

COMMONS AND RIGHTS OF WAY COMMITTEE

MINUTES of a meeting of the Commons and Rights of Way Committee held on Thursday 2 December 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)	

Officers: Liz Kirkham, Highways Operation Manager
Andrew Houldey, Asset Data Officer (PROW Definitive Map)
Jaci Harris, Asset Data Officer (PROW Definitive Map)
Daniel Marshall, Asset Data Technician
Joanne Bolton, Democratic Services Adviser

Apologies: Cllr Alex Hegenbarth and Cllr Dominic Morris

24. DECLARATIONS OF INTEREST

No declarations of interest were made.

At this juncture, Cllr David Willingham informed the Committee that he had undertaken an informal site visit on Sunday 28 November 2021.

25. MINUTES

Resolved

That the minutes of the previous meeting held on 5 October 2021 be approved as a correct record.

26. PUBLIC QUESTIONS ON APPLICATION(S)

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

27. MEMBERS QUESTIONS ON APPLICATION(S)

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

28. APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER FOR AN ADDITIONAL LENGTH OF PUBLIC FOOTPATH CRAWLEY HILL TO BATH ROAD, PARISHES OF ULEY AND NYMPFIELD

28.1 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.)*

- 28.2 The Committee considered the application for a Definitive Map Modification Order (DMMO) for an additional length of public footpath connecting Crawley Hill to Bath Road in the parishes of Uley and Nympsfield. The claimed route was shown running between points A and B, on the Plan attached at Appendix GCC2 to the report. The Committee was informed that the route commenced at its junction with Crawley Hill at Ordnance Survey Grid Reference (OSGR) ST 7919 / 9993 and shown as point A. It ran in a generally north-easterly direction for approximately 657 metres to its junction with Bath Road at (OSGR) SO 7971/ 0034 shown as point B.
- 28.3 The Asset Data Officer informed members of the documentary evidence relevant to this application. He explained that the claimed way was shown on commercial maps produced by Isaac Taylor (1777), Carey (1794) Smith (1804), Dix (1816) and Greenwood (1824) in a manner consistent with other known highways, and that it was identified in the key to the 1794, 1804, 1816 and 1824 maps as a cross road. This was indicative of the way at that time carrying public carriageway rights. Prior to the construction of the turnpike roads the claimed way formed the only link between the villages of Nympsfield and Uley. It was shown in a manner consistent with other known highways on the Ordnance Survey Surveyor's Plan of 1825-28 and the first edition one inch to the mile map of 1830.
- 28.4 He informed the Committee that the way was not created or constructed as a turnpike road, but its usefulness as a through route was linked to the roads which came into being around it in 1758 and 1821. Prior to the construction of the turnpike from the top of Frocester Hill to Uley c.1822 it formed the only direct road link between the two villages of Nympsfield and Uley. With the construction of the turnpike road bypassing Nympsfield village and that from Frocester Hill to the Freezes and then to Uley, it was of less importance. There was no evidence that it was legally stopped up as part of the turnpike process.
- 28.5 The Committee was informed that Tithe Maps and Apportionments showed the difference between tithable and untithable land. Their purpose was not to show rights of way and hence they were not conclusive evidence, but as Tithe Commutation was an impartial public process carried out under statutory authority and subject to appeal, the records should be given appropriate weight and considered alongside the other evidence.
- 28.6 The Committee noted that the claimed way passed through the parishes of Uley, Owlpen and Nympsfield. Consequently, there were three separate Tithe maps and apportionments to consider as evidence. The Asset Data Officer explained that the annotation "to Nympsfield" on the Uley map and "Bridle Road to Nympsfield" on the Owlpen map, showed that it was a through route and was presumably public. It was not in the nature of private roads to be thoroughfares from one village to another; private roads existed, and exist, to give access to the lands they led to and abutted. If the three Tithe maps were pieced together they showed a continuous

route connecting to known public carriageways at each end, distinct from the adjoining lands.

