the relevant tests, on the balance of probabilities, the Committee could choose to propose to upgrade Path 1: Point A to B to a bridleway rather than follow the applicant's proposal for restricted byway and propose that Path 2: Point B to Point C 'be made' to enable the upgrade to bridleway.

Point B to Point C only (Path 2)

Point raised – The metalled surface of Drove Lane ends by Point B and then the surface from Point B to Point C becomes rough. The bridge across the Rife is narrow.

Response – None required.

Point B to Point D only (Path 3)

Points raised – Historic evidence seems to indicate that Path 3 served only field access or access to a barn as a private route. Clarification was sought on whether Drove Lane is the sole access to the current solar farm.

Response – Drove Lane appears to be the only access to the solar farm.

22.6 Cllr Oakley proposed the following motions:

(A) In relation to Recommendation (1) of the Committee report, that this be amended as follows, for the reasons given:

(1) That a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub-section 53 (3)(c) (ii) of the Wildlife and Countryside Act 1981 to upgrade FP 155 to a ~~restricted byway~~ **bridleway** from Point A to B (Path 1) ~~be not made~~ **be made**.

Reasons – That based on overall evidence, on the balance of probabilities, use of the route was as a droving route for the movement of livestock and was of greater use than just private rights.

(B) In relation to Recommendation (2) of the Committee report, that this be amended as follows, for the reasons given:

(2) That a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub-section 53 (3)(c) (ii) of the Wildlife and Countryside Act 1981 to upgrade FP 155 to a bridleway from Point B to C (Path 2) ~~be not made~~ **be made**.

Reasons – That based on overall evidence, on the balance of probabilities, use of the route was as a droving route for the movement of livestock of and was of greater use than just private rights.

22.7 Motion (A) regarding amendments to Recommendation (1) of the Committee report was seconded by Cllr Duncton. The Committee voted on the amendment, which was rejected by a majority. The motion fell.

22.8 Motion (B) regarding amendments to Recommendation (2) of the Committee report was withdrawn by Cllr Oakley.

22.9 The substantive recommendation was voted upon by the Committee and approved by a majority.

22.10 Resolved -

(1) That a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub-section 53 (3)(c) (ii) of the Wildlife and Countryside Act 1981 to upgrade FP 155 to a restricted byway from Point A to B (Path 1) be not made.

(2) That a Definitive Map Modification Order, under Section 53 (2) in consequence of an event specified in sub-section 53 (3)(c) (ii) of the Wildlife and Countryside Act 1981 to upgrade FP 155 to a bridleway from Point B to C (Path 2) be not made.

- (3) 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 restricted byway from Point B to D (Path 3) be not made.

23. Definitive Map Modification Order

DMMO 6/18 - Definitive Map Modification Order Application to modify the Definitive Map and Statement for Chichester to upgrade FP 157 to a restricted byway from Point A to B and to add a bridleway from Point B to C, in the Parish of Yapton.

23.1 The Committee considered a report by the Director of Law and Assurance. The report was introduced by Georgia Hickland, Trainee Legal Executive, who outlined the proposals and the key points.

23.2 Jonathan Cheal, Solicitor at Mogers Drewett, representing Mr D W Langmead, the landowner, spoke in objection to the application. Evidence is insufficient to demonstrate historic public carriageway status on route Point A to Point B, Tack Lee Lane or bridleway status on route Point B to Point C, which cannot be reasonably alleged to subsist. The northern part of Point A to Point B is a short stretch serving an adjoining housing estate. Tack Lee Lane is a cul-de-sac and lies within the ownership of Mr Langmead. It is not a public carriageway or a through route. It was historically access to fields called Tack Lee, part of which is owned by Mr Langmead. The southern part of route Point A to Point B is access to their private land only. Route Point A to Point B is not shown on the Adcock Highways Classification 1890. Route Point B to C is claimed on a non-existent route over private land and there is no user or documentary evidence of a bridleway. Where Point C joins Drove Lane, in looking at the maps for DMMO 5/18 as well the Inclosure Map and award for the parish to the south, this shows the path continuing southwards as a footpath over the footbridge and on to the neighbouring parish still as a footpath: this shows consistency between parishes and it is virtually inconceivable that it was ever a through route public carriage way.

