

COMMONS AND RIGHTS OF WAY COMMITTEE

MINUTES of a meeting of the Commons and Rights of Way Committee held on Tuesday 3 October 2023 at the Council Chamber - Shire Hall, Gloucester.

PRESENT:

Cllr Alex Hegenbarth	Cllr Roger Whyborn
Cllr Beki Hoyland (Vice-Chair)	Cllr Dr David Willingham
Cllr Graham Morgan (Chair)	Cllr Terry Hale

Substitutes: Cllr Susan Williams

Apologies: Cllr Vernon Smith, Cllr Mark MacKenzie-Charrington and Cllr Robert Vines

1. MINUTES

Resolved

That the minutes of the previous meeting held on 6 June 2023 be approved as a correct record.

2. DECLARATIONS OF INTEREST

At this juncture, Cllr Beki Hoyland informed the meeting that the claimed route in regard to agenda item 7 was located within the division that she represented.

Cllr Terry Hale informed the meeting that the claimed route in regard to agenda item 8 was located within the division that he represented.

At this juncture, Cllr Dr David Willingham reported that he had undertaken an independent informal site visit on Saturday 30 September 2023.

3. PUBLIC QUESTIONS ON APPLICATION(S)

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

4. MEMBER QUESTIONS ON APPLICATION(S)

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

5. 573/11/141(6)) - APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO ADD A LENGTH OF PUBLIC FOOTPATH IN LOWER LYDBROOK, LYDBROOK PARISH, GLOUCESTERSHIRE

5.1 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 has been uploaded to the Council's website.)*

- 5.2 The Committee considered the application for a Definitive Map Modification Order (DMMO) to add a length of public footpath in Lower Lydbrook, Lydbrook Parish, Gloucestershire. On the Plan attached at Appendix JH2 to the report, the application route was identified by a black broken line between points A-B.
- 5.3 The Committee was informed that the claimed way commenced at the boundary with the Statutory Forest at the junction of Public Footpath RLY12 adjacent to the property Colliers Cottage at a point marked A on Appendix JH2, and continued in a southerly direction for approximately 218m along the line of the dis-used railway to the junction of Public Footpath RLY17.
- 5.4 The Asset Data officer explained that as part of the consultation process carried out in 2022, the landowner, Mr L Jones responded by email of 30 August 2023; "After consideration, we formerly object to the footpath amendment request from points A to B due to the fact that there is already an existing footpath linking RLY12 to RLY17 to few meters to the East". Footpath RLY12 although running in parallel to the claimed route was different in character and at its narrowest point it was approximately 10m and at its widest point approximately 20m.
- 5.5 The Asset Data Officer explained that the DMMO application was submitted by Lydbrook Parish Council on 26 February 2001. Members should note however that the application route was part of a claim for an additional public footpath made by Dr Cahn in February 1984. On the Plan attached at Appendix JH3 to the report, the original 1984 claim was shown comprising sections: A-F & G-F. On 19 March 1986, the Commons and Rights of Way Sub-Committee determined that no order be made due to the insufficiency of the evidence. There was no proven 20 years of uninterrupted user since the railway became inoperative in 1960.
- 5.6 The Committee noted that the Applicant appealed the decision to the Secretary of State and asked that he consider the claim in smaller individual sections. This request was rejected, the Inspector preferring to examine the entire length of the claimed route as one entity. He did concede however that the spur route from Bayhead to the Church: G-F (highlighted pink on Appendix JH3), was different in nature. He considered that there was sufficient evidence of use at common law of the spur route and directed the County Council to make an order for it. This was confirmed and added to the Definitive Map as Public Footpath RLY39. Members noted the reasons why the Secretary of State dismissed the appeal of the main application route A-F.
- 5.7 The Asset Data Officer reported that Lydbrook Parish Council made three further applications for smaller individual sections of the claimed route. The first of the smaller individual routes B-C, subject to an application dated 5 June 1998 and shown yellow on appendix JH3, was determined by the Commons and Rights of Way Sub-Committee, that an Order be made to add this section of route to the Definitive Map. The Order was made on 16 March 2004 and objections were received. This was now waiting to be considered by the Secretary of State.

