

minutes

Meeting RIGHTS OF WAY COMMITTEE

Date Wednesday 28 November 2012 (commencing at 10.00 am)

membership

Persons absent are marked with 'A'

COUNCILLORS

Bruce Laughton (Chairman)
Gail Turner (Vice-Chairman)

Chris Barnfather
Allen Clarke
John Cottee
Jim Creamer
Sybil Fielding

John Hemsall
Rachel Madden
Andy Stewart
Jason Zadrozny

ALSO IN ATTENDANCE

Councillor V H Dobson

OFFICERS IN ATTENDANCE

David Forster	- Governance Officer
Steven Eastwood, Snr	- Principal Legal Officer, Legal Services
Eddie Brennan	- Definitive Map Officer/Commons and Village Greens Officer
Angus Trundle	- Definitive Map Officer/Commons and Village Greens Officer
Dr Tim Hart	- Senior Definitive Map Officer
Alison Garraway	- Legal Practitioner, Legal Services
Tony Shardlow	- Community Safety Officer

MINUTES

The minutes of the meetings held on 10 October 2012 were taken as read and were confirmed and signed by the Chairman subject to it being noted that the road mentioned on page 5 should read A614 and not A416.

MEMBERSHIP

The Clerk to the Committee informed members that Councillor Chris Barnfather had been appointed to the Committee in place of Councillor Sue Saddington and this will revert back on 29 November 2012.

APOLOGIES FOR ABSENCE

There were no apologies for absence

DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

There were no declarations of interest

DECLARATIONS OF LOBBYING BY MEMBERS

There were no declarations of Lobbying.

ORDER OF BUSINESS

With the consent of the Committee the order of the agenda was amended.

APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF CLIPSTONE AND WARSOP.

The Chairman asked Mr Eastwood, Legal Advisor to address the Committee regarding the representations which had been received recently from both the Applicant and an Objector. The representations were specifically to do with the effect of the barrier in terms of challenging use, thus affecting the 20 year user period. Mr Eastwood reminded members that they could still consider the item today, but may wish to give the landowner the opportunity to produce their evidence and for officers to bring a report covering that evidence and the information from the applicant.

Following the advice from the Committee's Legal Advisor and on a motion by Councillor Gail Turner, seconded by Councillor Andy Stewart it was:-

RESOLVED 2012/018

That the item be deferred to the next meeting. (23 January 2013)

CONSIDERATION OF AN APPLICATION UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF CARLTON IN LINDRICK AND WALLINGWELLS.

Mr Trundle took members through the report and highlighted the issues around the evidence of a stile being erected at point E on the map attached to the report at appendix Plan B. He also informed members he had spoken to the Parish Paths Partnership Warden who recalls the stile being erected and that it was in place for approximately 3 years, although there is conflicting evidence from the landowner that the stile was only in place for 3 weeks.

Mr Trundle highlighted the Inclosure Award Plan of 1768 which showed evidence of a bridleway having been awarded and that this route was then shown on the Estate Plan of 1769 to Committee. Mr Trundle informed Members that there was no evidence that the path was ever legally stopped up.

Mr Trundle informed Members that since the report was published he had received further evidence from Mr Doughty, the Parish Paths Partnership Warden, who recalls the stile being erected around 1998. He had also had discussions with the applicant Mr Walker, who suggested the Bridleway comes out on a particularly dangerous bend on Owday Lane and could be diverted to a more suitable location. Finally Mr Anderson who acts for the Ramsden Estate had written offering discussion for an alternative route around Owday Lodge for an existing right of way.

Following the opening comments by Mr Trundle a number of public speakers were given the opportunity to speak and summaries of those speeches are set out below.

Mr Walker spoke in support to the application and informed members that he was willing to meet with all parties and look at how this application could be moved forward to the satisfaction of both ramblers and equestrians alike. He also felt that the potential alternative route brings an old fashioned route (the claimed route) in line with contemporary society and the needs of the 21 century.

In response to questions Mr Walker replied as follows:-

- He recalled the stile being in place for only a few weeks due to horses using the route and riding through an alternative gap into his yard to rejoin the path, therefore the stile was removed.
- The reason more people have not attended is due to the fact they do not feel comfortable with local politics and felt that he was able to represent their feelings adequately.
- He does not recall any objections to the removal of the stile at the time.

Mrs J Turley, Ramsden Estate, spoke in opposition of the application. She informed members that she had run this route over the years and there had been a stile there until at least 2000. She also informed Members that approximately 5 years ago riders had started to use the hand gate which replaced the stile and were becoming a nuisance to ramblers, and that also when challenged some have become abusive.

There were no questions asked.

