



minutes

Meeting	RIGHTS OF WAY COMMITTEE
Date	Wednesday 17 July 2013 (commencing at 2.00 pm)

membership

Persons absent are marked with 'A'

COUNCILLORS

Pam Skelding (Chairman)
Rachel Madden (Vice-Chairman)

John Cottee
Richard Butler
Steve Calvert
Jim Creamer
Sybil Fielding

Kevin Greaves
Roger Jackson
Darren Langton
Gail Turner

OFFICERS IN ATTENDANCE

David Forster	- Democratic Services 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
Neil Lewis	- Team Manager Countryside Access

APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN

RESOLVED 2013/007

That the appointment of Councillor Pam Skelding as Chairman and Councillor Rachel Madden as Vice-Chairman by Full Council on 16 May 2013 for the ensuing year be noted.

MEMBERSHIP AND TERMS OF REFERENCE OF THE RIGHTS OF WAY COMMITTEE

RESOLVED 2013/008

That the membership of the committee as set out above and terms of reference as set out in the report are noted.

MINUTES

The minutes of the meetings held on 6 March 2013 were taken as read and were confirmed and signed by the Chairman.

APOLOGIES FOR ABSENCE

None

DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

There were no declarations of interest

DECLARATIONS OF LOBBYING BY MEMBERS

There were no declarations of Lobbying.

COUNTRYSIDE ACCESS TEAM – PRESENTATION

Mr Lewis, Team Manager Countryside Access gave an oral and slide presentation on the work of the Countryside Access Team.

APPEAL DECISION BY THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS REGARDING AN APPLICATION TO RECORD A PUBLIC BRIDLEWAY IN CLIPSTONE AND WARSOP

Mr Brennan introduced the report and highlighted to Members the decision was based on user evidence, and that while the committee had previously come to the view that an order should not be made, the Secretary of State's Inspector had come to a different view and therefore Directed that an order should be made, on the basis that the 'reasonable allegation' test is met.

Following the introduction of the report members discussed issues around the financial implications if the Council challenges the Inspector's decision, or, if not challenged, the financial implications if it moves forward to a public inquiry as an opposed order.

Upon request from the Chairman, Mr Eastwood advised that while such financial implications were understandably of interest, he reminded members that whatever the financial implications flowing from the decision, these would flow from it rather than feed into it, and as a quasi-judicial function, the crux of the matter was whether the grounds for judicial review of the Inspector's decision were made out. Mr Eastwood highlighted that, as stated in the report, legal advice was that the Inspector's decision appeared neither irrational nor unreasonable, rather that the Inspector's view was the balance of the evidence tipped in favour of making an order rather than against it.

Members discussed the extent of challenges made by the landowners and queried whether a legal challenge should be made on the basis that the Council still considers the evidence to be tipped against the making of an order.

Upon request from the Chairman, Mr Eastwood advised that the making of the order would simply invite evidence which could then be tested and a view then formed on that evidence. Mr Eastwood highlighted that this would form a later stage of this matter, and that the immediate decision was simply in relation to the reasonableness, at law, of the Inspector's preliminary decision.

Following further discussion by Members of the status and implications of the Secretary of State's Direction, and further advice from Mr Eastwood,

On a motion by Councillor Gail Turner seconded by Councillor John Cottee it was unanimously:-

RESOLVED 2013/009

- 1) That the Council does not apply to the Administrative Court for judicial review of the Inspector's decision, and Officers be authorised to make a Modification Order as per the Secretary of State's Direction (such Order proposing the addition of a bridleway to the Definitive Map as per Mr Parkhouse's application)
- 2) That the Authority takes a neutral stance at present in the event that the Modification Order is referred to the Secretary of State for determination and
- 3) That a further report be presented to a future meeting once any further evidence has been submitted in order to determine what stance is to be adopted at any subsequent determination by the Secretary of State.

CONSIDERATION OF AN APPLICATION UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISH OF ARNOLD

Mr Trundle introduced the report and highlighted the fact that this application has been made on user evidence grounds only. He informed members that he had received verbal representations following the publication of papers from residents who lived adjacent from the path in question who stated they were in favour of the path being added to the definitive map.

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

Mr Melvyn Tisbury a Director of Castle Bar Properties who own the Tesco site spoke against the addition of the footpath and highlighted the following

- Route has only ever been referred to as a private Right of Way

- **32 of the 32 claimants have following the gate being permanently shut claimed use in 2006 but not one of them state it was closed for six months during construction.**
- The police are strongly supportive of restricting the route as there were incidents of arson and armed robbery previously.
- There is a very serious safety issue in terms of people walking across the store's delivery area.
- There is an adequate alternative route available for users.