- 5.8 The second of the smaller individual routes C-F, subject to an application dated 26 July 2006 and shown orange on Appendix JH3, was rejected by the Commons and Rights of Way Sub-Committee. Insufficient evidence of use was considered to exist. Lydbrook Parish Council appealed but this was in turn refused by the Secretary of State on the grounds that the appeal was invalid. The third, coloured blue, on Appendix JH3, was the subject of the Committee's determination.
- 5.9 The Committee was informed that with regard to documentary evidence, no evidence had been found which suggested that the claimed route existed prior to the creation of the 'Lydbrook Lydney Railway' (tram road) in 1809. Part of the application route crossed Crown land for which a permissive right on foot existed. However, both the Crown and British Rail sold their freehold interests in the land over which the application route crossed in 1973 at which point a statutory claim of presumed dedication could arise.
- 5.10 The Asset Data Officer explained that the user evidence would be assessed over the 20-year period 1981- 2001 leading up to the application. The application would be analysed under this statutory test as opposed to common law because the user evidence post-dated the disposal of interest by the Forestry Commission (Crown) and British Rail in the land crossed by the application route in 1973.
- 5.11 The Asset Data Officer drew members' attention to Section 9 of the report which set out the analysis of the user evidence. She reported that 15 Public Path Evidence Forms ("PPEFs") were completed by 15 individual members of the public in support of this application dating back to 1923 claiming a public footpath. All 15 individuals claimed use of the path over part or all of the 20-year qualifying period under analysis. She advised that the user evidence would be sufficient for a presumption of dedication of a public footpath.
- 5.12 Members were informed that whilst the landowner had objected to the application for the claimed route to be added to the Definitive Map as part of his consultation response, he had not submitted any evidence whether physical or verbal, including evidence of any overt actions to challenge the public's use of the route, or which would demonstrate his lack of intention to dedicate it. None of the 15 individuals who had submitted PPEFs had mentioned any physical or verbal obstruction to their use of the path.
- 5.13 The Asset Data Officer explained that the provisions of the Highways Act 1959, meant that rights of way created by deemed dedication after this Act came into force, would not give rise to them becoming a highway maintainable at the public expense. Therefore, if the Committee considered that highway rights subsisted or were reasonably alleged to subsist resulting in the direction that an Order should be made to add the claimed route to the Definitive Map, it would be recorded as not being publicly maintainable because the statutory presumption of dedication took place post 1959 when criteria for ways proposed to be adopted as publicly maintainable was introduced.

