

COMMONS AND RIGHTS OF WAY COMMITTEE

MINUTES of a meeting of the Commons and Rights of Way Committee held on Tuesday 5 October 2021 at the Council Chamber - Shire Hall, Gloucester.

PRESENT:

Cllr Phil Awford (Chair)	Cllr Robert Vines
Cllr Beki Hoyland	Cllr Susan Williams
Cllr Mark Mackenzie-Charrington	Cllr Dr David Willingham
Cllr Graham Morgan (Vice-Chair)	

Apologies: Cllr Alex Hegenbarth and Cllr Dominic Morris

Officers: Liz Kirkham, Highways Operation Manager
Karen Pearman, Asset Data Team Leader (Highway Records & DMMO)
Clare Bonser, Lawyer
Andrew Houldey, Engagement Officer (PROW Definitive Map)
Jaci Harris, Asset Data Officer
Daniel Marshall, Asset Data Technician
Joanne Bolton, Democratic Services Adviser

17. MINUTES

Resolved

That the minutes of the previous meeting held on 7 June 2021 be approved as a correct record.

18. DECLARATIONS OF INTEREST

18.1 No declarations of interest were made.

18.2 At this juncture, Cllr David Willingham informed the Committee that he had undertaken an informal site visit on Sunday 3 October 2021.

19. PUBLIC QUESTIONS ON APPLICATION(S)

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

20. MEMBERS QUESTIONS ON APPLICATION(S)

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

21. APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER FOR AN ADDITIONAL LENGTH OF PUBLIC FOOTPATH, LECKHAMPTON HILL (ROAD C377) TO FOOTPATH CHL 18 / ASH 42, PARISH OF LECKHAMPTON

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

- 21.1 Andrew Houldey, 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 has been uploaded to the Council's website.)*
- 21.2 The Committee considered the application for a Definitive Map Modification Order (DMMO) for an addition length of public footpath Leckhampton Hill (Road C377) to footpath CHL 18 / ASH 42, in the parish of Leckhampton. The claimed route was shown running between points A and B, on the Plan attached at Appendix 1B to the report. The route was approximately 35 metres in length.
- 21.3 The Committee was informed that the path formed a shortcut from the road known as Leckhampton Hill west to the public footpath ASH 42 / CHL 18 which ran roughly north-south along the course of the former Leckhampton Quarry tramway. Point B of the claimed route was on the class 3 road C377 known as Leckhampton Hill, and was almost opposite the entrance to Underhill Avenue. At point A the claimed route joined the public footpath along the old tramway. Directly to the west of point A there was a stile giving access to the fields west of the public footpath ASH 42 / CHL 18. The stile did not form part of the claimed route but was referred to in the user evidence statements as forming part of a longer walk to Leckhampton Church.
- 21.4 The Asset Data Officer explained that the claimed route was inspected on 30 July 2020 with the permission of (and accompanied by) the landowner. The line of the path was distinguishable by a bare earthen surface, approximately 1.5 metres in width in the middle section, but approximately 1 metre in width towards points A and B. There were no structures or boundary features at either point A or B. The path between points A and B crossed a small piece of woodland. At point B the path emerged through shrubs onto the road close to a speed restriction road sign. The claimed path was obstructed at each end by brushwood, branches and barbed wire.
- 21.5 In response to a question, the Asset Data Officer clarified that there was no public right of way over the fields beyond the stile located directly to the west of point A.
- 21.6 In response to a question, the Asset Data Officer explained that the county council as the Highway Authority was under a statutory duty to maintain the highways for which it was responsible. The law on whether the Highway Authority was liable for damages in respect of claims resulting from people being injured using a public right of way through woodland, was complex and would be dependent on the facts of each individual case. If an order was made to add the claimed route to the Definitive Map then the route would be made as safe as possible for public use, with the branches and barbed wire being cleared.
- 21.7 Cllr David Willingham explained that when he walked the route, he had noted that it was very narrow and overgrown in certain parts, which was not unexpected of a path in that setting. He had noted that the sign which stated '*Private Land No Public Access or Right of Way*' was so high up on a tree, that it was out of the natural scope of vision, and had he not already been aware of its existence, he

would not have seen it. He also noted that it looked to be a relatively new sign, given that it was clear of the green algae which was affecting the nearby speed restriction road sign. He questioned whether the sign could be considered as the landowner taking reasonable steps to deter people from using the path. In response, the Asset Data Officer explained that in order for the erection of a sign to be considered an overt act on the part of the landowner to show the public at large that he had no intention to dedicate, it would need to be clear, legible, suitability worded, and positioned so that it could be easily seen. However, the sign was too high up to be clearly visible, and in addition, it could be implied that it was erected after the application for a DMMO was submitted, given that none of the users of the claimed path had stated that there were signs or notices to deter access.