23.3 Paul Brown, representing the Open Spaces Society, spoke in support of the application. The objective for safe routes and the limited opportunities for walking, cycling and horse riding are noted in the West Sussex Rights of Way Management Plan 2018-28. The Committee report largely ignores the historic contextual evidence, prior to accurate mapping in the 18th century, that includes information about the route's juxtaposition to Yapton centre and the church and the links to Drove Lane. This route crosses the Portsmouth to Arundel Canal by yet another stone bridge in Yapton. The deposit plans for turnpikes, canals and railways provides strong evidence of public versus private status. In the Book of Reference, Tack Lee Lane is shown with no owner. A line was crossed by the canal at point number 10 on the 1815 Deposit Plan and was considered a public road with no owner cited, so no compensation was paid nor could be payable. That the stone bridge was built in this way is significantly in support of Tack Lee Lane being a public road at the time. Para 7.7 of the Committee report notes a black mark on the Railway, Canal and Rivers Record 1815, compared with the canal plan drawing and Book of Reference and the BHS evidence at figure 15, page 25 of their

evidence, the line cannot be seen and so there was no gate. It is believed the route was wrongly registered in the Definitive Map and Statement (DMS) under the National Parks and Access to the Countryside Act 1949. The vast discovered evidence has not really been evaluated. The Committee is asked to confirm the orders to allow a planning inspector to reconsider all evidence and objections.

23.4 Julie Robinson, the applicant and representing the British Horse Society, spoke in support of the application. The report omits various pieces of crucial evidence including the Consultant Archaeologist's report which confirmed it probably was a long distance drove route between Felpham and the Weald. Droving and the attractiveness of it being a route for horses or leading packhorses from Yapton Lane could only mean likelihood of its existence and higher public rights that would have at least bridleway status. The historic name, South Street, is indicative of a public road, not a private road leading to a few fields. Point A is the historic centre of Yapton with the church opposite and access to the only route north, Yapton Lane. Route Point A to B to C is, on the balance of probabilities, the original connection between Yapton and the coast. The Portsmouth to Arundel Canal Act proposition identifies no owner, as per other public roads. This is also the case with the Yapton Tithe Map, which shows a route of some importance. The multi-manor and intermixed landholding in Yapton, together with lack of evidence of private easements makes it likely that Tack Lee Lane (South Street) was a public road. Regarding Point B to Point C, the report makes no mention of the evidence and analysis that the vast majority of the dot and dash line routes shown on the Tithe Map were later recorded on the Definitive Map, which should conclude that the route was a public way or footpath or had bridleway status. In para. 7.17 regarding the Finance Act 2010 and in relation to Point A to Point B, the report leaves out the word 'strong' before "possibility it was considered a public highway ...". There is a steady stream of positive evidence in favour of the application. Consideration must be given to whether, on the balance of probabilities, this route has at any time been used by the public that would indicate a bridleway or restricted byway status, bearing in mind past times when the horse was the main mode of transport.

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

The applicant's evidence

Points raised – Clarification was sought regarding concerns raised by Mrs Robinson and Mr Brown that all evidence submitted by the applicant had not been properly interrogated.

Response – A copious amount of evidence was supplied by the applicant. Para. 5.2 of the Committee report noted that it has not been possible to reference all of it, but that it has all been taken into account.

Definition of Droving and implications

Points raised – The definition of droving was raised regarding the movement on foot of livestock and people and, from this, whether higher rights could be implied. Clarification was sought regarding whether droving on foot with dogs would be allowed on a bridleway.

Response – There is more than one explanation of droving, but no definitive legal definition. The application should be determined on the whole evidence whilst considering the weight given to each piece of evidence. It must be decided, for Point A to Point B, on the balance of probabilities whether the footpath ought to be shown as a restricted byway. And for Point B to Point C whether a bridleway subsists or can be reasonably alleged to subsist. Droving on foot with dogs would be allowed on a bridleway.

Committee Report Site Plan no. 01805

Points raised – Clarification was sought regarding the route to the north of Point B on the plan.

Response – There is an existing footpath from Point A to Point B.

Tack Lee Field/s

Points raised – Clarification was sought regarding the location of the field referred to by Mr Cheal as Tack Lee, which Tack Lee Lane led to.