- 5.14 Members were directed to note that Section 36 of the 1980 Highways Act (which replaced the 1959 Act) set out specific categories of way as being automatically publicly maintainable. The claimed route did not fit into any of the categories and that the majority of evidence, must be disregarded prior to 1960 whilst the railway was operational. There was no evidence of maintenance carried out by the highway authority and the route was not claimed during the 1949 process of compiling the Definitive Map.
- 5.15 The Asset Data Officer concluded her presentation by advising the Committee that the original application made in 1984 failed due to insufficient user evidence. The present application formed part of the original 1984 application, and now a number of years later was considered to be supported by sufficient evidence of use post the disposal of the land affecting the claimed route in 1973 by British Rail and the Forestry Commission (Crown). In her view, it was submitted therefore, that this route subsisted along section A-B and must now be protected by being recognised on the Definitive Map as a public footpath.
- 5.16 Cllr Dr David Willingham commented that based on his observations during his site visit, only the handrail to the steps could present as an impediment to access. However, he felt that people would be able to duck underneath the handrail to gain access. In response, the Asset Data Officer explained that this would not prevent the claimed route being dedicated on the Definitive Map. However, if the Committee did direct that an Order be made to record the route on the Definitive Map, once the Order was confirmed, the County Council would most likely remove that section of handrail.
- 5.17 Cllr Dr David Willingham reported that on his site visit he had been able to see the line of where people had been walking along the route. He had spoken to people who were using the route to walk their dogs, and they were of the view that the path was already a public right of way. He commented that there was no signage or barriers to imply that access was not permitted. He felt that given the claimed route was a former railway line, it could have been considered that the route carried higher rights. However, he saw no evidence of this, as the width of the path was too narrow for even cyclists to use.
- 5.18 In response, the Asset Data Officer reported that the claimed route could be made wider than it was currently by removing some of the scrub. This would be looked at if the Committee resolved that an Order should be made to add the route to the Definitive Map. She pointed out that the user evidence had only recorded use on foot, and therefore there was no evidence to indicate that higher rights existed.
- 5.19 In response to a question, the Asset Data Officer explained that some paths were publicly maintainable by the Council as the local Highway Authority, some were maintainable by the landowner, and for some paths there was no clear indication of where responsibility lay in respect of maintenance. In regard to the claimed route, whilst it would not be publicly maintainable, if any safety issues became apparent, then the Highway Authority would take action to make the path safe; however, this was different to any on-going maintenance of the route. The maintenance responsibility for rights of way recorded on the Definitive Map was shared between

the landowner and the Highway Authority. The landowner would automatically become responsible for maintaining the stiles and gates along the path across their land and maintaining any overhanging growth of the tree canopy.

- 5.20 One member questioned whether the stile on the claimed route could be made more accessible and user friendly. In response, the Asset Data Officer explained that there was on-going dialog between the Public Rights of Way Team and landowners around moving away from restrictive structures on rights of way and installing much more accessible structures such as kissing gates. However, the legislation did not prevent landowners from installing stiles, and therefore the Public Rights of Way Team could only make suggestions and try and negotiate with the landowners to install accessible structures.
- 5.21 Members of the Committee considered all the evidence, it was proposed, seconded and

Resolved

That a length of public footpath be added to the Definitive Map of Public Rights of Way between points A-B.

- 6. 573/11/159(1) - APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO ADD A LENGTH OF PUBLIC FOOTPATH IN WESTBURY ON SEVERN & NEWNHAM PARISHES, GLOUCESTERSHIRE**
- 6.1 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 has been uploaded to the Council's website.)
- 6.2 The Committee considered the application for a Definitive Map Modification Order (DMMO) to add a length of public footpath in Westbury on Severn & Newnham Parishes, Gloucestershire. The application was submitted by the Newnham Riverside Path Group on 4 April 2022. The claimed way connected Severn Terrace, Newnham, to the White Hart Inn at Broadoak, Westbury on Severn, and was identified by a black broken line and marked A-B-C on the plan attached at Appendix JH2 to the report. The Applicant subsequently requested that the claimed way be amended to exclude the section across the White Hart Inn at Broadoak, Westbury on Severn. A plan showing the amended application route A-B was held at appendix JH3.
- 6.3 The Asset Data Officer emphasised to the Committee that the process of determining the application would be based solely on the discovery of either user or documentary evidence, and the analysis of that evidence. She explained that a total of 48 User Evidence Forms (UEFs) were completed by 48 individual members of the public in support of this application, dating back to 1947. All of those individuals supplied maps and described the route that they used. There was sufficient user evidence in terms of quantity of individuals using the whole of the application route (A-B-C), to warrant an investigation into the route in its entirety.

