

# COMMONS AND RIGHTS OF WAY COMMITTEE

**MINUTES** of a meeting of the Commons and Rights of Way Committee held on Friday 21 June 2019 at the Cabinet Suite - Shire Hall, Gloucester.

**PRESENT:**

Cllr Phil Awford (Chair)	Cllr John Payne
Cllr Dr John Cordwell (Vice-Chair)	Cllr Brian Robinson
Cllr Carole Allaway Martin	Cllr Robert Vines
Cllr Graham Morgan	Cllr Simon Wheeler
Cllr Loraine Patrick	

**Officers:** Karen Pearman, Asset Data Team Leader (Highways Records)  
Jaci Harris, Asset Data Officer (PROW Definitive Map)  
Janet Smith, Specialist Advisor – Infrastructure Advice Hub – Corporate Team  
Clare Bonser, Specialist Advisor – Infrastructure Advice Hub – Corporate Team  
Juliette Walker, Asset Data Technician  
Joanne Bolton, Democratic Services Adviser

**1. ELECTION OF CHAIR**

Resolved

That Cllr Phil Awford be elected Chair for the ensuing civic year.

**2. ELECTION OF VICE CHAIR**

Resolved

That Cllr John Cordwell be elected Vice-Chair for the ensuing civic year.

**3. MINUTES**

Resolved

That the minutes of the previous meeting held on 11 December 2018 be approved and signed as a correct record.

**4. DECLARATIONS OF INTEREST**

No declarations of interests were made.

**5. PUBLIC QUESTIONS ON APPLICATION(S)**

*Minutes subject to their acceptance as a correct record at the next meeting*

No public questions had been received on the applications before the Committee.

## **6. MEMBERS QUESTIONS ON APPLICATION(S)**

No questions from members on the applications before the Committee had been received.

## **7. APPLICATION FOR A MODIFICATION ORDER FOR AN ADDITIONAL LENGTH OF PUBLIC FOOTPATH LINKING ROSE HILL AND FAR WELLS ROAD. BISLEY, GLOUCESTERSHIRE**

- 7.1 Jaci Harris, Asset Data Officer (PROW Definitive Map), gave a detailed presentation to the Committee aided by a PowerPoint presentation, which included photographs of the claimed route under consideration. *(For information: A copy of the presentation slides is included in the minute book and has been uploaded to the Council's website.)*
- 7.2 The Asset Data Officer explained that an application was made by Bisley Parish Council on 2 May 2019. The subject of the application was a 15m length of footpath linking Rose Hill with Far Wells Road in Bisley with Lypiatt, Gloucestershire. The Committee noted the route of the claimed path as outlined in Map GCC2 to the report. The path was situated between two properties ('The Firs', and 'Greystones'), and was on unregistered land.
- 7.3 The Committee was informed that the documentary evidence in support of the path was not compelling in terms of quantity. This may have been due to the path measuring only 15 metres in length, and the 1" and 2" smaller scale maps not being able to display it clearly. The Asset Data Officer drew the Committee's attention to the Tithe Map 1842 at GGC4 to the report, and the Finance Act Map 1910 at GCC7 to the report, which she explained portrayed the path in a similar manner to the other known highways at that time, albeit much narrower.
- 7.4 The Committee noted that as part of the 1950s process of officially recording the public rights of way network the Parish Council considered the path to carry highways rights and claimed it as a public footpath. However, it did not appear in the maps of subsequent stages of the process, again possibly due to its shortness of length or the scale of the map. The Asset Data Officer confirmed that she had found no evidence of any objections to the path with regard to its inclusion on the legal record; she had therefore determined that the Parish Council would have intended to dedicate the path as a public highway.
- 7.5 The Asset Data Officer drew the Committee's attention to paragraph 11 of the report which outlined the content of the single response received to the consultation from Mr Flowers of Greystones. She explained that Mr Flowers had provided background information regarding some neighbourly disputes in the area over the claimed footpath. The Committee was advised that Gloucestershire County Council had not taken into account the information concerning the disagreements, as part of

the determination of the evidence, and it was not a relevant point of consideration for the Committee.