Mr Fisher, a local farmer spoke in opposition to the application, informing members that he had often confronted riders who had used the footpaths and was subjected to a torrent of abuse. He also said that signs were erected which said no horses and also that he had placed wire across the gap to prevent trespassing but these were often vandalised or ripped down.

In response to a question Mr Fisher informed members that he does not recall horses using a hole in the fence/the alternative gap whilst he worked in the fields nearby.

Mr Anderson of James Martin & Co Land Agent for the Ramsden Estate spoke in opposition to the application and informed members that they do not accept that a bridleway should be recorded along points E and G because they refute the Inclosure Award evidence on the basis that the bridleway has not been used for centuries. He also said that without prejudice to that view, the landowner would not object to it being recorded if the cross-field path is diverted. As such, he would welcome discussions with the County Council to create an alternative footpath around Owday Lodge.

In response to questions Mr Anderson replied as follows:-

- He had not undertaken a traffic survey of Owday Lane so cannot comment on the traffic volume.
- The question is whether there has been uninterrupted use of the path over the years and the Estate is of the opinion there has not due to the erection of the stile at point E
- The benefits of a diverted route around the back of Owday Lodge would be that users would not put themselves in conflict with traffic.

Members discussed the issues before them, including the strength of the Inclosure evidence

- In response to a question Officers confirmed to members that the issues before them is to upgrade the footpath from point B to F on the plan and to add a further bridleway from point F-G
- Concerns were raised that the goodwill of residents could be lost if the recommendations are agreed so it was suggested that Officers enter into discussions with all parties to seek compromise and an amicable solution

The Chairman reminded members that Committee cannot enter into negotiations regarding proposed compromises suggested by applicants.

Mr Eastwood informed Committee that the report refers to the part of the claimed route which is based only on user evidence as failing due to the presence of the stile, but that the remainder which reflects the route shown by the Inclosure evidence as succeeding due to the legal importance and strength of this evidence, and the lack of being legally extinguished. Mr Eastwood stated that Members must determine whether they share this view, and make their decision based on that alone, and must not take into account in deciding whether an ancient public bridleway exists whether it is suitable or desirable, even whether a diversion may be expedient.

Following legal advice it was moved by the Chairman, seconded by the Vice-Chairman and unanimously

RESOLVED 2012/019

- 1) That approval be given for the making of a Modification Order to modify the Definitive Map and Statement by adding a bridleway from the County boundary to Owday Lane (points B-G) as, for the reasons set out in the report and on the

grounds that the evidence demonstrates on a balance of probabilities that public bridleway rights exist.

- 2) That, that part of the claim from Owday Lane to the junction with Carlton-in-Lindrick Bridleway No. 18 (points G-L) be turned down, for the reasons in the report on the grounds that the evidence does not demonstrate that the existence of a public bridleway is reasonably alleged.
- 3) That Officers be authorised to investigate options regarding diversion, extinguishment or other appropriate measures to look at improving the network locally as a result of the addition of the B-G route, and a report on this be brought back to Committee within six months.

CONSIDERATION OF APPLICATIONS UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 TO ADD FOOTPATHS TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISH OF ELKSLEY

Dr T Hart reminded Members that this item had been deferred from the previous Committee on the grounds there was additional evidence regarding parcel 142 which needed investigation. Following further investigation of evidence Dr Hart informed members the evidence shows that the parcel in question did receive a £10 reduction for having a footpath across it.

On a motion by the Chairman, seconded by the Vice-Chairman it was:-

RESOLVED 2012/020

- 1) That the Application be accepted and the making of a Modification Order to add a bridleway to the Definitive Map and Statement be approved on the basis that, for the reasons set out in the report, it is considered by the Authority that the evidence shows that a right of way is reasonably alleged to subsist.
- 2) Officers be authorised to explore options regarding a diversion etc of the route in or around the stack yard in the interests of safety and security for both the public and the landowner.

APPLICATION FOR A GATING ORDER AT CLERKSON'S ALLEY, MANSFIELD

Mr Shardlow introduced the report and highlighted to Members that the Local Access Forum are in full support of this proposed Gating Order.

In response to questions Mr Shardlow clarified that –

- The procedures for Gating Orders are prescribed, and the next step is one of formal consultation to ensure that all the views are taken account of.
- The opening and closing of the gates would be done by the adjacent local businesses for their business access only
- Any closure which occurs as a result of any Gating Order which is made, would be reviewed after 1 year to see if it was still appropriate

RESOLVED 2012/021

That the application for a Gating Order at Clerkson's Alley, Mansfield, be approved subject to consideration of any representations received from statutory consultees in accordance with the Council's agreed procedures

The meeting closed at 11.20 am

CHAIRMAN