- 6.4 Members were informed that part of the claimed route crossed, in two very short sections, Crown land; as the Highways Act 1980 did not bind the Crown, the evidence supplied in support of the application could not be considered under the statutory test (Section 31 of the Highways Act 1980) and would instead be considered under common law.
- 6.5 The Asset Data officer explained that the route commenced at the junction of Severn Terrace and Church Road at a point marked A on the Plan JH2. Notices, fixed to a wall and fence on each side of this private road stated "Pedestrians Only– No unauthorised vehicles". The route ran along Severn Terrace for approximately 55 metres, the first 34 metres of which was comprised of uneven tarmac which then became scrub. The application route turned in a southerly direction for approximately 52 metres before turning back on itself and passing through overgrown grass and scrub for approximately 300m. The route then proceeded along an embankment where the first 50m had a loose tarmac surface adjacent to Newnham Car Park & Toilets (maintained by Forest of Dean District Council, although the land was unregistered). An outfall sluice, controlling the discharge of water from Whetstones Brook into the River Severn and crossing a short area of Crown land, was located under the application route at this point. The pipe was maintained by the Environment Agency, by virtue of a Deed of Grant executed in 1990 between the Crown Estate and the Environment Agency's predecessor, the National Rivers Authority.
- 6.6 Members were informed that the next 200m or so of the claimed route was well maintained by Newnham Parish Council. This section of the route was the subject of a 1924 conveyance which granted a private right to individuals living within the area of Newnham Urban District Council to use the land over which the application route crossed as a promenade. It was not binding on successors in title and one shilling was paid annually on the 1 April for the conferred rights.
- 6.7 Members were advised to note that part of the application route, (identified by green hashed lines within a red outline) was designated on 10 June 1977 as a village green (VG20) under section 6(2) of the Commons Registration Act 1965; for the purpose of lawful sports and pastimes which would include organised or ad-hoc games, picnics, fetes, and similar activities.
- 6.8 It was reported that the next 600m or so of the claimed route was very overgrown, with short sections of boardwalk covered in wire netting. The Applicant had advised that Newnham Parish Council carried out some maintenance of this section. The section of application route leading to the boundary of the White Hart Inn overflow car park, comprised an embankment which was maintained by the Environment Agency. Another outfall sluice crossing Crown land was located under the application route, immediately before the car park. This area of land shown as point B on the Plan, was the termination point for the amended application route.
- 6.9 However, the original application route continued past the White Hart Inn and across the northernmost car park. The termination point of the claimed route was at its junction with the A48 highway identified as point C on the Plan.

- 6.10 The Asset Data Officer informed the Committee that the claimed route in its entirety, ran above the historic line of foreshore, (the body of water between the high and low water mark of ordinary tides) of the tidal River Severn. The first Ordnance Survey maps however, showed that historically sections of this route would have crossed land designated as foreshore. Case law, *Blundell v Catterall* 1821, ruled that there was no lawful public right of access over the foreshore of a tidal river because it belonged to the tidal owner, the Crown (unless sold off, or the right had been expressly dedicated) and it further suggested that rights could not be gained by statute or common law, through long use.
- 6.11 The Asset Data Officer informed members that she had contacted the Crown Estate to ask whether they considered the two areas of land in their ownership, to retain the designation of 'foreshore'. The Crown Estate Asset Manager (Coastal) had responded by email in February 2023, stating that: "The foreshore doesn't extend underneath the footpath. However, there are two pieces of land where the outfalls are located that are still in the ownership of The Crown Estate." Dedication of the application route in its entirety, was not therefore considered to be defeated by foreshore.
- 6.12 She explained that for the purposes of the analysis of the user evidence, the date of the Deed of Grant executed in 1990, between the Crown Estate and the Environment Agency provided a date from which it could be inferred that the outfall sluices were no longer considered by the landowner, the Crown Estate, to be foreshore, and therefore could be taken to be the date that the Crown Estate as owners of the land no longer considered it to be affected by the foreshore.
- 6.13 The Asset Data Officer drew members' attention to Section 9 of the report which set out the analysis of the user evidence. She explained that the analysis of the 48 UEFs completed by 48 individual members of the public in support of this application, was considered over a 32-year timeframe from 1990 (Deed of Grant) to 2022 (the date of the application). This would have the effect of removing the evidence of two individuals whose use ceased prior to 1990.
- 6.14 The Asset Data Officer reported that the application route had been used mainly for the purpose of recreation, accessing the café & White Hart Inn and dog walking. All 46 individuals claimed use of the route on foot, but 3 individuals also claimed use of the route by bicycle. By applying case law set out in the Dorset case of 1999, the evidence supplied by the 3 individuals of bicycle use along the application route was insufficient to infer dedication of bridleway or restricted byway.
- 6.15 The Asset Data Officer explained that for a claim to give rise to an inference of dedication at common law, user must be without force, secrecy, or permission. Use that complied with those three requirements was termed user 'as of right'. There was no evidence of use by force or secrecy. However, there were various issues relating to use by permission. The first was the 1924 license granting a private right to individuals living within the area of Newnham Urban District Council to use the land over which the application route crossed as a promenade. For those individuals, this could constitute use by permission, or 'by right' and could prevent