- 7.6 The Committee noted that there were two potential dates to consider (2015 and 2017), when determining the date as to when the public's use of the path was challenged.
- 7.7 The Asset Data Officer explained that in her previous role as a Public Rights of Way Officer, she had had a conversation with Ms Prior of Greystones at the site of the claimed path, she had also sent an email to her advising her that the claimed path was not an official recorded PROW; both took place in 2015. The Ward Chairman to Bisley with Lypiatt Parish Council, had supplied a copy of an email written by Ms Prior of Greystones dated 2 October 2017, which outlined the conversation Ms Prior had had with the PROW officer, and included content of the subsequent email advising Ms Prior that the path was not an officially recorded public right of way. Ms Prior's email had indicated that the matter of 'the unregistered strip of land between Greystones and The Firs, Far Wells Road' would be raised at a meeting of the Parish Council on 4 October 2017.
- 7.8 The Asset Data Officer explained that from an inspection of the Parish Council minutes from 2017, it was determined that the email was not brought to the public's attention. Therefore, the conversation at the path together with the email in 2015 did not constitute a challenge to the public's use of the path.
- 7.9 The Committee was informed that the owners of the two adjacent properties to the path could potentially claim ownership up to the centre line of the track over which the claimed highway crossed. The Asset Data Officer explained that challenges to the public using the path, made by someone who could potentially lay claim to the land over which the path crossed, could constitute a challenge to the public's use of it. Two responses made in the Public Path Evidence Forms (PPEF) demonstrated that challenges had been made to path users. In response to a question the officer clarified that the circumstances of the challenges were set out in the two PPEFs and were therefore in the public domain and thus constituted a challenge to the public's use of the path.
- 7.10 The Committee was informed therefore that the challenge of the owner of 'Greystones' to a Mr Merry's use of the path, had been taken as a date of challenge for the purposes of Section 31 of the Highways Act 1980, the retrospective 20 year qualifying period was therefore 1997 to 2017.
- 7.11 The Committee was informed that 10 PPEFs were submitted by 13 members of the public in support of this application; use dated back to 1944 on foot. A total of 7 individuals claimed use of the whole 20 year qualifying period. The use of the path was on foot without force, secrecy or permission, and thus their use was considered 'as of right'.
- 7.12 In response to a question, the Committee was informed that from the PPEFs 6 individuals had noted the planting of the conifer trees and 3 individuals had noted the removal of the steps. They had perceived those actions to have been

undertaken in an attempt at frustrating access to the claimed path. The Committee was advised that the steps and the conifer trees were irrelevant to its determination, as the highway verge was not part of the application. It was noted that existing legal provisions within the Highways Act protected highway verges.

- 7.13 The Asset Data Officer explained that she had determined from the available evidence that at some point between 1970 and 1990 the claimed path was signposted, either by the Parish Council or the Highway Authority. In light of the history of signposting paths in Gloucestershire, she could not confirm that the County Council itself had erected the signpost and therefore could state that the path enjoyed highway rights.
- 7.14 The Asset Data Officer informed the Committee that on the balance of probabilities, the user evidence showed that the claimed path had been enjoyed by the public on foot 'as of right', without interruption or challenge for a period in excess of 20 years. This was prior to September 2017 when the rights of the public were called into question and it was therefore deemed to subsist.
- 7.15 Having considered all of the information before it, the Committee

Resolved

That an Order be made to add the claimed path to the legal record of public rights of way.

## **8. APPLICATION FOR A MODIFICATION ORDER FOR ADDITIONAL LENGTH OF PUBLIC FOOTPATH AT BOWBRIDGE, STROUD, GLOUCESTERSHIRE**

- 8.1 Jaci Harris, Asset Data Officer (PROW Definitive Map), gave a detailed presentation to the Committee aided by a PowerPoint presentation, which included photographs of the claimed route under consideration. *(For information: A copy of the presentation slides is included in the minute book and has been uploaded to the Council's website.)*
- 8.2 The Asset Data Officer explained that an application was made by Mrs Fernando, a member of Stroud Ramblers Group, on 11 November 2016. The subject of the application was a 338m long path connecting public footpaths ZST50 and ZST54 across an area of land in Bowbridge Stroud. The Committee noted the route of the claimed path as outlined in Map JH2 to the report.
- 8.3 The Committee was informed that there was little documentary evidence to support the claim. Gloucestershire Archives, commissioned to compile a report into the history of the path, found no record of the claimed path on any historical documents and maps. In addition, the path was not claimed under the National Parks and Access to the Countryside Act 1949 process. Two Ordnance Survey maps showed the physical existence and extent of the claimed path, however those maps carried a disclaimer that any representation of a road, track or path was not evidence of the existence of a right of way over it.