- 21.8 In response to a question, the Asset Data Officer clarified that prior to April 2020 none of the users of the claimed path had been challenged in their use of the path or given permission at any time to use the path.
- 21.9 In response to a question, the Asset Data Officer explained that the fact that the claimed route at point B led directly onto a public highway with no pavement, would not preclude the route from being added to the Definitive Map. The route's suitability and safety were not factors that were to be taken into consideration by the Committee in determining the application. The Committee must only consider the evidence detailed in the report to determine whether it met the legal test of whether a right of way subsisted or could be reasonably alleged to subsist.
- 21.10 The Asset Data Officer informed the Committee that there were two possible dates of challenge: firstly, when work was undertaken to clear the site on 17 April 2020, felled trees were left in place with the expressed aim of preventing use and path users were turned away by the landowner and told that the path was not a public right of way. Secondly, in July 2020, when the path was obstructed at each end by the landowner or their agents, with brushwood, branches and barbed wire. He explained that in either case, the relevant period for the purpose of section 31(1) of the 1980 Highways Act was 2000 to 2020; however, as the actions of physically blocking the path and confronting path users in April 2020 had led directly to the submission of the application, it should be considered that April 2020 was the date of the bringing into question.
- 21.11 The Asset Data Officer informed the Committee that there were six witnesses who had used the path for the full twenty year period, one who used it from 1976 to 2011 and two who used it between 2010 and 2020. Use dated back to 1965 - a period of 55 years. He explained that the landowner had asserted that where the witnesses had ticked all of the boxes on the form to say that use was daily, weekly, every few months and once a year, then the least frequent occurrence should be considered, but that interpretation, although ingenious, did not seem to be consistent with the evidence supplied.
- 21.12 The Committee was informed that there was no statutory minimum level of user required to show sufficient use to raise a presumption of dedication. Use should have been by a sufficient number of people to show that it was use by 'the public'. When applying the relevant case law, the number of users must be such as might

reasonably have been expected, if the way had been unquestionably a public highway. It was generally applicable that in remote areas the amount of use of a way may be less than a way in an urban area.

- 21.13 The Asset Data Officer reported that there were seven sets of use covering the entire 20 years of the relevant period. Given that the claimed path was a local short cut to join the well-used footpath along the old tramway, its use was considered to be sufficient to raise a presumption of dedication, when applying the relevant case law.
- 21.14 The Asset Data Officer explained that if the Committee recommended that an order be made to add the claimed route to the Definitive Map, this would only be the first stage in the process of confirming the order. The next stage would consist of the proposed order being advertised, at which point objections could be raised, including by the landowner. If there were any objections to the order being made which were not withdrawn, then it could only be determined by an Inspector appointed by the Secretary of State, who may hold a local public inquiry before reaching a decision. At any public inquiry there would be cross examination of the users' evidence.
- 21.15 The Committee was informed that the public path user evidence forms had recently been revised, so that they were now more substantial and the questions more in-depth, to draw out as much evidence as possible from the users of the claimed route. They also now had a statement of truth included to bring them into line with the requirements for statements filed in civil proceedings. The statement of truth sought to ensure that it was clear to the users, when filling in the forms, that they must be completed honestly and truthfully.
- 21.16 Having considered all of the information before it, the Committee

Resolved

That an order be made to add a length of public footpath to the Definitive Map and Statement between points A and B (as shown on map 1B)

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

- 22.1 Two questions had been received. A copy of the questions and answers had been circulated and uploaded to the Council's website.
- 22.2 The Committee noted the questions and answers.

23. 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.

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

CHAIR

Meeting concluded at 10.45 am