- 28.7 The Committee was informed that the Ducie Estate map of 1846, based on the Nympsfield Tithe map, showed the way as being separate from the parcels which it crossed and outside of the estate boundary.
- 28.9 The Committee was informed that the claimed way was shown on the Ordnance Survey map of 1884 as a physical feature; however, it was not shown on subsequent large scale mapping from 1902 onwards. It was not shown as separate from the hereditament land it crossed on the 1910 Finance Act map.
- 28.10 The Asset Data Officer indicated that the route formed an important part of the local road network up until the mid-19th century, being the most direct route between the villages of Nympsfield and Uley. Since then the way had gradually fallen into disuse as a carriageway, as better and more convenient routes initially created as turnpike roads had come into being.
- 28.11 It was reported that the path was initially claimed by Nympsfield Parish Council as part of their parish submission under the 1949 National Parks and Access to the Countryside Act and was shown on their submission map. However, for unknown reasons the path was not added to the draft map. The path was also shown by a faint red line on the Uley submission.
- 28.12 The Asset Data Officer explained that Nympsfield Parish Council did not accept its omission from the Draft Map, and he referred to the correspondence from 1953 to 1975 between the parish and the county as they sought to have it included on the map. On 27 November 1953 Uley Parish Council had agreed to the path being added to the Draft Map. Despite this it was not shown on the Draft Map. The Parish Council further wrote in 1966 seeking to have the path added at the Provisional stage. Subsequent correspondence indicated that the County Council stated that the path would be included in the five yearly review of the definitive map (July and August 1969). Further requests were made to add the path in March 1970, September and November 1973, February and March 1974 and March 1975.
- 28.13 The Asset Data Officer explained that the Five Year review of Gloucestershire's Definitive Map, as required under the Countryside Act 1968, never took place as the Definitive Map was not concluded until after 1981 by which time the Wildlife and Countryside Act 1981 introduced different procedures for modifying the Definitive Map. Thus no further action was taken with regard to the claimed path until receipt of the application.
- 28.14 The Asset Data Officer drew members' attention to the summary of the user evidence forms (UEFs) at appendix GCC 4. He reported that the application was supported by four UEFs, completed by four individuals. The use as evidenced by the forms dated back to 1930. All four witnesses claimed use of the path on foot over a period of 20 years. Two of the statements, although evidencing public use over a period of 20 years, also indicated that the landowner demonstrated his lack of intention to dedicate the path by erecting a barbed wire fence and also a wall

across the path to prevent access and that the barbed wire was strengthened after it was removed. Those actions could for the purpose of Section 31 of the Highway Act 1980 constitute the date that the public's right to use the path was challenged and interruptions capable of rebutting the claim.

- 28.15 The Asset Data Officer explained that the report before the Committee had not sought to establish exactly when and for how long the barbed wire fence and wall were in place across the claimed way because the user evidence supplied in support of the application was considered to be insufficient in itself to support a claim of presumed dedication (as demonstrated by case law *R.v.SSETR (ex p. Dorset) 1999*).
- 28.16 The Asset Data Officer reported that the 2006 Natural Environment and Rural Communities (NERC) Act sought to limit the use of motor vehicles in the countryside. Subsection 67(1) of NERC extinguished unrecorded public motor vehicular rights over all highways except those shown on the Definitive Map as a byway open to all traffic (BOAT). Subsection 67(2) introduced a series of exceptions to protect certain highways from such extinction. He drew members' attention to the exceptions outlined in Subsection 67(2) as listed in the report, and confirmed that exceptions (b), (c), (d) and (e) did not apply. In regards to the two-part test in Subsection 67(2)(a), main lawful use meant that the way had to firstly carry a public vehicular right as of 2 May 2006 and secondly that the main use of the way between 2001 and 2006 was by motor vehicle (as opposed to other categories of user such as walkers, cyclists, horse riders and horse-drawn vehicles). Motor vehicular use in itself would not preserve the right - such use had to be greater than the other uses. He emphasised that as there was no evidence of any use between 2001 and 2006 then this exception to extinguishment of unrecorded public motor vehicular rights was not considered to be met either.
- 28.17 The Asset Data officer informed the Committee that the officer recommendation was that the way be shown on the Definitive Map as a restricted byway rather than a public footpath as claimed. In response to a question, he explained that this was due to the documentary evidence which was consistent in showing the way as a cross road and as part of the ordinary roads network in the late 18th century and early 19th century and the depiction of the way as a highway on all three Tithe maps in 1837-40.
- 28.18 The Committee noted that the category of restricted byway was introduced in 2006 and allowed the public to walk, lead or ride a horse or to use a non-mechanically propelled vehicle, such as a bicycle or horse and cart. A restricted byway did not carry a public motor vehicular right.
- 28.19 In response to a question, the Asset Data Officer explained that if the claimed way was shown to have been public at any time in the past, the public's rights would still exist today (in the absence of a stopping-up or diversion order). Simple disuse of a right of way did not mean that the right no longer existed, just that the right was not being exercised. The principle was "Once a highway, always a highway". He added that if it could be inferred from the documentary evidence alone that the right of way subsisted or was reasonably alleged to subsist over the claimed route, then

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

it was not necessary to also have sufficient user evidence to support a claim of presumed dedication.

28.20 Cllr David Willingham described to members the observations he had made during his site visit to view the claimed way. He explained that in his opinion, the evidence of the claimed way he had seen on the ground, correlated with the documentary evidence detailed in the report.

28.21 Members of the Committee expressed their thanks to the officers for the detailed report and acknowledged the level of research undertaken in order to provide the Committee with information on the supporting documentary evidence, which was felt to be compelling in its entirety.

28.22 Having considered all of the information before it, the Committee

Resolved that

(1) That no 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 GCC 2);

(2) That an order be made to add a length of restricted byway to the Definitive Map and Statement between points A and B.

29. 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.

30. 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 11.32 am