Response – The Chairman allowed Mr Cheal and Mrs Robinson to comment. Mr Cheal stated that pictures of a sale plan included in the application bundle, and marked 367 and 376, show two fields at the south end of Tack Lee Lane, over to the west of Drove Lane (to north/north west of Point B). Mrs Robinson states that the Victoria County History of Yapton states that Tack Lee Fields, south of the village, was the common open fields (strips of fields). Officers believe that Mr Cheal referred to Lots 6 and 7, page 31 and 32 of the applicant's statement.

Tack Lee Lane previously known as South Street

Points raised – The historical name, South Street, was discussed and clarification on the evidence of the name was sought. South Street may infer some connectivity between settlements, so it may be reasonable to infer, given also the topography, that a route existed, but the evidence of use, including public use, must be considered.

Response – Evidence of the historical name of South Street is provided in para. 5.3.7 of the Committee report.

Point A to Point B

Points raised – Regarding Point A to Point B, there is some uncertainty from the evidence as to whether or not this was just for access to the Tack Lee strips of land/fields or whether it gave access to fields either side of a route that carried on towards Flansham. The route to the common land

was likely used by people and oxen and/or horses and this may infer higher use. From the terrain as it is now and the width of the path, after the end of the urban area, it is difficult to see that it was ever anything other than a footpath.

Response – None required.

Point B to Point C

Points raised – There is some historical 18th Century evidence that the route continued from Point B south to Point C. Evidence is weak or ambiguous and evidence of the dotted line on maps is not always continuous. If a footpath ever existed there is no evidence to determine if it was private or public and if public, the status of the route. This feels more of a footpath between settlements.

Response – The Richard Wyatt Map of 1775 was not produced for the purposes of determining the status of the routes.

Response by Yapton Parish Council

Points raised – It is noted that Yapton Parish Council supports this application, where it did not support the application DMMO 5/18.

Response – None required.

Use of farm machinery

Points raised – It should be clarified that the main purpose of the application is for the use by the general public for access and leisure. Farmers will continue to use whatever farm machinery is required to access their land.

Response – None required.

23.6 Cllr Oakley proposed the following motions:

(A) In relation to Recommendation (1) of the Committee report, that this be amended as follows, for the reasons given:

(1) 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 ~~bridleway~~ **footpath** from Points B to C on the application plan ~~be not made~~ **be made**.

Reasons – That given the indications of a route on 18th Century mapping, it is reasonable to allege that there was at least a footpath in existence for route Point B to Point C.

(B) In relation to Recommendation (2) of the Committee report, that this be amended as follows, for the reasons given:

- (2) That a Definitive Map Modification Order, under Section 53(2) in consequence of an event specified in sub-section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade footpath 157 to a restricted byway from Points A to B on the application plan ~~be not made~~ **be made**.

Reasons – That it is reasonable, on the balance of probabilities, to assess that route Point A to Point B gave access to a number of fields and that it had a wider public use that justifies restricted byway status.

23.7 Motion (B) regarding amendments to Recommendation (2) of the Committee report was seconded by Cllr Sharp. The Committee voted on the amendment, which was rejected by a majority. The motion fell.

23.8 Motion (A) regarding amendments to Recommendation (1) of the Committee report was seconded by Cllr Sharp. The Committee voted on the amendment, which was rejected by a majority. The motion fell.

23.9 Recommendation (1) of the substantive recommendation was proposed by Cllr Atkins and seconded by Cllr Duncton and voted upon by the Committee and approved by a majority.

23.10 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 bridleway from Points B to C on the application plan be not made.

23.11 Recommendation (2) of the substantive recommendation was proposed by Cllr Atkins and seconded by Cllr Duncton and voted upon by the Committee and approved by a majority.

23.12 Resolved -

That a Definitive Map Modification Order, under Section 53(2) in consequence of an event specified in sub-section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade footpath 157 to a restricted byway from Points A to B on the application plan be not made.

24. Date of Next Meeting

24.1 The next scheduled meeting of the Planning and Rights of Way Committee will be on Tuesday, 5 April 2022 at 10.30 a.m.

The meeting ended at 1.10 pm

Chairman