dedication. This application, however, was to add a public footpath for the benefit of the 'public at large'.

- 6.16 She explained that a landowner must show sufficient overt evidence of his lack of intention to dedicate, it must be contemporaneous, and it must have been brought to the attention of those people concerned with using the way. Responses to 3 questions in the UEFs which were included to identify any use by permission, suggested that the 1924 license was not in the public domain and that individuals, whether living within the boundary of Newnham Urban District Council, or not, were unaware of it. As a result, when applying the relevant case law set out in the case of *Fairey v Southampton County Council 1956*, it was considered that the license would be insufficiently overt to rebut the claim.
- 6.17 The Committee was informed that the second issue of permission was the express permission granted to Mrs Ford in 2020 by individuals claiming riparian ownership of sections of the claimed route. This would constitute use 'by right', not 'as of right'. However, use prior to Mrs Ford being granted permission to use the path would be 'as of right' and could be considered as part of the analysis. The one year of use between 2020-2021 however, would be use by permission or 'by right' and as such had been removed from the analysis.
- 6.18 The third issue of permission was the registration under section 6(2) of the Commons Registration Act 1965: Register of Town and Village Greens, on 10 June 1977, of the area of land between Hawkins Pill and Newnham Car Park as a village green, for the purpose of lawful sports and pastimes which would include organised or ad-hoc games, picnics, fetes, and similar activities. Any such use would operate as a conditional permission to use the land and as such prevent presumed dedication under Section 31 Highways Act 1980. However, use of the claimed routes for reasons other than for 'lawful sports and pastimes' could succeed. By applying the case law, set out in the *Billson* case from 1998, Sullivan J, held that if the route subject to the application was deemed to have been used, not for the purpose of lawful sports and pastimes but to travel along a defined route between two highways, then this use could be considered capable of satisfying a claim.
- 6.19 The Asset Data Officer advised that another requirement for a claim of dedication was that the route had to start and end at a highway or a place of popular resort. Public user could not give rise to an inference of dedication if it did not. 28 individuals submitted a plan without an accepted termination point along the claimed route.
- 6.20 At this juncture, the Asset Data Officer handed out 9 plans which provided members with a sample of the plans which had been submitted with the UEFs. She explained that the 9 plans illustrated that various termination points had been included on the plans submitted. The various termination points could constitute 'wandering at will'. Wandering at will (roaming) over an area, just like the foreshore (*Dyfed CC v SSW 1989*), could not establish a public right.
- 6.21 The Committee was informed that the fourth issue of permission was in regard to the 6 individuals who had marked their termination point as the White Hart Inn. If

visiting the establishment for refreshment, this would constitute use 'by invitation', acting as a conditional permission to use the land and as such prevent inferred dedication.