There were no questions

Mr Deakin resident and neighbourhood watch coordinator spoke against the addition of the footpath and highlighted the following

- The lane had previously been a good "escape route" and there had been lots of evidence of drugs use.
- Tesco's even gave keys to residents who lived along the path so they could use the gate erected and closed at night
- Do not know why people would want to use this path when are other safer routes to the stores

Mr Deakin responded to members questions as follows

- Not sure how many keys were in circulation at Tesco allowed people to have a key if they requested one
- Not sure how many vehicular movements took place along the lane, but there was no vehicular access beyond the posts as those properties had access to their gardens via a nearby road
- There have been burglaries in the area, a couple of muggings and also a number of needles and drug paraphernalia has been found along the path
- The posts show in the picture attached to the report have been there since 1984 at least although as he has a 6' fence behind his property he couldn't comment on how much the route was used, and a number of the other houses faced away from the route.

Mr Azar local resident spoke against the addition of the footpath and highlighted the fact he is a resident of the one of the private houses which backed onto path, which he believes to be a private right of way. Mr Azar informed the Committee that he challenged anyone who was walking along the path who he felt did not have a right to do so, and that the sign in photograph 2 of the report has been there since 2003. He also raised concerns about crime and he felt that the gates should have

continued to be locked to stop anyone from using the path as an escape route as making it a public right of way would be detrimental to the owners.

In response to questions Mr Azar replied as follows

- I have always considered the path to be private as it is on the deeds to the houses along it. The path is also maintained in part by residents.
- I have challenged people and groups of youths on the land that I own and have always made it clear that the path is private, although many users may not have been challenged as they may not have been seen by residents due to work patterns and boundary fencing
- The majority of people using the path without permission will be going to the shops, and that people used to congregate around Tesco and Subway mainly
- We have been burgled on one occasion since we moved into the house in 2002.

Mr Ashley Turner, local resident, spoke in favour of the path being added to the definitive map and informed the committee that he had walked along the path for at least 60 years and has never once been challenged. He also stated that it was a pleasant route with a 'country lane' feel and he objected to the erection of the fence and gate by Tesco. To the best of his knowledge he had never seen an undue amount of litter, youths congregating or anyone misbehaving on the path.

In response to questions Mr Turner Informed members that he began using the route in his schooldays,, that the posts have been there as long as he can remember but they were never a fence in that time, that he had never been offered a key, and that he knows many people that have used the path to either go to the shop and get to bus stops along Mansfield Road.

Ms J Horsey, local resident, spoke in favour of the path being added to the definitive map and informed the committee she as a keen walker had used the path since 1994. She informed members that she had never encountered any poor behaviour whilst using the path. She also made comments that she was not happy when Tesco closed the path in an evening and made them aware of her feelings.

There were no questions

Mr Robert Proctor, a user of the path, stated that he has used it from late 1981 and has never been challenged when using the route and has in fact had conversations with local residents. He also informed members that he used it to get to the bus stops along Mansfield Road and that he had never seen any signs discouraging use. Mr Proctor stated that there is "wear line" of approx. 0.9 m at the path's narrowest point. He also informed members that with regard to the concrete posts he had never seen any wires between them to prevent anybody from passing along the path.

In response to questions Mr Proctor replied as follows

- The bus stops are on Mansfield Road outside the shops and on the opposite side of the road.
- The residents he spoke to were only on the surfaced section because those houses faced the path (unlike the others where it was the back gardens which joined) and that those he spoke to always seemed happy to pass the time of day and never challenged why he was using the path
- He had only occasionally encountered other people using the route

Following the public speakers Members considered the issue before them and raised concerns regarding the lack of historical evidence and the fact that residents have challenged people. However Members also acknowledged the reports of antisocial behaviour, which, whilst they could not be considered, were concerning, and upon request from the Chairman Mr Eastwood advised that should the public right of way be concluded to exist in due course, issues such as Gating Orders could be considered at a later date, as with all other ordinary parts of the network

Upon request from the Chairman, Mr Eastwood reminded Members that the relevant test here is whether the existence of a public right of way is reasonably alleged, in accordance with the case of Norton v Bagshaw. Mr Eastwood advised that incontrovertible evidence that a way could not exist is required to defeat this test.

Following discussions Members concluded that it is reasonably alleged that the path has been used for 20 years plus by non-residents as a route to the shops and bus stops along Mansfield Road, and therefore a motion in terms of the resolution below was put to the committee and upon a show of hands it was :-

RESOLVED 2013/010

That the making of a modification order to modify the definitive map and statement by adding a footpath from Woodthorpe Drive to Mansfield Road, Arnold be approved, for the reasons as set out in the report, as the evidence demonstrates on the balance of probabilities that public footpath rights were reasonably alleged to exist

The meeting closed at 4:15pm

CHAIRMAN