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- 8.4 The Asset Data Officer explained that the documentary evidence was insufficient on its own to infer on the balances of probabilities, that the claimed route was dedicated as a public highway. Consequently, the application would be determined upon evidence of long user under Section 31 of the Highways Act 1981, or at common law.
- 8.5 The Committee was informed that no action had been taken by the landowner to question or challenge the public's use of the claimed path. In such cases Section 69 of the Natural Environment and Rural Communities Act 2006 (NERC) provided that the date of the Definitive Map Modification Order application could be used in accordance with paragraph 1 of the Schedule 14 to the Wildlife and Countryside Act 1981.
- 8.6 The Committee noted that the user evidence had therefore been assessed over the 20 year period between 1996-2016 leading up to the application.
- 8.7 The Asset Data Officer drew the Committee's attention to the summary of the Public Path Evidence Forms (PPEFs) as outlined at JH8 to the report. The Committee noted that 13 PPEFs completed by 13 individual members of the public were submitted in support of the application; use of the paths dated back to 1932.
- 8.8 The Asset Data Officer further drew the Committee's attention to the main points of a signed statement made by Mr M Cullimore, who held Power of Attorney for the business affairs of Mr R Cullimore, the landowner. The statement was submitted by Katie Moylan of Sewell Mullings Logie LLP Solicitors and was included at JH7 to the report. In particular reference was made to his point that the evidence of 6 individual users should be discounted due to the fact they claimed less than 20 years use. She explained that use of a way by different persons, each for periods of less than 20 years, would suffice if, taken together, they totalled a continuous period of 20 years or more. As a result the individual evidence of use in support of the application of less than 20 years would not be discounted.
- 8.9 The Committee was also informed that PPEFs submitted by two members of the public indicated that the landowner/tenant was aware of their use of the path and both stated that the tenant/farmer gave them permission to use it. The Asset Data Officer explained that such permission was inconsistent with the user 'as of right' test, and she confirmed that the two PPEFs must be discounted. It was noted that this point was also raised in Mr Cullimore's statement.
- 8.10 The Asset Data Officer explained a total of 11 individuals had used the path for part or all of the qualifying period on foot without force, secrecy or permission, and thus their use was considered 'as of right'. Of those, 8 claimed use of the path across the whole of the 20 year period. She considered the user evidence to be sufficient on the balance of probabilities to support a case of deemed dedication as a public footpath in accordance with the provisions of Section 31 of the Highways Act 1980.
- 8.11 The Committee was informed that apart from the express permission to use the path granted privately to two individual members of the public, whose use was discounted, no further evidence had been provided by the landowner, tenant, or

members of the public that use had been publicly challenged or interrupted or of a lack of intention to dedicate prior to the application 2016. The path was therefore reasonably alleged to subsist.

- 8.12 The Committee was informed that Mr Cullimore had indicated in his statement that the landowner had never intended for the claimed path to become a dedicated right of way in existence over his land. He had also indicated in his statement that no signs had been positioned at the entry and exit points of the path due to there being other public footpaths crossing Thrupp Farm for which the landowner could not prohibit use of.
- 8.13 In response to a question, the Asset Data Officer outlined to members the methods landowners could undertake to protect their land from claims for additional public rights of way. This included the use of appropriate wording on correctly located signage to accord with the relevant legislation. She explained that the most effective way to demonstrate a lack of intention would be to deposit a landowner statement and map to the local authority under Section 31(6) of the Highways Act 1980. This would constitute a formal declaration to the effect that the landowner did not intend to dedicate any additional public rights of way over the land delineated on the map.
- 8.14 In response to a question the Committee was informed that if an Order was made to add the claimed path to the Definitive Map, and objections were received and not withdrawn, the Order would be referred to the Secretary of State for inquiry.
- 8.15 Having considered all of the information before it, the Committee

Resolved

That an Order be made to add the public footpath along the claimed route to the legal record of public rights of way.

**9. PUBLIC QUESTIONS - ABOUT THE MATTERS WHICH ARE WITHIN THE POWERS AND DUTIES OF THE COMMITTEE**

No public questions had been received on matters which were within the powers and duties of the Committee.

**10. MEMBERS' QUESTIONS - ABOUT THE MATTERS WHICH ARE WITHIN THE POWERS AND DUTIES OF THE COMMITTEE**

No written questions from members had been received on matters which were within the powers and duties of the Committee.

**CHAIR**

Meeting concluded at 11.20 am