- 6.22 The Asset Data Officer explained that she had contacted the Applicant regarding the northern termination point shortly after the Application was received. She drew members attention to the correspondence received from the Applicant as detailed at paragraph 9.21-9.22 of the report. The Applicant had subsequently decided that the northern termination point of the claimed route should be the A48 at the boundary of the White Hart Inn overspill car park (as shown at point B in the Plan at JH3). In light of the Applicant's responses, an email was sent in June 2023 to all individuals who had submitted user evidence to clarify the claimed termination points as shown on the submitted plans. As a result, 33 of the 46 individuals considered that the termination point should stop short of the White Hart Inn at the A48 pavement, essentially agreeing to the amended application plan JH3. 1 individual confirmed his termination point to be the first car park exit within the White Hart Inn boundary from Newnham and 12 individuals confirmed that their termination point was the A48 beyond the White Hart Inn.
- 6.23 The Asset Data Officer explained that the 12 individuals who walked beyond the White Hart Inn and terminated their use at the A48 highway adjacent to the northern car park (point C), illustrated the fifth issue of permission. Consideration had to be given to whether the owner or the tenant were capable of distinguishing between visitors to the White Hart Inn who would have been there 'by permission or invitation' i.e. 'by right' as opposed to users of the application route 'as of right'. She referred to the relevant case law and explained that at this location, where there was a pavement alongside the A48 highway, abutting the frontage of the Inn, albeit narrow, it would be almost impossible for the landowner/ tenant to distinguish between permitted use of his facilities, i.e. 'by right', by 12 individuals crossing his property, as opposed to use of a route across his land in a manner of a highway; 'as of right'. As a result, it was considered that in terms of sufficiency, use by 12 individuals in this location, would not be enough to infer dedication across the boundary of the White Hart Inn.
- 6.24 The Asset Data Officer advised the Committee that following analysis of the various issues concerning permission, in her view, the test of user being 'as of right' without force secrecy or permission, was satisfied.
- 6.25 The Committee was informed that a further requirement for a claim of dedication was that use should be 'without interruption'. Three individuals had noted in their evidence that their use of the section of application route between Severn Terrace and Newnham Car Park was interrupted on some days due to flooding.
- 6.26 The Asset Data Officer drew the Committee's attention to the comments outlined in the report, made by Mr Puttuck who claimed riparian ownership of the section of application route adjacent to his property since 2008, and the comments made by Mr. Dickie, who similarly claimed riparian ownership of the section of application route adjacent to his property since 1993. She explained that the issue of land being covered by water would not preclude a claim as Section 31(11) Highways Act

1980 included land 'covered with water' (e.g., causeways/ fords), when detailing the process of statutory dedication. Only 3 individuals who submitted evidence of use noted that on some days the route was inaccessible. Although considering this application at common law for which there was no minimum period of time required for use, this did not stop 31 members of the public claiming use of this section of route for a period of over 30 years (back to 1990). There was also no evidence to suggest that the fencing referred to by Mr Puttock was installed to prevent public access and none of the individuals claiming use of the route mentioned it. The route was inspected by officers in 2021 and 2023 and was found to be overgrown but not inaccessible. It should be noted however, that the Wildlife and Countryside Act 1981 was concerned with ascertaining the existence of highway rights and did not allow factors such as the suitability of the way to be considered. She added that a landowner who did not wish to dedicate a way as a highway, must make it clear to members of the public using it, as was the case with Mrs Ford in 2020. Tacit (unspoken/implied) permission was insufficient.

- 6.27 The Asset Data Officer advised the Committee that in her view the test of use being without interruption was satisfied.
- 6.28 The Asset Data Officer explained that if the Committee considered that highway rights subsisted or were reasonably alleged to subsist resulting in the direction that an Order should be made to add the claimed route to the Definitive Map, it would be recorded as not being publicly maintainable because the statutory presumption of dedication took place post 1959 when criteria for ways proposed to be adopted as publicly maintainable was introduced.
- 6.29 The Asset Data Officer concluded her presentation by advising the Committee that the analysis of the 46 UEFs indicated that the application route was used 'as of right' and without interruption for over 30 years (back to 1990) on foot. No sufficiently overt evidence over this period had been submitted to indicate a challenge to use by the landowner or a lack of intention dedicate it. Upon clarification of the northern termination point of the claimed route, most users accepted the amended application route suggested by the Applicant which removed the section of claimed route across the White Hart Inn from the application. The remaining 12 users whose claimed route crossed the White Hart Inn to the A48 highway were considered, at this location, to be insufficient in quantity to enable the landowner/ tenant of the White Hart Inn to distinguish between members of the public visiting their establishment from those crossing their land in the manner of a highway. In her view it was submitted therefore that the route subsisted along section A-B and must now be protected by being recognised on the Definitive Map as a public footpath. However, on the balance of probability she considered that the amount of public user was insufficient to infer that the application route B-C subsisted as a public footpath.
- 6.30 Cllr Dr David Willingham referred to Appendix JH4E and commented that he had observed during his site visit that the character of the footpath changed, and questioned whether there could be two separate paths and a section of common land. He explained that at termination point B, it appeared that the line people walked continued straight into the car park of the White Hart Inn and to the exit

opposite Redlands Farm, and did not go down the embankment. He felt that this seemed to be more representative of the route individuals would take. He commented that at the location of the 40mph sign, it could be quite difficult to walk down the embankment. By the Applicant amending where the termination point of the claimed route should be, he was concerned that this may have subsequently influenced the user evidence submitted in support of the application.

- 6.31 Cllr Beki Hoyland, explained that she had also walked the route and she was of the view that people would naturally walk up the embankment at the end of the footpath, alongside the river, towards where the public toilets were located. She was aware that people did do this. Cllr Hoyland commented that it was a clearly defined path. She added that the termination point B made sense as just before point B it was easy to get onto the pavement, which was close to the café, she acknowledged however that some people would walk across into the White Hart Inn car park.
- 6.32 In response to Cllr Dr Willingham's comments, the Asset Data Officer acknowledged that there were various points where individuals terminated their walk along the claimed route as outlined in the user evidence. She explained that after receiving the Applicant's decision on where the application route should end, she had contacted all individuals who had submitted user evidence to seek further clarification. She emphasised that it was their user evidence that formed the basis of her report. Only five individuals of the 46 whose user evidence was included in the analysis, had claimed the car park entrance as their termination point. Five was deemed to be insufficient user evidence to support a claim of presumed dedication. She reiterated that 33 of the 46 individuals considered that the termination point should stop short of the White Hart Inn at the A48 pavement, essentially agreeing to the amended application plan JH3. 1 individual confirmed his termination point to be the first car park exit within the White Hart Inn boundary from Newnham and 12 individuals confirmed that their termination point as the A48 beyond the White Hart Inn. This was insufficient in quantity to enable the landowner/ tenant of the White Hart Inn to distinguish between members of the public visiting their establishment from those crossing their land in the manner of a highway. She contended therefore that upon clarification, the user evidence showed that the path being used by members of the public stopped at point B, and this had formed the basis of the recommendation. She pointed out that a member of the public, including the Applicant, could make a DMMO application for another path in this area.
- 6.33 One member questioned whether the termination point at point B was a physically viable exit from the claimed route. In response, the Asset Data officer explained that there was a small section of grass embankment, approximately 2ft in height, and that people would be able to walk up and down it.
- 6.34 Cllr Dr David Willingham commented that based on the responses to his questions at this meeting and taking into account the evidence and applying the balance of probability test, he would be happy to support the officer's recommendation.
- 6.35 Members of the Committee considered all the evidence, it was proposed, seconded and

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

Resolved

- **That no order be made to add a length of public footpath to the Definitive Map of Public Rights of Way between points A-B-C as per the original application.**
- **That an order be made to add a length of public footpath to the Definitive Map of Public Rights of Way between points A-B.**

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

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

8. MEMBER QUESTIONS - ABOUT THE MATTERS WHICH ARE WITHIN THE POWERS AND DUTIES OF THE COMMITTEE

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

CHAIRMAN

Meeting concluded at 11.30 am